1	TOWNSHIP OF BERKELEY	1	I N D E X NAME OF WITNESS PAGE	
3	IN THE MATTER OF:	3	STUART WISER 4	
5	SOUTH SEASIDE PARK HOMEOWNERS AND NOTES SOS PETITION HEARING	5		
6	ally all was lide and	6		
8	Pinewald Keswick Road Bayyile, New Jersey Thursday, July II, 2019	/ 8		
9	6:25 p.m,	9		
10 11	BEFORE:	10 11		
12	Robert Winward i Chairman Bomenick Lorelli Mamember	12		
13	John A Backhione Councilman Bick Mackies, Member	13		
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1		1	MR. WINWARD: Next up on our agend	da
2	APPEARANCES: DASTIMURPHYMCGUCKIN, ULAKY,	2	is the South Seaside Park Homeowners and Voters Association. We're going to start out with them	
4	CHERROS W. CONNORS, ESOS.	4	tonight.	
5	BY: "MARTIN' J. "BUCKEEY" ESQ." Attorneys for the Board	5	(Off the record.)	_
6 7	O'MALLEY, SURMAN & MICHELINI, ESQS. 17.Beaverson Blvd.	6 7	MR. WINWARD: We're going to start out with them tonight, so if you could kindly ne	
8	O'MALLEY, SURMAN & MICHELINI, ESQS. 17.Beaverson Blvd. Brick, New Jersey 08723 By: JOSEPH MICHELINI ESQ. Attorneys for the Petitioners	8	up prepare for that.	
9 10	,	9 10	STUART WISER, having been duly sworn, according t law, upon his oath, testified as follows:	:0
11		11	MR. WISER: Good evening,	
12			Mr. Chairman, board members, members of the publi	
13 14	Kelly Hugg, Secretary James Oris, Planner Ernie Peters, Engineer		For the record, my name is Stuart Wiser. I'm the vice president of planning and environmental	e
15	, •	15	services for ARH Associates, and I've been through	-
16 17		16 17	this de-annexation with you since our first meeti in January 2015. It's been a long and winding roa	-
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19		19	through, by my count, 38 meetings, 47 witnesses.	
20 21		20 21	all resulted in more than 3,600 pages of transcrip And, by my count again, about 160 exhibits. The	
22		22	result of all of that is this report which has be	en
23 24			handed out to the board members, to the petitioner 395-page report. My job tonight and the next coup	
25			of sessions is to try to synthesize all of this f	

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1 you down into -- try to boil it down into what, in
2 this process, will amount to a concise summary.
3 I had a mentor tell me once that I
4 should start these things with a joke, what he
5 called a funny. So, I was going to start and say,
6 you know, when we started this process I had hair
7 and I had -- I had more hair and less weight. But
8 Mr. Michelini is going to remind me that I'm under
9 oath, so I can't say that, that would be a lie.
10 Then I was going to go through the old Airplane,
11 little skit that they did and start with first the
12 earth cooled and then there were dinosaurs. But,
13 actually, I decided to go with a more biblical
14 reference.

In the beginning, God created the heaven, the earth, and the earth was without form and it was void. And got God said, let the waters be gathered together into one place and let the dry land appear. And God called the dry land Earth, and he saw that it was good. And after awhile, a part of that dry land was named Dover Township. And it broke off at some point in time, a portion of it broke off, to become Berkeley Township. But some people thought that wasn't so good. So, some parts of Berkeley Township broke off to become Ocean Gate,

1 planning board for a public hearing and findings of 2 fact as to what the impact would be on de-annexation 3 or what the impact of any de-annexation would be. 4 That happened in October of 2014. The hearing began 5 on the 8th of January 2015 and included somewhere in 6 the neighborhood of 40 meetings with, again, 47 7 witnesses and professionals.

8 Now, we've heard a lot of testimony 9 after -- over the past number of months and years. 10 And I apologize, this is not coming through like it 11 did in my office. But what you were asked to do, as 12 the planning board, is make a finding based on the 13 petitioners' presentation. And the petitioners must 14 establish, by the preponderance of the credible 15 evidence, that refusal to consent to de-annexation 16 would be detrimental to the economic and social 17 well-being of the majority of the residents of 18 South Seaside Park and that de-annexation will not 19 cause a significant injury to the well-being of the 20 remaining residents of Berkeley Township. Both 21 conditions must be present for de-annexation to be 22 granted.

In evaluating the impact of de-annexation on both South Seaside Park and the township, there is case law that points to a number

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1 and Beachwood, and Pine Beach, and Island Beach 2 State Park, and South Toms River, and Seaside Park, 3 and Seaside Heights. And in the '70s, the 1970s, 4 some guy named Whiteman, I say respectfully --5 that's what I said, Whiteman -- still didn't think 6 that this was good. So, he and a number of his 7 neighbors decided they would try to break off from 8 Berkeley Township, and become part of Seaside Park. 9 There was a lot of litigation and legal instances, 10 legal proceedings that went on. And, apparently, 11 Seaside Park, at the end of that day, wouldn't take 12 them. And maybe Seaside Park was originally 13 supposed to be part of -- I'm sorry -- and maybe 14 South Seaside Park was originally supposed to be 15 part of Seaside Park or maybe it wasn't. And maybe 16 there was a boundary error on an old map, or maybe 17 the map was really just a real estate ad. And a lot 18 of other things happened and a lot of other things 19 didn't happen. And you know what, we've sat through 20 it all, but really none of that matters. 21 What matters is that South Seaside

22 Park Homeowners and Voters Association, which we

23 have been calling the petitioners, submitted a

24 petition for de-annexation in September of 2014.

25 The township clerk referred the petition to the

of factors that are potentially relevant to your review. Economic detriment is pretty much easy to sift through and determine its numbers. And some numbers are higher than other numbers. And we can debate as to where those numbers came from. But it's somewhat black and white.

MR. MICHELINI: I just, for the

8 record. I'm sorry to interrupt. But I will have a 9 continuing objection to Mr. Wiser without -- with 10 all due respect, he's an engineer, and possibly a 11 planner.

MR. WISER: No, I'm a planner and not an engineer.

MR. MICHELINI: Planner and not -
MR. WISER: For the record, I am a

licensed professional planner in the State of New

Jersey, and I hold the National AICP certification

from the American Institute of Certified Planners.

MR. MICHELINI: I don't want to stand

up and object every time he talks about case law.

21 But he's not an attorney. He's not a judge. He's 22 not somebody trained in the law. He's not somebody 23 that should be instructing this board in terms of 24 what the law is, and particularly what the case law 25 is. You have an attorney for that purpose

25 is. You have an attorney for that purpose.

1 MR. MARTIN: Mr. Michelini, you'll 2 have the opportunity to cross examine the witness. MR. MICHELINI: I absolutely will. 3 4 And rather than get up every time he talks about 5 case law --6 MR. MARTIN: Fair enough. 7 MR. MICHELINI: -- I want to note that I have a continuing objection on the record as 9 to anything that he says about case law. Thank you. 10 MR. WINWARD: Noted. Thank you. And 11 the record is noted. 12 MR. WISER: Be that as it may, and 13 I'm sure when it comes time, Mr. Michelini will tell 14 you all where he believes I'm wrong. But, this --15 these are quotes from the relevant -- from one of 16 the relevant cases. And it speaks to how we go 17 about evaluating social detriment. And it says 18 that, social department can be found in the form of 19 communities being deprived of the petitioner's 20 participation in the religious, civic, cultural, 21 charitable and intellectual activities in the 22 municipality, their meaningful interaction with 23 other members of the community, their contribution 24 to the community's prestige and social standing, the

1 Zoning and planning implications. Population demographics and geographic matters. 3 And, finally, based on -- or in 4 relation to all of those items, the courts have held 5 that the de-annexation law is intended to give 6 precedence to the policy of preservation of municipal boundaries and the maintenance of their integrity against challenges prompted by short term or even frivolous considerations, such as tax or 10 zone shopping. 11 So, again, my task is to synthesize 12 everything that we've heard over the past four and a 13 half years and to provide a report to you, which 14 I've done. Your task, as the planning board, is to 15 serve as an independent fact finder, regarding 16 whether or not the facts in evidence show that 17 refusal to consent to de-annexation would be 18 detrimental to the economic and social well-being of 19 the majority of residents of South Seaside Park, and 20 once again, that de-annexation will not cause a 21 significant injury to the well-being of 22 Berkeley Township. 23 Importantly, under the law, the

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3 that is social detriment. We know that this is true 4 because much of their planner's testimony dealt with 5 exactly these issues. You will remember a while 6 ago, long time ago by now, that a lot of this was 7 the bulk of what Mr. Bauman testified to. In terms of economic detriment, the 9 board can look to long-term or short-term economic 10 interests. Loss of ratables. The impacts on local 11 school or other taxes of the municipality and the 12 de-annexing areas. Cost savings in providing 13 municipal services. And the types of municipal 14 services provided to date. Once again, those are 15 things that the applicant -- the petitioners all 16 testified to, either individually or through their

25 part they play in the general scheme of the

1 municipality's social diversity, the wholesome

2 effect their presence has on racial integration,

17 professionals. Case law speaks also to impacts on 19 emergency services and equipment, including the cost 20 of providing them and the need to provide them in 21 the future. Recreational and school facilities. An 22 analysis of tax assessments, both the total tax 23 assessment of the municipality as relates to the 24 affected lands, and the total area of the 25 municipality as relates to the affected lands.

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24 petitioners have the burden of proof. Once you as 25 the planning board have made your findings, those

1 findings are referred to the governing body, the 2 township council, for their decision as to whether or not to permit de-annexation. You as the planning board may elect to provide the township with formal 5 recommendations or simply may refer your findings to the governing body without formal recommendation. So, during the course of this set of 8 hearings, we've heard testimony from witnesses that 9 can be grouped into the following categories. We've 10 heard from the residents of South Seaside Park. 11 We've heard from the petitioners' planning 12 professionals. We've heard from the petitioners' 13 financial professionals. We've heard 14 representatives from the township's police 15 department, EMS and first responders, public works 16 department, finance department and administration. 17 We've also heard from non-petitioners with opinions 18 regarding de-annexation. They were, some for and 19 some against.

20 The issues raised by the petitioners 21 can be grouped into the following categories. The 22 impact of distance of South Seaside Park from 23 mainland Berkeley Township. The lack of monetary 24 and non-monetary investment by the township in 25 South Seaside Park. Isolation and social injury for

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1 the residents of South Seaside Park being a part of 2 Berkeley Township. Economic injury to the residents 3 of South Seaside Park being part of 4 Berkeley Township. A general unresponsiveness by 5 Berkeley Township to South Seaside Park. And sort 6 of related to that is neglect by the Township of 7 South Seaside park. Public works services. Police 8 and emergency services. Township planning for 9 South Seaside Park. The financial impact of 10 de-annexation on South Seaside Park, on both 11 South Seaside Park and the township.

12 I'm going to try to take these one at 13 a time. There's going to be some overlap between 14 some of these various topics. So, if we don't get 15 to something in one, in one session, we're likely to 16 get to it in the additional session, in the further 17 sessions. I would anticipate given the two hour 18 time limit, definitely to take up all the two hours 19 tonight. Definitely to take up all the two hours 20 next week and probably a portion -- or not next 21 week, next meeting, and then a portion of the 22 meeting that comes after that. So, that's sadly 23 what you have to look forward to over the next 24 couple of months.

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So, the first issue regarding

1 may have to travel through other municipalities as 2 well. Conversely, South Seaside Park is contiguous 3 to Seaside Park, and the residents can ride their 4 bicycles to municipal meetings or anything that 5 happens in that community.

Regarding children. The applicants or the petitioners contend that children from South Seaside Park attend Berkeley Township public schools, and the distance and drive times from South 10 Seaside Park to these schools were reported as, 11 roughly, 13 to 16 miles, which may be a 25 to 31 12 minute drive time. Alternatively, children from 13 South Seaside Park attend school -- I'm sorry. 14 Alternatively, children from Seaside Park attend 15 school at the Washington Avenue elementary school in 16 Toms River. And that if de-annexation were granted, 17 children who now ride the school bus for 55 minutes 18 to Berkeley schools from South Seaside Park, would 19 only travel seven miles to the Washington Township 20 elementary school, which is a 12 minute trip. 21

The Township's planner spoke to 22 distance at length, recognizing that to get from 23 South Seaside Park to mainland Berkeley Township is 24 a pretty significant distance and a significant 25 travel time. After noting that other areas of the

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1 de-annexation is -- was distance. The distance --2 petitioners raised the issue that the distance from 3 South Seaside Park to the Berkeley Township 4 municipal building is 16 miles. On a Sunday 5 afternoon in March, this distance translated to a 31 6 minute drive. The time it takes to drive this 7 distance expands to about 45 minutes in the tourist 8 season. So that it may take an hour to 90 minutes 9 round trip to attend a township meeting here that 10 may only last a half hour. Other facilities are 11 roughly similar distances away.

What we have here is, outlined in 13 red, is Berkeley Township. This orange area is 14 South Seaside Park. This yellow circle represents 15 the bridge to get from the island to the mainland. 16 And then, depending on where you're going, you would 17 take various routes to get there. This is the same 18 slide, just a little closer up, without Island Beach 19 State Park.

20 The petitioners contend that to 21 travel from South Seaside Park to the Township's 22 mainland facilities, one must travel through Seaside 23 Park, Seaside Heights, Toms River, Island Heights, 24 South Toms River, Beachwood and Pine Beach. And 25 depending on what your ultimate destination is, you 16

1 township also have a distance to travel to get to 2 certain other locations, Mr. Slachetka commenced a discussion on what he termed locational decision making. So, I have this little note to make a joke 5 about Mr. Slachetka and trying to summarize his 6 testimony, but I'm not going to make that joke. But 7 what he basically said was, there are tradeoffs to make when deciding where to live. Factors such as access to community facilities, entertainment and 10 amenities are weighed against the cost of living, 11 the type and size of dwelling you might desire and 12 travel time to get from wherever you wish to live to 13 wherever you think you might want to go. Often, 14 certain desires must be sacrificed to achieve more 15 or other more desirous goals. So, as relates to 16 South Seaside Park, Mr. Slachetka referenced the 17 testimony of several petitioners regarding the 18 importance they place on the quality of life they 19 enjoy living in South Seaside Park on the island, 20 and agreed that this location is unique for the 21 township. But he also noted that living in 22 South Seaside Park entails certain sacrifices and 23 requires a balancing of priorities. He also 24 recognized that other sections of the township offer 25 amenities that might lead people to make different

1 locational decisions as to where they live, than the 2 petitioners or the residents of South Seaside Park. 3 People make choices, everybody makes different 4 choices.

5 At issue before you as the board 6 tonight is whether or not the distance between 7 South Seaside Park and mainland Berkeley Township is 8 detrimental to the well-being of the majority of the 9 residents of South Seaside Park. Based on all of 10 the testimony we have heard and the exhibits, it is 11 our belief that the distance between South Seaside 12 Park and the township's mainland facilities, may 13 create an inconvenience, certainly does create an 14 inconvenience for the petitioners. And that it 15 would be more convenient if their municipal 16 interactions were with neighboring Seaside Park. 17 That being said, our research has 18 found that the township facilities have historically 19 been located on the mainland. And the problems 20 related to distance are the result of locational 21 decisions made by island residents who have chosen 22 to trade distance from township hall, the 23 recreational facilities and other mainland based 24 facilities, in order to live in a beachfront island 25 community.

1 as members of the township's housing authority, 2 board of education and zoning and planning boards. 3 All of which meet on the mainland. Again, the 4 township's municipal facilities have always been on 5 the mainland, and the record demonstrates that many 6 of the petitioners actively participated in civic affairs throughout their residency in South Seaside 8 Park.

9 So, while perhaps an inconvenience, 10 the time and distance between South Seaside Park and 11 mainland Berkeley Township have not been so 12 significant as to override petitioners' desire to 13 remain in South Seaside Park. Had traveling to the 14 mainland been too onerous, they would not have 15 volunteered their time or continued to participate 16 as they have. The record indicates that their 17 South Seaside Park residence has not isolated them 18 from participating in the township's civic life. 19 The record does demonstrate that many

21 community life while younger, when younger, now, due 22 to age or disability or ability to drive or desire

20 of the petitioners who actively participate in

23 to drive, are less able to participate. So, at one

24 level, the impact of the distance between

25 South Seaside Park and mainland Berkeley Township is

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With respect to schools. Should 1 2 de-annexation occur, South Seaside Park will become part of the Seaside Park school system. 4 Seaside Park has no schools. Their elementary 5 students either attend Lavallette elementary school, 6 which is about five miles or ten minutes from 7 South Seaside Park. The Washington Township 8 elementary school and the Intermediate East School, 9 which are just about ten miles or 18 minutes from 10 South Seaside Park. Seaside Park's middle and high 11 schoolers attend Central Regional Middle and High 12 Schools, both are in Bayville. So, while 13 de-annexation may result in less travel time for 14 South Seaside Park's students in the elementary 15 grades, it will have no impact on the students once 16 they reach middle and high school. 17

We believe that the record does not 18 support the petitioners' contention that the 19 distance between South Seaside Park and the mainland 20 sections of the township has isolated them from the 21 township's civic life. The petitioners or many of 22 the petitioners testified at length regarding 23 frequent attendance at township public meetings and 24 at the municipal -- which are held at the municipal

25 complex here on the mainland. They have volunteered

1 the result of locational decisions made by island 2 residents who have chosen to trade distance from 3 township hall, recreation fields and other mainland based facilities for life in a beachfront island 5 community.

At another level, we do recognize 6 7 that peoples' conditions change over time. And as we age, things that we may have previously been able 9 to do and able to enjoy, may no longer be available 10 to us or available to us at the same level as 11 before. However, we don't believe that the solution 12 to this issue is de-annexation. If it were, de-annexation would be appropriate response each 14 time a neighborhood ages or the interests of the 15 residents change.

16 Now, the courts have ruled that the 17 de-annexation law is not encouraged -- is not 18 intended to encourage the adjustment of municipal 19 boundaries from time to time, dependent upon the 20 changing interests of the residents. It was 21 intended to give precedence to a more significant 22 policy, which is that of preserving municipal 23 boundaries and maintaining the integrity against 24 challenges prompted by short-term considerations.

The courts have also ruled that there are

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1 other mechanisms short of de-annexation to address 2 the concerns of petitioners. For example, 3 Berkeley Township could enter into an interlocal 4 agreement whereby South Seaside Park residents could 5 take advantage of Seaside Park's recreational 6 facilities, participate in its recreational programs 7 or otherwise take advantage of facilities that are 8 closer to their home. The township could hold 9 occasional public civic meetings in Seaside Park's 10 municipal building or at the Tri-Boro First Aid 11 Squad building. While the Tri-Boro building is not 12 in South Seaside Park, it would provide something 13 that would be closer to their home.

Given the advancement in technology, the 15 township could stream all public meetings on its 16 website so that interested parties who could not 17 attend in person would be able to view the 18 proceedings. There could even be a feedback 19 mechanism implemented so remote viewers, distance 20 viewers, could participate. That completes our 21 section on distance and related injury.

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We now would like to move on to general 23 unresponsiveness and neglect of South Seaside Park. 24 So, as related to general unresponsiveness and 25 neglect, petitioners assert that the township is not

1 to travel from South Seaside Park to the township's municipal complex make it difficult for them to --3 for petitioners to attend. The township holds no public meetings in South Seaside Park. In fact, 5 there's no suitable facility in South Seaside Park 6 for that purpose. Petitioners are required to 7 conduct their municipal businesses on the mainland. 8 And as we've heard, that requires a distance of 9 travel. Participation in municipal activities is 10 more convenient and more readily accessible by the 11 residents of mainland Berkeley Township than those 12 of South Seaside Park. And until the recent website 13 updates, residents of South Seaside Park had to 14 travel to the township's rec building on Route Nine, 15 recreation building on Route Nine, to register for 16 recreation programs or other -- or participate in 17 other activities. This is especially concerning to 18 elderly residents of South Seaside Park who find it 19 difficult to drive to the mainland, especially at 20 night.

21 The petitioners also complained that 22 there is a lack of communication from the township 23 to the island, which results in South Seaside Park 24 residents being disadvantaged when it comes to 25 learning of municipal programs, activities, meetings

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1 responsive to the needs of South Seaside Park and, 2 in effect, neglects these needs. This leads the petitioners to have a sense that they are second 4 class citizens compared to the residents of the 5 mainland.

MR. MICHELINI: Excuse me. What page 6 7 of your report are you on?

MR. WISER: I'm not going through the 9 pages of the report, so I couldn't even tell you. 10

MR. MICHELINI: Okay.

11 MR. WISER: I've distilled it all 12 down to something different.

13 MR. MICHELINI: That's fine. Just, 14 if you were following the report --

15 MR. WISER: I'm trying to go in order 16 but I don't know the page numbers.

MR. MICHELINI: Fine.

MR. WINWARD: It Looks like it's 82.

MR. MICHELINI: Okav.

MR. WISER: Good job.

MR. MICHELINI: Thank you.

21 22 MR. WISER: So, with respect to this 23 topic, specific issues raised by the petitioners

24 included: Municipal meeting times make attendance 25 difficult because the times and distances required 1 or announcements. South Seaside Park residents do 2 not receive any municipal newsletters, such as the

Berkeley Citizen or the Berkeley Times. And while

4 information including -- and while information,

5 including information regarding garbage and

6 recycling schedules, is available online, a lot of

7 seniors don't use a computer and are, therefore, not

8 in contact. Additionally, South Seaside Park

9 residents don't even have access to the township's 10 council meeting broadcast because the island does

11 not have Comcast service. They have a different

12 cable provider.

13 The petitioners asserted that the 14 township's recreational department sponsors bus 15 trips that are open to township residents, but buses 16 are not available to the residents of South Seaside 17 Park. Island residents must travel to any one of 18 five pickup points in order to take advantage of 19 this service. All of those pickup points are 20 located on the mainland. There is no public transit 21 service that connects South Seaside Park with 22 mainland Berkeley Township. While the county offers 23 an Ocean Ride bus service that does service mainland 24 Berkeley Township, including the senior communities, 25 it does not service South Seaside Park. During the

summer, New Jersey Transit services the island.
 They have a bus that leaves from Toms River for
 Island Beach State Park, but it does not stop in
 South Seaside Park. Mr. Whiteman testified that
 residents -- or that requests to address these and
 other issues repeatedly go unanswered.

