

**MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD
ON OCTOBER 10 AND 11, 1996**

I. CALL TO ORDER AND ROLL CALL

The Town Council meeting was called to order by President Lesly S. Smith at 9:30 a.m. on October 10, 1996, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Paul Ilyinsky; President Lesly Smith ; President Pro-Tem Jack McDonald; Councilmen Sam McLendon, Leslie Shaw; and Allen Wyett. Also in attendance were Town Manager Robert Doney; Assistant Town Manager Peter Elwell; Town Attorney John Randolph; Fire-Rescue Chief Ken Elmore; Police Chief Joseph Terlizzese; Police Major Frank Croft; Director of Public Works Al Dusey; Town Engineer James Bowser; Director of Planning, Zoning & Building Robert Moore; Zoning Administrator Paul Castro; and Town Clerk Mary Pollitt. In addition to the aforementioned individuals, Fire Marshal John Wandell and Town Clerk Secretary Jackie Reedy attended the Town Council meeting on October 11, 1996. William Brisson and Jeff Widener, consultants to the Town attended the meetings on both days.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President led the Pledge of Allegiance.

III. APPROVAL OF THE AGENDA

Motion made by Mr. Wyett to approve the agenda. The motion was seconded by Mr. Shaw. On roll call, the motion carried unanimously.

IV. CONTINUATION FROM SEPTEMBER 16, 1996, OF CONSIDERATION OF APPLICATION FOR SPECIAL EXCEPTION NO. 18-96 WITH SITE PLAN REVIEW, MAR-A-LAGO CLUB, 1100 SOUTH OCEAN BOULEVARD, WITH REGARD TO AMENDING THE "DECLARATION OF USE AGREEMENT"

A verbatim transcript of the meetings prepared by Murdrick, Witt, Levy & Consor Reporting Agency, Inc. is available in the Town Manager's office. This transcript covers the meetings held on October 10 and October 11, 1996.

V. ANY OTHER MATTERS

The Town Council agreed to schedule a Special Town Council Meeting on October 28, 1996, at 1:00 p.m. to discuss details of the water franchise agreement with the City of West Palm Beach.

VI. ADJOURNMENT

The October 10, 1996, meeting was adjourned at 9:15 p.m., and the October 11, 1996, meeting was adjourned at 9:35 p.m.

Mary A. Pollitt
Town Clerk

Page 294

Page 295

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

VOLUME III

**CERTIFIED
COPY**

360 South County Road
Palm Beach, Florida 33408
Thursday, October 10, 1996
9:30 a.m. - 12:45 p.m.

1 APPEARANCES:

Lesly Smith, President
Paul Ilyinsky, Mayor
Allen Wyett, Councilman
Leslie Shaw, Councilman
Jack McDonald, President Pro Tem
Samuel McLendon, Councilman
Robert Doney, Town Manager
Robert Moore, Director of
Planning, Zoning & Building
John Randolph, Town Attorney
Paul Castro, Zoning Administrator
Mary Pollitt, Town Clerk

*** Notes ***

Page 296

Page 297

1 PROCEEDINGS

2
3 PRESIDENT SMITH: Good morning, I'd like to
4 call to order the special town council meeting
5 of Thursday, October 10.

6 (Thereupon, the roll was called.)

7 PRESIDENT SMITH: Ms. Pollitt, will you do
8 the invocation, please?

9 (Thereupon, the invocation was given,
10 followed by the Pledge of Allegiance.)

11 PRESIDENT SMITH: Do we have a motion to
12 approve the agenda?

13 MR. WYETT: So moved.

14 PRESIDENT SMITH: Thank you.

15 THE CLERK: Mr. Wyett?

16 MR. WYETT: Yes.

17 THE CLERK: Mr. Shaw?

18 MR. SHAW: Yes.

19 THE CLERK: Mr. McLendon?

20 MR. MCLENDON: Yes.

21 THE CLERK: Mr. McDonald?

22 MR. MCDONALD: Yes.

23 THE CLERK: Mrs. Smith?

24 PRESIDENT SMITH: Yes.

25 Item number four, continuation from

September 16, 1996 of consideration of
application for special exception number 18-96
with site plan review, Mar-a-Lago Club, 1800
South Ocean Boulevard, with regard to amending
the declaration of use agreement.

The purpose of this special meeting is to
continue the hearing that we started on 18-96.
The commencement of these meetings was the
beginning of this procedure and this is merely a
continuation. At the conclusion of that day,
the town was in the process of hearing from
staff and consultants. Mr. Rampell had
concluded his case.

The procedure for today will be that the
town will continue with I believe the traffic
expert first and the additional staff comments.
The public will then have the opportunity to
speak as outlined.

All persons who address the council must be
sworn in, and I only ask that you please limit
your remarks and not be repetitive so that
everyone here will have the opportunity to be
heard.

Mr. Rampell will then have the opportunity
for cross examination and rebuttal. And in the

*** Notes ***

Page 298		Page 299	
1	final analysis, the applicant will have the	1	are intended to help me and the members of the
2	final statement, after which the town council	2	council reach a fair and equitable decision.
3	will go into executive session.	3	I'm not harassing Mr. Rampell. I'm not
4	I'd like to reiterate what I said at that	4	harassing Mr. Trump. I'm sure they can stand
5	meeting, which is that I believe and fervently	5	it. And they do not and should not be
6	hope that this hearing will be conducted in a	6	interpreted, any question that I make, as a
7	professional and courteous way, but before we	7	predisposition to vote one way or another in
8	begin, there is a preliminary issue that I would	8	this case. Therefore, I am certain I can reach
9	like to deal with.	9	a fair, impartial judgment in the application
10	As many of you probably know, Mr. Rampell	10	and I will not recuse myself.
11	wrote Mr. Randolph suggesting that I had a	11	I also want to make one other point. We
12	financial interest in the outcome of these	12	all sit up here as elected officials. We have
13	proceedings. For that reason and because he	13	learned that criticism is part of the game. We
14	stated that I had attempted to, quote, railroad	14	don't like it, especially when it's unfair and
15	the outcome of this pending application, he	15	unjust. However, that's part of the price we
16	requested that I recuse myself.	16	pay for serving you, albeit not a great price,
17	Mr. Rampell is wrong on both accounts. I	17	but we do it.
18	have no financial interest whatsoever in the	18	We are prepared to live with criticism. I
19	outcome of these proceedings, not directly,	19	can and I will and I will continue to do so.
20	indirectly or otherwise.	20	Fortunately, as an elected official, I don't
21	Moreover, regardless of what Mr. Rampell	21	have to sit by when other people are criticized.
22	may believe, it is my intention that we, the	22	Today, the comments in Mr. Rampell's letter
23	council, fully and fairly examine the issues	23	may be directed to Mr. Randolph as they were.
24	here as raised. I have asked questions and I'll	24	Mr. Randolph gives his advice to this council as
25	continue to do so. I believe that my questions	25	a guidance to us. I was told and read in the
*** Notes ***			
Page 300		Page 301	
1	letter that Mr. Randolph is unprofessional and	1	MR. RANDOLPH: This is October 1 regarding
2	has a financial interest.	2	the Mar-A-Lago Club application for special
3	I don't know whether he does or not, but I	3	exception.
4	can say that his advice and conduct during this	4	"Dear Skip:
5	hearing has been professional. He is a man of	5	"On behalf of the Mar-A-Lago Club, I
6	integrity and outstanding lawyer who serves the	6	respectfully request that Lesly S. Smith, as
7	town well. That's it.	7	Town Council President and member, and you, as
8	Mr. Randolph, have you got any preliminary	8	Town Attorney, recuse yourselves from further
9	matters?	9	proceedings in the Club's application for
10	MR. RANDOLPH: I do have, similar to the	10	Special Exception 18-96.
11	beginning of the hearing in September, I've	11	"Mrs. Smith holds equity in and therefore
12	received communications from attorneys, an	12	is an owner of two clubs, The Bath & Tennis Club
13	attorney which I want to address in the same	13	and the Everglades Club, which compete with the
14	manner that I addressed the previous	14	Mar-A-Lago Club. If either of these clubs
15	communications. You have somewhat touched on it	15	suffer a deficit or decline in value because of
16	in your comments, Madam President, but I believe	16	increased competition by the Mar-A-Lago Club,
17	I should touch on it.	17	Mrs. Smith could face financial effects. You
18	I have received a letter dated October 1,	18	are a member of The Sailfish Club and have been
19	1996 from Paul Rampell addressed to me. I think	19	since 1983. It appears that you are proprietor
20	it should be made a part of the record, as were	20	through some cooperative ownership arrangement.
21	the other letters. And in order that I might	21	It does seem that you similarly could face a
22	address what is contained within the letter, if	22	financial effect if our Application is approved.
23	the council would permit me, it's a short	23	"I enclose copies of the 1992 and 1995
24	letter, I would read it.	24	annual reports of the Everglades Club.
25	PRESIDENT SMITH: Go ahead, Mr. Randolph.	25	Stockholder equity increased as of June 30,
*** Notes ***			

Page 302

Page 303

1 1992, prior to the opening of the Mar-A-Lago
2 Club. Stockholder equity decreased as of
3 June 30, 1995 after the opening of the
4 Mar-A-Lago Club.

5 "In complete contrast, neither council
6 member Jack McDonald nor Leslie Shaw own any
7 interest of any kind in the Mar-A-Lago Club.
8 When they visit Mar-a-Lago, they do so as
9 patrons only. Any increase in dues is subject
10 to an annual ceiling of ten percent. Messrs.
11 McDonald and Shaw can vote on our application
12 according to Florida law and the State of
13 Florida Commission On Ethics. Nevertheless, you
14 repeatedly attempt to embarrass these
15 individuals by examining, reexamining and cross
16 examining them and encouraging others who cast
17 aspersions on their genuine independence. In
18 the past, they sometimes have voted in favor of
19 our applications and sometimes in opposition to
20 our applications. Mrs. Smith consistently votes
21 against the Mar-A-Lago Club.

22 "The procedural and rhetorical
23 irregularities at the September 16, 1996 town
24 council meeting make it clear that Mrs. Smith
25 and you are railroading, not running, a

1 quasi-judicial hearing. Almost each and every
2 question or comment made by either of you
3 reflected a design to defeat Application for
4 Special Exception number 18-96. The plain
5 predisposition both of you maintain against our
6 application is prejudicial to a fair and
7 impartial decision."

8 Madam President, on the basis of this
9 letter, I was prepared to ask you and am
10 prepared to ask you the same questions that I
11 asked of Mr. Shaw and Mr. McDonald when they
12 were asked to recuse themselves. You have
13 covered those in your statement, but I
14 nevertheless will ask you the question again in
15 a similar way it was asked of those two
16 individuals.

17 Can you on the basis of the testimony you
18 receive at this hearing and only on the basis of
19 that testimony render a fair and impartial
20 decision based upon competent substantial
21 evidence?

22 PRESIDENT SMITH: I can.

23 MR. RANDOLPH: And although, the other
24 allegation is that you have a financial conflict
25 of interest, and you have stated no, as I

*** Notes ***

Page 304

Page 305

1 understand it.

2 PRESIDENT SMITH: I would be happy to
3 elaborate on that.

4 As a shareholder of the Everglades and The
5 Bath and Tennis, I question the monetary value
6 of these stock certificates. I was informed by
7 both clubs the monetary value is zero. If the
8 certificates were to be turned in upon my
9 resignation, the monetary value is zero.

10 I understand that the Mar-A-Lago Club, that
11 once they reach membership cap, they can sell
12 their memberships to another person for the
13 price they paid, but at the Everglades and Bath
14 and Tennis, you cannot sell them. They are
15 zero.

16 MR. RANDOLPH: All right, thank you.

17 Now in addition, I have been asked to
18 recuse myself from further proceedings in regard
19 to the club's application for special exception,
20 apparently on the basis of a perceived conflict
21 of interest because of my membership in a club.

22 I would like to advise everyone here and
23 the council that I do not have a conflict of
24 interest pursuant to state law, nor is the state
25 law 112.3143 applicable to me, since I am not a

1 voting member of the town council.

2 It is further alleged that I have a
3 predisposition against the application and that
4 I am railroading, not running, a quasi-judicial
5 hearing.

6 I strongly object to the manner in which
7 Mr. Rampell has characterized my role in these
8 proceedings. My only interest as the town's
9 attorney is to assist the mayor and the town
10 council in this process, so as to attempt to
11 assure due process as afforded all parties
12 concerned, to provide advice on the applicable
13 law, and to assure that the mayor and town
14 council make an informed, fair and impartial
15 decision based upon competent substantial
16 evidence.

17 I will continue to act orderingly, unless I
18 am directed by the mayor and town council to
19 recuse myself from these proceedings.

20 And I want to make it clear to the mayor
21 and town council that I do not and will not take
22 a position either for or against this
23 application. I am here only to assist you in
24 this process so that you will be equipped during
25 your deliberations to make a fair and impartial

*** Notes ***

Page 306

Page 307

1 decision based upon competent substantial
2 evidence and the applicable law.
3 PRESIDENT SMITH: Thank you, Mr. Randolph.
4 Members of the town council, would you like
5 to ask Mr. Randolph to recuse himself?
6 MAYOR ILYINSKY: Mr. Randolph, you just
7 stay exactly where you are sitting.
8 MR. WYETT: Hell no.
9 MR. MCLENDON: Absolutely stay.
10 PRESIDENT SMITH: Mr. McDonald?
11 MR. MCDONALD: No.
12 PRESIDENT SMITH: Mr. Shaw?
13 MR. SHAW: No.
14 PRESIDENT SMITH: Thank you, Mr. Randolph.
15 I do believe too that the charges against you
16 are untrue, unfair and in my opinion also
17 unprofessional. You have the full support of
18 the town council.
19 And I believe we are now ready to proceed
20 if you don't have any other matters.
21 MR. RANDOLPH: We are ready to proceed.
22 PRESIDENT SMITH: All right. Mrs. Pollitt,
23 I'll ask that as I stated earlier, everyone who
24 is speaking today must be sworn in. I'll ask
25 that everyone who is here who intends to speak

1 please stand and be sworn in by Mrs. Pollitt.
2 THE CLERK: If everyone who is going to
3 speak, if you would raise your right hands,
4 please.
5 (Thereupon, the oath was administered by
6 the Clerk.)
7 PRESIDENT SMITH: Thank you. Mrs. Pollitt.
8 We have received numerous letters and
9 faxes. Is all the correspondence a part of the
10 public record?
11 THE CLERK: It is.
12 PRESIDENT SMITH: Thank you.
13 Is there anything else that should be made
14 a part of the public record before I go on to
15 ex parte communication, Mr. Randolph?
16 Any other exhibits? Mr. Rampell, do you
17 have any other exhibits?
18 MR. RAMPPELL: Not at this time.
19 PRESIDENT SMITH: Thank you. The members
20 of the council, part of the procedure is that we
21 reveal ex parte communication. That means
22 stating the name of the person you spoke to and
23 the subject on which they spoke to you about.
24 And we'll start at the end of the table
25 with Mr. Shaw.

*** Notes ***

Page 308

Page 309

1 MR. RANDOLPH: This is since the last --
2 PRESIDENT SMITH: Since the last town
3 council meeting.
4 MR. SHAW: I have not spoken with anybody
5 regarding this application.
6 PRESIDENT SMITH: Since the last council
7 meeting?
8 MR. SHAW: Right.
9 PRESIDENT SMITH: Mr. McDonald?
10 MR. MCDONALD: I have spoken to Stanley
11 Silk, Rodney Fink, Arthur Silverman, John
12 Maddish, Paul Rampell and Donald Trump.
13 PRESIDENT SMITH: I have spoken to
14 Dr. Lilia and Mrs. Douthit.
15 Mr. Mayor?
16 MAYOR ILYINSKY: I feel somewhat slighted.
17 I have only spoken to my wife, and once.
18 PRESIDENT SMITH: Was that about
19 Mar-a-Lago?
20 MAYOR ILYINSKY: No, it wasn't.
21 PRESIDENT SMITH: At least somebody spoke
22 to you, Mr. Mayor.
23 Mr. McLendon?
24 MR. MCLENDON: In attending meetings and
25 walking the street and whatever, I have been

1 maybe exposed to people, a number of people.
2 And I did not keep a list, so I won't even
3 attempt to mention, but it is the topic of the
4 town. And yes, I have been spoken to about it.
5 PRESIDENT SMITH: And I'm sure your wife
6 spoke to you, Mr. McLendon.
7 MR. MCLENDON: Yes.
8 PRESIDENT SMITH: Mr. Wyatt?
9 MR. WYETT: I have have had the same
10 experience Mr. McLendon has had. It has been
11 difficult as a member of council to walk through
12 this town and not have residents come up and
13 give me their opinion. I have listened
14 carefully and thanked them for their opinion.
15 And I do speak to my wife every night and
16 every day.
17 MR. RANDOLPH: May I follow up with a
18 question, ma'am?
19 PRESIDENT SMITH: Please, Mr. Randolph.
20 MR. RANDOLPH: I would like to ask the
21 question of all of you if, based upon the fact
22 that you have had those communications, that you
23 can base your decision on this application
24 solely on the evidence that's presented to you
25 at these hearings and not allow any comments

*** Notes ***

1 that you received outside these hearings to
2 affect your decision.

3 MAYOR ILYNSKY: Absolutely.

4 PRESIDENT SMITH: Would you like the
5 response individually, Mr. Randolph? Start with
6 Mr. Wyett then.

7 MR. WYETT: Absolutely.

8 MR. MCLENDON: Yes.

9 MAYOR ILYNSKY: Absolutely.

10 MR. MCDONALD: Yes.

11 MR. SHAW: Yes.

12 PRESIDENT SMITH: All right.

13 Mr. Randolph or Mr. Moore, who will be
14 speaking next as part of the town's
15 presentation.

16 MR. MOORE: Mr. Weidner from Frederic
17 R. Harris is here today to represent our traffic
18 engineering firm. And he will offer comments on
19 the application for your information.

20 PRESIDENT SMITH: All right. Are we ready
21 then, Mr. Weidner?

22 MR. WEIDNER: Good morning. My name is
23 Jeffrey Weidner. I'm a senior transportation
24 planner and director of the transportation
25 planning department for Frederic R. Harris

1 Florida.

2 I'd like to submit my resume for the
3 council. Frederic R. Harris is located in Miami
4 Lakes, Florida, and I reside at 1501 East
5 Broward Boulevard in Fort Lauderdale, Florida.

6 Before I make a recommendation on the
7 current application, I'd like to just discuss or
8 have an overview of Frederic R. Harris
9 participation in this Mar-A-Lago Club
10 application in 1993, what has happened since
11 1993, and then I'll give a recommendation on the
12 current application.

13 In 1993 Frederic R. Harris was contracted
14 with the town to review an application by
15 Mar-a-Lago residents or estate to convert to a
16 social club.

17 Now this application was reviewed with
18 three ordinances in mind, the county
19 traffic-wide performance standards ordinance of
20 Palm Beach County, the town's traffic
21 performance standards ordinance and the
22 comprehensive plan, and the requirements of the
23 special exception in the town's development
24 code.

25 And I would just like to read to you the

*** Notes ***

1 results of my review in a letter from May 7,
2 1993 to Mr. Timothy Frank of the town's planning
3 department.

4 "The results of our review indicate the
5 applicant will meet the city's traffic
6 concurrency requirements. However, this
7 condition is only met under limitations
8 indicated in a client application and by other
9 analyses performed by this office.

10 "Palm Beach County has also indicated the
11 county requirements would be met only if an
12 assurance consistent with the land development
13 regulations of Palm Beach County is provided
14 indicating traffic reduction options would be
15 implemented.

16 "Restrictions were put in place also
17 because the applicant has not provided
18 sufficient analysis to indicate the requirements
19 of Palm Beach Code Section 6.40B where the
20 applicant must indicate that the use is so
21 designed, located and proposed to be operated
22 that the public health, safety, welfare and
23 morals will be protected."

24 Now this was based on a proposal which
25 proposed ten guest room units, dining room

1 seating for 75 people, 70-person staff, a single
2 tennis court. Since that time there was
3 approval for four more tennis courts, so now it
4 is a proposal for five tennis courts, a pool, a
5 3500-foot spa and a nine-hole golf course.

6 Through three town meetings and certain
7 negotiations, a development order was prepared.
8 Since that time, Frederic R. Harris was again
9 contracted by the town to assist the town in
10 implementing or monitoring those requirements
11 that were in the development order.

12 Frederic R. Harris staff has been in touch
13 with Mr. Wes Blackman over the last two years a
14 number of times. And thank you, Wes, for your
15 cooperation. I'm sure he is in this room
16 somewhere.

17 In addition to that, over the last few
18 months Frederic R. Harris has reviewed the first
19 annual report submitted by Club Mar-A-Lago.
20 Frederic R. Harris has agreed with the results
21 of that review. It indicates that the current
22 trip generation by the club is about 270 trips,
23 which is well below the threshold required in
24 the current development order.

25 Now as far as the current application, the

*** Notes ***

Page 314	Page 315
1 current application requests removal of all 2 caps, all limitations. Our recommendation is 3 that this application does not meet the 4 requirements of the countywide traffic 5 performance standards ordinance, does not meet 6 the requirements of the town's traffic 7 performance standards ordinance or the special 8 exceptions. 9 This recommendation is based on there are 10 no limitations indicated in the application. 11 There is no documents of impacts, no 12 documentation of operating conditions. 13 There is reference to what has occurred at 14 the club in the last year. However, what has 15 occurred at the club in the last year -- and 16 this is verified by a field visit. I was 17 invited to visit the Mar-a-Lago site last week, 18 and literally the site is under construction. 19 The spa is not operating. The tennis courts 20 have not been under operation. The traffic 21 volumes and traffic numbers that have occurred 22 in the last year are reflective of a site under 23 construction and not reflective of what is 24 proposed for the site. 25 Based on those, what is in the current	1 application, I cannot make a recommendation in 2 there as to approval, because it does not 3 reflect what will be on the site. In effect, 4 the application does not indicate what will be 5 on the site. Thank you. 6 PRESIDENT SMITH: Thank you, Mr. Harris. 7 MR. WEIDNER: Weidner. That's the name of 8 the company. 9 PRESIDENT SMITH: Okay. Mr. McLendon? 10 MR. MCLENDON: I'm an engineer, but not a 11 traffic engineer, and I have heard traffic 12 things that bother me. 13 If I were designing a water system, I would 14 have to design for the peak hour use. I hear 15 averages of first and third quarters as far as 16 traffic is concerned. 17 Is there some established ratio between 18 such averages and peak periods that holds up in 19 actual experience, or why don't we hear about 20 peak period of traffic that we are talking 21 about? 22 MR. WEIDNER: Sir, as I referred to, there 23 are three documents that govern the approval of 24 this application, the countywide traffic 25 performance standards ordinance, which is based

*** Notes ***

Page 316	Page 317
1 on average traffic conditions. 2 MR. MCLENDON: Is there a reason they based 3 it on average instead of peak? 4 MR. WEIDNER: I'm not sure, but the town's 5 traffic standard performance ordinance is based 6 on peak hours, peak season, and the special 7 exception is based on providing for the public 8 health, safety, welfare and morals to be 9 protected. So actually both needs to be 10 addressed. 11 PRESIDENT SMITH: Mr. McDonald? 12 MR. MCDONALD: Mr. Weidner, I have a 13 question. I believe the applicant's traffic 14 expert indicated that the traffic volumes were 15 down this last period that it was measured; is 16 that correct? 17 Did you hear his testimony? 18 MR. WEIDNER: Yes, sir, I sure did. 19 MR. MCDONALD: I don't believe he gave a 20 reason for that other than saying that it was 21 down. Perhaps you can elaborate on that. 22 MR. WEIDNER: Certainly will. I would love 23 to. 24 The traffic count that was prepared by 25 Mr. Pollock of Kimley-Horn was based on a third	1 quarter 1995 count and a first quarter 1996 2 count. This is the methodology used by Palm 3 Beach County. They average the low part of the 4 year with the high part of the year to come up 5 with an average traffic volume. 6 However, the traffic counts for the '95 7 third quarter were taken on October 23rd, August 8 23rd and 24th. 9 The Southern Boulevard Bridge was closed 10 between I believe May 1st and August 20 of 1995. 11 Now the traffic counts were taken three days 12 following the reopening of completion of 13 construction on the bridge. Traffic patterns 14 were certainly affected by the closing of the 15 bridge. 16 I had done some analysis looking at the 17 off-peak counts, the third quarter counts for 18 '92, '93, '94 and '95. And the '95 count was 19 considerably lower, 25 percent lower than any of 20 the other counts. 21 So I think it can certainly be established 22 that that count was affected by the construction 23 and really should not be included in that 24 analysis or an analysis with the conclusion that 25 traffic has gone down. It was a result of the

*** Notes ***

Page 318

Page 319

1 construction and people going in different
2 travel patterns.

3 Now in my investigation I have also found
4 out that the county has just come up with a new
5 traffic count for third quarter '96. When you
6 average that with 1996 in January, it also shows
7 that traffic is a little bit below capacity,
8 which may also support the client's application.

9 However, submission of a single traffic
10 count does not satisfy the requirements of this
11 application. An entire study needs to be formed
12 to indicate to us what is proposed for the site.
13 There need to be some limitations on what is
14 going to be proposed for the site.

15 And frankly, the submission of a letter
16 with one traffic count is not sufficient to meet
17 requirements governing the approval of this
18 application.

19 MR. MCDONALD: Thank you. Then that
20 contributed, do you think, to too low counts
21 within the bridge?

22 MR. WEIDNER: One low count. It's
23 averaged.

24 MR. MCDONALD: And the second count would
25 average slightly below the previous traffic

1 levels.

2 Is there anything in your experience that
3 perhaps would have indicated when the original
4 report was done in '92 or '93, that perhaps
5 would have led to a higher count at that time,
6 some other existing condition?

7 MR. WEIDNER: You know, I have done some
8 analysis in the previous weeks of the traffic
9 counts at that location. '93, the roadway was
10 over capacity. '94, the roadway was below
11 capacity. '95, with an adjusted third quarter,
12 was over capacity. '96 is under capacity.

13 So really the roadway is right at capacity,
14 going a little bit above, a little bit below,
15 little bit above, little bit below every year.

16 So I don't think there is any trend that
17 traffic is going down. If the client were to
18 make that or come to that conclusion, I would
19 like to see an area-wide study perhaps. This
20 does not operate in a vacuum.

21 So basically the roadway is at capacity,
22 and if there is going to be a determination that
23 this roadway or traffic is going down, I would
24 like to see an area-wide analysis, and that has
25 not been provided.

*** Notes ***

Page 320

Page 321

1 MR. MCDONALD: I guess my point is I'm
2 trying to find out, because we all think it gets
3 crowded and crowded down here every year, so I
4 guess it's a little surprising that over the
5 last three or four years it really doesn't vary
6 much up or down.

7 Is there any conditions existing at the
8 time the original study was done that would have
9 placed it at a little bit higher than what it
10 has historically become?

11 MR. WEIDNER: Not at that time. There was
12 no construction in the area.

13 As a matter of fact, it is a little
14 peculiar the way the traffic was operating. In
15 1985 there were over 18,000 vehicles per day.
16 That was the highest peak season count in the
17 last five years.

18 MR. MCDONALD: Thank you.

19 PRESIDENT SMITH: But in 1996 we had a
20 rainy January and rainy March and many hotels
21 said their reservations were cancelled because
22 of the weather. Would that be a factor?

23 MR. WEIDNER: I would have to see some
24 documentation on that. I wouldn't want to
25 speculate on that.

1 PRESIDENT SMITH: All right. Thank you.
2 Mr. Wyett?

3 MR. WYETT: I think you mentioned that
4 under the concurrency rules, and 313 is the
5 allowable that Mar-a-Lago has, and that the
6 traffic count going in and out of Mar-a-Lago is
7 narrowed to 270 trips?

8 MR. WEIDNER: That was the result of
9 discussions at the previous meetings in 1993.
10 Actually I had to do quite a bit of research to
11 figure out how we came to that number.

12 The results of my study indicated that 611
13 members would be equivalent to 310 trips on
14 State Road A1A -- no, 303 trips. Basically the
15 previous application restricted itself under
16 their own application to 200 trips. This
17 allowed them to only analyze the
18 directly-accessed links from the proposed
19 development.

20 In other words, if you stay within 200
21 trips, you only have to look at the roadway
22 where your driveway is accessed. If they
23 exceeded 200 trips, they need to expand the
24 radius of influence to a half a mile. And they
25 would have had to look at the Southern Boulevard

*** Notes ***

Page 322 1 Bridge, State Road A1A south of Southern, and 2 gone up further on State Road A1A. 3 Previous use, they were allowed to credit 4 previous use when it was a residence of 103 5 trips, so that was 303 trips. 6 During our discussions in three meetings it 7 was determined that there was also a 8 single-family residence on site that was not 9 being utilized, and they were allowed another 10 ten trips for credit, so that came to 313 trip 11 threshold that was included in the development 12 order. 13 MR. WYETT: How many trips are they 14 utilizing out of that? 15 MR. WEIDNER: The applicant has submitted 16 to my office or submitted to the town and the 17 town contracted with us to review that about 270 18 trips per day. 19 MR. WYETT: You mentioned there was a lot 20 of construction and believed it was going on all 21 year. 22 MR. WEIDNER: Yes, sir. 23 MR. WYETT: Is there any way of eliminating 24 or estimating the elimination of construction 25 people which would not be an ongoing situation?	Page 323 1 MR. WEIDNER: Yesterday I met with the 2 applicant's traffic consultant and with the 3 traffic engineer, the Palm Beach County 4 Engineering, and that same question was posed to 5 me. 6 And I recommended to the applicant and I 7 have not done so myself, but as I understand it, 8 the club has a register of every vehicle that 9 comes in and out of or on and off of the site. 10 I imagine getting that information for the 11 same time period that we have traffic counts 12 for, that they could identify construction 13 vehicles, number of vehicles, extract that from 14 the traffic counts and then perhaps isolate or 15 separate the construction traffic from servant 16 and guest or member traffic. 17 MR. WYETT: When I saw the raw number, 270 18 versus allowable 313, I was concerned that 19 perhaps we had constrained the club and its 20 future growth pattern, and I was wondering 21 whether I should be listening very carefully to 22 an increase in the number. 23 However, if I subtract something from the 24 270, and I have heard figures thrown about that 25 you could substantially reduce the 270 by 30,
*** Notes ***	
Page 324 1 40, 50, 60, then the utilization was probably 2 around 200, 210, 220, which indicates that the 3 club is not being constrained in its future 4 growth pattern, because it now has about 300 5 members, and 500 members would not double that 6 figure. 7 MR. WEIDNER: Sir, you are going through 8 the same exercise as I went through when I 9 received the application, and basically it's 10 speculation. I agree with you totally. 11 If you remove the construction traffic, 12 that's not going to be there next year. When I 13 reviewed the application, I understood the site 14 was built out. 15 And further in my review found out that the 16 spa was not operating. There are now five 17 tennis courts that are not operating. And there 18 is 314 members. I have heard 250 members, I 19 have heard 280 members. I really need to see 20 some documentation to come to a conclusion. 21 MR. WYETT: So the club really doesn't want 22 to tell us how many members it really does have. 23 I at the last meeting asked whether it was 24 near at 250 or nearer 320, and Mr. Rampell 25 replied it was nearer 320, but he didn't really	Page 325 1 affirm it was 320. 2 PRESIDENT SMITH: Mr. Shaw has a question, 3 then Mr. McLendon. 4 Mr. Shaw. 5 MR. SHAW: During this time period I think 6 a few things were going on in the community, and 7 I'm not sure how that impacts traffic. 8 Do you know what the construction period 9 was for Okeechobee east of the railroad tracks 10 of '95 at the Kravis Center? 11 And how about the fact that Okeechobee was 12 rebuilt into, from a two-lane road into a four 13 or six-lane road? 14 MR. WEIDNER: The only construction project 15 that was investigated was the Southern Boulevard 16 Bridge project, so no, I don't have any -- 17 MR. SHAW: How was the reconstruction on 18 Southern Boulevard from the bridge to Dixie also 19 affecting the area? 20 I guess what I'm trying to determine, if 21 somebody wanted to get from Palm Beach to West 22 Palm Beach and Okeechobee was basically shut 23 down, were they not using Southern Boulevard as 24 a means to get across, those people that lived 25 between the two bridges, versus now, because of
*** Notes ***	

Page 326

Page 327

1 the rebuilding of Okeechobee, finding that
2 that's a better way to go?

3 I don't know what the answer is. I'm
4 looking to you to find out if that could lead to
5 why there is a decrease.

6 MR. WEIDNER: I'm just indicating that that
7 has not been investigated by myself, and it
8 sounds certainly like it may have impact, but I
9 have not reviewed that or analyzed that.

10 MR. SHAW: When a study is done and we talk
11 about averaging, are we -- the way it was
12 explained to me was the study is a one-day study
13 on a random day at some point in a -- is that
14 correct?

15 MR. WEIDNER: What kind of study?

16 MR. SHAW: The averaging studies that the
17 county does.

18 MR. WEIDNER: No, the county will perform
19 traffic counts. The information I have gotten,
20 there were traffic counts taken on two days
21 during an off-peak season and two days during
22 the peak season.

23 MR. SHAW: Are they 24-hour days?

24 MR. WEIDNER: Yes.

25 MR. SHAW: And they are random?

*** Notes ***

Page 328

Page 329

1 MR. WEIDNER: State Road A1A south of
2 Poinciana.

3 MR. SHAW: I'm trying to identify, one
4 other thing that you said was that because of
5 the number of cars that are in question, that
6 this was merely a count that was being done of
7 vehicles entering and leaving the property, and
8 that if they wanted to expand the scope, they
9 would then -- and increase the count, they would
10 have to do a traffic study, which would involve
11 a half mile radius of the entrance.

12 I'm paraphrasing to some degree. If I am
13 wrong, please tell me.

14 MR. WEIDNER: I guess you are going from
15 one issue to the other. First we were talking
16 about how the county does the traffic counts.

17 MR. SHAW: Correct.

18 MR. WEIDNER: Now you are discussing about
19 the applicant and how the applicant poses
20 monitoring traffic coming in and out of the
21 applicant's site.

22 MR. SHAW: No. I'm trying to determine why
23 the applicant did not need to do or did not do --
24 I don't know whether they needed to do it or not --
25 did not do a traffic study because apparently

1 their numbers did not require it.

2 What I'm trying to determine is where are
3 you getting your information from as to the
4 vehicle trips that are being counted on that
5 road?

6 Is it directly in front of Mar-a-Lago? Is
7 it in front of the Southern Boulevard entrance?
8 Is it in front of the main entrance? Is it a
9 quarter mile north?

10 Where are you measuring traffic?

11 MR. WEIDNER: There is a county traffic
12 count location on State Road A1A north of
13 Sunrise, just north of Sunrise Boulevard. I
14 know it's -- Southern Boulevard, I'm sorry. I'm
15 from Fort Lauderdale.

16 PRESIDENT SMITH: That's all right.
17 Sunrise is way north, north of Mr. Shaw's
18 Okeechobee.

19 MR. WEIDNER: And that is the traffic
20 count. The traffic count information provided
21 by the client indicating site traffic are coming
22 from count hoses on the clients' driveways.

23 PRESIDENT SMITH: Mr. Shaw, can I just stop
24 you for a minute?

25 MR. SHAW: I'm trying to understand where

*** Notes ***

Page 330	Page 331
1 the county is counting it that's establishing 2 that there is a surplus of traffic. You know, 3 there is a lot of people that come from the 4 south end of town -- 5 PRESIDENT SMITH: Mr. Moore, perhaps you 6 could clarify the situation. 7 MR. SHAW: People come from the south end. 8 If they are going over the Southern Boulevard 9 Bridge, they are going over -- 10 PRESIDENT SMITH: Or perhaps Mr. Rampell 11 could say where he takes his traffic counts. 12 Mr. Shaw, you are asking Mr. Weidner -- 13 MR. MCLENDON: Mr. Weidner said counts were 14 taken on A1A north of Southern, but where? It 15 would have to be in the vicinity of Mar-a-Lago. 16 PRESIDENT SMITH: Were not the traffic 17 counts part of the conditions of the 18 declaration-of-use agreement? 19 Was this not one of the conditions? If the 20 applicant submitted numbers, he submitted 21 numbers. 22 Let Mr. Moore speak, please, Mr. Shaw, or 23 Mr. Weidner. 24 MR. MOORE: The question that I think I 25 heard Mr. Shaw say was where does the county	1 take its counts? I do not know the answer to 2 that, and I'm not sure Mr. Weidner does, and I'm 3 not sure whether Mr. Rampell could tell us that 4 or not. 5 The town takes its readings in a very, in 6 the same places each year, in approximately Via 7 Vizcaya and also just south of Via Pelicano. 8 That's just south of the Southern Boulevard 9 traffic circle and just north of the Southern 10 Boulevard traffic circle. They also take one at 11 A1A -- excuse me, at Southern Boulevard as it 12 begins to cross the Post Causeway. 13 Those three points I'll defer to 14 Mr. Brisson, because he does that computation, 15 but they are average, and Mr. Weidner would look 16 at those to see if they meet the town's 17 requirements, which is peak season, peak hour. 18 MR. WEIDNER: I will indicate that the 19 county's count location is between, on State 20 Road A1A between County Road and Southern 21 Boulevard and is certainly reflective of the 22 traffics that passes by Club Mar-A-Lago on its 23 A1A entrance. 24 MR. SHAW: And the traffic study that is 25 provided by the club is strictly those vehicles

*** Notes ***

Page 332	Page 333
1 that go in and out of the club? 2 MR. WEIDNER: Yes. 3 MR. SHAW: Okay. Is the count based on the 4 fact that there are two distinct entrances or 5 exits from the club on two different roads? 6 Does Southern Boulevard have any bearing on 7 the main entrance, the two entrances? Because 8 there is an exit and an entrance. 9 MR. WEIDNER: Southern Boulevard influences 10 the Southern Boulevard entrance and A1A 11 influences the A1A entrance. 12 MR. SHAW: Okay. Are they the same total 13 cumulative 313 or does each entrance have its 14 own count? 15 MR. WEIDNER: The applicant, because State 16 Road A1A was over capacity in 1993 and the 17 applicant wished to remain at 200 trips per day 18 so as not to expand the area of influence beyond 19 the directly-accessed roadway, they limited 20 themselves to 200 trips. 21 MR. SHAW: On A1A? 22 MR. WEIDNER: On A1A. Southern Boulevard 23 Bridge was also over capacity I believe at that 24 time. I believe that's why they wanted to limit 25 themselves to half mile radius. Because A1A had	1 the smaller capacity, that was the main point of 2 the traffic study. 3 MR. SHAW: So the traffic count doesn't 4 really apply to the Southern Boulevard entrance? 5 MR. WEIDNER: There are different traffic 6 counts for the Southern Boulevard entrance that 7 should be addressed. 8 MR. SHAW: I'm sorry if I don't understand. 9 There are two distinct entrances to a 10 property. I'm trying to determine whether the 11 count of 313 is affecting all of the entrances 12 or is it strictly the entrance on A1A? 13 PRESIDENT SMITH: Why don't you ask the 14 applicant? It's his two entrances. Unless you 15 have the answer, Mr. Weidner. 16 MR. WEIDNER: Okay, the limit of 200 trips 17 per day, 313 trips is limited to the entire 18 site, both entrances. 19 The entire trip generation needs to be 20 limited to 313 trips per day. That includes all 21 entrances in and out of the site. Sorry. 22 MR. SHAW: That's what I was trying to 23 determine. 24 The comment about construction, do you not 25 feel that that's basically a wash, that when the

*** Notes ***

Page 334

Page 335

1 construction personnel leave, that's going to be
 2 replaced by people using the facility or --
 3 MR. WEIDNER: Speculation. I don't know.
 4 MR. SHAW: Okay.
 5 PRESIDENT SMITH: Mr. McLendon?
 6 MR. MCLENDON: I would like to go back and
 7 really try to understand this 313. You
 8 explained earlier how you got from 303 to 313.
 9 That was very clear.

10 Somewhere I heard that 113 -- and maybe it
 11 was 103, but I heard 113 -- was because of
 12 existing traffic from and to Mar-a-Lago itself,
 13 and that somebody took one percent of 20,000
 14 trips.

15 To me, purely arbitrary, but maybe not, to
 16 come up with 200. And 200 plus 113 is 313.
 17 That seems to be cast in stone without me really
 18 understanding it.

19 MR. WEIDNER: The 200 trips are based on a
 20 requirement in Palm Beach County traffic
 21 performance standards ordinance which limits the
 22 radius of influence of the study. 200 trips and
 23 under, the application need only address the
 24 directly-accessed links. Those are the roadway
 25 links that the driveways access on the regional

1 network.

2 MR. MCLENDON: Is it a percentage of some
 3 number or is it determined more precisely?

4 MR. WEIDNER: It's precisely exactly 200
 5 trips. That's a threshold in the traffic
 6 performance standards ordinance.

7 Okay, previous years at Mar-a-Lago as a
 8 residence, and sufficient documentation was
 9 provided in the previous application that
 10 indicated 103 trips.

11 During our discussions in the meeting that
 12 came up that there was a single-family residence
 13 on site and from the ITE trip generation manual,
 14 that's an additional ten trips was added to the
 15 303.

16 MR. MCLENDON: And you feel that the 313 is
 17 a valid number based on previous traffic
 18 information?

19 MR. WEIDNER: Based on previous traffic
 20 information.

21 PRESIDENT SMITH: All right. Mr. Weidner,
 22 could I ask if it you could spell your name for
 23 the record? The applicant has a court reporter
 24 here and they have indicated a problem with the
 25 spelling of everyone's name.

*** Notes ***

Page 336

Page 337

1 If you have a difficult name, would you
 2 please spell it before you speak to the council,
 3 anybody who will be addressing the council
 4 today.

5 MR. WEIDNER: Weidner, W-e-i-d-n-e-r.

6 PRESIDENT SMITH: Thank you very much.

7 Mr. Rampell, questions for Mr. Weidner?

8 MR. NATALE: My name is Anthony Natale. I
 9 believe Madam Court Reporter is familiar with
 10 the spelling my name.

11 PRESIDENT SMITH: Why don't you spell it
 12 for all of us.

13 MR. NATALE: Let's see if I can do it
 14 correctly. N-a-t-a-l-e.

15 PRESIDENT SMITH: Thank you. You are
 16 representing the applicant?

17 MR. NATALE: That's correct, right.

18 PRESIDENT SMITH: Thank you.

19 MR. NATALE: Thank you very much.

20 The first thing I would like to ask you,
 21 sir, is that as I understand it, you have been
 22 here to testify in the role of an expert, to
 23 give an expert opinion; is that fair to say?

24 MR. WEIDNER: Yes, sir.

25 MR. NATALE: Any you would agree with me

1 that when we are talking about engineers, that
 2 there is a particular education in which
 3 engineers go through?

4 MR. WEIDNER: Uh huh.

5 MR. NATALE: And you would agree with me
 6 that when we talk about traffic engineers, we
 7 are talking about a part of that profession
 8 which is actually specifically licensed by the
 9 state of Florida, is it not?

10 MR. WEIDNER: Yes, sir.

11 MR. NATALE: In fact, in order for someone
 12 to become a licensed traffic engineer, there are
 13 a number of educational and certification
 14 requirements they need to have?

15 MR. WEIDNER: Yes, sir.

16 MR. NATALE: And once they receive that
 17 traffic engineer certification, they are then
 18 empowered to give expert opinion and to actually
 19 sign as an engineer on official documents which
 20 would be submitted to the state, to city
 21 councils and other groups to certify traffic
 22 behavior and actions and plans, correct?

23 MR. WEIDNER: Yes, sir.

24 MR. NATALE: Okay. Now, I had an
 25 opportunity and I was very thankful, by the way,

*** Notes ***

Page 338	Page 339
1to look at your resume. 2You are not a licensed traffic engineer, 3are you? 4MR. WEIDNER: No, sir. 5MR. NATALE: All right. And I also believe 6that you mentioned parenthetically that you were 7from Fort Lauderdale? 8MR. WEIDNER: Yes. 9MR. NATALE: And that being from Fort 10Lauderdale, I guess that's one of the reasons 11why you may not be familiar with the volume of 12traffic that those of us who live in this county 13or live in this town know which exists on 14Okeechobee Boulevard; is that fair to say? 15MR. WEIDNER: No, sir. 16MR. NATALE: Well, isn't it true that you 17just testified that you did not inquire and did 18not study the traffic patterns and the effect of 19the pattern that they had when Okeechobee was 20under construction? 21MR. WEIDNER: Yes, sir. 22MR. NATALE: So you didn't consider a major 23artery which comes to and from this town, did 24you, sir? 25MR. WEIDNER: No.	1MR. NATALE: Now you would agree that the 2reality of the situation for those of us who 3travel those roads are well aware of what we all 4had to do when Okeechobee was closed to get 5around to get to and from the town? 6Are you aware of that or have you inquired 7as to anyone as to what we all needed to do? 8MR. WEIDNER: Are you asking me? 9MR. NATALE: Yes. 10MR. WEIDNER: No, sir. 11MR. NATALE: And you would agree that that 12sort of traffic is something which would 13certainly be meaningful in making the 14determination as to the reality of the traffic 15and the validity of the numbers which we have? 16MR. WEIDNER: Certainly. 17MR. NATALE: And you did not do that? 18MR. WEIDNER: I reviewed the application. 19That information was not included in the 20application, so no, I did not review it. 21MR. NATALE: I understand that, but you 22would admit, sir, that part of your opinion is 23based not on having information as to the 24reality of what is going on, right? 25MR. WEIDNER: Excuse me? Repeat the

*** Notes ***

Page 340	Page 341
1question. 2MR. NATALE: You would agree that part of 3an objective analysis would be to take 4everything that was there into consideration, 5wouldn't you, everything that was there to give? 6MR. WEIDNER: The way the application is 7written, there was an entire universe of 8scenarios to be considered. 9The information included in the previous 10scenario reviewed the traffic counts on State 11Road A1A, so naturally I reviewed the traffic 12count on State Road A1A, identified a traffic 13count that was lower than capacity, investigated 14the reasons for that and identified it as the 15Southern Boulevard Bridge being closed at that 16point in time. 17And I believe that if the applicant desires 18to submit to the county and to the town that 19traffic has been reduced in this area, the onus 20is on the part of the applicant to provide that 21information to me and not for me to go out and 22analyze traffic counts within a three-mile 23radius or two-mile radius. 24MR. NATALE: So what you are saying then, 25sir, is that the only thing you would do is view	1the documents that you received and not 2necessarily look to the real facts in order to 3make your opinion; is that correct? 4MR. WEIDNER: No, it's not, sir. I looked 5at a lower traffic count, identified a bridge 6being closed a half mile way. I think that was 7sufficient in indicating that this is a reason 8why the traffic count was lower and did not see 9the need to go any further. 10MR. NATALE: You chose to ignore the 11Okeechobee situation, correct? 12MR. WEIDNER: I was not aware of the 13construction on Okeechobee. And I have been 14working in the Palm Beach County, Broward County 15and Dade County area for over 12 years and am 16quite aware of the traffic circulation patterns 17in the area. 18I indicated earlier that I was not aware of 19a single construction project and the timing of 20that project. In fact, he asked me what the 21dates were of that project, and I had to say no. 22MR. NATALE: In fact, sir, you are aware 23that the Palm Beach County Traffic Engineering 24has volume reports that relate to the -- 25MR. WEIDNER: I get them sent to my office

*** Notes ***

Page 342

Page 343

1 every six months.

2 MR. NATALE: And I am sure that as it
3 related to the application, you reviewed the
4 information regarding the area of Club
5 Mar-A-Lago, correct?

6 MR. WEIDNER: Repeat the question.

7 MR. NATALE: I'm sure you reviewed the Palm
8 Beach County Traffic Engineering volume reports
9 as it related to the traffic monitoring in the
10 Mar-a-Lago area, right?

11 MR. WEIDNER: No, the application did not
12 include any information or analysis to go back
13 to traffic performance standards ordinance. I
14 went back to the previous study.

15 MR. NATALE: Okay. What I'm asking you is
16 you said yesterday you were at a meeting with
17 the county people, right?

18 MR. WEIDNER: Yes, with your traffic
19 consultant.

20 MR. NATALE: Now at that time did you ever
21 ask to see what's part of the public record,
22 which is the Palm Beach County Traffic
23 Engineering volume report that relates to this
24 specific property?

25 MR. WEIDNER: You know, I did this two

1 months ago. In fact, I talked with Mr. Weisburg
2 and got more detailed information than what is
3 provided to the public. I got the specific
4 counts and dates.

5 MR. NATALE: I guess what I'm getting at,
6 sir, that if you had actually looked at that,
7 wouldn't you then know that the actual location
8 of the counters is on A1A 400 feet north of the
9 junction of Southern Boulevard, and that if you
10 looked on that document, which is a public
11 document, you would have been able to answer
12 Councilman Shaw's question; is that right?

13 MR. WEIDNER: Sir, I don't think I was
14 inaccurate in saying the count was north of
15 Southern Boulevard and south of County Road.

16 MR. NATALE: But let me ask -- by the way,
17 if I could move to another area, you mentioned
18 that one of the concerns --

19 PRESIDENT SMITH: Excuse me, you have to
20 step back to the microphone if you want to be on
21 the record.

22 MR. NATALE: I most certainly do. May I
23 take this?

24 PRESIDENT SMITH: Yes, you most certainly
25 may.

*** Notes ***

Page 344

Page 345

1 MR. NATALE: And I promise I won't sing.

2 PRESIDENT SMITH: I don't know if you can
3 sing or not, so this is not a problem for me.

4 MR. NATALE: Is this recording now?

5 PRESIDENT SMITH: This is recording.

6 MR. NATALE: Thank you.

7 MR. NATALE: Mr. Weidner, one of the things
8 that you mentioned was the fact that there is a,
9 if you will, a public concern, a health, a
10 public welfare concern, that this is something
11 which is in the well being of the Town of Palm
12 Beach; isn't that correct?

13 MR. WEIDNER: I'm sorry, I was reading
14 the --

15 MR. NATALE: Okay, you can read that too.
16 When you finished reading it, let me know.

17 MR. WEIDNER: I'm done.

18 MR. NATALE: Now, you would agree, sir,
19 that one of the criteria is whether or not the
20 special exception would be to the benefit,
21 whether or not there is some social benefit to
22 the Town of Palm Beach; isn't that correct?

23 The health and welfare, isn't that one of
24 the things that you mentioned?

25 MR. WEIDNER: I guess it could be implied

1 in the requirement.

2 MR. NATALE: Okay. And in fact, the Palm
3 Beach has a section of its code which is the
4 town serving part of its code.

5 Are you aware of that?

6 MR. WEIDNER: No.

7 MR. NATALE: Okay. Well, if you were to
8 learn that the requirement of this town serving
9 element was that 50 percent, as a result of
10 this, that 50 percent of the membership of
11 Mar-A-Lago Club must be island residents or town
12 residents, would that be the sort of thing which
13 you think would be beneficial to the town?

14 MR. WEIDNER: You are getting out of my
15 area of expertise. Really I don't understand
16 your question.

17 PRESIDENT SMITH: That's not a correct
18 statement, because they do not have to be town
19 residents. They have to either be town
20 residents or live in the town.

21 MR. NATALE: Or live in the town.

22 PRESIDENT SMITH: So Mr. Weidner I think
23 really can't know about that.

24 MR. NATALE: I guess what I'm getting at --

25 PRESIDENT SMITH: Maybe he can answer the

*** Notes ***

Page 346	Page 347
1 question if you want to rephrase it correctly. 2 MR. NATALE: I think what I would like to 3 get to is that in determining this application, 4 one of the factors that you are particularly 5 addressing is the traffic that would be coming 6 to and from; is that correct? 7 MR. WEIDNER: Exactly. 8 MR. NATALE: Okay. You would agree that if 9 we had two members of the Mar-A-Lago Club, say 10 everything being equal, equal taste, equal 11 inclinations, and we had one of them say living 12 in the town, was a town resident, and another 13 was a resident of the city of Chicago, okay? 14 That would you agree that common sense would 15 tell us that the resident who resided here would 16 be more inclined to use the club and therefore 17 there would be more trips to and from the club 18 than the resident member of Chicago? 19 PRESIDENT SMITH: Give a really good 20 educated guess now, Mr. Weidner. 21 THE WITNESS: In the winter he would be 22 living -- 23 PRESIDENT SMITH: In the winter would be 24 more if he lived in Chicago, believe me. He 25 would spend the whole winter in Mar-a-Lago if he	1 could. 2 MR. NATALE: Understanding that summer 3 memberships are something that people have 4 thought very seriously about here, I would like 5 to ask you as we are talking about the use of 6 traffic, is it common sense, is it common sense 7 that one should infer or at least assume that a 8 town resident, all things being equal, with an 9 out-of-town resident, would make more trips to 10 Mar-a-Lago? 11 MR. WEIDNER: I guess so. I mean 12 considering the income of the people at the 13 club, anybody can fly from Chicago every other 14 day. 15 MR. NATALE: I understand that. And 16 wouldn't you agree that if someone that, given 17 the facilities of Mar-a-Lago, that a club member 18 who -- I'm sorry, are you having trouble 19 hearing? 20 MR. WEIDNER: Yes, noise in the background. 21 MR. NATALE: Mr. Weidner, would you agree 22 that a resident member -- 23 MR. WEIDNER: Weidner, e before the n. 24 MR. NATALE: Mr. Weidner, would you believe 25 that a resident of Palm Beach who is a member of

*** Notes ***

Page 348	Page 349
1 the club would be in a position to go to the 2 club and play tennis, go home, have lunch, come 3 back, go to the spa, could come to and from the 4 club for any number of reasons at any number of 5 times during the day and that would be more 6 common than a resident member of Chicago? 7 Wouldn't you agree with that? Doesn't that 8 make sense? 9 MR. WEIDNER: If there is a resident member 10 of Chicago living in a residence here? 11 Are they snowbirds? I don't understand the 12 question. 13 MR. NATALE: Over a general year, what 14 amount of traffic is going to be generated? 15 MR. WEIDNER: I'll say a year-round 16 resident would perhaps or would be more, tend to 17 make more trips back and forth to the club 18 rather than somebody who was here for a short 19 term during the year. 20 MR. NATALE: Okay. And if the membership 21 were to be 50 percent residents, given what you 22 just said, that one could infer, make a common 23 sense assumption that that would actually 24 increase the potential for traffic to and from 25 Mar-a-Lago rather than decrease it; isn't that	1 correct, based on what you just said? 2 MR. WEIDNER: I would like to see some 3 analysis and some numbers. If we are pointing 4 to and trying to identify or revise the trip 5 generation of the proposed club and these 6 proposals or assumptions that you are making, 7 give me some documentation, give me something to 8 review. 9 I don't want to sit here and have to 10 speculate on what you are proposing. 11 PRESIDENT SMITH: Please, I want to ask you 12 not to have any reaction from the crowd in all 13 fairness to the council and the club, so please 14 don't react to the remarks of the people that 15 are testifying. Thank you. 16 MR. NATALE: That's very fair. 17 And you would agree that a certified 18 traffic engineer is the sort of person who 19 could, would have the licensed expertise to make 20 those sort of representations? 21 MR. WEIDNER: Right, and I have three of 22 them working for me. 23 MR. NATALE: Okay, very good. And you have 24 those three people -- are they here for cross 25 examination?

*** Notes ***

Page 350

Page 351

1 MR. WEIDNER: No, they are not.
 2 MR. NATALE: I'd like to now ask you to,
 3 because one of the things we are talking about
 4 is the problems of congestion that would be
 5 caused by people coming to and from; isn't that
 6 correct?
 7 MR. WEIDNER: Yes, sir.
 8 MR. NATALE: I'd like to show you what is
 9 is in an exhibit which we are submitting as far
 10 as the overview of the east side of the
 11 Mar-a-Lago property and then the Southern
 12 Boulevard site.
 13 You have had an opportunity to go to the
 14 property, have you not?
 15 MR. WEIDNER: Yes, sir.
 16 MR. NATALE: And if you could look at this,
 17 does this appear to accurately reflect the
 18 layout of the land and the buildings at the east
 19 as well as at the Southern Boulevard entrances?
 20 MR. WEIDNER: It appears to, but at first
 21 glance it appears that the guardhouse on the
 22 Southern side is a little bit further away than
 23 the existing guardhouse. Is that not correct?
 24 MR. NATALE: What are you pointing to as
 25 the guardhouse?

1 MR. WEIDNER: Look at the top right of the
 2 tennis court and go up a little bit further and
 3 you will see the guardhouse. It appears to me
 4 that the guardhouse is perhaps three cars lower,
 5 but I was only on the site once and I'm not
 6 sure.
 7 Maybe the client can verify that that is
 8 the current location of the guardhouse.
 9 MR. NATALE: Okay, let's assume that we
 10 will have someone who will be able to represent
 11 that that is the current.
 12 MR. WEIDNER: Fine.
 13 MR. NATALE: Because when you went there,
 14 you didn't do any measurements, did you?
 15 MR. WEIDNER: No. The client had me wait
 16 for Mr. Blackman to pick me up and drove me
 17 around in a golf cart and then brought me back
 18 to my car.
 19 MR. NATALE: Did you ask to do any
 20 measurements?
 21 MR. WEIDNER: No.
 22 MR. NATALE: Okay. If we could, there is
 23 now a left-hand turn lane on the South Ocean
 24 Boulevard; is that correct?
 25 MR. WEIDNER: Yes.

*** Notes ***

Page 352

Page 353

1 MR. NATALE: And that turn lane is able to
 2 accommodate six cars and still allow traffic to
 3 proceed northbound, correct?
 4 MR. WEIDNER: Correct.
 5 MR. NATALE: That from the entrance area to
 6 Mar-a-Lago to the, I guess it would be the
 7 carport canopy area, it is stated -- let me ask
 8 you this.
 9 Would you have any quarrel with the fact
 10 that it is estimated that 26 cars could be
 11 parked within the property there?
 12 MR. WEIDNER: You know, we analyzed this
 13 three years ago. The left turn lane was put in
 14 at our, or recommendations from my engineers at
 15 my office, and it appears that they are working
 16 currently with the number of members and uses on
 17 site.
 18 We analyzed a storage or a stacking length
 19 three years ago. I'm not quite sure whether it
 20 was for 26 cars or 22 cars, but whatever was in
 21 the previous study, we analyzed and recommended
 22 that it would work.
 23 MR. NATALE: It would work, okay.
 24 And isn't it a fact that you have no reason
 25 to doubt the figures that we are representing

1 here that six cars can be stacked in the left
 2 turn lane and that 26 cars can be stacked within
 3 the property?
 4 MR. WEIDNER: Again, I reference the study
 5 from three years ago. If these numbers differ
 6 from what was in that study, I cannot speculate
 7 on that now until I see the distances and see
 8 the storage lengths on the State Road A1A.
 9 MR. NATALE: Okay. Now, likewise, would
 10 you, do you have any reason to refute that there
 11 is the left-hand turn lane which was put in by
 12 the Mar-A-Lago Club at the request and that this
 13 is a five-car capacity?
 14 MR. WEIDNER: I know that there is a left
 15 turn lane there.
 16 MR. NATALE: And you don't know what is the
 17 amount of that capacity?
 18 MR. WEIDNER: No.
 19 MR. NATALE: Okay. And you are also aware,
 20 I'm sure, as being involved in traffic planning
 21 that, one, it's not unusual for law enforcement
 22 officers to be used to help direct traffic at
 23 certain locations if there ever was a problem?
 24 MR. WEIDNER: Part of our recommendation
 25 three years ago.

*** Notes ***

Page 354	Page 355
1 MR. NATALE: And in fact, that is something 2 which was incorporated, was it not? 3 MR. WEIDNER: In accordance with the town 4 and with the recent application. 5 MR. NATALE: And you would also agree that 6 valet parking would help to, if you will, siphon 7 off the traffic quickly so there is no 8 impediments to the ordinary flow of traffic at 9 either location; isn't that correct? 10 MR. WEIDNER: Yes. 11 MR. NATALE: In fact, that's a 12 recommendation that was made and that's a 13 recommendation that was followed? 14 MR. WEIDNER: No. The application included 15 valet and that was what was analyzed. 16 MR. NATALE: Okay. And are you aware of 17 the fact that there were special events at 18 Mar-a-Lago where the events eventually were at 19 full capacity, that is, the 391? 20 MR. WEIDNER: Yes. In fact, I understand 21 it exceeded capacity. 22 MR. NATALE: Are you aware of the fact that 23 there was no reported traffic problems of any 24 form as a result of all of those at capacity 25 events?	1 MR. WEIDNER: That was stated in your 2 application. No documentation was provided. 3 MR. NATALE: Are you aware that the 4 chief-of-police testified before this party that 5 there was no traffic problems at Mar-a-Lago at 6 any of these special events? 7 MR. WEIDNER: Are you talking about the 8 September meeting? 9 MR. NATALE: That's correct. Are you aware 10 of that? 11 MR. WEIDNER: I'm not quite sure that's how 12 he stated it, but I have seen no documentation. 13 MR. NATALE: Okay. If you were to learn 14 that there was no traffic congestion or 15 problems, would that be a relevant factor to 16 consider for this panel to consider, that during 17 maximum use on the special events, that there 18 was no traffic problems whatsoever? 19 MR. NATALE: Certainly. 20 MR. WEIDNER: As a person involved in the 21 planning on transportation, would you agree that 22 regardless of the nature of the site, that there 23 should be considerations that all places have 24 access to proper queuing of the cars so we don't 25 get these traffic jams that build up?

*** Notes ***

Page 356	Page 357
1 Would you agree with that? 2 MR. WEIDNER: That all places should be -- 3 MR. NATALE: Well, that all businesses, all 4 places of where attracting the public should be 5 sensitive to that? Are you aware of that? 6 MR. WEIDNER: As a planner, I'm aware of 7 grandfathering clauses and the elements of 8 developing new code where you have existing 9 businesses. 10 MR. NATALE: Okay, thank you. 11 MR. GRAVES: Madam Chairman, Ken Graves. 12 Is it correct procedure if I raise an objection 13 at this point? 14 PRESIDENT SMITH: Mr. Randolph? 15 MR. RANDOLPH: It's up to the council as to 16 how they handle the proceedings. I think the 17 way we have handled this is that each person 18 would have an opportunity for cross examination, 19 and then after that, someone else would have an 20 opportunity. 21 MR. GRAVES: Fine. I'll raise my objection 22 at that time. 23 PRESIDENT SMITH: All right, if you would 24 wait then please until they finish. 25 MR. GRAVES: Thank you.	1 Mr. Natale, are you finished? 2 MR. NATALE: No, Madam President. 3 PRESIDENT SMITH: All right, thank you. 4 MR. NATALE: Have you seen any counts which 5 would show that any concurrency problem exists 6 on Ocean Boulevard near Mar-a-Lago? 7 MR. WEIDNER: Have I seen any counts that 8 indicate -- 9 MR. NATALE: Have you seen any counts which 10 show or indicate that the concurrency problem -- 11 MR. WEIDNER: As I indicated -- I'm sorry. 12 As I indicated in my testimony, that I have 13 had discussions and had discussions with 14 Mr. Pollock of Kimley-Horn that the 1996 third 15 quarter counts have become, recently become 16 available. 17 The county has not had time to publish 18 them, however, for information that can be 19 utilized. That information indicates that the 20 1996 AADT is just under capacity. And that 21 could have some inferences on concurrency. 22 MR. NATALE: Have you seen any figures 23 other than the ones you just told me which would 24 specifically relate that at capacity events in 25 peak seasons that there was any congestion

*** Notes ***

1 caused?

2 MR. WEIDNER: I have seen a breakdown of
3 the traffic counts on State Road A1A that
4 indicated in January of 1995 there was over
5 18,000 vehicles per day on State Road A1A 400
6 feet north of Southern Boulevard, that there
7 were over 15,000 cars per day in the first
8 quarter of the year 400 feet north of Southern
9 Boulevard during the first quarter of the year.

10 MR. NATALE: What I'm asking you is this.

11 Do you have any counts which would show
12 that during the season, the peak season, and
13 during events where the club was operating at
14 peak capacity, special events, that there was
15 any documentation of any congestion or any
16 traffic problems?

17 MR. WEIDNER: I have no documentation. I
18 have documentation of the club operating for
19 three months through the peak season, but I
20 don't have information with a traffic count on
21 the same day and I have no analysis of
22 congestion. So all the pieces aren't together.

23 MR. NATALE: I have no further questions.
24 Thank you very much.

25 PRESIDENT SMITH: Mr. Chopin, I had a

1 question too for Mr. Natale.

2 If you could clarify for me when you said
3 that the construction on Okeechobee, you asked
4 Mr. Weidner if he knew what we had to go
5 through. I don't know what you mean that we had
6 to go through, aside from the fact that I live
7 here and I banged up and down Okeechobee for the
8 year and may have lost the suspension in my car,
9 but I didn't avoid the road.

10 Would you clarify what you meant?

11 MR. NATALE: What I meant was I think a
12 number of people really felt that they didn't
13 want to damage their suspension of their car and
14 actually were rerouted through the Southern
15 Boulevard Bridge. And I think that there is a
16 lot of people who probably did not go that
17 route.

18 And I think that that's what I was asking
19 him to see if he studied based on his
20 representations of being an expert.

21 PRESIDENT SMITH: I see, thank you.

22 Mr. Wyett. Just a minute, Mr. Chopin.
23 Mr. Wyett.

24 MR. WYETT: I have been a resident of that
25 area, 2500 South Ocean Boulevard, and I can tell

*** Notes ***

1 you the tedious nature of making that type of
2 detour you are referring to is not practical,
3 that I would continue to take the bumps rather
4 than take that long tedious detour through a lot
5 of traffic in West Palm Beach, and that is an
6 actual resident's statement.

7 PRESIDENT SMITH: Thank you.

8 MAYOR ILYINSKY: May I ask a question?

9 PRESIDENT SMITH: Mr. Mayor.

10 MAYOR ILYINSKY: Counselor, let me ask you
11 a question if you don't mind.

12 You mentioned the word peak capacity a
13 little while ago, about Mar-a-Lago has had
14 parties at whenever, and you keep using the word
15 peak capacity.

16 What do you mean by peak capacity? Is that
17 one more person and you could be crushed to
18 death? Does that mean 100 more people and you
19 would be crushed to death?

20 MR. NATALE: No, what I'm talking about --

21 MAYOR ILYINSKY: Sir, what do you mean by
22 peak capacity? Because the club isn't even open
23 yet. They are not up to the membership that the
24 town has allowed them to have. We have no idea
25 what peak capacity means.

1 MR. NATALE: Mr. Mayor, I'm sure you are
2 very well aware of the fact that there were a
3 special events cap as well, correct? And that
4 that special events cap would mean that if they
5 had a special event, regardless of what the
6 nature of the charity is, they have to have that
7 cap.

8 What I am saying is that at those special
9 events, they have reached peak capacity. They
10 have reached the 391, and that during those
11 special events, during the season in which they
12 raised, I believe it's been testified to already
13 in excess of six million, almost seven million
14 dollars for charity, that during those times --

15 MAYOR ILYINSKY: I am delighted to hear
16 that. My heart bleeds in sympathy.

17 MR. NATALE: I'm not asking for your
18 sympathy. I'm talking about the fact that there
19 have been events, they have been during the peak
20 season and they have been to the max and there
21 has been no problems with the traffic.

22 MAYOR ILYINSKY: Okay.

23 MR. NATALE: Thank you.

24 PRESIDENT SMITH: Mr. Chopin?

25 MR. CHOPIN: I only have a couple of

*** Notes ***

Page 362	Page 363
1 questions of Mr. Weidner. First of all, I'd 2 like to perhaps bring things back in the 3 direction maybe where they should be. 4 I was interested that you made reference in 5 your report to the absence of a detailed 6 professionally prepared report which was 7 submitted in connection with this application 8 for special exception; is that correct? 9 MR. WEIDNER: Yes, sir. 10 MR. CHOPIN: That is in fact a requirement 11 for site plan review under the town ordinance, 12 is it not? 13 MR. WEIDNER: Well, this isn't a site plan 14 review. It's a special exception. 15 MR. CHOPIN: I appreciate that, but if you 16 take a look at section 460, it says when you 17 file an application for special exception, you 18 go through the site plan review; is that 19 correct? 20 MR. WEIDNER: Correct, yes. 21 MR. CHOPIN: We have an application here 22 and there was no site plan review documentation 23 submitted, was it? 24 MR. WEIDNER: I have seen no analysis of 25 traffic impacts or traffic operating conditions	1 at the proposed site. 2 MR. CHOPIN: So on the one hand, we have an 3 incomplete application. They don't comply with 4 what they are supposed to do. 5 And it seems to me from the vigorous 6 badgering cross examining, lawyers all do that, 7 you know that, the fact of the matter is that 8 what they have done is they have said now you 9 prove I'm wrong and I ain't giving you any 10 information. 11 Is that sort of the way you viewed those 12 questions, that you were supposed to go out and 13 do their work for them? 14 MR. WEIDNER: I have not seen any analysis 15 to review. 16 MR. CHOPIN: Okay. But your view of what 17 your job is, what you have been hired to do is 18 to review the application and give your opinion 19 on the application to the town council? 20 MR. WEIDNER: Well, as a matter of fact, I 21 have gone beyond the realm of reviewing. I went 22 out and relooked at traffic counts and took a 23 look at what's going on in preparation what I 24 might be faced with here today. 25 MR. CHOPIN: Now the county hasn't

*** Notes ***

Page 364	Page 365
1 published the third quarter 1996 numbers, but if 2 you call the county engineer, he will tell you 3 what they are, won't he? 4 MR. WEIDNER: Certainly. 5 MR. CHOPIN: And in fact, if I made that 6 phone call and he told me that it was 10,000 7 plus as compared to 7,000 plus in the third 8 quarter 1995, I could rely on those numbers, 9 couldn't I? 10 MR. WEIDNER: I believe it's 10,561. 11 MR. CHOPIN: In 1996, which is about a 12 forty percent increase over what it was in 1995; 13 is that correct? 14 MR. WEIDNER: It went from 7,009 to 10,500. 15 MR. CHOPIN: Okay. So whatever the numbers 16 are, it went up from 7,000 to 10,000, and you 17 didn't find those numbers in Mr. Rampell's 18 application, did you? 19 MR. WEIDNER: The testimony on September 16 20 from Mr. Pollack I utilized are referenced an 21 AADT for 1995/1996, which included the 7,000. 22 MR. CHOPIN: In other words, when 23 Mr. Pollack submitted his report, he made his 24 calculations on the basis of third quarter 1995 25 numbers and not third quarter 1996 numbers,	1 didn't he? 2 MR. WEIDNER: Yes. 3 MR. CHOPIN: Yes, he did. 4 MR. WEIDNER: Well, to his behalf, the 1996 5 had not been published yet. 6 MR. CHOPIN: I'm not finding any fault with 7 Mr. Pollock. I think he is an honest man that 8 did a good job, but he did not use the numbers 9 that are now available? 10 MR. WEIDNER: Right, that are now 11 available. 12 MR. CHOPIN: But the fact of the matter is 13 that to suggest that there is more capacity than 14 previously anticipated in this area based upon 15 the 1995 numbers would be misleading, given the 16 higher numbers in 1996; is that correct? 17 MR. WEIDNER: Further research indicated 18 and has been supported by the county that the 19 third quarter 1995 count should not be included 20 in the traffic impact analysis because it was 21 certainly impacted by the closing of the 22 Southern Boulevard Bridge. 23 MR. CHOPIN: Thank you. You did say just 24 what I said, didn't you? 25 MR. WEIDNER: I agree.

*** Notes ***

Page 366

Page 367

1 MR. CHOPIN: You agree, okay.
 2 PRESIDENT SMITH: Don't be a lawyer and try
 3 and confuse him.
 4 MR. CHOPIN: No, I'm just being a trustee
 5 of the Preservation Foundation, and I just want
 6 to be sure I understood him.
 7 In other words, you are saying we shouldn't
 8 jump to any conclusions on the basis of what
 9 happened in 1995 for whatever reason, whether it
 10 was the bridge closing or something else?
 11 MR. WEIDNER: I'm saying the traffic count
 12 third quarter 1995 should not be used in
 13 analysis, and that has been supported by the
 14 county engineers.
 15 MR. CHOPIN: And the 1996 figures are
 16 available now? You just recited what they were.
 17 MR. WEIDNER: If you call, they have not
 18 been published, but they will give it to you.
 19 MR. CHOPIN: But they will give you a copy.
 20 MR. WEIDNER: I am on their mailing list
 21 for twice a year.
 22 MR. CHOPIN: Let me ask you one other
 23 question, because frankly, I don't want to take
 24 a lot of time.
 25 You don't get involved in congestion,

1 whatever that means? What you look at is
 2 numbers and compare them to certain standards;
 3 is that correct?
 4 MR. WEIDNER: No, sir. I do get,
 5 congestion is certainly a concern.
 6 MR. CHOPIN: How do you define what
 7 congestion is?
 8 MR. WEIDNER: There are a level of service
 9 standards, A, B, C, D, E, F.
 10 MR. CHOPIN: Okay, LOS, level of service,
 11 right?
 12 A1A is what level of service type road at
 13 the Mar-a-Lago area?
 14 MR. WEIDNER: Under 1996 conditions?
 15 MR. CHOPIN: Yes.
 16 MR. WEIDNER: Level of service D.
 17 MR. CHOPIN: D?
 18 MR. WEIDNER: D.
 19 MR. CHOPIN: The worst is E, right?
 20 MR. WEIDNER: F.
 21 MR. CHOPIN: F, okay.
 22 MR. MCLENDON: F for failure.
 23 MR. CHOPIN: This is government. You know,
 24 you don't think they would do the same thing.
 25 And the fact of the matter is it shows that

*** Notes ***

Page 368

Page 369

1 by being, having a level of service
 2 classification of D, that it's a heavily-used
 3 roadway; is that correct?
 4 MR. WEIDNER: Yes, but it's not over
 5 capacity.
 6 MR. CHOPIN: Not over capacity.
 7 And it's not over capacity based upon the
 8 report given by Kimley-Horn as a result of the
 9 current utilization of Mar-a-Lago; is that
 10 correct?
 11 MR. WEIDNER: No. My estimates of level of
 12 service D is based upon the new information from
 13 1996.
 14 MR. CHOPIN: I understand that, but I'm
 15 really trying to help Mr. Trump out. You know,
 16 we try and do that all the time.
 17 The fact of the matter is that the current
 18 operations of Mar-a-Lago does not cause A1A at
 19 that point to fall into a category F level of
 20 service, is that correct?
 21 MR. WEIDNER: Correct.
 22 MR. CHOPIN: Okay. Now if in fact
 23 membership were to be achieved or an unlimited
 24 number of members were to be available for the
 25 club, that may or may not have the effect of

1 causing an over-utilization of the road; is that
 2 correct?
 3 MR. WEIDNER: That may or may not.
 4 MR. CHOPIN: May or may not. You wouldn't
 5 have any way of knowing?
 6 MR. WEIDNER: I don't want to speculate.
 7 MR. CHOPIN: Okay. But no one else would
 8 have any way of knowing either, would they?
 9 MR. WEIDNER: Correct.
 10 MR. CHOPIN: So to say remove all the
 11 limits, you would have to be saying let's
 12 speculate it's not going to have that effect,
 13 right?
 14 MR. WEIDNER: Removing all of the -- I
 15 would recommend that it does not meet the
 16 requirements of the county, does not meet the
 17 requirements of the town and does not meet the
 18 requirements of the town code.
 19 MR. CHOPIN: Okay, I have no other
 20 questions.
 21 PRESIDENT SMITH: All right. Thank you.
 22 Was there anyone else? All right. If you
 23 step to the podium, Mrs. Pollitt has a better
 24 chance of getting you on the TV camera. When
 25 you wander around, she keeps trying to follow

*** Notes ***

Page 370

Page 371

1 you. So for the record, please.
 2 MR. GRAVES: Yes, Madam President,
 3 Mr. Mayor and members of the council, for the
 4 record, my name is Ken Graves with the law firm
 5 of Carlton, Fields. Our local office is in the
 6 Esperante Building in West Palm Beach.
 7 Mr. Weidner, have you reviewed other
 8 special exceptions for the town?
 9 MR. WEIDNER: No, sir.
 10 MR. GRAVES: You have not?
 11 MR. WEIDNER: No.
 12 MR. GRAVES: In this instance, what you
 13 have indicated if I understand you correctly is
 14 that the information provided to you was
 15 reviewed; is that correct? You reviewed what
 16 was provided to you?
 17 MR. WEIDNER: Myself and my staff.
 18 MR. GRAVES: And your staff consists of?
 19 MR. WEIDNER: Two, actually three PES,
 20 professional engineers.
 21 You mean my whole staff?
 22 MR. GRAVES: No, just the summary of the
 23 people that reviewed it for you.
 24 MR. WEIDNER: Myself and one of my
 25 engineers.

1 MR. GRAVES: Okay. A licensed --
 2 MR. WEIDNER: Yes.
 3 MR. GRAVES: -- traffic engineer?
 4 MR. WEIDNER: Yes, sir.
 5 MR. GRAVES: Under the laws of Florida?
 6 MR. WEIDNER: Yes, sir.
 7 MR. GRAVES: Let me ask you this. Did
 8 Mr. Pollock review Okeechobee in his report?
 9 MR. WEIDNER: No, sir.
 10 MR. GRAVES: No, he didn't, did he?
 11 MR. WEIDNER: No, sir.
 12 MR. GRAVES: In fact, if you took the
 13 definition of objective that Mr. Natale just
 14 gave you --
 15 MR. NATALE: Natale, and I would like the
 16 record to be correct.
 17 MR. GRAVES: Mr. Natale, I apologize.
 18 THE WITNESS: May I just clarify?
 19 Mr. Pollock did not submit a report. A letter
 20 was submitted.
 21 MR. GRAVES: Right. So there was no report
 22 on which you could study, base, make decisions,
 23 right?
 24 MR. WEIDNER: Yes.
 25 MR. GRAVES: Since there was no report,

*** Notes ***

Page 372

Page 373

1 there certainly was no report on Okeechobee from
 2 Mr. Pollock, was there?
 3 MR. WEIDNER: Yes, sir, correct, sir.
 4 MR. GRAVES: That's correct. There was
 5 not.
 6 So if we take the argument that an
 7 objective report from their own attorney would
 8 be one where everything that was there to get
 9 was got, Mr. Pollock didn't submit an objective
 10 report, did he, if he had used that definition
 11 that he just gave you?
 12 MR. WEIDNER: No report was submitted with
 13 the application.
 14 MR. GRAVES: Did Mr. Pollock in his report
 15 do any projections to the total membership
 16 allowed?
 17 MR. WEIDNER: Again, no report.
 18 Mr. Pollock read a letter. And as I recall,
 19 there was no analysis of projected conditions.
 20 MR. GRAVES: So there were no projections
 21 to the total membership?
 22 MR. WEIDNER: No, sir. In my meeting
 23 yesterday, however, I indicated to Mr. Pollock,
 24 you know, this application has no limitations.
 25 I don't know what you are asking me to look at.

1 He says well, we are looking at 1,008
 2 members. So that was indicated.
 3 MR. GRAVES: So Mr. Pollock indicated to
 4 you yesterday that he is now looking at 1,008
 5 members?
 6 MR. WEIDNER: Yes, sir.
 7 MR. GRAVES: Has he provided you any
 8 traffic --
 9 MR. WEIDNER: No, sir.
 10 MR. GRAVES: -- data to even suggest the
 11 1,008 member number?
 12 MR. WEIDNER: No, sir, but we did sit and
 13 discuss for about an hour the type of
 14 information that I would like to have and the
 15 type of report that I would like to have.
 16 MR. GRAVES: But you don't have that?
 17 MR. WEIDNER: No, sir.
 18 MR. GRAVES: And we have what, according to
 19 Mr. Pollock, there are 270 trips already; is
 20 that correct, in his report?
 21 MR. WEIDNER: Yes, sir.
 22 MR. GRAVES: And why is the calculation,
 23 even Mr. Pollock in his letters that you did
 24 review indicate that the capacity is 313 trips;
 25 is that correct?

*** Notes ***

Page 374

Page 375

1 MR. WEIDNER: No. Can you restate that
2 again?
3 MR. GRAVES: Yes. In Mr. Pollack's report
4 or letter, I should say, he refers to a 313
5 number as being the, a number that he is working
6 against.
7 MR. WEIDNER: Okay. That's the threshold
8 that's included in the development order.
9 MR. GRAVES: Right. The limitation that's
10 in the development order.
11 MR. WEIDNER: Okay, right.
12 MR. GRAVES: Now that means if my addition
13 is correct that they can add, is it 43 trips?
14 MR. WEIDNER: 43 additional trips.
15 MR. GRAVES: 43 additional trips.
16 MR. WEIDNER: Right.
17 MR. GRAVES: Okay. Did Mr. Pollack give
18 you any kinds of trip rate information per, on a
19 per member basis? Was that provided to you?
20 MR. WEIDNER: No, sir.
21 MR. GRAVES: May I just have one moment,
22 please?
23 Let me ask you about the Chicago visitors.
24 You just look at automobiles; isn't that
25 correct?

1 MR. WEIDNER: Yes.
2 MR. GRAVES: You don't care whether they
3 are from Chicago or Palm Beach or West Palm
4 Beach or whatever; isn't that correct?
5 MR. WEIDNER: Not only automobiles, but
6 shuttle buses, motorcycles, pedestrians.
7 MR. GRAVES: You don't try to identify
8 where people are from inside those vehicles?
9 MR. WEIDNER: Not in this study.
10 MR. GRAVES: Okay. So there really isn't
11 any relevance to whether they are from Chicago
12 or from Palm Beach; isn't that correct?
13 MR. WEIDNER: Not as far as this
14 application is concerned.
15 MR. GRAVES: Okay, thank you. I have no
16 further questions.
17 PRESIDENT SMITH: Thank you very much.
18 Are there any more questions for
19 Mr. Weidner? All right, thank you, Mr. Weidner.
20 Mr. Moore?
21 MR. MOORE: That would, that is the end of
22 the staff's report to you.
23 PRESIDENT SMITH: All right, thank you very
24 much. Before we continue, we'll take a
25 five-minute break. We will be breaking for

*** Notes ***

Page 376

Page 377

1 lunch at approximately 12:00, 12:10, something
2 like that.
3 (Thereupon, a recess was taken.)
4 PRESIDENT SMITH: If you will all take your
5 seats, please.
6 (Discussion held off the record.)
7 PRESIDENT SMITH: This is now the time for
8 public comment. And I can see that Mr. Chopin
9 is at the podium, so I can only assume that you
10 are going first, Mr. Chopin.
11 MR. CHOPIN: Actually, Madam President, I
12 am going to defer saying anything until after
13 the lunch recess.
14 However, I do have an expert witness whose
15 testimony I would like to share with the
16 council, Mr. Bill Tipton, with Tipton and
17 Associates, who is a traffic engineering firm
18 that previously provided information in which in
19 part this council relied on in 1993 in
20 addressing the traffic issues resulting from the
21 granting of the special exception.
22 So if I could call Mr. Tipton.
23 PRESIDENT SMITH: Please, Mr. Chopin, go
24 ahead.
25 MR. CHOPIN: Mr. Tipton, would you come

1 forward?
2 My name, for the record, is spelled
3 C-h-o-p-i-n. My first name is Frank, F-r-a-n-k.
4 PRESIDENT SMITH: Thank you.
5 MR. TIPTON: My name is Bill Tipton, Jr.,
6 T-i-p-t-o-n, with Tipton and Associates,
7 Incorporated in Orlando. I am a registered
8 professional traffic engineer and vice-president
9 of Tipton and Associates, a traffic
10 transportation and civil engineering firm.
11 We have been asked by the --
12 MR. CHOPIN: Mr. Tipton, before you go into
13 that, if I could just so that the record will be
14 clear, would you state your educational
15 qualifications, please?
16 I have a Bachelor of Science in civil
17 engineering from the University of Central
18 Florida and I am a registered professional
19 engineer in the state of Florida, Louisiana and
20 Alabama.
21 MR. CHOPIN: Are you qualified in the state
22 of Florida to act as a traffic engineer?
23 MR. TIPTON: Yes, that is what my license
24 entitles me to do.
25 MR. CHOPIN: You heard the attorney

*** Notes ***

Page 378

1 questioning Mr. Weidner talking about licensing.
 2 Do you meet those qualifications?
 3 MR. TIPTON: Yes, I do.
 4 MR. CHOPIN: Do you have a copy of your
 5 resume with you?
 6 MR. TIPTON: I have a copy, yes, sir.
 7 MR. CHOPIN: If you will, Madam President,
 8 rather than spend the hour or two that it would
 9 take to let Mr. Tipton tell you all of the
 10 wonderful things he has done, if I can, I would
 11 like to offer his resume to entered into the
 12 record.
 13 PRESIDENT SMITH: So entered, Mr. Chopin,
 14 if you would give it to the clerk, please.
 15 MR. CHOPIN: Mr. Tipton, on that basis,
 16 would you just go ahead and make your
 17 presentation?
 18 Well, let me get back, because I have some
 19 handouts to the council that I would like them
 20 to look at.
 21 MR. TIPTON: Okay, as I stated a moment
 22 ago, I have been asked by the Preservation
 23 Society as we had previously in 1993 to review
 24 information submitted by the applicant for the
 25 special exception request with respect to the

Page 379

1 traffic impacts, more directly with respect to
 2 the trip generation counts that have been
 3 accomplished through the first year of operation
 4 of the club in order to evaluate how the club is
 5 performing on a trip generation standpoint
 6 versus the membership and trip generation limits
 7 which were imposed in the current development
 8 agreement with the town and the applicant.
 9 Mr. Chopin has some small handouts
 10 circulating of which I have some larger boards
 11 that I wanted to go through the analyses which
 12 we have accomplished.
 13 MR. CHOPIN: Where should we put this so
 14 that if necessary it can be seen on camera, over
 15 here?
 16 PRESIDENT SMITH: I think if you want to
 17 clip it to the top, perhaps it's easier for the
 18 public to see it.
 19 MR. CHOPIN: Mr. Tipton, would you explain
 20 to the council, members of the council and the
 21 staff what this graphic is supposed to
 22 illustrate and as well, how you came to prepare
 23 it, on what information, please?
 24 MR. TIPTON: We received a copy of the trip
 25 generation counts accomplished by the applicant

*** Notes ***

Page 380

1 traffic consultant at the Mar-a-Lago site for
 2 the first quarter of '96 and the third quarter
 3 of '95.
 4 MR. CHOPIN: Bill, let me just interrupt
 5 you, because there has been a lot of confusion
 6 about different kinds of numbers.
 7 What you are talking about now are hard
 8 numbers that were mechanically counted as a
 9 result of machines actually located at
 10 Mar-a-Lago itself, is that right?
 11 MR. TIPTON: These were actual machine
 12 counts accomplished at the entry and exit points
 13 to the existing Mar-a-Lago flow.
 14 We reviewed that data and summarized it to
 15 determine what the current average annual daily
 16 traffic generation for the existing Mar-A-Lago
 17 Club with its current membership and the current
 18 amount of facilities that are in operation at
 19 the time the counts were taken, what those
 20 results were.
 21 The green bar on your drawing in front of
 22 you on the large presentation board shows the
 23 results of the consultant's counts for the first
 24 quarter of '96, which would be the peak season
 25 counts, demonstrating a peak season ADT at the

Page 381

1 club of 404 trips per day.
 2 MR. CHOPIN: Before we go on, just so that
 3 there is no confusion, the limit of daily trips,
 4 and I think that's what you said ADT, average
 5 daily trips?
 6 MR. TIPTON: That's correct.
 7 MR. CHOPIN: The permitted number of trips
 8 is 313?
 9 MR. TIPTON: On an average daily basis.
 10 MR. CHOPIN: Okay. But in the peak season
 11 of January, February and March of 1996, the
 12 current year, it would appear that that number
 13 of 313 has been exceeded by almost 100,
 14 approximately 90?
 15 MR. TIPTON: That is correct.
 16 MR. CHOPIN: Okay. The off-peak season or
 17 third quarter counts indicate that the daily
 18 generation is 313 trips from the Mar-A-Lago
 19 Club.
 20 As approved in the development agreement,
 21 the average daily trips are calculated by
 22 averaging peak season first quarter and off-peak
 23 season third quarter trips, which from the
 24 consultant's letter indicated an averaging of
 25 traffic generation on the orange bar of 270

*** Notes ***

Page 382

Page 383

1 trips per day.

2 It's my understanding that they have
3 documented or a statement has been made to the
4 effect that there are approximately 314 members
5 that are generating 270 trips per day on an
6 average annual basis.

7 We reviewed those counts. There was very
8 good documentation in the notebook. I have a
9 notebook that's some three inches thick over
10 there in my file that indicated problems they
11 had during the data collection process. There
12 were machines that went down. There were times
13 gates were closed. There were times
14 construction traffic inhibited the use of one or
15 more of the driveways.

16 We went through and discounted what we
17 called those errant or suspicious count days,
18 came up with our own average again of the
19 Tuesday, Wednesday and Thursday traffic counts
20 that was talked about by the city's consultant
21 previously.

22 We get average annual daily traffic
23 generation from the club of 260 trips, very
24 comparable numbers. The rest of my presentation
25 works from my number of 260 daily trips

1 generated the club which has benefit to the
2 applicant.

3 So the limit is 313. Based on the
4 membership we have been provided of 314 members,
5 the club is generating 260, 270 average annual
6 daily trips. So it's getting close to its
7 volume threshold, while it is just a little bit
8 over 50 percent of its membership threshold at
9 500.

10 The second page you have shows a comparison
11 and a huge projection. There was a question
12 made earlier had any future --

13 PRESIDENT SMITH: Will you please use a
14 microphone when you move away from it? Because
15 I can't hear you. Thank you.

16 MR. TIPTON: A question had been raised
17 previously by one of the board members, had any
18 future projections been accomplished in
19 determining what growth could be expected by
20 increased membership reaching the 500 level or
21 even reaching an infinite number as I think
22 being requested by the applicant.

23 What we show here again is 314 members
24 which has been provided by the applicant. We
25 have average annual daily traffic generation

*** Notes ***

Page 384

Page 385

1 which is our test of 260 vehicles per day being
2 generated at the Mar-A-Lago Club.

3 Using that trip rate, which I think was
4 specified for previously, it comes out to trip
5 rate using the consultant's number .86 trips per
6 member on a daily basis, using my number as .83.

7 Using the lower generation rate to give the
8 applicant the benefit of the doubt, when 378
9 members are in operation or utilizing the club,
10 that will equal the 313 daily trip limit, which
11 is in the current development agreement between
12 the applicant and the town.

13 Should they reach the maximum membership
14 threshold which has been established, which is a
15 two-step test again, they would be generating at
16 the rate they are today 414 average daily trips,
17 or 101 more trips than are currently allowed in
18 the agreement.

19 So what those numbers tell us is the
20 traffic threshold will be reached and/or
21 exceeded well before the membership threshold of
22 500, which is currently in place and is asking
23 to be completely removed.

24 Again, I want to reiterate something that
25 was talked about previously, and that is we need

1 to remember these counts were accomplished by
2 the consultant at the time that the spa is not
3 in operation, construction traffic is coming to
4 and from the site, which can inhibit the quality
5 of the counts, and membership is not at its full
6 limit at this point.

7 MR. CHOPIN: Let me follow up on that.

8 What you are suggesting is that if in fact
9 more members, or excuse me, if in fact there
10 were more facilities, they might reach the
11 maximum utilization allowed under the
12 declaration-of-use agreement quicker than 378
13 members?

14 MR. TIPTON: I think it is a safe
15 observation to make from a traffic generation
16 standpoint. I think there is a request for ten
17 additional suites or something of that extent,
18 that any additional dwelling units or activities
19 on the property are logically going to bring an
20 increased trip rate or an increased number of
21 trips, maybe not the rate, but an increased
22 number of trips to the facility.

23 So as expansion continues, even if
24 membership doesn't grow, I think there is a safe
25 assumption and analysis could be accomplished to

*** Notes ***

Page 386		Page 387	
1	demonstrate that you would have increased	1	facilities, have you?
2	generation solely on that.	2	MR. TIPTON: No. We have just worked with
3	You have two independent variables, both	3	the database that was provided to us by the
4	membership and additional development, that	4	consultant for the applicant.
5	continues to lead to increase the traffic	5	MR. CHOPIN: In your opinion, as a
6	generation on the property.	6	qualified expert professional engineer, licensed
7	MR. CHOPIN: Would the same thing be true	7	traffic engineer, does the fact of new
8	of the additional of the four tennis courts that	8	facilities argue for a continuation of the
9	to this time are not in operation?	9	monitoring of the average daily trips at the
10	MR. TIPTON: I believe you could safely say	10	property?
11	they would lead to some increase in trip	11	MR. TIPTON: I certainly think with any new
12	generation.	12	development you would, any additional
13	MR. CHOPIN: How about a world class spa of	13	development there you would want to monitor its
14	3500 square feet which is not yet in use or	14	activity.
15	minimal use certainly? Would the addition or	15	You are logically going to have to internal
16	coming on line of that world class spa affect	16	capture between the new facility provided and
17	the use of the club and therefore the number of	17	the other facilities on the property, but at the
18	the trips to the club and from the club?	18	same time there are going to be some new
19	MR. TIPTON: Again, an addition of a	19	external trips generated due to any increased
20	facility available for the membership would tend	20	development. Therefore, it should be continued
21	to lead me to believe you would have increased	21	to be monitored to make sure it meets the
22	traffic generation due to that being available.	22	standards that are in the agreement.
23	MR. CHOPIN: You haven't taken into account	23	MR. CHOPIN: In addition to using the
24	in the calculation of maximum utilization at 378	24	average daily trip counts, did you also prepare
25	members any of these new or additional	25	an analysis of the trip count in the peak
*** Notes ***			
Page 388		Page 389	
1	season?	1	As you continue to step up the ladder, the
2	MR. TIPTON: Yes. That is the board that's	2	current maximum membership threshold of 500
3	before you right now. The question was raised	3	members would generate 643 peak season trips on
4	earlier whether our standard is peak hour, peak	4	a daily basis, or more than two times the
5	season.	5	current average annual limit which was
6	Negotiations were made beyond	6	negotiated previously.
7	recommendations we had previously made in '93	7	MR. CHOPIN: Bill, did you hear today -- I
8	that the county's average annual process of	8	mean I didn't tell you about 1,008 members.
9	averaging third quarter and the first quarter	9	You didn't hear that from me, did you?
10	counts be used in evaluating the traffic impacts	10	MR. TIPTON: No, I had not heard that
11	of this project, which does not in my	11	before today's testimony.
12	understanding concur with the town's position of	12	MR. CHOPIN: But you did hear that
13	using peak hour, peak season volumes.	13	Mr. Pollock had indicated that to Mr. Weidner?
14	Just as a point of reference, I have a	14	MR. TIPTON: Yes, I did.
15	little bit of apples and oranges here, because	15	MR. CHOPIN: And as a result of hearing
16	the 313 number is an average annual value, but	16	that, did I ask and you comply by making some
17	what I want to show you is in relationship to	17	calculations to reflect what the trip count
18	the membership value that we talked about	18	would be at 1,008 members?
19	before.	19	MR. TIPTON: Yes, using the trip generation
20	The current 314 members generate the 404.	20	rate which we have computed from the client's
21	That was on the first sheet. The 378 members	21	or the consultant for the applicant's
22	which we say is going to equal the average	22	information, 1,008 members would generate 867
23	annual limit, the red line of 313, in peak	23	average annual daily trips to that club.
24	season that's going to generate 486 daily trips	24	MR. CHOPIN: That's not peak season, that's
25	to the property.	25	first and third quarter averaging?
*** Notes ***			

Page 390

Page 391

1 MR. TIPTON: That's testing 867 against the
2 313 threshold which currently is imposed on the
3 property, or 177 percent increase over the
4 current threshold volume.

5 And I believe the application does read in
6 and of itself that they want the 500 limit
7 abolished, no ceiling established.

8 MR. CHOPIN: Let me just ask you if you
9 would clarify for the town the 313 trips. We
10 have heard it talked about that that's what's
11 required to meet county concurrency standards.

12 Can you explain just briefly if you will
13 what the effect or impact of the 313 trips are,
14 how it impacts road usage and county traffic
15 ordinances?

16 MR. TIPTON: It's my understanding and I
17 have not reviewed this issue in great detail,
18 but I think the city's consultant went through
19 the methodology used to determine the 313-trip
20 threshold based on the capacity issues that were
21 in place at the time the application was filed,
22 the overage above the 200 trips was granted due
23 to credits of existing development on the
24 property is logical to be able to analyze and
25 project that any additional trip limits, if we

1 had a concern and critical issue at that point,
2 we have some fluctuation traffic volumes that
3 have been talked about, but as we look at
4 numbers that are two times, three times, who
5 knows how many times, or if we eliminate
6 membership criteria and we throw the rules out,
7 there is going to be some point where the
8 volumes are going to come back up to what it
9 used to be in '93.

10 Development hasn't stopped. There aren't
11 vacant properties out there that folks aren't
12 visiting anymore.

13 There is going to be a time in the future
14 that the trip impacts, I can't tell you exactly
15 when, but the trip impacts from continued
16 growth, unregulated unmonitored growth from this
17 development will be a significant cause of
18 adverse level service, adverse traffic operation
19 congestion within the area.

20 The town has established a methodology to
21 monitor that, to keep tabs on the growth and the
22 operation of the club as it exists today and as
23 it's proposed to be completed in the near
24 future.

25 And based on the numbers that we have

*** Notes ***

Page 392

Page 393

1 before us, showing that before they even reach
2 the 500 membership level, they will reach the
3 current trip thresholds, it's our professional
4 recommendation that we have something that
5 should not be abolished in the limits and
6 controls in place today, because these
7 projections based on our own data indicate that
8 this thing can grow many times above what the
9 current requirements are.

10 MR. CHOPIN: Let me ask you about
11 concurrency sort of generically.

12 When we talk about concurrency
13 particularly, and it's not the only kind of
14 concurrency, we are talking about requirements
15 that anyone who wants to develop a property must
16 comply with or he is not going to be given the
17 go-ahead, if you will, to develop a property; is
18 that correct?

19 MR. TIPTON: That is correct.

20 MR. CHOPIN: So if I were out in the county
21 in a new section, I would have to show
22 concurrency with the Comprehensive Land Use Plan
23 of the county or I wouldn't be able to do a
24 development; is that correct?

25 MR. TIPTON: You would have to meet the

1 minimum performance standard of their land
2 development code as it pertains to concurrency.

3 MR. CHOPIN: So there is no one singling
4 out Mar-a-Lago or Mr. Trump in any fashion in
5 asking that he meet the same requirements as
6 everyone else; is that correct?

7 MR. TIPTON: That is correct.

8 MR. CHOPIN: No discrimination?

9 MR. TIPTON: Not to my knowledge.

10 MR. CHOPIN: Okay. Based upon your study,
11 did you come to some conclusion, Bill?

12 MR. TIPTON: Yes. If you look at the last
13 page that I provided in your package, we have
14 highlighted five conclusions and a
15 recommendation.

16 One of the issues we talked about a few
17 moments ago that was a question, would more
18 development, more guest suites or something on
19 this property generate more traffic?

20 Logically that answer is yes. Any
21 additional development on any kind of property,
22 you are going to have some internal capture with
23 a special use like this, and also some net
24 increase in trips generated on Southern
25 Boulevard and the surrounding areas.

*** Notes ***

Page 394	Page 395
1 So in summary, the client's traffic data 2 documents that the 313 average annual daily trip 3 generation threshold outlined in the current 4 agreement between the town and the applicant 5 will be reached at a membership level of 378 6 members, in addition, with implementation or 7 reaching the goal of the current membership 8 threshold of 500 members, the average annual 9 daily traffic generation will be 101 vehicles, 10 based on the generation counts we have in the 11 current facility, above that 313 threshold. 12 MR. CHOPIN: Again, that's on an average 13 taking into account the third quarter? 14 MR. TIPTON: Yes. 15 MR. CHOPIN: And the first quarter? 16 MR. TIPTON: That's not peak season item. 17 That is an average annual item. 18 Increased attendance at special events, 19 that was talked about a while ago. Logically if 20 you have increased attendance at special events, 21 we are going to have increased traffic 22 generation in and out of the property. I can't 23 quantify what hours that's happening. I don't 24 have that information, but logic tells you if 25 you allow higher attendance at events, you are	1 going to have more trips generated or else the 2 request wouldn't be there. 3 They want to be able to move more people in 4 and out of the property to attend these special 5 events, which is going to in turn mean increased 6 trips generation. 7 MR. CHOPIN: Let me ask you now, I think 8 you know there is a requirement in the use 9 agreement that requires at least 40 percent I 10 believe it is of the staff, which I heard today 11 was 70 people, have to come by shuttle to the 12 property. 13 That obviously was intended to reduce the 14 number of trips to and from the property; is 15 that correct? 16 MR. TIPTON: That is correct. 17 MR. CHOPIN: If you were to eliminate that 18 requirement of shuttling these employees, would 19 it have the reverse effect of increasing the 20 number of trips? 21 MR. TIPTON: It's logically going to 22 increase the traffic. They are going to have to 23 drive themselves to the facility. You may have 24 some car pooling, but you are not going to have 25 a lump sum 40 people using one vehicle to enter

*** Notes ***

Page 396	Page 397
1 and exit the property; therefore, you would have 2 increased generation. 3 MR. CHOPIN: Any increased use of the 4 facility logically is likely to cause an 5 increase in the amount of traffic to and from 6 the property? 7 MR. TIPTON: I believe it is, yes. 8 So based on those statements and based on 9 the analysis of the data that was provided, it 10 is our professional opinion that the traffic 11 monitoring be required to continue at such a 12 time as the club can either demonstrate they are 13 not going to exceed the threshold or determine 14 that there are other mitigating circumstances 15 that they can adequately handle the traffic 16 impacts of their project above the standards 17 which have been established. 18 Based on that, we recommend that none of 19 the traffic-based recommendation, in fact, all 20 the requests for the special exception be denied 21 by the town. 22 MR. CHOPIN: Let me just ask you a couple 23 of questions to put it on the record, and I 24 probably should have done this sooner. 25 You are not donating your services for	1 being here today, are you? 2 MR. TIPTON: No, I'm not. 3 MR. CHOPIN: You are being paid? 4 MR. TIPTON: That is correct. 5 MR. CHOPIN: And you haven't been paid -- I 6 guess you have been paid already. You are not 7 influenced by the fact you are being paid? 8 MR. TIPTON: No, I'm not. 9 MR. CHOPIN: No one told you what to say? 10 These are the results of your own analysis? 11 MR. TIPTON: That's correct. 12 MR. CHOPIN: I don't have any further 13 questions of Mr. Tipton. 14 I would certainly offer making him 15 available to the council or to Mr. Trump's 16 lawyers. 17 PRESIDENT SMITH: Members of the council 18 for Mr. Tipton. Mr. McLendon, please. 19 MR. MCLENDON: With regard to your counts, 20 was any consideration given to how many of the 21 staff are taking advantage of the shuttle and to 22 construction workers, who I assume many of which 23 will be of a temporary nature? 24 Did that crank into your formula at all? 25 MR. TIPTON: We did not try and manipulate

*** Notes ***

Page 398

Page 399

1 the numbers that were provided to us. We only
2 eliminated those counts days of which they gave
3 us documentation that there were problems with
4 the counts.

5 And we took that dataset as a whole,
6 eliminating the errant counts and proceeded with
7 their number. We did not try and add to them,
8 subtract from them or make any revisions.

9 MR. MCLENDON: Thank you.

10 MR. CHOPIN: You assumed Mr. Trump was
11 complying with the declaration-of-use agreement
12 and in fact shuttling his employees?

13 MR. TIPTON: I think that was a basic
14 assumption we took. We didn't try to test
15 whether it was being accomplished or not.

16 PRESIDENT SMITH: Mr. McDonald? Mr. Shaw.
17 Mr. Wyatt? No?

18 Mr. Shaw looks like he has a question.

19 MR. SHAW: What percentage of the traffic
20 count is applied to members versus what
21 percentage do you feel is applied to special
22 events?

23 MR. TIPTON: I don't have the information
24 to give you that calculation.

25 MR. SHAW: Can't go any further if he

1 doesn't have any information.

2 MR. TIPTON: Their count data for Tuesday,
3 Wednesday and Thursdays in the third and first
4 quarters, I don't have documentation of what
5 special events may have occurred during that
6 time period, what functions other than ordinary
7 operation of the club may have occurred.

8 MR. SHAW: If there were a number of
9 outside events that take place at the club, if
10 you double the membership, does that mean you
11 double the outside events, because your formula
12 is going not in a percentage, but is basically
13 saying if one equals two, then two equals four?

14 MR. TIPTON: I don't think you can
15 necessarily make that comparison. That becomes
16 a function of how they operate their business.

17 I don't know that the membership number
18 base has a direct correlation with the
19 attendance or invitees to any special events.
20 That's not information I have access to.

21 MR. CHOPIN: Was that information provided
22 by Mr. Trump in connection with his application?

23 MR. TIPTON: Not to my knowledge.

24 MR. CHOPIN: You did review his
25 application, however?

*** Notes ***

Page 400

Page 401

1 MR. TIPTON: Yes, I reviewed the letter by
2 his consultant, and it made statements to
3 traffic counts and to current generation, but to
4 my knowledge, it did not provide any information
5 regarding numbers and special events.

6 MR. CHOPIN: Did you hear the questioning
7 before about the construction vehicles that were
8 still going on and had been going on and that
9 perhaps arbitrarily increased the number of
10 average daily trips?

11 Do you recall that testimony that was
12 before?

13 MR. TIPTON: Yes.

14 MR. CHOPIN: Do you have an opinion as to
15 whether that in fact necessarily distorted the
16 average daily trip counts?

17 MR. TIPTON: I think it -- most likely you
18 could potentially speculate, which I hate to do
19 with this information, that it would have an
20 effect on it, but I honestly could not give you
21 an accurate opinion which way it may skew.
22 There is several different ways to look at it.

23 MR. CHOPIN: As a professional engineer
24 offering your expert opinion, do you think that
25 the fact that there is a great deal of

1 construction going on might have an effect of
2 causing members not to go to the club, not to
3 use the facilities because of the noise and
4 disruption?

5 MR. TIPTON: I think from a data collection
6 standpoint, in order to get an accurate
7 representation of the trip generation of the
8 club facilities, you would not want to
9 accomplish counts at such time as significant
10 construction was occurring, similar to you would
11 not want to collect data on any public facility
12 at or near a major holiday time period. You are
13 going to have altered and skewed numbers.

14 We don't have a snapshot of what the club
15 is doing as a club, not as a club plus some part
16 being constructed or some part not being open.

17 MR. CHOPIN: Is that recommended,
18 continuation of the monitoring?

19 MR. TIPTON: I think that's one of the
20 significant reasons. Not only these numbers
21 tell us that they are going to far exceed their
22 traffic thresholds in the pretty near future of
23 attendance, but we don't have a clean picture of
24 a full year or a full third quarter/first
25 quarter operation of this club as it was

*** Notes ***

Page 402

1 intended to be under the current rules.
2 PRESIDENT SMITH: All right. Thank you
3 Mr. Tipton. Mr. McDonald?
4 MR. MCDONALD: Mr. Tipton, I would like to
5 compliment you on the best handout of the day so
6 far. I just have one question.
7 Your recommendation relates just to
8 traffic-related requests of the applicant; is
9 that correct?
10 MR. TIPTON: Yes. That is the main items
11 that we have looked into are the traffic aspect
12 and monitoring.
13 MR. MCDONALD: Thank you.
14 PRESIDENT SMITH: Mr. Wyett?
15 MR. WYETT: Mr. Tipton, I too thank you for
16 the excellent charts you have here, but they
17 seem to be dedicated only to membership.
18 Have you done any studies or thinking
19 patterns as to events? Right now we have a 391
20 cap on attendance. I heard some testimony that
21 is often exceeded. I don't know what numbers.
22 But the applicant is asking for all caps to be
23 taken off for events.
24 What would that do to the traffic counts if
25 it doubled or tripled?

Page 403

1 MR. TIPTON: From --
2 MR. WYETT: 391.
3 MR. TIPTON: What point of view?
4 MR. WYETT: Increasing the traffic pattern
5 you would subscribe to here. Built into this
6 number right here is events.
7 I doubt if the 404 events during January,
8 February and March are not members going to
9 play, having dinner or whatever else they are
10 doing there. I assume a good part of that count
11 is for charity events and other events they have
12 there that create the going in and the leaving.
13 MR. TIPTON: If I remember the information
14 correctly, we do not necessarily know whether
15 these Tuesday, Wednesday and Thursday counts
16 include normal club operation and overlap of
17 special events. I do not believe they do.
18 So I have analyzed this as being typical
19 club generation and operation versus what it
20 would do with increased typical club membership.
21 We have not tried to do a separate analysis on
22 what the impacts would be of increased special
23 event attendance.
24 We have made a general statement from a
25 logical traffic engineering standpoint that if

*** Notes ***

Page 404

1 you are going to increase the number of people
2 who can attend a facility, logically you are
3 going to have increased trips.
4 If those were to occur on a day as shown in
5 your other handout, say one of those peak season
6 days when we have 500 numbers and 600-some-odd
7 trips, if you start using some of those, you are
8 going to have a greater amount of impact on the
9 operation of the club and its impact on the
10 adjacent roadway system, but I do not have the
11 data available to separate the two.
12 MR. WYETT: Could Mr. Rampell enlighten the
13 council as to what days are dedicated to special
14 events there such as a charity event?
15 MR. RAMPELL: It is decided by members.
16 MR. WYETT: I mean what days do you
17 normally, if I understand, there are certain
18 days that the club is not open and that charity
19 events tend to occur more frequently?
20 MR. RAMPELL: We have given you a calendar
21 of events, and that reflects the days that
22 actual charitable fundraisers have occurred and
23 other special events.
24 MR. WYETT: In other words, you just send a
25 letter out to the members saying on a given day

Page 405

1 don't plan for dinner because we are having a
2 big event?
3 MR. RAMPELL: Not necessarily.
4 MR. WYETT: Could both be going on at the
5 same time?
6 MR. RAMPELL: No, two special events are
7 not permitted at the same time.
8 MR. WYETT: No. I mean could you be having
9 an event that has 391 people attending and still
10 be serving dinner that night?
11 MR. RAMPELL: Yes, sir.
12 MR. WYETT: So you would have a lot more
13 traffic that night.
14 MR. RAMPELL: And that has occurred without
15 any traffic problems.
16 MR. WYETT: Thank you.
17 PRESIDENT SMITH: Mr. Weidner, did you have
18 something for Mr. Tipton or a question?
19 MR. WEIDNER: No, I just wanted to
20 interject.
21 PRESIDENT SMITH: Into the microphone,
22 please.
23 MR. WEIDNER: Sorry. Perhaps I can clarify
24 Councilman Shaw's question. He asked Mr. Tipton
25 whether special event traffic was included in

*** Notes ***

Page 406

Page 407

1 his numbers.

2 Per the development order, special events
3 are to occur on weekends or after 6:00 p.m. on
4 weekdays. It appears by my review of the
5 traffic counts that that has basically been the
6 way the club has operated.

7 MR. RANDOLPH: Madam President, may I
8 interject for a moment?

9 PRESIDENT SMITH: Mr. Randolph.

10 MR. RANDOLPH: This is just advice to the
11 council and you can decide, but we have had two
12 things happen here which are a little bit out of
13 the ordinary if you were in a courtroom type of
14 atmosphere.

15 Number one, Mr. Chopin tendered his witness
16 to the council to ask questions, but then he
17 continued to ask questions after he had tendered
18 him.

19 I think it might be better once a witness
20 is tendered to you that the process be that
21 whoever is asking the questions continue with
22 them without having any questions asked by the
23 person that was first doing it.

24 And also, because you would have an
25 opportunity, Mr. Chopin, at a later time to have

1 redirect.

2 And also I think, unless you have questions
3 of Mr. Weidner, he had concluded his testimony
4 and I don't think that he ought to now interject
5 himself in the process relating to this
6 particular witness.

7 PRESIDENT SMITH: All right. Thank you
8 Mr. Randolph. That's it, Mr. Weidner.
9 We will continue, though.

10 MR. CHOPIN: May I ask for clarification
11 just for future reference?

12 First of all, Skip, I thought this was
13 quasi, so I didn't think all the rules apply.

14 MR. RANDOLPH: That's true, but I think it
15 looks like this is going to be a long hearing.
16 I just wanted everyone to have an understanding.

17 If the council and the applicant accept the
18 manner in which it's proceeding, that's fine
19 with me. I just wanted to advise the council of
20 these two things, which seemed a little bit out
21 of the ordinary.

22 MR. CHOPIN: Well, if I could just point
23 one thing out, and I'm happy to live by any
24 rules.

25 If you think about it, when I ask follow-up

*** Notes ***

Page 408

Page 409

1 questions, it was always after what amounted to
2 cross examination, which would have been when in
3 a court of law I would have had a right to
4 redirect anyway, but we are happy to do it any
5 way.

6 PRESIDENT SMITH: Mr. Natale, are you on
7 your feet with an opinion?

8 MR. NATALE: I am on my feet and I think on
9 behalf of the applicant --

10 MR. NATALE: Any method which would allow
11 this body to get its questions answered and the
12 true facts considered so a true decision is made
13 is welcome and encouraged.

14 PRESIDENT SMITH: Thank you.

15 Members of the council, are you comfortable
16 with the way the proceedings have been going
17 this morning and the questions and answers for
18 the various witnesses occurring?

19 Mr. McDonald, do you wish to speak?

20 MR. MCDONALD: I would prefer that once the
21 witness has been tendered, that actually that
22 whoever is going to question next would question
23 him, when he is complete, what's been completed
24 by either the council --

25 PRESIDENT SMITH: From my point of view,

1 not being as learned as Mr. McDonald, I find it
2 easier to follow the process if the question is
3 asked immediately after you raise the point,
4 because then it connects the two. Otherwise, we
5 have to redirect our thoughts back to what you
6 said 15 minutes ago.

7 So for me it's a more logical progression
8 to have the question right after the statements
9 being made, but that's only my opinion.

10 If the council feels they would like to
11 hear the whole presentation or the witness has
12 been tendered and go through the whole thing
13 before they ask any questions, we will do so. I
14 just find it more difficult to follow.

15 Mr. McLendon?

16 MR. MCLENDON: I have no problem with
17 what's been occurring this morning. I can
18 foresee perhaps it could get out of control, so
19 to speak, or out of hand, and then we can
20 address it at that time, but I'm content with
21 what's going on.

22 PRESIDENT SMITH: I think if it gets out of
23 control and Mr. Chopin starts talking too much,
24 we can tell him to be quiet.

25 MR. CHOPIN: I'm deeply offended.

*** Notes ***

Page 410	Page 411
1PRESIDENT SMITH: Don't be offended. 2Nothing personal. 3Mr. Wyett. 4MR. WYETT: I think I agree with you, 5Mrs. Smith, and I think I appreciate simplicity 6and directness in relation of the testimony on 7the spot rather than having to try to remember 8what the testimony is and going a long period 9before I get a clarification from another. 10PRESIDENT SMITH: Thank you. 11Mr. Shaw? 12MR. SHAW: I agree with you. The only 13question I would have is whether the applicant 14should intervene prior to the council, after the 15presentation is made. 16PRESIDENT SMITH: Mr. Natale, do you feel 17that you have been denied the opportunity to 18intervene? 19MR. NATALE: I have been treated here with 20utmost courtesy and opportunity to be heard and 21I appreciate that. 22PRESIDENT SMITH: Thank you. 23MR. NATALE: I think that -- and Councilman 24Shaw, I appreciate your concern. 25I think that if we could have all of your	1questions answered, then I will hope by my cross 2examinations to bring out the points which I 3think are significant. And I think that would 4be the best. I really do. 5PRESIDENT SMITH: I think that's logical. 6MR. NATALE: I agree with you, madam 7President. 8PRESIDENT SMITH: Thank you very much. 9After your cross examination, then we can ask 10additional questions if you have raised 11additional points? 12Do you have a problem with that? 13MR. NATALE: Absolutely not. 14PRESIDENT SMITH: Thank you very much. We 15are not discriminating against any attorney 16here. Everybody gets a fair shake. 17PRESIDENT SMITH: I was really looking at 18Mr. Chopin, who was looking hurt and injured. 19MR. NATALE: I thought he was looking 20statuesque and handsome. 21PRESIDENT SMITH: I guess it's a different 22angle. 23MR. CHOPIN: You really thought that was 24necessary, no doubt, Mrs. Smith. 25PRESIDENT SMITH: No, I didn't.

*** Notes ***

Page 412	Page 413
1What happened to Mr. Tipton in the middle 2of this exchange? 3MR. CHOPIN: Don't leave, Mr. Tipton. 4PRESIDENT SMITH: Does the council have any 5other questions for Mr. Tipton? No. 6Mr. Natale, would you like to cross 7examine? 8MR. NATALE: Mr. Tipton? 9PRESIDENT SMITH: Yes. 10MR. NATALE: Very well, thank you. 11Mr. Tipton, you are aware that there have 12been existing peak seasonal studies, levels of 13service done as it relates to Southern Boulevard 14west of State Road A1A? 15MR. TIPTON: I have not reviewed any such 16studies. 17MR. NATALE: Are you aware that those 18studies are routinely kept and done by the Town 19of Palm Beach? 20MR. TIPTON: I understand as part of their 21monitoring methodology for the overall public 22transportation system they accomplish counts 23throughout the year. 24MR. NATALE: Isn't that required pursuant 25to county regulation and state law?	1MR. TIPTON: I cannot quote to you what 2regulation that would be subject to. 3MR. NATALE: Would you be surprised to 4learn that the Keith & Schnars report would show 5that there is an existing peak hour level of 6service of a B, they use the alphabetical letter 7B, for the State Road A1A north of Via-del-Lago? 8Are you aware of that? 9MR. TIPTON: I have seen that 10correspondence, yes. 11MR. NATALE: Okay. And would you please 12enlighten council as to what a level B in your 13expertise means? 14MR. TIPTON: Level B on the grading scale 15of A to F is a roadway which is operating with 16more than sufficient capacity available and even 17better than average traffic conditions, meaning 18minimal delay and operation. 19MR. NATALE: In fact, some may even call it 20excellent? 21MR. TIPTON: I wouldn't go that far. 22MR. NATALE: Okay. Didn't expect you to. 23Mr. Tipton, if I understand correctly, you 24are saying that the 313 daily trip limit 25basically would be met or exceeded when the

*** Notes ***

Page 414

Page 415

1 membership would reach 374; is that correct?
 2 MR. TIPTON: It would be equal based on
 3 your counts when the membership reached 378
 4 members.
 5 MR. NATALE: What I'm asking you is in your
 6 projection, the projection that you are making
 7 based on the numbers that were received, really
 8 I think you said logically it assumes that there
 9 is a co-relationship between membership and trip
 10 generation; is that correct?
 11 MR. TIPTON: We are taking your
 12 documentation as being a documented trip rate
 13 for the club based membership and using that for
 14 future collection.
 15 MR. NATALE: I believe you also said the
 16 data you acquired also involved the
 17 construction, the travel that was going onto and
 18 from the club based on the construction that was
 19 there, correct?
 20 MR. TIPTON: At the time the count was
 21 accomplished, construction was occurring.
 22 MR. NATALE: So when you say that your
 23 information is based upon, these numbers are
 24 based upon the membership usage, really a more
 25 correct statement would be that the numbers, the

1 hard numbers that you refer to that you are
 2 referring to actually include the hard numbers
 3 of vendors to the construction work and the
 4 actual construction work that was coming and
 5 going from Mar-a-Lago, correct?
 6 MR. TIPTON: They would logically be in the
 7 counts, yes.
 8 MR. NATALE: Okay. And therefore, in light
 9 of the desire to be logical, in order to have a
 10 more accurate extrapolation, it would make sense
 11 to take those construction and those
 12 construction-related vendor trips out of the
 13 total number of trips that were counted; isn't
 14 that correct?
 15 MR. TIPTON: That would give you the best
 16 representation; however, the applicant
 17 consultant did not provide that detailed data,
 18 so we could only accomplish calculations based
 19 on the best information you provided to us.
 20 MR. NATALE: Very well. So you would agree
 21 that if additional information is provided to
 22 this commission, that your opinion and the
 23 opinions of others you have heard of could very
 24 well change; isn't that correct?
 25 MR. TIPTON: A new set of more factual data

*** Notes ***

Page 416

Page 417

1 that does not include non-member, non-club trip
 2 generations could generate new answers.
 3 MR. NATALE: You would agree that -- let me
 4 ask you this. Is there any really good
 5 correlation, that is, from a, I guess an
 6 industry-wide or profession-wide established
 7 standard correlation between membership numbers
 8 and trip generations?
 9 MR. TIPTON: For?
 10 MR. NATALE: For a club such as Mar-a-Lago.
 11 MR. TIPTON: There may be a land use
 12 category in the trip generation manual. I am
 13 not familiar whether there is or is not.
 14 MR. NATALE: What I'm getting at, sir,
 15 isn't it correct that for certain types of
 16 residential development, certain types of
 17 commercial developments, there have been
 18 established standards which academic journals
 19 within your licensed expertise say this is what
 20 we can expect when we have this sort of use with
 21 this number of square footage and these sorts of
 22 things, and when you are making your evaluations
 23 you refer to that reference data; isn't that
 24 correct?
 25 MR. TIPTON: Yes. That's data that's been

1 generated based on for residential uses.
 2 MR. NATALE: They are held in books or
 3 documents that anyone in your profession can go
 4 look at and say gee, what's the correlation
 5 here?
 6 MR. TIPTON: That is correct.
 7 MR. NATALE: In fact, there is even
 8 correlations that exist for certain commercial
 9 uses of property; isn't that correct?
 10 MR. TIPTON: That is correct.
 11 MR. NATALE: Now obviously prior to coming
 12 up with your figures, you looked at those
 13 references and could you tell me what reference
 14 you looked at to determine what the
 15 co-relationship, if any, exists between
 16 membership and trips of a private club?
 17 MR. TIPTON: We did not reference any
 18 outside sources. Your best data is to cite
 19 specific data.
 20 The applicant provided site specific
 21 numbers, representing that to be the generation
 22 for the membership he claims is in existence.
 23 We went with those numbers and made our
 24 analysis.
 25 MR. NATALE: Very well. And that if those

*** Notes ***

Page 418

1 numbers needed to adjust true member activity,
2 then your figures and your computations would
3 have to be adjusted?

4 MR. TIPTON: If new numbers were available,
5 new calculations would be accomplished.

6 MR. NATALE: Is it fair, though, as a
7 matter of principle, for us to assume based on
8 your testimony that you are submitting as an
9 expert that there is in fact a good correlation
10 between membership and trip generation?

11 MR. TIPTON: For a development of this
12 type, I think that's an appropriate yardstick or
13 method to measure trip generation. What is the
14 relationship between trips generated and the
15 number of members?

16 MR. NATALE: I understand, but what I'm
17 asking you is you were saying that there is a
18 correlation between membership and trip
19 generation, as a recognized correlation within
20 your profession; is that correct?

21 MR. TIPTON: Certainly. You can equate it
22 to anything.

23 MR. NATALE: Okay. Now, sir, if we had a
24 resident of Palm Beach member who lived in Palm
25 Beach for 300 days -- I'm going to stay away

Page 419

1 from Chicago. Okay, do you understand that?

2 MR. TIPTON: Yes.

3 MR. NATALE: And then we have a non-town
4 resident who is only physically here 30 days a
5 year, right? Both of them would be counted as a
6 member, correct?

7 MR. TIPTON: Correct.

8 MR. NATALE: Wouldn't it be logical that
9 the member who was living here 300 days out of
10 the year would generate more trips to Mar-a-Lago
11 than one who is only here for 30 days out of the
12 year?

13 MR. TIPTON: Potentially could be logical.

14 You would have to assume that he would frequent
15 the club more than the person who is here on a
16 semi-annual basis.

17 MR. NATALE: And all things being equal,
18 that's a logical assumption, correct?

19 MR. TIPTON: I guess a reasonable
20 estimation, yes.

21 MR. NATALE: And you would agree that many
22 of your estimates were based on logical, real
23 numbers, real figures and real behavior of
24 humans, correct?

25 MR. TIPTON: Our calculations were based on

*** Notes ***

Page 420

1 real data provided.

2 MR. NATALE: You would agree then that
3 since it's logical to assume that equal members,
4 even though they would be counted as two
5 members, that the member who lived in the town
6 300 days out of the year, it is fair to assume
7 that they would make more trips and generate
8 more trips than a member who only was here for
9 30 days out of the year? Isn't that correct?

10 MR. TIPTON: I don't think it's a valid
11 point to probe into. The traffic numbers have
12 been documented. They are potentially viewed to
13 the construction traffic.

14 I think it's safe to assume that the
15 generation that occurred over the first year
16 include those people who live in Europe. I
17 don't know where they are, but you have that
18 intermix that's brought us the numbers you
19 brought to the table. I think that blending and
20 that in town and out of town relationship is
21 represented just like the internal capture is
22 represented in these numbers.

23 MR. NATALE: You believe that's already
24 represented?

25 MR. TIPTON: I would think it is, unless

Page 421

1 you can tell me that there are no out-of-town
2 members in the first year of 314 members.

3 MR. NATALE: What I'm getting to you,
4 though, is when you are talking about the
5 projection of membership, you are assuming for
6 each member there is an associated number of
7 trips per day; isn't that correct?

8 MR. TIPTON: There is an average trip rate
9 which you can equate on membership basis. I can
10 do it on a number of rooms. I can do it on
11 number of tennis courts. I can do it on number
12 of rocks in the driveway. Doesn't matter.

13 It's an average. Some are going to be
14 higher, some of going to be lower.

15 MR. NATALE: Mr. Tipton, that's my point.
16 You could even use the rocks in the driveway and
17 come up with the same sort of correlation
18 numbers?

19 MR. TIPTON: You could do that.

20 MR. NATALE: So now let's talk about
21 something that really relates to the traffic and
22 congestion at this location.

23 Do you know of any traffic or congestion
24 problem which ever occurred at any events at any
25 time at this location?

*** Notes ***

Page 422

Page 423

1 MR. TIPTON: I cannot give you that
2 information, and I was not asked to evaluate any
3 of that information.

4 MR. NATALE: And if you are not asked, you
5 don't look; is that fair to say?

6 MR. TIPTON: I was asked to review the
7 count data which was provided with the
8 application.

9 MR. NATALE: So I understand what your
10 answer was, but my question to you was -- and
11 I'm assuming that logic and common sense has
12 something to do with your expertise; isn't that
13 fair?

14 MR. TIPTON: Yes.

15 MR. NATALE: Okay. Now what I'm asking you
16 is the person who you believe would utilize the
17 facility more would be the person who is here
18 more days out of the year and they would in turn
19 generate more trips; isn't that correct?

20 MR. TIPTON: Speculation.

21 MR. NATALE: That would be a valid
22 speculation; isn't that correct?

23 MR. TIPTON: I'm going to let you make that
24 statement.

25 MR. NATALE: I'm asking you.

*** Notes ***

Page 424

Page 425

1 assumption.

2 MR. NATALE: If you were to say learn that
3 the spa could only deal with say 15 members, 15
4 people at any given time, would the size of the
5 spa have any effect on the numbers you would
6 attribute to it?

7 MR. TIPTON: The capacity of people it
8 could service I think would obviously be a
9 contributing factor.

10 MR. NATALE: And the smaller it is, the
11 less factor it would increase the trips; is that
12 fair to have to say?

13 MR. TIPTON: Would have a relationship of
14 that type.

15 MR. NATALE: Is it fair for a town or any
16 municipality to rely upon its police personnel
17 to help with the effective and smooth flow of
18 traffic?

19 Is that part of the sort of things that you
20 would consider in doing traffic analysis?

21 MR. TIPTON: Are you asking me in order to
22 maintain safe medical access to a property,
23 there should be on-site police patrol?

24 MR. NATALE: Yes. I'm saying or for
25 special events, either one.

*** Notes ***

1 MR. TIPTON: I'm not going to run through a
2 bunch of hypotheticals. I don't think they are
3 pertinent to the information that's been
4 provided and the calculations that have been
5 accomplished.

6 MR. NATALE: I noticed you said to the
7 information provided.

8 Are we fair to assume, is the council
9 members fair to assume that your position is
10 merely based on the limited information you have
11 to date and not, if you will, in an objective
12 total and complete analysis of the situation?
13 Just based on what you received to evaluate, is
14 that fair?

15 MR. TIPTON: My analysis is based on the
16 data you provided which as we discussed,
17 includes some duration of construction during
18 the counts and also is based on non, not 100
19 percent development of the current approvals on
20 the property.

21 MR. NATALE: Now as it relates to that, you
22 said that if the spa was in full operation, you
23 would assume that that could increase the number
24 of trips.

25 MR. TIPTON: Yes. That's a valid

Page 426

1 MR. GRAVES: Mr. Natale, may I ask to see
2 that Keith & Schnars exhibit that you referred
3 to but did not put into evidence?
4 MR. NATALE: Sure.
5 MR. GRAVES: Mr. Tipton -- and for the
6 record, Ken Graves.
7 Mr. Tipton, there was a question asked
8 whether you have reviewed this. Have you
9 reviewed this document, Bar Dunlop?
10 MR. TIPTON: I scanned over a letter.
11 Actually it was Keith & Schnars, I believe. I
12 have not seen this one before.
13 PRESIDENT SMITH: Gentlemen, for the
14 record, would you please tell us what document
15 you are speaking about?
16 MR. GRAVES: Madam President, I am
17 referring to a letter to Paul Rampell from Bar,
18 Dunlop and Associates, dated October 8, 1996.
19 MR. TIPTON: I have not seen that letter
20 before.
21 MR. GRAVES: So when you responded that you
22 were familiar with the Keith & Schnars study,
23 your answer was actually incorrect, because you
24 haven't seen this study; is that correct?
25 MR. TIPTON: I have copies and

Page 427

1 correspondence was provided to me from Keith &
2 Schnars to the Town of Palm Beach I believe
3 documenting traffic counts that were done in
4 '96.
5 MR. GRAVES: '96, okay. Let me ask you
6 this.
7 Just to make it absolutely clear, the
8 numbers that you have provided and testified to
9 are numbers that were provided to you from the
10 applicant's engineer, If I understand it
11 correctly?
12 MR. TIPTON: Yes.
13 MR. GRAVES: Okay. Those are not in the
14 application, are they?
15 MR. TIPTON: I do not believe so, but I'm
16 not 100 percent sure.
17 MR. GRAVES: So that was a separate
18 document that was prepared or that you looked at
19 that was prepared by the applicant?
20 MR. TIPTON: Yes.
21 MR. GRAVES: So your trip generation rate
22 of .83 is based solely on their information?
23 MR. TIPTON: That's correct.
24 MR. GRAVES: Isn't it true that you would
25 look -- I think you have already answered this,

*** Notes ***

Page 428

1 but isn't it true that the best data from a trip
2 generation standpoint is the data from the site
3 itself?
4 MR. TIPTON: Yes, especially with a special
5 use facility that we have here.
6 MR. GRAVES: And particularly if ITE,
7 Institute of Transportation Engineers, trip
8 generation manual doesn't have specific numbers
9 for this type of use?
10 MR. TIPTON: Absolutely.
11 MR. GRAVES: That's all. I appreciate it.
12 Thank you.
13 PRESIDENT SMITH: All right. Thank you,
14 Mr. Graves.
15 Mr. Natale, have you someone else?
16 MR. NATALE: No, I'm just getting my paper,
17 thank you.
18 PRESIDENT SMITH: All right. You are not
19 putting it into the record?
20 MR. NATALE: Your Honor, we will put it
21 into the record now. Boy, am I showing all I of
22 of my bad habits. I called you Your Honor.
23 Madam President. I apologize.
24 MAYOR ILYNSKY: She doesn't mind. Go
25 ahead.

Page 429

1 PRESIDENT SMITH: I don't mind. He says I
2 don't mind. Go ahead.
3 MR. NATALE: That's the last time it will
4 happen.
5 Your Honor -- maybe there is something
6 about your demeanor I'm referring to.
7 PRESIDENT SMITH: Learned council. Go
8 ahead.
9 MR. NATALE: We would would like to submit
10 into the record of this the Barr & Dunlop
11 Association report, which Mr. Barr is present
12 and is going to be stating in full and in
13 complete his testimony, which will come later.
14 PRESIDENT SMITH: All right, please enter
15 it. Mr. Natale, give it to the clerk.
16 MR. NATALE: Thank you.
17 MR. CHOPIN: May I be heard on that point
18 briefly?
19 PRESIDENT SMITH: Yes.
20 MR. CHOPIN: This is Frank Chopin. I don't
21 know, Skip, how we are running there, and I
22 think your guidance to the council is what's
23 important.
24 That would not be an appropriate proffer at
25 this time if we in fact were in court. For one

*** Notes ***

Page 430

Page 431

1 thing, he has closed his case in chief. He has
2 laid out predicate for it.

3 You know, he is intending to call the
4 expert during his redirect, but, you know, I
5 don't know how to act, because when these things
6 come up, frankly, they weren't anticipated, but
7 I at least want to be sure that we make the
8 point that this is not the way you do it in a
9 courtroom. So I guess it's up to you to give us
10 some guidance.

11 PRESIDENT SMITH: Mr. Randolph, please.

12 MR. RANDOLPH: There again, the decision is
13 up to the council. It was stated correctly by
14 Mr. Chopin earlier when I made my comment that
15 this is a quasi-judicial proceeding, and what
16 you are looking for is to receive all of the
17 evidence so that you can make a fair and
18 impartial decision based upon substantial and
19 competent evidence.

20 The formal rules of court are not applied
21 in this proceeding. You are really only trying
22 to provide due process.

23 So I don't make that decision for you, but
24 you can make the decision as a council how you
25 wish the proceeding to take place.

*** Notes ***

Page 432

Page 433

1 then certainly I would expect that the applicant
2 would have an opportunity to rebut what had been
3 said, but not to have an entirely second bite at
4 the apple of putting in new evidence that at
5 that point the public and representatives of
6 citizens of this town would not have an
7 opportunity to know about and hence rebut when
8 we come up during this stage of the proceedings
9 to speak to you.

10 So I object to the receipt of that
11 evidence. I would object to the production of
12 new evidence and new witnesses by the applicant
13 that would extend beyond a summary and rebuttal
14 that normally you would expect at these kinds of
15 hearings.

16 It is clear to me that Mr. Natale said
17 directly to you that they have got new traffic
18 information, a new traffic witness. That
19 information and anything else like it should
20 have been put on in their case in chief three
21 weeks ago, and I don't want to be in the
22 position, Madam President, of hearing it when my
23 opportunity to speak is over and there is
24 nothing I can do about it.

25 So I object to the receipt of the evidence.

*** Notes ***

1 PRESIDENT SMITH: Mr. Kolins?

2 MR. KOLINS: Thank you, Madam President.

3 For the record, my name is Ron Kolins.
4 That is spelled K-o-l-i-n-s, and I'm with the
5 Moyle, Flanigan, Katz, Kolins & Sheehan law
6 firm.

7 I have an additional objection to the
8 receipt of this evidence. While I don't
9 disagree at all with the advice given to you by
10 Mr. Randolph, as far as it goes, my recollection
11 of the initial hearing in this case which began
12 two or three weeks ago was that certain ground
13 rules were laid out. And indeed, at the very
14 end of that hearing I personally came up here to
15 confirm those ground rules with you so I would
16 know and everyone else would know how we were
17 going to proceed with this hearing.

18 And what was set forth as the ground rules
19 clearly was that the applicant had his
20 opportunity to make his case in chief and
21 present his evidence. He was not going to be
22 able to do that again.

23 We were at the point where the staff was
24 going to finish its report to you and then
25 members of the public were going to speak. And

1 Thank you.

2 PRESIDENT SMITH: All right, Mr. Kolins, it
3 is -- just a minute, Mr. Graves, just a minute.

4 It is very clear that at the end of the
5 last meeting I did lay out the ground rules for
6 how we would proceed on September 16.
7 Mr. Rampell did say that he was finished, but as
8 the applicant, he has the last word.

9 Did you state, which I didn't hear,
10 Mr. Natale, that you were bringing new
11 witnesses?

12 MR. NATALE: Madam President, what I'm
13 saying is that based on what we have heard here
14 today, they have advanced expert testimony. And
15 in any court proceeding it is perfectly
16 legitimate, in fact rebuttal is often and has to
17 be reserved to rebut their expert testimony.

18 And I know of under no legal precedent,
19 and, Mr. Randolph, maybe you can help me here,
20 where if they are presenting expert testimony,
21 that on rebuttal we are prevented from
22 impeaching the accuracy or in this notion at
23 least presenting you with all of the facts and
24 more of the facts.