7 So, at issue before the board tonight 8 is whether or not the township has been 9 nonresponsive to or neglectful of the needs of 10 South Seaside Park. The petitioners, as we note, 11 contend that it has. And to support their 12 contention, they've testified and submitted 13 exhibits.

Based on everything that we have
heard, we find that the scheduling of public
meetings for times when traffic is heavy, thereby
making it difficult for residents to attend, may
work an inconvenience on the petitioners, but it
also may be beneficial to other members of the
communities whose work schedules don't permit them
attend evening meetings -- or early meetings,
excuse me.

Township facilities have historically been located on the mainland. Again, there is no suitable facility to hold public meetings in

1 justifiably lends to a feeling of neglect by the 2 petitioners.

With all that being said -- and once again, if I didn't say this before, I think it's important, I'm trying to distill a almost 400 page report down to a manageable presentation. If I have neglected any particular detail of concern, it is not -- it is in my attempt to be expeditious and it's not the result of me trying to skip over anything. So, if there are any questions about any specific issues, when it comes time, I'll certainly try to answer them.

So, at issue before the board is
whether or not Berkeley Township has been
nonresponsive or neglectful to the needs of
South Seaside Park. We do not believe that the
record supports this conclusion. While the lack of
bus transportation to the mainland does limit
petitioners' ability to participate in the rec
programs, that would be addressed -- pardon me, I'm
sorry. While the lack of bus and transportation to
the mainland does limit petitioners' ability to
participate in the township's rec program,
de-annexation would address those issues, not by

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1 South Seaside Park and no township owned developable
2 land to construct such a facility in South Seaside
3 Park. And even if there were, we have heard
4 testimony that it would not be prudent to locate
5 such a facility on the barrier island in the
6 floodplain.

There was testimony from the township

8 public works department -- excuse me -- recreation

9 department, that left it unclear as to whether

10 pickup for South Seaside Park -- pickup by the

11 recreation department in South Seaside Park for

12 their bus trips is available or not. Let me say

13 that again. It is unclear whether pickup for the

14 township's recreation department bus trips is

15 available for South Seaside Park residents upon

16 request. Absent the addition of island bus routes

17 by Ocean County and/or New Jersey Transit,

18 de-annexation will have no impact on that bus

19 service.

20 Recognizing -- or as to the
21 complaints regarding the lack of communication
22 between Berkeley Township municipal government and
23 the residents of South Seaside Park, most
24 significantly the inability to view televised
25 township council meetings, we believe that this

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25 making it easier for the residents to get to

1 mainland Berkeley Township, but they would be able
2 to take advantage of the recreation programs in
3 Seaside Park. Pardon me. However, we believe that
4 the deficiencies cited as neglect do not reflect the
5 kind of long-term structural and inherently remedial
6 detriment we believe the legislature had in mind
7 when enacting the de-annexation law. Again, the
8 courts have ruled that there are other mechanisms
9 short of de-annexation to address the concerns of
10 petitioners.

The township council could alternate start times of public meetings, like they do for the budget hearings, so that those who cannot attend at 6:30 would be able to participate at other times. We talked about, a little earlier, the township working with the Borough of Seaside Park to work out a mechanism where the residents of South Seaside Park would be able to benefit -- or would be able to participate in the recreation programs of Seaside Park. And there are any number of mechanisms that could alleviate the concerns of the petitioners, short of de-annexation.

23 The third item that the petitioners raised 24 was -- I'm sorry -- I've got a little technical 25 issue here. Other issues -- let me go back.

Other issues short of de-annexation that 2 could address the neglect would be that the township 3 could stream public meetings, once again, on its 4 website. They could improve the website so more 5 business could be conducted over the internet as 6 opposed to having to come to the mainland. The 7 township could petition Ocean County and/or New 8 Jersey Transit to provide stops that would service 9 South Seaside park. Those are all things that could 10 occur.

I apologize. I'm having a little technical 11 12 difficulty.

13 The next issue raised is lack of investment. 14 Petitioners assert that a lack of investment in 15 South Seaside Park by Berkeley Township -- that 16 there is a lack of investment in South Seaside Park 17 by Berkeley Township. At issue before the board is 18 whether or not there has been a lack of investment 19 sufficient to be detrimental to the well-being of a 20 majority of residents of South Seaside Park. 21 Specific issues raised by the petitioners included 22 the fact that other than the White Sands Beach, 23 there is only one recreation facility in 24 South Seaside Park, that's the Lyons basketball

25 court. There are a number of parks on the mainland

1 include time, effort, services, equipment and general showing of concern. Specifically, the 3 township doesn't maintain the outfall pipe in the 4 area at the bay beach. And that rocks that are used 5 to keep the pipes in place, have disbursed 6 throughout the bay area. There's no lifeguard on South Seaside Park's bay beach. Whereas, the 8 township's mainland beaches are guarded. There's no policing of litter and debris on the bay beach. 10 Adequate, once per week cleaning of White Sands --11 inadequate, once per week cleaning of White Sands 12 Beach during the tourist season is not sufficient, 13 and whereas Seaside Park cleans the beach at least 14 five days a week. There's inadequate street 15 sweeping and roadway cleaning. There's inadequate 16 snow plowing. 17

The financial expert brought in by the 18 petitioners reviewed the capital bond ordinance 19 adopted by the township for 2010 to 2015, and he 20 testified that the 30 million-dollar authorized 21 during that period of time made minimal reference at 22 best to South Seaside Park. From this analysis, he 23 concluded that very little was spent in 24 South Seaside Park. When he was asked to clarify if 25 he thought that such spending was minimal as

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1 that offer a variety of amenities, but those do not 2 extend into South Seaside Park. The Lyons 3 basketball court itself lacks amenities that are 4 available at the township's mainland parks and in 5 neighboring parks in Seaside Park. There are no 6 recreation programs in South Seaside Park and only 7 one special event that's held in the community, and 8 that's the beach concert. And, again, there's no 9 transportation for South Seaside Park residents to 10 attend recreation programs or special events on the 11 mainland.

12 South Seaside Park has no police substation, 13 bayfront beach, satellite municipal garage to 14 accommodate beach cleaning equipment, playgrounds or 15 general recreation facilities, community or senior 16 center with appropriate senior facilities. There's 17 only one beach bathroom and water fountain. The 18 decorative entrance to South Seaside Park is much 19 nicer than the one -- I'm sorry, the decorative 20 entrance for Seaside Park is much nicer than the one 21 in South Seaside Park. There are no amenities for 22 children in South Seaside Park. And the roads in 23 South Seaside Park don't get repaved.

Petitioners assert that this lack of 25 investment extends beyond monetary investment to 1 compared to what the township spends in other 2 neighborhoods, or in terms of total dollars, he 3 replied that he was referring to the total dollars 4 spent in the rest of the township versus the total 5 dollars spent in South Seaside Park. But he 6 admitted that he didn't conduct an analysis to 7 determine if there was a correlation between the 8 size of the mainland and what is spent there, as

9 opposed to the size of South Seaside Park and what

10 the township invests in that community.

11 The financial expert also admitted that he 12 had not performed any calculations as to the portions of the township's bond ordinance for 14 capital improvements that might apply to 15 South Seaside Park. And while he was able to 16 identify roads that were to be improved, he was 17 unable to determine specific allocations of monies 18 for specific roadways. When asked if he had 19 conducted any investigation as to non-road related 20 improvements that were made without using bond 21 money, he indicated that he did not.

When asked for specifics to support the 23 repeated assertions that the township has not 24 invested in South Seaside Park, the petitioners were 25 unable to do so. Conversely, numerous township

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1 professionals testified regarding the extent of 2 support provided to the neighborhood. One measure 3 of this support is that the township spends in 4 excess of \$100,000 annually on beach staff, 5 lifeguards, badge checkers, ticket takers, et 6 cetera. Now, while that's township wide, the 7 testimony was that 90 percent was for White Sands Beach. Other specific activities will be addressed 9 when we get to public works.

As relates to Mr. Whiteman's additional 11 testimony that there is no police substation in 12 South Seaside Park, the township testified that they 13 do have a mobile unit that acts as a substation when 14 the situation requires. The police representatives 15 testified that a traditional satellite substation of 16 the type requested by Mr. Whiteman is an antiquated 17 concept in this era of cell phones and mobile 18 communications.

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19 While conceding that limited recreation 20 facilities are provided in South Seaside Park, the 21 township views this as due to a lack of land 22 available for development of those amenities in 23 South Seaside Park and not as neglect. And while 24 the township recognizes that the Lyons Memorial Park 25 is small and may contain only a basketball court,

1 tides.

15

2 So, based on all the testimony and the 3 experts we heard in this subject, petitioners' assertion that there is a lack of public recreation 5 in South Seaside Park is not without merit. It is 6 credible. The township points to the White Sands Beach and the Lyons Memorial Basketball Park as 8 recreation areas and states that the size of South Seaside Park precludes the number and types of 10 facilities as are located on the mainland. While 11 both of these statements are factual, the island 12 facilities do lack amenities that are available in 13 the township's mainland parks and at facilities in 14 neighboring Seaside Park.

with few facilities to host programs, it's 16 not surprising that little programming is offered in 17 South Seaside Park. Notably, the township does take 18 advantage of the single facility in South Seaside 19 Park that can accommodate event, the White Sands 20 Beach, for the annual beach concert. But beyond 21 that, there really is nothing.

22 So, at issue for the board is whether 23 or not the township has exhibited a lack of 24 investment in South Seaside Park so as to be 25 detrimental to the well-being of the majority of the

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1 the size of the lot limits what can fit in that 2 area. Further, the township views the White Sands

Beach as one of the largest public areas in the township and are very proud of that offering. 5

The township testified that they have 6 invested considerable time and resources into land use planning for South Seaside Park, including the

2017 neighborhood plan for South Seaside Park and 9 subsequent ordinance revisions. We'll address 10 specific planning issues in a different section. 11 During discussion of the township providing a 12 satellite municipal garage in South Seaside Park to 13 accommodate beach cleaning equipment, petitioners 14 did concede that it made economic sense for the 15 township to share facilities with its neighboring 16 municipality than -- rather than constructing a 17 facility of its own. During discussion about the 18 debris along South Seaside Park's bay beach, it was 19 determined that the rocks that were testified to 20 were actually purposely placed by the township over 21 a culvert or outfall pipe as ballast to keep the 22 infrastructure in place. The township did concede, 23 however, that there needed to be additional 24 maintenance in that area to make sure that that

25 ballast remains in place and doesn't shift with the

1 residents of South Seaside Park. The record does 2 not support petitioners' contention that there has been a lack of investment in South Seaside Park. 4 The township has paved a higher percentage of 5 roadways in South Seaside Park than it has for the 6 balance of the township. And has commissioned and 7 adopted a neighborhood plan for South Seaside Park. 8 as well as ordinances to implement the plan. The 9 neighborhood includes a recommendation for a 10 recreation and open space plan design to address 11 many of the petitioners' complaints. Clearly, it is 12 up to the township now to continue this investment 13 in South Seaside Park by funding the recreation and 14 open space plan and acting on those recommendations. 15 The record does support petitioners'

16 assertions that South Seaside Park lacks amenities 17 that are available in other parts of the township. 18 And while it would be imprudent for us not to 19 recognize the development and economic constraints 20 placed upon the township by the island's physical 21 characteristics, the lack of developed land --

22 undeveloped land, and prudent operational realities,

23 certain of the investments requested by the

24 petitioners appear to be appropriate and relatively

25 inexpensive to provide.

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So, while the record does not support a lack of investment in its totality in South Seaside Park, certain of the petitioners' complaints would be addressed by de-annexation. Specifically, de-annexation would permit the petitioners expanded recreational opportunities in what would then become their home municipality, which would be Seaside Park. And de-annexation would obviate their perceived need for a police substation, satellite municipal garage and senior center in South Seaside Park, because all of those facilities would be available in their new home municipality.

However, there's nothing in the record to suggest that de-annexation would result in a bay beach south of 14th Avenue, a decorative entrance to the community at 14th Avenue, better repaving of streets, better maintenance of the bay beach area, lifeguards at the bay beach south of 14th Avenue, better snow plowing, better planning, expanded beach bathrooms or water fountains south of 14th Avenue, or more investment than is provided by Berkeley Township. Again, the courts have ruled that there are other mechanisms short of de-annexation to address some of the concerns of the

1 around Seaside Park and the surrounding areas. They
2 testified that this is where they dine, attend
3 church, go to the beach, go to the bakery, go to the
4 liquor store, have their cars repaired attend
5 recreational and arts classes and social clubs,
6 recycle and use the post office. They expressed an
7 aversion to traveling to the mainland and testified
8 that they don't come to the mainland Berkeley
9 Township. Seaside Park is where they feel
10 comfortable. It's where their friends are. And
11 it's where their amenities, the amenities that they
12 enjoy are. Having said all that, because they are
13 part of Berkeley Township, they don't feel as if
14 they are fully a part of the Seaside Park community,
15 and they want to be.

and they want to be.

The planner hired by the petitioners summed up these statements by stating, South Seaside Park identifies with other barrier island communities that have similar characteristics. Its remoteness from mainland Berkeley Township offers -- mainland Berkeley Township offices and the recreation facilities has contributed to South Seaside Park residents relating more to its neighboring municipalities.

25 Another complaint is that

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1 petitioners. Access to South Seaside Park's
2 recreation amenities can be made available, once
3 again, to the residents of South Seaside Park by an
4 interlocal agreement whereby both municipalities
5 honor their respective beach badges or where a
6 combined beach badge program between the two
7 municipalities could be instituted. And there are
8 other mechanisms short of de-annexation that we've
9 talked to -- we've talked about in other contexts
10 that would lead to the solving of the operational
11 difficulties faced by the petitioners, short of

I'd like to now move on to social
injury. Petitioners contend that the distance from
South Seaside Park to mainland Berkeley Township
results in their being so isolated from the mainland
that they're not part of the township's social
fabric. They identify more with neighboring barrier
island communities than what they termed the distant
mainland. And they cite an affinity with and
connection to Seaside Park that they don't share
with Berkeley Township as a whole, as a reason for
desiring to become part of neighboring Seaside Park.
Specific issues raised by the petitioners included,
the fact that their daily and social lives revolve

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1 South Seaside Park is assigned the Seaside Park zip 2 code and not the zip code assigned to the balance of Berkeley Township. They assert that having what amounts to a Seaside Park zip code results in 5 driver's licenses of full-time South Seaside Park 6 residents having a Seaside Park address, delayed 7 delivery of -- and delayed delivery of mail. Next, the citizens of -- as citizens 9 of Berkeley Township, South Seaside Park residents 10 can't vote in Seaside Park elections. There is a 11 feeling that South Seaside Park is under represented 12 in Berkeley Township politics. And should 13 de-annexation be permitted, South Seaside Park would 14 constitute 25 percent of the Seaside Park voting 15 base. They feel that they would have more political 16 clout to have their concerns addressed if they were 17 represent -- if they were voters in Seaside Park. 18 So, at issue before the planning 19 board is whether or not being part of

20 Berkeley Township is detrimental to the social
21 well-being of the majority of the residents of
22 South Seaside Park. Before we get into the merits
23 of these assertions, I'd like to take a step back
24 and remind the board of what is required to evaluate
25 social detriment.

1 And bear with me a second. The 2 courts point to the following factors as potentially 3 relevant areas of investigation for social 4 detriment. Community being deprived of petitioners' 5 participation in religious, civic, cultural, 6 charitable and intellectual activities of the municipality. Their meaningful interaction with 8 other members of the community. Their contribution 9 to the community's prestige and social standing. 10 The part they play in the general scheme of the 11 municipality's social diversity and the wholesome 12 effect their presence has on racial integration. 13 Once again, the courts stressed that 14 these factors are not intended to be all inclusive. 15 And that in the final analysis, local decision 16 makers will have to bring to bear their own 17 knowledge, experience and perceptions in determining 18 what, in the context of de-annexation, would inflict 19 social injury upon the well being of the community. 20 The court also recognized that these 21 values undergo change over time and, therefore, 22 accorded different weight, depending, in part, on 23 the composition of the community. That these 24 examples are only some of the appropriate 25 considerations. And that values can be weighed

1 assertion. We know, we all know that there are no places to worship in South Seaside Park, and places 3 of worship in Seaside Park are limited to the Saint 4 Catherine of Siena Roman Catholic Church and the nondenominational Seaside Park Union Church. Extending the distance -- extending 6 7 the distance to the north end of Point Pleasant Beach, which is about 13 miles from the northern end of South Seaside Park, we found 13 places of worship 10 on the island. So, if you are Catholic, Methodist, 11 Episcopalian, Evangelical, Lutheran or 12 nondenominational Christian, you can worship in the 13 South Seaside Park area, not necessarily or in 14 Seaside Park, but generally on the island. But if 15 you live in South Seaside Park, and are Seventh Day 16 Adventists, you have to go to mainland Toms River. 17 African-American Methodist, you have to the mainland 18 Berkeley Township. If you're Baptist, you have to 19 go to mainland Toms River. If you're a Christian 20 Scientist, you have to go to mainland Toms River. 21 If you're Coptic, you have got to go to Barnegat 22 Township. If you're Greek Orthodox, you have to go 23 to mainland Toms River. If you're Hindu, you have 24 to go to mainland Toms River. If you're a Jehovah's

42

1 differently by a municipality at different times. So, based on all of the testimony and 3 the exhibits, it's our opinion that the petitioners' 4 lives are indeed more closely aligned with Seaside 5 Park and the surrounding areas than with 6 Berkeley Township. However, the record does not 7 support their claim to be -- to have an exclusive connection to Seaside Park. The record is full of 9 testimony that petitioners food shop in Lavallette. 10 Ortley Beach and Toms River, dine in Lavallette, go 11 to the doctors in Toms River, worship in Toms River, 12 shop at Kohl's and the mall on the mainland. And, 13 once again, they testified that they come to the 14 mainland quite often to attend meetings. They are proud to have volunteered 16 their time to serve in elected and appointed 17 positions which require travel to the mainland. So, 18 while they credibly claim an affinity to 19 Seaside Park, the petitioners are not being deprived 20 of participating in the civic activities of 21 Berkeley Township. The petitioners claim that they

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22 23 worship in the South Seaside -- in the Seaside Park 24 area. And that, somehow, this is supportive of 25 de-annexation. We believe this is a tenuous

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1 Township or mainland Toms River. If you're Jewish, 2 you have to go to mainland Toms River or Lakewood.

3 If you're Mormon, you have to go to mainland Toms

River. If you're Muslim, mainland Toms River.

25 Witness, you can worship in mainland Berkeley

5 Orthodox Christian, mainland Toms River.

6 Pentecostal, Lakehurst or Lakewood. Presbyterian,

mainland Toms River. Quaker, Barnegat Township.

Russian Orthodox, Jackson. So, basically, unless the assertion 10 is that Catholics, Methodists, Episcopalians, 11 Evangelicals, Lutherans and nondenominational 12 Christians have a greater affinity for South Seaside 13 Park than do this litany of religions, the fact is 14 that the residents of South Seaside Park worship 15 where they do -- the fact that residents of 16 South Seaside Park worship where they do, has less 17 to do with the municipality where they live in, and 18 more to do with the present religious makeup of 19 South Seaside Park and the location of their 20 denominational places of worship. So, the residents 21 of South Seaside Park are not being deprived of

22 participating in the religious activities of the

23 township. And, frankly, de-annexation won't change

24 where they worship.

25 Moving on to the situation regarding the zip

1 code. While testimony that South Seaside Park is 2 assigned a zip code of Seaside Park and not the one 3 of mainland Berkeley Township, and as a result, the 4 driver's licenses of full-time South Seaside Park 5 residents have a Seaside Park address, that may be 6 factually correct. The only testimony to support 7 any negative impact of South Seaside Park's zip code 8 is that of Mrs. Dolebacs who has seen some delay in 9 her mail delivery. While this is no doubt annoying 10 and inconvenient, the record contains no evidence to 11 suggest that this has led to any social injury. 12 Further, we note that zip codes do not follow -- or 13 zip codes that do not follow municipal boundaries 14 are not uncommon. Single zip codes often encompass 15 multiple municipalities and single municipalities 16 often have multiple zip codes. What we have up here 17 in the -- is a slide in the blue which shows 18 municipal boundary lines. And the red which shows 19 zip code boundary lines. And as you can see --20 well, you're free to come up, I'm addressing the 21 board -- as you can see, there is a lack of 22 correlation all over the State. 23 Next, with regard to voting. Petitioners' 24 Berkeley residency does prohibit them from voting in

1 Seaside Park, but they are prioritized for 2 Seaside Park residents and, therefore, not always 3 available to the residents of South Seaside Park. 4 So, to the extent that the township's recreational 5 programs represent cultural, charitable or 6 intellectual activities, petitioners' lack of participation may indeed represent a social detriment. However, once again, the record shows 9 that petitioners actively participate or have 10 actively participated in township civic life, which 11 suggests that they would participate in township 12 programming if they were interested. Which brings 13 us to the fact that there is no municipal sponsored 14 bus service from South Seaside Park to the mainland 15 for events or programs, which does serve to isolate 16 residents of South Seaside Park from the balance of 17 Berkeley Township. 18

While the record contains no evidence to 19 suggest that the petitioners are being deprived of 20 interactions with residents of mainland Berkeley 21 Township, one can infer from the testimony that such 22 interaction, to the extent it exists at all, would 23 be limited. I'm sorry.

24 (Off the record.)

25 MR. WISER: As with most people, the

46

1 participating in certain of the borough's civic 2 offerings. But other than the decision to limit the 3 response by Seaside Park Police to South Seaside 4 Park, there is no record to suggest that municipal 5 decisions made in Seaside Park negatively impact the 6 residents of South Seaside Park.

25 South Seaside Park's elections and from

As to the impact that their increased clout 8 would have in curing the injuries that they feel 9 they have suffered at the hands of Berkeley 10 Township, the record reflects that some of these 11 perceived injuries are not curable. And also, the 12 testimony regarding the response that Seaside Park 13 would have to South Seaside Park's complaints should 14 de-annexation occur is speculative at best. And to 15 invoke Mr. Slachetka, while de-annexation would 16 permit the residents of South Seaside Park to 17 participate in the government in Seaside Park, once 18 again, they made individual locational decisions 19 regarding where they wish to live and where they 20 wish naturally, then, to vote. Had they wished to 21 vote in Seaside Park, they could have moved to 22 Seaside Park.

23 Other than White Sands Beach and Lyons Park, 24 there are no municipal recreation facilities in 25 South Seaside Park. Such facilities do exist in

1 petitioners shop where the stores are. Dine where 2 the food is to their liking. Visit the doctors at 3 the doctors' offices. Worship where their religious 4 institutions are located. And associate with 5 like-minded individuals without regard for municipal 6 boundaries. These social habits will not change 7 should de-annexation occur. And while distance may 8 make it inconvenient or difficult for petitioners to 9 participate in the religious, civic, cultural, 10 charitable and intellectual activities of the 11 township, or to meaningfully interact with other 12 members of the community, they're not being deprived

13 of their ability to do so. 14 And then, once again, there are other 15 mechanisms short of de-annexation to address the 16 concerns of the petitioners. The township could 17 enter into an interlocal agreement whereby South 18 Seaside Park residents could take advantage of 19 Seaside Park's recreational facilities, participate 20 in its recreation programs and otherwise take 21 advantage of facilities which are closer to their 22 homes. The township could hold occasional public or 23 civic meetings in South Seaside Park's -- in 24 Seaside Park's, pardon me, municipal building or in 25 the Tri-Boro First Aid Squad building. While not in

48

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1 Berkeley proper, such effort would provide an added
2 voice to the residents of South Seaside Park. And
3 the township could stream, once again, their public
 4 meetings on the website so that interested parties
 5 who could not attend would be able to view, and
 6 perhaps a feedback mechanism could be implemented so
7 that remote viewers could participate.
                  At this point, understanding it's
9 only been an hour and a half, I think our next
10 section is going to be quite lengthy. And it may be
11 beneficial that we break now. I will leave it up to
12 the board, but it may be beneficial that we break
13 now and start fresh, rather than having to break in
14 the middle of one particular section.
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MR. MICHELINI: I'd like to be heard 16 on that at some point. I'd like to be heard on that 17 issue. I believe we started Mr. Wiser's testimony 18 at 6:25. We were promised we would get two hours. 19 We were not reached two meetings ago. We were not 20 reached last meeting. We were told we would have 21 two hours. And, really, this thing has gone on for 22 so many meetings, I think we ought to push through 23 and try to get at least two hours of testimony in 24 tonight. I have no objection to taking a break for

25 our court reporter. But I think we ought to do two

1 Island Beach State Park. MR. MACKRES: So, we're going to have 3 a -- if this goes through, there will be a broken piece?

5 MR. WISER: A further disconnect

6 between --MR. MACKRES: There already is

already, but it will be a further disconnect? MR. WISER: Yeah. Yeah.

10 MR. MACKRES: All right. Thank you.

11 MR. WISER: Okay. The next issue we 12 would like to address is economic injury. The

13 petitioners assert that they are harmed economically

14 by South Seaside Park being part of Berkeley

15 Township. I want to just indicate here that this

16 economic argument is not the fiscal argument 17 regarding taxes. We have addressed that in a

18 separate section later on in the report, and we'll

19 certainly get to that. But the issues that are

20 addressed by the petitioners are more, if I could

21 call them retail issues. They're issues that, 22 having to conduct municipal business on the

23 mainland, results in economic injury in the form of

24 gas, time and tolls. The lack of -- the lack of

25 amenities in South Seaside Park means that

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1 hours of testimony tonight.

MR. WINWARD: We'll take a quick

3 five, ten minute recess.

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4 5 (Off the record.)

MR. WISER: Thank you. Before we 6 move on, there was a question on page eight of our 7 report, that South Seaside Park is listed as being 8 30 square miles. Clearly, the area of the petition 9 is not that large. I don't remember what it is off 10 the top of my head. The 30 square miles includes 11 Island Beach State Park. So, just to clear up any 12 misunderstanding or misrepresentation that that 13 would have -- may have caused, everybody knows 14 South Seaside Park, and it runs from 14th to 24th 15 and from the ocean to the bay, clearly is not that 16 large.

17 MR. MACKRES: I have a quick 18 question. So, the petitioners, are they asking for 19 the improved lots to de-annex, or are they asking 20 for their improved lots and including Island Beach 21 State Park?

MR. WISER: I could answer that, but 22 23 do you want to answer it?

24 MR. MICHELINI: You can answer. 25

MR. WISER: They are not asking for

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1 petitioners have to go to use Seaside Park for their 2 bay beach, tennis courts, the pier, the boat ramp,

3 or take part -- or to take part in other amenities

4 offered by the borough. And in order to do this,

5 they need to buy a beach badge for Seaside Park.

6 So, what this means is, they have to buy a beach 7 badge to go to the beach in South Seaside Park,

8 their community, and if they want to take advantage

9 of any of the amenities in Seaside Park, they have

10 to buy a separate Seaside Park beach badge, which

11 results in economic injury for the purchase of the

12 dual badges. According to one petitioner,

13 de-annexation would save them about \$385 a year.

14 So, at issue before the planning board is whether or 15 not being part of Berkeley Township is detrimental

16 to the economic well-being of a majority of the

17 residents of South Seaside Park. 18 Based on all the testimony and the 19 exhibits, we find that the need to conduct municipal 20 business on the mainland does result in economic 21 injury for the residents of South Seaside Park. And 22 while other residents -- while there was an argument 23 that other residents of the township also have to 24 travel distances to get to the municipal building, 25 none of these business -- none of these distances

56

1 are as long as for the residents of South Seaside
2 Park. We also find that the need for South Seaside
3 Park residents to purchase beach badges for
4 Seaside Park also causes economic injury. Now, one
5 can certainly question whether going to certain
6 beaches, playing tennis, using the pier or the boat
7 ramp rises to the level of need, but these -- this
8 has been the testimony of the petitioners.
9

Finally, with respect to the ultimate disposition of White Sands Beach. During the course of these hearings, the petitioners asserted that upon de-annexation from Berkeley Township and annexation to Seaside Park, the beach would transfer to Seaside Park. It is our position that while a municipal jurisdiction may indeed transfer, the fee ownership of the beach as property, as real estate, and along with similarly for Lyons Park and other township owned land, would remain with Berkeley Township, unless a transfer is made as part of the negotiations process between Seaside Park and Berkeley Township.

So, in other words -- and we have
talked about this on a couple of times -- if the
township permits South Seaside Park to de-annex, and
Sif Seaside Park then accepts South Seaside Park or

1 if we go through litigation and it ends up that

1 combine their beach badge programs to a joint beach
2 badge that would allow both communities access to
3 each other's amenities. And by the way, not only
4 would that permit Berkeley Township residents to
5 enjoy the amenities in Seaside Park, but it would
6 also allow Seaside Park residents to enjoy some of
7 the more forested or lakeside amenities on mainland
8 Berkeley Township that they do not have access to
9 presently because their township -- their
10 municipality doesn't include those amenities.
11 Seaside Park's municipal offices. A

12 deal could be struck where Seaside Park's municipal
13 offices could handle routine matters for the
14 residents of South Seaside Park. The township could
15 hold occasional public meetings or civic meetings in
16 Seaside Park's municipal building or the Tri-Boro
17 building to reduce costs for South Seaside Park

18 residents. The township could further improve its 19 website and Facebook page to expand the ability of

20 residents to conduct business via the internet as 21 opposed to in person. And given the advancement of 22 technology, the township could stream all public

23 meetings on its website so that interested parties

24 who could not attend in person would be able to view 25 them. Again, a feedback mechanism may even allow

2 that's the result, there will be a negotiations
3 between South Seaside Park and Berkeley -- between
4 Seaside Park and Berkeley Township regarding issues
5 related to equitable bond compensation, payment of
6 debt, purchasing of land, whether it's the beach or
7 other things, and any number of issues that we
8 haven't even talked about. Those will be a
9 negotiations between the two municipalities, to
10 determine the best way for this transfer to take
11 place. So, unless the township elects to include
12 the beach in these negotiations, Berkeley will

15 from Berkeley Township if they wanted to enjoy a
16 beach right up the street from their homes.
17 We believe that the record does
18 support petitioners' assertions that they face

14 residents would still have to purchase beach badges

13 continue to operate White Sands Beach, and the

18 support petitioners' assertions that they face
19 economic injury by being residents of Berkeley
20 Township. However, and once again, we also believe
21 that there are other mechanisms short of
22 de-annexation to address this injury. Seaside Park
23 and Berkeley Township could, once again, cross honor
24 each other's beach badges for access to recreation
25 and amenities. The borough and township could

1 them to remotely participate in the meetings. So, 2 while there is, in our opinion, economic injury, the 3 de-annexation is not the only mechanism left to cure 4 that economic injury.

5 We now move on to public works. 6 Petitioners contend that South Seaside Park is not 7 well served by the township's department of public works. They state that the roads in South Seaside 9 Park aren't cleaned or repayed. The roads are not 10 cleared of sand after a storm. South Seaside Park 11 did not receive automatic robo-cans for recycling. 12 Trash does not get picked up on a normal pickup day. 13 And bulk refuse put out for pickup does not get 14 picked up the day it's supposed to, if it gets 15 picked up at all. This is despite multiple calls to 16 request a pickup. The township doesn't clean the 17 beach as often or as well as Seaside Park. The 18 beach is supposed to be cleaned two days a week, but 19 it only gets cleaned one day a week, once a week. 20 Seaside Park cleans their beach every day. 21 Another complaint is that the bay

Another complaint is that the bay
front in South Seaside Park is unmaintained with
debris, asphalt, wood, tar, cement, concrete,
macadam, rusty pipes from illegal dumping along the
water's edge and in the bay itself, so that one

1 can't walk in their barefoot. I have a slide here 2 that shows all those. I can run through that if you 3 wish or I could keep moving. These were -- well, 4 I'll run through it anyway. These were exhibits 5 that were submitted early on, very early on in the 6 process. So, we have debris, stone, pipe. 7 Somebody's shadow. This is the bay beach that is 8 overgrown. What you can sort of see here is some 9 signage that is obscured by the vegetation. As 10 opposed to the bay beach in Seaside Park, which 11 clearly is larger, has significantly better 12 amenities.

There was also a comparison to the 14 amenities on the public recreation properties in 15 South Seaside Park versus those in mainland Berkeley 16 Township. And I'll just quickly run through, a 17 picture's worth a thousand words. So, this is 18 Butler Boulevard Park, William Dudley Park, 19 Allen Road Park, Amherst Drive Beach. This is an exhibit of the winter 21 storm in 2012 or 2013 that was submitted by the

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22 exhibitors, which shows, this is 14th Avenue. In 23 Seaside Park, the roads are clean. In South Seaside 24 Park, they are covered with snow. Further,

25 petitioners contend that, unlike the bay front in

1 township doesn't clean the streets in South Seaside Park according to the publicized schedule.

3 Other than two photos related to the 4 delay in bulk pickup and one photo depicting sand 5 along the sides of 20th Avenue, the record really 6 doesn't contain any evidence to suggest that the streets in South Seaside Park are litter strewn or 8 otherwise suffer from a lack of street sweeping. Conventional wisdom in municipal government holds 10 that nobody thinks their streets are cleaned often 11 enough. Without corroborating evidence, there's no 12 way to determine the validity of either side's 13 assertions. Also, the record contains no evidence 14 to suggest that Seaside Park would do a better job 15 than Berkeley Township in cleaning the roads, should 16 de-annexation -- the roads in South Seaside Park 17 should de-annexation occur. 18

In response to the petitioners' 19 assertions that the roads in South Seaside Park 20 don't get repayed, the representative from the 21 township engineer's office testified that the length 22 of local roads in South Seaside Park is about 23 2.5 percent of all of the local roads in the 24 township. So, these are just local roads. They're 25 not county roads or state roads. The length of

58

1 South Seaside Park, the bay beach in Seaside Park is 2 quarded. There are lifequards.

So, again, at issue before the board 4 is whether or not Berkeley Township provides 5 adequate service to the residents of South Seaside 6 Park. Based on everything that we heard and the 7 exhibits submitted by petitioners, we find that petitioners' testimony that the township doesn't 9 clean the streets in South Seaside Park is in 10 conflict with the testimony of the township's 11 director of public works and the principal -- or 12 principal public works manager that say that they 13 do.

14 To support this assertion, Mr. Seiler 15 submitted a schedule that depicts the roads in each 16 section of the township are cleaned four times a 17 year. He testified that the streets in 18 South Seaside Park are cleaned after storms when 19 necessary. And that South Seaside Park is treated 20 no different than other sections of the township. 21 Without corroborating evidence, there's no way for 22 us to determine the validity of the petitioners' 23 assertions or the township's response. We've got 24 competing testimony. That being said, we do believe 25 that it is likely that there are times when the

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1 local roads paved in South Seaside Park since 2012 2 equates to approximately 27 percent of the local 3 roads in South Seaside Park. The length of local 4 roads paved on the mainland and Pelican Island since 5 2012 equates to approximately nine percent of the 6 local roads in these sections of the township. So, 7 between 2012 and 2017, the road miles repayed in 8 South Seaside Park was 2.84 times the road miles paved for the balance of the township.

10 The engineer also testified that 11 between 2012 and 2017, the township funded the 12 resurfacing of approximately 20 percent of the 13 roadways in South Seaside Park and approximately 14 nine percent of the roadways in the remaining 15 portion of the township. And that the 27 percent 16 figure does not take into consideration local roads 17 in South Seaside Park that were paved by other 18 entities or were paved utilizing non-township funds.

In response to a complaint that 20th Avenue 20 had not been repayed in 50 years, the township 21 administrator testified that the decision as -- that 22 the decision as to whether or not to repaye a local 23 road is based on the condition and traffic and not 24 the amount of time since its last repaying. The 25 administrator further testified that the township

1 budgets four to five million dollars yearly in the 2 road program and that South Seaside Park, when 3 compared to other areas of the township, has 4 received a substantially higher proportion of that 5 budget.

6 With regard to South Seaside Park not 7 receiving automatic robo cans for recycling. The 8 testimony of the township's director of sanitation 9 and recycling was that the robo cans were provided 10 for South Seaside Park except for the lanes, which 11 is Midway Beach and Miller's Camp. The only reason 12 that those areas don't have the robo cans, is that 13 the width of the roads and the low hanging utility 14 lines servicing these areas precludes access by the 15 larger trucks that are used to collect trash or to 16 empty these cans. Otherwise, the rest of 17 South Seaside Park, which he testified was 20th to 18 24th, and the other six streets, Roberts, Kathryn, 19 Sprague, Beach, all have robo cans, both robo cans 20 for recycling and for garbage pickup, traditional 21 garbage pickup.

With regard to testimony that trash is not 23 picked up per the published schedule. The 24 superintendent of, or the director of sanitation and 25 recycling testified that the only time it would not 1 recreational beach to hang out at. It's a natural growth that helps stabilize the shoreline. It's not 3 meant to be a recreational beach. So, the fact that 4 it's not fitted out as a recreational beach should 5 be no surprise. That area is not on the township's 6 open space and recreation inventory, it's not considered to be a recreational beach.

When questioned about the debris along the 9 beachfront, and the bay area as shown, the township 10 representatives testified that the township has no 11 jurisdiction to go into the water to clean up. And 12 for the material on the land, he testified that the 13 beaches in South Seaside Park are patrolled three 14 times a week in the off season and daily in the 15 tourist season. I'm sorry. I'm having some technical issues again.

with regard to snow removal, the storms that 18 were specifically addressed --

19 I'm sorry. Bear with me a second, please. 20 With apologies. I'm having problems with my -- I 21 have a corruption in my system here. I think it 22 would best serve both sides if we, with apologies, 23 if we broke here and pick up next time. 24 MR. WINWARD: Unless you want to

25 borrow a book.

17

62

1 be picked up on a scheduled day is if there was a 2 storm, then they'd push it off, or if there was a 3 holiday, it would be picked up the next day, or if 4 there was some mechanical issue with the trash 5 trucks. He testified that South Seaside Park is 6 picked up twice a week in the summer. And that no 7 other part of the town receives that type of pickup. 8 Recycling is picked up every two weeks. If there's 9 a holiday, and the holiday is on a Monday, it gets 10 picked up the next day. He testified that bulk 11 trash pickup is scheduled four times a year and that 12 there's also a call-in procedure. Other than the 13 scheduled bulk pickup days, if a request is not made 14 to his office, he will not know that the items need 15 to be picked up.

16 In response -- with respect to the bay beach. 17 In response to petitioners' request for a bay beach 18 that more closely resembles the facility in Seaside 19 Park, the township superintendent of parks and 20 recreation testified that he didn't see how this was 21 possible. It's a small area of land between the 22 road and the waterway. It's about ten feet wide. 23 There's simply no room to do that. The township's 24 planner testified that the bay beach is more of a 25 natural type of area. It's not a beach. It's not a

MR. MICHELINI: I would ask --1 2 MR. WISER: I do apologize. 3 MR. MICHELINI: Apology accepted. I would ask that Mr. Wiser provide us

5 with the program that he's following, because the 6 board and the public is looking at documentation which is being put up on a screen. Fairly, we should have a copy of that.

9 MR. WISER: Well, you submitted it. 10 Those are all your --

11 MR. MICHELINI: No, no, no. I'm 12 talking about your all overall program --

13 MR. MARTIN: Their overall program --14 MR. MICHELINI: -- you're testifying 15 to is not the same. I realize it's a summary of

what's in the report, but it's not the same.

17 MR. MARTIN: That's his own notes

18 that --

19 MR. MICHELINI: I think that we're 20 entitled to -- yeah, but he's putting it up. He's 21 put up graphics of zip codes. He's doing things 22 that aren't necessary -- some things are in the 23 report, some things are not in the report. His 24 summary of the law, for instance. I can't find it 25 word-for-word. There are some sections that are the