25 Further, it's a quasi-judicial hearing,

Page 434

1 Madam President, and I'm sure as you stated in
2 the beginning, not only the first hearing here
3 today, we want to have a full hearing of all the
4 relevant facts.

5 Consequently, the relevant testimony that
6 we will be presenting and information is going
7 to answer many of the questions that this
8 council has raised and I think is going to show
9 that their expert engineers are not as credible
10 in their projections as they would like you to
11 believe. And that is always proper and always
12 considered part of our due process rights.

13 MR. KOLINS: May I?

14 PRESIDENT SMITH: Mr. Kolins. This is
15 absolutely correct, but this is a very important
16 point that I think everyone here wants to be
17 totally clear upon and I think we should hear
18 from all the attorneys involved on this legal
19 point. Lunch will wait.

20 Go ahead, Mr. Kolins.

21 MR. KOLINS: Thank you very much. I will
22 be brief.

23 If what Mr. Natale says is true, that after
24 hearing experts presented on the other side of
25 the case they have an opportunity to rebut, so

Page 435

1 in other words, they didn't know that they were
2 going to have to deal with any of this until
3 they heard these experts, then how is it that
4 they happened to bring witnesses with them with
5 new reports and information if they did not know
6 until now that there is something to rebut?

7 Now on September 16, almost a month ago, I
8 asked this council to continue the hearing to
9 the very next day so there could be a
10 continuity. But to accommodate Mr. Trump
11 personally, and I don't object to this, but to
12 accommodate him personally, since he couldn't
13 come back until today, this thing was delayed
14 for three weeks.

15 I do not see Mr. Trump here. What I see,
16 however, is a number or at least apparently a
17 number of other lawyers and a number of other
18 witnesses that have apparently put together a
19 new case to buttress what apparently was a very
20 weak one put on initially, so they could put on
21 this new case for you and have the time to
22 prepare it.

23 That is inconsistent with why this hearing
24 was delayed. And it belies the statement of
25 Mr. Natale that they just are hearing some new

*** Notes ***

Page 436

1 evidence and have a right to rebut it, because
2 if that were true, they wouldn't have reports
3 prepared. They wouldn't have witnesses coming,
4 witnesses from out of town to speak to you later
5 on.

6 PRESIDENT SMITH: All right, thank you.
7 Mr. Graves?

8 MR. CHOPIN: May I be heard on that point?

9 PRESIDENT SMITH: Mr. Chopin.

10 MR. CHOPIN: The fact is they are playing
11 games, and you are going to let them put that
12 witness on and that's fine and I don't disagree
13 with you, but we have have been playing games
14 with Mr. Trump for years and pretending what we
15 see we don't really see. Don't think about the
16 people in town. Think about the staff. You
17 want their evaluation of these reports, and you
18 should. They have been working on it since May.

19 So what you are having accomplished here is
20 an end run, deliberate attempt to come in after
21 your staff has given you a report and present
22 evidence to you which should have been
23 available. Mr. Rampell, you know, castigated
24 all of you for not having this hearing months
25 ago. Now after having the hearing on

Page 437

1 September 16, after your staff studied the
2 reports, after they reported to you, he wants to
3 offer you something new.

4 We will deal with it, but the fact of the
5 matter is, come on, let's quit playing games
6 about what Mr. Trump is doing, because he is not
7 here, and that's why you postponed the thing.

8 PRESIDENT SMITH: Mr. Graves?

9 MR. GRAVES: Madam President, Ken Graves
10 for the record.

11 We would echo the objections for the
12 record. Direct testimony at the specific
13 questioning from the town attorney, have you
14 rested? Have you finished your case? Yes.

15 We object on the same bases that have been
16 stated by Mr. Kolins and by Mr. Chopin.

17 PRESIDENT SMITH: Absolutely. Thank you,
18 Mr. Graves.

19 Mr. Randolph?

20 MR. RANDOLPH: I think the only thing
21 that's, that hasn't been asked so far is whether
22 or not this particular document can be put in.
23 We don't -- I don't know, I can't tell if from
24 what's been presented whether this document is
25 direct testimony or whether it's rebuttal. The

*** Notes ***

Page 438

Page 439

1 only thing that's happening now is it's coming
2 out of order.

3 What's been advised by counsel for the
4 applicant is that this is being presented as
5 rebuttal.

6 I don't know. I can't tell, because I
7 haven't seen it whether it's true rebuttal or
8 whether it's new evidence, but the
9 representation has been made that it's rebuttal.
10 That's the only thing.

11 Plus representations have been made that
12 there are other witnesses here to testify with
13 new evidence. I don't think you or I know that
14 at this point.

15 So I'm not sure how we can respond to the
16 arguments that have been made in that regard.
17 We are just now talking about this particular
18 piece of paper.

19 MR. NATALE: Very briefly --

20 PRESIDENT SMITH: For the record,
21 Mr. Natale, please.

22 MR. NATALE: My name is Mr. Natale on
23 behalf of the applicant.

24 I only sought to put it in now in response
25 to Madam President's request that, in response

1 to council said what are you looking at, he
2 wanted to look at it and talk about it, and you
3 said are you putting it in?

4 That is the only reason why it was advanced
5 at this time, Mr. Randolph, and I agree with
6 you, I think that if we want to do things in
7 order, we do them in order and then you can make
8 the decision then, but it's up to you. We are
9 here to serve you.

10 PRESIDENT SMITH: I have one more question.

11 Did you say -- and I'm not sure if the
12 question is directed to you, Mr. Natale, because
13 you were not here on September 16. Mr. Rampell
14 was.

15 Did you say or did Mr. Rampell say that you
16 would be calling other witnesses?

17 MR. NATALE: I think what my understanding
18 was was that there was the opportunity to rebut,
19 and that that's what we are talking about, is
20 rebuttal testimony, and that we are talking
21 about a quasi-judicial, quasi-legislative
22 hearing in which we are trying to present you
23 with all of the relevant information.

24 And the reason why you have this
25 flexibility, unlike in a courtroom, is because

*** Notes ***

Page 440

Page 441

1 we don't have the discovery. For example, I
2 know Mr. Rampell asked for, tell me everything
3 you are going to be putting on, and basically
4 there is no reciprocal discovery requirements,
5 which is how we avoid a lot of these things in
6 the court.

7 The bottom line is you are here to get all
8 the facts, all the information. We want to
9 present them to you and not try to in any way
10 impede any public comments or response.

11 MR. MCLENDON: I think the error was in
12 offering it at this time instead of when the
13 witness was called.

14 MR. NATALE: I only offered it, sir,
15 pursuant to a request.

16 PRESIDENT SMITH: I asked.

17 MAYOR ILYINSKY: I think we ought to decide
18 once and for all right now what sort of
19 procedures we are going to follow. I went to
20 law school, but I never took a bar exam, so I'm
21 the most dangerous person in the room.

22 So it seems to me this is being handled a
23 little sloppily right now. Both the lawyers for
24 the witness and the prosecution, whatever you
25 want to call it, have very good point, but I

1 think we should decide as a body how we are
2 going to proceed from now on.

3 So I would ask Mr. McDonald, who is a
4 qualified past lawyer, to express his opinion
5 about it, because I think we are getting a
6 little sloppy. I think too many people are
7 saying things. I think there should be better
8 order, John. That's all I'm pointing out. It
9 should be a procedure and --

10 MR. NATALE: Okay, we withdraw introduction
11 of it right now. So rather than having to
12 discuss it at this point, we will withdraw it.

13 I apologize for not being able to fulfill
14 your request at this time. We will do it later.
15 This way we don't have to waste any more time
16 and you can proceed to whatever you need to do,
17 hopefully, which might be lunch.

18 MAYOR ILYINSKY: Excuse me, I think all of
19 you really need to discuss this thing a little
20 bit, if that's allowed under these rules. I
21 guess it is, isn't it?

22 MR. NATALE: Yes,

23 MAYOR ILYINSKY: And decide how you are
24 going to proceed this afternoon. Speaking for
25 myself, I would think the council president will

*** Notes ***

Page 442	Page 443
1decide what you all are going to do. 2MR. NATALE: I would be more than willing 3to meet with your council and see if we can come 4to a resolution. 5MR. ILYINSKY: Did any of you go to a 6University of Virginia law school? If they did, 7that's all the opinion I need. 8MR. NATALE: I played rugby against them, 9but not with them. 10PRESIDENT SMITH: I believe the applicant 11knows how he is going to proceed and you are 12proceeding I believe on the track you were 13before you entered the room this morning. 14What I would like to know is whether or not 15in the process of your rebuttal -- I'll wait 16until you are finished with Mr. Rampell. 17MR. NATALE: I apologize for Mr. Rampell. 18PRESIDENT SMITH: If whether or not you 19will then expect the town to have or members of 20the public to reply to your rebuttal. 21MR. NATALE: Absolutely. We wouldn't want 22anything else but their rigorous cross 23examination and scrutiny. 24PRESIDENT SMITH: Mr. McDonald? 25MR. MCDONALD: My feeling is this is a very	1important town issue. We need to be as fair as 2we can. It obviously is going to affect both 3sides in the same way and that we should 4basically let everything in that's relevant from 5both sides so that we can have all the 6information that's pertinent to the case so that 7we can make a decision. 8MR. MCLENDON: Amen. 9MR. MCDONALD: Thank you. 10PRESIDENT SMITH: Mr. Randolph, would 11you -- Mr. Natale said that he would meet with 12you. 13Is it the lawyers who are all standing at 14the bar now, I'm now going to ask you, is it 15legal for you all to meet and discuss how you 16are going to proceed? 17Are there going to be some ground rules 18here or are you going to keep throwing us curve 19balls as we sit here? 20MR. RANDOLPH: May I speak on that? 21PRESIDENT SMITH: Please. 22MR. RANDOLPH: I would rather any comments 23that be made in regard to this be made on the 24public record by the lawyers who are making this 25presentation rather than my being asked to meet

*** Notes ***

Page 444	Page 445
1with them at any kind of a side bar. 2I think you are, even though you are 3discussing a specific piece of paper in these 4proceedings, you have a larger issue here that's 5being addressed. At some point in these 6proceedings you are going to have to address 7that. 8Indeed, true rebuttal is only rebuttal to 9that testimony which has been presented after 10the applicant has closed his case, and you are 11going to have to make a determination as to 12whether or not you are going to be strict in 13that regard and allow only rebuttal or whether 14you are going to allow further testimony. 15If you allow further testimony, it's going 16to be a different decision than the decision you 17first made, as I understand it. 18I understood that the applicant had closed 19his case, that the public and the town staff 20were going to go forward, and that the applicant 21would then have an opportunity for rebuttal. 22And rebuttal is simply that. It's to rebut what 23has been stated in the intervening time since 24the closure of the case. It is not new 25testimony.	1If you are going to change that proceeding, 2I think it's only fair that everyone in this 3room be advised that you are going to change it, 4because if the applicant is going to have the 5opportunity to put on new testimony during the 6process of rebuttal, then you are going to have 7to change the ground rules. 8At that point you are going to have to 9reopen this proceeding to allow the public and 10the town to comment on the new testimony that 11has come out on so-called rebuttal, which 12apparently is going to be more than rebuttal, if 13I understand it, but I don't know that. I don't 14know what's going to be presented. 15So you have got an issue to deal with and I 16think you are the ones that have to make that 17decision. Mr. McDonald has stated that he would 18just like to bring everything in and hear it all 19so that you can make a decision based on that, 20but to allow, to be fair to everybody, everybody 21ought to know what the rules are. They seem to 22be a little bit different than they were first 23announced. 24MS. KENDIG: Council Members, if I may, my 25name is Julie Kendig, K-e-n-d-i-g. I'm an

*** Notes ***

1 attorney.

2 Although this is a quasi-judicial hearing,
3 generally in almost every judicial proceeding
4 there is a set sequence of events. The person
5 requesting relief has an opportunity to speak.
6 Anyone who wishes to reply to that has an
7 opportunity to make their point and then a
8 person requesting relief has the final say.

9 My only concern is that if we allow this to
10 go back and forth, back and forth, back and
11 forth without end, that we could be here four or
12 five more days, and that again, in the interest
13 of fairness, perhaps we all understood
14 supposedly I guess how this was going to work,
15 that the applicant would have their opportunity
16 to request relief, we would have the opportunity
17 to reply and the applicant would have the final
18 word.

19 I would just suggest that to allow it to go
20 back and forth indefinitely would not serve the
21 purposes of this board or this hearing.

22 PRESIDENT SMITH: Thank you very much.

23 MR. MCLENDON: Can I say something?

24 PRESIDENT SMITH: Mr. McLendon.

25 MR. MCLENDON: I would like to express my

1 opinion, and that is that I think the applicant
2 has every right to rebut. I think the rebuttal
3 should be limited, however, to not new testimony
4 by some other experts, but focus on testimony
5 already presented by the other side, if you
6 will, and limit it to that. I'm not interested
7 in going ad infinitum with more reports.

8 PRESIDENT SMITH: All right. Thank you
9 Mr. McLendon.

10 Mr. Wyett?

11 MR. WYETT: I don't think any method is
12 fair to both parties.

13 MAYOR ILYINSKY: I agree.

14 PRESIDENT SMITH: Mr. Rampell, are you
15 standing up to say something?

16 MR. RAMPPELL: Only to Mr. Natale.

17 PRESIDENT SMITH: Oh, another side bar.

18 While the lawyers for the applicant are in
19 whispered conference, it was my understanding
20 too that the case was finished. We have
21 attempted here to be fair. We gave the
22 applicant all the time for all the testimony and
23 experts.

24 The applicant in the final process has the
25 final word and you do also have rebuttal and the

*** Notes ***

1 town will rebut, but it was not my understanding
2 or the understanding of other members of the
3 council that there would be any other experts
4 testifying other than testified on the 16th for
5 the applicant.

6 Now are you appealing that decision?

7 MR. NATALE: I would I guess if you want, I
8 can say one, yes, I am appealing it, but I am
9 also saying that what we plan to do is
10 legitimate rebuttal and it would come under any
11 scrutiny of what rebuttal is.

12 Now what I heard President Pro-Tem
13 Mr. McDonald saying is he would like to have
14 sort of it all come in.

15 As I told you before, anything we would
16 produce in rebuttal is also subject to cross
17 examination. And I think that Mr. McDonald's
18 plan is one that's certainly acceptable to us;
19 however, if you want us to say it's rebuttal,
20 it's rebuttal.

21 PRESIDENT SMITH: Are you talking about
22 anything or any person? It all came up with
23 this one paper that was being passed around, and
24 I asked to have it entered because I didn't know
25 what you were speaking about.

1 MR. NATALE: Right. We plan to put on a
2 rebuttal case. That rebuttal case was going to
3 rebut what was presented to you as valid facts
4 upon which you should make your decision. We
5 have a rebuttal case.

6 Now what happened here was something came
7 up out of order because counsel took it from my
8 hands saying that he wanted to look at it to
9 show it to his witness.

10 So it wasn't done by me. It was only in
11 response. In other words, we got out of order
12 by conduct of other counsel, not of the
13 applicant.

14 PRESIDENT SMITH: I didn't criticize you.
15 I said it was my mistake for asking that it be
16 entered.

17 Mr. Kolins and Mr. Chopin, are you
18 anticipating the opportunity to rebut the rebut?
19 Please speak to this. This is a very serious
20 matter.

21 MR. CHOPIN: It is a serious matter. Let
22 me tell you, I mean it's not unusual to have an
23 opportunity to deal with particularly the
24 introduction of new evidence which comes as a
25 surprise.

*** Notes ***

Page 450	Page 451
1 You know, I don't even know what it is. If 2 you are going to take it into evidence, I would 3 love to get a copy of it. I don't know what it 4 is. I don't know who this guy is. I don't know 5 when they hired him. I don't know what he says 6 in that report. I don't know anything. 7 And I guess I'm going to have to cross 8 examine him blind, but I'll do that, but that's 9 not fair to me. You know, lawyers prepare 10 sometimes. But I don't intend to bring any 11 other experts in. 12 We have done the best we can to help the 13 town in the making of its decision as it relates 14 to the traffic issue. We didn't fake the 15 evidence. We took their evidence and told you 16 what it said. And there is nothing else I can 17 tell you. I think it's right. You have to make 18 the decision. 19 Would I try and cross examine this man who 20 I don't even know his name? Sure. I don't know 21 that I would be effective. 22 By the way, could I take one second? Skip 23 mentioned to me -- I'm not sure I asked that you 24 include in the record the handouts that 25 Mr. Tipton testified from. If I didn't, may I	1 ask that they be included in the record? 2 PRESIDENT SMITH: Yes. They will be 3 included in the record. Thank you. 4 MR. KOLINS: Madam President, this is Ron 5 Kolins, and I would like to respond to your 6 question in two ways. 7 First I will simply ask something of this 8 council, and that is that because I don't know 9 either who is going to be brought up as rebuttal 10 witnesses, what reports, what they have got to 11 say. 12 The issue came to my attention when 13 Mr. Natale made remarks making it clear that 14 they have other evidence to present and at least 15 one, if not more reports, one being this Keith & 16 Schnars report or the Frederic Barr, Barr & 17 Dunlop letter. 18 So beyond that, I don't know what they plan 19 to do. Whatever they do, I would ask you to 20 consider very carefully whether it is fair and 21 true rebuttal or whether it was pre-planned, 22 pre-prepared, additional direct evidence. 23 I'm asking that of you now, because one of 24 my concerns and my second point is the issue of 25 fairness to my client, Mrs. Massey.

*** Notes ***

Page 452	Page 453
1 When this hearing was scheduled, I blocked 2 out this day so that I could be here for it, 3 under the impression that I had heard all of 4 their direct evidence and I would respond to it 5 when my turn came. 6 I am not here crying for a whole lot of 7 sympathy, but I'm in the middle of two major 8 trials right now, and I don't believe it's 9 possible for me to be here tomorrow or at any 10 other day in the, for the rest of October. 11 So if what's going to happen is they are 12 allowed to put in new stuff and have new 13 witnesses, I am not going to be here to have 14 that opportunity even blindly without having 15 studied the material to cross examine or make 16 any further point to you on this issue. 17 So I'm going to appeal to your sense of 18 fairness to the other side. We are hearing a 19 lot about fairness to the petitioner here, but 20 there is fairness to the other side that we not 21 be taken advantage of. 22 And since I won't be here, so to speak, to 23 defend myself at that point in time, I'm going 24 to have to throw that ball in your court. 25 Clearly they are entitled to have a rebuttal	1 case. The question is whether they are misusing 2 that process or not with any given witness or 3 report, and I just want to heighten your 4 sensitivity to those issues so that when it 5 comes up, you can make that determination. 6 Thank you. 7 MR. NATALE: Madam President, I'll try to 8 be brief. I didn't know Mr. Tipton existed. I 9 never saw anything. I never saw these reports 10 or these charts before. 11 As I mentioned in prior comments, when they 12 are saying there is no reciprocal discovery 13 here, that's correct. We don't know what they 14 were going to say either. 15 So I really think that what we need to do 16 is either you make your decision now to adopt 17 what President Pro-Tem McDonald has suggested or 18 you say let's deal with this when rebuttal 19 properly comes and then we will deal with it at 20 that time. 21 I think the issue is joint and you can make 22 your decision one way or another. We are here 23 to serve your pleasure in that regard. 24 PRESIDENT SMITH: Right. You do 25 understand, Mr. Natale, that the council also

*** Notes ***

Page 454

Page 455

1 has not seen any of this information. There is
2 no discovery process for the council, as there
3 is in a court of law where a list of witnesses
4 and evidence is produced.

5 MR. NATALE: I understand that.

6 PRESIDENT SMITH: Before September 16, the
7 council had seen nothing, because it was a
8 quasi-judicial procedure, and today we have not.

9 We obviously have no idea of who is being
10 presented, of who Mr. Chopin was presenting or
11 Mr. Kolins or anyone else here or you.

12 MR. NATALE: Right. That's what I'm
13 saying. We are all in the same boat as council.

14 PRESIDENT SMITH: Right. So when you think
15 about and talk about the council making a
16 decision, the more that we go through the
17 process here today, the more difficult it will
18 be to make a decision in what you might consider
19 a timely matter.

20 Mr. Chopin?

21 MR. CHOPIN: You heard Mr. Natale say he
22 didn't know Mr. Tipton was going to be here.
23 You heard him say that, okay? He didn't know
24 there were going to be any experts here.

25 Then maybe you ought to ask him to explain

1 to you why did he have an expert traffic
2 consultant in the wings to testify in rebuttal?

3 The simple fact is he had no reason to need
4 rebuttal. What he has done, pure and simple, is
5 to have a witness that needed to be presented in
6 his case in chief, held him back so that nobody
7 would have an opportunity to deal with it, and
8 that's where we are.

9 I know what's going to happen and I know
10 what should happen. This case doesn't have any
11 merit and it ought to be decided on the basis of
12 all the testimony that somebody wants to enter
13 and then when you make your decision, you are
14 not going to face the procedural issue of
15 whether you should or you should not have heard
16 some testimony.

17 I personally don't think it's fair, but I
18 also don't think it's fair to hand Mr. Trump a
19 case that he doesn't have on the basis of the
20 facts.

21 And therefore, I don't like it, but I would
22 ask you to receive everything that they want to
23 give you and I will try and deal with it in a
24 surprise manner. I won't be my typical fluid
25 self, but I will do the best I can to deal with

*** Notes ***

Page 456

Page 457

1 it, but take it all in. I think Mr. McDonald is
2 correct, because if you don't, he is going to
3 say you weren't fair, that gee, he even may say
4 that you discriminated against him, and I don't
5 think you want to put yourself in that position.

6 So to the extent I expressed an objection,
7 I will withdraw it and invite you to take it all
8 in so we don't allow something to develop out of
9 nothing, but I do have a point to make as well,
10 and that is scheduling.

11 And that is a problem. It's a problem for
12 Ron. It's a problem for a lot of us, because
13 this is pro bono. And unlike Mr. Trump, I've
14 got to work for a living.

15 MR. MCDONALD: Do you know whether
16 Mr. Kolins is working pro bono today?

17 MR. KOLINS: I will stipulate that I am
18 not.

19 MR. CHOPIN: And I will stipulate that I
20 am. So the fact of the matter is that I just
21 ask you to keep into account that there are
22 other people's schedules that are affected by
23 when you continue this hearing, and don't forget
24 that it was Mr. Trump who was accommodated in
25 postponing this hearing for three weeks.

1 PRESIDENT SMITH: The schedule is to
2 continue tomorrow. After that, I have no idea,
3 because what you have failed to mention is that
4 the council also has plans. And we also work
5 pro bono.

6 And with the constant juggling around, we
7 are inclined to feel overworked and under-
8 appreciated. And we worked all day Tuesday from
9 9:30 to 9:00 p.m. We are working today. We are
10 prepared to work tomorrow.

11 And as far as that, that's about as long as
12 a commitment we are going to give you right now.
13 But we are not going to dance around to
14 anybody's drummer, and I hope you will
15 appreciate that. We are also trying to be
16 accommodated in this procedure.

17 Mr. Kolins?

18 MR. KOLINS: I'm going to offer --

19 MR. CHOPIN: Can I interrupt Ron? Because
20 a suggestion was just made.

21 MR. KOLINS: Whose side are you on? Once
22 again, I'm standing alone. No, go ahead.

23 MR. CHOPIN: It was just suggested we can
24 yield and allow Mr. Natale to put his witness on
25 right now so that will accommodate the fact that

*** Notes ***

Page 458		Page 459	
1	Mr. Kolins won't be here tomorrow. I'm still in	1	present him now or right after lunch?
2	the midst of my presentation, but I would gladly	2	MR. NATALE: I think right after lunch
3	give him the opportunity to do it now so we can	3	would be fine.
4	deal with it.	4	PRESIDENT SMITH: What is, let's see what
5	MR. KOLINS: The point I was going to make	5	the council would like.
6	is very similar. I do not withdraw my	6	MR. WYETT: After lunch.
7	objection; however, it would seem to me if you	7	MR. NATALE: Madam President, we wouldn't
8	are going to hear whatever additional witnesses	8	want that to be our total rebuttal.
9	and evidence the petitioner has planned to put	9	PRESIDENT SMITH: I think we are trying to
10	on, that perhaps the best way to do it would be	10	be very agreeable here, Mr. Natale. I'm not
11	let him put it on right after lunch and then go	11	limiting you to total rebuttal. I am merely
12	back to the public portion of this hearing,	12	asking whether or not there is somebody in the
13	rather than get into the problem that somebody,	13	room now other than Mr. Pollock.
14	I think it was Mr. McLendon, we don't want to	14	MR. NATALE: Yes, and we will do that.
15	keep going back and forth, back and forth.	15	PRESIDENT SMITH: All right. Mr. Graves?
16	Let's once and for all hear from them and	16	MR. GRAVES: I would discuss if they are
17	then we won't have to put up with this.	17	witnesses that he intends to put on that are
18	PRESIDENT SMITH: Mr. Kolins, if I can ask	18	really in the nature of direct testimony? If
19	Mr. Natale a question, please.	19	so, let's put it out there.
20	Do you have a traffic expert here now that	20	PRESIDENT SMITH: All right, let's be
21	is not Mr. Pollock who we heard on the 16th?	21	totally honest, Mr. Natale.
22	MR. NATALE: Yes.	22	Do you have other witnesses you are
23	PRESIDENT SMITH: In the room now?	23	planning to present in rebuttal?
24	MR. NATALE: Yes.	24	MR. NATALE: Yes, issues that are in
25	PRESIDENT SMITH: Are you prepared to	25	rebuttal to issues raised here.

*** Notes ***

Page 460		Page 461	
1	PRESIDENT SMITH: I'm just asking the	1	involving staff at Mar-a-Lago and statements
2	question. Thank you.	2	that that staff person allegedly made and
3	MR. WYETT: How many?	3	representations that they made.
4	MR. NATALE: Let me check.	4	That person is available to rebut those
5	MR. KOLINS: While he is checking, what	5	statements that he attributed to her during the
6	issues is he talking about?	6	course of his cross examination.
7	The only thing we put on is one traffic	7	PRESIDENT SMITH: All right. You are
8	expert, so he has got witnesses for testimony to	8	referring to the spa director?
9	rebut that haven't even come up yet.	9	MR. NATALE: That is correct.
10	MAYOR ILYINSKY: What did you just say, how	10	PRESIDENT SMITH: Right. Even I remember
11	many witnesses?	11	that.
12	MR. KOLINS: He asked how many witnesses.	12	Anything else? Because so far this morning
13	MAYOR ILYINSKY: Oh, okay.	13	the only thing we have heard from is one traffic
14	MR. NATALE: Based on what happened at the	14	expert.
15	September hearing, we have two witnesses who	15	MAYOR ILYINSKY: And we have a lot of
16	were mentioned, whose names have been mentioned,	16	people that want to talk.
17	and their subject matters have been mentioned	17	PRESIDENT SMITH: Three.
18	that we need to rebut, that we will rebut.	18	MR. NATALE: The only other thing that I
19	PRESIDENT SMITH: I don't mean to sound	19	guess, Madam President, would be is if something
20	vague, but I don't understand what you said.	20	came up during the public comments that we felt
21	MR. NATALE: There was an expert who	21	we needed to address, because it was factually
22	testified, Mr. Brisson I believe testified	22	inaccurate or legally inaccurate, we would have
23	before, so we have the expert to rebut that.	23	to deal with that appropriately.
24	There was also comments I believe made by	24	PRESIDENT SMITH: Right, but they are not
25	Counsel Randolph in his cross examination	25	here now, because you don't know what's going to

*** Notes ***

Page 462

Page 463

1 be said, right?

2 MR. NATALE: Exactly. So all we have is
3 two.

4 PRESIDENT SMITH: Two people after lunch,
5 all right, thank you. If I made a mistake and
6 it was three -- would you like to have a moment
7 to whisper Mr. Natale's ear?

8 MR. NATALE: I will admonish Mr. Green as
9 well.

10 PRESIDENT SMITH: Oh, I recognize Mr. Green
11 as well. I know Mr. Green. I didn't see him.
12 Are you ready?

13 MR. NATALE: I believe we would say that
14 there would be three.

15 PRESIDENT SMITH: All right, two or three.
16 We are trying just to get an idea. That's all,
17 Mr. Natale.

18 Is there anything further?

19 We will now adjourn for lunch. We will be
20 back at --

21 MR. CHOPIN: Madam President, will you just
22 clarify that while I'm yielding the floor with
23 this, that I still have it when they finish with
24 their two, three, four witnesses, whatever it
25 is?

1 PRESIDENT SMITH: Absolutely, Mr. Chopin.
2 Everyone and everybody is going to have an
3 opportunity to speak during the course of this
4 hearing if it takes until December 31st, 1996.

5 MR. CHOPIN: What time do we go to tonight?

6 PRESIDENT SMITH: 2:15.

7 MR. CHOPIN: How late do we go tonight?

8 PRESIDENT SMITH: We haven't gotten that
9 far, Mr. Chopin.

10 MR. CHOPIN: You didn't fix an agenda is
11 what I'm asking?

12 PRESIDENT SMITH: No, because we had
13 anticipated stopping at 12:30. We hadn't gotten
14 to the discussion with the council, but I do not
15 anticipate that it will go beyond 6:00, 6:30 if
16 this is going to be a very long procedure, but I
17 haven't polled them yet. We are adjourned for
18 lunch.

19 (Thereupon, a luncheon recess was taken.)
20 - - -

*** Notes ***

Page 464

CERTIFICATE

1
2
3 STATE OF FLORIDA)
4 COUNTY OF PALM BEACH)
5

6 I, Rachel W. Bridge, Registered Professional
7 Reporter, certify that I was authorized to and did
8 stenographically report the foregoing proceedings and
9 that the transcript is a true record.

10
11 Dated this ____ day of _____, 1996.
12
13
14

15 Rachel W. Bridge, RPR, CM
16 Notary Public - State of Florida
17 My commission expires 1-15-99.
18

*** Notes ***

TOWN OF PALM BEACH 10-10-96

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'92 - absence

'92 [2] 317:18 319:4	364:11 364:25 365:4	402:19 403:2 405:9	322:7 322:19 323:8	404:20 404:24 404:25
'93 [5] 317:18 319:4	365:16 366:15 367:14	40 [3] 324:1 395:9	324:20 325:2 325:6	405:1 405:12 405:18
319:9 388:7 391:9	368:13 381:11 426:18	395:25	325:12 325:12 325:24	406:8 406:12 406:13
'94 [2] 317:18 319:10	463:4 464:11	400 [4] 327:1 343:8	326:2 326:5 326:10	406:19 406:25 407:15
'95 [6] 317:6 317:18	1st [1] 317:10	358:5 358:8	326:12 326:13 326:13	407:20 408:3 408:3
317:18 319:11 325:10	2 [1] 463:6	404 [3] 381:1 388:20	327:12 327:17 327:19	408:12 409:7 410:8
380:3	20 [1] 317:10	403:7	327:24 328:6 328:10	410:9 411:12 411:16
'96 [6] 318:5 319:12	20,000 [1] 334:13	414 [1] 384:16	328:11 328:25 329:8	411:21 413:6 413:12
380:2 380:24 427:4	200 [13] 321:16 321:20	43 [3] 374:13 374:14	329:11 329:24 330:2	413:15 413:15 414:9
427:5	321:23 324:2 332:17	374:15	330:3 331:5 333:9	414:12 414:24 415:9
.83 [2] 384:6 427:22	332:20 333:16 334:16	45 [1] 294:22	333:25 334:19 335:2	415:25 416:5 416:10
.86 [1] 384:5	334:16 334:19 334:22	460 [1] 362:16	335:5 335:7 335:12	416:11 417:16 418:6
00 [4] 376:1 406:3	335:4 390:22	486 [1] 388:24	335:17 335:23 335:24	418:9 418:11 418:17
457:9 463:15	210 [1] 324:2	50 [5] 324:1 345:9	336:1 337:2 337:7	418:19 418:23 419:3
1 [2] 300:18 301:1	22 [1] 352:20	345:10 348:21 383:8	337:12 337:13 338:2	419:4 419:5 419:15
1,008 [6] 373:1	220 [1] 324:2	500 [9] 324:5 383:9	338:22 340:12 340:22	419:18 419:19 420:8
373:4 373:11 389:8	23rd [2] 317:7 317:8	383:20 384:22 389:2	341:5 341:5 341:6	420:10 421:10 422:21
389:18 389:22	24-hour [1] 326:23	390:6 392:2 394:8	341:7 341:19 342:16	423:1 423:25 424:8
1-15-99 [1] 464:17	24th [1] 317:8	404:6	343:10 344:3 344:8	424:13 424:15 424:22
10 [3] 294:21 296:5	25 [1] 317:19	6 [3] 406:3 463:15	344:9 344:9 344:9	425:1 425:2 425:4
376:1	250 [2] 324:18 324:24	463:15	345:3 345:9 345:17	425:5 425:13 426:7
10,000 [2] 364:6	2500 [1] 359:25	6.40B [1] 312:19	346:12 346:13 346:19	426:10 426:17 427:17
364:16	26 [3] 352:10 352:20	60 [1] 324:1	347:7 347:17 347:22	428:1 428:4 430:8
10,500 [1] 364:14	353:2	600-some-odd [1] 404:6	347:25 347:25 348:1	430:15 430:17 430:24
10,561 [1] 364:10	260 [4] 382:23 382:25	611 [1] 321:12	348:6 348:9 348:10	432:13 432:18 433:3
100 [4] 360:18 381:13	383:5 384:1	643 [1] 389:3	348:13 348:15 348:18	433:3 433:25 434:3
423:18 427:16	270 [10] 313:22 321:7	7 [1] 312:1	348:22 349:17 350:22	434:15 435:7 435:9
101 [2] 384:17 394:9	322:17 323:17 323:24	7,000 [3] 364:16 364:21	351:2 351:17 351:23	435:16 435:16 435:17
103 [3] 322:4 334:11	323:25 373:19 381:25	7,009 [1] 364:14	352:18 352:18 352:24	435:18 435:19 436:1
335:10	382:5 383:5	70 [1] 395:11	353:13 353:14 353:23	436:21 439:21 439:25
112.3143 [1] 304:25	280 [1] 324:19	70-person [1] 313:1	354:11 354:12 354:24	440:5 440:15 440:20
113 [3] 334:10 334:11	30 [10] 294:22 301:25	75 [1] 313:1	355:15 355:20 356:6	440:22 441:1 441:3
334:16	302:3 323:25 419:4	8 [1] 426:18	358:2 358:20 358:25	441:5 441:9 441:19
12 [5] 294:22 341:15	419:11 420:9 457:9	867 [2] 389:22 390:1	359:11 359:15 359:22	442:4 442:5 442:25
376:1 376:1 463:13	463:13 463:15	9 [3] 294:22 457:9	359:24 360:4 360:8	443:7 444:1 444:3
15 [4] 409:6 424:3	300 [4] 324:4 418:25	90 [1] 381:14	360:11 360:12 361:2	444:4 444:11 444:16
424:3 463:6	419:9 420:6	a [453] 296:11 297:9	361:5 361:25 362:5	445:19 445:22 446:2
15,000 [1] 358:7	303 [4] 321:14 322:5	298:6 298:8 298:11	362:10 362:13 362:14	446:4 446:7 449:1
1501 [1] 311:4	334:8 335:15	299:2 299:6 299:9	362:16 363:20 363:22	449:5 449:19 449:21
16 [8] 297:1 302:23	310 [1] 321:13	299:16 299:25 300:2	364:11 365:8 366:2	449:24 450:3 452:6
364:19 433:6 435:7	313 [26] 321:4 322:10	300:5 300:18 300:20	366:4 366:19 366:21	452:18 452:25 454:3
437:1 439:13 454:6	323:18 332:13 333:11	300:23 301:15 301:18	366:24 367:5 367:8	454:3 454:7 454:15
16th [2] 448:4 458:21	333:17 333:20 334:7	301:21 302:25 303:3	367:9 368:1 368:2	455:18 455:19 455:5
177 [1] 390:3	334:8 334:16 335:16	303:6 303:15 303:19	368:8 368:19 369:23	455:18 455:23 456:9
18,000 [2] 320:15	373:24 374:4 381:8	303:24 304:4 304:20	371:1 371:19 371:19	456:11 456:11 456:12
358:5	381:13 381:18 383:3	304:21 304:23 304:25	372:18 374:4 374:5	456:12 456:14 457:12
18-96 [4] 297:2	384:10 388:16 388:23	305:2 305:4 305:22	374:18 375:24 376:3	457:20 458:19 458:20
297:7 301:10 303:4	390:2 390:9 390:13	305:25 307:9 307:14	376:17 377:7 377:9	461:15 462:5 462:6
1800 [1] 297:3	394:2 394:11 413:24	309:1 309:2 309:11	377:16 377:18 377:22	463:16 463:19 464:1
1983 [1] 301:19	313-trip [1] 390:19	309:17 310:23 311:6	378:4 378:6 378:21	a.m [1] 294:22
1985 [1] 320:15	314 [6] 324:18 382:4	311:11 311:15 312:1	379:5 379:24 380:5	A1A [26] 321:14
1992 [2] 301:23 302:1	383:4 383:23 388:20	312:8 312:24 313:1	380:8 380:25 382:3	322:1 322:2 328:1
1993 [8] 311:10 311:11	421:2	313:4 313:4 313:4	382:8 383:7 383:10	329:12 330:14 331:11
311:13 312:2 321:9	31st [1] 463:4	313:5 313:7 313:13	383:11 383:11 383:13	331:20 331:23 332:10
332:16 376:19 378:23	320 [3] 324:24 324:25	314:16 314:22 315:1	385:14 385:15 385:16	332:11 332:16 332:21
1995 [12] 301:23	325:1	315:10 315:13 316:2	385:24 386:13 386:19	332:22 332:25 333:12
302:3 317:1 317:10	33408 [1] 294:20	316:12 316:19 316:25	387:5 387:8 388:14	340:11 340:12 343:8
358:4 364:8 364:12	3500 [1] 386:14	317:1 317:25 318:4	388:14 389:4 389:15	353:8 358:3 358:5
364:24 365:15 365:19	3500-foot [1] 313:5	318:7 318:9 318:15	391:1 391:13 391:17	367:12 368:18 412:14
366:9 366:12	360 [1] 294:19	319:5 319:14 319:14	392:21 392:23 393:14	413:7
1995/1996 [1] 364:21	374 [1] 414:1	319:20 319:22 320:4	393:16 393:17 393:23	AADT [2] 357:20
1996 [21] 294:21	378 [6] 384:8 385:12	320:9 320:13 320:13	394:5 394:19 395:8	364:21
297:1 300:19 302:23	386:24 388:21 394:5	320:19 320:22 321:10	395:25 396:11 396:22	able [8] 343:11 351:10
317:1 318:6 320:19	391 [5] 354:19 361:10	321:24 321:24 322:4	397:23 398:5 398:13	352:1 390:24 392:23
357:14 357:20 364:1			398:18 399:8 399:12	395:3 431:22 441:13
			399:16 399:18 400:23	abolished [2] 390:7
			400:25 401:5 401:12	392:5
			401:14 401:15 401:15	above [6] 319:14
			401:23 401:24 401:24	319:15 390:22 392:8
			402:19 403:10 403:21	394:11 396:16
			403:24 403:24 404:2	absence [1] 362:5
			404:4 404:8 404:14	

absolutely [11] 306:9 310:3 310:7 310:9 411:13 427:7 428:10 434:15 437:17 442:21 463:1	409:20 444:6 461:21 addressed [5] 300:14 300:19 316:10 333:7 444:5	360:13 378:22 393:17 394:19 409:6 431:12 432:21 435:7 436:25	always [3] 408:1 434:11 434:11	apparently [6] 304:20 328:25 435:16 435:18 435:19 445:12
academic [1] 416:18	addressing [3] 336:3 346:5 376:20	agree [27] 324:10 336:25 337:5 339:1 339:11 340:2 344:18 346:8 346:14 347:16 347:21 348:7 349:17 354:5 355:21 356:1 365:25 366:1 410:4 410:12 411:6 415:20 416:3 419:21 420:2 439:5 447:13	amending [1] 297:4 amount [5] 348:14 353:17 380:18 396:5 404:8	appeal [1] 452:17 appealing [2] 448:6 448:8
accept [1] 407:17	adequately [1] 396:15	agreeable [1] 459:10	amounted [1] 408:1	appear [2] 350:17 381:12
acceptable [1] 448:18	adjacent [1] 404:10	agreed [1] 313:20	analyses [2] 312:9 379:11	APPEARANCES [1] 295:1
access [4] 334:25 355:24 399:20 424:22	adjourn [1] 462:19	agreement [11] 297:5 330:18 379:8 381:20 384:11 384:18 385:12 387:22 394:4 395:9 398:11	analysis [26] 298:1 312:18 317:16 317:24 317:24 319:8 319:24 327:8 340:3 342:12 349:3 358:21 362:24 363:14 365:20 366:13 372:19 385:25 387:25 396:9 397:10 403:21 417:24 423:12 423:15 424:20	appears [6] 301:19 350:20 350:21 351:3 352:15 406:4
accessed [1] 321:22	adjourned [1] 463:17	ahead [8] 300:25 376:24 378:16 428:25 429:2 429:8 434:20 457:22	analyzed [6] 326:9 352:12 352:18 352:21 354:15 403:18	apple [1] 432:4
accommodate [4] 352:2 435:10 435:12 457:25	adjust [1] 418:1	ain't [1] 363:9	and/or [1] 384:20	apples [3] 327:9 327:9 388:15
accommodated [2] 456:24 457:16	adjusted [2] 319:11 418:3	Alabama [1] 377:20	angle [1] 411:22	applicable [4] 304:25 305:12 306:2 327:21
accomplish [3] 401:9 412:22 415:18	administered [1] 307:5	albeit [1] 299:16	announced [1] 445:23	applicant [55] 298:1 312:5 312:17 312:20 322:15 323:6 327:23 328:19 328:19 328:23 330:20 332:15 332:17 333:14 335:23 336:16 340:17 340:20 378:24 379:8 379:25 383:2 383:22 383:24 384:8 384:12 387:4 394:4 402:8 402:22 407:17 408:9 410:13 415:16 417:20 427:19 431:19 432:1 432:12 433:8 438:4 438:23 442:10 444:10 444:18 444:20 445:4 446:15 446:17 447:1 447:18 447:22 447:24 448:5 449:13
accomplished [12] 379:3 379:12 379:25 380:12 383:18 385:1 385:25 398:15 414:21 418:5 423:5 436:19	admit [1] 339:22	allegation [1] 303:24	annual [17] 301:24 302:10 313:19 327:6 380:15 382:6 382:22 383:5 383:25 388:8 388:16 388:23 389:5 389:23 394:2 394:8 394:17	applicant's [5] 316:13 323:2 328:21 389:21 427:10
accordance [1] 354:3	admonish [1] 462:8	alleged [1] 305:2	another [8] 299:7 304:12 322:9 343:17 346:12 410:9 447:17 453:22	application [62] 297:2 298:15 299:9 301:2 301:9 301:22 302:11 303:3 303:6 304:19 305:3 305:23 308:5 309:23 310:19 311:7 311:10 311:12 311:14 311:17 312:8 313:25 314:1 314:3 314:10 315:1 315:4 315:24 318:8 318:11 318:18 321:15 321:16 324:9 324:13 334:23 335:9 339:18 339:20 340:6 342:3 342:11 346:3 354:4 354:14 355:2 362:7 362:17 362:21 363:3 363:18 363:19 364:18 372:13 372:24 375:14 390:5 390:21 399:22 399:25 422:8 427:14
according [2] 302:12 373:18	adverse [2] 391:18 391:18	Allegiance [1] 296:10	answer [9] 326:3 331:1 333:15 343:11 345:25 393:20 422:10 426:23 434:7	applications [2] 302:19 302:20
account [3] 386:23 394:13 456:21	advice [5] 299:24 300:4 305:12 406:10 431:9	Allen [1] 295:5	answered [3] 408:11 411:1 427:25	applied [3] 398:20 398:21 430:20
accounts [1] 298:17	advise [2] 304:22 407:19	allow [14] 309:25 327:4 352:2 394:25 408:10 444:13 444:14 444:15 445:9 445:20 446:9 446:19 456:8 457:24	answers [2] 408:17 416:2	apply [2] 333:4 407:13
accuracy [1] 433:22	advised [2] 438:3 445:3	allowable [2] 321:5 323:18	Anthony [1] 336:8	appreciate [6] 362:15 410:5 410:21 410:24
accurate [3] 400:21 401:6 415:10	affect [3] 310:2 386:16 443:2	allowed [9] 321:17 322:3 322:9 360:24 372:16 384:17 385:11 441:20 452:12	anticipate [1] 463:15	
accurately [1] 350:17	affected [3] 317:14 317:22 456:22	allowing [1] 327:7	anticipated [3] 365:14 430:6 463:13	
achieved [1] 368:23	affecting [2] 325:19 333:11	almost [5] 303:1 361:13 381:13 435:7 446:3	anticipating [1] 449:18	
acquired [1] 414:16	affirm [1] 325:1	alone [1] 457:22	anybody [3] 308:4 336:3 347:13	
across [1] 325:24	afforded [1] 305:11	alphabetical [1] 413:6	anybody's [1] 457:14	
act [3] 305:17 377:22 430:5	after [23] 298:2 302:3 356:19 376:12 406:3 406:17 408:1 409:3 409:8 410:14 411:9 434:23 436:20 436:25 437:1 437:2 444:9 457:2 458:11 459:1 459:2 459:6 462:4	already [6] 361:12 373:19 397:6 420:23 427:25 447:5	anyone [6] 339:7 369:22 392:15 417:3 446:6 454:11	
actions [1] 337:22	afternoon [1] 441:24	also [31] 299:11 306:16 312:10 312:16 318:3 318:6 318:8 322:7 325:18 331:7 331:10 332:23 338:5 353:19 354:5 387:24 393:23 406:24 407:2 414:15 414:16 423:18 447:25 448:9 448:16 453:25 455:18 457:4 457:4 457:15 460:24	anything [12] 307:13 319:2 376:12 418:22 432:19 442:22 448:15 448:22 450:6 453:9 461:12 462:18	
activities [1] 385:18	again [15] 303:14 313:8 353:4 372:17 374:2 382:18 383:23 384:15 384:24 386:19 394:12 430:12 431:22 446:12 457:22	although [2] 303:23 446:2	apologize [4] 371:17 428:23 441:13 442:17	
activity [2] 387:14 418:1	against [10] 302:21 303:5 305:3 305:22 306:15 374:6 390:1 411:15 442:8 456:4			
actual [6] 315:19 343:7 360:6 380:11 404:22 415:4	agenda [2] 296:12 463:10			
actually [14] 316:9 321:10 337:8 337:18 343:6 348:23 359:14 370:19 376:11 380:9 408:21 415:2 426:11 426:23	ago [14] 343:1 352:13 352:19 353:5 353:25			
ad [1] 447:7				
add [2] 374:13 398:7				
added [1] 335:14				
addition [7] 304:17 313:17 374:12 386:15 386:19 387:23 394:6				
additional [18] 297:16 335:14 374:14 374:15 385:17 385:18 386:4 386:8 386:25 387:12 390:25 393:21 411:10 411:11 415:21 431:7 451:22 458:8				
address [7] 297:19 300:13 300:22 334:23				

428:11 457:15	406:21 414:5 418:17	382:22 383:5 383:25	basically [11] 319:21	395:10 396:7 403:17
appreciated [1] 457:8	422:15 422:25 424:21	384:16 387:9 387:24	321:14 324:9 325:22	414:15 420:23 422:16
appropriate [2] 418:12	449:15 451:23 459:12	388:8 388:16 388:22	327:17 333:25 399:12	426:11 427:2 427:15
429:24	460:1 463:11	389:5 389:23 394:2	406:5 413:25 440:3	434:11 442:10 442:12
appropriately [1]	aspect [1] 402:11	394:8 394:12 394:17	443:4	452:8 460:22 460:24
461:23	aspersions [1] 302:17	400:10 400:16 413:17	basis [18]	462:13
approval [4] 313:3	assist [3] 305:9	421:8 421:13	303:17 303:18 304:20	believed [1] 322:20
315:2 315:23 318:17	305:23 313:9	averaged [1] 318:23	327:6 327:6 364:24	below [6] 313:23
approvals [1] 423:19	associated [1] 421:6	averages [2] 315:15	366:8 374:19 378:15	318:7 318:25 319:10
approve [1] 296:12	Associates [4] 376:17	315:18	381:9 382:6 384:6	319:14 319:15
approved [2] 301:22	377:6 377:9 426:18	averaging [6] 326:11	389:4 419:16 421:9	beneficial [1] 345:13
381:20	Association [1] 429:11	326:16 381:22 381:24	455:11 455:19	benefit [4] 344:20
approximately [4]	assume [13] 347:7	388:9 389:25	Bath [3] 301:12 304:5	344:21 383:1 384:8
331:6 376:1 381:14	351:9 376:9 397:22	avoid [2] 359:9	304:13	best [9] 402:5 411:4
382:4	403:10 418:7 419:14	440:5	Beach [30] 294:6	415:15 415:19 417:18
arbitrarily [1] 400:9	420:3 420:6 420:14	aware [18] 339:3	294:20 311:20 312:10	428:1 450:12 455:25
arbitrary [1] 334:15	423:8 423:9 423:23	339:6 341:12 341:16	312:13 312:19 317:3	458:10
area [16] 320:12 325:19	assumed [1] 398:10	341:18 341:22 345:5	323:3 325:21 325:22	better [5] 326:2
332:18 340:19 341:15	assumes [1] 414:8	353:19 354:16 354:22	327:2 334:20 341:14	369:23 406:19 413:17
341:17 342:4 342:10	assuming [2] 421:5	355:3 355:9 356:5	341:23 342:8 342:22	441:7
343:17 345:15 352:5	422:11	356:6 361:2 412:11	344:12 344:22 345:3	between [14] 315:17
352:7 359:25 365:14	assumption [5] 348:23	412:17 413:8	347:25 360:5 370:6	317:10 325:25 331:19
367:13 391:19	385:25 398:14 419:18	away [3] 350:22 383:14	375:3 375:4 375:12	331:20 384:11 387:16
area-wide [2] 319:19	424:1	418:25	412:19 418:24 418:25	394:4 414:9 416:7
319:24	assumptions [1] 349:6	B [5] 367:9 413:6	427:2 464:4	417:15 418:10 418:14
areas [1] 393:25	assurances [1] 312:12	413:7 413:12 413:14	bearing [1] 332:6	418:18
aren't [3] 358:22	assure [2] 305:11	Bachelor [1] 377:16	become [4] 320:10	beyond [6] 332:18
391:10 391:11	305:13	back [21] 334:6	337:12 357:15 357:15	363:21 388:6 432:13
argue [1] 387:8	atmosphere [1] 406:14	342:12 342:14 343:20	becomes [1] 399:15	451:18 463:15
argument [1] 372:6	attempt [4] 302:14	348:3 348:17 351:17	before [26] 298:7	big [1] 405:2
arguments [1] 438:16	305:10 309:3 436:20	362:2 378:18 391:8	307:14 311:6 336:2	Bill [5] 376:16 377:5
around [7] 324:2	attempted [2] 298:14	409:5 435:13 446:10	347:23 355:4 375:24	380:4 389:7 393:11
339:5 351:17 369:25	447:21	446:10 446:10 446:20	377:12 381:2 384:21	bit [15] 318:7 319:14
448:23 457:6 457:13	attend [2] 395:4	455:6 458:12 458:15	388:3 388:19 389:11	319:14 319:15 319:15
arrangement [1] 301:20	404:2	458:15 462:20	392:1 392:1 400:7	320:9 321:10 350:22
artery [1] 338:23	attendance [7] 394:18	background [1] 347:20	400:12 409:13 410:9	351:2 383:7 388:15
Arthur [1] 308:11	394:20 394:25 399:19	bad [1] 428:22	426:12 426:20 442:13	406:12 407:20 441:20
aside [1] 359:6	401:23 402:20 403:23	badgering [1] 363:6	448:15 453:10 454:6	445:22
ask [46] 297:20 303:9	attending [2] 308:24	ball [1] 452:24	460:23	bite [1] 432:3
303:10 303:14 306:5	405:9	balls [1] 443:19	began [1] 431:11	Blackman [2] 313:13
306:23 306:24 309:20	attention [1] 451:12	banged [1] 359:7	begin [1] 298:8	351:16
333:13 335:22 336:20	attorney [9] 295:12	bar [8] 380:21 381:25	beginning [3] 297:9	bleeds [1] 361:16
342:21 343:16 347:5	300:13 301:8 305:9	426:9 426:17 440:20	300:11 434:2	blending [1] 420:19
349:11 350:2 351:19	372:7 377:25 411:15	443:14 444:1 447:17	begins [1] 331:12	blind [1] 450:8
352:7 360:8 360:10	437:13 446:1	Barr [4] 429:10 429:11	365:4 408:9 438:23	blindly [1] 452:14
366:22 371:7 374:23	attorneys [2] 300:12	451:16 451:16	behavior [2] 337:22	blocked [1] 452:1
389:16 390:8 392:10	434:18	base [3] 309:23 371:22	419:23	board [4] 380:22
395:7 396:22 406:16	attracting [1] 356:4	399:18	being [37] 322:9	383:17 388:2 446:21
406:17 407:10 407:25	attribute [1] 424:6	based [51] 303:20	324:3 328:6 329:4	boards [1] 379:10
409:13 411:9 416:4	attributed [1] 461:5	305:15 306:1 309:21	338:9 340:15 341:6	boat [1] 454:13
426:1 427:5 441:3	August [2] 317:7	312:24 314:9 314:25	344:11 346:10 347:8	body [2] 408:11 441:1
443:14 451:1 451:7	317:10	315:25 316:2 316:5	353:20 359:20 366:4	bono [3] 456:13 456:16
451:19 454:25 455:22	authorized [1] 464:7	316:7 316:25 332:3	368:1 374:5 383:22	457:5
456:21 458:18	automobiles [2] 374:24 375:5	334:19 335:17 335:19	384:1 386:22 397:1	books [1] 417:2
asked [25] 298:24	available [13] 357:16	339:23 349:1 359:19	397:3 397:7 398:15	both [12] 298:17 303:5
303:11 303:12 303:15	365:9 365:11 366:16	365:14 368:7 368:12	401:16 401:16 403:18	304:7 316:9 333:18
304:17 324:23 341:20	368:24 386:20 386:22	383:3 390:20 391:25	409:1 409:9 414:12	386:3 405:4 419:5
359:3 377:11 378:22	397:15 404:11 413:16	392:7 393:10 394:10	419:17 438:4 440:22	440:23 443:2 443:5
405:24 406:22 409:3	418:4 436:23 461:4	396:8 396:8 396:18	441:13 443:25 444:5	447:12
422:2 422:4 422:6	average [33] 316:1	414:2 414:7 414:13	448:23 451:15 454:9	bother [1] 315:12
426:7 435:8 437:21	316:3 317:3 317:5	414:18 414:23 414:24	belies [1] 435:24	bottom [1] 440:7
440:2 440:16 443:25	318:6 318:25 331:15	415:18 417:1 418:7	believe [38] 297:15	Boulevard [36] 297:4
448:24 450:23 460:12	380:15 381:4 381:9	419:22 419:25 423:10	298:5 298:22 298:25	311:5 317:9 321:25
asking [21] 330:12	381:21 382:6 382:18	423:13 423:15 423:18	300:16 306:15 306:19	325:15 325:18 325:23
339:8 342:15 358:10		427:22 430:18 433:13	316:13 316:19 317:10	329:7 329:13 329:14
359:18 361:17 372:25		445:19 460:14	332:23 332:24 336:9	330:8 331:8 331:10
384:22 393:5 402:22		bases [1] 437:15	338:5 340:17 346:24	331:11 331:21 332:6
		basic [1] 398:13	347:24 361:12 364:10	
			386:10 386:21 390:5	

Boy - communication

Condenselt™

TOWN OF PALM BEACH 10-10-96

332:9	332:10	332:22	315:1	353:6	413:1	397:14	418:21	432:1	454:10	454:20	454:21	348:4	348:17	349:5
333:4	333:6	338:14	422:1			448:18			456:19	457:19	457:23	349:13	353:12	358:13
340:15	343:9	343:15	canopy [1]	352:7		certificates [2]	304:6		462:21	463:1	463:5	358:18	360:22	368:25
350:12	350:19	351:24	cap [5]	304:11	361:3	304:8			463:7	463:9	463:10	379:4	379:4	380:17
357:6	358:6	358:9	capacity [33]	318:7		certification [2]	337:13	337:17	chosc [1]		341:10	381:1	381:19	382:23
359:15	359:25	365:22	cap [5]	304:11	361:3	337:13	337:17		circle [2]		331:9	383:1	383:5	384:2
393:25	412:13		319:10	319:11	319:12	certified [1]	349:17		331:10			384:9	386:17	386:18
Boy [1]	428:21		319:12	319:13	319:21	certify [2]	337:21		circulating [1]	379:10		386:18	389:23	391:22
break [1]	375:25		332:16	332:23	333:1	464:7			circulation [1]	341:16		396:12	399:7	399:9
breakdown [1]	358:2		340:13	353:13	353:17	Chairman [1]	356:11		circumstances [1]			401:2	401:8	401:14
breaking [1]	375:25		354:19	354:21	354:24	chance [1]	369:24		396:14			401:15	401:15	401:25
bridge [16]	317:9		357:20	357:24	358:14	change [4]	415:24		cite [1]	417:18		403:16	403:19	403:20
317:13	317:15	318:21	360:12	360:15	360:16	445:1	445:3	445:7	citizens [1]	432:6		404:9	404:18	406:6
322:1	325:16	325:18	360:22	360:25	361:9	characterized [1]			city [2]	337:20	346:13	414:13	414:18	416:10
330:9	332:23	340:15	365:13	368:5	368:6	305:7			city's [3]	312:5		417:16	419:15	
341:5	359:15	365:22	368:7	373:24	390:20	charges [1]	306:15		382:20	390:18		club's [2]		301:9
366:10	464:6	464:15	413:16	424:7		charitable [1]	404:22		civil [2]	377:10	377:16	304:19		
bridges [1]	325:25		caps [2]	314:2	402:22	charity [5]	361:6		claims [1]	417:22		clubs [3]		301:12
brief [2]	434:22	453:8	capture [3]	387:16		361:14	403:11	404:14	clarification [2]			301:14	304:7	
briefly [3]	390:12		393:22	420:21		404:18			407:10	410:9		CM [1]	464:15	
429:18	438:19		car [4]	351:18	359:8	charts [2]	402:16		clarify [7]			co-relationship [2]		
bring [6]	362:2	385:19	359:13	395:24		453:10			359:2	359:10	371:18	414:9	417:15	
411:2	435:4	445:18	care [1]	375:2		check [1]	460:4		390:9	405:23	462:22	code [7]	311:24	312:19
450:10			carefully [3]	309:14		checking [1]	460:5		class [2]	386:13	386:16	345:3	345:4	356:8
bringing [1]	433:10		323:21	451:20		Chicago [10]	346:13		classification [1]			369:18	393:2	
Brisson [2]	331:14		Carlton [1]	370:5		346:18	346:24	347:13	368:2			collect [2]		327:5
460:22			carport [1]	352:7		348:6	348:10	374:23	clean [1]	401:23		401:11		
brought [4]	351:17		cars [10]	328:5	351:4	375:3	375:11	419:1	clear [9]	302:24	305:20	collection [3]	382:11	
420:18	420:19	451:9	352:2	352:10	352:20	chief [4]	430:1	431:20	334:9	377:14	427:7	401:5	414:14	
Broward [2]	311:5		355:24	358:7		432:20	455:6		432:16	433:4	434:17	317:4	318:4	319:12
341:14			cart [1]	351:17		chief-of-police [1]			451:13			324:20	330:3	330:7
build [1]	355:25		case [22]	297:13	299:8	355:4			clearly [2]	431:19		334:16	348:2	348:3
Building [2]	295:11		430:1	431:11	431:20	Chopin [12]	358:25		452:25			376:25	391:8	393:11
370:6			432:20	434:25	435:19	359:22	361:24	361:25	client [6]	312:8		395:11	421:17	429:13
buildings [1]	350:18		435:21	437:14	443:6	362:10	362:15	362:21	319:17	329:21	351:7	430:6	432:8	435:13
built [3]	324:14	403:5	444:10	444:19	444:24	363:2	363:16	363:25	351:15	451:25		436:20	437:5	442:3
425:8			447:20	449:2	449:2	364:5	364:11	364:15	389:20	394:1		445:11	448:10	448:14
bumps [1]	360:3		449:5	453:1	455:6	364:22	365:3	365:6	429:15			460:9		
bunch [1]	423:2		455:10	455:19		365:12	365:23	366:1	client's [3]	318:8		comes [6]	323:9	
buses [1]	375:6		cast [2]	302:16	334:17	366:4	366:15	366:19	389:20	394:1		338:23	384:4	449:24
business [1]	399:16		castigated [1]	436:23		366:22	367:6	367:10	clients' [1]	329:22		453:5	453:19	
businesses [2]	356:3		Castro [1]	295:13		367:15	367:17	367:19	clip [1]	379:17		comfortable [1]	408:15	
356:9			category [2]	368:19		367:21	367:23	368:6	close [1]	383:6		coming [11]	328:20	
butress [1]	435:19		416:12			368:14	368:22	369:4	closed [8]			329:21	346:5	350:5
C [4]	296:1	367:9	cause [3]	368:18		369:7	369:10	369:19	339:4	340:15	341:6	385:3	386:16	415:4
464:1	464:1		391:17	396:4		376:8	376:10	376:11	382:13	430:1	444:10	417:11	425:12	436:3
C-h-o-p-i-n [1]	377:3		caused [2]	350:5		376:23	376:25	377:12	444:18			438:1		
calculated [1]	381:21		358:1			377:21	377:25	378:4	club [82]	297:3	301:2	commencement [1]		
calculation [3]	373:22		Causeway [1]	331:12		378:7	378:13	378:15	301:5	301:12	301:13	297:8		
386:24	398:24		causing [2]	369:1		379:9	379:13	379:19	301:14	301:16	301:18	comment [5]	303:2	
calculations [6]			401:2			380:4	381:2	381:7	302:7	302:21	304:10	333:24	376:8	430:14
364:24	389:17	415:18	ceiling [2]	302:10		381:10	381:16	385:7	304:21	311:9	311:16	445:10		
418:5	419:25	423:4	390:7			386:7	386:13	386:23	313:19	313:22	314:14	comments [10]	297:16	
calendar [1]	404:20		center [3]	325:10		387:5	387:23	389:7	314:15	323:8	323:19	299:22	300:16	309:25
call [9]	296:4	327:18	425:5	425:7		389:12	389:15	389:24	324:3	324:21	331:22	310:18	440:10	443:22
364:2	364:6	366:17	Central [1]	377:17		390:8	392:10	392:20	331:25	332:1	332:5	453:11	460:24	461:20
376:22	413:19	430:3	certain [9]	299:8		393:3	393:8	393:10	342:4	345:11	346:9	commercial [2]	416:17	
440:25			313:6	353:23	367:2	394:12	394:15	395:7	346:16	346:17	347:13	417:8		
called [4]	296:6		404:17	416:15	416:16	395:17	396:3	396:22	347:17	348:1	348:2	commission [3]	302:13	
382:17	428:22	440:13	417:8	431:12		397:3	397:5	397:9				415:22	464:17	
calling [1]	439:16		certainly [20]	316:22		397:12	398:10	399:21				commitment [1]		
camera [2]	369:24		317:14	317:21	326:8	399:24	400:6	400:14				457:12		
379:14			331:21	339:13	339:16	400:23	401:17	406:15				common [6]	346:14	
cancelled [1]	320:21		343:22	343:24	355:19	406:25	407:10	407:22				347:6	347:6	348:6
cannot [5]	304:14		364:4	365:21	367:5	409:23	409:25	411:18				348:22	422:11	
			372:1	386:15	387:11	411:23	412:3	429:17				communication [2]		
						429:20	429:20	430:14				307:15	307:21	
						436:8	436:9	436:10						
						437:16	449:17	449:21						

Index Page 5

curve [1] 443:18	445:17 445:19 448:6	development [27] 311:23 312:12 313:7	documentation [15] 314:12 320:24 324:20	461:20 463:3
D [7] 296:1 367:9	449:4 450:13 450:18	313:11 313:24 321:19	335:8 349:7 355:2	dwelling [1] 385:18
367:16 367:17 367:18	453:16 453:22 454:16	322:11 374:8 374:10	355:12 358:15 358:17	each [5] 303:1 331:6
368:2 368:12	454:18 455:13	379:7 381:20 384:11	358:18 362:22 382:8	332:13 356:17 421:6
Date [1] 341:15	decisions [1] 371:22	386:4 387:12 387:13	398:3 399:4 414:12	ear [1] 462:7
daily [24] 380:15	declaration [1] 297:5	387:20 390:23 391:10	documented [3] 382:3	earlier [6] 306:23
381:3 381:5 381:9	declaration-of-use [3] 330:18 385:12 398:11	391:17 392:24 393:2	414:12 420:12	334:8 341:18 383:12
381:17 381:21 382:22	decline [1] 301:15	393:18 393:21 406:2	documenting [1] 427:3	388:4 430:14
382:25 383:6 383:25	decrease [2] 326:5	416:16 418:11 423:19	documents [6] 314:11	early [1] 327:18
384:6 384:10 384:16	348:25	developments [1] 416:17	315:23 337:19 341:1	easier [2] 379:17
387:9 387:24 388:24	decreased [1] 302:2	differ [1] 353:5	394:2 417:3	409:2
389:4 389:23 394:2	dedicated [2] 402:17	different [8] 318:1	doesn't [12] 320:5	cast [4] 311:4 325:9
394:9 400:10 400:16	404:13	332:5 333:5 380:6	324:21 333:3 348:7	350:10 350:18
413:24 425:4	deeply [1] 409:25	400:22 411:21 444:16	385:24 399:1 421:12	ccho [1] 437:11
damage [1] 359:13	defeat [1] 303:3	445:22	425:7 428:8 428:24	educated [1] 346:20
dance [1] 457:13	defend [1] 452:23	difficult [4] 309:11	455:10 455:19	education [1] 337:2
dangerous [1] 440:21	defer [2] 331:13 376:12	336:1 409:14 454:17	doing [5] 401:15	educational [2] 337:13
data [22] 373:10 380:14	deficit [1] 301:15	dining [1] 312:25	403:10 406:23 424:20	377:14
382:11 392:7 394:1	define [1] 367:6	dinner [3] 403:9	437:6	effect [11] 301:22
396:9 399:2 401:5	definition [2] 371:13	405:1 405:10	dollars [1] 361:14	315:3 338:18 368:25
401:11 404:11 414:16	372:10	direct [7] 353:22	Donald [1] 308:12	369:12 382:4 390:13
415:17 415:25 416:23	degree [1] 328:12	399:18 437:12 437:25	donating [1] 396:25	395:19 400:20 401:1
416:25 417:18 417:19	delay [1] 413:18	451:22 452:4 459:18	done [19] 317:16	424:5
420:1 422:7 423:16	delayed [2] 435:13	directed [3] 299:23	319:4 319:7 320:8	effective [2] 424:17
428:1 428:2	435:24	305:18 439:12	323:7 326:10 327:3	450:21
database [1] 387:3	deliberate [1] 436:20	direction [1] 362:3	328:6 344:17 363:8	effects [1] 301:17
dataset [1] 398:5	deliberations [1] 305:25	directly [4] 298:19	378:10 396:24 402:18	either [12] 301:14
date [1] 423:11	delighted [1] 361:15	329:6 379:1 432:17	412:13 412:18 427:3	303:2 305:22 345:19
dated [3] 300:18	demeanor [1] 429:6	directly-accessed [3] 321:18 332:19 334:24	449:10 450:12 455:4	354:9 369:8 396:12
426:18 464:11	demonstrate [2] 386:1 396:12	directness [1] 410:6	Doney [1] 295:9	408:24 424:25 451:9
dates [2] 341:21 343:4	demonstrating [1] 380:25	director [3] 295:10	door [1] 327:24	453:14 453:16
day [27] 297:10 309:16	denied [2] 396:20	310:24 461:8	double [3] 324:5	elaborate [2] 304:3
320:15 322:18 326:13	410:17	disagree [2] 431:9	399:10 399:11	316:21
327:13 332:17 333:17	department [2] 310:25	436:12	doubled [1] 402:25	elected [2] 299:12
333:20 347:14 348:5	312:3	discounted [1] 382:16	doubt [4] 352:25	299:20
358:5 358:7 358:21	design [2] 303:3	discovery [4] 440:1	384:8 403:7 411:24	element [1] 345:9
381:1 382:1 382:5	315:14	440:4 453:12 454:2	Douthit [1] 308:14	elements [1] 356:7
384:1 402:5 404:4	designed [1] 312:21	discriminated [1] 456:4	down [10] 316:15	eliminate [2] 391:5
404:25 421:7 435:9	designing [1] 315:13	discriminating [1] 411:15	316:21 317:25 319:17	395:17
452:2 452:10 457:8	desire [1] 415:9	discrimination [1] 393:8	319:23 320:3 320:6	eliminated [1] 398:2
464:11	desires [1] 340:17	discuss [6] 311:7	325:23 359:7 382:12	eliminating [2] 322:23
days [21] 317:11	detail [1] 390:17	373:13 441:12 441:19	drawing [1] 380:21	398:6
326:20 326:21 326:23	detailed [3] 343:2	443:15 459:16	drive [1] 395:23	elimination [1] 322:24
327:10 327:11 382:17	362:5 415:17	discussed [1] 423:16	driveway [4] 321:22	else [15] 307:13 356:19
398:2 404:6 404:13	determination [4] 319:22 339:14 444:11	discussing [2] 328:18	421:12 421:16 425:6	366:10 369:7 369:22
404:16 404:18 404:21	453:5	444:3	driveways [3] 329:22	393:6 395:1 403:9
418:25 419:4 419:9	death [2] 360:18	discussion [2] 376:6	334:25 382:15	428:15 431:16 432:19
419:11 420:6 420:9	360:19	463:14	drove [1] 351:16	442:22 450:16 454:11
422:18 446:12	December [1] 463:4	discussions [5] 321:9	drummer [1] 457:14	461:12
deal [14] 298:9 400:25	decide [5] 406:11	322:6 335:11 357:13	due [6] 305:11 386:22	embarrass [1] 302:14
424:3 435:2 437:4	440:17 441:1 441:23	357:13	387:19 390:22 430:22	employees [2] 395:18
445:15 449:23 453:18	442:1	disruption [1] 401:4	434:12	398:12
453:19 455:7 455:23	decided [2] 404:15	distances [1] 353:7	ducs [1] 302:9	empowered [1] 337:18
455:25 458:4 461:23	455:11	distinct [2] 332:4	Dunlop [4] 426:9	enclose [1] 301:23
Dear [1] 301:4	determine [9] 325:20	333:9	426:18 429:10 451:17	encouraged [1] 408:13
death [2] 360:18	328:22 329:2 333:10	distorted [1] 400:15	duration [1] 423:17	encouraging [1] 302:16
December [1] 463:4	333:23 380:15 390:19	Dixie [1] 325:18	during [27] 300:4	end [8] 307:24 330:4
decide [5] 406:11	396:13 417:14	document [7] 343:10	305:24 322:6 325:5	330:7 375:21 431:14
440:17 441:1 441:23	determined [2] 322:7	343:11 426:9 426:14	326:21 326:21 335:11	433:4 436:20 446:11
442:1	335:3	427:18 437:22 437:24	348:5 348:19 355:16	enforcement [2] 353:21 425:11
decided [2] 404:15	determining [2] 346:3		358:9 358:12 358:13	engineer [17] 315:10
455:11	383:19		361:10 361:11 361:14	315:11 323:3 337:12
decision [27] 299:2	detour [2] 360:2		361:19 382:11 399:5	337:17 337:19 338:2
303:7 303:20 305:15	360:4		403:7 423:17 430:4	349:18 364:2 371:3
306:1 309:23 310:2	develop [4] 392:15		432:8 445:5 461:5	
408:12 430:12 430:18	392:17 425:4 456:8			
430:23 430:24 439:8	developing [1] 356:8			
443:7 444:16 444:16				

377:8 377:19 377:22	evaluate [3]	379:4	examination [9]	458:20 460:8 460:21	303:6 303:19 305:14	
387:6 387:7 400:23	422:2 423:13		297:25 349:25 356:18	460:23 461:14	305:25 336:23 338:14	
427:10	evaluating [1]	388:10	408:2 411:9 442:23	expertise [5]	345:15	
engineering [9]	evaluation [1]	436:17	448:17 460:25 461:6	349:19 413:13 416:19	420:6 422:5 422:13	
323:4 341:23 342:8	evaluations [1]	416:22	examinations [1]	422:12	423:8 423:9 423:14	
342:23 376:17 377:10	even [19]	309:2	411:2	experts [7]	434:24	
377:17 403:25	360:22 373:10 373:23		examine [5]	435:3 447:4 447:23	443:1 445:2 445:20	
engineers [9]	383:21 385:23 392:1		412:7 450:8 450:19	448:3 450:11 454:24	447:12 447:21 450:9	
337:3 337:6 352:14	413:16 413:19 417:7		452:15	expires [1]	451:20 455:17 455:18	
366:14 370:20 370:25	420:4 421:16 444:2		examining [3]	379:19	456:3	
428:7 434:9	450:1 450:20 452:14		302:16 363:6	explain [3]	fairly [1]	298:23
enlighten [2]	456:3 460:9 461:10		example [1]	390:12 454:25	fairness [6]	349:13
413:12	evening [1]	327:19	exceed [2]	334:8	446:13 451:25 452:18	
enter [3]	event [8]	361:5	401:21	exposed [1]	452:19 452:20	
395:25 429:14	403:23 404:14 405:2		exceeded [6]	309:1	fake [1]	450:14
455:12	405:9 405:25 425:1		354:21 381:13 384:21	express [2]	fall [1]	368:19
entered [5]	425:13		402:21 413:25	446:25	familiar [4]	336:9
378:13 442:13 448:24	events [39]	354:17	excellent [2]	expressed [1]	338:11 416:13 426:22	
449:16	354:18 354:25 355:6		413:20	456:6	far [12]	313:25 315:15
entering [1]	355:17 357:24 358:13		except [1]	432:13	350:9 375:13 401:21	
entire [4]	358:14 361:3 361:4		425:12	extent [2]	402:6 413:21 431:10	
333:17 333:19 340:7	361:9 361:11 361:19		exception [15]	456:6	437:21 457:11 461:12	
entirely [1]	394:18 394:20 394:25		301:3 301:10 303:4	external [1]	463:9	
entitled [1]	395:5 398:22 399:5		304:19 311:23 316:7	extract [1]	fashion [1]	393:4
entitles [1]	399:9 399:11 399:19		344:20 362:8 362:14	323:13	fault [1]	365:6
entrance [13]	399:5 402:19 402:23		362:17 376:21 378:25	extrapolation [1]	favor [1]	302:18
329:7 329:8 331:23	400:5 403:6 403:7 403:11		396:20 425:3	415:10	faxes [1]	307:9
332:7 332:8 332:10	403:11 403:17 404:14		exceptions [2]	F [7]	February [3]	327:13
332:11 332:13 333:4	404:19 404:21 404:23		370:8	367:9 367:22 368:19	381:11 403:8	
333:6 333:12 352:5	405:6 406:2 421:24		excess [1]	413:15 464:1	feel [6]	308:16 333:25
entrances [8]	424:25 446:4		431:13	F-r-a-n-k [1]	335:16 398:21 410:16	
332:7 333:9 333:11	eventually [1]	354:18	exchange [1]	377:3	457:7	
333:14 333:18 333:21	ever [3]	342:20 353:23	excuse [5]	face [3]	feeling [1]	442:25
350:19	421:24		339:25 343:19 385:9	455:14	feels [1]	409:10
entry [1]	Everglades [4]	301:13	441:18	faced [1]	feet [6]	343:8 358:6
equal [9]	301:24 304:4 304:13		executive [1]	363:24	358:8 386:14 408:7	
346:10 346:10 347:8	every [11]	303:1	298:3	facilities [8]	408:8	
384:10 388:22 414:2	309:15 309:16 319:15		324:8	380:18 385:10 387:1	felt [2]	359:12 461:20
419:17 420:3	320:3 323:8 327:13		350:9	387:8 387:17 401:3	fervently [1]	298:5
equals [2]	342:1 347:13 446:3		426:2	401:8	few [3]	313:17 325:6
399:13	447:2		exhibits [2]	facility [11]	393:16	
equate [2]	everybody [4]	411:16	307:17	385:22 386:20 387:16	field [1]	314:16
421:9	445:20 445:20 463:2		exist [1]	394:11 395:23 396:4	Fields [1]	370:5
equipped [1]	everyone [11]	297:22	existed [1]	401:11 404:2 422:17	figure [2]	321:11
equitable [1]	304:22 306:23 306:25		453:8	428:5	324:6	
equity [3]	307:2 393:6 407:16		existence [1]	fact [47]	figures [7]	323:24
301:25 302:2	431:16 434:16 445:2		existing [10]	309:21 320:13	352:25 357:22 366:15	
equivalent [1]	463:2		320:7 334:12 350:23	325:11 332:4 337:11	417:12 418:2 419:23	
errant [2]	everyone's [1]	335:25	356:8 380:13 380:16	341:20 341:22 343:1	file [2]	362:17 382:10
398:6	everything [8]	340:4	390:23 412:12 413:5	344:8 345:2 352:9	filed [1]	390:21
error [1]	342:1 347:13 446:3		exists [4]	352:24 354:1 354:11	final [6]	298:1 298:2
440:11	447:2		357:5 391:22 417:15	354:17 354:20 354:22	446:8 446:17 447:24	
especially [2]	455:22		exit [3]	359:6 361:2 361:18	447:25	
428:4	evidence [27]	303:21	396:1	362:10 363:7 363:20	financial [6]	298:12
Esperante [1]	305:16 306:2 309:24		exits [1]	364:5 365:12 367:25	298:18 300:2 301:17	
established [8]	425:10 426:3 430:17		332:5	368:17 368:22 371:12	301:22 303:24	
317:21 384:14 390:7	430:19 431:8 431:21		expand [3]	385:8 385:9 387:7	find [5]	320:2 326:4
391:20 396:17 416:6	432:4 432:11 432:12		328:8 332:18	396:19 397:7 398:12	364:17 409:1 409:14	
416:18	432:25 436:1 436:22		expansion [1]	400:15 400:25 413:19	finding [2]	326:1
establishing [1]	438:8 438:13 449:24		expect [5]	417:7 418:9 429:25	fine [5]	351:12 356:21
330:1	438:8 438:13 449:24		416:20 432:1 432:14	433:16 436:10 437:4	407:18 436:12 459:3	
estate [1]	450:2 450:15 450:15		442:19	455:3 456:20 457:25	finish [3]	356:24
311:15	451:14 451:22 452:4		expected [1]	factor [4]	431:24 462:23	
estimated [1]	454:4 458:9		383:19	355:15 424:9 424:11	finished [6]	344:16
352:10	ex [2]	307:15 307:21	experience [3]	424:11	357:1 433:7 437:14	
estimates [2]	exactly [6]	306:7	315:19 319:2	factors [1]		
419:22	335:4 346:7 391:14		expert [21]	346:4		
estimating [1]	425:9 462:2		316:14 336:22 336:23	facts [8]		
419:20	exam [1]	440:20	337:18 359:20 376:14	433:23 433:24 434:4		
Ethics [1]			387:6 400:24 418:9	440:8 449:3 455:20		
302:13			430:4 433:14 433:17	factual [1]		
Europe [1]			433:20 434:9 455:1	factually [1]		
420:16				failed [1]		
				failure [1]		
				fair [30]		

442:16 447:20	399:13 446:11 462:24	418:19 420:15 427:21	427:17 427:21 427:24	311:13 313:8 313:12
Fink [1] 308:11	Frank [3] 312:2	428:2 428:8	428:6 428:11 428:14	313:18 313:20 315:6
firm [5] 310:18 370:4	377:3 429:20	generations [2] 416:2	433:3 436:7 437:8	hate [1] 400:18
376:17 377:10 431:6	frankly [3] 318:15	416:8	437:9 437:9 437:18	health [4] 312:22
first [30] 297:16 313:18	366:23 430:6	generically [1] 392:11	459:15 459:16	316:8 344:9 344:23
315:15 317:1 327:13	Frederic [10] 310:16	Gentlemen [1] 426:13	great [3] 299:16 390:17	hear [15] 315:14 315:19
328:15 336:20 350:20	310:25 311:3 311:8	genuine [1] 302:17	400:25	316:17 361:15 383:15
358:7 358:9 362:1	311:13 313:8 313:12	gets [3] 320:2 409:22	greater [1] 404:8	389:7 389:9 389:12
376:10 377:3 379:3	313:18 313:20 451:16	411:16	green [4] 380:21	400:6 409:11 433:9
380:2 380:23 381:22	frequent [1] 419:14	getting [11] 323:10	462:8 462:10 462:11	434:17 445:18 458:8
388:9 388:21 389:25	frequently [1] 404:19	329:3 343:5 345:14	ground [6] 431:12	458:16
394:15 399:3 406:23	Friday [1] 327:18	345:24 369:24 383:6	431:15 431:18 433:5	heard [26] 297:23
407:12 420:15 421:2	front [5] 327:24 329:6	416:14 421:3 428:16	443:17 445:7	315:11 323:24 324:18
434:2 444:17 445:22	329:7 329:8 380:21	441:5	groups [1] 337:21	324:19 330:25 334:10
451:7	fulfill [1] 441:13	give [23] 309:13 311:11	grow [2] 385:24 392:8	334:11 377:25 389:10
five [5] 313:4 320:17	full [8] 306:17 354:19	336:23 337:18 340:5	growth [6] 323:20	390:10 395:10 402:20
324:16 393:14 446:12	385:5 401:24 401:24	346:19 349:7 349:7	324:4 383:19 391:16	410:20 415:23 429:17
five-car [1] 353:13	423:22 429:12 434:3	363:18 366:18 366:19	391:16 391:21	433:13 435:3 436:8
five-minute [1] 375:25	fully [1] 298:23	374:17 378:14 384:7	guardhouse [6] 350:21	448:12 452:3 454:21
fix [1] 463:10	function [1] 399:16	398:24 400:20 415:15	350:23 350:25 351:3	454:23 455:15 458:21
Flanigan [1] 431:5	functions [1] 399:6	422:1 429:15 430:9	351:4 351:8	461:13
flexibility [1] 439:25	fundraisers [1] 404:22	455:23 457:12 458:3	guess [21] 320:1	hearing [34] 297:7
floor [1] 462:22	further [20] 301:8	given [13] 296:9	320:4 325:20 328:14	297:11 298:6 300:5
Florida [13] 294:20	304:18 305:2 322:2	347:16 348:21 365:15	338:10 343:5 344:25	300:11 303:1 303:18
302:12 302:13 311:1	324:15 341:9 350:22	368:8 392:16 397:20	345:24 346:20 347:11	305:5 347:19 389:15
311:4 311:5 337:9	351:2 358:23 365:17	404:20 404:25 424:4	352:6 397:6 411:21	407:15 431:11 431:14
371:5 377:18 377:19	375:16 397:12 398:25	431:9 436:21 453:2	416:5 419:19 430:9	431:17 432:22 433:25
377:22 464:3 464:16	425:21 425:24 433:25	gives [1] 299:24	441:21 446:14 448:7	434:2 434:3 434:24
flow [3] 354:8 380:13	444:14 444:15 452:16	giving [1] 363:9	450:7 461:19	435:8 435:23 435:25
424:17	462:18	gladly [1] 458:2	gucst [3] 312:25 323:16	436:24 436:25 439:22
fluctuation [1] 391:2	future [9] 323:20	glance [1] 350:21	393:18	446:2 446:21 452:1
fluid [1] 455:24	324:3 383:12 383:18	go-ahead [1] 392:17	guidance [3] 299:25	452:18 456:23 456:25
fly [1] 347:13	391:13 391:24 401:22	goal [1] 394:7	429:22 430:10	458:12 460:15 463:4
focus [1] 447:4	407:11 414:14	golf [2] 313:5 351:17	guy [1] 450:4	hearings [3] 309:25
folks [1] 391:11	G [1] 296:1	gone [3] 317:25 322:2	habits [1] 428:22	310:1 432:15
follow [6] 309:17	game [1] 299:13	363:21	hadn't [1] 463:13	heart [1] 361:16
369:25 385:7 409:2	games [3] 436:11	good [10] 296:3	half [5] 321:24 327:24	heavily-used [1] 368:2
409:14 440:19	436:13 437:5	310:22 346:19 349:23	328:11 332:25 341:6	heighten [1] 453:3
follow-up [1] 407:25	gates [1] 382:13	365:8 382:8 403:10	hand [3] 363:2 409:19	held [3] 376:6 417:2
followed [2] 296:10	gave [5] 316:19 371:14	416:4 418:9 440:25	455:18	455:6
354:13	372:11 398:2 447:21	gotten [3] 326:19	handle [2] 356:16	Hell [1] 306:8
following [1] 317:12	gee [2] 417:4 456:3	463:8 463:13	396:15	help [7] 299:1 353:22
footage [1] 416:21	general [2] 348:13	govern [1] 315:23	handled [2] 356:17	354:6 368:15 424:17
foregoing [1] 464:8	403:24	governing [1] 318:17	440:22	433:19 450:12
foresee [1] 409:18	generally [1] 446:3	government [1] 367:23	handout [2] 402:5	hence [1] 432:7
forget [1] 456:23	generate [9] 388:20	grading [1] 413:14	404:5	high [1] 317:4
form [1] 354:24	388:24 389:3 389:22	grandfathering [1] 356:7	handouts [3] 378:19	higher [5] 319:5
formal [1] 430:20	393:19 416:2 419:10	granted [1] 390:22	379:9 450:24	320:9 365:16 394:25
formed [1] 318:11	420:7 422:19	granting [1] 376:21	hands [2] 307:3	421:14
formula [2] 397:24	generated [8] 348:14	graphic [1] 379:21	449:8	highest [1] 320:16
399:11	383:1 384:2 387:19	Graves [60] 356:11	handsome [1] 411:20	highlighted [1] 393:14
Fort [4] 311:5 329:15	393:24 395:1 417:1	356:11 356:21 356:25	happen [5] 406:12	himself [2] 306:5
338:7 338:9	418:14	370:2 370:4 370:10	429:4 452:11 455:9	407:5
forth [8] 348:17 431:18	generating [3] 382:5	370:12 370:18 370:22	455:10	hired [2] 363:17 450:5
446:10 446:10 446:11	383:5 384:15	371:1 371:3 371:5	happened [6] 311:10	historical [1] 327:8
446:20 458:15 458:15	generation [39] 313:22	371:7 371:10 371:12	366:9 412:1 435:4	historically [1] 320:10
Fortunately [1] 299:20	333:19 335:13 349:5	371:17 371:21 371:25	449:6 460:14	holds [2] 301:11
forty [1] 364:12	379:2 379:5 379:6	372:4 372:14 372:20	happening [2] 394:23	315:18
forward [2] 377:1	379:25 380:16 381:18	373:3 373:7 373:10	438:1	holiday [1] 401:12
444:20	381:25 382:23 383:25	373:16 373:18 373:22	happy [3] 304:2	home [1] 348:2
found [2] 318:3	384:7 385:15 386:2	374:3 374:9 374:12	407:23 408:4	honest [2] 365:7
324:15	386:6 386:12 386:22	374:15 374:17 374:21	299:4	459:21
Foundation [1] 366:5	389:19 394:3 394:9	375:2 375:7 375:10	harassing [2] 299:3	honestly [1] 400:20
four [8] 296:25 313:3	394:10 394:22 395:6	375:15 425:25 426:1	hard [3] 380:7 415:1	Honor [3] 428:20
320:5 325:12 386:8	396:2 400:3 401:7	426:5 426:6 426:16	415:2	428:22 429:5
	403:19 414:10 416:12	426:21 427:5 427:13	Harris [10] 310:17	hope [3] 298:6 411:1
	417:21 418:10 418:13		310:25 311:3 311:8	

457:14	imposed [2]	379:7	individually [1]	internal [3]	387:15	380:10	390:6	428:3
hopefully [1]	441:17	390:2	310:5	393:22	420:21	Jack [2]	295:7	302:6
hoses [1]	329:22	impression [1]	452:3	interpreted [1]	299:6	jams [1]	355:25	
hotels [1]	320:20	inaccurate [3]	343:14	interrupt [2]	380:4	January [5]	318:6	
hour [7]	315:14	461:22	461:22	457:19		320:20	358:4	381:11
373:13	378:8	inches [1]	382:9	intervene [2]	410:14	403:7		
388:13	413:5	inclinations [1]	346:11	410:18		Jeffrey [1]	310:23	
hours [2]	316:6	inclined [2]	346:16	intervening [1]	444:23	job [2]	363:17	365:8
394:23		457:7		into [21]	298:3	John [3]	295:12	308:11
house [1]	327:25	include [6]	342:12	325:12	340:4	441:8		
however [15]	299:15	403:16	415:2	377:12	378:11	joint [1]	453:21	
312:6	314:14	420:16	450:24	394:13	397:24	journals [1]	416:18	
318:9	323:23	included [11]	317:23	403:5	405:21	judgment [1]	299:9	
372:23	376:14	322:11	339:19	426:3	428:19	judicial [1]	446:3	
399:25		354:14	364:21	429:10	450:2	juggling [1]	457:6	
415:16	435:16	374:8	405:25	458:13		Julie [1]	445:25	
448:19	458:7	451:3		introduction [2]	441:10	449:24	jump [1]	366:8
huge [1]	383:11	includes [2]	333:20	investigated [3]	325:15	326:7	junction [1]	343:9
huh [1]	337:4	423:17		325:15	326:7	340:13	June [2]	301:25
humans [1]	419:24	income [1]	347:12	investigation [1]	318:3		K-e-n-d-i-g [1]	445:25
hurt [1]	411:18	incomplete [1]	363:3	invite [1]	456:7		K-o-l-i-n-s [1]	431:4
hypotheticals [1]	423:2	inconsistent [1]	435:23	invited [1]	314:17	Katz [1]	431:5	
idea [4]	360:24	incorporated [2]	354:2	invitees [1]	399:19	keep [6]	309:2	360:14
457:2	462:16	354:2	377:7	invocation [2]	296:8	391:21	443:18	456:21
identified [3]	340:12	incorrect [1]	426:23	296:9		458:15		
340:14	341:5	increase [14]	302:9	involve [1]	328:10	keeps [1]	369:25	
identify [4]	323:12	323:22	328:9	involved [5]	353:20	Keith [6]	413:4	
328:3	349:4	364:12	386:5	355:20	366:25	426:2	426:11	426:22
ignore [1]	341:10	390:3	393:24	427:1	451:15	427:1	451:15	
III [1]	294:10	396:5	404:1	423:10	425:15	Ken [4]	356:11	370:4
illustrate [1]	379:22	424:11		432:18	432:19	426:6	437:9	
Ilyinsky [21]	295:4	increased [19]	301:16	435:5	439:23	Kendig [2]	445:24	
306:6	308:16	301:25	383:20	443:6	454:1	445:25		
310:3	310:9	385:20	385:21	informed [2]	304:6	kept [1]	412:18	
360:10	360:21	386:21	387:19	305:14		Kimley-Horn [3]	316:25	357:14
361:22	425:19	386:21	387:19	inhibit [1]	385:4	316:25	357:14	368:8
440:17	441:18	394:20	394:21	inhibited [1]	382:14	kind [5]	302:7	326:15
442:5	447:13	396:2	396:3	initial [1]	431:11	392:13	393:21	444:1
460:13	461:15	400:9		initially [1]	435:20	kinds [3]	374:18	
imagine [1]	323:10	403:20	403:22	injured [1]	411:18	380:6	432:14	
immediately [1]	409:3	403:4		inquire [1]	338:17	knew [1]	359:4	
impact [5]	326:8	indeed [2]	431:13	inquired [1]	339:6	knowing [2]	369:5	
365:20	390:13	444:8		inside [1]	375:8	369:8		
404:9		indefinitely [1]	446:20	instance [1]	370:12	knowledge [4]	393:9	
impacted [1]	365:21	independence [1]	302:17	instead [2]	316:3	399:23	400:4	425:14
impacts [10]	314:11	independent [1]	386:3	440:12		knows [2]	391:5	
325:7	362:25	indicate [11]	312:4	Institute [1]	428:7	442:11		
388:10	390:14	312:18	312:20	integrity [1]	300:6	Kolins [24]	431:1	
391:15	396:16	318:12	331:18	intend [1]	450:10	431:2	431:3	431:5
impartial [6]	299:9	357:10	373:24	intended [3]	299:1	433:2	434:13	434:14
303:7	303:19	392:7		395:13	402:1	434:20	434:21	437:16
305:25	430:18	indicated [20]	312:8	intending [1]	430:3	449:17	451:4	451:5
impeaching [1]	433:22	312:10	314:10	intends [2]	306:25	454:11	456:16	456:17
impede [1]	440:10	319:3	321:12	459:17		457:17	457:18	457:21
impediments [1]	354:8	335:24	341:18	intention [1]	298:22	458:1	458:5	458:18
implementation [1]		357:12	358:4	interest [9]	298:12	460:5	460:12	
394:6		370:13	372:23	298:18	300:2	Kravis [1]	325:10	
implemented [1]		373:3	381:24	303:25	304:21	ladder [1]	389:1	
312:15		389:13		305:8	446:12	laid [2]	430:2	431:13
implementing [1]		indicates [3]	313:21	interested [2]	362:4	Lakes [1]	311:4	
313:10		324:2	357:19	447:6		land [5]	312:12	350:18
implied [1]	344:25	indicating [4]	312:14	interject [3]	405:20	392:22	393:1	416:11
important [3]	429:23	326:6	329:21	intermix [1]	420:18	lane [6]	351:23	352:1
434:15	443:1	indirectly [1]	298:20			352:13	353:2	353:11

353:15	460:4	456:14	378:7	406:7	411:6	346:25	347:10	347:17
large [1] 380:22	letter [19]	local [1] 370:5	425:16	426:16	428:23	348:25	350:11	352:6
larger [2] 379:10	300:1 300:18 300:22	located [3] 311:3	431:2	432:22	433:12	353:12	354:18	355:5
444:4	300:24 303:9 312:1	312:21 380:9	434:1	437:9	438:25	357:6	360:13	367:13
last [17] 308:1 308:2	318:15 371:19 372:18	location [9] 319:9	451:4	453:7	459:7	368:9	368:18	380:1
308:6 313:13 313:17	374:4 381:24 400:1	327:10 329:12 331:19	461:19	462:21		380:10	380:13	380:16
314:14 314:15 314:17	404:25 413:6 426:10	343:7 351:8 354:9	Maddish [1] 308:12			381:18	384:2	393:4
314:22 316:15 320:5	426:17 426:19 451:17	421:22 421:25	made [30] 300:20			415:5	416:10	419:10
320:17 324:23 393:12	letters [3] 300:21	locations [3] 327:2	303:2 307:13 354:12			425:11	461:1	
429:3 433:5 433:8	307:8 373:23	327:5 353:23	362:4 364:5 364:23			March [3] 320:20		
late [1] 463:7	level [14] 367:8	logic [2] 394:24 422:11	382:3 383:12 388:6			381:11 403:8		
later [4] 406:25 429:13	367:10 367:12 367:16	logical [10] 390:24	388:7 400:2 403:24			Mary [1] 295:14		
436:4 441:14	368:1 368:11 368:19	403:25 409:7 411:5	408:12 409:9 410:15			Massey [1] 451:25		
Lauderdale [4] 311:5	383:20 391:18 392:2	415:9 419:8 419:13	417:23 430:14 438:9			material [1] 452:15		
329:15 338:7 338:10	394:5 413:5 413:12	419:18 419:22 420:3	438:11 438:16 443:23			matter [13] 320:13		
law [14] 302:12 304:24	413:14	logically [9] 385:19	443:23 444:17 451:13			363:7 363:20 365:12		
304:25 305:13 306:2	levels [2] 319:1	387:15 393:20 394:19	457:20 460:24 461:2			367:25 368:17 418:7		
353:21 370:4 408:3	412:12	395:21 396:4 404:2	461:3 462:5			421:12 437:5 449:20		
412:25 425:10 431:5	license [1] 377:23	414:8 415:6	mailing [1] 366:20			449:21 454:19 456:20		
440:20 442:6 454:3	licensed [7] 337:8	long [5] 360:4 407:15	main [4] 329:8 332:7			matters [3] 300:9		
laws [1] 371:5	337:12 338:2 349:19	410:8 457:11 463:16	333:1 402:10			306:20 460:17		
lawyer [3] 300:6	371:1 387:6 416:19	look [21] 321:21 321:25	maintain [2] 303:5			max [1] 361:20		
366:2 441:4	licensing [1] 378:1	331:15 338:1 341:2	424:22			maximum [5] 355:17		
lawyers [8] 363:6	light [1] 415:8	350:16 351:1 362:16	major [3] 338:22			384:13 385:11 386:24		
397:16 435:17 440:23	likely [2] 396:4	363:23 367:1 372:25	401:12 452:7			389:2		
443:13 443:24 447:18	400:17	374:24 378:20 391:3	make [46] 299:6			may [39] 298:22 299:23		
450:9	likewise [1] 353:9	393:12 400:22 417:4	299:11 302:24 305:14			309:17 312:1 317:10		
lay [1] 433:5	Lilia [1] 308:14	422:5 427:25 439:2	305:20 305:25 311:6			318:8 326:8 338:11		
layout [1] 350:18	limit [12] 297:20	449:8	315:1 319:18 341:3			343:22 343:25 359:8		
lead [4] 326:4 386:5	332:24 333:16 381:3	looked [7] 341:4	347:9 348:8 348:17			360:8 368:25 368:25		
386:11 386:21	383:3 384:10 385:6	343:6 343:10 402:11	348:22 349:19 371:22			369:3 369:3 369:4		
learn [4] 345:8 355:13	388:23 389:5 390:6	417:12 417:14 427:18	378:16 385:15 387:21			369:4 371:18 374:21		
413:4 424:2	413:24 447:6	looking [9] 317:16	398:8 399:15 415:10			395:23 399:5 399:7		
learned [3] 299:13	limitation [1] 374:9	326:4 373:1 373:4	420:7 422:23 427:7			400:21 406:7 407:10		
409:1 429:7	limitations [5] 312:7	411:17 411:18 411:19	430:7 430:17 430:23			413:19 416:11 425:16		
least [7] 308:21 347:7	314:2 314:10 318:13	430:16 439:1	430:24 431:20 439:7			425:17 426:1 429:17		
395:9 430:7 433:23	372:24	looks [2] 398:18	443:7 444:11 445:16			434:13 436:8 436:18		
435:16 451:14	limited [5] 332:19	407:15	445:19 446:7 449:4			443:20 445:24 450:25		
leave [2] 334:1 412:3	333:17 333:20 423:10	LOS [1] 367:10	450:17 452:15 453:5			456:3		
leaving [2] 328:7	447:3	lost [1] 359:8	453:16 453:21 454:18			maybe [10] 309:1		
403:12	limiting [1] 459:11	lot [14] 322:19 327:17	455:13 456:9 458:5			334:10 334:15 345:25		
led [1] 319:5	limits [5] 334:21	327:19 330:3 359:16	making [11] 339:13			351:7 362:3 385:21		
left [3] 352:13 353:1	369:11 379:6 390:25	360:4 366:24 380:5	349:6 360:1 389:16			429:5 433:19 454:25		
353:14	392:5	405:12 440:5 452:6	397:14 414:6 416:22			mayor [29] 295:4		
left-hand [2] 351:23	line [3] 386:16 388:23	452:19 456:12 461:15	443:24 450:13 451:13			305:9 305:13 305:18		
353:11	440:7	Louisiana [1] 377:19	454:15			305:20 306:6 308:15		
legal [3] 433:18 434:18	links [3] 321:18 334:24	love [2] 316:22 450:3	man [3] 300:5 365:7			308:16 308:20 308:22		
443:15	334:25	low [3] 317:3 318:20	450:19			310:3 310:9 360:8		
legally [1] 461:22	list [3] 309:2 366:20	318:22	Manager [1] 295:9			360:9 360:10 360:21		
legitimate [2] 433:16	454:3	lower [8] 317:19	manipulate [1] 397:25			361:1 361:15 361:22		
448:10	listened [1] 309:13	317:19 340:13 341:5	manner [4] 300:14			370:3 425:19 428:24		
length [1] 352:18	listening [1] 323:21	341:8 351:4 384:7	305:6 407:18 455:24			440:17 441:18 441:23		
lengths [1] 353:8	literally [1] 314:18	421:14	manual [3] 335:13			447:13 460:10 460:13		
Leslie [2] 295:6	little [19] 318:7	lump [1] 395:25	416:12 428:8			461:15		
302:6	319:14 319:14 319:15	lunch [12] 348:2	many [14] 298:10			McDonald [34] 295:7		
Lesly [2] 295:3	319:15 320:4 320:9	376:1 376:13 434:19	320:20 322:13 324:22			296:21 296:22 302:6		
301:6	320:13 350:22 351:2	441:17 458:11 459:1	391:5 392:8 397:20			302:11 303:11 306:10		
less [1] 424:11	360:13 383:7 388:15	459:2 459:6 462:4	397:22 419:21 434:7			306:11 308:9 308:10		
let [24] 330:22 343:16	406:12 407:20 440:23	462:19 463:18	441:6 460:3 460:11			310:10 316:11 316:12		
344:16 352:7 360:10	441:6 441:19 445:22	luncheon [1] 463:19	460:12			316:19 318:19 318:24		
366:22 371:7 374:23	live [8] 299:18 338:12	ma'am [1] 309:18	Mar-a-Lago [53] 297:3			320:1 320:18 398:16		
378:9 378:18 380:4	338:13 345:20 345:21	machine [1] 380:11	301:2 301:5			402:3 402:4 402:13		
385:7 390:8 392:10	359:6 407:23 420:16	machines [2] 380:9	301:14 301:16 302:1			408:19 408:20 409:1		
395:7 396:22 416:3	lived [4] 325:24 346:24	382:12	302:4 302:7 302:8			441:3 442:24 442:25		
422:23 427:5 436:11	418:24 420:5	madam [24] 300:16	302:21 304:10 308:19			443:9 445:17 448:13		
443:4 449:21 458:11	living [5] 346:11	303:8 336:9 356:11	311:9 311:15 313:19			453:17 456:1 456:15		
	346:22 348:10 419:9	357:2 370:2 376:11	314:17 321:5 321:6			McDonald's [1] 448:17		
			329:6 330:15 331:22			McLendon [32] 295:8		
			334:12 335:7 342:5			296:19 296:20 306:9		
			342:10 345:11 346:9					

308:23	308:24	309:6	420:5	421:2	421:2	monetary [3]	304:5	335:25	336:1	336:8	461:18	462:2	462:8
309:7	309:10	310:8	423:9	424:3	431:25	304:7	304:9	336:10	370:4	377:2	462:13	462:17	
315:9	315:10	316:2	442:19	445:24	448:2	monitor [2]	387:13	377:3	377:5	431:3	Natale's [1]	462:7	
325:3	330:13	334:5	membership [41]			391:21		438:22	445:25	450:20	naturally [1]	340:11	
334:6	335:2	335:16	304:11	304:21	345:10	monitored [1]	387:21	names [1]		460:16	nature [5]	355:22	
367:22	397:18	397:19	348:20	360:23	368:23	monitoring [8]	313:10	narrowed [1]	321:7		360:1	361:6	397:23
398:9	409:15	409:16	372:15	372:21	379:6	328:20	342:9	Natale [204]	336:8		459:18		
440:11	443:8	446:23	380:17	383:4	383:8	396:11	401:18	336:8	336:13	336:17	near [5]	324:24	357:6
446:24	446:25	447:9	383:20	384:13	384:21	412:21		336:19	336:25	337:5	391:23	401:12	401:22
458:14			385:5	385:24	386:4	month [1]	435:7	337:11	337:16	337:24	nearer [2]	324:24	
mean [14]	347:11		386:20	388:18	389:2	months [5]	313:18	338:5	338:9	338:16	necessarily [5]	341:2	
359:5	360:16	360:18	391:6	392:2	394:5	342:1	343:1	338:22	339:1	339:9	399:15	400:15	403:14
360:21	361:4	370:21	394:7	399:10	399:17	436:24		339:11	339:17	339:21	405:3		
389:8	395:5	399:10	402:17	403:20	414:1	Moore [8]	295:10	340:2	340:24	341:10	necessary [2]	379:14	
404:16	405:8	449:22	414:3	414:9	414:13	310:13	310:16	341:22	342:2	342:7	411:24		
460:19			414:24	416:7	417:16	330:5		342:15	342:20	343:5	need [18]	318:13	
meaning [1]	413:17		417:22	418:10	418:18	330:22	330:24	343:16	343:22	344:1	321:23	324:19	328:23
meaningful [1]	339:13		421:5	421:9		375:21		344:4	344:6	344:7	334:23	337:14	341:9
means [6]	307:21		memberships [2]			morals [2]	312:23	344:15	344:18	345:2	384:25	425:5	425:7
325:24	360:25	367:1	304:12	347:3		316:8		345:7	345:21	345:24	425:10	441:16	441:19
374:12	413:13		mention [2]	309:3		more [50]	313:3	346:2	346:8	347:2	442:7	443:1	453:15
meant [2]	359:10		457:3			335:3	343:2	347:15	347:21	347:24	455:3	460:18	
359:11			mentioned [12]	321:3		346:17	346:24	348:13	348:20	349:16	needed [5]	328:24	
measure [1]	418:13		322:19	338:6	343:17	348:5	348:16	349:23	350:2	350:8	339:7	418:1	455:5
measured [2]	316:15		344:8	344:24	360:12	360:17	360:18	350:16	350:24	351:9	461:21		
327:23			450:23	453:11	460:16	375:18	379:1	351:13	351:19	351:22	needs [3]	316:9	
measurements [2]			460:16	460:17		384:17	385:9	352:1	352:5	352:23	318:11	333:19	
351:14	351:20		merely [4]	297:9		389:4	393:17	353:9	353:16	353:19	negotiated [1]	389:6	
measuring [1]	329:10		328:6	423:10	459:11	393:19	395:1	354:1	354:5	354:11	negotiations [2]	313:7	388:6
mechanically [1]			merit [1]	455:11		404:19	405:12	354:16	354:22	355:3	neither [1]	302:5	
380:8			Messrs [1]	302:10		409:14	413:16	355:9	355:13	355:19	net [1]	393:23	
medical [1]	424:22		met [4]	312:7	312:11	415:10	415:25	356:3	356:10	357:1	network [1]	335:1	
meet [16]	312:5		323:1	413:25		419:15	420:7	357:2	357:4	357:9	never [3]	440:20	
314:3	314:5	318:16	method [3]	408:10		422:17	422:18	357:22	358:10	358:23	453:9	453:9	
331:16	369:15	369:16	418:13	447:11		433:24	439:10	359:1	359:11	360:20	nevertheless [2]	302:13	303:14
369:17	378:2	390:11	methodology [4]			442:2	445:12	361:1	361:17	361:23	new [33]	318:4	356:8
392:25	393:5	442:3	317:2	390:19	391:20	447:7	451:15	371:13	371:15	371:15	368:12	386:25	387:7
443:11	443:15	443:25	412:21			454:17		371:17	408:6	408:8	387:11	387:16	387:18
meeting [13]	294:7		Miami [1]	311:3		Moreover [1]	298:21	408:10	410:16	410:19	392:21	415:25	416:2
296:4	297:6	298:5	microphone [3]	343:20		morning [6]	296:3	410:23	411:6	411:13	418:4	418:5	432:4
302:24	308:3	308:7	383:14	405:21		310:22	408:17	411:19	412:6	412:8	432:12	432:12	432:17
324:23	335:11	342:16	middle [2]	412:1		442:13	461:12	412:10	412:17	412:24	432:18	433:10	435:5
355:8	372:22	433:5	452:7			most [4]	343:22	413:3	413:11	413:19	435:19	435:21	435:25
meetings [5]	297:8		midst [1]	458:2		400:17	440:21	413:22	414:5	414:15	437:3	438:8	438:13
308:24	313:6	321:9	mile [6]	321:24	327:24	motion [1]	296:11	414:22	415:8	415:20	444:24	445:5	445:10
322:6			328:11	329:9	332:25	motorcycles [1]		416:3	416:10	416:14	447:3	449:24	452:12
meets [1]	387:21		341:6			375:6		417:2	417:7	417:11	452:12		
member [22]	301:7		million [2]	361:13		move [3]	343:17	417:25	418:6	418:16	next [4]	310:14	324:12
301:18	302:6	305:1	361:13			383:14	395:3	418:23	419:3	419:8	408:22	435:9	
309:11	323:16	346:18	mind [5]	311:18	360:11	moved [1]	296:13	419:17	419:21	420:2	night [3]	309:15	405:10
347:17	347:22	347:25	428:24	429:1	429:2	Moyle [1]	431:5	420:23	421:3	421:15	405:13		
348:6	348:9	373:11	minimal [2]	386:15		Mrs [13]	296:23	421:20	422:4	422:9	nine-hole [1]	313:5	
374:19	384:6	418:1	413:18			301:17	302:20	422:15	422:21	422:25	nobody [1]	455:6	
418:24	419:6	419:9	minimum [1]	393:1		306:22	307:1	423:6	423:21	424:2	noise [2]	347:20	401:3
420:5	420:8	421:6	minute [4]	329:24		308:14	369:23	424:10	424:15	424:24	non [1]	423:18	
members [52]	299:1		359:22	433:3	433:3	411:24	451:25	425:9	425:16	425:21	non-club [1]	416:1	
306:4	307:19	321:13	minutes [1]	409:6		municipality [1]	424:16	426:1	426:4	428:15	non-member [1]	416:1	
324:5	324:5	324:18	misleading [1]	365:15		must [5]	297:19	428:16	428:20	429:3	non-town [1]	419:3	
324:18	324:19	324:22	mistake [2]	449:15		312:20	345:11	429:9	429:15	429:16	none [1]	396:18	
346:9	352:16	368:24	462:5			327:10	304:18	432:16	433:10	433:12	nor [2]	302:6	304:24
370:3	373:2	373:5	misusing [1]	453:1		327:7	327:7	434:23	435:25	438:19	normal [1]	403:16	
379:20	382:4	383:4	mitigating [1]	396:14		370:17	370:24	438:21	438:22	438:22	normally [2]	404:17	
383:17	383:23	384:9	moment [5]	374:21		452:23		439:12	439:17	440:14			
385:9	385:13	386:25	462:6			n [2]	296:1	441:10	441:22	442:2			
388:20	388:21	389:3	moments [1]	393:17		N-a-t-a-l-e [1]	336:14	442:8	442:17	442:21			
389:8	389:18	389:22	Monday [1]	327:17		name [16]	307:22	443:11	447:16	448:7			
394:6	394:8	397:17				310:22	315:7	449:1	451:13	453:7			
398:20	401:2	403:8						453:25	454:5	454:12			
404:15	404:25	408:15						454:21	457:24	458:19			
414:4	418:15	420:3						458:22	458:24	459:2			
								459:7	459:10	459:14			
								459:21	459:24	460:4			
								460:14	460:21	461:9			

432:14	occurred [9]	314:13	406:6	outside [4]	310:1	392:13	428:6	449:23
north [12]	314:15	314:21	399:5	399:9	399:11	417:18	parties [3]	305:11
329:12	329:13	329:17	314:19	320:14	324:16	outstanding [1]	360:14	447:12
329:17	330:14	331:9	324:17	358:13	358:18	over [26]	313:13	313:17
343:8	343:14	358:6	362:25	413:15	319:10	319:12	320:4	320:4
358:8	413:7		operation [16]	314:20	320:15	327:1	330:8	330:8
northbound [1]	352:3		379:3	380:18	384:9	330:9	332:16	332:23
Notary [1]	464:16		385:3	386:9	391:18	341:15	348:13	358:4
notebook [2]	382:8		391:22	399:7	401:25	358:7	364:12	368:4
382:9			403:16	403:19	404:9	368:6	368:7	379:14
nothing [5]	410:2		413:18	423:22	425:4	382:9	383:8	390:3
432:24	450:16	454:7	operations [1]	368:18	420:15	426:10	432:23	
456:9			opinion [19]	306:16	over-utilization [1]	369:1		
noticed [1]	423:6		309:13	309:14	336:23	overage [1]	390:22	
notion [1]	433:22		337:18	339:22	341:3	overall [1]	412:21	
number [51]	296:25		363:18	387:5	396:10	overlap [1]	403:16	
297:2	303:4	309:1	400:14	400:21	400:24	overview [2]	311:8	350:10
313:14	321:11	323:13	408:7	409:9	415:22	overworked [1]	457:7	
323:17	323:22	328:5	441:4	442:7	447:1	own [7]	302:6	321:16
335:3	335:17	337:13	opinions [1]	415:23	opportunity [28]	332:14	372:7	382:18
348:4	348:4	352:16	297:17	297:22	297:24	392:7	397:10	
359:12	368:24	373:11	337:25	350:13	356:18	owner [1]	301:12	
374:5	374:5	381:7	356:20	406:25	410:17	ownership [1]	301:20	
381:12	382:25	383:21	410:20	431:20	432:2	P [1]	296:1	
384:5	384:6	385:20	432:7	432:23	434:25	p.m [3]	294:22	406:3
385:22	386:17	388:16	439:18	444:21	445:5	457:9		
395:14	395:20	398:7	446:5	446:7	446:15	package [1]	393:13	
399:8	399:17	400:9	446:16	449:18	449:23	page [2]	383:10	393:13
403:6	404:1	406:15	452:14	455:7	458:3	paid [5]	304:13	397:3
415:13	416:21	418:15	463:3	opposition [1]	302:19	397:5	397:6	397:7
421:6	421:10	421:11	options [1]	312:14	orange [1]	Palm [30]	294:6	
421:11	423:23	435:16	oranges [1]	388:15	order [21]	294:20	311:20	312:10
435:17	435:17		order [21]	296:4	300:21	313:7	313:11	312:13
numbers [49]	314:21		313:24	322:12	337:11	323:3	325:21	325:22
329:1	330:20	330:21	341:2	374:8	374:10	327:2	334:20	341:14
339:15	349:3	353:5	379:4	401:6	406:2	341:23	342:7	342:22
364:1	364:8	364:15	415:9	424:21	438:2	344:11	344:22	345:2
364:17	364:25	364:25	439:7	439:7	441:8	347:25	360:5	370:6
365:8	365:15	365:16	449:7	449:11	orderingly [1]	305:17	375:3	375:12
367:2	380:6	380:8	ordinance [10]	311:19	311:21	314:5	314:7	314:7
382:24	384:19	391:4	315:25	316:5	334:21	335:6	342:13	362:11
391:25	398:1	400:5	ordinances [2]	311:18	390:15	ordinary [4]	354:8	399:6
401:13	401:20	402:21	399:6	406:13	407:21	original [2]	319:3	320:8
404:6	406:1	414:7	Orlando [1]	377:7	others [2]	415:23	otherwise [2]	298:20
414:23	414:25	415:1	ought [5]	407:4	440:17	445:21	454:25	455:11
415:2	416:7	417:21	out-of-town [2]	347:9	421:1	outcome [3]	298:12	298:15
417:23	418:1	418:4	outlined [2]	297:18	394:3	part [24]	299:13	299:15
419:23	420:11	420:18				300:20	307:9	307:14
420:22	421:18	424:5				307:20	310:14	317:3
427:8	427:9	428:8				317:4	330:17	337:7
numerous [1]	307:8					339:22	340:2	340:20
O [1]	296:1					342:21	345:4	353:24
oath [1]	307:5					376:19	401:15	401:16
object [6]	305:6					403:10	412:20	424:19
432:10	432:11	432:25				434:12		
435:11	437:15					part [2]	307:15	307:21
objection [5]	356:12					participation [1]	311:9	
356:21	431:7	456:6				particular [4]	337:2	
458:7						407:6	437:22	438:17
objections [1]	437:11					particularly [4]	346:4	
objective [5]	340:3							
371:13	372:7	372:9						
423:11								
observation [1]	385:15							
obviously [5]	395:13							
417:11	424:8	443:2						
454:9								
occur [3]	404:4							
404:19	406:3							

Index Page 13

proposal [2] 312:24 313:4	318:5 319:11 329:9 357:15 358:8 358:9 364:1 364:8 364:24 364:25 365:19 366:12 380:2 380:2 380:24 381:17 381:22 381:23 388:9 388:9 389:25 394:13 394:15 401:25	raise [4] 307:3 356:12 356:21 409:3	339:14 339:24 really [28] 317:23 319:13 320:5 324:19 324:21 324:22 324:25 333:4 334:7 334:17 345:15 345:23 346:19 359:12 368:15 375:10 411:4 411:17 411:23 414:7 414:24 416:4 421:21 430:21 436:15 441:19 453:15 459:18	393:15 396:19 402:7 recommendations [2] 352:14 388:7 recommended [3] 323:6 352:21 401:17 reconstruction [1] 325:17
proposals [1] 349:6	quarter/first [1] 401:24	raised [7] 298:24 361:12 383:16 388:3 411:10 434:8 459:25	realm [1] 363:21	record [29] 300:20 307:10 307:14 327:15 335:23 342:21 343:21 370:1 370:4 371:16 376:6 377:2 377:13 378:12 396:23 426:6 426:14 428:19 428:21 429:10 431:3 437:10 437:12 438:20 443:24 450:24 451:1 451:3 464:9
proposed [9] 312:21 312:25 314:24 318:12 318:14 321:18 349:5 363:1 391:23	quarters [2] 315:15 399:4	Rampell [32] 297:12 297:24 298:10 298:17 298:21 299:3 300:19 305:7 307:16 307:18 308:12 324:24 330:10 331:3 336:7 404:12 404:15 404:20 405:3 405:6 405:11 405:14 426:17 433:7 436:23 439:13 439:15 440:2 442:16 442:17 447:14 447:16	reason [10] 298:13 316:2 316:20 341:7 352:24 353:10 366:9 439:4 439:24 455:3	reconstruction [1] 325:17
proposing [1] 349:10	quasi [1] 407:13	Rampell's [2] 299:22 364:17	reasonable [1] 419:19	rebuilding [1] 326:1
proprietor [1] 301:19	quasi-judicial [7] 303:1 305:4 430:15 433:25 439:21 446:2 454:8	Randolph [41] 295:12 298:11 299:23 299:24 300:1 300:8 300:10 300:25 301:1 303:23 304:16 306:3 306:5 306:6 306:14 306:21 307:15 308:1 309:17 309:19 309:20 310:5 310:13 356:14 356:15 406:7 406:9 406:10 407:8 407:14 430:11 430:12 431:10 433:19 437:19 437:20 439:5 443:10 443:20 443:22 460:25	reasons [4] 338:10 340:14 348:4 401:20	recording [2] 344:4 344:5
prosecution [1] 440:24	quasi-legislative [1] 439:21	random [6] 326:13 326:25 327:3 327:10 327:10 327:11	rebuilt [1] 325:12	recreational [1] 327:20
protected [2] 312:23 316:9	question [42] 299:6 303:2 303:14 304:5 309:18 309:21 316:13 323:4 325:2 328:5 330:24 340:1 342:6 343:12 345:16 346:1 348:12 359:1 360:8 360:11 366:23 383:11 383:16 388:3 393:17 398:18 402:6 405:18 405:24 408:22 408:22 409:2 409:8 410:13 422:10 426:7 439:10 439:12 451:6 453:1 458:19 460:2	rate [11] 374:18 384:3 384:5 384:7 384:16 385:20 385:21 389:20 414:12 421:8 427:21	rebut [18] 432:2 432:7 433:17 434:25 435:6 436:1 439:18 444:22 447:2 448:1 449:3 449:18 449:18 460:9 460:18 460:18 460:23 461:4	recuse [7] 298:16 299:10 301:8 303:12 304:18 305:19 306:5
prove [1] 363:9	questioning [3] 378:1 400:6 437:13	rather [9] 348:18 348:25 360:3 378:8 410:7 441:11 443:22 443:25 458:13	rebuttal [39] 297:25 432:13 433:16 433:21 437:25 438:5 438:7 438:9 439:20 442:15 442:20 444:8 444:8 444:13 444:21 444:22 445:6 445:11 445:12 447:2 447:25 448:10 448:11 448:16 448:19 448:20 449:2 449:2 449:5 451:9 451:21 452:25 453:18 455:2 455:4 459:8 459:11 459:23 459:25	red [1] 388:23
provide [5] 305:12 340:20 400:4 415:17 430:22	questions [27] 298:24 298:25 303:10 336:7 358:23 362:1 363:12 369:20 375:16 375:18 396:23 397:13 406:16 406:17 406:21 406:22 407:2 408:1 408:11 408:17 409:13 411:1 411:10 412:5 425:21 425:24 434:7	ratio [1] 315:17	recall [2] 372:18 400:11	redirect [4] 407:1 408:4 409:5 430:4
provided [32] 312:13 312:17 319:25 329:20 331:25 335:9 343:3 355:2 370:14 370:16 373:7 374:19 376:18 383:4 383:24 387:3 387:16 393:13 396:9 398:1 399:21 415:19 415:21 417:20 420:1 422:7 423:4 423:7 423:16 427:1 427:8 427:9	queuing [1] 355:24	raw [1] 323:17	receipt [3] 431:8 432:10 432:25	reduce [2] 323:25 395:13
providing [1] 316:7	quicker [1] 385:12	reach [8] 299:2 299:8 304:11 384:13 385:10 392:1 392:2 414:1	receive [4] 303:18 337:16 430:16 455:22	reduced [1] 340:19
public [25] 297:17 307:10 307:14 312:22 316:7 342:21 343:3 343:10 344:9 344:10 356:4 376:8 379:18 401:11 412:21 431:25 432:5 440:10 442:20 443:24 444:19 445:9 458:12 461:20 464:16	quiet [1] 409:24	reached [5] 361:9 361:10 384:20 394:5 414:3	received [9] 300:12 300:18 307:8 310:1 324:9 341:1 379:24 414:7 423:13	reduction [1] 312:14
publish [1] 357:17	quit [1] 437:5	reaching [3] 383:20 383:21 394:7	recent [1] 354:4	reexamining [1] 302:15
published [3] 364:1 365:5 366:18	quite [4] 321:10 341:16 352:19 355:11	react [1] 349:14	recently [1] 357:15	refer [2] 415:1 416:23
pure [1] 455:4	quote [2] 298:14 413:1	reaction [1] 349:12	recess [3] 376:3 376:13 463:19	reference [9] 314:13 327:23 353:4 362:4 388:14 407:11 416:23 417:13 417:17
purely [1] 334:15	R [11] 296:1 310:17 310:25 311:3 311:8 311:13 313:8 313:12 313:18 313:20 464:1	read [6] 299:25 300:24 311:25 344:15 372:18 390:5	reciprocal [2] 440:4 453:12	referenced [1] 364:20
purpose [1] 297:6	Rachel [2] 464:6	reading [2] 344:13 344:16	recited [1] 366:16	references [1] 417:13
purposes [1] 446:21	radius [6] 321:24 328:11 332:25 334:22 340:23 340:23	readings [1] 331:5	recognized [1] 462:10	referred [2] 315:22 426:2
pursuant [3] 304:24 412:24 440:15	railroad [2] 298:14 325:9	ready [4] 306:19 306:21 310:20 462:12	recognition [1] 418:19	referring [5] 360:2 415:2 426:17 429:6 461:8
put [25] 312:16 352:13 353:11 379:13 396:23 426:3 428:20 432:20 435:18 435:20 435:20 436:11 437:22 438:24 445:5 449:1 452:12 456:5 457:24 458:9 458:11 458:17 459:17 459:19 460:7	railroading [2] 302:25 305:4	real [5] 341:2 419:22 419:23 419:23 420:1	recommend [2] 369:15 396:18	refers [1] 374:4
qualifications [2] 377:15 378:2	rainy [2] 320:20 320:20	reality [3] 339:2	recommendation [12] 311:6 311:11 314:2 314:9 315:1 353:24 354:12 354:13 392:4	reflect [3] 315:3 350:17 389:17
qualified [3] 377:21 387:6 441:4				reflected [1] 303:3
quality [1] 385:4				reflective [3] 314:22 314:23 331:21
quantify [1] 394:23				reflects [1] 404:21
quarrel [1] 352:9				refute [1] 353:10
quarter [28] 317:1 317:1 317:7 317:17				regard [7] 297:4 304:18 397:19 438:16 443:23 444:13 453:23

413:2 regulations [1] 312:13 reiterate [2] 298:4 384:24 relate [2] 341:24 357:24 related [2] 342:3 342:9 relates [6] 342:23 402:7 412:13 421:21 423:21 450:13 relating [1] 407:5 relation [1] 410:6 relationship [4] 388:17 418:14 420:20 424:13 relevance [1] 375:11 relevant [5] 355:15 434:4 434:5 439:23 443:4 relied [1] 376:19 relief [3] 446:5 446:8 446:16 relooked [1] 363:22 rely [2] 364:8 424:16 remain [1] 332:17 remarks [3] 297:21 349:14 451:13 remember [4] 385:1 403:13 410:7 461:10 removal [1] 314:1 remove [2] 324:11 369:10 removed [1] 384:23 Removing [1] 369:14 render [1] 303:19 reopen [1] 445:9 reopening [1] 317:12 Repeat [2] 339:25 342:6 repeatedly [1] 302:14 repetitive [1] 297:21 rephrase [1] 346:1 replaced [1] 334:2 reply [1] 324:25 reply [3] 442:20 446:6 446:17 report [29] 313:19 319:4 342:23 362:5 362:6 364:23 368:8 371:8 371:19 371:21 371:25 372:1 372:7 372:10 372:12 372:14 372:17 373:15 373:20 374:3 375:22 413:4 429:11 431:24 436:21 450:6 451:16 453:3 464:8 reported [2] 354:23 437:2 reporter [3] 335:23 336:9 464:7 reports [11] 301:24 341:24 342:8 435:5 436:2 436:17 437:2 447:7 451:10 451:15	453:9 represent [2] 310:17 351:10 representation [3] 401:7 415:16 438:9 representations [4] 349:20 359:20 438:11 461:3 representatives [1] 432:5 represented [3] 420:21 420:22 420:24 representing [3] 336:16 352:25 417:21 request [9] 301:6 353:12 378:25 385:16 395:2 438:25 440:15 441:14 446:16 requested [2] 298:16 383:22 requesting [2] 446:5 446:8 requests [3] 314:1 396:20 402:8 require [1] 329:1 required [4] 313:23 390:11 396:11 412:24 requirement [6] 334:20 345:1 345:8 362:10 395:8 395:18 requirements [18] 311:22 312:6 312:11 312:18 313:10 314:4 314:6 318:10 318:17 331:17 337:14 369:16 369:17 369:18 392:9 392:14 393:5 440:4 requires [1] 395:9 rerouted [1] 359:14 research [2] 321:10 365:17 reservations [1] 320:21 reserved [1] 433:17 reside [1] 311:4 resided [1] 346:15 residence [5] 322:4 322:8 335:8 335:12 348:10 resident [14] 346:12 346:13 346:15 346:18 347:8 347:9 347:22 347:25 348:6 348:9 348:16 359:24 418:24 419:4 resident's [1] 360:6 residential [2] 416:16 417:1 residents [7] 309:12 311:15 345:11 345:12 345:19 345:20 348:21 resignation [1] 304:9 resolution [1] 442:4 respect [2] 378:25 379:1 respectfully [1] 301:6	respond [3] 438:15 451:5 452:4 responded [1] 426:21 response [5] 310:5 438:24 438:25 440:10 449:11 rest [2] 382:24 452:10 restate [1] 374:1 rested [1] 437:14 restricted [1] 321:15 Restrictions [1] 312:16 result [7] 317:25 321:8 345:9 354:24 368:8 380:9 389:15 resulting [1] 376:20 results [7] 312:1 312:4 313:20 321:12 380:20 380:23 397:10 resume [4] 311:2 338:1 378:5 378:11 reveal [1] 307:21 reverse [1] 395:19 review [21] 297:3 311:14 312:1 312:4 313:21 322:17 324:15 339:20 349:8 362:11 362:14 362:18 362:22 363:15 363:18 371:8 373:24 378:23 399:24 406:4 422:6 reviewed [20] 311:17 313:18 324:13 326:9 339:18 340:10 340:11 342:3 342:7 370:7 370:15 370:15 370:23 380:14 382:7 390:17 400:1 412:15 426:8 426:9 reviewing [1] 363:21 revise [1] 349:4 revisions [1] 398:8 rhetorical [1] 302:22 rights [1] 434:12 rigorous [1] 442:22 road [24] 294:19 321:14 322:1 322:2 325:12 325:13 328:1 329:5 329:12 331:20 331:20 332:16 340:11 340:12 343:15 353:8 358:3 358:5 359:9 367:12 369:1 390:14 412:14 413:7 roads [2] 332:5 339:3 roadway [11] 319:9 319:10 319:13 319:21 319:23 321:21 332:19 334:24 368:3 404:10 413:15 Robert [2] 295:9 295:10 rocks [2] 421:12 421:16 Rodney [1] 308:11 role [2] 305:7 336:22 roll [1] 296:6	Ron [4] 431:3 451:4 456:12 457:19 room [8] 312:25 312:25 313:15 440:21 442:13 445:3 458:23 459:13 rooms [1] 421:10 route [1] 359:17 routinely [1] 412:18 RPR [1] 464:15 rugby [1] 442:8 rules [14] 321:4 391:6 402:1 407:13 407:24 430:20 431:13 431:15 431:18 433:5 441:20 443:17 445:7 445:21 run [2] 423:1 436:20 running [4] 302:25 305:4 425:19 429:21 S [2] 296:1 301:6 safe [4] 385:14 385:24 420:14 424:22 safely [2] 386:10 425:6 safety [2] 312:22 316:8 Sailfish [1] 301:18 same [20] 300:13 303:10 309:9 323:4 323:11 324:8 327:5 331:6 332:12 358:21 367:24 386:7 387:18 393:5 405:5 405:7 421:17 437:15 443:3 454:13 Samuel [1] 295:8 satisfy [1] 318:10 saw [3] 323:17 453:9 453:9 says [5] 362:16 373:1 429:1 434:23 450:5 scale [1] 413:14 scanned [1] 426:10 scenario [1] 340:10 scenarios [1] 340:8 schedule [1] 457:1 scheduled [1] 452:1 schedules [1] 456:22 scheduling [1] 456:10 Schnars [6] 413:4 426:2 426:11 426:22 427:2 451:16 school [2] 440:20 442:6 Science [1] 377:16 scope [1] 328:8 scrutiny [2] 442:23 448:11 season [24] 316:6 320:16 326:21 326:22 331:17 358:12 358:12 358:19 361:11 361:20 380:24 380:25 381:10 381:16 381:22 381:23 388:1 388:5 388:13 388:24 389:3 389:24	394:16 404:5 seasonal [1] 412:12 seasons [1] 357:25 seating [1] 313:1 seats [1] 376:5 second [5] 318:24 383:10 432:3 450:22 451:24 section [4] 312:19 345:3 362:16 392:21 seem [4] 301:21 402:17 445:21 458:7 seemed [1] 407:20 seems [3] 334:17 363:5 440:22 seen [16] 355:12 357:4 357:7 357:9 357:22 358:2 362:24 363:14 379:14 413:9 426:12 426:19 426:24 438:7 454:1 454:7 self [1] 455:25 sell [2] 304:11 304:14 semi-annual [2] 327:6 419:16 send [1] 404:24 senior [1] 310:23 sense [8] 346:14 347:6 347:6 348:8 348:23 415:10 422:11 452:17 sensitive [1] 356:5 sensitivity [1] 453:4 sent [1] 341:25 separate [4] 323:15 403:21 404:11 427:17 September [11] 297:1 300:11 302:23 355:8 364:19 433:6 435:7 437:1 439:13 454:6 460:15 sequence [1] 446:4 serious [2] 449:19 449:21 seriously [1] 347:4 servant [1] 323:15 serve [3] 439:9 446:20 453:23 serves [1] 300:6 service [11] 367:8 367:10 367:12 367:16 368:1 368:12 368:20 391:18 412:13 413:6 424:8 services [1] 396:25 serving [4] 299:16 345:4 345:8 405:10 session [1] 298:3 set [3] 415:25 431:18 446:4 seven [1] 361:13 several [1] 400:22 shake [1] 411:16 share [1] 376:15 shareholder [1] 304:4
--	---	---	--	--

Shaw - statements

Condenselt™

TOWN OF PALM BEACH 10-10-96

Shaw [47] 295:6	simplicity [1] 410:5	345:22 345:25 346:19	sort [11] 339:12 345:12	spelled [2] 377:2
296:17 296:18 302:6	simply [2] 444:22	346:23 349:11 356:14	349:18 349:20 363:11	431:4
302:11 303:11 306:12	451:7	356:23 357:3 358:25	392:11 416:20 421:17	spelling [2] 335:25
306:13 307:25 308:4	since [14] 301:19	359:21 360:7 360:9	424:19 440:18 448:14	336:10
308:8 310:11 325:2	304:25 308:1 308:2	361:24 366:2 369:21	sorts [1] 416:21	spend [2] 346:25
325:4 325:5 325:17	308:6 311:10 313:2	375:17 375:23 376:4	sought [1] 438:24	378:8
326:10 326:16 326:23	313:8 371:25 420:3	376:7 376:23 377:4	sound [1] 460:19	spoke [4] 307:22
326:25 327:11 327:21	435:12 436:18 444:23	378:13 379:16 383:13	sounds [1] 326:8	307:23 308:21 309:6
328:3 328:17 328:22	452:22	397:17 398:16 402:2	sources [1] 417:18	spoken [5] 308:4
329:23 329:25 330:7	sing [2] 344:1 344:3	402:14 405:17 405:21	south [11] 294:19	308:10 308:13 308:17
330:12 330:22 330:25	single [3] 313:1	406:9 407:7 408:6	297:4 322:1 328:1	309:4
331:24 332:3 332:12	318:9 341:19	408:14 408:25 409:22	330:4 330:7 331:7	spot [1] 410:7
332:21 333:3 333:8	single-family [2] 322:8 335:12	410:1 410:5 410:10	331:8 343:15 351:23	square [2] 386:14
333:22 334:4 398:16	singling [1] 393:3	410:16 410:22 411:5	359:25	416:21
398:18 398:19 398:25	siphon [1] 354:6	411:8 411:14 411:17	Southern [32] 317:9	stacked [2] 353:1
399:8 410:11 410:12	sit [5] 299:12 299:21	411:21 411:24 411:25	321:25 322:1 325:15	353:2
410:24	349:9 373:12 443:19	412:4 412:9 425:18	325:18 325:23 329:7	stacking [1] 352:18
Shaw's [3] 329:17	site [30] 297:3 314:17	425:23 426:13 428:13	329:14 330:8 330:14	staff [17] 297:12
343:12 405:24	314:18 314:22 314:24	428:18 429:1 429:7	331:8 331:9 331:11	297:16 313:1 313:12
Sheehan [1] 431:5	315:3 315:5 318:12	429:14 429:19 430:11	331:20 332:6 332:9	370:17 370:18 370:21
sheet [1] 388:21	318:14 322:8 323:9	431:1 433:2 434:14	332:10 332:22 333:4	379:21 395:10 397:21
shopping [2] 425:5	324:13 328:21 329:21	436:6 436:9 437:8	333:6 340:15 343:9	431:23 436:16 436:21
425:7	333:18 333:21 335:13	437:17 438:20 439:10	343:15 350:11 350:19	437:1 444:19 461:1
short [2] 300:23 348:18	350:12 351:5 352:17	440:16 442:10 442:18	350:22 358:6 358:8	461:2
should [35] 299:5	355:22 362:11 362:13	442:24 443:10 443:21	359:14 365:22 393:24	staff's [1] 375:22
300:17 300:20 307:13	362:18 362:22 363:1	446:22 446:24 447:8	412:13	stage [1] 432:8
317:23 323:21 333:7	380:1 385:4 417:20	447:14 447:17 448:21	spa [11] 313:5 314:19	stand [2] 299:4
347:7 355:23 356:2	sitting [1] 306:7	449:14 451:2 453:24	324:16 348:3 385:2	307:1
356:4 362:3 365:19	situation [6] 322:25	454:6 454:14 457:1	386:13 386:16 423:22	standard [4] 316:5
366:12 374:4 379:13	330:6 339:2 341:11	458:18 458:23 458:25	424:3 424:5 461:8	388:4 393:1 416:7
384:13 387:20 392:5	423:12 425:2	459:4 459:9 459:15	speak [17] 297:18	standards [14] 311:19
396:24 410:14 424:23	six [4] 342:1 352:2	459:20 460:1 460:19	306:25 307:3 309:15	311:21 314:5 314:7
432:19 434:17 436:18	353:1 361:13	461:7 461:10 461:17	330:22 336:2 408:19	315:25 334:21 335:6
436:22 441:1 441:7	six-lane [1] 325:13	461:24 462:4 462:10	409:19 431:25 432:9	342:13 367:2 367:9
441:9 443:3 447:3	size [1] 424:4	462:15 463:1 463:6	432:23 436:4 443:20	387:22 390:11 396:16
449:4 455:10 455:15	skew [1] 400:21	463:8 463:12	446:5 449:19 452:22	416:18
shouldn't [1] 366:7	skewed [1] 401:13	smooth [1] 424:17	463:3	standing [3] 443:13
show [10] 350:8	Skip [4] 301:4 407:12	snapshot [1] 401:14	speaking [5] 306:24	447:15 457:22
357:5 357:10 358:11	429:21 450:22	snowbirds [1] 348:11	310:14 426:15 441:24	standpoint [5] 379:5
383:23 388:17 392:21	slighted [1] 308:16	so-called [1] 445:11	448:25	385:16 401:6 403:25
413:4 434:8 449:9	slightly [1] 318:25	social [2] 311:16	speccial [47] 296:4	428:2
showing [2] 392:1	sloppily [1] 440:23	344:21	297:2 297:6 301:2	Stanley [1] 308:10
428:21	sloppy [1] 441:6	Society [1] 378:23	301:10 303:4 304:19	start [3] 307:24 310:5
shown [1] 404:4	small [1] 379:9	solely [3] 309:24	311:23 314:7 316:6	404:7
shows [4] 318:6	smaller [2] 333:1	386:2 427:22	344:20 354:17 355:6	started [1] 297:7
367:25 380:22 383:10	Smith [165] 295:3	somebody [7] 308:21	355:17 358:14 361:3	starts [1] 409:23
shut [1] 325:22	296:3 296:7 296:11	325:21 334:13 348:18	361:4 361:5 361:8	state [26] 302:12
shuttle [3] 375:6	296:14 296:23 296:24	455:12 458:13 459:12	361:11 362:8 362:14	304:24 304:24 321:14
395:11 397:21	300:25 301:6 301:11	someone [5] 337:11	362:17 370:8 376:21	322:1 322:2 328:1
shuttling [2] 395:18	301:17 302:20 302:24	347:16 351:10 356:19	378:25 393:23 394:18	329:12 331:19 332:15
398:12	303:22 304:2 306:3	428:15	394:20 395:4 396:20	337:9 337:20 340:10
sick [1] 327:18	306:10 306:12 306:14	something [24] 323:23	398:21 399:5 399:19	340:12 353:8 358:3
side [9] 350:10 350:22	306:22 307:7 307:12	339:12 344:10 347:3	400:5 403:17 403:22	358:5 377:14 377:19
434:24 444:1 447:5	307:19 308:2 308:6	349:7 354:1 366:10	404:13 404:23 405:6	377:21 412:14 412:25
447:17 452:18 452:20	308:9 308:13 308:18	376:1 384:24 385:17	405:25 406:2 424:25	413:7 433:9 464:3
457:21	308:21 309:5 309:8	392:4 393:18 405:18	425:1 425:2 425:13	464:16
sides [2] 443:3 443:5	309:19 310:4 310:12	421:21 422:12 429:5	428:4	stated [12] 298:14
sign [1] 337:19	310:20 315:6 315:9	435:6 437:3 446:23	specific [7] 342:24	303:25 306:23 352:7
significant [4] 391:17	316:11 320:19 321:1	447:15 449:6 451:7	343:3 417:19 417:20	355:1 355:12 378:21
401:9 401:20 411:3	325:2 329:16 329:23	456:8 461:19	428:8 437:12 444:3	430:13 434:1 437:16
Silk [1] 308:11	330:5 330:10 330:16	sometimes [3] 302:18	speccifically [2] 337:8	444:23 445:17
Silverman [1] 308:11	333:13 334:5 335:21	302:19 450:10	357:24	statement [9] 298:2
similar [4] 300:10	336:6 336:11 336:15	somewhat [2] 300:15	specified [1] 384:4	303:13 345:18 360:6
303:15 401:10 458:6	336:18 343:19 343:24	308:16	369:12 400:18	382:3 403:24 414:25
similarly [1] 301:21	344:2 344:5 345:17	somewhere [2] 313:16	speculation [4] 324:10	422:24 435:24
simple [2] 455:3		334:10	334:3 422:20 422:22	statements [5] 396:8
455:4		sooner [1] 396:24	spell [3] 335:22 336:2	400:2 409:8 461:1
		sorry [7] 329:14 333:8	336:11	461:5
		333:21 344:13 347:18		
		357:11 405:23		

stating [2] 307:22 429:12	401:9 404:14 412:15 416:10	talk [7] 326:10 337:6 392:12 421:20 439:2 454:15 461:16	402:15 405:16 407:7 408:14 410:10 410:22 411:8 411:14 412:10 425:22 425:23 428:12 428:13 428:17 429:16 431:2 433:1 434:21 436:6 437:17 443:9 446:22 447:8 451:3 453:6 460:2 462:5	324:8 337:3 358:19 359:5 359:6 359:14 360:4 362:18 379:3 379:11 382:16 390:18 409:12 423:1 454:16
stations [1] 327:4	suffer [1] 301:15	talked [8] 343:1 382:20 384:25 388:18 390:10 391:3 393:16 394:19	thank [1] 309:14	throughout [1] 412:23
statuesque [1] 411:20	sufficient [5] 312:18 318:16 335:8 341:7 413:16	talking [19] 315:20 328:15 337:1 337:7 347:5 350:3 355:7 360:20 361:18 378:1 380:7 392:14 409:23 421:4 438:17 439:19 439:20 448:21 460:6	thankful [1] 337:25	throw [2] 391:6 452:24
stay [4] 306:7 306:9 321:20 418:25	suggest [3] 365:13 373:10 446:19	taste [1] 346:10	their [34] 302:17 304:12 309:13 309:14 320:21 321:16 327:24 327:25 329:1 359:13 359:13 363:13 366:20 372:7 393:1 396:16 398:7 399:2 399:16 401:21 412:20 427:22 432:20 433:17 434:9 434:10 436:17 442:22 446:7 446:15 450:15 452:4 460:17 462:24	throwing [1] 443:18
stenographically [1] 464:8	suggested [2] 453:17 457:23	tedious [2] 360:1	themselves [4] 303:12 332:20 332:25 395:23	thrown [1] 323:24
step [3] 343:20 369:23 389:1	suggesting [2] 298:11 385:8	tells [1] 394:24	therefore [9] 299:8 301:11 327:6 346:16 386:17 387:20 396:1 415:8 455:21	Thursday [5] 294:21 296:5 327:17 382:19 403:15
still [5] 352:2 400:8 405:9 458:1 462:23	suggestion [1] 457:20	Tem [1] 295:7	Thereupon [5] 296:6 296:9 307:5 376:3	Thursdays [1] 399:3
stipulate [2] 456:17 456:19	suites [2] 385:17 393:18	temporary [1] 397:23	thick [1] 382:9	time [47] 307:18 313:2 313:8 319:5 320:8 320:11 323:11 325:5 332:24 340:16 342:20 356:22 357:17 366:24 368:16 376:7 380:19 385:2 386:9 387:18 390:21 391:13 396:12 399:6 401:9 401:12 405:5 405:7 406:25 409:20 414:20 421:25 424:4 425:11 425:20 429:3 429:25 435:21 439:5 440:12 441:14 441:15 444:23 447:22 452:23 453:20 463:5
stock [1] 304:6	sum [1] 395:25	ten [5] 302:10 312:25 322:10 335:14 385:16	thinking [1] 402:18	timely [1] 454:19
Stockholder [2] 301:25 302:2	summarized [1] 380:14	tend [3] 348:16 386:20 404:19	third [21] 315:15 316:25 317:7 317:17 318:5 319:11 357:14 364:1 364:7 364:24 364:25 365:19 366:12 380:2 381:17 381:23 388:9 389:25 394:13 399:3 401:24	times [10] 313:14 348:5 361:14 382:12 382:13 389:4 391:4 391:4 391:5 392:8
stone [1] 334:17	summary [3] 370:22 394:1 432:13	tendered [5] 406:15 406:17 406:20 408:21 409:12	thought [4] 347:4 407:12 411:19 411:23	timing [1] 341:19
stop [1] 329:23	summer [1] 347:2	tennis [12] 301:12 304:5 304:14 313:2 313:3 313:4 314:19 324:17 348:2 351:2 386:8 421:11	thoughts [1] 409:5	Timothy [1] 312:2
stopped [1] 391:10	Sunrise [3] 329:13 329:13 329:17	term [1] 348:19	three [27] 311:18 313:6 315:23 317:11 320:5 322:6 331:13 349:21 349:24 351:4 352:13 352:19 353:5 353:25 358:19 370:19 382:9 391:4 431:12 432:20 435:14 456:25 461:17 462:6 462:14 462:15 462:24	Tipton [133] 376:16 376:16 376:22 376:25 377:5 377:5 377:6 377:9 377:12 377:23 378:3 378:6 378:9 378:15 378:21 379:19 379:24 380:11 381:6 381:9 381:15 383:16 385:14 386:10 386:19 387:2 387:11 388:2 389:10 389:14 389:19 390:1 390:16 392:19 392:25 393:7 393:9 393:12 394:14 394:16 395:16 395:21 396:7 397:2 397:4 397:8 397:11 397:13 397:18 397:25 398:13 398:23 399:2 399:14 399:23 400:1 400:13 400:17 401:5 401:19 402:3 402:4 402:10 402:15 403:1 403:3 403:13 405:18 405:24 412:1 412:3 412:5 412:8 412:11 412:15 412:20 413:1 413:9 413:14 413:21 413:23 414:2 414:11 414:20 415:6 415:15 415:25 416:9 416:11 416:25 417:6 417:10 417:17 418:4 418:11 418:21 419:2 419:7 419:13 419:19
stopping [1] 463:13	support [2] 306:17 318:8	test [3] 384:1 384:15 398:14	three-mile [1] 340:22	
storage [2] 352:18 353:8	supported [2] 365:18 366:13	testified [8] 338:17 355:4 361:12 427:8 448:4 450:25 460:22 460:22	threshold [17] 313:23 322:11 335:5 374:7 383:7 383:8 384:14 384:20 384:21 389:2 390:2 390:4 390:20 394:3 394:8 394:11 396:13	
street [1] 308:25	supposed [3] 363:4 363:12 379:21	testify [3] 336:22 438:12 455:2	thresholds [2] 392:3 401:22	
strict [1] 444:12	supposedly [1] 446:14	testifying [2] 349:15 448:4	through [19] 301:20 309:11 313:6 324:7	
strictly [2] 331:25 333:12	sure [25] 299:4 309:5 313:15 316:4 316:18 325:7 331:2 331:3 342:2 342:7 351:6 352:19 353:20 355:11 361:1 366:6 387:21 426:4 427:16 430:7 434:1 438:15 439:11 450:20 450:23	testimony [34] 303:17 303:19 316:17 357:12 364:19 376:15 389:11 400:11 402:20 407:3 410:6 410:8 418:8 429:13 433:14 433:17 433:20 434:5 437:12 437:25 439:20 444:9 444:14 444:15 444:25 445:5 445:10 447:3 447:4 447:22 455:12 455:16 459:18 460:8		
strongly [1] 305:6	surplus [1] 330:2	testing [1] 390:1		
studied [3] 359:19 437:1 452:15	surprise [2] 449:25 455:24	thank [64] 296:14 304:16 306:3 306:14 307:7 307:12 307:19 313:14 315:5 315:6 318:19 320:18 321:1 336:6 336:15 336:18 336:19 344:6 349:15 356:10 356:25 357:3 358:24 359:21 360:7 361:23 365:23 369:21 375:15 375:17 375:19 375:23 377:4 383:15 398:9 402:2 402:13		
studies [5] 326:16 402:18 412:12 412:16 412:18	surprised [1] 413:3			
study [25] 318:11 319:19 320:8 321:12 326:10 326:12 326:12 326:15 327:12 327:14 328:10 328:25 331:24 333:2 334:22 338:18 342:14 352:21 353:4 353:6 371:22 375:9 393:10 426:22 426:24	surprising [1] 320:4			
stuff [1] 452:12	surrounding [1] 393:25			
subject [5] 302:9 307:23 413:2 448:16 460:17	suspension [2] 359:8 359:13			
submission [2] 318:9 318:15	suspicious [1] 382:17			
submit [5] 311:2 340:18 371:19 372:9 429:9	sworn [3] 297:20 306:24 307:1			
submitted [12] 313:19 322:15 322:16 330:20 330:20 337:20 362:7 362:23 364:23 371:20 372:12 378:24	sympathy [3] 361:16 361:18 452:7			
submitting [2] 350:9 418:8	system [3] 315:13 404:10 412:22			
subscribe [1] 403:5	T [2] 464:1 464:1			
substantial [4] 303:20 305:15 306:1 430:18	T-i-p-t-o-n [1] 377:6			
substantially [1] 323:25	table [2] 307:24 420:19			
subtract [2] 323:23 398:8	tabs [1] 391:21			
such [6] 315:18 396:11	taken [10] 317:7 317:11 326:20 330:14 376:3 380:19 386:23 402:23 452:21 463:19			

419:25 420:10 420:25	450:13	traffic-wide [1] 311:19	440:9 450:19 453:7	University [2] 377:17
421:8 421:15 421:19	town's [9] 305:8	traffics [1] 331:22	455:23	442:6
422:1 422:6 422:14	310:14 311:20 311:23	transcript [1] 464:9	trying [16] 320:2	unjust [1] 299:15
422:20 422:23 423:1	312:2 314:6 316:4	transportation [6] 310:23 310:24 355:21	325:20 328:3 328:22	unless [4] 305:17
423:15 423:25 424:7	331:16 388:12	377:10 412:22 428:7	329:2 329:25 333:10	333:14 407:2 420:25
424:13 424:21 425:1	track [1] 442:12	travel [3] 318:2	333:22 349:4 368:15	unlike [2] 439:25
425:14 426:5 426:7	tracks [1] 325:9	339:3 414:17	369:25 430:21 439:22	456:13
426:10 426:19 426:25	traffic [179] 297:15	treated [1] 410:19	457:15 459:9 462:16	unlimited [1] 368:23
427:12 427:15 427:20	310:17 311:20 312:5	trend [1] 319:16	Tuesday [5] 327:16	unmonitored [1] 391:16
427:23 428:4 428:10	312:14 314:4 314:6	trials [1] 452:8	382:19 399:2 403:15	unprofessional [2] 300:1 306:17
450:25 453:8 454:22	314:20 314:21 315:11	tried [1] 403:21	457:8	unregulated [1] 391:16
today [19] 297:14	315:11 315:16 315:20	trip [39] 313:22 322:10	turn [9] 351:23 352:1	until [8] 353:7 356:24
299:22 306:24 310:17	315:24 316:1 316:5	333:19 335:13 349:4	352:13 353:2 353:11	376:12 435:2 435:6
336:4 363:24 384:16	316:13 316:14 316:24	374:18 379:2 379:5	353:15 395:5 422:18	435:13 442:16 463:4
389:7 391:22 392:6	317:5 317:6 317:11	379:6 379:24 384:3	452:5	untrue [1] 306:16
395:10 397:1 433:14	317:13 317:25 318:5	384:4 384:10 385:20	turned [1] 304:8	unusual [2] 353:21
434:3 435:13 454:8	318:7 318:9 318:16	386:11 387:24 387:25	TV [1] 369:24	449:22
454:17 456:16 457:9	318:25 319:8 319:17	389:17 389:19 390:25	twice [1] 366:21	upon [15] 303:20
today's [1] 389:11	319:23 320:14 321:6	391:14 391:15 392:3	two [34] 301:12 303:15	304:8 305:15 306:1
together [2] 358:22	323:2 323:3 323:11	394:2 400:16 401:7	313:13 325:25 326:20	309:21 365:14 368:7
435:18	323:14 323:15 323:16	413:24 414:9 414:12	326:21 332:4 332:5	368:12 393:10 414:23
told [6] 299:25 357:23	324:11 325:7 326:19	416:1 416:8 416:12	332:7 333:9 333:14	414:24 424:16 430:18
364:6 397:9 448:15	326:20 327:4 327:12	418:10 418:13 418:18	342:25 346:9 370:19	434:17 449:4
450:15	327:16 327:22 328:10	421:8 427:21 428:1	378:8 386:3 389:4	usage [2] 390:14
tomorrow [4] 452:9	328:16 328:20 328:25	428:7	391:4 399:13 399:13	414:24
457:2 457:10 458:1	329:10 329:11 329:19	triple [1] 402:25	404:11 405:6 406:11	use [25] 297:5 312:20
tonight [2] 463:5	329:20 329:21 330:2	trips [77] 313:22	407:20 409:4 420:4	315:14 322:3 322:4
463:7	330:11 330:16 331:9	321:7 321:13 321:14	431:12 451:6 452:7	346:16 347:5 355:17
too [8] 306:15 318:20	331:10 331:24 333:2	321:16 321:21 321:23	460:15 462:3 462:4	365:8 382:14 383:13
344:15 359:1 402:15	333:3 333:5 334:12	322:5 322:5 322:10	462:15 462:24	386:14 386:15 386:17
409:23 441:6 447:20	334:20 335:5 335:17	322:13 322:18 329:4	two-lane [1] 325:12	392:22 393:23 395:8
took [8] 334:13 363:22	335:19 337:6 337:12	332:17 332:20 333:16	two-mile [1] 340:23	396:3 401:3 413:6
371:12 398:5 398:14	337:17 337:21 338:2	333:17 333:20 334:14	two-step [1] 384:15	416:11 416:20 421:16
440:20 449:7 450:15	338:12 338:18 339:12	334:19 334:22 335:5	type [8] 360:1 367:12	428:5 428:9
top [2] 351:1 379:17	339:14 340:10 340:11	335:10 335:14 346:17	373:13 373:15 406:13	used [7] 317:2 353:22
topic [1] 309:3	340:12 340:19 340:22	347:9 348:17 373:19	418:12 424:14 428:9	366:12 372:10 388:10
total [7] 332:12 372:15	341:5 341:8 341:16	373:24 374:13 374:14	types [2] 416:15	390:19 391:9
372:21 415:13 423:12	341:23 342:8 342:9	374:15 381:1 381:3	416:16	uses [4] 327:20 352:16
459:8 459:11	342:13 342:18 342:22	381:5 381:7 381:18	typical [3] 403:18	417:1 417:9
totally [3] 324:10	346:5 347:6 348:14	381:21 381:23 382:1	403:20 455:24	using [13] 325:23
434:17 459:21	353:20 353:22 354:7	382:5 382:23 382:25	under [20] 312:7	334:2 360:14 384:3
touch [2] 300:17	354:8 354:23 355:5	383:6 384:5 384:16	314:18 314:20 314:22	384:5 384:6 384:7
313:12	355:14 355:18 355:25	384:17 385:21 385:22	319:12 321:4 321:15	387:23 388:13 389:19
touched [1] 300:15	358:3 358:16 358:20	386:18 387:9 387:19	334:23 338:20 357:20	395:25 404:7 414:13
town [77] 294:6	360:5 361:21 362:25	388:24 389:3 389:23	362:11 367:14 371:5	utilization [4] 324:1
294:7 295:9 295:12	362:25 363:22 365:20	390:9 390:13 390:22	385:11 402:1 433:18	368:9 385:11 386:24
295:14 296:4 297:11	366:11 371:3 373:8	393:24 395:1 395:6	441:20 448:10 452:3	utilize [1] 422:16
297:15 298:2 300:7	376:17 376:20 377:8	395:14 395:20 400:10	457:7	utilized [3] 322:9
301:7 301:8 302:23	377:9 377:22 379:1	404:3 404:7 415:12	understand [26] 304:1	357:19 364:20
305:1 305:9 305:13	380:1 380:16 381:25	415:13 417:16 418:14	304:10 323:7 329:25	utilizing [2] 322:14
305:18 305:21 306:4	382:14 382:19 382:22	419:10 420:7 420:8	333:8 334:7 336:21	384:9
306:18 308:2 309:4	383:25 384:20 385:3	421:7 422:19 423:24	339:21 345:15 347:15	utmost [1] 410:20
309:12 311:14 313:6	385:15 386:5 386:22	424:11	348:11 354:20 368:14	vacant [1] 391:11
313:9 313:9 322:16	387:7 388:10 390:14	trouble [1] 347:18	370:13 404:17 412:20	vacuum [1] 319:20
322:17 330:4 331:5	391:2 391:18 393:19	true [14] 338:16 386:7	413:23 418:16 419:1	vague [1] 460:20
338:13 338:23 339:5	394:1 394:9 394:21	407:14 408:12 408:12	422:9 427:10 444:17	valet [2] 354:6 354:15
340:18 344:11 344:22	395:22 396:5 396:10	418:1 427:24 428:1	445:13 453:25 454:5	valid [5] 335:17 420:10
345:4 345:8 345:11	396:15 398:19 400:3	434:23 436:2 438:7	460:20	422:21 423:25 449:3
345:13 345:18 345:19	401:22 402:11 402:24	444:8 451:21 464:9	understanding [10] 334:18 347:2 382:2	validity [1] 339:15
345:20 345:21 346:12	403:4 403:25 405:13	Trump [13] 299:4	388:12 390:16 407:16	value [6] 301:15
346:12 347:8 354:3	405:15 405:25 406:5	308:12 368:15 393:4	439:17 447:19 448:1	304:5 304:7 304:9
360:24 362:11 363:19	413:17 420:11 420:13	398:10 399:22 435:10	448:2	388:16 388:18
369:17 369:18 370:8	421:21 421:23 424:18	435:15 436:14 437:6	understood [4] 324:13	variables [1] 386:3
379:8 384:12 390:9	424:20 425:12 427:3	455:18 456:13 456:24	366:6 444:18 446:13	various [1] 408:18
391:20 394:4 396:21	432:17 432:18 450:14	Trump's [1] 397:15	unfair [2] 299:14	
412:18 420:5 420:20	455:1 458:20 460:7	trustee [1] 366:4	306:16	
420:20 424:15 427:2	461:13	try [12] 334:7 366:2	units [2] 312:25 385:18	
432:6 436:4 436:16	traffic-based [1] 396:19	368:16 375:7 397:25	universe [1] 340:7	
437:13 442:19 443:1	traffic-related [1] 402:8	398:7 398:14 410:7		
444:19 445:10 448:1				

vary [1] 320:5	ways [2] 400:22 451:6	374:11 374:14 374:16	383:13 384:10 384:20	worst [1] 367:19
vehicle [3] 323:8	weak [1] 435:20	374:20 375:1 375:5	390:12 391:17 392:2	wouldn't [14] 320:24
329:4 395:25	weather [1] 320:22	375:9 375:13 375:19	392:17 394:5 394:9	340:5 343:7 347:16
vehicles [10] 320:15	Wednesday [4] 327:16	375:19 378:1 389:13	397:23 407:9 409:13	348:7 369:4 392:23
323:13 323:13 328:7	382:19 399:3 403:15	405:17 405:19 405:23	411:1 423:11 428:20	395:2 413:21 419:8
331:25 358:5 375:8	week [1] 314:17	407:3 407:8	429:3 429:13 434:6	436:2 436:3 442:21
384:1 394:9 400:7	weekdays [1] 406:4	Weisburg [1] 343:1	434:19 434:21 437:4	459:7
vendor [1] 415:12	weekends [1] 406:3	welcome [1] 408:13	441:12 441:14 441:25	written [1] 340:7
vendors [1] 415:3	weeks [5] 319:8	welfare [4] 312:22	442:19 447:6 448:1	wrong [3] 298:17
verified [1] 314:16	431:12 432:21 435:14	316:8 344:10 344:23	451:2 451:7 453:19	328:13 363:9
verify [1] 351:7	456:25	weren't [2] 430:6	454:17 455:23 455:25	wrote [1] 298:11
versus [5] 323:18	Weidner [198] 310:16	456:3	456:7 456:17 456:19	Wyett [37] 295:5
325:25 379:6 398:20	310:21 310:22 310:23	Wes [2] 313:13 313:14	457:14 457:25 459:14	296:13 296:15 296:16
403:19	315:7 315:7 315:22	west [5] 325:21 360:5	460:18 462:8 462:19	306:8 309:8 309:9
Via [2] 331:6 331:7	316:4 316:12 316:18	370:6 375:3 412:14	462:19 462:21 463:15	310:6 310:7 321:2
Via-del-Lago [1] 413:7	316:22 318:22 319:7	what's [14] 342:21	willing [1] 442:2	321:3 322:13 322:19
vice-president [1] 377:8	320:11 320:23 321:8	363:23 390:10 408:23	wings [1] 455:2	322:23 323:17 324:21
vicinity [1] 330:15	322:15 322:22 323:1	409:17 409:21 417:4	346:23 346:25	359:22 359:23 359:24
view [4] 340:25 363:16	324:7 325:14 326:6	429:22 437:24 438:3	wish [2] 408:19 430:25	398:17 402:14 402:15
403:3 408:25	326:15 326:18 326:24	445:14 452:11 455:9	wished [1] 332:17	403:2 403:4 404:12
viewed [2] 363:11	327:1 327:15 328:1	461:25	wishes [1] 446:6	404:16 404:24 405:4
420:12	328:14 328:18 329:11	whatever [12] 308:25	withdraw [4] 441:10	405:8 405:12 405:16
vigorous [1] 363:5	329:19 330:12 330:13	352:20 364:15 366:9	441:12 456:7 458:6	410:3 410:4 447:10
Virginia [1] 442:6	330:23 331:2 331:15	367:1 375:4 403:9	within [9] 300:22	447:11 459:6 460:3
visit [3] 302:8 314:16	331:18 332:2 332:9	440:24 441:16 451:19	318:21 321:20 340:22	yardstick [1] 418:12
314:17	332:15 332:22 333:5	458:8 462:24	352:11 353:2 391:19	year [29] 314:14 314:15
visiting [1] 391:12	333:15 333:16 334:3	whatsoever [2] 298:18	416:19 418:19	314:22 317:4 317:4
visitors [1] 374:23	334:19 335:4 335:19	355:18	without [5] 334:17	319:15 320:3 322:21
Vizcaya [1] 331:7	335:21 336:5 336:5	whenever [1] 360:14	405:14 406:22 446:11	324:12 327:13 331:6
volume [8] 294:10	336:7 336:24 337:4	whether [35] 300:3	452:14	348:13 348:19 358:8
317:5 338:11 341:24	337:10 337:15 337:23	323:21 324:23 328:24	witness [16] 346:21	358:9 359:8 366:21
342:8 342:23 383:7	338:4 338:8 338:15	331:3 333:10 344:19	371:18 376:14 406:15	379:3 381:12 401:24
390:4	338:21 338:25 339:8	344:21 352:19 366:9	406:19 407:6 408:21	412:23 419:5 419:10
volumes [5] 314:21	339:10 339:16 339:18	375:2 375:11 388:4	409:11 432:18 436:12	419:12 420:6 420:9
316:14 388:13 391:2	339:25 340:6 341:4	398:15 400:15 403:14	440:13 440:24 449:9	420:15 421:2 422:18
391:8	341:12 341:25 342:6	405:25 410:13 416:13	453:2 455:5 457:24	year-round [1] 348:15
vote [2] 299:7 302:11	342:11 342:18 342:25	426:8 437:21 437:24	witnesses [20] 408:18	years [10] 313:13
voted [1] 302:18	343:13 344:7 344:13	437:25 438:7 438:8	432:12 433:11 435:4	320:5 320:17 335:7
votes [1] 302:20	344:17 344:25 345:6	442:14 442:18 444:12	435:18 436:3 436:4	341:15 352:13 352:19
voting [1] 305:1	345:14 345:22 346:7	444:13 451:20 451:21	438:12 439:16 451:10	353:5 353:25 436:14
W [2] 464:6 464:15	346:20 347:11 347:20	453:1 455:15 456:15	439:12 439:16 451:10	yesterday [4] 323:1
W-e-i-d-n-e-r [1] 336:5	347:21 347:23 347:23	459:12	452:13 454:3 458:8	342:16 372:23 373:4
wait [4] 351:15 356:24	347:24 348:9 348:15	while [7] 360:13	459:17 459:22 460:8	yet [5] 360:23 365:5
434:19 442:15	349:2 349:21 350:1	383:7 394:19 431:8	460:11 460:12 460:15	386:14 460:9 463:17
walk [1] 309:11	350:7 350:15 350:20	447:18 460:5 462:22	462:24	yield [1] 457:24
walking [1] 308:25	351:1 351:12 351:15	whisper [1] 462:7	won't [7] 309:2	yielding [1] 462:22
wander [1] 369:25	351:21 351:25 352:4	whispered [1] 447:19	344:1 364:3 452:22	yourself [1] 456:5
wants [4] 392:15	352:12 353:4 353:14	whoever [2] 406:21	455:24 458:1 458:17	yourselves [1] 301:8
434:16 437:2 455:12	353:18 353:24 354:3	408:22	wonderful [1] 378:10	zero [3] 304:7 304:9
wash [1] 333:25	354:10 354:14 354:20	whole [6] 346:25	wondering [1] 323:20	304:15
waste [1] 441:15	355:1 355:7 355:11	370:21 398:5 409:11	word [5] 360:12 360:14	Zoning [2] 295:11
water [1] 315:13	355:20 356:2 356:6	409:12 452:6	433:8 446:18 447:25	295:13
way [27] 298:7 299:7	357:7 357:11 358:2	whose [3] 376:14	words [6] 321:20	
303:15 320:14 322:23	358:17 359:4 362:1	457:21 460:16	364:22 366:7 404:24	
326:2 326:11 329:17	362:9 362:13 362:20	wife [3] 308:17 309:5	435:1 449:11	
337:25 340:6 341:6	362:24 363:14 363:20	309:15	work [9] 352:22 352:23	
343:16 356:17 363:11	364:4 364:10 364:14	will [83] 296:7 297:14	363:13 415:3 415:4	
369:5 369:8 400:21	364:19 365:2 365:4	297:15 297:17 297:22	446:14 456:14 457:4	
406:6 408:5 408:16	365:10 365:17 365:25	297:24 298:1 298:3	457:10	
430:8 440:9 441:15	366:11 366:17 366:20	298:6 299:10 299:19	worked [2] 387:2	
443:3 450:22 453:22	367:4 367:8 367:14	299:19 303:14 305:17	457:8	
458:10	367:16 367:18 367:20	305:21 305:24 310:13	workers [1] 397:22	
	368:4 368:11 368:21	310:18 312:5 312:23	working [7] 341:14	
	369:3 369:6 369:9	315:3 315:4 316:22	349:22 352:15 374:5	
	369:14 370:7 370:9	326:18 331:18 336:3	436:18 456:16 457:9	
	370:11 370:17 370:19	344:9 351:3 351:10	works [1] 382:25	
	370:24 371:2 371:4	351:10 354:6 364:2	world [2] 386:13	
	371:6 371:9 371:11	366:18 366:19 375:25		
	371:24 372:3 372:12	376:4 377:13 378:7		
	372:17 372:22 373:6			
	373:9 373:12 373:17			
	373:21 374:1 374:7			

Page 465

Page 466

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

VOLUME IV

360 South County Road
Palm Beach, Florida
2:15 p.m. - 7:30 p.m.

CERTIFIED
COPY

COUNCIL PRESENT:

Lesly Smith, President
Paul Ilyinsky, Mayor
Allen Wyett, Councilman
Leslie Shaw, Councilman
Jack McDonald, President Pro tem
Samuel McLendon, Councilman
John Randolph, Town Attorney
Robert Doney, Town Manager
Robert Moore, Director of Planning, Zoning & Building
Paul Castro, Zoning Administrator

*** Notes ***

Page 467

Page 468

PROCEEDINGS

THE COURT: Good afternoon.
MR. NATALE: I believe you wanted to hear from my witnesses at this the time?
PRESIDENT SMITH: I think that was the determination, that that was going to happen.
MR. NATALE: Then I would like to call John W. Barr.
It may be easier if you use the podium mike, sir. Sir, please state your name and spell your last name for the Court Reporter.
MR. BARR: Yes, my name is John W. Barr, B-a-r-r. I'm president of Barr, Dunlop & Associates, Incorporated.
MR. NATALE: Could you briefly tell them what your educational background is?
MR. BARR: I have masters and bachelors degrees in civil engineering from Purdue University specializing in statistics and traffic engineering.
MR. NATALE: Have you studied at any universities outside of the United States?
MR. BARR: Oxford University in

England.

MR. NATALE: But what was the subject matter?
MR. BARR: The subject matter was in planning.
MR. NATALE: Thank you. You are registered as a licensed engineer?
MR. BARR: Yes, I am.
MR. NATALE: In what states?
MR. BARR: In Florida, Georgia, Alabama, Kentucky, Indiana.
MR. NATALE: Have you authored any publications, received any professional honors?
MR. BARR: Yes, several.
MR. NATALE: Are they set forth in your Curriculum Vitae?
MR. BARR: Yes, they are.
MR. NATALE: Could you please tell the Members of the Council what your expertise is, what you do, and how you do it.
MR. BARR: Well, my primary area of experience and I guess you would call expertise is in traffic engineering and transportation planning, which I have been

*** Notes ***

Page 469

Page 470

1 working at for more than 40 years now, most
 2 of which is has been in the State of Florida,
 3 dealing with all aspects of traffic
 4 engineering.
 5 MR. NATALE: Before we continue, I
 6 would I like to show you what you have given
 7 to me as your resume. If you would look at
 8 that, is that a copy of your resume?
 9 MR. BARR: Yes, it is.
 10 MR. NATALE: Madame President, may I
 11 have this placed into the record?
 12 PRESIDENT SMITH: Yes, sir. It will be
 13 put into the record.
 14 MR. NATALE: Have you had an
 15 opportunity to review the report of
 16 Mr. Brisson regarding the traffic in this
 17 case?
 18 MR. BARR: Yes, sir, I have. A report
 19 by Mr. William F. Brisson of Adley, Brisson
 20 Engman Company, dated September 13th, 1996.
 21 MR. NATALE: And did you receive that
 22 sometime after September 16th?
 23 MR. BARR: Yes, I did.
 24 MR. NATALE: And were you contacted
 25 after September 16th, to do an analysis as

1 far as that particular report and the
 2 contents of it?
 3 MR. BARR: Yes, I was.
 4 MR. NATALE: Okay. Since you were
 5 contacted after that September 16th hearing,
 6 could you tell the Council what you did in
 7 that time frame?
 8 MR. BARR: I reviewed all of the facts
 9 and factors and information that I could put
 10 my hands on that were related at all to the
 11 issues discussed, particularly as it related
 12 to the traffic impacts of Mar-a-Lago and the
 13 experience that they have had over the past
 14 year, year and a half, all of the related
 15 information concerning the traffic counts on
 16 the adjacent roads, and other experience
 17 related to the Mar-a-Lago operations.
 18 MR. NATALE: Now, when you say that,
 19 what are the sorts of things that you
 20 actually looked at? What are the sort of
 21 things you considered before coming up with
 22 your opinions about the Brisson report?
 23 MR. BARR: Well, there is a list in my
 24 report that I have given you. In addition to
 25 the report by Mr. Brisson, I reviewed the

*** Notes ***

Page 471

Page 472

1 Declaration of Use Agreement dated August
 2 11th, 1993, the application for special
 3 exception that is now on the table, a site
 4 plan showing the on-site cueing capacity and
 5 left-turn storage that has been provided,
 6 information that was given to me relative to
 7 the membership of the club, the parking space
 8 information, information regarding the new
 9 bus service that is being planned in this
 10 area, the 1995-1996 traffic count data that
 11 was taken by Mar-a-Lago at it's entrances and
 12 exits, the 1996 peak season traffic count
 13 data and level of service analysis developed
 14 checking by Keith and Schnars for the Town,
 15 the 1996 peak season and off season count
 16 data published by Palm Beach County,
 17 statements made in the last hearing here,
 18 September 16th, statements made by Chief
 19 Tarlizzese, information on the Mar-a-Lago
 20 operations and experience provided by several
 21 members of the Mar-a-Lago staff.
 22 MR. NATALE: Now, is there any reason
 23 why you -- well, let me ask you this: Was
 24 there anything that you were directed not to
 25 look at or not to look for or not to research

1 or look into in coming up with your
 2 conclusions?
 3 MR. BARR: No, sir.
 4 MR. NATALE: In coming up with your
 5 conclusions, did you refer to any standard
 6 articles or references which are routinely
 7 used by experts such as yourself?
 8 MR. BARR: Yes, I did.
 9 MR. NATALE: And tell the Council what
 10 you did.
 11 MR. BARR: Among the things that I
 12 looked at were the present standards for
 13 level of service determination and the
 14 criteria as published by the Florida
 15 Department of Transportation and utilized
 16 throughout the state. And I also examined
 17 the research performed by the Institute of
 18 Transportation Engineers and published
 19 relative to trip generation of clubs.
 20 MR. NATALE: And is that a standard
 21 procedure to look through the applicable
 22 literature and references in giving an
 23 opinion as a traffic engineer?
 24 MR. BARR: Why, yes, sir. It is.
 25 MR. NATALE: Okay. If you could, based

*** Notes ***

Page 473

Page 474

1 on your -- by the way, did you ever have any
2 contact with the Mar-a-Lago property prior to
3 this investigation you conducted?

4 MR. BARR: Yes. In 1993, at the time
5 of the application for it to be -- to come
6 into club use, I was retained to do a traffic
7 analysis related to it's proposed use. And I
8 did present the results of that traffic
9 analysis to the Town Council.

10 MR. NATALE: Very well.

11 Based on all that you have considered,
12 all that you have looked at in your
13 expertise, do you have an opinion as to the
14 report, the Brisson Report as it relates to
15 the problems of traffic, traffic flow,
16 membership, the relationship if any between
17 membership and traffic generated and the
18 like?

19 MR. BARR: Yes, I do.

20 MR. NATALE: Okay. Would you please
21 tell the Council what those opinions are and
22 why.

23 MR. BARR: In summary, or would you
24 like me to go through the findings?

25 MR. NATALE: Go through your findings,

1 in the way you think that would answer for
2 them or give them the most information that
3 you can.

4 MR. BARR: I'll try to be as brief as
5 possible and get covered the information that
6 came out of the review that I did with the
7 assistance of my staff.

8 In reviewing the Brisson Report and the
9 other materials that I have just mentioned, I
10 went back to our 1993 analysis and compared
11 it to what the actual experience has been at
12 Mar-a-Lago in every way that it could
13 possibly be compared as related to these
14 matters that you just mentioned.

15 In your 1993 analysis we reported that
16 the research reported at that time by the
17 Institute of Transportation Engineers, which
18 I'll call the ITE for brevity, shows no
19 correlation between club membership and trip
20 generation. We have still been unable to
21 find any such evidence of correlation.

22 The ITE research includes substantial
23 data on trips generated by large and small
24 clubs ranging in size from 150 memberships to
25 4,000 memberships. None show any useful

*** Notes ***

Page 475

Page 476

1 correlation. It's expressed as an R-squared
2 correlation of determination.

3 MR. NATALE: Let me interrupt you, sir.
4 Does that mean that in your research of the
5 literature within your profession you found
6 that there is nothing in the literature or in
7 the data that is regularly used to support
8 the statement that there is a correlation
9 between membership and traffic generated?

10 MR. BARR: That is right. That is the
11 published research that is used as a standard
12 in our profession.

13 MR. NATALE: By the way, have you ever
14 been a professor anywhere?

15 MR. BARR: Yes.

16 MR. NATALE: And where is that?

17 MR. BARR: An adjunct professor at
18 Florida State University.

19 MR. NATALE: Now, sir, as it relates to
20 the information you were able to find about
21 clubs and traffic generation, would you share
22 with the Council what that information is?

23 MR. BARR: Well, it shows literally no
24 correlation. The coefficient of correlation
25 is not even given, because it has no useful

1 purpose. I did find that, for example, the
2 largest club that was in the research samples
3 had a 4,000 membership. And there were
4 several clubs in the two to 300 membership
5 category that had larger trip generation,
6 daily trip generation, than did the club that
7 had 4,000 members.

8 There just no useful correlation to be
9 used between membership and estimating trip
10 generation.

11 MR. NATALE: What is the next point
12 that you came to, the next conclusion?

13 MR. BARR: The next conclusion was that
14 what does control the trip generation at the
15 Mar-a-Lago Club based on the experience that
16 we reviewed over the past year-plus, 12
17 months-plus, is that the limitations on the
18 facilities, the parking area, the dining room
19 facilities and the other facilities of the
20 club had certain limitations.

21 The limitations are quite large because
22 they entertain substantial people at the
23 major events that we have heard about. But
24 the capacity of the house itself as it sits,
25 the house just can't hold more than has been

*** Notes ***

Page 477 1 held and that have attended at the major 2 events that have been held from time to time 3 at the club. That's as much as the house 4 will hold. 5 MR. NATALE: Has there, to your 6 knowledge and based on all that you have 7 looked at, has there been any problem with 8 traffic congestion at all? 9 MR. BARR: None, and for several 10 reasons. One has to do with the capacity of 11 Ocean Boulevard, which has in the past been 12 stated and which we found is operating well 13 under its standard capacity. 14 The Keith and Schnars report showed 15 that to be operating at level of service B. 16 During the 1996 peak season with counts that 17 were taken in February it would get as low as 18 C at times, but it's -- that's the present 19 level of service even during the peak season 20 there. 21 The other reason is that the handling 22 of traffic going in and going out of 23 Mar-a-Lago has been handled quite adequately 24 by the traffic plans that have been carried 25 out cooperatively between the Town Police	Page 478 1 Department and Mar-a-Lago staff and an 2 excellent valet service in combination with 3 the adequate stacking spaces that's inside of 4 the gates to avoid any backups out onto Ocean 5 Boulevard and in combination with the 6 adequacy of the parking spaces. 7 MR. NATALE: If I could, when you talk 8 about the adequate staffing -- stacking. 9 PRESIDENT SMITH: Use the microphone, 10 please. Thank you. 11 MR. NATALE: When we're talking about 12 adequate stacking, I'd like you to look at 13 this diagram which we've previously 14 presented. Could you explain, and I'm going 15 to give you this mic. 16 Could you explain what you mean by 17 stacking and how this is worked in reality 18 and how you see it working in the future? 19 Maybe if you could stand to this side it 20 would be easier. 21 MR. BARR: In our 1993 analysis and 22 recommendations for appropriate measures to 23 be taken to preclude any possibility of 24 stacking or backups out onto Ocean Boulevard, 25 we recommended that stacking distances be
*** Notes ***	
Page 479 1 provided inside the gate that was adequate to 2 take care of what we expected the maximum 3 rate of arrivals at the club at any peak 4 event would be. That has been provided. 5 And as has been illustrated here, 26 6 spaces have been provided, which even exceeds 7 what we estimated as the minimum that should 8 be provided at that time. And I understand 9 recommendation has been made by others as 10 well. 11 MR. NATALE: If I may interrupt. You 12 have been to Mar-a-Lago and seen these 13 locations that have been depicted in this 14 chart? 15 MR. BARR: Yes. 16 MR. NATALE: Does this chart accurately 17 reflect what you saw when you went there? 18 MR. BARR: Yes, it does. 19 MR. NATALE: I believe we recommended 20 20 or 22 spaces. I don't recall exactly what 21 the number was at the time. I believe more 22 than that has been provided. 23 Futhermore, we have inquired about how 24 often has that total amount of stack space 25 filled up at that location, and the answers	Page 480 1 from everybody that I asked, and it was 2 separate people that I asked the question of, 3 is that it has never filled up and has not 4 really come close to filled up because of the 5 adequacy of the valet service. 6 MR. NATALE: Thank you. 7 What is the next point that you have as 8 a finding in your report? 9 MR. BARR: Okay. Relative to the 10 traffic concurrency evaluation and the need 11 for being concerned about whether or not the 12 Ocean Boulevard capacity is being exceeded or 13 has any chance to be exceeded in the near 14 future, we predicted in our 1993 analysis 15 that it would not be exceeded, it was not 16 being exceeded then, as I have mentioned. 17 The Keith and Schnars Report has found 18 that at level of service B there, the County 19 counts taken a very close B by location show 20 level of service C on some days during the 21 peak season, but never to the level of 22 service D, which is the County standard or 23 the level of service E, which I understand is 24 the Town's standard. 25 So there is no concurrency issue on
*** Notes ***	

1 Ocean Boulevard at the present time or in the
2 foreseeable future. A substantial increase
3 in traffic by as much as 50 percent or more
4 could occur before those levels of service
5 standards are exceeded.

6 MR. NATALE: Sir, were you present
7 during the testimony of Mr. Tipton regarding
8 his extrapolations as to projected traffic
9 usage, trips generated, and when and if the
10 cap would be exceeded or met?

11 MR. BARR: Yes, I was.

12 MR. NATALE: Okay. And what is your
13 response to that methodology and to the
14 conclusions from that?

15 MR. BARR: That methodology is based on
16 a premise that there is excellent correlation
17 between the size of the membership and the
18 amount of traffic that would be generated by
19 the Mar-a-Lago Club. And I totally disagree
20 that there is any correlation between the
21 size of the membership and the amount of
22 traffic that would be generated.

23 Traffic is contained by other factors
24 related as I said, to the size of the
25 facilities, the capacity of the facilities

1 within the property.

2 MR. NATALE: Are you aware if at any
3 time in the past Mr. Weidner has made a
4 similar statement that membership should not
5 be considered as a factor in the generation
6 of trips?

7 MR. BARR: I believe that statement was
8 made in the 1993 analysis by Mr. Weidner.

9 MR. NATALE: If you may now, what is
10 your next point that you would have?

11 MR. BARR: We recommended in our 1993
12 analysis that there be Police control at the
13 entrance and exits at the property during
14 special events. And that has been complied
15 with.

16 And the experience of that Police
17 control the Police officers and Police
18 Department working in close cooperation and
19 coordination with the Mar-a-Lago staff,
20 including the valet staff that's caused the
21 result to be that there have been literally
22 no problems resulting even during the major
23 peak events that have taken place at
24 Mar-a-Lago.

25 MR. NATALE: Next?

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1 MR. BARR: Well, let's see. The next
2 one had to do with the 26 spaces. We have
3 covered that. The valet service, as I say
4 has been adequate, and we understand not so
5 much to preclude any further backups or
6 possibilities of the backups, but more
7 directed at accommodating convince of members
8 arriving at the club, that it's been reported
9 to me that more valet personnel have been
10 hired and will be used over this next season.

11 We recommended that there be adequate
12 internal parking spaces provided and it has
13 been. The 252 parking spaces which exist
14 there now have proven adequate for all major
15 events, even those that went to the capacity
16 of the facility.

17 MR. NATALE: Sir, are you aware of what
18 the parking mix ratio is at any of the other
19 private clubs in Palm Beach?

20 MR. BARR: The standard that has been
21 developed, I have been informed in this area,
22 is to have ideally one valet attendant for
23 each 25 guests or for each 12 cars expected
24 when up to 300 guests are expected, and one
25 valet for each 20 guests if more than 300

1 guests are expected. And Mar-a-Lago staffing
2 exceeds those standards.

3 MR. NATALE: Okay. Very well.

4 And the next point that you make?

5 MR. BARR: The next point had to do
6 with the provision of left-turn lanes. We
7 had recommended the installation of the
8 left-turn lane, not as something that was
9 essential to completely avoid congestion on
10 Ocean Boulevard for traffic entering the
11 property, but rather in order to prevent any
12 delays to traffic other than the traffic
13 waiting to turn in. That has been done.

14 And in addition to that, the left-turn
15 lane on Ocean Boulevard, which has been
16 working very well with a left-turn lane has
17 also been provided at the south entrance.

18 MR. NATALE: Has there been any
19 analysis on your part as it relates to the
20 traffic monitoring devices and the data based
21 on them?

22 MR. BARR: Say again. I'm sorry.

23 MR. NATALE: Have you made any
24 evaluations, or do you have any opinions
25 about the data monitoring, the traffic

*** Notes ***

Page 485

Page 486

1 monitoring that has been going on with the
 2 County boxes, whatever and the ability to
 3 extrapolate what other experts have said they
 4 can from the numbers recorded there?
 5 MR. BARR: The traffic counts on the
 6 driveways, you're talking about?
 7 MR. NATALE: Yes. On the driveways.
 8 MR. BARR: Taken by Mar-a-Lago staff?
 9 MR. NATALE: Yes.
 10 MR. BARR: There have been gaps on
 11 those. However, we found more than
 12 sufficient data to be able to annualize and
 13 determine what the averages have been even
 14 during peak events and peak months as well as
 15 off peak periods. And we have made some
 16 estimates that coincide very closely with
 17 what I have heard here.
 18 MR. NATALE: Sir, as it relates to the
 19 extrapolation that was made by Mr. Tipton
 20 based on those comings and goings, was there
 21 any defect in that analysis in that it didn't
 22 account for the construction staff and the
 23 vendors, the construction staff that were
 24 clearly just a temporary thing?
 25 MR. BARR: Right. I think he stated

1 that. I heard this morning that the traffic
 2 counts undoubtedly did consider or include
 3 construction traffic.
 4 MR. NATALE: How much of that is from
 5 data and how much is estimate?
 6 MR. BARR: I agree with him on this
 7 point. But does it contain a certain amount
 8 of construction traffic and the total number
 9 of members or people attending the club and
 10 going in and out, either members or staff?
 11 And that has not been isolated from the
 12 totals.
 13 MR. NATALE: Based on all that you have
 14 heard and read and know about this, do you
 15 have an opinion as to whether the application
 16 of Mar-a-Lago in any way would cause them to
 17 be in violation of the concurrency
 18 requirements?
 19 MR. BARR: No. And the primary reason
 20 for that is that Ocean Boulevard is operating
 21 well below the level where its capacity would
 22 be exceeded.
 23 MR. NATALE: In any way, whatsoever, do
 24 you see if the Council were to approve this
 25 Application, that they would be creating or

*** Notes ***

Page 487

Page 488

1 exposing the Town of Palm Beach to traffic
 2 congestion or any traffic problems in
 3 relation to the operation of Mar-a-Lago?
 4 MR. BARR: No, I do not.
 5 MR. NATALE: One moment, please.
 6 Oh, there was one thing, sir, that I
 7 wanted to bring out.
 8 I would first like you to make a
 9 judgment on the following: If a traffic
 10 engineer was given the following
 11 hypothetical, do you as a traffic engineer
 12 think it's fair and appropriate.
 13 The hypothetical is this: Assume that
 14 we have two members, one is a Town resident
 15 member and the other is a non-Town resident
 16 member who lives in with Detroit or Richmond,
 17 Virginia.
 18 MAYOR ILYNSKY: -- who lives in
 19 Chicago.
 20 PRESIDENT SMITH: Or Detroit.
 21 MR. NATALE: But they don't live in the
 22 Town of Palm Beach. And they are only a
 23 resident for 30 days, while the Town of Palm
 24 Beach resident is a 300-day-a-year resident.
 25 Do you believe that the person -- what

1 is your opinion as to whether or not the Town
 2 resident with 300 days here would be
 3 logically more likely to create greater
 4 traffic, greater trips than the 30-day
 5 resident?
 6 MR. BARR: Certainly members who are
 7 residents of the Town could be without
 8 question expected to use the club more often
 9 on a daily basis, weekly basis, and make more
 10 trips to and from the club over the course of
 11 a year than would be a resident who lives out
 12 of Town for several months or most of the of
 13 the year.
 14 MR. NATALE: Would it be fair then to
 15 assume that the more people that would be
 16 required to be Town of Palm Beach residents,
 17 that there is a greater likelihood that you
 18 would increase the number of trips with
 19 traffic to and from Mar-a-Lago?
 20 MR. BARR: Yes, there is a greater
 21 likelihood that the total trip generation
 22 across a year's time would be greater if a
 23 larger portion of the members were residents
 24 of the Town than if the smaller portion of
 25 members were residents of the Town.

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1 MR. NATALE: As a traffic engineer who
2 has testified as an expert in these areas
3 before, is there anything foolish or
4 inappropriate about that series of questions
5 I have just asked you?

6 MR. BARR: No, sir.

7 MR. NATALE: One moment.

8 I have no further questions.

9 PRESIDENT SMITH: If I could ask one
10 question, Mr. Barr, and I know the Mayor has
11 one question.

12 Do you feel that it's difficult for you
13 to answer these questions because you don't
14 live in the area like Mr. Weidner who was
15 questioned this morning? Was he capable of
16 discussing daily traffic since he lives in
17 Fort Lauderdale? And I see your based in
18 Tallahassee.

19 MR. BARR: Do I feel it's a
20 disadvantage?

21 PRESIDENT SMITH: Yes.

22 MR. BARR: No. The only disadvantage
23 is that I was not here to see the major
24 events, and I have to rely on the reports of
25 your Chief of Police and the Mar-a-Lago staff

1 that no traffic congestion occurred

2 Other than that, the facts speak for
3 themselves. The data I reviewed was
4 sufficient for this analysis.

5 PRESIDENT SMITH: All right. And when
6 you were supplied the information about the
7 parking at the other clubs, who did you speak
8 to and at what clubs?

9 MR. BARR: I did not look at parking at
10 other clubs.

11 PRESIDENT SMITH: You said you were
12 supplied with the information as to the ratio
13 of valet parkers to arriving cars for special
14 events at other clubs.

15 MR. BARR: Oh.

16 PRESIDENT SMITH: Who supplied you with
17 the information?

18 MR. BARR: The information was as to
19 the standards. I did not have the
20 information as to the size of parking or to
21 the number of valets. That was as to the
22 standards that are popularly in use in the
23 valet industry.

24 PRESIDENT SMITH: Oh, that's a formula?

25 MR. BARR: That that's correct.

*** Notes ***

1 PRESIDENT SMITH: All right. Fine,
2 that's fine. Thank you very much.
3 Mayor?

4 MR. NATALE: I'd just like to get this
5 report into evidence.

6 PRESIDENT SMITH: Is that the same
7 report that started this this morning?

8 MR. NATALE: Yes. Boy scout's honor.

9 PRESIDENT SMITH: Is that a yes?

10 MR. NATALE: Yes.

11 PRESIDENT SMITH: All right.

12 Mr. Mayor?

13 MAYOR ILYINSKY: The job of being a
14 consultant has always fascinated me. And
15 Mr. McLendon and I have are going to become
16 consultants as soon as we get fired from this
17 job. Because apparently no two consultants
18 will ever agree.

19 Mr. Barr, I hold you in the highest
20 respect. But for you to stand there and say
21 that there is not one issue that you agree
22 with the Town's consultants about to me is
23 absolutely laughable. And I can only say
24 that if you were working for me you would be
25 saying something else.

1 And that is absolutely impossible to
2 swallow. If I happen to see a tennis
3 tournament at the Bath and Tennis, let's say
4 or a party there, the traffic will even pile
5 up for that club.

6 And do you mean to tell me that if you
7 have a club of 15 people -- or where's your
8 favorite break off point -- and 1,000 people
9 there's no difference? Or 1,000 people and
10 525 people, there's no difference?

11 Pardon me for saying so there, but that
12 is hog wash. The more cars you have the more
13 cars you have piling up. The more people,
14 the more cars, the more trips.

15 How can you justify saying that there
16 is not one single bit of correlation between
17 the number of members at the club and the
18 number of trips per day? And if you'll
19 explain that to me in English, sir, well, I'm
20 sure we'd all love to hear it.

21 MR. BARR: What I stated, sir, was that
22 the research taken by the Institute of
23 Transportation Engineers --

24 MAYOR ILYINSKY: Sir, we're talking
25 about two roads in Palm Beach, not from the

*** Notes ***

Page 493

Page 494

1 Institute of Engineers in some other Town.
2 We're only talking about the club and a
3 little stretch of A1A.

4 MR. BARR: I was talking about
5 statistical correlation. No one has ever
6 shown statistical correlation between the
7 number of members and the trip generation of
8 any club.

9 PRESIDENT SMITH: Mr. McLendon?

10 MR. McLENDON: Yes.

11 The Mayor asked one of the two
12 questions that I was going to ask.

13 All things being equal, it would
14 certainly appear to me that there must be a
15 correlation between the number of members.

16 The other question I was going to ask of
17 Mr. Natale would be that on several occasions
18 you have given both directions to traffic
19 engineers -- and I guess I have had enough
20 traffic to last me the rest of my life.

21 MAYOR ILYNSKY: Don't get rid of it
22 now. We're going to need it later.

23 MR. McLENDON: You keep asking me about
24 an out-of-towner and an in-towner. I assume
25 that that question presumes that there will

1 be some difference in distribution between
2 members of the club and future members of the
3 club. Because without knowing that
4 distribution I don't know how anyone could
5 have answered your question.

6 MR. NATALE: The reason I asked the
7 question, Counselor McLendon, is this: one
8 of the things the Application is trying to
9 address as well is the 50 percent local
10 residents, as far as participation or
11 patronage of the club. And the reason why I
12 asked that particular question is because if
13 they are in fact concerned about traffic
14 generation, then there may be -- and even
15 using your logic and what the Mayor says is
16 common sense, then using that same common
17 sense, the more residents we have who were
18 members of that club, we really would just
19 increase more of the problem. And it may be
20 prudent to require a less percentage of Town
21 membership so that the problem wouldn't
22 occur.

23 MAYOR ILYNSKY: Oh, I get it. Good
24 for you. Good for you. That is a beauty,
25 that is.

*** Notes ***

Page 495

Page 496

1 PRESIDENT SMITH: Quiet, please, so
2 everybody can digest this. Mr. McLendon is
3 not finished.

4 Please, Mr. Moore, please.
5 Mr. McLendon has a question. Don't talk,
6 please.

7 MR. McLendon: It's obvious that if you
8 have in-Town club members only and you decide
9 to take in only out-of-Town members only, the
10 effect on traffic is going to be less for
11 members. There is no question in my mind
12 about that. Okay.

13 But this line of questioning seems to
14 suggest some different proportion of
15 out-of-Town, in-Town members now as opposed
16 to the future. So I don't really understand
17 that.

18 MR. NATALE: What I'm saying is we
19 don't know exactly what the proportion is
20 going to be in reality or in the future.

21 MR. McLENDON: Do you know what it is
22 now, Counselor?

23 MAYOR ILYNSKY: What does the
24 Agreement say?

25 MR. NATALE: Now it says 50 percent.

1 It must be 50 percent.

2 Now, in answer to your question, I
3 don't know whether it's at 85 or 95 percent
4 or what it is.

5 PRESIDENT SMITH: It must be. It must
6 be Town serving.

7 MR. NATALE: It must be.

8 I'm merely bringing this up as a point
9 of consideration when we're evaluating the
10 validity of the positions that the different
11 experts have told, to consider the totality
12 of the circumstances. That is the purpose of
13 my cross examination and the purpose of the
14 presentation today.

15 PRESIDENT SMITH: I have one small
16 question, Mr. Natale. If you suggested to us
17 that perhaps we should put a condition on it
18 that there be only non-residents, wouldn't
19 you feel that would be discriminatory toward
20 the residents of the Town of Palm Beach?

21 MR. NATALE: I'm not saying you would
22 do that, and I would never say that.

23 PRESIDENT SMITH: Well, you made some
24 suggestion.

25 MR. NATALE: No. No. What I was

*** Notes ***

1 saying is that we need to think about that
2 the percentage required of residents and the
3 impact that that may or may not have on the
4 traffic.

5 That's all I'm bringing to your
6 attention, Madame President, that that's a
7 factor to be considered. And I'm certainly
8 not going to be advocate that any group or
9 any set of people be excluded from anything.

10 PRESIDENT SMITH: But the Ordinance
11 doesn't say Town residences, it says the club
12 must show it is Town serving.

13 MR. NATALE: I understand that.

14 PRESIDENT SMITH: Right. But you keep
15 saying Town residents, but it is Town serving
16 in the Ordinance.

17 MR. NATALE: It is Town serving. And
18 what I would like to say is as defined in the
19 Ordinance.

20 PRESIDENT SMITH: All right. Thank
21 you.

22 Mr. Wyett?

23 MR. WYETT: Can we have anything but a
24 Town serving rule relative to the Mar-a-Lago
25 club versus any other operation we have? In

1 the last two years of sitting here, almost
2 everybody who comes to us warrants that they
3 are Town serving.

4 Can Mr. Trump or Mar-a-Lago be excepted
5 from that?

6 MR. MOORE: The Application before you
7 is a special exception. And in order to find
8 and grant approval for a special exception
9 all of the criteria must be examined.

10 Item L of that criteria is the Town
11 serving requirement that more than 50 percent
12 of the individuals, and in this particular
13 case, members would be residents or persons
14 employed known as Town's persons in the Town
15 of Palm Beach.

16 So, the answer is no, we may not grant,
17 in my opinion, the special exception without
18 that provision.

19 Okay. I just wanted to put that to
20 bed.

21 Mr. Natale, I think one of the problems
22 I have in trying to reach a just and fair
23 decision is I keep hearing put out piece by
24 piece, the cars. I don't see a full deck on
25 board. And you're revealing more and more

*** Notes ***

1 each time. And I can understand where you're
2 coming from more and more each time. And it
3 will be more helpful if you would explain
4 yourself up front rather than to go through
5 15 or 20 minutes of dragging it out.

6 Mr. Barr, I have heard you say that
7 there is no relationship between membership
8 and traffic. And I have heard it disputed.
9 And it doesn't make too much sense to me.
10 But you haven't talked about special events
11 which generate a tremendous amount of
12 traffic. Because Monday and Wednesday I
13 understand that the club is closed. And
14 there are days that there are often charity
15 or other type of events which could be from a
16 few people to 391 or more with 391 allowed,
17 expanded a little bit.

18 I understand that if we were to take
19 off all limits and the club has the physical
20 grounds to tent, which they do occasionally,
21 and they had 1,000 or 2,000 people, what
22 effect would that have on traffic?

23 MR. BARR: The limitations of the
24 ability of the property to accept traffic
25 either entering or exiting are affected by

1 the capacity of the property itself, the
2 dining area, the parking area is a primary
3 limiting factor, and other activities, the
4 spaces that are available for the various
5 activities within the property itself.

6 It has substantial limitations in its
7 space and its availability to take --

8 MR. WYETT: I just told you that there
9 is enough space there, there's something like
10 14, 15 16 acres. You can just tent tennis
11 courts and you put a lot of people on them.

12 But regardless of how they would accept
13 this number of people, if we took one of the
14 requests, it would be to take off all
15 limitations of access. And that means that
16 you could have a thousand or more people
17 there.

18 Since there's an average of two people
19 per car arriving, a thousand people would be
20 500 cars plus all of the extra people to
21 service them. So it could be six or 700
22 cars. And if you had a real big event, it
23 could go much than that.

24 What would that do to traffic in a very
25 sensitive section of Town where the Southern

*** Notes ***

Page 501

Page 502

1 Boulevard circle creates a traffic problem?

2 MR. BARR: The planning of each
3 individual major event needs to take that
4 into account. And the experience that
5 happened with various larger events, even
6 that have taken place now, although it's my
7 understanding that they have reached the
8 capacity of the property now at times.

9 However, even at those times there has
10 been no backup out onto Ocean Boulevard. The
11 recommendation that came out of our analysis
12 that we did in response to the Brisson review
13 and the other materials that we analyzed was
14 that what was working ought to continuing
15 working.

16 The best thing is being done right now
17 to handle traffic and which has been very
18 effective in precluding any backups or any of
19 the traffic congestion whatsoever during the
20 major events has been the excellent planning
21 of those events and the traffic control at
22 those events cooperatively by your Police
23 departments and by the Mar-a-Lago --

24 MR. WYETT: That doesn't answer my
25 question. You keep referring to the current

1 limitation of 391. And this Council grants
2 you, the Police Department grants you that
3 everything has been handled well. We are not
4 concerned with that.

5 I told you I want to know in your
6 opinion as a traffic expert what would happen
7 if you took off the limits. And now we're
8 not talking about the house or the existing
9 ballroom, but tenting or some other facility
10 in the future, which the County would lose
11 control of it if it took off the limits and
12 there were 1,000 or 1,500 or 2,000 people
13 arriving still in that same narrow time
14 frame.

15 I'm still very concerned for all of the
16 residents in this Town as well as for
17 Mr. Trump, that we do not create a monster.

18 We only have one access road going from
19 north to south. It is very busy. The
20 residents along Sloan's curve will tell you
21 it's bumper to bumper during season.

22 Now, I'm very concerned for the
23 protection of everyone what your answer will
24 be based on having a very large number, and
25 having nothing to do with the very small

*** Notes ***

Page 503

Page 504

1 number that we have very wisely in the past
2 imposed to see how things would work.

3 The idea is that you can go from a
4 small number to a very large number. But
5 once this Town grants a large number, it
6 cannot take it back.

7 MR. BARR: I'm not suggesting that the
8 number be increased. What I'm suggesting is
9 that the public interest and the very
10 legitimate concern that I have that the
11 public be protected from any possibility that
12 there may be traffic congestion and
13 difficulties on Ocean Boulevard relating from
14 traffic going in and out of Mar-a-Lago.

15 The kinds of controls that the city
16 should continue to have are not in these
17 artificial caps because they're not really
18 related to what goes in and out of the site.

19 What control that the city should
20 continue to have is what's been working and
21 what has continued to work on every major
22 type of special event of a similar nature all
23 over the country, and that is the traffic
24 plan --

25 MR. WYETT: Mr. Barr, we don't have a

1 similar situation. If you go down to this
2 area between 4:00 and 6:00 o'clock at night,
3 any night when season begins to when season
4 ends, you cannot get through. It's a half
5 hour wait to get past Mar-a-Lago; nothing to
6 do with Mar-a-Lago. Now, it existed before.

7 But that's a similar amount of traffic
8 to having 500 cars trying to get into
9 Mar-a-Lago between 7:00 and 7:15 or 7:00 and
10 7:30.

11 So I don't need to go to San Francisco;
12 I have the experience here in Palm Beach.
13 And I have been in that situation hundreds of
14 times. And your testimony -- I can't get a
15 straight answer from you.

16 What would happen right here -- wait a
17 month and go look if you haven't been there.

18 MR. BARR: I have to tell you that if
19 there were no Police and Mar-a-Lago planning
20 of how to control the traffic at those events
21 and there were no limitations --

22 MR. WYETT: We would have --

23 PRESIDENT SMITH: Mr. Wyett, let
24 Mr. Barr finish.

25 MR. BARR: If there were no controls

*** Notes ***

1 whatsoever such was Police involvement and
2 planning for those events, then you would
3 have no control and the public would not be
4 adequately protected.

5 MR. WYETT: That's what I believe to be
6 the case. Because we do have Police trying
7 to control the traffic that's in the circle
8 there, it was never designed for the amount
9 of traffic that has developed. The circle
10 came first and the development south of it
11 came second and the development north of it,
12 which at this time has grown immensely.

13 This Town has grown immensely. We have
14 grown from approximately 10,000 people
15 off-season to somewhere between 25 and
16 35,000 people. And we are full. And we are
17 the access road from the communities below us
18 north trying to come into the center of Town
19 which is major attraction, too.

20 So, I get the impression from you that
21 we shouldn't change the access because 391 is
22 working very well. So that's the impression
23 I get.

24 The other question I have to ask you is
25 you're basing your opinion on memberships and

1 relationships and the experience. And
2 Mar-a-Lago at the beginning of their season
3 had 157 members based on the Town serving
4 testimony that was given to us just prior to
5 granting the C.O. It grew during the year to
6 somewhere close to 300.

7 However, most of that growth occurred
8 in the latter part of the season. So
9 somewhere short of 200 was probably the
10 average membership. We don't know exactly.
11 But up a few, down a few, that's not
12 important.

13 But what will happen when 500 members
14 go there and also in a very narrow period of
15 time and want to leave? If I was there to
16 play golf or use the various other facilities
17 or tennis, 4:00 o'clock would be the time I
18 would leave, right in the middle of the
19 traffic.

20 I'm only concerned about protecting
21 this Town, maintaining it, preserving it for
22 the way this Town was when I came here 22
23 years ago. And I hope it looks the same way
24 and has the same wonderful characteristics 22
25 years from today. That is what this Council

*** Notes ***

1 is concerned about.

2 PRESIDENT SMITH: Mr. Barr, did I
3 understand you to say that you understand the
4 property has reached capacity on several
5 occasions?

6 MR. BARR: That's my understanding,
7 yes.

8 PRESIDENT SMITH: Right. Well, if
9 that's the case, that was with the 390 cap on
10 several events, what would be the reasoning
11 to increase it?

12 MR. BARR: I'm not suggesting it be
13 increased. I'm suggesting that the Police
14 advise --

15 PRESIDENT SMITH: I'm not talking about
16 the Police. I'm just saying that if the
17 capacity of the property has been reached
18 with 390 and a cap on the 500 membership and
19 313 trip total, what would be the rationale
20 for this Council to change that?

21 MR. BARR: See, I don't see any that
22 the 391 has had any effect on the major
23 special events.

24 PRESIDENT SMITH: You mean they have
25 had more than that?

1 MR. BARR: I saw no correlation between
2 that cap and how many attended special
3 events.

4 PRESIDENT SMITH: But there couldn't be
5 more than that. That is part of the
6 Agreement.

7 MR. BARR: The correlation has been
8 that the facility control -- the adequacy of
9 the facility's control as to how many can be
10 accommodated during these special events --

11 PRESIDENT SMITH: But, you see, that's
12 what the problem is that I'm having a problem
13 with. You don't see the correlation, but if
14 I see the Agreement says no more than 390,
15 and you say that the property has reached
16 capacity, I mean an apple is an apple and
17 it's a given.

18 But I'm not a traffic engineer, so we
19 don't think in the same way. This is why I
20 don't understand your reasoning. I'm sorry.

21 MR. McDonald?

22 MR. McDONALD: Let me try and clarify
23 this.

24 When you say it's reached capacity, are
25 you saying it's reached the number allowable

*** Notes ***

Page 509

Page 510

1 under the current declaration of use?
 2 MR. BARR: No.
 3 MR. McDONALD: Well, what are you
 4 saying?
 5 MR. BARR: That the capacity of the
 6 facility, the property itself, it's parking
 7 lot primarily --
 8 MR. McDONALD: Yes.
 9 MR. BARR: -- has on occasion at these
 10 special events that they have had reached its
 11 capacity.
 12 But there is no relation to the 391.
 13 That's my point.
 14 MR. McDONALD: So you are saying that
 15 if there were less than 391 people there at
 16 any given event in the past, that they have
 17 exceeded the parking?
 18 Is that what you're --
 19 MR. BARR: I don't know what the number
 20 in and out was at any particular -- or the
 21 391, I guess, is a limitation on --
 22 MR. McDONALD: -- is the number of
 23 people that came to attend an event.
 24 MR. BARR: -- the number of people
 25 attending?

1 MR. McDONALD: Yes.
 2 MR. BARR: I don't know how many people
 3 attended these special events. But the point
 4 is, the people where they filled up was
 5 controlled and limited by the capacity of the
 6 facilities.
 7 MR. McDONALD: What I understand and
 8 think you're trying to say is there an
 9 inherent limit that is posed by the property
 10 itself.
 11 MR. BARR: Yes.
 12 MR. McDONALD: Okay. And I understand
 13 that. But how are you relating that to the
 14 391 cap?
 15 MR. BARR: I'm not.
 16 MR. McDONALD: So there is no
 17 relationship between the 391 cap and what
 18 this property could hold at any time?
 19 MR. BARR: That's correct. That's my
 20 opinion.
 21 MR. McDONALD: Thank you.
 22 PRESIDENT SMITH: Mr. Shaw, is the
 23 situation more clarified for you?
 24 MR. SHAW: I think it keeps getting
 25 more confusing, personally.

*** Notes ***

Page 511

Page 512

1 People are getting -- we have three
 2 separate elements; we have a road capacity
 3 which is dictated by a measurement of twice a
 4 quarter for one day or once a quarter for one
 5 day for two different groups which creates an
 6 average of what is on the road.
 7 We have a standard of -- level of
 8 service that the road is able to handle as
 9 provided by the County.
 10 Then we have got capacity that the club
 11 can handle as far as cars. Then you have got
 12 a capacity that can attend special events
 13 after 6:00 o'clock p.m. Then you have got a
 14 number of people with members that can go in
 15 and out throughout the day.
 16 At any point does that all come
 17 together? I mean, how do you add this all
 18 up? How do you take 391 people which may
 19 represent 200 cars, but since trips are
 20 counted going in and out, we'll call it 400
 21 trips for a special event in the afternoon.
 22 And how does that correlate with the
 23 people that may go in and out in the morning
 24 and people that may go in and out at 4:00
 25 o'clock in the afternoon?

1 MR. BARR: I look at it in a very
 2 simplistic manner.
 3 MR. SHAW: Great.
 4 MR. BARR: The simplicity of it is what
 5 has been the experience during major events
 6 that reached the capacity of the property and
 7 what has been the experience of growth on
 8 Ocean Boulevard in its traffic and how close
 9 is it getting to its capacity and its
 10 standard level of service.
 11 Neither of these has been a problem.
 12 They are not a problem now and are not
 13 expected to be a problem whether there are
 14 any caps or controls other than what is being
 15 done now with the cooperation of the Police
 16 and Mar-a-Lago staff.
 17 MR. SHAW: But if the County doesn't
 18 test its counts on a Tuesday -- is that
 19 correct? You said it was on Tuesday?
 20 A VOICE: Wednesday.
 21 MR. SHAW: Tuesday, Wednesday and
 22 Thursday.
 23 And special events usually take place
 24 on a weekend, then the County's count is
 25 never going to correlate to what is actually

*** Notes ***

Page 513

Page 514

1 happening. It's like me going out and doing
2 a sampling of how much my sprinkler is
3 putting on the grass at 3:00 o'clock in the
4 afternoon when I'm not allowed to water and
5 then saying I'm not using any water to water
6 my lawn because I'm watering at night.

7 All of these different numbers, and all
8 I see are logical statements that are not
9 coming from any concrete study or projection
10 that put all of these elements together that
11 say here is the road, here are the hourly
12 peak uses. You have got a chart in one
13 presentation that shows what the actual study
14 was over the 24-hour period of February 1st
15 through the 2nd of 1996 at one of the three
16 locations that apparently is used in the
17 study.

18 So what we don't know is how many
19 people have gone past Via Del Lago on this
20 study, and how many went into the Mar-a-Lago,
21 how many went over the Southern bridge or how
22 many turned south on South Ocean Boulevard.

23 And I don't see what the correlation of
24 any of this is. I don't know how to take
25 this and come up with an answer. Everyone

1 sounds right. Everybody says something and
2 it sounds great.

3 But the bottom line is if there is no
4 tie in to concurrency, how many cars could go
5 in and out of Mar-a-Lago. If there is no tie
6 to membership, how many of the cars on the
7 road could go into Mar-a-Lago? How many
8 would just continue down? How do I know if
9 I'm driving south do I turn or continue on to
10 Southern.

11 What is the impact? It's not a
12 dead-end road where they're going to go there
13 and end. And I just find the whole thing
14 mind boggling.

15 PRESIDENT SMITH: I don't think that
16 was a question. That was a statement from
17 Mr. Shaw.

18 MR. SHAW: It is if you can clear it up
19 for me. But four people haven't so far. Go
20 for it.

21 PRESIDENT SMITH: Mr. McLendon?

22 MR. MCLENDON: I thought I heard you
23 say that the on-site facilities had been
24 filled over and over or filled to capacity
25 and you particularly made that reference to

*** Notes ***

Page 515

Page 516

1 parking. Is that what you said?

2 MR. BARR: The parking has been filled,
3 I understand, on more than one occasion
4 during a capacity event.

5 MAYOR ILYNSKY: Did they turn people
6 away for that? I'm sorry, I didn't mean to
7 interrupt.

8 Mr. McDONALD: That seems strange to me
9 because I believe there's supposed to be 252
10 parking spaces, I believe. And it's been
11 claimed or reported that this would be
12 adequate for the Town criteria, say a
13 thousand-plus members. But it's already been
14 filled or overflowed with a lot less, with
15 391 or whatever the number was at an event.

16 I'm trying to make sense of what I
17 think I know you said. And it doesn't quite
18 fit.

19 MR. BARR: Well, we're talking about
20 the amount of trips. On one hand we're
21 talking about the amount of trips generated
22 across, on the year on an average. And on
23 the other hand we're talking about what
24 happens in the case of a peak event.

25 And again, there is no support in my

1 opinion for saying that there -- the peak
2 events will become larger if membership
3 increases because the peak events are
4 controlled by the capacity of the facilities,
5 how many can be invited and how many can
6 attend and go in and out of the property must
7 be controlled.

8 The issue of the parking is a capacity
9 issue, that is one of the limitations that
10 the property has that will itself control how
11 much traffic there is in and out of the
12 property.

13 MR. McDONALD: And I understand that
14 not all of the parking facilities are yet
15 completed or they weren't a couple of weeks
16 ago, so that may have some bearing on what
17 you said.

18 PRESIDENT SMITH: Mr. Barr, did you say
19 that the amount of traffic must be
20 controlled?

21 MR. BARR: Yes.

22 PRESIDENT SMITH: And how would you do
23 that if all restrictions were lifted?

24 MR. BARR: By careful development of a
25 traffic control plan for each event, as is

*** Notes ***

Page 517

Page 518

1 being done now, as I understand.

2 PRESIDENT SMITH: Exactly. This is in
3 place right now.

4 MR. BARR: That is between the Police
5 department and the Mar-a-Lago staff is what I
6 mean by traffic a control plan.

7 PRESIDENT SMITH: But all of these
8 conditions were put in place when you spoke
9 at the May 13th, 1993 meeting. You spoke in
10 conjunction with Mr. Pollack. And you both
11 came up with the figures, which Mr. Rampell
12 representing the Applicant stated the most
13 discussed item was the traffic.

14 This is on Page 10 from May 13th. And
15 he stated the seating capacity for the
16 special events would be a little less than
17 400 people. And they know associated with
18 that level of activity, that would generate
19 approximately 200 cars and they would have
20 adequate parking on site.

21 And you did not disagree with that
22 statement at that time.

23 MR. BARR: I don't recall that I agreed
24 or disagreed with it. The 391 figure did not
25 come out of our analysis.

1 PRESIDENT SMITH: Right. But it did
2 come out of those hearings. And you said
3 that you reached your analysis by using a
4 different figure than Mr. Pollack used.

5 According to the minutes -- you
6 followed him at the meeting in May. But you
7 said -- you quote, "Estimated a normal daily
8 trip generation of the club in the vicinity
9 of three to 400 vehicles per day, averaging
10 around 348, approximately."

11 He called you -- you, he -- excuse
12 me -- recalled remarkably, that this figure
13 is very close to Mr. Pollack's estimate. So
14 you and the other traffic expert agreed at
15 the time on the number of trips that would be
16 generated by the club.

17 MR. BARR: We made an estimate on the
18 trip generation.

19 PRESIDENT SMITH: Right. Thank you.
20 Mr. Wyett?

21 MR. WYETT: I think I understood, and
22 I'm asking a question, that you said that the
23 capacity of the facility governs the number
24 of people that could be on the facility at
25 one time?

*** Notes ***

Page 519

Page 520

1 MR. BARR: Yes, sir.

2 MR. WYETT: Is the facility now being
3 operated at its capacity?

4 MR. BARR: Yes, at times it is.

5 MR. WYETT: Can you explain to me why
6 you are here and why the Petitioner is here
7 asking for a change when he's at capacity?

8 MR. BARR: I think these changes are
9 not related to the capacity from a traffic
10 standpoint.

11 MR. WYETT: You just said that we can't
12 handle any more. You know, if the bottle is
13 full and I still have a hose with water
14 coming out I can't put any more water into
15 the bottle.

16 MR. BARR: Perhaps I didn't make myself
17 clear. What I'm saying is that the number --
18 that the caps that have been put on and the
19 stipulations as they stand now do not affect
20 how many people can come in and out of the
21 site, that the facility's capacity of the
22 site itself affects and limits the number of
23 people.

24 MR. WYETT: I heard you clearly on
25 that. Now, let's see if I understand what

1 you said. You said even though the capacity
2 that's been reached as far as the physical
3 plant is, the capacity of the traffic hasn't
4 been reached. Is that what you're saying to
5 me?

6 MR. BARR: On Ocean?

7 MR. WYETT: Yes.

8 And the capacity for more cars has not
9 been reached?

10 MR. BARR: The capacity for several
11 major events has been reached.

12 MR. WYETT: So therefore I ask you: If
13 the club cannot accept another car because
14 you can't put the people inside of the
15 facility and we assume that there's somewhere
16 close to two people per car and that is 200
17 odd cars there, sometimes 250, because you
18 have said or 250, and the facility is
19 overbrimming with people, what is the purpose
20 of you coming here and your clients coming
21 here and asking for more capacity for coming
22 on with cars when there is no place to put
23 the people the cars bring?

24 MR. BARR: You'll have to ask our
25 client what their intention is. All I'm

*** Notes ***

1 giving you is the traffic analysis.

2 MR. WYETT: So would it be logical to
3 assume that Mar-a-Lago has a reason for
4 asking for this increased capacity? Have
5 they revealed it yet? Because these people
6 are very intelligent. They know what they're
7 doing. Because it doesn't make sense based
8 on what the evidence has been presented so
9 far.

10 It may make sense if they clarify it,
11 but I haven't heard it at the moment.

12 Would you concur with that?

13 MR. BARR: Concur that they should
14 clarify?

15 MR. WYETT: Yes.

16 MR. BARR: Yes.

17 MR. WYETT: Thank you.

18 PRESIDENT SMITH: Any other questions
19 for Mr. Barr?

20 MR. CHOPIN: Yes.

21 PRESIDENT SMITH: Mr. Chopin?

22 MR. CHOPIN: For the record, my name is
23 Frank Chopin.

24 Mr. Barr, you and I have chatted
25 beforehand?

1 MR. BARR: About three and a half years
2 ago.

3 MR. CHOPIN: You submitted the report
4 which I'm not sure whether the Town Council
5 members have had an opportunity to look at.
6 That was submitted today; is that correct?

7 MR. BARR: Yes.

8 MR. CHOPIN: Okay. Were you
9 retained -- Mr. Trump's attorneys said it was
10 sometime after the 16th of September.

11 MR. BARR: Approximately the 16th of
12 September.

13 MR. CHOPIN: And the report was
14 dated -- was that submitted to the Town prior
15 to October 8th?

16 MR. BARR: Not that I know of.

17 MR. CHOPIN: Let me ask you a couple of
18 questions. Do you have a copy of your report
19 with you?

20 MR. BARR: Yes.

21 MR. CHOPIN: You do recognize that I
22 haven't seen it until about an hour ago and
23 I'm going to be disoriented in asking you
24 questions. And if you'll bear with me, I'd
25 appreciate it.

*** Notes ***

1 But one of the questions that seems to
2 me to be of academic importance if none other
3 that is that there is no other correlation
4 between traffic and membership.

5 That is a point that you have tried to
6 make?

7 MR. BARR: Yes.

8 MR. CHOPIN: And as I understand it,
9 you made the same point in 1993; did you not?

10 MR. BARR: Yes, sir.

11 MR. CHOPIN: And in 1993, you went to
12 ITE source materials; is that not correct?

13 MR. BARR: Yes.

14 MR. CHOPIN: And you did the same thing
15 in your report in 1996, didn't you?

16 MR. BARR: Yes.

17 MR. CHOPIN: Now, when you were being
18 questioned on direct examination, I think
19 counsel was very careful to continue to refer
20 to clubs in quotation marks in asking you
21 whether any ITE terms suggested a correlation
22 between membership and traffic; is that
23 correct?

24 MR. BARR: Yes.

25 MR. CHOPIN: Now, in fact, what kind of

1 clubs are we talking about?

2 MR. BARR: The clubs that were surveyed
3 by ITE are health clubs.

4 MR. CHOPIN: Are they health clubs?
5 Would you take a look at the report that you
6 put together and the attachments to that
7 report and tell me if it's not in your
8 Category 492?

9 MR. BARR: That's correct.

10 MR. CHOPIN: What is Category 492?

11 MR. BARR: They were all classified,
12 the samples were all classified under a
13 category called racquet club.

14 MR. CHOPIN: Racquet clubs; is that
15 right?

16 PRESIDENT SMITH: Could you tell us
17 where that is? Because we only got this
18 report last night.

19 MR. CHOPIN: If you look towards the
20 back of that report you will see that there
21 are two charts. And in fact I think it will
22 be helpful in my examination if you look at
23 it.

24 PRESIDENT SMITH: I see, it's at the
25 next to last page.

*** Notes ***

Page 525

Page 526

1 MR. CHOPIN: What you're saying is that
 2 the ITE made a study and they couldn't
 3 correlate membership with traffic generation
 4 in racquet clubs; is that correct?
 5 MR. BARR: That's correct.
 6 MR. CHOPIN: I can go further than
 7 that. The materials that appear in this ITE
 8 booklet with respect to that category, are
 9 there any other terms in that book that would
 10 go along with those charts, those graphs that
 11 you submitted?
 12 MR. BARR: Those are the only club
 13 samples that are researched.
 14 MR. CHOPIN: But are there any
 15 descriptive materials that tell you more
 16 about the study that you submitted as
 17 evidence of the lack of correlation between
 18 membership and traffic?
 19 MR. BARR: There is in the description,
 20 I believe there is one or two descriptive
 21 pages. Yes.
 22 MR. CHOPIN: Okay. You didn't include
 23 that in your report, though, did you?
 24 MR. BARR: No.
 25 MR. CHOPIN: By the way, do you recall

1 off hand when those studies were done?
 2 MR. BARR: They were made, as I recall,
 3 a number of years ago. I don't recall
 4 exactly what years they were made.
 5 MR. CHOPIN: Okay. Let me show you,
 6 and I'm going to ask the Council if I can,
 7 what is the page that precedes the page that
 8 you put in your report? And take a look at
 9 it and I'll ask you if you can identify what
 10 that is.
 11 MR. BARR: It's source numbers -- it's
 12 additional data and description of land use
 13 492.
 14 MR. CHOPIN: And it ties in
 15 specifically with the graphs that you
 16 submitted as a part of your report?
 17 MR. BARR: Yes, sir.
 18 MR. CHOPIN: And if you take a look at
 19 the bottom of the page, those studies were
 20 done in the 1970's, weren't they?
 21 MR. BARR: Yes.
 22 MR. CHOPIN: As I understand that could
 23 be anywhere from 25 years or something of
 24 that sort; right?
 25 MR. BARR: It could be.

*** Notes ***

Page 527

Page 528

1 MR. CHOPIN: Yeah. Okay. Of racquet
 2 clubs?
 3 MR. BARR: Yes.
 4 MR. CHOPIN: You were at Mar-a-Lago?
 5 MR. BARR: Beg your pardon?
 6 MR. CHOPIN: Were you at Mar-a-Lago?
 7 MR. BARR: Yes.
 8 MR. CHOPIN: With the Council's
 9 permission I would give this and I would ask
 10 for it to be circulated.
 11 PRESIDENT SMITH: And entered into the
 12 record?
 13 MR. CHOPIN: It's not a part of that.
 14 It's not part of what corresponds to the
 15 graphs. I'm going to come back to that in a
 16 minute.
 17 Have you been to Mar-a-Lago?
 18 MR. BARR: Yes.
 19 MR. CHOPIN: Did you play racquet ball?
 20 MR. BARR: No.
 21 MR. CHOPIN: Do you play racquet ball?
 22 MR. CHOPIN: No.
 23 MR. CHOPIN: Are there any racquet ball
 24 facilities there?
 25 MR. BARR: Not that I know of.

1 MR. CHOPIN: Is there a restaurant
 2 there?
 3 MR. BARR: A dining room.
 4 MR. CHOPIN: They serve meals?
 5 MR. BARR: Yes.
 6 MR. CHOPIN: Okay.
 7 The study, were there any restaurants
 8 attached to the racquet club?
 9 MR. BARR: That information is not
 10 clear in the data.
 11 MR. CHOPIN: You don't know is what
 12 you're saying?
 13 MR. BARR: That's correct.
 14 MR. CHOPIN: Now, can I ask you if you
 15 will to go to the report, your report, and in
 16 particular, the first page that says "Racquet
 17 Club 492, and the study that included eight
 18 samples -- do you see it?
 19 Do you have that page open?
 20 MR. BARR: Yes.
 21 MR. CHOPIN: Would you look about four
 22 inches down and in big bold black print would
 23 you read for me where it says "Trip
 24 generation per member"?
 25 MR. BARR: Yes.

*** Notes ***

Page 529

Page 530

1 MR. CHOPIN: It does say that?
 2 MR. BARR: Yes.
 3 MR. CHOPIN: And underneath that it
 4 tells you what the average trip generation
 5 per member of those racquet clubs were, does
 6 it not?
 7 MR. BARR: Yes.
 8 MR. CHOPIN: And in fact in the study
 9 that you rely on to say there is no
 10 correlation between membership and traffic
 11 they in fact calculated a membership/trip
 12 generation, did they not?
 13 MR. BARR: They have an average
 14 generation rate but not a correlation.
 15 MR. CHOPIN: I'm going get to
 16 correlation, Mr. Barr. I'm just a lawyer.
 17 But if you would just answer one question at
 18 a time I won't get confused.
 19 Did they or did they not indicate the
 20 average number of trips per member?
 21 MR. BARR: That calculation is shown
 22 here.
 23 MR. CHOPIN: It is shown there.
 24 Would you turn the page of the study
 25 which is included in ten sample clubs?

1 MR. BARR: Yes.
 2 MR. CHOPIN: Is the same information
 3 contained there?
 4 MR. BARR: Similar information.
 5 MR. CHOPIN: Well, it made the
 6 calculation of the number of trips per
 7 member, did it not, and then averaged it?
 8 MR. BARR: Yes.
 9 MR. CHOPIN: Okay. So in this ITE
 10 material they in fact were able and in fact
 11 did do just exactly what Mr. Tipton testified
 12 to this morning he did on the basis of the
 13 hard numbers that were taken in the
 14 Mar-a-Lago counts; is that not correct?
 15 MR. BARR: Yes.
 16 MR. CHOPIN: Okay. If I confuse you, I
 17 certainly confuse myself sometimes and I
 18 certainly confuse Ms. Smith from time to
 19 time, so don't hesitate to say so.
 20 PRESIDENT SMITH: Hey, hey.
 21 MR. CHOPIN: Well, it's my fault. He
 22 agreed with me.
 23 Now, let's talk about correlation.
 24 This report said that they tried to correlate
 25 the trip generation on a per member basis

*** Notes ***

Page 531

Page 532

1 between the different racquet clubs. And
 2 they had difficulty in doing so to calculate
 3 the relative coefficient that comes somewhere
 4 near the mathematical constants; is that
 5 right?
 6 MR. BARR: More or less.
 7 MR. CHOPIN: More or less.
 8 Now, they didn't say, did they, that
 9 you could never calculate a relationship
 10 between membership and traffic generation,
 11 did they?
 12 MR. BARR: They said there is no
 13 correlation.
 14 MR. CHOPIN: Let me try one more time,
 15 Mr. Barr, because I ain't going away.
 16 Okay. The ITE does not say anywhere
 17 that you cannot correlate in certain cases
 18 trip generation and membership, does it?
 19 MR. BARR: It says that there is no
 20 correlation on the same page as you're
 21 looking at.
 22 MR. CHOPIN: With respect to these
 23 racquet club studies; right?
 24 MR. BARR: Yes.
 25 MR. CHOPIN: But now this is not a

1 racquet club. We're already past that.
 2 Maybe next week, because we don't know what
 3 they're going to apply for next.
 4 But let's forget about racquet clubs
 5 and just talk about whatever you want to call
 6 Mar-a-Lago, a country club. Okay.
 7 Is there any where in any of the
 8 research materials that you have examined
 9 either in 1993 or currently that has an
 10 affirmative statement that says it is not
 11 possible to calculate a correlation between
 12 membership and traffic?
 13 MR. BARR: There is no research that
 14 shows any correlation between the two.
 15 MR. CHOPIN: We're going to try one
 16 more time, Mr. Barr, because I'm not going
 17 give up.
 18 Have you been able to find anywhere in
 19 the ITE materials a statement that says it is
 20 not possible to calculate a relationship
 21 between membership and traffic generation?
 22 MR. BARR: This evidence makes it very
 23 clear that are there is no correlation.
 24 That's my opinion and that's --
 25 MR. CHOPIN: Again, sir, I really

*** Notes ***

Page 533

Page 534

1 respect your opinion. But that isn't my
2 question.

3 Did you find an affirmative statement
4 anywhere in your research in 1993 or 1996
5 which says that it is not possible in any
6 kind of a club to calculate a relationship
7 between traffic and membership?

8 MR. BARR: The R-squared figure which
9 is the coefficient of determination is shown
10 when there is any correlation whatsoever.
11 The R-square figures on these two
12 illustrations that I brought here for all of
13 the clubs that were researched by ITE shows
14 that there is no correlation.

15 MR. CHOPIN: Okay. I want to make two
16 points.

17 MR. NATALE: I would object to any more
18 repetitive questioning. The question has
19 been asked and answered.

20 MR. CHOPIN: It's been certainly asked.

21 MR. NATALE: But it's been answered.

22 If you don't like the answer --

23 PRESIDENT SMITH: Go ahead, Mr. Chopin.

24 MR. CHOPIN: But you will concede that
25 that R-square number relates to only what is

1 on the page which deals with the racquet
2 clubs and not Mar-a-Lago; is that right?

3 MR. BARR: No, I believe it applies to
4 other clubs. And that is my opinion.

5 MR. CHOPIN: Okay. That's fine.

6 Now, if I may move on to another
7 subject, you said in your direct testimony
8 that there was no traffic congestion and that
9 in fact the Mar-a-Lago, in particular A1A,
10 was operating below capacity. Did you not?

11 MR. BARR: Yes.

12 MR. CHOPIN: And as I read your report,
13 again, very quickly, it seemed to me that you
14 said that you had come to a similar
15 conclusion in 1993. Is that not correct?

16 MR. BARR: Yes.

17 MR. CHOPIN: Now, let me ask you
18 something. Do you know who Mr. Ackerman is?

19 MR. BARR: Mr. Ackerman? No.

20 MR. CHOPIN: Okay. Do you know who
21 Mr. Walker is?

22 MR. BARR: Yes.

23 MR. CHOPIN: Who is Mr. Walker?

24 MR. BARR: He's with the County.

25 MR. CHOPIN: Well, he's with the County

*** Notes ***

Page 535

Page 536

1 doesn't give him quite the credit he
2 deserves, does it?

3 MR. BARR: I don't know his exact
4 title.

5 MR. CHOPIN: Well, would you say that
6 he's been with the County for a long time?

7 MR. BARR: Yes.

8 MR. CHOPIN: And that his title is the
9 director of the traffic division?

10 MR. BARR: If that's how he signed that
11 letter, I presume that's correct.

12 MR. CHOPIN: Do you respect him?

13 MR. BARR: Yes.

14 MR. CHOPIN: Good man?

15 MR. BARR: I respect him. I don't know
16 how good he is.

17 MR. CHOPIN: I only meant
18 professionally.

19 Now, let me show you a letter dated
20 April 2nd, 1993. I would like to circulate
21 copies to members of the Town Council. And
22 I'd ask that it be admitted to the record if
23 I could. It's addressed to Mr. Ackerman from
24 the Town of Palm Beach in reference to
25 Mar-a-Lago.

1 Would you read for me the paragraph
2 beginning with existing traffic volumes?
3 Would you read that for me?

4 PRESIDENT SMITH: Before you begin,
5 Mr. Barr, was this was entered into the
6 record, Mr. Chopin?

7 MR. CHOPIN: Well, I'd ask that it
8 would be.

9 PRESIDENT SMITH: Okay. Thank you.
10 Mr. Rampell, do you have a copy of
11 this?

12 MR. CHOPIN: I'm happy to give him one.
13 I'm sure he had one at the time, but he may
14 not have had the same 35 minutes to find it
15 that I did.

16 PRESIDENT SMITH: Well, we just got it
17 now. So...

18 MR. CHOPIN: Would you read that
19 letter? And in the interest of brevity and
20 time, would you read where the paragraph
21 reads "existing traffic volumes"?

22 MR. BARR: Yes. This is the March
23 30th, 1993, letter.

24 MR. CHOPIN: Okay.

25 MR. BARR: "Existing traffic volumes

*** Notes ***

1 exceeded the adopted level of service
2 standard volumes on both Ocean Boulevard and
3 Southern Boulevard. Because of traffic
4 volumes on these roadways, in order to meet
5 the technical requirements of the traffic
6 performance standards the proposed club can
7 generate no more than 200 daily trips."

8 MR. CHOPIN: Okay. You don't have to
9 go on. But I'd like to ask you a question
10 about the first sentence.

11 In your report of 1993, you stated that
12 Ocean Boulevard, A1A was operating under
13 capacity; is that not correct?

14 MR. BARR: That's correct.

15 MR. CHOPIN: And the County's traffic
16 division director, Mr. Walker said, Mr. Barr,
17 you're wrong, it's over capacity; isn't that
18 correct?

19 MR. BARR: That's what the sentence
20 says that I just read.

21 MR. CHOPIN: Well, the sentence says
22 it, but more importantly, Palm Beach County
23 said it; did they not?

24 MR. BARR: He signed the letter.

25 MR. CHOPIN: He signed the letter.

1 And since he's the one that makes the
2 decision right or wrong, he's always right;
3 is that not true?

4 MR. BARR: Not true.

5 MR. CHOPIN: Not true? Okay.

6 Let me ask you something: Is
7 Mar-a-Lago meeting all of the concurrency
8 requirements as it relates to traffic?

9 MR. BARR: In that the roads are
10 operating below capacity, yes.

11 MR. CHOPIN: Would you say that again?
12 I'm sorry, I got distracted in turning the
13 pages.

14 MR. BARR: In that the roads adjacent,
15 public records adjacent to Mar-a-Lago are
16 operating below capacity, yes.

17 MR. CHOPIN: Your answer was "In that
18 the roads." There are only two, Southern
19 Boulevard and A1A; is that not correct?

20 MR. BARR: Yes.

21 MR. CHOPIN: Okay. Would you turn to
22 Table 3 which shows existing peak season/peak
23 hour levels of service which you attached to
24 your report, please?

25 PRESIDENT SMITH: What page is this?

*** Notes ***

1 MR. CHOPIN: Unfortunately they're not
2 Numbered, but it says Table 3 at the top it.
3 My guess is six pages.

4 PRESIDENT SMITH: Thank you.

5 MR. CHOPIN: Would you take a look at
6 that Table 3, which I'm sure you did since
7 you submitted it with your report. And these
8 are the Town of Palm Beach traffic counts,
9 are they not?

10 MR. BARR: Yes.

11 MR. CHOPIN: Okay. And look at
12 Southern Boulevard west of State Road A1A.
13 Do you see that first item on the table?

14 MR. BARR: Yes.

15 MR. CHOPIN: Okay. Would you tell us
16 based on this chart what the 1996 p.m. peak
17 hour volume utilization was on that road?

18 MR. BARR: 1,894 vehicles.

19 MR. CHOPIN: Okay. And would you tell
20 us what the level of service D classification
21 for peak hour capacity was on that road?

22 It's right on the chart, sir.

23 MR. BARR: Well, what this chart
24 says --

25 MR. CHOPIN: Well, you submitted it

1 with your report. Just tell us what it says.

2 MR. BARR: Well, it's the Keith and
3 Schnars report.

4 MR. CHOPIN: That's correct. You
5 submitted it with your report. Just tell us
6 what it says.

7 MR. BARR: It says 1,550.

8 MR. CHOPIN: And the next column, it
9 says V/C. Now, does that mean volume to
10 capacity?

11 MR. BARR: Yes.

12 MR. CHOPIN: And the number there is
13 1.22 which means that its operating at 1.22,
14 which is over capacity; is that correct?

15 MR. BARR: That's what that Keith and
16 Schnars report says, yes.

17 MR. CHOPIN: And it also says that the
18 existing p.m. peak hour load makes it an F
19 class road which means it fails; right?

20 MR. BARR: That's what the Keith and
21 Schnars report says, yes.

22 MR. CHOPIN: You know, I don't think
23 you like the Keith and Schnars report; is
24 that right?

25 MR. BARR: It's not a matter of liking

*** Notes ***

Page 541

Page 542

1 or disliking it, I'm stating a fact.
 2 MR. CHOPIN: Now, you stated in your
 3 opinion a minute ago that, in fact, both
 4 roads were operating under the capacity, and
 5 yet attached to your report is a report that
 6 says in fact Southern Boulevard is over
 7 capacity; is that correct?
 8 MR. BARR: West of State Road A1A,
 9 that's what the Keith and Schnars report
 10 says, yes.
 11 MR. CHOPIN: Okay. Thank you.
 12 MR. SHAW: Where is that in reference
 13 to the entrance of Mar-a-Lago?
 14 MR. CHOPIN: Well, I don't have that, a
 15 map, but perhaps Mr. Barr can tell you.
 16 PRESIDENT SMITH: Yes. And, Mr. Barr,
 17 what are they referring to when they say west
 18 of A1A, Southern Boulevard west of State Road
 19 A1A?
 20 MR. BARR: I would presume that segment
 21 goes across the bridge.
 22 MR. CHOPIN: No. Let me tell you what
 23 it really means. It means the segment from
 24 A1A all the way until you get to the Town of
 25 Palm Beach. It's that stretch of road right

1 by the gate.
 2 PRESIDENT SMITH: Would you --
 3 MR. BARR: It's all of Southern
 4 Boulevard west -- State Road A1A west of the
 5 circle.
 6 MR. CHOPIN: West of the circle. In
 7 the Town of Palm Beach right where the exit
 8 for Mar-a-Lago is located.
 9 PRESIDENT SMITH: The exit is just to
 10 the west of that. So this is very much --
 11 MR. CHOPIN: It's precisely in the area
 12 where they say it is over capacity.
 13 PRESIDENT SMITH: I know where the
 14 circle is. Thank you.
 15 Do you agree with that, Mr. Barr, that
 16 the location west of A1A --
 17 MR. BARR: From the circle to west
 18 across the bridge --
 19 PRESIDENT SMITH: And the circle is
 20 east of the gate, so we know where that is.
 21 MR. BARR: Yes.
 22 PRESIDENT SMITH: Okay. Thank you very
 23 much.
 24 MR. CHOPIN: So they're violating the
 25 Town's concurrency requirements, are they

*** Notes ***

Page 543

Page 544

1 not?
 2 MR. BARR: The Town concurrency
 3 standard on Southern Boulevard, I don't know
 4 what level of service it is. But it
 5 certainly would be higher than F, yes.
 6 MR. CHOPIN: Did it pass or did it
 7 fail?
 8 MR. BARR: F means -- according to this
 9 Keith and Schnars report, it's level of
 10 service F, which means in your jargon that it
 11 failed.
 12 MR. CHOPIN: So it is violating the
 13 Town's concurrency requirements according to
 14 that report?
 15 MR. BARR: According to that report,
 16 yes.
 17 MR. CHOPIN: And according to that
 18 report, your statement that both roads are
 19 operating under capacity is not accurate; is
 20 that not true?
 21 MR. BARR: According to this report,
 22 that statement would not be true.
 23 MR. CHOPIN: Oh, thank you.
 24 MR. BARR: In the case of Southern
 25 Boulevard --

1 PRESIDENT SMITH: Mr. Barr, was this
 2 Keith and Schnars report attached to yours?
 3 MR. BARR: That one page was, yes.
 4 PRESIDENT SMITH: I see. I sort of
 5 wonder why.
 6 MR. CHOPIN: Because they were hoping
 7 we wouldn't read it.
 8 MR. BARR: To illustrate that State
 9 Road A1A, Ocean Boulevard is shown by Keith
 10 and Schnars to be operating at level of
 11 service B.
 12 PRESIDENT SMITH: Where is that?
 13 MR. CHOPIN: Now, may I continue my
 14 examination?
 15 PRESIDENT SMITH: Please. Please,
 16 Mr. Chopin.
 17 MR. CHOPIN: I took a look at your
 18 report. And you had gone to some length, and
 19 we've talked about it before, of making the
 20 point that there is no correlation between
 21 membership and traffic generation. And I
 22 think you argue from that that there should
 23 not be any restrictions on membership; is
 24 that correct?
 25 MR. BARR: They have no value in

*** Notes ***

1 limiting the traffic in and out.

2 MR. CHOPIN: Okay. It is your
3 conclusion that therefore they should be
4 abolished?

5 MR. BARR: Abolished or not, I'm just
6 stating my opinion that they have no
7 relationship to the traffic in and out.

8 MR. CHOPIN: They're not increasing or
9 decreasing the traffic?

10 MR. BARR: Right.

11 MR. CHOPIN: Can you think of any
12 reason as an expert why the Town Council
13 should deal with that issue now?

14 MR. BARR: I see no reason why not to
15 or why to.

16 MR. CHOPIN: Do you know how many
17 members there are?

18 MR. BARR: No.

19 MR. CHOPIN: You know, I don't
20 understand that. Nobody knows how many
21 members there are.

22 Didn't you ask how many members there
23 are?

24 MR. BARR: Yes.

25 MR. CHOPIN: And what did they tell

1 you?

2 MR. BARR: I have gotten a figure that
3 varied across the year. I don't know what it
4 is right now.

5 MR. CHOPIN: Well, you only got hired
6 two weeks ago. Did you ask two weeks ago
7 what the membership was?

8 MR. BARR: Yes.

9 MR. CHOPIN: What did they tell you?

10 MR. BARR: That it varied across the
11 year.

12 MR. CHOPIN: In other words, they're
13 just as ambiguous with you as they are with
14 everybody else; is that right?

15 MR. BARR: Well, I got some figures
16 that I started out with, I believe they have
17 been already reported to the Council.

18 MR. CHOPIN: Okay. at this the moment,
19 in spite of having asked your client what the
20 membership is, you don't know what that
21 membership is?

22 MR. BARR: I don't know what it is
23 today.

24 MR. CHOPIN: Well, you're an expert,
25 and because of that I'm entitled to ask you

*** Notes ***

1 to assume certain hypothetical facts.

2 I'd like you to assume that the
3 membership 314. I'd like to tell you what it
4 really is, but it's a closely guarded secret.
5 We know more about the Iraqi military than we
6 do about the membership of the Mar-a-Lago
7 Club.

8 So Assume that it's 314. Would you do
9 that?

10 MR. BARR: Yes.

11 MR. CHOPIN: And the Declaration
12 Agreement allows them to go up to 500. They
13 have a lot of latitude right now, don't they?

14 MR. BARR: That's latitude, yes.

15 MR. CHOPIN: They're only at
16 three-fifths and they have another two-fifths
17 to go, that's assuming a lot of folks don't
18 drop out after this hearing; right?

19 They have another 200 memberships that
20 they can sell?

21 MR. BARR: I presume that's right.

22 MR. CHOPIN: And at the rate
23 they're going that's probably a minimum of
24 another year before they reach the 500; is
25 that not true?

1 MR. BARR: I have no idea.

2 MR. CHOPIN: Well, you're willing to
3 conjecture about the use of members,
4 non-members, resident members and
5 non-resident members. And if it's taken them
6 this period of time to get up to 300, it's
7 going to take them some additional period of
8 time get up to 500; right?

9 MR. BARR: I have no idea as to how
10 that relates to traffic analysis.

11 MR. CHOPIN: You also talk in your
12 report about monitoring; is that not true?

13 MR. BARR: Yes.

14 MR. CHOPIN: And do you recall which
15 paragraph that is in, maybe Paragraph 10?

16 MR. BARR: Yes.

17 MR. CHOPIN: What do you say there in
18 Paragraph 10?

19 MR. BARR: "Traffic monitoring has been
20 in compliance with the 1993 Agreement.
21 However, the data have not been utilized in
22 planning for major events at the club, since
23 the effective traffic control strategies
24 developed cooperatively by the staff and
25 Police personnel have been based on their

*** Notes ***

Page 549	Page 550
1 actual observations and experience and not on 2 traffic count data. Because of this, and 3 because there is no road concurrency problem, 4 there is no need to continue monitoring 5 traffic entering and leaving Mar-a-Lago." 6 MR. CHOPIN: Oh, okay. 7 I'm going to ask you to read some other 8 testimony and ask you if you have had a 9 chance to read it and consider it. The 10 testimony is that it's recommended however, 11 that the ingress and egress operation of the 12 club be monitored periodically for several 13 months after it opens as a club and until it 14 reaches full membership. 15 Did you hear that testimony? 16 MR. BARR: Yes, sir. 17 MR. CHOPIN: You gave that testimony, 18 didn't you? 19 MR. BARR: Yes, sir. 20 MR. CHOPIN: In fact, in 1993 in your 21 report you said that until full membership is 22 reached there should be continuing 23 monitoring; right? 24 MR. BARR: Yes, sir. 25 MR. CHOPIN: Let me ask you: Have you	1 now been converted? 2 MR. BARR: I have now looked at the 3 experience. 4 MR. CHOPIN: You have looked at the 5 experience over the relatively short period 6 of time; right? 7 MR. BARR: Over a good bit of the 8 evidence that has been produced over that 9 time. 10 MR. CHOPIN: Some of it very good, some 11 of it defective; right? 12 MR. BARR: I have looked at all of it. 13 MR. CHOPIN: Okay. Now, doesn't it 14 make sense that since Mr. Trump is not near 15 his membership limits, that the Town have an 16 opportunity to wait until it is a relevant 17 consideration to make the decision to 18 determine whether it should eliminate the 19 membership limitations and to consider the 20 data which is generated as a consequence of 21 the monitoring during that period of time? 22 Doesn't that make good sense? 23 MR. BARR: The call on monitoring, I 24 believe, should be a product of the control 25 that is exercised by the Police Department

*** Notes ***

Page 551	Page 552
1 and by the Mar-a-Lago people. 2 MR. CHOPIN: Okay. Do you want to 3 answer my question, Mr. Barr? 4 MR. BARR: That's what's I'm trying to 5 do. 6 MR. CHOPIN: I just asked you doesn't 7 that make good sense. And you can say no if 8 you if you want to. 9 MR. BARR: I think it makes good sense 10 if it was ordered by the Police Department. 11 That's what I'm trying to explain to you, 12 sir. 13 MR. CHOPIN: The fact that it was 14 ordered by the Town Council and agreed to by 15 Mr. Trump, that's not good enough? 16 MR. BARR: It is my opinion that if the 17 Police says it's not needed except for 18 special events or during special events or 19 even on a continuing basis, that that ought 20 to be complied with. 21 MR. CHOPIN: Now, if the Police said 22 that -- when did the Police say that? 23 MR. BARR: Say what, sir? 24 MR. CHOPIN: That it's not necessary to 25 do that monitoring.	1 You just told us if the Police say it's 2 not necessary we should comply with the 3 Police. 4 MR. BARR: I don't know if they said 5 that. 6 MR. CHOPIN: Oh. 7 MR. BARR: I said if they say it ought 8 to be continued, then it should be continued. 9 MR. CHOPIN: But you said it shouldn't 10 be continued. I don't understand. You want 11 to listen to the Police; right? 12 MR. BARR: That's what is done in many 13 areas. 14 MR. CHOPIN: Have you talked to the 15 Police about this matter? 16 MR. BARR: No, sir. 17 MR. CHOPIN: And you still got an 18 opinion? 19 MR. BARR: Yes, sir. 20 MR. CHOPIN: But it's not based on the 21 Police? 22 MR. BARR: It's based on the 23 experience. 24 MR. CHOPIN: One year's experience 25 where the membership started out at about

*** Notes ***

Page 553

Page 554

1 157. Based on experience when the club is
2 not in full operation; right?

3 MR. BARR: That's correct. Based on
4 the experience also when -- that's correct.
5 And based on the experience when there were
6 major events taxing the capacity of the
7 facility.

8 MR. CHOPIN: You know, I guess I was as
9 confused as Ms. Smith and Members of the
10 Town Council in trying to understand what
11 you're point was. And I finally got to the
12 point that I guess your point is being that
13 there is no need to have membership, no need
14 to have parking, no need to have a lot of
15 other conditions because Mar-a-Lago just
16 can't handle a crowd of more than a certain
17 amount of people and therefore it's a
18 self-limiting facility; is that correct?

19 MR. BARR: That's the generally my
20 understanding.

21 MR. CHOPIN: Have you ever heard any
22 discussions about enlarging Mar-a-Lago?

23 MR. BARR: Enlarging it?

24 MR. CHOPIN: Yes, sir.

25 MR. BARR: You mean in terms of

1 enlarging its facility?

2 MR. CHOPIN: Did you know that there is
3 an Application pending right now for 120-foot
4 marina on Lake Worth? Have you heard that?

5 MR. BARR: I have.

6 MR. CHOPIN: You heard that. Would you
7 think that's an enlargement?

8 MR. BARR: If that's part of Mar-a-Lago
9 that would certainly be an enlargement.

10 MR. CHOPIN: Have you ever heard any
11 discussion about or seen any in the newspaper
12 about Mr. Trump talking about building some
13 great big ballroom at Mar-a-Lago?

14 MR. BARR: I have heard that mentioned,
15 yes, sir.

16 MR. CHOPIN: And all of those possible
17 new things that he might do could have an
18 effect, might it not, on traffic?

19 MR. BARR: They would enlarge the
20 facilities, yes.

21 MR. CHOPIN: It would enlarge the
22 facility. And when the facilities are
23 enlarged, then your argument is that the size
24 of the facility is a self-limiting factor in
25 the utilization of Mar-a-Lago and that all of

*** Notes ***

Page 555

Page 556

1 the sudden that changes and it becomes
2 capable of at least having more people, more
3 cars and the like; right?

4 MR. BARR: And accommodating them, yes.

5 MR. CHOPIN: Okay. Now, as it relates
6 to parking, do you know what Mr. Trump is
7 asking for in connection with this
8 Application?

9 MR. BARR: In terms of the expansion of
10 the parking? No, I didn't.

11 MR. CHOPIN: Did you ever hear that he
12 wants to expand the parking or does he want
13 to contract the amount of parking?

14 MR. BARR: I misunderstood your
15 question.

16 MR. CHOPIN: Do you know that Mr. Trump
17 is asking to be relieved of the obligation to
18 provide 252 parking spaces?

19 MR. BARR: No, I'm not aware of that.
20 I don't recall having read that that's being
21 requested.

22 MR. CHOPIN: Did you read his
23 Application?

24 MR. BARR: Yes.

25 MR. CHOPIN: You said you did in his

1 report.

2 MR. BARR: Yes.

3 MR. CHOPIN: Well, he's required to
4 have 252 parking places now; right?

5 MR. BARR: That's my understanding.

6 MR. CHOPIN: And he says he should only
7 be required to have -- I'm sure they will,
8 but in all seriousness, if I misstate this, I
9 think it's one parking space for every four
10 members. Is that correct?

11 Did you know that he was asking for a
12 reduction in parking?

13 MR. BARR: I didn't realize that.

14 MR. CHOPIN: Well, let me ask you this.
15 If with the current restrictions, the current
16 requirement of 252 parking spaces he has
17 exceeded his capacity to park the cars in
18 certain events, what is going happen when he
19 reduces his parking to 314? That's about 75
20 parking spaces, one in four; right?

21 What's he going to with 75 parking
22 spaces when he can't park with 252?

23 MR. BARR: I'm unaware he's going to
24 reduce the parking spaces.

25 MR. CHOPIN: Well, I understand you

*** Notes ***

Page 557

Page 558

1 have only been hired two weeks ago and you
2 didn't have an awful lot of time to study
3 what you have been asked to testify about.
4 But I think if you go back, you'll find out,
5 Mr. Barr, what he's asking.

6 If you were sitting up there, would you
7 approve that reduction in parking
8 requirements?

9 MR. BARR: Certainly a reduction in
10 parking requirements would reduce the
11 capacity to accommodate people.

12 MR. CHOPIN: I'm tempted, Mr. Bar, but
13 I'm not going to ask it to you again because
14 everybody heard you can't do it with 250, you
15 can't do it with 275. Let me go on.

16 Take a look at Paragraph 8 -- no, I'm
17 sorry. Look at Paragraph 9 of your report,
18 which deals with the shuttle. Would you like
19 to take a moment just to review that and
20 refresh your recollection of what it says?

21 MR. BARR: I'm aware of what it says.

22 MR. CHOPIN: I would like you to
23 explain to the Town Council, if you will, the
24 sentence which is the second in that
25 paragraph that says the records of traffic,

1 and it indicates the average annual daily
2 generation is well below that.

3 And this is the language I'm
4 particularly interested in, "Even though the
5 shuttle van service has very low
6 utilization." What does that mean?

7 MR. BARR: That means that the
8 experience has shown that the van shuttle is
9 not used and is not needed --

10 MR. CHOPIN: Well, let's not worry
11 about not needed.

12 MR. BARR: -- in a large extent.

13 MR. CHOPIN: There are a lot of laws
14 that are not needed, but you still obey those
15 laws don't you?

16 MR. BARR: Yes.

17 MR. CHOPIN: If you got a contract and
18 it's not necessary, but you look like an
19 honorable man, you would pay those contracts,
20 right?

21 MR. BARR: Yes.

22 MR. CHOPIN: Are you saying this Town
23 Council that notwithstanding that there is an
24 agreement in place between the Town and
25 Mr. Trump that requires that 40 percent of

*** Notes ***

Page 559

Page 560

1 his employees be shuttled to and from
2 Mar-a-Lago, that in fact he is not doing
3 that? Is that what you're saying?

4 MR. BARR: I understand that the vans
5 have had very few people in them.

6 MR. CHOPIN: Let me try this one again.

7 Are you saying that 40 percent of the
8 employees have not been shuttled to and from
9 work?

10 MR. BARR: No.

11 MR. CHOPIN: Have 40 percent of the
12 employees been shuttled to work?

13 MR. BARR: I'm not saying that. I
14 don't know.

15 MR. CHOPIN: You don't know.

16 MR. BARR: I don't know what percent
17 have been shuttled or accommodated.

18 MR. CHOPIN: Did you ask?

19 MR. BARR: No.

20 MR. CHOPIN: You didn't ask?

21 MR. BARR: No. It is not related to my
22 traffic impact analysis.

23 MR. CHOPIN: You said that they're very
24 low utilization.

25 MR. BARR: That's correct.

1 MR. CHOPIN: You read the Declaration
2 of Use Agreement as you said you did. It's
3 one of the documents you had. It's on the
4 first page of your report. You read it?

5 MR. BARR: Yes.

6 MR. CHOPIN: Did you read in that
7 report that 40 percent of the employees are
8 supposed to be shuttled to and from work?

9 MR. BARR: As I recall it says that.

10 MR. CHOPIN: Did you ask if they were
11 complying with that?

12 MR. BARR: No.

13 MR. CHOPIN: Now, the letter that I
14 referred you to you previously from the
15 County, do you have a copy of it still with
16 you right there?

17 MR. BARR: Yes.

18 MR. CHOPIN: Okay.

19 MR. CHOPIN: Would you read the last
20 paragraph on the first page of that letter?

21 MR. BARR: "Two options are presented
22 in the traffic study." This is again March
23 30th, 1993.

24 "Two options are presented in the
25 traffic study which would reduce the increase

*** Notes ***

Page 561

Page 562

1 in traffic to no more than 200 trips per
 2 day."
 3 "One option would incorporate a shuttle
 4 bus system for 30 to 70 -- for 30 of the 70
 5 person staff. The shuttle bus would operate
 6 to a parking facility west of the
 7 intracoastal waterway. The second option
 8 would be to reduce the dining area to 50
 9 seats."
 10 MR. CHOPIN: How many seats do they
 11 have at the restaurant?
 12 MR. BARR: I don't know.
 13 MR. CHOPIN: Okay.
 14 Now, what I'm having trouble
 15 understanding and it's probably because I'm
 16 not a traffic engineer, is that the County
 17 traffic department which is responsible for
 18 the enforcement and planning of concurrency
 19 and development in this County says that in
 20 order to meet concurrency, you got to show 40
 21 percent, 30, which is actually slightly more
 22 than 40 percent, if you want to meet
 23 concurrency.
 24 They said that; didn't they?
 25 MR. BARR: 30 of the 70 percent

1 person --
 2 MR. CHOPIN: Well, if you turn over to
 3 the next page, you will see that it's saying
 4 that by doing that you can comply with the
 5 County concurrency requirements; correct?
 6 MR. BARR: "Meet the technical
 7 requirements," yes.
 8 MR. CHOPIN: Okay.
 9 Now, the County said that, and you
 10 testified today under oath that Mar-a-Lago
 11 was in compliance with the concurrency
 12 requirements, did you not?
 13 MR. BARR: I testified that the
 14 capacity of the adjacent public streets is
 15 not being exceeded, that there is no
 16 concurrency issue.
 17 MR. CHOPIN: Okay. But if we were to
 18 apply the standards that Mr. Walker dictated
 19 in 1993 to meet concurrency requirements, it
 20 would have been relevant for you to know,
 21 sir, whether in fact they were complying with
 22 the obligation of the shuttle.
 23 That was not something that came from
 24 this Town Council, it was something that came
 25 from the County. Wouldn't that be relevant

*** Notes ***

Page 563

Page 564

1 to you? Isn't that a traffic issue to you?
 2 MR. BARR: It's a traffic issue, yes,
 3 sir.
 4 MR. CHOPIN: But you didn't answer the
 5 question.
 6 MR. BARR: No.
 7 MR. CHOPIN: Okay. Now, let me take
 8 you to Paragraph 3, if I may. Your report,
 9 which is on the second paragraph.
 10 Okay. You got it?
 11 MR. BARR: Yes.
 12 MR. CHOPIN: You want to take a look at
 13 it for a second?
 14 MR. BARR: I've got it.
 15 MR. CHOPIN: Okay. You refer in that
 16 paragraph to two studies of the volume on A1A
 17 near Mar-a-Lago; is that not correct?
 18 MR. BARR: Yes.
 19 MR. CHOPIN: Those were studies that
 20 were done each on one day only; is that not
 21 correct?
 22 MR. BARR: They were traffic counts,
 23 yes, if that's what you mean by studies.
 24 MR. CHOPIN: Were they done on one day?
 25 MR. BARR: Each. Yes.

1 MR. CHOPIN: Only one day. This was
 2 not over a three-month period or anything
 3 like that. This was a one-day count?
 4 MR. BARR: Peak seasonal count, that's
 5 correct.
 6 MR. CHOPIN: It was?
 7 MR. BARR: Yes.
 8 MR. CHOPIN: Okay.
 9 Do you know which day the report that
 10 was submitted by Keith and Schnars was? Do
 11 you know which day that was done?
 12 MR. BARR: Yes, February 27th, 1996.
 13 MR. CHOPIN: Okay. And do you know
 14 what day the Palm Beach County study was
 15 conducted?
 16 MR. BARR: Yes, sir. That was a
 17 24-hour period of February 1st and 2nd.
 18 MR. CHOPIN: Okay. It started at
 19 midnight and went for 24 hours? It didn't go
 20 into the 1st, it was just the 2nd; correct?
 21 MR. BARR: It was only for one 24-hour
 22 period. It was not two days. It started at
 23 midnight and ended at 11:59 on the 1st; is
 24 that correct?
 25 MR. BARR: Well, that's a tabulation

*** Notes ***

Page 565

Page 566

1 there. Their printout also says started on
 2 February 1st and ended on February 2nd.
 3 MR. CHOPIN: Just one day?
 4 MR. BARR: Yes.
 5 MR. SHAW: It says started 10:15 and
 6 ends at 10:15.
 7 MR. CHOPIN: I'm sorry.
 8 In any event It doesn't matter. It's a
 9 one-day count; right?
 10 MR. BARR: Yes.
 11 MR. CHOPIN: It's the first time I have
 12 heard anybody laugh in a long time.
 13 PRESIDENT SMITH: It's not the most
 14 exciting subject.
 15 MR. CHOPIN: Now, Mr. Barr, they seem
 16 to have come up with different answers. They
 17 seem to have come up with different counts;
 18 didn't they?
 19 MR. BARR: Yes.
 20 MR. CHOPIN: Would you take a look and
 21 say that there is about a 40 percent
 22 differential between the two counts?
 23 MR. BARR: I don't know what the
 24 percentage is. But there is a difference.
 25 MR. CHOPIN: Just so you know, I ran

1 that calculation in my head and I come up
 2 with 39 percent. But one has 1,037 and one
 3 has 1,044, so that's roughly about 39, 40
 4 percent; isn't it?
 5 PRESIDENT SMITH: Where are they
 6 reading?
 7 MR. BARR: Yes.
 8 MR. CHOPIN: Is it possible, sir, that
 9 if -- no.
 10 Before I do that, do you know the day
 11 of the week that these counts were taken?
 12 MR. BARR: Offhand I don't.
 13 MR. CHOPIN: Do you know whether there
 14 were any special events on either of those
 15 days?
 16 MR. BARR: No.
 17 MR. CHOPIN: You don't know?
 18 MR. BARR: No.
 19 MR. CHOPIN: I'm sorry, sir.
 20 You were saying no, there were not or
 21 you don't know?
 22 MR. BARR: I don't know. They're not
 23 included in the report.
 24 MR. CHOPIN: Did you ask?
 25 MR. BARR: No.

*** Notes ***

Page 567

Page 568

1 MR. CHOPIN: You could have asked your
 2 client; right?
 3 PRESIDENT SMITH: Well, he didn't --
 4 MR. CHOPIN: Beg your pardon, Ms.
 5 Smith?
 6 PRESIDENT SMITH: I said "he didn't."
 7 MR. CHOPIN: I thought he said they
 8 were not included in the report. I did not
 9 hear him answer the question.
 10 Did you ask your client?
 11 MR. BARR: No.
 12 MR. CHOPIN: Wouldn't it have been
 13 relevant for you to ask your client whether
 14 there was a special event on those days?
 15 MR. BARR: It might have been of
 16 interest.
 17 MR. CHOPIN: It might have been of
 18 added interest for you to know what the value
 19 of these numbers were; right?
 20 MR. BARR: Right.
 21 MR. CHOPIN: But you didn't ask your
 22 client, so you don't know?
 23 MR. BARR: Yes.
 24 MR. CHOPIN: You read Mr. Tipton's
 25 report this morning; right?

1 MR. BARR: Yes.
 2 MR. CHOPIN: And you heard that he ran
 3 his calculations upon hard actual numbers
 4 that were taken by the Mar-a-Lago staff; is
 5 that not correct?
 6 MR. BARR: Yes.
 7 MR. CHOPIN: And he referred to it, if
 8 I can remember his word, as an on-site count
 9 or something to that effect?
 10 MR. BARR: Yes.
 11 MR. CHOPIN: That's right? And he said
 12 that's the best numbers you can get; is that
 13 not correct?
 14 MR. BARR: Yes.
 15 MR. CHOPIN: And do you agree with it,
 16 that's the best numbers can you get?
 17 MR. BARR: That's the best numbers that
 18 are available for looking at the traffic
 19 going on and off the site, yes.
 20 MR. CHOPIN: Well, if you want to know
 21 how much traffic use there is on a particular
 22 piece of property and you go out to the
 23 property and you actually count them, isn't
 24 that the best evidence of the use of the
 25 property in terms of traffic generation?

*** Notes ***

1 MR. BARR: Yes.
 2 MR. CHOPIN: There isn't anything
 3 better; is there?
 4 MR. BARR: Right.
 5 MR. CHOPIN: Not possible to have
 6 anything better, is there?
 7 MR. BARR: Right.
 8 MR. CHOPIN: Okay. And on the basis of
 9 those real hard numbers, all Mr. Tipton was
 10 testifying was the real hard numbers and the
 11 number of members to come up with a per
 12 member daily traffic usage; is that correct?
 13 MR. BARR: Yes.
 14 MR. CHOPIN: Now, in fact, there is a
 15 correlation, is there not?
 16 MR. BARR: No.
 17 MR. CHOPIN: Well, now, do you have a
 18 calculator with you?
 19 MR. BARR: Somewhere, yes.
 20 MR. CHOPIN: Well, if I asked you to
 21 divide the number of members into the total
 22 number of trips, could you do that?
 23 MR. BARR: Yes.
 24 MR. CHOPIN: And it would produce what?
 25 A per number of trips per member, would it

1 not?
 2 MR. BARR: Yes.
 3 MR. CHOPIN: So you mathematically can
 4 make that calculation; can you not?
 5 MR. BARR: Yes.

(End Volume IV)

* * *

*** Notes ***

1 The State Of Florida,)
 2 County of Palm Beach.)
 3
 4 CERTIFICATE
 5
 6 I, Pamela J. Sullivan, Court Reporter and
 7 Notary Public, State of Florida at Large, do hereby
 8 certify that I was authorized to and did report the above
 9 proceedings and that the foregoing pages, numbered 465
 10 through 571, inclusive, are a true and correct excerpt of
 11 my stenotype notes of said proceedings.
 12 I further certify that the said proceedings
 13 were taken at the time and place hereinabove set forth and
 14 that the taking of said proceedings was commenced and
 15 completed as hereinabove set out.
 16 I further certify that am not attorney or
 17 counsel of any of the parties, nor am I a relative or
 18 employee of any attorney or counsel or party connected
 19 with the action, nor am I financially interested in the
 20 action.
 21 The foregoing certificate of this transcript
 22 does not apply to any reproduction of the same by any
 23 means unless under the direct control and/or direction of
 24 the certifying reporter.
 25 In witness whereof I have hereunto set my
 hand and seal this 10th day of September, 1995.