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1 same. But I think, as a matter of fairness and
                                                                                 MR. WISER: Can I wait till the end?
 2 appropriateness -- these are not simply notes that
                                                                2 Do you want that now? I will not change anything
 3 he's reading from. He's actually projecting them.
                                                                3 that has already been shown.
 4 So, I think we're entitled to that. And I think in
                                                                                 MR. MICHELINI: This is what I ask.
                                                                5 Once you get your system uncorrupted and fix that,
 5 past cases, they've been produced. That Egg Harbor,
 6 the first case that you were involved in.
                                                                6 if you can show me what you've shown already, that
                                                                7 would be great. If it's so inconvenient that you
                  MR. MARTIN: Do you have an issue of
 7
   providing that?
                                                                8 can't show me until after the last meeting that you
 9
                  MR. WISER: This just got corrupted,
                                                                9 testify, then I'll accept it at that time as a
10 so I'm not sure I can provide this. I have no
                                                               10 package or the whole thing then. If you're able to
11 problem providing that. What I would --
                                                               11 give it to me piecemeal, once you figure it out,
                  MR. MICHELINI: When you say that,
                                                               12 that's fine too. I would prefer that. But I will
13 I'm looking at anything that he's putting up on a
                                                               13 leave it to your discretion. Thank you.
14 screen, I think we're entitled to have.
                                                               14
                                                                                 MR. WISER: Again, for the board. I
                  MR. MARTIN: Well, Mr. Michelini, why
                                                               15 do apologize. I don't know what happened here.
15
16 don't you put your request in writing, and we'll go
                                                               16
                                                                                 MR. MARTIN: It's okay. We're almost
17 through there.
                                                               17 at your two hours anyway.
18
                  MR. MICHELINI: I don't think I need
                                                               18
                                                                                 MR. MICHELINI: Yeah. Is there a
19 to, but I'd be happy to do that. I think my request
                                                               19 likelihood that we could go first again, having not
20 is pretty clear. Anything he's putting up on the
                                                               20 gone at all the last two meetings? Would that be
21 screen that he's showing to the board and the
                                                               21 possible at the next meeting?
22 public, we're entitled to have a copy of it. It's
                                                                                 MR. WINWARD: I'm not privy to what's
23 not exactly the same as his report. Some of it is,
                                                               23 on the agenda, but I'll leave that up to Kelly to
24 some of it isn't.
                                                               24 work out with Greq.
25
                  MR. WISER: I would say that -- first
                                                               25
                                                                                 Kelly, do you know what's on the
                                                                                                                 68
                                                  66
 1 of all, I have no problem with that request.
                                                                1 August?
 2
                  MR. WINWARD: Okay.
                                                                2
                                                                                 MS. HUGG: Well, tentatively,
 3
                  MR. MICHELINI: Thank you.
                                                                   somebody was supposed to -- Lumberton Three was
 4
                  MR. WISER: I would say for the
                                                                   supposed to provide more information to hear the
 5 record that the incredibly vast majority of what is
                                                                5 rest of their case, but so far we have not received
                                                                  that. So --
 6 up there has been the exhibits that the petitioners
                                                                6
 7 submitted, so --
                                                                7
                                                                                  (Off the record.)
                                                                8
                                                                                 MR. WINWARD: Can you guys use your
                  MR. MICHELINI: That may be, but I'm
 9 particularly interested in the case law since he's
                                                                9 mikes?
10 not an attorney and he's testified about it. I have
                                                               10
                                                                                 MS. HUGG: Okay. The other case for
11 a continuing objection to it. And I certainly
                                                               11 the minor site plan, I talked to the attorney for
12 intend to go down that road on cross-examination.
                                                               12 that. And that's scheduled for the September
                                                               13 meeting, so, and the other -- there's two other
13 So, I need that information that he was putting up
14 there.
                                                               14 applications out there, but they're still under
15
                  MR. WINWARD: Is there no issue?
                                                               15 review, that Berkeley Nine.
16
                  MR. WISER: I have no problem with
                                                               16
                                                                                 MR. PETERS: Berkeley Nine was deemed
17 that.
                                                               17 complete.
18
                                                               18
                                                                                 MS. HUGG: We'll put them -- I think
                  MR. WINWARD: Okav.
                                                               19 that we should put the de-annexation on first.
19
                  MR. WISER: May I ask a question,
20 though?
                                                               20 That's my opinion. But, again, you guys can tell me
21
                  MR. WINWARD: Absolutely.
                                                               21 how to run or the chairman can tell me what to put
```

22 on the agenda first.

MR. WINWARD: Well, if there's

24 nothing on the agenda besides them, then they go

23

25 first.

22

25

24 added to it.

MR. WISER: As we move forward, this

MR. MICHELINI: Sure. I would --

23 may -- there will be things that will probably be

1	MS. HUGG: Right.	1	
2	MR. WINWARD: But you know what	2	CERTIFICATE
3	applications are on.	3	
4	MS. HUGG: Like I said, the Lumberton	4	I, LINDA SULLIVAN-HILL, a Notary
5	Three one. I'm not scheduling Berkeley Nine until,	5	Public and Certified Court Reporter of the State of
6	if I have to, until September.	6	New Jersey, do hereby certify that the foregoing is
7	MR. WINWARD: Okay. And what's	7	a true and accurate transcript of the proceedings as
8	Lumberton?	8	taken stenographically by and before me at the time,
9	MS. HUGG: That was the one we	9	place and on the date hereinbefore set forth.
10	started, but they	10	
11	MR. WINWARD: Last week?	11	
12	MS. HUGG: Last	12	
13	MR. WINWARD: Last month?	13	Notary Public of the State of New Jersey
14	MS. HUGG: I think it was in April	14	My Commission expires January 26, 2021
15	that we wait, was it last month? No, I think it	15	
16	was	16	Datade August 1 2010
17	MR. WINWARD: Was that the one that	17	Dated: August 1, 2019
18	was on the Pine Beach border?	18	
19	MS. HUGG: It was the one with the	19	
20	road issue.	20	
21	MR. WINWARD: Yeah, that was last	21	
22	month.	22	
23	MS. HUGG: Okay.	23	
24	MR. WINWARD: Yeah.	24	
25	MS. HUGG: So, I still haven't	25	

1 received any information from them. MR. WINWARD: Well, then I see no 2 3 problem putting South Seaside Park first in August. MR. MICHELINI: I think it's in the 5 interest of expediting things, too, now that 6 Mr. Wiser, we know he's going to take a couple of 7 meetings, he's about halfway through, it would be 8 great if -- and I'm not saying he has to do this --9 but if he can get through the next meeting, it would 10 be good for everyone, I think. MR. WINWARD: Absolutely. And then 12 so you can tell next application by 8:15, 8:30 to be 13 -- 8:15 to be here, so they're ready for 8:30 or 14 whenever we get started. 15 MS. HUGG: Are we talking about 16 Lumberton Three? 17 MR. WINWARD: Yes. 18 MS. HUGG: Okay. 19 MR. WINWARD: Just tell them they 20 would come in at like between 8:15 and 8:30. 21 MS. HUGG: And if they don't come in, 22 then maybe we can --23 MR. WINWARD: Yeah, exactly. MR. MICHELINI: Thank you very much. 25 Everyone have a good evening.

	26 [1] 71/14	33/8 41/6 42/20 44/22 47/6 48/10
MR. MACKRES: [4] 50/16 51/1 51/6	27 [1] 60/15	acts [1] 33/13
51/9	27 percent [1] 60/2	actually [3] 5/13 34/20 65/3 ad [1] 6/17
MR. MARTIN: [7] 8/25 9/5 64/12 64/16 65/6 65/14 67/15		added [2] 49/1 66/24
MR. MICHELINI: [27] 8/6 8/13 8/18	3,600 [1] 4/20 30 million-dollar [1] 31/20	addition [1] 26/16
9/2 9/6 22/5 22/9 22/12 22/16 22/18	30 square [2] 50/8 50/10	additional [3] 13/16 33/10 34/23 Additionally [1] 24/8
22/20 49/14 50/23 63/25 64/2 64/10 64/13 64/18 65/11 65/17 66/2 66/7	31 [2] 14/5 15/11	address [13] 21/1 25/5 27/24 28/9 29/2
66/24 67/3 67/17 70/3 70/23	38 [1] 4/19	34/9 36/10 37/25 40/6 45/5 48/15 51/12 54/22
MR. PETERS: [1] 68/15	395-page [1] 4/24	addressed [7] 27/20 33/8 37/4 40/16
MR. WINWARD: [25] 3/3 4/5 9/9 22/17 50/1 63/23 66/1 66/14 66/17 66/20	-	51/17 51/20 63/18
67/21 68/7 68/22 69/1 69/6 69/10 69/12	40 [1] 7/6 400 [1] 27/5	addressing [1] 45/20 adequate [2] 31/10 58/5
69/16 69/20 69/23 70/1 70/10 70/16 70/18 70/22	45 [1] 14/7	adjustment [1] 20/18
MR. WISER: [26] 4/10 8/11 8/14 9/11	46 [1] 1/24 47 [0] 4/10 7/0	administration [1] 12/16
22/7 22/10 22/14 22/19 22/21 47/24	47 [2] 4/19 7/6	administrator [2] 60/21 60/25 admitted [2] 32/6 32/11
50/4 50/21 50/24 51/4 51/8 51/10 64/1 64/8 65/8 65/24 66/3 66/15 66/18 66/21	5	adopted [2] 31/19 36/7
66/25 67/13	50 [1] 60/20 55 [1] 15/17	advancement [2] 21/14 55/21
MS. HUGG: [14] 68/1 68/9 68/17		advantage [8] 21/5 21/7 24/18 28/2 35/18 48/18 48/21 52/8
68/25 69/3 69/8 69/11 69/13 69/18 69/22 69/24 70/14 70/17 70/20	6	Adventists [1] 43/16
	620 [1] 2/4 6:25 [2] 1/8 49/18	affairs [1] 19/7
\$ 000 000 541, 00/4	6:30 [1] 28/14	affected [2] 10/24 10/25 affinity [3] 38/20 42/18 44/12
\$100,000 [1] 33/4 \$385 [1] 52/13	7	African [1] 43/17
•	732 [1] 1/25	African-American [1] 43/17 after [7] 5/20 7/9 13/22 15/25 56/10
'70s [1] 6/3	8	58/18 67/8
0	82 [1] 22/18	afternoon [1] 14/5 again [28] 4/21 7/6 10/14 11/11 11/20
0001 [1] 1/25	833-0001 [1] 1/25 8:15 [3] 70/12 70/13 70/20	19/3 25/24 26/13 27/4 28/7 29/3 30/8
08527 [1] 1/25	8:30 [2] 70/13 70/20	37/23 38/3 41/13 42/13 46/18 47/8 48/14 49/3 54/20 54/23 55/25 58/3
08723 [1] 2/7 08731 [1] 2/4	8:30 to [1] 70/12	63/16 67/14 67/19 68/20
1	8th [1] 7/5	against [4] 11/8 12/19 16/10 20/23 age [2] 19/22 20/8
11 [1] 1/8	9 00 (2) 14/9 22/7	agenda [4] 4/1 67/23 68/22 68/24
12 [1] 15/20	90 [2] 14/8 33/7	ages [1] 20/14
13 [2] 15/11 43/9 13 miles [1] 43/8	A	ago [3] 10/6 10/6 49/19 agreed [1] 16/20
14th [6] 37/16 37/17 37/20 37/22 50/14	ability [5] 19/22 27/19 27/22 48/13 55/19	agreement [3] 21/4 38/4 48/17
57/22	able [12] 19/23 20/8 20/9 21/17 28/1	AICP [1] 8/17
16 miles [2] 14/4 15/11 160 [1] 4/21	28/14 28/18 28/18 32/15 49/5 55/24	Aid [2] 21/10 48/25 Airplane [1] 5/10
160 [1] 4/2 17 [1] 2/7	67/10 about [24] 4/21 8/20 9/4 9/9 9/17 14/7	aligned [1] 42/4
18 [1] 18/9	16/5 18/6 18/9 27/10 28/15 34/17 38/9	all [36] 4/20 4/22 4/25 6/20 8/10 9/14
1970s [1] 6/3	43/8 52/13 53/23 54/8 59/22 62/22 63/8	10/15 11/4 13/18 13/19 17/9 19/3 21/15 22/11 24/19 27/3 29/9 35/2 37/11 39/12
2	64/12 66/10 70/7 70/15 Absent [1] 26/16	41/14 42/2 43/1 45/22 47/22 51/10
2.5 percent [1] 59/23	absolutely [3] 9/3 66/21 70/11	52/18 55/22 56/15 57/2 59/23 61/19 64/10 64/12 66/1 67/20
2.84 [1] 60/8 20 percent [1] 60/12	accept [1] 67/9	Allen [1] 57/19
2010 [1] 31/19	accepted [1] 64/3 accepts [1] 53/25	Allen Road [1] 57/19
2012 [5] 57/21 60/1 60/5 60/7 60/11	access [7] 16/9 24/9 38/1 54/24 55/2	alleviate [1] 28/21 allocations [1] 32/17
2013 [1] 57/21 2014 [2] 6/24 7/4	55/8 61/14 accessible [1] 23/10	allow [3] 55/2 55/6 55/25
2015 [3] 4/17 7/5 31/19	accommodate [3] 30/14 34/13 35/19	almost [2] 27/5 67/16
2017 [3] 34/8 60/7 60/11 2019 [2] 1/8 71/16	accorded [1] 41/22	along [5] 34/18 53/17 56/24 59/5 63/8 already [4] 51/7 51/8 67/3 67/6
2019 [2]	according [3] 4/9 52/12 59/2 accurate [1] 71/7	also [21] 2/12 10/18 12/17 16/1 16/21
20th [3] 59/5 60/19 61/17	achieve [1] 16/14	16/23 20/25 23/21 25/19 32/11 41/20
24th [2] 50/14 61/18 25 [1] 15/11	acting [1] 36/14	46/11 52/23 53/2 53/4 54/20 55/6 57/13 59/13 60/10 62/12
25 percent [1] 40/14	actively [4] 19/6 19/20 47/9 47/10 activities [10] 9/21 23/9 23/17 23/25	alternate [1] 28/11
	400 FILE 2010 FOLL FOLES	
L	<u> </u>	