Pamela J. Sullivan,
 Court Reporter
 Notary Public, State of Florida

*** Notes ***

00 [8] 504:2 504:2	252 [6] 483:13 515:9	85 [1] 496:3	568:21 569:11 569:14	adjacent [4] 470:16
504:9 504:9 506:17	555:18 556:4 556:16	8th [1] 522:15	569:17 569:25 571:8	538:14 538:15 562:14
511:13 511:24 513:3	556:22	9 [1] 557:17	571:11	adjunct [1] 475:17
1,000 [4] 492:8	26 [2] 479:5 483:2	95 [1] 496:3	A1A [13] 493:3	Adley [1] 469:19
492:9 499:21 502:12	275 [1] 557:15	a [213] 468:7 469:8	534:9 537:12 538:19	Administrator [1] 466:8
1,037 [1] 566:2	27th [1] 564:12	469:18 470:14 470:23	539:12 541:8 541:18	admitted [1] 535:22
1,044 [1] 566:3	2nd [5] 513:15 535:20	471:3 472:20 472:23	541:19 541:24 542:4	adopted [1] 537:1
1,500 [1] 502:12	564:17 564:20 565:2	473:6 475:8 475:11	542:16 544:9 563:16	advise [1] 507:14
1,550 [1] 540:7	3 [5] 513:3 538:22	475:14 476:3 480:8	ability [2] 485:2	advocate [1] 497:8
1,894 [1] 539:18	539:2 539:6 563:8	480:19 481:2 481:16	499:24	affect [1] 519:19
1.22 [2] 540:13 540:13	30 [7] 465:18 487:23	482:3 482:5 484:16	able [5] 475:20 485:12	affected [1] 499:25
10 [5] 517:14 548:15	504:10 561:4 561:4	485:24 486:7 487:8	511:8 530:10 532:18	affects [1] 519:22
548:18 565:5 565:6	561:21 561:25	487:9 487:11 487:14	abolished [2] 545:4	affirmative [2] 532:10
10,000 [1] 505:14	30-day [1] 488:4	487:15 487:22 487:24	545:5	533:3
10th [1] 571:16	300 [6] 476:4 483:24	488:9 488:11 488:11	above [1] 571:7	after [7] 469:22 469:25
11 [1] 564:23	483:25 488:2 506:6	488:17 488:20 488:22	absolutely [2] 491:23	470:5 511:13 522:10
11th [1] 471:2	548:6	488:22 489:1 489:19	492:1	547:18 549:13
12 [2] 476:16 483:23	300-day-a-year [1] 487:24	490:24 491:9 491:13	academic [1] 523:2	afternoon [4] 467:4
120-foot [1] 554:3	30th [2] 536:23 560:23	492:2 492:4 492:7	accept [3] 499:24	511:21 511:25 513:4
13th [3] 469:20 517:9	313 [1] 507:19	493:2 493:14 494:20	500:12 520:13	again [8] 484:22
517:14	314 [3] 547:3 547:8	494:24 495:5 496:8	access [4] 500:15	515:25 532:25 534:13
14 [1] 500:10	556:19	496:17 497:6 497:23	502:18 505:17 505:21	538:11 557:13 559:6
15 [7] 465:18 492:7	348 [1] 518:10	498:7 498:8 498:22	accommodate [1] 557:11	560:22
499:5 500:10 504:9	35 [1] 536:14	498:24 499:11 499:15	accommodated [2] 508:10 559:17	ago [9] 506:23 516:16
565:5 565:6	35,000 [1] 505:16	499:17 500:2 500:11	accommodating [2] 483:7 555:4	522:2 522:22 526:3
150 [1] 474:24	360 [1] 465:17	500:16 500:19 500:22		541:3 546:6 546:6
157 [2] 506:3 553:1	39 [2] 566:2 566:3	500:24 501:1 502:6	according [6] 518:5	557:1
16 [1] 500:10	390 [3] 507:9 507:18	502:17 502:24 503:3	543:8 543:13 543:15	agree [5] 486:6 491:18
16th [6] 469:22 469:25	508:14	503:4 503:5 503:22	543:17 543:21	491:21 542:15 568:15
470:5 471:18 522:10	391 [13] 499:16 499:16	503:25 504:4 504:7	account [2] 485:22	agreed [4] 517:23
522:11	502:1 505:21 507:22	504:14 504:16 506:11	501:4	518:14 530:22 551:14
1970's [1] 526:20	509:12 509:15 509:21	506:11 506:14 507:18	accurate [1] 543:19	agreement [8] 471:1
1993 [21] 471:2	510:14 510:17 511:18	508:12 508:17 508:18	accurately [1] 479:16	495:24 508:6 508:14
473:4 474:10 474:15	515:15 517:24	509:21 511:2 511:3	Ackerman [3] 534:18	547:12 548:20 558:24
478:21 480:14 482:8	4 [3] 504:2 506:17	511:3 511:4 511:7	534:19 535:23	560:2
482:11 517:9 523:9	511:24	512:1 512:11 512:12	acres [1] 500:10	ahead [1] 533:23
523:11 532:9 533:4	4,000 [3] 474:25	512:13 512:18 512:20	across [6] 488:22	ain't [1] 531:15
534:15 535:20 536:23	476:3 476:7	512:24 513:2 513:12	515:22 541:21 542:18	Alabama [1] 468:11
537:11 548:20 549:20	40 [9] 469:1 558:25	514:11 514:16 514:16	546:3 546:10	Allen [1] 466:5
560:23 562:19	559:7 559:11 560:7	515:4 515:12 515:14	action [2] 571:12	allowable [1] 508:25
1995 [1] 571:16	561:20 561:22 565:21	515:24 516:8 516:15	571:13	allowed [2] 499:16
1995-1996 [1] 471:10	566:3	516:24 517:6 517:16	activities [2] 500:3	513:4
1996 [9] 469:20 471:12	400 [3] 511:20 517:17	518:3 518:7 518:22	500:5	allows [1] 547:12
471:15 477:16 513:15	518:9	519:7 519:9 519:13	activity [1] 517:18	almost [1] 498:1
523:15 533:4 539:16	465 [1] 571:7	521:3 522:1 522:17	actual [4] 474:11	along [2] 502:20
564:12	492 [4] 524:8 524:10	522:18 523:5 523:21	513:13 549:1 568:3	525:10
1st [5] 513:14 564:17	526:13 528:17	524:5 524:12 525:2	actually [4] 470:20	already [3] 515:13
564:20 564:23 565:2	50 [6] 481:3 494:9	526:3 526:8 526:16	512:25 561:21 568:23	532:1 546:17
2 [1] 465:18	495:25 496:1 498:11	526:18 527:13 527:15	add [1] 511:17	also [7] 472:16 484:17
2,000 [2] 499:21	561:8	528:1 528:3 529:11	added [1] 567:18	506:14 540:17 548:11
502:12	500 [7] 500:20 504:8	529:14 529:16 529:18	addition [2] 470:24	553:4 565:1
20 [3] 479:20 483:25	506:13 507:18 547:12	530:25 531:9 531:25	484:14	although [1] 501:6
499:5	547:24 548:8	532:6 532:11 532:19	additional [2] 526:12	always [2] 491:14
200 [7] 506:9 511:19	525 [1] 492:10	533:6 533:6 533:6	548:7	538:2
517:19 520:16 537:7	571 [1] 571:8	534:14 535:6 535:19	address [1] 494:9	ambiguous [1] 546:13
547:19 561:1	59 [1] 564:23	536:10 537:9 539:5	addressed [1] 535:23	Among [1] 472:11
22 [3] 479:20 506:22	6 [2] 504:2 511:13	540:25 541:1 541:3	adequacy [3] 478:6	amount [12] 479:24
506:24	7 [5] 465:18 504:9	541:5 541:14 544:17	480:5 508:8	481:18 481:21 486:7
24 [1] 564:19	504:9 504:9 504:10	546:2 547:4 547:13	adequate [9] 478:3	499:11 504:7 505:8
24-hour [3] 513:14	525 [1] 492:10	547:17 547:23 549:8	478:8 478:12 479:1	515:20 515:21 516:19
564:17 564:21	571 [1] 571:8	549:13 550:7 550:16	483:4 483:11 483:14	553:17 555:13
25 [3] 483:23 505:15	59 [1] 564:23	550:20 550:24 551:19	adequately [2] 477:23	analysis [19] 469:25
526:23	6 [2] 504:2 511:13	553:14 553:16 553:16	505:4	471:13 473:7 473:9
250 [3] 520:17 520:18	7 [5] 465:18 504:9	553:17 554:24 556:11		474:10 474:15 478:21
557:14	70 [3] 561:4 561:4	557:9 557:16 557:19		
	561:25	558:12 558:13 558:17		
	700 [1] 500:21	560:15 561:3 561:6		
	75 [2] 556:19 556:21	561:16 563:1 563:2		
	8 [1] 557:16	563:12 563:13 564:2		
		564:3 564:16 564:25		
		565:8 565:12 565:20		
		565:21 565:24 567:14		

480:14 482:8 482:12	articles [1]	472:6	B [4]	477:15 480:18	534:19 534:22 534:24	542:7 564:14 571:2	
484:19 485:21 490:4	artificial [1]	503:17	480:19 544:11	480:19 544:11	535:3 535:7 535:10	bear [1]	522:24
501:11 517:25 518:3	ask [31]	471:23 489:9	B-a-r-r [1]	467:15	535:13 535:15 536:5	bearing [1]	516:16
521:1 548:10 559:22	493:12 505:24 520:12	520:12	bachelors [1]	467:19	536:22 536:25 537:14	beauty [1]	494:24
analyzed [1]	520:24 522:17 526:6	526:6	back [5]	474:10 503:6	537:16 537:19 537:24	become [2]	491:15
and/or [1]	526:9 527:9 528:14	528:14	524:20 527:15 557:4	557:4	538:4 538:9 538:14	516:2	
annual [1]	534:17 535:22 536:7	536:7	background [1]	467:18	538:20 539:10 539:14	becomes [1]	555:1
annualize [1]	537:9 538:6 545:22	545:22	backup [1]	501:10	539:18 539:23 540:2	bed [1]	498:20
another [5]	546:6 546:25 549:7	549:7	backups [5]	478:4	540:7 540:11 540:15	before [10]	469:5
534:6 547:16 547:19	549:8 549:25 556:14	556:14	478:24 483:5 483:6	483:6	540:20 540:25 541:8	470:21 481:4 489:3	
547:24	557:13 559:18 559:20	559:20	501:18		541:15 541:16 541:20	498:6 504:6 536:4	
answer [14]	560:10 566:24 567:10	567:10	ball [3]	527:19 527:21	542:3 542:15 542:17	544:19 547:24 566:10	
489:13 496:2 498:16	567:13 567:21	567:21	527:23		542:21 543:2 543:8	beforehand [1]	521:25
501:24 502:23 504:15	asked [13]	480:1	ballroom [2]	502:9	543:15 543:21 543:24	Beg [2]	527:5 567:4
513:25 529:17 533:22	480:2 489:5 493:11	493:11	554:13		544:1 544:3 544:8	begin [1]	536:4
538:17 551:3 563:4	494:6 494:12 533:19	533:19	Bar [1]	557:12	544:25 545:5 545:10	beginning [2]	506:2
567:9	533:20 546:19 551:6	551:6	Barr [327]	467:10	545:14 545:18 545:24	536:2	
answered [3]	557:3 567:1 569:20	569:20	467:14 467:15 467:15	467:15	546:2 546:8 546:10	begins [1]	504:3
533:19 533:21	asking [11]	493:23	467:19 467:25 468:4	468:4	546:15 546:22 547:10	being [14]	471:9
answers [2]	518:22 519:7 520:21	520:21	468:8 468:10 468:15	468:15	547:14 547:21 548:1	480:11 480:12 480:16	
565:16	521:4 522:23 523:20	523:20	468:18 468:22 469:9	469:9	548:9 548:13 548:16	491:13 493:13 501:16	
anybody [1]	555:7 555:17 556:11	556:11	469:18 469:23 470:3	470:3	549:24 550:2 550:7	512:14 517:1 519:2	
anyone [1]	557:5		470:8 470:23 472:3	472:3	550:12 550:23 551:3	523:17 553:12 555:20	
anything [7]	aspects [1]	469:3	472:8 472:11 472:24	472:24	551:4 551:9 551:16	562:15	
489:3 497:9 497:23	assistance [1]	474:7	473:4 473:19 473:23	473:23	552:12 552:16 552:19	believe [12]	467:5
564:2 569:2 569:6	associated [1]	517:17	474:4 475:10 475:15	475:15	552:22 553:3 553:19	479:19 479:21 482:7	
anywhere [5]	Associates [1]	467:16	475:17 475:23 476:13	476:13	553:23 553:25 554:5	487:25 505:5 515:9	
526:23 531:16 532:18	assume [8]	487:13	477:9 478:21 479:15	479:15	554:8 554:14 554:19	515:10 525:20 534:3	
533:4	488:15 493:24 520:15	520:15	479:18 480:9 481:11	481:11	555:4 555:9 555:14	546:16 550:24	
apparently [2]	521:3 547:1 547:2	547:2	481:15 482:7 482:11	482:11	555:19 555:24 556:2	below [6]	486:21
513:16	547:8		483:1 483:20 484:5	484:5	556:5 556:13 556:23	505:17 534:10 538:10	
appear [2]	assuming [1]	547:17	484:22 485:5 485:8	485:8	557:5 557:9 557:21	538:16 558:2	
525:7	attached [4]	528:8	485:10 485:25 486:6	486:6	558:7 558:12 558:16	best [5]	501:16 568:12
apple [2]	538:23 541:5 544:2	544:2	486:19 487:4 488:6	488:6	558:21 559:4 559:10	568:16 568:17 568:24	
508:16	attachments [1]	524:6	488:20 489:6 489:10	489:10	559:13 559:16 559:19	better [2]	569:3
applicable [1]	attend [3]	509:23	489:19 489:22 490:9	490:9	559:21 559:25 560:5	569:6	
Applicant [1]	511:12 516:6	516:6	490:15 490:18 490:25	490:25	560:9 560:12 560:17	between [31]	473:16
application [9]	attendant [1]	483:22	491:19 492:21 493:4	493:4	560:21 561:12 561:25	474:19 475:9 476:9	
473:5 486:15 486:25	attended [3]	477:1	499:6 499:23 501:2	501:2	562:6 562:13 563:2	477:25 481:17 481:20	
494:8 498:6 554:3	508:2 510:3	510:3	503:7 503:25 504:18	504:18	563:6 563:11 563:14	492:16 493:6 493:15	
555:8 555:23	attending [2]	486:9	504:24 504:25 507:2	507:2	563:18 563:22 563:25	494:1 499:7 504:2	
applies [1]	509:25		507:6 507:12 507:21	507:21	564:4 564:7 564:12	504:9 505:15 508:1	
apply [3]	attention [1]	497:6	508:1 508:7 509:2	509:2	564:16 564:21 564:25	510:17 517:4 523:4	
562:18 571:14	attorney [3]	466:7	509:5 509:9 509:19	509:19	565:4 565:10 565:15	523:22 525:17 529:10	
appreciate [1]	571:11 571:12	571:12	509:24 510:2 510:11	510:11	565:19 565:23 566:7	531:1 531:10 532:11	
appropriate [2]	attorneys [1]	522:9	510:15 510:19 512:1	512:1	566:12 566:16 566:18	532:14 532:21 533:7	
487:12	attraction [1]	505:19	512:4 515:2 515:19	515:19	566:22 566:25 567:11	544:20 558:24 565:22	
approval [1]	August [1]	471:1	516:18 516:21 516:24	516:24	567:15 567:20 567:23	big [3]	500:22 528:22
approve [2]	authored [1]	468:12	517:4 517:23 518:17	518:17	568:1 568:6 568:10	554:13	
557:7	authorized [1]	571:7	519:1 519:4 519:8	519:8	568:14 568:17 569:1	bit [3]	492:16 499:17
approximately [4]	availability [1]	500:7	519:16 520:6 520:10	520:10	569:4 569:7 569:13	550:7	
505:14 517:19 518:10	available [2]	500:4	520:24 521:13 521:16	521:16	569:16 569:19 569:23	black [1]	528:22
522:11	568:18		521:19 521:24 522:1	522:1	570:2 570:5	board [1]	498:25
April [1]	average [8]	500:18	522:7 522:11 522:16	522:16	based [19]	boggling [1]	514:14
area [10]	506:10 511:6 515:22	515:22	522:20 523:7 523:10	523:10	473:11 476:15 477:6	bold [1]	528:22
476:18 483:21 489:14	529:4 529:13 529:20	529:20	523:13 523:16 523:24	523:24	481:15 484:20 485:20	book [1]	525:9
500:2 500:2 504:2	558:1		524:2 524:9 524:11	524:11	486:13 489:17 502:24	booklet [1]	525:8
542:11 561:8	averaged [1]	530:7	525:5 525:12 525:19	525:19	506:3 521:7 539:16	both [5]	493:18 517:10
areas [2]	averages [1]	485:13	525:24 526:2 526:11	526:11	548:25 552:20 552:22	537:2 541:3 543:18	
argue [1]	averaging [1]	518:9	526:17 526:21 526:25	526:25	553:1 553:3 553:5	bottle [2]	519:12
argument [1]	avoid [2]	478:4	527:3 527:5 527:7	527:7	basing [1]	519:15	
around [1]	484:9		527:18 527:20 527:25	527:25	505:25	bottom [2]	514:3
arrivals [1]	aware [4]	482:2	528:3 528:5 528:9	528:9	basis [6]	526:19	
arriving [4]	483:17 555:19 557:21	557:21	528:13 528:20 528:25	528:25	488:9 488:9	Boulevard [24]	477:11
490:13 500:19 502:13	away [2]	515:6 531:15	529:2 529:7 529:13	529:13	530:12 530:25 551:19	478:5 478:24 480:12	
	awful [1]	557:2	529:16 529:21 530:1	530:1	569:8	481:1 484:10 484:15	
			530:4 530:8 530:15	530:15	Bath [1]		
			531:6 531:12 531:15	531:15	492:3		
			531:19 531:24 532:13	532:13	Beach [19]		
			532:16 532:22 533:8	533:8	465:6 465:17 471:16 483:19		
			534:3 534:11 534:16	534:16	487:1 487:22 487:24		
					488:16 492:25 496:20		
					498:15 504:12 535:24		
					537:22 539:8 541:25		

486:20 501:1 501:10	537:17 538:10 538:16	523:11 523:14 523:17	circle [8] 501:1	565:16 565:17 566:1
503:13 512:8 513:22	539:21 540:10 540:14	523:25 524:4 524:10	505:7 505:9 542:5	569:11
537:2 537:3 537:12	541:4 541:7 542:12	524:14 524:19 525:1	542:6 542:14 542:17	comes [2] 498:2
538:19 539:12 541:6	543:19 553:6 556:17	525:6 525:14 525:22	542:19	531:3
541:18 542:4 543:3	557:11 562:14	525:25 526:5 526:14	circulate [1] 535:20	coming [9] 470:21
543:25 544:9	caps [3] 503:17 512:14	526:18 526:22 527:1	circulated [1] 527:10	472:1 472:4 499:2
boxes [1] 485:2	519:18	527:4 527:6 527:8	circumstances [1] 496:12	513:9 519:14 520:20
Boy [1] 491:8	car [3] 500:19 520:13	527:13 527:19 527:21	city [2] 503:15 503:19	520:20 520:21
break [1] 492:8	520:16	527:22 527:23 528:1	civil [1] 467:20	comings [1] 485:20
brevity [2] 474:18	care [1] 479:2	528:4 528:6 528:11	claimed [1] 515:11	commenced [1] 571:10
536:19	careful [2] 516:24	528:14 528:21 529:1	clarified [1] 510:23	common [2] 494:16
bridge [3] 513:21	523:19	529:3 529:8 529:15	clarify [3] 508:22	494:16
541:21 542:18	carried [1] 477:24	529:23 530:2 530:5	class [1] 540:19	communities [1] 505:17
brief [1] 474:4	cars [20] 483:23 490:13	530:9 530:16 530:21	classification [1] 539:20	Company [1] 469:20
briefly [1] 467:17	492:12 492:13 492:14	531:7 531:14 531:22	classified [2] 524:11	compared [2] 474:10
bring [2] 487:7 520:23	498:24 500:20 500:22	531:25 532:15 532:25	524:12	474:13
bringing [2] 496:8	504:8 511:11 511:19	533:15 533:20 533:23	clear [4] 514:18 519:17	completed [2] 516:15
497:5	514:4 514:6 517:19	533:24 534:5 534:12	528:10 532:23	571:10
Brisson [8] 469:16	520:8 520:17 520:22	534:17 534:20 534:23	clearly [2] 485:24	completely [1] 484:9
469:19 469:19 470:22	520:23 555:3 556:17	534:25 535:5 535:8	client [6] 520:25	compliance [2] 548:20
470:25 473:14 474:8	case [6] 469:17 498:13	535:12 535:14 535:17	546:19 567:2 567:10	562:11
501:12	505:6 507:9 515:24	536:6 536:7 536:12	567:13 567:22	complied [2] 482:14
brought [1] 533:12	543:24	536:18 536:24 537:8	clients [1] 520:20	551:20
building [2] 466:8	cases [1] 531:17	537:15 537:21 537:25	close [7] 480:4 480:19	comply [2] 552:2
554:12	Castro [1] 466:8	538:5 538:11 538:17	482:18 506:6 512:8	562:4
bumper [2] 502:21	category [5] 476:5	539:11 539:15 539:19	518:13 520:16	complying [2] 560:11
502:21	524:8 524:10 524:13	539:25 540:4 540:8	closed [1] 499:13	562:21
bus [3] 471:9 561:4	525:8	540:12 540:17 540:22	closely [2] 485:16	concede [1] 533:24
561:5	cause [1] 486:16	541:2 541:11 541:14	547:4	concern [1] 503:10
busy [1] 502:19	caused [1] 482:20	541:22 542:6 542:11	club [46] 471:7 473:6	concerned [7] 480:11
C [2] 477:18 480:20	center [1] 505:18	542:24 543:6 543:12	474:19 476:2 476:6	494:13 502:4 502:15
C.O [1] 506:5	certain [6] 476:20	543:17 543:23 544:6	476:15 476:20 477:3	502:22 506:20 507:1
calculate [5] 531:2	486:7 531:17 547:1	544:13 544:16 544:17	479:3 481:19 483:8	concerning [1] 470:15
531:9 532:11 532:20	553:16 556:18	545:2 545:8 545:11	486:9 488:8 488:10	conclusion [4] 476:12
533:6	certainly [9] 488:6	545:16 545:19 545:25	492:5 492:7 492:17	476:13 534:15 545:3
calculated [1] 529:11	493:14 497:7 530:17	546:5 546:9 546:12	493:2 493:8 494:2	conclusions [3] 472:2
calculation [4] 529:21	530:18 533:20 543:5	546:18 546:24 547:11	494:3 494:11 494:18	472:5 481:14
530:6 566:1 570:4	554:9 557:9	547:15 547:22 548:2	495:8 497:11 497:25	concrete [1] 513:9
calculations [1] 568:3	certificate [2] 571:4	548:11 548:14 548:17	499:13 499:19 511:10	concur [2] 521:12
calculator [1] 569:18	571:13	549:6 549:17 549:20	518:8 518:16 520:13	521:13
call [6] 467:9 468:23	certify [3] 571:7	549:25 550:4 550:10	524:13 525:12 528:8	concurrency [16] 480:10 480:25 486:17
474:18 511:20 532:5	571:9 571:11	550:13 551:2 551:6	528:17 531:23 532:1	514:4 538:7 542:25
550:23	certifying [1] 571:15	551:13 551:21 551:24	532:6 533:6 537:6	543:2 543:13 549:3
called [2] 518:11	chance [2] 480:13	552:6 552:9 552:14	547:7 548:22 549:12	561:18 561:20 561:23
524:13	549:9	552:17 552:20 552:24	549:13 553:1	562:5 562:11 562:16
cannot [4] 503:6	change [3] 505:21	553:8 553:21 553:24	clubs [24] 472:19	562:19
504:4 520:13 531:17	507:20 519:7	554:2 554:6 554:10	474:24 475:21 476:4	condition [1] 496:17
cap [6] 481:10 507:9	changes [2] 519:8	555:11 555:16 555:22	483:19 490:7 490:8	conditions [2] 517:8
507:18 508:2 510:14	555:1	555:25 556:3 556:6	490:10 490:14 523:20	553:15
510:17	characteristics [1] 506:24	556:14 556:25 557:12	524:1 524:2 524:3	conducted [2] 473:3
capable [2] 489:15	charity [1] 499:14	557:22 558:10 558:13	524:4 524:14 525:4	564:15
555:2	chart [6] 479:14 479:16	558:17 558:22 559:6	527:2 529:5 529:25	confuse [3] 530:16
capacity [54] 471:4	513:12 539:16 539:22	559:11 559:15 559:18	531:1 532:4 533:13	530:17 530:18
476:24 477:10 477:13	539:23	559:20 559:23 560:1	534:2 534:4	confused [2] 529:18
480:12 481:25 483:15	charts [2] 524:21	560:6 560:10 560:13	coefficient [3] 475:24	553:9
486:21 500:1 501:8	525:10	560:18 560:19 561:10	531:3 533:9	confusing [1] 510:25
507:4 507:17 508:16	chatted [1] 521:24	561:13 562:2 562:8	coincide [1] 485:16	congestion [7] 477:8
508:24 509:5 509:11	checking [1] 471:14	562:17 563:4 563:7	column [1] 540:8	484:9 487:2 490:1
510:5 511:2 511:10	Chicago [1] 487:19	563:12 563:15 563:19	combination [2] 478:2 478:5	501:19 503:12 534:8
511:12 512:6 512:9	Chief [2] 471:18	563:24 564:1 564:6	come [14] 473:5	conjecture [1] 548:3
514:24 515:4 516:4	489:25	564:8 564:13 564:18	480:4 505:18 511:16	conjunction [1] 517:10
516:8 517:15 518:23	Chopin [230] 521:20	565:3 565:7 565:11	513:25 517:25 518:2	connected [1] 571:12
519:3 519:7 519:9	521:21 521:22 521:23	565:15 565:20 565:25	519:20 527:15 534:14	connection [1] 555:7
519:21 520:1 520:3	522:3 522:8 522:13	566:8 566:13 566:17		
520:8 520:10 520:21	522:17 522:21 523:8	566:19 566:24 567:1		
521:4 534:10 537:13		567:4 567:7 567:12		
		567:17 567:21 567:24		
		568:2 568:7 568:11		
		568:15 568:20 569:2		
		569:5 569:8 569:14		
		569:17 569:20 569:24		
		570:3		

consequence [1] 550:20	569:12 571:8	creating [1] 486:25	determination [4] 467:8 472:13 475:2 533:9	565:8
consider [4] 496:11 549:9 550:19	correlate [5] 511:22 512:25 525:3 530:24 531:17	credit [1] 535:1	467:8 472:13 475:2 533:9	doing [5] 513:1 521:7 531:2 559:2 562:4
consideration [2] 496:9 550:17	correlation [34] 474:19 474:21 475:1 475:2 475:8 475:24 475:24 476:8 481:16 481:20 492:16 493:5 493:6 493:15 508:1 508:7 508:13 513:23 523:3 523:21 525:17 529:10 529:14 529:16 530:23 531:13 531:20 532:11 532:14 532:23 533:10 533:14 544:20 569:15	criteria [4] 472:14 498:9 498:10 515:12	determine [2] 485:13 550:18	done [10] 484:13 501:16 512:15 517:1 526:1 526:20 552:12 563:20 563:24 564:11
considered [4] 470:21 473:11 482:5 497:7		cross [1] 496:13	Detroit [2] 487:16	Doney [1] 466:7
constants [1] 531:4		crowd [1] 553:16	developed [4] 471:13 483:21 505:9 548:24	down [4] 504:1 506:11 514:8 528:22
construction [4] 485:22 485:23 486:3 486:8		cueing [1] 471:4	development [4] 505:10 505:11 516:24 561:19	dragging [1] 499:5
consultant [1] 491:14		current [4] 501:25 509:1 556:15 556:15		driveways [2] 485:6
consultants [3] 491:16 491:17 491:22		currently [1] 532:9	devices [1] 484:20	driving [1] 514:9
contact [1] 473:2	corresponds [1] 527:14	Curriculum [1] 468:17	diagram [1] 478:13	drop [1] 547:18
contacted [2] 469:24 470:5	couldn't [2] 508:4 525:2	curve [1] 502:20	dictated [2] 511:3 562:18	Dunlop [1] 467:15
contain [1] 486:7	Council [22] 465:7 466:2 468:20 470:6 472:9 473:9 473:21 475:22 486:24 502:1 506:25 507:20 522:4 526:6 535:21 545:12 546:17 551:14 553:10 557:23 558:23 562:24	D [2] 480:22 539:20	difference [4] 492:9 492:10 494:1 565:24	during [15] 477:19 480:20 481:7 482:13 482:22 485:14 501:19 502:21 506:5 508:10 512:5 515:4 550:21 551:18
contained [2] 481:23 530:3		data [15] 471:10 471:13 471:16 474:23 475:7 484:20 484:25 485:12 486:5 490:3 526:12 528:10 548:21 549:2 550:20	different [8] 495:14 496:10 511:5 513:7 518:4 531:1 565:16 565:17	each [9] 483:23 483:23 483:25 499:1 499:2 501:2 516:25 563:20 563:25
contents [1] 470:2	Council's [1] 527:8	dated [4] 469:20 471:1 522:14 535:19	differential [1] 565:22	easier [2] 467:11 478:20
continue [8] 469:5 503:16 503:20 514:8 514:9 523:19 544:13 549:4	Councilman [3] 466:5 466:5 466:6	day [15] 492:18 511:4 511:5 511:15 518:9 561:2 563:20 563:24 564:1 564:9 564:11 564:14 565:3 566:10 571:16	difficult [1] 489:12	east [1] 542:20
continued [4] 552:8 552:8 552:10	counsel [3] 523:19 571:11 571:12	days [7] 480:20 487:23 488:2 499:14 564:22 566:15 567:14	difficulties [1] 503:13	educational [1] 467:18
continuing [3] 501:14 549:22 551:19	Counselor [2] 494:7 495:22	dead-end [1] 514:12	difficulty [1] 531:2	effect [5] 495:10 499:22 507:22 554:18 568:9
contract [2] 555:13 558:17	count [10] 471:10 471:12 471:15 512:24 549:2 564:3 564:4 565:9 568:8 568:23	deal [1] 545:13	digest [1] 495:2	effective [2] 501:18 548:23
contracts [1] 558:19	counted [1] 511:20	dealing [1] 469:3	dining [4] 476:18 500:2 528:3 561:8	egress [1] 549:11
control [17] 476:14 482:12 482:17 501:21 502:11 503:19 504:20 505:3 505:7 508:8 508:9 516:10 516:25 517:6 548:23 550:24 571:14	country [2] 503:23 532:6	deals [2] 534:1 557:18	direct [3] 523:18 534:7 571:14	eight [1] 528:17
controlled [4] 510:5 516:4 516:7 516:20	counts [12] 470:15 477:16 480:19 485:5 486:2 512:18 530:14 539:8 563:22 565:17 565:22 566:11	decide [1] 495:8	directed [2] 471:24 483:7	either [4] 486:10 499:25 532:9 566:14
controls [3] 503:15 504:25 512:14	County [20] 465:17 471:16 480:18 480:22 485:2 502:10 511:9 512:17 534:24 534:25 535:6 537:22 560:15 561:16 561:19 562:5 562:9 562:25 564:14 571:2	decision [3] 498:23 538:2 550:17	disadvantage [2] 489:20 489:22	elements [2] 511:2 513:10
converted [1] 550:1		deck [1] 498:24	disagree [2] 481:19 517:21	eliminate [1] 550:18
convince [1] 483:7		declaration [4] 471:1 509:1 547:11 560:1	disagreed [1] 517:24	else [2] 491:25 546:14
cooperation [2] 482:18 512:15		decreasing [1] 545:9	discriminatory [1] 496:19	employed [1] 498:14
cooperatively [3] 477:25 501:22 548:24		defect [1] 485:21	discussed [2] 470:11 517:13	employee [1] 571:12
coordination [1] 482:19		defective [1] 550:11	discussing [1] 489:16	employees [4] 559:1 559:8 559:12 560:7
copies [1] 535:21	County's [2] 512:24 537:15	defined [1] 497:18	discussion [1] 554:11	end [2] 514:13 570:7
copy [4] 469:8 522:18 536:10 560:15	couple [2] 516:15 522:17	degrees [1] 467:20	discussions [1] 553:22	ended [2] 564:23 565:2
correct [36] 490:25 510:19 512:19 522:6 523:12 523:23 524:9 525:4 525:5 528:13 530:14 534:15 535:11 537:13 537:14 537:18 538:19 540:4 540:14 541:7 544:24 553:3 553:4 553:18 556:10 559:25 562:5 563:17 563:21 564:5 564:20 564:24 568:5 568:13		Del [1] 513:19	disliking [1] 541:1	ends [2] 504:4 565:6
		delays [1] 484:12	disoriented [1] 522:23	enforcement [1] 561:18
		department [8] 472:15 478:1 482:18 502:2 517:5 550:25 551:10 561:17	disputed [1] 499:8	engineer [7] 468:7 472:23 487:10 487:11 489:1 508:18 561:16
		departments [1] 501:23	distances [1] 478:25	engineering [4] 467:20 467:22 468:24 469:4
		depicted [1] 479:13	distracted [1] 538:12	engineers [5] 472:18 474:17 492:23 493:1 493:19
		description [2] 525:19 526:12	divide [1] 569:21	England [1] 468:1
		descriptive [2] 525:15 525:20	division [2] 535:9 537:16	English [1] 492:19
		deserves [1] 535:2	documents [1] 560:3	Engman [1] 469:20
		designed [1] 505:8	doesn't [11] 497:11 499:9 501:24 512:17 515:17 521:7 535:1 550:13 550:22 551:6	

enlarge [2] 554:19 554:21	exactly [6] 479:20 495:19 506:10 517:2 526:4 530:11	extrapolation [1] 485:19	fine [3] 491:1 491:2 534:5	544:21 558:2 568:25
enlarged [1] 554:23	examination [4] 496:13 523:18 524:22 544:14	extrapolations [1] 481:8	finish [1] 504:24	Georgia [1] 468:10
enlargement [2] 554:7 554:9	examined [3] 472:16 498:9 532:8	F [5] 469:19 540:18 543:5 543:8 543:10	finished [1] 495:3	getting [3] 510:24 511:1 512:9
enlarging [3] 553:22 553:23 554:1	example [1] 476:1	facilities [13] 476:18 476:19 476:19 481:25 481:25 506:16 510:6 514:23 516:4 516:14 527:24 554:20 554:22	fired [1] 491:16	give [6] 474:2 478:15 527:9 532:17 535:1 536:12
enough [3] 493:19 500:9 551:15	exceeded [11] 480:12 480:13 480:15 480:16 481:5 481:10 486:22 509:17 537:1 556:17 562:15	facility [15] 483:16 502:9 508:8 509:6 518:23 518:24 519:2 520:15 520:18 553:7 553:18 554:1 554:22 554:24 561:6	first [8] 487:8 505:10 528:16 537:10 539:13 560:4 560:20 565:11	given [9] 469:6 470:24 471:6 475:25 487:10 493:18 506:4 508:17 509:16
entered [2] 527:11 536:5	exceeds [2] 479:6 484:2	facility's [2] 508:9 519:21	fit [1] 515:18	giving [2] 472:22 521:1
entering [3] 484:10 499:25 549:5	excellent [3] 478:2 481:16 501:20	fact [16] 494:13 523:25 524:21 529:8 529:11 530:10 530:10 534:9 541:1 541:3 541:6 549:20 551:13 559:2 562:21 569:14	Florida [8] 465:17 468:10 469:2 472:14 475:18 571:1 571:6 571:20	goings [1] 485:20
entertain [1] 476:22	except [1] 551:17	factor [4] 482:5 497:7 500:3 554:24	flow [1] 473:15	golfs [1] 506:16
entitled [1] 546:25	excepted [1] 498:4	factors [2] 470:9 481:23	folks [1] 547:17	gone [2] 513:19 544:18
entrance [3] 482:13 484:17 541:13	exception [4] 471:3 498:7 498:8 498:17	facts [3] 470:8 490:2 547:1	followed [1] 518:6	good [11] 467:4 494:23 494:24 535:14 535:16 550:7 550:10 550:22 551:7 551:9 551:15
entrances [1] 471:11	excerpt [1] 571:8	fail [1] 543:7	following [2] 487:9 487:10	gotten [1] 546:2
equal [1] 493:13	exciting [1] 565:14	failed [1] 543:11	foolish [1] 489:3	governs [1] 518:23
essential [1] 484:9	excluded [1] 497:9	fails [1] 540:19	foregoing [1] 571:13	grant [2] 498:8 498:16
estimate [3] 486:5 518:13 518:17	excuse [1] 518:11	fair [3] 487:12 488:14 498:22	foreseeable [1] 481:2	granting [1] 506:5
estimated [2] 479:7 518:7	exercised [1] 550:25	far [6] 470:1 494:10 511:11 514:19 520:2 521:9	forget [1] 532:4	grants [3] 502:1 502:2 503:5
estimates [1] 485:16	exist [1] 483:13	fascinated [1] 491:14	forgoing [1] 571:7	graphs [3] 525:10 526:15 527:15
estimating [1] 476:9	existed [1] 504:6	fault [1] 530:21	formula [1] 490:24	grass [1] 513:3
evaluating [1] 496:9	existing [6] 502:8 536:2 536:21 536:25 538:22 540:18	favorite [1] 492:8	Fort [1] 489:17	great [3] 512:3 514:2 554:13
evaluation [1] 480:10	exit [2] 542:7 542:9	February [6] 477:17 513:14 564:12 564:17 565:2 565:2	forth [2] 468:16 571:9	greater [5] 488:3 488:4 488:17 488:20 488:22
evaluations [1] 484:24	exiting [1] 499:25	feel [3] 489:12 489:19 496:19	found [4] 475:5 477:12 480:17 485:11	grew [1] 506:5
even [13] 475:25 477:19 479:6 482:22 483:15 485:13 492:4 494:14 501:5 501:9 520:1 551:19 558:4	exists [2] 471:12 482:13	few [4] 499:16 506:11 506:11 559:5	four [4] 514:19 528:21 556:9 556:20	grounds [1] 499:20
event [13] 479:4 500:22 501:3 503:22 509:16 509:23 511:21 515:4 515:15 515:24 516:25 565:8 567:14	expanded [1] 499:17	figure [5] 517:24 518:4 518:12 533:8 546:2	frame [2] 470:7 502:14	group [1] 497:8
events [35] 476:23 477:2 482:14 482:23 483:15 485:14 489:24 490:14 499:10 499:15 501:5 501:20 501:21 501:22 504:20 505:2 507:10 507:23 508:3 508:10 509:10 510:3 511:12 512:5 512:23 516:2 516:3 517:16 520:11 548:22 551:18 551:18 553:6 556:18 566:14	expansion [1] 555:9	figures [3] 517:11 533:11 546:15	Francisco [1] 504:11	groups [1] 511:5
ever [7] 473:1 475:13 491:18 493:5 553:21 554:10 555:11	expected [6] 479:2 483:23 483:24 484:1 488:8 512:13	filled [8] 479:25 480:3 480:4 510:4 514:24 514:24 515:2 515:14	Frank [1] 521:23	grown [3] 505:12 505:13 505:14
every [3] 474:12 503:21 556:9	experience [21] 468:23 470:13 470:16 471:20 474:11 476:15 482:16 501:4 504:12 506:1 512:5 512:7 549:1 550:3 550:5 552:23 552:24 553:1 553:4 553:5 558:8	finally [1] 553:11	front [1] 499:4	growth [2] 506:7 512:7
everybody [6] 480:1 495:2 498:2 514:1 546:14 557:14	expert [5] 489:2 502:6 518:14 545:12 546:24	find [9] 474:21 475:20 476:1 498:7 514:13 532:18 533:3 536:14 557:4	full [6] 498:24 505:16 519:13 549:14 549:21 553:2	guarded [1] 547:4
everyone [2] 502:23 513:25	expertise [3] 468:20 468:24 473:13	findings [1] 480:8	further [5] 483:5 489:8 525:6 571:9 571:11	guess [6] 468:23 493:19 509:21 539:3 553:8 553:12
everything [1] 502:3	experts [3] 472:7 485:3 496:11	financially [1] 571:12	Futhermore [1] 479:23	guests [4] 483:23 483:24 483:25 484:1
evidence [7] 474:21 491:5 521:8 525:17 532:22 550:8 568:24	explain [7] 478:14 478:16 492:19 499:3 519:5 551:11 557:23	finding [1] 480:8	future [7] 478:18 480:14 481:2 494:2 495:16 495:20 502:10	half [3] 470:14 504:4 522:1
exact [1] 535:3	extent [1] 558:12	findings [2] 473:24 473:25	gaps [1] 485:10	hand [4] 515:20 515:23 526:1 571:16
	extra [1] 500:20		gate [3] 479:1 542:1 542:20	handle [5] 501:17 511:8 511:11 519:12 553:16
	extrapolate [1] 485:3		gates [1] 478:4	handled [2] 477:23 502:3
			gave [1] 549:17	handling [1] 477:21
			generally [1] 553:19	hands [1] 470:10
			generate [3] 499:11 517:18 537:7	happen [6] 467:8 492:2 502:6 504:16 506:13 556:18
			generated [9] 473:17 474:23 475:9 481:9 481:18 481:22 515:21 518:16 550:20	happened [1] 501:5
			generation [25] 472:19 474:20 475:21 476:5 476:6 476:10 476:14 482:5 488:21 493:7 494:14 518:8 518:18 525:3 528:24 529:4 529:12 529:14 530:25 531:10 531:18 532:21	happening [1] 513:1

happens [1] 515:24	493:21 494:23 495:23	interested [2] 558:4	lack [1] 525:17	liking [1] 540:25
happy [1] 536:12	ILYNSKY [1] 515:5	571:12	Lago [1] 513:19	limit [1] 510:9
hard [4] 530:13 568:3	immensely [2] 505:12	internal [1] 483:12	Lake [1] 554:4	limitation [2] 502:1
569:9 569:10	505:13	interrupt [3] 475:3	land [1] 526:12	509:21
head [1] 566:1	impact [3] 497:3	479:11 515:7	lane [3] 484:8 484:15	limitations [9] 476:17
health [2] 524:3	514:11 559:22	into [15] 469:11 469:13	484:16	476:20 476:21 499:23
524:4	impacts [1] 470:12	472:1 473:6 491:5	lanes [1] 484:6	500:6 500:15 504:21
hear [5] 467:6 492:20	importance [1] 523:2	501:4 504:8 505:18	language [1] 558:3	516:9 550:19
549:15 555:11 567:9	important [1] 506:12	513:20 514:7 519:14	large [7] 474:23 476:21	limited [1] 510:5
heard [17] 476:23	importantly [1] 537:22	527:11 536:5 564:20	502:24 503:4 503:5	limiting [2] 500:3
485:17 486:1 486:14	imposed [1] 503:2	569:21	558:12 571:6	545:1
499:6 499:8 514:22	impossible [1] 492:1	intracoastal [1] 561:7	larger [4] 476:5	limits [5] 499:19
519:24 521:11 553:21	impression [2] 505:20	investigation [1] 473:3	488:23 501:5 516:2	502:7 502:11 519:22
554:4 554:6 554:10	505:22	invited [1] 516:5	largest [1] 476:2	550:15
554:14 557:14 565:12	in-Town [2] 495:8	involvement [1] 505:1	last [7] 467:13 471:17	line [2] 495:13 514:3
568:2	495:15	involvement [1] 505:1	493:20 498:1 524:18	list [1] 470:23
hearing [4] 470:5	in-towner [1] 493:24	Iraqi [1] 547:5	524:25 560:19	listen [1] 552:11
471:17 498:23 547:18	inappropriate [1] 489:4	isn't [6] 533:1 537:17	later [1] 493:22	literally [2] 475:23
hearings [1] 518:2	inches [1] 528:22	563:1 566:4 568:23	latitude [2] 547:13	482:21
held [2] 477:1 477:2	include [2] 486:2	569:2	547:14	literature [3] 472:22
helpful [2] 499:3	525:22	isolated [1] 486:11	latter [1] 506:8	475:5 475:6
524:22	included [4] 528:17	issue [8] 480:25 491:21	Lauderdale [1] 489:17	little [3] 493:3 499:17
hereby [1] 571:6	529:25 566:23 567:8	516:8 516:9 545:13	laugh [1] 565:12	517:16
hereinabove [2] 571:9	includes [1] 474:22	562:16 563:1 563:2	laughable [1] 491:23	live [2] 487:21 489:14
571:10	including [1] 482:20	issues [1] 470:11	lawn [1] 513:6	lives [4] 487:16 487:18
hereunto [1] 571:15	inclusive [1] 571:8	ITE [11] 474:18 474:22	laws [2] 558:13 558:15	488:11 489:16
hesitate [1] 530:19	incorporate [1] 561:3	523:12 523:21 524:3	lawyer [1] 529:16	load [1] 540:18
hey [2] 530:20 530:20	Incorporated [1] 467:16	525:2 525:7 530:9	least [1] 555:2	local [1] 494:9
higher [1] 543:5	increase [5] 481:2	531:16 532:19 533:13	leave [2] 506:15 506:18	located [1] 542:8
highest [1] 491:19	488:18 494:19 507:11	item [3] 498:10 517:13	leaving [1] 549:5	location [3] 479:25
hired [3] 483:10 546:5	560:25	539:13	left-turn [5] 471:5	480:19 542:16
557:1	increased [3] 503:8	its [12] 477:13 486:21	484:6 484:8 484:14	locations [2] 479:13
hog [1] 492:12	507:13 521:4	500:6 500:7 509:10	484:16	513:16
hold [4] 476:25 477:4	increases [1] 516:3	512:8 512:9 512:9	legitimate [1] 503:10	logic [1] 494:15
491:19 510:18	increasing [1] 545:8	512:18 519:3 540:13	length [1] 544:18	logical [2] 513:8
honor [1] 491:8	Indiana [1] 468:11	554:1	Leslie [1] 466:5	521:2
honorable [1] 558:19	indicate [1] 529:19	itself [7] 476:24 500:1	Lesly [1] 466:4	logically [1] 488:3
honors [1] 468:14	indicates [1] 558:1	500:5 509:6 510:10	less [7] 494:20 495:10	long [2] 535:6 565:12
hope [1] 506:23	individual [1] 501:3	516:10 519:22	509:15 515:14 517:16	look [24] 469:7 471:25
hoping [1] 544:6	individuals [1] 498:12	IV [2] 465:11 570:7	531:6 531:7	471:25 472:1 472:21
hose [1] 519:13	industry [1] 490:23	J [2] 571:6 571:19	let [16] 471:23 475:3	478:12 490:9 504:17
hour [6] 504:5 522:22	information [18] 470:9 470:15 471:6	Jack [1] 466:6	504:23 508:22 522:17	512:1 522:5 524:5
538:23 539:17 539:21	471:8 471:8 471:19	jargon [1] 543:10	526:5 531:14 534:17	524:19 524:22 526:8
540:18	474:2 474:5 475:20	job [2] 491:13 491:17	535:19 538:6 541:22	526:18 528:21 539:5
hourly [1] 513:11	475:22 490:6 490:12	John [3] 466:7 467:10	549:25 556:14 557:15	539:11 544:17 557:16
hours [1] 564:19	490:17 490:18 490:20	467:14	559:6 563:7	557:17 558:18 563:12
house [4] 476:24	528:9 530:2 530:4	judgment [1] 487:9	letter [8] 535:11 535:19	looked [7] 470:20
476:25 477:3 502:8	informed [1] 483:21	justify [1] 492:15	536:19 536:23 537:24	472:12 473:12 477:7
however [5] 485:11	ingress [1] 549:11	keep [4] 493:23 497:14	537:25 560:13 560:20	550:2 550:4 550:12
501:9 506:7 548:21	inherent [1] 510:9	498:23 501:25	level [17] 471:13	looking [2] 531:21
549:10	inquired [1] 479:23	keeps [1] 510:24	472:13 477:15 477:19	568:18
hundreds [1] 504:13	inside [3] 478:3	Keith [12] 471:14	480:18 480:20 480:21	looks [1] 506:23
hypothetical [3] 487:11 487:13 547:1	479:1 520:14	477:14 480:17 540:2	480:23 486:21 511:7	lose [1] 502:10
idea [3] 503:3 548:1	installation [1] 484:7	540:15 540:20 540:23	512:10 517:18 537:1	lot [8] 500:11 509:7
548:9	Institute [4] 472:17	541:9 543:9 544:2	539:20 543:4 543:9	515:14 547:13 547:17
ideally [1] 483:22	474:17 492:22 493:1	544:9 564:10	544:10	553:14 557:2 558:13
identify [1] 526:9	intelligent [1] 521:6	Kentucky [1] 468:11	levels [2] 481:4	love [1] 492:20
illustrate [1] 544:8	intention [1] 520:25	kind [2] 523:25 533:6	538:23	low [3] 477:17 558:5
illustrated [1] 479:5	interest [4] 503:9	kinds [1] 503:15	licensed [1] 468:7	559:24
illustrations [1] 533:12	536:19 567:16 567:18	knowing [1] 494:3	life [1] 493:20	Madame [2] 469:10
Ilyinsky [7] 466:4		knowledge [1] 477:6	lifted [1] 516:23	497:6
487:18 491:13 492:24		known [1] 498:14	likelihood [2] 488:17	made [16] 471:17
		knows [1] 545:20	488:21	471:18 479:9 482:3
		L [1] 498:10	likely [1] 488:3	482:8 484:23 485:15
				485:19 496:23 514:25

Index Page 7

537:2 537:12 544:9	483:10 488:10 503:23	patronage [1] 494:11	place [8] 482:23 501:6	481:1 481:6
October [1] 522:15	513:14 513:21 514:24	Paul [2] 466:4 466:8	512:23 517:3 517:8	presentation [2]
odd [1] 520:17	514:24 537:17 540:14	pay [1] 558:19	520:22 558:24 571:9	496:14 513:13
off-season [1] 505:15	541:6 542:12 550:5	peak [19] 471:12	placed [1] 469:11	presented [4] 478:14
Offhand [1] 566:12	550:7 550:8 562:2	471:15 477:16 477:19	places [1] 556:4	521:8 560:21 560:24
officers [1] 482:17	overbrimming [1] 520:19	479:3 480:21 482:23	plan [4] 471:4 503:24	preserving [1] 506:21
often [3] 479:24 488:8	overflowed [1] 515:14	485:14 485:14 485:15	516:25 517:6	president [69] 466:4
499:14	Oxford [1] 467:25	513:12 515:24 516:1	planned [1] 471:9	466:6 467:7 467:15
on-site [3] 471:4	p.m. [5] 465:18 465:18	516:3 538:22 539:16	planning [9] 466:8	469:10 469:12 478:9
514:23 568:8	511:13 539:16 540:18	539:21 540:18 564:4	468:5 468:25 501:2	487:20 489:9 489:21
once [2] 503:5 511:4	page [15] 517:14	pending [1] 554:3	501:20 504:19 505:2	490:5 490:11 490:16
one-day [2] 564:3	524:25 526:7 526:7	people [48] 476:22	548:22 561:18	490:24 491:1 491:6
565:9	526:19 528:16 528:19	480:2 486:9 488:15	plans [1] 477:24	491:9 491:11 493:9
only [22] 487:22 489:22	529:24 531:20 534:1	492:7 492:8 492:9	plant [1] 520:3	495:1 496:5 496:15
491:23 493:2 495:8	538:25 544:3 560:4	492:10 492:13 497:9	play [3] 506:16 527:19	496:23 497:6 497:10
495:9 495:9 496:18	560:20 562:3	499:16 499:21 500:11	527:21	497:14 497:20 504:23
502:18 506:20 524:17	pages [4] 525:21	500:13 500:16 500:18	please [12] 467:12	507:2 507:8 507:15
525:12 533:25 535:17	538:13 539:3 571:7	500:19 500:20 502:12	468:19 473:20 478:10	507:24 508:4 508:11
538:18 546:5 547:15	Palm [19] 465:6	505:14 505:16 509:15	487:5 495:1 495:4	510:22 514:15 514:21
556:6 557:1 563:20	465:17 471:16 483:19	509:23 509:24 510:2	495:4 495:6 538:24	516:18 516:22 517:2
564:1 564:21	487:1 487:22 487:23	510:4 511:1 511:14	544:15 544:15	517:7 518:1 518:19
onto [3] 478:4 478:24	488:16 492:25 496:20	511:18 511:23 511:24	plus [1] 500:20	521:18 521:21 524:16
501:10	498:15 504:12 535:24	513:19 514:19 515:5	podium [1] 467:11	524:24 527:11 530:20
open [1] 528:19	537:22 539:8 541:25	517:17 518:24 519:20	point [17] 476:11	533:23 536:4 536:9
opens [1] 549:13	542:7 564:14 571:2	519:23 520:14 520:16	480:7 482:10 484:4	536:16 538:25 539:4
operate [1] 561:5	Pamela [2] 571:6	520:19 520:23 521:5	484:5 486:7 492:8	541:16 542:2 542:9
operated [1] 519:3	571:19	551:1 553:17 555:2	496:8 509:13 510:3	542:13 542:19 542:22
operating [11] 477:12	paragraph [12] 536:1	557:11 559:5	511:16 523:5 523:9	544:1 544:4 544:12
477:15 486:20 534:10	536:20 548:15 548:15	per [13] 492:18 500:19	544:20 553:11 553:12	544:15 565:13 566:5
537:12 538:10 538:16	548:18 557:16 557:17	518:9 520:16 528:24	553:12	567:3 567:6
540:13 541:4 543:19	557:25 560:20 563:8	529:5 529:20 530:6	points [1] 533:16	presume [3] 535:11
544:10	563:9 563:16	530:25 561:1 569:11	Police [26] 477:25	541:20 547:21
operation [4] 487:3	pardon [3] 492:11	569:25 569:25	482:12 482:16 482:17	presumes [1] 493:25
497:25 549:11 553:2	527:5 567:4	494:9 495:25 496:1	482:17 489:25 501:22	prevent [1] 484:11
operations [2] 470:17	park [2] 556:17 556:22	496:3 498:11 558:25	502:2 504:19 505:1	previously [2] 478:13
471:20	parkers [1] 490:13	559:7 559:11 559:16	505:6 507:13 507:16	560:14
opinion [16] 472:23	parking [35] 471:7	560:7 561:21 561:22	512:15 517:4 548:25	primarily [1] 509:7
473:13 486:15 488:1	476:18 478:6 483:12	561:25 565:21 566:2	550:25 551:10 551:17	primary [3] 468:22
498:17 502:6 505:25	483:13 483:18 490:7	566:4	551:21 551:22 552:1	486:19 500:2
510:20 516:1 532:24	490:9 490:20 500:2	percentage [3] 494:20	552:3 552:11 552:15	print [1] 528:22
533:1 534:4 541:3	509:6 509:17 515:1	497:2 565:24	552:21	printout [1] 565:1
545:6 551:16 552:18	515:2 515:10 516:8	performance [1] 537:6	Pollack [2] 517:10	prior [3] 473:2 506:4
opinions [3] 470:22	516:14 517:20 553:14	performed [1] 472:17	518:4	522:14
473:21 484:24	555:6 555:10 555:12	perhaps [3] 496:17	Pollack's [1] 518:13	private [1] 483:19
opportunity [3] 469:15	555:13 555:18 556:4	519:16 541:15	popularly [1] 490:22	Pro [1] 466:6
522:5 550:16	556:9 556:12 556:16	period [9] 506:14	portion [2] 488:23	probably [3] 506:9
opposed [1] 495:15	556:19 556:20 556:21	513:14 548:6 548:7	488:24	547:23 561:15
option [2] 561:3	556:24 557:7 557:10	550:5 550:21 564:2	posed [1] 510:9	problem [10] 477:7
561:7	561:6	564:17 564:22	positions [1] 496:10	494:19 494:21 501:1
options [2] 560:21	part [7] 484:19 506:8	periodically [1] 549:12	possibilities [1] 483:6	508:12 508:12 512:11
560:24	508:5 526:16 527:13	periods [1] 485:15	possibility [2] 478:23	512:12 512:13 549:3
order [4] 484:11 498:7	527:14 554:8	permission [1] 527:9	503:11	problems [4] 473:15
537:4 561:20	participation [1] 494:10	person [3] 487:25	possible [7] 474:5	482:22 487:2 498:21
ordered [2] 551:10	particular [7] 470:1	561:5 562:1	532:11 532:20 533:5	procedure [1] 472:21
551:14	494:12 498:12 509:20	personally [1] 510:25	554:16 566:8 569:5	proceedings [5] 467:2
Ordinance [3] 497:10	528:16 534:9 568:21	personnel [2] 483:9	possibly [1] 474:13	571:7 571:8 571:9
497:16 497:19	particularly [3] 470:11	548:25	precedes [1] 526:7	571:10
others [1] 479:9	514:25 558:4	persons [2] 498:13	precisely [1] 542:11	produce [1] 569:24
ought [3] 501:14	parties [1] 571:11	498:14	preclude [2] 478:23	produced [1] 550:8
551:19 552:7	party [2] 492:4 571:12	Petitioner [1] 519:6	483:5	product [1] 550:24
out-of-Town [2] 495:9 495:15	pass [1] 543:6	physical [2] 499:19	precluding [1] 501:18	profession [2] 475:5
out-of-towner [1] 493:24	past [9] 470:13 476:16	520:2	predicted [1] 480:14	475:12
493:24	477:11 482:3 503:1	piece [3] 498:23 498:24	premise [1] 481:16	professional [1] 468:13
outside [1] 467:24	504:5 509:16 513:19	568:22	present [6] 466:2	professionally [1] 535:18
over [18] 470:13 476:16	532:1	pile [1] 492:4	472:12 473:8 477:18	professor [2] 475:14
		piling [1] 492:13		

475:17	quotation [1]	523:20	recommendation [2]	470:24 470:25 473:14	561:11	
projected [1]	quote [1]	518:7	479:9 501:11	473:14 474:8 477:14	restaurants [1]	528:7
projection [1]	R-square [2]	533:11	recommendations [1]	480:8 480:17 491:5	restrictions [3]	516:23
property [21]	533:25		478:22	491:7 522:3 522:13	544:23 556:15	
482:1 482:13 484:11	R-squared [2]	475:1	recommended [6]	522:18 523:15 524:5	result [1]	482:21
499:24 500:1 500:5	533:8		478:25 479:19 482:11	524:7 524:18 524:20	resulting [1]	482:22
501:8 507:4 507:17	racquet [15]	524:13	483:11 484:7 549:10	525:23 526:8 526:16	results [1]	473:8
508:15 509:6 510:9	524:14 525:4 527:1		record [6]	528:15 528:15 530:24	resume [2]	469:7
510:18 512:6 516:6	527:19 527:21 527:23		469:13 521:22 527:12	534:12 537:11 538:24	469:8	
516:10 516:12 568:22	528:8 528:16 529:5		535:22 536:6	539:7 540:1 540:3	retained [2]	473:6
568:23 568:25	531:1 531:23 532:1		recorded [1]	540:5 540:16 540:21	522:9	
proportion [2]	532:4 534:1		485:4	540:23 541:5 541:5	revealed [1]	521:5
495:19	Rampell [2]	517:11	records [2]	541:9 543:9 543:14	revealing [1]	498:25
proposed [2]	536:10		557:25	543:15 543:18 543:21	review [4]	469:15
537:6	ran [2]	565:25 568:2	reduce [4]	544:2 544:18 548:12	474:6 501:12 557:19	
protected [2]	Randolph [1]	466:7	557:10 560:25 561:8	549:21 556:1 557:17	reviewed [4]	470:8
505:4	ranging [1]	474:24	reduces [1]	560:4 560:7 563:8	470:25 476:16 490:3	
protecting [1]	rate [3]	479:3 529:14	reduction [3]	564:9 566:23 567:8	reviewing [1]	474:8
protection [1]	547:22		557:7 557:9	567:25 571:7	Richmond [1]	487:16
proven [1]	rather [2]	484:11	refer [3]	reported [5]	474:15	
provide [1]	499:4		563:15	474:16 483:8 515:11	546:17	
provided [10]	ratio [2]	483:18 490:12	reference [3]	467:13	reporter [4]	467:13
471:20 479:1 479:4	ratio [2]	483:18 490:12	535:24 541:12	571:6 571:15 571:19	571:6 571:15 571:19	
479:6 479:8 479:22	rationale [1]	507:19	references [2]	489:24	reports [1]	489:24
483:12 484:17 511:9	reach [2]	498:22	472:22	511:19	represent [1]	511:19
provision [2]	547:24		referred [2]	representing [1]	517:12	
498:18	reached [14]	501:7	568:7	517:12	reproduction [1]	571:14
prudent [1]	507:4 507:17 508:15		referring [2]	571:14	571:14	
public [7]	508:24 508:25 509:10		541:17	requested [1]	555:21	
503:11 505:3 538:15	512:6 518:3 520:2		reflect [1]	500:14	requests [1]	500:14
562:14 571:6 571:20	520:4 520:9 520:11		refresh [1]	494:20	require [1]	494:20
publications [1]	549:22		regarding [3]	488:16	required [4]	488:16
468:13	reaches [1]	549:14	471:8 481:7	497:2 556:3 556:7	requirement [2]	498:11
published [4]	read [18]	486:14 528:23	regardless [1]	556:16	requirements [11]	
472:14 472:18 475:11	534:12 536:1 536:3		registered [1]	486:18 537:5 538:8	486:18 537:5 538:8	
Purdue [1]	536:18 536:20 537:20		regularly [1]	542:25 543:13 557:8	542:25 543:13 557:8	
purpose [4]	544:7 549:7 549:9		related [10]	557:10 562:5 562:7	557:10 562:5 562:7	
476:1	555:20 555:22 560:1		470:11 470:14 470:17	562:12 562:19	562:12 562:19	
496:12 496:13 520:19	560:4 560:6 560:19		473:7 474:13 481:24	requires [1]	558:25	
put [14]	567:24		503:18 519:9 559:21	research [11]	471:25	
469:13 470:9	reading [1]	566:6	475:19 484:19 485:18	472:17 474:16 474:22	472:17 474:16 474:22	
496:17 498:19 498:23	reads [1]	536:21	533:25 538:8 548:10	475:4 475:11 476:2	475:4 475:11 476:2	
500:11 513:10 517:8	real [3]	500:22 569:9	555:5	492:22 532:8 532:13	492:22 532:8 532:13	
519:14 519:18 520:14	reality [2]	478:17	relating [2]	533:4	533:4	
520:22 524:6 526:8	495:20		510:13	researched [2]	525:13	
putting [1]	realize [1]	556:13	relation [2]	533:13	533:13	
quarter [2]	really [7]	480:4	509:12	residences [1]	497:11	
511:4	494:18 495:16 503:17		relationship [7]	487:14	487:14	
question [25]	532:25 541:23 547:4		499:7 510:17 531:9	487:15 487:23 487:24	487:15 487:23 487:24	
488:8 489:10 489:11	reason [8]	471:22	532:20 533:6 545:7	488:2 488:5	488:2 488:5	
493:16 493:25 494:5	477:21 486:19 494:6		relationships [1]	488:11 548:4	488:11 548:4	
494:7 494:12 495:5	494:11 521:3 545:12		506:1	residents [12]	488:7	
495:11 496:2 496:16	reasoning [2]	507:10	relative [6]	488:16 488:23 488:25	488:16 488:23 488:25	
501:25 505:24 514:16	508:20		472:19 480:9 497:24	494:10 494:17 496:20	494:10 494:17 496:20	
518:22 529:17 533:2	reasons [1]	477:10	531:3 571:11	497:2 497:15 498:13	497:2 497:15 498:13	
533:18 537:9 551:3	recall [8]	479:20	relatively [1]	502:16 502:20	502:16 502:20	
555:15 563:5 567:9	517:23 525:25 526:2		relevant [4]	respect [6]	491:20	
questioned [2]	526:3 548:14 555:20		562:20 562:25 567:13	525:8 531:22 533:1	525:8 531:22 533:1	
523:18	560:9		relieved [1]	535:12 535:15	535:12 535:15	
questioning [2]	recalled [1]	518:12	555:17	response [2]	481:13	
533:18	receive [1]	469:21	rely [2]	501:12	501:12	
questions [8]	received [1]	468:13	489:24 529:9	responsible [1]	561:17	
489:8 489:13 493:12	recognize [1]	522:21	remarkably [1]	rest [1]	493:20	
521:18 522:18 522:24	recollection [1]	557:20	remember [1]	restaurant [2]	528:1	
523:1			repetitive [1]			
quickly [1]			report [60]			
Quiet [1]			469:18 470:1 470:22			
quite [4]						
515:17 535:1						

MUDRICK, WITT, LEVY & CONSOR W.P.B. FL (407)659-41

ten [1] 529:25	title [2] 535:4 535:8	529:10 531:10 532:12	509:1 524:12 537:12	vendors [1] 485:23
tennis [4] 492:2	today [5] 496:14	532:21 533:7 534:8	541:4 543:19 562:10	versus [1] 497:25
492:3 500:10 506:17	506:25 522:6 546:23	535:9 536:2 536:21	571:14	Via [1] 513:19
tent [2] 499:20 500:10	562:10	536:25 537:3 537:5	underneath [1] 529:3	vicinity [1] 518:8
tenting [1] 502:9	together [3] 511:17	537:15 538:8 539:8	understand [24] 479:8	violating [2] 542:24
terms [5] 523:21	513:10 524:6	544:21 545:1 545:7	480:23 483:4 495:16	543:12
525:9 553:25 555:9	told [4] 496:11 500:8	545:9 548:10 548:19	497:13 499:1 499:13	violation [1] 486:17
568:25	502:5 552:1	548:23 549:2 549:5	499:18 507:3 507:3	Virginia [1] 487:17
test [1] 512:18	too [2] 499:9 505:19	554:18 557:25 559:22	508:20 510:7 510:12	Vitae [1] 468:17
testified [4] 489:2	took [4] 500:13 502:7	560:22 560:25 561:1	515:3 516:13 517:1	VOICE [1] 512:20
530:11 562:10 562:13	502:11 544:17	561:16 561:17 563:1	519:25 523:8 526:22	volume [5] 465:11
testify [1] 557:3	top [1] 539:2	563:2 563:22 568:18	545:20 552:10 553:10	539:17 540:9 563:16
testifying [1] 569:10	total [5] 479:24 486:8	568:21 568:25 569:12	understanding [5] 501:7 507:6 553:20	570:7
testimony [8] 481:7	488:21 507:19 569:21	transcript [1] 571:13	556:5 561:15	volumes [5] 536:2
504:14 506:4 534:7	totality [1] 496:11	transportation [5] 468:25 472:15 472:18	understood [1] 518:21	536:21 536:25 537:2
549:8 549:10 549:15	totally [1] 481:19	474:17 492:23	undoubtedly [1] 486:2	537:4
549:17	totals [1] 486:12	tremendous [1] 499:11	unfortunately [1] 539:1	W [2] 467:10 467:14
thank [14] 468:6	tournament [1] 492:3	tried [2] 523:5 530:24	United [1] 467:24	wait [3] 504:5 504:16
478:10 480:6 491:2	toward [1] 496:19	trip [15] 472:19 474:19	universities [1] 467:24	550:16
497:20 510:21 518:19	towards [1] 524:19	476:5 476:6 476:9	University [3] 467:21	waiting [1] 484:13
521:17 536:9 539:4	Town [55] 465:6	476:14 488:21 493:7	467:25 475:18	Walker [4] 534:21
541:11 542:14 542:22	465:7 466:7 466:7	507:19 518:8 518:18	unless [1] 571:14	534:23 537:16 562:18
543:23	471:14 473:9 477:25	528:23 529:4 530:25	until [5] 522:22 541:24	wants [1] 555:12
their [4] 506:2 520:25	487:1 487:14 487:22	trips [19] 481:9 482:6 488:4	549:13 549:21 550:16	warrants [1] 498:2
548:25 565:1	487:23 488:1 488:7	488:10 488:18 492:14	upon [1] 568:3	wash [1] 492:12
themselves [1] 490:3	488:12 488:16 488:24	492:18 511:19 511:21	usage [2] 481:9	water [5] 513:4
therefore [3] 520:12	488:25 493:1 494:20	515:20 515:21 518:15	569:12	513:5 513:5 519:13
545:3 553:17	496:6 496:20 497:11	529:20 530:6 537:7	use [14] 467:11 471:1	519:14
though [3] 520:1	497:12 497:15 497:15	561:1 569:22 569:25	473:6 473:7 478:9	watering [1] 513:6
525:23 558:4	497:17 497:24 498:3	trouble [1] 561:14	488:8 490:22 506:16	waterway [1] 561:7
thought [2] 514:22	498:10 498:14 500:25	true [8] 538:3 538:4	509:1 526:12 548:3	way [11] 473:1 474:1
567:7	502:16 503:5 505:13	538:5 543:20 543:22	560:2 568:21 568:24	474:12 475:13 486:16
thousand [2] 500:16	505:18 506:3 506:21	547:25 548:12 571:8	used [8] 472:7 475:7	486:23 506:22 506:23
500:19	506:22 515:12 522:4	Trump [8] 498:4	475:11 476:9 483:10	508:19 525:25 541:24
thousand-plus [1] 515:13	522:14 535:21 535:24	502:17 550:14 551:15	513:16 518:4 558:9	we'd [1] 492:20
three [4] 511:1 513:15	539:8 541:24 542:7	554:12 555:6 555:16	useful [3] 474:25	we've [2] 478:13
518:9 522:1	543:2 545:12 550:15	558:25	475:25 476:8	544:19
three-fifths [1] 547:16	551:14 553:10 557:23	Trump's [1] 522:9	uses [1] 513:12	Wednesday [3] 499:12
three-month [1] 564:2	558:22 558:24 562:24	try [5] 474:4 508:22	using [4] 494:15	512:20 512:21
through [7] 472:21	Town's [5] 480:24	531:14 532:15 559:6	494:16 513:5 518:3	week [2] 532:2 566:11
473:24 473:25 499:4	491:22 498:14 542:25	trying [10] 494:8	usually [1] 512:23	weekend [1] 512:24
504:4 513:15 571:8	543:13	498:22 504:8 505:6	utilization [4] 539:17	weekly [1] 488:9
throughout [2] 472:16	traffic [121] 467:22	505:18 510:8 515:16	554:25 558:6 559:24	weeks [4] 516:15
511:15	468:24 469:3 469:16	551:4 551:11 553:10	utilized [2] 472:15	546:6 546:6 557:1
Thursday [1] 512:22	470:12 470:15 471:10	Tuesday [3] 512:18	548:21	Weidner [3] 482:3
tie [2] 514:4 514:5	471:12 472:23 473:6	512:19 512:21	V/C [1] 540:9	482:8 489:14
ties [1] 526:14	473:8 473:15 473:15	turn [6] 484:13 514:9	valet [9] 478:2 480:5	weren't [2] 516:15
time [38] 467:6 470:7	473:17 475:9 475:21	515:5 529:24 538:21	482:20 483:3 483:9	526:20
473:4 474:16 477:2	477:8 477:22 477:24	turned [1] 513:22	483:22 483:25 490:13	west [11] 539:12
477:2 479:8 479:21	480:10 481:3 481:8	turning [1] 538:12	490:23	541:8 541:17 541:18
481:1 482:3 488:22	481:18 481:22 481:23	twice [1] 511:3	valets [1] 490:21	542:4 542:4 542:6
499:1 499:2 502:13	484:10 484:12 484:12	two [23] 476:4 487:14	validity [1] 496:10	542:10 542:16 542:17
505:12 506:15 506:17	484:20 484:25 485:5	491:17 492:25 493:11	value [2] 544:25	561:6
510:18 517:22 518:15	486:1 486:3 486:8	498:1 500:18 511:5	van [2] 558:5 558:8	what's [3] 503:20
518:25 529:18 530:18	487:1 487:2 487:9	520:16 524:21 525:20	vans [1] 559:4	551:4 556:21
530:19 531:14 532:16	487:11 488:4 488:19	532:14 533:11 533:15	varied [2] 546:3	whatever [3] 485:2
535:6 536:13 536:20	489:1 489:16 490:1	538:18 546:6 546:6	546:10	515:15 532:5
548:6 548:8 550:6	492:4 493:18 493:20	557:1 560:21 560:24	various [3] 500:4	whatsoever [4] 486:23
550:9 550:21 557:2	494:13 495:10 497:4	563:16 564:22 565:22	501:5 506:16	501:19 505:1 533:10
565:11 565:12 571:9	499:8 499:12 499:22	two-fifths [1] 547:16	vehicles [2] 518:9	where's [1] 492:7
times [5] 477:18	499:24 500:24 501:1	type [2] 499:15 503:22	whether [11] 480:11	486:15 488:1 496:3
501:8 501:9 504:14	501:17 501:19 501:21	unable [1] 474:20	512:13 522:4 523:21	512:13 522:4 523:21
519:4	502:6 503:12 503:14	unaware [1] 556:23	550:18 562:21 566:13	
Tipton [4] 481:7	503:23 504:7 504:20	under [8] 477:13		
485:19 530:11 569:9	505:7 505:9 506:19			
Tipton's [1] 567:24	508:18 512:8 516:11			
	516:19 516:25 517:6			
	517:13 518:14 519:9			
	520:3 521:1 523:4			
	523:22 525:3 525:18			

567:13				
while [1]	487:23			
whole [1]	514:13			
will [19]	469:12 477:4			
483:10 491:18	492:4			
493:25 499:3	502:20			
502:23 506:13	516:2			
516:10 524:20	524:21			
528:15 533:24	556:7			
557:23 562:3				
William [1]	469:19			
willing [1]	548:2			
wisely [1]	503:1			
within [3]	475:5			
482:1 500:5				
without [3]	488:7			
494:3 498:17				
witness [1]	571:15			
witnesses [1]	467:6			
won't [1]	529:18			
wonder [1]	544:5			
wonderful [1]	506:24			
word [1]	568:8			
words [1]	546:12			
work [5]	503:2 503:21			
559:9 559:12	560:8			
worked [1]	478:17			
working [9]	469:1			
478:18 482:18	484:16			
491:24 501:14	501:15			
503:20 505:22				
worry [1]	558:10			
Worth [1]	554:4			
wouldn't [5]	494:21			
496:18 544:7	562:25			
567:12				
wrong [2]	537:17			
538:2				
Wyett [20]	466:5			
497:22 497:23	500:8			
501:24 503:25	504:22			
504:23 505:5	518:20			
518:21 519:2	519:5			
519:11 519:24	520:7			
520:12 521:2	521:15			
521:17				
year [9]	470:14 470:14			
488:11 488:13	506:5			
515:22 546:3	546:11			
547:24				
year's [2]	488:22			
552:24				
year-plus [1]	476:16			
years [8]	469:1 498:1			
506:23 506:25	522:1			
526:3 526:4	526:23			
yet [3]	516:14 521:5			
541:5				
yours [1]	544:2			
yourself [2]	472:7			
499:4				
Zoning [2]	466:8			
466:8				

Page 1

TOWN OF PALM BEACH
TOWN COUNCIL MEETINGVOLUME IV
(PART 2)CERTIFIED
COPY16 360 South County Road
17 Palm Beach, Florida
18 2:15 p.m. - 7:30 p.m.

Page 2

COUNCIL PRESENT:

Lesly Smith, President
 Paul Ilyinsky, Mayor
 Allen Wyatt, Councilman
 Leslie Shaw, Councilman
 Jack McDonald, President Pro tem
 Samuel McLendon, Councilman
 John Randolph, Town Attorney
 Robert Doney, Town Manager
 Robert Moore, Director of Planning, Zoning & Building
 Paul Castro, Zoning Administrator

*** Notes ***

Page 3

* * *
PROCEEDINGS
* * *

MR. CHOPIN: And you can at the end of that time know how many trips per member has occurred based upon the real hard best evidence numbers that are possible to obtain; is that not correct?

MR. BARR: Similarly to the way you can divide the number of pieces of gravel in the driveway, as was stated.

PRESIDENT SMITH: What?

MR. CHOPIN: He's taking about the number of correlation between the number of trips and the number of stones in the driveway.

You don't espouse that as a valid correlation, do you, Mr. Barr?

MR. BARR: No, sir.

MR. CHOPIN: I only have another couple of questions, which I think is going to make a lot of people happy.

PRESIDENT SMITH: I think particularly Mr. Barr.

MR. CHOPIN: Let me ask you this.

Page 4

You're a traffic engineer and I'm a lawyer. And because I'm the lawyer, I think things relating to my profession are the most important things in the world because that's what I do. It's the only thing I know how to do.

And I suspect that when you look at a problem you primarily look at in the context of traffic and traffic engineering and things of that nature. Is that a fair human nature evaluation, do you think?

MR. BARR: I deal in facts relating to traffic.

MR. CHOPIN: Could you concede notwithstanding the natural inclination to focus on traffic that there are in fact other factors that come into play in deciding how many people, how many cars, how many members might be appropriate for a commercial venture in a single family residential neighborhood?

MR. BARR: I really haven't analyzed that or have an opinion on it because it's not related to traffic.

MR. CHOPIN: You live in a house?

MR. BARR: Yes.

*** Notes ***

Page 5

1 MR. CHOPIN: If they put a club next
2 door to you do you think there should be some
3 limitations on how many people can go over to
4 that club?

5 MR. BARR: Again, I deal strictly with
6 traffic indications as facts.

7 MR. CHOPIN: So if you had a club next
8 door to your house -- you know where
9 Woodbridge is?

10 MR. BARR: Yes.

11 MR. CHOPIN: You do know there's a lot
12 of folks that live on Woodbridge?

13 MR. BARR: I don't know how many.

14 MR. CHOPIN: But there are guys -- men
15 and women that live on Woodbridge?

16 MR. BARR: I think so.

17 MR. CHOPIN: They have at least as much
18 right as does Mr. Trump to peaceful enjoyment
19 of their property; is that not true?

20 MR. BARR: I wouldn't analyze their
21 rights.

22 MR. CHOPIN: It doesn't take a rocket
23 scientist to know that they're people and
24 they live in a single family home and have a
25 right to privacy and peaceful enjoyment of

*** Notes ***

Page 6

1 their houses, don't they?

2 MR. BARR: I strictly analyze the
3 traffic aspects.

4 MR. CHOPIN: In other words, you have
5 no opinion as to whether the proximity of
6 single family residents to a commercial
7 establishment, whether that fact or that
8 relationship should have any influence
9 whatsoever on making conditions under use of
10 the commercial establishment? You have no
11 opinion at all?

12 MR. BARR: That's correct.

13 MR. CHOPIN: And in all, how long have
14 you been a professional engineer, traffic
15 engineer?

16 MR. BARR: Little more than 40 years.

17 MR. CHOPIN: And during that period of
18 time, you have testified in hundreds of
19 development board, planning commission,
20 zoning commission hearings; is that not true?

21 MR. BARR: No, that's not true.

22 MR. CHOPIN: It's not true?

23 MR. BARR: Not hundreds.

24 MR. CHOPIN: Oh, I'm sorry. I would
25 have thought 40 a year, that's only a little

Page 7

1 better than two or three a year.

2 But you have done a number, haven't
3 you?

4 MR. BARR: Oh, yes.

5 MR. CHOPIN: And you have seen people
6 making land use decisions factor in something
7 other than just your profession, other than
8 just traffic, is that not true?

9 MR. BARR: Yes.

10 MR. CHOPIN: Have you ever said, that's
11 ridiculous, they should only look at the
12 traffic?

13 MR. BARR: No.

14 MR. CHOPIN: And you have an opinion
15 that other factors are important, don't you,
16 Mr. Barr?

17 MR. BARR: I didn't say that I had that
18 opinion.

19 MR. CHOPIN: Okay. I want to talk
20 about that guy from Chicago for a minute.
21 Now, what I didn't understand, sir, I didn't
22 understand until frankly I guess it was the
23 Mayor who says he's not a member of the bar,
24 but he did better than the rest of us lawyers
25 when they were trying to ask that question.

*** Notes ***

Page 8

1 I didn't understand this: You were
2 willing to speculate on whether the guy from
3 Chicago was going to use the club more or
4 less than the guy that lived in Town. You
5 were. You answered those questions; did you
6 not?

7 MR. BARR: That's correct.

8 MR. CHOPIN: Well, let me ask you this:
9 Do you not think that Mar-a-Lago has a record
10 of which of its members use the club's
11 facilities?

12 MR. BARR: I don't know.

13 MR. CHOPIN: Did you ask?

14 MR. BARR: No.

15 MR. CHOPIN: Well, you didn't ask. But
16 if they did, sir -- I kind of guess they have
17 to send out bills. And I know that the use
18 agreement specifies reservations for dinner.
19 And I'm assuming that Mr. Trump would obey
20 the law. So there are reservations.

21 They had real hard numbers which you
22 could have asked for that would have given
23 some insight as to whether in-Town or
24 out-of-Town people use the club more or less;
25 is that not true? You could have asked for

Page 9

Page 10

1 that; right?

2 MR. BARR: Oh, I could have asked, yes.

3 MR. CHOPIN: But instead you were
4 prepared to speculate as a traffic engineer
5 about someone from Chicago would use the club
6 less frequently than someone from Palm Beach.

7 MR. BARR: I just responded to the
8 question that was asked of me.

9 MR. CHOPIN: Well, they had better luck
10 than I did, Mr. Barr, if you did.

11 Now, you came up with some traffic
12 counts in 1993; do you remember that --
13 excuse me -- those were some estimates as to
14 the number of trips that would be generated
15 as a consequence of the use of the club.

16 MR. BARR: Yes.

17 MR. CHOPIN: Do you recall how you came
18 up with that?

19 MR. BARR: Not without reviewing that
20 report again.

21 MR. CHOPIN: You mean to tell me you
22 didn't review your own report? You referred
23 to your report, you're 1993 report
24 continuously in your 1996 report, didn't you?

25 MR. BARR: I don't remember offhand.

1 Yes, I did refer to that, but I don't

2 remember the exact technique that we used
3 had.

4 MR. CHOPIN: Okay. Let me show you a
5 page from the Barr, Dunlop & Associates
6 report dealing with trip generation estimates
7 for proposed Mar-a-Lago Club combined impact
8 of individual activity. Would you like to
9 take a look at that and tell the Town exactly
10 how you came up with the number of trips that
11 would be generated at Mar-a-Lago?

12 It's just one page, Mr. Barr.

13 MR. BARR: We made a combined estimate
14 related to the number of rooms, accommodation
15 of rooms, the number of courts for tennis or
16 racquet --

17 MR. CHOPIN: Uh-huh.

18 MR. BARR: -- and the number of seats
19 in the restaurant that we understood were to
20 be used as a part of this facility.

21 MR. CHOPIN: If I can work over your
22 shoulder since I only have one copy of this.

23 What you said in effect was Mr. Trump
24 said he was only going to have ten guest
25 rooms and if there was ten guest rooms it was

*** Notes ***

Page 11

Page 12

1 going to generate an estimate of two trips on
2 an average weekday; isn't that correct?

3 MR. BARR: Yes.

4 MR. CHOPIN: And he also said if he --

5 MR. BARR: This is just a list of
6 assumptions. I don't know whether Mr. Trump
7 said it nor not.

8 MR. CHOPIN: Well, let's just assume
9 it. And everybody else here knows what he
10 said.

11 There was one tennis court at the time;
12 is that correct?

13 MR. BARR: That was assumption, yes.

14 MR. CHOPIN: And if there was one
15 tennis court at the time it was going to
16 generate 43 trips; is that not correct?

17 MR. BARR: Yes, that was our estimate.

18 MR. CHOPIN: Okay. And there was a
19 restaurant, a quality restaurant, that was
20 your assumption, with 75 seats. And in your
21 judgement it was going to generate on an
22 average weekday 203 trips?

23 MR. BARR: That was the estimate.

24 MR. CHOPIN: Okay. Let me ask you.

25 Would you now assume that there are no limits

1 on the number of guest suites and instead I
2 want you to assume that there are 20, 30, 40
3 guest rooms. Would that affect the number of
4 trips?

5 MR. BARR: Again, the measurements of
6 the facility, if the facility was enlarged it
7 would affect the number of trips.

8 MR. CHOPIN: Do you know how many guest
9 suites are possible with the existing
10 facilities there now?

11 MR. BARR: No.

12 MR. CHOPIN: Did you ask?

13 MR. BARR: No.

14 MR. CHOPIN: Consistent.

15 Would you assume for me, sir,
16 hypothetically, that he has got enough room
17 there for 20 guest suites?

18 MR. BARR: Okay. And would you assume
19 that the traffic count then would double as a
20 consequence of the assumption you made in
21 1993?

22 MR. BARR: My 1993 estimate would have
23 increased. Would the traffic count have
24 doubled, I don't know that. The counts speak
25 for themselves.

*** Notes ***

Page 13

1 MR. CHOPIN: Let me take you back,
 2 Mr. Barr, and ask you to assume there are 20
 3 guest suites. If you apply the same
 4 methodology that you did in 1993, you'd go
 5 from 102 trips to 204 trips, would you not?
 6 MR. BARR: Yes.
 7 MR. CHOPIN: And if you went from one
 8 tennis court to five tennis courts, you would
 9 go from 43 trips to 200 --
 10 MR. BARR: Over 200.
 11 MR. CHOPIN: 215 trips; right?
 12 MR. BARR: Right.
 13 MR. CHOPIN: And if you enlarged the
 14 restaurant to more than 75 seats you would go
 15 in some fashion to more trips; is that not
 16 correct?
 17 MR. BARR: Yes.
 18 MR. CHOPIN: So if Mr. Trump gets what
 19 he's asking for, which is the elimination of
 20 restrictions on his ability to utilize the
 21 facilities in a manner and in the specifics
 22 that we're just talking about, in fact, it
 23 would increase, would it not, the amount of
 24 traffic that is being generated by trips to
 25 and from Mar-a-Lago?

*** Notes ***

Page 14

1 MR. BARR: If all of the facilities
 2 were to increase including the parking, yes,
 3 it would be --
 4 MR. CHOPIN: Did you hear me ask you
 5 anything about parking, sir?
 6 MR. BARR: No, I noticed you omitted
 7 that.
 8 MR. CHOPIN: Well, you know why I
 9 omitted it?
 10 MR. BARR: No, I don't know why you
 11 omitted it.
 12 MR. CHOPIN: Well, you see that's the
 13 problem. Because Mr. Trump wants to be able
 14 to have more guest suites, he has more tennis
 15 courts, he wants to be able to have more
 16 restaurant space, but he also simultaneously
 17 is asking for 75 parking spaces instead of
 18 252.
 19 That's why I omitted it, Mr. Barr. But
 20 let's deal with my questions. You'll have a
 21 chance to rehabilitate your testimony. Okay?
 22 If he increases the use of the
 23 facilities it will increase the traffic?
 24 MR. BARR: Yes, if the capacity of all
 25 facilities increase or any of them do that do

Page 15

1 not restrain traffic and would allow more
 2 traffic to go in and more people to be
 3 accommodated, then there can be accommodated
 4 there now, yes, more people would go in.
 5 MR. CHOPIN: It's not a tough question.
 6 You got more rooms, you're going to have more
 7 people; right?
 8 MR. BARR: Right.
 9 MR. CHOPIN: But not necessarily in
 10 direct proportion to what your estimate was
 11 1993; right?
 12 MR. BARR: (Nodding.)
 13 MR. CHOPIN: I don't think the record
 14 can see you shake your head.
 15 MR. BARR: Not in direct proportion is
 16 your question? Probably not. Is that your
 17 question?
 18 MR. CHOPIN: That's my question. I'm
 19 trying to help you. Okay. Because my
 20 example before proportionately increased
 21 based on the assumed numbers of increase in
 22 utilization, I assure you not capacity, sir.
 23 but it could increase
 24 disproportionately based on the estimates you
 25 made in '93; correct?

*** Notes ***

Page 16

1 MR. BARR: I don't understand your
 2 disproportionately increasing comment.
 3 MR. CHOPIN: Well, maybe it didn't go
 4 as high as one for one. Is that possible?
 5 MR. BARR: Yes.
 6 MR. CHOPIN: You're willing to accept
 7 that.
 8 MR. BARR: Yes.
 9 MR. CHOPIN: But let's see if you do
 10 you it the other way. Is it possible to go
 11 up more than one for one?
 12 MR. BARR: Not likely because the
 13 formulas that are used to estimate trip
 14 generation rates --
 15 MR. CHOPIN: Uh-huh.
 16 MR. BARR: -- are normally based upon
 17 the number of units. And as the number of
 18 units increases the trips per unit decreases
 19 for those uses.
 20 MR. CHOPIN: Okay. But you can't under
 21 oath swear that that is a fact?
 22 MR. BARR: That the estimates would be
 23 that?
 24 MR. CHOPIN: No. You don't know.
 25 MR. BARR: no, I do not know the

Page 17

Page 18

1 estimates.
 2 MR. CHOPIN: Okay. Of course not.
 3 You say that A1A is under capacity;
 4 right?
 5 MR. BARR: Yes.
 6 MR. CHOPIN: Okay. You're saying that
 7 A1A is under capacity.
 8 Is it possible that if there is a
 9 continuous increase in the utilization of
 10 Mar-a-Lago, for it to contribute sufficient
 11 trips on to and from A1A as to cause that
 12 road to fail even by your standards?
 13 MR. BARR: That's not a given. I
 14 cannot assume that, no, sir.
 15 MR. CHOPIN: You can assume anything
 16 you're asked to. But I didn't ask you to
 17 assume anything.
 18 MR. BARR: I'm not speculating. And I
 19 don't agree with that.
 20 MR. CHOPIN: Let me ask it another way.
 21 Okay. Let's prove the ridiculous first and
 22 then maybe it will be a little easier to get
 23 to something more realistic. If he was
 24 allowed to have 1,500 people attend a concert
 25 on the golf course, that would generate some

1 huge number of trips, would it not?
 2 MR. BARR: Yes.
 3 MR. CHOPIN: And right now I think if I
 4 understood Mr. Wyett's questioning, he said
 5 something about two fans or two guests or two
 6 people per car; right?
 7 MR. BARR: Yes.
 8 MR. CHOPIN: Okay. Work with me. We
 9 got 15 people listening to somebody on the
 10 golf course. That's 7,500 trips?
 11 MR. BARR: Yes.
 12 MR. CHOPIN: No. Is it?
 13 MR. BARR: What?
 14 MR. CHOPIN: They got to come in and
 15 then they got to go home; right?
 16 MR. BARR: Well, it's two trips per
 17 vehicle that are actually parked on the
 18 site, and that's assuming there is no shuttle.
 19 MR. CHOPIN: Okay. Well, work with me,
 20 Mr. Barr. I just want to prove a point.
 21 15,000 people attending a concert on
 22 the golf course. Two people per car. That's
 23 15,000 trips; right?
 24 MR. BARR: On and off the site, is that
 25 will your question?

*** Notes ***

Page 19

Page 20

1 MR. CHOPIN: Yes. Yeah.
 2 MR. BARR: And there is no shuttle
 3 service?
 4 MR. CHOPIN: Oh, all right, no shuttle
 5 service involved. They're coming in
 6 limousines. These are high rollers. There
 7 is no shuttle service involved.
 8 MR. BARR: I'm trying to answer your
 9 question.
 10 MR. CHOPIN: Okay.
 11 MR. BARR: And if the Police allowed
 12 that many to get on and off.
 13 MR. CHOPIN: Absolutely.
 14 MR. BARR: And if there were zero
 15 congestion as a result of that.
 16 MR. CHOPIN: Yes.
 17 MR. BARR: Theoretically that could
 18 happen.
 19 MR. CHOPIN: So if you added 15,000
 20 trips to A1A, would it exceed the capacity
 21 under any standard of concurrency?
 22 MR. BARR: Yes.
 23 MR. CHOPIN: Did you say yes?
 24 MR. BARR: Yes.
 25 MR. CHOPIN: Okay. By a whole lot, no

1 doubt; is that correct?
 2 MR. BARR: For that particular day it
 3 certainly would.
 4 MR. CHOPIN: Okay. And if that
 5 happened to be the one day they took a count
 6 we'd be in big trouble, wouldn't we? Right?
 7 MR. BARR: If it happened to be the day
 8 they took the count they'd get a skewed
 9 account.
 10 MR. CHOPIN: And if they happened to
 11 take the count on a day when there was no
 12 special event they'd get a skewed count, too;
 13 right?
 14 MR. BARR: They'd get closer to the
 15 average annual condition.
 16 MR. CHOPIN: So we know you can bust
 17 the concurrency if you got 15,000; right?
 18 MR. BARR: Say again.
 19 MR. CHOPIN: We know we can bust the
 20 concurrency requirements if you had 15,000
 21 people going to a concert?
 22 MR. BARR: Bust them?
 23 MR. CHOPIN: That you can exceed them?
 24 MR. BARR: Oh, yes.
 25 MR. CHOPIN: How about if you have

*** Notes ***

Page 21

Page 22

1 10,000 at the concert?
 2 MR. BARR: No -- yes.
 3 MR. CHOPIN: Yes.
 4 You would exceed it. You have done the
 5 analysis, sir, taking into account added
 6 utilization as is possible with unlimited use
 7 of Mar-a-Lago to determine what additional
 8 use would be possible in order to stay within
 9 the concurrency requirements as you
 10 understand them?
 11 MR. BARR: Let me look -- have you look
 12 with me at what the concurrency addresses.
 13 MR. CHOPIN: No. I get to ask the
 14 questions, Mr Barr. Did you do that
 15 analysis?
 16 MR. NATALE: Madame President, may he
 17 be allowed to answer?
 18 You can ask the question and he is
 19 allowed to answer it as completely as he can.
 20 MR. CHOPIN: But I have a right to ask
 21 him a question, yes or no, did he do the
 22 analysis.
 23 PRESIDENT SMITH: Mr. Chopin asked you
 24 the question, Mr. Barr. Rather than walking
 25 through the concurrency, would you answer his

1 question with what I gather is a simple yes
 2 or no.
 3 MR. BARR: It's not quite as simple as
 4 that. The question has to do with what would
 5 bust concurrency. And concurrency is related
 6 to the annual average conditions and to the
 7 peak season, peak hour conditions on an
 8 average basis during the peak season.
 9 He is talking about a situation in
 10 which there are events that he is looking at
 11 on that particular day of that event would
 12 bust the concurrency thing. Really does not
 13 bust the concurrency thing, because
 14 concurrency is not based on any one day's
 15 count. It's based on an average for the peak
 16 season.
 17 PRESIDENT SMITH: All right. That's
 18 your answer for Mr. Chopin.
 19 MR. CHOPIN: I'm going to try again.
 20 PRESIDENT SMITH: If we can both, Mr.
 21 Chopin and Mr. Barr, try if we could to be a
 22 little more specific and perhaps we can wrap
 23 up this segment. I know you hope so, and I
 24 do to. This sell sort of like DNA testing,
 25 it's such a fascinating subject.

*** Notes ***

Page 23

Page 24

1 Please, Mr. Chopin, go ahead.
 2 MR. CHOPIN: Did you do an analysis to
 3 determine maximum utilization of Mar-a-Lago
 4 consistent with the requirements of
 5 concurrency?
 6 MR. BARR: Not of Mar-a-Lago.
 7 MR. CHOPIN: Okay. Thank you. So you
 8 did not do that?
 9 MR. BARR: Not at Mar-a-Lago, that's
 10 correct.
 11 MR. CHOPIN: And that is the
 12 Application that is before this Town;
 13 correct?
 14 MR. BARR: That's my understanding.
 15 MR. CHOPIN: Okay. In the course of
 16 the documents you examined -- and I promise
 17 you, Mr. Barr I think this is my last
 18 question. The "I think" is just to give me a
 19 hedge in case I think of something else.
 20 Did you have the opportunity to review
 21 the detailed professionally prepared site
 22 plan that was submitted with Mr. Trump's
 23 Application?
 24 MR. BARR: No.
 25 MR. CHOPIN: Have did you see it?

1 MR. BARR: No.
 2 MR. CHOPIN: Do you know it's been
 3 done?
 4 MR. BARR: No.
 5 MR. CHOPIN: If it hasn't been done and
 6 this is the site plan review process,
 7 something is missing; right?
 8 MR. BARR: I don't know.
 9 MR. CHOPIN: Okay. I have no other
 10 questions.
 11 PRESIDENT SMITH: Thank you.
 12 Mr. Kolins?
 13 MR. KOLINS: Thank you, Madame
 14 President. For the record, my name is
 15 Ron Kolins, spelled K-o-l-i-n-s.
 16 Between the questions that were asked
 17 of you, Mr. Barr, by Council and the
 18 questions asked of you by Mr. Chopin, there
 19 isn't too much left for me. So I'll just ask
 20 you a few questions, if you don't mind.
 21 First of all, two weeks ago when you
 22 were hired by Mar-a-Lago or the Mar-a-Lago
 23 interests, what were you asked to do?
 24 MR. BARR: I was asked to review the
 25 information that was available to the Town

*** Notes ***

Page 25

Page 26

1 Council and I guess presented to the Town
 2 Council at the first day of this hearing.
 3 MR. KOLINS: Okay. And did that
 4 include the Keith and Schnars report?
 5 MR. BARR: Yes.
 6 MR. KOLINS: So it's your testimony
 7 that that report was presented and introduced
 8 on September 16th?
 9 MR. BARR: Let me correct that. I'm
 10 not sure that that included the Keith and
 11 Schnars report. That may have been
 12 information that I obtained in order to do
 13 the review which has been presented.
 14 MR. KOLINS: What is the date of the
 15 Keith and Schnars report?
 16 MR. BARR: March 5th, 1996.
 17 MR. KOLINS: And you don't know if that
 18 was presented here by anybody?
 19 MR. BARR: No, I don't know for sure.
 20 MR. KOLINS: Now, you were sitting here
 21 when we had this whole discussion this
 22 morning over the fact that it was new
 23 evidence; right?
 24 MR. BARR: Yes.
 25 MR. KOLINS: So if you will assume for

1 me that it was not presented on behalf of the
 2 Applicant previously, you then would not be
 3 here to rebut that report since it was never
 4 presented previously; is that correct?
 5 MR. BARR: That's not the report that I
 6 was rebutting as I understand the term. What
 7 I was responding to was the question of the
 8 points that were raised at the previous
 9 hearing and the information that was
 10 presented by the William Brisson Report that
 11 was presented at that.
 12 And in order to investigate those, I
 13 did research myself of the information that
 14 was necessary in order to address those
 15 questions.
 16 MR. KOLINS: So your only purpose here
 17 today is to rebut the Brisson Report?
 18 MR. BARR: Basically, that's it and to
 19 respond to the questions which I
 20 understand -- or the statements which I
 21 understand were given and the information and
 22 opinions that were given at that previous
 23 hearing.
 24 MR. KOLINS: Okay. Do you feel you
 25 have had a full opportunity to do that?

*** Notes ***

Page 27

Page 28

1 MR. BARR: I believe so.
 2 MR. KOLINS: And do you support the
 3 Keith and Schnars report, or do you disagree
 4 with that, too?
 5 MR. BARR: I have information in the
 6 Keith and Schnars report that I looked at and
 7 reviewed. I did my own independent check.
 8 It differs from their numbers in some
 9 respects and it agrees with their numbers in
 10 other respects.
 11 MR. KOLINS: So you agree with it in
 12 part and disagree in part?
 13 MR. BARR: Yes.
 14 MR. KOLINS: So when they agree with
 15 you you think they know what they're doing
 16 and when they don't, you think they don't
 17 know what they're doing?
 18 MR. BARR: No, I would not say that.
 19 MR. KOLINS: Do they know what they're
 20 doing?
 21 MR. BARR: They're a respectable outfit
 22 if that's what you mean.
 23 MR. KOLINS: I won't ask you if they're
 24 good because I know what you feel about that.
 25 MR. BARR: Okay.

1 MR. KOLINS: You talked a little bit
 2 about the construction traffic. And I don't
 3 want to put words in your mouth. But I think
 4 you said that that traffic wasn't accounted
 5 for. And I and assume that you're suggesting
 6 that the traffic of the workmen and the
 7 construction people and so forth would be
 8 over and above the traffic that was counted
 9 at that time; is that right?
 10 MR. BARR: No, sir.
 11 MR. KOLINS: That it was included and
 12 that it gave a falsely high figure; is that
 13 correct?
 14 MR. BARR: The traffic counts? You're
 15 talking about the counts in and out of the
 16 driveways?
 17 MR. KOLINS: Yes, ma'am -- yes, sir.
 18 MR. BARR: The counts in and out of
 19 driveways that were taken included all
 20 traffic --
 21 MR. KOLINS: So if they --
 22 MR. BARR: -- so if they were in the
 23 driveways it including construction traffic.
 24 MR. KOLINS: So therefore if there
 25 wasn't construction the figures would be

*** Notes ***

Page 29

1 lower, is that what you're saying?
 2 MR. BARR: Yes.
 3 MR. KOLINS: And therefore it was an
 4 inflated figure due to construction?
 5 MR. BARR: There would be days in which
 6 it would be -- the counts would include
 7 primarily construction traffic, perhaps.
 8 MR. KOLINS: What is your answer to my
 9 question? And I say that not to be
 10 disrespectful, but we're going on a long time
 11 here and the Council is getting tired and so
 12 am I.
 13 MR. BARR: Well, I wouldn't use the
 14 word inflated, but higher because they
 15 include construction.
 16 MR. KOLINS: I'll take your word higher
 17 instead of inflated.
 18 Is it possible that because of the
 19 construction that was going on less members
 20 or guests came to the club during those
 21 periods than otherwise would because they
 22 didn't want to put up with the noise and
 23 construction?
 24 MR. BARR: It's possible.
 25 MR. KOLINS: So therefore it's also

Page 30

1 possible that the figure was lower than it
 2 otherwise would have been?
 3 MR. BARR: It's possible.
 4 MR. KOLINS: Okay.
 5 You talked earlier or it was brought
 6 out earlier about the Town-serving
 7 requirement in that 50 percent of the
 8 membership have to be from the Town of Palm
 9 Beach. Are you familiar with that?
 10 MR. BARR: I heard that. Yes, sir.
 11 MR. KOLINS: But you don't know if that
 12 requirement's been complied with, do you?
 13 MR. BARR: No.
 14 MR. KOLINS: Now, this all came up with
 15 our guest from Chicago and the whole
 16 discussion. But would you agree that if no
 17 information is provided to this Council as to
 18 the names and addresses of the members, any
 19 of them, that it's impossible for the Council
 20 to know or for anyone to know except those in
 21 the bowels of Mar-a-Lago whether or not the
 22 50 percent requirement is being met?
 23 MR. BARR: That's really -- I don't
 24 have an opinion on that.
 25 MR. KOLINS: Is that an illogical

*** Notes ***

Page 31

1 statement? Do you disagree with what I said?
 2 MR. BARR: I don't agree or disagree.
 3 MR. KOLINS: You don't have an opinion.
 4 MR. BARR: Right, I don't.
 5 MR. KOLINS: Oh, all right.
 6 Do you have any reason to believe that
 7 whatever the geographical makeup of the
 8 members is now, that if the membership were
 9 increased by whatever percentage that that
 10 proportion would change? Do you have any
 11 reason to believe that it would?
 12 MR. BARR: No.
 13 MR. KOLINS: Okay.
 14 I heard you to say when you were
 15 talking about this correlation that some of
 16 the studies said that there was a club of 200
 17 members and another one of 4,000 members and
 18 they had the same traffic; is that correct?
 19 MR. BARR: Actually there were a couple
 20 of instances where the very large club
 21 generated less traffic than the small clubs.
 22 MR. KOLINS: Now, as a traffic engineer
 23 expert, what does that suggest to you?
 24 MR. BARR: That there is no correlation
 25 between the size of membership and trip

Page 32

1 generation.
 2 MR. KOLINS: Okay. Now, Mr. Natale
 3 asked Mr. Tipton about the application of
 4 common sense in traffic work. Do you
 5 remember that?
 6 MR. BARR: Yes.
 7 MR. KOLINS: Do you think common sense
 8 plays a role in your work?
 9 MR. BARR: Yes.
 10 MR. KOLINS: So let's apply some of
 11 that. And let's take this 200 member club
 12 and the 4,000 member club which has in some
 13 cases less traffic than the 200 member club.
 14 Doesn't it seem logical to you that there
 15 must be some extraneous reason for that?
 16 For example, maybe the 4,000 member
 17 club is under reconstruction or maybe it's
 18 got very limited facilities notwithstanding
 19 its large membership. Doesn't it suggest to
 20 you from a common sense standpoint that
 21 there's got to be something about that big
 22 club that's causing it to have so little
 23 activity?
 24 MR. BARR: Of the theories that you
 25 just mentioned, that would have been under

*** Notes ***

Page 33

Page 34

1 construction at the time that the ITE trip
2 generation research was conducted, and that
3 almost could not happen.

4 MR. KOLINS: Well, I'll withdraw that
5 one.

6 MR. BARR: However, in the other
7 example that you mentioned, the other theory
8 for that large a difference in the findings
9 there, if the large club had much more
10 limited facilities, yes. It in fact would
11 have explained why its trip generation per
12 member was much lower.

13 MR. KOLINS: Now, there was nothing
14 about that study, was there, that analyzed
15 the 200 member club standing alone and what
16 would happen to its traffic if it doubled its
17 membership to 400?

18 MR. BARR: No.

19 MR. KOLINS: Or to 600 or to any
20 number?

21 MR. BARR: No.

22 MR. KOLINS: Nothing about that in that
23 study?

24 MR. BARR: So if whatever there was
25 about the 200 person club was attractive

1 enough that those people kept going, if you
2 doubled the membership, more people would
3 keep going; right?

4 MR. BARR: Perhaps.

5 MR. KOLINS: So just apply that common
6 sense. Don't tap dance with me. Do you
7 agree with me or not?

8 MR. BARR: I'm sorry. I'm not tap
9 dancing. I cannot agree or disagree. I
10 think that it's a possibility, yes.

11 MR. KOLINS: Okay. If this Application
12 that has been filed by Mar-a-Lago is granted,
13 what consequences will that have for traffic?

14 MR. BARR: Say again?

15 MR. KOLINS: If the Mar-a-Lago
16 Application, that's why we're here today,
17 that you have reviewed, if it is granted,
18 what implications would that will carry with
19 it for traffic?

20 MR. BARR: The traffic, that is what I
21 tried to present in my testimony, that the
22 removal of the limitations, provided there
23 were adequate control with the cooperation of
24 the Police Department of the Town and of
25 Mar-a-Lago staff to work on each major event

*** Notes ***

Page 35

Page 36

1 and make sure that there was an adequate --
2 adequately planned and executed traffic
3 control plan for each event, there would be
4 no negative effects.

5 MR. KOLINS: Okay. I would like to
6 explore that with you for just a minute or
7 two. Again, I want you to bring this common
8 sense to bear that Mr. Natale thinks ought to
9 be brought into traffic analyses. So your
10 side's lawyer agrees with me on that point.

11 If this Application is granted, there
12 will be no cap on membership at all; is that
13 right?

14 MR. BARR: That's my understanding; I
15 don't know. Well, I want you to assume that
16 because indeed that is the case. They're not
17 proposing to go from 500 to 700 or from 500
18 to some other number, they're proposing no
19 cap at all. Okay. Would you assume that for
20 me?

21 MR. BARR: I'll assume that, but I
22 don't know if that's a fact.

23 MR. KOLINS: Of course. You don't know
24 a lot. But I want you to assume that.

25 Now, if that's true the present

1 membership which we understand to be
2 approximately 314 people, all unnamed, of
3 course but nevertheless about 314, that could
4 go up to any number depending on how
5 successful the Mar-a-Lago Club is at
6 marketing it's memberships; right?

7 MR. BARR: I don't know.

8 MR. KOLINS: Well, If there is no on
9 membership is there anything to preclude them
10 selling as memberships as they can get people
11 to pay for?

12 MR. BARR: I don't know. That sounds
13 like a business management answer to me to
14 answer that question.

15 MR. KOLINS: I'm not saying what they
16 would do. I'm not asking you to manage their
17 business. I'm saying from a technical
18 standpoint there are no caps on members.
19 They could give them away, they don't even
20 have to sell them. They could sell them for
21 half price, they could give them as prizes.

22 They could have as many members as they
23 want; isn't that correct?

24 MR. BARR: I don't know.

25 MR. KOLINS: All right. Will you

*** Notes ***

Page 37

1 assume that with me?
 2 MR. BARR: All right.
 3 MR. KOLINS: So if the membership went
 4 up and up and up and up, is there anywhere up
 5 there, a point in your professional judgment
 6 where that increase in membership will
 7 increase the demand for the use of the club?
 8 MR. BARR: Well, probably applying your
 9 common sense approach the more members that
 10 there are the more the demands for service in
 11 the facilities there might be. As to whether
 12 or not those facilities are provided and are
 13 adequate and attract those people, there is
 14 no -- that would be part of the answer.
 15 MR. KOLINS: Okay. I'll accept that.
 16 Now, let's talk about that capacity.
 17 What physically, now physically, what
 18 constraints are there on the number of people
 19 that can go to Mar-a-Lago?
 20 MR. BARR: The primary physical
 21 constraint right now is the parking capacity.
 22 MR. KOLINS: Okay. That's the on site
 23 parking?
 24 MR. BARR: Yes.
 25 MR. KOLINS: That Mr. Trump wants to

Page 38

1 reduce from 252 to 75?
 2 MR. BARR: As I said, I don't know that
 3 that's what it is.
 4 MR. KOLINS: Or 77. Excuse me.
 5 But even if it's 125 if you assume the
 6 500 capacity of the club now. So he wants to
 7 reduce, in any event, the number of parking
 8 spaces.
 9 So now, at the same time he wants to
 10 increase membership or have no cap on it and
 11 no caps in terms of special events and
 12 increase facilities such as tennis courts and
 13 rooms to sleep in, even at the same time he's
 14 reducing parking on site.
 15 Now, why do you think -- I mean, to me
 16 that's irrational on its face if the parking
 17 is a constraint on the use of the club.
 18 Because if you have to have 252 spaces
 19 and your use of the club is correlated to the
 20 number of the parking spaces, why the heck
 21 would you want to reduce that while at the
 22 same time increasing membership? Can you
 23 give me an answer to that?
 24 MR. BARR: No. I don't know.
 25 MR. KOLINS: So doesn't it suggest to

*** Notes ***

Page 39

1 you that he wants to use the grounds for
 2 things other than for parking to begin with?
 3 MR. BARR: I did not speculate on that.
 4 MR. KOLINS: Okay. But that's
 5 possible?
 6 MR. BARR: I presume.
 7 MR. KOLINS: I mean, if he's not going
 8 to use it for parking he'll use it for
 9 something else; right?
 10 MR. BARR: Perhaps, perhaps not.
 11 MR. KOLINS: Okay. And is it possible
 12 that people that come to the club will not
 13 park on site?
 14 MR. BARR: Yes.
 15 MR. KOLINS: All right. So they could
 16 park in some parking lot somewhere else and
 17 be shuttled, for example, to the club; right?
 18 MR. BARR: Yes.
 19 MR. KOLINS: Or they could park on some
 20 off-site facility and walk to the club if
 21 it's close enough?
 22 MR. BARR: Yes.
 23 MR. KOLINS: Or they could park on the
 24 street around the club until the Police haul
 25 them off; right?

Page 40

1 MR. BARR: There's not much capacity
 2 for that, maybe a few.
 3 MR. KOLINS: Maybe a few. Whatever the
 4 capacity is, that would mess up the street,
 5 interfere with traffic and have an impact on
 6 the neighbors; right?
 7 MR. BARR: Well, you couldn't park on
 8 Ocean Boulevard, I don't believe.
 9 MR. KOLINS: Well, have you ever seen
 10 people pull up and park on grass and anywhere
 11 whenever there is no where else to park?
 12 MR. BARR: Have I ever seen that
 13 anyplace?
 14 MR. KOLINS: Yes.
 15 MR. BARR: Yes, I have seen that.
 16 MR. KOLINS: Now, I just want to
 17 clarify something that you said about the
 18 capacity of the club. I thought you said,
 19 and if I'm wrong, please, sir, correct me.
 20 But I want to get this straight.
 21 I thought you said that you knew of
 22 instances where the capacity of the club for
 23 special events was exceeded; right?
 24 MR. BARR: No, I don't believe I said
 25 exceeded, I believe I said that the capacity

*** Notes ***

Page 41

Page 42

1 was reached.
 2 MR. KOLINS: Okay. What was the
 3 capacity?
 4 MR. BARR: The capacity was -- the
 5 indication of that having reached capacity
 6 was that the parking lots were filled.
 7 MR. KOLINS: Do you know if they parked
 8 people off-site and brought them some other
 9 way?
 10 MR. BARR: No, I don't.
 11 MR. KOLINS: So all you know is that
 12 the parking lot was filled?
 13 MR. BARR: Yes.
 14 MR. KOLINS: Now, do you know how many
 15 people were at those events?
 16 MR. BARR: No.
 17 MR. KOLINS: Is assuming two people per
 18 car reasonable?
 19 MR. BARR: That's reasonable.
 20 MR. KOLINS: Is that an assumption you
 21 would make as a traffic expert?
 22 MR. BARR: There could be a range of
 23 vehicle occupancy that could be --
 24 MR. KOLINS: I'm talking about an
 25 average.

1 MR. BARR: That's reasonable then, a
 2 reasonable average.
 3 MR. KOLINS: Okay. So that means when
 4 252 parking spaces were taken up we could
 5 assume 504 people? And I'm talking about an
 6 average.
 7 MR. BARR: If you use that average.
 8 MR. KOLINS: And that doesn't account
 9 for people parked elsewhere; correct?
 10 MR. BARR: That's right, they would not
 11 accounted for in this scenario.
 12 MR. KOLINS: So if the limit under the
 13 Declaration of Use Agreement for this Town is
 14 254 people, they would have exceeded that
 15 number substantially?
 16 MR. BARR: I don't know how many people
 17 were in the facility at the time that those
 18 cars were there and the parking lot was
 19 filled.
 20 MR. KOLINS: Well, you told me it was
 21 reasonable to assume 504 people, two people
 22 per car.
 23 MR. BARR: Yes.
 24 MR. KOLINS: So, even if no one else
 25 was there besides those 252 cars that were,

*** Notes ***

Page 43

Page 44

1 they're well over 390?
 2 MR. BARR: If that was the average --
 3 if that average applied.
 4 MR. KOLINS: How many times did you
 5 find the parking lot full?
 6 MR. BARR: It was more than one was the
 7 report that I got, more than one time.
 8 Whether it was to or three, I don't know.
 9 MR. KOLINS: Okay. So in any event the
 10 bottom line is you're saying it doesn't
 11 matter whether there were no caps on
 12 anything, the only thing that counts is how
 13 many parking spaces were on the ground.
 14 MR. BARR: That is one of the factors
 15 that has limited the attendance by experience
 16 here and has resulted in zero congestion and
 17 impact on Ocean Boulevard.
 18 MR. KOLINS: Is that a yes?
 19 MR. BARR: Yes.
 20 MR. KOLINS: Okay.
 21 What are the factors that are limiting
 22 factors?
 23 MR. BARR: Limiting factors would be
 24 the number of people in attendance at events
 25 and on the ability of the property to

1 accommodate those people on site, whether it
 2 be a ballroom or a dining room or in the
 3 other facilities.
 4 MR. KOLINS: How many people do you
 5 think Mar-a-Lago and all of its grounds can
 6 accommodate at any one of time? If they
 7 could pack in all of the people they wanted
 8 to in there for a concert, dinner, dancing,
 9 for whatever they had going on, how many
 10 people do you they could get in there on the
 11 grounds?
 12 MR. BARR: You probably could get on
 13 reasonably without exceeding the capacity as
 14 many people as would come in the cars that
 15 fill the parking lot.
 16 MR. KOLINS: Well, I'm not talking now
 17 about parking lot capacity. You've already
 18 said that's one factor. But you said another
 19 one is how many people you can get on there;
 20 right?
 21 MR. BARR: Right. Yeah.
 22 MR. KOLINS: Well how many people can
 23 you get on there?
 24 MR. BARR: Well, four times whatever --
 25 I mean two times whatever 252 is.

*** Notes ***

Page 45

1 MR. KOLINS: So you're saying the only
2 factor that limits how many people can use
3 this club is parking on site?
4 MR. BARR: Well, there are other
5 limiting factors as well.
6 MR. KOLINS: Okay. What are they?
7 MR. BARR: The number of people that
8 can be seated in the dining room or that can
9 be fed at any one time, the number of people
10 that the Fire Marshal says that the
11 facilities can accommodate.
12 MR. KOLINS: Well, you got a piece of
13 property here that I don't know exactly but
14 it's somewhere around 15, 16 acres. That's a
15 lot of property; right?
16 MR. BARR: Yes.
17 MR. KOLINS: And so do you have any
18 reason to believe that 390 people is the most
19 you could get in there if you wanted to get
20 all of the them there that wanted to go?
21 MR. BARR: No.
22 MR. KOLINS: Okay. Thanks. I have
23 nothing.
24 PRESIDENT SMITH: Thank you,
25 Mr. Kolins.

*** Notes ***

Page 46

1 Anything further for Mr. Barr?
2 Mr. Natale, did you have some?
3 MR. NATALE: I'm wondering, Madame
4 President, if there is any further
5 cross-examination from counsel. I just think
6 we take should take cross-examination before
7 direct.
8 PRESIDENT SMITH: Okay. Thank you.
9 Mr. Barr, would you like a chair? You
10 have been standing for two and a half hours.
11 It's a very long time.
12 MR. BARR: It seems like only a few
13 minutes.
14 PRESIDENT SMITH: We must be doing
15 something right.
16 COURT REPORTER: Could we take a
17 minute?
18 PRESIDENT SMITH: Mr. Graves, the Court
19 Reporter would like to take a recess.
20 Five minutes, please.
21 COURT REPORTER: Thank you.
22 (Thereupon, a recess was taken.)
23 PRESIDENT SMITH: I think you'll have
24 to turn off the Yankees or your baseball game
25 and go back to the equally interesting

Page 47

1 subject about traffic and concurrency.
2 PRESIDENT SMITH: Mr. Barr, are you
3 ready?
4 MR. BARR: Yes.
5 MR. GRAVES: My name is Kevin Graves
6 for the record. I would like to ask you just
7 a couple of questions. And I wouldn't ask
8 you if you thought it was a home run because
9 I just asked you that.
10 Did you in your review review
11 Mr. Pollack's letter that was submitted in
12 the September 16th meeting?
13 MR. BARR: No, I did not.
14 MR. GRAVES: So you're not necessarily
15 inconsistent with what Mr. Pollack said,
16 because you don't know what he said?
17 MR. BARR: No. The only item that I
18 know of that came out of his report I am
19 consistent with. Because it was reported by
20 Mr. Brisson in his testimony the estimated
21 annual average trip generation.
22 MR. GRAVES: Which was, I believe, 270?
23 MR. BARR: Yes.
24 MR. GRAVES: Which in your testimony
25 your own calculations would bring you up to

*** Notes ***

Page 48

1 about that 270?
2 MR. BARR: Close to that, 267 was the
3 figure I independently arrived at.
4 MR. GRAVES: Well, I believe Mr. Tipton
5 had about 260 because he made some
6 adjustments to that, if my recollection
7 serves me correctly.
8 Could you tell me the importance of 200
9 daily trips under the Palm Beach daily
10 traffic performance standards, please?
11 MR. BARR: No, I really am not familiar
12 with the importance of that number except as
13 it -- except that I understand it had
14 something to do with the concurrency issue
15 and what triggers something to have a
16 substantial impact on roads that are
17 deficient in their capacity.
18 MR. GRAVES: So then when you said
19 earlier that there was no concurrency
20 problem, you weren't referring to Palm Beach
21 County then, were you?
22 MR. BARR: I was referring to the
23 capacity of Ocean Boulevard and the fact that
24 there is no deficiency.
25 MR. GRAVES: Capacity rather than

Page 49

Page 50

1 concurrency issues?

2 MR. BARR: Well, concurrency means that
3 of course the adequate capacity of the roads
4 is in existence at the time that the
5 development occurs.

6 MR. GRAVES: Do you know Mr. Dan
7 Wiseberg?

8 MR. BARR: I have heard that name. I
9 don't know him.

10 MR. GRAVES: Then I won't go through
11 what Mr. Chopin did. He is the senior
12 registered engineer with the County
13 engineering department of the County of Palm
14 Beach.

15 If he wrote that 200 a day -- or 200
16 daily trips is important because of the
17 analysis that is required, you wouldn't have
18 any reason to disagree with that, would you?

19 MR. BARR: Not to disagree or agree.

20 MR. GRAVES: Okay. And he said that if
21 it went over 200 trips you had to extend your
22 study area out beyond one half mile, you
23 wouldn't be able to disagree or agree, would
24 you?

25 MR. BARR: Neither.

1 MR. GRAVES: If, however, as a
2 hypothetical, Mr. Wiseberg is correct that if
3 you go over that 200 number, you have to go
4 out greater than one half mile and study an
5 analysis of those lengths, would Southern
6 Boulevard potentially become a problem here
7 because of this level of service from your
8 concurrency standpoint?

9 MR. BARR: It potentially could. Just
10 in my looking at it at the present time I do
11 not find a deficiency there that the County
12 found --

13 MR. GRAVES: So what --

14 MR. BARR: -- or that Keith and Schnars
15 found.

16 MR. GRAVES: So what you're saying is
17 that the Keith and Schnars report that you
18 included in your report you don't agree with
19 as to Southern Boulevard?

20 MR. BARR: We did not find a deficiency
21 in the vicinity where Mar-a-Lago impacts it.

22 MR. GRAVES: But you did agree with
23 Keith and Schnars when they said that Ocean
24 Boulevard capacity was okay?

25 MR. BARR: Well, actually Keith and

*** Notes ***

Page 51

Page 52

1 Schnars showed it to be a level of service B,
2 and the County traffic count on Ocean
3 Boulevard would indicate that it was at level
4 of service B. And we assumed that C is the
5 correct level of service there.

6 MR. GRAVES: Let me go back again.

7 MR. BARR: But I don't strictly agree
8 either with Keith and Schnars on that one.

9 MR. GRAVES: So they may be right or
10 they may be wrong.

11 MR. BARR: Right.

12 MR. GRAVES: Let me ask you this
13 question. Let's assume, and I think you can
14 as an expert qualified, make an assumption.
15 Let's assume that it is a half mile study or
16 greater than a half mile and Southern
17 Boulevard comes into play and Keith and
18 Schnars is absolutely accurate in their study
19 that Palm Beach relied on or the Town of Palm
20 Beach relied upon that it is level of service
21 F.

22 Let's make those assumptions. And
23 someone comes in to pull a permit to do
24 developing. What occurs?

25 MR. BARR: Assuming all of those

1 things, then the traffic analysis should
2 extend to include Southern Boulevard.

3 MR. GRAVES: Okay. And if you had
4 unlimited membership, how far potentially
5 could that study have to go out?

6 MR. BARR: Again, unlimited membership
7 is not related, in my opinion, to the trip
8 generation by Mar-a-Lago.

9 MR. GRAVES: But you just said that it
10 may have to go out because we have more than
11 200 trips, if that's correct.

12 MR. BARR: The annual average trips,
13 daily trips in the peak hour on an annual
14 average basis, that's my understanding of
15 what the criteria is.

16 MR. GRAVES: Okay.

17 Would it, knowing your knowledge
18 throughout the state -- if you didn't meet
19 concurrency, if this project did not meet
20 concurrency, could permits be issued?

21 MR. BARR: A finding of meeting
22 concurrency is normally required.

23 MR. GRAVES: And concurrency being one
24 mandatory element of the transportation
25 element, which is a required element of every

*** Notes ***

Page 53

1 city and town's and county's comprehensive
 2 plan; is that correct?
 3 MR. BARR: That's my understanding.
 4 Yes, sir.
 5 MR. GRAVES: So if those figures were
 6 correct and you had to go out more than half
 7 a mile to study it and Southern Boulevard if
 8 level of service F, and given all of those
 9 things it couldn't be issued because it
 10 wouldn't be consistent with concurrency; is
 11 that a fair statement?
 12 MR. BARR: If all of those things were
 13 correct and if indeed it could be shown that
 14 the impacts extend onto Southern Boulevard to
 15 that extent, then yes, that would have to be
 16 shown.
 17 MR. GRAVES: Did you review
 18 Mr. Wiseberg's letter in preparation for
 19 today by any chance?
 20 MR. BARR: Excuse me.
 21 MR. GRAVES: Dated September 12.
 22 MR. BARR: No, I did not.
 23 MR. GRAVES: I would like to ask that
 24 letter -- I think it is already in the file,
 25 but I would ask that it be specifically

Page 54

1 received and filed into the record of this
 2 proceeding. It is a letter from Mr. Wiseberg
 3 to Jeff Weidner dated September 12th of 1996.
 4 PRESIDENT SMITH: All right. Do you
 5 have more than one copy of that letter
 6 Mr. Graves?
 7 MR. GRAVES: No, I do not. I will
 8 first thing in the morning if that is
 9 acceptable. And I will present additional
 10 copies both to you and for the record. I
 11 think this is already in. But I --
 12 MR. MCLENDON: I think it was entered a
 13 while ago.
 14 PRESIDENT SMITH: It was?
 15 If you just wait a minute, please,
 16 Mr. Graves. Is Mr. Castro making copies?
 17 MR. GRAVES: He is making copies.
 18 PRESIDENT SMITH: The Town is making
 19 the copies and entering them into the record.
 20 MR. GRAVES: If I could just go through
 21 to summarize as we have finished up here. If
 22 I understand it correctly, if those
 23 assumptions that I made are correct then
 24 permits could not be issued because of the
 25 inconsistency with the concurrency doctrine,

*** Notes ***

Page 55

1 a mandated element of the mandated
 2 transportation element, the comprehensive
 3 plan; is that a fair statement?
 4 MR. BARR: Until an analysis that could
 5 show that concurrency was met, yes.
 6 MR. GRAVES: If it could be done. I
 7 mean, if such an analysis could be done.
 8 What if you couldn't show that? I
 9 mean, do you have to fix it? What is the
 10 requirement?
 11 MR. BARR: Well, it would be up to the
 12 Town to make a determination on what would
 13 need to be done in order to reach the
 14 concurrency --
 15 MR. GRAVES: But a permit couldn't be
 16 issued until such time as those kinds of
 17 analyses were --
 18 MR. BARR: That's my understanding that
 19 that's the process.
 20 MR. GRAVES: Thank you. That's all I
 21 have.
 22 PRESIDENT SMITH: Thank you,
 23 Mr. Graves.
 24 Mr. Natale, are you asking any more
 25 questions of Mr. Graves -- I mean Mr. Barr?

Page 56

1 MR. NATALE: Yes, Your Honor, there are
 2 some comments first by Mr. Rampell then I'll
 3 ask some questions.
 4 MR. GRAVES: Are we shifting attorneys
 5 here?
 6 MR. RAMPPELL: I would just like your
 7 permission to clarify our Application for
 8 about two minutes because I think there has
 9 been some misconceptions about it.
 10 MR. CHOPIN: I'd like to be heard on
 11 this. He has finished his case.
 12 PRESIDENT SMITH: Mr. Chopin, to the
 13 microphone, please.
 14 MR. CHOPIN: I have an objection. You
 15 have got to make your own procedure. But
 16 what he wants to do is make a speech now in
 17 the middle of cross-examination of his
 18 witness. That is not the procedure that you
 19 have outlined in the past.
 20 His case is finished. He said. So he
 21 wants to clarify his Application. And you
 22 spent all day on the 16th listening to it.
 23 This is not time to do that.
 24 I mean, you can make your own rules,
 25 but you did say you had a procedure.

*** Notes ***

Page 57

Page 58

PRESIDENT SMITH: Mr. Chopin, if you'd wait. You spoke before the Council had a chance to decide what they were going to do about Mr. Rampell speaking.

Mr. Rampell just finished saying he wants to clarify. I would like to hear Mr. Natale cross-examine his witness so Mr. Barr can be excused. And we're not talking about the Application now, we're still talking about the traffic concurrency.

MR. RAMPPELL: Very well.

MR. NATALE: I'd like to start off with the 1993 letter that one of the Council brought to your attention and had placed in the record. Do you have a copy of that, sir?

MR. BARR: Yes, sir.

MR. NATALE: And that letter is dated 1993; correct?

MR. BARR: Yes.

MR. NATALE: And that letter dealt with the Application that was originally going to be -- that was originally tendered in 1993.

MR. BARR: Yes.

MR. NATALE: And that was based on the facts, the reality, the assumptions, the

speculations and opinions which were articulated by people in 1993; isn't that correct?

MR. BARR: Yes.

MR. NATALE: And in fact there was a big point made to tie you into the validity of the County and the County's accuracy and believability as it relates to the traffic and the traffic volume and the like; isn't that true?

MR. BARR: Yes.

MR. NATALE: Okay.

If you would look at Page 3 of your own report, Paragraph 3. And that's your 1996 report?

MR. BARR: Yes.

MR. NATALE: And in your 1996 report, in the body of that report you analyze figures you receive from the same department from the same Palm Beach County that the Council said you should apply; isn't that correct?

MR. BARR: Yes, these are County figures.

MR. NATALE: So the figures that you

*** Notes ***

Page 59

Page 60

utilized in giving your opinion here today as contained in your report are based on the '96 figures of Palm Beach County that you got from the Palm Beach County authorities; correct?

MR. BARR: That is a part of the facts, yes.

MR. NATALE: And it's the same people that the Council -- excuse me -- that the attorney for one of the people here was getting you to say that that is important and you really got to go with those guys; correct?

MR. BARR: Say again.

MR. NATALE: Wasn't he saying that those are the people in the County and you really got to go along with what the County says on it?

MR. BARR: Oh, yes.

MR. NATALE: So based on what the County has said as it relates to the volume or use of service on the roads, the two roads that we're talking about here, there is no problem with the concurrency as it stands now; is there?

MR. BARR: That is correct.

MR. NATALE: And that is based on the County's own data; correct?

MR. BARR: Correct.

MR. NATALE: And that's what the Council who was cross-examining you wanted you to take into consideration as being validated; isn't that correct?

MR. BARR: Yes.

MR. NATALE: Okay. Now, staying with that 1993 letter as we are concerned, in 1993 there were certain proposals; isn't that correct?

MR. BARR: Yes.

MR. NATALE: And one of them was a nine-hole golf course?

MR. BARR: Yes.

MR. NATALE: Now, if that golf course was decommissioned that it was not to be instituted or not to be in any way created or allowed, that would have a downward effect as far as in calculating the number of trips per member; is that correct?

MR. BARR: That would have reduced the estimate, yes.

*** Notes ***

Page 61

1 MR. NATALE: Likewise the spa was
2 computed at 3,500 square feet. If the spa
3 was smaller than that, that could affect the
4 numbers that were used back in 1993; correct?

5 MR. BARR: I presume that the units
6 shown here were what they used, the County
7 used to make their estimates. And if the
8 units are less than they assumed then the
9 estimates would be lower.

10 MR. NATALE: So we understand, in 1993
11 the County letter that they are referring to
12 is referring to a spa of a particular square
13 footage and a golf course of a particular
14 nature of nine holes; correct?

15 MR. BARR: Yes.

16 MR. NATALE: And the rest of the
17 residential units and the like; right?

18 MR. BARR: Yes.

19 MR. NATALE: Now, is it fair to assume
20 that if the proposed criteria were to have
21 changed between now and 1996, that the
22 County's evaluation would in fact change as
23 well?

24 MR. BARR: Their evaluation should be
25 based upon what the actual facilities are.

Page 62

1 MR. NATALE: Very well.

2 Now, if we look at that same letter,
3 even though based on that letter there were
4 problems on Southern Boulevard, if you will,
5 segment of this property, they said that that
6 could be fixed, that could be cured by the
7 shuttle bus system; correct?

8 MR. BARR: Yes. That was one of them.

9 MR. NATALE: Or a reduction of the
10 dining area?

11 MR. BARR: That was the other.

12 MR. NATALE: So they didn't say it was
13 a terminal defect, did they?

14 MR. BARR: No.

15 MR. NATALE: They said that it could be
16 fixed and adjusted in those two ways, and
17 that was back in 1993?

18 MR. BARR: Yes.

19 MR. NATALE: Okay.

20 Now, as it relates to the utilization
21 of the two, if you will, entrances to
22 Mar-a-Lago, the South Ocean Boulevard is the
23 roadway which according to the County and to
24 the -- I believe the Schnars report, that
25 according to everyone is really doing pretty

*** Notes ***

Page 63

1 good as far as the level of traffic. Okay.
2 Is that fair to say?

3 MR. BARR: Yes.

4 MR. NATALE: And it is that road which
5 the membership is directed to use during
6 their comings and goings from the Mar-a-Lago
7 Club; isn't that correct?

8 MR. BARR: Yes. It's been reported to
9 me that this is the entrance to be and that
10 is being used for these major events and that
11 that is where the traffic counts have
12 primarily -- they reflect that that is where
13 the traffic goes in and out.

14 MR. NATALE: So based on the policy of
15 Mar-a-Lago and the reality of what is
16 actually happening, is that the people who
17 are guests going to avail themselves of
18 whatever is there at Mar-a-Lago, their coming
19 and going is by and through the South Ocean
20 Boulevard entrance; isn't that correct?

21 MR. BARR: Yes.

22 MR. NATALE: All right. Now, the
23 Southern Boulevard entrance which we had a
24 great deal of conversation about, that is
25 where the construction traffic is coming in

Page 64

1 and out; is that correct?

2 MR. BARR: That's my understanding,
3 yes.

4 MR. NATALE: And in fact, isn't it,
5 when you look at the location, that the
6 Mar-a-Lago Club has attempted to cordon off
7 or in some way designate the construction
8 areas in such a way that it really doesn't
9 affect the people who would be coming into
10 the main house; isn't that fair to say?

11 MR. BARR: It's my understanding that
12 the guests and visitors and members are using
13 that Ocean Boulevard entrance, yes.

14 MR. NATALE: And in fact the
15 construction, the construction that we're
16 talking about in the tennis courts which have
17 been approved is all in this Southern
18 Boulevard area; isn't that correct?

19 MR. BARR: Yes.

20 MR. NATALE: And when you would come in
21 and out of the main Mar-a-Lago entrance, you
22 can't even see what is going on in there, can
23 you?

24 MR. BARR: That's correct.

25 MR. NATALE: So, the other thing that

*** Notes ***

Page 65

Page 66

1 we had was the fact that I think it was
2 between 4:00 and 6:00, that there is traffic
3 jams during the season in this area here; is
4 that fair to say?

5 MR. BARR: That's what we have heard.

6 MR. NATALE: Okay. And in light of the
7 fact that in the reality of the policies and
8 operation, the membership would be coming and
9 going from South Ocean Boulevard, and keeping
10 in mind that the people who were utilizing
11 this area will only be there until the
12 completion of their construction, does there
13 appear to be any real problem with vehicles
14 coming and going from the Southern Boulevard
15 way?

16 MR. BARR: There's been no problem
17 there because there's been very little
18 utilization and practically no utilization, I
19 understand, by members.

20 MR. NATALE: Now, you were aware that
21 at Mar-a-Lago as part of the present
22 agreement there is a requirement that there
23 to be 252 parking spaces; correct?

24 MR. BARR: Yes.

25 MR. NATALE: And that it is your

1 understanding now that there is that that's
2 approximately the number of spaces that they
3 have available?

4 MR. BARR: Yes.

5 MR. NATALE: Okay. Now, there are
6 regulations which govern Mar-a-Lago as well
7 as all of the other clubs in addition to the
8 agreement that was made, the zoning code for
9 example or the code of ordinances; isn't that
10 correct?

11 MR. BARR: Yes.

12 MR. NATALE: And then regardless of
13 what the Council were to vote on on this
14 proposal, it would have no effect on what the
15 code ordinances say regarding parking and
16 membership; isn't that correct?

17 MR. BARR: I don't know. It's a legal
18 question, but I would presume not.

19 MR. NATALE: Okay. Now, if you were to
20 learn the code ordinance says that for every
21 one parking space you can have four members,
22 let's assume that that's the code and that's
23 the law in the Town of Palm Beach.

24 And let's assume that this was enacted
25 by the Council because that was a rational

*** Notes ***

Page 67

Page 68

1 and well-studied and well-believed meaningful
2 correlation, and that's why they put it into
3 their Code. Let's assume that.

4 Based on the 252 parking spaces that
5 are presently in effect at Mar-a-Lago, in
6 compliance with the code, how many people --
7 members would they be able to have?

8 MR. BARR: Based on that ratio that I
9 understand is a part of the Town ordinance,
10 they could have four members for each parking
11 space which will calculate to be 1,008.

12 MR. NATALE: Okay. So being in full
13 and total compliance with the regulations,
14 the zoning regulations and the ordinance of
15 Palm Beach, they could -- Mar-a-Lago could
16 maintain it's 252 parking spaces and be in
17 total compliance with the zoning regulations
18 if it had 1,000 members?

19 MR. BARR: Yes.

20 MR. NATALE: Now, do you know of any
21 plans to reduce the number of parking places?

22 MR. BARR: No.

23 MR. NATALE: Now, from a common sense
24 perspective, which I believe one of the
25 counsel who was questioning you about brought

1 up, my question is: Using some common sense,
2 would it be common sense to have less parking
3 for people you want to attract to your
4 location than more parking available?

5 MR. BARR: I would see no reason to
6 reduce the amount of parking spaces
7 available.

8 MR. NATALE: Based on your knowledge
9 and experience, is the fact that a particular
10 location may have a lack of parking often
11 times a decision as to whether or not people
12 are wanting to attend or even go to that
13 location?

14 MR. BARR: Again, that's one of the
15 main factors that controls the capacity of
16 the property.

17 MR. NATALE: Okay. Sir, if you were to
18 learn that in Palm Beach, the Town of Palm
19 Beach, that there exists a club, and say that
20 this club was called the Club Colette, and
21 let's say that this club had a membership of
22 1,000, assuming this now as an expert and
23 based on the zoning code, what amount of
24 parking spaces should that club have?

25 MR. BARR: The code would indicate that

*** Notes ***

Page 69

1 they would need 250 spaces.
 2 MR. NATALE: Okay. In the event that
 3 they didn't have 250 spaces, for them to
 4 operate in accordance with the code and in
 5 accordance with the law, they would have to,
 6 A, either get those additional spots or B,
 7 ask for a special exception; is that correct?
 8 MR. BARR: That again I guess is a
 9 legal question, but logically, I would expect
 10 it.
 11 MR. NATALE: And one of the things that
 12 people would consider would be whether or not
 13 that exception would generate a traffic
 14 problem or traffic congestion as it related
 15 to that club?
 16 MR. BARR: Yes.
 17 MR. NATALE: Okay. Now, that club is
 18 also a restaurant; is it not? Do you know?
 19 MR. BARR: That's what I have been
 20 told. I have not been there.
 21 MR. NATALE: Now, there is another
 22 thing which I wanted to bring out. There was
 23 the conversation about the manner of how you
 24 compute parking spaces to members; correct?
 25 MR. BARR: Yes.

Page 70

1 MR. NATALE: Now, when you were talking
 2 about the parking spaces to members, that was
 3 taking into account what the present
 4 agreement is which is unique to Mar-a-Lago,
 5 right, and the zoning code which is
 6 applicable to all other clubs; correct?
 7 MR. BARR: Yes.
 8 MR. NATALE: And there is a disparity,
 9 is there not, between the one-to-two ratio
 10 for Mar-a-Lago versus the one-to-four ratio
 11 for the other clubs?
 12 MR. BARR: Yes.
 13 MR. NATALE: Has there been anything
 14 presented to you that you have heard and in
 15 the testimony that would lead you to believe
 16 that as a traffic engineer there is a
 17 rational basis for such a disparity in the
 18 treatment?
 19 MR. BARR: No, sir. Not that I have
 20 seen.
 21 MR. NATALE: Since other Council wanted
 22 to go back to 1993, I would like to ask you
 23 if you're aware that during the Town Council
 24 meeting, the minutes held on May 13th, 1993,
 25 that Mr. Weidner testified that he thought

*** Notes ***

Page 71

1 they should forget about the membership as a
 2 limit because nobody has the correct
 3 information as to the correlation between
 4 number and trips?
 5 MS. KENDIG: Excuse me. I just wanted
 6 to interject an objection and say that this
 7 is way beyond the scope of direct and way
 8 beyond the scope of cross-examination. And I
 9 object because this is bringing up new items
 10 that this witness has not previously
 11 addressed.
 12 Thank you.
 13 PRESIDENT SMITH: Thank you.
 14 And did you state who you were for the
 15 record?
 16 MS. KENDIG: Oh, pardon me.
 17 Julie Kendig, Seaman, Larson and Marsh.
 18 PRESIDENT SMITH: Thank you.
 19 Mr. Randolph, would you give us an
 20 opinion?
 21 MR. RANDOLPH: This is a quasi judicial
 22 hearing. And again it depends on how you're
 23 going to follow the rules. Strict rules of
 24 evidence and court procedures are not
 25 required to be followed in a quasi judicial

Page 72

1 proceeding.
 2 I believe that you have been conducting
 3 this proceeding in a manner much differently
 4 than you would in a court of law. And you
 5 have basically said let's let everything come
 6 in.
 7 And under that scenario, it's up to you
 8 whether you want them to go ahead and
 9 continue.
 10 MR. NATALE: Madame President?
 11 PRESIDENT SMITH: If I could speak to
 12 this. We did decide prior to the lunch break
 13 that everything would be put into the record.
 14 And unless the Council has changed their
 15 minds we'll continue.
 16 So, if you want to bring up a new line
 17 of questioning with in Barr on Club Colette
 18 that's never been brought up before...
 19 MR. NATALE: Madame President, the only
 20 reason why I brought that up is I think it
 21 was relating to the gist of the
 22 cross-examinations which went to an increase
 23 in club membership causing an increase in
 24 traffic and those sorts of problems. And
 25 that's why I wanted to bring it up, because

*** Notes ***

Page 73

Page 74

1 it's a factual situation.
 2 PRESIDENT SMITH: But could you tell
 3 me, was Club Colette mentioned? I must not
 4 have heard it.
 5 MR. McLENDON: Yes, it was.
 6 MR. NATALE: Yes.
 7 PRESIDENT SMITH: By whom? Who
 8 mentioned Club Colette earlier?
 9 MR. NATALE: I believe -- what I'm
 10 talking about is the cross-examinations that
 11 dealt with clubs and the increases in club
 12 memberships.
 13 PRESIDENT SMITH: I see. But they
 14 didn't specifically refer to Club Colette? I
 15 thought maybe I had missed it.
 16 Go ahead.
 17 MR. WYETT: I don't understand the
 18 reference to Club Colette. Club Colette is a
 19 dining club. It has a capacity of 125 seats,
 20 one seeing the per night. And I don't see
 21 the relevance.
 22 MR. NATALE: I think at this point that
 23 for me to have a discussion on it I think
 24 that would be more suitable for our closing
 25 arguments as to why we think it's relevant.

1 PRESIDENT SMITH: Mr. Graves?
 2 MR. GRAVES: Madame President, I simply
 3 raise an objection. He is leading his
 4 witness all over the place. This is his
 5 witness. And he is testifying as a result of
 6 that. That's not competent testimony.
 7 He's putting into evidence things that
 8 haven't even been put into evidence through
 9 witnesses, competent witnesses. And I object
 10 to that nature of the questioning and to his
 11 testifying.
 12 MR. WYETT: Well, there's --
 13 MR. NATALE: Madame President, I have
 14 no further questions.
 15 I would just like to submit into the
 16 record a copy of the Town Council minutes of
 17 the meeting held on May 13th, 1993, where we
 18 are quoting from the comments that were made
 19 by the same Mr. Weidner who is present here
 20 today and has testified here today.
 21 PRESIDENT SMITH: All right. Though,
 22 Mr. Natale, the minutes from the May and
 23 June, 1993 meetings are already in the
 24 record. They were presented on September
 25 16th.