Α Alternatively [2] 15/12 15/14 always [2] 19/4 47/2 **am [1]** 8/15 amenities [21] 16/10 16/25 30/1 30/3 30/21 33/22 35/12 36/16 38/2 39/11 39/11 51/25 52/3 52/9 54/25 55/3 55/5 55/7 55/10 57/12 57/14 American [2] 8/18 43/17 Amherst [1] 57/19 Amherst Drive [1] 57/19 amount [2] 5/2 60/24 amounts [1] 40/4 analysis [4] 10/22 31/22 32/6 41/15 and/or [2] 26/17 29/7 annex [2] 50/19 53/24 annexation [52] 1/5 4/16 6/24 7/2 7/3 7/15 7/18 7/21 7/24 11/5 11/17 11/20 12/3 12/18 13/10 14/1 15/16 18/2 18/13 20/12 20/13 20/17 21/1 26/18 27/24 28/7 28/9 28/22 29/1 37/4 37/5 37/8 37/15 37/25 38/8 38/12 40/13 41/18 42/25 44/23 46/14 46/15 48/7 48/15 52/13 53/12 53/13 54/22 56/3 59/16 59/17 68/19 annexing [1] 10/12 announcements [1] 24/1 annoying [1] 45/9 annual [1] 35/20 annually [1] 33/4 another [3] 20/6 39/25 56/21 answer [4] 27/12 50/22 50/23 50/24 anticipate [1] 13/17 antiquated [1] 33/16 any [16] 7/3 24/2 24/17 27/7 27/10 27/10 28/20 32/12 32/19 45/7 45/11 50/11 52/9 54/7 59/6 70/1 anything [6] 9/9 15/4 27/10 65/13 65/20 67/2 anyway [2] 57/4 67/17 apologies [2] 63/20 63/22 apologize [4] 7/10 29/11 64/2 67/15 **Apology [1]** 64/3 apparently [1] 6/10 appear [2] 5/19 36/24 APPEARANCES [1] 2/2 applicant [1] 10/15 applicants [1] 15/6 application [1] 70/12 applications [2] 68/14 69/3 apply [1] 32/14 appointed [1] 42/16 appropriate [4] 20/13 30/16 36/24 41/24 appropriateness [1] 65/2 approximately [4] 60/2 60/5 60/12 60/13 **April** [1] 69/14 are [91] area [14] 10/24 14/13 31/4 31/6 34/2 34/24 37/19 42/24 43/13 50/8 62/21 62/25 63/5 63/9 areas [10] 10/12 15/25 34/3 35/8 39/1 41/3 42/5 61/3 61/12 61/14 aren't [2] 56/9 64/22 argument [3] 51/16 51/16 52/22 **ARH [1]** 4/15

around [1] 39/1 **arts** [1] 39/5 as [78] ask [4] 64/1 64/4 66/19 67/4 asked [4] 7/11 31/24 32/18 32/22 asking [3] 50/18 50/19 50/25 asphalt [1] 56/23 assert [5] 21/25 29/14 30/24 40/3 51/13 asserted [2] 24/13 53/11 assertion [4] 35/4 43/1 44/9 58/14 assertions [7] 32/23 36/16 40/23 54/18 58/23 59/13 59/19 assessment [1] 10/23 assessments [1] 10/22 assigned [3] 40/1 40/2 45/2 associate [1] 48/4 **ASSOCIATES [2]** 1/23 4/15 **ASSOCIATION [3]** 1/4 4/3 6/22 attempt [1] 27/8 attend [17] 14/9 15/8 15/13 15/14 18/5 18/11 21/17 23/3 25/17 25/21 28/13 30/10 39/2 39/4 42/14 49/5 55/24 attendance [2] 18/23 22/24 attorney [4] 8/21 8/25 66/10 68/11 **Attorneys [2]** 2/5 2/8 August [3] 68/1 70/3 71/16 authority [1] 19/1 authorized [1] 31/20 automatic [2] 56/11 61/7 available [13] 20/9 20/10 24/6 24/16 26/12 26/15 30/4 33/22 35/12 36/17 37/12 38/2 47/3 Avenue [8] 15/15 37/16 37/17 37/20 37/22 57/22 59/5 60/19 aversion [1] 39/7 away [1] 14/11 awhile [1] 5/20 **Bacchione** [1] 1/13

back [2] 28/25 40/23 badge [7] 33/5 38/6 52/5 52/7 52/10 55/1 55/2 badges [5] 38/5 52/12 53/3 54/14 54/24 **bakery** [1] 39/3 balance [4] 36/6 40/2 47/16 60/9 balancing [1] 16/23 ballast [2] 34/21 34/25 Baptist [1] 43/18 barefoot [1] 57/1 Barnegat [2] 43/21 44/7 barrier [3] 26/5 38/18 39/18 base [1] 40/15 based [11] 7/12 11/3 17/9 17/23 20/4 25/14 35/2 42/2 52/18 58/6 60/23 basically [2] 16/7 44/9 basketball [4] 29/24 30/3 33/25 35/7 **bathroom** [1] 30/17 bathrooms [1] 37/21 **Bauman [1]** 10/7 bay [20] 31/4 31/6 31/7 31/9 34/18 37/16 37/18 37/19 50/15 52/2 56/21 56/25 57/7 57/10 57/25 58/1 62/16 62/17 62/24 63/9 **bayfront** [1] 30/13

Bayville [2] 1/7 18/12 be [83] beach [71] 6/1 6/1 14/18 14/24 25/3 29/22 30/8 30/13 30/14 30/17 31/4 31/7 31/9 31/12 31/13 33/4 33/8 34/3 34/13 34/18 35/7 35/20 35/20 37/16 37/19 37/19 37/21 38/5 38/6 39/3 42/10 43/8 46/23 50/11 50/20 51/1 52/2 52/5 52/6 52/7 52/10 53/3 53/10 53/13 53/16 54/6 54/12 54/13 54/14 54/16 54/24 55/1 55/1 56/17 56/18 56/20 57/7 57/10 57/19 58/1 61/11 61/19 62/16 62/17 62/24 62/25 63/1 63/3 63/4 63/7 69/18 beaches [3] 31/8 53/6 63/13 beachfront [3] 17/24 20/4 63/9 Beachwood [2] 6/1 14/24 bear [3] 41/1 41/16 63/19 Beaverson [1] 2/7 because [7] 10/4 22/25 24/10 37/11 39/12 55/9 64/5 become [6] 5/23 5/25 6/8 18/2 37/7 38/23 been [21] 4/9 4/15 4/17 4/22 6/23 17/19 19/4 19/11 19/14 20/8 25/8 25/24 27/14 29/18 36/3 49/9 53/8 60/20 65/5 66/6 67/3 before [12] 17/5 20/11 25/7 27/4 27/13 29/17 40/18 40/22 50/5 52/14 58/3 71/8 began [1] 7/4 **beginning [1]** 5/15 being [29] 7/17 7/19 9/19 11/18 11/21 13/1 13/3 17/8 17/17 23/24 27/3 29/19 35/25 38/16 40/19 40/21 41/4 41/19 42/19 44/21 47/19 48/12 50/7 51/14 52/15 52/16 54/19 58/24 64/7 belief [1] 17/11 believe [11] 18/17 20/11 26/25 27/16 28/3 28/6 42/25 49/17 54/17 54/20 58/24 believes [1] 9/14 Bell [1] 1/14 beneficial [3] 25/19 49/11 49/12 benefit [1] 28/18 **BERKELEY [69]** 1/1 5/23 5/25 6/8 7/20 11/22 12/23 13/2 13/4 13/5 14/3 14/13 15/8 15/18 15/23 17/7 19/11 19/25 21/3 23/11 24/3 24/3 24/22 24/24 26/22 27/14 28/1 29/15 29/17 37/23 38/15 38/22 39/8 39/13 39/20 39/21 40/3 40/9 40/12 40/20 42/6 42/21 43/18 43/25 45/3 45/24 46/9 47/17 47/20 49/1 51/14 52/15 53/12 53/19 53/21 54/3 54/4 54/12 54/15 54/19 54/23 55/4 55/8 57/15 58/4 59/15 68/15 68/16 69/5 Berkeley Citizen [1] 24/3 Berkeley Township [40] 5/23 5/25 6/8 7/20 11/22 12/23 13/2 13/4 13/5 14/13 15/8 15/23 17/7 19/11 19/25 21/3 23/11 26/22 27/14 28/1 29/15 29/17 37/23 38/22 40/3 40/12 40/20 42/6 42/21 43/18 47/17 52/15 53/12 53/19 53/21 54/4 54/15 54/23 58/4 59/15 besides [1] 68/24 best [4] 31/22 46/14 54/10 63/22 better [6] 37/17 37/18 37/20 37/20 57/11 59/14

between [18] 13/13 17/6 17/11 18/19

В	called [2] 5/5 5/19	58/18 59/10
between [14] 19/10 19/24 26/22 32/7	calling [1] 6/23	cleaning [6] 30/14 31/10 31/11 31/15
38/6 51/6 53/20 54/3 54/3 54/9 60/7	calls [1] 56/15	34/13 59/15
60/11 62/21 70/20	came [1] 8/5 Camp [1] 61/11	cleans [2] 31/13 56/20
beyond [2] 30/25 35/20	can [28] 8/4 9/18 10/9 12/9 12/21 15/3	clear [2] 50/11 65/20 cleared [1] 56/10
biblical [1] 5/13	34/1 35/19 38/2 41/25 43/12 43/25	clearly [4] 36/11 50/8 50/15 57/11
bicycles [1] 15/4	45/19 45/21 47/21 50/24 53/5 57/2 57/8	
black [1] 8/6	65/10 67/1 67/6 68/8 68/20 68/21 70/9	closely [2] 42/4 62/18
blue [1] 45/17 Blvd [1] 2/7	70/12 70/22	closer [4] 14/18 21/8 21/13 48/21
board [26] 1/1 2/5 4/12 4/23 7/1 7/12	can't [5] 5/9 40/10 57/1 64/24 67/8	clout [2] 40/16 46/7
8/23 10/9 11/14 11/25 12/4 17/5 19/2	cannot [1] 28/13	clubs [1] 39/5
25/7 27/13 29/17 35/22 40/19 40/24	cans [7] 56/11 61/7 61/9 61/12 61/16	code [7] 40/2 40/2 40/4 45/1 45/2 45/7
45/21 49/12 52/14 58/3 64/6 65/21	61/19 61/19	45/19 codes [5] 45/12 45/13 45/14 45/16
67/14	capital [2] 31/18 32/14 cars [1] 39/4	64/21
boards [1] 19/2	case [10] 7/25 8/20 8/24 9/5 9/9 10/18	collect [1] 61/15
boat [2] 52/2 53/6	65/6 66/9 68/5 68/10	combine [1] 55/1
body [2] 12/1 12/6	cases [2] 9/16 65/5	combined [1] 38/6
boil [1] 5/1 bond [4] 31/18 32/13 32/20 54/5	categories [2] 12/9 12/21	Comcast [1] 24/11
book [1] 63/25	Catherine [1] 43/4	come [6] 29/6 39/8 42/13 45/20 70/20
border [1] 69/18	Catholic [2] 43/4 43/10	70/21
Boro [4] 21/10 21/11 48/25 55/16	Catholics [1] 44/10	comes [4] 9/13 13/22 23/24 27/11
borough [3] 28/16 52/4 54/25	cause [2] 7/19 11/20 caused [1] 50/13	comfortable [1] 39/10 coming [1] 7/10
borough's [1] 46/1	causes [1] 53/4	commenced [1] 16/2
borrow [1] 63/25	cell [1] 33/17	Commission [1] 71/14
both [10] 7/20 7/24 10/22 13/10 18/12	cement [1] 56/23	commissioned [1] 36/6
35/11 38/4 55/2 61/19 63/22 Boulevard [1] 57/18	center [2] 30/16 37/11	communication [2] 23/22 26/21
boundaries [5] 11/7 20/19 20/23 45/13	Central [1] 18/11	communications [1] 33/18
48/6	certain [7] 16/2 16/14 16/22 36/23 37/3	
boundary [3] 6/16 45/18 45/19	46/1 53/5	38/19 39/19 55/2
break [5] 6/7 49/11 49/12 49/13 49/24	certainly [5] 17/13 27/11 51/19 53/5 66/11	community [17] 9/23 15/5 16/9 17/25 19/21 20/5 30/7 30/15 32/10 37/17
Brian [1] 1/12	certification [1] 8/17	39/14 41/4 41/8 41/19 41/23 48/12 52/8
Brick [1] 2/7	CERTIFIED [3] 1/24 8/18 71/5	community's [2] 9/24 41/9
bridge [1] 14/15	certify [1] 71/6	compared [3] 22/4 32/1 61/3
bring [1] 41/16 brings [1] 47/12	cetera [1] 33/6	comparison [1] 57/13
broadcast [1] 24/10	chairman [3] 1/11 4/12 68/21	compensation [1] 54/5
broke [4] 5/22 5/23 5/25 63/23	challenges [2] 11/8 20/24	competing [1] 58/24
broken [1] 51/3	change [6] 20/7 20/15 41/21 44/23 48/6 67/2	complained [1] 23/21
brought [1] 31/17	changing [1] 20/20	complaint [3] 39/25 56/21 60/19 complaints [4] 26/21 36/11 37/4 46/13
BUCKLEY [1] 2/5	characteristics [2] 36/21 39/19	complete [1] 68/17
budget [2] 28/13 61/5	charitable [4] 9/21 41/6 47/5 48/10	completes [1] 21/20
budgets [1] 61/1 building [11] 14/4 21/10 21/11 21/11	checkers [1] 33/5	complex [2] 18/25 23/2
23/14 23/15 48/24 48/25 52/24 55/16	CHERKOS [1] 2/3	composition [1] 41/23
55/17	children [6] 15/6 15/7 15/12 15/14	computer [1] 24/7
bulk [5] 10/7 56/13 59/4 62/10 62/13	15/17 30/22	concede [2] 34/14 34/22
burden [1] 11/24	choices [2] 17/3 17/4 chosen [2] 17/21 20/2	conceding [1] 33/19 concept [1] 33/17
bus [11] 15/17 24/14 24/23 25/2 26/12	Christian [3] 43/12 43/19 44/5	concern [2] 27/7 31/2
26/14 26/16 26/18 27/18 27/21 47/14	Christians [1] 44/12	concerning [1] 23/17
buses [1] 24/15 business [5] 29/5 51/22 52/20 52/25	church [3] 39/3 43/4 43/5	concerns [6] 21/2 28/9 28/21 37/25
55/20	circle [1] 14/14	40/16 48/16
businesses [1] 23/7	cite [1] 38/20	concert [2] 30/8 35/20
but they [1] 69/10	cited [1] 28/4	concise [1] 5/2
Butler [1] 57/18	Citizen [1] 24/3 citizens [3] 22/4 40/8 40/8	concluded [1] 31/23 conclusion [1] 27/17
Butler Boulevard [1] 57/18	civic [12] 9/20 18/21 19/6 19/18 21/9	concrete [1] 56/23
buy [3] 52/5 52/6 52/10	41/5 42/20 46/1 47/10 48/9 48/23 55/15	= =
C	claim [3] 42/7 42/18 42/22	conditions [2] 7/21 20/7
cable [1] 24/12	clarify [1] 31/24	conduct [5] 23/7 32/6 51/22 52/19
calculations [1] 32/12	class [1] 22/4	55/20
call [2] 51/21 62/12	classes [1] 39/5 clean [5] 56/16 57/23 58/9 59/1 63/11	conducted [2] 29/5 32/19 conflict [1] 58/10
call-in [1] 62/12	cleaned [6] 56/9 56/18 56/19 58/16	connection [2] 38/21 42/8
Callahan [1] 1/14		

curing [1] 46/8 detail [1] 27/7 determine [6] 8/3 32/7 32/17 54/10 connects [1] 24/21 58/22 59/12 **CONNORS** [1] 2/3 daily [2] 38/25 63/14 **determined** [1] 34/19 consent [2] 7/15 11/17 **DASTI [1]** 2/3 determining [1] 41/17 considerable [1] 34/6 date [2] 10/14 71/9 detriment [8] 8/2 9/17 10/3 10/8 28/6 consideration [1] 60/16 **Dated [1]** 71/16 40/25 41/4 47/8 considerations [3] 11/9 20/24 41/25 day [9] 6/11 43/15 56/12 56/14 56/19 detrimental [7] 7/16 11/18 17/8 29/19 considered [1] 63/7 56/20 62/1 62/3 62/10 35/25 40/20 52/15 constitute [1] 40/14 days [3] 31/14 56/18 62/13 developable [1] 26/1 constraints [1] 36/19 de [54] 1/5 4/16 6/24 7/2 7/3 7/15 7/18 developed [1] 36/21 **construct** [1] 26/2 7/21 7/24 10/12 11/5 11/17 11/20 12/3 development [2] 33/22 36/19 constructing [1] 34/16 12/18 13/10 14/1 15/16 18/2 18/13 did [6] 5/11 7/11 32/21 34/14 34/22 contact [1] 24/8 20/12 20/13 20/17 21/1 26/18 27/24 56/11 contain [2] 33/25 59/6 28/7 28/9 28/22 29/1 37/4 37/5 37/8 didn't [5] 6/5 6/19 27/4 32/6 62/20 contains [3] 45/10 47/18 59/13 37/15 37/25 38/8 38/12 40/13 41/18 different [8] 16/25 17/3 22/12 24/11 contend [6] 14/20 15/7 25/11 38/14 42/25 44/23 46/14 46/15 48/7 48/15 34/10 41/22 42/1 58/20 56/6 57/25 50/19 52/13 53/12 53/24 54/22 56/3 differently [1] 42/1 contention [3] 18/18 25/12 36/2 59/16 59/17 68/19 difficult [5] 22/25 23/2 23/19 25/17 context [1] 41/18 de-annex [2] 50/19 53/24 48/8 contexts [1] 38/9 de-annexation [51] 1/5 4/16 6/24 7/2 difficulties [1] 38/11 contiguous [1] 15/2 7/3 7/15 7/18 7/21 7/24 11/5 11/17 difficulty [1] 29/12 continue [2] 36/12 54/13 11/20 12/3 12/18 13/10 14/1 15/16 18/2 dine [3] 39/2 42/10 48/1 continued [1] 19/15 18/13 20/12 20/13 20/17 21/1 26/18 dinosaurs [1] 5/12 continuing [3] 8/9 9/8 66/11 27/24 28/7 28/9 28/22 29/1 37/4 37/5 director [3] 58/11 61/8 61/24 contributed [1] 39/22 37/8 37/15 37/25 38/8 38/12 40/13 disability [1] 19/22 contribution [2] 9/23 41/8 41/18 42/25 44/23 46/14 46/15 48/7 disadvantaged [1] 23/24 convenient [2] 17/15 23/10 48/15 52/13 53/12 54/22 56/3 59/16 **disbursed** [1] 31/5 Conventional [1] 59/9 59/17 68/19 disconnect [2] 51/5 51/8 Conversely [2] 15/2 32/25 de-annexing [1] 10/12 discretion [1] 67/13 cooled [1] 5/12 deal [1] 55/12 discussion [3] 16/3 34/11 34/17 Coptic [1] 43/21 dealt [1] 10/4 disposition [1] 53/10 copy [2] 64/8 65/22 debate [1] 8/5 distance [25] 12/22 14/1 14/1 14/2 correct [1] 45/6 debris [5] 31/9 34/18 56/23 57/6 63/8 14/5 14/7 15/9 15/22 15/24 16/1 17/6 correlation [2] 32/7 45/22 debt [1] 54/6 17/11 17/20 17/22 18/19 19/10 19/24 corroborating [2] 58/21 59/11 decided [2] 5/13 6/7 20/2 21/19 21/21 23/8 38/14 43/6 43/7 **corrupted** [1] 65/9 **deciding [1]** 16/8 48/7 corruption [1] 63/21 decision [6] 12/2 16/3 41/15 46/2 distances [4] 14/11 22/25 52/24 52/25 cost [3] 10/12 10/19 16/10 60/21 60/22 distant [1] 38/19 costs [1] 55/17 decisions [5] 17/1 17/21 20/1 46/5 distill [1] 27/5 could [37] 4/7 21/3 21/4 21/8 21/15 46/18 distilled [1] 22/11 21/16 21/18 21/20 28/11 28/21 29/2 decorative [3] 30/18 30/19 37/16 diversity [2] 10/1 41/11 29/3 29/4 29/5 29/7 29/9 38/7 46/21 **deemed [1]** 68/16 do [36] 7/11 20/6 20/9 24/1 27/16 28/4 48/16 48/18 48/22 49/3 49/5 49/6 49/7 deficiencies [1] 28/4 28/12 30/1 32/25 33/13 35/12 44/13 50/22 51/20 54/23 54/25 55/12 55/13 definitely [2] 13/18 13/19 44/15 44/16 44/17 44/18 45/12 45/13 55/14 55/18 55/22 55/24 57/3 67/19 delay [2] 45/8 59/4 46/25 48/13 49/25 50/23 52/4 55/8 couldn't [1] 22/9 delayed [2] 40/6 40/7 58/13 58/24 59/14 62/23 64/2 65/7 council [4] 12/2 24/10 26/25 28/11 delivery [3] 40/7 40/7 45/9 65/19 67/2 67/15 67/25 70/8 71/6 Councilman [1] 1/13 demographics [1] 11/2 doctors [2] 42/11 48/2 count [2] 4/19 4/21 demonstrate [1] 19/19 doctors' [1] 48/3 county [4] 24/22 26/17 29/7 59/25 demonstrates [1] 19/5 documentation [1] 64/6 couple [4] 4/24 13/24 53/23 70/6 denominational [1] 44/20 does [21] 17/13 18/17 19/19 24/10 course [2] 12/7 53/10 department [10] 9/18 12/15 12/16 24/23 24/25 25/3 27/18 27/22 35/17 court [7] 1/24 29/25 30/3 33/25 41/20 12/16 24/14 26/8 26/9 26/11 26/14 56/7 36/1 36/15 37/1 42/6 45/24 47/15 52/20 49/25 71/5 54/17 56/12 56/13 60/16 dependent [1] 20/19 courts [8] 11/4 20/16 20/25 28/8 37/23 depending [3] 14/16 14/25 41/22 doesn't [7] 31/3 34/25 55/10 56/16 41/2 41/13 52/2 depicting [1] 59/4 58/8 59/1 59/6 covered [1] 57/24 depicts [1] 58/15 doing [1] 64/21 create [2] 17/13 17/13 deprived [6] 9/19 41/4 42/19 44/21 **Dolebacs** [1] 45/8 created [1] 5/15 47/19 48/12 dollar [1] 31/20 credible [2] 7/14 35/6 design [1] 36/10 dollars [4] 32/2 32/3 32/5 61/1 credibly [1] 42/18 desire [3] 16/11 19/12 19/22 **Domenick [1]** 1/12 cross [3] 9/2 54/23 66/12 desires [1] 16/14 don't [18] 8/19 13/14 20/11 22/16 24/7 cross-examination [1] 66/12 desiring [1] 38/23 24/9 25/20 30/23 38/21 39/8 39/13 50/9 cultural [4] 9/20 41/5 47/5 48/9 desirous [1] 16/15 59/20 61/12 65/16 65/18 67/15 70/21 culvert [1] 34/21 despite [1] 56/15 done [1] 11/14 curable [1] 46/11 destination [1] 14/25 doubt [1] 45/9 cure [1] 56/3

D	equipment [4] 10/19 30/14 31/1 34/13	facility [8] 23/5 25/25 26/2 26/5 29/23
	equitable [1] 54/5	34/17 35/18 62/18
Dover [1] 5/21	era [1] 33/17	fact [9] 7/2 11/15 23/4 29/22 38/25
down [5] 5/1 5/1 22/12 27/6 66/12	Ernie [1] 2/14	44/13 44/15 47/13 63/3
drive [9] 1/24 14/6 14/6 15/9 15/12	error [1] 6/16	factors [4] 8/1 16/8 41/2 41/14
19/22 19/23 23/19 57/19	especially [2] 23/17 23/19	facts [1] 11/16
driver's [2] 40/5 45/4	ESQ [2] 2/5 2/8	factual [1] 35/11
dry [3] 5/18 5/19 5/21 dual [1] 52/12	ESQS [2] 2/3 2/6	factually [1] 45/6
Dudley [1] 57/18	establish [1] 7/14	Fair [1] 9/6
due [3] 8/10 19/21 33/21	estate [2] 6/17 53/16	Fairly [1] 64/7
duly [1] 4/9	et [1] 33/5	fairness [1] 65/1
dumping [1] 56/24	evaluate [1] 40/24	far [1] 68/5
during [7] 12/7 24/25 31/12 31/21	evaluating [2] 7/23 9/17	fee [1] 53/15
34/11 34/17 53/10	Evangelical [1] 43/11	feedback [3] 21/18 49/6 55/25
dwelling [1] 16/11	Evangelicals [1] 44/11	feel [4] 39/9 39/13 40/15 46/8
	even [7] 11/9 21/18 22/9 24/9 26/3 54/8	
E	55/25	feet [1] 62/22
each [4] 20/13 54/24 55/3 58/15	evening [3] 4/11 25/21 70/25	few [1] 35/15
earlier [1] 28/15	event [2] 30/7 35/19	fields [1] 20/3
early [3] 25/21 57/5 57/5	events [2] 30/10 47/15 every [4] 8/20 9/4 56/20 62/8	figure [2] 60/16 67/11
earth [4] 5/12 5/16 5/16 5/19	every [4] 8/20 9/4 36/20 62/8 everybody [2] 17/3 50/13	final [1] 41/15 finally [2] 11/3 53/9
easier [1] 27/25	everyone [2] 70/10 70/25	
East [1] 18/8	everything [3] 11/12 25/14 58/6	
easy [1] 8/2	evidence [8] 7/15 11/16 45/10 47/18	find [6] 23/18 25/15 52/19 53/2 58/7
economic [18] 7/16 8/2 10/8 10/9	58/21 59/6 59/11 59/13	64/24
11/18 13/2 34/14 36/19 51/12 51/16	exactly [3] 10/5 65/23 70/23	finder [1] 11/15
51/23 52/11 52/16 52/20 53/4 54/19	examination [1] 66/12	finding [1] 7/12
56/2 56/4	examine [1] 9/2	findings [4] 7/1 11/25 12/1 12/5
economically [1] 51/13	example [1] 21/2	fine [3] 22/13 22/17 67/12
edge [1] 56/25	examples [1] 41/24	first [13] 4/16 5/11 12/15 13/25 21/10
education [1] 19/2 effect [3] 10/2 22/2 41/12	except [1] 61/10	48/25 65/6 65/25 67/19 68/19 68/22
effort [2] 31/1 49/1	excess [1] 33/4	68/25 70/3
Egg [1] 65/5	exclusive [1] 42/7	fiscal [1] 51/16
eight [1] 50/6	excuse [3] 22/6 25/22 26/8	fit [1] 34/1
either [3] 10/16 18/5 59/12	exhibit [1] 57/20	fitted [1] 63/4
elderly [1] 23/18	exhibited [1] 35/23	five [5] 18/6 24/18 31/14 50/3 61/1
elect [1] 12/4	exhibitors [1] 57/22	five miles [1] 18/6
elected [1] 42/16	exhibits [8] 4/21 17/10 25/13 42/3	five million [1] 61/1
elections [2] 40/10 45/25	52/19 57/4 58/7 66/6	fix [1] 67/5
elects [1] 54/11	exist [1] 46/25	floodplain [1] 26/6
elementary [6] 15/15 15/20 18/4 18/5	exists [1] 47/22	follow [2] 45/12 45/13 following [5] 12/9 12/21 22/14 41/2
18/8 18/14	expand [1] 55/19 expanded [2] 37/6 37/21	64/5
emergency [2] 10/19 13/8	expanded [2] 37/0 37/21	follows [1] 4/10
empty [1] 61/16	expediting [1] 70/5	food [2] 42/9 48/2
EMS [1] 12/15	expeditious [1] 27/8	foregoing [1] 71/6
enacting [1] 28/7	experience [1] 41/17	forested [1] 55/7
encompass [1] 45/14	expert [2] 31/17 32/11	Forked [1] 2/4
encourage [1] 20/18 encouraged [1] 20/17	experts [1] 35/3	form [3] 5/16 9/18 51/23
end [4] 6/11 43/7 43/8 67/1	expires [1] 71/14	formal [2] 12/4 12/6
ends [1] 54/1	expressed [1] 39/6	forth [1] 71/9
engineer [4] 2/14 8/10 8/13 60/10	extend [1] 30/2	forward [2] 13/23 66/22
engineer's [1] 59/21	extending [2] 43/6 43/6	found [3] 9/18 17/18 43/9
enjoy [6] 16/19 20/9 39/12 54/15 55/5	extends [1] 30/25	fountain [1] 30/17
55/6	extent [3] 33/1 47/4 47/22	fountains [1] 37/21
enough [2] 9/6 59/11	F	four [5] 4/18 11/12 58/16 61/1 62/11
entails [1] 16/22	fabric [1] 38/18	frankly [1] 44/23
enter [2] 21/3 48/17		Frederick [1] 1/14
entertainment [1] 16/9	Facebook [1] 55/19	free [1] 45/20 frequent [1] 18/23
entities [1] 60/18	faced [1] 38/11	
entitled [4] 64/20 65/4 65/14 65/22	facilities [27] 10/21 14/10 14/22 16/9	fresh [1] 49/13 friends [1] 39/10
entrance [3] 30/18 30/20 37/17	17/12 17/18 17/23 17/24 19/4 20/4 21/6	frivolous [1] 11/9
environmental [1] 4/14	21/7 25/23 30/15 30/16 33/20 34/15	front [2] 56/22 57/25
Episcopalian [1] 43/11	35/10 35/12 35/13 35/15 37/12 39/22	full [3] 40/5 42/8 45/4
Episcopalians [1] 44/10	46/24 46/25 48/19 48/21	full-time [2] 40/5 45/4
equates [2] 60/2 60/5		

however [7] 20/11 28/3 34/23 37/14 handle [1] 55/13 42/6 47/8 54/20 hands [1] 46/9 fully [1] 39/14 hang [1] 63/1 **Hugg [1]** 2/13 funded [1] 60/11 hanging [1] 61/13 funding [1] 36/13 **happen [1]** 6/19 funds [1] 60/18 I'd [5] 38/13 40/23 49/15 49/16 65/19 happened [3] 6/18 7/4 67/15 funny [1] 5/5 **I'II [5]** 27/11 57/4 57/16 67/9 67/23 happens [1] 15/5 further [8] 13/16 34/2 45/12 51/5 51/8 I'm [30] 4/13 5/8 6/13 8/8 8/12 9/13 happy [1] 65/19 55/18 57/24 60/25 9/14 13/12 15/13 16/6 22/8 22/15 27/5 Harbor [1] 65/5 future [1] 10/21 27/20 28/24 29/11 30/19 45/20 47/23 harmed [1] 51/13 63/15 63/15 63/19 63/20 64/11 65/10 has [30] 4/22 10/2 17/17 18/4 18/20 19/17 25/8 25/11 27/14 29/18 30/12 65/13 66/8 67/22 69/5 70/8 garage [3] 30/13 34/12 37/10 I've [4] 4/15 11/14 22/11 28/24 32/23 35/23 36/2 36/4 36/5 36/6 39/22 garbage [3] 24/5 61/20 61/21 identifies [1] 39/18 41/12 44/16 45/8 45/11 49/21 53/8 gas [1] 51/24 identify [2] 32/16 38/18 57/11 61/3 63/10 66/6 67/3 70/8 Gate [1] 5/25 illegal [1] 56/24 have [96] gathered [1] 5/18 haven't [2] 54/8 69/25 impact [11] 7/2 7/3 7/23 12/22 13/9 general [7] 9/25 13/4 21/22 21/24 having [11] 4/9 29/6 29/11 39/12 40/3 18/15 19/24 26/18 45/7 46/5 46/7 30/15 31/2 41/10 impacts [2] 10/10 10/18 40/6 49/13 51/22 63/15 63/20 67/19 generally [1] 43/14 implement [1] 36/8 he [35] 5/4 5/20 6/6 8/20 9/4 9/9 9/14 geographic [1] 11/2 implemented [2] 21/19 49/6 16/3 16/7 16/21 16/23 31/19 31/22 get [22] 9/4 13/14 13/16 14/15 14/17 implications [1] 11/1 31/24 31/25 32/2 32/3 32/5 32/6 32/11 15/22 16/1 16/12 27/25 30/23 33/9 32/15 32/16 32/18 32/21 32/21 58/17 importance [1] 16/18 40/22 49/18 49/23 51/19 52/24 56/12 61/17 62/5 62/10 62/14 62/20 63/12 **important** [1] 27/5 56/13 59/20 67/5 70/9 70/14 66/13 70/8 70/9 Importantly [1] 11/23 gets [3] 56/14 56/19 62/9 he's [18] 8/10 8/21 8/21 8/21 8/22 64/5 improve [2] 29/4 55/18 Gingrich [1] 1/12 64/20 64/20 64/21 65/3 65/3 65/13 improved [3] 32/16 50/19 50/20 give [3] 11/5 20/21 67/11 65/20 65/21 66/9 66/10 70/6 70/7 improvements [2] 32/14 32/20 given [3] 13/17 21/14 55/21 **imprudent** [1] 36/18 **head [1]** 50/10 go [27] 5/10 5/13 9/16 16/13 22/15 inability [1] 26/24 hear [1] 68/4 25/6 28/25 39/3 39/3 39/3 42/10 43/16 inadequate [3] 31/11 31/14 31/15 heard [16] 7/8 11/12 12/8 12/10 12/11 43/19 43/20 43/21 43/22 43/24 44/2 12/12 12/13 12/17 17/10 23/8 25/15 include [3] 31/1 54/11 55/10 44/3 52/1 52/7 54/1 63/11 65/16 66/12 included [4] 7/5 22/24 29/21 38/24 26/3 35/3 49/15 49/16 58/6 67/19 68/24 includes [2] 36/9 50/10 hearing [3] 1/5 7/1 7/4 goals [1] 16/15 hearings [3] 12/8 28/13 53/11 including [6] 10/19 24/4 24/5 24/24 **God [3]** 5/15 5/17 5/19 34/7 50/20 heaven [1] 5/16 goes [1] 51/3 inclusive [1] 41/14 heavy [1] 25/16 going [14] 4/3 4/6 5/5 5/8 5/10 13/12 Heights [3] 6/3 14/23 14/23 inconvenience [4] 17/13 17/14 19/9 13/13 14/16 16/6 22/8 49/10 51/2 53/5 held [3] 11/4 18/24 30/7 25/18 70/6 helps [1] 63/2 inconvenient [3] 45/10 48/8 67/7 gone [2] 49/21 67/20 her [1] 45/9 increased [1] 46/7 good [7] 4/11 5/20 5/24 6/6 22/20 here [12] 14/9 14/12 18/25 28/25 45/16 incredibly [1] 66/5 70/10 70/25 indeed [3] 42/4 47/7 53/15 51/15 57/1 57/8 63/21 63/23 67/15 got [5] 5/17 28/24 43/21 58/23 65/9 independent [1] 11/15 70/13 governing [2] 12/1 12/6 hereby [1] 71/6 indicate [1] 51/15 government [3] 26/22 46/17 59/9 hereinbefore [1] 71/9 indicated [1] 32/21 grades [1] 18/15 high [3] 18/10 18/11 18/16 indicates [1] 19/16 granted [2] 7/22 15/16 individual [1] 46/18 higher [3] 8/4 36/4 61/4 graphics [1] 64/21 individually [1] 10/16 **HILL [2]** 1/23 71/4 great [2] 67/7 70/8 individuals [1] 48/5 Hindu [1] 43/23 greater [1] 44/12 inexpensive [1] 36/25 hired [1] 39/16 Greek [1] 43/22 his [7] 4/10 6/6 16/5 62/14 64/17 64/23 infer [1] 47/21 Greg [1] 67/24 65/23inflict [1] 41/18 grouped [2] 12/9 12/21 historically [2] 17/18 25/23 information [6] 24/4 24/4 24/5 66/13 growth [1] 63/2 68/4 70/1 **hold [5]** 8/17 21/8 25/25 48/22 55/15 guarded [2] 31/8 58/2 infrastructure [1] 34/22 holds [2] 23/3 59/9 guy [1] 6/4 inherently [1] 28/5 holiday [3] 62/3 62/9 62/9 guys [2] 68/8 68/20 injuries [2] 46/8 46/11 home [4] 21/8 21/13 37/7 37/12 injury [17] 7/19 11/21 12/25 13/2 21/21 **HOMEOWNERS [3]** 1/4 4/2 6/22 38/14 41/19 45/11 51/12 51/23 52/11 homes [2] 48/22 54/16 habits [1] 48/6 52/21 53/4 54/19 54/22 56/2 56/4 honor [2] 38/5 54/23 had [11] 5/3 5/6 5/7 5/7 19/13 23/13 instance [1] 64/24 host [1] 35/15 28/6 32/12 32/18 46/20 60/20 hour [4] 13/17 14/8 14/10 49/9 instances [1] 6/9 hair [2] 5/6 5/7 hours [7] 13/18 13/19 49/18 49/21 Institute [1] 8/18 half [4] 4/18 11/13 14/10 49/9 **instituted** [1] 38/7 49/23 50/1 67/17 halfway [1] 70/7 institutions [1] 48/4 housing [1] 19/1 hall [2] 17/22 20/3 instructing [1] 8/23 how [3] 9/16 62/20 68/21 handed [1] 4/23

Jewish [1] 44/1 let [4] 5/17 5/18 26/12 28/25 iob [3] 4/24 22/20 59/14 level [4] 19/24 20/6 20/10 53/7 integration [2] 10/2 41/12 John [1] 1/13 licensed [1] 8/16 integrity [2] 11/8 20/23 joint [1] 55/1 licenses [2] 40/5 45/4 intellectual [4] 9/21 41/6 47/6 48/10 joke [3] 5/4 16/4 16/6 lie [1] 5/9 intend [1] 66/12 **JOSEPH [1]** 2/8 life [6] 16/18 18/21 19/18 19/21 20/4 intended [4] 11/5 20/18 20/21 41/14 47/10 judge [1] 8/21 interact [1] 48/11 **July [1]** 1/8 lifequard [1] 31/6 interaction [3] 9/22 41/7 47/22 jurisdiction [2] 53/15 63/11 lifeguards [3] 33/5 37/19 58/2 interactions [2] 17/16 47/20 like [12] 7/10 21/22 22/18 28/12 38/13 just [11] 6/17 8/7 14/18 18/9 22/13 interest [1] 70/5 50/11 51/15 57/16 59/24 65/9 70/19 40/23 48/5 49/15 49/16 51/12 69/4 interested [5] 21/16 47/12 49/4 55/23 justifiably [1] 27/1 70/20 66/9 like-minded [1] 48/5 interests [3] 10/10 20/14 20/20 likelihood [1] 67/19 interlocal [3] 21/3 38/4 48/17 Kathryn [1] 61/18 likely [2] 13/15 58/25 Intermediate [1] 18/8 keep [3] 31/5 34/21 57/3 liking [1] 48/2 internet [2] 29/5 55/20 Kelly [3] 2/13 67/23 67/25 limit [4] 13/18 27/18 27/22 46/2 interrupt [1] 8/8 Keswick [1] 1/7 limited [3] 33/19 43/3 47/23 inventory [1] 63/6 kind [1] 28/5 limits [1] 34/1 invested [2] 32/24 34/6 **LINDA [2]** 1/23 71/4 kindly [1] 4/7 investigation [2] 32/19 41/3 know [11] 5/6 6/19 10/3 22/16 43/1 lines [3] 45/18 45/19 61/14 investment [12] 12/24 29/13 29/14 43/1 62/14 67/15 67/25 69/2 70/6 liquor [1] 39/4 29/16 29/18 30/25 30/25 35/24 36/3 knowledge [1] 41/17 listed [1] 50/7 36/12 37/2 37/22 knows [1] 50/13 litany [1] 44/13 investments [1] 36/23 Kohl's [1] 42/12 litigation [2] 6/9 54/1 invests [1] 32/10 litter [2] 31/9 59/7 invoke [1] 46/15 little [8] 5/11 14/18 16/4 28/15 28/24 involved [1] 65/6 Lacey [1] 2/4 29/11 31/23 35/16 is [155] lack [22] 12/23 23/22 26/21 27/17 live [7] 16/8 16/12 17/1 17/24 43/15 island [25] 6/1 14/15 14/18 14/23 27/21 29/13 29/14 29/16 29/18 30/24 44/17 46/19 16/19 17/21 17/24 20/1 20/4 23/23 33/21 35/4 35/12 35/23 36/3 36/21 37/2 lives [2] 38/25 42/4 24/10 24/17 25/1 25/3 26/5 26/16 35/11 45/21 47/6 51/24 51/24 59/8 living [3] 16/10 16/19 16/21 38/19 39/18 43/10 43/14 50/11 50/20 lacks [2] 30/3 36/16 local [11] 10/10 41/15 59/22 59/23 51/1 60/4 **Lakehurst** [1] 44/6 59/24 60/1 60/2 60/3 60/6 60/16 60/22 Island Heights [1] 14/23 lakeside [1] 55/7 locate [1] 26/4 island's [1] 36/20 **LAKEVIEW [1]** 1/24 located [5] 17/19 24/20 25/24 35/10 isn't [1] 65/24 Lakewood [2] 44/2 44/6 48/4 isolate [1] 47/15 land [12] 5/19 5/19 5/21 26/2 33/21 location [2] 16/20 44/19 isolated [3] 18/20 19/17 38/16 34/6 36/21 36/22 53/18 54/6 62/21 locational [5] 16/3 17/1 17/20 20/1 **Isolation [1]** 12/25 63/12 46/18 issue [19] 13/25 14/2 17/5 20/12 25/7 lands [2] 10/24 10/25 locations [1] 16/2 27/13 28/25 29/13 29/17 35/22 40/18 lanes [1] 61/10 long [5] 4/17 10/6 10/9 28/5 53/1 49/17 51/11 52/14 58/3 62/4 65/7 66/15 large [2] 50/9 50/16 long-term [2] 10/9 28/5 69/20 larger [2] 57/11 61/15 longer [1] 20/9 issues [17] 10/5 12/20 22/23 25/6 largest [1] 34/3 look [2] 10/9 13/23 27/11 27/24 28/25 29/1 29/21 34/10 last [10] 14/10 49/20 60/24 67/8 67/20 looking [2] 64/6 65/13 38/24 51/19 51/21 51/21 54/4 54/7 69/11 69/12 69/13 69/15 69/21 Looks [1] 22/18 63/16 later [1] 51/18 Lorelli [1] 1/12 it [85] **Lavallette [3]** 18/5 42/9 42/10 **Loss [1]** 10/10 it's [26] 4/17 8/6 22/18 27/4 27/9 35/15 law [15] 4/10 7/25 8/20 8/22 8/24 8/24 lot [7] 6/9 6/17 6/18 7/8 10/6 24/6 34/1 39/10 39/11 42/3 49/8 54/6 56/14 62/21 9/5 9/9 10/18 11/5 11/23 20/17 28/7 lots [2] 50/19 50/20 62/22 62/25 62/25 63/1 63/2 63/4 63/6 64/24 66/9 low [1] 61/13 64/15 64/16 65/22 67/7 67/16 70/4 lead [2] 16/25 38/10 **Lumberton [4]** 68/3 69/4 69/8 70/16 item [1] 28/23 leads [1] 22/2 Lumberton Three [1] 70/16 items [2] 11/4 62/14 learning [1] 23/25 Lutheran [1] 43/11 its [13] 8/3 21/6 21/15 29/3 34/15 34/17 least [2] 31/13 49/23 Lutherans [1] 44/11 37/2 39/19 39/23 48/20 55/18 55/23 leave [3] 49/11 67/13 67/23 Lyons [6] 29/24 30/2 33/24 35/7 46/23 60/24 leaves [1] 25/2 53/17 itself [2] 30/3 56/25 led [1] 45/11 **Lyons Park [2]** 46/23 53/17 left [2] 26/9 56/3 legal [2] 6/9 6/10 **JACKSON [2]** 1/25 44/8 legislature [1] 28/6 macadam [1] 56/24 **James [1]** 2/13 lends [1] 27/1 **Mackres [1]** 1/13 January [3] 4/17 7/5 71/14 length [5] 15/22 18/22 59/21 59/25 made [11] 11/25 17/21 20/1 31/21 January 2015 [1] 7/5 60/3 32/20 34/14 38/2 46/5 46/18 53/19 Jehovah's [1] 43/24 lengthy [1] 49/10 62/13 Jersey [10] 1/7 1/25 2/4 2/7 8/17 25/1 less [4] 5/7 18/13 19/23 44/16 mail [2] 40/7 45/9

26/17 29/8 71/6 71/13

M merit [1] 35/5 municipality's [2] 10/1 41/11 merits [1] 40/22 MURPHY [1] 2/3 mainland [66] 12/23 14/15 14/22 15/23 Methodist [2] 43/10 43/17 Muslim [1] 44/4 17/7 17/12 17/19 17/23 18/19 18/25 **Methodists [1]** 44/10 must [5] 7/13 7/21 14/22 16/14 24/17 19/3 19/5 19/11 19/14 19/25 20/3 22/5 MICHELINI [6] 2/6 2/8 5/8 9/1 9/13 my [13] 4/13 4/19 4/21 4/24 7/11 11/11 23/7 23/11 23/19 24/20 24/22 24/23 27/8 50/10 63/20 63/21 65/19 68/20 65/15 25/24 27/18 27/22 28/1 29/6 29/25 30/4 71/14 middle [4] 18/10 18/11 18/16 49/14 30/11 31/8 32/8 35/10 35/13 38/15 Midway [1] 61/11 38/16 38/20 39/7 39/8 39/20 39/21 N Midway Beach [1] 61/11 42/12 42/14 42/17 43/16 43/17 43/19 might [4] 16/11 16/13 16/25 32/14 name [2] 3/2 4/13 43/20 43/23 43/24 43/25 44/1 44/2 44/3 named [2] 5/21 6/4 mikes [1] 68/9 44/4 44/5 44/7 45/3 47/14 47/20 51/23 National [1] 8/17 miles [10] 14/4 15/11 15/19 18/6 18/9 52/20 55/7 57/15 60/4 natural [2] 62/25 63/1 43/8 50/8 50/10 60/7 60/8 maintain [1] 31/3 naturally [1] 46/20 Miller's [1] 61/11 maintaining [1] 20/23 necessarily [1] 43/13 million [2] 31/20 61/1 maintenance [3] 11/7 34/24 37/18 mind [1] 28/6 necessary [2] 58/19 64/22 majority [8] 7/17 11/19 17/8 29/20 need [9] 10/20 37/9 52/5 52/19 53/2 minded [1] 48/5 35/25 40/21 52/16 66/5 minimal [2] 31/21 31/25 53/7 62/14 65/18 66/13 make [10] 7/12 16/4 16/6 16/8 16/25 minor [1] 68/11 needed [1] 34/23 17/3 22/24 23/2 34/24 48/8 needs [4] 22/1 22/2 25/9 27/15 minute [4] 14/6 15/12 15/20 50/3 makers [1] 41/16 **negative [1]** 45/7 minutes [5] 14/7 14/8 15/17 18/6 18/9 makes [1] 17/3 negatively [1] 46/5 misrepresentation [1] 50/12 makeup [1] 44/18 neglect [7] 13/6 21/23 21/25 27/1 28/4 misunderstanding [1] 50/12 making [3] 16/4 25/17 27/25 29/2 33/23 mobile [2] 33/13 33/17 mall [1] 42/12 neglected [1] 27/7 Monday [1] 62/9 manageable [1] 27/6 neglectful [2] 25/9 27/15 monetary [3] 12/23 12/24 30/25 manager [1] 58/12 neglects [1] 22/2 money [1] 32/21 many [5] 18/21 19/5 19/19 36/11 49/22 negotiations [4] 53/20 54/2 54/9 54/12 monies [1] 32/17 map [2] 6/16 6/17 neighborhood [6] 7/6 20/14 33/2 34/8 month [3] 69/13 69/15 69/22 March [1] 14/5 36/7 36/9 months [2] 7/9 13/24 **MARTIN [1]** 2/5 more [21] 4/20 5/7 5/13 16/14 16/15 neighborhoods [1] 32/2 material [1] 63/12 17/15 20/21 23/10 23/10 29/4 37/22 neighboring [7] 17/16 30/5 34/15 matter [2] 1/3 65/1 35/14 38/18 38/23 39/24 38/18 39/23 40/15 42/4 44/18 51/20 matters [4] 6/20 6/21 11/2 55/13 neighbors [1] 6/7 55/7 62/18 62/24 68/4 may [25] 9/12 12/4 12/5 14/8 14/10 new [11] 1/7 1/25 2/4 2/7 8/16 25/1 Mormon [1] 44/3 15/1 15/11 17/12 18/13 20/8 20/9 25/17 26/17 29/7 37/12 71/6 71/13 most [2] 26/23 47/25 25/19 33/25 45/5 47/7 48/7 49/10 49/12 New Jersey [1] 26/17 **move [5]** 21/22 38/13 50/6 56/5 66/22 50/13 53/15 55/25 66/8 66/19 66/23 moved [1] 46/21 newsletters [1] 24/2 maybe [6] 6/12 6/13 6/15 6/15 6/16 moving [2] 44/25 57/3 next [18] 4/1 4/7 4/24 13/20 13/20 70/22 Mr [3] 25/4 33/16 49/17 13/21 13/23 29/13 40/8 45/23 49/9 McGUCKIN [1] 2/3 Mr. [15] 4/12 5/8 8/9 9/1 9/13 10/7 16/2 51/11 62/3 62/10 63/23 67/21 70/9 me [19] 5/3 5/8 22/6 25/22 26/8 26/12 16/5 16/16 33/10 46/15 58/14 64/4 70/12 27/9 27/20 28/3 28/25 41/1 48/24 63/19 65/15 70/6 nicer [2] 30/19 30/20 67/6 67/8 67/11 68/20 68/21 71/8 nicer than [1] 30/19 **Mr. Bauman [1]** 10/7 meaningful [2] 9/22 41/7 Nick [1] 1/13 Mr. Chairman [1] 4/12 meaningfully [1] 48/11 Mr. Michelini [4] 5/8 9/1 9/13 65/15 night [1] 23/20 means [2] 51/25 52/6 nine [7] 23/14 23/15 60/5 60/14 68/15 Mr. Seiler [1] 58/14 meant [1] 63/3 68/16 69/5 Mr. Slachetka [4] 16/2 16/5 16/16 measure [1] 33/2 46/15 nine percent [1] 60/5 mechanical [1] 62/4 no [42] 8/12 18/4 18/15 20/9 23/3 23/5 Mr. Whiteman's [1] 33/10 mechanism [5] 21/19 28/17 49/6 55/25 24/20 25/24 26/1 26/18 30/5 30/8 30/12 Mr. Wiser [3] 8/9 64/4 70/6 56/3 30/21 31/6 31/8 33/11 43/1 45/9 45/10 Mrs. [1] 45/8 mechanisms [7] 21/1 28/8 28/20 37/24 46/4 46/24 47/13 47/18 49/24 58/20 Mrs. Dolebacs [1] 45/8 38/8 48/15 54/21 much [5] 8/2 10/4 30/18 30/20 70/24 58/21 59/11 59/13 62/6 62/23 63/5 meet [1] 19/3 63/10 64/11 64/11 64/11 65/10 66/1 multiple [3] 45/15 45/16 56/15 meeting [11] 4/16 13/21 13/22 14/9 66/15 66/16 69/15 70/2 municipal [37] 10/13 10/13 11/7 14/4 22/24 24/10 49/20 67/8 67/21 68/13 **nobody [1]** 59/10 15/4 17/15 18/24 18/24 19/4 20/18 70/9 **non [4]** 12/17 12/24 32/19 60/18 20/22 21/10 22/24 23/2 23/7 23/9 23/25 meetings [26] 4/19 7/6 15/4 18/23 21/9 non-monetary [1] 12/24 24/2 26/22 30/13 34/12 37/10 45/13 21/15 23/4 23/25 25/16 25/21 25/21 non-petitioners [1] 12/17 45/18 46/4 46/24 47/13 48/5 48/24 25/25 26/25 28/12 29/3 42/14 48/23 51/22 52/19 52/24 53/15 55/11 55/12 non-road [1] 32/19 49/4 49/19 49/22 55/15 55/15 55/23 **non-township** [1] 60/18 55/16 59/9 56/1 67/20 70/7 municipalities [7] 15/1 38/4 38/7 39/24 nondenominational [3] 43/5 43/12 Member [5] 1/12 1/12 1/13 1/14 1/14 44/11 45/15 45/15 54/9 members [8] 4/12 4/12 4/23 9/23 19/1 none [3] 6/20 52/25 52/25 municipality [11] 9/22 10/11 10/23