*** Notes ***

Page 75

Page 76

1 MR. NATALE: Thank you very much.
 2 PRESIDENT SMITH: Is there anything
 3 else for Mr. Barr?
 4 Mr. Chopin?
 5 MR. CHOPIN: I only have one question.
 6 Do you know what the zoning is at Club
 7 Colette?
 8 MR. BARR: The exact wording of the
 9 zoning? No.
 10 MR. CHOPIN: Is it in a single family
 11 residential neighborhood?
 12 MR. BARR: There are single family
 13 residences in the area.
 14 MR. CHOPIN: Do you understand my
 15 question? Is it in a single family
 16 residential neighborhood? Is it zoned
 17 R-double A?
 18 MR. BARR: I don't know.
 19 MR. CHOPIN: Could it have been zoned
 20 commercial?
 21 MR. BARR: I don't know.
 22 MR. CHOPIN: If it were zoned
 23 commercial, might it have had an affect on
 24 what your testimony was?
 25 MR. BARR: No.

1 MR. CHOPIN: It wouldn't? You don't
 2 think the rules for commercial neighborhoods
 3 might be different than the rules for single
 4 family neighborhoods?
 5 MR. BARR: My opinion applied to the
 6 traffic impacts and to traffic trip
 7 generation.
 8 MR. CHOPIN: I have no further
 9 questions.
 10 PRESIDENT SMITH: Mr. Chopin, if you
 11 can wait for a minute, Mr. McLendon has a
 12 question.
 13 MR. McLENDON: You made some references
 14 to something earlier that I'm not familiar
 15 with. And I may need to be corrected, but
 16 you mentioned the Application before us
 17 reduced the parking to 77 spaces. And I
 18 haven't seen that anywhere.
 19 MR. CHOPIN: Well, the effect of what
 20 they're applying for is to remove the
 21 restrictions of the Use Agreement which
 22 requires the 252 and allow them to be
 23 governed only by Town ordinances that affect
 24 parking which is one parking place per four
 25 members --

*** Notes ***

Page 77

Page 78

1 MR. McLendon: Would that be making it
2 125, then?

3 MR. CHOPIN: No, not if they have 400.

4 MR. MCLENDON: They're bound to have
5 500.

6 MR. CHOPIN: Yeah. I'm not debating
7 the issue with you. I'm only saying we're
8 talking about two different things in the
9 sense that if it were 500 members that they
10 had then they'd be required to have 125. If
11 they chose to have only 314 members, they
12 would only be required to have 77.

13 MR. McLendon: They haven't applied for
14 this to the best of my knowledge.

15 MR. CHOPIN: They don't have to.

16 MR. McLendon: And their present
17 membership allowance is 500. So following
18 that theory it would be 125 and not 77 or
19 whatever the number was that you mentioned.

20 MR. CHOPIN: I think the answer, Mr.
21 McLendon, and again I'm not sure it's my
22 position to advise you on this because
23 Skip -- it's his job. But it's my
24 understanding of the code that they are
25 limited to having a maximum of 500 members,

1 and there is nothing that requires them to go
2 to that level.

3 If for whatever reason they choose to
4 limit their membership to 314 which is what
5 they tell us they are at today, then I think
6 under the Town Code they would only be
7 required to have the 77 parking spaces.

8 MR. MCLENDON: But I haven't heard any
9 requests to the Council that they want to
10 stop their membership at 300 or whatever it
11 might be.

12 And when the project was originally
13 negotiated by previous counsel and think done
14 in an excellent fashion, the number of
15 members finally selected in the use agreement
16 was 500, which then dictated by the agreement
17 also 252 spaces.

18 Now, if you use the four-to-one it
19 backs off to 125. But I don't know any place
20 that it infers 77 that they have asked for.

21 MR. CHOPIN: Well, let me try again how
22 I got there. I mean, I don't think they want
23 to reduce their membership so as a practical
24 matter I'm not in disagreement with you about
25 the 125.

*** Notes ***

Page 79

Page 80

1 But what I'm saying to you, sir, is
2 that if for whatever reason they choose to
3 reduce their current parking from -- assuming
4 you lifted the restrictions and they reduce
5 the parking from 252 to 77 and you went in or
6 your enforcement board went in to enforce the
7 requirements, they would be in compliance, in
8 my opinion, with the Town Ordinance because
9 notwithstanding they could have more members,
10 they didn't; they had enough parking for the
11 members that they had which would allow them
12 to use that for, you know, the spaces or the
13 land for whatever other purposes.

14 MR. McLendon: You're presuming that
15 all of the things are removed and there are
16 no limits on anything?

17 MR. CHOPIN: I'm saying if their
18 Application is granted. That's all I've been
19 talking about is if you grant their
20 Application to eliminate 252 parking places
21 per requirement, then you'd go back to the
22 straight Code, which is one parking space for
23 every four members. And you can change as
24 they get more or less members.

25 MR. McLendon: You did not say that he

1 applied for 77?

2 MR. CHOPIN: No, sir. And let me
3 clarify that. Because Mr. Rampell would have
4 you believe they're not applying for
5 anything.

6 What I'm telling you is they wouldn't
7 have to apply for anything. They would be
8 consistent with the Code to reducing the
9 number of parking places they have if you
10 remove the restrictions from the Declaration
11 of Use Agreement. And nothing further would
12 be required of them in coming before this
13 Town in order to do that.

14 And the real problem you have to
15 understand with that is even though they only
16 have 314 members, they still would be able to
17 have as many special events with as many
18 people as they wanted to. And the fact is
19 they could be moving them in with trucks and,
20 you know, whatever.

21 And that's how those two things work
22 together. But there is no further
23 application required unless they wanted to
24 build another building.

25 MR. MCLENDON: If the frog had wings.

*** Notes ***

Page 81

Page 82

MR. CHOPIN: I agree with that. But that's what we have to deal with because they haven't given us a site plan as to what they want to do specifically so we have to guess as to what they want to do.

A VOICE IN THE AUDIENCE: (Inaudible.)

PRESIDENT SMITH: Is somebody speaking? Is that you, Mr. Chopin?

MR. CHOPIN: No, unless I'm a ventriloquist and I didn't move my lips.

PRESIDENT SMITH: I didn't know whether or not the gentleman wanted to come to the microphone and speak to you.

Do you want to come to the microphone?

MR. CHOPIN: He seems like a nice enough fellow. Do you want to come up?

My name is Lyle Crisic (phonetic). And I --

PRESIDENT SMITH: Do you have a question for Mr. Chopin?

MR. CRISIC: It's not a question, but listening this one looks like he's giving them as hard a time as he can.

PRESIDENT SMITH: If you could wait, please, for public comment and then can you

stand and make your comments about anyone and everyone and anything that you like. But thank you for the record.

I do have one question for you, Mr. Barr.

Mr. Rampell, you better get him. He sounds like one of yours.

Mr. Barr, could you tell me, you referred in the cross-examination by Mr. Natale the Zoning Code of the Town of Palm Beach. Have you studied that and know how it would apply to restrictions in commercial areas?

MR. BARR: No, I have not. I have only looked at the part dealing with the one-to-four ratio in parking.

PRESIDENT SMITH: Right. Thank you very much.

Is there anything else? Mr. Shaw has a question for you, Mr. Barr. Why don't you give Mr. Barr the mobile microphone and he can sit down.

MR. BARR: I'm fine.

PRESIDENT SMITH: Oh, Mr. Barr, he doesn't want to talk to you. Sorry.

*** Notes ***

Page 83

Page 84

MR. SHAW: Sorry. This is for my own clarification. Is the zoning requirement for parking something that is meant to be fixed like parking for seats in a restaurant? Or is it based on a floating scale from day-to-day?

If a club was to open in an area that it was permitted to open in without any variance or without any special exception, do they say I want to have 50 members and therefore I have to have X parking? Or is the parking totally ignored and it floats from week to week?

MR. MOORE: It's one space for --

MR. SHAW: But is it if they of 100 members, do they have 120 spaces? And if next week they have 125, that they have to add more spaces? And if they lose members do they take them away?

Do they declare to the Town like a restaurant if we have 150 seats, whether they're used or not, and they have to have X number of parking places?

MR. MOORE: The club is a special exception use. And in order to comply with

all aspects of the zoning code on a new club application they would be required to provide the parking for the membership that they have announced on the new club. Therefore one space for four is a fixed figure.

MR. SHAW: Okay. So basically they have to declare their membership goal and that determines their parking?

MR. NATALE: That would be on a new club application, that's correct.

MR. SHAW: So it's not that I have no members today, I need no parking there?

MR. MOORE: That's correct.

MR. WYETT: Madame President?

PRESIDENT SMITH: Mr. Wyett?

MR. WYETT: I think the Council should take a vote on this. I think that Mr. Natale and his staff have used up our good will in reference to whatever rules that we have allowed here which don't fall within the normal course of law and courts, this not being a full court.

And at the rate we're going and coming back and back we're going to be here until 3:00 in the morning and come back at 9:00

*** Notes ***

Page 85

1 tomorrow.
 2 PRESIDENT SMITH: No, we're not.
 3 MR. SHAW: And the next day.
 4 PRESIDENT SMITH: No, we're not.
 5 MR. WYETT: I think at one particular
 6 point enough is enough. It's redundant and
 7 it seems to go in odd directions.
 8 PRESIDENT SMITH: Well, perhaps
 9 Mr. Wyett, we can do it this way.
 10 Mr. Natale and Mr. Rampell, how much
 11 longer do you anticipate? You said before
 12 the lunch break you had three witnesses. So
 13 we have heard from one. How long would you
 14 anticipate?
 15 MR. McLENDON: God bless it.
 16 PRESIDENT SMITH: He said "God bless
 17 it."
 18 MR. NATALE: What I think is that we
 19 would have -- I know we have two more
 20 witnesses and possibly a third more. Now --
 21 MAYOR ILYNSKY: We're talking about
 22 traffic?
 23 MR. NATALE: I think only one of them
 24 would not be talking about traffic. And the
 25 others would be doing rebuttal of testimony

*** Notes ***

Page 86

1 based on cross-examination.
 2 Now, what I would suggest is that from
 3 what I gather, Madame President, was that
 4 yesterday was set. I believe that we would
 5 be able to -- I don't see any problem with
 6 concluding tomorrow. I just don't see any
 7 problem whatsoever in us concluding fully and
 8 completely tomorrow.
 9 PRESIDENT SMITH: My feeling though, is
 10 that we have been on such an extended agenda
 11 of traffic that I for one would like to hear
 12 all of the traffic stuff today and then not
 13 hear it again.
 14 MR. McLENDON: I think we have had
 15 enough traffic. But go ahead.
 16 MR. WYETT: Too much traffic.
 17 PRESIDENT SMITH: But if you think that
 18 there is any facet or any detail of a traffic
 19 study or concurrency or road grade or parking
 20 that we have not heard, then please, please
 21 go ahead.
 22 But, I mean, are we going to -- I'd
 23 like you to bear in mind that we have gotten
 24 all of these reports and all these figures
 25 which we will be studying when all of the

Page 87

1 presentations are finished. But I would like
 2 to hear the end of the parking or traffic if
 3 we could.
 4 MR. NATALE: Madame President, I think
 5 we said that we're going to sort of put on a
 6 rebuttal case before they even finish with
 7 the cross-examination of our proposal or
 8 their affirmative public comments, the two
 9 people we said that we would put on to deal
 10 with that issue. We said it was going to be
 11 Susie, who is the spa director and one other
 12 person.
 13 Now, if you want us to put all of the
 14 traffic people that we have that relate to
 15 that on, I have no problem doing that right
 16 now. I'm just thinking that maybe it would
 17 be better if we could get -- because I think
 18 that what would happen is that it would go on
 19 very late.
 20 I think that what we could do --
 21 PRESIDENT SMITH: Is there really any
 22 great deal more to be said about the traffic?
 23 And I'm asking that as a very honest, sincere
 24 question. I'm not totally sure what we
 25 haven't heard from Mr. Barr in three and a

*** Notes ***

Page 88

1 half hours of testimony and
 2 cross-examination.
 3 MAYOR ILYNSKY: What does Susie know
 4 that Mr. Barr doesn't?
 5 PRESIDENT SMITH: Susie is the spa
 6 director. She's not going to talk about
 7 traffic.
 8 Really, is there a great deal more?
 9 MR. NATALE: May I, with your
 10 indulgence, see if we can make a decision?
 11 PRESIDENT SMITH: All right.
 12 MR. CHOPIN: Can I remind the Council
 13 that this was the public section? I yielded
 14 the floor and I asked specifically,
 15 Mrs. Smith, about the fact that it is my
 16 time. They said they had three witnesses,
 17 one dealing with traffic.
 18 I don't know when they confer if
 19 they're going to come up with another one or
 20 not. But since this morning, they apparently
 21 had grown another expert or something.
 22 I object because they told us this
 23 morning that they had three witnesses. And I
 24 gave up the floor for the purpose of letting
 25 you hear those three witnesses because of

Page 89

Page 90

1 Mr. Kolins' conflict.

2 And I know you're dying to hear me talk
3 again.

4 MR. McDONALD: We didn't know we lost
5 you.

6 PRESIDENT SMITH: Mr. Natale, please?
7 You heard Mr. Chopin's comments?

8 MR. NATALE: Yes, I did. I understand
9 the time constraints. At this time I think
10 that since we don't what other rebuttal would
11 be necessary, what we would like to be
12 putting on as it relates to the agreement was
13 the spa director.

14 And I think that may be the best thing
15 to put on as it relates to the agreement that
16 we have. And then if based on the comments
17 that they have, as we said before and you
18 said that if there is other rebuttal
19 necessary then we'll deal with the other
20 rebuttal in the appropriate time and in the
21 appropriate procedure, which is what they
22 agreed.

23 MR. CHOPIN: No, that's not what we
24 agreed to, Ms. Smith. And again, I suggest
25 to you you should do whatever you have to not

1 to give them a phony issue if they want to
2 take a lawsuit on you or anything.

3 But the fact of the matter is that, you
4 know, they rested their case and they were
5 finished. And then they said they were going
6 to bring on, you know, Mr. Barr which nobody
7 knew about and then -- I'm sorry -- I don't
8 know the lady's last name, but Susie as she's
9 been referred to, and somebody else. I
10 frankly can't remember.

11 Now, what are they going to get, two
12 rebuttals? One in the middle of our
13 presentation and one at the end of it again?
14 I mean, that's ridiculous.

15 MR. NATALE: Madame President, we said
16 that we were perfectly willing to wait for
17 our rebuttal to present. It was the wishes
18 of the Council to present it now. We did not
19 ask to interrupt anyone. We merely said that
20 we would accommodate the request of people to
21 put it on now.

22 So I want the record to be very clear
23 that we did not ask to interrupt and put it
24 on now, we merely acquiesced to your request.

25 PRESIDENT SMITH: That was my

*** Notes ***

Page 91

Page 92

1 understanding, too, Mr. Chopin, that they
2 were going to have the three witnesses after
3 lunch.

4 MR. CHOPIN: No.

5 PRESIDENT SMITH: And that you waived
6 your time and you would get as much time as
7 you want.

8 MR. CHOPIN: Now, I appreciate that.
9 But I want to make a different point. In the
10 debate this morning -- and I would suggest
11 you refer to Skip, because perhaps he could
12 confirm my recollection -- the issue that
13 came up this morning was as to what is
14 rebuttal.

15 Rebuttal in a typical case and in the
16 setting of lawsuit is restricted to testimony
17 which is presented in the context of the
18 ongoing hearing. What they were suggesting
19 they were going to do frankly, was to go
20 beyond the scope of what had been the
21 testimony presented to something that should
22 have been put on in their case in chief.

23 We had that debate. You may recall I
24 said, "I don't want this to be an issue
25 because I don't believe they got a case to

1 begin with. Let them put everything in."

2 But the intention was let them put it
3 in now and not when they get finished putting
4 it in during the course of our presentation
5 to the Council and then have another whack at
6 it when everybody is finished. That's what
7 the discussion was this morning.

8 PRESIDENT SMITH: All right.
9 Mr. Randolph?

10 MR. RANDOLPH: Quite frankly I'm not
11 sure what the intent of this Council was when
12 they agreed to take these witnesses out of
13 order. I agree that it's a very awkward
14 process to bring people on out of order
15 presumably for rebuttal and then have other
16 comment, and then perhaps have rebuttal
17 afterwards.

18 But I really don't know if the intent,
19 Mr. Chopin, was for these witnesses that are
20 on now to be rebuttal witnesses or whether or
21 not you and the others wanted to be -- have
22 an opportunity to hear the testimony that
23 they might have that is not necessarily
24 rebuttal so that you would have an
25 opportunity to address it.

*** Notes ***

Page 93

1 MR. CHOPIN: I think it was a
2 combination of both factors, Skip. The fact
3 of the matter is that we had scheduling
4 problems. But there was the debate, if you
5 recall, as to what was going to be the scope
6 or the limitations on what they were going to
7 be able to put on with respect to testimony,
8 particularly if that testimony should have
9 been the kind that fell within their
10 presentation of their case in chief.

11 If we were in a court of law, it would
12 have been limited. I don't believe that that
13 is in the best interest of the Town that it
14 be so limited. This is not pure rebuttal.

15 Mr. Barr's testimony went well beyond
16 the scope of any rebuttal. It went into
17 areas that were not addressed by Mr. Tipton,
18 as you well know. And that's fine. I mean,
19 I don't like it but it's in your best
20 interest and in the Town's and that's fine.

21 But the reason why they're putting it
22 on now is because what they're really doing
23 is because on September 16th, they said "We
24 rest." And they're now reopening the case
25 and putting on new testimony which was not

Page 94

1 responsive to the testimony as you heard
2 today of Mr. Tipton.

3 And that's fine. Let them do it. But
4 to give them another shot at it afterwards, I
5 mean, that's ridiculous.

6 And where did this witness come from
7 when they only had three this morning and
8 now they're claiming they may have four or
9 something. I mean, again, I guess I'm
10 moaning. But the fact of the matter is that
11 you got to do what you got to do. But this
12 thing is topsy-turvy because you can't get a
13 handle on it.

14 You know, somebody from the Council
15 says you weed this stuff out so piecemeal
16 they don't know what is going on. Well,
17 neither does anybody else. And we're just
18 trying to share with you the information that
19 we have to help you with the decision. But
20 it would help if we could do this in an
21 orderly fashion.

22 MR. RANDOLPH: Let me ask a question of
23 Mr. Natale.

24 Is it that you're presenting rebuttal
25 testimony or is it new testimony?

*** Notes ***

Page 95

1 MR. NATALE: It is my position that
2 this was rebuttal testimony and that it is
3 rebuttal testimony. We fully intended to
4 present this as rebuttal. And if you wish I
5 can make the argument to you as to why it's
6 rebuttal.

7 MR. RANDOLPH: Well that's -- No.

8 MR. NATALE: Can I finish?

9 MR. RANDOLPH: Yeah, go ahead.

10 MR. NATALE: As a result, when this
11 first came up -- and Madame President,
12 correct me if I'm wrong -- what happened as I
13 understood it was when we had the choice of
14 either conducting this in the normal you
15 finish, they finish, we do our rebuttal; or
16 to interrupt it at this time. That was not
17 my request, that was not our request. We
18 acquiesced to what Madame President wanted.

19 In fact, I believe --

20 PRESIDENT SMITH: It wasn't. Excuse
21 me, Mr. Natale. It was the Council. Please.

22 MR. NATALE: Well, I believe you
23 initiated it.

24 PRESIDENT SMITH: If we're going to be
25 very legal, we have to be very technical on

Page 96

1 how these things came about.

2 MR. NATALE: Let me finish.

3 But then the entire Council said that's
4 the procedure that we wish to employ, so
5 therefore we went forward.

6 I believe great pains were made to
7 express to Mr. Chopin that he was not
8 relinquishing the floor. And in fact he made
9 a point to say, "I'm not relinquishing the
10 floor."

11 And it was made the point that no,
12 you're not, we're still in the public
13 comments section, but for these two unique
14 witnesses we're relinquishing the floor.

15 PRESIDENT SMITH: Yes, and I believe it
16 was made the recommendation of President
17 Pro Tem McDonald that everything be put into
18 the record and that it was thought that that
19 was a good idea. And Mr. Chopin agreed to
20 withdraw his objection to have everything put
21 into the record.

22 MR. NATALE: I agree.

23 PRESIDENT SMITH: Good.

24 MR. NATALE: Now, as you said before,
25 we would still have the right to rebuttal.

*** Notes ***

Page 97

Page 98

1 So you want us to continue to go on as
2 we are, that's fine. However, this is not
3 technically all of our rebuttal because we
4 haven't heard all of the public comments that
5 we need to rebut.

6 I believe that is a correct statement
7 of the procedure. We haven't heard all of
8 the public comment.

9 PRESIDENT SMITH: Mr. Randolph?

10 MR. RANDOLPH: As I understand your
11 comment, and the answer to your question is
12 this was rebuttal and you are accommodating
13 the Council by putting on your rebuttal now.
14 See, I didn't hear on the record an objection
15 to your putting on rebuttal at this
16 particular time.

17 Now I'm asking you if you in addition
18 to the rebuttal testimony that you're putting
19 on, which some have characterized as new
20 testimony as opposed to rebuttal testimony,
21 you're saying that you want another
22 opportunity at the end to put on additional
23 rebuttal testimony?

24 MR. NATALE: No.

25 MR. RANDOLPH: No? Then I

1 misunderstood.

2 MR. NATALE: We can only rebut what is
3 presented. If the public comments section
4 has not been completed, right, if it hasn't
5 been completed yet -- it had started actually
6 by the testimony of Mr. Tipton -- that if it
7 hasn't been complete yet, right, then we
8 don't know all that there is to rebut.

9 In fact, I believe that Madame
10 President even pointed out that of course if
11 there is more that comes up we still have our
12 right to rebut what is the more. Now, if you
13 would have said, no, all rebuttal waits until
14 all of the public comments, then we would
15 have had all of the public comments and then
16 have gone into rebuttal.

17 MR. RANDOLPH: So what you're saying is
18 once the public has commented you are going
19 to confine your questions or your testimony
20 to pure rebuttal and you will not be putting
21 on anything new that has not been addressed
22 by public comment when you get your second
23 opportunity for rebuttal?

24 MR. NATALE: Remember, the rebuttal --

25 MR. RANDOLPH: That's a question.

*** Notes ***

Page 99

Page 100

1 MR. NATALE: Yes. My answer is
2 remember there was testimony by Mr. Brisson
3 and by other people who were not public
4 comment that was put on. And we have a right
5 to rebut everything that was said in
6 opposition to our Application. That's all we
7 want to do. That's what we want to do.
8 That's all we want to do.

9 MR. WYETT: You have been rebutting for
10 three and a half hours, and I think you put
11 on twice the amount of testimony he gave.
12 And I find going over such a wide area and
13 searching in so many different areas, that I
14 think you of taken gross advantage of our
15 desire to give you a full and fair hearing
16 without too many restrictions.

17 I mean, this has got to have some time
18 limit, otherwise you're going to be here with
19 your additional two -- now you're telling us
20 maybe three additional witnesses on top of
21 the one Mr. Barr where you promised us three,
22 now you're saying four or more.

23 We're going to be here not only today,
24 tonight, tomorrow, we're going to be here
25 Monday, Tuesday and Wednesday at the rate

1 we're going.

2 PRESIDENT SMITH: Oh, no, we're not.

3 MR. MCLENDON: Can I ask a question?

4 MR. NATALE: Yes, sir.

5 MR. MCLENDON: What is there about the
6 spa that is part of rebuttal? Who has
7 testifying about the spa?

8 MR. NATALE: During cross examination
9 Mr. Randolph cross-examined with Wes Blackman
10 saying that this spa is a destination spa,
11 that people were going to be coming here,
12 quoting from Ms. Ellis, saying that she said
13 that it was a destination spa and therefore
14 people are going to be coming in from the
15 outside.

16 Now, he is quoting from a person who
17 wants very much -- and we believe we have a
18 right to have her present what she actually
19 said and what she actually meant. That is
20 classic rebuttal.

21 MR. RANDOLPH: Excuse me, if I might.
22 So you're putting on rebuttal to the
23 testimony your own witness.

24 MR. NATALE: Excuse me?

25 MR. RANDOLPH: Then you're putting on

*** Notes ***

Page 101

1 rebuttal to the testimony of your --
 2 MR. CHOPIN: Excuse me. You don't
 3 rebut your own witnesses' testimony.
 4 MR. RANDOLPH: Excuse me. You are
 5 putting on rebuttal to the testimony of your
 6 own witness.
 7 MR. NATALE: No, I am putting on
 8 rebuttal to the basis your questioning. The
 9 basis of your questioning created an issue as
 10 to whether this was a destination spa
 11 predicated upon comments made by an employee
 12 of the Mar-a-Lago Club.
 13 MR. RANDOLPH: I think the Council has
 14 said they don't have any problem in letting
 15 in all of this evidence.
 16 But I would comment as I made comments
 17 earlier in this hearing trying to advise you
 18 as to what court procedures normally are,
 19 that it appears that there are good reasons
 20 that courts proceed in a particular order.
 21 And we have attempted to try to employ
 22 that order in this proceeding. But I guess
 23 *that determination has been made since this*
 24 *is quasi judicial, to hear anything. But the*
 25 *confusion that we're having now is because*

*** Notes ***

Page 102

1 we're not following order.
 2 And it looks like in addition to your
 3 going out of order to be presented with all
 4 of the testimony which some have
 5 characterized as new testimony, that in
 6 addition at the end you want to present
 7 rebuttal testimony.
 8 My only question is are you at the end,
 9 when you have rebuttal testimony, going to
 10 confine it to pure rebuttal of citizens'
 11 comments that are made, or are you going to
 12 put on new testimony?
 13 MR. NATALE: We're going to put on
 14 rebuttal of testimony that has been made
 15 after our case was closed in chief.
 16 MR. RANDOLPH: Which was today or in
 17 September?
 18 MR. NATALE: Which is September.
 19 MR. RANDOLPH: Oh, okay.
 20 MR. NATALE: Sir, because we haven't
 21 had a chance to fully complete our rebuttal.
 22 Keep in mind that we said we will wait until
 23 the end. We're not trying to do anything.
 24 We said we'd wait until the end. We haven't
 25 asked for the procedures to be confused.

Page 103

1 Let's just say you allowed us to open
 2 up our rebuttal for limited purposes. It's
 3 now closed. Let's go back to the public
 4 comment. The floor returns to him and for
 5 anyone who wants to speak their piece. And
 6 when they speak their piece it will be the
 7 original procedure and we have our rebuttal
 8 and it's over.
 9 MR. CHOPIN: The problem is you can't
 10 get a straight answer out of him just like
 11 you can't out of his client. Is he going to
 12 limit his rebuttal to rebutting what comes up
 13 during the public comments? That is
 14 rebuttal.
 15 The problem we had this morning and the
 16 reason we went out of turn with one of these
 17 witnesses is that anybody that sat there and
 18 listened to Mr. Barr's testimony and believed
 19 that Mr. Barr's testimony did not cover new
 20 ground right down to Club Colette at the last
 21 minute hasn't been listening to the
 22 testimony. And that's the problem.
 23 He wanted to put on new testimony at
 24 the end of the everybody's public comments
 25 when he had no right to deal with it any

*** Notes ***

Page 104

1 longer and call it rebuttal. And I told you
 2 to let him do it. Let him do it, because
 3 when he goes to court he is not going to have
 4 a phony issue to do it.
 5 But it's fundamentally unfair. And
 6 Skip asked him twice, are you going to limit
 7 it to rebuttal at the end. And he didn't get
 8 a straight answer out of him. We're not
 9 doing him any favor, we're accommodating the
 10 fact. And he's not doing us any favor,
 11 either.
 12 We're accommodating the fact that he
 13 intended, clearly, to go beyond what is
 14 customary in presenting rebuttal testimony by
 15 presenting what his case in chief was in a
 16 rebuttal atmosphere when the Town, your
 17 experts, your staff, everybody else would
 18 have had no opportunity to deal with it.
 19 And so we said put it on now and we'll
 20 scurry to deal with it. We had a half hour
 21 to deal with Mr. Barr and to try to prepare
 22 for his testimony and the cross-examination
 23 of Mr. Barr.
 24 Okay. Fine. It hurt us. It should
 25 have been submitted with the Application. It

Page 105

Page 106

1 should have been heard on September the 16th.
2 And he didn't do it.

3 But let's not give him an issue. But
4 don't say you're doing us a favor, for God's
5 sake. Don't do it.

6 MR. NATALE: Mr. Randolph, you would
7 agree that we would have an opportunity to
8 rebut whatever was presented in opposition to
9 our Application?

10 MR. RANDOLPH: Absolutely.

11 MR. NATALE: And that is not limited to
12 public comment; correct?

13 MR. RANDOLPH: That's correct.

14 MR. NATALE: So if we had followed the
15 established procedure which you have outlined
16 as our case, the Town's case, the Town's
17 testimony and then public comment and then
18 rebuttal, right, you would not be in a
19 position to ask me the question am I going to
20 limit it to public comments, would you?

21 MR. RANDOLPH: No, but I would have
22 asked whether or not you were going to limit
23 it to pure rebuttal or whether or not you
24 were going to put on new testimony.

25 MR. NATALE: Very well.

1 MR. RANDOLPH: Now, it seems to me that
2 it would be fair, because of the sequence
3 having been interrupted the way it has, for
4 you to at this point put on everything that
5 you want to in regard to your case. I think
6 you have put on new testimony in addition to
7 rebuttal. That's the way I look at it.

8 And I think the Council has agreed to
9 hear that. And I think that you should go
10 ahead and continue like that and continue to
11 put on whatever you consider rebuttal,
12 whether it be new testimony or rebuttal and
13 continue in the fashion that you have.

14 But at that point it seems to me you
15 have sort of closed your case and then your
16 rebuttal. If you have had an opportunity to
17 hear from all of these other lawyers and all
18 of these other witnesses and they're not
19 going to be putting on any other witnesses
20 for you to rebut at the end of your case.

21 And it seems -- if I might finish -- it
22 seems to me that fairness would dictate that
23 after you have had all of this opportunity
24 put on all of this new testimony and rebuttal
25 testimony by putting on your witnesses

*** Notes ***

Page 107

Page 108

1 tonight and tomorrow, that then your case in
2 chief is closed and that you should confine
3 your rebuttal to what comes up during the
4 citizens' comments.

5 Because now you're being afforded the
6 opportunity to rebut everything the witnesses
7 that Mr. Chopin and everybody else has put
8 on, haven't you? Aren't you getting that
9 opportunity to rebut those things right now?

10 MR. NATALE: As I understand,
11 Mr. Chopin has not closed his presentation to
12 the Council. Consequently, I don't know what
13 if any witnesses.

14 Now, Mr. Randolph, if you --

15 MR. CHOPIN: I don't intend to call any
16 other witnesses. I don't have anything to
17 hide. I don't intend to call any other
18 witnesses. Why don't you tell us who your
19 witnesses are? You show us yours and we'll
20 show you ours.

21 PRESIDENT SMITH: One at a time.

22 MR. NATALE: So when one person is
23 speaking unless the other is recognized we're
24 going to be polite and civil? Is that fair
25 to assume?

1 PRESIDENT SMITH: I thought that was
2 very clear when we started that way this
3 morning. I'd like it to stay that way, so
4 one at a time, please.

5 MR. NATALE: Thank you.

6 MR. Randolph, am I to understand that
7 you have just said that you anticipate that
8 there are going to be no other witnesses
9 called and therefore there would be no need
10 for us to make a rebuttal to anything?

11 MR. RANDOLPH: I don't know because --

12 MR. NATALE: Now --

13 MR. RANDOLPH: May I finish?

14 MR. NATALE: Yes.

15 MR. RANDOLPH: You were talking about
16 citizens' comments. I thought we were
17 talking about after all of this was over we
18 were going to go into citizens' comments.
19 And I asked you if your case rebuttal was
20 going to be to rebut that.

21 Certainly if there is other testimony
22 that comes out other than citizens' comments
23 I think you should have an opportunity to
24 rebut that.

25 I thought that you had heard the

*** Notes ***

Page 109

1 testimony from witnesses that were presented
2 by Mr. Chopin. And I didn't know whether or
3 not there was anything else to come other
4 than citizens' comments and that indeed in
5 your presentation now that you are were
6 rebutting those things.

7 I think if there are other -- if there
8 is other testimony that is going to come
9 other than citizens' comments that you would
10 have an opportunity to rebut that.

11 But at this point it sounds to me like
12 you ought to make sure that it's pure
13 rebuttal rather than new testimony. Because
14 we're going round and round.

15 PRESIDENT SMITH: Just a minute.

16 Mr. Randolph, are you finished?

17 MR. RANDOLPH: Yes.

18 PRESIDENT SMITH: All right.

19 Mr. Chopin?

20 MR. CHOPIN: Maybe I can remind Skip of
21 something that might put some perspective on
22 things. Remember Mr. Rampell spent a better
23 part of the 16th talking? And you asked him
24 the question, "Are you presenting testimony
25 or is this argument?" Because he under the

Page 110

1 guidelines of your procedure, had he been
2 presenting testimony which it sounded an
3 awful lot like, then we would have had a
4 right to question Mr. Rampell.

5 And not me but some people were really
6 looking forward to that opportunity. But no,
7 he said no, this is argument. I would
8 suggest to you the fact is that the folks in
9 this Town want to stand up and testify -- or
10 rather really make an argument in the hopes
11 of persuading you to a point. It's argument.
12 It's not subject to cross-examination and
13 it's not subject to rebuttal. It's argument.
14 And they're going to have a closing argument
15 anyway.

16 So the fact of the matter is, I have
17 already told you I am not appearing as an
18 attorney, I am appearing as a trustee. I
19 invite any cross examination Mr. Rampell or
20 anyone else would like to have.

21 The fact of the matter is I don't
22 intend to call any other witnesses. I don't
23 believe the intention is for any of the other
24 attorneys that I have seen to call other
25 witnesses.

*** Notes ***

Page 111

1 And so I think what we're going to be
2 doing is in effect arguing and making comment
3 about the testimony that you have received in
4 attempting to persuade you that we really did
5 have the right in the first place. But that
6 is argument. That is not rebuttal testimony,
7 Skip. And that's the problem. You're really
8 putting on testimony to rebut an argument and
9 that doesn't make any sense.

10 MR. WYETT: Ms. Smith?

11 PRESIDENT SMITH: Just a minute, Mr.
12 Wyett. It's Mr. Natale's turn.

13 MR. NATALE: Mr. Randolph, did I hear
14 you correct to say that if anyone were to
15 present say, another expert, say representing
16 some group of or organization, that if they
17 were to present another expert or present
18 some other testimony as it goes to the actual
19 substantial merits of this, that we would be
20 allowed proper rebuttal?

21 MR. RANDOLPH: I can't rule for the
22 Council. But that was what I indicated that
23 I think is fair, that if other testimony
24 comes on, that should have an opportunity for
25 rebuttal at the end of the case.

Page 112

1 MR. NATALE: So therefore, if the
2 public comment is not going to involve that,
3 as Mr. Chopin as inferred or indicated, what
4 then my question would be for rebuttal right,
5 then what we would have for rebuttal really
6 would be limited at that time. That's my
7 understanding.

8 MR. RANDOLPH: Who knows what is going
9 to happen? I wouldn't have guessed some of
10 the things happening that have happened today
11 as far as the order of the presentation of
12 this case. So I don't know what is going to
13 happen after you finish with your testimony.

14 But indeed if there are new witnesses
15 that come out and new testimony, I believe
16 that at the end of the case -- I'll wait
17 until you're finished so can you hear me.

18 I hadn't finished. I just wanted to
19 wait for you.

20 MR. NATALE: No, I can hear you.

21 MR. RANDOLPH: Okay. I believe that if
22 new testimony comes out that you ought to
23 have an opportunity for rebuttal as long as
24 it's pure rebuttal and related strictly to
25 that testimony that has come up.

*** Notes ***

Page 113

Page 114

1 MR. McLENDON: I have a problem in the
2 planned rebuttal. If just the citizens'
3 comments are directed, I can't concede that
4 you or one of your partners in this would
5 have the ability to do it yourself instead of
6 calling another witness?
7 MR. NATALE: May respond, sir?
8 MR. McLENDON: Sure.
9 MR. NATALE: For example, if someone
10 has an attorney who is representing them and
11 if their attorney were to put on witnesses --
12 MR. McLENDON: That's a different ball
13 game.
14 MR. NATALE: So we agree on that?
15 MR. McLENDON: Yes, that's right.
16 MR. NATALE: So if someone were to
17 testify to something which we believe is
18 factually inaccurate, in order to prove that
19 it is factually inadequate and not to do the
20 he-said and she-said situation, that if there
21 is a witness who could clarify that or a
22 document that would clarify that, then we
23 think we would have rebuttal to it.
24 I agree with you, sir, that I don't
25 assume that many of the comments from the

1 public are going to be the type that we need
2 rebuttal testimony on.
3 MR. McLENDON: I hope not.
4 MR. NATALE: I agree with you.
5 What I am referring to, sir, is that we
6 have -- there is still yet the
7 cross-examination of Mr. Chopin, because he
8 has said to you that he's not here as an
9 attorney, that he's here as a witness and as
10 a trustee and has said that he is subject to
11 cross-examination.
12 during his, if you will, testimony, he
13 put on a witness. Now, that is a rather
14 unique and unusual situation for any witness.
15 I have to tell you quite frankly, I
16 have been in a number of courtrooms
17 throughout the United States and I have never
18 been in a situation where a witness ends up
19 calling another witness to testify in the
20 middle of their testimony.
21 Now, Mr. Randolph, I don't know you
22 well enough to call you Skip, but I do say as
23 professional to professional, do you know of
24 any court or any situation where a witness is
25 sworn to tell the truth, the whole truth and

*** Notes ***

Page 115

Page 116

1 nothing but the truth they stand up and call
2 another witness and they question that other
3 witness in the middle of their own testimony?
4 MR. RANDOLPH: No. In a court of law
5 that order would not be taken.
6 MR. NATALE: No. Thank you very much.
7 MR. WYETT: I don't think that's a very
8 fair question because we have not followed
9 court procedures.
10 I would like to know if you would allow
11 residents of this Town who have been sitting
12 here all day wanting to have a few words -- I
13 don't think any residents want to take more
14 than five minutes.
15 And I'm asking Council's permission to
16 allow witnesses to come forward.
17 MR. NATALE: Absolutely.
18 PRESIDENT SMITH: And if I may, I would
19 like to make a statement. It is not the
20 Council President who is determining who is
21 speaking, it is the Town's Council in itself
22 who is deciding what the procedure is.
23 We are under public comment.
24 Mr. Chopin waived his time to Mr. Natale and
25 we have just had this legal argument on who

1 is a witness and who is not a witness and
2 what members of the public may be
3 cross-examined.
4 MR. WYETT: Let the public speak.
5 PRESIDENT SMITH: Yes. I would like to
6 let the public speak.
7 But by the same token, as the public
8 would like to speak, I would like the members
9 of the public that are speaking on either
10 side of this Application to feel safe and
11 secure that they will not be attacked by
12 Council around the room for some remark they
13 might make if they're just speaking as
14 Mrs. Smith or something. So be nice to the
15 public that is going to speak.
16 And we certainly would like to have the
17 public speak.
18 MR. McLENDON: Where is that
19 Mr. Chopin? He was part of the public if I
20 understand it.
21 PRESIDENT SMITH: Well, the lawyers
22 have a language all their own.
23 MR. CHOPIN: I want to clarify
24 something. Because of your procedure I want
25 it to be clear that I wanted to be in

*** Notes ***

Page 117

1 contrast to Mr. Rampell who has sent you
2 movies and talked about you behind your backs
3 and did innuendo and came in here and spoke
4 for four hours and didn't have the guts to
5 stand up and be questioned.

6 I am an attorney and I am willing to
7 stand up and answer for the comments I'm
8 going to make. And that's why I said I'm
9 appearing as a trustee here.

10 He thinks that's an unorthodox
11 procedure? Mr. Rampell would be in jail if
12 he was conducting himself in a court of law
13 the way he has conducted himself before you.
14 So that's the contrast I wanted to make.

15 And there are many good people here.
16 And if you would permit me, I would like to
17 let them talk.

18 PRESIDENT SMITH: Thank you.

19 We will now have other public comment.
20 I would hope that it would be without any
21 attorneys.

22 Are there any members of the public
23 that would like to speak that are not
24 attorneys?

25 Mrs. Rose?

Page 118

1 And no, she is not an attorney. We did
2 ask earlier that you would state your name
3 and spell your last name for the Court
4 Reporter.

5 MS. ROSE: It's Marjorie Rose,
6 M-a-r-j-o-r-i-e R-o-s-e.

7 Good afternoon -- or good evening, Your
8 Honor, Madame President and other Town
9 Council Members. My name is Marjorie Rose,
10 and I reside in Palm Beach most of the year.

11 PRESIDENT SMITH: Use the microphone,
12 please.

13 MS. ROSE: As a Jewish American, I
14 would like to state my complete abhorrence at
15 Mr. Trump's position regarding the Town
16 Council. He had a contract was presumably
17 was satisfactory to him, since signed it. He
18 found no anti-Semitism in the Council at that
19 time. Now, when he can't have his own way,
20 he smears decent members of the Council with
21 a charge for which there is absolutely no
22 evidence.

23 The charge of anti-Semitism is a
24 serious one, particularly when lodged against
25 a public official. The use of this

*** Notes ***

Page 119

1 preposterous allegation as a lever to bribe
2 concessions from the Town is shameful.

3 Portraying Donald Trump as a victim of
4 anti-Semitism trivializes the real sufferings
5 of millions who were the victims of real
6 bigotry. Thank you.

7 PRESIDENT SMITH: Thank you, Mrs. Rose.

8 MR. BARNES: I know it's late. I'm
9 sorry. I have a statement from the Civic
10 Association.

11 My name is Ned Barnes. I'm the
12 president and chief operating officer of the
13 Palm Beach Civic Association. And let me
14 pass this out. I'm speaking this evening on
15 behalf of the Civic Association, the
16 executive committee and the co-chairman,
17 Mr. Louis Prior and Mr. Harold Scott. Both
18 really wished they could have been here today
19 to make this presentation themselves, to make
20 this statement but they were unable to
21 rearrange their schedules.

22 In deliberating Mr. Trump's Application
23 we think it is very important to bear in mind
24 that unlike all other equivalent Palm Beach
25 clubs Mar-a-Lago is owned not by its members

Page 120

1 but by Mr. Trump personally. It is organized
2 as a business for profit with a presumed
3 objective to expand operations so as to
4 enhance its profitability.

5 Now, in granting Mr. Trump a special
6 exception to the Town's Code three years ago,
7 the guiding principle to the Town's Council
8 was a determination that the Mar-a-Lago Club
9 be Town-serving. Accordingly, the agreement
10 specifies that at least half of the members
11 be Town residents and that the club's
12 amenities be designed to meet the same
13 Town-serving test.

14 The Town Civic Association urges our
15 Town Council, which to the date has preserved
16 this objective to the wide spectrum of all of
17 it's decisions, to hold firm to this
18 fundamental principle in considering
19 Mr. Trump's present Application: Is it in
20 fact Town-serving?

21 With respect to separate issues on
22 which Mr. Trump seeks relief, the Palm Beach
23 Preservation Foundation has made public a
24 most compelling statement. And the Civic
25 Association wishes to thank them and strongly

*** Notes ***

Page 121

Page 122

support their suggestion that the Town Council defer any decision on any aspect of this present Application until it has before it a medium and long term plan for the growth and expansion of the Mar-a-Lago Club.

Specifically, Mr. Trump has recently concluded with the County a lease of County land on which he intends, we understand, to build a golf course and club house. He has reportedly stated that the course will be tied in some way to the club, and he refers to Mar-a-Lago.

We believe that the Council should have full details about the golf club's membership participation in Mar-a-Lago:

With respect to the proposed marina on the Mar-a-Lago property we ask the same question, what would be the relationship between the boaters and the Mar-a-Lago Club?

As to the health spa, what restrictions will be placed on non-member frequency of use.

Mr. Trump asks for unlimited guest suites, unlimited membership, half of whom must be Town residents, unlimited auto trips,

unlimited social events, no parking space requirements, and while not specifically mentioned, the assumption of unlimited guest privileges.

In aggregate, these requests strongly suggest that Mr. Trump seeks to establish at Mar-a-Lago a nationwide and possibly international destination resort spa.

The essential question is whether the conversion of a private limited member social club in a residential zoned area into a presumably profit driven resort hotel spa is A, Town-serving -- is it Town-serving, and B, appropriate to a residential area protected by ordinance from a commercial activity.

We hold, we hold deeply, that Palm Beach today remains a quite residential resort Town. And strenuous efforts must be made to preserve this unique environment.

At our three most recent Civic Association community forums, these are events we hold each month where any resident may come and discuss community issues, virtually every comment on this subject which took the whole meeting last Monday, every

*** Notes ***

Page 123

Page 124

meeting which was packed to capacity residents expressed a deep interest and concern about what were Mr. Trump's long-range plans for Mar-a-Lago.

Residents worry about the degree to which these plans would affect our current lifestyle.

And quite honestly, quite honestly, the mercurial nature of Mr. Trump's public statements on Mar-a-Lago, that has only enhanced the Civic Association's concern about his future objectives.

I mean, just to give you an example, Mr. Trump's attorney wrote on March 10th, 1995, in a letter to our association, he said "Mr. Trump has not sought any amendment, modification or waiver of provision of the Declaration of Use Agreement. He has demonstrated by his abundance of activities, not just his words, his determination to adhere to the agreement."

Well, we compare that to Mr. Trump's statement just one year later quoted on May 11th, 1996, in the Palm Beach Daily News, he says, "We have always felt that it, the

agreement, was discriminatory and very unfair. I always felt that I would bring it up at the appropriate time."

When and if Mr. Trump shares with the Town Council his complete long term plans for Mar-a-Lago, when and if it is mutually observed that certain provisions in the existing agreement have proven uncomfortable for Mr. Trump and/or unnecessary, when and if their modification in no way affects the Town-serving characteristics of Mar-a-Lago, then the Palm Beach Civic Association will support the Town Council's decisions towards mitigation.

Finally, we understand that Mr. Trump has often resorted to litigation and threats of litigation as a means of achieving his business objectives. We accept that the right to resolve disputes through use of litigation is part of the rough and tumble of the market place. The Civic Association itself has received it's share of litigation threats from Mr. Trump.

However, if Mr. Trump chooses to employ this tactic to pursue his business objectives

*** Notes ***

Page 125

1 in the present negotiation, we believe that
2 we speak for the great majority of Palm Beach
3 residents in assuring our Town Council of our
4 unwavering support which would include
5 support for adequate budget provisions if in
6 fact litigation becomes a reality.

7 Once again, we reiterate our full
8 support for the Preservation's Foundation on
9 this matter. Let us first as a
10 non-negotiable step have full disclosure.
11 And let us not deal with this immensely
12 important matter piecemeal. Thank you.
13 Thank you very much.

14 PRESIDENT SMITH: Mr. Randolph?

15 MR. RANDOLPH: Yes, he is entitled to
16 cross-examination.

17 MR. NATALE: Sir, I notice that there
18 was a great deal of reference to Town-serving
19 in your presentation. Is it fair for me to
20 assume that when you say Town-serving that
21 that is this entity, the Mar-a-Lago Club that
22 serves what are legitimate interests which
23 are to the benefit of the Town?

24 MR. BARNES: Yes, sir.

25 MR. NATALE: Okay. And would you agree

Page 126

1 that the preserving, the architectural
2 integrity of what has been declared a rather
3 unique piece of architecture as consistent
4 with being Town-serving?

5 MR. MCLENDON: It's landmarked.

6 MR. NATALE: It would also be
7 consistent with Town-serving in that the
8 Mar-a-Lago Club is subject to the regulations
9 of the national trust; isn't that correct?

10 MR. BARNES: Yes.

11 MR. NATALE: You would also agree that
12 it is Town-serving if the facility is as a
13 result of that open to the public for the
14 limited purposes of fund raising, if a member
15 would be wanting to have fund raising for
16 charitable causes?

17 MR. BARNES: Yes, sir.

18 MR. NATALE: And would you agree that
19 its fund-raising and raising the funds in
20 excess of \$6,000,000 is consistent with
21 being --

22 PRESIDENT SMITH: Now, how would
23 Mr. Barnes know the answers to these
24 questions? He's not a lawyer.

25 MR. NATALE: If I may, I'm asking him

*** Notes ***

Page 127

1 based on what he says of the Town-serving
2 purpose and whether he thinks these things
3 are Town-serving and would he recognize them.

4 MR. GRAVES: Madame President, I
5 object. This is totally outside of the scope
6 of his testimony. Objection, period. I
7 object.

8 PRESIDENT SMITH: Mr. Gutman?

9 MR. GUTMAN: For the record, my name is
10 Bill Gutman. I'm an executive director of
11 the Civic Association. I believe he was
12 using the words "Town-serving" as words of
13 art. Is he not testifying to any facts. He
14 was using a word in the English language.
15 Thank you very much.

16 MR. NATALE: Mr. Barnes, could you tell
17 me what you meant when you said
18 "Town-serving" so that I understand.

19 MR. BARNES: In the best interest of
20 the community.

21 MR. NATALE: Okay. So I would like to
22 use that word in the same context then, not
23 in any legal context, but in the best
24 interest of the community.

25 You would agree that it's in the best

Page 128

1 interest of the community that a facility be
2 available which can raise substantial amounts
3 of money for charity, wouldn't you?

4 MR. BARNES: Really, what we're
5 referring to is in the Town Code, as to the
6 term Town-serving, which in fact means in the
7 best interest of the community.

8 MR. NATALE: Okay. So if I understand
9 you, when you use the term Town-serving,
10 you're referring to as stated the code; is
11 that correct?

12 MR. BARNES: Yes.

13 MR. NATALE: And that is the part of
14 the code, if I understand it, which requires
15 the 50 percent figure; is that correct?

16 MR. BARNES: Yes.

17 MR. NATALE: And that the purpose of
18 that is to preserve what I believe you said
19 was the small and limited resort nature of
20 Palm Beach; is that correct?

21 MR. BARNES: That's the opinion of the
22 Palm Beach Civic Association.

23 MR. NATALE: Right. And your opinion
24 is that in order to preserve that, that it
25 needs to basically include the Town

*** Notes ***

Page 129

Page 130

1 population and exclude non-Town population;
2 is that fair to say?

3 PRESIDENT SMITH: Are you asking
4 Mr. Barnes for his personal opinion or for
5 the opinion of the membership of the Civic
6 Association?

7 MR. NATALE: I'm asking to find out if
8 that's what he meant when he said
9 "Town-serving."

10 PRESIDENT SMITH: Mr. Gutman?

11 MR. GUTMAN: This is Bill Gutman, for
12 the record. Skip, I beseech that you as
13 Counsel to the Town Council not permit this
14 to go on any longer.

15 Mr. Barnes is an executive, our
16 executive director of the Civic Association,
17 not a lawyer. And he is not familiar with
18 many of the particular facts involved in this
19 case.

20 And I believe that counsel is badgering
21 him, for the record.

22 PRESIDENT SMITH: Mr. Gutman, you are a
23 lawyer.

24 MR. RANDOLPH: And may I respond?

25 PRESIDENT SMITH: Yes, Mr. Randolph.

1 MR. RANDOLPH: But Mr. Barnes is
2 presenting an opinion of the Civic
3 Association and apparently has been -- if you
4 let me finish -- apparently has been chosen
5 for the spokesman for the Civic Association.

6 I think cross-examination is often
7 uncomfortable for people who testify in quasi
8 judicial hearings. However, the case law is
9 very clear that cross-examination should be
10 afforded. And I think that's what
11 Mr. Natale is trying to do.

12 MR. McDONALD: Mr. Gutman?

13 PRESIDENT SMITH: He is conferring with
14 his lawyer. He can confer all day.

15 MR. McDONALD: Mr. Gutman, there seems
16 to be some confusion between -- Mr. Barnes
17 introduced himself as president/chief
18 operating officer and you indicated he is the
19 executive director.

20 What is his position?

21 MR. GUTMAN: I think I misspoke.

22 MR. BARNES: I appreciate Mr. Gutman's
23 concern. I think that there's some concern
24 that I'm being badgered here. But if there
25 are questions I'm comfortable.

*** Notes ***

Page 131

Page 132

1 MR. NATALE: If I'm correct, you are
2 involved with the Palm Beach Civic
3 Association?

4 MR. BARNES: Yes.

5 MR. NATALE: Are you aware of
6 individuals named Harold V. Scott and Louis
7 C. Prior?

8 MR. BARNES: Yes, as I mentioned in the
9 beginning they're the co-chairmen of the
10 organization.

11 MR. NATALE: Are you aware of a letter
12 which they sent to the editor of what I
13 believe is colloquially referred to as the
14 Shiny Sheet?

15 MR. BARNES: What date is that?

16 MR. NATALE: I don't have the date, but
17 I would like to show you what is the letter
18 and see if that refreshes your recollection
19 as to whether your organization sent that
20 letter.

21 MR. BARNES: Yes, that's our
22 organization.

23 MR. NATALE: And is it fair for us to
24 assume and for the Council to assume that
25 your organization is not receding from what

1 your co-chairman has said in a letter to the
2 newspaper?

3 MR. BARNES: No, that's not fair.
4 That's why I asked you the date of that
5 letter. Can you tell me the date of that
6 letter?

7 MR. NATALE: I apologize. I wish I
8 could, sir. I can't.

9 MR. BARNES: Well, that would be
10 important for whatever you're going to ask
11 me.

12 MR. NATALE: Do you have any idea as to
13 when it would have been sent?

14 MR. BARNES: No. I'm asking you.

15 MR. NATALE: Well, I don't know.

16 PRESIDENT SMITH: You're both asking
17 each other. Who is going to come up with the
18 answer?

19 Mr. Natale, you're the lawyer, you're
20 supposed to know these things. Mr. Rampell
21 gave you the letter. Maybe he knows the
22 date.

23 Do you know the date, Mr. Rampell?

24 MR. RAMPPELL: It was only published
25 about three weeks ago.

*** Notes ***

Page 133

1 MR. BARNES: I don't think so. That's
2 why I'd like to know.
3 MR. RAMPELL: Three weeks ago, four
4 weeks ago.
5 PRESIDENT SMITH: He says the letter
6 was published three or four weeks ago.
7 Mr. Barnes, you're saying it was not. Should
8 we move ahead?
9 MR. NATALE: Okay. Mr. Barnes, have
10 you had an opportunity to review the letter
11 and look at that?
12 MR. BARNES: Yes.
13 MR. NATALE: And is it fair to say that
14 you objected to that letter going out at the
15 time?
16 MR. BARNES: I think that there has
17 been a refining of our position since then.
18 MR. NATALE: So if I understand what
19 your testimony would be, it is that your
20 purpose here is to refine the intent of the
21 meaning of the letter, the public letter
22 which was sent by your two co-chairmans; is
23 that correct?
24 MR. BARNES: No, that's not true. As a
25 matter of fact we have issued a later

Page 134

1 statement which is our position. Our later
2 statement was sent to our membership in our
3 newsletter, which is a little different than
4 that. And that reflects the feeling of the
5 Civic Association.
6 MR. NATALE: Very well. I have no
7 further questions. Thank you very much.
8 PRESIDENT SMITH: Thank you.
9 Mrs. Douthit?
10 MS. DOUTHIT: Let me just say that this
11 is my cane, it's supporting me. It's not
12 meant to be an offensive weapon.
13 PRESIDENT SMITH: Thank you,
14 Mrs. Douthit. I'm sure that is of great
15 relief to the Applicant.
16 MS. DOUTHIT: My name is Douthit,
17 D-o-u-t-h-i-t. I have been sitting here so
18 long that I'm content to stand.
19 What I have been constantly hearing is
20 the other clubs, the other clubs, we want to
21 be treated the same way as the other clubs.
22 Now, just a brief look at the other
23 clubs on the island, those that Mr. Trump has
24 been using for comparison: The Sailfish Club
25 is the oldest, it was founded in 1914 and

*** Notes ***

Page 135

1 moved to its present location in 1935.
2 The structure that became the
3 Everglades Club in 1921 had been built in
4 1919 as a Veteran's recovery hospital. It
5 therefore has always provided limited housing
6 and in this day and age is in a commercial
7 zoning area.
8 The Bath and Tennis Club was founded in
9 1926 in its present location. And at this
10 date it seems to coincide with the
11 construction of Mar-a-Lago.
12 The Palm Beach County Club was
13 chartered in 1953 on the site of a small club
14 building at a north-end golf course.
15 The Beach Club was founded in 1969 on
16 the same site as the Coral Beach Club, the
17 Old Coral Beach Club. Since approximately
18 1943, club use of the property has been
19 non-stop.
20 And we now come to a very magic date in
21 our Town's history, and that is March 26th of
22 1974, at which time a pretty darn close
23 semblance of our existing zoning code was
24 adopted.
25 And as we all know, Mr. Trump signed

Page 136

1 his agreement with the Town in '93. Now,
2 that's 19 years later. So he had plenty of
3 time to look into the zoning and all of this.
4 And this whole problem -- we have
5 listened to two full days of traffic, God
6 help us. And I'm glad it all goes well with
7 357 hours or thereabouts of off-duty Police
8 help. Thank heaven it has gone well.
9 But that's besides the point. The main
10 issue of this whole exercise has no bearing
11 to traffic other than as to the zoning. Do
12 we want commercial use in an RAA that's zoned
13 residential district in this Town? And
14 that's what Council is here to decide.
15 And we've been here listening to an
16 awful lot of stuff. That's all I have on my
17 mind. Thank you.
18 PRESIDENT SMITH: Thank you very much.
19 MS. CUDAHY: For the record, I am Lynn
20 Cudahy, C-u-d-a-h-y. I would like to read a
21 letter from my husband, Bill Cudahy. He is
22 sorry that due to illness he cannot be here
23 today.
24 "Dear Madame President, Mayor and
25 Council Members: As Mayor and member of the

*** Notes ***

Page 137

Page 138

1 zoning commission that drafted the present
2 Town Zoning Code I know the concern to
3 preserve the vitally important single-family
4 residential character of the Town, and
5 thereby to protect the health, welfare and
6 safety of its citizens.

7 "I would urge the Council to adhere to
8 the zoning code and to reject the intrusions
9 being considered here today.

10 "Sincerely, Bill Cudahy."

11 Thank you.

12 PRESIDENT SMITH: Thank you,
13 Mrs. Cudahy. Our best wishes to the former
14 Mayor. We hope he does well.

15 Dr. Lilja?

16 DR. LILJA: I have given to Mary a copy
17 of my speech.

18 PRESIDENT SMITH: To the microphone,
19 please.

20 DR. LILJA: For the record I'm a
21 full-time resident of this Town. I have
22 given copies of my speech to be passed around
23 so you don't have to worry about how I
24 pronounce things.

25 I would like to say that I have no

1 educational background about what I'm going
2 to say. I'm not presenting any facts and I'm
3 only making suggestions and all of them is on
4 common sense, and I have no educational
5 background on that either.

6 Honorable Mayor and Council Members,
7 there is a threat to our Town which has the
8 potential of becoming very destructive to our
9 way of life. It is not the implied threat of
10 lawsuit that worries me, but the threat of
11 other future litigation and consequences to
12 the Town which we developed from the matter
13 before you.

14 It is that future problem that I intend
15 to address. I shall not go into those
16 details and facts which have been brought out
17 already, for instance, by the Preservation
18 Foundation, the Civic Association, the Shiny
19 Sheet Editorial and by private individuals
20 with the common concern that we actually may
21 be looking at the commercial endeavor such as
22 a hotel, resort, spa or whatever.

23 I shall address, however, the potential
24 consequences of such a determination as it
25 pertains to land use. Our zoning laws

*** Notes ***

Page 139

Page 140

1 specifically exclude commercial use in
2 R-double A districts.

3 The special exception that was granted
4 to the Mar-a-Lago Club with many important
5 restrictions does not pertain to or permit
6 commercial use of the land.

7 Were this Council to grant a revision,
8 variance or whatever to allow for in effect a
9 commercial use in R-double A, it would create
10 a precedent which could have serious
11 consequences for the Town.

12 If subsequently an Applicant were to be
13 denied permission to establish a hotel,
14 parlor, spa, resort or some other commercial
15 enterprise or activity in an R-double A
16 district, he might want to sue the Town.

17 In his lawsuit, the Applicant wouldn't
18 be limited to claiming that the Town's
19 failure to apply a Mar-a-Lago precedent to
20 his case had denied him fair and equal
21 treatment.

22 But he could also seek recourse under
23 the new and powerful Bert Harris Private
24 Property Law for Private Rights Protection
25 Act which became effective as of October 1,

1 1995. He would claim that the Town, by its
2 denial had put an inordinate burden on the
3 use of his property, which is the violation
4 of that act.

5 Such unfair burden entitles him to
6 relief or to compensation from the
7 Government, in this case the Town of Palm
8 Beach. The act provides for arbitration and
9 litigation as well as costs and attorney's
10 fees.

11 He would claim that the Council, by
12 overriding the Zoning Ordinance regarding
13 land use in R-double A districts, which
14 remains in effect today, had sanctioned a
15 change in the zoning Code, thus creating a
16 new, less restrictive code which because it
17 was enacted subsequently to October 1, 1995,
18 it then becomes the norm under the Bert
19 Harris Law.

20 If we were to lose the general
21 designation of no commercial use as presently
22 applied in R-double A, we could find
23 ourselves in deep trouble when trying to keep
24 commercialism out of R-double A and perhaps
25 other residential districts as well.

*** Notes ***

Page 141

1 MR. NATALE: I leave it to your
2 imagination, what kind of commercial activity
3 might try to get a foothold in the Town.

4 Because of the Bert Harris Act it is
5 risky and difficult to enact zoning changes
6 if they may be construed to constrict the use
7 of property.

8 What was on the books prior to October,
9 1995 is precious when it comes to our
10 continuing efforts to preserve our Town.

11 And revisions or changes to the special
12 exception could change the effective date of
13 the entire special exception and thereby open
14 the door for challenges under the Bert Harris
15 Law in the Town's ability to regulate similar
16 uses. Any change after October of '95 can
17 come back and haunt us in different ways.

18 The Bert Harris Act is a very
19 comprehensive and complex piece of
20 legislation, the ultimate form of which would
21 take many years to sort out in the courts.

22 One thing is clear: The basic intent
23 of the Act will remain, and I don't believe
24 that the Town should risk a confrontation
25 with that law in the future because of an

Page 142

1 unwise decision in the matter at hand.

2 There may be some legal experts who
3 would question the scenario that I have
4 presented. And I suggest to you that you
5 then ask them to state without reservations
6 that the Town has nothing to fear

7 Why do I bring up this controversial
8 matter? The answer is perhaps that common
9 sense must force us to look at potential
10 consequences in the future. It is too late
11 to close the barn door once a horse is gone.

12 When I prepared this speech up to this
13 point for presentation at the September 16th
14 hearing I was unaware of several important
15 facts which came out of the testimony on that
16 date. For instance, the Town's zoning
17 consultant is Mr. Brisson. He testified that
18 the current amount of guest suites not even
19 counting the spa already exceeds allowable
20 commercial accessory space.

21 Also questions and testimony about
22 guest rules and the spa's possible economic
23 dependency on a large number of guests,
24 perhaps by means of complimentary guest cards
25 or by some kind of invitation or temporary

*** Notes ***

Page 143

1 memberships or by some other type of
2 arrangement or other commercial endeavors,
3 perhaps in Florida or elsewhere may suggest
4 that there is already a commercial venture
5 planned or in place.

6 We may be looking -- we may be looking
7 at a different kind horse here, one that
8 tries to get on the inside, a Trojan horse.

9 It all adds up to a matter of
10 commercial use in the R-double A district,
11 now or later, which is not permitted under
12 the Town's zoning ordinance.

13 I urge this Council to take the bull by
14 the horns and to enforce our zoning laws
15 before it is too late. A loophole created by
16 excessive use of guest cards or invitations
17 or whatever in combination with the spa or
18 the guest suites or other amenities and
19 affairs would circumvent the intent of the
20 special exception.

21 It would violate the current zoning law
22 as well as the intent of that law. You must
23 determine if this is in actuality a
24 restricted Town-serving private club, or is
25 it perhaps already or will be a non-permitted

Page 144

1 commercial use of land in the R-double A
2 district.

3 A quite serious problem may be that the
4 Council now has been made aware of important
5 facts and would then be without defense if
6 present and future use were not put into
7 compliance with our Zoning Ordinance.

8 It is my recommendation that the
9 Council accept the threat of litigation today
10 rather than expose the Town to future and
11 potentially more difficult litigation and
12 possible awards.

13 Thank you.

14 PRESIDENT SMITH: Thank you.

15 Any response?

16 Mr. Rock?

17 MR. ROCK: I'm Peter Rock, R-o-c-k. I
18 reside in this Town.

19 Madame President, Mayor, Council
20 Members, I originally came because of the
21 foolishness that occurred with the
22 gentleman's agreement. But Mrs. Rose already
23 addressed that. I just thought it was
24 scandalous and scurrilous.

25 But in coming here two days now, having

*** Notes ***

Page 145

1 to deal with this litigious bully and his
2 minions and seeing our Town Council having to
3 walk on eggs to avoid any kind of litigation,
4 it's disgusting. It's like we have lost
5 control of our Town. I would call --
6 particularly after what I have heard today.

7 There are three clear violations of the
8 agreement: We don't have a certified copy of
9 who the membership is; we do not know if they
10 have ever exceeded the number of people that
11 are allowed; and they're not bussing their
12 people back and forth. We have heard that
13 today.

14 I call on you today to enforce the
15 Ordinance 100 percent and have some sort of
16 committee that oversees that. That should be
17 done and it should be done in an ongoing
18 manner. And I would also call on you in a
19 corny way to be Churchills and not
20 Chamberlains and to reject this bully, reject
21 it out of hand.

22 He hasn't shown any reason why there
23 should be any exceptions. That should stand
24 as it is. Thank you very much.

25 PRESIDENT SMITH: Thank you, Mr. Rock.

*** Notes ***

Page 146

1 Are there other members of the public
2 that would like to speak? All right.

3 MR. WINTERFIELD: Good evening. My
4 name is Adrian Winterfield. A-d-r-a -- let's
5 start again. A-d-r-i-a-n
6 W-i-n-t-e-r-f-i-e-l-d.

7 MR. MCLENDON: You got it.

8 MR. WINTERFIELD: And that was probably
9 the last controversial thing I'll have to
10 say. There are a number of relatively minor
11 points which I would respectfully make which
12 I suggest that taken together, and even alone
13 is presently a serious problem.

14 With your permission I will read from
15 the minutes of the September meeting.
16 Mr. Randolph referred to a settlement
17 agreement entered into by the Mar-a-Lago
18 Club, LLC Club, and Palm Beach County, which
19 had a whereas clause indicating that the
20 Mar-a-Lago Club, LLC specifically represents
21 that it is the successor to all legal claims
22 of all persons or entities holding title to
23 Mar-a-Lago on or after April 6th, 1995.

24 When asked if Mar-a-Lago Club, LLC was
25 a distinct entity from the Mar-a-Lago Club,

Page 147

1 Mr. Rampell replied that it was essentially
2 the same, that it was a successor interest
3 and was the owner of Mar-a-Lago Club, Inc.,
4 and Mr. Trump was the owner of both.

5 Mr. Randolph asked if Mr. Rampell could
6 sign for the Mar-a-Lago Club, LLC for
7 purposes of presenting the Application today.
8 Mr. Rampell replied affirmatively.

9 I believe you have a copy of an
10 information sheet obtained from the division
11 of corporations and the Secretary of State.
12 Mar-a-Lago Club, LLC, LC was registered in
13 the State of Florida on April 14, 1995, whose
14 principal address is Care of the Trump
15 Organization, 725 Fifth Avenue, New York.

16 The registered agent in the State of
17 Florida is the Prentice Hall Corporation
18 System, Inc., Tallahassee. The managing
19 member details are given as follows: The
20 manager is Donald J. Trump, also 725 Fifth
21 Avenue; the member is Mar-a-Lago Club, Inc.,
22 care of 725 Fifth Avenue.

23 Respectfully submitted there is a
24 serious threshold problem. The Declaration
25 of Use Agreement is among Donald J. Trump, a

*** Notes ***

Page 148

1 Florida Corporation and the Town of Palm
2 Beach.

3 It appears that Mr. Trump has
4 arbitrarily without consulting in advance the
5 Town, substituted one entity for another. I
6 fail to see how the Town benefits. One
7 readily sees how Mr. Trump benefits.

8 I have distributed a certified copy of
9 a document filed -- excuse me -- recorded in
10 the official records of Palm Beach County as
11 of May 1st, 1996. Mar-a-Lago Club, LLC,
12 recorded a financing statement, a U.C.C. form
13 in which it was the debtor and the secured
14 party was Banker's Trust.

15 Immediately following that document,
16 which is five pages, is a modification of a
17 U.C.C. financing agreement whereby
18 Donald J. Trump is released from an
19 obligation created in his name in 1990.

20 At the very least, these things require
21 explanation. It is not clear, not at all
22 clear, which is a surviving entity. If it is
23 Mar-a-Lago Club, LLC, LC -- and I assume the
24 LC stands for licensed club; I have no
25 idea -- then the Declaration of Use Agreement

Page 149

1 should be amended prior to any consideration
2 of further amendment.

3 The mortgagee must accept the new
4 party. Of course Mr. Trump is personally
5 liable on the ten million dollar mortgage.
6 But this is just an indication.

7 It would have been far simpler had the
8 Town simply executed an agreement with
9 Donald Trump, at least it would have known
10 with whom it was dealing. In this case we
11 don't know from one day to the next. Today
12 it's Mar-a-Lago Club, LLC, a presumably
13 New York limited liability company, next week
14 it may be a Cayman Islands corporation.

15 Does that make any difference to the
16 Town? I wonder. Certainly it doesn't make
17 things any simpler. Thank you.

18 PRESIDENT SMITH: Thank you,
19 Mr. Winterfield.

20 Are there other members of the public
21 to speak? Come up, please.

22 DR. ROVIN: I'm Dr. George R-o-v-i-n,
23 Rovin. And as a permanent resident of Palm
24 Beach, I implore the Council to deny Donald
25 Trump's request.

Page 150

1 Thank you.

2 PRESIDENT SMITH: Thank you, Dr. Rovin.

3 MS. KAHN: My name is Adell Kahn. I do
4 not have a prepared speech. I have been in
5 business and lived here since 1972. What I
6 deeply resent was Mr. Trump sending out the
7 gentleman's agreement which was made in 1950.

8 We're now in 1996 where Christians and
9 Jews have worked hard to bring everything
10 together. And when our temple was being
11 rebuilt, where do you think we went? We went
12 to Saint Edwards.

13 So we're going to talk about
14 anti-Semetics so somebody can get a few more
15 rooms? It sounds more like Germany.

16 Thank you.

17 PRESIDENT SMITH: Thank you, Ms. Kahn.

18 There is no more public comment? This
19 is still the public comment part of the
20 procedure.

21 MR. CHOPIN: Are lawyers still barred?

22 PRESIDENT SMITH: No, lawyers are not
23 barred. But please start because we're going
24 to leave this --

25 MR. CHOPIN: Madame President, I would

*** Notes ***

Page 151

1 like some clarification. I don't want you to
2 close the public comment while we're sitting
3 down.

4 PRESIDENT SMITH: I was very close to
5 closing the public comment when you leapt to
6 your feet which was a big change from 9:30
7 this morning when the whole room was
8 standing.

9 MR. WYETT: Ms. Smith, I think it
10 should be noted that I don't think it's a
11 lack of public interest. It's the late hour
12 of the night and the total frustration of the
13 public sitting here through two full days
14 that the public is sitting here.

15 PRESIDENT SMITH: You're talking about
16 us or them?

17 MR. WYETT: The public is both here for
18 and against.

19 MAYOR ILYINSKY: I wonder if any of
20 them will come back tomorrow thinking that we
21 have extended it to two days.

22 PRESIDENT SMITH: The public comment
23 part of the procedure is obviously not
24 closed. I would like to poll the Members of
25 the Council and see what they would like to

Page 152

1 do. It is now 7:10.

2 If you attorneys could give us an idea
3 roughly of how long it will take, then we'll
4 be able to make our decision.

5 A VOICE: How long what will take?

6 PRESIDENT SMITH: How long your
7 presentations are going to take to finish.

8 MR. GRAVES: Madame president,
9 Ken Graves for Mrs. DeMoss. I think our
10 presentation will take approximately one
11 hour.

12 PRESIDENT SMITH: Mr. Chopin?

13 MR. CHOPIN: Well, I mean, the answer
14 is I don't know. But, you know, I'm tired,
15 you're tired.

16 PRESIDENT SMITH: Don't speak for the
17 Council, Mr. Chopin. We're ready to go.

18 MR. CHOPIN: Well, you're younger than
19 I am and I'm about to die right now.

20 PRESIDENT SMITH: Well, there might be
21 people that would...

22 MR. WYETT: We're used to being here
23 until 11:30 at night.

24 PRESIDENT SMITH: I think that you have
25 to give us an idea.

*** Notes ***

Page 153

Page 154

MR. CHOPIN: I think if you give me 15
or 20 minutes --

PRESIDENT SMITH: If you would let me
poll the Council, please.

Mr. Wyett, do you want to continue, or
would you like to adjourn? We have said that
if necessary we would be reconvening at 930
tomorrow morning. That is part of the record
and has been publicized so that it is not a
surprise.

MR. WYETT: Well, Ms. Smith,
unfortunately I think we have to continue for
this reason: There will be enough testimony
tomorrow, our deliberation tomorrow. And we
must get to order sometime tomorrow. So if
we start now, the very desperate subject of
water will probably be put in the background
to our Town's detriment.

Therefore, I must ask the Town Council
to continue.

PRESIDENT SMITH: I think in all
fairness I don't want the Applicant to think
that any other matter is taking precedent
over this. Everyone will be given as much
time as necessary to present, to

cross-examine, to rebut and then the
analysis, the Applicant will make the final
statement.

We do have another item that the
Council will be discussing, but it is not
going to be affected by this proceeding.
This proceeding will take as long as
necessary.

PRESIDENT SMITH: Mr. McLendon?

MR. MCLENDON: I guess I have a problem
conceding, with all due respect, Mr. Graves,
why we have another hour facing us. I'm just
sick of listening to so much repetitive stuff
today.

MR. GRAVES: So am I. And I hope I
won't be repetitive. We have one witness to
put on, and it's a planning expert. I think
it will take some time. And we certainly
would attempt to move it faster than an hour,
and I have argument to make.

PRESIDENT SMITH: And I'm sure that
your witness will be subjected to
cross-examination.

MR. GRAVES: Well, that's my --

PRESIDENT SMITH: Educated guess?

*** Notes ***

Page 155

Page 156

MR. GRAVES: Guess, yes.

PRESIDENT SMITH: Mr. Mayor, before you
make the call --

MAYOR ILYINSKY: I want to tell my wife
I haven't died or something.

PRESIDENT SMITH: All right.

Mr. McDonald, do you want to go on or stop?

MR. McDONALD: I don't mind going on
for a while. But I'd like to know we're
going to cut off and where we're going to cut
off and when we're going to start tomorrow.

I don't mind going on, like I said, but
I'm just curious to know the topics. I mean,
is there something specific like we have
discussed, the parking -- excuse me -- the
cars, the traffic?

Is there one specific point that you're
addressing or you are just going to go down
the whole list of 29 items?

MR. GRAVES: We're going to go down the
list of 18 conditions that you're going to
consider.

MR. CHOPIN: I'm not. I'd Like to but
I'm not.

PRESIDENT SMITH: If I could speak at

this time. I think to be realistic about it
we have given everyone great latitude today
on the length of time of the discussions and
the cross-examinations.

And I have reiterated that what will
happen, that there will be opportunity for
the Applicant to cross examine and to do his
rebuttal as Mr. Natale will find further on,
and then have the final statement.

We know we're coming back tomorrow.
And we're all tired. And I frankly would
like to stop. But I would like Mr. Natale
and Mr. Rampell to speak for the record that
they don't feel that this procedure is being
closed out.

MR. NATALE: No, I have no objection to
your position to recess for today and
reconvene tomorrow.

MR. MCLENDON: Some people have
indicated that there was a problem with going
on tomorrow. Were you one of them,
Mr. Chopin?

MR. CHOPIN: Unfortunately.

PRESIDENT SMITH: The main thing is
that the Town Council is able to go on

*** Notes ***

Page 157

Page 158

1 tomorrow.
 2 MR. CHOPIN: You can't go on without
 3 me, can you?
 4 PRESIDENT SMITH: I don't think you
 5 want to hear the answer, Mr. Chopin.
 6 I think that the Council has cleared
 7 their schedules. We are ready to go on with
 8 this.
 9 We will be going into executive session
 10 after the deliberations are finished, and we
 11 have no idea of how long that will take. So
 12 there is not necessarily any determination
 13 that a finding will be reached by Council by
 14 tomorrow.
 15 May I ask the Council, please?
 16 Unfortunately I had expected to do my whole
 17 presentation today and then we had this whole
 18 hub-bub thing.
 19 And I do have an appointment scheduled
 20 in the morning and my client is arriving from
 21 England today. I'm going to try and catch
 22 him and try to postpone him.
 23 But can I ask that if you convene at
 24 9:30, that I could make my presentation at
 25 that time so that I could in fact go away and

1 meet this client?
 2 PRESIDENT SMITH: Well, why don't you
 3 turn around and ask the members of the public
 4 if they don't mind. This is still public
 5 comment.
 6 MR. CHOPIN: Well, I think that the
 7 answer to the question is that I certainly
 8 would, you know, be wishing to do what the
 9 public wants. But it was my time when we
 10 broke before. And I thought you in fact had
 11 given everyone an opportunity to --
 12 PRESIDENT SMITH: Let me make sure that
 13 all of the public has spoken. Have you all
 14 spoken?
 15 MR. McLENDON: Let me ask this.
 16 Mr. Chopin, I think you said you only have 15
 17 or 20 minutes. Would that be acceptable to
 18 you?
 19 MR. CHOPIN: It's fine within me. I
 20 know that the Council is tired.
 21 PRESIDENT SMITH: I didn't say I was
 22 tired, Mr. Chopin.
 23 Mr. McDonald, you said you were very
 24 happy to stop.
 25 MR. McDONALD: I have no problem with

*** Notes ***

Page 159

Page 160

1 that. And I think that we're going to have
 2 cross-examination. And I think it's just
 3 better for us to recess and start tomorrow to
 4 accommodate his schedule. It's no problem
 5 with us.
 6 MR. WYETT: Let's take a vote.
 7 PRESIDENT SMITH: all right, let's poll
 8 the Council. Who wants to stop and who wants
 9 to go on starting with Mr. Wyett?
 10 MR. WYETT: Let's go on for a
 11 reasonable period of time and if we find it's
 12 getting too tedious we can always find --
 13 PRESIDENT SMITH: No. No, let's come
 14 up with a specific thing and not be general.
 15 If we go on we go on until we finish and we
 16 go through the cross-examination. And we're
 17 not going to stop in the middle of a
 18 procedure.
 19 MR. WYETT: Let's go.
 20 PRESIDENT SMITH: All right.
 21 Mr. McLendon?
 22 MR. McLENDON: I vote to stop.
 23 PRESIDENT SMITH: All right.
 24 Mr. Mayor, you don't have a vote, but would
 25 you give us your opinion?

1 MAYOR ILYNSKY: I vote we adjourn.
 2 PRESIDENT SMITH: Mr. McDonald?
 3 MR. McDONALD: Mr. Chopin, what would
 4 you prefer? Would you prefer to do it
 5 tonight or at 9:00 tomorrow? And if we give
 6 you at 9:00 tomorrow, which would you prefer?
 7 MR. CHOPIN: I'm perfectly amenable to
 8 doing whatever the Council finds is best.
 9 PRESIDENT SMITH: All right.
 10 Mr. McDonald, you have to decide yes or no.
 11 MR. CHOPIN: I'd like you to be frankly
 12 awake enough and fresh enough for you to hear
 13 me, because I'm also tired.
 14 MR. McDONALD: Well, I'd like to
 15 continue on for a while then, because I don't
 16 want to get so backed up tomorrow that we
 17 don't get to the water.
 18 PRESIDENT SMITH: I think you want to
 19 split those issues.
 20 MR. McDONALD: I'd like to go for
 21 another 30 or 40 minutes.
 22 PRESIDENT SMITH: Mr. Shaw?
 23 MR. SHAW: I'm perfectly happy to go
 24 along with what the rest of the Council likes
 25 to do.

*** Notes ***

Page 161

Page 162

1 PRESIDENT SMITH: Vote. Vote,
 2 Mr. Shaw.
 3 MR. WYETT, what did you ask to do?
 4 MR. WYETT: I said I'll go on as long
 5 as necessary.
 6 PRESIDENT SMITH: Mr. McLendon said to
 7 adjourn. Mr. McDonald said to go on.
 8 MR. SHAW: Is your position about 15 or
 9 20 minutes?
 10 PRESIDENT SMITH: Mr. Shaw, will you
 11 vote and not put the conditions on
 12 Mr. Chopin's rapid speech?
 13 MR. CHOPIN: I'm really not going to --
 14 PRESIDENT SMITH: But please, please
 15 don't. Because there is going to be
 16 cross-examination.
 17 Okay. Have a nice time, gentlemen.
 18 I'm going out for a break. But you all
 19 please continue. You're going to continue
 20 for 30 or 40 minutes, please go on.
 21 MR. NATALE: I just want you to
 22 understand that my cross-examination may
 23 exceed that time.
 24 PRESIDENT SMITH: You will then have as
 25 much time as you need. There is no time

1 limit on this. Thank you. Please continue.
 2 MR. WYETT: Would everyone agree to a
 3 five-minute break?
 4 PRESIDENT SMITH: No. I think you all
 5 want to get started. And Mr. McDonald wants
 6 to go for 30 or 40 minutes.
 7 MR. WYETT: The Court Reporter needs a
 8 break.
 9 PRESIDENT SMITH: Okay. We'll take a
 10 break.
 11 * * *
 12 (Thereupon, a recess was taken at 7:30)
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*** Notes ***

Page 163

1 The State Of Florida,)
 2 County of Palm Beach.)
 3
 4 CERTIFICATE
 5
 6 I, Pamela J. Sullivan, Court Reporter and
 7 Notary Public, State of Florida at Large, do hereby
 8 certify that I was authorized to and did report the above
 9 proceedings and that the foregoing pages, numbered 1
 10 through 163, inclusive, are a true and correct excerpt of
 11 my stenotype notes of said proceedings.
 12 I further certify that the said proceedings
 13 were taken at the time and place hereinabove set forth and
 14 that the taking of said proceedings was commenced and
 15 completed as hereinabove set out.
 16 I further certify that am not attorney or
 17 counsel of any of the parties, nor am I a relative or
 18 employee of any attorney or counsel or party connected
 19 with the action, nor am I financially interested in the
 20 action.
 21 The foregoing certificate of this transcript
 22 does not apply to any reproduction of the same by any
 23 means unless under the direct control and/or direction of
 24 the certifying reporter.
 25 In witness whereof I have hereunto set my
 hand and seal this 10th day of September, 1995.

Pamela J. Sullivan,
 Court Reporter
 Notary Public, State of Florida

*** Notes ***

\$6,000,000 [1] 126:20	147:13 163:16	700 [1] 35:17	83:24 84:1 84:5	17:11 19:20
'93 [2] 15:25 136:1	1996 [9] 9:24 25:16	725 [3] 147:15 147:20	84:9 84:17 84:22	abhorrence [1] 118:14
'95 [1] 141:16	54:3 58:14 58:17	147:22	85:20 86:18 87:5	ability [4] 13:20
'96 [1] 59:2	61:21 123:24 148:11	75 [4] 11:20 13:14	87:23 87:25 88:8	43:25 113:5 141:15
00 [6] 65:2 65:2	150:8	14:17 38:1	88:10 90:1 90:2	able [9] 14:13 14:15
84:25 84:25 160:5	1st [1] 148:11	77 [8] 38:4 76:17	91:9 91:15 91:25	49:23 67:7 80:16
160:6	2 [2] 1:8 1:17	77:12 77:18 78:7	92:13 93:1 93:11	86:5 93:7 152:4
1 [3] 139:25 140:17	20 [6] 12:2 12:17	78:20 79:5 80:1	94:12 94:22 95:10	156:25
163:7	13:2 153:2 158:17	9 [6] 84:25 151:6	96:9 96:19 97:6	above [2] 28:8
1,000 [2] 67:18	161:9	153:7 157:24 160:5	98:25 99:4 99:10	163:7
68:22	200 [13] 13:9 13:10	160:6	99:12 99:15 100:3	absolutely [5] 19:13
1,008 [1] 67:11	31:16 32:11 32:13	a [394] 3:17 3:22	100:10 100:13 100:16	51:18 105:10 115:17
1,500 [1] 17:24	33:15 33:25 48:8	4:1 4:1 4:7	100:17 101:10 101:20	118:21
10 [1] 152:1	49:15 49:15 49:21	4:10 4:19 4:20	102:21 103:10 104:4	abundance [1] 123:19
10,000 [1] 21:1	50:3 52:11	4:24 5:1 5:7	104:8 104:15 104:20	accept [5] 16:6
100 [2] 83:15 145:15	203 [1] 11:22	5:11 5:22 5:24	105:4 105:18 107:21	37:15 124:18 144:9
102 [1] 13:5	204 [1] 13:5	5:24 6:6 6:14	108:4 108:10 109:15	149:3
10th [2] 123:14 163:16	215 [1] 13:11	6:25 6:25 7:1	109:22 110:3 110:11	acceptable [2] 54:9
11 [1] 152:23	250 [2] 69:1 69:3	7:2 7:20 7:23	110:14 110:18 111:11	158:17
11th [1] 123:24	252 [13] 14:18 38:1	8:9 9:4 9:15	113:1 113:12 113:21	accessory [1] 142:20
12 [1] 53:21	38:18 42:4 42:25	10:4 10:9 10:13	113:21 114:9 114:10	accommodate [5]
120 [1] 83:16	44:25 65:23 67:4	10:20 11:5 11:18	114:13 114:13 114:16	44:1 44:6 45:11
125 [8] 38:5 73:19	67:16 76:22 78:17	11:19 12:19 13:21	114:18 114:18 114:24	90:20 159:4
77:2 77:10 77:18	79:5 79:20	14:20 15:5 16:21	115:4 115:7 115:12	accommodated [2]
78:19 78:25 83:17	254 [1] 42:14	17:8 17:13 17:22	115:19 116:1 116:1	15:3 15:3
12th [1] 54:3	260 [1] 48:5	17:24 18:20 18:21	116:22 117:9 117:12	accommodating [3]
13th [2] 70:24 74:17	267 [1] 48:2	19:15 19:25 20:5	118:13 118:16 118:21	97:12 104:9 104:12
14 [1] 147:13	26th [1] 135:21	20:8 20:11 20:12	118:23 118:25 119:1	accommodation [1]
15 [6] 1:17 18:9	270 [2] 47:22 48:1	20:21 21:20 21:21	119:3 119:9 120:2	10:14
45:14 153:1 158:16	29 [1] 155:19	22:1 22:9 22:21	120:2 120:5 120:8	accordance [2] 69:4
161:8	3 [3] 58:13 58:14	22:25 23:18 24:20	120:23 121:4 121:7	69:5
15,000 [5] 18:21	84:25	26:25 27:21 28:1	121:9 122:7 122:10	according [2] 62:23
18:23 19:19 20:17	3,500 [1] 61:2	28:12 29:10 31:16	122:11 122:11 122:13	62:25
20:20	30 [10] 1:17 12:2	31:19 31:22 32:8	122:14 122:15 122:17	Accordingly [1]
150 [1] 83:21	151:6 152:23 153:7	32:20 33:8 34:10	123:2 123:15 124:17	120:9
16 [1] 45:14	157:24 160:21 161:20	35:6 35:22 35:24	125:6 125:9 125:18	account [4] 20:9
163 [1] 163:8	162:6 162:12	36:13 36:17 37:5	126:2 126:12 126:14	21:5 42:8 70:3
16th [8] 25:8 47:12	300 [1] 78:10	38:17 40:2 40:3	126:24 127:14 128:1	accounted [2] 28:4
56:22 74:25 93:23	314 [5] 36:2 36:3	41:21 41:22 42:1	129:17 129:22 131:11	42:11
105:1 109:23 142:13	77:11 78:4 80:16	43:18 44:2 44:2	132:1 133:17 133:24	accuracy [1] 58:7
18 [1] 155:21	357 [1] 136:7	44:8 45:12 45:14	133:25 134:3 134:22	accurate [1] 51:18
19 [1] 136:2	360 [1] 1:16	46:9 46:10 46:11	135:4 135:6 135:13	achieving [1] 124:17
1914 [1] 134:25	390 [2] 43:1 45:18	46:12 46:16 46:19	135:14 135:20 135:22	acquiesced [2] 90:24
1919 [1] 135:4	4 [1] 65:2	46:22 47:7 47:8	136:20 137:16 137:20	95:18
1921 [1] 135:3	4,000 [3] 31:17	48:15 49:15 50:1	138:7 138:22 138:24	acres [1] 45:14
1926 [1] 135:9	32:12 32:16	50:6 50:11 50:20	139:2 139:7 139:8	act [6] 139:25 140:4
1935 [1] 135:1	40 [6] 6:16 6:25	51:1 51:15 51:16	139:9 139:10 139:13	140:8 141:4 141:18
1943 [1] 135:18	12:2 160:21 161:20	51:23 52:21 52:25	139:15 139:19 140:13	141:23
1950 [1] 150:7	162:6	53:7 53:11 54:2	140:14 140:15 140:22	action [2] 163:12
1953 [1] 135:13	400 [2] 33:17 77:3	54:12 54:15 55:1	140:24 141:3 141:18	163:13
1969 [1] 135:15	43 [2] 11:16 13:9	55:3 55:12 55:15	141:24 142:11 142:23	activities [1] 123:19
1972 [1] 150:5	50 [4] 30:7 30:22	56:16 56:25 57:2	143:4 143:7 143:8	activity [5] 10:8
1974 [1] 135:22	83:10 128:15	57:15 58:5 59:6	143:9 143:10 143:15	32:23 122:15 139:15
1990 [1] 148:19	500 [8] 35:17 35:17	60:15 60:21 61:12	143:23 143:25 144:1	141:2
1993 [19] 9:12	38:6 77:5 77:9	61:12 61:13 61:13	144:3 145:8 145:18	actual [2] 61:25
9:23 12:21 12:22	77:17 77:25 78:16	62:9 62:13 63:23	146:10 146:13 146:16	111:18
13:4 15:11 57:13	504 [2] 42:5 42:21	64:8 65:22 66:17	146:19 146:25 147:2	actuality [1] 143:23
57:18 57:22 58:2	5th [1] 25:16	66:25 67:9 67:23	147:9 147:23 147:25	actually [8] 18:17
60:11 60:11 61:4	6 [1] 65:2	68:9 68:10 68:11	148:8 148:9 148:12	31:19 50:25 63:16
61:10 62:17 70:22	600 [1] 33:19	68:19 68:21 69:6	148:12 148:16 148:16	98:5 100:18 100:19
70:24 74:17 74:23	6th [1] 146:23	69:7 69:8 69:13	148:22 149:12 149:14	138:20
1995 [7] 123:15 140:1	7 [3] 1:17 152:1	70:16 70:8 70:16	149:23 150:4 150:14	add [1] 83:18
140:17 141:9 146:23	162:12	71:21 71:25 72:3	151:6 151:10 152:5	added [2] 19:19
	7,500 [1] 18:10	72:4 72:16 73:1	153:9 154:10 154:17	21:5
		73:18 73:19 73:23	155:9 156:20 157:13	addition [5] 66:7
		74:5 74:16 75:10	159:6 159:10 159:14	97:17 102:2 102:6
		75:15 75:17 76:11	159:17 159:24 160:15	
		76:11 77:25 78:23	161:17 161:18 162:2	
		81:3 81:6 81:9	162:7 162:9 162:12	
		81:15 81:19 81:21	163:8 163:11	
		81:23 82:19 83:4	A-d-r-a [1] 146:4	
		83:5 83:7 83:20	A-d-r-i-a-n [1] 146:5	
			AlA [4] 17:3 17:7	

106:6	120:6	132:25	133:3	analyses [2]	35:9	134:15	139:12	139:17	24:19	27:23	47:6
additional [6]	21:7	133:4	133:6	55:17		153:22	154:2	156:7	47:7	51:12	53:23
54:9	69:6			analysis [10]	21:5	23:23	32:3	34:11	53:25	56:3	69:7
99:19	99:20	27:11	27:14	21:15	21:22	34:16	35:11	56:7	70:22	90:19	90:23
address [5]	26:14	31:2	34:7	49:17	50:5	56:21	57:9	57:21	94:22	100:3	105:19
92:25	138:15	49:19	49:23	55:4	55:7	76:16	79:18	79:20	118:2	121:17	132:10
147:14		50:22	51:7	analyze [3]	5:20	80:23	84:2	84:10	142:5	153:19	157:15
addressed [4]	71:11	92:13	96:22	6:2	58:18	99:6	104:25	105:9	157:23	158:3	158:15
93:17	98:21	113:14	113:24	analyzed [2]	4:21	116:10	119:22	120:19	161:3		
addresses [2]	21:12	125:25	126:11	33:14		121:3	147:7		asked [22]	8:22	
30:18		127:25	162:2	and/or [2]	124:9	applied [5]	43:3		8:25	9:2	9:8
addressing [1]	155:18	agreed [5]	89:22	163:14		76:5	77:13	80:1	17:16	21:23	24:16
adds [1]	143:9	106:8	96:19	announced [1]	84:4	140:22			24:18	24:23	24:24
Adell [1]	150:3	agreement [25]	8:18	annual [5]	20:15	apply [8]	13:3		32:3	47:9	78:20
adequate [5]	34:23	42:13	65:22	22:6	47:21	32:10	34:5	58:21	88:14	102:25	104:6
35:1	37:13	70:4	76:21	52:13	52:12	80:7	82:12	139:19	105:22	108:19	109:23
125:5		78:16	80:11	another [20]	3:20	163:14			132:4	146:24	147:5
adequately [1]	35:2	89:15	120:9	17:20	31:17	applying [3]	37:8		asking [12]	13:19	
adhere [2]	123:21	123:21	124:1	69:21	80:24	76:20	80:4		14:17	36:16	55:24
137:7		136:1	144:22	88:21	92:5	appointment [1]			87:23	97:17	115:15
adjourn [3]	153:6	146:17	147:25	97:21	111:15	157:19			126:25	129:3	129:7
160:1	161:7	148:25	149:8	113:6	114:19	appreciate [2]	91:8		132:14	132:16	
adjusted [1]	62:16	agrees [2]	27:9	148:5	154:4	130:22			asks [1]	121:23	
adjustments [1]	48:6	35:10		160:21		approach [1]	37:9		aspect [1]	121:2	
Administrator [1]		ahead [8]	23:1	answer [21]	19:8	appropriate [5]	4:19		aspects [2]	6:3	
2:9		72:8	73:16	21:17	21:19	89:20	89:21	122:14	84:1		
adopted [1]	135:24	86:21	95:9	36:14	37:14	124:3			Associates [1]	10:5	
Adrian [1]	146:4	133:8		77:20	97:11	approved [1]	64:17		association [18]	119:10	
advance [1]	148:4	allegation [1]	119:1	103:10	104:8	approximately [4]			119:13	119:15	120:14
advantage [1]	99:14	Allen [1]	2:5	132:18	142:8	36:2	66:2	135:17	120:25	122:21	123:15
advise [2]	77:22	allow [6]	15:1	157:5	158:7	152:10			124:12	124:21	127:11
101:17		76:22	79:11	answered [1]	8:5	April [2]	146:23		128:22	129:6	129:16
affairs [1]	143:19	115:16	139:8	answers [1]	126:23	147:13			130:3	130:5	131:3
affect [7]	12:3	allowable [1]	142:19	anti-Semetics [1]		arbitrarily [1]	148:4		134:5	138:18	
12:7	61:3	allowance [1]	77:17	150:14		arbitration [1]	140:8		Association's [1]	123:11	
75:23	76:23	allowed [9]	17:24	anti-Semitism [3]		architectural [1]			assume [31]	11:8	
affected [1]	154:6	19:11	21:17	118:18	118:23	126:1			11:25	12:2	12:15
affects [1]	124:10	60:21	84:20	anticipate [3]	85:11	architecture [1]	126:3		12:18	13:2	17:14
affirmative [1]	87:8	111:20	145:11	85:14	108:7	area [11]	49:22	62:10	17:15	17:17	25:25
affirmatively [1]		almost [1]	33:3	anybody [3]	25:18	64:18	65:3	65:11	28:5	35:15	35:19
147:8		alone [2]	33:15	94:17	103:17	75:13	83:7	99:12	35:21	35:24	37:1
afforded [2]	107:5	146:12		anyone [6]	30:20	122:11	122:14	135:7	38:5	42:5	42:21
130:10		along [2]	59:17	82:1	90:19	areas [4]	64:8	82:13	51:13	51:15	61:19
after [9]	91:2	160:24		110:20	111:14	93:17	99:13		66:22	66:24	67:3
106:23	108:17	already [10]	44:17	anyplace [1]	40:13	Aren't [1]	107:8		107:25	113:25	125:20
141:16	145:6	53:24	54:11	anything [20]	14:5	arguing [1]	111:2		131:24	131:24	148:23
157:10		110:17	138:17	17:15	17:17	argument [11]	95:5		assumed [3]	15:21	
afternoon [1]	118:7	143:4	143:25	43:12	46:1	109:25	110:7	110:10	51:4	61:8	
afterwards [2]	92:17	also [12]	11:4	75:2	79:16	110:11	110:13	110:14	assuming [6]	8:19	
94:4		29:25	69:18	80:7	82:2	111:6	111:8	115:25	18:18	41:17	51:25
again [22]	5:5	126:6	126:11	90:2	98:21	154:20			68:22	79:3	
9:20	12:5	142:21	145:18	102:23	107:16	arguments [1]	73:25		assumption [6]	11:13	
22:19	34:14	160:13		109:3		around [5]	39:24		11:20	12:20	41:20
51:6	52:6	always [4]	123:25	anyway [1]	110:15	45:14	116:12	137:22	51:14	122:3	
68:14	69:8	124:2	135:5	anywhere [3]	37:4	158:3			assumptions [4]	57:25	
77:21	78:21	amenable [1]	160:7	40:10	76:18	arrangement [1]			assure [1]	15:22	
89:3	89:24	amended [1]	149:1	apologize [1]	132:7	143:2			assuring [1]	125:3	
94:9	125:7	amendment [2]	123:16	apparently [3]	88:20	arrived [1]	48:3		atmosphere [1]	104:16	
against [2]	118:24	149:2		130:3	130:4	arriving [1]	157:20		attacked [1]	116:11	
151:18		amenities [2]	120:12	appear [1]	65:13	art [1]	127:13		attempt [1]	154:19	
age [1]	135:6	143:18		appearing [3]	110:17	articulated [1]	58:2		attempted [2]	64:6	
agenda [1]	86:10	American [1]	118:13	110:18	117:9	ask [39]	3:25	7:25	101:21		
agent [1]	147:16	among [1]	147:25	appears [2]	101:19	8:8	8:13	8:15	attempting [1]	111:4	
aggregate [1]	122:5	amount [5]	13:23	148:3		11:24	12:12	13:2	attend [2]	17:24	
ago [7]	24:21	68:6	68:23	applicable [1]	70:6	14:4	17:16	17:20	68:12		
		142:18		Applicant [7]	26:2	21:13	21:18	21:20			
		amounts [1]	128:2								

attendance [2] 43:15 43:24	119:11 125:24 126:10 126:17 126:23 127:16 127:19 128:4 128:12 128:16 128:21 129:4 129:15 130:1 130:16 130:22 131:4 131:8 131:15 131:21 132:3 132:9 132:14 133:1 133:7 133:9 133:12 133:16 133:24	46:1 46:9 46:12 47:2 47:4 47:13 47:17 47:23 48:2 48:11 48:22 49:2 49:8 49:19 49:25 50:9 50:14 50:20 50:25 51:7 51:11 51:25 52:6 52:12 52:21 53:3 53:12 53:20 53:22 55:4 55:11 55:18 55:25 57:8 57:16 57:19 57:23 58:4 58:11 58:16 58:23 59:6 59:14 59:19 60:1 60:4 60:9 60:14 60:17 60:24 61:5 61:15 61:18 61:24 62:8 62:11 62:14 62:18 63:3 63:8 63:21 64:2 64:11 64:19 64:24 65:5 65:16 65:24 66:4 66:11 66:17 67:8 67:19 67:22 68:5 68:14 68:25 69:8 69:16 69:19 69:25 70:7 70:12 70:19 72:17 75:3 75:8 75:12 75:18 75:21 75:25 76:5 82:5 82:8 82:14 82:20 82:21 82:23 82:24 87:25 88:4 90:6 99:21 104:21 104:23	became [2] 135:2 139:25	bills [1] 8:17
attending [1] 18:21	3:18 3:19 3:24	57:8 57:16 57:19	become [1] 50:6	bit [1] 28:1
attention [1] 57:14	4:12 4:21 4:25	57:23 58:4 58:11	becomes [2] 125:6	Blackman [1] 100:9
attorney [11] 2:7 59:10 110:18 113:10 113:11 114:9 117:6 118:1 123:14 163:11 163:12	5:5 5:10 5:13 5:16 5:20 6:2 6:12 6:16 6:21 6:23 7:4 7:9 7:13 7:16 7:17 8:7 8:12 8:14 9:2 9:7 9:10 9:16 9:19 9:25 10:5 10:12 10:13 10:18 11:3 11:5 11:13 11:17 11:23 12:5 12:11 12:13 12:18 12:22 13:2 13:6 13:10 13:12 13:17 14:1 14:6 14:10 14:19 14:24 15:8 15:12 15:15 16:1 16:5 16:8 16:12 16:16 16:22 16:25 17:5 17:13 17:18 18:2 18:7 18:11 18:13 18:16 18:20 18:24 19:2 19:8 19:11 19:14 19:17 19:22 19:24 20:2 20:7 20:14 20:18 20:22 20:24 21:2 21:11 21:14 21:24 22:3 22:21 23:6 23:9 23:14 23:17 23:24 24:1 24:4 24:8 24:17 24:24 25:5 25:9 25:16 25:19 25:24 26:5 26:18 27:1 27:5 27:13 27:18 27:21 27:25 28:10 28:14 28:18 28:22 29:2 29:5 29:13 29:24 30:3 30:10 30:13 30:23 31:2 31:4 31:12 31:19 31:24 32:6 32:9 32:24 33:6 33:18 33:21 33:24 34:4 34:8 34:14 34:20 35:14 35:21 36:7 36:12 36:24 37:2 37:8 37:20 37:24 38:2 38:24 39:3 39:6 39:10 39:14 39:18 39:22 40:1 40:7 40:12 40:15 40:24 41:4 41:10 41:13 41:16 41:19 41:22 42:1 42:7 42:10 42:16 42:23 43:2 43:6 43:14 43:19 43:23 44:12 44:21 44:24 45:4 45:7 45:16 45:21	58:16 58:23 59:6 59:14 59:19 60:1 60:4 60:9 60:14 60:17 60:24 61:5 61:15 61:18 61:24 62:8 62:11 62:14 62:18 63:3 63:8 63:21 64:2 64:11 64:19 64:24 65:5 65:16 65:24 66:4 66:11 66:17 67:8 67:19 67:22 68:5 68:14 68:25 69:8 69:16 69:19 69:25 70:7 70:12 70:19 72:17 75:3 75:8 75:12 75:18 75:21 75:25 76:5 82:5 82:8 82:14 82:20 82:21 82:23 82:24 87:25 88:4 90:6 99:21 104:21 104:23	139:25	both [7] 22:20 54:10 93:2 119:17 132:16 147:4 151:17
attorney's [1] 140:9	Barr [295]	57:8 57:16 57:19	begin [2] 39:2	bottom [1] 43:10
attorneys [5] 56:4 110:24 117:21 117:24 152:2	3:18 3:19 3:24	57:23 58:4 58:11	beginning [1] 131:9	Boulevard [19] 40:8 43:17 48:23 50:6 50:19 50:24 51:3 51:17 52:2 53:7 53:14 62:4 62:22 63:20 63:23 64:13 64:18 65:9 65:14
attract [2] 37:13 68:3	5:5 5:10 5:13	58:16 58:23 59:6	behalf [2] 26:1	bound [1] 77:4
attractive [1] 33:25	5:16 5:20 6:2	59:14 59:19 60:1	behind [1] 117:2	bowels [1] 30:21
AUDIENCE [1] 81:6	6:12 6:16 6:21	60:4 60:9 60:14	being [15] 13:24	break [6] 72:12 85:12 161:18 162:3 162:8 162:10
authorities [1] 59:4	6:23 7:4 7:9	60:17 60:24 61:5	believability [1] 58:8	bribe [1] 119:1
authorized [1] 163:7	7:13 7:16 7:17	61:15 61:18 61:24	believe [37] 27:1	brief [1] 134:22
auto [1] 121:25	8:7 8:12 8:14	62:8 62:11 62:14	31:6 31:11 40:8	bring [10] 35:7 47:25 69:22 72:16 72:25 90:6 92:14 124:2 142:7 150:9
avail [1] 63:17	9:2 9:7 9:10	62:18 63:3 63:8	40:24 40:25 45:18	bringing [1] 71:9
available [5] 24:25 66:3 68:4 68:7 128:2	9:16 9:19 9:25	63:21 64:2 64:11	47:22 48:4 62:24	Brisson [5] 26:10 26:17 47:20 99:2 142:17
Avenue [3] 147:15 147:21 147:22	10:5 10:12 10:13	64:19 64:24 65:5	67:24 70:15 72:2	broke [1] 158:10
average [15] 11:2 11:22 20:15 22:6 22:8 22:15 41:25 42:2 42:6 42:7 43:2 43:3 47:21 52:12 52:14	10:18 11:3 11:5	65:16 65:24 66:4	73:9 80:4 86:4	brought [8] 30:5 35:9 41:8 57:14 67:25 72:18 72:20 138:16
avoid [1] 145:3	11:13 11:17 11:23	66:11 66:17 67:8	91:25 93:12 95:19	budget [1] 125:5
awake [1] 160:12	12:5 12:11 12:13	67:19 67:22 68:5	95:22 96:6 96:15	build [2] 80:24 121:9
awards [1] 144:12	12:18 12:22 13:2	68:14 68:25 69:8	97:6 98:9 100:17	building [3] 2:8 80:24 135:14
aware [5] 65:20 70:23 131:5 131:11 144:4	13:6 13:10 13:12	69:16 69:19 69:25	110:23 112:15 112:21	built [1] 135:3
away [3] 36:19 83:19 157:25	13:17 14:1 14:6	70:7 70:12 70:19	113:17 121:13 125:1	bull [1] 143:13
awful [2] 110:3 136:16	14:10 14:19 14:24	72:17 75:3 75:8	127:11 128:18 129:20	bully [2] 145:1 145:20
awkward [1] 92:13	15:8 15:12 15:15	75:12 75:18 75:21	131:13 141:23 147:9	burden [2] 140:2 140:5
B [4] 51:1 51:4 69:6 122:13	16:1 16:5 16:8	75:25 76:5 82:5	believed [1] 103:18	bus [1] 62:7
back [15] 13:1 46:25 51:6 61:4 62:17 70:22 79:21 84:24 84:24 84:25 103:3 141:17 145:12 151:20 156:10	16:12 16:16 16:22	82:8 82:14 82:20	benefit [1] 125:23	business [6] 36:13 36:17 120:2 124:18 124:25 150:5
backed [1] 160:16	16:25 17:5 17:13	82:21 82:23 82:24	benefits [2] 148:6	bussing [1] 145:11
background [3] 138:1 138:5 153:17	17:18 18:2 18:7	87:25 88:4 90:6	148:7	bust [6] 20:16 20:19 20:22 22:5 22:12 22:13
backs [2] 78:19 117:2	18:11 18:13 18:16	99:21 104:21 104:23	Bert [5] 139:23 140:18 141:4 141:14 141:18	C [2] 51:4 131:7
badgered [1] 130:24	18:20 18:24 19:2	103:18 103:19	beseech [1] 129:12	C-u-d-a-h-y [1] 136:20
badgering [1] 129:20	19:8 19:11 19:14	150:21	besides [2] 42:25	calculate [1] 67:11
ball [1] 113:12	19:17 19:22 19:24	150:23	136:9	calculating [1] 60:22
ballroom [1] 44:2	20:2 20:7 20:14	baseball [1] 46:24	best [11] 3:6 77:14	calculations [1] 47:25
Banker's [1] 148:14	20:18 20:22 20:24	based [21] 3:6	89:14 93:13 93:19	call [11] 104:1 107:15 107:17 110:22 110:24
bar [1] 7:23	21:2 21:11 21:14	15:21 15:24 16:16	127:19 127:23 127:25	
barn [1] 142:11	21:24 22:3 22:21	22:14 22:15 57:24	128:7 137:13 160:8	
Barnes [30] 119:8	23:6 23:9 23:14	59:2 59:20 60:2	better [7] 7:1 7:24 9:9 82:6 87:17 109:22 159:3	
	23:17 23:24 24:1	61:25 62:3 63:14	between [9] 3:14	
	24:4 24:8 24:17	67:4 67:8 68:8	24:16 31:25 61:21	
	24:24 25:5 25:9	68:23 83:5 86:1	65:2 70:9 71:3	
	25:16 25:19 25:24	89:16 127:1	121:19 130:16	
	26:5 26:18 27:1	basic [1] 141:22	beyond [6] 49:22	
	27:5 27:13 27:18	basically [4] 26:18	71:7 71:8 91:20	
	27:21 27:25 28:10	72:5 84:6 128:25	93:15 104:13	
	28:14 28:18 28:22	basis [5] 22:8 52:14	big [4] 20:6 32:21	
	29:2 29:5 29:13	70:17 101:8 101:9	58:6 151:6	
	29:24 30:3 30:10	Bath [1] 135:8	bigotry [1] 119:6	
	30:13 30:23 31:2	Beach [38] 1:4	Bill [4] 127:10 129:11	
	31:4 31:12 31:19	1:16 9:6 30:9	136:21 137:10	
	31:24 32:6 32:9	48:9 48:20 49:14		
	32:24 33:6 33:18	51:19 51:20 58:20		
	33:21 33:24 34:4	59:3 59:4 66:23		
	34:8 34:14 34:20	67:15 68:18 68:19		
	35:14 35:21 36:7	82:11 118:10 119:13		
	36:12 36:24 37:2	119:24 120:22 122:17		
	37:8 37:20 37:24	123:24 124:12 125:2		
	38:2 38:24 39:3	128:20 128:22 131:2		
	39:6 39:10 39:14	135:12 135:15 135:16		
	39:18 39:22 40:1	135:17 140:8 146:18		
	40:7 40:12 40:15	148:2 148:10 149:24		
	40:24 41:4 41:10	163:2		
	41:13 41:16 41:19	bear [3] 35:8 86:23		
	41:22 42:1 42:7	119:23		
	42:10 42:16 42:23	bearing [1] 136:10		
	43:2 43:6 43:14			
	43:19 43:23 44:12			
	44:21 44:24 45:4			
	45:7 45:16 45:21			

114:22 115:1 145:5 145:14 145:18 155:3 called [2] 68:20 108:9 calling [2] 113:6 114:19 cane [1] 134:11 cannot [3] 17:14 34:9 136:22 cap [3] 35:12 35:19 38:10 capacity [26] 14:24 15:22 17:3 17:7 19:20 37:16 37:21 38:6 40:1 40:4 40:18 40:22 40:25 41:3 41:4 41:5 44:13 44:17 48:17 48:23 48:25 49:3 50:24 68:15 73:19 123:1 caps [3] 36:18 38:11 43:11 car [4] 18:6 18:22 41:18 42:22 cards [2] 142:24 143:16 care [2] 147:14 147:22 carry [1] 34:18 cars [5] 4:18 42:18 42:25 44:14 155:16 case [28] 23:19 35:16 56:11 56:20 87:6 90:4 91:15 91:22 91:25 93:10 93:24 102:15 104:15 105:16 105:16 106:5 106:15 106:20 107:1 108:19 111:25 112:12 112:16 129:19 130:8 139:20 140:7 149:10 cases [1] 32:13 Castro [2] 2:9 54:16 catch [1] 157:21 cause [1] 17:11 causes [1] 126:16 causing [2] 32:22 72:23 Cayman [1] 149:14 certain [2] 60:12 124:7 certainly [6] 20:3 108:21 116:16 149:16 154:18 158:7 certificate [2] 163:4 163:13 certified [2] 145:8 148:8 certify [3] 163:7 163:9 163:11 certifying [1] 163:15 chair [1] 46:9 challenges [1] 141:14 Chamberlains [1] 145:20	chance [4] 14:21 53:19 57:3 102:21 change [7] 31:10 61:22 79:23 140:15 141:12 141:16 151:6 changed [2] 61:21 72:14 changes [2] 141:5 141:11 character [1] 137:4 characteristics [1] 124:11 characterized [2] 97:19 102:5 charge [2] 118:21 118:23 charitable [1] 126:16 charity [1] 128:3 chartered [1] 135:13 check [1] 27:7 Chicago [4] 7:20 8:3 9:5 30:15 chief [6] 91:22 93:10 102:15 104:15 107:2 119:12 choice [1] 95:13 choose [2] 78:3 79:2 chooses [1] 124:24 Chopin [166] 3:4 3:13 3:20 3:25 4:14 4:24 5:1 5:7 5:11 5:14 5:17 5:22 6:4 6:13 6:17 6:22 6:24 7:5 7:10 7:14 7:19 8:8 8:13 8:15 9:3 9:9 9:17 9:21 10:4 10:17 10:21 11:4 11:8 11:14 11:18 11:24 12:8 12:12 12:14 13:1 13:7 13:11 13:13 13:18 14:4 14:8 14:12 15:5 15:9 15:13 15:18 16:3 16:6 16:9 16:15 16:20 16:24 17:2 17:6 17:15 17:20 18:3 18:8 18:12 18:14 18:19 19:1 19:4 19:10 19:13 19:16 19:19 19:23 19:25 20:4 20:10 20:16 20:19 20:23 20:25 21:3 21:13 21:20 21:23 22:18 22:19 22:21 23:1 23:2 23:7 23:11 23:15 23:25 24:2 24:5 24:9 24:18 49:11 56:10 56:12 56:14 57:1 75:4 75:5 75:10 75:14 75:19 75:22 76:1 76:8 76:10 76:19 77:3 77:6 77:15 77:20 78:21 79:17 80:2 81:1 81:8	81:9 81:15 81:20 88:12 89:23 91:1 91:4 91:8 92:19 93:1 96:7 96:19 101:2 103:9 107:7 107:11 107:15 109:2 109:19 109:20 112:3 114:7 115:24 116:19 116:23 150:21 150:25 152:12 152:13 152:17 152:18 153:1 155:23 156:22 156:23 157:2 157:5 158:6 158:16 158:19 158:22 160:3 160:7 160:11 161:13 Chopin's [2] 89:7 161:12 chose [1] 77:11 chosen [1] 130:4 Christians [1] 150:8 Churchills [1] 145:19 circumvent [1] 143:19 citizens [1] 137:6 citizens' [8] 102:10 107:4 108:16 108:18 108:22 109:4 109:9 113:2 city [1] 53:1 Civic [18] 119:9 119:13 119:15 120:14 120:24 122:20 123:11 124:12 124:21 127:11 128:22 129:5 129:16 130:2 130:5 131:2 134:5 138:18 civil [1] 107:24 claim [2] 140:1 140:11 claiming [2] 94:8 139:18 claims [1] 146:21 clarification [2] 83:2 151:1 clarify [8] 40:17 56:7 56:21 57:6 80:3 113:21 113:22 116:23 classic [1] 100:20 clause [1] 146:19 clear [8] 90:22 108:2 116:25 130:9 141:22 145:7 148:21 148:22 cleared [1] 157:6 clearly [1] 104:13 client [3] 103:11 157:20 158:1 close [6] 39:21 48:2 135:22 142:11 151:2 151:4 closed [7] 102:15 103:3 106:15 107:2 107:11 151:24 156:15 closer [1] 20:14 closing [3] 73:24 110:14 151:5 club [89] 5:1 5:4 5:7 8:3 8:24	9:5 9:15 10:7 29:20 31:16 31:20 32:11 32:12 32:13 32:17 32:22 33:9 33:15 33:25 36:5 37:7 38:6 38:17 38:19 39:12 39:17 39:20 39:24 40:18 40:22 45:3 63:7 64:6 68:19 68:20 68:20 68:21 68:24 69:15 69:17 72:17 72:23 73:3 73:8 73:11 73:14 73:18 73:18 73:19 75:6 83:7 83:24 84:1 84:4 84:10 101:12 103:20 120:8 121:5 121:9 121:11 121:19 122:11 125:21 126:8 134:24 135:3 135:8 135:12 135:13 135:15 135:16 135:17 135:18 139:4 143:24 146:18 146:18 146:20 146:24 146:25 147:3 147:6 147:12 147:21 148:11 148:23 148:24 149:12 club's [3] 8:10 120:11 121:14 clubs [10] 31:21 66:7 70:6 70:11 73:11 119:25 134:20 134:20 134:21 134:23 co-chairman [2] 119:16 132:1 co-chairmans [1] 133:22 co-chairmen [1] 131:9 code [26] 66:8 66:9 66:15 66:20 66:22 67:3 67:6 68:23 68:25 69:4 70:5 77:24 78:6 79:22 80:8 82:10 84:1 120:6 128:5 128:10 128:14 135:23 137:2 137:8 140:15 140:16 coincide [1] 135:10 Colette [9] 68:20 72:17 73:3 73:8 73:14 73:18 73:18 75:7 103:20 colloquially [1] 131:13 combination [2] 93:2 143:17 combined [2] 10:7 10:13 come [24] 4:17 18:14 39:12 44:14 64:20 72:5 81:12 81:14 81:16 84:25 88:19 94:6 109:3 109:8 112:15 112:25 115:16 122:23 132:17 135:20 141:17 149:21 151:20 159:13 comes [9] 51:17	51:23 98:11 103:12 107:3 108:22 111:24 112:22 141:9 comfortable [1] 130:25 coming [12] 19:5 63:18 63:25 64:9 65:8 65:14 80:12 84:23 100:11 100:14 144:25 156:10 comings [1] 63:6 commenced [1] 163:10 comment [22] 16:2 81:25 92:16 97:8 97:11 98:22 99:4 101:16 103:4 105:12 105:17 111:2 112:2 115:23 117:19 122:24 150:18 150:19 151:2 151:5 151:22 158:5 commented [1] 98:18 comments [26] 56:2 74:18 82:1 87:8 89:7 89:16 96:13 97:4 98:3 98:14 98:15 101:11 101:16 102:11 103:13 103:24 105:20 107:4 108:16 108:18 108:22 109:4 109:9 113:3 113:25 117:7 commercial [22] 4:19 6:6 6:10 75:20 75:23 76:2 82:13 122:15 135:6 136:12 138:21 139:1 139:6 139:9 139:14 140:21 141:2 142:20 143:2 143:4 143:10 144:1 commercialism [1] 140:24 commission [3] 6:19 6:20 137:1 committee [2] 119:16 145:16 common [12] 32:4 32:7 32:20 34:5 35:7 37:9 67:23 68:1 68:2 138:4 138:20 142:8 community [6] 122:21 122:23 127:20 127:24 128:1 128:7 company [1] 149:13 compare [1] 123:22 comparison [1] 134:24 compelling [1] 120:24 compensation [1] 140:6 competent [2] 74:6 74:9 complete [4] 98:7 102:21 118:14 124:5 completed [3] 98:4 98:5 163:10 completely [2] 21:19 86:8 completion [1] 65:12
---	---	---	--	---

complex [1] 141:19	Consequently [1] 107:12	corporation [3] 147:17 148:1 149:14	20:11 20:12 22:15 51:2	cross-examining [1] 60:6
compliance [5] 67:6 67:13 67:17 79:7 144:7	consider [3] 69:12 106:11 155:22	corporations [1] 147:11	counted [1] 28:8	Cudahy [5] 136:19 136:20 136:21 137:10 137:13
complied [1] 30:12	consideration [2] 60:7 149:1	correct [65] 3:8 6:12 8:7 11:2 11:12 11:16 13:16 15:25 20:1 23:10 23:13 25:9 26:4 28:13 31:18 36:23 40:19 42:9 50:2 51:5 52:11 53:2 53:6 53:13 54:23 57:18 58:3 58:22 59:5 59:13 60:1 60:3 60:4 60:8 60:13 60:23 61:4 61:14 62:7 63:7 63:20 64:1 64:18 64:24 65:23 66:10 66:16 69:7 69:24 70:6 71:2 84:10 84:13 95:12 97:6 105:12 105:13 111:14 126:9 128:11 128:15 128:20 131:1 133:23 163:8	counting [1] 142:19	cured [1] 62:6
complimentary [1] 142:24	considered [1] 137:9		counts [8] 9:12 12:24 28:14 28:15 28:18 29:6 43:12 63:11	curious [1] 155:13
comply [1] 83:25	considering [1] 120:18		County [23] 1:16 48:21 49:12 49:13 50:11 51:2 58:7 58:20 58:23 59:3 59:4 59:16 59:17 59:21 61:6 61:11 62:23 121:7 121:7 135:12 146:18 148:10 163:2	current [4] 79:3 123:6 142:18 143:21
comprehensive [3] 53:1 55:2 141:19	consistent [8] 12:14 23:4 47:19 53:10 80:8 126:3 126:7 126:20		county's [4] 53:1 58:7 60:3 61:22	customary [1] 104:14
compute [1] 69:24	constantly [1] 134:19		couple [3] 3:20 31:19 47:7	cut [2] 155:10 155:10
computed [1] 61:2	constraint [2] 37:21 38:17		course [18] 17:2 17:25 18:10 18:22 23:15 35:23 36:3 49:3 60:16 60:18 61:13 84:21 92:4 98:10 121:9 121:10 135:14 149:4	D-o-u-t-h-i-t [1] 134:17
concede [2] 4:14 113:3	constraints [2] 37:18 89:9	corrected [1] 76:15		daily [5] 48:9 48:9 49:16 52:13 123:24
conceding [1] 154:11	constrict [1] 141:6	correctly [2] 48:7 54:22		Dan [1] 49:6
concern [6] 123:3 123:11 130:23 130:23 137:2 138:20	construction [16] 28:2 28:7 28:23 28:25 29:4 29:7 29:15 29:19 29:23 33:1 63:25 64:7 64:15 64:15 65:12 135:11			dance [1] 34:6
concerned [1] 60:11	construed [1] 141:6			dancing [2] 34:9 44:8
concert [5] 17:24 18:21 20:21 21:1 44:8	consultant [1] 142:17			darn [1] 135:22
concessions [1] 119:2	consulting [1] 148:4	correlated [1] 38:19		data [1] 60:3
concluded [1] 121:7	contained [1] 59:2	correlation [6] 3:14 3:18 31:15 31:24 67:2 71:3		date [12] 25:14 120:15 131:15 131:16 132:4 132:5 132:22 132:23 135:10 135:20 141:12 142:16
concluding [2] 86:6 86:7	content [1] 134:18	costs [1] 140:9		dated [3] 53:21 54:3 57:17
concurrency [29] 19:21 20:17 20:20 21:9 21:12 21:25 22:5 22:5 22:12 22:13 22:14 23:5 47:1 48:14 48:19 49:1 49:2 50:8 52:19 52:20 52:22 52:23 53:10 54:25 55:5 55:14 57:10 59:24 86:19	context [4] 4:8 91:17 127:22 127:23	couldn't [4] 40:7 53:9 55:8 55:15		day [14] 20:2 20:5 20:7 20:11 22:11 25:2 49:15 56:22 85:3 115:12 130:14 135:6 149:11 163:16
condition [1] 20:15	continue [13] 72:9 72:15 97:1 106:10 106:10 106:13 153:5 153:12 153:20 160:15 161:19 161:19 162:1	Council [73] 1:5 2:3 24:17 25:1 25:2 29:11 30:17 30:19 57:2 57:13 58:21 59:9 60:6 66:13 66:25 70:21 70:23 72:14 74:16 78:9 84:16 88:12 90:18 92:5 92:11 94:14 95:21 96:3 97:13 101:13 106:8 107:12 111:22 115:20 115:21 116:12 118:9 118:16 118:18 118:20 120:7 120:15 121:2 121:13 124:5 125:3 129:13 131:24 136:14 136:25 137:7 138:6 139:7 140:11 143:13 144:4 144:9 144:19 145:2 149:24 151:25 152:17 153:4 153:19 154:5 156:25 157:6 157:13 157:15 158:20 159:8 160:8 160:24		day's [1] 22:14
conditions [5] 6:9 22:6 22:7 155:21 161:11	continuing [1] 141:10			day-to-day [1] 83:6
conducted [2] 33:2 117:13	continuous [1] 17:9			days [5] 29:5 136:5 144:25 151:13 151:21
conducting [3] 72:2 95:14 117:12	continuously [1] 9:24			deal [16] 4:12 5:5 14:20 63:24 81:2 87:9 87:22 88:8 89:19 103:25 104:18 104:20 104:21 125:11 125:18 145:1
confer [2] 88:18 130:14	contract [1] 118:16			dealing [4] 10:6 82:15 88:17 149:10
conferring [1] 130:13	contrast [2] 117:1 117:14			dealt [2] 57:20 73:11
confine [3] 98:19 102:10 107:2	contribute [1] 17:10			Dear [1] 136:24
confirm [1] 91:12	control [4] 34:23 35:3 145:5 163:14			debate [3] 91:10 91:23 93:4
conflict [1] 89:1	controls [1] 68:15			debating [1] 77:6
confrontation [1] 141:24	controversial [2] 142:7 146:9			debtor [1] 148:13
confused [1] 102:25	convene [1] 157:23			decent [1] 118:20
confusion [2] 101:25 130:16	conversation [2] 63:24 69:23			decide [4] 57:3 72:12 136:14 160:10
congestion [3] 19:15 43:16 69:14	conversion [1] 122:10			deciding [2] 4:17 115:22
connected [1] 163:12	cooperation [1] 34:23			decision [6] 68:11 88:10 94:19 121:2 142:1 152:4
consequence [2] 9:15 12:20	copies [5] 54:10 54:16 54:17 54:19 137:22			decisions [3] 7:6 120:17 124:13
consequences [5] 34:13 138:11 138:24 139:11 142:10	copy [8] 10:22 54:5 57:15 74:16 137:16 145:8 147:9 148:8			Declaration [5] 42:13 80:10 123:18 147:24 148:25
	Coral [2] 135:17			declare [2] 83:20 84:7
	cordon [1] 64:6			
	corny [1] 145:19			
		Council's [2] 115:15 124:13		
		Councilman [3] 2:5 2:6 2:7		
		counsel [7] 46:5 67:25 78:13 129:13 129:20 163:11 163:12		
		count [8] 12:19 12:23 20:5 20:8		
			court [20] 11:11 11:15 13:8 46:16 46:18 46:21 71:24 72:4 84:22 93:11 101:18 104:3 114:24 115:4 115:9 117:12 118:3 162:7 163:6 163:19	
			courtrooms [1] 114:16	
			courts [8] 10:15 13:8 14:15 38:12 64:16 84:21 101:20 141:21	
			cover [1] 103:19	
			create [1] 139:9	
			created [4] 60:20 101:9 143:15 148:19	
			creating [1] 140:15	
			Crisic [2] 81:17	
			criteria [2] 52:15 61:20	
			cross [3] 100:8 110:19 156:7	
			cross-examination [20] 46:5 46:6 56:17 71:8 82:9 86:1 87:7 88:2 104:22 110:12 114:7 114:11 125:16 130:6 130:9 154:23 159:2 159:16 161:16 161:22	
			cross-examinations [3] 72:22 73:10 156:4	
			cross-examine [2] 57:7 154:1	
			cross-examined [2] 100:9 116:3	

declared [1] 126:2	different [8] 76:3	62:25 85:25 87:15	116:9 138:5	entrances [1] 62:21
decommissioned [1] 60:19	77:8 91:9 99:13	93:22 104:9 104:10	element [5] 52:24	environment [1] 122:19
decreases [1] 16:18	113:12 134:3 141:17	105:4 111:2 160:8	52:25 52:25 55:1	equal [1] 139:20
deep [2] 123:2 140:23	143:7	dollar [1] 149:5	55:2	equally [1] 46:25
deeply [2] 122:16	differently [1] 72:3	Donald [6] 119:3	eliminate [1] 79:20	equivalent [1] 119:24
150:6	differs [1] 27:8	147:20 147:25 148:18	elimination [1] 13:19	espouse [1] 3:17
defect [1] 62:13	difficult [2] 141:5	149:9 149:24	Ellis [1] 100:12	essential [1] 122:9
defense [1] 144:5	144:11	done [10] 7:2	else [14] 11:9 23:19	essentially [1] 147:1
defer [1] 121:2	dining [4] 44:2	21:4 24:3 24:5	39:9 39:16 40:11	establish [2] 122:6
deficiency [3] 48:24	45:8 62:10 73:19	55:6 55:7 55:13	42:24 75:3 82:19	139:13
50:11 50:20	dinner [2] 8:18	78:13 145:17 145:17	90:9 94:17 104:17	established [1] 105:15
deficient [1] 48:17	44:8	Doney [1] 2:8	107:7 109:3 110:20	establishment [2] 6:7 6:10
degree [1] 123:5	direct [5] 15:10	door [4] 5:2 5:8	elsewhere [2] 42:9	estimate [8] 10:13
deliberating [1] 119:22	15:15 46:7 71:7	141:14 142:11	143:3	11:1 11:17 11:23
deliberation [1] 153:14	163:14	double [1] 12:19	employ [3] 96:4	12:22 15:10 16:13
deliberations [1] 157:10	directed [2] 63:5	doubled [3] 12:24	101:21 124:24	60:25
demand [1] 37:7	113:3	33:16 34:2	employee [2] 101:11	estimated [1] 47:20
demands [1] 37:10	direction [1] 163:14	doubt [1] 20:1	163:12	estimates [7] 9:13
demonstrated [1] 123:19	directions [1] 85:7	Douthitt [5] 134:9	enact [1] 141:5	10:6 15:24 16:22
DeMoss [1] 152:9	director [7] 2:8	134:10 134:14 134:16	enacted [2] 66:24	17:1 61:7 61:9
denial [1] 140:2	87:11 88:6 89:13	134:16	140:17	evaluation [3] 4:11
denied [2] 139:13	127:10 129:16 130:19	down [5] 82:22	end [13] 3:4 87:2	61:22 61:24
139:20	disagree [8] 27:3	103:20 151:3 155:18	90:13 97:22 102:6	even [14] 17:12
deny [1] 149:24	27:12 31:1 31:2	downward [1] 60:21	102:8 102:23 102:24	36:19 38:5 38:13
department [3] 34:24	34:9 49:18 49:19	drafted [1] 137:1	103:24 104:7 106:20	42:24 62:3 64:22
49:13 58:19	disagreement [1] 78:24	driven [1] 122:12	111:25 112:16	68:12 74:8 80:15
dependency [1] 142:23	disclosure [1] 125:10	driveway [2] 3:11	endeavor [1] 138:21	87:6 98:10 142:18
depending [1] 36:4	discriminatory [1] 124:1	3:16	endeavors [1] 143:2	146:12
depends [1] 71:22	discuss [1] 122:23	driveways [3] 28:16	ends [1] 114:18	evening [3] 118:7
designate [1] 64:7	discussed [1] 155:15	28:19 28:23	enforce [3] 79:6	119:14 146:3
designation [1] 140:21	discussing [1] 154:5	due [3] 29:4 136:22	143:14 145:14	event [7] 20:12
designed [1] 120:12	discussion [4] 25:21	154:11	enforcement [1] 79:6	22:11 34:25 35:3
desire [1] 99:15	30:16 73:23 92:7	Dunlop [1] 10:5	engineer [7] 4:1	38:7 43:9 69:2
desperate [1] 153:16	discussions [1] 156:3	during [11] 6:17	6:14 6:15 9:4	events [9] 22:10
destination [4] 100:10	disgusting [1] 145:4	22:8 29:20 63:5	31:22 49:12 70:16	38:11 40:23 41:15
100:13 101:10 122:8	disparity [2] 70:8	65:3 70:23 92:4	engineering [2] 4:9	43:24 63:10 80:17
destructive [1] 138:8	70:17	100:8 103:13 107:3	49:13	122:1 122:22
detail [1] 86:18	disproportionately [2] 15:24 16:2	114:12	England [1] 157:21	ever [4] 7:10 40:9
detailed [1] 23:21	disputes [1] 124:19	dying [1] 89:2	English [1] 127:14	40:12 145:10
details [3] 121:14	disrespective [1] 29:10	each [5] 34:25 35:3	enhance [1] 120:4	Everglades [1] 135:3
138:16 147:19	distinct [1] 146:25	67:10 122:22 132:17	enhanced [1] 123:11	every [5] 52:25
determination [6] 55:12 101:23 120:8	distributed [1] 148:8	earlier [7] 30:5	enjoyment [2] 5:18	66:20 79:23 122:24
123:20 138:24 157:12	district [4] 136:13	30:6 48:19 73:8	5:25	122:25
determine [3] 21:7	139:16 143:10 144:2	76:14 101:17 118:2	enlarged [2] 12:6	everybody [4] 11:9
23:3 143:23	districts [3] 139:2	easier [1] 17:22	13:13	92:6 104:17 107:7
determines [1] 84:8	140:13 140:25	economic [1] 142:22	enough [12] 12:16	everybody's [1] 103:24
determining [1] 115:20	divide [1] 3:10	editor [1] 131:12	34:1 39:21 79:10	everyone [6] 62:25
detriment [1] 153:18	DNA [1] 22:24	Editorial [1] 138:19	81:16 85:6 85:6	82:2 153:24 156:2
developed [1] 138:12	doctrine [1] 54:25	Educated [1] 154:25	86:15 114:22 153:13	158:11 162:2
developing [1] 51:24	document [3] 113:22	educational [2] 138:1	160:12 160:12	everything [9] 72:5
development [2] 6:19 49:5	148:9 148:15	138:4	entered [2] 54:12	72:13 92:1 96:17
dictate [1] 106:22	documents [1] 23:16	Edwards [1] 150:12	146:17	96:20 99:5 106:4
dictated [1] 78:16	doesn't [11] 5:22	effect [8] 10:23	entering [1] 54:19	107:6 150:9
die [1] 152:19	32:14 32:19 38:25	60:21 66:14 67:5	enterprise [1] 139:15	evidence [7] 3:7
died [1] 155:5	42:8 43:10 64:8	76:19 111:2 139:8	entire [2] 96:3	25:23 71:24 74:7
difference [2] 33:8	82:25 88:4 111:9	140:14	141:13	74:8 101:15 118:22
149:15	149:16	effective [2] 139:25	entities [1] 146:22	exact [2] 10:2 75:8
	doing [13] 27:15	141:12	entitled [1] 125:15	exactly [2] 10:9
	27:17 27:20 46:14	effects [1] 35:4	entitles [1] 140:5	45:13
		efforts [2] 122:18	entity [4] 125:21	examination [2] 100:8 110:19
		141:10	146:25 148:5 148:22	examine [1] 156:7
		eggs [1] 145:3	entrance [5] 63:9	examined [1] 23:16
		either [6] 51:8	63:20 63:23 64:13	
		69:6 95:14 104:11	64:21	

example [7] 15:20	facet [1] 86:18	feeling [2] 86:9	96:8 96:10 96:14	46:4 74:14 76:8
32:16 33:7 39:17	facilities [14] 8:11	134:4	103:4	80:11 80:22 134:7
66:9 113:9 123:13	12:10 13:21 14:1	fees [1] 140:10	Florida [8] 1:16	149:2 156:8 163:9
exceed [4] 19:20	14:23 14:25 32:18	feet [2] 61:2 151:6	143:3 147:13 147:17	163:11
20:23 21:4 161:23	33:10 37:11 37:12	fell [1] 93:9	148:1 163:1 163:6	future [7] 123:12
exceeded [4] 40:23	38:12 44:3 45:11	fellow [1] 81:16	163:20	138:11 138:14 141:25
40:25 42:14 145:10	61:25	felt [2] 123:25 124:2	focus [1] 4:16	142:10 144:6 144:10
exceeding [1] 44:13	facility [7] 10:20	few [6] 24:20 40:2	folks [2] 5:12 110:8	game [2] 46:24 113:13
exceeds [1] 142:19	12:6 12:6 39:20	40:3 46:12 115:12	follow [1] 71:23	gather [2] 22:1
excellent [1] 78:14	42:17 126:12 128:1	150:14	followed [3] 71:25	86:3
except [3] 30:20	facing [1] 154:12	Fifth [3] 147:15 147:20	105:14 115:8	gave [4] 28:12 88:24
48:12 48:13	fact [34] 4:16 6:7	147:22	following [3] 77:17	99:11 132:21
exception [9] 69:7	13:22 16:21 25:22	figure [6] 28:12	102:1 148:15	general [2] 140:20
69:13 83:9 83:25	33:10 35:22 48:23	29:4 30:1 48:3	follows [1] 147:19	159:14
120:6 139:3 141:12	58:5 61:22 64:4	84:5 128:15	foolishness [1] 144:21	generate [5] 11:1
141:13 143:20	64:14 65:1 65:7	figures [7] 28:25	footage [1] 61:13	11:16 11:21 17:25
exceptions [1] 145:23	68:9 80:18 88:15	53:5 58:19 58:24	foothold [1] 141:3	69:13
excerpt [1] 163:8	90:3 93:2 94:10	58:25 59:3 86:24	force [1] 142:9	generated [4] 9:14
excess [1] 126:20	95:19 96:8 98:9	file [1] 53:24	foregoing [1] 163:13	10:11 13:24 31:21
excessive [1] 143:16	104:10 104:12 110:8	filed [3] 34:12 54:1	forget [1] 71:1	generation [8] 10:6
exclude [2] 129:1	110:16 110:21 120:20	148:9	forgoing [1] 163:7	16:14 32:1 33:2
139:1	125:6 128:6 133:25	fill [1] 44:15	forming [1] 148:12	33:11 47:21 52:8
excuse [12] 9:13	157:25 158:10	filled [3] 41:6	form [2] 141:20 148:12	76:7
38:4 53:20 59:9	factor [3] 7:6	41:12 42:19	former [1] 137:13	gentleman [1] 81:12
71:5 95:20 100:21	44:18 45:2	final [2] 154:2 156:9	formulas [1] 16:13	gentleman's [2] 144:22
100:24 101:2 101:4	factors [9] 4:17	finally [2] 78:15	forth [3] 28:7 145:12	150:7
148:9 155:15	7:15 43:14 43:21	124:15	forums [1] 122:21	gentlemen [1] 161:17
excused [1] 57:8	43:22 43:23 45:5	financially [1] 163:12	forward [3] 96:5	geographical [1] 31:7
executed [2] 35:2	68:15 93:2	financing [2] 148:12	110:6 115:16	George [1] 149:22
149:8	facts [10] 4:12	148:17	found [3] 50:12	Germany [1] 150:15
executive [6] 119:16	5:6 57:25 59:6	find [9] 43:5 50:11	50:15 118:18	gets [1] 13:18
127:10 129:15 129:16	127:13 129:18 138:2	50:20 99:12 129:7	Foundation [3] 120:23	getting [4] 29:11
130:19 157:9	138:16 142:15 144:5	140:22 156:8 159:11	125:8 138:18	59:11 107:8 159:12
exercise [1] 136:10	factual [1] 73:1	159:12	founded [3] 134:25	gist [1] 72:21
existence [1] 49:4	factually [2] 113:18	finding [2] 52:21	135:8 135:15	give [16] 23:18 36:19
existing [3] 12:9	fail [2] 17:12 148:6	157:13	four [11] 44:24 66:21	36:21 38:23 71:19
124:8 135:23	failure [1] 139:19	findings [1] 33:8	67:10 76:24 79:23	82:21 90:1 94:4
exists [1] 68:19	fair [18] 4:10 53:11	finds [1] 160:8	84:5 94:8 99:22	99:15 105:3 123:13
expand [1] 120:3	55:3 61:19 63:2	fine [7] 82:23 93:18	117:4 133:3 133:6	152:2 152:25 153:1
expansion [1] 121:5	64:10 65:4 99:15	93:20 94:3 97:2	four-to-one [1] 78:18	159:25 160:5
expect [1] 69:9	106:2 107:24 111:23	104:24 158:19	frankly [7] 7:22	given [12] 8:22
expected [1] 157:16	115:8 125:19 129:2	finish [11] 87:6	90:10 91:19 92:10	17:13 26:21 26:22
experience [2] 43:15	131:23 132:3 133:13	95:8 95:15 95:15	114:15 156:11 160:11	53:8 81:3 137:16
68:9	139:20	96:2 106:21 108:13	frequency [1] 121:21	137:22 147:19 153:24
expert [8] 31:23	fairness [2] 106:22	112:13 130:4 152:7	frequently [1] 9:6	156:2 158:11
41:21 51:14 68:22	fall [1] 84:20	finished [12] 54:21	fresh [1] 160:12	giving [2] 59:1
88:21 111:15 111:17	falsely [1] 28:12	56:11 56:20 57:5	frog [1] 80:25	81:22
154:17	familiar [4] 30:9	87:1 90:5 92:3	frustration [1] 151:12	glad [1] 136:6
experts [2] 104:17	48:11 76:14 129:17	92:6 109:16 112:17	full [10] 26:25 43:5	goal [1] 84:7
142:2	family [7] 4:20	Fire [1] 45:10	67:12 84:22 99:15	God [3] 85:15 85:16
explained [1] 33:11	5:24 6:6 75:10	firm [1] 120:17	121:14 125:7 125:10	136:5
explanation [1] 148:21	75:12 75:15 76:4	first [8] 17:21 24:21	136:5 151:13	God's [1] 105:4
explore [1] 35:6	fans [1] 18:5	25:2 54:8 56:2	full-time [1] 137:21	goings [1] 63:6
expose [1] 144:10	far [5] 52:4 60:22	95:11 111:5 125:9	fully [3] 86:7 95:3	golf [9] 17:25 18:10
express [1] 96:7	63:1 112:11 149:7	five [4] 13:8 46:20	102:21	18:22 60:16 60:18
expressed [1] 123:2	fascinating [1] 22:25	115:14 148:16	fund [2] 126:14 126:15	61:13 121:9 121:14
extend [3] 49:21	fashion [4] 13:15	five-minute [1] 162:3	fund-raising [1] 126:19	135:14
52:2 53:14	78:14 94:21 106:13	fix [1] 55:9	fundamental [1] 120:18	gone [3] 98:16 136:8
extended [2] 86:10	faster [1] 154:19	fixed [4] 62:6 62:16	fundamentally [1] 104:5	142:11
151:21	favor [3] 104:9	83:3 84:5	funds [1] 126:19	good [10] 27:24
extent [1] 53:15	104:10 105:4	floating [1] 83:5	further [11] 46:1	63:1 84:18 96:19
extraneous [1] 32:15	fear [1] 142:6	floats [1] 83:12		96:23 101:19 117:15
F [2] 51:21 53:8	fed [1] 45:9	floor [6] 88:14 88:24		118:7 118:7 146:3
face [1] 38:16	feel [4] 26:24 27:24			gotten [1] 86:23
	116:10 156:14			govern [1] 66:6

governed [1] 76:23	half [12] 36:21 46:10	himself [3] 117:12	impacts [3] 50:21	29:14 29:17
Government [1] 140:7	49:22 50:4 51:15	117:13 130:17	53:14 76:6	influence [1] 6:8
grade [1] 86:19	51:16 53:6 88:1	hired [1] 24:22	implications [1] 34:18	information [10] 24:25 25:12 26:9
grant [2] 79:19 139:7	99:10 104:20 120:10	history [1] 135:21	implied [1] 138:9	26:13 26:21 27:5
granted [5] 34:12	Hall [1] 147:17	hold [4] 120:17 122:16	implore [1] 149:24	30:17 71:3 94:18
34:17 35:11 79:18	hand [3] 142:1 145:21	122:16 122:22	importance [2] 48:8	147:10
139:3	163:16	holding [1] 146:22	48:12	initiated [1] 95:23
granting [1] 120:5	handle [1] 94:13	holes [1] 61:14	important [11] 4:4	innuendo [1] 117:3
grass [1] 40:10	happen [7] 19:18	home [3] 5:24	7:15 49:16 59:11	inordinate [1] 140:2
gravel [1] 3:10	33:3 33:16 87:18	18:15 47:8	119:23 125:12 132:10	inside [1] 143:8
Graves [48] 46:18	112:9 112:13 156:6	honest [1] 87:23	137:3 139:4 142:14	insight [1] 8:23
47:5 47:5 47:14	happened [5] 20:5	honestly [2] 123:8	144:4	instance [2] 138:17
47:22 47:24 48:4	20:7 20:10 95:12	Honor [2] 56:1	impossible [1] 30:19	142:16
48:18 48:25 49:6	112:10	118:8	in-Town [1] 8:23	instances [2] 31:20
49:10 49:20 50:1	happening [2] 63:16	Honorable [1] 138:6	inaccurate [1] 113:18	40:22
50:13 50:16 50:22	112:10	hope [5] 22:23 114:3	inadequate [1] 113:19	instead [5] 9:3
51:6 51:9 51:12	happy [3] 3:22	117:20 137:14 154:15	Inaudible [1] 81:6	12:1 14:17 29:17
52:3 52:9 52:16	158:24 160:23	hopes [1] 110:10	Inc [3] 147:3 147:18	113:5
52:23 53:5 53:17	hard [4] 3:6 8:21	horns [1] 143:14	147:21	instituted [1] 60:20
53:21 53:23 54:6	81:23 150:9	horse [3] 142:11	inclination [1] 4:15	integrity [1] 126:2
54:7 54:16 54:17	Harold [2] 119:17	143:7 143:8	include [6] 25:4	intend [4] 107:15
54:20 55:6 55:15	131:6	hospital [1] 135:4	29:6 29:15 52:2	107:17 110:22 138:14
55:20 55:23 55:25	Harris [5] 139:23	hotel [3] 122:12 138:22	125:4 128:25	intended [2] 95:3
56:4 74:1 74:2	140:19 141:4 141:14	139:13	included [4] 25:10	104:13
127:4 152:8 152:9	haul [1] 39:24	hour [7] 22:7 52:13	28:11 28:19 50:18	intends [1] 121:8
154:11 154:15 154:24	haunt [1] 141:17	104:20 151:11 152:11	including [2] 14:2	intent [6] 92:11
great [8] 63:24 87:22	he-said [1] 113:20	154:12 154:19	28:23	92:18 133:20 141:22
88:8 96:6 125:2	head [1] 15:14	hours [5] 46:10	inclusive [1] 163:8	143:19 143:22
125:18 134:14 156:2	health [2] 121:20	88:1 99:10 117:4	inconsistency [1] 54:25	intention [2] 92:2
greater [2] 50:4	137:5	136:7	inconsistent [1] 47:15	110:23
51:16	hear [17] 14:4 57:6	house [4] 4:24	47:15	interest [9] 93:13
gross [1] 99:14	86:11 86:13 87:2	5:8 64:10 121:9	increase [13] 13:23	93:20 123:2 127:19
ground [2] 43:13	88:25 89:2 92:22	houses [1] 6:1	14:2 14:23 14:25	127:24 128:1 128:7
103:20	97:14 101:24 106:9	housing [1] 135:5	15:21 15:23 17:9	147:2 151:11
grounds [3] 39:1	106:17 111:13 112:17	however [6] 33:6	37:6 37:7 38:10	interested [1] 163:12
44:5 44:11	112:20 157:5 160:12	50:1 97:2 124:24	38:12 72:22 72:23	interesting [1] 46:25
group [1] 111:16	heard [19] 30:10	130:8 138:23	increased [3] 12:23	interests [2] 24:23
grown [1] 88:21	31:14 49:8 56:10	hub-bub [1] 157:18	15:20 31:9	125:22
growth [1] 121:4	65:5 70:14 73:4	huge [1] 18:1	increases [3] 14:22	interfere [1] 40:5
guess [10] 7:22	78:8 85:13 86:20	human [1] 4:10	16:18 73:11	interject [1] 71:6
8:16 25:1 69:8	87:25 89:7 94:1	hundreds [2] 6:18	increasing [2] 16:2	international [1] 122:8
81:4 94:9 101:22	97:4 97:7 105:1	6:23	38:22	interrupt [3] 90:19
154:10 154:25 155:1	108:25 145:6 145:12	hurt [1] 104:24	indeed [4] 35:16	90:23 95:16
guessed [1] 112:9	hearing [9] 25:2	husband [1] 136:21	53:13 109:4 112:14	interrupted [1] 106:3
guest [16] 10:25 12:1 12:3	26:9 26:23 71:22	hypothetical [1] 50:2	independent [1] 27:7	into [26] 4:17 21:5
12:8 12:17 13:3	91:18 99:15 101:17	hypothetically [1] 12:16	independently [1] 48:3	35:9 51:17 54:1
14:14 30:15 121:23	134:19 142:14	idea [6] 96:19 132:12	indicate [2] 51:3	54:19 58:6 60:7
122:3 142:18 142:22	hearings [2] 6:20	148:25 152:2 152:25	68:25	64:9 67:2 70:3
142:24 143:16 143:18	130:8	157:11	indicated [4] 111:22	72:13 74:7 74:8
guests [5] 18:5	heaven [1] 136:8	ignored [1] 83:12	112:3 130:18 156:20	74:15 93:16 96:17
29:20 63:17 64:12	heck [1] 38:20	illness [1] 136:22	indicating [1] 146:19	96:21 98:16 108:18
142:23	hedge [1] 23:19	illogical [1] 30:25	indication [2] 41:5	122:11 136:3 138:15
guidelines [1] 110:1	held [2] 70:24 74:17	Ilyinsky [6] 2:5	149:6	144:6 146:17 157:9
guiding [1] 120:7	help [5] 15:19 94:19	85:21 88:3 151:19	indications [1] 5:6	introduced [2] 25:7
Gutman [10] 127:8	94:20 136:6 136:8	155:4 160:1	individual [1] 10:8	130:17
127:9 127:10 129:10	hereby [1] 163:6	imagination [1] 141:2	individuals [2] 131:6	intrusions [1] 137:8
129:11 129:11 129:22	hereinabove [2] 163:9	Immediately [1] 148:15	138:19	investigate [1] 26:12
130:12 130:15 130:21	163:10	immensely [1] 125:11	indulgence [1] 88:10	invitation [1] 142:25
Gutman's [1] 130:22	hereunto [1] 163:15	impact [4] 10:7	inferred [1] 112:3	invitations [1] 143:16
guts [1] 117:4	hide [1] 107:17	40:5 43:17 48:16	infers [1] 78:20	invite [1] 110:19
guy [3] 7:20 8:2	high [3] 16:4 19:6		inflated [3] 29:4	involve [1] 112:2
8:4	28:12			involved [4] 19:5
guys [2] 5:14 59:12	higher [2] 29:14			19:7 129:18 131:2
hadn't [1] 112:18	29:16			

irrational [1]	38:16	knew [2]	40:21	lawyer [8]	4:1	likes [1]	160:24	143:6	143:6
island [1]	134:23	90:7		4:2	35:10	Likewise [1]	61:1	looks [2]	81:22
Islands [1]	149:14	knowing [1]	52:17	129:17	129:23	Lilja [3]	137:15	102:2	
isn't [16]	11:2	knowledge [3]	52:17	132:19			137:20	loophole [1]	143:15
24:19	36:23	68:8	77:14	lawyers [5]	7:24	limit [9]	42:12	lose [2]	83:18
58:9	58:21	known [1]	149:9	106:17	116:21		71:2	lost [2]	89:4
60:12	63:7	knows [3]	11:9	150:22			103:12	lot [13]	3:22
64:4	64:10	112:8	132:21	LC [3]	147:12		105:22	19:25	35:24
66:9	66:16	Kolins [89]	24:12	148:24		limitations [3]	5:3	41:12	42:18
issue [10]	48:14	24:13	24:15	lead [1]	70:15		34:22	44:15	44:17
77:7	87:10	25:6	25:14	leading [1]	74:3	limited [15]	32:18	110:3	136:16
91:12	91:24	25:20	25:25	leapt [1]	151:5		33:10	lots [1]	41:6
104:4	105:3	26:24	27:2	learn [2]	66:20		93:12	Louis [2]	119:17
issued [5]	52:20	27:14	27:19	lease [1]	121:7		93:14	131:6	
53:9	54:24	28:1	28:11	least [4]	5:17		103:2	lower [4]	29:1
133:25		28:21	28:24	148:20	149:9	limiting [3]	43:21	30:1	33:12
issues [4]	49:1	29:8	29:16	leave [2]	141:1		43:23	luck [1]	9:9
120:21	122:23	30:4	30:11	left [1]	24:19	limits [3]	11:25	lunch [3]	72:12
160:19		30:25	31:3	legal [7]	66:17		45:2	85:12	91:3
ITE [1]	33:1	31:13	31:22	95:25	115:25	limousines [1]	19:6	Lyle [1]	81:17
item [2]	47:17	32:7	32:10	142:2	146:21	line [2]	43:10	Lynn [1]	136:19
items [2]	71:9	33:13	33:19	legislation [1]	141:20	lips [1]	81:10	M-a-r-j-o-r-i-e [1]	118:6
155:19		34:5	34:11	legitimate [1]	125:22	list [3]	11:5		
its [14]	8:10	35:5	35:23	length [1]	156:3	155:21	155:19	ma'am [1]	28:17
33:11	33:16	36:15	36:25	lengths [1]	50:5	listened [2]	103:18	Madame [20]	21:16
38:16	44:5	37:15	37:22	Leslie [1]	2:6	136:5		24:13	46:3
120:4	126:19	38:4	38:25	Lesly [1]	2:4	listening [6]	18:9	72:19	74:2
135:9	137:6	39:7	39:11	less [10]	8:4	56:22	81:22	74:13	74:13
itself [2]	115:21	39:19	39:23	9:6	29:19	136:15	154:13	84:14	86:3
IV [1]	1:7	40:9	40:14	32:13	61:8	litigation [10]	124:16	90:15	95:11
J [5]	147:20	41:2	41:7	79:24	140:16	124:17	124:20	98:9	118:8
148:18	163:6	41:14	41:17	let [31]	3:25	125:6	138:11	136:24	144:19
Jack [1]	2:6	42:12	42:20	10:4	11:24	144:9	144:11	152:8	150:25
jail [1]	117:11	43:4	43:9	17:20	21:11	litigious [1]	145:1	made [22]	10:13
jams [1]	65:3	43:20	44:4	51:6	51:12	little [8]	6:16	12:20	15:25
Jeff [1]	54:3	44:22	45:1	78:21	80:2	17:22	22:22	54:23	58:6
Jewish [1]	118:13	45:12	45:17	92:2	94:3	32:22	65:17	74:18	76:13
Jews [1]	150:9	45:25		92:2	94:3	5:15	5:24	96:8	96:11
job [1]	77:23	Kolins' [1]	89:1	96:2	104:2	live [4]	4:24	101:11	101:16
John [1]	2:7	lack [2]	68:10	116:4	116:6	5:15	5:24	102:11	102:14
judgement [1]	11:21	lady's [1]	90:8	119:13	125:9	lived [2]	8:4	122:19	144:4
judgment [1]	37:5	land [7]	7:6	130:4	134:10	150:5		magic [1]	135:20
judicial [4]	71:21	121:8	138:25	158:12	158:15	LLC [8]	146:18	main [5]	64:10
Julie [1]	71:17	140:13	144:1	letter [26]	47:11	146:24	147:6	68:15	136:9
June [1]	74:23	landmarked [1]	126:5	53:18	53:24	148:11	148:23	maintain [1]	67:16
K-o-l-i-n-s [1]	24:15	language [2]	116:22	54:5	57:13	location [6]	64:5	major [2]	34:25
Kahn [3]	150:3	127:14		57:20	60:11	68:4	68:10	63:10	
150:3	150:17	large [6]	31:20	62:2	62:3	135:1	135:9	majority [1]	125:2
keep [3]	34:3	33:8	33:9	131:11	131:17	lodged [1]	118:24	make [33]	3:21
140:23	102:22	163:6	142:23	132:1	132:5	logical [1]	32:14	35:1	41:21
keeping [1]	65:9	Larson [1]	71:17	132:21	133:5	logically [1]	69:9	51:22	55:12
Keith [11]	25:4	last [6]	23:17	133:14	133:21	long [14]	6:13	56:16	56:24
25:10	25:15	146:9	122:25	136:21		46:11	85:13	82:1	88:10
27:6	50:14	late [5]	87:19	letting [2]	88:24	121:4	124:5	95:5	108:10
50:23	50:25	142:10	143:15	101:14		152:3	152:5	110:10	111:9
51:17		later [5]	123:23	level [8]	50:7	154:7	157:11	116:13	117:8
Ken [1]	152:9	134:1	136:2	51:3	51:5	long-range [1]	123:4	119:19	119:19
Kendig [3]	71:5	latitude [1]	156:2	53:8	63:1	longer [3]	85:11	149:15	149:16
71:16	71:17	law [15]	8:20	lever [1]	119:1	104:1	129:14	154:2	154:20
kept [1]	34:1	69:5	72:4	liability [1]	149:13	look [14]	4:7	157:24	158:12
Kevin [1]	47:5	93:11	115:4	liable [1]	149:5	7:11	10:9	makeup [1]	31:7
kind [6]	8:16	130:8	139:24	licensed [1]	148:24	21:11	58:13	making [8]	6:9
141:2	142:25	141:15	141:25	life [1]	138:9	64:5	106:7	7:6	54:16
145:3	143:7	143:22	143:21	lifestyle [1]	123:7	134:22	136:3	54:18	77:1
kinds [1]	55:16	laws [2]	138:25	lifted [1]	79:4	looked [2]	27:6	138:3	111:2
		lawsuit [4]	90:2	light [1]	65:6	82:15		manage [1]	36:16
		91:16	138:10	likely [1]	16:12	looking [6]	22:10	management [1]	36:13
		139:17				50:10	110:6		

manager [2] 2:8 147:20	161:22	79:23 79:24 80:16 83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	misunderstood [1] 98:1	58:12 58:17 58:25 59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
managing [1] 147:18	maybe [11] 16:3 17:22 32:16 32:17 40:2 40:3 73:15 87:16 99:20 109:20 132:21	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	mitigation [1] 124:14	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
mandated [2] 55:1	17:22 32:16 32:17 40:2 40:3 73:15 87:16 99:20 109:20 132:21	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	moaning [1] 94:10	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
mandatory [1] 52:24	40:2 40:3 73:15 87:16 99:20 109:20 132:21	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	mobile [1] 82:21	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
manner [4] 13:21 69:23 72:3 145:18	132:21	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	modification [3] 123:17 124:10 148:16	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
many [29] 3:5 4:18 4:18 4:18 5:3 5:13 12:8 19:12 36:22 41:14 42:16 43:4 43:13 44:4 44:9 44:14 44:19 44:22 45:2 67:6 80:17 80:17 99:13 99:16 113:25 117:15 129:18 139:4 141:21	Mayor [14] 2:5 7:23 85:21 88:3 136:24 136:25 137:14 138:6 144:19 151:19 155:2 155:4 159:24 160:1	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	Monday [2] 99:25 122:25	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
Mar-a-Lago [62] 8:9 10:7 10:11 13:25 17:10 21:7 23:3 23:6 23:9 24:22 24:22 30:21 34:12 34:15 34:25 36:5 37:19 44:5 50:21 52:8 62:22 63:6 63:15 63:18 64:6 64:21 65:21 66:6 67:5 67:15 70:4 70:10 101:12 119:25 120:8 121:5 121:12 121:15 121:17 121:19 122:7 123:4 123:10 124:6 124:11 125:21 126:8 135:11 139:4 139:19 146:17 146:20 146:23 146:24 146:25 147:3 147:6 147:12 147:21 148:11 148:23 149:12	McDonald [16] 2:6 89:4 96:17 130:12 130:15 155:7 155:8 158:23 158:25 160:2 160:3 160:10 160:14 160:20 161:7 162:5	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	money [1] 128:3	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
March [3] 25:16 123:14 135:21	McLendon [33] 2:7 54:12 73:5 76:11 76:13 77:1 77:4 77:13 77:16 77:21 78:8 79:14 79:25 80:25 85:15 86:14 100:3 100:5 113:1 113:8 113:12 113:15 114:3 116:18 126:5 146:7 154:9 154:10 156:19 158:15 159:21 159:22 161:6	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	month [1] 122:22	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
marina [1] 121:16	mean [19] 9:21 27:22 38:15 39:7 44:25 55:7 55:9 55:25 56:24 78:22 86:22 90:14 93:18 94:5 94:9 99:17 123:13 152:13 155:13	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	morning [14] 25:22 54:8 84:25 88:20 88:23 91:10 91:13 92:7 94:7 103:15 108:3 151:7 153:8 157:20	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
Marjorie [2] 118:5 118:9	meaning [1] 133:21	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	mortgage [1] 149:5	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63:4 63:14 63:22 64:4 64:14 64:20 64:25 65:6 65:20 65:25 66:5 66:12 66:19 67:12 67:20 67:23 68:8 68:17 69:2 69:11 69:17 69:21 70:1 70:8 70:13 70:21 72:10 72:19 73:6 73:9 73:22 74:13 74:22 75:1 82:10 84:9 84:17 85:10 85:18 85:23 87:4 88:9 89:6 89:8 90:15 94:23 95:1 95:8 95:10 95:21 95:22 96:2 96:22 96:24 97:24 98:2 98:24 99:1 100:4 100:8 100:24 101:7 102:13 102:18 102:20 105:6 105:11 105:14 105:25 107:10 107:22 108:5 108:12 108:14 111:13 112:1 112:20 113:7 113:9 113:14 113:16 114:4 115:6 115:17 115:24 125:17 125:25 126:6 126:11 126:18 126:25 127:16 127:21 128:8 128:13 128:17 128:23 129:7 130:11 131:1 131:5 131:11 131:16 131:23 132:7 132:12 132:15 132:19 133:9 133:13 133:18 134:6 141:1 156:8 156:12 156:16 161:21
market [1] 124:21	meaningful [1] 67:1	83:10 83:16 83:18 84:12 116:2 116:8 117:22 118:9 118:20 119:25 120:10 136:25 138:6 144:20 146:1 149:20 151:24 158:3	mortgagee [1] 149:3	59:8 59:15 59:20 60:2 60:5 60:10 60:15 60:18 61:1 61:10 61:16 61:19 62:1 62:9 62:12 62:15 62:19 63

neighborhoods [2] 76:2 76:4	10:14 10:15 10:18 12:1 12:3 12:7 16:17 16:17 18:1 33:20 35:18 36:4 37:18 38:7 38:20 42:15 43:24 45:7 45:9 48:12 50:3 60:22 66:2 67:21 71:4 77:19 78:14 80:9 83:23 114:16 142:23 145:10 146:10	10:14 10:15 10:18 12:1 12:3 12:7 16:17 16:17 18:1 33:20 35:18 36:4 37:18 38:7 38:20 42:15 43:24 45:7 45:9 48:12 50:3 60:22 66:2 67:21 71:4 77:19 78:14 80:9 83:23 114:16 142:23 145:10 146:10	ongoing [2] 91:18 145:17 only [30] 3:20 4:5 6:25 7:11 10:22 10:24 26:16 43:12 45:1 46:12 47:17 65:11 72:19 75:5 76:23 77:7 77:11 77:12 78:6 80:15 82:14 85:23 94:7 98:2 99:23 102:8 123:10 132:24 138:3 158:16 onto [1] 53:14 open [5] 83:7 83:8 103:1 126:13 141:13 operate [1] 69:4 operating [2] 119:12 130:18 operation [1] 65:8 operations [1] 120:3 opinion [18] 4:22 6:5 6:11 7:14 7:18 30:24 31:3 52:7 59:1 71:20 76:5 79:8 128:21 128:23 129:4 129:5 130:2 159:25 opinions [2] 26:22 58:1 opportunity [20] 23:20 26:25 92:22 92:25 97:22 98:23 104:18 105:7 106:16 106:23 107:6 107:9 108:23 109:10 110:6 111:24 112:23 133:10 156:6 158:11 opposed [1] 97:20 opposition [2] 99:6 105:8 order [18] 25:12 26:12 26:14 55:13 80:13 83:25 92:13 92:14 101:20 101:22 102:1 102:3 112:11 113:18 115:5 128:24 153:15 orderly [1] 94:21 ordinance [9] 66:20 67:9 67:14 79:8 122:15 140:12 143:12 144:7 145:15 ordinances [3] 66:9 66:15 76:23 organization [6] 111:16 131:10 131:19 131:22 131:25 147:15 organized [1] 120:1 original [1] 103:7 originally [4] 57:21 57:22 78:12 144:20 others [2] 85:25 92:21 otherwise [3] 29:21 30:2 99:18 ought [3] 35:8 109:12 112:22	ours [1] 107:20 ourselves [1] 140:23 out-of-Town [1] 8:24 outfit [1] 27:21 outlined [2] 56:19 105:15 outside [2] 100:15 127:5 over [13] 5:3 10:21 13:10 25:22 28:8 43:1 49:21 50:3 74:4 99:12 103:8 108:17 153:24 overriding [1] 140:12 overseas [1] 145:16 own [14] 9:22 27:7 47:25 56:15 56:24 58:13 60:3 83:1 100:23 101:3 101:6 115:3 116:22 118:19 owned [1] 119:25 owner [2] 147:3 147:4 p.m [2] 1:17 1:17 pack [1] 44:7 packed [1] 123:1 page [3] 10:5 10:12 58:13 pages [2] 148:16 163:7 pains [1] 96:6 Palm [35] 1:16 9:6 30:8 48:9 48:20 49:13 51:19 51:19 58:20 59:3 59:4 66:23 67:15 68:18 68:18 82:11 118:10 119:13 119:24 120:22 122:16 123:24 124:12 125:2 128:20 128:22 131:2 135:12 140:7 146:18 148:1 148:10 149:23 163:2 Pamela [2] 163:6 163:19 Paragraph [1] 58:14 pardon [1] 71:16 park [7] 39:13 39:16 39:19 39:23 40:7 40:10 40:11 parked [3] 18:17 41:7 42:9 parking [58] 14:2 14:5 14:17 37:21 37:23 38:7 38:14 38:16 38:20 39:2 39:8 39:16 41:6 41:12 42:4 42:18 43:5 43:13 44:15 44:17 45:3 65:23 66:15 66:21 67:4 67:10 67:16 67:21 68:2 68:4 68:6 68:10 68:24 69:24 70:2 76:17 76:24 76:24 78:7 79:3	79:5 79:10 79:20 79:22 80:9 82:16 83:3 83:4 83:11 83:12 83:23 84:3 84:8 84:12 86:19 87:2 122:1 155:15 parlor [1] 139:14 part [17] 1:8 10:20 27:12 27:12 37:14 59:6 65:21 67:9 82:15 100:6 109:23 116:19 124:20 128:13 150:19 151:23 153:8 participation [1] 121:15 particular [9] 20:2 22:11 61:12 61:13 68:9 85:5 97:16 101:20 129:18 particularly [4] 3:23 93:8 118:24 145:6 parties [1] 163:11 partners [1] 113:4 party [3] 148:14 149:4 163:12 pass [1] 119:14 passed [1] 137:22 past [1] 56:19 Paul [2] 2:5 2:9 pay [1] 36:11 peaceful [2] 5:18 5:25 peak [5] 22:7 22:7 22:8 22:15 52:13 people [71] 3:22 4:18 5:3 5:23 7:5 8:24 15:2 15:4 15:7 17:24 18:6 18:9 18:21 18:22 20:21 28:7 34:1 34:2 36:2 36:10 37:13 37:18 39:12 40:10 41:8 41:15 41:17 42:5 42:9 42:14 42:16 42:21 42:21 43:24 44:1 44:4 44:7 44:10 44:14 44:19 44:22 45:2 45:7 45:9 45:18 58:2 59:8 59:10 59:16 63:16 64:9 65:10 67:6 68:3 68:11 69:12 80:18 87:9 87:14 90:20 92:14 99:3 100:11 100:14 110:5 117:15 130:7 145:10 145:12 152:21 156:19 per [12] 3:5 16:18 18:6 18:16 18:22 33:11 41:17 42:22 60:22 73:20 76:24 79:21 percent [4] 30:7 30:22 128:15 145:15 percentage [1] 31:9 perfectly [3] 90:16 160:7 160:23
new [27] 25:22 71:9 72:16 84:1 84:4 84:9 93:25 94:25 97:19 98:21 102:5 102:12 103:19 103:23 105:24 106:6 106:12 106:24 109:13 112:14 112:15 112:22 139:23 140:16 147:15 149:3 149:13 News [1] 123:24 newsletter [1] 134:3 newspaper [1] 132:2 next [6] 5:1 5:7 83:17 85:3 149:11 149:13 nice [3] 81:15 116:14 161:17 night [3] 73:20 151:12 152:23 nine [1] 61:14 nine-hole [1] 60:16 nobody [2] 71:2 90:6 Nodding [1] 15:12 noise [1] 29:22 non-member [1] 121:21 non-negotiable [1] 125:10 non-permitted [1] 143:25 non-stop [1] 135:19 non-Town [1] 129:1 nor [3] 11:7 163:11 163:12 norm [1] 140:18 normal [2] 84:21 95:14 normally [3] 16:16 52:22 101:18 north-end [1] 135:14 Notary [2] 163:6 163:20 noted [1] 151:10 notes [1] 163:8 nothing [7] 33:13 33:22 45:23 78:1 80:11 115:1 142:6 notice [1] 125:17 noticed [1] 14:6 notwithstanding [3] 4:15 32:18 79:9 number [40] 3:10 3:14 3:14 3:15 7:2 9:14 10:10	10:14 10:15 10:18 12:1 12:3 12:7 16:17 16:17 18:1 33:20 35:18 36:4 37:18 38:7 38:20 42:15 43:24 45:7 45:9 48:12 50:3 60:22 66:2 67:21 71:4 77:19 78:14 80:9 83:23 114:16 142:23 145:10 146:10 numbered [1] 163:7 numbers [6] 3:7 8:21 15:21 27:8 27:9 61:4 oath [1] 16:21 obey [1] 8:19 object [5] 71:9 74:9 88:22 127:5 127:7 objected [1] 133:14 objection [7] 56:14 71:6 74:3 96:20 97:14 127:6 156:16 objective [2] 120:3 120:16 objectives [3] 123:12 124:18 124:25 obligation [1] 148:19 observed [1] 124:7 obtain [1] 3:7 obtained [2] 25:12 147:10 obviously [1] 151:23 occupancy [1] 41:23 occurred [2] 3:6 144:21 occurs [2] 49:5 51:24 Ocean [9] 40:8 43:17 48:23 50:23 51:2 62:22 63:19 64:13 65:9 October [4] 139:25 140:17 141:8 141:16 odd [1] 85:7 off-duty [1] 136:7 off-site [2] 39:20 41:8 offensive [1] 134:12 offhand [1] 9:25 officer [2] 119:12 130:18 official [2] 118:25 148:10 often [3] 68:10 124:16 130:6 Old [1] 135:17 oldest [1] 134:25 omitted [4] 14:6 14:9 14:11 14:19 once [3] 98:18 125:7 142:11 one-to-four [2] 70:10 82:16 one-to-two [1] 70:9	10:14 10:15 10:18 12:1 12:3 12:7 16:17 16:17 18:1 33:20 35:18 36:4 37:18 38:7 38:20 42:15 43:24 45:7 45:9 48:12 50:3 60:22 66:2 67:21 71:4 77:19 78:14 80:9 83:23 114:16 142:23 145:10 146:10 numbered [1] 163:7 numbers [6] 3:7 8:21 15:21 27:8 27:9 61:4 oath [1] 16:21 obey [1] 8:19 object [5] 71:9 74:9 88:22 127:5 127:7 objected [1] 133:14 objection [7] 56:14 71:6 74:3 96:20 97:14 127:6 156:16 objective [2] 120:3 120:16 objectives [3] 123:12 124:18 124:25 obligation [1] 148:19 observed [1] 124:7 obtain [1] 3:7 obtained [2] 25:12 147:10 obviously [1] 151:23 occupancy [1] 41:23 occurred [2] 3:6 144:21 occurs [2] 49:5 51:24 Ocean [9] 40:8 43:17 48:23 50:23 51:2 62:22 63:19 64:13 65:9 October [4] 139:25 140:17 141:8 141:16 odd [1] 85:7 off-duty [1] 136:7 off-site [2] 39:20 41:8 offensive [1] 134:12 offhand [1] 9:25 officer [2] 119:12 130:18 official [2] 118:25 148:10 often [3] 68:10 124:16 130:6 Old [1] 135:17 oldest [1] 134:25 omitted [4] 14:6 14:9 14:11 14:19 once [3] 98:18 125:7 142:11 one-to-four [2] 70:10 82:16 one-to-two [1] 70:9	ongoing [2] 91:18 145:17 only [30] 3:20 4:5 6:25 7:11 10:22 10:24 26:16 43:12 45:1 46:12 47:17 65:11 72:19 75:5 76:23 77:7 77:11 77:12 78:6 80:15 82:14 85:23 94:7 98:2 99:23 102:8 123:10 132:24 138:3 158:16 onto [1] 53:14 open [5] 83:7 83:8 103:1 126:13 141:13 operate [1] 69:4 operating [2] 119:12 130:18 operation [1] 65:8 operations [1] 120:3 opinion [18] 4:22 6:5 6:11 7:14 7:18 30:24 31:3 52:7 59:1 71:20 76:5 79:8 128:21 128:23 129:4 129:5 130:2 159:25 opinions [2] 26:22 58:1 opportunity [20] 23:20 26:25 92:22 92:25 97:22 98:23 104:18 105:7 106:16 106:23 107:6 107:9 108:23 109:10 110:6 111:24 112:23 133:10 156:6 158:11 opposed [1] 97:20 opposition [2] 99:6 105:8 order [18] 25:12 26:12 26:14 55:13 80:13 83:25 92:13 92:14 101:20 101:22 102:1 102:3 112:11 113:18 115:5 128:24 153:15 orderly [1] 94:21 ordinance [9] 66:20 67:9 67:14 79:8 122:15 140:12 143:12 144:7 145:15 ordinances [3] 66:9 66:15 76:23 organization [6] 111:16 131:10 131:19 131:22 131:25 147:15 organized [1] 120:1 original [1] 103:7 originally [4] 57:21 57:22 78:12 144:20 others [2] 85:25 92:21 otherwise [3] 29:21 30:2 99:18 ought [3] 35:8 109:12 112:22	ours [1] 107:20 ourselves [1] 140:23 out-of-Town [1] 8:24 outfit [1] 27:21 outlined [2] 56:19 105:15 outside [2] 100:15 127:5 over [13] 5:3 10:21 13:10 25:22 28:8 43:1 49:21 50:3 74:4 99:12 103:8 108:17 153:24 overriding [1] 140:12 overseas [1] 145:16 own [14] 9:22 27:7 47:25 56:15 56:24 58:13 60:3 83:1 100:23 101:3 101:6 115:3 116:22 118:19 owned [1] 119:25 owner [2] 147:3 147:4 p.m [2] 1:17 1:17 pack [1] 44:7 packed [1] 123:1 page [3] 10:5 10:12 58:13 pages [2] 148:16 163:7 pains [1] 96:6 Palm [35] 1:16 9:6 30:8 48:9 48:20 49:13 51:19 51:19 58:20 59:3 59:4 66:23 67:15 68:18 68:18 82:11 118:10 119:13 119:24 120:22 122:16 123:24 124:12 125:2 128:20 128:22 131:2 135:12 140:7 146:18 148:1 148:10 149:23 163:2 Pamela [2] 163:6 163:19 Paragraph [1] 58:14 pardon [1] 71:16 park [7] 39:13 39:16 39:19 39:23 40:7 40:10 40:11 parked [3] 18:17 41:7 42:9 parking [58] 14:2 14:5 14:17 37:21 37:23 38:7 38:14 38:16 38:20 39:2 39:8 39:16 41:6 41:12 42:4 42:18 43:5 43:13 44:15 44:17 45:3 65:23 66:15 66:21 67:4 67:10 67:16 67:21 68:2 68:4 68:6 68:10 68:24 69:24 70:2 76:17 76:24 76:24 78:7 79:3	79:5 79:10 79:20 79:22 80:9 82:16 83:3 83:4 83:11 83:12 83:23 84:3 84:8 84:12 86:19 87:2 122:1 155:15 parlor [1] 139:14 part [17] 1:8 10:20 27:12 27:12 37:14 59:6 65:21 67:9 82:15 100:6 109:23 116:19 124:20 128:13 150:19 151:23 153:8 participation [1] 121:15 particular [9] 20:2 22:11 61:12 61:13 68:9 85:5 97:16 101:20 129:18 particularly [4] 3:23 93:8 118:24 145:6 parties [1] 163:11 partners [1] 113:4 party [3] 148:14 149:4 163:12 pass [1] 119:14 passed [1] 137:22 past [1] 56:19 Paul [2] 2:5 2:9 pay [1] 36:11 peaceful [2] 5:18 5:25 peak [5] 22:7 22:7 22:8 22:15 52:13 people [71] 3:22 4:18 5:3 5:23 7:5 8:24 15:2 15:4 15:7 17:24 18:6 18:9 18:21 18:22 20:21 28:7 34:1 34:2 36:2 36:10 37:13 37:18 39:12 40:10 41:8 41:15 41:17 42:5 42:9 42:14 42:16 42:21 42:21 43:24 44:1 44:4 44:7 44:10 44:14 44:19 44:22 45:2 45:7 45:9 45:18 58:2 59:8 59:10 59:16 63:16 64:9 65:10 67:6 68:3 68:11 69:12 80:18 87:9 87:14 90:20 92:14 99:3 100:11 100:14 110:5 117:15 130:7 145:10 145:12 152:21 156:19 per [12] 3:5 16:18 18:6 18:16 18:22 33:11 41:17 42:22 60:22 73:20 76:24 79:21 percent [4] 30:7 30:22 128:15 145:15 percentage [1] 31:9 perfectly [3] 90:16 160:7 160:23

performance - public

Condenselt™

TOWN OF PALM BEACH 10-10-96

performance [1] 48:10	86:20 86:20 89:6 95:21 108:4 118:12 137:19 149:21 150:23 153:4 157:15 161:14 161:14 161:19 161:20 162:1	plenty [1] 136:2	point [16] 18:20 35:10 37:5 58:6 73:22 85:6 91:9 96:9 96:11 106:4 106:14 109:11 110:11 136:9 142:13 155:17	presentation [12] 90:13 92:4 93:10 107:11 109:5 112:11 119:19 125:19 142:13 152:10 157:17 157:24	proceed [1] 101:20 proceeding [6] 54:2 72:1 72:3 101:22 154:6 154:7 proceedings [5] 3:2 163:7 163:8 163:9 163:10 process [3] 24:6 55:19 92:14 profession [2] 4:3 7:7 professional [4] 6:14 37:5 114:23 114:23 professionally [1] 23:21 profit [2] 120:2 122:12 profitability [1] 120:4 project [2] 52:19 78:12 promise [1] 23:16 promised [1] 99:21 pronounce [1] 137:24 proper [1] 111:20 property [11] 5:19 43:25 45:13 45:15 62:5 68:16 121:17 135:18 139:24 140:3 141:7 proportion [3] 15:10 15:15 31:10 proportionately [1] 15:20 proposal [2] 66:14 87:7 proposals [1] 60:12 proposed [3] 10:7 61:20 121:16 proposing [2] 35:17 35:18 protect [1] 137:5 protected [1] 122:14 Protection [1] 139:24 prove [3] 17:21 18:20 113:18 proven [1] 124:8 provide [1] 84:2 provided [4] 30:17 34:22 37:12 135:5 provides [1] 140:8 provision [1] 123:17 provisions [2] 124:7 125:5 proximity [1] 6:5 public [53] 81:25 87:8 88:13 96:12 97:4 97:8 98:3 98:14 98:15 98:18 98:22 99:3 103:3 103:13 103:24 105:12 105:17 105:20 112:2 114:1 115:23 116:2 116:4 116:6 116:7 116:9 116:15 116:17
perhaps [13] 22:22 29:7 34:4 39:10 39:10 85:8 91:11 92:16 140:24 142:8 142:24 143:3 143:25	period [3] 6:17 127:6 159:11 periods [1] 29:21 permanent [1] 149:23 permission [4] 56:7 115:15 139:13 146:14 permit [5] 51:23 55:15 117:16 129:13 139:5 permits [2] 52:20 54:24 permitted [2] 83:8 143:11 person [4] 33:25 87:12 100:16 107:22 personal [1] 129:4 personally [2] 120:1 149:4 persons [1] 146:22 perspective [2] 67:24 109:21 persuade [1] 111:4 persuading [1] 110:11 pertain [1] 139:5 pertains [1] 138:25 Peter [1] 144:17 phonetic [1] 81:17 phony [2] 90:1 104:4 physical [1] 37:20 physically [2] 37:17 37:17 piece [5] 45:12 103:5 103:6 126:3 141:19 piecemeal [2] 94:15 125:12 pieces [1] 3:10 place [7] 74:4 76:24 78:19 111:5 124:21 143:5 163:9 placed [2] 57:14 121:21 places [4] 67:21 79:20 80:9 83:23 plan [7] 23:22 24:6 35:3 53:2 55:3 81:3 121:4 planned [3] 35:2 113:2 143:5 planning [3] 2:8 6:19 154:17 plans [4] 67:21 123:4 123:6 124:5 play [2] 4:17 51:17 plays [1] 32:8 please [23] 23:1 40:19 46:20 48:10 54:15 56:13 81:25	pointed [1] 98:10 points [2] 26:8 146:11 Police [4] 19:11 34:24 39:24 136:7 policies [1] 65:7 policy [1] 63:14 polite [1] 107:24 poll [3] 151:24 153:4 159:7 Pollack [1] 47:15 Pollack's [1] 47:11 population [2] 129:1 129:1 Portraying [1] 119:3 position [9] 77:22 95:1 105:19 118:15 130:20 133:17 134:1 156:17 161:8 possibility [1] 34:10 possible [15] 3:7 12:9 16:4 16:10 17:8 21:6 21:8 29:18 29:24 30:1 30:3 39:5 39:11 142:22 144:12 possibly [2] 85:20 122:7 postpone [1] 157:22 potential [3] 138:8 138:23 142:9 potentially [4] 50:6 50:9 52:4 144:11 powerful [1] 139:23 practical [1] 78:23 practically [1] 65:18 precedent [3] 139:10 139:19 153:23 precious [1] 141:9 preclude [1] 36:9 predicated [1] 101:11 prefer [3] 160:4 160:4 160:6 Prentice [1] 147:17 preparation [1] 53:18 prepare [1] 104:21 prepared [4] 9:4 23:21 142:12 150:4 preposterous [1] 119:1 present [25] 2:3 34:21 35:25 50:10	presented [17] 25:1 25:7 25:13 25:18 26:1 26:4 26:10 26:11 70:14 74:24 91:17 91:21 98:3 102:3 105:8 109:1 142:4 presenting [8] 94:24 104:14 104:15 109:24 110:2 130:2 138:2 147:7 presently [3] 67:5 140:21 146:13 Preservation [2] 120:23 138:17 Preservation's [1] 125:8 preserve [5] 122:19 128:18 128:24 137:3 141:10 preserved [1] 120:15 preserving [1] 126:1 president [147] 2:4 2:6 3:12 3:23 21:16 21:23 22:17 22:20 24:11 24:14 45:24 46:4 46:8 46:14 46:18 46:23 47:2 54:4 54:14 54:18 55:22 56:12 57:1 71:13 71:18 72:10 72:11 72:19 73:2 73:7 73:13 74:1 74:2 74:13 74:21 75:2 76:10 81:7 81:11 81:19 81:24 82:17 82:24 84:14 84:15 85:2 85:4 85:8 85:16 86:3 86:9 86:17 87:4 87:21 88:5 88:11 89:6 90:15 90:25 91:5 92:8 95:11 95:18 95:20 95:24 96:15 96:16 96:23 97:9 98:10 100:2 107:21 108:1 109:15 109:18 111:11 115:18 115:20 116:5 116:21 117:18 118:8 118:11 119:7 119:12 125:14 126:22 127:4 127:8 129:3 129:10 129:22 129:25 130:13 132:16 133:5 134:8 134:13 136:18 136:24 137:12 137:18 144:14	144:19 145:25 149:18 150:2 150:17 150:22 150:25 151:4 151:15 151:22 152:6 152:8 152:12 152:16 152:20 152:24 153:3 153:21 154:9 154:21 154:25 155:2 155:6 155:25 156:24 157:4 158:2 158:12 158:21 159:7 159:13 159:20 159:23 160:2 160:9 160:18 160:22 161:1 161:6 161:10 161:14 161:24 162:4 162:9 president/chief [1] 130:17 presumably [4] 92:15 118:16 122:12 149:12 presume [3] 39:6 61:5 66:18 presumed [1] 120:2 presuming [1] 79:14 pretty [2] 62:25 135:22 previous [3] 26:8 26:22 78:13 previously [3] 26:2 26:4 71:10 price [1] 36:21 primarily [3] 4:8 29:7 63:12 primary [1] 37:20 principal [1] 147:14 principle [2] 120:7 120:18 prior [5] 72:12 119:17 131:7 141:8 149:1 privacy [1] 5:25 private [5] 122:10 138:19 139:23 139:24 143:24 privileges [1] 122:4 prizes [1] 36:21 Pro [2] 2:6 96:17 probably [5] 15:16 37:8 44:12 146:8 153:17 problem [27] 4:8 14:13 48:20 50:6 59:24 65:13 65:16 69:14 80:14 86:5 86:7 87:15 101:14 103:9 103:15 103:22 111:7 113:1 136:4 138:14 144:3 146:13 147:24 154:10 156:20 158:25 159:4 problems [3] 62:4 72:24 93:4 procedure [16] 56:15 56:18 56:25 89:21 96:4 97:7 103:7 105:15 110:1 115:22 116:24 117:11 150:20 151:23 156:14 159:18 procedures [4] 71:24 101:18 102:25 115:9	

116:19

117:19

117:22

118:25

120:23

123:9

126:13

133:21

146:1

149:20

150:18

150:19

151:2

151:5

151:11

151:13

151:14

151:17

151:22

158:3

158:4

158:9

158:13

163:6

163:20

publicized [1]

153:9

published [2]

132:24

133:6

pull [2]

40:10

51:23

pure [6]

93:14

98:20

102:10

105:23

109:12

112:24

purpose [5]

26:16

88:24

127:2

128:17

133:20

purposes [4]

79:13

103:2

126:14

147:7

pursue [1]

124:25

put [39]

5:1

28:3

29:22

67:2

72:13

74:8

87:5

87:9

87:13

89:15

90:21

90:23

91:22

92:1

92:2

93:7

96:17

96:20

97:22

99:4

99:10

102:12

102:13

103:23

104:19

105:24

106:4

106:6

106:11

106:24

107:7

109:21

113:11

114:13

140:2

144:6

153:17

154:17

161:11

putting [16]

74:7

89:12

92:3

93:21

93:25

97:13

97:15

97:18

98:20

100:22

100:25

101:5

101:7

106:19

106:25

111:8

qualified [1]

51:14

quality [1]

11:19

quasi [4]

71:21

71:25

101:24

130:7

question [44]

7:25

9:8

15:5

15:16

15:17

15:18

18:25

19:9

21:18

21:21

21:24

22:1

22:4

23:18

26:7

29:9

36:14

51:13

66:18

68:1

69:9

75:5

75:15

76:12

81:20

81:21

82:4

82:20

87:24

94:22

97:11

98:25

100:3

102:8

105:19

109:24

110:4

112:4

115:2

115:8

121:18

122:9

142:3

158:7

questioned [1]

117:5

questioning [6]

18:4

67:25

72:17

74:10

101:8

101:9

questions [20]

3:21

8:5

14:20

21:14

24:10

24:16

24:18

24:20

26:15

26:19

47:7

55:25

56:3

74:14

76:9

98:19

126:24

130:25

134:7

142:21

quite [7]

22:3

92:10

114:15

122:17

123:8

123:8

144:3

quoted [1]

123:23

quoting [3]

74:18

100:12

100:16

R-double [9]

75:17

139:2

139:9

139:15

140:13

140:22

140:24

143:10

144:1

R-o-c-k [1]

144:17

R-o-s-e [1]

118:6

R-o-v-i-n [1]

149:22

RAA [1]

136:12

racquet [1]

10:16

raise [2]

74:3

128:2

raised [1]

26:8

raising [3]

126:14

126:15

126:19

Rampell [21]

56:2

56:6

57:4

57:5

57:11

80:3

82:6

85:10

109:22

110:4

110:19

117:1

117:11

132:20

132:23

132:24

133:3

147:1

147:5

147:8

156:13

Randolph [45]

2:7

71:19

71:21

92:9

92:10

94:22

95:7

95:9

97:9

97:10

97:25

98:17

98:25

100:9

100:21

100:25

101:4

101:13

102:16

102:19

105:6

105:10

105:13

105:21

106:1

107:14

108:6

108:11

108:13

108:15

109:16

109:17

111:13

111:21

112:8

112:21

114:21

115:4

125:14

125:15

129:24

129:25

130:1

146:16

147:5

range [1]

41:22

rapid [1]

161:12

rate [2]

84:23

99:25

rates [1]

16:14

rather [7]

21:24

48:25

109:13

110:10

114:13

126:2

144:10

ratio [4]

67:8

70:9

70:10

82:16

rational [2]

66:25

70:17

reach [1]

55:13

reached [3]

41:1

41:5

157:13

read [2]

136:20

146:14

readily [1]

148:7

ready [3]

47:3

152:17

157:7

real [6]

3:6

8:21

65:13

80:14

119:4

119:5

realistic [2]

17:23

156:1

reality [4]

57:25

63:15

65:7

125:6

really [20]

4:21

22:12

30:23

48:11

59:12

59:17

62:25

64:8

87:21

88:8

92:18

93:22

110:5

110:10

111:4

111:7

112:5

119:18

128:4

161:13

rearrange [1]

119:21

reason [13]

31:6

31:11

32:15

45:18

49:18

68:5

72:20

78:3

79:2

93:21

103:16

145:22

153:13

reasonable [6]

41:18

41:19

42:1

42:2

42:21

159:11

reasonably [1]

44:13

reasons [1]

101:19

rebuilt [1]

150:11

rebut [17]

26:3

26:17

97:5

98:2

98:8

98:12

99:5

101:3

105:8

106:20

107:6

107:9

108:20

108:24

109:10

111:8

154:1

rebuttal [75]

85:25

87:6

89:10

89:18

89:20

90:17

91:14

91:15

92:15

92:16

92:20

92:24

93:14

93:16

94:24

95:2

95:3

95:4

95:6

95:15

96:25

97:3

97:12

97:13

97:15

97:18

97:20

97:23

98:13

98:16

98:20

98:23

98:24

100:6

100:20

100:22

101:1

101:5

101:8

102:7

102:9

102:10

102:14

102:21

103:2

103:7

103:12

103:14

104:1

104:7

104:14

104:16

105:18

105:23

106:7

106:11

106:12

106:16

106:24

107:3

108:10

108:19

109:13

110:13

111:6

111:20

111:25

112:4

112:5

112:23

112:24

113:2

113:23

114:2

156:8

rebuttals [1]

90:12

rebutting [4]

26:6

99:9

103:12

109:6

recall [3]

9:17

91:23

93:5

receding [1]

131:25

receive [1]

58:19

received [3]

54:1

111:3

124:22

recent [1]

122:20

recently [1]

121:6

recess [5]

46:19

46:22

156:17

159:3

162:12

recognize [1]

127:3

recognized [1]

107:23

recollection [3]

48:6

91:12

131:18

recommendation [2]

96:16

144:8

reconstruction [1]

32:17

reconvene [1]

156:18

reconvening [1]

153:7

record [24]

8:9

15:13

24:14

47:6

54:1

54:10

54:19

57:15

71:15

72:13

74:16

74:24

82:3

90:22

96:18

96:21

97:14

127:9

129:12

129:21

136:19

137:20

153:8

156:13

recorded [2]

148:9

148:12

records [1]

148:10

recourse [1]

139:22

recovery [1]

135:4

reduce [8]

38:1

38:7

38:21

67:21

68:6

78:23

79:3

79:4

reduced [2]

60:24

76:17

reducing [2]

38:14

80:8

reduction [1]

62:9

redundant [1]

85:6

refer [3]

10:1

73:14

91:11

reference [3]

73:18

84:19

125:18

references [1]

76:13

referred [5]

9:22

82:9

90:9

131:13

146:16

referring [7]

48:20

48:22

61:11

61:12

114:5

128:5

128:10

refers [1]

121:11

refine [1]

133:20

refining [1]

133:17

reflect [1]

63:12

reflects [1]

134:4

refreshes [1]

131:18

regard [1]

106:5

regarding [3]

66:15

118:15

140:12

regardless [1]

66:12

registered [3]

49:12

147:12

147:16

regulate [1]

141:15

regulations [5]

66:6

67:13

67:14

67:17

126:8

rehabilitate [1]

14:21

reiterate [1]

125:7

reiterated [1]

156:5

reject [3]

137:8

145:20

145:20

relate [1]

87:14

related [6]

4:23

10:14

22:5

52:7

69:14

112:24

relates [5]

58:8

59:21

62:20

89:12

89:15

relating [3]

4:3

4:12

72:21

relationship [2]

6:8

121:18

relative [1]

163:11

relatively [1]

146:10

released [1]

148:18

relevance [1]

73:21

relevant [1]

73:25

relied [2]

51:19

51:20

relief [3]

120:22

134:15

140:6

relinquishing [3]

96:8

96:9

96:14

remain [1]

141:23

remains [2]

122:17

140:14

remark [1]

116:12

remember [8]

9:12

9:25

10:2

32:5

90:10

98:24

99:2

109:22

remind [2]

88:12

109:20

removal [1]

34:22

remove [2]

76:20

80:10

removed [1]

79:15

reopening [1]

93:24

repetitive [2]

154:13

154:16

replied [2]

147:1

147:8

report [27]

9:20

9:22

9:23

9:23

9:24

10:6

25:4

25:7

25:11

25:15

26:3

26:5

26:10

26:17

27:3

27:6

43:7

47:18

50:17

50:18

58:14

58:15

58:17

58:18

59:2

62:24

163:7

reported [2]

47:19

63:8

reportedly [1]

121:10

reporter [8]

46:16

46:19

46:21

118:4

162:7

163:6

163:15

163:19

reports [1]

86:24

representing [2]

111:15

113:10

represents [1] 146:20	restrain [1] 15:1	sake [1] 105:5	segment [2] 22:23	121:13 130:9 133:7
reproduction [1] 163:14	restricted [2] 91:16	same [18] 13:3	62:5	141:24 145:16 145:17
request [5] 90:20	143:24	31:18 38:9 38:13	selected [1] 78:15	145:23 145:23 149:1
90:24 95:17 95:17	restrictions [8] 13:20	38:22 58:19 58:20	sell [3] 22:24 36:20	151:10
149:25	76:21 79:4 80:10	59:8 62:2 74:19	selling [1] 36:10	shoulder [1] 10:22
requests [2] 78:9	82:12 99:16 121:20	116:7 120:12 121:17	semblance [1] 135:23	show [6] 10:4 55:5
122:5	139:5	127:22 134:21 135:16	send [1] 8:17	55:8 107:19 107:20
require [1] 148:20	restrictive [1] 140:16	147:2 163:14	senior [1] 49:11	131:17
required [10] 49:17	result [4] 19:15	Samuel [1] 2:7	sense [13] 32:4	showed [1] 51:1
52:22 52:25 71:25	74:5 95:10 126:13	sanctioned [1] 140:14	32:7 32:20 34:6	shown [4] 53:13
77:10 77:12 78:7	resulted [1] 43:16	sat [1] 103:17	35:8 37:9 67:23	53:16 61:6 145:22
80:12 80:23 84:2	returns [1] 103:4	satisfactory [1] 118:17	68:1 68:2 77:9	shuttle [5] 18:18
requirement [6] 30:7	review [9] 9:22	says [8] 7:23 45:10	111:9 138:4 142:9	19:2 19:4 19:7
30:22 55:10 65:22	23:20 24:6 24:24	59:18 66:20 94:15	sent [6] 117:1 131:12	shuttled [1] 39:17
79:21 83:2	25:13 47:10 47:10	123:25 127:1 133:5	131:19 132:13 133:22	sick [1] 154:13
requirement's [1] 30:12	53:17 133:10	scale [1] 83:5	134:2	side [1] 116:10
requirements [5] 20:20 21:9 23:4	reviewed [2] 27:7	scandalous [1] 144:24	separate [1] 120:21	side's [1] 35:10
79:7 122:2	34:17	scenario [3] 42:11	September [12] 25:8	sign [1] 147:6
requires [3] 76:22	reviewing [1] 9:19	72:7 142:3	47:12 53:21 54:3	signed [2] 118:17
78:1 128:14	revision [1] 139:7	schedule [1] 159:4	74:24 93:23 102:17	135:25
research [2] 26:13	revisions [1] 141:11	scheduled [1] 157:19	102:18 105:1 142:13	similar [1] 141:15
33:2	ridiculous [4] 7:11	schedules [2] 119:21	146:15 163:16	Similarly [1] 3:9
resent [1] 150:6	17:21 90:14 94:5	scheduling [1] 93:3	sequence [1] 106:2	simple [2] 22:1
reservations [3] 8:18 8:20 142:5	rights [2] 5:21	Schnars [12] 25:4	serious [5] 118:24	22:3
reside [2] 118:10	139:24	25:11 25:15 27:3	139:10 144:3 146:13	simpler [2] 149:7
residences [1] 75:13	risk [1] 141:24	27:6 50:14 50:17	147:24	149:17
resident [3] 122:22	risky [1] 141:5	50:23 51:1 51:8	serves [2] 48:7	simply [2] 74:2
137:21 149:23	road [4] 1:16 17:12	51:18 62:24	125:22	149:8
residential [10] 4:20	63:4 86:19	scientist [1] 5:23	service [11] 19:3	simultaneously [1] 14:16
61:17 75:11 75:16	roads [4] 48:16	scope [6] 71:7	19:5 19:7 37:10	since [10] 10:22
122:11 122:14 122:17	49:3 59:22 59:22	71:8 91:20 93:5	50:7 51:1 51:4	26:3 70:21 88:20
136:13 137:4 140:25	roadway [1] 62:23	93:16 127:5	51:5 51:20 53:8	89:10 101:23 118:17
residents [8] 6:6	Robert [2] 2:8	Scott [2] 119:17 131:6	session [1] 157:9	133:17 135:17 150:5
115:11 115:13 120:11	Rock [4] 144:16 144:17	scurrilous [1] 144:24	set [4] 86:4 163:9	sincere [1] 87:23
121:25 123:2 123:5	144:17 145:25	scurry [1] 104:20	163:10 163:15	Sincerely [1] 137:10
125:3	rocket [1] 5:22	seal [1] 163:16	setting [1] 91:16	single [7] 4:20
resolve [1] 124:19	role [1] 32:8	Seaman [1] 71:17	settlement [1] 146:16	5:24 6:6 75:10
resort [6] 122:8	rollers [1] 19:6	searching [1] 99:13	several [1] 142:14	75:12 75:15 76:3
122:12 122:18 128:19	Ron [1] 24:15	season [4] 22:7	shake [1] 15:14	single-family [1] 137:3
138:22 139:14	room [5] 12:16 44:2	22:8 22:16 65:3	shall [2] 138:15 138:23	sit [1] 82:22
resorted [1] 124:16	45:8 116:12 151:7	seated [1] 45:8	shameless [1] 119:2	site [12] 18:18 18:24
respect [4] 93:7	rooms [8] 10:14	seats [6] 10:18 11:20	share [2] 94:18 124:22	23:21 24:6 37:22
120:21 121:16 154:11	10:15 10:25 10:25	13:14 73:19 83:4	shares [1] 124:4	38:14 39:13 44:1
respectable [1] 27:21	12:3 15:6 38:13	83:21	Shaw [12] 2:6	45:3 81:3 135:13
respectfully [2] 146:11	150:15	second [1] 98:22	82:19 83:1 83:15	135:16
147:23	Rose [7] 117:25 118:5	Secretary [1] 147:11	84:6 84:11 85:3	sitting [6] 25:20
respects [2] 27:9	118:5 118:9 118:13	section [3] 88:13	160:22 160:23 161:2	115:11 134:17 151:2
27:10	119:7 144:22	96:13 98:3	161:8 161:10	151:13 151:14
respond [3] 26:19	rough [1] 124:20	secure [1] 116:11	she's [2] 88:6 90:8	situation [6] 22:9
113:7 129:24	roughly [1] 152:3	secured [1] 148:13	she-said [1] 113:20	73:1 113:20 114:14
responded [1] 9:7	round [2] 109:14	seeing [2] 73:20	sheet [3] 131:14 138:19	114:18 114:24
responding [1] 26:7	109:14	145:2	147:10	size [1] 31:25
response [1] 144:15	Rovin [3] 149:22	seek [1] 139:22	shifting [1] 56:4	skewed [2] 20:8
responsive [1] 94:1	149:23 150:2	seeks [2] 120:22	Shiny [2] 131:14	20:12
rest [4] 7:24 61:16	rule [1] 111:21	122:6	138:18	Skip [8] 77:23 91:11
93:24 160:24	rules [7] 56:24 71:23	seem [1] 32:14	shot [1] 94:4	93:2 104:6 109:20
restaurant [8] 10:19	71:23 76:2 76:3	seems [9] 46:12	should [29] 5:2	111:7 114:22 129:12
11:19 11:19 13:14	run [1] 47:8	81:15 85:7 106:1	6:8 7:11 46:6	sleep [1] 38:13
14:16 69:18 83:4	safe [1] 116:10	106:14 106:21 106:22	52:1 58:21 61:24	small [3] 31:21
83:21	safety [1] 137:6	130:15 135:10	68:24 71:1 84:16	128:19 135:13
rested [1] 90:4	Sailfish [1] 134:24	seen [7] 7:5 40:9	89:25 91:21 93:8	smaller [1] 61:3
	Saint [1] 150:12	40:12 40:15 70:20	104:24 105:1 106:9	smears [1] 118:20
		76:18 110:24	107:2 108:23 111:24	
		secs [1] 148:7		

Smith [129] 2:4	sounds [4] 36:12	spoken [2] 158:13	studies [1] 31:16	swear [1] 16:21
3:12 3:23 21:23	82:7 109:11 150:15	158:14	study [9] 33:14	sworn [1] 114:25
22:17 22:20 24:11	South [4] 1:16	spokesman [1] 130:5	33:23 49:22 50:4	system [2] 62:7
45:24 46:8 46:14	62:22 63:19 65:9	spots [1] 69:6	51:15 51:18 52:5	147:18
46:18 46:23 47:2	Southern [10] 50:5	square [2] 61:2	53:7 86:19	tactic [1] 124:25
54:4 54:14 54:18	50:19 51:16 52:2	61:12	studying [1] 86:25	taken [8] 28:19
55:22 56:12 57:1	53:7 53:14 62:4	staff [3] 34:25 84:18	stuff [4] 86:12 94:15	42:4 46:22 99:14
71:13 71:18 72:11	63:23 64:17 65:14	104:17	136:16 154:13	115:5 146:12 162:12
73:2 73:7 73:13	spa [19] 61:1 61:2	stand [7] 82:1	subject [8] 22:25	163:9
74:1 74:21 75:2	61:12 87:11 88:5	110:9 115:1 117:5	47:1 110:12 110:13	taking [5] 3:13
76:10 81:7 81:11	89:13 100:6 100:7	117:7 134:18 145:23	114:10 122:24 126:8	21:5 70:3 153:23
81:19 81:24 82:17	100:10 100:10 100:13	standard [1] 19:21	153:16	163:10
82:24 84:15 85:2	101:10 121:20 122:8	standards [2] 17:12	subjected [1] 154:22	talk [7] 7:19 37:16
85:4 85:8 85:16	122:12 138:22 139:14	48:10	submit [1] 74:15	82:25 88:6 89:2
86:9 86:17 87:21	142:19 143:17	standing [3] 33:15	submitted [4] 23:22	117:17 150:13
88:5 88:11 88:15	spa's [1] 142:22	46:10 151:8	47:11 104:25 147:23	talked [3] 28:1
89:6 89:24 90:25	space [8] 14:16	standpoint [3] 32:20	subsequently [2] 139:12 140:17	30:5 117:2
91:5 92:8 95:20	66:21 67:11 79:22	36:18 50:8	111:19 128:2	talking [21] 13:22
95:24 96:15 96:23	83:14 84:5 122:1	stands [2] 59:24	substantial [3] 48:16	22:9 28:15 31:15
97:9 100:2 107:21	142:20	148:24	111:19 128:2	41:24 42:5 44:16
108:1 109:15 109:18	spaces [22] 14:17	start [6] 57:12 146:5	substantially [1] 42:15	57:9 57:10 59:23
111:10 111:11 115:18	38:8 38:18 38:20	150:23 153:16 155:11	substituted [1] 148:5	64:16 70:1 73:10
116:5 116:14 116:21	42:4 43:13 65:23	159:3	successful [1] 36:5	77:8 79:19 85:21
117:18 118:11 119:7	66:2 67:4 67:16	started [3] 98:5	successor [2] 146:21	85:24 108:15 108:17
125:14 126:22 127:8	68:6 68:24 69:1	108:2 162:5	147:2	109:23 151:15
129:3 129:10 129:22	69:3 69:24 70:2	starting [1] 159:9	such [11] 22:25	Tallahassee [1] 147:18
129:25 130:13 132:16	76:17 78:7 78:17	state [11] 52:18	38:12 55:7 55:16	tap [2] 34:6 34:8
133:5 134:8 134:13	79:12 83:16 83:18	71:14 118:2 118:14	64:8 70:17 86:10	technical [2] 36:17
136:18 137:12 137:18	speak [17] 12:24	142:5 147:11 147:13	99:12 138:21 138:24	95:25
144:14 145:25 149:18	72:11 81:13 103:5	147:16 163:1 163:6	sue [1] 139:16	technically [1] 97:3
150:2 150:17 150:22	103:6 116:4 116:6	stated [3] 3:11	sufferings [1] 119:4	technique [1] 10:2
151:4 151:9 151:15	116:8 116:15 116:17	121:10 128:10	sufficient [1] 17:10	tedious [1] 159:12
151:22 152:6 152:12	117:23 125:2 146:2	statement [14] 31:1	suggestions [1] 138:3	telling [2] 80:6
152:16 152:20 152:24	149:21 152:16 155:25	53:11 55:3 97:6	32:19 38:25 86:2	99:19
153:3 153:11 153:21	speaking [7] 57:4	115:19 119:9 119:20	89:24 91:10 110:8	tem [2] 2:6 96:17
154:9 154:21 154:25	81:7 107:23 115:21	120:24 123:23 134:1	122:6 142:4 143:3	temple [1] 150:10
155:2 155:6 155:25	116:9 116:13 119:14	134:2 148:12 154:3	146:12	temporary [1] 142:25
156:24 157:4 158:2	special [12] 20:12	156:9	suggesting [2] 28:5	ten [3] 10:24 10:25
158:12 158:21 159:7	38:11 40:23 69:7	statements [2] 26:20	91:18	149:5
159:13 159:20 159:23	80:17 83:9 83:24	123:10	suggestion [1] 121:1	tendered [1] 57:22
160:2 160:9 160:18	120:5 139:3 141:11	States [1] 114:17	suitable [1] 73:24	tennis [9] 10:15
160:22 161:1 161:6	141:13 143:20	stay [2] 21:8 108:3	suites [8] 12:1	11:11 11:15 13:8
161:10 161:14 161:24	specific [4] 22:22	staying [1] 60:10	12:9 12:17 13:3	13:8 14:14 38:12
162:4 162:9	155:14 155:17 159:14	stenotype [1] 163:8	14:14 121:24 142:18	64:16 135:8
social [2] 122:1	specifically [8] 53:25	step [1] 125:10	143:18	term [5] 26:6 121:4
somebody [5] 18:9	73:14 81:4 88:14	still [9] 57:10 80:16	Sullivan [2] 163:6	124:5 128:6 128:9
81:7 90:9 94:14	121:6 122:2 139:1	96:12 96:25 98:11	163:19	terminal [1] 62:13
150:14	146:20	114:6 150:19 150:21	summarize [1] 54:21	terms [1] 38:11
someone [5] 9:5	specifics [1] 13:21	stones [1] 3:15	support [6] 27:2	test [1] 120:13
9:6 51:23 113:9	specifies [2] 8:18	stop [7] 78:10 155:7	121:1 124:13 125:4	testified [4] 6:18
113:16	120:10	156:12 158:24 159:8	125:5 125:8	70:25 74:20 142:17
something [22] 7:6	spectrum [1] 120:16	159:17 159:22	supporting [1] 134:11	testify [4] 110:9
17:23 18:5 23:19	speculate [3] 8:2	straight [4] 40:20	supposed [1] 132:20	113:17 114:19 130:7
24:7 32:21 39:9	9:4 39:3	79:22 103:10 104:8	sure [11] 25:10 25:19	testifying [4] 74:5
40:17 46:15 48:14	speculating [1] 17:18	street [2] 39:24	35:1 77:21 87:24	74:11 100:7 127:13
48:15 76:14 83:3	speculations [1] 58:1	40:4	92:11 109:12 113:8	testimony [76] 14:21
88:21 91:21 94:9	speech [6] 56:16	strenuous [1] 122:18	134:14 154:21 158:12	25:6 34:21 47:20
109:21 113:17 116:14	137:17 137:22 142:12	Strict [1] 71:23	surprise [1] 153:10	47:24 70:15 74:6
116:24 155:5 155:14	150:4 161:12	strictly [4] 5:5	surviving [1] 148:22	75:24 85:25 88:1
sometime [1] 153:15	spell [1] 118:3	6:2 51:7 112:24	Susie [4] 87:11	91:16 91:21 92:22
somewhere [2] 39:16	spelled [1] 24:15	strongly [2] 120:25	88:3 88:5 90:8	93:7 93:8 93:15
45:14	spent [2] 56:22	122:5	suspect [1] 4:7	93:25 94:1 94:25
sorry [7] 6:24 34:8	109:22	structure [1] 135:2		94:25 95:2 95:3
82:25 83:1 90:7	split [1] 160:19	studied [1] 82:11		97:18 97:20 97:20
119:9 136:22	spoke [2] 57:2			97:23 98:6 98:19
sort [5] 22:24 87:5	117:3			99:2 99:11 100:23
106:15 141:21 145:15				101:1 101:3 101:5
sorts [1] 72:24				
sought [1] 123:16				
sounded [1] 110:2				

102:4102:5102:7102:9102:12102:14103:18103:19103:22103:23104:14104:22105:17105:24106:6106:12106:24106:25108:21109:1109:8109:13109:24110:2111:3111:6111:8111:18111:23112:13112:15112:22112:25114:2114:12114:20115:3127:6133:19142:15142:21153:13testing [1]22:24thank [42]23:724:1124:1345:2446:846:2155:2055:2271:1271:1371:1875:182:382:17108:5115:6117:18119:6119:7120:25125:12125:13127:15134:7134:8134:13136:8136:17136:18137:11137:12144:13144:14145:24145:25149:17149:18150:1150:2150:16150:17162:1Thanks [1]45:22their [40]5:195:206:127:827:936:1648:1751:1861:761:2463:663:1865:1267:372:1477:1678:478:1078:2379:379:1779:1984:784:887:890:491:2293:993:10103:5103:6113:11114:20115:3116:22119:21121:1124:10145:11157:7themselves [3]12:2563:17119:19Theoretically [1]19:17theories [1]32:24theory [2]33:777:18thereabouts [1]136:7thereby [2]137:5141:13therefore [11]28:2429:329:2583:1184:496:5100:13108:9112:1135:5153:19Thereupon [2]46:22162:12they'd [4]20:820:1220:1477:10thinking [2]87:16151:20thinks [3]35:8117:10127:2third [1]85:20though [4]62:3

74:2180:1586:9thought [12]6:2540:1840:2147:870:2573:1596:18108:1108:16108:25144:23158:10threat [4]138:7138:9138:10144:9threats [2]124:16124:23three [18]7:143:885:1287:2588:1688:2388:2591:294:799:1099:2099:21120:6122:20132:25133:3133:6145:7threshold [1]147:24through [9]21:2549:1054:2063:1974:8124:19151:13159:16163:8throughout [2]52:18114:17thus [1]140:15tie [1]58:6tied [1]121:11time [50]3:56:1811:1111:1528:929:1033:138:938:1338:2242:1743:744:645:946:1149:450:1055:1656:2381:2388:1689:989:989:2091:691:695:1697:1699:17107:21108:4112:6115:24118:19124:3133:15135:22136:3153:25154:18156:1156:3157:25158:9159:11161:17161:23161:25161:25163:9times [4]43:444:2444:2568:11Tipton [5]32:348:493:1794:298:6tired [7]29:11152:14152:15156:11158:20158:22160:13title [1]146:22today [29]26:1734:1653:1959:174:2074:2078:584:1286:1294:299:23102:16112:10119:18122:17136:23137:9140:14144:9145:6145:13145:14147:7149:11154:14156:2156:17157:17157:21together [3]80:22146:12150:10token [1]116:7told [5]42:2069:2088:22104:1110:17

tomorrow [20]85:186:686:899:24107:1151:20153:8153:14153:14153:15155:11156:10156:18156:21157:1157:14159:3160:5160:6160:16tonight [3]99:24107:1160:5too [9]20:1224:1927:486:1691:199:16142:10143:15159:12took [3]20:520:8122:25top [1]99:20topics [1]155:13topsy-turvy [1]94:12total [3]67:1367:17151:12totally [3]83:1287:24127:5tough [1]15:5towards [1]124:13Town [72]1:41:52:72:88:410:923:1224:2525:130:834:2442:1351:1954:1855:1266:2367:968:1870:2374:1676:2378:679:880:1382:1083:2093:13104:16110:9115:11118:8118:15119:2120:11120:14120:15121:1121:25122:18124:5124:13125:3125:23128:5128:25129:13136:1136:13137:2137:4137:13137:7138:12139:11139:16140:1140:7141:3141:10141:24142:6144:10144:18145:2145:5148:1148:5148:6149:8149:16153:19156:25town's [13]53:193:20105:16105:16115:21120:6120:7135:21139:18141:15142:16143:12153:18Town-serving [20]30:6120:9120:13120:20122:13122:13124:11125:18125:20126:4126:7126:12127:1127:3127:12127:18128:6128:9129:9143:24traffic [73]4:14:94:134:164:235:66:36:147:87:129:49:1112:1912:2313:2414:2315:115:2

28:228:428:628:828:1428:2028:2329:731:1831:2131:2232:432:1333:1634:1334:1934:2035:235:940:541:2147:148:1051:252:157:1058:858:963:163:1163:1363:2565:269:1369:1470:1672:2476:676:685:2285:2486:1186:1286:1586:1686:1887:287:288:788:17136:5136:11155:16transcript [1]163:13transportation [2]52:2455:2treated [1]134:21treatment [2]70:18139:21tried [1]34:21tries [1]143:8triggers [1]48:15trip [8]10:616:1331:2533:133:1147:2152:776:6trips [31]3:59:1410:1011:111:1611:2212:412:713:513:513:913:1113:1513:2416:1817:1118:118:1018:1618:2319:2048:949:1649:2152:1152:1252:1360:2271:4121:25trivializes [1]119:4Trojan [1]143:8trouble [2]20:6140:23trucks [1]80:19true [10]5:196:206:216:227:88:2535:2558:10133:24163:8Trump [32]5:188:1910:2311:613:1814:1337:25119:3120:1120:5120:22121:6121:23122:6123:16124:4124:9124:15124:23124:24134:23135:25147:4147:14147:20147:25148:3148:7148:18149:4149:9150:6Trump's [9]23:22118:15119:22120:19123:3123:9123:14123:22149:25trust [2]126:9148:14trustee [3]110:18114:10117:9

truth [3]114:25114:25115:1try [8]22:1922:2178:21101:21104:21141:3157:21157:22trying [8]7:2515:1919:894:18101:17102:23130:11140:23Tuesday [1]99:25tumble [1]124:20turn [4]46:24103:16111:12158:3twice [2]99:11104:6two [29]7:111:118:518:518:518:1618:2224:2135:741:1742:2144:2546:1056:859:2262:1662:2177:880:2185:1987:890:1196:1399:19133:22136:5144:25151:13151:21type [2]114:1143:1typical [1]91:15U.C.C [2]148:12148:17ultimate [1]141:20unable [1]119:20unaware [1]142:14uncomfortable [2]124:8130:7under [18]6:916:2017:317:719:2132:1732:2542:1248:972:778:6109:25115:23139:22140:18141:14143:11163:14understand [29]7:217:228:116:121:1026:626:2026:2136:148:1354:2261:1065:1967:973:1775:1480:1589:897:10107:10108:6116:20121:8124:15127:18128:8128:14133:18161:22understanding [11]23:1435:1452:1453:355:1864:264:1166:177:2491:1112:7understood [3]10:1918:495:13unfair [3]104:5124:2140:5unfortunately [3]153:12156:23157:16unique [5]70:496:13114:14122:19126:3unit [1]16:18United [1]114:17

units [5] 16:17 16:18 61:5 61:8 61:17	ventriloquist [1] 81:10	133:6	wings [1] 80:25	76:1 80:6 112:9
unless [5] 72:14 80:23 81:9 107:23 163:14	venture [2] 4:19 143:4	Weidner [3] 54:3 70:25 74:19	Winterfield [4] 146:3 146:4 146:8 149:19	128:3 139:17
unlike [1] 119:24	versus [1] 70:10	welfare [1] 137:5	Wiseberg [3] 49:7 50:2 54:2	wrap [1] 22:22
unlimited [8] 21:6 52:4 52:6 121:23 121:24 121:25 122:1 122:3	Veteran's [1] 135:4	well-believed [1] 67:1	Wiseberg's [1] 53:18	wrong [3] 40:19 51:10 95:12
unnamed [1] 36:2	vicinity [1] 50:21	well-studied [1] 67:1	wish [3] 95:4 96:4 132:7	wrote [2] 49:15 123:14
unnecessary [1] 124:9	victim [1] 119:3	weren't [1] 48:20	wished [1] 119:18	Wyett [27] 2:5 73:17 74:12 84:14 84:15 84:16 85:5 85:9 86:16 99:9 111:10 111:12 115:7 116:4 151:9 151:17 152:22 153:5 153:11 159:6 159:9 159:10 159:19 161:3 161:4 162:2 162:7
unorthodox [1] 117:10	victims [1] 119:5	Wes [1] 100:9	wishes [3] 90:17 120:25 137:13	Wyett's [1] 18:4
until [13] 7:22 39:24 55:4 55:16 65:11 84:24 98:13 102:22 102:24 112:17 121:3 152:23 159:15	violate [1] 143:21	whack [1] 92:5	wishing [1] 158:8	X [2] 83:11 83:22
unusual [1] 114:14	violation [1] 140:3	whatever [23] 31:7 31:9 33:24 40:3 44:9 44:24 44:25 63:18 77:19 78:3 78:10 79:2 79:13 80:20 84:19 89:25 105:8 106:11 132:10 138:22 139:8 143:17 160:8	withdraw [2] 33:4 96:20	Yankees [1] 46:24
unwavering [1] 125:4	violations [1] 145:7	whatsoever [2] 6:9 86:7	within [4] 21:8 84:20 93:9 158:19	year [4] 6:25 7:1 118:10 123:23
unwise [1] 142:1	virtually [1] 122:24	whenever [1] 40:11	without [10] 9:19 44:13 83:8 83:9 99:16 117:20 142:5 144:5 148:4 157:2	years [4] 6:16 120:6 136:2 141:21
upon [5] 3:6 16:16 51:20 61:25 101:11	visitors [1] 64:12	whereas [1] 146:19	witness [23] 56:18 57:7 71:10 74:4 74:5 94:6 100:23 101:6 113:6 113:21 114:9 114:13 114:14 114:18 114:19 114:24 115:2 115:3 116:1 116:1 154:16 154:22 163:15	yesterday [1] 86:4
urge [2] 137:7 143:13	vitality [1] 137:3	whereby [1] 148:17	witnesses [29] 74:9 74:9 85:12 85:20 88:16 88:23 88:25 91:2 92:12 92:19 92:20 96:14 99:20 103:17 106:18 106:19 106:25 107:6 107:13 107:16 107:18 107:19 108:8 109:1 110:22 110:25 112:14 113:11 115:16	yet [3] 98:5 98:7 114:6
urges [1] 120:14	VOICE [2] 81:6 152:5	whereof [1] 163:15	women [1] 5:15	yielded [1] 88:13
use [52] 6:9 7:6 8:3 8:10 8:17 8:24 9:5 9:15 14:22 21:6 21:8 29:13 37:7 38:17 38:19 39:1 39:8 39:8 42:7 42:13 45:2 59:22 63:5 76:21 78:15 78:18 79:12 80:11 83:25 118:11 118:25 121:22 123:18 124:19 127:22 128:9 135:18 136:12 138:25 139:1 139:6 139:9 140:3 140:13 140:21 141:6 143:10 143:16 144:1 144:6 147:25 148:25	volume [3] 1:7 58:9 59:21	whether [24] 6:5 6:7 8:2 8:23 11:6 30:21 37:11 43:8 43:11 44:1 68:11 69:12 72:8 81:11 83:21 92:20 101:10 105:22 105:23 106:12 109:2 122:9 127:2 131:19	won't [3] 27:23 49:10 154:16	York [2] 147:15 149:13
used [10] 10:2 10:20 16:13 61:4 61:6 61:7 63:10 83:22 84:18 152:22	vote [9] 66:13 84:17 159:6 159:22 159:24 160:1 161:1 161:1 161:11	while [6] 38:21 54:13 122:2 151:2 155:9 160:15	wonder [2] 149:16 151:19	younger [1] 152:18
uses [2] 16:19 141:16	wait [9] 54:15 57:2 76:11 81:24 90:16 102:22 102:24 112:16 112:19	whole [11] 19:25 25:21 30:15 114:25 122:25 136:4 136:10 151:7 155:19 157:16 157:17	wondering [1] 46:3	yours [2] 82:7 107:19
using [5] 64:12 68:1 127:12 127:14 134:24	waived [2] 91:5 115:24	whom [3] 73:7 121:24 149:10	Woodbridge [3] 5:9 5:12 5:15	yourself [1] 113:5
utilization [7] 15:22 17:9 21:6 23:3 62:20 65:18 65:18	waiver [1] 123:17	whose [1] 147:13	word [4] 29:14 29:16 127:14 127:22	zero [2] 19:14 43:16
utilize [1] 13:20	walk [2] 39:20 145:3	wide [2] 99:12 120:16	wording [1] 75:8	zoned [5] 75:16 75:19 75:22 122:11 136:12
utilized [1] 59:1	walking [1] 21:24	wife [1] 155:4	words [6] 6:4 28:3 115:12 123:20 127:12 127:12	zoning [29] 2:8 2:9 6:20 66:8 67:14 67:17 68:23 70:5 75:6 75:9 82:10 83:2 84:1 135:7 135:23 136:3 136:11 137:1 137:2 137:8 138:25 140:12 140:15 141:5 142:16 143:12 143:14 143:21 144:7
utilizing [1] 65:10	wanting [3] 68:12 115:12 126:15	will [50] 14:23 17:22 18:25 25:25 34:13 34:18 35:12 36:25 37:6 39:12 54:7 54:9 62:4 62:21 65:11 67:11 84:18 86:25 98:20 102:22 103:6 114:12 116:11 117:19 121:10 121:21 124:12 141:23 143:25 146:14 151:20 152:3 152:5 152:10 153:13 153:17 153:24 154:2 154:5 154:7 154:18 154:22 156:5 156:6 156:8 157:9 157:11 157:13 161:10 161:24	worries [1] 138:10	worry [2] 123:5 137:23
V [1] 131:6	ways [2] 62:16 141:17	William [1] 26:10	worked [1] 150:9	wouldn't [12] 5:20 20:6 29:13 47:7 49:17 49:23 53:10
valid [1] 3:17	we'd [2] 20:6 102:24	willing [4] 8:2 16:6 90:16 117:6	workmen [1] 28:6	
validated [1] 60:8	we've [1] 136:15		world [1] 4:4	
validity [1] 58:6	weapon [1] 134:12		worries [1] 138:10	
variance [2] 83:9 139:8	Wednesday [1] 99:25		worry [2] 123:5 137:23	
vehicle [2] 18:17 41:23	weed [1] 94:15		wouldn't [12] 5:20 20:6 29:13 47:7 49:17 49:23 53:10	
vehicles [1] 65:13	week [4] 83:13 83:13 83:17 149:13			
	weekday [2] 11:2 11:22			
	weeks [5] 24:21 132:25 133:3 133:4			

Page 1

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

VOLUME V

CERTIFIED
COPY

360 South County Road
Palm Beach, Florida 33408
Thursday, October 10, 1996
7:40 - 9:15 p.m.

Page 2

APPEARANCES:

Lesly Smith, President
Paul Ilyinsky, Mayor
Allen Wyett, Councilman
Leslie Shaw, Councilman
Jack McDonald, President Pro Tem
Samuel McLendon, Councilman
Robert Doney, Town Manager
Robert Moore, Director of
Planning, Zoning & Building
John Randolph, Town Attorney
Paul Castro, Zoning Administrator
Mary Pollitt, Town Clerk

*** Notes ***

Page 3

PROCEEDINGS

PRESIDENT SMITH: I'd like to reconvene the meeting and I'd also like to clarify exactly what everybody understands is going to happen tonight.

Mr. Chopin is going to do his testimony and then will be cross examined by Mr. Rampell or Mr. Natale.

Is that your understanding of what's going to happen? Because I do not want to interrupt anybody's presentation in the middle. Starting with one attorney and we are going to finish.

Mr. Natale, dinner will not be served, it seems.

MR. NATALE: Madam President, given the time constraints and whatever, I'm just saying that it might be very late and we may go on beyond the time given for my cross examination.

Given his schedule, if he wants to make his presentation in light of the fact that our five-minute recess has gone much longer and then I can cross examine in the morning, that may be the way to go, or to have him testifying in the morning.

Page 4

I see some nodding of the other council members. I just want to understand that this is a witness who has said a number of things which I'm going to need to deal with and it's going to take some time.

MR. CHOPIN: I look forward to him dealing with it.

PRESIDENT SMITH: Tonight?

MR. CHOPIN: Any time he wants to.

PRESIDENT SMITH: I feel if you are going to speak tonight -- council voted to stay, we will stay.

MR. CHOPIN: Okay, I'm going to be brief. Since I have all this cross examination, I don't want to use up my time in positive presentation. I want to give Mr. Natale his best shot.

I want to make a technical point first, but it's not a technical point. It's a real point, and I would ask you to think through what I am going to say.

What you have before you is an application for a special exception. You got a number to it, I forget what it is, 18-96 or something like that.

Your town code ordinance requires under

*** Notes ***

Page 5

Page 6

1 section 6.40 special exception uses, and it says
2 special exception uses -- and wait a minute, I
3 think I'm reading the wrong section. That's how
4 tired we all are.

5 Yes. "Special exception uses and their
6 related accessory uses or any expansion,
7 expansion, enlargement, modification of an
8 existing special use or any physical expansion
9 of an existing special use of a facility shall
10 be permitted only upon authorization by the town
11 council provided that such uses shall be found
12 by the town council to comply with the following
13 requirements and other applicable requirements
14 as set forth in this chapter in accordance with
15 section 960 of this chapter ordinance."

16 Now section 960 deals with a site plan.
17 Now what special exception requires you to do is
18 to go through a litany of factors and make a
19 positive factual determination as to, of the
20 impacts that a special exception will have on a
21 particular neighborhood. That's what you have
22 to do. That's what you are going to have to do
23 with this special exception application. That's
24 what the previous town council did in 1993 with
25 that application.

1 In order to be able to do that, you have
2 got to decide the impact of the application.
3 And that's why a site plan review is required.
4 Now let me tell you what they are supposed
5 to file with the site plan application or
6 review.

7 The application -- and this is section 961
8 of the code: "The applicant or his agent shall
9 furnish to the town as a part of his application
10 for site plan review a professionally prepared
11 study and detailed report at the applicant's
12 expense of the impact of the proposed
13 development on the infrastructure and operation
14 of the town."

15 That makes perfect sense. You know, as you
16 have been listening -- and I'm going to get this
17 hand microphone -- you have been listening all
18 day and I have been listening to you and I have
19 heard the comment gee, we have gone all over the
20 place. We are talking about this, we are
21 talking about that, 390 people here, the parking
22 here, all of this stuff.

23 And the problem is that you are trying to
24 make a decision, you are being asked to make a
25 decision about the impact of this special

*** Notes ***

Page 7

Page 8

1 exception application, and you don't know what
2 the application is going to produce in the way
3 of a development. I'm sorry, folks. You don't
4 know what it's going to look like if you grant
5 the application.

6 Now if you don't know how many rooms he is
7 going to have and if you don't know how many
8 people at special events he is going to have,
9 and if you don't know how many members he is
10 going to have and if you don't know how many
11 parking spaces he is going to have, will you
12 please tell me how are you going to make a
13 judgment about the impact that the development
14 is going to have on the town? You can't. It's
15 not possible.

16 Now I'm going to talk plainly, because I'm
17 looking forward to being cross examined.
18 Mr. Rampell didn't have the stomach for it, but
19 I do.

20 The fact of the matter is that this is not
21 the first time that Mr. Trump filed an
22 application that was incomplete. In 1993 when
23 he filed the application it was also incomplete.
24 The town council determined that it was
25 incomplete and made him go back and complete the

1 application.

2 Now in 1996, with that experience and the
3 same minions, as somebody referred to them, they
4 come in and they file another application and
5 they just ignore the code. They just don't pay
6 any attention to it. It said you've got to go
7 through site plan review. It said you've got to
8 have a professionally prepared detailed study
9 showing the impact of the development on the
10 town. And they don't do it. They don't do it.

11 Now let me ask you something. When you are
12 deciding whether Mr. Trump has been
13 discriminated against, ask yourself, not each
14 other, but let that little voice in your head
15 ask you, if it was somebody else, would you have
16 let him get away with it? You wouldn't have. I
17 have been here too long and too many meetings
18 and too many zoning meetings. You wouldn't have
19 let him get away with it.

20 But Trump, I don't know what it is. The
21 threats, I know that you have a responsibility
22 which is perhaps different than the
23 responsibility that I have. You have to be
24 concerned. He threatened that \$50 million suit,
25 Mr. Mayor, the last time and you know, somebody

*** Notes ***

Page 9

1 had to pay it. Well, you can only go to that
2 well so many times.

3 The fact of the matter is if it were
4 somebody else, without hesitation, without
5 vindictiveness, you would have said your
6 application is incomplete and I'm not going to
7 consider it. And you have now spent two full
8 days considering an application which is on its
9 face, black and white, not gray, black and
10 white, incomplete. That's discrimination.

11 But if I were Mr. Trump, that's the kind of
12 discrimination I would like to be the victim of.
13 It's called favoritism. But I don't really care
14 about the technical part of it, you know, that
15 he didn't do it right.

16 By the way, Mr. Winterfield is wrong, but
17 so is Mr. Rampell, because the name on the
18 application ain't the owner of the club. And if
19 he would like to argue with me, I'll give him a
20 copy of the deed.

21 But I don't care about that. If there's
22 been a merger, which he should know about, since
23 he's Mr. Trump's attorney, but Mr. Trump don't
24 tell anybody anything, like won't tell how many
25 members there are, don't tell how many live in

*** Notes ***

Page 10

1 town, how many live out of town. Nobody knows
2 anything. Apparently they don't even know who
3 owns the property. But it's close enough.

4 But when we talk about site plan, let's be
5 clear. For you to make an informed decision,
6 you really need to know what's he going to do?
7 And you don't. And if you think you do, I think
8 you are mistaken.

9 I think you can figure out what's the worst
10 thing he can do, but I don't think you really
11 know what he is going to do. And that's the
12 problem you have and that's why your ordinance
13 in its infinite wisdom, or however else it got
14 there, says when you apply for a special
15 exception you go for a site plan review. It's
16 not there.

17 I had my say. I think I know what you
18 ought to do on that issue, but I want to talk
19 about some other things.

20 If you go and look at Mr. Trump's
21 application, he says that all of the
22 restrictions in the, let's call it use
23 agreement, the agreement with the town, should
24 be eliminated because he has been singled out
25 for special attention.

Page 11

1 He wants to do two things. First of all,
2 there are a whole series of regulations that
3 were incorporated as conditions precedent to the
4 issuance of a Certificate of Occupancy.

5 Mr. Trump says we did it, and I assume he
6 did, since he has a Certificate of Occupancy.
7 And he says take it out. They are --
8 "superfluous" is his word in his application.

9 Mr. Mayor, you are a lawyer. Mr. McDonald,
10 you are a lawyer. I'm a lawyer. We have all
11 bought houses. We have all entered into
12 contracts.

13 Think, of all those contracts had
14 conditions precedent to closing, for example, in
15 the case of a real estate closing. It doesn't
16 happen. You don't go at the end of the contract
17 period at closing and say oh, let's modify the
18 contract because I have already done all of the
19 conditions. Let's change the contract and take
20 them out. Doesn't happen. It doesn't. On big
21 deals, little deals, in-between deals -- and I
22 have done plenty of them -- it doesn't happen.
23 You don't do it that way.

24 Now why is that relevant? Well, it's
25 relevant to me because when I read it I thought,

*** Notes ***

Page 12

1 Rampell can't be that bad a lawyer. What is he
2 up to? I mean he knows that that's not the
3 custom. I hope he is getting really mad.

4 But the fact of the matter is -- let me
5 tell you something. Why does he wants to do it?
6 I don't know. I can only speculate.

7 And my speculation, the best answer that I
8 can come up with, is that if you fall into that
9 deep hole and agree to modify the contract and
10 take out the conditions, and at some point in
11 the future one of those conditions are no longer
12 being adhered to for whatever reason and you go
13 to him, and you say oh, no, you've got to do
14 this, that or something else, what's he going to
15 say to you?

16 He is going to say, my friend, I used to
17 have to do that, but don't forget, in 1996 I
18 went to you and I said take that out of the
19 agreement and you know what you did? You took
20 it out of the agreement. I got an agreement
21 with you that doesn't require me to do that.

22 That may not be his reason. It's a real
23 threat, I think. But if it isn't his reason,
24 why don't you ask him what it is. Okay? Ask
25 him what it is.

Page 13

1 Then there are a bunch of other things.
 2 And I would love to talk about all of them, but
 3 I'm not going to, because you are tired and I
 4 suspect you are going to hear from some other
 5 people about them. But I want to talk about
 6 something that I feel very strongly about. I
 7 really do, not on a personal level, but as a
 8 member of this community.

9 Mr. Trump, who was supposed to be here
 10 today, has accused this town in the national
 11 press, the local press and in his filings of
 12 discrimination, which has grown to focus on
 13 anti-Semitism, a week or so ago on racism, as
 14 the basis for why those restrictions were put
 15 into the agreement.

16 That's the accusation. You have all heard
 17 it. You all know it's there. And you sat here
 18 all day long -- and I hope you don't get mad at
 19 me for pointing this out -- but you sat here on
 20 September 16. Mr. Trump came up here.
 21 Mr. Rampell was here all day. You didn't ask
 22 him who discriminated against him. I suggest to
 23 you that if it wasn't Mr. Trump, you would have
 24 asked him.

25 Now I'm asking Mr. Rampell right now that I

*** Notes ***

Page 14

1 will yield a minute or two of my time to tell us
 2 who did it, Mr. Rampell? Was it Mrs. Wiener?
 3 Because she was on the town council.

4 Was it Mr. Weinburg? Was it Mrs. Smith?
 5 Mrs. Douthit? Who was it? Do you want to
 6 answer the question, Paul? I didn't think you
 7 would want to answer the question.

8 The truth of the matter is it's bad faith.
 9 He knows there is no discrimination, there never
 10 was any discrimination. If you had been here in
 11 1993 and seen the elation that existed when the
 12 town council approved the agreement, Mr. Trump
 13 was a happy man. He didn't feel discriminated
 14 against. And I assure you he wasn't.

15 I was a part of the process. Now maybe I'm
 16 the one who discriminated. I don't know how I
 17 got that far, but if Skip Randolph can have a
 18 financial interest in The Sailfish Club, I guess
 19 I can probably discriminate against Mr. Trump.

20 But Mr. Rampell is sitting here and hasn't
 21 the nerve to answer the question. And yet what
 22 he has done has put this town into the position
 23 of being on the defensive.

24 I was at the civic association the other
 25 day and I heard Nancy speaking and Nancy said,

Page 15

1 as a lot of people in this town have said,
 2 including some folks on the council right now,
 3 how could we have discriminated? We don't know,
 4 didn't know who the members were? There were no
 5 members and we don't even know who the members
 6 are right now.

7 That's true. But think about the mental
 8 part of that statement. People who have done
 9 nothing, because of the seriousness, because of
 10 the absolute, unacceptable and unconscionable
 11 charge, feel that they have to defend
 12 themselves.

13 And the man that makes the charge for
 14 commercial gain is not called to account, to
 15 produce any evidence, any support that there was
 16 discrimination. He is entitled to send you a
 17 movie, "Perfect Gentleman," or whatever the
 18 thing was. I wish he sent me a copy. I haven't
 19 seen it in a long time.

20 The fact of the matter is he can do that.
 21 And you know, you ought to be damned mad, you
 22 ought to be, because the inference, the
 23 suggestion and innuendo, is that you
 24 discriminate. And I don't think you take it
 25 from a lot of other people, but you ought to be

*** Notes ***

Page 16

1 mad and you ought to react like you are mad.

2 The Anti-Defamation League, they have been
 3 asking Mr. Rampell from the beginning, according
 4 to the statement which I read -- and I haven't
 5 spoken to anybody at the Anti-Defamation League,
 6 to produce some evidence, and he hasn't, but he
 7 was going to do it the next day according to the
 8 statements -- but you know what? I'll bet he
 9 didn't. And they looked at the issue and they
 10 couldn't find any support for it either.

11 The town council ain't perfect, this one or
 12 any other one. But I want to tell you
 13 something. I have never in the years I have
 14 been in this town, had any reason to believe
 15 that there was any type of discrimination which
 16 was a factor in making a decision regarding
 17 issues that come before the town, and yet with
 18 impugntiy and apparent immunity, Mr. Trump has
 19 come before you without suffering your ire, at
 20 least not in a public way, and accused you of
 21 one of the most dastardly things you could ever
 22 be accused of, and he hasn't been held to
 23 account. And I think that's wrong. And I think
 24 that's dangerous. And I think you should
 25 consider what your response is.

Page 17

Page 18

1 And I would hope whatever you do on this
2 application -- well, you know what I would like
3 you to do on the application. But what I really
4 would like you to do, irrespective of what else
5 you do, is to make it perfectly clear that the
6 Town of Palm Beach as an institution, including
7 its town council, and I suppose its staff, are
8 not guilty of a conspiracy based upon
9 anti-Semitism. That's important.

10 And it's also important to say to Mr. Trump
11 and to the press accounts that report his words
12 that you have an obligation. You have a
13 professional obligation. And your lawyer has a
14 professional obligation that if you don't have
15 some basis of support, you are not supposed to
16 advance that allegation.

17 You are an attorney, Mr. McDonald, and so
18 am I, and you know that we can't file a
19 frivolous lawsuit. We are held responsible, not
20 for being judges and juries, but to have some
21 basis for what actions we take on behalf of a
22 client. And yet this action has been filed and
23 we are going to live with it for a long time.
24 We really are.

25 Okay. Now let me just quickly talk to you

1 about a couple of other points.

2 Did you see this chart over here, by the
3 way? Did you?

4 PRESIDENT SMITH: No.

5 MR. CHOPIN: Well, let me bring it over so
6 maybe you can see it a little closer.

7 Can I come up on the -- I just saw this.
8 This is not my evidence. Is it all right if I
9 come up?

10 MR. WYETT: Yes, please do.

11 MR. CHOPIN: Okay. They put this up when
12 someone was asking questions. Now I don't know
13 what this is, but I'll bet you all never saw it
14 before and I'll bet you don't have any idea what
15 it is that Mar-a-Lago is contemplating.

16 PRESIDENT SMITH: Put it on the easel.
17 Everybody can see it. Mrs. Pollitt, can you get
18 the camera on it so everybody can see it?

19 MR. CHOPIN: I guess this is some of the
20 things that they want you to do and what they
21 are going to tell you it's going to look like
22 afterwards. I'm guessing, frankly.

23 Ten suites. Now I read the application and
24 it says remove the limitations. I read the
25 application. It says let's have kitchens in

*** Notes ***

Page 19

Page 20

1 there.

2 Shouldn't have been able to have guest
3 suites in Mar-a-Lago in the first place, okay?
4 Your ordinance is just clear. I disagree with
5 Mr. Brisson. He said if it's incidental, it's
6 okay. Well, you don't have any other clubs in a
7 residential neighborhood that has guest suites.
8 He got away with it, ten.

9 Now he says take off the restrictions and
10 let me put kitchens in. He says regulations
11 after application. Ten guest suites.

12 Come on, he can't believe you are that
13 stupid. He can't. Nobody could believe you are
14 that stupid, because if you take the regulation
15 off, he can have as many guest suites as he
16 wants to. Maybe he does think you are that
17 stupid.

18 PRESIDENT SMITH: Let's not push the point.

19 MR. MCLENDON: You said it three times.

20 MR. CHOPIN: I think he figures if you
21 didn't get insulted when he called you
22 anti-Semitic, it wouldn't matter what else he
23 thought of you.

24 No published photographs. I see
25 Mr. Trump's picture all the time. I don't give

1 a damn whether they take his picture. I don't
2 think he should have Madonna on commercial ad
3 layout. There should be restrictions on
4 commercial layouts.

5 Now 500 members subject to adjustment.
6 Listen, I want to be clear about what the
7 Preservation Foundation's position was in 1993.
8 Our position was this thing has to be examined
9 carefully to see how it can be made to work.
10 It's a very complex issue.

11 I'm sorry, a complex issue takes a long
12 time, a lot of investigation, a lot of
13 discussion, a lot of negotiation and a lot of
14 compromise. That's what our position was.

15 We were not opposed necessarily to the club
16 if it could be made to work to preserve the
17 building and to work in the neighborhood. We
18 are not opposed necessarily to any particular
19 number of members. There may or may not be a
20 connection between members and traffic.

21 My instinct tells me this is because if you
22 are going to shell out 175,000 -- or it may be
23 150,000 -- after something, I would think you
24 are going to use the club, right? So if you are
25 a member and you paid your money, I would think

*** Notes ***

Page 21

Page 22

1 you are going to use it. And if you are going
2 to use it, there is going to be traffic.

3 But, you know, you don't have to decide
4 that now. They are only at 314 members. You
5 don't know that. They told you there are 314,
6 but you don't know that.

7 I mean who else would you let get away with
8 that? But they got up to 500 under the current
9 agreement. Mr. Barr sent you all a monitor
10 until -- you said you ought to monitor until you
11 get to full membership. Now he wants you to get
12 rid of the monitor altogether. But the decision
13 is premature. You don't have to make it now.

14 When he gets to 500 members he can come
15 back and we will have had a year, year and a
16 half or whatever to have looked at the data free
17 of construction vehicles with real understanding
18 of what the effect is going to be. And that's a
19 fact. So why deal with that now? But do you
20 see what this number is?

21 Now let me ask you something. Before today
22 did any of you realize that he wanted 1,008
23 members? I didn't. I spent a lot of time in
24 it. Didn't know that.

25 MR. MCLENDON: I saw that, yes.

1 MR. CHOPIN: Well, the way he comes in it
2 from the back, not from the front. I mean the
3 fact is other than the one for if he puts in
4 more marking spaces, I heard something about
5 decommissioning the golf course, I don't know
6 what that's about either; he could have a lot
7 more members and just put in more parking
8 spaces.

9 Advance reservations for use of club. Let
10 me ask you something: Anybody enforce that now?
11 Do you know if he lets somebody walk in and get
12 a table? Do we know that? No. We don't know
13 that. That doesn't frankly concern me. And it
14 probably shouldn't concern you.

15 I know the reason for the rule. The rule
16 was that it was a way of controlling the number
17 of people at the club and at the same time by
18 controlling the number of people at the club, he
19 would be in a position where you could control
20 the traffic. That was part of the rationale.

21 If I had to guess, and I don't know, and I
22 want to be clear, I'm under oath and I don't
23 want you to take this as testimony, I don't
24 believe he enforces it anyway, okay? I don't
25 believe it.

*** Notes ***

Page 23

Page 24

1 Now I can't prove it. And I want to be
2 clear. I have no evidence to offer for it, but
3 I don't believe it. He doesn't shuttle his
4 people, so I don't think the agreement makes
5 that much difference.

6 Average annual automobile trips of 313 per
7 day, enhanced vehicular flow. No automotive
8 traffic which blocks public roads or causes
9 nuisances, enhanced vehicular flow.

10 You know what he is saying? No regulation.
11 If we create a nuisance, you can deal with me
12 then. Won't that be a fine kettle of fish? You
13 are going to have to go say hey, Mr. Trump you
14 are creating a nuisance here and you are going
15 to end up in court proving every time he creates
16 a nuisance.

17 That's just not how you run the zoning laws
18 of this town or any other place. You have rules
19 and regulations.

20 We have a traffic problem. We are all
21 supposed to close our eyes, close our ears and
22 pretend we have never been caught in a traffic
23 jam down near Mar-a-Lago. That's what we are
24 supposed to do. You listen to all this
25 testimony today, you believe all the testimony

1 of the experts, you would believe there is no
2 congestion on A1A near Mar-a-Lago.

3 Well, I have been caught in a traffic jam.
4 I don't know if that's not just an ad hoc piece
5 of information, but I would be happy to swear to
6 that, and I sure have cussed trying to get
7 someplace because I was stuck up in traffic.

8 Well, you make allowances. You balance.
9 You look for middle ground someplace, but there
10 needs to be some regulation of the traffic,
11 because unfortunately, there is only one road
12 that will get you from point A to point B as it
13 relates to Mar-a-Lago.

14 I don't believe he is shuttling the people,
15 and I think that's what Mr. Barr's report says
16 and I think he chickened out when I questioned
17 him about it.

18 Mar-a-Lago happens to be a national
19 historic landmark, landmark of the town.
20 Mr. Ciklin and Mr. Rampell came before the '93
21 council and said we thought the ten percent
22 account was a good idea. And you know what?
23 It's still a good idea. It's a way of taking a
24 certain amount of revenues and putting them
25 aside for the refurbishment and maintenance of a

*** Notes ***

Page 25

Page 26

1 landmark property. Very small amount of money.
2 You don't know how much is in it. No, you don't
3 know. You've got to get his permission if you
4 want to find out how much is in it. But it's
5 not a bad idea. He has got to spend the money
6 anyway. And this is just an opportunity to
7 provide a mechanism to doing it.

8 390 individuals at special events. Must
9 not cause a nuisance. I think we should appoint
10 the mayor to be at all the special events and
11 determine if there is a nuisance there, because
12 that's what he is saying. Somebody is going to
13 decide on an event-by-event-by-event basis is
14 there a nuisance? Now that's just silly.

15 I know you don't get a vote, so I'm trying
16 to do something for you, Mr. Mayor, but the fact
17 of the matter is isn't that really pretty silly?
18 I mean we think about all this stuff in terms of
19 traffic, but how about those folks that live on
20 Woodbridge? Think about that. Think about the
21 noise. Good people have a good time, but it
22 affects somebody.

23 What about the people that live across the
24 street? What about the people who live further
25 south that have to deal with the traffic or the

1 people that live further north or all the go
2 action on and that sort of thing? This my
3 friends is a single family neighborhood.

4 Now if you listen to some people in this
5 town, it would have collapsed to the ground if
6 Mr. Trump hadn't bought it. Let me tell you
7 something. That ain't true. If the Foundation
8 had offered it for sale to the public at the
9 price that Mr. Trump bought it for, I know a lot
10 of people, including Earl Smith, who would have
11 raised the money to buy it, but we never had an
12 opportunity to do it.

13 So Mr. Trump is not a fool. He bought it.
14 It's not the most expensive house in town.
15 There are other people who have more expensive
16 houses who maintain those more expensive houses.
17 He can't afford it? Tough. Sell it. You are
18 not entitled to have something you can't afford
19 and you are not entitled to run a business in a
20 single family neighborhood just because things
21 get tough for you.

22 The fact of the matter is that, the reality
23 is that that property is a very special property
24 and it's regulated different from the other
25 clubs. I think they made the point. For a land

*** Notes ***

Page 27

Page 28

1 developer, which is what Trump is, to come to
2 you and look you in the face, because he
3 wouldn't show up today, but the fact of the
4 matter is he knows that regulations on zoning
5 are grandfathered. You don't think he knows
6 that? Everybody knows that. He certainly knows
7 that.

8 The Beach Club, Everglades club, Club
9 Collette, are they regulated differently? In a
10 lot of ways, sure, but for very valid reasons.
11 They were grandfathered in when we got the code.
12 Are we supposed to all ignore that? You don't
13 have the power to go change those regulations, I
14 don't think you do any way, so you dealt with
15 this.

16 I'd like to at the end of this arrange to
17 introduce for the record the minutes of the
18 various meetings that took place. I think you
19 ought to read them if you have time, because you
20 know what they show? The painstaking process
21 that this council went through in trying to deal
22 with the issues that were raised. I mean what
23 you see is that there was real concerns, there
24 were real questions, there were real problems,
25 problems that Mr. Trump acknowledged, that his

1 experts acknowledged.

2 They didn't get it right, but they did the
3 best they could. And they compromised and they
4 came up with a type of effort to balance the
5 rights of different interests in the town.

6 And you cannot read the minutes -- if you
7 think I'm boring, you ought to read the minutes.
8 So I'll tell you, but you can't read it without
9 coming with the clear understanding that five,
10 six good people worked very hard for a long time
11 to try and get it right, but with the ultimate
12 commitment that they were going to allow
13 Mar-a-Lago to operate as a private club.

14 Now maybe you think you could do that
15 better, and maybe you can't. But I'll tell you
16 something. You can't do it with the two days of
17 testimony you have had so far. Read the
18 minutes. See how much time, see how many
19 complicated, subtle issues had to be addressed.

20 So if you want to take it on and review it
21 all, then do it, but commit yourself to do it
22 right. You can't do it any other way. These
23 are not easy questions.

24 I think it was you, Mr. McLendon, that
25 expressed the frustration of how one thing

*** Notes ***

Page 29

Page 30

1 doesn't fit together with something else. Well,
2 they don't fit together, because they are
3 intended to address different things.

4 And the fact of the matter is it is
5 complex. And there are other people's rights
6 involved. And so personally, I don't think you
7 know enough, because the application that should
8 have been filed has not been filed. I don't
9 think you know what Mr. Trump wants to do.

10 Now is there any of you who have read in
11 the paper that he is considering building some
12 big ballroom? I'm saying it. He is considering
13 it. Is there a master plan someplace? Has
14 anybody seen it? Is there one?

15 Well, you know, the guy is a planner. You
16 don't think he has a master plan for where he is
17 going? He has filed an application for the
18 120-foot slip marina. They talk about
19 decommissioning the golf course.

20 You don't know what he wants to do with
21 this property. And the odd thing is that you
22 wouldn't necessarily be opposed to what he wants
23 to do with the club. He just doesn't have
24 enough faith in you to tell you what it is and
25 to justify where he wants to do it and how it

1 fits in the neighborhood.

2 That's it. That's the only way you can
3 look at the application. And you are supposed
4 to make a decision on that basis. I don't think
5 you can do it.

6 So my, if I were voting, I would tell him
7 to go do what he should have done, like
8 everybody else, I would scold him for accusing
9 me of anti-Semitism and then I would look at
10 what it is he wants to do, I would investigate
11 it, study it, have consultants advise me, and
12 then I would make an involved decision. That's
13 what I would do.

14 Now I'm going to be cross examined.

15 PRESIDENT SMITH: Thank you, Mr. Chopin.
16 Mr. Natale.

17 MR. NATALE: Sir --

18 MR. CHOPIN: You don't have to call me,
19 sir. My name is Frank.

20 MR. NATALE: This is interesting. I'm
21 going to have an opportunity to be frank with
22 Frank.

23 MR. CHOPIN: It will be the first time in
24 these proceedings.

25 MR. NATALE: First time I have had a chance

*** Notes ***

Page 31

Page 32

1 to talk to you.

2 MR. CHOPIN: First time to be frank.

3 MR. NATALE: You mean to tell me what we
4 were listening to was something that wasn't,
5 Frank?

6 MR. CHOPIN: I think your presentation has
7 been something less than forthcoming.

8 MR. NATALE: I'm talking about what we just
9 heard just recently.

10 MR. CHOPIN: I think we have gone as far as
11 we can. Let's go on.

12 MR. NATALE: Yes. I apologize.

13 Sir, from what I heard, it seemed that the
14 one thing that you were -- of substance that you
15 were really insisting on was the 313 trips per
16 day limit; is that fair to say?

17 MAYOR ILYINSKY: We go back to traffic
18 again.

19 PRESIDENT SMITH: All right, please,
20 please. Very serious. We spent three and a
21 half hours, so please, let Mr. Chopin answer the
22 question.

23 MR. CHOPIN: I don't recall other than
24 reading the number 313 off of your chart that I
25 said one thing about 313. Now I would have

1 liked to have thought that I did discuss some
2 other substantive issues in the few minutes that
3 I spoke, but I did not raise the 313.

4 I read your note, but if you want to ask me
5 about it, it's outside the scope of my direct
6 examination, but I'll answer it anyway if that's
7 the wishes of the commission.

8 MR. NATALE: If I understand, sir, part of
9 your presentation under oath was referring to
10 the chart which is standing before me; isn't
11 that correct?

12 MR. CHOPIN: I think that's a fair
13 statement. It was on the board and I certainly
14 looked at it, yes.

15 MR. NATALE: And you referred to that.

16 What I'm asking you is, do you have any
17 objection to or any problem with maintaining the
18 313 trips per day limitation?

19 MR. CHOPIN: Do I have any problem with
20 maintaining it?

21 MR. NATALE: Yes.

22 MR. CHOPIN: What do you want me to do to
23 maintain it?

24 MR. NATALE: I'm asking your position based
25 on your organization. Does your organization

*** Notes ***

Page 33

1 then, do you in a personal capacity, or in a
2 capacity as representing your organization, have
3 any objection to maintaining the 313 trips per
4 day?

5 MR. CHOPIN: No. Let me answer the
6 question like this.

7 It may well be that 313 is not the right
8 number. I don't know what the right number is.

9 The county told us in 1993 313 was the
10 right number. I believe the city and the
11 professional staff and all of the experts came
12 to a conclusion 313 was right.

13 Now if you, sir, and Mr. Rampell had done
14 your job and presented an application that was
15 properly structured, properly supported with
16 detailed professional reports, we would have
17 been in a position to attempt to analyze and
18 assess that and make a determination whether
19 there was such a change in circumstances that
20 something would be different.

21 But instead, on September 16, we got Kimley
22 Horn's report that said nothing about the 313,
23 whether it was valid or what the analysis was or
24 anything else.

25 You don't seem to get it, unfortunately,

*** Notes ***

Page 35

1 analysis makes sense, if I can understand his
2 reasoning, if he comes to a conclusion which is
3 consistent with his reasoning and his analysis,
4 would I argue with him? No. I'm a lawyer. I'm
5 not a traffic expert. So why would I argue with
6 him?

7 MR. NATALE: Sir, you presented an expert
8 here.

9 MR. CHOPIN: I did present an expert here.

10 MR. NATALE: And did you ask that expert
11 whether or not he had any objections based on
12 his expertise to the 313?

13 MR. CHOPIN: No. Why should I?

14 MR. NATALE: You clearly would want this
15 council to deal with --

16 MR. CHOPIN: I want to make a point here
17 about my expert. I put my experts on to deal
18 with what your expert dealt with. Your expert
19 didn't deal with 313, so it's not my job to open
20 up Pandora's box to do your job for you. That's
21 the problem.

22 You were going to save your sneaky witness
23 to come on when nobody could question you and
24 have him talk about the 313. That's what
25 Mr. Barr was going to do. The only thing I knew

*** Notes ***

Page 34

1 but the job to present the case for change is
2 yours, not mine. My job is to point out your
3 failure when you fail to make that case, and you
4 failed.

5 So don't ask me about the 313. You have to
6 deal with that issue and you haven't done it.
7 Not you, because you weren't here at that time.
8 That was somebody else.

9 MR. NATALE: Would you quarrel with any
10 expert who said that the 313 is a legitimate
11 limit?

12 MR. CHOPIN: Would I quarrel with any
13 legitimate expert who said it was -- I'm sorry,
14 say it again.

15 MR. NATALE: Would you quarrel with any
16 expert in the area of traffic engineering who
17 testified that the 313 trips per day limit is a
18 valid limit? Would you quarrel with that?

19 MR. CHOPIN: Don't I get to hear what he
20 has to say and understand his analysis before I
21 tell you that or am I supposed to answer you in
22 a vacuum?

23 If he is, number one, a qualified expert;
24 if he has, number two, done his homework and
25 read things he is supposed to read; if his

Page 36

1 was what Joe Vitale testified to on the 16th, so
2 we got Bill Tipton to look at his report, to
3 analyze the numbers and to give you some number
4 as best he could figure. And on the question of
5 the usage that -- in traffic usage that's being
6 produced by the use of the club now. That's all
7 we tried to do. We were rebutting.

8 MR. NATALE: Did your expert in any way
9 testify to the fact that there was a 313 limit?

10 MR. CHOPIN: Did he testify that there was?

11 MR. NATALE: Yes. Did he testify to that?

12 MR. CHOPIN: I don't know if he testified
13 to it, but I mean, what are we, playing games?
14 It's in the agreement that there is 313. It's
15 in all the records.

16 Are you questioning there is 313?

17 MR. NATALE: No. What I'm asking you is,
18 did you ask your experts whether what was in the
19 agreement and already agreed to by the council
20 and Mar-a-Lago was a good or bad agreement?

21 Did you inquire of your expert of that as
22 it relates solely to the 313? Because that
23 deals with the traffic problem.

24 MR. CHOPIN: Did you ask my experts that
25 question?

Page 37

Page 38

1 MR. NATALE: Did I ask your expert that
2 question?
3 MR. CHOPIN: Yes. I'm asking if you did.
4 You heard me asking him the questions. Did you
5 ask him? You are so worried about it, why
6 didn't you ask him?
7 MR. RANDOLPH: May I intervene for a
8 moment? I don't think it's constructive for the
9 lawyer and the witness to be arguing. I think
10 that if the question could be answered rather
11 than argued, if I might.
12 MR. WYETT: You might.
13 MR. RANDOLPH: I am just suggesting this to
14 the council.
15 MR. CHOPIN: I think the point is well
16 taken. Let me answer you. I don't think I
17 raised the subject of the 313. It had not been
18 raised previously by your expert.
19 The whole 313 came up only with the
20 subsequent testimony. I, therefore, really put
21 him on for a different purpose and I don't
22 recall asking him that question, nor, frankly,
23 do I recall you asking him that question either.
24 MR. NATALE: Very well, sir. You would
25 agree that your purpose is to further the

1 preservation of historical sites and the
2 integrity of the, among other things, the
3 architectural history of Palm Beach, would you
4 agree with that?
5 MR. CHOPIN: I'd like to think so. That's
6 part of what I'm trying to accomplish,
7 preservation of a way of life in this town.
8 MR. NATALE: Is your answer yes?
9 MR. CHOPIN: I'm trying to tell you. If
10 you don't want the answer, don't ask the
11 question, because I want you to understand
12 something, that in this case I have a bigger
13 mission involved, and that's to deal with
14 Mr. Trump's allegations of anti-Semitism.
15 We have got to stand up. We have got to be
16 counted. We have got to confront that issue and
17 no one else has done it, so that's part of my
18 mission, but yes, preservation of this town and
19 its way of life and its architectural heritage
20 is a part of the Preservation Foundation
21 mission.
22 MR. NATALE: And you would agree that one
23 of the factors to consider in whether or not the
24 Mar-a-Lago estate or area is going to be
25 preserved in any meaningful way would relate to

*** Notes ***

Page 39

Page 40

1 the fact that the amount of traffic that could
2 be generated to and from would be a
3 consideration, a valid consideration for your
4 organization in the name of preservation?
5 MR. CHOPIN: One of many factors, sure.
6 MR. NATALE: Okay. And it would seem to me
7 that wanting to be fully honest and fully, I
8 guess, representing your interest to preserve,
9 that when you had your expert and your expert
10 realized that the agreement which already
11 existed called for 313, that you would have
12 asked that, your expert whether or not you
13 should make an objection to the 313?
14 Does that make sense?
15 MR. CHOPIN: Maybe I'm not just as good a
16 lawyer as you are. But the fact of the matter
17 is that we think 313 is a number that was
18 arrived at by experts. There hasn't been enough
19 time to make a judgment as to its validity or
20 invalidity.
21 And just like Mr. Barr said, we ought to
22 continue to monitor until we get enough raw data
23 so that we can make a decision.
24 So no, I have no intuitive problem with
25 313.

1 MR. NATALE: Thank you. Now, you mentioned
2 that there was a zoning code that deals with the
3 one to four ratio as members to parking. And
4 that's a zoning ordinance that no one can get
5 around, is that correct?
6 MR. CHOPIN: I didn't say anything in the
7 world about nobody being able to get around it.
8 Did you hear me say that?
9 MR. NATALE: Do you know any way people get
10 around it?
11 MR. CHOPIN: Are you telling me that I said
12 that?
13 MR. NATALE: Are you saying that people can
14 get around it?
15 MR. CHOPIN: I don't even remember
16 discussing it.
17 MR. NATALE: You don't remember discussing
18 the zoning requirements?
19 MR. CHOPIN: Get real. You said that
20 nobody can get around it. That's what I'm
21 asking. I never said whether anybody can get
22 around it or not get around it.
23 You can apply for a special exception and
24 ask for a variation on the amount of parking
25 space that you are allowed to have.

*** Notes ***

Page 41

1 Can you get around it? Apply for a special
2 exception. Is that getting around something?
3 No, because when you file a special exception,
4 you file a site plan, a detailed report showing
5 the development effects on the community, and
6 the town council can adjust the number of
7 parking spaces up or down as the case might be
8 to fit the circumstances. That's the way you
9 deal with parking spaces variation from the town
10 council.

11 MR. NATALE: So there is no way to get
12 around it. There is a procedure for a special
13 exception, correct?

14 MR. CHOPIN: I didn't say that. "Get
15 around" is not a word that works its way into my
16 legal vocabulary. If you would like to tell me
17 what getting around means, I'll be glad to
18 answer your question.

19 MR. NATALE: Well, is there any way of
20 circumventing that ordinance?

21 MR. CHOPIN: Sure. Do you want a good
22 example?

23 MR. NATALE: Give it to me. Go ahead.

24 MR. CHOPIN: I'll give you a perfect
25 example. You buy Mar-a-Lago. You set up a

Page 42

1 club. You bring in people to park without any
2 supervision and no one to have the faintest idea
3 how many people are parking, how many parking
4 places you have or don't have.

5 Yes, that's one example I can think of how
6 you get away with something, but that's the only
7 example I frankly can think of.

8 MR. MCLENDON: Can I? You asked about a
9 313 and I think Mr. Tipton did testify with this
10 chart that 313 would reasonably only support 378
11 members. That's what it says on here. I think
12 that was part of the record.

13 MR. NATALE: Thank you, sir.

14 Now, the ordinance that we are talking
15 about was promulgated by the --

16 MR. CHOPIN: Which ordinance are we talking
17 about?

18 MR. NATALE: Talking about the one to four
19 for parking.

20 MR. CHOPIN: Would you show it to me,
21 please?

22 MR. NATALE: Do we have a copy of that one?

23 MR. CHOPIN: Are you asking for my legal
24 opinion?

25 MR. NATALE: No. I'm asking that that

*** Notes ***

Page 43

1 particular provision provides for a one to four
2 relationship, doesn't it?

3 MR. CHOPIN: Show me the ordinance and I'll
4 tell you what it says.

5 MR. NATALE: Okay.

6 MR. CHOPIN: Why don't you just come back
7 to that question while he is trying to find the
8 ordinance and we can talk about it then.

9 MR. NATALE: In the interest of time, are
10 you aware of any town ordinance, based on your
11 knowledge as a lawyer who has testified that you
12 have been in front of this committee so many
13 times, that there is such an ordinance?

14 Are you aware of such an ordinance?

15 MR. CHOPIN: I am aware that there are
16 ordinances that deal with parking. I don't have
17 them memorized.

18 And it just seems simple to me that you
19 have been in all these courtrooms -- and by the
20 way, this town council knows I haven't been
21 before them that many times, but I have
22 certainly been a witness to the proceedings in
23 this town, but it's not complicated. You want
24 to ask me about an ordinance, show it to me.

25 MR. NATALE: I understand that.

Page 44

1 MR. CHOPIN: I just don't have it
2 memorized, and I bet you don't either.

3 MR. NATALE: Let me ask you, do you know
4 the number of it?

5 MR. CHOPIN: No. You are the lawyer. I'm
6 just a witness.

7 MR. NATALE: Let me ask you, sir. Are you --
8 as a witness, do you have any knowledge of an
9 ordinance which would say that there is a one
10 per four member requirement?

11 Are you aware, yes or no? Are you aware of
12 it, sir?

13 MR. CHOPIN: Come on, don't be silly.

14 MR. NATALE: No. Are you aware of it, sir?

15 MR. CHOPIN: There is an ordinance that
16 limits parking. I have heard the one to four.
17 I haven't read it recently.

18 If you let me read it -- I'm not trying to
19 evade you, but you want me to guess at that?
20 You don't even know what it says until Rampell
21 found it for you, but you want me to guess.
22 What do you want me to tell you?

23 MR. McDONALD: Could --

24 PRESIDENT SMITH: Mr. McDonald, you've got
25 two lawyers going at each other. But I think if

*** Notes ***

Page 45

Page 46

1 it's a legitimate question, Mr. Chopin will
2 determine that and answer it. And Mr. Natale
3 has a reason for asking it, so let's not us jump
4 in. We didn't ask the town attorney to jump in,
5 but let's not have the council jump in.

6 MR. MCDONALD: I have a comment to make.
7 Mr. Chopin, it's hard to shift from being an
8 attorney to a witness, I understand that.

9 And, Mr. Natale, I'm not sure the direction
10 you are coming from. But may I ask both of you
11 to just answer the questions and be a witness.

12 MR. CHOPIN: But, Mr. McDonald, if I was
13 sitting in a courtroom and he asked me about an
14 ordinance and I asked him to let me see it,
15 there isn't a judge anywhere in this country
16 that wouldn't require him to show it to me. I
17 don't want to guess. I haven't memorized it.

18 MR. MCDONALD: I agree. I just don't want
19 you two arguing with each other.

20 MR. CHOPIN: I'll answer any question he
21 wants me to. I think there is an ordinance that
22 ties membership and parking spaces together. If
23 I could read it, I can tell you what I think it
24 means.

25 MR. NATALE: My question was, was he aware

1 of it. Now, he could either say yes or no to
2 that question, and you know that and I know
3 that. And you don't have to be a lawyer.

4 In fact, if we see how he conducted his
5 cross examination, he wanted yes and nos.
6 What's good for the geese is good for the
7 gander.

8 MR. CHOPIN: I think it's what's good for
9 the goose is what's good for the gander.

10 PRESIDENT SMITH: All right. All right.

11 MR. NATALE: What I'm saying is I have
12 asked straightforward, simple questions.

13 PRESIDENT SMITH: All right. Stop. Just a
14 minute, just a minute. We have to stop and we
15 have to go back.

16 Mr. Chopin, do you remember the question?

17 MR. CHOPIN: The question is, you know,
18 like when did I stop beating my wife?

19 PRESIDENT SMITH: No. Let's be a little
20 more polite, please.

21 MR. CHOPIN: The fact of the matter is his
22 question, am I aware that there is an ordinance
23 that provides for one to four?

24 What I am aware of, Mrs. Smith, is that
25 there is an ordinance dealing with parking that

*** Notes ***

Page 47

Page 48

1 ties membership to the number of parking spaces.

2 I do not have that memorized. I do not
3 know off the top of my head --

4 PRESIDENT SMITH: He just asked you if you
5 were aware of it.

6 MR. CHOPIN: Ma'am, he didn't. He asked me
7 if I was aware of an ordinance that said one
8 parking space per four members.

9 I'm not sure that that's what it says or
10 what it says in its entirety. If I say yes, I'm
11 aware of that, then I have admitted that I'm
12 aware of an ordinance of one to four. And I'm
13 telling you I'm not arguing with him. I just
14 can't swear to you that's what it says because I
15 haven't read it.

16 PRESIDENT SMITH: All right. That's the
17 answer.

18 MR. NATALE: Sir, I'd like you to look at
19 what is a book called "A Zoning: Town of Palm
20 Beach, Florida."

21 Have you ever seen a book similar to this
22 ever before?

23 MR. CHOPIN: Never saw it before.

24 MR. NATALE: Have you ever had the
25 opportunity to see what language is particularly

1 written in it?

2 MR. CHOPIN: My copy is not pink, but I
3 have seen the town ordinance.

4 MR. NATALE: That's not my question. My
5 question is do you recognize the language which
6 was used to write that?

7 MR. CHOPIN: Which ordinance are you
8 talking about?

9 MR. NATALE: Anything on the page which I
10 pointed out to you, do you recognize the
11 language that's being utilized?

12 MR. CHOPIN: The language? It's in
13 English.

14 MR. MCLENDON: If you guys don't quit, I'm
15 going home.

16 PRESIDENT SMITH: All right, because this
17 is what these two gentlemen are doing and the
18 council is going to have to sit. We sat for the
19 other and we are going to have to sit for this.

20 So in the interest of keeping our
21 attention, I would suggest you get on with it,
22 and I think we will stipulate the zoning code
23 for the town of Palm Beach is in English.

24 MR. NATALE: Sir, I'd like you to direct
25 your attention to where I'm pointing out where

*** Notes ***

Page 49

1 it says Four: social, swimming, golf, tennis and
 2 yacht clubs, and then it says spaces required
 3 per unit, one per four members.
 4 MR. CHOPIN: Right.
 5 MR. NATALE: Is that what the code says?
 6 MR. CHOPIN: I just read it to you.
 7 MR. NATALE: Now, sir, that code provision,
 8 do you have any reason to believe that that code
 9 provision was enacted improvidently or foolishly
 10 by the council?
 11 MR. WYETT: Which council?
 12 PRESIDENT SMITH: No, let him answer the
 13 question, please.
 14 MR. CHOPIN: I have no reason to believe it
 15 was enacted improperly.
 16 MR. NATALE: Do you have any opinion as to
 17 whether that should be changed or remain the
 18 same?
 19 MR. CHOPIN: No, I think it should remain
 20 exactly the same, because the fact is the
 21 council has the power of the exception, special
 22 exception to review the circumstances and fix
 23 appropriate conditions or in the granting of the
 24 exception.
 25 I have no reason to think we should have

*** Notes ***

Page 50

1 wholesale changes. I don't know anything about
 2 anything other than what we are talking about
 3 today.
 4 MR. NATALE: Sir, you would agree that the
 5 property at Mar-a-Lago is governed by the
 6 National Trust regarding activity changes that
 7 goes on?
 8 MR. CHOPIN: No, sir, I won't agree to
 9 that.
 10 MR. NATALE: Okay. You will not agree that
 11 they have to approve any plans as far as
 12 changing of building or building which goes on
 13 on the property?
 14 MR. CHOPIN: I know that somebody has to
 15 approve it, but Mr. Trump reserved in his
 16 preservation easement the power to change who
 17 has that easement, so it doesn't necessarily
 18 have to be the National Trust. It could be
 19 somebody else.
 20 MR. NATALE: As it stands today, it is the
 21 National Trust, is it not?
 22 MR. CHOPIN: It is, unless you all have
 23 changed it. I haven't had any notice of that.
 24 It is the National Trust, yes.
 25 MR. NATALE: And the National Trust, do you

Page 51

1 have any problem with that organization as being
 2 either incompetent or insensitive to the needs
 3 to preserve national monuments?
 4 MR. CHOPIN: No, I don't.
 5 MR. NATALE: Okay. Do you have any reason
 6 to believe that they would do anything contrary
 7 to what is in the best interest of preserving
 8 the architectural historical significance of the
 9 Mar-a-Lago building?
 10 MR. CHOPIN: I think that they would -- the
 11 answer to your question is no, I don't think
 12 they would do anything to harm it, but I think
 13 they might well some day be put into a position
 14 where they have to make a judgment to allow
 15 something they would prefer not to happen in
 16 order to hopefully achieve the best overall
 17 result that they can.
 18 MR. NATALE: That's a fear you have?
 19 MR. CHOPIN: No, it's not a fear. It's a
 20 possibility, is what I'm telling you.
 21 MR. NATALE: It's a possibility and what is
 22 the basis of that possibility that they would
 23 abandon their mission?
 24 MR. CHOPIN: I don't think they would
 25 abandon their mission, but the fact of the

*** Notes ***

Page 52

1 matter is you set the preservation easement up
 2 so you could take it away and give it to
 3 somebody else if they didn't do what you wanted
 4 them to do.
 5 So they could be confronted with a
 6 situation that says am I better off giving in on
 7 something which is not life-threatening as
 8 opposed to letting them take it away, as opposed
 9 to putting it in some 5013 charity on their own.
 10 I can set it up tomorrow if you want to. It's
 11 not complicated to do. The fact of the matter
 12 is they have to make that decision.
 13 MR. NATALE: Have you ever expressed
 14 opposition to the fact that the deed of trust
 15 was issued to the National Trust?
 16 MR. CHOPIN: I haven't had an opportunity
 17 to express that. The fact of the matter is that
 18 designation came during the executive session
 19 when nobody had an opportunity to comment, but
 20 no, I think it was a good selection. I wouldn't
 21 have expressed any concerns about the National
 22 Trust account.
 23 MR. NATALE: Now, when we talk about a site
 24 plan that you refer to, the site plan would be
 25 to articulate physical changes, among other

Page 53

Page 54

1 things, physical changes to the property, would
2 it not?