10/25 34/16 37/7 37/13 41/7 42/1 44/17

55/10

nonresponsive [2] 25/9 27/15

normal [1] 56/12

25/19 41/8 48/12

mentor [1] 5/3

Memorial [2] 33/24 35/7

ordinance [3] 31/18 32/13 34/9 Pelican Island [1] 60/4 north [1] 43/7 Pentecostal [1] 44/6 ordinances [1] 36/8 northern [1] 43/8 people [4] 5/24 16/25 17/3 47/25 originally [2] 6/12 6/14 not [116] Oris [1] 2/13 peoples' [1] 20/7 Notably [1] 35/17 Orthodox [3] 43/22 44/5 44/8 per [3] 31/10 31/11 61/23 **Notary [2]** 71/4 71/13 perceived [2] 37/9 46/11 Ortley [1] 42/10 note [4] 9/7 16/4 25/10 45/12 other [52] 6/18 6/18 8/4 9/23 10/11 percent [8] 33/7 40/14 59/23 60/2 60/5 noted [3] 9/10 9/11 16/21 14/10 15/1 15/25 16/2 16/15 16/24 60/12 60/14 60/15 notes [2] 64/17 65/2 17/23 20/3 21/1 23/16 23/17 25/6 25/19 percentage [1] 36/4 nothing [3] 35/21 37/14 68/24 28/8 28/14 28/25 29/1 29/22 32/1 33/8 perceptions [1] 41/17 **noting [1]** 15/25 36/17 37/24 38/8 38/9 39/18 41/8 46/2 **performed** [1] 32/12 now [15] 7/8 10/6 15/17 19/21 20/16 46/23 48/11 48/14 52/3 52/22 52/23 perhaps [2] 19/9 49/6 21/22 33/6 36/12 38/13 49/11 49/13 53/17 53/22 54/7 54/21 58/20 59/3 period [1] 31/21 53/4 56/5 67/2 70/5 60/17 61/3 61/18 62/7 62/12 68/10 permit [5] 12/3 25/20 37/5 46/16 55/4 number [7] 6/6 7/9 7/25 28/20 29/25 68/13 68/13 permits [1] 53/24 35/9 54/7 other's [2] 54/24 55/3 **permitted** [1] 40/13 numbers [5] 8/3 8/4 8/4 8/5 22/16 otherwise [4] 21/7 48/20 59/8 61/16 person [3] 21/17 55/21 55/24 numerous [1] 32/25 ought [2] 49/22 49/25 Peters [1] 2/14 petition [5] 1/5 6/24 6/25 29/7 50/8 our [11] 4/1 4/16 17/11 17/17 21/20 42/3 49/9 49/25 50/6 53/14 56/2 **petitioner** [1] 52/12 O'MALLEY [1] 2/6 out [10] 4/3 4/7 4/23 28/16 56/13 63/1 petitioner's [1] 9/19 oath [2] 4/10 5/9 petitioners [63] 2/8 4/23 6/23 7/13 63/4 67/11 67/24 68/14 object [1] 8/20 outfall [2] 31/3 34/21 10/15 11/24 12/17 12/20 14/2 14/20 objection [4] 8/9 9/8 49/24 66/11 15/7 16/17 17/2 17/14 18/21 18/22 19/6 outlined [1] 14/12 obscured [1] 57/9 19/20 21/2 21/25 22/3 22/23 23/3 23/6 over [10] 4/18 7/9 11/12 13/23 20/7 obviate [1] 37/9 27/9 29/5 34/20 41/21 45/22 23/21 24/13 25/10 25/18 27/2 28/10 occasional [3] 21/9 48/22 55/15 28/21 28/23 29/14 29/21 30/24 31/18 overall [2] 64/12 64/13 occur [5] 18/2 29/10 46/14 48/7 59/17 32/24 34/13 36/24 37/6 38/1 38/11 **overgrown [1]** 57/8 ocean [5] 5/25 24/23 26/17 29/7 50/15 overlap [1] 13/13 38/14 38/24 39/16 42/9 42/19 42/22 October [1] 7/4 override [1] 19/12 47/9 47/19 48/1 48/8 48/16 50/18 51/13 off [11] 4/5 5/22 5/23 5/25 6/7 47/24 own [3] 34/17 41/16 64/17 51/20 52/1 53/8 53/11 56/6 57/25 58/7 50/4 50/9 62/2 63/14 68/7 owned [2] 26/1 53/18 66/6 offer [2] 16/24 30/1 petitioners' [21] 7/13 12/11 12/12 ownership [1] 53/16 offered [2] 35/16 52/4 18/18 19/12 27/19 27/22 35/3 36/2 offering [1] 34/4 36/11 36/15 37/3 41/4 42/3 45/23 47/6 offerings [1] 46/2 **p.m [1]** 1/8 54/18 58/8 58/22 59/18 62/17 offers [2] 24/22 39/20 package [1] 67/10 phones [1] 33/17 office [4] 7/11 39/6 59/21 62/14 page [7] 3/2 4/24 22/6 22/16 27/5 50/6 photo [1] 59/4 offices [4] 39/21 48/3 55/11 55/13 55/19 photos [1] 59/3 often [6] 16/13 42/14 45/14 45/16 pages [2] 4/20 22/9 physical [1] 36/20 56/17 59/10 pardon [3] 27/20 28/3 48/24 pick [1] 63/23 okay [10] 22/10 22/19 51/11 66/2 66/18 park [258] picked [10] 56/12 56/14 56/15 61/23 67/16 68/10 69/7 69/23 70/18 Park's [16] 18/10 18/14 21/5 21/9 31/7 62/1 62/3 62/6 62/8 62/10 62/15 **old [2]** 5/10 6/16 34/18 38/1 45/7 45/25 46/13 48/19 pickup [14] 24/18 24/19 26/10 26/10 once [21] 5/3 10/14 11/20 11/24 18/15 48/23 48/24 55/11 55/12 55/16 26/13 56/12 56/13 56/16 59/4 61/20 27/3 29/3 31/10 31/11 38/2 41/13 42/13 parks [5] 29/25 30/4 30/5 35/13 62/19 61/21 62/7 62/11 62/13 46/17 47/8 48/14 49/3 54/20 54/23 part [21] 5/20 6/8 6/13 6/15 9/25 13/1 picture's [1] 57/17 56/19 67/5 67/11 13/3 18/3 38/17 38/23 39/13 39/14 piece [1] 51/4 one [27] 5/18 9/15 13/12 13/15 13/15 40/19 41/10 41/22 51/14 52/3 52/3 **piecemeal** [1] 67/11 14/22 19/23 24/17 29/23 30/7 30/17 52/15 53/19 62/7 pier [2] 52/2 53/6 30/19 30/20 33/2 34/3 45/2 47/21 49/14 participate [17] 19/15 19/20 19/23 21/6 Pine [3] 6/1 14/24 69/18 52/12 53/4 56/19 56/25 59/4 69/5 69/9 21/20 23/16 27/19 27/23 28/14 28/19 **Pinewald [1]** 1/7 69/17 69/19 46/17 47/9 47/11 48/9 48/19 49/7 56/1 pipe [3] 31/3 34/21 57/6 onerous [1] 19/14 participated [2] 19/6 47/10 pipes [2] 31/5 56/24 online [1] 24/6 place [7] 5/18 16/18 31/5 34/22 34/25 participating [4] 19/18 42/20 44/22 only [14] 14/10 15/19 29/23 30/6 30/17 54/11 71/9 33/25 41/24 45/6 49/9 55/3 56/3 56/19 participation [4] 9/20 23/9 41/5 47/7 placed [2] 34/20 36/20 61/11 61/25 particular [2] 27/7 49/14 places [4] 43/2 43/2 43/9 44/20 open [4] 24/15 36/10 36/14 63/6 particularly [2] 8/24 66/9 plan [6] 34/8 36/7 36/8 36/10 36/14 **operate** [1] 54/13 parties [3] 21/16 49/4 55/23 68/11 operational [2] 36/22 38/10 parts [2] 5/24 36/17 planner [8] 2/13 8/11 8/12 8/14 8/16 opinion [3] 42/3 56/2 68/20 past [4] 4/18 7/9 11/12 65/5 15/21 39/16 62/24 opinions [1] 12/17 patrolled [1] 63/13 planner's [1] 10/4 opportunities [1] 37/6 paved [6] 36/4 60/1 60/4 60/9 60/17 **Planners** [1] 8/18 opportunity [1] 9/2 60/18 planning [16] 1/1 4/14 7/1 7/12 11/1 opposed [4] 29/6 32/9 55/21 57/10 payment [1] 54/5 11/14 11/25 12/3 12/11 13/8 19/2 34/7 orange [1] 14/13

order [4] 17/24 22/15 24/18 52/4

Pelican [1] 60/4

N

P **properties** [1] 57/14 recognizes [1] 33/24 property [1] 53/16 recognizing [2] 15/22 26/20 planning... [4] 34/10 37/20 40/18 52/14 proportion [1] 61/4 recommendation [2] 12/6 36/9 play [2] 9/25 41/10 proud [2] 34/4 42/15 recommendations [2] 12/5 36/14 playgrounds [1] 30/14 provide [10] 10/20 11/13 12/4 21/12 record [29] 4/5 4/13 8/8 8/15 9/8 9/11 playing [1] 53/6 29/8 36/25 49/1 64/4 65/10 68/4 18/17 19/5 19/16 19/19 27/17 36/1 Pleasant [1] 43/7 provided [5] 10/14 33/2 33/20 37/22 36/15 37/1 37/15 42/6 42/8 45/10 46/4 **please [1]** 63/19 46/10 47/8 47/18 47/24 50/4 54/17 59/5 plowing [2] 31/16 37/20 provider [1] 24/12 59/13 66/5 68/7 point [5] 5/22 41/2 43/7 49/8 49/16 recreation [25] 20/3 23/15 23/16 26/8 **provides** [1] 58/4 points [4] 7/25 24/18 24/19 35/6 providing [5] 10/12 10/20 34/11 65/8 26/11 26/14 28/2 28/19 29/23 30/6 police [7] 12/14 13/7 30/12 33/11 30/10 30/15 33/19 35/4 35/8 36/10 65/11 33/14 37/9 46/3 prudent [2] 26/4 36/22 36/13 38/2 39/22 46/24 48/20 54/24 policing [1] 31/9 public [31] 4/12 7/1 12/15 13/7 15/8 57/14 62/20 63/6 policy [2] 11/6 20/22 18/23 21/9 21/15 23/4 24/20 25/15 recreational [13] 10/21 17/23 21/5 political [1] 40/15 25/25 26/8 28/12 29/3 33/9 34/3 35/4 21/6 24/14 37/6 39/5 47/4 48/19 63/1 politics [1] 40/12 48/22 49/3 55/15 55/22 56/5 56/7 57/14 63/3 63/4 63/7 Population [1] 11/1 58/11 58/12 64/6 65/22 71/5 71/13 recycle [1] 39/6 portion [4] 5/22 13/20 13/21 60/15 publicized [1] 59/2 recycling [7] 24/6 56/11 61/7 61/9 portions [1] 32/13 published [1] 61/23 61/20 61/25 62/8 position [1] 53/14 purchase [3] 52/11 53/3 54/14 red [2] 14/13 45/18 positions [1] 42/17 purchasing [1] 54/6 reduce [1] 55/17 possible [2] 62/21 67/21 purpose [2] 8/25 23/6 refer [1] 12/5 possibly [1] 8/10 purposely [1] 34/20 reference [2] 5/14 31/21 post [1] 39/6 **push [2]** 49/22 62/2 **referenced** [1] 16/16 potentially [2] 8/1 41/2 put [7] 56/13 64/7 64/21 65/16 68/18 referred [2] 6/25 12/1 precedence [2] 11/6 20/21 68/19 68/21 referring [1] 32/3 precludes [2] 35/9 61/14 putting [5] 64/20 65/13 65/20 66/13 reflect [1] 28/4 **prefer [1]** 67/12 70/3 reflects [1] 46/10 **prepare [1]** 4/8 refusal [2] 7/15 11/17 preponderance [1] 7/14 refuse [1] 56/13 Presbyterian [1] 44/6 regard [5] 45/23 48/5 61/6 61/22 63/17 Quaker [1] 44/7 presence [2] 10/2 41/12 quality [1] 16/18 regarding [14] 11/15 12/18 13/25 15/6 present [3] 2/12 7/21 44/18 question [4] 50/6 50/18 53/5 66/19 16/17 18/22 24/5 26/21 33/1 44/25 presentation [2] 7/13 27/6 questioned [1] 63/8 46/12 46/19 51/17 54/4 **presently** [1] 55/9 questions [1] 27/10 Regional [1] 18/11 preservation [1] 11/6 quick [2] 50/2 50/17 register [1] 23/15 preserving [1] 20/22 related [7] 13/6 17/20 21/21 21/24 quickly [1] 57/16 president [1] 4/14 quite [2] 42/14 49/10 32/19 54/5 59/3 prestige [2] 9/24 41/9 quotes [1] 9/15 relates [4] 10/23 10/25 16/15 33/10 pretty [3] 8/2 15/24 65/20 relating [1] 39/23 previously [1] 20/8 relation [1] 11/4 principal [2] 58/11 58/12 racial [2] 10/2 41/12 relatively [1] 36/24 **priorities** [1] 16/23 raised [7] 12/20 14/2 22/23 28/23 relevant [4] 8/1 9/15 9/16 41/3 prioritized [1] 47/1 29/13 29/21 38/24 religions [1] 44/13 privy [1] 67/22 ramp [2] 52/2 53/7 religious [6] 9/20 41/5 44/18 44/22 probably [2] 13/20 66/23 ratables [1] 10/10 48/3 48/9 problem [4] 65/11 66/1 66/16 70/3 rather [3] 9/4 34/16 49/13 remain [2] 19/13 53/18 problems [2] 17/19 63/20 reach [1] 18/16 remaining [2] 7/20 60/14 **procedure [1]** 62/12 reached [2] 49/19 49/20 remains [1] 34/25 proceedings [3] 6/10 21/18 71/7 readily [1] 23/10 remedial [1] 28/5 process [4] 5/2 5/6 53/20 57/6 reading [1] 65/3 remember [2] 10/5 50/9 produced [1] 65/5 ready [1] 70/13 remind [2] 5/8 40/24 professional [1] 8/16 real [2] 6/17 53/16 remote [2] 21/19 49/7 professionals [5] 7/7 10/17 12/12 realities [1] 36/22 remotely [1] 56/1 12/13 33/1 **realize [1]** 64/15 remoteness [1] 39/20 program [6] 27/23 38/6 61/2 64/5 really [5] 6/17 6/20 35/21 49/21 59/5 removal [1] 63/17 64/12 64/13 reason [2] 38/22 61/11 repaired [1] 39/4 programming [2] 35/16 47/12 rec [3] 23/14 27/19 27/23 repave [1] 60/22 programs [13] 21/6 23/16 23/25 27/20 receive [2] 24/2 56/11 repaved [5] 30/23 56/9 59/20 60/7 28/2 28/19 30/6 30/10 35/15 47/5 47/15 received [3] 61/4 68/5 70/1 60/20 48/20 55/1 receives [1] 62/7 repaving [2] 37/18 60/24 prohibit [1] 45/24 receiving [1] 61/7 repeated [1] 32/23 projecting [1] 65/3 recent [1] 23/12 repeatedly [1] 25/6 promised [1] 49/18 recess [1] 50/3 replied [1] 32/3 prompted [2] 11/8 20/24 recognize [2] 20/6 36/19 report [13] 4/22 4/24 11/13 22/7 22/9 proof [1] 11/24 recognized [2] 16/24 41/20 22/14 27/6 50/7 51/18 64/16 64/23 **proper [1]** 49/1

55/5 55/6 56/17 56/20 57/10 57/23 58/1 R roadways [4] 32/18 36/5 60/13 60/14 **Robert [1]** 1/11 59/14 report... [2] 64/23 65/23 **Roberts [1]** 61/18 Seaside Park's [6] 21/9 48/19 48/24 reported [1] 15/10 robo [6] 56/11 61/7 61/9 61/12 61/19 55/11 55/12 55/16 reporter [2] 49/25 71/5 season [4] 14/8 31/12 63/14 63/15 61/19 REPORTERS [1] 1/24 second [3] 22/3 41/1 63/19 robo cans [5] 61/7 61/9 61/12 61/19 represent [3] 40/17 47/5 47/7 61/19 **Secretary [1]** 2/13 representative [1] 59/20 robo-cans [1] 56/11 section [6] 21/21 34/10 49/10 49/14 representatives [3] 12/14 33/14 63/10 rocks [2] 31/4 34/19 51/18 58/16 represented [1] 40/11 **Roman [1]** 43/4 sections [5] 16/24 18/20 58/20 60/6 represents [1] 14/14 64/25 room [1] 62/23 request [7] 26/16 56/16 62/13 62/17 roughly [2] 14/11 15/11 see [5] 45/19 45/21 57/8 62/20 70/2 65/16 65/19 66/1 seen [1] 45/8 **round [1]** 14/9 requested [2] 33/16 36/23 Route [2] 23/14 23/15 **Seiler [1]** 58/14 requests [1] 25/5 senior [4] 24/24 30/15 30/16 37/10 **Route Nine [1]** 23/14 require [1] 42/17 routes [2] 14/17 26/16 seniors [1] 24/7 required [3] 22/25 23/6 40/24 routine [1] 55/13 sense [2] 22/3 34/14 requires [3] 16/23 23/8 33/14 ruled [4] 20/16 20/25 28/8 37/23 separate [2] 51/18 52/10 research [1] 17/17 run [4] 57/2 57/4 57/16 68/21 September [3] 6/24 68/12 69/6 resembles [1] 62/18 runs [1] 50/14 **serve [4]** 11/15 42/16 47/15 63/22 residence [1] 19/17 **Russian [1]** 44/8 served [1] 56/7 residency [2] 19/7 45/24 service [10] 24/11 24/19 24/21 24/23 rusty [1] 56/24 residents [64] 7/17 7/20 11/19 12/10 24/23 24/25 26/19 29/8 47/14 58/5 13/1 13/2 15/3 17/2 17/9 17/21 20/2 services [8] 4/15 10/13 10/14 10/19 20/15 20/20 21/4 22/4 23/11 23/13 sacrificed [1] 16/14 13/7 13/8 25/1 31/1 23/18 23/24 24/1 24/9 24/15 24/16 sacrifices [1] 16/22 servicing [1] 61/14 24/17 25/5 25/17 26/15 26/23 27/25 sadly [1] 13/22 session [2] 13/15 13/16 28/17 29/20 30/9 36/1 38/3 39/23 40/6 said [8] 5/17 6/5 16/7 17/17 27/3 39/12 sessions [2] 4/25 13/17 40/9 40/21 44/14 44/15 44/20 45/5 46/6 58/24 69/4 set [2] 12/7 71/9 46/16 47/2 47/3 47/16 47/20 48/18 49/2 **Saint [1]** 43/3 seven [1] 15/19 52/17 52/21 52/22 52/23 53/1 53/3 same [6] 14/17 20/10 64/15 64/16 65/1 **seven miles [1]** 15/19 54/14 54/19 55/4 55/6 55/14 55/18 65/23Seventh [1] 43/15 55/20 58/5 sand [2] 56/10 59/4 several [1] 16/17 resources [1] 34/6 Sands [10] 29/22 31/10 31/11 33/7 shadow [1] 57/7 respect [5] 8/10 18/1 22/22 53/9 62/16 34/2 35/6 35/19 46/23 53/10 54/13 **share [2]** 34/15 38/21 respectfully [1] 6/4 sanitation [2] 61/8 61/24 shift [1] 34/25 respective [1] 38/5 sat [2] 4/18 6/19 shop [3] 42/9 42/12 48/1 responders [1] 12/15 satellite [4] 30/13 33/15 34/12 37/10 shopping [1] 11/10 response [8] 20/13 46/3 46/12 58/23 save [1] 52/13 shoreline [1] 63/2 59/18 60/19 62/16 62/17 **savings [1]** 10/12 short [12] 10/9 11/8 20/24 21/1 28/9 responsive [1] 22/1 saw [1] 5/20 28/22 29/1 37/24 38/8 38/11 48/15 rest [3] 32/4 61/16 68/5 say [9] 5/5 5/9 6/4 26/12 27/4 58/12 54/21 result [9] 4/22 17/20 18/13 20/1 27/9 65/12 65/25 66/4 short-term [2] 10/9 20/24 37/15 45/3 52/20 54/2 **should [11]** 5/4 8/23 18/1 40/12 46/13 **saying [1]** 70/8 resulted [1] 4/20 says [2] 9/9 9/17 48/7 59/15 59/17 63/4 64/8 68/19 results [5] 23/23 38/16 40/4 51/23 schedule [3] 58/15 59/2 61/23 **show [3]** 11/16 67/6 67/8 52/11 scheduled [4] 62/1 62/11 62/13 68/12 showing [2] 31/2 65/21 resurfacing [1] 60/12 schedules [2] 24/6 25/20 **shown [3]** 63/9 67/3 67/6 retail [1] 51/21 scheduling [2] 25/15 69/5 **shows [5]** 45/17 45/18 47/8 57/2 57/22 review [2] 8/2 68/15 scheme [2] 9/25 41/10 side's [1] 59/12 reviewed [1] 31/18 school [12] 10/11 10/21 15/13 15/15 sides [2] 59/5 63/22 revisions [1] 34/9 15/15 15/17 15/20 18/3 18/5 18/8 18/8 Siena [1] 43/4 revolve [1] 38/25 18/16 sift [1] 8/3 Richard [1] 1/14 schoolers [1] 18/11 **signage [1]** 57/9 ride [3] 15/3 15/17 24/23 schools [6] 15/9 15/10 15/18 18/1 18/4 significant [6] 7/19 11/21 15/24 15/24 right [3] 51/10 54/16 69/1 18/12 19/12 20/21 rises [1] 53/7 Scientist [1] 43/20 significantly [2] 26/24 57/11 River [20] 2/4 6/2 14/23 14/24 15/16 screen [3] 64/7 65/14 65/21 similar [2] 14/11 39/19 25/2 42/10 42/11 42/11 43/16 43/19 **SEASIDE** [264] **similarly [1]** 53/17 43/20 43/23 43/24 44/1 44/2 44/4 44/4 Seaside Heights [1] 6/3 simply [3] 12/5 62/23 65/2 44/5 44/7 since [5] 4/16 60/1 60/4 60/24 66/9 Seaside Park [54] 6/8 6/11 6/12 6/15 road [12] 1/7 2/4 4/17 32/19 57/19 60/7 15/3 15/14 17/16 18/3 18/4 28/3 28/16 single [3] 35/18 45/14 45/15 60/8 60/23 61/2 62/22 66/12 69/20 30/5 30/20 31/13 35/14 37/8 38/23 39/1 site [1] 68/11 roads [20] 30/22 32/16 56/8 56/9 57/23 39/9 39/14 40/1 40/4 40/14 40/17 42/8 situation [2] 33/14 44/25 58/15 59/15 59/16 59/19 59/22 59/23 42/19 42/23 43/3 43/14 45/2 45/5 46/3 six [1] 61/18 59/24 59/25 59/25 60/1 60/3 60/4 60/6 46/5 46/12 46/17 46/21 47/2 52/1 52/5 size [5] 16/11 32/8 32/9 34/1 35/8 60/16 61/13 52/9 52/10 53/4 53/20 53/25 54/4 54/22 skip [1] 27/9 roadway [1] 31/15