3 MR. CHOPIN: I suspect that's the reason we
4 don't have what you are supposed to have. If
5 you read section 961, it tells you that you are
6 supposed to submit a professionally-prepared,
7 detailed report showing the impact of the
8 development on the community.

9 And so it would address, just as the '93
10 site plan review addressed, the number of
11 members, the number of facilities, how they were
12 going to be used, all of those things. That's
13 what it should have done.

14 MR. NATALE: Sir, are you aware as to
15 whether or not the staff of the Town of Palm
16 Beach requested for any site plan as it related
17 to this application?

18 MR. CHOPIN: Let me tell you something.
19 Town staff doesn't have anything to do with it.
20 It's a town ordinance. The fact that they
21 didn't ask you in '93 didn't make it better.

22 The fact is you are required to do it.
23 It's not discretionary; it's mandatory, and you
24 didn't do it. I don't know whether the staff
25 said anything to you or not.

1 MR. NATALE: Would it make any difference
2 to your opposition to the application if the
3 provision that would require 252 parking spaces
4 was not changed or altered in any way, that it
5 was maintained?

6 Would you have objection to that?

7 MR. CHOPIN: Would I have an objection to
8 leaving the agreement the way it is now?

9 MR. NATALE: Would you have any objection
10 to the 252 parking space requirement being
11 maintained?

12 MR. CHOPIN: No. I mean I don't have any
13 objection to it now. You are only asking me
14 about that one provision, right?

15 MR. NATALE: That's my question.

16 MR. CHOPIN: No. I am not here objecting
17 to anything.

18 MR. NATALE: Now, would your opposition to
19 the application change if there were no pending
20 applications for a marina?

21 MR. CHOPIN: Would it change?

22 MR. NATALE: Your opposition.

23 MR. CHOPIN: No, nothing to do with the
24 marina. I don't think you can get the marina
25 anyway, but no, you have to be realistic. It's

*** Notes ***

Page 55

Page 56

1 there. You filed the application, but I don't
2 think our view of the ability to judge the
3 impact of the development on the community is
4 affected by the fact that you do or don't have a
5 marina plan that's been submitted.

6 MR. NATALE: Would the fact that there
7 would be no ballroom, no building of a ballroom,
8 would that fact in any way change your
9 opposition to this application?

10 MR. CHOPIN: It's not a part of this
11 application, is it?

12 MAYOR ILYINSKY: Neither is the marina, is
13 it?

14 MR. NATALE: No, that's correct.

15 My point is, sir, that when you were
16 testifying you kept saying there is a fear that
17 all of these things could happen, and what I'm
18 trying to establish is if those fears were he
19 eradicated, would that change your position as
20 it relates to Mar-a-Lago?

21 MR. CHOPIN: Are you asking me can I trust
22 Mr. Trump to keep his word and not change what
23 he is going to do in three years? Are you
24 asking me to take that?

25 Are you asking anybody in this room to

1 believe that the man who made the deal, you
2 know, can be counted on not to want to change it
3 in three years? Is that your question?

4 MR. NATALE: My question, sir, is if the --

5 MR. CHOPIN: The answer to your question is
6 no. The fact of the matter is our position on
7 the application is based on precisely the points
8 that are contained in the application. They are
9 exacerbated to some extent by reason of the fact
10 that we know that there are other plans under
11 consideration for other modifications to
12 Mar-a-Lago. Our decision with respect to the
13 application was made, pure and simple, on the
14 application itself and its disgusting suggestion
15 of anti-Semitism.

16 By the way, do you know who discriminated
17 against Mr. Trump?

18 MR. NATALE: Sir, if I may. You mentioned
19 that there could be --

20 MR. CHOPIN: I guess not.

21 MR. NATALE: Could be noise problems. You
22 mentioned that there was a concern you would
23 have.

24 MR. CHOPIN: I said that it was a concern
25 that the town council had, the people on

*** Notes ***

Page 57

1 Woodbridge had, Mrs. Massey, who lives across
2 the street.

3 You don't have to be a brain surgeon to
4 figure out that if you are going to have an
5 unlimited number of people, a matter of feet
6 away from your house, it might get noisy.

7 MR. NATALE: Sir, are you aware of the fact
8 that there have been concerts at the facility
9 and there have been no complaints of any noise
10 or in fact no one has even called the police
11 station to say that there was a nuisance?

12 MR. CHOPIN: Do you want to bet at this?
13 It's late at this. If I produce tomorrow
14 someone who has complained about the noise at
15 Mar-a-Lago, will you withdraw your application?

16 MR. NATALE: That's not my question, sir,
17 because I'm sure you would have the capacity to
18 produce whatever you want. My question is this.

19 MR. CHOPIN: I have heard of complaints
20 about the noise. I have heard concerns about
21 the number of people, the traffic and the
22 congestion and the like.

23 Yes, the answer to your question is yes, I
24 have heard that.

25 MR. NATALE: Have you had any conversation

Page 58

1 with the police chief --

2 MR. CHOPIN: No, I have not.

3 MR. NATALE: -- to whether there has been
4 complaints --

5 MR. CHOPIN: I haven't had any conversation
6 with him about anything so far.

7 MR. NATALE: Do you feel that he isn't
8 doing his job well and wouldn't be protecting
9 the interests of the people to prevent a
10 nuisance?

11 Is that why you haven't talked to him? Why
12 haven't you talked to him?

13 MR. CHOPIN: Get real. I didn't talked to
14 him. I respect Mr. Terlizze. We all do. I
15 didn't talk to him because it's not my job to
16 talk to him. I'm not on a witch hunt, my
17 friend. What I'm trying to do is deal with the
18 failures in your application.

19 MR. NATALE: When you talked about the uses
20 of the property that you said that those uses
21 would need to be articulated even if there is no
22 change in the physical plan, is that your
23 position?

24 MR. CHOPIN: I said to this town council
25 you need to know the utilization of the property

*** Notes ***

Page 59

1 in order to determine its development impact on
2 the community. That makes perfect sense to me,
3 because I don't know how you make a decision as
4 to whether it's going to meet all the criteria
5 that you are required to sign off on if you do
6 not know how it's going to be used. I think
7 that makes perfect sense. That's what I said.

8 MR. NATALE: Is there anything in the
9 application, since you have told me that you are
10 merely concentrating on the application, is
11 there anything in the application that says
12 there is going to be any use different than what
13 was approved by this council in 1993?

14 MR. CHOPIN: Absolutely.

15 MR. NATALE: What is it? What uses are
16 different?

17 MR. CHOPIN: How many members you are going
18 to have, how many, the whole litany of things,
19 how many people at special events, the amount of
20 parking spaces that you can have, the shuttling
21 requirements, the ten percent escrowing for the
22 maintenance of the property, you know, the whole
23 litany.

24 I don't have them all memorized, but if you
25 take out all the restrictions, you know, this is

Page 60

1 not Wonderland and you have not fallen through
2 the mirror, my friend.

3 The fact is once you take those
4 restrictions off, you don't have to come back to
5 this council to ask for anything. So you have
6 to assume unlimited uses if you believe that
7 Donald Trump ain't going to use the power that
8 he has to run this club any way that he wants
9 to.

10 So, yes, the application speaks directly
11 and forthrightly to the fact that the
12 limitations that were agreed to would be removed
13 and that Mr. Trump would be able to operate
14 totally without constraints. That's the
15 application and that's the concern I have with
16 the application.

17 MR. NATALE: Your position is that this
18 application, if granted, would allow Mr. Trump,
19 the Mar-a-Lago club, to develop itself without
20 any restraint whatsoever, is that what you are
21 telling this body?

22 MR. CHOPIN: No. If all lawyers are this
23 much of a pain in the neck, I'm going to join
24 the priesthood or something and give up being a
25 lawyer.

*** Notes ***

Page 61

Page 62

PRESIDENT SMITH: Mr. Chopin, back on the subject, please.

MR. CHOPIN: I didn't say anything like that.

What I said was, very precisely, that if you take the limitations and the restrictions that are contained in the use agreement that was agreed with Mr. Trump and you remove those restrictions, then they're no longer there to serve as a regulatory device for how that property is used.

Now, if you want to build something, then you are going to have to variance and I know that. I'm talking about your application.

MR. NATALE: Sir, if the application were granted, Mr. Trump, Mar-a-Lago club would still need to comply with all other zoning requirements, wouldn't they?

MR. CHOPIN: Subject to the special exception, yes.

MR. NATALE: And the "subject to a special exception" would mean that this council --

MR. CHOPIN: They have a special exception, don't forget that. There is a special exception that allows him to use the club, I mean the

property as a club. Don't forget that.

MR. NATALE: I understand that.

MR. CHOPIN: Okay.

MR. NATALE: What I'm getting at is if he wanted to use the club in any way other than what the club is being used for, he would still be subject to all of the other zoning regulations, he would still be subject to all of the other laws of the state of Florida that relate to that use, wouldn't he?

MR. CHOPIN: He has been given permission to run that single-family residential property as a club.

He may use the property in any way that is consistent incidental to the operation of the club.

So if he wants to do things, enlarge the use, modify the use, do other things, he would not have to come back to this council and ask you for permission.

He has been granted an exception, a special exception to run -- I don't think the last council appreciated it -- but to run a commercial enterprise in a single-family neighborhood. And he has that permission. You

*** Notes ***

Page 63

Page 64

are not going to take it away from him. You can't. He has got it.

And the fact of the matter is he can run a club and do all things that are incidental to that club without any further coming back to this council, because he will be in compliance with the law. He will be in compliance with the law if you --

MR. NATALE: Sir, isn't it true that he if he did something which was contrary to the zoning code or contrary to the laws of the state of Florida, that the special exception given by this council to run a club would not protect him? Isn't that true?

MR. CHOPIN: You know, it's a--

MR. NATALE: Isn't that true?

MR. CHOPIN: I can't answer you yes or no, and I'm sorry if you don't understand that, but the bottom line is that the club is a special exception. It has a right to operate as a club.

If he has a concert with 9,000 members going out to hear The Frug -- not many of you remember who The Frug are -- the fact of the matter is he would not be in violation. He would not be, because he has no parking

requirements if he shuttles people over from West Palm Beach. He has no limitations on the number of people attending special events. There is nothing that this town would be able to do about it.

Now, did he create a nuisance? Maybe, I don't know. Just haven't -- so you can't ask me conflicting questions and expect a single answer. If you don't understand that I apologize, but I can't do better.

MR. NATALE: Sir, the situation that you described, do you know of anything in the special exception which would prevent the police department from conducting or doing anything they felt was necessary in order to protect the health and welfare and public safety?

MR. CHOPIN: I think the police department has a mission and that they accomplish their mission. I don't think it's the prerogative of you to suggest, or this town to accept, the notion that they should discharge their obligation by relying on the police to enforce the zoning codes of the Town of Palm Beach, and that's what you want to suggest. That's what Mr. Barr suggested. As long as the police

*** Notes ***

Page 65

1 thought everything was okay, nobody else should
 2 have an opinion.
 3 MR. NATALE: Sir, what I'm getting at is
 4 isn't it true that this special exception does
 5 not release the Mar-a-Lago club from zoning
 6 regulations, from other zoning regulations? It
 7 does not release them from the laws of the state
 8 of Florida?
 9 MR. CHOPIN: That's not true. It does
 10 release them from the zoning regulations. It
 11 releases them from all of the zoning regulations
 12 that apply to single-family neighborhood and
 13 allows him to run a business in their
 14 neighborhood.
 15 Are you out of your mind? That's exactly
 16 what it does.
 17 MR. NATALE: Sir, what would -- is there
 18 anything that the Mar-a-Lago Club could do or
 19 produce that would cause you not to oppose this
 20 application?
 21 MR. CHOPIN: Absolutely.
 22 MR. NATALE: Please tell us everything that
 23 you think you would want us to do or produce so
 24 you wouldn't oppose it.
 25 MR. CHOPIN: Well, now wait a minute.

*** Notes ***

Page 66

1 Let's take it one step at a time.
 2 What I'd like you to do is what you should
 3 have done back when you filed the application.
 4 And that is submit a detailed site plan, a
 5 detailed application, telling us what you want
 6 to do and give us the kind of
 7 professionally-prepared staffing and reports
 8 that we can evaluate.
 9 I would not be opposed to that application.
 10 I think that we would review the application.
 11 We would try and understand it, appreciate its
 12 impacts on the neighborhood, consult other
 13 people and possibly say not a bad idea.
 14 But what you are asking this council to do
 15 and me, by asking me this question is to tell
 16 you in a vacuum that it's okay to do something
 17 when you refuse to tell us what it is that you
 18 want to do.
 19 MR. NATALE: Sir, that's not my question.
 20 MR. CHOPIN: Sorry.
 21 MR. NATALE: My question to you, is there
 22 anything, any requirements you would want --
 23 MR. CHOPIN: I'm just a poor lawyer. I
 24 don't want anything but what the code requires
 25 you to do. To start with, give us the site plan

Page 67

1 review.
 2 Now, after I see the site plan review, then
 3 maybe I can go on and give you an answer, is
 4 there something else I want? But that's a
 5 starting point. I can't tell you what I want
 6 when I don't know what you want to do except I
 7 want you -- you want to tell me you want to have
 8 a free hand totally without restriction to do
 9 anything you want to do, and that I find
 10 objectionable.
 11 MR. NATALE: Sir, did you oppose the
 12 application for subdivision when that was first
 13 made?
 14 MR. CHOPIN: I opposed the application for
 15 the division of Mar-a-Lago into 11, 12, or 13
 16 lots, as I remember.
 17 MR. NATALE: Okay. Do you have an opinion
 18 as to whether Mar-a-Lago should have been
 19 subdivided instead of turning it into a club?
 20 MR. CHOPIN: Mar-a-Lago should not have
 21 been subdivided into 13 lots, if that's the
 22 right number.
 23 Should Mar-a-Lago have been subdivided into
 24 a different number of lots -- you know, greed is
 25 a funny thing. The only opportunity council

*** Notes ***

Page 68

1 could consider, which was the application which
 2 was filed which was for 13 lots. That's all
 3 that anybody focused on. That was too many.
 4 Maybe it was 11. Was it 11?
 5 PRESIDENT SMITH: I think it was 11.
 6 MR. CHOPIN: Okay. But 11 was too many.
 7 There was a lot of evidence to suggest 11 was
 8 too many. I think the council would have
 9 probably approved five, six or seven, but it
 10 only had the choice to vote yea or nay on 11.
 11 MR. NATALE: It's your recollection that it
 12 was 11, not eight?
 13 MR. CHOPIN: I think Mr. McDonald told me
 14 that and Mrs. Smith told me that.
 15 MR. MCDONALD: I think 11.
 16 MR. CHOPIN: No, I've got to tell you that
 17 I remember. I think it is 11. I'm sorry, it's
 18 been four or five years, but the fact of the
 19 matter is that they were flirting all around
 20 about offering something for seven but when they
 21 came to the town council, we didn't know which
 22 application we were considering, and I think it
 23 was --
 24 PRESIDENT SMITH: That's right. They did
 25 the 11 at town council, that's right.

Page 69

Page 70

1 MR. CHOPIN: They would not back off and I
2 can't remember who represented Mr. Trump at that
3 time, but they said we are here on this
4 application for 11, but they did flirt with the
5 idea of a lesser number, but held out for the
6 11.

7 PRESIDENT SMITH: Steve Broberg. If it
8 isn't 11, that's my mistake. There were four
9 sets of plans.

10 MR. CHOPIN: It was certainly more than
11 ten, in any event. That's my recollection.
12 Polly, do you remember?

13 PRESIDENT SMITH: Never mind, please go
14 back and forth.

15 MR. NATALE: I have no further questions,
16 Madam President.

17 PRESIDENT SMITH: Wait, wait.

18 MR. CHOPIN: Do I get redirect?

19 PRESIDENT SMITH: Wait. Are there -- just
20 a minute, Mr. Chopin. You were on here as a
21 witness and as we have done with the other
22 witnesses, are there, is there anyone else who
23 has any questions for Mr. Chopin? Don't go.
24 Members of the council? Well, this is your
25 opportunity to question Mr. Chopin. He is here,

1 as he has been here all day, and when you are
2 finished with him, you are finished. So this is
3 your opportunity.

4 Mr. Wyett?

5 MR. WYETT: Frank, do you feel that if this
6 council granted the petition, the town would be
7 harmed?

8 MR. CHOPIN: Yes, I really do. And it
9 pretty much goes back to what I have been trying
10 to say to you all evening.

11 One, I have no doubt that the power that
12 you would give willy-nilly to Mr. Trump would be
13 exploited to its fullest possible extent.

14 Two, you would be harming the town by
15 establishing a precedent for approving the use
16 of that property without knowing what was going
17 to be done that, and I think that would be a
18 long-term harm that you would live to regret.

19 The fact of the matter is that Mar-a-Lago
20 can work well as a club, but it has to work
21 within certain restraints and subject to certain
22 conditions.

23 It is not Mr. Trump's gold mine. It is a
24 club functioning in a single-family neighborhood
25 and if it functions the way it apparently has in

*** Notes ***

Page 71

Page 72

1 the last year or so, I think everybody is very
2 happy about the way it's worked or could work,
3 but -- and at some point in the future we may
4 have enough information about the club to be
5 able to judge should we do things differently
6 than what we have already done, but I don't
7 think that you have that experience to make that
8 judgment right now.

9 MR. WYETT: Is it your testimony that the
10 applicant has failed to present the proper
11 documentation and this council would be setting
12 a bad precedent by allowing this to happen at
13 this time?

14 MR. CHOPIN: I don't think the town council
15 has that authority to waive a provision in your
16 ordinance. I mean Skip is your attorney.

17 To me, the requirements for a special
18 exception are black and white. They are
19 mandatory. And I don't think anybody could
20 question he hasn't done what he is supposed to
21 do.

22 MR. WYETT: Are you aware that among the
23 letters we have, there is complaints about
24 noise?

25 MR. CHOPIN: I was aware of that and I have

1 also talked to a lot of people, as I'm sure all
2 of you have for the last several weeks.
3 Wherever you go you get confronted.

4 And I have certainly heard an awful lot of
5 complaints about noise. But trying to bring to
6 mind, just like when you went through your
7 ex parte confessions this morning, who it was
8 you talked to, at this point I couldn't remember
9 who it was that had told me. So yes, I am, now
10 that you refreshed my memory, aware of the
11 complaints and letters about noise.

12 PRESIDENT SMITH: Are you finished,
13 Mr. Wyett?

14 MR. WYETT: Yes.

15 PRESIDENT SMITH: Mr. McDonald?

16 MR. MCDONALD: Mr. Chopin, when you were
17 going through the exhibit there, you seemed to
18 indicate that there were some that you weren't
19 concerned about and I just want to go through
20 that with you.

21 Are there any of those that were on the
22 chart that you used, any of those requests that
23 you feel that would be acceptable?

24 MR. CHOPIN: I can't see it from there.

25 PRESIDENT SMITH: If you want to take the

*** Notes ***

Page 73

Page 74

portable microphone, Mr. Chopin, please.

MR. CHOPIN: Well, you know what I said about the photography. If they are taking pictures of guests over there, I'm not going to get too excited about it. I don't know whether they do that or not, but if you don't couch what you do carefully, you are going to end up with commercial photography and layouts and shoots and movies and things like that, even though you aren't supposed to be able to do movies. They have done shoots at Mar-a-Lago. That doesn't trouble me. You know, it's not on here -- maybe it is. Yes, Trump pays the taxes.

Listen, the town council didn't understand when they put that provision in that Donald Trump wasn't transferring the property to, you know, the collective membership. They put that provision in because they thought he was and he wanted to make sure that they would be able to pay the taxes.

Well, the truth of the matter is, he is going to pay the taxes because he owns the property. So I don't care about that. The members don't have to be members. They don't want to be members. He can stick it to you as

much as he can stick it to you, but if you don't want to, you can quit. But he owns that property and he is going to pay the taxes, so that doesn't trouble me a great deal.

I'm trying to think -- this is not an exhaustive list -- if there is anything else.

MR. MCDONALD: The only other one you talked about was, that I remember was advance reservations.

MR. CHOPIN: I suspect that they take walk-ins anyway, and you don't have any way of enforcing whether they are advance reservations or not. So would that trouble me? Not greatly.

If you are going to go through point by point and consider these things, they are innocent enough that no matter how uninformed you are, you can't screw it up.

The rest of them, you better stay away from.

PRESIDENT SMITH: Who is uninformed, Mr. Chopin, that they might screw it up, in the vernacular?

MR. CHOPIN: Mrs. Smith, through no fault of your own, but as a consequence of Mr. Trump not doing what he is supposed to do, you folks

*** Notes ***

Page 75

Page 76

just don't have the information you are supposed to have, and therefore you are uninformed and can't make a fully-informed decision as a consequence.

PRESIDENT SMITH: All right. Anything else, Mr. Shaw? I see Mrs. Douthit and Mr. Shaw has asked to have a question.

Mrs. Douthit, if you want to speak, come up while Mr. Shaw is asking his question.

MR. SHAW: My question is very simple.

MR. CHOPIN: Can I bring this microphone back to Nancy?

PRESIDENT SMITH: I don't know if you would be allowed to that in a court of law, Mr. Chopin.

MR. CHOPIN: In the South, chivalry is not dead, Mr. Smith.

PRESIDENT SMITH: I'm glad to hear that. Since it has been pointed out to us today by both the applicant and the others speaking that this is not a court of law, but quasi-judicial, I think it would be fine for Mrs. Douthit to have the microphone; however, would you wait for Mr. Shaw.

MR. SHAW: Does the National Trust have to

approve any changes in the agreement? I throw that out to the floor.

MR. CHOPIN: No, it doesn't, Mr. Shaw. I don't think it does.

MR. SHAW: Mr. Natale, do you know -- do you feel that the National Trust has any say in the conditions that are on the declaration from the standpoint that it could impact the property?

MR. NATALE: My understanding is that anything which is going to go on to change or in any way jeopardize or affect historical significance of the landmark, that the architectural integrity of the property itself is something that they have to approve first.

In fact, it is my understanding, Councilman Shaw, that even if the council or anyone was to say you can go and do x, if the National Trust were to say no, we don't want that to happen to the building, then it couldn't happen. That's my understanding.

MR. SHAW: If wear and tear or use of the building, that impacts the building, that's something that would fall under their jurisdiction?

*** Notes ***

Page 77

1 MR. NATALE: Absolutely, yes. I think
2 that's one of the things. In other words, I
3 think that the people who have been doing the
4 planning and have been going back and forth with
5 this have spent numerous hours with the National
6 Trust, because they understand, at least as we
7 interpret it and as it's been effected, that
8 nothing can go on there unless there is a
9 clearance from them that it's not going to in
10 any way inhibit or destroy the architectural
11 integrity.

12 MR. CHOPIN: That simply is untrue.

13 PRESIDENT SMITH: Wait, Mr. Chopin.

14 MR. SHAW: I'm not an attorney so I could
15 lose my train of thought very quickly and then I
16 rattle on forever.

17 PRESIDENT SMITH: Don't. Let him get back
18 on track. Please keep going.

19 MR. SHAW: Thank you.

20 If the limitation of 390 people to a
21 special event is no longer there, and we now
22 have the seven and a half thousand guests coming
23 to listen to -- who was it?

24 MR. CHOPIN: The Frug.

25 PRESIDENT SMITH: Who was that?

*** Notes ***

Page 78

1 MR. CHOPIN: You had to be young to
2 remember The Frug.

3 MR. SHAW: That was a dance.

4 PRESIDENT SMITH: Would you go ahead,
5 Mr. Shaw?

6 MR. CHOPIN: It was also a group.

7 MR. SHAW: Do you not feel that that has an
8 impact on the facility and therefore would fall
9 under the domaine or approval of the National
10 Trust?

11 MR. NATALE: To be quite frank, I would
12 feel personally very uncomfortable to say what
13 the National Trust would do or not do, so I
14 don't want to say something that I don't think
15 that I am in a position to say.

16 I can tell you what my understanding is,
17 and the role that they have, if you will, in the
18 hierarchy of what happens to the physical plant,
19 what happens to the physical structure, however,
20 that they would be the best people to say how
21 they view their responsibility.

22 MR. SHAW: Have they responded to this
23 application?

24 MR. NATALE: May I have a moment to ask, to
25 find out what the answer to that is?

Page 79

1 PRESIDENT SMITH: You can say you don't
2 know and consult with the other council.

3 MR. NATALE: At this point I don't know. I
4 would have to consult.

5 PRESIDENT SMITH: All right.

6 MR. CHOPIN: Mr. Shaw, may I have a chance
7 to comment on your question if you don't mind?

8 First of all, there are limited
9 preservation easements that have been granted to
10 the National Historic Trust. The whole of the
11 property and all of the uses are not subject to
12 the jurisdiction of the National Trust. If they
13 want to make changes or in other fashions, they
14 have to get the consent, because there are
15 integral parts of the agreement that require
16 that.

17 If they want to utilize a space in a
18 different fashion without making those changes,
19 it is not covered by the preservation easement.
20 And if he reads it, he will see that.

21 PRESIDENT SMITH: All right. Mr. Natale,
22 can I ask you a question about the preservation
23 easement?

24 MR. NATALE: Yes, Madam President.

25 PRESIDENT SMITH: This is being recorded

*** Notes ***

Page 80

1 being the National Trust and Mr. Trump; is that
2 correct?

3 MR. NATALE: Yes. What I have been
4 informed is that on a once-a-year basis, the
5 National Trust conducts inspection of the
6 property, that the inspection of that property
7 is conducted by the National Trust.

8 PRESIDENT SMITH: Right.

9 MR. NATALE: However, the cost has to be
10 borne by the Mar-a-Lago Club, that anything
11 which they say needs to be fixed, repaired,
12 maintained or anything like that must be
13 maintained in order to continue to receive their
14 approval.

15 PRESIDENT SMITH: Right. I think
16 Mr. Rampell told us that there were going to be
17 annual visits by the National Trust at the time
18 we were talking about the preservation
19 easements, and I know these easements are in
20 place.

21 Have they been submitted as part of your
22 application so we know exactly what the
23 parameters are of the -- have I not seen that?

24 Could Mr. Rampell answer?

25 MR. NATALE: Yes.

Page 81

1 MR. RAMPPELL: The deed of conservation and
2 preservation easement was made part of the
3 record on September 16.

4 PRESIDENT SMITH: It was?

5 MR. RAMPPELL: Yes, ma'am.

6 PRESIDENT SMITH: All right. Thank you.

7 All right. Now who is going to take the
8 microphone? We are getting to Mrs. Douthit.

9 MRS. DOUTHIT: It is simply a question.

10 PRESIDENT SMITH: Wait, Mrs. Douthit,
11 please.

12 MR. CHOPIN: They want to have you on the
13 record.

14 MRS. DOUTHIT: As I recall, one of the
15 requests was to have the unity of title removed
16 from the agreement, and as I understand it, that
17 has some rather heavy penalties to the town
18 included.

19 And if you would please explain that, I
20 would appreciate it.

21 MR. CHOPIN: Well, I would be happy to
22 explain it.

23 If you allow them to divide up the
24 property, they could sell off that marina they
25 are not going to get. They could move off the

*** Notes ***

Page 82

1 Beach Club. They could do all kinds of things.

2 And what you or what the previous council
3 intended is that you would look at this as a
4 whole property, connected and together.

5 If you give up on that unity of title, the
6 property is big enough to meet the zoning
7 requirements so that it could have multiple
8 uses. It's not a subdivision, necessarily, but
9 that's the risk you face to the unity of title,
10 so that would certainly not be one that you
11 would want to take on easily.

12 PRESIDENT SMITH: Is there anything else
13 for Mr. Chopin?

14 MR. WYETT: Yes.

15 PRESIDENT SMITH: Mr. Wyett has an
16 objection.

17 MR. WYETT: Is there any objection to
18 lifting the limitation of the 75 dining seats?

19 MR. CHOPIN: Yes, I do. First of all,
20 that's a county requirement that's tied to
21 concurrency.

22 Secondly, I have never been to Mar-a-Lago
23 Club. Mr. Trump used to invite me to his
24 parties.

25 PRESIDENT SMITH: I don't think you are

Page 83

1 going to make it.

2 MR. CHOPIN: I used to get invited in the
3 past and I didn't go. I have been to
4 Mar-a-Lago, obviously. The truth is don't you
5 have to know more of what the dining room can
6 accommodate in the way of guests?

7 MR. WYETT: If your testimony is correct
8 that you would be in violation of having more
9 than 75 diners at one time, many members tell me
10 that they are irritated by having to dine in the
11 living room or out in the terrace when there is
12 no space in the dining room.

13 MR. CHOPIN: You know, I saw this town once
14 before have a landmark building and there were
15 so many violations that they finally gave in and
16 de-landmarked the thing. You may remember that.
17 We had a pretty reasonable requirement on the 75
18 diners based upon the traffic and the like.

19 I wouldn't just throw the baby out because
20 you haven't been effective in the last year in
21 enforcing that.

22 MR. WYETT: It isn't always impossible to
23 enforce, unless you send a code enforcement
24 officer out at 8:00 on a Saturday night.

25 MR. CHOPIN: If somebody files a complaint

*** Notes ***

Page 84

1 because they are irritated because they are
2 spending the money, if you take the 75 off and
3 give him 100, he is going to have 125. You are
4 better off sticking with 75.

5 MR. WYETT: Do you have any trouble with
6 the fact that Donald Trump has appropriated one
7 of the bedrooms for his personal use? It's the
8 original suite that Mrs. Post used for herself
9 and her husband. I think there are two bedrooms
10 there, but I'm not sure.

11 THE WITNESS: I would have to go back. I
12 read the minutes and I just don't want to
13 mislead you. Something says to me that it was
14 intended that he would continue to occupy that
15 at the time it was approved.

16 Perhaps Mrs. Smith could answer that.

17 PRESIDENT SMITH: It was in the minutes. I
18 read it on September 16.

19 Actually Mr. Rampell stated, when asked the
20 question, that Mr. Trump would not be living at
21 Mar-a-Lago, and I even gave you the page. I
22 would be happy to go back and look, but I would
23 have to tell you tomorrow. Actually I might be
24 able to tell you in 12 hours and 20 minutes,
25 which is when we will be reconvening if we ever

Page 85

Page 86

1 finish.

2 MR. WYETT: I have one further question, my
3 last question.

4 PRESIDENT SMITH: All right, but other
5 people have questions.

6 MR. WYETT: My last question. Do you
7 consider it a violation of the intent that there
8 are numerous functions there for profit, which
9 is contrary to how it's done at all the other
10 clubs, when Mr. Trump says I want to be treated
11 like all the other clubs, however he wants to do
12 things that the other clubs don't do, especially
13 when he has all these functions there?

14 He claims it's a great idea because of
15 charity, but the charity money is raised before
16 the function, because you can't raise money in
17 town at a function.

18 PRESIDENT SMITH: What's the question?

19 MR. CHOPIN: If I have an objection because
20 he is making money.

21 First of all, I heard about the testimony,
22 unfortunately, I couldn't be here in the
23 afternoon on the 16th. It's compelling
24 testimony. If we could have more guests, we
25 could make more money for charity and that sort

1 of thing. Who can argue with that?

2 But the fact of the matter is they can only
3 have a certain number of people at The Breakers
4 too because there are restrictions that limit
5 there. The fact is that their benefit is
6 somebody's disadvantage because of the effect it
7 has in the neighborhood.

8 I've got to tell you, I don't think that,
9 frankly, the town council focused on the
10 question of whether he was going to make a
11 profit out of these various events or not. So
12 when you speak to the intent of the agreement, I
13 can't tell you that I ever heard anybody express
14 the thought in that regard.

15 So Mr. Mayor was here and Mrs. Smith was
16 here and I, so I don't think it was ever
17 considered by the town frankly.

18 MR. WYETT: Let me rephrase it.

19 Do you think it was, we are giving him a
20 special privilege that when he rents out his
21 ballrooms that acts more like a hotel, and isn't
22 the council giving him a special privilege that
23 we have given him and treated him special?

24 MR. CHOPIN: Absolutely. I mean how can
25 you run a business in a single family

*** Notes ***

Page 87

Page 88

1 neighborhood? That's pure and simple what you
2 did.

3 Nobody can take it away from him. You are
4 stuck with it. You have got a business being
5 run in a single-family neighborhood. It is not
6 a club in the context that any of you would know
7 of clubs. It's a business, a commercial
8 enterprise.

9 PRESIDENT SMITH: In response, Mr. Chopin,
10 page 15, the minutes of May 13, 1993, in
11 response to a question, Mr. Rampell stated, he
12 stated, another question asked of him is whether
13 or not Mr. Trump will continue to live at
14 Mar-a-Lago; and the answer was no, except that
15 he will be a member of the club and would be
16 entitled to use the guest rooms. May 16,
17 page 15.

18 MR. CHOPIN: Thank you, Mrs. Smith, but I
19 don't think he is complying with that
20 representation that Mr. Rampell made.

21 My recollection of the agreement, Skip, is
22 that they didn't incorporate that statement. Is
23 that your recollection of the use agreement?

24 MR. RANDOLPH: That it did not incorporate
25 that statement?

1 MR. CHOPIN: Yes.

2 MR. RANDOLPH: Yes, that it did not.

3 MR. CHOPIN: It did not, and you see that's
4 how it works.

5 So be careful, folks. They say he ain't
6 going to be living there. You don't think it's
7 an issue and don't put it in the agreement and
8 lo and behold, he is there.

9 PRESIDENT SMITH: For the record, please?

10 MS. ROSINSKY: My name is Claude Rosinsky.
11 Like I told you last time, I am a resident, a
12 member of Mar-a-Lago Club, and also a member of
13 the Preservation Foundation.

14 I think there is so much a lack of
15 communication that it's very sad.

16 And by the way, you are my guest at the
17 Mar-a-Lago Club.

18 MR. CHOPIN: I will be your guest any day.

19 MS. ROSINSKY: I will be happy to have you.

20 PRESIDENT SMITH: Not you.

21 MS. ROSINSKY: It's so sad, Mr. Chopin.

22 You are a wonderful lawyer. If I was the one in
23 trouble, I would ask for your help.

24 MR. CHOPIN: Thank you.

25 MS. ROSINSKY: But there is so much lack of

*** Notes ***

Page 89

1 communication and I would like you to sit down
2 with Mr. Trump.
3 MR. CHOPIN: You don't want me to eat
4 anything. I will have to bring a taster with
5 me.
6 MS. ROSINSKY: Mr. Chopin, you don't know,
7 when I run the small organization that I have
8 and when I go there, when I listen, you have no
9 idea how Mr. Trump is trying his best not to
10 damage Mar-a-Lago. We tiptoe at Mar-a-Lago. He
11 tries to preserve it so well.
12 And the boardroom cannot -- sometimes we
13 have so many servants, he didn't want us to use
14 more the beautiful boardroom of
15 Mrs. Merriweather Trump -- Merriweather Post.
16 Well, I'm tired. I have been here since 9:30.
17 But that's why the, that came to maybe have
18 another boardroom. So you have to look at the
19 point of positive side.
20 MR. CHOPIN: We would like to do that. You
21 do know that. We would like to do that.
22 MS. ROSINSKY: I know, and I think from
23 both sides, I am not thinking, but I feel
24 because I do, I love the town and I do preserve
25 it and I look after all the part, the Moorish

*** Notes ***

Page 90

1 part was preserved, which is where I come from,
2 and the research with the books, and he did a
3 beautiful job.
4 And I also offered my -- you know, I told
5 Mr. Trump if you need any advice to preserve the
6 tiles which is leading to the rooms -- you know,
7 I live 25 years with those people in Moracco and
8 that's where it comes from. So he was, he is
9 always receptive. I know nobody likes his
10 lifestyle.
11 PRESIDENT SMITH: Mrs. Rosinsky, have you
12 got another question for Mr. Chopin? We are not
13 condemning Mr. Trump's lifestyle.
14 MR. CHOPIN: I don't know anything about
15 his lifestyle.
16 PRESIDENT SMITH: Why not? Don't you read
17 the papers?
18 MR. CHOPIN: You have to be selective about
19 what you read.
20 MS. ROSINSKY: We should get together and
21 see if we can do better than that today.
22 PRESIDENT SMITH: Are there any other
23 questions for Mr. Chopin? Mr. Chopin,
24 Mr. Rampell, do you have any other questions for
25 Mr. Chopin?

Page 91

1 MR. NATALE: No, Madam President. Thank
2 you.
3 PRESIDENT SMITH: All right, any other
4 members of the public? Members of the council?
5 MR. WYETT: Have you released Mr. Chopin?
6 He doesn't have to show up tomorrow?
7 MR. NATALE: Absolutely. I finished.
8 PRESIDENT SMITH: Mr. Chopin is not under a
9 prison sentence here. Neither are the
10 applicant. No one has to show up here tomorrow
11 except, unfortunately, the town council.
12 Are we finished?
13 MR. MCDONALD: Adjournment.
14 PRESIDENT SMITH: Thank you. 9:30.
15 12 hours and 15 minutes.
16 - - -

*** Notes ***

Page 92

C E R T I F I C A T E

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2
3 STATE OF FLORIDA)
4 COUNTY OF PALM BEACH)
5

6 I, Rachel W. Bridge, Registered Professional
7 Reporter, certify that I was authorized to and did
8 stenographically report the foregoing proceedings and
9 that the transcript is a true record.

10
11 Dated this ____ day of _____, 1996.
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Rachel W. Bridge, RPR, CM
Notary Public - State of Florida
My commission expires 1-15-99.

\$50 [1] 8:24	960 [2] 5:15 5:16	62:1 62:13 62:21	actions [1] 17:21	allows [2] 61:25
'93 [3] 24:20 53:9	961 [2] 6:7 53:5	62:23 62:24 63:3	activity [1] 50:6	65:13
53:21	a [308] 4:3 4:3	63:13 63:15 63:19	acts [1] 86:21	already [4] 11:18
00 [1] 83:24	4:17 4:18 4:18	63:20 63:20 63:21	Actually [2] 84:19	36:19 39:10 71:6
1,008 [1] 21:22	4:22 4:22 5:2	64:6 64:8 64:18	84:23	also [7] 3:4 7:23
1-15-99 [1] 92:17	5:9 5:16 5:18	65:13 65:25 66:1	ad [2] 20:2 24:4	17:10 72:1 78:6
10 [1] 1:22	5:18 5:20 5:20	66:4 66:4 66:13	address [2] 29:3	88:12 90:4
100 [1] 84:3	6:3 6:9 6:10	66:16 66:23 67:4	53:9	altered [1] 54:4
11 [14] 67:15 68:4	6:24 6:24 7:3	67:8 67:19 67:24	addressed [2] 28:19	altogether [1] 21:12
68:4 68:5 68:6	7:12 8:8 8:21	67:25 68:7 69:5	53:10	always [2] 83:22
68:7 68:10 68:12	9:19 9:22 10:14	69:20 69:20 70:15	adhered [1] 12:12	90:9
68:15 68:17 68:25	10:15 11:2 11:4	70:17 70:20 70:23	Adjourment [1] 91:13	among [3] 38:2
69:4 69:6 69:8	11:6 11:9 11:10	71:17 72:1 74:4	adjust [1] 41:6	amount [5] 24:24
12 [3] 67:15 84:24	11:10 11:15 12:1	74:24 75:3 75:3	adjustment [1] 20:5	25:1 39:1 40:24
91:15	12:22 13:1 13:7	75:7 75:14 75:21	Administrator [1] 2:13	59:19
120-foot [1] 29:18	13:7 13:13 14:1	77:8 77:20 77:22	admitted [1] 47:11	analysis [4] 33:23
125 [1] 84:3	14:13 14:15 14:17	78:3 78:6 78:15	advance [4] 17:16	34:20 35:1 35:3
13 [4] 67:15 67:21	15:1 15:16 15:18	78:24 79:6 79:17	22:9 74:8 74:12	analyze [2] 33:17
68:2 87:10	15:19 15:25 16:16	79:17 79:22 80:4	advice [1] 90:5	36:3
15 [4] 1:23 87:10	16:16 16:20 17:8	81:9 82:3 82:8	advise [1] 30:11	annual [2] 23:6
87:17 91:15	17:12 17:13 17:18	82:20 83:14 83:17	affect [1] 76:12	80:17
150,000 [1] 20:23	17:21 17:23 18:1	83:23 83:24 83:25	affected [1] 55:4	another [4] 8:4
16 [5] 13:20 33:21	18:6 19:6 20:1	85:7 85:14 85:17	affects [1] 25:22	87:12 89:18 90:12
81:3 84:18 87:16	20:10 20:11 20:11	86:3 86:10 86:19	afford [2] 26:17	answer [27] 12:7
16th [2] 36:1 85:23	20:12 20:12 20:13	86:21 86:22 86:25	after [4] 19:11 20:23	14:6 14:7 14:21
175,000 [1] 20:22	20:13 20:19 20:25	86:25 87:4 87:5	67:2 89:25	31:21 32:6 33:5
18-96 [1] 4:23	21:9 21:15 21:15	87:6 87:7 87:7	afternoon [1] 85:23	34:21 37:16 38:8
1993 [7] 5:24 7:22	21:18 21:23 22:6	87:11 87:15 88:11	afterwards [1] 18:22	38:10 41:18 45:2
14:11 20:7 33:9	22:12 22:16 22:19	88:11 88:12 88:14	again [2] 31:18	45:11 45:20 47:17
59:13 87:10	23:11 23:12 23:14	88:22 89:4 90:2	34:14	49:12 51:11 56:5
1996 [4] 1:22 8:2	23:16 23:20 23:22	91:8 92:1 92:9	against [5] 8:13	57:23 63:17 64:9
12:17 92:11	24:3 24:12 24:18	A1A [1] 24:2	13:22 14:14 14:19	67:3 78:25 80:24
20 [1] 84:24	24:22 24:23 24:23	abandon [2] 51:23	56:17	84:16 87:14
25 [1] 90:7	24:23 24:25 25:5	51:25	agent [1] 6:8	answered [1] 37:10
252 [2] 54:3 54:10	25:7 25:9 25:11	ability [1] 55:2	ago [1] 13:13	Anti-Defamation [2] 16:2 16:5
30 [2] 89:16 91:14	25:14 25:15 25:21	able [9] 6:1 19:2	agrec [8] 12:9 37:25	anti-Semitic [1] 19:22
313 [29] 23:6 31:15	26:3 26:9 26:13	40:7 60:13 64:4	38:4 38:22 45:18	anti-Semitism [5] 13:13 17:9 30:9
31:24 31:25 32:3	26:19 26:19 26:23	71:5 73:10 73:19	50:4 50:8 50:10	38:14 56:15
32:18 33:3 33:7	26:25 27:9 28:4	absolute [1] 15:10	agreed [3] 36:19	anybody [9] 9:24
33:9 33:12 33:22	28:10 28:13 29:13	Absolutely [5] 59:14	60:12 61:8	16:5 22:10 29:14
34:5 34:10 34:17	29:15 29:16 30:4	65:21 77:1 86:24	agreement [22] 10:23	40:21 55:25 68:3
35:12 35:19 35:24	30:25 31:20 32:12	91:7	10:23 12:19 12:20	71:19 86:13
36:9 36:14 36:16	33:1 33:1 33:12	accept [1] 64:20	12:20 13:15 14:12	anybody's [1] 3:12
36:22 37:17 37:19	33:17 33:18 33:19	acceptable [1] 72:23	21:9 23:4 36:14	anyone [2] 69:22
39:11 39:13 39:17	34:10 34:17 34:22	accessory [1] 5:6	36:19 36:20 39:10	76:17
39:25 42:9 42:10	34:23 35:2 35:4	accommodate [1] 83:6	54:8 61:7 76:1	anything [31] 9:24
314 [2] 21:4 21:5	35:5 35:16 36:9	accomplish [2] 38:6	79:15 81:16 86:12	10:2 33:24 40:6
33408 [1] 1:21	36:20 37:7 37:21	64:18	87:21 87:23 88:7	48:9 50:1 50:2
360 [1] 1:20	38:7 38:12 38:20	accordance [1] 5:14	ahead [2] 41:23	51:6 51:12 53:19
378 [1] 42:10	39:2 39:3 39:15	according [2] 16:3	78:4	53:25 54:17 58:6
390 [3] 6:21 25:8	39:17 39:19 39:23	16:7	ain't [5] 9:18 16:11	59:8 59:11 60:5
77:20	40:2 40:4 40:23	account [4] 15:14	26:7 60:7 88:5	61:3 64:12 64:14
40 [1] 1:23	40:24 41:1 41:3	accounts [1] 17:11	allegation [1] 17:16	65:18 66:22 66:24
500 [3] 20:5 21:8	41:4 41:4 41:12	accusation [1] 13:16	allegations [1] 38:14	67:9 74:6 75:5
21:14	41:24 41:25 42:8	accused [3] 13:10	Allen [1] 2:5	76:11 80:10 80:12
5013 [1] 52:9	42:22 43:1 43:11	16:20 16:22	allow [4] 28:12	82:12 89:4 90:14
6.40 [1] 5:1	43:22 44:6 44:8	accusing [1] 30:8	51:14 60:18 81:23	anyway [5] 22:24
7 [1] 1:23	44:9 45:1 45:3	achieve [1] 51:16	allowances [1] 24:8	25:6 32:6 54:25
75 [5] 82:18 83:9	45:6 45:8 45:11	acknowledged [2] 27:25 28:1	allowed [2] 40:25	74:11
83:17 84:2 84:4	45:13 45:15 46:3	across [2] 25:23	75:14	anywhere [1] 45:15
8 [1] 83:24	46:13 46:14 46:19	action [2] 17:22	allowing [1] 71:12	apologize [2] 31:12
9 [3] 1:23 89:16	47:19 47:19 47:21	26:2		64:10
91:14	51:13 51:14 51:18			apparent [1] 16:18
9,000 [1] 63:21	51:19 51:19 51:21			apparently [2] 10:2

79:6	81:12	81:21	coming [4]	28:9	confront [1]	38:16	37:14	41:6	41:10	deals [6]	5:16	11:21
82:13	82:19	83:2	45:10	63:5	77:22	confronted [2]	52:5	43:20	45:5	48:18	11:21	11:21
83:13	83:25	85:19	comment [4]	6:19	72:3	72:3	52:5	49:10	49:11	49:21	40:2	36:23
86:24	87:9	87:18	45:6	52:19	79:7	congestion [2]	24:2	56:25	58:24	59:13	dealt [2]	27:14
88:1	88:3	88:18	commercial [6]	15:14	57:22	57:22	24:2	60:5	61:22	62:19	decide [3]	6:2
88:21	88:24	89:3	20:2	20:4	62:24	connected [1]	82:4	62:23	63:6	63:13	21:3	25:13
89:6	89:20	90:12	73:8	87:7		connection [1]	20:20	66:14	67:25	68:8	deciding [1]	8:12
90:14	90:18	90:23	commission [2]	32:7	92:17	consent [1]	79:14	68:21	68:25	69:24	decision [12]	6:24
90:23	90:25	91:5	commit [1]	28:21	commitment [1]	28:12	74:24	70:6	71:11	71:14	6:25	10:5
91:8			28:12		committee [1]	43:12	74:24	73:14	76:17	79:2	21:12	30:4
Ciklin [1]	24:20		communication [2]	88:15	89:1	community [5]	13:8	82:2	86:9	86:22	39:23	52:12
circumstances [3]	33:19	41:8	49:22	41:5	53:8	55:3	59:2	91:4	91:11		59:3	75:3
circumventing [1]	41:20			compelling [1]	85:23	complained [1]	57:14	Councilman [4]	2:5	2:6	2:8	76:7
city [1]	33:10			complaint [1]	83:25	complaints [6]	57:9	2:5	2:6	2:8		76:16
civic [1]	14:24			57:19	58:4	71:23	72:5	counted [2]	38:16			22:5
claims [1]	85:14			complete [1]	7:25	complex [3]	20:10	56:2				29:19
clarify [1]	3:4			20:11	29:5	compliance [2]	63:6	country [1]	45:15			52:14
Claude [1]	88:10			63:7	complicated [3]	28:19	43:23	county [4]	1:20			81:1
clear [7]	10:5	17:5		comply [2]	5:12	61:17	87:19	33:9	82:20	92:4		12:9
19:4	20:6	22:22		complying [1]	87:19	compromise [1]	20:14	couple [1]	18:1			15:11
23:2	28:9			compromised [1]	28:3	concentrating [1]	59:10	course [2]	22:5			14:23
clearance [1]	77:9			concern [5]	22:13	22:14	56:22	29:19				64:14
clearly [1]	35:14			60:15	concerned [2]	8:24	72:19	29:19				64:17
Clerk [1]	2:14			concerns [3]	27:23	52:21	57:20	court [3]	23:15	75:14		64:12
client [1]	17:22			concert [1]	63:21	concerts [1]	57:8	75:21				52:18
close [3]	10:3	23:21		conclusion [2]	33:12	35:2		courtroom [1]	45:13			77:10
23:21				concurrence [1]	82:21	condemning [1]	90:13	courtrooms [1]	43:19			6:11
closer [1]	18:6			conditions [8]	11:3	11:14	11:19	covered [1]	79:19			6:11
closing [3]	11:14			12:11	49:23	70:22	76:7	create [2]	23:11			41:4
11:15	11:17			conducted [2]	46:4	80:7		64:6				66:5
club [4]	9:18	14:18		conducting [1]	64:14	conducts [1]	80:5	creates [1]	23:15			5:19
20:15	20:24	22:9		confessions [1]	72:7	conflicting [1]	64:8	creating [1]	23:14			33:18
22:17	22:18	27:8						criteria [1]	59:4			45:2
27:8	27:8	28:13						cross [7]	3:8	3:19		59:1
29:23	36:6	42:1						3:23	4:14	7:17		7:24
60:8	60:19	61:16						30:14	46:5			60:19
61:25	62:1	62:5						current [1]	21:8			27:1
62:6	62:13	62:16						cussed [1]	24:6			development [8]
63:4	63:5	63:13						custom [1]	12:3			6:13
63:19	63:20	65:5						D [1]	3:1			7:13
65:18	67:19	70:20						damage [1]	89:10			8:9
70:24	71:4	80:10						damn [1]	20:1			41:5
82:1	82:23	87:6						damned [1]	15:21			53:8
87:15	88:12	88:17						dance [1]	78:3			59:1
clubs [7]	19:6							dangerous [1]	16:24			61:10
26:25	49:2	85:10						dastardly [1]	16:21			23:5
85:11	85:12	87:7						data [2]	21:16	39:22		54:1
CM [1]	92:15							Dated [1]	92:11			8:22
code [12]	4:25							day [14]	6:18	13:18		26:24
6:8	8:5	27:11						13:21	14:25	16:7		28:5
40:2	48:22	49:5						23:7	31:16	32:18		33:20
49:7	49:8	63:11						33:4	34:17	51:13		37:21
66:24	83:23							70:1	88:18	92:11		59:16
codes [1]	64:23							days [2]	9:8	28:16		67:24
collapsed [1]	26:5							de-landmarked [1]	83:16			27:9
collective [1]	73:17							83:16				71:5
Collette [1]	27:9							dead [1]	75:17			83:10
come [16]	8:4							deal [15]	4:4	21:19		83:9
12:8	16:17	16:19						23:11	25:25	27:21		83:18
18:7	18:9	19:12						34:6	35:15	35:17		82:18
21:14	27:1	35:23						35:19	38:13	41:9		3:14
43:6	44:13	60:4						43:16	56:1	58:17		32:5
62:19	75:8	90:1						74:4				48:24
comes [3]	22:1							dealing [2]	4:6			45:9
35:2	90:8							46:25				60:10

APPEARANCES - Chopin

Condenselt™

TOWN OF PALM BEACH 10-10-96

70:25	8:13	8:15	12:24	balance [2]	24:8	book [2]	47:19	47:21	change [13]	11:19
APPEARANCES [1]	12:24	13:21	21:21	28:4		books [1]	90:2		27:13	33:19
2:1	22:10	32:4	34:5	ballroom [3]	29:12	boring [1]	28:7		50:16	54:19
applicable [1]	35:10	36:18	36:24	55:7	55:7	borne [1]	80:10		55:8	55:19
applicant [4]	37:1	37:5	37:6	ballrooms [1]	86:21	both [3]	45:10	75:20	56:2	58:22
71:10	38:10	40:24	43:24	Barr [4]	21:9	89:23			changed [3]	49:17
applicant's [1]	44:3	44:7	45:4	39:21	64:25	bottom [1]	63:19		50:23	54:4
application [6]	45:10	53:21	60:5	Barr's [1]	24:15	bought [4]	11:11		changes [7]	50:1
5:23	62:19	64:7	78:24	based [6]	17:8	26:6	26:9	26:13	50:6	52:25
6:5	79:22	88:23		32:24	35:11	box [1]	35:20		76:1	79:13
6:7	asked [12]	6:24		56:7	83:18	brain [1]	57:3		changing [1]	50:12
7:1	13:24	39:12	42:8	basis [7]	13:14	Breakers [1]	86:3		chapter [2]	5:14
7:22	45:13	45:14	46:12	17:21	25:13	Bridge [2]	92:6		5:15	
8:4	47:4	47:6	75:7	51:22	80:4	92:15			charge [2]	15:11
9:18	84:19	87:12		Beach [12]	1:7	brief [1]	4:13		15:13	
17:2	asking [21]	13:25		1:21	17:6	bring [5]	18:5	42:1	charity [4]	52:9
18:25	16:3	18:12	32:16	38:3	47:20	72:5	75:11	89:4	85:15	85:15
29:17	32:24	36:17	37:3	53:16	64:2	Brisson [1]	19:5		chart [5]	18:2
53:17	37:4	37:22	37:23	82:1	92:4	Broberg [1]	69:7		32:10	42:10
55:1	40:21	42:23	42:25	beating [1]	46:18	build [1]	61:12		chickened [1]	24:16
56:7	45:3	54:13	55:21	beautiful [2]	89:14	building [11]	2:11		chief [1]	58:1
56:14	55:24	55:25	66:14	90:3		20:17	29:11	50:12	chivalry [1]	75:16
59:9	66:15	75:9		bedrooms [2]	84:7	50:12	51:9	55:7	choice [1]	68:10
60:10	assess [1]	33:18		84:9		76:20	76:23	76:23	Chopin [170]	3:7
60:18	association [1]	14:24		before [13]	4:21	83:14			4:6	4:9
65:20	assume [2]	11:5		16:17	16:19	bunch [1]	13:1		18:5	18:11
66:9	assure [1]	14:14		21:21	24:20	business [5]	26:19		19:20	22:1
67:14	attempt [1]	33:17		34:20	43:21	65:13	86:25	87:4	30:18	30:23
69:4	attending [1]	64:3		47:23	83:14	87:7			31:6	31:10
applications [1]	attention [4]	8:6		beginning [1]	16:3	buy [2]	26:11	41:25	31:23	32:12
54:20	10:25	48:21	48:25	behalf [1]	17:21	C [3]	3:1	92:1	32:22	33:5
apply [4]	attorney [8]	2:12		behold [1]	88:8	92:1			34:19	35:9
40:23	3:13	9:23	17:17	being [16]	6:24	call [2]	10:22	30:18	35:16	36:10
41:1	45:4	45:8	71:16	7:17	12:12	called [6]	9:13		36:24	37:3
appoint [1]	77:14			17:20	36:5	15:14	19:21	39:11	38:5	38:9
25:9	authority [1]	71:15		45:7	48:11	47:19	57:10		39:15	40:6
appreciate [2]	authorization [1]	5:10		54:10	60:24	camera [1]	18:18		40:15	40:19
66:11	5:10			79:25	80:1	cannot [2]	28:6		41:21	41:24
81:20	authorized [1]	92:7		believe [15]	16:14	89:12			42:20	42:23
appreciated [1]	automobile [1]	23:6		19:12	19:13	care [3]	9:13	9:21	43:6	43:15
62:23	automotive [1]	23:7		22:25	23:3	73:23			44:5	44:13
49:23	Average [1]	23:6		24:1	24:14	capacity [3]	33:1		45:1	45:7
appropriated [1]	aware [18]	43:10		49:8	49:14	33:2	57:17		45:20	46:8
84:6	43:14	43:15	44:11	56:1	60:6	care [3]	9:13	9:21	46:17	46:21
approval [2]	44:11	44:14	45:25	benefit [1]	86:5	careful [1]	88:5		47:23	48:2
78:9	46:22	46:24	47:5	best [8]	4:16	carefully [2]	20:9		48:12	49:4
80:14	47:7	47:11	47:12	28:3	36:4	73:7			49:14	49:19
approve [4]	53:14	57:7	71:22	51:16	78:20	case [5]	11:15	34:1	50:14	50:22
50:15	71:25	72:10		bet [5]	16:8	34:3	38:12	41:7	51:10	51:19
76:15	away [11]	8:16		18:14	44:2	Castro [1]	2:13		52:16	53:3
14:12	8:19	19:8	21:7	better [7]	28:15	caught [2]	23:22		54:7	54:12
59:13	42:6	52:2	52:8	52:6	53:21	24:3			54:21	54:23
84:15	57:6	63:1	74:18	74:18	84:4	cause [2]	25:9		55:21	56:5
70:15	87:3			between [1]	20:20	65:19			56:24	57:12
architectural [5]	awful [1]	72:4		beyond [1]	3:19	causes [1]	23:8		58:2	58:5
38:3	B [1]	24:12		big [3]	11:20	certain [4]	24:24		58:24	59:14
38:19	baby [1]	83:19		82:6		70:21	70:21	86:3	60:22	61:1
51:8	back [19]	7:25		bigger [1]	38:12	72:4	82:10	69:10	61:19	61:23
76:14	21:15	22:2	31:17	Bill [1]	36:2	certify [1]	92:7		62:11	63:15
area [2]	43:6	46:15	60:4	black [3]	9:9	72:4	82:10		64:17	65:9
34:16	61:1	62:19	63:5	9:9	71:18	Certificate [2]	11:4		65:25	66:20
38:24	66:3	69:1	69:14	blocks [1]	23:8	11:6			67:14	67:20
aren't [1]	70:9	75:12	77:4	board [1]	32:13	chance [2]	30:25		68:13	68:16
73:10	77:17	84:11	84:22	boardroom [3]	89:12	79:6			69:10	69:18
argue [4]	bad [6]	12:1	14:8	body [1]	60:21				69:23	69:25
9:19	25:5	36:20	66:13						71:14	71:25
35:4	71:12								72:24	73:1
86:1									74:10	74:21
37:11									75:11	75:15
argued [1]									76:3	77:12
37:9									77:24	78:1
45:19										
47:13										
around [13]										
40:7										
40:10										
40:20										
41:1										
41:2										
41:15										
41:17										
68:19										
arrange [1]										
27:16										
arrived [1]										
39:18										
articulate [1]										
52:25										
articulated [1]										
58:21										
aside [1]										
24:25										
ask [31]										
4:19										
8:11										

43:1	44:10	44:16	49:1	heavy [1]	81:17	incompetent [1]	irrespective [1]	17:4
46:23	47:8	47:12	gone [3]	3:22	6:19	51:2	irritated [2]	83:10
49:1	49:3	68:18	31:10	held [3]	16:22	7:23	84:1	
69:8			good [13]	24:22	69:5	7:25	isn't [12]	12:23
frank [7]	30:19		24:23	25:21	25:21	9:10	25:17	32:10
30:21	30:22	31:2	28:10	36:20	39:15	incorporate [2]	58:7	63:9
31:5	70:5	78:11	41:21	46:6	46:6	87:24	63:16	65:4
frankly [6]	18:22		46:8	46:9	52:20	incorporated [1]	83:22	86:21
22:13	37:22	42:7	goose [1]	46:9		11:3	issuance [1]	11:4
86:9	86:17		governed [1]	50:5		indicate [1]	issue [7]	10:18
free [2]	21:16	67:8	grandfathered [2]	27:5	27:11	individuals [1]	20:10	20:11
friend [3]	12:16		grant [1]	7:4		inference [1]	38:16	88:7
58:17	60:2		granted [5]	60:18		infinite [1]	issued [1]	52:15
friends [1]	26:3		61:16	62:21	70:6	information [3]	issues [4]	16:17
frivolous [1]	17:19		79:9			71:4	27:22	28:19
front [2]	22:2	43:12	granting [1]	49:23		75:1	its [13]	9:8
Frug [4]	63:22	63:23	gray [1]	9:9		informed [2]	17:7	17:7
77:24	78:2		great [2]	74:4	85:14	80:4	38:19	39:19
frustration [1]	28:25		greatly [1]	74:13		infrastructure [1]	47:10	56:14
full [2]	9:7	21:11	greed [1]	67:24		6:13	66:11	70:13
fullest [1]	70:13		ground [2]	24:9		inhibit [1]	itself [3]	56:14
fully [2]	39:7	39:7	26:5			innocent [1]	76:14	60:19
fully-informed [1]	75:3		group [1]	78:6		innuendo [1]	Jack [1]	2:7
function [2]	85:16		grown [1]	13:12		inquire [1]	jam [2]	23:23
85:17			guess [8]	14:18		insensitive [1]	jeopardize [1]	76:12
functioning [1]	70:24		18:19	22:21	39:8	insisting [1]	job [8]	33:14
functions [3]	70:25		44:19	44:21	45:17	inspection [2]	34:2	35:19
85:8	85:13		56:20			80:6	58:8	58:15
funny [1]	67:25		guessing [1]	18:22		instead [2]	Joe [1]	36:1
furnish [1]	6:9		77:22	83:6	85:24	67:19	John [1]	2:12
further [6]	25:24	63:5	guilty [1]	17:8		instinct [1]	join [1]	60:23
26:1	37:25		guy [1]	29:15		institution [1]	judge [3]	45:15
69:15	85:2		guys [1]	48:14		17:6	55:2	71:5
future [2]	12:11		hadn't [1]	26:6		19:21	judges [1]	17:20
71:3			half [3]	21:16	31:21	79:15	judgment [4]	7:13
G [1]	3:1		77:22			integrity [3]	39:19	51:14
gain [1]	15:14		guilty [1]	29:15		76:14	jump [3]	45:3
games [1]	36:13		guy [1]	29:15		77:11	45:5	45:4
gander [2]	46:7		guys [1]	48:14		intended [3]	juries [1]	17:20
46:9			hadn't [1]	26:6		82:3	jurisdiction [2]	76:25
gave [2]	83:15	84:21	half [3]	21:16	31:21	84:14	79:12	
gee [1]	6:19		77:22			85:7	justify [1]	29:25
geese [1]	46:6		hand [2]	6:17	67:8	86:12	keep [2]	55:22
generated [1]	39:2		happen [10]	3:5		interest [5]	keeping [1]	48:20
Gentleman [1]	15:17		3:11	11:16	11:20	39:8	kept [1]	55:16
gentlemen [1]	48:17		11:22	51:15	55:17	43:9	kettle [1]	23:12
gets [1]	21:14		71:12	76:19	76:20	51:7	Kimley [1]	33:21
getting [6]	12:3		happens [3]	24:18		interesting [1]	kind [2]	9:11
41:2	41:17	62:4	78:18	78:19		interests [2]	kinds [1]	82:1
65:3	81:8		happy [6]	14:13		58:9	kitchens [2]	18:25
give [14]	4:16	9:19	24:5	71:2	81:21	interpret [1]	19:10	
19:25	36:3	41:23	84:22	88:19		interrupt [1]	knew [1]	35:25
41:24	52:2	60:24	hard [2]	28:10	45:7	intervene [1]	knowing [1]	70:16
66:6	66:25	67:3	harm [2]	51:12	70:18	into [10]	knowledge [2]	43:11
70:12	82:5	84:3	harm [2]	51:12	70:18	13:15	44:8	
given [6]	3:16		harm [2]	51:12	70:18	14:22	knows [8]	10:1
3:19	3:20	62:11	harm [2]	51:12	70:18	16:15	12:2	14:9
63:12	86:23		harm [2]	51:12	70:18	17:19	27:5	27:6
giving [3]	52:6		harm [2]	51:12	70:18	27:17	43:20	
86:19	86:22		harm [2]	51:12	70:18	27:17	lack [2]	88:14
glad [2]	41:17	75:18	harm [2]	51:12	70:18	39:24	land [1]	26:25
gold [1]	70:23		harm [2]	51:12	70:18	39:20	landmark [5]	24:19
golf [3]	22:5	29:19	harm [2]	51:12	70:18	30:10	24:19	25:1
			harm [2]	51:12	70:18	20:12	83:14	76:13
			harm [2]	51:12	70:18	82:23		
			harm [2]	51:12	70:18	83:2		
			harm [2]	51:12	70:18	29:6		
			harm [2]	51:12	70:18	30:12		
			harm [2]	51:12	70:18	16:19		

discriminate [2] 14:19 15:24	eight [1] 68:12	84:25 86:13 86:16	exploited [1] 70:13	17:18 41:3 41:4
discriminated [6] 8:13 13:22 14:13 14:16 15:3 56:16	either [6] 16:10 22:6 37:23 44:2 46:1 51:2	Everglades [1] 27:8	express [2] 52:17	filed [9] 7:21 7:23 17:22 29:8 29:8 29:17 55:1 66:3 68:2
discrimination [7] 9:10 9:12 13:12 14:9 14:10 15:16 16:15	elation [1] 14:11	every [1] 23:15	expressed [3] 28:25 52:13 52:21	files [1] 83:25
discuss [1] 32:1	eliminated [1] 10:24	everybody [6] 3:5 18:17 18:18 27:6 30:8 71:1	extent [2] 56:9 70:13	filings [1] 13:11
discussing [2] 40:16 40:17	else [20] 8:15 9:4 10:13 12:14 17:4 19:22 21:7 29:1 30:8 33:24 34:8 38:17 50:19 52:3 65:1 67:4 69:22 74:6 75:6 82:12	everything [2] 65:1 65:22	eyes [1] 23:21	finally [1] 83:15
discussion [1] 20:13	enacted [2] 49:9 49:15	evidence [5] 15:15 16:6 18:8 23:2 68:7	F [1] 92:1	financial [1] 14:18
disgusting [1] 56:14	end [4] 11:16 23:15 27:16 73:7	ex [1] 72:7	face [3] 9:9 27:2 82:9	find [5] 16:10 25:4 43:7 67:9 78:25
divide [1] 81:23	enforce [3] 22:10 64:22 83:23	exacerbated [1] 56:9	facilities [1] 53:11	fine [2] 23:12 75:22
division [1] 67:15	enforcement [1] 83:23	exactly [4] 3:4 49:20 65:15 80:22	facility [3] 5:9 57:8 78:8	finish [2] 3:13 85:1
documentation [1] 71:11	enforces [1] 22:24	examination [4] 3:19 4:14 32:6 46:5	fact [40] 3:21 7:20 9:3 12:4 15:20 21:19 22:3 25:16 26:22 27:3 29:4 36:9 39:1 39:16 46:4 46:21 49:20 51:25 52:11 52:14 52:17 53:20 53:22 55:4 55:6 55:8 56:6 56:9 57:7 57:10 60:3 60:11 63:3 63:23 68:18 70:19 76:16 84:6 86:2 86:5	finished [5] 70:2 70:2 72:12 91:7 91:12
doesn't [16] 11:15 11:20 11:22 12:21 22:13 23:3 29:1 29:23 43:2 50:17 53:19 73:12 74:4 76:3 91:6	engineering [1] 34:16	examine [1] 3:23	factor [1] 16:16	first [12] 4:17 7:21 11:1 19:3 30:23 30:25 31:2 67:12 76:15 79:8 82:19 85:21
doing [6] 25:7 48:17 58:8 64:14 74:25 77:3	English [2] 48:13 48:23	examined [4] 3:8 7:17 20:8 30:14	factors [3] 5:18 38:23 39:5	fish [1] 23:12
domaine [1] 78:9	enhanced [2] 23:7 23:9	example [5] 11:14 41:22 41:25 42:5 42:7	failed [2] 34:4 71:10	fit [3] 29:1 29:2 41:8
Donald [3] 60:7 73:15 84:6	enlarge [1] 62:17	except [3] 67:6 87:14 91:11	failure [1] 34:3	fits [1] 30:1
done [17] 11:18 11:22 14:22 15:8 30:7 33:13 34:6 34:24 38:17 53:13 66:3 69:21 70:17 71:6 71:20 73:11 85:9	enlargement [1] 5:7	exception [27] 4:22 5:1 5:2 5:5 5:17 5:20 5:23 7:1 10:15 40:23 41:2 41:3 41:13 49:21 49:22 49:24 61:20 61:22 61:23 61:24 62:21 62:22 63:12 63:20 64:13 65:4 71:18	fact [40] 3:21 7:20 9:3 12:4 15:20 21:19 22:3 25:16 26:22 27:3 29:4 36:9 39:1 39:16 46:4 46:21 49:20 51:25 52:11 52:14 52:17 53:20 53:22 55:4 55:6 55:8 56:6 56:9 57:7 57:10 60:3 60:11 63:3 63:23 68:18 70:19 76:16 84:6 86:2 86:5	five [3] 28:9 68:9 68:18
Doney [1] 2:9	entered [1] 11:11	excited [1] 73:5	factor [1] 16:16	five-minute [1] 3:22
doubt [1] 70:11	enterprise [2] 62:24 87:8	executive [1] 52:18	factors [3] 5:18 38:23 39:5	fix [1] 49:22
Douthit [8] 14:5 75:6 75:8 75:22 81:8 81:9 81:10 81:14	entirety [1] 47:10	exhaustive [1] 74:6	factual [1] 5:19	fixed [1] 80:11
down [3] 23:23 41:7 89:1	entitled [4] 15:16 26:18 26:19 87:16	exhibit [1] 72:17	fail [1] 34:3	flirt [1] 69:4
during [1] 52:18	eradicated [1] 55:19	existed [2] 14:11 39:11	failed [2] 34:4 71:10	flirting [1] 68:19
each [3] 8:13 44:25 45:19	escrowing [1] 59:21	existing [2] 5:8 5:9	failure [1] 34:3	floor [1] 76:2
Earl [1] 26:10	especially [1] 85:12	expansion [3] 5:6 5:7 5:8	failures [1] 58:18	Florida [7] 1:21 47:20 62:9 63:12 65:8 92:3 92:16
cars [1] 23:21	establish [1] 55:18	expect [1] 64:8	faintest [1] 42:2	flow [2] 23:7 23:9
casel [1] 18:16	establishing [1] 70:15	expense [1] 6:12	fair [2] 31:16 32:12	focus [1] 13:12
casement [6] 50:16 50:17 52:1 79:19 79:23 81:2	estate [2] 11:15 38:24	expensive [3] 26:14 26:15 26:16	faith [2] 14:8 29:24	focused [2] 68:3 86:9
casements [3] 79:9 80:19 80:19	evade [1] 44:19	experience [2] 8:2 71:7	fall [3] 12:8 76:24 78:8	folks [5] 7:3 15:2 25:19 74:25 88:5
easily [1] 82:11	evaluate [1] 66:8	expert [18] 34:10 34:13 34:16 34:23 35:5 35:7 35:9 35:10 35:17 35:18 35:18 36:8 36:21 37:1 37:18 39:9 39:9 39:12	fallen [1] 60:1	following [1] 5:12
easy [1] 28:23	even [9] 10:2 15:5 40:15 44:20 57:10 58:21 73:9 76:17 84:21	exhibit [1] 72:17	family [3] 26:3 26:20 86:25	fool [1] 26:13
eat [1] 89:3	evening [1] 70:10	existed [2] 14:11 39:11	far [5] 14:17 28:17 31:10 50:11 58:6	foolishly [1] 49:9
effect [2] 21:18 86:6	event [2] 69:11 77:21	exists [2] 14:11 39:11	fashion [1] 79:18	foregoing [1] 92:8
effected [1] 77:7	event-by-event-by-event [1] 25:13	expert [18] 34:10 34:13 34:16 34:23 35:5 35:7 35:9 35:10 35:17 35:18 35:18 36:8 36:21 37:1 37:18 39:9 39:9 39:12	fashions [1] 79:13	forever [1] 77:16
effective [1] 83:20	events [6] 7:8 25:8 25:10 59:19 64:3 86:11	expert [18] 34:10 34:13 34:16 34:23 35:5 35:7 35:9 35:10 35:17 35:18 35:18 36:8 36:21 37:1 37:18 39:9 39:9 39:12	fault [1] 74:23	forget [4] 4:23 12:17 61:24 62:1
effects [1] 41:5	ever [8] 16:21 47:21 47:22 47:24 52:13	experts [7] 24:1 28:1 33:11 35:17 36:18 36:24 39:18	favoritism [1] 9:13	forth [3] 5:14 69:14 77:4
effort [1] 28:4		expires [1] 92:17	fear [3] 51:18 51:19 55:16	forthcoming [1] 31:7
		explain [2] 81:19 81:22	fears [1] 55:18	forthrightly [1] 60:11
			feel [11] 4:10 13:6 14:13 15:11 58:7 70:5 72:23 76:6 78:7 78:12 89:23	forward [2] 4:6 7:17
			feet [1] 57:5	found [2] 5:11 44:21
			felt [1] 64:15	Foundation [3] 26:7 38:20 88:13
			few [1] 32:2	Foundation's [1] 20:7
			figure [3] 10:9 36:4 57:4	four [12] 40:3 42:18
			figures [1] 19:20	
			file [5] 6:5 8:4	

40:17	41:11	41:19	noise [8] 25:21	56:21	60:13	63:20	42:3	42:3	42:19	78:18	78:19	
41:23	42:13	42:18	57:9	57:14	57:20	operation [2]	6:13	43:16	44:16	45:22	picture [2]	19:25
42:22	42:25	43:5	71:24	72:5	72:11	62:15		46:25	47:1	47:8	20:1	
43:9	43:25	44:3	noisy [1]	57:6	opinion [4]	42:24	54:3	54:10	59:20	pictures [1]	73:4	
44:7	44:14	45:2	nor [1]	37:22	49:16	65:2	63:25			piece [1]	24:4	
45:9	45:25	46:11	north [1]	26:1	opportunity [9]	25:6	part [15]	6:9	9:14	pink [1]	48:2	
47:18	47:24	48:4	nos [1]	46:5	26:12	30:21	14:15	15:8	22:20	place [5]	6:20	
48:9	48:24	49:5	Notary [1]	92:16	52:16	52:19	32:8	38:6	38:17	23:18	27:18	
49:7	49:16	50:4	note [1]	32:4	69:25	70:3	38:20	42:12	55:10	places [1]	42:4	
50:10	50:20	50:25	nothing [5]	15:9	oppose [3]	65:19	80:21	81:2	89:25	plainly [1]	7:16	
51:5	51:18	51:21	33:22	54:23	65:24	67:11	90:1			plan [19]	5:16	
52:13	52:23	53:14	77:8		opposed [7]	20:15	partic [1]	72:7		6:5	6:10	
54:1	54:9	54:15	notice [1]	50:23	20:18	29:22	particular [3]	5:21		10:4	10:15	
54:18	54:22	55:6	notion [1]	64:21	52:8	66:9	20:18	43:1		29:16	41:4	
55:14	56:4	56:18	nuisance [9]	23:11	opposition [5]	52:14	particularly [1]	47:25		52:24	53:10	
56:21	57:7	57:16	23:14	23:16	54:2	54:18	parties [1]	82:24		55:5	58:22	
57:25	58:3	58:7	25:11	25:14	55:9		parts [1]	79:15		66:25	67:2	
58:19	59:8	59:15	58:10	64:6	order [5]	6:1	past [1]	83:3		planner [1]	29:15	
60:17	61:15	61:21	nuisances [1]	23:9	59:1	64:15	Paul [3]	2:4	2:13	planning [2]	2:11	
62:2	62:4	63:9	number [26]	4:3	ordinance [26]	4:25	14:6			77:4		
63:16	64:11	65:3	4:22	20:19	5:15	10:12	pay [5]	8:5	9:1	plans [3]	50:11	
65:17	65:22	66:19	22:16	22:18	40:4	41:20	73:20	73:22	74:3	56:10	69:9	
66:21	67:11	67:17	33:8	33:8	42:16	43:3	pays [1]	73:13		plant [1]	78:18	
68:11	69:15	76:5	34:23	34:24	43:10	43:13	penalties [1]	81:17		playing [1]	36:13	
76:10	77:1	78:11	39:17	41:6	43:24	44:9	pending [1]	54:19		please [16]	7:12	
78:24	79:3	79:21	47:1	53:10	45:14	45:21	people [37]	6:21		18:10	31:19	
79:24	80:3	80:9	57:5	57:21	46:25	47:7	7:8	13:5	15:1	31:21	42:21	
80:25	91:1	91:7	67:22	67:24	48:3	48:7	15:8	15:25	22:17	49:13	61:2	
national [22]	13:10		86:3		71:16		22:18	23:4	24:14	69:13	73:1	
24:18	50:6	50:18	numbers [1]	36:3	ordinances [1]	43:16	25:21	25:23	25:24	81:11	81:19	
50:21	50:24	50:25	numerous [2]	77:5	organization [6]		26:1	26:4	26:10	plenty [1]	11:22	
51:3	52:15	52:21	85:8		32:25	32:25	26:15	28:10	40:9	point [19]	4:17	
75:25	76:6	76:18	O [1]	3:1	39:4	51:1	40:13	42:1	42:3	4:18	4:18	
77:5	78:9	78:13	oath [2]	22:22	original [1]	84:8	56:25	57:5	57:21	19:18	24:12	
79:10	79:12	80:1	objecting [1]	54:16	others [1]	75:20	58:9	59:19	64:1	26:25	34:2	
80:5	80:7	80:17	objection [10]	32:17	ought [9]	10:18	64:3	66:13	72:1	37:15	55:15	
nay [1]	68:10		33:3	39:13	15:21	15:22	77:3	77:20	78:20	71:3	72:8	
near [2]	23:23	24:2	54:7	54:9	16:1	21:10	85:5	86:3	90:7	74:15	79:3	
necessarily [5]	20:15		82:16	82:17	28:7	39:21	pcople's [1]	29:5		pointed [2]	48:10	
20:18	29:22	50:17	85:19		outside [1]	32:5	per [9]	23:6	31:15	75:19		
82:8			objectionable [1]	67:10	over [5]	6:19	32:18	33:3	34:17	pointing [2]	13:19	
necessary [1]	64:15		objections [1]	35:11	18:5	64:1	44:10	47:8	49:3	48:25		
neck [1]	60:23		obligation [4]	17:12	overall [1]	51:16	percent [2]	24:21		points [2]	18:1	
need [6]	4:4	10:6	17:13	17:14	own [2]	52:9	59:21			56:7		
58:21	58:25	61:17	82:16	82:17	owner [1]	9:18	perfect [6]	6:15		police [6]	57:10	
90:5			obviously [1]	83:4	owns [3]	10:3	15:17	16:11	41:24	58:1	64:13	
needs [3]	24:10		Occupancy [2]	11:4	74:2		59:2	59:7		64:22	64:25	
51:2	80:11		11:6		P [1]	3:1	period [1]	11:17		polite [1]	46:20	
negotiation [1]	20:13		occupy [1]	84:14	p.m [1]	1:23	permission [4]	25:3		Pollitt [2]	2:14	
neighborhood [14]			October [1]	1:22	page [4]	48:9	62:11	62:20	62:25	18:17		
5:21	19:7	20:17	odd [1]	29:21	87:10	87:17	59:2	59:7		Polly [1]	69:12	
26:3	26:20	30:1	offer [1]	23:2	paid [1]	20:25	perfectly [1]	17:5		poor [1]	66:23	
62:25	65:12	65:14	offered [2]	26:8	pain [1]	60:23	perhaps [2]	8:22		portable [1]	73:1	
66:12	70:24	86:7	offering [1]	68:20	painstaking [1]	27:20	84:16			position [13]	14:22	
87:1	87:5		officer [1]	83:24	Palm [10]	1:7	petition [1]	70:6		20:7	20:8	
Neither [2]	55:12		once [2]	60:3	1:21	17:6	perogative [1]	64:19		22:19	32:24	
91:9			once-a-year [1]	80:4	47:19	48:23	personal [3]	13:7		51:13	55:19	
nerve [1]	14:21		only [15]	5:10	64:2	64:23	33:1	84:7		58:23	60:17	
never [9]	14:9		9:1		Pandora's [1]	35:20	personally [2]	29:6		positive [3]	4:15	
16:13	18:13	23:22	12:6	21:4	paper [1]	29:11	78:12			5:19	89:19	
26:11	40:21	47:23	30:2	35:25	papers [1]	90:17	photograph [1]	70:6		possibility [3]	51:20	
69:13	82:22		42:6	42:10	parameters [1]	80:23	photographs [1]	19:24		51:21	51:22	
next [1]	16:7		67:25	68:10	park [1]	42:1	photography [2]	73:3	73:8	possible [2]	7:15	
night [1]	83:24		86:2		parking [20]	6:21	physical [6]	5:8		70:13		
nobody [9]	10:1		open [1]	35:19	7:11	22:7	52:25	53:1	58:22	possibly [1]	66:13	
19:13	35:23	40:7	operate [3]	28:13	40:24	41:7				Post [2]	84:8	
40:20	52:19	65:1									89:15	
87:3	90:9											
nodding [1]	4:1											

language [4]	47:25	limits [1]	44:16	17:5	21:13	24:8	mayor [8]	2:4	minutes [10]	27:17		
48:5	48:11	48:12		30:4	30:12	33:18	8:25	11:9	25:10	28:6	28:7	28:18
last [8]	8:25	62:22	line [1]	63:19	34:3	35:16	25:16	31:17	55:12	32:2	84:12	84:17
71:1	72:2	83:20	list [1]	74:6	39:14	39:19	86:15			84:24	87:10	91:15
85:3	85:6	88:11	listen [6]	20:6	45:6	51:14	McDonald [14]	2:7		mirror [1]		60:2
late [2]	3:18	57:13	23:24	26:4	53:21	54:1	11:9	17:17	44:23	mislead [1]		84:13
law [4]	63:7	63:8	77:23	89:8	71:7	73:19	44:24	45:6	45:12	mission [7]		38:13
75:14	75:21		listening [4]	6:16	79:13	83:1	45:18	68:13	68:15	38:18	38:21	51:23
laws [4]	23:17	62:9	6:17	6:18	86:10		72:15	72:16	74:7	51:25	64:18	64:19
63:11	65:7		litany [3]	5:18	makes [6]	6:15	91:13			mistake [1]		69:8
lawsuit [1]	17:19		59:18	59:23	15:13	23:4	McLendon [6]	2:8		mistaken [1]		10:8
lawyer [14]	11:9		little [4]	8:14	59:2	59:7	19:19	21:25	28:24	modification [1]		
11:10	11:10	12:1	18:6	46:19	making [3]	16:16	42:8	48:14		5:7		
17:13	35:4	37:9	live [10]	9:25	79:18	85:20	mean [12]	12:2		modifications [1]		
39:16	43:11	44:5	17:23	25:19	man [3]	14:13	21:7	22:2	25:18	56:11		
46:3	60:25	66:23	25:24	26:1	56:1		27:22	31:3	36:13	modify [3]		11:17
88:22			87:13	90:7	Manager [1]	2:9	54:12	61:22	61:25	12:9	62:18	
lawyers [2]	44:25		lives [1]	57:1	mandatory [2]	53:23	71:16	86:24		moment [2]		37:8
60:22			living [3]	83:11	71:19		meaningful [1]	38:25		78:24		
layout [1]	20:3		84:20	88:6	many [27]	7:6	means [2]	41:17		money [9]		20:25
layouts [2]	20:4		lo [1]	88:8	7:7	7:9	45:24			25:1	25:5	26:11
73:8			local [1]	13:11	8:17	8:18	mechanism [1]	25:7		84:2	85:15	85:16
leading [1]	90:6		long [7]	8:17	9:24	9:25	meet [2]	59:4	82:6	85:20	85:25	
League [2]	16:2		15:19	17:23	19:15	28:18	meeting [2]	1:8		monitor [4]		21:9
16:5			28:10	64:25	42:3	42:3	3:4			21:10	21:12	39:22
least [2]	16:20	77:6	long-term [1]	70:18	43:21	59:17	meetings [3]	8:17		monuments [1]		51:3
leaving [1]	54:8		longer [4]	3:22	59:19	63:22	8:18	27:18		Moore [1]		2:10
legal [2]	41:16	42:23	12:11	61:9	68:6	68:8	member [6]	13:8		Moorish [1]		89:25
legitimate [3]	34:10		77:21		83:15	89:13	20:25	44:10	87:15	Morocco [1]		90:7
34:13	45:1		look [14]	4:6	Mar-a-Lago [34]		88:12	88:12		more [13]		22:4
Leslie [1]	2:6		10:20	18:21	18:15	19:3	members [27]	4:2		22:7	22:7	26:15
Lesly [1]	2:3		27:2	30:3	24:2	24:13	7:9	9:25	15:4	26:16	46:20	69:10
less [1]	31:7		36:2	47:18	41:25	50:5	15:5	15:5	20:5	83:5	83:8	85:24
lesser [1]	69:5		84:22	89:18	55:20	56:12	20:19	20:20	21:4	85:25	86:21	89:14
let [24]	6:4	8:11	looked [3]	16:9	60:19	61:16	21:14	21:23	22:7	morning [3]		3:23
8:14	8:16	8:19	21:16	32:14	65:18	67:15	40:3	42:11	47:8	3:25	72:7	
12:4	17:25	18:5	looking [1]	7:17	67:20	67:23	49:3	53:11	59:17	most [2]	16:21	26:14
19:10	21:7	21:21	lose [1]	77:15	73:11	80:10	63:21	69:24	73:24	move [1]		81:25
22:9	26:6	31:21	lot [13]	15:1	83:4	84:21	73:24	73:25	83:9	movie [1]		15:17
33:5	37:16	44:3	20:12	20:12	88:12	88:17	91:4	91:4		movies [2]		73:9
44:7	44:18	45:14	20:13	21:23	89:10		membership [4]			73:11		
49:12	53:18	77:17	26:9	27:10	marina [7]	29:18	21:11	45:22	47:1	Mrs [21]	14:2	14:4
86:18			72:1	72:4	54:20	54:24	73:17			14:5	18:17	46:24
lets [1]	22:11		lots [4]	67:16	55:5	55:12	memorized [5]	43:17		57:1	68:14	74:23
letters [2]	71:23		67:24	68:2	marking [1]	22:4	44:2	45:17	47:2	75:6	75:8	75:22
72:11			love [2]	13:2	Mary [1]	2:14	59:24			81:8	81:9	81:10
letting [1]	52:8		ma'am [2]	47:6	Massey [1]	57:1	memory [1]	72:10		81:14	84:8	84:16
level [1]	13:7		81:5		master [2]	29:13	mental [1]	15:7		86:15	87:18	89:15
life [2]	38:7	38:19	mad [5]	12:3	29:16		mentioned [3]	40:1		90:11		
life-threatening [1]	52:7		15:21	16:1	matter [24]	7:20	56:18	56:22		multiple [1]		82:7
lifestyle [3]	90:10		16:1		9:3	12:4	mercy [1]	59:10		must [2]	25:8	80:12
90:13	90:15		69:16	79:24	15:20	19:22	merger [1]	9:22		N [1]	3:1	
lifting [1]	82:18		91:1		26:22	27:4	Merriweather [2]			name [4]	9:17	30:19
light [1]	3:21		made [9]	7:25	39:16	46:21	89:15	89:15		39:4	88:10	
liked [1]	32:1		20:16	26:25	52:11	52:17	microphone [5]	6:17		Nancy [3]		14:25
likes [1]	90:9		56:13	67:13	57:5	63:3	73:1	75:11	75:23	14:25	75:12	
limit [6]	31:16	34:11	87:20		68:19	70:19	81:8			Natale [115]		3:9
34:17	34:18	36:9	Madonna [1]	20:2	74:16	86:2	middle [2]	3:12		3:14	3:16	4:16
86:4			maintain [2]	26:16	may [17]	3:18	24:9			30:16	30:17	30:20
limitation [3]	32:18		32:23		12:22	20:19	million [1]	8:24		30:25	31:3	31:8
77:20	82:18		maintained [4]	54:5	20:22	33:7	mind [4]	65:15	69:13	31:12	32:8	32:15
limitations [4]	18:24		54:11	80:12	45:10	56:18	72:6	79:7		32:21	32:24	34:9
60:12	61:6	64:2	maintaining [3]	32:17	71:3	78:24	mine [2]	34:2	70:23	34:15	35:7	35:10
limited [1]	79:8		32:20	33:3	83:16	87:10	minions [1]	8:3		35:14	36:8	36:11
			maintenance [2]		maybe [11]	14:15	minute [6]	5:2		36:17	37:1	37:24
			24:25	59:22	18:6	19:16	14:1	46:14	46:14	38:8	38:22	39:6
			make [32]	3:20	28:15	39:15	65:25	69:20		40:1	40:9	40:13
			4:17	5:18	67:3	68:4						
			6:24	7:12	89:17							

requires [3] 4:25 5:17 66:24	Samuel [1] 2:8 sat [3] 13:17 13:19 48:18	76:22 77:14 77:19 78:3 78:5 78:7 78:22 79:6	small [2] 25:1 89:7	speaks [1] 60:10 special [37] 4:22 5:1 5:2 5:5 5:8 5:9 5:17 5:20 5:23 6:25 7:8 10:14 10:25 25:8 25:10 26:23 40:23 41:1 41:3 41:12 49:21 59:19 61:19 61:21 61:23 61:24 62:21 63:12 63:19 64:3 64:13 65:4 71:17 77:21 86:20 86:22 86:23
research [1] 90:2	Saturday [1] 83:24	shell [1] 20:22	Smith [68] 2:3 3:3 4:8 4:10 14:4 18:4 18:16 19:18 26:10 30:15 31:19 44:24 46:10 46:13 46:19 46:24 47:4 47:16 48:16 49:12 61:1 68:5 68:14 68:24 69:7 69:13 69:17 69:19 72:12 72:15 72:25 74:20 74:23 75:5 75:13 75:17 75:18 77:13 77:17 77:25 78:4 79:1 79:5 79:21 79:25 80:8 80:15 81:4 81:6 81:10 82:12 82:15 82:25 84:16 84:17 85:4 85:18 86:15 87:9 87:18 88:9 88:20 90:11 90:16 90:22 91:3 91:8	speculate [1] 12:6 speculation [1] 12:7 spend [1] 25:5 spending [1] 84:2 spent [4] 9:7 21:23 31:20 77:5 spoke [1] 32:3 spoken [1] 16:5 staff [5] 17:7 33:11 53:15 53:19 53:24 staffing [1] 66:7 stand [1] 38:15 standing [1] 32:10 standpoint [1] 76:8 stands [1] 50:20 start [1] 66:25 starting [2] 3:12 67:5 state [5] 62:9 63:11 65:7 92:3 92:16 stated [3] 84:19 87:11 87:12 statement [5] 15:8 16:4 32:13 87:22 87:25 statements [1] 16:8 station [1] 57:11 stay [3] 4:11 4:12 74:18 stenographically [1] 92:8 step [1] 66:1 Steve [1] 69:7 stick [2] 73:25 74:1 sticking [1] 84:4 still [4] 24:23 61:16 62:6 62:8 stipulate [1] 48:22 stomach [1] 7:18 stop [3] 46:13 46:14 46:18 straightforward [1] 46:12 street [2] 25:24 57:2 strongly [1] 13:6 structure [1] 78:19 structured [1] 33:15 stuck [2] 24:7 87:4
reservations [3] 22:9 74:9 74:12	save [1] 35:22	shift [1] 45:7	73:9	
reserved [1] 50:15	saw [5] 18:7 18:13 21:25 47:23 83:13	shoots [2] 73:11		
resident [1] 88:11	says [23] 5:1 10:14 10:21 11:5 11:7 18:24 18:25 19:9 19:10 24:15 42:11 43:4 44:20 47:9 47:10 47:14 49:1 49:2 49:5 52:6 59:11 84:13 85:10	shot [1] 4:16		
residential [2] 19:7 62:12	schedule [1] 3:20	should [22] 9:22 10:23 16:24 20:2 20:3 25:9 29:7 30:7 35:13 39:13 49:17 49:19 49:25 53:13 64:21 65:1 66:2 67:18 67:20 67:23 71:5 90:20		
respect [2] 56:12 58:14	scold [1] 30:8	shouldn't [2] 19:2 22:14		
responded [1] 78:22	scope [1] 32:5	show [8] 27:3 27:20 42:20 43:3 43:24 45:16 91:6 91:10		
response [3] 16:25 87:9 87:11	screw [2] 74:17 74:21	showing [3] 8:9 41:4 53:7		
responsibility [3] 8:21 8:23 78:21	seats [1] 82:18	shuttle [1] 23:3		
responsible [1] 17:19	Secondly [1] 82:22	shuttles [1] 64:1		
rest [1] 74:18	section [6] 5:1 5:3 5:15 5:16 6:7 53:5	shuttling [2] 24:14 59:20		
restraint [1] 60:20	seem [2] 33:25 39:6	side [1] 89:19		
restraints [1] 70:21	seemed [2] 31:13 72:17	sides [1] 89:23		
restriction [1] 67:8	seems [2] 3:15 43:18	sign [1] 59:5		
restrictions [9] 10:22 13:14 19:9 20:3 59:25 60:4 61:6 61:9 86:4	seen [6] 14:11 15:19 29:14 47:21 48:3 80:23	significance [2] 51:8 76:13		
result [1] 51:17	selection [1] 52:20	silly [3] 25:14 25:17 44:13		
revenues [1] 24:24	selective [1] 90:18	similar [1] 47:21		
review [11] 6:3 6:6 6:10 8:7 10:15 28:20 49:22 53:10 66:10 67:1	sell [2] 26:17 81:24	simple [5] 43:18 46:12 56:13 75:10 87:1		
rid [1] 21:12	send [2] 15:16 83:23	simply [2] 77:12 81:9		
rights [2] 28:5 29:5	sense [5] 6:15 35:1 39:14 59:2 59:7	since [6] 4:14 9:22 11:6 59:9 75:19 89:16		
risk [1] 82:9	sent [2] 15:18 21:9	single [4] 26:3 26:20 64:8 86:25		
road [2] 1:20 24:11	sentence [1] 91:9	single-family [5] 62:12 62:24 65:12 70:24 87:5		
roads [1] 23:8	September [4] 13:20 33:21 81:3 84:18	singled [1] 10:24		
Robert [2] 2:9	series [1] 11:2	sit [3] 48:18 48:19 89:1		
role [1] 78:17	serious [1] 31:20	site [15] 5:16 6:3 6:5 6:10 8:7 10:4 10:15 41:4 52:23 52:24 53:10 53:16 66:4 66:25 67:2		
room [4] 55:25 83:5 83:11 83:12	seriousness [1] 15:9	sites [1] 38:1		
rooms [3] 7:6 87:16 90:6	servants [1] 89:13	sitting [2] 14:20 45:13		
Rosinsky [9] 88:10 88:10 88:19 88:21 88:25 89:6 89:22 90:11 90:20	serve [1] 61:10	situation [2] 52:6 64:11		
RPR [1] 92:15	served [1] 3:14	six [2] 28:10 68:9		
rule [2] 22:15 22:15	session [1] 52:18	Skip [3] 14:17 71:16 87:21		
rules [1] 23:18	set [4] 5:14 41:25 52:1 52:10	slip [1] 29:18		
run [12] 23:17 26:19 60:8 62:12 62:22 62:23 63:3 63:13 65:13 86:25 87:5	sets [1] 69:9			
S [1] 3:1	setting [1] 71:11			
sad [2] 88:15 88:21	seven [3] 68:9 68:20 77:22			
safety [1] 64:16	several [1] 72:2			
Sailfish [1] 14:18	shall [3] 5:9 5:11 6:8			
sale [1] 26:8	Shaw [18] 2:6 75:6 75:6 75:9 75:10 75:24 75:25 76:3 76:5 76:17			
same [4] 8:3 22:17 49:18 49:20				

power [5]	27:13	Pro [1]	2:7	22:7	35:17	37:20	read [23]	11:25	16:4	50:6		
49:21	50:16	probably [3]	14:19	51:13	73:15	73:17	18:23	18:24	27:19	Registered [1]	92:6	
70:11		22:14	68:9	88:7			28:6	28:7	28:8	regret [1]	70:18	
precedent [4]	11:3	problem [9]	6:23	puts [1]	22:3		28:17	29:10	32:4	regulated [2]	26:24	
11:14	70:15	10:12	23:20	putting [2]	24:24		34:25	34:25	44:17	27:9		
precisely [2]	56:7	32:19	35:21	52:9			44:18	45:23	47:15	regulation [3]	19:14	
61:5		39:24	51:1	qualified [1]	34:23		49:6	53:5	84:12	23:10	24:10	
prefer [1]	51:15	problems [3]	27:24	quarrel [4]	34:9		84:18	90:16	90:19	regulations [10]	11:2	
premature [1]	21:13	27:25	56:21	34:12	34:15	34:18	reading [2]	5:3		19:10	23:19	27:4
prepared [2]	6:10	procedure [1]	41:12	quasi-judicial [1]			31:24			27:13	62:8	65:6
8:8		proceedings [3]	30:24	75:21			reads [1]	79:20		65:6	65:10	65:11
present [3]	34:1	43:22	92:8	question [53]	14:6		real [9]	4:18	11:15	regulatory [1]	61:10	
35:9	71:10	process [2]	14:15	14:7	14:21	31:22	12:22	21:17	27:23	relate [2]	38:25	
presentation [5]		27:20		33:6	35:23	36:4	27:24	27:24	40:19	62:10		
3:12	3:21	4:15		36:25	37:2	37:10	58:13			related [2]	5:6	
31:6	32:9			37:22	37:23	38:11	realistic [1]	54:25		53:16		
presented [2]	33:14			41:18	43:7	45:1	reality [1]	26:22		relates [3]	24:13	
35:7				45:20	45:25	46:2	realize [1]	21:22		36:22	55:20	
preservation [14]				46:16	46:17	46:22	realized [1]	39:10		relationship [1]	43:2	
20:7	38:1	38:7		48:4	48:5	49:13	really [11]	9:13		release [3]	65:5	
38:18	38:20	39:4		51:11	54:15	56:3	10:6	10:10	12:3	65:7	65:10	
50:16	52:1	79:9		56:4	56:5	57:16	13:7	17:3	17:24	released [1]	91:5	
79:19	79:22	80:18		57:18	57:23	66:15	25:17	31:15	37:20	releases [1]	65:11	
81:2	88:13			66:19	66:21	69:25	70:8			relevant [2]	11:24	
preserve [6]	20:16			71:20	75:7	75:9	reason [12]	12:12		11:25		
39:8	51:3	89:11		75:10	79:7	79:22	12:22	12:23	16:14	relying [1]	64:22	
89:24	90:5			81:9	84:20	85:2	22:15	45:3	49:8	remain [2]	49:17	
preserved [2]	38:25			85:3	85:6	85:18	49:14	49:25	51:5	49:19		
90:1				86:10	87:11	87:12	53:3	56:9		remember [12]	40:15	
preserving [1]	51:7			90:12			reasonable [1]	83:17		40:17	46:16	63:23
President [64]	2:3			questioned [1]	24:16		reasonably [1]	42:10		67:16	68:17	69:2
2:7	3:3	3:16		questioning [1]	36:16		reasoning [2]	35:2		69:12	72:8	74:8
4:8	4:10	18:4		questions [12]	18:12		35:3			78:2	83:16	
18:16	19:18	30:15		27:24	28:23	37:4	reasons [1]	27:10		remove [2]	18:24	
31:19	44:24	46:10		45:11	46:12	64:8	rebutting [1]	36:7		61:8		
46:13	46:19	47:4		69:15	69:23	85:5	recall [4]	31:23		removed [2]	60:12	
47:16	48:16	49:12		90:23	90:24		37:22	37:23	81:14	81:15		
61:1	68:5	68:24		quickly [2]	17:25		reccive [1]	80:13		rents [1]	86:20	
69:7	69:13	69:16		77:15			recently [2]	31:9		repaired [1]	80:11	
69:17	69:19	72:12		quit [2]	48:14	74:2	44:17			rephrase [1]	86:18	
72:15	72:25	74:20		quite [1]	78:11		receptive [1]	90:9		report [8]	6:11	
75:5	75:13	75:18		R [2]	3:1	92:1	recess [1]	3:22		17:11	24:15	33:22
77:13	77:17	77:25		Rachel [2]		92:6	recognize [2]	48:5		36:2	41:4	53:7
78:4	79:1	79:5		92:15			48:10			92:8		
79:21	79:24	79:25		racism [1]	13:13		recollection [4]	68:11		Reporter [1]	92:7	
80:8	80:15	81:4		raise [2]	32:3	85:16	69:11	87:21	87:23	reports [2]	33:16	
81:6	81:10	82:12		raised [5]	26:11		reconvene [1]	3:3		66:7		
82:15	82:25	84:17		27:22	37:17	37:18	reconvening [1]			representation [1]		
85:4	85:18	87:9		85:15			84:25			87:20		
88:9	88:20	90:11		Rampell [20]	3:8		record [6]	27:17		represented [1]	69:2	
90:16	90:22	91:1		7:18	9:17	12:1	42:12	81:3	81:13	representing [2]		
91:3	91:8	91:14		13:21	13:25	14:2	88:9	92:9		33:2	39:8	
press [3]	13:11	13:11		14:20	16:3	24:20	recorded [1]	79:25		requested [1]	53:16	
17:11				33:13	44:20	80:16	records [1]	36:15		requests [2]	72:22	
pretend [1]	23:22			80:24	81:1	81:5	redirect [1]	69:18		81:15		
pretty [3]	25:17			84:19	87:11	87:20	refer [1]	52:24		require [4]	12:21	
70:9	83:17			90:24			referred [2]	8:3		45:16	54:3	79:15
prevent [2]	58:9			Randolph [6]	2:12		32:15			required [4]	6:3	
64:13				14:17	37:7	37:13	referring [1]	32:9		49:2	53:22	59:5
previous [2]	5:24			87:24	88:2		refreshed [1]	72:10		requirement [4]	44:10	
82:2				rather [2]	37:10		24:25			54:10	82:20	83:17
previously [1]	37:18			81:17			refurbishment [1]			requirements [9]		
price [1]	26:9			ratio [1]	40:3		refuse [1]	66:17		5:13	5:13	40:18
priesthood [1]	60:24			rational [1]	22:20		regard [1]	86:14		59:21	61:18	64:1
prison [1]	91:9			rattle [1]	77:16		regarding [2]	16:16		66:22	71:17	82:7
private [1]	28:13			raw [1]	39:22							
privilege [2]	86:20			react [1]	16:1							
86:22												

validity [1]	39:19	whatever [6]	3:17	world [1]	40:7
variance [1]	61:13	12:12 15:17 17:1		worried [1]	37:5
variation [2]	40:24	21:16 57:18		worst [1]	10:9
41:9		whatsoever [1]	60:20	wouldn't [12]	8:16
various [2]	27:18	Wherever [1]	72:3	8:18 19:22 27:3	
86:11		whether [19]	8:12	29:22 45:16 52:20	
vehicles [1]	21:17	20:1 33:18 33:23		58:8 61:18 62:10	
vehicular [2]	23:7	35:11 36:18 38:23		write [1]	48:6
23:9		39:12 40:21 49:17		written [1]	48:1
vernacular [1]	74:22	53:15 53:24 58:3		wrong [3]	5:3
victim [1]	9:12	59:4 67:18 73:5		9:16 16:23	
view [2]	55:2 78:21	74:12 86:10 87:12		Wyett [20]	2:5
vindictiveness [1]		while [2]	43:7	18:10 37:12 49:11	
9:5		75:9		70:4 70:5 71:9	
violation [3]	63:24	white [3]	9:9	71:22 72:13 72:14	
83:8 85:7		9:10 71:18		82:14 82:15 82:17	
violations [1]	83:15	whole [6]	11:2	83:7 83:22 84:5	
visits [1]	80:17	37:19 59:18 59:22		85:2 85:6 86:18	
Vitale [1]	36:1	79:10 82:4		91:5	
vocabulary [1]	41:16	wholesale [1]	50:1	x [1]	76:18
voice [1]	8:14	Wiener [1]	14:2	yacht [1]	49:2
VOLUME [1]	1:11	wife [1]	46:18	yea [1]	68:10
vote [2]	25:15 68:10	will [23]	3:8 3:14	year [4]	21:15 21:15
voted [1]	4:11	4:12 5:20 7:11		71:1 83:20	
voting [1]	30:6	14:1 21:15 24:12		years [5]	16:13 55:23
W [2]	92:6 92:15	30:23 45:1 48:22		56:3 68:18 90:7	
wait [8]	5:2 65:25	50:10 57:15 63:6		yet [3]	14:21 16:17
69:17 69:17 69:19		63:7 78:17 79:20		17:22	
75:23 77:13 81:10		84:25 87:13 87:15		yield [1]	14:1
waive [1]	71:15	88:18 88:19 89:4		young [1]	78:1
walk [1]	22:11	willy-nilly [1]	70:12	yours [1]	34:2
walk-ins [1]	74:11	Winterfield [1]	9:16	yourself [2]	8:13
wanting [1]	39:7	wisdom [1]	10:13	28:21	
wants [15]	3:20	wish [1]	15:18	zoning [19]	2:11
4:9 11:1 12:5		wishes [1]	32:7	2:13 8:18 23:17	
19:16 21:11 29:9		witch [1]	58:16	27:4 40:2 40:4	
29:20 29:22 29:25		withdraw [1]	57:15	40:18 47:19 48:22	
30:10 45:21 60:8		within [1]	70:21	61:17 62:7 63:11	
62:17 85:11		without [11]	9:4	64:23 65:5 65:6	
way [36]	3:24 7:2	9:4 16:19 28:8		65:10 65:11 82:6	
9:16 11:23 16:20		42:1 60:14 60:19			
18:3 22:1 22:16		63:5 67:8 70:16			
24:23 27:14 28:22		79:18			
30:2 36:8 38:7		witness [10]	4:3		
38:19 38:25 40:9		35:22 37:9 43:22			
41:8 41:11 41:15		44:6 44:8 45:8			
41:19 43:20 54:4		45:11 69:21 84:11			
54:8 55:8 56:16		witnesses [1]	69:22		
60:8 62:5 62:14		won't [3]	9:24		
70:25 71:2 74:11		23:12 50:8			
76:12 77:10 83:6		wonderful [1]	88:22		
88:16		Wonderland [1]	60:1		
ways [1]	27:10	Woodbridge [2]	25:20 57:1		
wear [1]	76:22	word [3]	11:8 41:15		
week [1]	13:13	55:22			
weeks [1]	72:2	words [2]	17:11		
Weinburg [1]	14:4	77:2			
welfare [1]	64:16	work [6]	20:9 20:16		
weren't [2]	34:7	20:17 70:20 70:20			
72:18		71:2			
West [1]	64:2	worked [2]	28:10		
what's [8]	3:10	71:2			
10:6 10:9 12:14		works [2]	41:15		
46:6 46:8 46:9		88:4			
85:18					

study [3]	6:11	10:18	13:2	13:5	72:19	74:14	74:23	56:25	58:24	64:4	type [2]	16:15	28:4
8:8	30:11	17:25	29:18	31:1	throw [2]	76:1		64:20	64:23	68:21	ultimate [1]	28:11	
stuff [2]	6:22	35:24	43:8	52:23	83:19			68:25	70:6	70:14	unacceptable [1]	15:10	
stupid [3]	19:13	58:15	58:16		Thursday [1]	1:22		71:14	73:14	81:17	uncomfortable [1]	78:12	
19:14	19:17	talked [7]	58:11		tied [1]	82:20		83:13	85:17	86:9	unconscionable [1]	15:10	
subdivided [3]	67:19	58:12	58:13	58:19	ties [2]	45:22	47:1	86:17	89:24	91:11	under [8]	4:25	
67:21	67:23	72:1	72:8	74:8	tiles [1]	90:6		track [1]	77:18		21:8	22:22	32:9
subdivision [2]	67:12	talked [10]	6:20		time [32]	3:17	3:19	traffic [19]	20:20		56:10	76:24	78:9
82:8		6:21	31:8	42:14	4:5	4:9	4:15	21:2	22:20	23:8	91:8		
subject [9]	20:5	42:16	42:18	48:8	7:21	8:25	14:1	23:20	23:22	24:3	understand [14]	4:2	
37:17	61:2	50:2	61:14	80:18	15:19	17:23	19:25	24:7	24:10	25:19	32:8	34:20	35:1
61:21	62:7	taster [1]	89:4		20:12	21:23	22:17	25:25	31:17	34:16	38:11	43:25	45:8
70:21	79:11	taxes [4]	73:13	73:20	23:15	25:21	27:19	35:5	36:5	36:23	62:2	63:18	64:9
submit [2]	53:6	73:22	74:3		28:10	28:18	30:23	39:1	57:21	83:18	66:11	73:14	77:6
66:4		tear [1]	76:22		30:25	31:2	34:7	train [1]	77:15		81:16		
submitted [2]	55:5	technical [3]	4:17		39:19	43:9	66:1	transcript [1]	92:9		understanding [7]	3:10	21:17
80:21		4:18	9:14		69:3	71:13	80:17	transferring [1]	73:16		3:10	21:17	28:9
subsequent [1]	37:20	telling [5]	40:11		83:9	84:15	88:11	treated [2]	85:10		76:10	76:16	76:21
substance [1]	31:14	47:13	51:20	60:21	times [4]	9:2		86:23			78:16		
substantive [1]	32:2	66:5			19:19	43:13	43:21	tried [1]	36:7		understands [1]	3:5	
subtle [1]	28:19	tells [2]	20:21	53:5	tiptoe [1]	89:10		tries [1]	89:11		unfortunately [4]	24:11	33:25
such [4]	5:11	Tem [1]	2:7		Tipton [2]	36:2		trips [5]	23:6	31:15	91:11		
43:13	43:14	ten [6]	18:23	19:8	42:9			32:18	33:3	34:17	uninformed [3]	74:16	
suffering [1]	16:19	19:11	24:21	59:21	tired [3]	5:4	13:3	trouble [5]	73:12		74:20	75:2	
suggest [5]	13:22	69:11			89:16			74:4	74:13	84:5	unit [1]	49:3	
48:21	64:20	tennis [1]	49:1		title [3]	81:15	82:5	88:23			unity [3]	81:15	82:5
68:7		Terlizze [1]	58:14		82:9			true [8]	15:7	26:7	82:9		
suggested [1]	64:25	terms [1]	25:18		today [8]	13:10		63:9	63:14	63:16	unless [3]	50:22	
suggesting [1]	37:13	terraced [1]	83:11		21:21	23:25	27:3	65:4	65:9	92:9	unlimited [2]	57:5	
suggestion [2]	15:23	testified [4]	34:17		50:3	50:20	75:19	Trump [43]	7:21		60:6		
56:14		36:1	36:12	43:11	90:21			8:12	8:20	9:11	until [4]	21:10	21:10
suit [1]	8:24	testify [4]	36:9		together [5]	29:1		9:23	11:5	13:9	39:22	44:20	
suite [1]	84:8	36:10	36:11	42:9	29:2	45:22	82:4	13:20	13:23	14:12	untrue [1]	77:12	
19:3	19:7	testifying [2]	3:24		90:20			14:19	16:18	17:10	upon [3]	5:10	17:8
19:15		55:16			told [9]	21:5	33:9	23:13	26:6	26:9	usage [2]	36:5	
superfluous [1]	11:8	testimony [10]	3:7		59:9	68:13	68:14	26:13	27:1	27:25	use [24]	4:15	5:8
supervision [1]	42:2	22:23	23:25	23:25	72:9	80:16	88:11	29:9	50:15	55:22	5:9	10:22	20:24
support [4]	15:15	28:17	37:20	71:9	90:4			56:17	60:7	60:13	21:1	21:2	22:9
16:10	17:15	83:7	85:21	85:24	tomorrow [5]	52:10		60:18	61:8	61:16	36:6	59:12	60:7
support [4]	15:15	Thank [9]	30:15		57:13	84:23	91:6	69:2	70:12	73:13	61:7	61:25	62:5
supported [1]	33:15	40:1	42:13	77:19	91:10			73:16	74:24	80:1	62:10	62:14	62:18
suppose [1]	17:7	81:6	87:18	88:24	tonight [3]	3:6		82:23	84:6	84:20	62:18	70:15	76:22
supposed [15]	6:4	91:1	91:14		4:8	4:11		85:10	87:13	89:2	84:7	87:16	87:23
13:9	17:15	their [11]	5:5		too [8]	8:17	8:17	89:9	89:15	90:5	89:13		
23:24	27:12	51:23	51:25	52:9	8:18	68:3	68:6	Trump's [6]	9:23		used [10]	12:16	
34:21	34:25	64:18	64:21	65:13	68:8	73:5	86:4	10:20	19:25	38:14	48:6	53:12	59:6
53:6	71:20	76:24	78:21	80:13	took [2]	12:19	27:18	70:23	90:13		61:11	62:6	72:22
74:25	75:1	86:5			top [1]	47:3		trust [21]	50:6		82:23	83:2	84:8
sure [10]	24:6	themselves [1]	15:12		totally [2]	60:14		50:18	50:21	50:24	uses [11]	5:1	5:2
39:5	41:21	therefore [3]	37:20		67:8			50:25	52:14	52:15	5:5	5:6	5:11
47:9	57:17	75:2	78:8		tough [2]	26:17		52:22	55:21	75:25	58:19	58:20	59:15
73:19	84:10	thinking [1]	89:23		26:21			76:6	76:18	77:6	60:6	79:11	82:8
surgeon [1]	57:3	though [1]	73:10		town [64]	1:7		78:10	78:13	79:10	utilization [1]	58:25	
suspect [3]	13:4	thought [8]	11:25		1:8	2:9	2:12	79:12	80:1	80:5	utilize [1]	79:17	
53:3	74:10	19:23	24:21	32:1	2:14	4:25	5:10	80:7	80:17		utilized [1]	48:11	
swear [2]	24:5	65:1	73:18	77:15	5:12	5:24	6:9	truth [3]	14:8	73:21	V [1]	1:11	
47:14		86:14			6:14	7:14	7:24	83:4			vacuum [2]	34:22	
swimming [1]	49:1	thousand [1]	77:22		8:10	10:1	10:1	try [2]	28:11	66:11	66:16		
T [2]	92:1	threat [1]	12:23		10:23	13:10	14:3	trying [14]	6:23		valid [4]	27:10	33:23
table [1]	22:12	threatened [1]	8:24		14:12	14:22	15:1	24:6	25:15	27:21	34:18	39:3	
taken [1]	37:16	threats [1]	8:21		16:11	16:14	16:17	38:6	38:9	43:7			
takes [1]	20:11	three [4]	19:19	31:20	17:6	17:7	23:18	44:18	55:18	58:17			
taking [2]	24:23	55:23	56:3		24:19	26:5	26:14	70:9	72:5	74:5			
73:3		through [10]	4:19		28:5	38:7	38:18	89:9					
talk [13]	7:16	5:18	8:7	27:21	41:6	41:9	43:10	turning [1]	67:19				
		60:1	72:6	72:17	43:20	43:23	45:4	two [10]	9:7	11:1			
					47:19	48:3	48:23	14:1	28:16	34:24			
					53:15	53:19	53:20	44:25	45:19	48:17			
								70:14	84:9				

Page 1

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

Volume VI

CERTIFIED
COPY360 South County Road
Palm Beach, FL 33408
Friday, October 11, 1996
9:30 - 12:30 p.m.

Page 2

APPEARANCES:

Lesly Smith, President
Paul Ilyinsky, Mayor
Allen Wyatt, Councilman.
Leslie Shaw, Councilman
Jack McDonald, Councilman
Samuel McClendon, Councilman
Robert Doney, Town Manager.
Robert Moore, Director, Planning,
Zoning & Building
John Randolph, City Attorney

*** Notes ***

Page 3

PROCEEDINGS

(Thereupon the meeting was called to
order at 9:30 a.m.)

MRS. SMITH: Mr. Rampell, are you ready?

MR. RAMPPELL: Yes.

MRS. SMITH: Good morning, Mr. Natale.

I would like to reconvene the special
Town Council meeting which started yesterday
and ended at 9:10 p.m.. Call the roll,
please.

(Thereupon the roll was called.)

MRS. SMITH: When we ended last night we
were in the middle of public comment. There
will be an opportunity for public comment
today.Anyone who is going to speak must be
sworn in. I would like to ask if -- I would
like to ask whoever is going to speak today,
please stand up and be sworn in by the clerk.(Thereupon all prospective speakers were
sworn by the clerk.)MRS. SMITH: Did everybody understand what
I said? Anybody who is going to speak as part
of public comment would have to be sworn in.?

*** Notes ***

Page 4

Okay, Mr. Shaw, everybody stood up who is
going to speak.

Mr. Graves, were you first today?

MR. GRAVES: Madam President, Mr. Mayor,
Council members. My name is Ken Graves for
the record. I am with the law firm of
Carlton, Fields. We are in the Esperante -- I
am from the Tampa office. The West Palm
office is in the Esperante Building in West
Palm Beach.As I previously mentioned, but I think it
is important to remind you, that our client is
Mrs. Nancy DeMoss. Mrs. DeMoss's property is
immediately adjacent to the Mar-A-Lago
property on the northwest corner of the
Mar-A-Lago property. If you will, they abut
at the northwest corner of the Mar-A-Lago
property.I would like to mention I think due
process has been discussed back and forth,
back and forth. And I just would like to
remind you that due process goes both ways.
And I think our client has a right to every
aspect of due process.

I will try to be brief this morning. I

Page 5

Page 6

1 understand that you have water issues to
2 discuss and we've, I think, during the evening
3 managed to cut down the presentation.

4 But this is an important issue for
5 Mrs. DeMoss. She relied on the Declaration of
6 Use Agreement that was filed of record, public
7 record, in purchasing the property and in
8 building -- and is building at the moment, she
9 hopes to be in by Christmas permanently. She
10 has relied I think in good faith on that
11 Declaration of Use Agreement. She has relied
12 in good faith on this Council's application of
13 the Special Exception conditions and
14 requirements of the special exceptions section
15 of your code.

16 She has relied to her detriment, this is
17 an equitable estoppel argument I am making
18 here, good faith reliance on an act or
19 omission of the government, and she has relied
20 to her detriment.

21 She has and is in the process of spending
22 in excess of several million dollars in
23 reliance on that. So her due process rights
24 are equally important. The Bert Harris Act
25 was mentioned yesterday. That applies to

1 Mrs. DeMoss as well.

2 And the Bert Harris Act is, to remind
3 you, is an act passed by the legislature
4 relative to property rights. And it talks to
5 inordinate burdens by actions of government on
6 private property and there is a mediation
7 process and so forth.

8 Now, that didn't apply in 1993. I think
9 your Town Attorney has advised you of that in
10 the earlier hearing and there was some mention
11 yesterday of the Bert Harris Act. But it does
12 apply now, in my opinion, or could potentially
13 apply. The case law is not clear on that. It
14 is just developing.

15 So she had a right to rely. She relied
16 in good faith. She relied to her detriment
17 and has expended sums of money in that
18 reliance.

19 Now, what did she rely on: She relied on
20 the Declaration of Use Agreement. She
21 recognized that it could be amended, but she
22 also recognized that the code said that if
23 there was to be an amendment to this Special
24 Exception, there were procedures that had to
25 be followed, conditions that had to be

*** Notes ***

Page 7

Page 8

1 established, evidence that had to be
2 presented. And that you had to make certain
3 findings. That's what she relied on.

4 With that as an introduction, let me go
5 back to an argument as part of my -- I think
6 we came up with about 15 reasons why you
7 should not defer, should not delay, but deny
8 the application.

9 When I was here in September we went
10 essentially first because of letters that we
11 had submitted. One of those letters was a
12 letter dated September 17, 1996 which is in
13 the record and it has to do with really
14 administrative res judicata. That was
15 explained to you in some detail by your Town
16 Attorney as to what that means.

17 But, let me, if I may try and summarize,
18 the public policy arguments behind
19 administrative res judicata. Administrative
20 res judicata -- somebody in looking at the
21 transcript said I don't know how to spell or
22 pronounce that, but administrative res
23 judicata is simply there has to be finality.
24 And if you have the same issues and the same
25 parties, and there is no change of

1 circumstances, then you have the discretion to
2 determine that there are no changed
3 circumstances and that the matter has already
4 been adjudicated, resolved. The thing has
5 been adjudicated.

6 Now, the public policy basis for that I
7 would just like to read and this is from
8 Rattkauf (Phonetic) on the law of planning and
9 zoning. But the purpose of the rule is to
10 give finality to board decisions. It applies
11 to quasi judicial proceedings by
12 administrative boards, clearly under the law
13 of Florida. And to prevent an undue burden
14 from being placed on property owners seeking
15 to uphold the zoning plan.

16 Further rationale is that if a board is
17 permitted to revoke former actions without a
18 change of circumstances, it would allow
19 interested parties to be harassed by being
20 called upon to contest repeated and frequently
21 recurring applications pertaining to the same
22 matter.

23 Similarly, if parties could repeatedly
24 return to the same board seeking the same
25 relief, under the same conditions, there is

*** Notes ***

1 the risk that both the board and the
2 objector's resistance would be worn down.
3 Chief Elmore I don't think today, as he
4 did on September 16, has to advise everyone
5 where the exits are; which he did. We are at
6 capacity; let me explain where the fire exits
7 are, and where they are not. Don't put
8 tripods in the aisle. Is that a problem
9 today? No.
10 What we have is that that there is risk
11 that both the board and objector's resistance
12 would be born down.
13 MR. MCLENDON: Mr. Graves, a point of
14 clarification. You, I thought, mentioned a
15 date on your letter of September 17?
16 MR. GRAVES: Yes.
17 MR. MCLENDON: I think that was the day
18 after we met. So I assume it was the day
19 preceding that. Just to be sure it isn't a
20 letter I don't have.
21 MR. GRAVES: I am sorry, it is September
22 12. I appreciate the opportunity to correct
23 that.
24 Now, what is the test for the application
25 of administrative res judicata. Several of

1 you reading the transcript again in September
2 said I will be very interested in hearing what
3 the changed circumstances are and your Town
4 Attorney questioned Mr. Rampell; he said what
5 are the changed circumstances? Well, I'll get
6 to that, I'll present that.
7 Mr. Rampell begins his presentation, this
8 is on page 60 line 20 of the transcript. I
9 will read it to you, because I don't know that
10 each of you has a copy of the transcript, but
11 I will read it to you.
12 MRS. SMITH: No. We don't have a
13 transcript.
14 MR. GRAVES: "Mr. Rampell: I make
15 mistakes. The Town makes mistakes. Let's
16 muster the fortitude to admit them and improve
17 this situation. Many circumstances have
18 changed. First of all, all of the millions of
19 dollars worth of construction which were
20 required under the Declaration of Use
21 Agreement have been completed."
22 That's not a change. That's a completion
23 of a requirement. That's not a change. And
24 even hundreds of thousands of dollars more as
25 he said.

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1 Second, "The Mar-A-Lago Club is no longer
2 a plan or concept or set of projections. It
3 is a living and breathing membership which
4 consists of people from all different
5 ancestries, ethnic backgrounds and people of
6 all different beliefs. This membership is a
7 new party in interest."
8 The membership was anticipated. I assume
9 they don't have a social club to have no
10 members. That's not a change in
11 circumstances. That's what they have a social
12 club for.
13 Third, "The club has been used to its
14 fullest capacity and everyone, even the most
15 out spoken oponents, admit by acclamation that
16 the Mar-A-Lago Club has been a good
17 neighbor."
18 I will have more comment to make on that
19 point. But the club has been used to its
20 fullest capacity; good. Is that a change?
21 No. I would expect that that's what they
22 wanted to happen.
23 Indeed if it's been used to its fullest
24 capacity, then I am not sure what this taking
25 the restrictions off is, if it has already

1 been used to its fullest capacity.
2 Nonetheless, is that a change? No.
3 He goes on to say, so that I don't
4 misrepresent, in the same third point, "We no
5 longer are dealing with a theoretical club.
6 We are dealing with a club that's been in
7 operation and is operated very smoothly."
8 I would hope it is. Is that a change?
9 No. It was expected to operate smoothly.
10 "Many people predicted unmitigated
11 disaster if the club was approved in 1993.
12 All sorts of projections about traffic
13 congestion were made and they have not come to
14 pass, even during the times when Mar-A-Lago
15 was used to its fullest capacity."
16 Is that a change? No. That's why you
17 put the restrictions on there. That's why it
18 does work. There is no change.
19 Now, I haven't heard -- pardon me. Let
20 me back up. The burden of proof, I think your
21 Town Attorney will tell you, is on the
22 applicant. It is not on those who oppose the
23 application to prove or disprove anything. It
24 is the applicant who must prove, prove to you,
25 by competent, substantial evidence, not

*** Notes ***

1 argument, evidence, their case.
 2 Now, I would submit to you that I haven't
 3 heard anything in their testimony, and I am
 4 presuming a lot, I guess, that they finally
 5 rested and they are finished on their direct
 6 and so forth, but I think that's been
 7 resolved, they have. And I haven't heard
 8 anything to suggest that there has been any
 9 change in circumstances.
 10 Mr. Wyett asked in the hearing in
 11 September, I will be very interested in
 12 hearing those change of circumstances; what
 13 are they. Now that has to come to you, in my
 14 opinion, by way -- that's argument. But
 15 nonetheless, even if it is argument, it
 16 doesn't establish changes. Those are the very
 17 things that were expected. Those are not
 18 changes and here we are again. And here we
 19 are again.
 20 I think in this instance, and I don't
 21 mean to misrepresent and I won't, this is a
 22 discretionary matter on the part of the Town
 23 Council. But, in this instance, it is so
 24 blatant that there has been no change.
 25 What's the basis for the application?

1 That there is discrimination? They didn't
 2 even establish that. There has been no
 3 testimony. They've completed their case.
 4 They can't even tell you how many members
 5 they have. They can't tell you the makeup of
 6 those members. They can't tell you any of
 7 those things or they've chosen not to tell
 8 you.
 9 So I believe that there is no evidence in
 10 the record, no competent substantial evidence
 11 on direct testimony, that there has been any
 12 change of circumstances and that is really the
 13 key to the argument of administrative res
 14 judicata. To harass, to repeat, to wear down.
 15 One of the arguments that was made and
 16 has been made is that the conditions that you
 17 applied in the special exceptions didn't apply
 18 to all the clubs. And maybe that somehow was
 19 a changed circumstance.
 20 Let me cite to you the testimony -- while
 21 Mrs. Grimes is looking for the specific
 22 provision, I will summarize it for you. At
 23 the first hearing Mrs. Wiener was, and I don't
 24 know whether she was the president, I
 25 apologize, but she was on the board. And

*** Notes ***

1 there is discussion. These are the minutes in
 2 the record of June 1, 1993. Those have
 3 already been put into the record. And we're
 4 talking about various things.
 5 Mrs. Wiener asks since this is a new use,
 6 would the Town have any problem with this
 7 since the Town Attorney advised the Council
 8 many times they must treat people in the same
 9 business equally. Mr. Randolph responded that
 10 this would apply, but it would not preclude
 11 the Council from placing any conditions which
 12 they determine to be reasonable and so forth.
 13 This is on page 4 of the minutes.
 14 Mrs. Wiener recalled one of the clubs in
 15 the Town has a cap on membership, and wondered
 16 if others had a cap; and if they do, are they
 17 monitored. Mr. Randolph did not believe the
 18 Town monitored the traffic at other clubs in
 19 the Town. Mr. Moore stated they did not. He
 20 recalled the existing clubs and so forth and
 21 there was a discussion.
 22 Mr. Rampell, and I am going down and
 23 skipping I think what is not relevant.
 24 Mr. Rampell responded that the daily
 25 monitoring is acceptable to them and they

1 would be willing to install monitoring devices
 2 subject to the Town's requirements and which
 3 could be read at any time.
 4 Was the equal protection argument joined
 5 at the 1993 hearing? Yeah. It was there. It
 6 was raised. This issue about treatment the
 7 same as other clubs was raised. It was asked
 8 and answered. And the answer was it is
 9 acceptable monitoring.
 10 The issue was there. The issue of equal
 11 protection, the issue of equal treatment with
 12 other clubs, was clearly before this body or
 13 its predecessor body in 1993. Is equal
 14 protection a change here? No. Because it was
 15 asked and answered. It was addressed. It was
 16 joined at the hearing in 1993.
 17 This, it seems to me, has been a really
 18 highly charged, highly political and fairly
 19 high profile focus on the issue and I would
 20 like to suggest to you that it doesn't have to
 21 be and shouldn't be. And the reason I think
 22 is very obvious.
 23 This body, this Council, has one very
 24 simple responsibility in regard to this
 25 application. And it is the same test that a

*** Notes ***

Page 21

Page 22

development is such a substantial change in the use, that in my opinion it no longer qualifies as a use permitted in the zoning district in which it is located. It no longer fits the definition. So it cannot be permitted in the zoning district.

B: The use is so designed, located, proposed to be operated, that the public health, safety, welfare and morals will be protected.

There has been absolutely no evidence submitted, either with the application or in the testimony, to demonstrate that there will be no adverse impact on adjacent property owners or the public at large. And I believe that you need to consider, anticipate that there will be adverse impacts.

So the lack of demonstration that there will be none qualifies that this does not meet the standard.

C: That the use will not cause substantial injury to the value of other property in the neighborhood where it is to be located.

Again, it certainly can be anticipated

that the removal of limiting conditions will have an impact of substantial injury to the neighboring parties.

This is a use which could be considered inherently incompatible. It is a commercial use in a single family zoning district. It is the conditions, and this is the nature of the Special Exception uses, it is the conditions that render the incompatibility for this.

Otherwise, I think the standard is that you need to judge this as inherently incompatible where there are no conditions that limit the intensity or the activity that can take place.

This relates to limitations on traffic, parking, membership and a host of other activities. I think it can be seen quite clearly to be incompatible with the unique single family character of this area.

D: That the use will be compatible with adjoining development and the intended purpose of the district in which it is located.

There has been absolutely no information submitted to document that it would be compatible and every reason to suggest, based

*** Notes ***

Page 23

Page 24

on the intent and purpose of the zoning district, that a club without limiting conditions would be incompatible.

The intent of the district is to provide for single family estate, residential use of spacious character. Also to protect and preserve the existing development of estate character. Private commercial uses simply can be seen as incompatible with the stated intent.

E: That the use will comply with the schedule set out for the particular use involved.

This gets back to the same issue that these are private clubs conforming uses as they existed as of the date of the change ordinance 196.

You don't have any regulations related to private clubs in RAA district any more. So, the applicant's burden is to prove that the use will comply with your standards.

I think he has not done that. You don't know what will be done when there is no limitations on this particular use. And you can't regulate it properly with no standards

in your own code.

F: That the use will comply with the Comprehensive Plan. This is fundamental to your review. And it is my opinion that the proposal does not meet a number of elements of your Comprehensive Plan.

Within the Comprehensive Plan and the land use plan there is a description of private group uses being low intensity, private clubs, golf and country clubs, and noncommercial uses at a scale and intensity intended to primarily serve the needs of Town persons.

This is reiterated in Objective Two. 2.2 B where it is also defined. Objective two requires that you maintain the character of the Town as a predominantly residential community having only the type and amount of businesses and other support services necessary to meet the needs of the Town residents.

Policy 2.3: To prevent critical and dangerous overuse of its street, parking resources, public services and facilities, and damage to its historic character and to

*** Notes ***

Page 17

1 court, whether you approve or deny, would look
 2 at. What is the code and what does the code
 3 say and did you have competent, substantial
 4 evidence to reach the findings that you have
 5 to make.
 6 It is simple. We're talking about the
 7 application, not the applicant. We're talking
 8 about the manor M-A-N-O-R, and not the man.
 9 This is simple. This is textbook.
 10 I appreciate the position that you are
 11 in. But I think it is that simple and I think
 12 if there is any equal protection argument to
 13 be made, it is that if you treat that
 14 differently, then there may be an equal
 15 protection question raised. Whoever the
 16 applicant is, they need to be treated just the
 17 same.
 18 At this point I would like to introduce
 19 our only witness, Ann Cottrell, who is going
 20 to discuss the planning issues. She'll state
 21 in summary her curriculum vitae and her
 22 qualifications as an expert and I would ask
 23 her to make the presentation to discuss those
 24 planning issues that are relevant, I believe,
 25 to your consideration.

Page 18

1 MS. COTTRELL: Good morning. I am Anna
 2 Cottrell, C-O-T-T-R-E-L-L. I have an academic
 3 background in urban planning. I have a
 4 bachelor of science in governmental
 5 administration with a specialty in planning.
 6 I did graduate work in urban and regional
 7 planning at Virginia Commonwealth University.
 8 I have 14 years experience, both as a
 9 practicing planner with the City of Boynton
 10 Beach and West Palm Beach, and the last 12
 11 years as a consultant.
 12 I am with Baseheart & Cottrell in West
 13 Palm Beach. I am certified by the American
 14 Institute of Certified Planners and qualified
 15 as an expert in planning by Palm Beach County
 16 Circuit Court.
 17 What I was asked to do for Mrs. DeMoss's
 18 attorneys is to review the application that
 19 was submitted; to review the requirements of
 20 the Town for the review and approval of such,
 21 and to render an opinion about whether or not
 22 the application meets the standards.
 23 My opinion, my professional opinion, is
 24 that the application does not meet the
 25 criteria set forth in your Comprehensive Plan

*** Notes ***

Page 19

1 and your code for approval. It does not meet
 2 the standards that the Town has outlined for
 3 approval.
 4 Now, the standards that apply are Special
 5 Exception. This is because the Declaration of
 6 Use constitutes a development order for the
 7 property. Modifications to the Declaration of
 8 Use must be considered as special exceptions.
 9 The applicant acknowledges that and
 10 that's the form of the application he has
 11 submitted and I heard testimony from
 12 Mr. Rampell that he considered this as a
 13 Special Exception.
 14 So I applied the standards of 6.40 of
 15 your code. There are 18 standards in that
 16 that apply to the Comprehensive Plan and the
 17 code and policies. I am going to go through
 18 those standards and given the time, as quickly
 19 as possible, but I think it is important that
 20 you hear why this application, based on the
 21 documentation submitted to the Town and on the
 22 testimony that's been given by the applicant,
 23 does not meet the criteria.
 24 Standard A: That the use is a permitted
 25 Special Exception use as set forth in the

Page 20

1 schedule of use regulations in Article 4.
 2 Well, it is no longer permitted as a Special
 3 Exception use in the zoning district in which
 4 it is located, RAA. Changes by the Town in
 5 January of last year removed it from the
 6 permitted use list or Special Exception list.
 7 However, it recognized that clubs that
 8 were existing as of the effective date of the
 9 ordinance would be considered still permitted
 10 Special Exception uses.
 11 This is a little unusual way of dealing
 12 with uses which may no longer be appropriate
 13 in certain zoning districts. More typically
 14 they would be rendered nonconforming,
 15 continued to exist as they were permitted,
 16 until the time that the code changed.
 17 But, in reading the backup to your
 18 ordinance 196, which did remove this from the
 19 list of permitted uses, the Town made its
 20 intent clear they wanted to consider as
 21 conforming those uses as they existed as of
 22 the date of that ordinance.
 23 Now, I think that's the key there,
 24 because what's been presented by the applicant
 25 to remove all of the conditions on this

*** Notes ***

Page 25

Page 26

1 overall property values of the community, the
2 Town will take all technical administrative
3 measures legally available to minimize the
4 change or transition of existing low density
5 areas or structures to more intensive use
6 patterns and thereby lowering the pattern of
7 density where possible and to minimize tourism
8 inflow.

9 Policy 2.4: Continue to enforce the
10 provisions of the Town's zoning ordinance
11 directed towards encouragement of Town-serving
12 commercial uses and the discouragement of
13 those uses which are likely to attract
14 patronage on a regional level.

15 Objective five: Development orders and
16 permits for new development or redevelopment
17 or building permits for developments that have
18 been issued development orders prior to the
19 adoption of the Comprehensive Plan, so that
20 applies only to uses prior to 1989, shall be
21 issued only if public facilities and services
22 necessary to meet the Town's adopted level of
23 service standards are available concurrent
24 with the impacts of development.

25 There has been no documentation nor

1 testimony to demonstrate that there has been
2 compliance with any of these standards and
3 every reason to anticipate that the use as
4 proposed cannot meet those standards.

5 It is mandated by growth management laws
6 of the State of Florida, mandated by your
7 Comprehensive Plan. You cannot approve
8 development orders which have not been
9 evaluated for the impacts on levels of service
10 standards.