stream [4] 21/15 29/3 49/3 55/22 S taxes [2] 10/11 51/17 street [3] 31/14 54/16 59/8 technical [3] 28/24 29/11 63/16 skit [1] 5/11 streets [7] 37/18 58/9 58/17 59/1 59/7 technology [2] 21/14 55/22 Slachetka [4] 16/2 16/5 16/16 46/15 59/10 61/18 televised [1] 26/24 slide [3] 14/18 45/17 57/1 tell [7] 5/3 9/13 22/9 68/20 68/21 70/12 **stressed [1]** 41/13 small [2] 33/25 62/21 70/19 strewn [1] 59/7 snow [4] 31/16 37/20 57/24 63/17 ten [4] 18/6 18/9 50/3 62/22 struck [1] 55/12 so [72] structural [1] 28/5 ten feet [1] 62/22 social [21] 7/16 9/17 9/18 9/24 10/1 **STUART [3]** 3/3 4/9 4/13 tennis [2] 52/2 53/6 10/3 11/18 12/25 38/13 38/17 38/25 students [3] 18/5 18/14 18/15 tentatively [1] 68/2 39/5 40/20 40/25 41/3 41/9 41/11 41/19 tenuous [1] 42/25 **subject [1]** 35/3 45/11 47/7 48/6 term [5] 10/9 10/9 11/8 20/24 28/5 submitted [8] 6/23 25/12 57/5 57/21 solution [1] 20/11 58/7 58/15 64/9 66/7 termed [2] 16/3 38/19 solving [1] 38/10 terms [3] 8/23 10/8 32/2 subsequent [1] 34/9 some [23] 5/22 5/23 5/24 6/4 8/3 12/18 substantially [1] 61/4 testified [29] 4/10 10/7 10/16 18/22 12/19 13/13 13/14 37/25 41/24 45/8 **substation [5]** 30/12 33/11 33/13 33/15 25/4 25/12 31/20 33/1 33/12 33/15 34/5 46/10 49/16 55/6 57/8 62/4 63/15 64/22 34/19 39/2 39/7 42/13 58/17 59/21 64/23 64/25 65/23 65/24 such [9] 11/9 16/8 24/2 26/2 26/5 60/10 60/21 60/25 61/17 61/25 62/5 somebody [3] 8/22 8/22 68/3 31/25 46/25 47/21 49/1 62/10 62/20 62/24 63/10 63/12 66/10 Somebody's [1] 57/7 suffer [1] 59/8 testify [1] 67/9 somehow [1] 42/24 **suffered** [1] 46/9 testifying [1] 64/14 something [3] 13/15 21/12 22/12 sufficient [2] 29/19 31/12 testimony [27] 7/8 10/4 12/8 16/6 somewhat [1] 8/6 suggest [6] 37/15 45/11 46/4 47/19 16/17 17/10 26/4 26/7 33/7 33/11 35/2 somewhere [1] 7/5 59/6 59/14 42/2 42/9 45/1 45/6 46/12 47/21 49/17 sorry [9] 6/13 8/8 15/13 27/21 28/24 49/23 50/1 52/18 53/8 58/8 58/10 58/24 suggests [1] 47/11 30/19 47/23 63/15 63/19 61/8 61/22 suitable [2] 23/5 25/25 sort [2] 13/5 57/8 than [22] 4/20 8/4 9/4 17/1 23/11 29/22 **SULLIVAN [2]** 1/23 71/4 south [193] 30/19 30/20 34/16 34/16 36/5 37/22 **SULLIVAN-HILL [2]** 1/23 71/4 South Seaside [175] 38/19 42/5 44/13 46/2 46/23 49/13 **summarize** [1] 16/5 space [3] 36/10 36/14 63/6 summary [3] 5/2 64/15 64/24 58/20 59/3 59/15 62/12 **speaks [2]** 9/16 10/18 summed [1] 39/17 Thank [8] 9/9 9/10 22/21 50/5 51/10 special [2] 30/7 30/10 66/3 67/13 70/24 summer [2] 25/1 62/6 specific [8] 22/23 27/11 29/21 32/17 Sunday [1] 14/4 that [341] 32/18 33/8 34/10 38/24 superintendent [2] 61/24 62/19 that's [12] 6/5 13/22 22/13 29/24 30/7 specifically [3] 31/2 37/5 63/18 support [12] 18/18 25/11 32/22 33/2 30/8 33/6 54/2 64/17 67/12 68/12 68/20 **specifics** [1] 32/22 33/3 36/2 36/15 37/1 42/7 45/6 54/18 their [53] 9/22 9/23 10/2 10/4 10/16 speculative [1] 46/14 58/14 11/7 12/2 15/3 17/15 18/4 19/7 19/15 spending [1] 31/25 19/16 21/8 21/13 23/7 25/11 26/12 37/7 supportive [1] 42/24 spends [2] 32/1 33/3 37/9 37/12 38/5 38/16 38/25 39/4 39/10 supports [1] 27/17 spent [4] 31/23 32/4 32/5 32/8 supposed [6] 6/13 6/14 56/14 56/18 39/11 40/16 41/7 41/8 41/12 41/16 42/7 spoke [1] 15/21 68/3 68/4 42/16 44/19 46/7 48/2 48/3 48/13 48/21 **sponsored** [1] 47/13 sure [4] 9/13 34/24 65/10 66/25 49/3 50/20 52/1 52/8 54/16 55/1 55/9 sponsors [1] 24/14 **SURMAN [1]** 2/6 55/9 56/20 57/1 59/10 64/13 68/5 **Sprague [1]** 61/19 them [20] 4/3 4/7 6/12 10/20 10/20 surprise [1] 63/5 **Squad [2]** 21/11 48/25 **surprising [1]** 35/16 18/20 19/17 23/2 25/20 27/12 45/24 square [2] 50/8 50/10 surrounding [2] 39/1 42/5 51/21 52/13 55/25 56/1 65/3 68/18 stabilize [1] 63/2 68/24 70/1 70/19 **sweeping [2]** 31/15 59/8 staff [1] 33/4 sworn [1] 4/9 then [15] 5/10 5/12 13/21 14/16 37/7 stand [1] 8/19 46/20 48/14 53/25 62/2 67/9 67/10 synthesize [2] 4/25 11/11 standing [2] 9/24 41/9 68/24 70/2 70/11 70/22 **system [3]** 18/3 63/21 67/5 start [7] 4/3 4/6 5/4 5/5 5/11 28/12 there [59] 5/12 6/9 6/16 7/25 14/17 49/13 16/7 20/25 21/18 23/22 24/20 25/24 started [4] 5/6 49/17 69/10 70/14 take [21] 6/11 13/12 13/18 13/19 14/8 26/3 26/7 27/10 28/8 28/20 29/16 29/18 state [12] 6/2 8/16 14/19 25/3 45/22 14/17 21/5 21/7 24/18 28/2 35/17 40/23 29/23 29/25 30/5 30/21 32/7 32/8 33/11 50/11 50/21 51/1 56/8 59/25 71/5 71/13 48/18 48/20 50/2 52/3 52/3 52/8 54/10 34/23 35/4 35/21 36/2 37/24 38/7 40/10 statements [2] 35/11 39/17 60/16 70/6 43/1 45/21 46/4 46/24 47/13 48/14 50/6 states [1] 35/8 taken [1] 71/8 51/3 51/7 52/22 54/2 54/21 56/2 57/13 **stating [1]** 39/17 takers [1] 33/5 58/2 58/25 62/1 62/2 62/4 64/25 65/17 stenographically [1] 71/8 takes [1] 14/6 66/6 66/14 66/15 66/23 67/18 68/14 step [1] 40/23 taking [1] 49/24 there's [16] 13/13 23/5 30/8 30/16 31/6 still [4] 6/5 54/14 68/14 69/25 talked [6] 28/15 38/9 38/9 53/23 54/8 31/8 31/14 31/15 37/14 58/21 59/11 stone [1] 57/6 68/11 62/8 62/12 62/23 68/13 68/23 stop [1] 25/3 talking [2] 64/12 70/15 thereby [1] 25/16 stops [1] 29/8 talks [2] 8/20 9/4 therefore [3] 24/7 41/21 47/2 store [1] 39/4 tar [1] 56/23 these [28] 5/4 9/15 10/5 13/12 13/14 stores [1] 48/1 task [2] 11/11 11/14 15/10 22/2 25/5 35/11 39/17 40/23 storm [3] 56/10 57/21 62/2 tax [3] 10/22 10/22 11/9 41/14 41/20 41/23 46/10 48/6 52/25 storms [2] 58/18 63/17

Т these... [11] 52/25 53/7 53/11 54/12 57/3 57/4 59/24 60/6 61/14 61/16 65/2 they [76] they'd [1] 62/2 they're [6] 38/17 48/12 51/21 59/24 68/14 70/13 they've [2] 25/12 65/5 thing [2] 49/21 67/10 things [12] 5/4 6/18 6/18 10/15 20/8 29/9 54/7 64/21 64/22 64/23 66/23 70/5 think [19] 6/5 16/13 27/4 49/9 49/22 49/25 63/21 64/19 65/1 65/4 65/4 65/14 65/18 65/19 68/18 69/14 69/15 70/4 70/10 thinks [1] 59/10 third [1] 28/23 this [62] 4/16 4/22 4/25 5/2 5/6 6/6 7/10 8/23 9/14 10/3 10/6 12/7 14/5 14/6 14/13 14/14 14/17 16/4 16/20 20/12 22/2 22/22 23/17 24/19 26/25 27/4 27/17 30/24 31/22 33/3 33/17 33/21 35/3 36/12 39/2 42/24 42/25 44/13 45/9 45/11 49/8 49/21 51/3 51/15 52/4 52/6 53/7 53/23 54/10 54/22 56/15 57/7 57/17 57/20 57/22 58/14 62/20 65/9 65/10 66/22 67/4 70/8 those [19] 8/5 10/14 11/4 11/25 23/11 24/19 27/24 28/13 29/9 30/1 33/22 36/14 37/11 54/8 55/10 57/2 57/15 61/12 64/10 though [1] 66/20 thought [2] 5/24 31/25 thousand [1] 57/17 three [4] 63/13 68/3 69/5 70/16 through [19] 4/15 4/19 5/10 6/19 7/10 8/3 10/16 14/22 15/1 22/8 49/22 51/3 54/1 57/2 57/4 57/16 65/17 70/7 70/9 throughout [2] 19/7 31/6 **Thursday [1]** 1/8 ticket [1] 33/5 tides [1] 35/1 till [1] 67/1 time [32] 5/22 8/20 9/4 9/13 10/6 13/13 13/18 14/6 15/12 15/25 16/12 18/13 19/10 19/15 20/7 20/14 20/19 20/19 27/11 31/1 31/21 34/6 40/5 41/21 42/16 45/4 51/24 60/24 61/25 63/23 67/9 71/8 times [14] 15/9 22/24 22/25 24/3 25/16 28/12 28/14 42/1 53/23 58/16 58/25 60/8 62/11 63/14 to something [1] 22/12 together [1] 5/18 told [1] 49/20 tolls [1] 51/24 Toms [19] 6/2 14/23 14/24 15/16 25/2 42/10 42/11 42/11 43/16 43/19 43/20 43/23 43/24 44/1 44/2 44/3 44/4 44/5 44/7 Toms River [8] 6/2 15/16 25/2 42/11 43/16 43/19 44/1 44/2 tonight [8] 4/4 4/7 4/24 13/19 17/6 25/7 49/24 50/1

too [3] 19/14 67/12 70/5

top [1] 50/10

topic [1] 22/23

topics [1] 13/14

total [5] 10/22 10/24 32/2 32/3 32/4 totality [1] 37/2 tourist [3] 14/7 31/12 63/15 town [1] 62/7 township [157] township's [26] 12/14 14/21 15/21 17/12 18/21 19/1 19/4 19/18 23/1 23/14 use [5] 24/7 34/7 39/6 52/1 68/8 24/9 24/14 26/14 27/23 30/4 31/8 32/13 used [2] 31/4 61/15 35/13 38/17 47/4 56/7 58/10 58/23 61/8 62/23 63/5 trade [2] 17/22 20/2 tradeoffs [1] 16/7 traditional [2] 33/15 61/20 traffic [2] 25/16 60/23 trained [1] 8/22 transcript [2] 4/20 71/7 transfer [4] 53/13 53/15 53/19 54/10 transit [4] 24/20 25/1 26/17 29/8 **translated** [1] 14/5 transportation [3] 27/18 27/21 30/9 trash [5] 56/12 61/15 61/22 62/4 62/11 travel [14] 14/21 14/22 15/1 15/19 15/25 16/1 16/12 18/13 23/1 23/9 23/14 24/17 42/17 52/24 traveling [2] 19/13 39/7 treated [1] 58/19 **Tri [4]** 21/10 21/11 48/25 55/16 **Tri-Boro [4]** 21/10 21/11 48/25 55/16 trip [2] 14/9 15/20 trips [3] 24/15 26/12 26/14 trucks [2] 61/15 62/5 true [2] 10/3 71/7 try [6] 4/25 5/1 6/7 13/12 27/12 49/23 trying [4] 16/5 22/15 27/5 27/9 twice [1] 62/6 two [16] 13/17 13/18 13/19 38/6 49/18 49/19 49/21 49/23 49/25 54/9 56/18 59/3 62/8 67/17 67/20 68/13 type [4] 16/11 33/16 62/7 62/25 types [2] 10/13 35/9

ULAKY [1] 2/3 ultimate [2] 14/25 53/9 unable [2] 32/17 32/25 unanswered [1] 25/6 unclear [2] 26/9 26/13 uncommon [1] 45/14 uncorrupted [1] 67/5 under [4] 5/8 11/23 40/11 68/14 undergo [1] 41/21 understanding [1] 49/8 undeveloped [1] 36/22 Union [1] 43/5 unique [1] 16/20 unit [1] 33/13 unless [4] 44/9 53/19 54/11 63/24 unlike [1] 57/25 unmaintained [1] 56/22 unresponsiveness [3] 13/4 21/23 21/24 until [4] 23/12 67/8 69/5 69/6 up [35] 4/1 4/8 8/20 9/4 13/18 13/19 14/18 36/12 39/17 45/16 45/20 49/11 50/11 54/1 54/16 56/12 56/14 56/15 61/23 62/1 62/3 62/6 62/8 62/10 62/15 63/11 63/23 64/7 64/20 64/21 65/13

65/20 66/6 66/13 67/23 updates [1] 23/13 upon [6] 4/10 20/19 26/15 36/20 41/19 53/12 us [6] 20/10 20/10 36/18 47/13 58/22 64/4 using [2] 32/20 53/6 utility [1] 61/13 utilizing [1] 60/18

validity [2] 58/22 59/12 values [2] 41/21 41/25 variety [1] 30/1 various [2] 13/14 14/17 vast [1] 66/5 vegetation [1] 57/9 versus [2] 32/4 57/15 very [4] 31/23 34/4 57/5 70/24 via [1] 55/20 vice [1] 4/14 view [4] 21/17 26/24 49/5 55/24 viewers [3] 21/19 21/20 49/7 views [2] 33/21 34/2 Visit [1] 48/2 voice [1] 49/2 void [1] 5/17 volunteered [3] 18/25 19/15 42/15 vote [3] 40/10 46/20 46/21 voters [4] 1/4 4/2 6/22 40/17 voting [3] 40/14 45/23 45/24

W

wait [2] 67/1 69/15 walk [1] 57/1 want [9] 8/19 9/7 16/13 39/15 50/23 51/15 52/8 63/24 67/2 wanted [1] 54/15 was [51] 5/5 5/10 5/16 5/17 5/20 5/21 6/6 6/9 6/12 6/14 6/16 6/17 10/6 14/1 16/7 20/20 26/7 28/24 31/23 31/24 31/25 32/3 32/7 32/15 32/16 33/7 33/7 34/18 50/6 52/22 57/13 57/21 60/8 61/9 61/17 62/1 62/2 62/4 62/20 66/13 68/3 68/3 68/16 69/9 69/14 69/15 69/16 69/17 69/18 69/19 69/21 Washington [3] 15/15 15/19 18/7 Washington Avenue [1] 15/15 wasn't [2] 5/24 6/15 water [3] 30/17 37/21 63/11 water's [1] 56/25 waters [1] 5/17 waterway [1] 62/22 way [4] 54/10 55/3 58/21 59/12 we [71] 5/6 6/22 8/4 9/16 10/3 13/14 14/12 17/10 18/17 20/6 20/8 20/8 20/11 21/22 25/10 25/14 25/15 26/3 26/25 27/16 28/3 28/6 28/15 33/9 35/3 40/22 42/25 43/1 43/1 43/9 45/12 45/16 49/11 49/12 49/17 49/18 49/18 49/19 49/19 49/20 49/20 49/22 49/25 50/5 51/11 51/17 52/19 53/2 53/22 54/1 54/7 54/17 54/20 56/5 57/6 58/6 58/7 58/24 63/22 63/23 64/7 66/22 67/19 68/5 68/19 69/9 69/15 70/6 70/14 70/15 70/22

W wholesome [2] 10/1 41/11 whose [1] 25/20 we'll [5] 34/9 50/2 51/18 65/16 68/18 why [1] 65/15 we're [9] 4/3 4/6 13/15 51/2 64/19 65/4 wide [2] 33/6 62/22 65/14 65/22 67/16 width [1] 61/13 we've [14] 4/18 6/19 7/8 11/12 12/8 will [24] 5/2 7/18 8/8 9/3 9/13 10/5 12/9 12/11 12/12 12/13 12/17 23/8 38/8 11/20 18/2 18/15 26/18 33/8 41/16 48/6 zone [1] 11/10 38/9 58/23 49/11 51/3 51/8 54/2 54/8 54/12 62/14 website [7] 21/16 23/12 29/4 29/4 49/4 66/23 66/23 67/2 67/12 55/19 55/23 William [1] 57/18 week [11] 13/20 13/21 31/10 31/11 William Dudley [1] 57/18 31/14 56/18 56/19 56/19 62/6 63/14 winding [1] 4/17 69/11 winter [1] 57/20 weeks [1] 62/8 Winward [1] 1/11 weighed [2] 16/10 41/25 wisdom [1] 59/9 weight [2] 5/7 41/22 WISER [6] 3/3 4/9 4/13 8/9 64/4 70/6 well [21] 7/17 7/19 11/18 11/21 15/2 Wiser's [1] 49/17 17/8 29/19 35/25 36/8 40/21 41/19 wish [4] 16/12 46/19 46/20 57/3 45/20 52/16 56/7 56/17 57/3 64/9 65/15 wished [1] 46/20 68/2 68/23 70/2 without [9] 5/16 8/9 12/6 14/18 32/20 well-being [9] 7/17 7/19 11/18 11/21 35/5 48/5 58/21 59/11 17/8 29/19 35/25 40/21 52/16 witness [3] 3/2 9/2 43/25 went [1] 6/10 witnesses [3] 4/19 7/7 12/8 were [29] 5/12 7/11 12/18 15/10 15/16 won't [1] 44/23 17/16 20/12 22/14 26/3 32/16 32/20 wood [1] 56/23 32/24 34/19 34/20 40/16 40/17 47/12 word [2] 64/25 64/25 49/18 49/19 49/19 49/20 57/3 57/4 57/5 word-for-word [1] 64/25 60/17 60/18 61/9 63/18 65/6 words [2] 53/22 57/17 what [37] 5/1 5/4 6/5 6/19 6/21 7/2 7/3 work [4] 25/18 25/20 28/16 67/24 7/11 8/24 8/24 10/7 13/23 14/12 14/25 working [1] 28/16 16/3 16/7 22/6 32/1 32/8 32/9 34/1 37/7 works [8] 12/15 13/7 26/8 33/9 56/5 38/19 40/3 40/24 41/18 45/16 50/9 52/6 56/8 58/11 58/12 57/8 65/11 66/5 67/4 67/6 67/15 68/21 worship [12] 42/11 42/23 43/2 43/3 69/2 43/9 43/12 43/25 44/14 44/16 44/20 what's [4] 64/16 67/22 67/25 69/7 44/24 48/3 when [18] 5/6 9/13 16/8 19/21 23/24 worth [1] 57/17 25/16 27/11 28/7 31/24 32/18 32/22 would [72] 33/9 33/13 58/18 58/25 61/2 63/8 65/12 wouldn't [1] 6/11 whenever [1] 70/14 writing [1] 65/16 where [21] 8/5 9/14 14/16 16/8 17/1 wrong [1] 9/14 28/17 38/5 39/2 39/9 39/10 39/11 44/15 44/16 44/17 44/24 46/19 46/19 48/1 48/1 48/3 55/12 yeah [7] 51/9 51/9 64/20 67/18 69/21 whereas [2] 31/7 31/13 69/24 70/23 whereby [3] 21/4 38/4 48/17 year [3] 52/13 58/17 62/11 wherever [2] 16/12 16/13 yearly [1] 61/1 whether [15] 11/16 12/2 17/6 25/8 26/9 years [4] 4/18 7/9 11/13 60/20 26/13 27/14 29/18 35/22 40/19 52/14 yellow [1] 14/14 53/5 54/6 58/4 60/22 **Yes [1]** 70/17 which [26] 4/22 6/22 11/13 15/11 you [67] 4/7 4/16 5/1 5/6 6/19 7/11 15/20 18/6 18/9 18/24 19/3 20/22 23/23 8/25 9/9 9/10 9/14 10/5 11/13 11/24 37/8 42/17 43/8 45/17 45/18 47/10 12/3 13/23 14/16 14/25 16/11 16/12 47/12 47/15 48/21 52/10 57/10 57/22 16/13 16/13 17/5 22/7 22/9 22/14 22/21 61/10 61/17 64/7 43/10 43/12 43/15 43/16 43/17 43/18 while [28] 10/5 18/12 19/9 19/21 21/11 43/20 43/21 43/22 43/23 43/25 44/2 24/3 24/4 24/22 27/17 27/21 32/15 33/6 44/3 45/19 45/21 50/5 50/23 50/24 33/19 33/23 35/10 36/18 37/1 42/18 51/10 57/2 57/8 63/24 64/9 65/6 65/7 45/1 45/9 46/15 47/18 48/7 48/25 52/22 65/12 65/16 66/3 67/2 67/5 67/6 67/7 52/22 53/14 56/2 67/8 67/11 67/13 67/25 68/8 68/20 69/2 white [11] 8/6 29/22 31/10 31/11 33/7 70/12 70/24 34/2 35/6 35/19 46/23 53/10 54/13 **you'll [1]** 9/1 White Sands [7] 29/22 31/11 34/2 vou're [13] 14/16 43/18 43/19 43/21 35/19 46/23 53/10 54/13 43/22 43/23 43/24 44/1 44/3 44/4 45/20 Whiteman [4] 6/4 6/5 25/4 33/16 64/14 67/10 Whiteman's [1] 33/10

you've [1] 67/6

younger [2] 19/21 19/21

your [13] 8/1 11/14 11/25 12/5 14/25

who [10] 15/17 17/21 19/20 20/2 21/16

23/18 28/13 45/8 49/5 55/24

whole [2] 38/22 67/10

22/7 64/10 64/12 65/16 67/5 67/13 67/17 68/8

zip [12] 40/1 40/2 40/4 44/25 45/2 45/7 45/12 45/13 45/14 45/16 45/19 64/21 | zoning [2] 11/1 19/2