11 You heard a full day of testimony
12 yesterday about traffic. You didn't hear one
13 single time from the applicant that he has
14 demonstrated consistency or that he can meet
15 concurrency standards. That is required.

16 I think also Objective Nine, which
17 relates to historic and architectural
18 preservation, the Town shall protect its
19 structures and neighborhoods having historic
20 or architectural merit.

21 I think the applicaiton violates that
22 standard of the Comprehensive Plan as well.

23 G: That the use will not result in
24 substantial economic noise, glare or odor
25 impacts on adjacent properties and properties

*** Notes ***

Page 27

Page 28

1 generally in the district.

2 You don't know how it is going to affect
3 the neighbors. You've already heard that
4 there is complaints about noise. There is the
5 potential for problems with parking, other
6 activities, and there hasn't been any
7 demonstration that it will not result in
8 substantial economic noise, glare or odor
9 impacts on adjacent properties.

10 H: That adequate ingress and egress to
11 property structures thereon and off-street
12 parking and loading areas will be provided
13 where where required to automotive and
14 pedestrian safety and convenience, traffic,
15 traffic flow and control and access in case
16 fire or catastrophe.

17 Maybe they met it; maybe they didn't.
18 You heard a lot about that, but the key is you
19 haven't heard enough information about what
20 the impacts will be when you take off all the
21 limiting conditions. We don't know.

22 I: Signs, exterior lighting with
23 reference to glare, traffic safety and
24 economic impact be compatible and in harmony
25 with the properties in the district.

1 Well, without limitations, the club use
2 certainly will have an impact on properties in
3 the district and, again, we don't know how
4 much.

5 That the location, availability and
6 compatibility of utility service for the use
7 be satisfactory to ensure health and safety.
8 There is no demonstration how that's going to
9 be met either.

10 A number of these I am going to skip
11 over.

12 K: Refuse and service areas. It applies
13 and there hasn't been a demonstration that
14 they've met that condition.

15 L: That the proposed use will not
16 attract the principal portion of its customer
17 or clients from off-island locations. The
18 applicant shall, not maybe, not if he wants
19 to, the applicant shall submit evidence
20 satisfactory to the Town Council that not less
21 than 50 percent of the customers of the use
22 will be Town persons.

23 Lifting the restrictions without evidence
24 of Town-serving qualifications clearly
25 violates this. And I think you heard

*** Notes ***

1 yesterday, the way I heard it, that the intent
2 is to ask you to lift that restriction.
3 Absolutely contrary to your Comprehensive Plan
4 that requires that.

5 Now, when you changed the use regulation
6 schedule back in January, I went back and
7 looked at what was presented in terms of the
8 justification for making that change to delete
9 this particular use from the zoning district.

10 There was documentation presented by
11 staff that there are 4,060 memberships in the
12 Town's seven private clubs, accommodating
13 8,120 persons. Population of the Town in 1994
14 was estimated to be 9,855. There are
15 sufficient club memberships, this is your own
16 staff, among existing clubs to accommodate the
17 number of persons that could reasonably be
18 expected to come from the Town's permanent
19 population.

20 When you adopted this change you stated
21 the intent was to remove the potential for
22 conversion of more residential land to
23 nonresidential use, thereby protecting
24 existing residents from increased intensity of
25 use, traffic, noise, light, associated with

1 recreation use and social events from private
2 clubs.

3 Again, as indicated in the backup to
4 ordinance 196, this change is consistent with
5 the Comprehensive Plan and was based on the
6 requirements of it, including objective two,
7 maintain the character of the Town as a
8 predominantly residential community, having
9 only the type and amount of businesses and
10 other support services necessary to meet the
11 needs of Town residents.

12 Back to the standards.

13 M: I think we've got them up here.

14 N, O, P, Q, there is not enough
15 evidence. The requirements are that the
16 proposed use will not place a greater burden
17 than would be caused by a permitted use on
18 municipal police services due to increased
19 traffic.

20 Well, an expansion of the membership with
21 no limitations will definitely have that
22 effect. We heard a lot yesterday. Use your
23 common sense. Common sense says with no
24 limitations that that type of use will clearly
25 have more impact than a use which is permitted

*** Notes ***

1 by right in the zoning district. What's
2 permitted by right? Single family estate.

3 I think the application can only be
4 viewed as an intensification of the use. The
5 nature of Special Exception is a use which may
6 be permitted in the zoning district, given
7 certain limitations. And I think that's the
8 key. What the applicant has asked for is no
9 limitations.

10 Section 10.12 of your code, which is
11 related to Special Exception, requires in
12 granting the Special Exception the Council
13 shall find, again shall, that such grant will
14 not adversely affect the public interest. I
15 don't think you are going to be able to find
16 that, based on what's been presented, that it
17 will not affect the public interest. Mrs.
18 DeMoss thinks it will.

19 Further, the Special Exception requires
20 site plan approval. The purpose of site plan
21 review exam for potential adverse impacts on
22 the adjacent area, neighborhood or Town, those
23 uses having characteristics identified as
24 possessing the potential for negative impact
25 and to ensure such uses are located, sited and

1 designed that they result in a positive
2 contribution to their area, neighborhood and
3 Town.

4 To achieve these purposes the Town
5 Council may, after detailed review of the site
6 plan and its potential off-site impacts,
7 impose such operational and/or design
8 conditions as will eliminate or minimize such
9 impact.

10 Section 9.61 outlines the requirements
11 for site plan application. Now, I understand
12 that your staff did not request a site plan
13 from the applicant. That may fit the category
14 of what the staff considers to be optional.

15 Your code doesn't say that. Your code
16 says site plan is required. And at a minimum
17 what should have been submitted, what's
18 required to be submitted by the applicant is a
19 demonstration what the modification proposes
20 is not inconsistent with the site plan
21 previously evaluated.

22 You've heard there is going to be changes
23 made in parking. You know with an increase in
24 membership there is going to be more cars, so
25 there is going to be a demand for more

*** Notes ***

Page 33

1 parking. There is already a request for more
2 tennis courts.
3 Those are site conditions with activities
4 for adverse impacts which must be evaluated.
5 And the best way to do that is with a site
6 plan that shows comprehensively and without
7 omissions what the activity level will be and
8 what can be done to minimize the impacts on
9 neighbors.

10 The application doesn't meet the
11 requirements for technical sufficiency.
12 Again, it fails to demonstrate it meets the
13 criteria for granting Special Exception and
14 the information presented suggests strongly
15 that it cannot meet your requirements.

16 I think the application as proposed is
17 contrary to the Comprehensive Plan, it is
18 contrary to your zoning code, and quite
19 frankly, in my professional opinion, it is
20 contrary to good planning to allow Special
21 Exception commercial uses in single family
22 residential estate zoning districts without
23 limitations.

24 MR. GRAVES: Mrs. Cottrell is available
25 for cross-examination.

*** Notes ***

Page 34

1 MR. MCDONALD: Was a site plan required
2 for this application?

3 MR. MOORE: No, it was not.

4 MR. MCDONALD: Thank you.

5 MRS. SMITH: I don't understand the
6 question. Did you feel it was not -- is that
7 your opinion, was that a site plan was not
8 required, or you did not request one?

9 MR. MOORE: Based upon the application
10 and the wording of the application to modify
11 the Declaration of Use Agreement on the prior
12 one, which was created by the prior Special
13 Exception granted in 1993, the site plan was
14 not required by our office. It was not
15 requested, nor did we believe it was
16 applicable to this application.

17 MRS. SMITH: Thank you.

18 MRS. SMITH: Members, any questions?

19 MR. MCLENDON: I can only assume this was
20 predicated on this modification rather than
21 opposed to the use Special Exception. But,
22 that may not be the case.

23 MR. MCDONALD: Can you clarify the reason
24 it didn't require a site plan.

25 MR. MOORE: The application requested

Page 35

1 modification in the Declaration of Use
2 Agreement and the conditions associated with
3 the Declaration of Use Agreement. It was not
4 asking for new uses, such as the tennis court
5 application that did come prior to you, as an
6 example.

7 There was a site plan. You reviewed the
8 site plan for the tennis court operation and
9 you reviewed things associated with the
10 neighbors and the lights and so forth and so
11 on. That would be a new addition to the
12 actual original Special Exception permitted
13 use.

14 MR. MCLENDON: You confirmed what I was
15 supposing happened.

16 MR. MOORE: That standard, I might add,
17 has been the standard used since the Town
18 enacted zoning ordinance 274.

19 MRS. SMITH: Any other questions for Ms.
20 Cottrell?

21 Mr. Natale, would you like to
22 cross-examine.

23 MR. NATALE: Yes, ma'am.

24 MR. NATALE: If I understand, in summary,
25 your opinion is that the application is

*** Notes ***

Page 36

1 insufficient in that it doesn't provide enough
2 background documentation in order to meet the
3 criteria which you say it needs to meet; is
4 that fair?

5 MS. COTTRELL: I think the application is
6 insufficient from a technical standpoint. But
7 I think also on the substance of what's being
8 requested, that it is insufficient to render
9 an approval.

10 MR. NATALE: When you say technical, are
11 you referring that there is additional data,
12 additional information which you believe would
13 be helpful and necessary; is that correct?

14 MS. COTTRELL: Yes. As I've stated, a
15 site plan is one of those elements that would
16 justify this type of proposal.

17 MR. NATALE: You are aware that the
18 Declaration of Use anticipates amendments; is
19 that correct?

20 MS. COTTRELL: Yes.

21 MR. NATALE: That was approved by the
22 Council?

23 MS. COTTRELL: Yes.

24 MR. NATALE: You also would agree -- I
25 think that the zoning code is still in effect

Page 37

Page 38

1 as it relates to this property; isn't that
2 correct?

3 MS. COTTRELL: The zoning code --

4 MR. NATALE: Of the Town of Palm Beach.

5 MS. COTTRELL: That the zoning code
6 applies?

7 MR. NATALE: Yes.

8 MS. COTTRELL: Yes.

9 MR. NATALE: And that that zoning code
10 has a provision, which I believe we produced
11 yesterday, which says that for clubs there is
12 a need for or there must be a one-to-four
13 ratio, that is one parking place for four
14 members; is that correct, that the code says
15 that?

16 MS. COTTRELL: I believe it does and
17 that's what I heard you say last night, yes.

18 MR. NATALE: And that that, wouldn't you
19 agree, is a form of restriction upon what the
20 code -- what any club can do, based on what
21 the zoning code says, that it is a
22 restriction; you have to have one for every
23 four members.

24 MS. COTTRELL: That is a property
25 development regulation that would apply.

1 MR. NATALE: And that would apply to the
2 Mar-A-Lago Club?

3 MS. COTTRELL: What applies to the
4 Mar-A-Lago Club are those uses, activities,
5 limitations identified in the Declaration of
6 Use. That is the best documentation of what
7 existed in terms of development as of the day
8 that this use was no longer permitted as a
9 Special Exception use in the zoning district.

10 MR. NATALE: I understand that.

11 In your presentation you make the
12 assertion that this application is contrary to
13 the zoning requirements, the zoning
14 ordinances, and what I am asking you is if
15 Mar-A-Lago were to be allowed to have a one
16 parking place for every four members, would
17 that be consistent with the present zoning
18 code?

19 MS. COTTRELL: There is no standard that
20 applies to this use in this zoning district
21 any longer.

22 MR. NATALE: That the there is none?

23 MS. COTTRELL: There is none, because it
24 is no longer permitted as a Special Exception
25 use, except as of the date as it existed -- as

*** Notes ***

Page 39

Page 40

1 of the date of ordinance 196. So there is no
2 standard.

3 MR. NATALE: Your feeling in looking at
4 this is that the zoning code provision would
5 not apply to Mar-A-Lago?

6 MS. COTTRELL: What I said was that there
7 are no standards for private clubs in the RAA
8 zoning district any longer.

9 MR. NATALE: Let me ask you this: Do you
10 believe the provision that says that private
11 clubs are to have one parking space for four
12 members would apply to Mar-A-Lago?

13 MR. GRAVES: Asked and answered,
14 objection.

15 MR. NATALE: I don't believe I've had an
16 answer to that specific question.

17 Does she believe that that provision
18 would apply to Mar-A-Lago, yes or no?

19 MS. COTTRELL: I think without the use
20 permit it is impossible to determine what
21 standards would apply. There are no standards
22 for that use in that zoning district.

23 MR. NATALE: That means that would not
24 apply to Mar-A-Lago; is that your answer, that
25 it wouldn't apply?

1 MS. COTTRELL: There are no standards.

2 MR. NATALE: Now, you also mentioned, at
3 least I got the sense that there was no
4 compatible use -- you talked about compatible
5 use in the area.

6 You would agree the Bath and Tennis Club
7 is fairly contiguous with the Mar-A-Lago Club,
8 correct?

9 MS. COTTRELL: I did no analysis of the
10 Bath and Tennis Club as part of the scope of
11 my work.

12 MR. NATALE: I understand you didn't.
13 Assume as an expert that right across the
14 street there is a Bath and Tennis Club and
15 that this is a private club and that, in fact,
16 their properties are contiguous. Further,
17 assume in the Declaration of Use that there
18 was a condition that the Mar-A-Lago Club and
19 that club coordinate their activities and work
20 cooperatively in such a way as to accommodate
21 whatever traffic or congestion or planning is
22 necessary.

23 Wouldn't that be an indication that the
24 Mar-A-Lago Club is in a position to have a
25 compatible or similar use with a contiguous

*** Notes ***

Page 41

Page 42

1 neighbor?

2 MS. COTTRELL: My answer to that is that
3 in order to properly review this use, which
4 may be inherently incompatible with the zoning
5 district in which it is located, a
6 comprehensive and full review of all of the
7 uses intended must be performed.

8 So, to pick out one element out of that,
9 it is impossible, even with all your
10 assumptions, to say would it be compatible; I
11 don't know. I don't think anybody else is
12 going to be able to tell you that it would be
13 compatible to take one element out without a
14 full review.

15 MR. NATALE: You went through each
16 element and said that each element isn't met.
17 What I am doing is nothing more than asking
18 you questions about each element you said
19 wasn't met.

20 I understand that your position is we
21 need to have the whole package, I understand
22 that. What I am asking you is, as it deals
23 with your testimony as to each individual
24 element, as it relates to this compatible use,
25 are you telling the Council that the

1 Mar-A-Lago Club and the Bath and Tennis Club,
2 which is adjacent to it, and in light of the
3 cooperation that they are required to do, is
4 not a compatible use between -- of the land
5 between the two clubs?

6 MS. COTTRELL: I think that it can be
7 anticipated that there is an incompatibility
8 that will result by taking off the conditions
9 limiting the use at Mar-A-Lago.

10 MR. NATALE: That's a fear that you would
11 have?

12 MS. COTTRELL: I think it can be
13 anticipated and I think good planning requires
14 that it be anticipated that there are adverse
15 impacts and incompatibility.

16 MR. NATALE: I understand you are talking
17 about the impact. What I am asking is, and
18 this is very important, because you said that
19 there was no compatible contiguous use. Would
20 you agree --

21 MS. COTTRELL: No. I don't believe that
22 was part of my testimony, that there is no
23 compatible contiguous use.

24 MR. NATALE: Would you agree there is?

25 MS. COTTRELL: I am not agreeing or

*** Notes ***

Page 43

Page 44

1 disagreeing. I am saying the potential
2 impacts from this proposal should be
3 anticipated to create incompatibility on the
4 adjacent properties.

5 MR. NATALE: What you are saying then, if
6 I understand your answer, is if you had more
7 information as to what was going to happen in
8 the future, that your opinion could change?

9 MS. COTTRELL: My opinion could change
10 with more information, yes.

11 MR. NATALE: And I guess the reason for
12 that is that you wouldn't want someone to have
13 to try and prove a negative? You know what I
14 mean by that, right?

15 MS. COTTRELL: No, I don't.

16 MR. NATALE: The idea of proving a
17 negative is to prove that something never will
18 happen or never could happen. That's what I
19 mean by that.

20 Can you think of any way that someone or
21 anyone could ever prove that something could
22 not never or never did happen?

23 MS. COTTRELL: No. And I absolutely fail
24 to see what relevance there is. You asked me
25 just a minute ago would my opinion change with

1 more information. Well, obviously, because my
2 opinion is that the application doesn't meet
3 the standards, because there is not enough
4 information to judge it --

5 MR. NATALE: Wouldn't you agree then, if
6 more information was presented to the
7 commission, that that would be good for public
8 policy and that would be good to have a sound
9 and wise decision?

10 MS. COTTRELL: I think it is good public
11 policy to give the Council and staff the
12 information they need to judge the
13 application.

14 MR. NATALE: That's something you would
15 voice no objection to.

16 MS. COTTRELL: Giving more information?

17 MR. NATALE: Yes.

18 MS. COTTRELL: If it was done in a manner
19 consistent with what the code requires, that
20 is documentations, plans and other information
21 submitted in a timely fashion and reviewed in
22 a comprehensive way.

23 If what you are suggesting is you are
24 going to be submitting evidence, I am going to
25 voice an objection and say that's not a proper

*** Notes ***

Page 45	Page 46
1 way to protect the neighbor's interest in 2 making sure all the impacts from your proposal 3 are mitigated properly. 4 MR. NATALE: Basically you are saying you 5 would like to look at that and review any 6 documentation to make a determination. 7 MS. COTTRELL: I would like Mrs. DeMoss 8 to know what she is up against by having staff 9 do a fair evaluation and have information 10 presented at the hearing so the Town Council 11 can do what they are charged to do -- 12 MR. NATALE: So you would want ever one 13 to have ample opportunity to review this 14 additional information in order to make the 15 most intelligent and fair decision that could 16 be made. 17 MS. COTTRELL: I think the code requires 18 it. 19 MR. NATALE: You would agree with that 20 provision of the code. 21 You also mentioned that there was in the 22 Comprehensive Plan, there is open space 23 requirement; is that correct. 24 MS. COTTRELL: I don't remember stating 25 that. But there are open space requirements.	1 MR. NATALE: I believe you did. I 2 believe you said that -- you mentioned there 3 was open space requirement as part of the 4 comprehensive plan and that -- 5 MS. COTTRELL: Of the code. I don't 6 recall mentioning open space requirements in 7 the Comprehensive Plan. 8 MR. NATALE: Of the code. Are you aware 9 there is a need of the Town to submit 10 compliance with the open space requirements? 11 MS. COTTRELL: I am sorry, restate that. 12 MR. NATALE: Are you aware of the fact 13 that the Town must submit to the appropriate 14 State authorities that they are in compliance 15 with the open space rules? 16 MS. COTTRELL: As they are with every 17 other element, goal, policy of the 18 Comprehensive Plan. 19 MR. NATALE: Very well. Are you aware of 20 the fact they utilize private land to make the 21 acceptable level? 22 MS. COTTRELL: I don't know how they 23 derived that compliance. 24 MR. NATALE: If you were to learn 25 information that the value of properties in

*** Notes ***

Page 47	Page 48
1 the immediate area in the last year did not go 2 down, but went up -- 3 MR. GRAVES: Objection. There has been no 4 testimony, no direct testimony, and certainly 5 Anna did not testify as to values of land. 6 MR. NATALE: May I respond? 7 MRS. SMITH: She didn't testify. 8 MR. NATALE: But what she did tell you is 9 that there was the potential for damage to the 10 value of surrounding properties, that their 11 valuations would go down. 12 Now, obviously she has stated 13 conclusions, and what I am trying to do is see 14 if there is any factual predicate for those 15 conclusions. And in the event that there is 16 actually evidence to the contrary, what her 17 professional opinion would be. 18 MRS. SMITH: Mr. Graves, would you respond 19 to that? 20 MR. GRAVES: I will be happy to respond. 21 Madam President, once again, I am going 22 to object. They are trying to use our 23 witnesses to establish what they failed to 24 establish, as they were required to do it on 25 their direct case in September and yesterday.	1 And I object to that. That's not proper. 2 What Anna Cottrell testified to is that 3 they didn't put on any evidence in their 4 direct testimony that related to that 5 condition that you have to make a finding on. 6 And now he is trying to turn it around. 7 I object to the question. It was not 8 what she testified to. She testified as to 9 whether there was evidence before you relative 10 to that condition. That's all she testified 11 to. 12 MAYOR ILYINSKY: I just want to ask, 13 isn't this the Town Attorney's job to answer 14 these questions? Who is the judge? 15 MR. RANDOLPH: You are. 16 MAYOR ILYINSKY: Then I say the question 17 is overruled. 18 MR. RANDOLPH: The Council is the judge. 19 You guys make up your mind. 20 I believe that it is appropriate 21 cross-examination to phrase hypotheticals to 22 an expert and ask what their answer would be 23 under those hypotheticals, if that's what's 24 being done here, and to test the credibility 25 of the expert.

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1 MAYOR ILYINSKY: Is that what's being
2 done here?
3 MR. RANDOLPH: I don't know, because I
4 don't know where he is going with it.
5 MAYOR ILYINSKY: For hours, that's where
6 he is going with it.
7 MR. RANDOLPH: He can attempt to impeach
8 this witness. He can attempt to attack the
9 credibility of the witness and he can phrase
10 hypothetical questions to an expert.
11 MAYOR ILYINSKY: He is allowed to go
12 after the credibility of the witness?
13 MR. RANDOLPH: Absolutely.
14 MRS. SMITH: The objections are so noted.
15 We have -- we're sitting here, we're not worn
16 down, we know where you are going and please
17 continue Mr. Natale.
18 MR. NATALE: Thank you.
19 I believe you said there was going to be
20 a change in the parking; that you believe
21 that's part of the proposal, that there will
22 be a change in the parking.
23 MS. COTTRELL: What I said was I think it
24 is logical to assume with more membership you
25 need more parking.

*** Notes ***

1 to be approved by Council.
2 Council wouldn't prepare such an
3 application. That would presume that the
4 applicant would apply for the parking. So
5 that's sort of twisting things around.
6 MR. NATALE: If I may tell you the
7 purpose of my question. She made
8 representations in her testimony that this
9 application is contrary to the zoning code and
10 contrary to the Comprehensive Plan. One of
11 the items that she mentioned was that there
12 would be a concern for preservation; that
13 there was nothing in here in the application
14 which would deal with the concern to preserve
15 the integrity of the architecture, the
16 integrity of the area. That's clearly where
17 she said it was deficient.
18 She went through a number of areas where
19 she said it was deficient. What I would like
20 to do and the purpose of my question, sir, is
21 merely to say, to cross-examine on the grounds
22 that in reality that's incorrect, because we
23 know that the National Trust has that duty,
24 has that responsibility, and no one has any
25 reason to believe --

*** Notes ***

1 MR. NATALE: Are you aware if there was a
2 need for more parking that that would be
3 something that would have to come to the board
4 to be approved?
5 MS. COTTRELL: I am assuming that it
6 would be done under site plan modification.
7 MR. NATALE: Therefore it would have to
8 come before this Council if there was going to
9 be any additional parking, correct?
10 MS. COTTRELL: That's my understanding.
11 MR. NATALE: Now, you are aware, are you
12 not, that the National Trust has, if you will,
13 veto power over all of the changes, all of the
14 efforts that were made, in any way, that could
15 destroy the preservation integrity?
16 MR. GRAVES: Objection.
17 MRS. SMITH: Mr. Graves, state it for the
18 record.
19 MR. GRAVES: Objection. It is just
20 totally outside the scope of the direct
21 testimony.
22 MR. MCLENDON: I would like to say
23 something here, Mr. Natale. You asked her a
24 question which I don't think was appropriate
25 in that any future parking changes would have

1 MRS. SMITH: Mr. Natale, you know it, but
2 the entire world may not know it. So how can
3 you go on the assumption that Mrs. Cottrell
4 knows it?
5 MR. NATALE: Then if she is coming before
6 you as an expert to say that this plan
7 violates that provision which says that there
8 is going to be preservation, then I think --
9 if that's her position -- then I have the
10 right to cross-examine and expose --
11 MRS. SMITH: I understand that. I didn't
12 hear the word violate. Please give credit to
13 the Council for the intelligence to remember
14 what was said three minutes ago. And I would
15 appreciate that.
16 We understand she is not a witness for
17 the Town. She is a witness for an attorney.
18 And we have heard a lot of information since
19 September 16 and yesterday. And the Council,
20 before it reaches a decision, will plow
21 through everything that's been said by
22 everyone and every attorney before we reach
23 our decision. So give us some credit for what
24 we just heard and please go on.
25 MR. NATALE: I give you the credit for

Page 53

1 it. I just want to make sure there would be
2 nothing which would appear we are conceding
3 the accuracy of her recommendations to you.

4 MRS. SMITH: I understand that. Perhaps
5 your question raised a question in our mind of
6 what direction you were going.

7 MR. NATALE: Do you believe the present
8 proposal and application would violate the
9 preservation goals of the Comprehensive Plan?

10 MS. COTTRELL: I think the proposal has
11 the potential to be contrary to that goal and
12 I do want to state something. I am not
13 familiar with the agreements with the National
14 Preservation Trust or any other specific
15 arrangement for preservation of Mar-A-Lago. I
16 haven't been asked that as part of the scope
17 of what I was asked to do here.

18 I think that you need to be honest that
19 the historic preservation policies of the
20 Comprehensive Plan are not just regarding site
21 specific architectural integrity. They relate
22 to preserving the history and the culture of
23 the Town and certainly of this neighborhood.

24 So I think it is a broader question and I
25 don't think you can address it by saying that

Page 54

1 we have agreements with the National Trust to
2 maintain the architectural history of
3 Mar-A-Lago and saying okay, we met that policy
4 of the Comprehensive Plan.

5 I think you have not met it and you
6 certainly haven't demonstrated that you can
7 meet it.

8 MR. NATALE: You probably would say we
9 look to the history of this property before
10 this to see how it was used and the sort of
11 entertaining, and see if it is consistent to
12 deal with the preservation?

13 MS. COTTRELL: I think that's an element
14 of it. I don't think that fully meets the
15 policy regarding the historic and
16 architectural integrity of the neighborhood
17 and Town.

18 MR. NATALE: That would be one of the
19 elements that would be considered?

20 MS. COTTRELL: That is an element, just
21 as I stated.

22 MR. NATALE: Now, if you were to learn
23 that there was going to be no change in
24 parking and that the parking was going to be
25 maintained in accordance with the numbers

*** Notes ***

Page 55

1 which are already approved, would that in any
2 way impact your decision at all?

3 MS. COTTRELL: That would be a
4 consideration whether or not I felt the
5 applicant's burden to demonstrate consistency
6 with the code is met.

7 But I think a statement that we're not
8 increasing parking does not, and I feel it
9 raises more questions. If you have no
10 limitation on membership, I think it is common
11 sense and certainly from a planning
12 perspective it should be anticipated that
13 membership will increase and the amount of
14 parking available may not be sufficient.

15 So that would be one element that ought
16 to be reviewed.

17 MR. NATALE: You said that there should
18 be, I guess, some concerns about the noise and
19 the light that goes on there?

20 MS. COTTRELL: As required by the code,
21 that those are impacts that must be evaluated.

22 MR. NATALE: If you were to learn that
23 there was no problems with that, if you were
24 to learn that, would that in any way affect
25 your opinion as to this application?

Page 56

1 MS. COTTRELL: As with the last question,
2 it is an element that ought to be considered
3 as part of the comprehensive review of this
4 proposal.

5 MR. NATALE: You mentioned the
6 possibility of congestion and cars coming to
7 and from as a concern to meet concurrency.

8 If it were shown from statistics from the
9 County that concurrency would be met, is that
10 an element that you think should be
11 considered?

12 MS. COTTRELL: Well, you are mixing two
13 things up. You are mixing up congestion and
14 concurrency. They are distinct requirements.

15 MR. NATALE: Deal with concurrency.

16 MS. COTTRELL: Each of those elements has
17 to be reviewed.

18 MR. NATALE: If the County said
19 concurrency was met, is that a positive piece
20 of information in favor of the application?

21 MS. COTTRELL: It is a requirement.

22 MR. NATALE: And you would agree that
23 fact would support the application if the
24 County were to say that?

25 MS. COTTRELL: If it was directly related

*** Notes ***

Page 57

1 to what the proposal was.

2 MR. NATALE: The answer is yes.

3 MS. COTTRELL: Yes, if it is related to
4 the proposal to demonstrate concurrency
5 required by the code.

6 MR. NATALE: You saw, because you were
7 here yesterday, the capacity to handle the
8 cars that queue up and deal with congestion?

9 MS. COTTRELL: Yes.

10 MR. NATALE: Do you have any reason to
11 quarrel with that as the reality of what
12 happens at Mar-A-Lago?

13 MS. COTTRELL: No reason to quarrel with
14 that.

15 MR. NATALE: You agree that's factual
16 information, as it relates to the ability of
17 this facility and its staff to deal with
18 people coming and going?

19 MS. COTTRELL: I think what you provided
20 as testimony yesterday is not a factual basis
21 on which to render a decision about whether or
22 not to grant your specific proposal. Your
23 proposal is that the club operate without
24 limits.

25 So the information you presented

Page 58

1 yesterday about how it currently operates is
2 not sufficient to demonstrate compliance that
3 the new proposal will meet that --

4 MR. NATALE: Let me ask you this: Do you
5 think it would ever be possible for an
6 applicant to, given this application, to ever
7 meet the criteria that would convince you that
8 there would be no problem?

9 MS. COTTRELL: Well certainly, if you
10 present enough information.

11 MR. NATALE: Can you tell me what
12 specific information you would like to see --

13 MS. COTTRELL: No, I won't. I won't
14 because what I was asked to do is review what
15 was submitted, listen to what's been provided
16 here at the hearing, and render an opinion
17 regarding the sufficiency on both the
18 technical merits and the substance of the
19 application in regard to its demonstration of
20 consistency with the Comprehensive Plan and
21 the code.

22 So it would be impossible for me, and
23 certainly far outside the scope of what I was
24 asked to do, to offer to you elements that
25 would be approvable.

*** Notes ***

Page 59

1 MR. NATALE: Based on your knowledge and
2 expertise in your consulting firm, do you even
3 feel you would have the capacity or ability,
4 if so instructed, to come up with a list of
5 things that should be provided and a list of
6 standards; do you think you have that
7 expertise and that ability to produce that?

8 MS. COTTRELL: To come up with a list of
9 what?

10 MR. NATALE: Here is what I am asking
11 you: Do you possess the expertise to come up
12 with the standards and the methodology to make
13 a presentation --

14 MRS. SMITH: Mr. Graves.

15 MR. GRAVES: Madam President, I object.

16 MR. MCLENDON: Isn't this in our rules and
17 regulations, what you were required to submit
18 to us?

19 MR. GRAVES: This was his burden of
20 proof. It isn't to ask Mr. Chopin or Anna
21 what's the list. This isn't let's make a
22 deal.

23 MRS. SMITH: He is trying to attack the
24 credibility of your witness, Mr. Graves. We
25 see what Mr. Natale is doing.

Page 60

1 I have a question at this point. When
2 you just brought up and said that Ms. Cottrell
3 saw the photograph yesterday, you are assuming
4 that she saw it and was paying attention.

5 This picture was -- I don't remember your
6 entering it as evidence. I thought it was for
7 illumination and if you did enter it, was the
8 date on it and did you answer whether or not
9 this was to show the number of cars or that
10 this happened at an actual event? Did you
11 clarify or state --

12 MR. NATALE: What I did was I believe I
13 introduced it and that this is the capacity,
14 this is what can actually fit there and can
15 actually be tolerated.

16 MRS. SMITH: So it was really just showing
17 us how many cars would be put in the
18 driveway?

19 MR. NATALE: And in the left-hand turn
20 lanes and therefore how many people can be
21 accommodated.

22 MRS. SMITH: Your expert said there was no
23 correlation between cars and members and
24 people. So all we know is how many cars fit.
25 I am assuming they are driven by someone.

*** Notes ***

Page 61

Page 62

1 MR. NATALE: So am I. I would be
2 frightened if it is not.
3 MRS. SMITH: But you are stating that for
4 the record. So to ask Ms. Cottrell to comment
5 on a photograph that was just put up, I know
6 Mr. Rampell put it now behind you again, I
7 don't find the purpose to that, but please go
8 ahead.
9 MR. NATALE: I will tell you the
10 purpose. If we're saying that there is
11 something defective about the property, if
12 that was to be inferred, the reality of it is
13 that there is this space that should be
14 recognized and I think put in by competent
15 evidence and Mr. Weidner agreed that was, in
16 fact, an accurate representation.
17 MRS. SMITH: We all agreed the cars are in
18 the area. That is an accurate
19 representation. I am sure the photographs are
20 accurate.
21 MR. NATALE: If I may, the reason why I
22 was asking the question, I think
23 Mr. McClendon, is that my question is: If this
24 person presents themselves as an expert and
25 yet they are in a position where they are

1 saying I am an expert saying that this doesn't
2 make it, what I am asking is do they possess
3 the knowledge and the ability that if they
4 were asked to come up with something, because
5 if not, they may be asking for an
6 impossibility, and that's all I want to
7 establish.
8 Does she believe that it is possible and
9 does she believe she would have that ability
10 to do it? Because if someone is coming to you
11 I want them to prove X, Y and Z, and we no
12 scientifically that cannot be proven at this
13 date, then that's an unfair burden and that's
14 all I am trying to establish.
15 MR. MCLENDON: It would seem to me --
16 she's already gone through a liturgy of items
17 where in her opinion things were deficient.
18 It clearly states what is required in each of
19 those things. So, I really --
20 MR. NATALE: I understand what you are
21 saying. We know what it is we are supposed to
22 achieve and therefore it is clearly
23 established.
24 What I am asking is, in her opinion, are
25 those goals, because what we're talking about

*** Notes ***

Page 63

Page 64

1 are basically goals, is in her opinion can
2 those goals realistically be met. Because if
3 her opinion was that well, let's face it, no,
4 those goals cannot be met, no one can meet
5 them, then that affects her opinion as to
6 whether or not this application is truly
7 defective. Because then every application
8 would be defective because the goals are
9 unattainable.
10 MR. WYETT: I've been sitting here two
11 years hearing Special Exceptions. I have a
12 piece of land 20,000 feet, the code allows a
13 5,000 foot house to go up and I want to put a
14 10,000 foot house there and I come for Special
15 Exception. I'm not going to get it. It is
16 impossible.
17 If you have a piece of land -- is it 17
18 acres -- it is impossible to comply, then you
19 don't have the right to be here. So I don't
20 find this line of questioning substantial.
21 Also, I find it a little objectionable in
22 one respect, this line, in that this Council
23 is very well aware and doesn't need to be
24 educated on several of the things you are
25 trying to educate us on. This is not a trial

1 where there is a judge trying to understand
2 the nature of the Town or the nature of our
3 Comprehensive Plan. We understand the
4 Comprehensive Plan. And you keep coming back
5 to it.
6 MR. RANDOLPH: Can I interrupt though.
7 The lawyers that appear in front of you have
8 to assume that you know nothing, because they
9 have a burden that they have to meet. So they
10 have to present the evidence to you in the
11 best way they know how and they don't know
12 what you know about the Comprehensive Plan or
13 about your zoning ordinances. So lawyers from
14 both sides of this issue are presenting that.
15 I think the best way to deal with
16 objections like this is to understand that
17 this forum is a forum that is to provide due
18 process and that the formal rules of evidence
19 that you would hear in a courtroom and the
20 objections you would hear in a courtroom don't
21 necessarily apply.
22 They do apply to the point you want to
23 afford due process to each party. But rules
24 of evidence such as this kind of question is
25 improper because of failure to lay a predicate

*** Notes ***

Page 65

1 or this sort of thing, I think you should just
2 note those objections for the record, but
3 allow the testimony to come forward. And then
4 let a court deal with it at a later time, if
5 indeed there is a subsequent proceeding.

6 I think the best way to afford due
7 process and the safest way is to allow all of
8 the evidence to come in and then for you at
9 the conclusion to determine what you feel is
10 competent, substantial evidence, and then
11 ferret out that which you don't and consider
12 that which you do and then make your
13 decision. That would probably make the
14 decision a lot better.

15 MR. MCDONALD: What we would like you to
16 do is move it along.

17 MR. NATALE: I will move it along.

18 Given your concern, you are aware of all
19 this, there would be no need for this witness
20 to tell you all about the Comprehensive Plan.
21 All I am trying to do is deal with the issues
22 that she raised and she presented to you.

23 MR. WYETT: You are asking her to give
24 you evidence on what is or isn't. It is
25 outside of what she testified to.

*** Notes ***

Page 66

1 MR. MCDONALD: I think that's probably
2 outside our scope to be able to comment on
3 that. But I would encourage you to move it
4 along.

5 MR. NATALE: My question to you is: Do
6 you believe that the objectives, based on your
7 professional expertise, believe that the goals
8 or policies, whatever, of the Comprehensive
9 Plan, are actually attainable; that someone in
10 an application can present the information and
11 that it is possible that they can make those
12 sort of to your standards, make those sort of
13 representations with enough certainty that you
14 would have no objection or no questions as to
15 whether or not they are in compliance with
16 those goals?

17 MS. COTTRELL: I was not asked to render
18 an opinion, to do any review, whether or not
19 the standards could or could not be met.

20 So my assumption, my presumption, was
21 that the standards in effect were valid and
22 that the Town had rendered a judgement based
23 on their use of those standards that they
24 indeed could be met.

25 Now, what you just asked me was a little

Page 67

1 bit different than the question before this
2 last part of the discussion. It was whether
3 or not as a professional planner I could put
4 together an application that met all of those
5 criteria. If you are speaking of goals of the
6 Comprehensive Plan, you are speaking of the
7 development regulations and there is
8 criteria --

9 MR. NATALE: Either one.

10 MS. COTTRELL: What my practice primarily
11 consists of is representing property owners,
12 developers often, in packaging, submitting,
13 representing applications for review.

14 It is not within my expertise to be able
15 to compile all of the documentation generally
16 that's required myself, but in a coordinating
17 role to ensure that the application submitted
18 does meet those criteria.

19 So, in my opinion, yes, the criteria can
20 be met. There is a presumption they are valid
21 and fair and that there has not been a
22 challenge at this point to the criteria
23 itself, and I wasn't asked to render an
24 opinion about those.

25 MRS. SMITH: I'm calling a five-minute

*** Notes ***

Page 68

1 break if you are going to have a conference

2
3 (Whereupon a brief recess was taken after which
4 the following proceedings were had.)

5
6 MRS. SMITH: Please take your seats. We'd
7 like to continue.

8 Mr. Natale, please.

9 MR. NATALE: I believe you made reference
10 to section 6.40 of the Special Exception uses
11 of the Palm Beach Code.

12 MS. COTTRELL: Yes.

13 MR. NATALE: I notice you have a piece of
14 paper. Do you have a copy of that or do you
15 prefer to see the one I am using?

16 MS. COTTRELL: I have a copy.

17 MR. NATALE: Look at it and do you assume
18 it is the same one? Last night we had some
19 problems and I don't want to have that come up
20 again.

21 MS. COTTRELL: Yes, I am assuming it is
22 the same. It is the same.

23 MR. NATALE: If I am to understand that
24 your presentation and opinion was that none of
25 the criteria as set forth in 6.40 has been

1 adequately addressed or met by the applicant?
 2 MS. COTTRELL: Yes.
 3 MR. NATALE: No further questions.
 4 MR. MCDONALD: I have a question.
 5 Ms. Cottrell, what is your experience
 6 previous to today? And, I think you did a
 7 good review of our code, but prior to today,
 8 what's been your experience with our code?
 9 MS. COTTRELL: I have been involved as an
 10 expert in several cases that involved property
 11 in the Town.
 12 MR. MCDONALD: Town of Palm Beach?
 13 MS. COTTRELL: Yes, sir.
 14 MR. MCDONALD: In that capacity you've
 15 read the code and been familiar with it before
 16 this time?
 17 MS. COTTRELL: Yes.
 18 MR. MCDONALD: Have you ever processed or
 19 been involved with an application for a
 20 Special Exception in the Town?
 21 MS. COTTRELL: Not directly.
 22 MR. MCDONALD: Thank you.
 23 MRS. SMITH: Mr. Graves, please.
 24 MR. GRAVES: I would just like to make a
 25 few points, if I may, relative to the

1 application. I am not going to bore you by
 2 going through those.
 3 In summary, it is our position, our
 4 client's position, that the burden of proof is
 5 theirs. They have failed that burden of
 6 proof.
 7 I would just like to draw your attention
 8 to the beginning paragraph of 6.40 on the
 9 copies before you. Is Mr. Shaw here?
 10 MR. MCDONALD: He's not here.
 11 MRS. SMITH: Let me look. Lo and behold,
 12 here is Mr. Shaw. You don't realize how
 13 important you are; we just noticed that you
 14 weren't here. Please sit down.
 15 MR. SHAW: I'll make up for it.
 16 MRS. SMITH: If you knew him better,
 17 Mr. Graves, when he is here he is speaking.
 18 We all know he is here.
 19 MR. GRAVES: The burden of proof is on the
 20 applicant. In summary, as to the application,
 21 they have failed to meet that burden of
 22 proof.
 23 Let me point out just one thing, if I
 24 may, in 6.40 in the explanatory provision.
 25 And premised upon the advice that you've

*** Notes ***

1 already received from your Town Attorney that
 2 your decision must be based on substantial,
 3 competent evidence.
 4 You must, you can, approve a Special
 5 Exception and authorize it, provided that such
 6 uses shall be found, findings, found, based on
 7 substantial competent evidence by the Town
 8 Council to comply about the following
 9 requirements and other applicable
 10 requirements. That had to be put on on direct
 11 and it has not.
 12 Let me, if I may, just point out one
 13 other item and that's B of the Special
 14 Exception criteria. It is that the use is so
 15 designed, located and proposed to be operated
 16 that the public health, safety, welfare and
 17 morals will be protected. Not will be not
 18 harmed, not that it will be promoted, but that
 19 it will be protected. I think an important
 20 word.
 21 The final point that I would like to make
 22 before I conclude is relative to the equal
 23 protection arguments that have been made. I
 24 think this should be important to you. It is
 25 certainly important to our client. And you

1 have received I believe into evidence letters
 2 from an attorney Green and an Attorney Ciklin
 3 at your September hearing relative to this
 4 equal protection argument. And Mr. Rampell
 5 said they would be available -- I believe
 6 Mr. Rampell said they would be available for
 7 examination. I consider it argument on their
 8 part just as it is argument on my part.
 9 But let's look through what is really the
 10 law on equal protection. Their arguments
 11 cannot be supported for the following
 12 reasons: First, the club had a right to
 13 appeal your decision under your own code. And
 14 they had 30 days to file that in Circuit
 15 Court. Even if it was an approval and they
 16 weren't happy with the restrictions or they
 17 thought those restrictions were
 18 unconstitutional, they had the right to appeal
 19 that. They didn't avail themselves of that
 20 right.
 21 Second, can you waive rights? Even
 22 rights that involve equal protection, and the
 23 answer is yes.
 24 It has to be, however, a knowing,
 25 voluntary and intelligent waiver of those

*** Notes ***

Page 73

rights. Indeed, the case law is one of the most fundamental constitutional rights that we all have, but hopefully wouldn't have to exercise, which is the right to a trial by jury. A fundamental right guaranteed by both the Federal and State constitutions. Can that right be waived? Absolutely. But it has to be a knowing, voluntary and intelligent waiver.

I would like to draw your attention to the Declaration of Use and Restrictions. Ms. Grimes has just placed that on the easel. That application is signed by Donald A. Trump, although I can't tell from the signature, but it says that and I have no reason and I don't think anybody suggests that it wasn't signed by Mr. Trump. And he signs not only as President of Mar-A-Lago Inc., one of the parties to the agreement, but he signs as Donald Trump owner. He signs in two capacities, because there are really three parties to the agreement: The Town, Mar-A-Lago, Inc. and the owner, Mr. Trump.

Was it knowing, intelligent? Mr. Ciklin, interestingly enough, has written you a letter

Page 74

which Mr. Rampell put into evidence and says oh, this is unconstitutional.

Mr. Ciklin actually was one of the attorneys at the hearing in 1993. This is the Town minutes of the meeting held May 13, 1993. On page 55 of those minutes attorney Alan Ciklin addressed the Council indicating that he has been involved in this since the beginning as a type of overseer to ensure that they have met all of the legal requirements in that the application is in posture so that it can be approved.

Now, I think that's the same Alan Ciklin who has now written you a letter saying it is unconstitutional and a violation of equal protection.

Well, he was the overseer, by his own words, he was the overseer at that hearing. I don't think he was representing the Town.

Third point: The club asserts that it should not be subject to the conditions and limitations agreed to in the agreement, because other private social clubs are not subject to the same standards.

The other clubs, of course as you know,

*** Notes ***

Page 75

and evidence is in, were begun, operated, organized long before this club, I think with the exception of Poinciana, which of course is in a commercial district and that's important.

First, a property owner doesn't have any vested rights to a continuation of existing zoning. Indeed, if somebody had an idea for something like that, Mar-A-Lago in RAA today, they couldn't even make an application to you. You don't permit that any more.

Now, does Mar-A-Lago say well, gee wiz, anybody should be able to come in? No, I don't think that's what they're saying. They're saying hey, let us be like all these others.

There is documentation in their own declaration of restrictions -- let me go back and finish this.

They have no vested right to a continuation of the zoning. So any claim that they have to be treated like every other club is invalid on the basis of equal protection argument.

And, finally, the doctrine of equal

Page 76

protection requires only that persons similarly situated be treated equally. Your planner I thought did a superb job and I would simply draw your attention back to his testimony as to the distinctions, the differences, between each one of these other clubs that we've heard reference to and Mar-A-Lago.

I think it was mentioned the historical designation. It is a private club in a residential -- social club in a residential, RAA, district. Some of the other clubs are in commercial districts. And it is my understanding that they are the only social club located in a RAA district, as opposed to the Everglades Club, that has overnight stays available. And the Everglades Club, as to the overnight stays, is in a commercial district.

Now, you have to be similarly situated to make these arguments. The testimony from your staff on that is very clear.

Our conclusion is, and we did cite some law to you, for the record, and I would ask that a copy of this memo from myself to Mr. Randolph dated October 9 be received and

*** Notes ***

Page 77

Page 78

1 filed into the record. It is argument and we
2 would ask that it be received and filed.

3 MRS. SMITH: It will be entered into the
4 record.

5 MR. RANDOLPH: For the record, I am seeing
6 this letter for the first time today. I
7 didn't want anyone to think I got this on
8 October 9.

9 MR. GRAVES: This will confirm for the
10 record that that memo was intended to be
11 presented at this point in time. I understand
12 your Town Attorney has not had an opportunity
13 to review it and did not mean in any way to
14 suggest that you did, Mr. Randolph.

15 Let me just, if I may, conclude by noting
16 to you some letters, that without objection
17 from counsel, were received into the public
18 records as evidence. One of which was from
19 Mr. Weidman (Phonetic) on Woodbridge Road. I
20 am going to summarize. This was dated
21 September 10, it was received and filed and I
22 am going to summarize and save time. "His
23 entire aim is to create a resort business in a
24 residential neighborhood. It does not, even
25 as it is now constituted, it does not operate

1 quietly and with decorum as do other clubs in
2 Palm Beach. Its parties are extremely noisy,
3 always with amplified bands, models bused in
4 from out of Town and certainly not limited to
5 members only. Mar-A-Lago invades my home
6 every time it has one of its revels."

7 MR. MCLENDON: Mr. Graves, repeat the date
8 on that letter, because Mr. Weidman has three
9 letters filed.

10 MR. GRAVES: This is dated September 10,
11 1996 and has a date stamp on it, Town of Palm
12 Beach Manager's Office, date stamp of
13 September 10.

14 MRS. SMITH: Mrs. Pollitt, will you be
15 able to tell us whether this letter is part of
16 the public record?

17 THE CLERK: I have many here and I found
18 one of Mr. Weidman (Phonetic)'s letters and I
19 will check now.

20 MRS. SMITH: Check please, because I
21 believe all of these letters on Mar-A-Lago are
22 a matter of public record.

23 MR. WYETT: I received the letter.

24 THE CLERK: I do have the original.

25 MR. GRAVES: It is on the list, the

*** Notes ***

Page 79

Page 80

1 summary, that was presented.

2 THE CLERK: I do have it.

3 MR. GRAVES: Next, a letter dated
4 September 12, 1996 from a Woodbridge Road
5 resident to the Palm Beach Town Council. This
6 is dated September 12, 1996, received stamped
7 Town of Palm Beach Manager's Office, September
8 13, 1996. It is signed Woodbridge Road
9 resident.

10 To you, to the Council: "Can you imagine
11 sitting in your home trying to read, rest,
12 watch television or sleep and finding it
13 impossible because the Donald is having one of
14 many, many parties, which features the loudest
15 music, thanks to the latest electronic
16 equipment that is distributed throughout the
17 property. Sleep is virtually impossible and
18 earplugs are meaningless, ineffective.

19 "I have attempted by phone and note to
20 ask for some relief, to no avail. Would it be
21 possible for the Town Council to at least have
22 an investigation of the electronic equipment
23 and perhaps enforce the sound control
24 ordinance. Thank you, Woodbridge Road
25 Resident. P.S. I am omitting my name for fear

1 of a lawsuit by DT."

2 MRS. SMITH: I think, Mr. Graves, in all
3 fairness, anonymous letters and anonymous
4 phone calls are really not worth the paper or
5 the thing that they say. I understand
6 somebody's fear and trepidation, but I don't
7 think we can give any credibility to the fact
8 that it is a Woodbridge Road resident.

9 MR. GRAVES: I would simply ask that you
10 consider it for what it is worth.

11 MRS. SMITH: I am sure it is in the record
12 and we'll consider it for what it is worth.

13 MR. GRAVES: Finally, I would conclude by
14 frankly first stating from a letter from Nancy
15 Aldridge (Phonetic), she writes a letter to
16 the Council dated September 13, 1996, received
17 stamped September 13, final paragraph,
18 "Mr. Trump authored a book titled The Art Of
19 The Deal. My imagination questions the
20 possibility of his acquiring background for
21 another book, The Art Of Breaking The Deal.
22 Sincerely."

23 I conclude, we're staying at a local
24 hotel, that is the magazine that I saw on the
25 table. Another is guest informant materials

*** Notes ***

Page 81

Page 82

1 and I thought I was dreaming this morning when
2 the alarm went off on the radio and they were
3 talking about the Council meeting today on
4 this matter.

5 MRS. SMITH: What can I tell you.

6 MR. GRAVES: This is an article in this
7 magazine or guest informant, Gold Coast, Palm
8 Beach and Broward Counties. It is an article
9 entitled, Donald Trump Making a Statement, by
10 Maurice Spied (Phonetic). In it and I quote
11 only one sentence, "When I saw it" referring
12 to Mar-A-Lago, "I realized it was going to be
13 an expensive hobby, but there is no place like
14 it Trump says."

15 This may be Mr. Trump's hobby, but it is
16 yours and Mrs. DeMoss's home and community,
17 and I ask you to consider all that I've said,
18 recognizing your need to protect the public
19 interest.

20 This isn't your hobby. And it isn't
21 Mrs. DeMoss's hobby. It is going to be her
22 home and I ask that you give that
23 consideration as you reach your decision. I
24 ask that you not defer, that you not delay,
25 but that you deny, and that we not have to sit

1 here and go through what I am anticipating is
2 to let's make a deal or let's amend the deal.
3 It is not a hobby, it is her home.

4 Thank you.

5 MRS. SMITH: Thank you, Mr. Graves.

6 MR. MCDONALD: I have a few questions.

7 MRS. SMITH: Mr. Graves, Mr. McDonald has
8 some questions.

9 MR. MCDONALD: In your opening statement
10 you made a couple of comments I would like you
11 to elaborate on.

12 One representation you made was that
13 Mrs. DeMoss read the Declaration of Use and
14 had relied on that in purchasing her property;
15 is that correct?

16 MR. GRAVES: No, I didn't say that. I
17 said she relied on it.

18 MR. MCDONALD: She relied on it in what?
19 Relied on it to purchase the property?

20 MR. GRAVES: Correct. And in building a
21 home.

22 MR. MCDONALD: And how does that differ
23 from how I phrased it?

24 MR. GRAVES: You said she had read it. I
25 said she relied on it.

*** Notes ***

Page 83

Page 84

1 MR. MCDONALD: I thought you said she
2 read it and relied on it. Because you raise
3 the issue of damages based on her having
4 relied on it; do you recall that?

5 MR. GRAVES: I don't believe I used the
6 word damages, but I said she detrimentally
7 relied.

8 MR. MCDONALD: That would mean to me you
9 did it to your detriment and that raises the
10 issue of damages.

11 MR. GRAVES: I would agree it does raise
12 the issue of damages.

13 MR. MCDONALD: The other part, since we
14 are quite concerned about application of the
15 Harris Act and you raised this in your opening
16 statement, that somehow if any change was made
17 to Mar-A-Lago it would -- could result in
18 application of the Harris Act to her
19 property.

20 Now, my knowledge of Mrs. DeMoss's
21 property, because she has been before this
22 Council more than once, is that she has
23 probably developed that to the highest
24 allowable use under our code at this time.

25 MR. GRAVES: Single-family home.

1 MR. MCDONALD: Correct. She developed
2 that to its greatest use in that district.
3 How do you feel the Harris Act would apply
4 with changes made to an adjacent property?

5 MR. GRAVES: My point being that if you
6 look at the conditions of the Special
7 Exception and choose to ignore them, noise,
8 glare, parking next to it, you don't know
9 where it is going to be, you haven't even seen
10 a site plan.

11 Landscaping, buffering, all of those
12 requirements, or the lack thereof, if you will
13 on the landscaping and buffering, the noise,
14 the glare.

15 All of those things that you may well be
16 allowing if you were to grant this
17 application, which takes all of those Special
18 Exceptions away, I think could be potentially
19 to inordinately burden Mrs. DeMoss's property.

20 MR. MCDONALD: I believe under the Harris
21 Act it is a burden that prevents you from
22 utilizing your land to its best value. And
23 since she's already doing that, I am wondering
24 how that application would apply to it?

25 MR. GRAVES: I simply would say that I

*** Notes ***

Page 85

Page 86

1 think the Harris Act, in my opinion, deals
2 with inordinate burdens on property by actions
3 of government.

4 MR. MCDONALD: That's correct. I believe
5 that's correct.

6 But, what I don't understand or what I
7 believe it means is an inordinate burden
8 relating to her property from something the
9 zoning or local municipality did affecting the
10 use of her property.

11 MR. GRAVES: I think an argument can be
12 made that decisions you make on property that
13 is immediately adjacent to hers can certainly
14 have an effect.

15 And, to be very honest with you, I was
16 simply responding to a comment that was made I
17 think from the public -- I've forgotten the
18 gentleman's name, but he mentioned Bert Harris
19 and I wanted to bring that back up and simply
20 in the sense that it potentially applies both
21 ways. That's all.

22 MR. MCDONALD: Thank you.

23 MRS. SMITH: Could I ask a point of
24 clarification here. Obviously when I was out
25 of the room earlier I missed the discussion on

1 the maximum development of Mrs. DeMoss's
2 property.

3 MR. GRAVES: I have not put any testimony
4 on at all. All I said was she was building a
5 home.

6 MRS. SMITH: We know she is building a
7 home. We do know that and we do know she was
8 before us for some gates, which she did not
9 get.

10 But I am not sure as to the development,
11 the maximum development of the property; was
12 that discussed?

13 MR. MCDONALD: No.

14 MRS. SMITH: That's why -- I am sorry, I
15 thought I missed something.

16 MR. MCLENDON: That was a presumption of
17 Mr. McDonald's.

18 MRS. SMITH: I don't know how much space
19 she has taken on the property. It is a
20 beautiful property.

21 MR. GRAVES: It will be when she finishes.

22 MR. WYETT: Has Mrs. DeMoss asked for --
23 to have a decibel meter put out on her
24 property for noise interference?

25 MR. GRAVES: I am not aware that she has.

*** Notes ***

Page 87

Page 88

1 I think until she takes occupancy, if you
2 will, which is anticipated to be in December,
3 full-time occupancy in the home, I understand
4 your question that she can make request for
5 code enforcement or code action based on noise
6 and noise and nuisance on so forth, which is
7 very interesting, because that's what they've
8 suggested. That's how or that's what they
9 suggested as to how we're going to control
10 Mar-A-Lago; people have to complain there is a
11 nuisance and prove there is a nuisance. And I
12 simply suggest to you that's going to be very
13 difficult to prove.

14 MR. WYETT: Mr. Moore, I have received
15 letters and verbal complaints of noise. I
16 told them to go to the police and they said
17 they didn't want to go that far. Has anybody
18 asked for a decibel meter to be put up?

19 MR. MOORE: No, sir.

20 MRS. SMITH: Any other questions for
21 Mr. Graves? Mr. Shaw?

22 MR. SHAW: No.

23 MRS. SMITH: Thank you, Mr. Graves.

24 MR. GRAVES: Thank you very much for your
25 consideration. I appreciate it.

1 MS. KENDIG: Good morning. I am Julie
2 Kendig with the law firm of Seaman
3 (Inaudible), and we represent Frances Scaife,
4 S-C-A-I-F-E who resides at 179 Via Del Lago.

5 I think all the legal points have been
6 well covered. I would like to express my
7 support for the points made by Mr. Graves
8 earlier this morning. I would also like to
9 express my client's opposition to the granting
10 of the Special Exception.

11 My client owns a piece of property which
12 is approximately two streets up from
13 Mar-A-Lago on the water at the end of Via Del
14 Lago and she is very, very concerned about
15 potential future impacts on her home by
16 changes that might arise at Mar-A-Lago. That
17 said, I believe that's all I have.

18 MR. WYETT: Who is your client?

19 SPEAKER: Frances Scaife at 179 Via Del
20 Lago.

21 MAYOR ILYNSKY: I'm three streets up.
22 Give her a map of the Town and tell her to
23 look how far it is up.

24 MR. MOORE: It is beyond County Road.

25 MR. SHAW: Is it a thousand feet?

*** Notes ***

Page 89

1 MR. MCDONALD: It is in the same Town,
2 right.
3 SPEAKER: And on the water.
4 MR. SHAW: What is she concerned or where
5 is she concerned that the impact is going to
6 come from; from the water, from land, from
7 air?
8 SPEAKER: I think basically everything
9 that we've examined her, traffic from her
10 getting to her home. I don't know about noise
11 or anything.
12 We have nothing to base concerns on now,
13 because we have no proposition before us of
14 what's going to be done. It is basically an
15 open ended request that's been put to the
16 Council.
17 MRS. SMITH: Excuse me, but I thought you
18 had a letter in of objection to the marina.
19 Mr. Scaife had a letter of objection to the
20 marina. Is this a different Mrs. Scaife?
21 SPEAKER: No. It is the same client.
22 Although we weren't addressing that today, but
23 we have objected to the installation of a
24 marina at Mar-A-Lago.
25 MRS. SMITH: That's not on the application

*** Notes ***

Page 91

1 MRS. SMITH: Thank you.
2 Will you please come up if you are going
3 to speak, because -- I just saw five people
4 stand up and say they were going to speak.
5 MR. ANGART: My name is Norm Angart,
6 A-N-G-A-R-T, and I reside at 168 Kings Road.
7 That's the other side of DeMoss's property.
8 Now, the reason I am here is because we
9 have a lot of problems. First of all, when
10 Trump throws one of his parties, the noise is
11 so loud that you can't even hear your TV in
12 your own home and we even called the police
13 department, but nothing happens.
14 As far as the traffic goes, I've got a
15 little slip here. During the rush hour in the
16 mornings and in the afternoons and all during
17 the season it is very, very difficult to come
18 out of our street onto A1A. As far as taking
19 a left-hand turn, it is practically
20 impossible.
21 As far as this picture here, I got this
22 letter. Half this stuff is incorrect that
23 Paul Rampell wrote. If he wants me to correct
24 him I can, but I wouldn't go through
25 everything.

*** Notes ***

Page 90

1 today.
2 Any other members of the public? Please
3 come to the microphone.
4 MR. WATSON: My name is Whit Watson. I
5 live at 226 Chilian Avenue.
6 MRS. SMITH: Were you sworn in?
7 MR. WATSON: No.
8 MRS. SMITH: All those, again, who are
9 going to speak, please stand and be sworn.
10 (Thereupon further potential speakers
11 were sworn by the clerk.)
12 MR. WATSON: My name is Whit Watson. I
13 live at 226 Chilian Avenue in Palm Beach.
14 In reference to the lady that just spoke
15 to the Council, I believe it is five streets
16 up, it is Woodbridge, Kings, Algoma -- four or
17 five streets up, and I have a copy of that
18 letter, too, because I am involved or was
19 involved with the marina aspect of it and I
20 have a comment to make.
21 It seems that Mrs. DeMoss is taking on
22 the plight of the whole Town and an awful lot
23 of the Council's time and that's just my
24 comment and observation.
25 Thank you so much.

Page 92

1 As far as charities go. From what I
2 understand, he charges for the use of the
3 facility. I can't see why that is a charity.
4 If it is a charity, let's let them use the
5 place free of charge.
6 He also has gates in front of his place,
7 which I don't -- can't see either, because the
8 other clubs in the area, they're open, they
9 don't have any gates.
10 THE COURT: Is that it Mr. Angart?
11 MR. ANGART: Most people like to say they
12 live next door to Mar-A-Lago -- I don't
13 believe that. I think that's a false
14 statement.
15 That's about all I have to say.
16 MRS. SMITH: Thank you very much.
17 Who is speaking next?
18 DR. LILJA: I am Stan Lilja. Pardon me
19 for coming back. Yesterday -- it is a matter
20 of procedure. Yesterday I heard Mrs. Smith
21 and Mr. Randolph responding to a letter about
22 a question for excusing yourself. I think the
23 matter was left unfinished because this
24 morning I read in the newspaper that a
25 reporter said the attorney for the applicant

Page 93

Page 94

1 had stated that the applicant has boycotted
2 this proceeding.
3 I think -- I would suggest that this
4 Council ask the alleged stater if that is true
5 or not. I believe it should be on the
6 record.

7 Thank you.

8 MRS. SMITH: Did you make a statement,
9 Mr. Natale, for the paper that was in the
10 paper this morning?

11 DR. LILJA: They specifically said it was
12 Mr. Rampell.

13 MR. NATALE: I didn't make any statement
14 and I haven't had the opportunity to read the
15 paper, Madam President.

16 MRS. SMITH: I obviously didn't either.

17 Mr. Rampell, did you make a statement for
18 the paper?

19 MR. RAMPPELL: I have no comment.

20 MRS. SMITH: Mr. Rampell, come to the
21 microphone please. I am asking you a
22 question.

23 MR. RAMPPELL: I have no comment about the
24 article in the paper.

25 MRS. SMITH: Was there an article in the

1 paper?

2 MR. RAMPPELL: I am not going to discuss
3 the article in the paper.

4 MRS. SMITH: I would like to see the
5 article in the paper.

6 Who else is speaking, please?

7 Mr. Davidoff.

8 MR. DAVIDOFF: My name is Bob Davidoff,
9 D-A-V-I-D-O-F-F. I've been a photographer in
10 this Town for over 40 years. I've been
11 photographing at all of the clubs and while
12 Mrs. Post was alive I did many, many parties,
13 affairs and functions at her home.

14 I at this particular time, listening to
15 the pros and cons about the club, I have a few
16 comments I would like to make that I think
17 would be relevant.

18 Most of the people who frequent this Town
19 attend the charitable balls. They have
20 parties in their own home and they usually are
21 accompanied by music and that's when the
22 photographers, the social photographers do
23 pictures.

24 At the time I photographed at Mar-A-Lago,
25 up until the time that Mrs. Post died, the

*** Notes ***

Page 95

Page 96

1 property was offered to the government. They
2 decided that they couldn't afford the upkeep.
3 The State of Florida likewise. There were
4 several other people that wanted to use the
5 property by subdividing it and they couldn't
6 manage either.

7 It wasn't until Donald Trump bought the
8 property, improved a beautiful building. Went
9 even further by making it even more so.

10 I think that instead of hindering him
11 about improving Mar-A-Lago, I think we should
12 thank him. I think if Mrs. Post were alive, I
13 think that's what she would do.

14 Thank you.

15 MRS. SMITH: Thank you, Mr. Davidoff.

16 Is there any other member of the public
17 who would like to speak? We are in the public
18 comment part of the application.

19 MR. KOLINS: Mrs. Smith I would like to
20 speak and there is a lady that was sworn.

21 MRS. SMITH: Mr. Kolins, please.

22 MR. KOLINS: Before I begin, we are
23 approaching the lunch hour and if you and the
24 Council prefer, I would be happy to defer so
25 that you can take a lunch break at a

1 reasonable time.

2 MRS. SMITH: How long do you anticipate,
3 just generally, and then I will poll the
4 Council on what they would like to do.

5 MR. KOLINS: Maybe 30 minutes.

6 MRS. SMITH: Members of the Council?

7 MR. MCDONALD: I can wait 30 minutes.
8 You feel fairly comfortable it is 30 minutes?

9 MR. KOLINS: Depends on how many
10 questions there are. I can only control what
11 I am going to say --

12 MR. MCDONALD: I have have a feeling
13 there is a lot of cross. Are you just going
14 to make a statement?

15 MRS. SMITH: Are you submitting
16 yourself --

17 MR. MCDONALD: Are you a witness or
18 representative?

19 MR. KOLINS: I'm representing a party.
20 That doesn't mean that Mr. Natale might not
21 try to cross-examine me, but we'll deal with
22 that later.

23 MRS. SMITH: It is anticipated that you
24 will go on Mr. Kolins and we'll hear your full
25 presentation no matter how long it takes.

*** Notes ***

Page 97

Page 98

1 MR. KOLINS: Then for the record my name
2 is Ron Kolins, K-O-L-I-N-S, and I am with the
3 law firm of Moyle, Flanagan, Katz, Kolins,
4 Raymond and Sheehan in West Palm Beach and I
5 am here representing Alyne, A-L-Y-N-E,
6 Massey.

7 I am going to make my time today to try
8 as best as I can to do two things: One, to
9 express the views and concerns of my client
10 Mrs. Massey. Secondly, to try and get this
11 case back into some perspective. Because
12 there have been many areas covered, many of
13 which I think are irrelevant. And I think it
14 would be helpful to all of us if we understood
15 what this case is truly about.

16 In thinking about what I was going to
17 say, I thought back and refreshed my memory as
18 best as I could to the September 16 hearing,
19 because clearly everything that was said then
20 is just as much a matter of record, as is what
21 we're saying here yesterday and today.

22 I heard a number of people, including the
23 then counsel for -- as well as members of the
24 public and witnesses and other people, talk
25 about first Mr. Trump personally. And they

1 were saying things about him. Well, I'm not
2 here to say bad things about him. I don't
3 know him personally very well. I have no
4 basis to say anything personal about him. But
5 I will assume and have no reason to doubt that
6 Donald Trump is one heck of a terrific guy. I
7 know that he plays by the rules. His rules.

8 Here, however, we need to play by your
9 rules. And I've tried to do that as we've
10 gone throughout and I know this Council has
11 bent over backwards to accommodate Mr. Trump
12 in ways that I suspect wouldn't be tendered to
13 other applicants for Special Exceptions in
14 this Town.

15 But I understand that he is a very well
16 known, perhaps the most well known person in
17 Town.

18 MAYOR ILYNSKY: I beg your pardon?

19 MR. KOLINS: With the no doubt exception
20 of our Mayor.

21 I've heard a lot over the course of this
22 hearing about what a fine club Mar-A-Lago is
23 and that it doesn't discriminate among its
24 members, which I have no reason to doubt and
25 which is certainly admirable.

*** Notes ***

Page 99

Page 100

1 And we've heard a lot about the
2 Mar-A-Lago estate and what a fine house it
3 is. Indeed, we just heard a gentleman tell
4 you that Mr. Trump has made a substantial
5 investment in it and has improved that
6 property and I don't doubt it. We've heard
7 that the house is used for charitable events.
8 I am sure it has. And we heard from a witness
9 a little while ago that Mr. Trump charges for
10 those things and I don't know if that's true
11 or not.

12 But, in any event, it is a situs for
13 charitable events and perhaps because it is
14 Mar-A-Lago, it carries with it a cache that
15 helps makes those charitable events more
16 successful or better attended. I think all of
17 those things are just great.

18 They are also totally irrelevant to this
19 proceeding. What this proceeding is, it is an
20 application for Special Exception, and whether
21 the applicant is a good person or bad person,
22 or whether a property is beautiful or not
23 beautiful, or you like the color or don't like
24 the color, none of that matters.

25 We've heard Mr. Graves and Ann Cottrell

1 today and I was not able to be here last
2 night, so I don't know what was said by
3 Mr. Chopin and others, but today we heard all
4 of the standards that you have to apply, have
5 to apply when you judge a Special Exception
6 application, and I am going to try my best not
7 to be too repetitive of what you already
8 heard, although as I said, I don't know what
9 Mr. Chopin said.

10 Let me quickly explain my presence here
11 today, because Mr. Shaw quite right referred
12 to a remark I made yesterday about not being
13 able to be here today and that was the case.
14 I was scheduled to take a number of
15 depositions today in a case going to trial on
16 Tuesday, but because this matter was not
17 concluded yesterday, because I had no
18 opportunity to say anything on behalf of my
19 client, who has been a longstanding client, I
20 felt an obligation to be here. And what I had
21 to do, which I was not happy about, was get
22 other lawyers in my firm to pinch hit at those
23 depositions, even though they are not as
24 involved in that case as I would like them to
25 be, for those depositions.

*** Notes ***

Page 101

1 But that's why I am here, without seeming
2 to seek your sympathy, which I am not. That
3 was a sacrifice for me and to my other client,
4 but nevertheless I feel I needed to be here.

5 Let us try to understand what this
6 application is about and why it was filed. It
7 is pure and simple, an application to
8 eliminate restrictions, get rid of them. Not
9 change them, but totally get rid of them, to
10 increase the intensity of use on the
11 property. When you lump them all together
12 that's what would be the result.

13 Now, we have heard claims certainly from
14 Mr. Rampell on the 16th that, notwithstanding
15 this application, there would not be an
16 intensity of use. And Mr. Natale in
17 cross-examining I think it was Ms. Cottrell
18 today suggested, at least by his questions,
19 that there wouldn't be any change in the
20 actual number of parking spaces, even though
21 they are asking for the requirement of those
22 parking spaces to be lifted.

23 In other words, they are saying let us do
24 what we want. But, by the way, don't worry,
25 we're not going to do anything. That's pure

Page 102

1 poppycock and you know it and I know it and,
2 most important, they know it.

3 I think they are treating you and me and
4 these people like fools when they contend that
5 they don't want any restrictions, but it is
6 not going to change anything. It is going to
7 change things dramatically.

8 If indeed they really don't contemplate
9 any change in intensity, what are they doing
10 here? Because no one can tell me that Donald
11 Trump is a fool. And no one can tell me that
12 Donald Trump is throwing money away for the
13 fun of it.

14 So he has a phalanx of lawyers and
15 experts and whatever here who have been
16 working on this case for some time and they
17 are getting paid. Is he doing that out of
18 some principle? By the way, we have a
19 restriction that that club over there doesn't
20 have and I am going to spend a fortune to get
21 that removed as a matter of principle? I
22 don't buy it and I don't know anybody with an
23 ounce of common sense would buy it.

24 Now, three years ago I was here when this
25 club was originally approved. And I know and

*** Notes ***

Page 103

1 you know that the then Council, which had a
2 different composition, struggled mightily with
3 that application. There were some members of
4 the Council that seemed very much in favor
5 from the outset and pushed it along. There
6 were some at the outset that seemed to oppose
7 it.

8 However you add up the votes, the Council
9 struggled with it. They struggled with it,
10 because clearly that application at that time
11 presented unique circumstances and concerns to
12 this Council and to this Town.

13 One of them was its location. It is in
14 the RAA zoning district, large estate
15 residential district, and on its face the club
16 is incompatible with that. There were
17 concerns about traffic. There were concerns
18 about all kinds of impacts on the Town.

19 A number of people, including my client,
20 made their concerns known and opposed the
21 approval of that club. But the club was
22 approved. But it wasn't just approved. What
23 the Council in effect said was well, yeah,
24 there are problems on the one hand. But we're
25 going to approve the club on the other.

Page 104

1 However, we're going to condition that
2 approval to make sure that it doesn't create
3 the kind of impacts that are going to
4 negatively affect the Town, negatively affect
5 the people that live in that neighborhood.

6 So they crafted a series of conditions
7 that made its way ultimately into the
8 Declaration of Use Agreement, which is, do not
9 forget, a development order.

10 At the time, Mr. Rampell, who was then
11 the spokesman for Mr. Trump, and Mr. Ciklin
12 agreed, they agreed to the entire series of
13 conditions. Would they have preferred not to
14 have them? I'm sure. But they agreed to
15 them. They didn't sustain an objection to any
16 of them. They didn't say at that time we're
17 going to go to court if you impose that
18 restriction. They said we agree.

19 Indeed, my memory is that Mr. Rampell
20 came up here at one point and said we'll agree
21 to whatever you feel is appropriate. And they
22 knew and the record is clear that there were
23 conditions imposed that were different from or
24 not a part of the other clubs, or some of the
25 other clubs in Town. And indeed this equal

*** Notes ***

1 protection argument was discussed. But they
2 nevertheless agreed to those conditions and
3 they never challenged them after that
4 approval.

5 Now, their so-called equal protection
6 argument is bogus for a number of reasons.
7 First, there are not equal circumstances. For
8 equal protection to be alleged, you have to
9 show that two situations that are the same,
10 are being treated differently. But the
11 situations here are not the same as relates to
12 any other club.

13 I'll give you a couple of examples. This
14 is the only club in the RAA zoning district.
15 Now the Bath and Tennis Club was not subject
16 to RAA zoning in the 1920s or whenever it was
17 when it was created. Subsequently, various
18 zoning code provisions were created and this
19 is the only club that's in that zoning code as
20 of the time of its approval.

21 Secondly, there were no concurrency rules
22 applicable to the Bath and Tennis or the other
23 clubs when they were created, as are
24 applicable to Mar-A-Lago.

25 Thirdly, the location of each club stands

1 on its own. They are all a little bit
2 different and it is your obligation indeed to
3 consider those differences when you decide
4 whether or not to approve the use.

5 Clearly, there is no equal protection
6 argument here that is meritorious. And if
7 there was, it their obligation was to raise it
8 within the appropriate time of appeal after
9 the first hearing. Which they didn't do, so
10 they've waived it.

11 And thirdly, they agreed on the record to
12 all these conditions.

13 Res judicata has been covered in some
14 detail. I want to briefly reiterate, no,
15 zero, zip, changed circumstances have been
16 shown to this Council. Some examples of that
17 were told to you by Mr. Graves. But to
18 suggest, for example, that they have members,
19 all of the alleged changes are not changes,
20 because they were all clearly contemplated by
21 or required by their approval and their
22 development order. That's not a change.

23 Now what would happen if this application
24 is granted? It is not that the club will have
25 different limits of membership or other

*** Notes ***

1 things. It will be unlimited. Given that
2 there are no limits whatsoever, I would
3 suggest that in that context the entire debate
4 you heard ad nauseam yesterday about traffic
5 is irrelevant, because there is no way to know
6 what traffic impacts will be brought to bear
7 if this application is granted.

8 Now, Mr. Natale asked Ms. Cottrell, are
9 you asking us to prove a negative? Well, let
10 me tell you something; they have set
11 themselves up for them to have to prove a
12 negative by not applying for something
13 specific that they could present evidence
14 about.

15 So that there is an impossibility of
16 proof here, and if there is, they created it
17 and they knowingly created it. If they had
18 some changes in mind that were quantifiable,
19 such as we'd like you to raise the membership
20 limit from 500 to 600, then they could have
21 traffic analyses done as to what would happen
22 if it were 600 members. And, they could come
23 in here with their evidence, and if there was
24 rebutting evidence, you make a decision.

25 They can't bring in evidence. They have

1 no evidence and that's why they want
2 Ms. Cottrell to tell them how to prove their
3 case because they haven't done it and don't
4 know how and can't do it, because of the very
5 nature of their own application.

6 Now, the reality, the inescapable
7 reality, is that an applicant for a Special
8 Exception in the Town of Palm Beach, in Palm
9 Beach County or anywhere else I know, has the
10 burden of proof. As you heard, substantial
11 and competent evidence proving he met the
12 criteria.

13 They haven't done that and suggested that
14 it might be impossible to do that. But the
15 important thing is that they haven't done it
16 and therefore it is not possible, it is just
17 not possible to grant this application.

18 Now when the original Special Exception
19 was granted, what was contemplated by the
20 Council was that it would be a low intensity
21 use. That's why the conditions were crafted
22 and that's why the conditions were imposed.
23 And those limits that the Council put on the
24 club assured that.

25 Now, what does Mr. Trump want? He wants

*** Notes ***

Page 109		Page 110	
1	all of the benefits of his bargain, but none	1	hasn't created any traffic problems, and if
2	of the obligations. So to use a little	2	indeed it hasn't created any problems at all,
3	metaphor I used once before, he is like the	3	you know what that proves? It proves one
4	camel that stuck his nose under the tent.	4	thing; that the conditions imposed by this
5	They said whatever you wanted to hear in 1993,	5	Council in 1993 worked. They were wise when
6	they agreed to whatever they had to agree to	6	they imposed them, they worked, and I want to
7	to get that application approved. Now they're	7	tell you, if it ain't broke, don't fix it.
8	going to come in and take over that whole	8	They talked about Charlie's Crab.
9	tent. That's what they want to do.	9	Remember that? It makes my case. They're
10	And you know who really made my case for	10	telling you what a mess it is by Charlie's
11	me, I'll tell you surprisingly enough,	11	Crab. You're darn right, because there are no
12	Mr. Rampell did and Mr. Blackman did and	12	conditions attached to Charlie's Crab and it
13	Mr. Pollock did. And let me tell you why. The	13	was here a long time ago.
14	real basis of their case simply is hey,	14	What they're really saying is grant our
15	there's no problem, okay. I mean, there	15	application so that we, too, can make a mess,
16	hasn't been any traffic problems, there aren't	16	if that's the way that it turns out. I mean,
17	a whole list of calls to the police, there is	17	take away all these conditions that have made
18	just no problem. This club is operating just	18	it work okay, so maybe it won't work okay.
19	fine and therefore eliminate the	19	Just like Charlie's Crab.
20	restrictions.	20	So the strategy is clear: Tell them what
21	Well, I would suggest to you that as was	21	they want to hear and we'll get them later.
22	suggested by those witnesses, if this club,	22	The problem is they didn't come up with an
23	and I don't concede this to be true, but let's	23	application that makes any sense. They didn't
24	assume it is for our discussion. If this club	24	come up with an application that is provable.
25	is such a good neighbor and if indeed it	25	So when Mr. Natale suggests through

*** Notes ***

Page 111		Page 112	
1	Ms. Cottrell gee, Ms. Cottrell, you'll never	1	earlier about concurrency and it kind of puts
2	be satisfied with any information we give	2	a little umbrella over some of this, I think.
3	you. You're darn right, because until they	3	Because there are no limits to what they're
4	give information that the code requires,	4	asking for, no one can predict, can they; no
5	nobody should be satisfied. And they've	5	one is prescient, no one can predict what the
6	crafted an application that they probably	6	traffic is going to be.
7	cannot prove up. What does that mean? Every	7	If they have 501 members, it is not going
8	application for Special Exception doesn't get	8	to be much different. If they have a hundred
9	granted and the ones that don't get granted	9	thousand members, I suggest it is a big
10	don't get granted because the applicant hasn't	10	difference. And I suggest most numbers in
11	proved his case. He hasn't proved it for a	11	between would be a big difference.
12	number of reasons. Maybe he is incompetent,	12	What they need to get and what they I
13	maybe he is stupid, or maybe the evidence	13	think conceded they needed to get was a
14	isn't there to allow the case to be proved in	14	concurrency certificate from the County. Do
15	the first place.	15	they have that; no. Now they don't have it
16	That's what we've got here. Mr. Trump	16	because they can't get it. Because they can't
17	isn't stupid and I don't suggest his	17	get it, because they can't tell the County
18	representatives are incompetent. But you have	18	what the traffic impact is going to be so the
19	an application where the circumstances and the	19	County can measure it against its standards.
20	evidence will not allow it to be proved. And,	20	And without it you can't grant the
21	therefore, not only is he not entitled to a	21	application, because you have to have
22	grant of the application, but he just flat out	22	concurrency and they can't do it.
23	hasn't made his case at all, leaving in effect	23	They've again created an impossible
24	no choice.	24	burden for themselves by the nature of the
25	You know, an interesting point was made	25	application.

*** Notes ***

Page 113

1 Mrs. Massey's issue being that she lives
2 immediately across the street on South Ocean
3 Boulevard is this: First, let me tell you we
4 opposed the application for the club in the
5 first place, and thus were not pleased when it
6 was approved.

7 But, Mrs. Massey is no fool and she is
8 not unrealistic. It is there, it is not going
9 to get thrown out. She has to and indeed has
10 and does accept it. And indeed accepts the
11 fact that if you are going to have a club
12 there, within reason it has to be able to be
13 operated in a reasonable fashion.

14 But the issue here today is the question
15 of intensity. And virtually all of the relief
16 requested by this applicant goes to the
17 umbrella of intensity. It does it in a
18 variety of ways. The number of guest suites
19 they want to be unlimited. The length of stay
20 within those guest suites. The number of
21 members. The number of guests that people can
22 have. The number of traffic trips.
23 Eliminating the van for the staff. The number
24 of people at special events and the reduction
25 in parking spaces and a rationale for part of

Page 114

1 this application seems to me they want more
2 and wants to make less room for it.

3 They all go to the question of
4 intensity. The traffic, the noise. In
5 general, the disruption in the area. The
6 disruption where Mrs. Massey lives.

7 And Mrs. Massey is no less deserving of
8 your concern than Mr. Trump or anyone else in
9 this Town. She is a fine, fine lady. A long
10 time resident known by many.

11 So, what will happen is that if this
12 application were granted, among other things,
13 as to her personally, never mind the whole
14 Town, is her quality of life will be impacted
15 further than it is already impacted from the
16 club at all. She will be deprived of the
17 quiet enjoyment of her property, to which she
18 is entitled, just like any of you are, and the
19 value of her property will deteriorate, as was
20 testified to by Mr. Underwood at the 1993
21 hearing. And that testimony was never
22 rebutted.

23 If the club's existence with those
24 conditions at that time would devalue her
25 property, can you imagine what it would do if

*** Notes ***

Page 115

1 all those conditions were removed and the
2 place becomes a zoo?

3 This property Mar-A-Lago is probably the
4 Town's most treasured property. It is one of
5 the world's most treasured properties. Well,
6 it was allowed to become a social club for
7 better or for worse. But it was allowed to
8 become that only after Mr. Trump agreed to the
9 conditions that he now wants to eliminate, so
10 that he can have unfettered use of the club.

11 I want to ask you something: I trust
12 Mr. Trump and his representatives don't think
13 that the six of you sitting up there and
14 Mr. Randolph and myself and many others, I
15 trust they don't think we have no common sense
16 whatsoever.

17 How does it make sense to you, and if it
18 does, tell me how please, because it doesn't
19 to me, that Mr. Trump can be asking for the
20 elimination of all of these conditions so he
21 is free to increase the use of this club,
22 without any cap at all, and at the same time
23 reduce the parking spaces from 252 to 75. And
24 then tell us that it is not going to be a
25 change in the use. And, by the way, what

Page 116

1 changes there are wouldn't impact anybody.

2 Where are people going to park? I tell
3 you where. On my client's -- in front of my
4 client's house is one place. They haven't
5 provided a site plan, and with all due respect
6 to Mr. Moore, I think they should have.

7 Because one of the things I think they
8 should show is where people are going to park
9 when they go to this club when it has more
10 than 500 members and when it has 125 parking
11 spaces, and where are people going to go to
12 this club when it is no longer limited to 390
13 people at special events. Although I suspect
14 that's been continuously violated, but if you
15 give them the benefit of the doubt and they
16 say they've lived up to that and 390 fills the
17 parking area now at 252 spaces, where are
18 people going to park when it is more than
19 390?

20 We don't know that and they don't want to
21 tell us that, because they can't tell us that.

22 Let me tell you something: The
23 protections afforded by those conditions are
24 still needed. Nothing on this earth has
25 changed to suggest that there is no longer a

*** Notes ***

Page 117

1 need for them. The fact that they are working
2 doesn't mean you should eliminate them.
3 Now, Mr. Trump is the guardian of
4 Mar-A-Lago. But you are the guardians of the
5 public welfare in this Town and you are the
6 guardians of Mrs. Massey's welfare as well. I
7 trust you will live up to that obligation and
8 deny this application.

9 Thank you very much.

10 MRS. SMITH: Thank you, Mr. Kolins.

11 Is there anything further, members of the
12 Council, did you have any questions for
13 Mr. Kolins?

14 MR. MCLENDON: I just wanted to make a
15 comment. I keep hearing 75 applied to parking
16 spaces. I haven't seen that and I don't
17 know --

18 MR. KOLINS: I can tell you where that
19 comes from. First of all, I said 125 because
20 125 is one space per four members at their
21 present.

22 MR. MCLENDON: You said 75 before you
23 mentioned 125.

24 MR. KOLINS: I said it yesterday for
25 sure. Let me explain where that number comes

Page 118

1 from. Simply it is my understanding, I cannot
2 be certain, you cannot be certain, we don't
3 know, but my understanding is that there are
4 approximately 300 or 314 members to the club
5 now.

6 So, given that level of membership, if
7 you apply the one-to-four ratio, you get to
8 75, 77 spaces. Something like that.

9 MR. MCLENDON: I don't get the pertinence
10 of that.

11 MR. KOLINS: Well, they are asking that
12 the restriction that requires them to have 252
13 spaces be removed, and instead they be allowed
14 to have one space per four members. So one
15 space per four members at 300 or 314 is 75 or
16 77.

17 MR. MCLENDON: That would be a moving
18 target. If the membership changed, the
19 parking spaces would go up.

20 MR. KOLINS: But not at the ratio that
21 was contemplated by the restriction at 252 at
22 500 members. That number came, if my memory
23 serves, when the club took into account the
24 special event features.

25 MR. MCLENDON: That's what I assume, too.

*** Notes ***

Page 119

1 MR. KOLINS: As well as a membership cap,
2 on the assumption that you have about two
3 people per car and if you have 500 members,
4 that would be about 250 cars. But I don't
5 want to swear to that, because that's just my
6 recollection, faint recollection.

7 MR. WYETT: Mr. Kolins, going back to the
8 parking issue again. I think testimony was
9 given that at times 200 to 250 spaces are
10 used, which would indicate that the prior
11 Council's decision to impose 250 spaces would
12 be correct.

13 Do you believe that should the petitioner
14 at some future date ask for increased
15 facilities, as they were hinting at when they
16 said they might be decommissioning the golf
17 course, which is another issue entirely, would
18 require more than 250 spaces?

19 MR. KOLINS: Well, clearly there would be
20 justification for more parking spaces. It
21 would be up to them to either show you where
22 they are going to park those additional cars
23 on site, or if they are going to make
24 arrangements for off-site parking and bus the
25 people back and forth or whatever. There are

Page 120

1 various ways to skin that cat.

2 However they choose to do it, they need
3 to come to this Council and see whether you
4 concur with it. One way or another, they need
5 to provide the space.

6 MR. WYETT: Under the Declaration of Use
7 Agreement, do they have the right to
8 decommission the golf course without coming to
9 us?

10 MR. KOLINS: It is not my belief they can
11 do that. But, I don't want to say that
12 dogmatically, but I don't think so.

13 MR. WYETT: Mr. Moore, can they
14 decommission the golf course without coming to
15 us?

16 MR. MOORE: Not without coming and
17 amending the Special Exception.

18 MR. MCLENDON: I agree and I think this is
19 what you said: The number of parking spaces
20 that the previous Council and staff insisted
21 be provided was related to the 390 cap for
22 special events, rather than for the number of
23 members. I would certainly agree that would
24 be the probability.

25 MR. KOLINS: It may be Mr. McClendon. I

*** Notes ***

1 can't say.

2 But, indeed, if they want to now remove
3 the cap on the amount of people that can
4 attend special events, they are going to be
5 increasing parking, rather than decreasing,
6 which is what they are trying to do.

7 MRS. SMITH: Members of the Council, any
8 other questions?

9 I announced before you started we were
10 going to break for lunch after your
11 presentation. We'll be back at 1:45 and
12 public comment will remain open at that time.
13 Thank you.

14 (Thereupon the lunch recess was had.)
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1
2 CERTIFICATE
3
4

5 THE STATE OF FLORIDA)
6 County OF PALM BEACH
7

8 I, ALBERT WAYNE MATTOX, court reporter, do
9 hereby certify that I was authorized to and did report
10 the above hearing at the time and place herein stated,
11 and that it is a true and correct transcription of my
12 stenotype notes taken during said hearing.
13

14 In witness whereof I have hereunto set my hand
15 this _____ day of _____ 1996.
16
17

18 ALBERT WAYNE MATTOX,
19 COURT REPORTER.
20
21
22
23
24
25

*** Notes ***

*** Notes ***

's [1] 78:18	500 [4] 107:20 116:10	84:21 85:1	afternoons [1] 91:16	89:22 100:8 116:13
1 [2] 15:2 121:11	118:22 119:3	action [1] 87:5	again [14] 10:1	always [1] 78:3
10 [4] 3:10 77:21	501 [1] 112:7	actions [3] 6:5	13:18 13:19 21:25	Alyne [1] 97:5
78:10 78:13	55 [1] 74:6	8:17 85:2	28:3 30:3 31:13	amend [1] 82:2
10,000 [1] 63:14	6.40 [5] 19:14 68:10	activities [5] 22:17	33:12 47:21 61:6	amended [1] 6:21
10.12 [1] 31:10	68:25 70:8 70:24	27:6 33:3 38:4	68:20 90:8 112:23	amending [1] 120:17
11 [1] 1:20	60 [1] 10:8	40:19	119:8	amendment [1] 6:23
12 [5] 1:20 9:22	600 [2] 107:20 107:22	activity [2] 22:13	against [2] 45:8	amendments [1] 36:18
18:10 79:4 79:6	75 [5] 115:23 117:15	33:7	112:19	American [1] 18:13
125 [4] 116:10 117:19	117:22 118:8 118:15	actual [3] 35:12	ago [5] 43:25 52:14	among [3] 29:16
117:20 117:23	77 [2] 118:8 118:16	60:10 101:20	99:9 102:24 110:13	98:23 114:12
13 [4] 74:5 79:8	8,120 [1] 29:13	actually [5] 47:16	agree [15] 36:24	amount [4] 24:18
80:16 80:17	9 [5] 1:20 3:4	60:14 60:15 66:9	37:19 40:6 42:20	30:9 55:13 121:3
14 [1] 18:8	3:10 76:25 77:8	74:3	42:24 44:5 45:19	ample [1] 45:13
15 [1] 7:6	9,855 [1] 29:14	ad [1] 107:4	56:22 57:15 83:11	amplified [1] 78:3
16 [3] 9:4 52:19	9.61 [1] 32:10	add [2] 35:16 103:8	104:18 104:20 109:6	analysed [1] 107:21
97:18	A-L-Y-N-E [1] 97:5	addition [1] 35:11	120:18 120:23	analysis [1] 40:9
168 [1] 91:6	A-N-G-A-R-T [1] 91:6	additional [5] 36:11	agreed [10] 61:15	ancestries [1] 11:5
16th [1] 101:14	a.m [1] 3:4	36:12 45:14 50:9	61:17 74:22 104:12	and/or [1] 32:7
17 [3] 7:12 9:15	A1A [1] 91:18	119:22	104:12 104:14 105:2	Angart [4] 91:5
63:17	ability [5] 57:16	address [1] 53:25	106:11 109:6 115:8	91:5 92:10 92:11
179 [2] 88:4 88:19	59:3 59:7 62:3	addressed [3] 16:15	agreeing [1] 42:25	Ann [2] 17:19 99:25
18 [1] 19:15	62:9	69:1 74:7	agreement [12] 5:6	Anna [4] 18:1
1920s [1] 105:16	able [9] 31:15 41:12	addressing [1] 89:22	5:11 6:20 10:21	47:5 48:2 59:20
196 [4] 20:18 23:17	66:2 67:14 75:13	adequate [1] 27:10	34:11 35:2 35:3	announced [1] 121:9
30:4 39:1	78:15 100:1 100:13	adequately [1] 69:1	73:19 73:22 74:22	anonymous [2] 80:3
1989 [1] 25:20	113:12	adjacent [9] 4:14	104:8 120:7	80:3
1993 [12] 6:8	above [1] 122:10	21:14 26:25 27:9	agreements [2] 53:13	another [4] 80:21
12:11 15:2 16:5	absolutely [6] 21:11	31:22 42:2 43:4	54:1	80:25 119:17 120:4
16:13 16:16 34:13	22:23 29:3 43:23	84:4 85:13	ahead [1] 61:8	answer [10] 16:8
74:4 74:6 109:5	49:13 73:7	adjoining [1] 22:21	ain't [1] 110:7	39:16 39:24 41:2
110:5 114:20	abut [1] 4:16	adjudicated [2] 8:4	air [1] 89:7	43:6 48:13 48:22
1994 [1] 29:13	academic [1] 18:2	8:5	aisle [1] 9:8	57:2 60:8 72:23
1996 [8] 1:20 7:12	accept [1] 113:10	administration [1] 18:5	Alan [2] 74:7 74:13	answered [3] 16:8
78:11 79:4 79:6	acceptable [3] 15:25	administrative [8] 7:14 7:19 7:19	alarm [1] 81:2	16:15 39:13
79:8 80:16 122:15	16:9 46:21	7:22 8:12 9:25	ALBERT [2] 122:8	anticipate [3] 21:16
2.2 [1] 24:15	accepts [1] 113:10	14:13 25:2	122:19	26:3 96:2
2.3 [1] 24:22	access [1] 27:15	admirable [1] 98:25	Aldridge [1] 80:15	anticipated [9] 11:8
2.4 [1] 25:9	acclamation [1] 11:15	admit [2] 10:16	Algoma [1] 90:16	21:25 42:7 42:13
20 [1] 10:8	accommodate [3] 29:16 40:20 98:11	11:15	alive [2] 94:12 95:12	42:14 43:3 55:12
20,000 [1] 63:12	accommodated [1] 60:21	adopted [2] 25:22	alleged [3] 93:4	87:2 96:23
200 [1] 119:9	accommodating [1] 29:12	29:20	105:8 106:19	anticipates [1] 36:18
226 [2] 90:5 90:13	accompany [1] 94:21	adoption [1] 25:19	Allen [1] 2:5	anticipating [1] 82:1
250 [4] 119:4 119:9	accordance [1] 54:25	adverse [5] 21:14	allow [6] 8:18	anybody [7] 3:24
119:11 119:18	account [1] 118:23	21:17 31:21 33:4	33:20 65:3 65:7	41:11 73:16 75:13
252 [4] 115:23 116:17	accuracy [1] 53:3	42:14	111:14 111:20	87:17 102:22 116:1
118:12 118:21	accurate [3] 61:16	adversely [1] 31:14	allowable [1] 83:24	anyone [4] 3:17
274 [1] 35:18	61:18 61:20	advice [1] 70:25	allowed [5] 38:15	43:21 77:7 114:8
30 [7] 1:20 1:20	achieve [2] 32:4	advise [1] 9:4	49:11 115:6 115:7	anything [9] 12:23
3:4 72:14 96:5	acknowledges [1] 19:9	advised [2] 6:9	118:13	13:3 13:8 89:11
96:7 96:8	acquiring [1] 80:20	15:7	allowing [1] 84:16	98:4 100:18 101:25
300 [2] 118:4 118:15	acres [1] 63:18	affairs [1] 94:13	allows [1] 63:12	102:6 117:11
314 [2] 118:4 118:15	across [2] 40:13	affect [6] 27:2	along [4] 65:16	anywhere [1] 108:9
33408 [1] 1:19	act [10] 5:18 5:24	31:14 31:17 55:24	65:17 66:4 103:5	apologize [1] 14:25
360 [1] 1:19	6:2 6:3 6:11	104:4 104:4	already [11] 8:3	appeal [3] 72:13
390 [4] 116:12 116:16	83:15 83:18 84:3	affecting [1] 85:9	11:25 15:3 27:3	72:18 106:8
116:19 120:21		affects [1] 63:5	33:1 55:1 62:16	appear [2] 53:2
4 [2] 15:13 20:1		afford [3] 64:23	71:1 84:23 100:7	64:7
4,060 [1] 29:11		65:6 95:2	114:15	APPEARANCES [1] 2:2
40 [1] 94:10		afforded [1] 116:23	also [12] 6:22 23:6	applicable [4] 34:16
45 [1] 121:11		after [8] 9:18 32:5	24:15 26:16 36:7	71:9 105:22 105:24
5,000 [1] 63:13		49:12 68:3 105:3	36:24 40:2 45:21	applicaiton [1] 26:21
50 [1] 28:21		106:8 115:8 121:10	63:21 88:8 92:6	
			99:18	
			although [4] 73:14	

applicant [23] 12:22	approve [5] 17:1	asserts [1] 74:20	119:25 121:11	34:15 36:12 37:10
12:24 17:7 17:16	26:7 71:4 103:25	associated [3] 29:25	background [3] 18:3	37:16 39:10 39:15
19:9 19:22 20:24	106:4	35:2 35:9	36:2 80:20	39:17 42:21 46:1
26:13 28:18 28:19	approved [11] 12:11	assume [11] 9:18	backgrounds [1]	46:2 48:20 49:19
31:8 32:13 32:18	36:21 50:4 51:1	11:8 34:19 40:13	11:5	49:20 51:25 53:7
51:4 58:6 69:1	55:1 74:12 102:25	40:17 49:24 64:8	backup [2] 20:17	60:12 62:8 62:9
70:20 92:25 93:1	103:22 103:22 109:7	68:17 98:5 109:24	30:3	66:6 66:7 68:9
99:21 108:7 111:10	113:6	118:25	backwards [1] 98:11	72:1 72:5 78:21
113:16	approximately [2]	assuming [4] 50:5	bad [2] 98:2 99:21	83:5 84:20 85:4
applicant's [2] 23:20	88:12 118:4	60:3 60:25 68:21	balls [1] 94:19	85:7 88:17 90:15
55:5	architectural [5]	assumption [3] 52:3	bands [1] 78:3	92:13 93:5 119:13
applicants [1] 98:13	26:17 26:20 53:21	66:20 119:2	bargain [1] 109:1	benefit [1] 116:15
application [79] 5:12	54:2 54:16	assumptions [1]	base [1] 89:12	benefits [1] 109:1
7:8 9:24 12:23	architecture [1] 51:15	41:10	based [13] 19:20	bent [1] 98:11
13:25 16:25 17:7	area [10] 22:19 31:22	assured [1] 108:24	22:25 30:5 31:16	Bert [4] 5:24 6:2
18:18 18:22 18:24	32:2 40:5 47:1	attached [1] 110:12	34:9 37:20 59:1	6:11 85:18
19:10 19:20 21:12	51:16 61:18 92:8	attack [2] 49:8	66:6 66:22 71:2	best [9] 33:5 38:6
31:3 32:11 33:10	114:5 116:17	59:23	71:6 83:3 87:5	64:11 64:15 65:6
33:16 34:2 34:9	areas [5] 25:5 27:12	attainable [1] 66:9	Baseheart [1] 18:12	84:22 97:8 97:18
34:10 34:16 34:25	28:12 51:18 97:12	attempt [2] 49:7	basically [4] 45:4	100:6
35:5 35:25 36:5	aren't [1] 109:16	49:8	63:1 89:8 89:14	better [4] 65:14
38:12 44:2 44:13	argument [17] 5:17	attempted [1] 79:19	basis [6] 8:6 13:25	70:16 99:16 115:7
51:3 51:9 51:13	7:5 13:1 13:14	attend [2] 94:19	57:20 75:23 98:4	between [5] 42:4
53:8 55:25 56:20	13:15 14:13 16:4	121:4	109:14	42:5 60:23 76:6
56:23 58:6 58:19	17:12 72:4 72:7	attended [1] 99:16	Bath [6] 40:6 40:10	112:11
63:6 63:7 66:10	72:8 75:24 77:1	attention [4] 60:4	40:14 42:1 105:15	beyond [1] 88:24
67:4 67:17 69:19	85:11 105:1 105:6	70:7 73:10 76:4	105:22	big [2] 112:9 112:11
70:1 70:20 73:13	arguments [5] 7:18	attorney [14] 2:12	Beach [20] 1:6	bit [2] 67:1 106:1
74:11 75:10 83:14	14:15 71:23 72:10	6:9 7:16 10:4	1:19 4:10 18:10	Blackman [1] 109:12
83:18 84:17 84:24	76:20	12:21 15:7 52:17	18:10 18:13 18:15	blatant [1] 13:24
89:25 95:18 99:20	arise [1] 88:16	52:22 71:1 72:2	37:4 68:11 69:12	board [7] 8:10
100:6 101:6 101:7	around [2] 48:6	72:2 74:6 77:12	78:2 78:12 79:5	8:16 8:24 9:1
101:15 103:3 103:10	51:5	92:25	79:7 81:8 90:13	9:11 14:25 50:3
106:23 107:7 108:5	arrangement [1]	Attorney's [1] 48:13	97:4 108:8 108:9	boards [1] 8:12
108:17 109:7 110:15	53:15	attorneys [2] 18:18	122:5	Bob [1] 94:8
110:23 110:24 111:6	arrangements [1]	74:4	bear [1] 107:6	body [3] 16:12 16:13
111:8 111:19 111:22	119:24	attract [2] 25:13	beautiful [4] 86:20	16:23
112:21 112:25 113:4	Art [2] 80:18 80:21	28:16	95:8 99:22 99:23	bogus [1] 105:6
114:1 114:12 117:8	article [7] 20:1	authored [1] 80:18	115:8	book [2] 80:18 80:21
applications [2]	81:6 81:8 93:24	authorities [1] 46:14	become [2] 115:6	bore [1] 70:1
8:21 67:13	93:25 94:3 94:5	authorize [1] 71:5	becomes [1] 115:2	born [1] 9:12
applied [3] 14:17	ask [21] 3:18 3:19	authorized [1] 122:9	before [19] 16:12	both [8] 4:22 9:1
19:14 117:15	17:22 29:2 39:9	automotive [1] 27:13	48:9 50:8 52:5	9:11 18:8 58:17
applies [8] 5:25	48:12 48:22 58:4	avail [2] 72:19 79:20	52:20 52:22 54:9	64:14 73:5 85:20
8:10 25:20 28:12	59:20 61:4 76:23	availability [1] 28:5	67:1 69:15 70:9	bought [1] 95:7
37:6 38:3 38:20	77:2 79:20 80:9	available [7] 25:3	71:22 75:2 83:21	Boulevard [1] 113:3
85:20	81:17 81:22 81:24	25:23 33:24 55:14	86:8 89:13 95:22	boycotted [1] 93:1
apply [23] 6:8	85:23 93:4 115:11	72:5 72:6 76:17	109:3 117:22 121:9	Boynton [1] 18:9
6:12 6:13 14:17	119:14	Avenue [2] 90:5	beg [1] 98:18	break [3] 68:1
15:10 19:4 19:16	asked [19] 13:10	90:13	begin [1] 95:22	95:25 121:10
37:25 38:1 39:5	16:7 16:15 18:17	36:17	beginning [2] 70:8	Breaking [1] 80:21
39:12 39:18 39:21	31:8 39:13 43:24	46:8 46:12 46:19	74:9	breathing [1] 11:3
39:24 39:25 51:4	50:23 53:16 53:17	50:1 50:11 63:23	begins [1] 10:7	brief [2] 4:25 68:3
64:21 64:22 84:3	58:14 58:24 62:4	65:18 86:25	begun [1] 75:1	briefly [1] 106:14
84:24 100:4 100:5	66:17 66:25 67:23	away [3] 84:18 102:12	behalf [1] 100:18	bring [2] 85:19 107:25
118:7	86:22 87:18 107:8	110:17	behind [2] 7:18	broad [1] 53:24
applying [1] 107:12	asking [17] 35:4	awful [1] 90:22	61:6	broke [1] 110:7
appreciate [4] 9:22	38:14 41:17 41:22	B [3] 21:7 24:15	behold [1] 70:11	brought [2] 60:2
17:10 52:15 87:25	42:17 59:10 61:22	71:13	being [10] 8:14	107:6
approaching [1] 95:23	62:2 62:5 62:24	bachelor [1] 18:4	8:19 24:9 36:7	Broward [1] 81:8
appropriate [6] 20:12	65:23 93:21 101:21	back [18] 4:20	48:24 49:1 84:5	buffering [2] 84:11
46:13 48:20 50:24	107:9 112:4 115:19	4:21 7:5 12:20	100:12 105:10 113:1	84:13
104:21 106:8	118:11	23:14 29:6 29:6	belief [1] 120:10	building [9] 2:11
approvable [1] 58:25	asks [1] 15:5	30:12 64:4 75:18	beliefs [1] 11:6	4:9 5:8 5:8
approval [11] 18:20	aspect [2] 4:24	76:4 85:19 92:19	believe [37] 14:9	25:17 82:20 86:4
19:1 19:3 31:20	assertion [1] 38:12	97:11 97:17 119:7	15:17 17:24 21:15	

85:6 95:8	58:23 71:25 78:4	circumstance [1]	6:22 17:2 17:2	compliance [6] 26:2
burden [17] 8:13	85:13 98:25 101:13	14:19	19:1 19:15 19:17	46:10 46:14 46:23
12:20 23:20 30:16	120:23	circumstances [14]	20:16 24:1 31:10	58:2 66:15
55:5 59:19 62:13	certainty [1] 66:13	8:1 8:3 8:18	32:15 32:15 33:18	comply [5] 23:11
64:9 70:4 70:5	certificate [1] 112:14	10:3 10:5 10:17	36:25 37:3 37:5	23:21 24:2 63:18
70:19 70:21 84:19	certified [2] 18:13	11:11 13:9 13:12	37:9 37:14 37:20	71:8
84:21 85:7 108:10	18:14	14:12 103:11 105:7	37:21 38:18 39:4	composition [1]
112:24	certify [1] 122:9	106:15 111:19	44:19 45:17 45:20	103:2
burdens [2] 6:5	challenge [1] 67:22	cite [2] 14:20 76:22	46:5 46:8 51:9	comprehensive [29]
85:2	challenged [1] 105:3	City [2] 2:12 18:9	55:6 55:20 57:5	18:25 19:16 24:3
bus [1] 119:24	change [35] 7:25	claim [1] 75:21	58:21 63:12 68:11	24:6 24:7 25:19
bused [1] 78:3	8:18 10:22 10:23	claims [1] 101:13	69:7 69:8 69:15	26:7 26:22 29:3
business [2] 15:9	11:10 11:20 12:2	clarification [2]	72:13 83:24 87:5	30:5 33:17 41:6
77:23	12:8 12:16 12:18	9:14 85:24	87:5 105:18 105:19	44:22 45:22 46:4
businesses [2] 24:19	13:9 13:12 13:24	clarify [2] 34:23	color [2] 99:23 99:24	46:7 46:18 51:10
30:9	14:12 16:14 21:1	60:11	come [25] 12:13	53:9 53:20 54:4
buy [2] 102:22 102:23	23:16 25:4 29:8	clear [5] 6:13 20:20	13:13 29:18 35:5	56:3 58:20 64:3
C [4] 3:2 21:21	29:20 30:4 43:8	76:21 104:22 110:20	50:3 50:8 59:4	64:4 64:12 65:20
122:2 122:2	43:9 43:25 49:20	clearly [13] 8:12	59:8 59:11 62:4	66:8 67:6
C-O-T-T-R-E-L-L [1]	49:22 54:23 83:16	16:12 22:18 28:24	63:14 65:3 65:8	comprehensively [1]
18:2	101:9 101:19 102:6	30:24 51:16 62:18	68:19 75:13 89:6	33:6
cache [1] 99:14	102:7 102:9 106:22	62:22 97:19 103:10	90:3 91:2 91:17	concede [1] 109:23
Call [1] 3:10	115:25	106:5 106:20 119:19	93:20 107:22 109:8	conceded [1] 112:13
called [4] 3:3	changed [10] 8:2	clerk [6] 3:20 3:22	110:22 110:24 120:3	conceding [1] 53:2
3:12 8:20 91:12	10:3 10:5 10:18	78:17 78:24 79:2	comes [2] 117:19	concept [1] 11:2
calling [1] 67:25	14:19 20:16 29:5	90:11	117:25	concern [5] 51:12
calls [2] 80:4 109:17	106:15 116:25 118:18	client [11] 4:12	comfortable [1] 96:8	51:14 56:7 65:18
camel [1] 109:4	changes [12] 13:16	4:23 71:25 88:11	coming [9] 52:5	114:8
cannot [10] 21:5	13:18 20:4 32:22	88:18 89:21 97:9	56:6 57:18 62:10	concerned [4] 83:14
26:4 26:7 33:15	50:13 50:25 84:4	100:19 100:19 101:3	64:4 92:19 120:8	88:14 89:4 89:5
62:12 63:4 72:11	88:16 106:19 106:19	103:19	120:14 120:16	concerns [7] 55:18
111:7 118:1 118:2	107:18 116:1	client's [4] 70:4	comment [14] 3:14	89:12 97:9 103:11
cap [6] 15:15 15:16	character [6] 22:19	88:9 116:3 116:4	3:15 3:25 11:18	103:17 103:17 103:20
115:22 119:1 120:21	23:6 23:8 24:16	clients [1] 28:17	61:4 66:2 85:16	conclude [4] 71:22
121:3	24:25 30:7	club [63] 11:1 11:9	90:20 90:24 93:19	77:15 80:13 80:23
capacities [1] 73:21	characteristics [1]	11:12 11:13 11:16	93:23 95:18 117:15	concluded [1] 100:17
capacity [10] 9:6	31:23	11:19 12:5 12:6	121:12	conclusion [2] 65:9
11:14 11:20 11:24	charge [1] 92:5	12:11 23:2 28:1	comments [2] 82:10	76:22
12:1 12:15 57:7	charged [2] 16:18	29:15 37:20 38:2	94:16	conclusions [2] 47:13
59:3 60:13 69:14	45:11	38:4 40:6 40:7	commercial [7] 22:5	47:15
car [1] 119:3	charges [2] 92:2	40:10 40:14 40:15	23:8 25:12 33:21	concur [1] 120:4
Carlton [1] 4:7	99:9	40:18 40:19 40:24	75:4 76:13 76:18	concurrency [11]
carries [1] 99:14	charitable [4] 94:19	42:1 42:1 57:23	commission [1] 44:7	26:15 56:7 56:9
cars [10] 32:24 56:6	99:7 99:13 99:15	72:12 74:20 75:2	common [5] 30:23	56:14 56:15 56:19
57:8 60:9 60:17	charities [1] 92:1	75:22 76:10 76:11	30:23 55:10 102:23	57:4 105:21 112:1
60:23 60:24 61:17	charity [2] 92:3	76:15 76:16 76:17	115:15	112:14 112:22
119:4 119:22	92:4	94:15 98:22 102:19	Commonwealth [1]	concurrent [1] 25:23
case [20] 6:13 13:1	Charlie's [4] 110:8	102:25 103:15 103:21	18:7	condition [5] 28:14
14:3 27:15 34:22	110:10 110:12 110:19	103:21 103:25 105:12	community [4] 24:18	40:18 48:5 48:10
47:25 73:1 97:11	check [2] 78:19	105:14 105:15 105:19	25:1 30:8 81:16	104:1
97:15 100:13 100:15	78:20	105:25 106:24 108:24	compatibility [1]	conditions [33] 5:13
100:24 102:16 108:3	Chief [1] 9:3	109:18 109:22 109:24	28:6	6:25 8:25 14:16
109:10 109:14 110:9	Chilian [2] 90:5	113:4 113:11 114:16	compatible [12] 22:20	15:11 20:25 22:1
111:11 111:14 111:23	90:13	115:6 115:10 115:21	22:25 27:24 40:4	22:7 22:8 22:12
cases [1] 69:10	choice [1] 111:24	116:9 116:12 118:4	40:4 40:25 41:10	23:3 27:21 32:8
cat [1] 120:1	choose [2] 84:7	118:23	41:13 41:24 42:4	33:3 35:2 42:8
catastrophe [1] 27:16	120:2	club's [1] 114:23	42:19 42:23	74:21 84:6 104:6
category [1] 32:13	Chopin [3] 59:20	clubs [28] 14:18	competent [8] 12:25	104:13 104:23 105:2
cause [1] 21:21	100:3 100:9	15:14 15:18 15:20	14:10 17:3 61:14	106:12 108:21 108:22
caused [1] 30:17	chosen [1] 14:7	16:7 16:12 20:7	65:10 71:3 71:7	110:4 110:12 110:17
certain [5] 7:2	Christmas [1] 5:9	23:15 23:19 24:10	108:11	114:24 115:1 115:9
20:13 31:7 118:2	Ciklin [6] 72:2	24:10 29:12 29:16	compile [1] 67:15	115:20 116:23
118:2	73:24 74:3 74:7	30:2 37:11 39:7	complain [1] 87:10	conference [1] 68:1
certainly [14] 21:25	74:13 104:11	39:11 42:5 74:23	complaints [2] 27:4	confirm [1] 77:9
28:2 47:4 53:23	Circuit [2] 18:16	74:25 76:7 76:12	87:15	confirmed [1] 35:14
54:6 55:11 58:9	72:14	78:1 92:8 94:11	completed [2] 10:21	conforming [2] 20:21
		104:24 104:25 105:23	14:3	23:15
		Coast [1] 81:7	completion [1] 10:22	congestion [5] 12:13
		code [44] 5:15		

40:21 56:6 56:13
57:8
cons [1] 94:15
consider [8] 20:20
21:16 65:11 72:7
80:10 80:12 81:17
106:3
consideration [4]
17:25 55:4 81:23
87:25
considered [7] 19:8
19:12 20:9 22:4
54:19 56:2 56:11
considers [1] 32:14
consistency [3] 26:14
55:5 58:20
consistent [4] 30:4
38:17 44:19 54:11
consists [2] 11:4
67:11
constituted [1] 77:25
constitutes [1] 19:6
constitutional [1]
73:2
constitutions [1]
73:6
construction [1]
10:19
consultant [1] 18:11
consulting [1] 59:2
contemplate [1]
102:8
contemplated [3]
106:20 108:19 118:21
contend [1] 102:4
contest [1] 8:20
context [1] 107:3
contiguous [5] 40:7
40:16 40:25 42:19
42:23
continuation [2]
75:7 75:21
continue [3] 25:9
49:17 68:7
continued [1] 20:15
continuously [1]
116:14
contrary [9] 29:3
33:17 33:18 33:20
38:12 47:16 51:9
51:10 53:11
contribution [1]
32:2
control [4] 27:15
79:23 87:9 96:10
convenience [1]
27:14
conversion [1] 29:22
convince [1] 58:7
cooperation [1] 42:3
cooperatively [1]
40:20
coordinate [1] 40:19
coordinating [1]
67:16

copies [1] 70:9
copy [5] 10:10 68:14
68:16 76:24 90:17
corner [2] 4:15
4:17
correct [16] 9:22
36:13 36:19 37:2
37:14 40:8 45:23
50:9 82:15 82:20
84:1 85:4 85:5
91:23 119:12 122:11
correlation [1] 60:23
Cottrell [81] 17:19
18:1 18:2 18:12
33:24 35:20 36:5
36:14 36:20 36:23
37:3 37:5 37:8
37:16 37:24 38:3
38:19 38:23 39:6
39:19 40:1 40:9
41:2 42:6 42:12
42:21 42:25 43:9
43:15 43:23 44:10
44:16 44:18 45:7
45:17 45:24 46:5
46:11 46:16 46:22
48:2 49:23 50:5
50:10 52:3 53:10
54:13 54:20 55:3
55:20 56:1 56:12
56:16 56:21 56:25
57:3 57:9 57:13
57:19 58:9 58:13
59:8 60:2 61:4
66:17 67:10 68:12
68:16 68:21 69:2
69:5 69:9 69:13
69:17 69:21 99:25
101:17 107:8 108:2
111:1 111:1
couldn't [3] 75:10
95:2 95:5
Council [49] 1:7
3:9 4:5 13:23
15:7 15:11 16:23
28:20 31:12 32:5
36:22 41:25 44:11
45:10 48:18 50:8
51:1 51:2 52:13
52:19 63:22 71:8
74:7 79:5 79:10
79:21 80:16 81:3
83:22 89:16 90:15
93:4 95:24 96:4
96:6 98:10 103:1
103:4 103:8 103:12
103:23 106:16 108:20
108:23 110:5 117:12
120:3 120:20 121:7
Council's [3] 5:12
90:23 119:11
Councilman [4]
2:5 2:6 2:7
2:8
counsel [2] 77:17
97:23
Counties [1] 81:8
country [1] 24:10
County [11] 1:19
18:15 56:9 56:18
56:24 88:24 108:9

112:14 112:17 112:19
122:5
couple [2] 82:10
105:13
course [6] 74:25
75:3 98:21 119:17
120:8 120:14
court [10] 17:1
18:16 35:4 35:8
65:4 72:15 92:10
104:17 122:8 122:19
courtroom [2] 64:19
64:20
courts [1] 33:2
covered [3] 88:6
97:12 106:13
Crab [4] 110:8 110:11
110:12 110:19
crafted [3] 104:6
108:21 111:6
create [3] 43:3
77:23 104:2
created [9] 34:12
105:17 105:18 105:23
107:16 107:17 110:1
110:2 112:23
credibility [5] 48:24
49:9 49:12 59:24
80:7
credit [3] 52:12
52:23 52:25
criteria [13] 18:25
19:23 33:13 36:3
58:7 67:5 67:8
67:18 67:19 67:22
68:25 71:14 108:12
critical [1] 24:22
cross [1] 96:13
cross-examination [2]
33:25 48:21
cross-examine [4]
35:22 51:21 52:10
96:21
cross-examining [1]
101:17
culture [1] 53:22
currently [1] 58:1
curriculum [1] 17:21
customer [1] 28:16
customers [1] 28:21
cut [1] 5:3
D [2] 3:2 22:20
D-A-V-I-D-O-F-F [1]
94:9
daily [1] 15:24
damage [2] 24:25
47:9
damages [4] 83:3
83:6 83:10 83:12
dangerous [1] 24:23
darn [2] 110:11 111:3
data [1] 36:11
date [12] 9:15 20:8
20:22 23:16 38:25
39:1 60:8 62:13
78:7 78:11 78:12

119:14
dated [7] 7:12
76:25 77:20 78:10
79:3 79:6 80:16
Davidoff [4] 94:7
94:8 94:8 95:15
day [5] 9:17 9:18
26:11 38:7 122:15
days [1] 72:14
deal [14] 51:14 54:12
56:15 57:8 57:17
59:22 64:15 65:4
65:21 80:19 80:21
82:2 82:2 96:21
dealing [3] 12:5
12:6 20:11
deals [2] 41:22 85:1
debate [1] 107:3
December [1] 87:2
decibel [2] 86:23
87:18
decide [1] 106:3
decided [1] 95:2
decision [13] 44:9
45:15 52:20 52:23
55:2 57:21 65:13
65:14 71:2 72:13
81:23 107:24 119:11
decisions [2] 8:10
85:12
declaration [17] 5:5
5:11 6:20 10:20
19:5 19:7 34:11
35:1 35:3 36:18
38:5 40:17 73:11
75:18 82:13 104:8
120:6
decommission [2]
120:8 120:14
decommissioning [1]
119:16
decorum [1] 78:1
decreasing [1] 121:5
defective [3] 61:11
63:7 63:8
defer [3] 7:7 81:24
95:24
deficient [3] 51:17
51:19 62:17
defined [1] 24:15
definitely [1] 30:21
definition [1] 21:5
Del [3] 88:4 88:13
88:19
delay [2] 7:7
81:24
delete [1] 29:8
demand [1] 32:25
demonstrate [6]
21:13 26:1 33:12
55:5 57:4 58:2
demonstrated [2]
26:14 54:6
demonstration [6]
21:18 27:7 28:8
28:13 32:19 58:19

DeMoss [8] 4:13
5:5 6:1 31:18
45:7 82:13 86:22
90:21
DeMoss's [8] 4:13
18:17 81:16 81:21
83:20 84:19 86:1
91:7
density [2] 25:4
25:7
deny [4] 7:7 17:1
81:25 117:8
department [1] 91:13
Depends [1] 96:9
depositions [3] 100:15
100:23 100:25
deprived [1] 114:16
derived [1] 46:23
description [1] 24:8
deserving [1] 114:7
design [1] 32:7
designation [1] 76:10
designed [3] 21:7
32:1 71:15
destroy [1] 50:15
detail [2] 7:15
106:14
detailed [1] 32:5
deteriorate [1] 114:19
determination [1]
45:6
determine [4] 8:2
15:12 39:20 65:9
detriment [4] 5:16
5:20 6:16 83:9
detrimentally [1]
83:6
devalue [1] 114:24
developed [2] 83:23
84:1
developers [1] 67:12
developing [1] 6:14
development [17]
19:6 21:1 22:21
23:7 25:15 25:16
25:18 25:24 26:8
37:25 38:7 67:7
86:1 86:10 86:11
104:9 106:22
developments [1]
25:17
devices [1] 16:1
died [1] 94:25
differ [1] 82:22
difference [2] 112:10
112:11
differences [2] 76:6
106:3
different [9] 11:4
11:6 67:1 89:20
103:2 104:23 106:2
106:25 112:8
differently [2] 17:14
105:10
difficult [2] 87:13

91:17		Donald [8]	73:13	58:24		even [19]	10:24	excusing [1]	92:22
direct [7]	13:5	73:20 79:13	81:9	eliminate [5]	32:8	11:14 12:14	13:15	exercise [1]	73:4
14:11 47:4	47:25	95:7 98:6	102:10	101:8 109:19	115:9	14:2 14:4	41:9	exist [1]	20:15
48:4 50:20	71:10	102:12		117:2		59:2 72:15	72:21	existed [4]	20:21
directed [1]	25:11	done [12]	23:22	Eliminating [1]	113:23	75:10 77:24	84:9	23:16 38:7	38:25
direction [1]	53:6	23:23 33:8	44:18	elimination [1]	115:20	91:11 91:12	95:9	existence [1]	114:23
directly [2]	56:25	48:24 49:2	50:6	Elmore [1]	9:3	95:9 100:23	101:20	existing [7]	15:20
69:21		89:14 107:21	108:3	else [4]	41:11 94:6	evening [1]	5:2	20:8 23:7	25:4
Director [1]	2:10	108:13 108:15		108:9 114:8		event [4]	47:15	29:16 29:24	75:7
disagreeing [1]	43:1	Doney [1]	2:9	enacted [1]	35:18	60:10 99:12	118:24	exits [2]	9:5 9:6
disaster [1]	12:11	door [1]	92:12	encourage [1]	66:3	events [8]	30:1	expansion [1]	30:20
discouragement [1]	25:12	doubt [5]	98:5	encouragement [1]	25:11	99:7 99:13	99:15	expect [1]	11:21
discretion [1]	8:1	98:19 98:24	99:6	end [1]	88:13	113:24 116:13	120:22	expected [3]	12:9
discretionary [1]	13:22	116:15		ended [3]	3:10	121:4		13:17 29:18	
discriminate [1]	98:23	down [9]	5:3	enforce [2]	25:9	ever [5]	43:21 45:12	expended [1]	6:17
discrimination [1]	14:1	9:2 9:12	14:14	79:23		58:5 58:6	69:18	expensive [1]	81:13
discuss [4]	5:2	15:22 47:2	47:11	enforcement [1]	87:5	Everglades [2]	76:16	experience [3]	18:8
discussed [3]	4:20	49:16 70:14		enjoyment [1]	114:17	76:17		69:5 69:8	
86:12 105:1		dramatically [1]	102:7	enough [8]	27:19	every [11]	4:23	expert [11]	17:22
discussion [5]	15:1	draw [3]	70:7 73:10	30:14 36:1	44:3	22:25 26:3	37:22	18:15 40:13	48:22
15:21 67:2	85:25	76:4		58:10 66:13	73:25	38:16 46:16	52:22	48:25 49:10	52:6
109:24		dreaming [1]	81:1	109:11		63:7 75:22	78:6	60:22 61:24	62:1
disprove [1]	12:23	driven [1]	60:25	ensure [4]	28:7	everybody [2]	3:23	69:10	
disruption [2]	114:5	driveway [1]	60:18	31:25 67:17	74:9	4:1		expertise [5]	59:2
114:6		DT [1]	80:1	enter [1]	60:7	11:14 52:22	9:4	59:7 59:11	66:7
distinct [1]	56:14	due [9]	4:19 4:22	entered [1]	77:3	everything [4]	52:21	67:14	
distinctions [1]	76:5	4:24 5:23	30:18	entering [1]	60:6	89:8 91:25	97:19	experts [1]	102:15
distributed [1]	79:16	64:17 64:23	65:6	entertaining [1]	54:11	evidence [36]	7:1	explain [3]	9:6
district [27]	20:3	116:5		entire [4]	52:2	12:25 13:1	14:9	100:10 117:25	
21:4 21:6	22:6	during [5]	5:2	77:23 104:12	107:3	14:10 17:4	21:11	explained [1]	7:15
22:22 23:2	23:4	12:14 91:15	91:16	entirely [1]	119:17	28:19 28:23	30:15	explanatory [1]	70:24
23:19 27:1	27:25	122:12		entitled [3]	81:9	44:24 47:16	48:3	expose [1]	52:10
28:3 29:9	31:1	duty [1]	51:23	111:21 114:18		48:9 60:6	61:15	express [3]	88:6
31:6 38:9	38:20	each [10]	10:10 41:15	equal [18]	16:4	64:10 64:18	64:24	88:9 97:9	
39:8 39:22	41:5	41:16 41:18	41:23	16:10 16:11	16:13	65:8 65:10	65:24	exterior [1]	27:22
75:4 76:12	76:15	56:16 62:18	64:23	17:12 17:14	71:22	71:3 71:7	72:1	extremely [1]	78:2
76:18 84:2	103:14	76:6 105:25		72:4 72:10	72:22	74:1 75:1	77:18	F [2]	24:2 122:2
103:15 105:14		earlier [4]	6:10	74:15 75:23	75:25	107:13 107:23	107:24	face [2]	63:3 103:15
districts [3]	20:13	85:25 88:8	112:1	104:25 105:5	105:7	107:25 108:1	108:11	facilities [3]	24:24
33:22 76:13		earplugs [1]	79:18	105:8 106:5		111:13 111:20		25:21 119:15	
doctrine [1]	75:25	earth [1]	116:24	equally [3]	5:24	exam [1]	31:21	facility [2]	57:17
document [1]	22:24	easel [1]	73:12	15:9 76:2		examination [1]	72:7	92:3	
documentation [8]		economic [3]	26:24	equipment [2]	79:16	examined [1]	89:9	fact [8]	40:15 46:12
19:21 25:25	29:10	educate [1]	63:25	79:22		example [2]	35:6	46:20 56:23	61:16
36:2 38:6	45:6	educated [1]	63:24	equitable [1]	5:17	106:18		80:7 113:11	117:1
67:15 75:17		effect [6]	30:22	Esperante [2]	4:7	examples [2]	105:13	factual [3]	47:14
documentations [1]		103:23 111:23	85:14	essentially [1]	7:10	106:16		57:15 57:20	
44:20		effective [1]	20:8	establish [6]	13:16	except [1]	38:25	fail [1]	43:23
doesn't [16]	13:16	efforts [1]	50:14	14:2 47:23	47:24	exception [35]	5:13	failed [3]	47:23
16:20 32:15	33:10	egress [1]	27:10	62:7 62:14		6:24 19:5	19:13	70:5 70:21	
36:1 44:2	62:1	either [7]	21:12	established [2]	7:1	19:25 20:3	20:6	fails [1]	33:12
63:23 75:6	96:20	28:9 67:9	92:7	62:23		20:10 22:8	31:5	failure [1]	64:25
98:23 102:19	104:2	93:16 95:6	119:21	estate [6]	23:5	31:11 31:12	31:19	faint [1]	119:6
111:8 115:18	117:2	elaborate [1]	82:11	23:7 31:2	33:22	33:13 33:21	34:13	fair [4]	36:4 45:9
dogmatically [1]		electronic [2]	79:15	99:2 103:14		34:21 35:12	38:9	45:15 67:21	
120:12		element [12]	41:8	estimated [1]	29:14	38:24 63:15	68:10	fairly [3]	16:18
doing [5]	41:17	41:13 41:16	41:16	estoppel [1]	5:17	69:20 71:5	71:14	40:7 96:8	
59:25 84:23	102:9	41:18 41:24	46:17	ethnic [1]	11:5	75:3 84:7	88:10	fairness [1]	80:3
102:17		54:13 54:20	55:15	evaluated [4]	26:9	98:19 99:20	100:5	faith [4]	5:10 5:12
dollars [3]	5:22	56:2 56:10		32:21 33:4	55:21	108:8 108:18	111:8	5:18 6:16	
10:19 10:24		elements [5]	24:5	evaluation [1]	45:9	120:17		false [1]	92:13
		36:15 54:19	56:16			exceptions [6]	5:14	familiar [2]	53:13
						14:17 19:8	63:11	69:15	
						84:18 98:13		family [5]	22:6
						excess [1]	5:22		
						Excuse [1]	89:17		

22:19 23:5 31:2	26:6 95:3 122:5	gentleman [1] 99:3	Green [1] 72:2	helpful [2] 36:13
33:21	flow [1] 27:15	gentleman's [1] 85:18	Grimes [2] 14:21	97:14
far [7] 58:23 87:17	focus [1] 16:19	gets [1] 23:14	73:12	helps [1] 99:15
88:23 91:14 91:18	followed [1] 6:25	getting [2] 89:10	grounds [1] 51:21	hereby [1] 122:9
91:21 92:1	following [3] 68:4	102:17	group [1] 24:9	herein [1] 122:10
fashion [2] 44:21	71:8 72:11	give [13] 8:10 44:11	growth [1] 26:5	hereunto [1] 122:14
113:13	fool [2] 102:11 113:7	52:12 52:23 52:25	guaranteed [1] 73:5	hers [1] 85:13
favor [2] 56:20	fools [1] 102:4	65:23 80:7 81:22	guardian [1] 117:3	hey [2] 75:15 109:14
103:4	foot [2] 63:13 63:14	88:22 105:13 111:2	guardians [2] 117:4	high [1] 16:19
fear [3] 42:10 79:25	forget [1] 104:9	111:4 116:15	117:6	highest [1] 83:23
80:6	forgotten [1] 85:17	given [8] 19:18	guess [3] 13:4	highly [2] 16:18
features [2] 79:14	form [2] 19:10 37:19	19:22 31:6 58:6	43:11 55:18	16:18
118:24	formal [1] 64:18	65:18 107:1 118:6	guest [4] 80:25 81:7	hindering [1] 95:10
Federal [1] 73:6	former [1] 8:17	119:9	113:18 113:20	hinting [1] 119:15
feel [8] 34:6 55:8	forth [12] 4:20	Giving [1] 44:16	guests [1] 113:21	historic [5] 24:25
59:3 65:9 84:3	4:21 6:7 13:6	glare [5] 26:24 27:8	guy [1] 98:6	26:17 26:19 53:19
96:8 101:4 104:21	15:12 15:20 18:25	27:23 84:8 84:14	guys [1] 48:19	54:15
feeling [2] 39:3	19:25 35:10 68:25	goal [2] 46:17 53:11	H [1] 27:10	historical [1] 76:9
96:12	87:6 119:25	goals [9] 53:9 62:25	Half [1] 91:22	history [3] 53:22
feet [2] 63:12 88:25	fortitude [1] 10:16	63:1 63:2 63:4	hand [2] 103:24 122:14	54:2 54:9
felt [2] 55:4 100:20	fortune [1] 102:20	63:8 66:7 66:16	handle [1] 57:7	hit [1] 100:22
ferret [1] 65:11	forum [2] 64:17	67:5	happen [8] 11:22	hobby [5] 81:13
few [3] 69:25 82:6	forward [1] 65:3	Gold [1] 81:7	43:7 43:18 43:18	81:15 81:20 81:21
94:15	found [3] 71:6	120:8 120:14	43:22 106:23 107:21	82:3
Fields [1] 4:7	71:6 78:17	gone [2] 62:16 98:10	114:11	home [15] 78:5
file [1] 72:14	four [8] 37:13 37:23	good [17] 3:7	happened [2] 35:15	79:11 81:16 81:22
filed [6] 5:6 77:1	38:16 39:11 90:16	5:10 5:12 5:18	60:10	82:3 82:21 83:25
77:2 77:21 78:9	117:20 118:14 118:15	6:16 11:16 11:20	happens [2] 57:12	86:5 86:7 87:3
101:6	Frances [2] 88:3	18:1 33:20 42:13	91:13	88:15 89:10 91:12
fills [1] 116:16	88:19	44:7 44:8 44:10	happy [4] 47:20	94:13 94:20
final [2] 71:21 80:17	frankly [2] 33:19	69:7 88:1 99:21	72:16 95:24 100:21	honest [2] 53:18
finality [2] 7:23	80:14	109:25	14:14	85:15
8:10	free [2] 92:5 115:21	government [4] 5:19	harass [1] 14:14	hope [1] 12:8
finally [3] 13:4	frequent [1] 94:18	6:5 85:3 95:1	harassed [1] 8:19	hopefully [1] 73:3
75:25 80:13	frequently [1] 8:20	governmental [1] 18:4	harmed [1] 71:18	hopes [1] 5:9
find [5] 31:13 31:15	Friday [1] 1:20	graduate [1] 18:6	harmony [1] 27:24	host [1] 22:16
61:7 63:20 63:21	frightened [1] 61:2	grant [7] 31:13 57:22	Harris [9] 5:24	hotel [1] 80:24
finding [2] 48:5	front [3] 64:7 92:6	84:16 108:17 110:14	6:2 6:11 83:15	hour [2] 91:15 95:23
79:12	116:3	111:22 112:20	83:18 84:3 84:20	hours [1] 49:5
findings [3] 7:3	full [4] 26:11 41:6	granted [8] 34:13	85:1 85:18	house [5] 63:13
17:4 71:6	41:14 96:24	106:24 107:7 108:19	health [3] 21:9	63:14 99:2 99:7
fine [5] 98:22 99:2	full-time [1] 87:3	111:9 111:9 111:10	28:7 71:16	116:4
109:19 114:9 114:9	fullest [5] 11:14	114:12	hear [9] 19:20 26:12	however [6] 20:7
finish [1] 75:19	11:20 11:23 12:1	granting [3] 31:12	52:12 64:19 64:20	72:24 98:8 103:8
finished [1] 13:5	12:15	33:13 88:9	91:11 96:24 109:5	104:1 120:2
finishes [1] 86:21	fully [1] 54:14	Graves [52] 4:3	110:21	hundred [1] 112:8
fire [2] 9:6 27:16	fun [1] 102:13	4:4 4:5 9:13	heard [29] 12:19	hundreds [1] 10:24
firm [5] 4:6 59:2	functions [1] 94:13	9:16 9:21 10:14	13:3 13:7 19:11	hypothetical [1] 49:10
88:2 97:3 100:22	fundamental [3] 24:3 73:2 73:5	33:24 39:13 47:3	26:11 27:3 27:18	hypotheticals [2] 48:21 48:23
first [16] 4:3 7:10	24:3 73:2 73:5	47:18 47:20 50:16	27:19 28:25 29:1	idea [2] 43:16 75:8
10:18 14:23 72:12	further [8] 8:16	50:17 50:19 59:14	30:22 32:22 37:17	identified [2] 31:23
75:6 77:6 80:14	31:19 40:16 69:3	59:15 59:19 59:24	52:18 52:24 76:7	38:5
91:9 97:25 105:7	90:10 95:9 114:15	69:23 69:24 70:17	92:20 97:22 98:21	ignore [1] 84:7
106:9 111:15 113:3	117:11	70:19 77:9 78:7	99:1 99:3 99:6	illumination [1] 60:7
113:5 117:19	future [4] 43:8	78:10 78:25 79:3	99:8 99:25 100:3	Ilyinsky [8] 2:4
fit [3] 32:13 60:14	50:25 88:15 119:14	80:2 80:9 80:13	100:8 101:13 107:4	48:12 48:16 49:1
60:24	G [2] 3:2 26:23	81:6 82:5 82:7	108:10	49:5 49:11 88:21
fits [1] 21:5	gates [3] 86:8 92:6	82:16 82:20 82:24	hearing [20] 6:10	98:18
five [4] 25:15 90:15	gee [2] 75:12 111:1	83:5 83:11 83:25	10:2 13:10 13:12	imagination [1] 80:19
90:17 91:3	general [1] 114:5	84:5 84:25 85:11	14:23 16:5 16:16	imagine [2] 79:10
five-minute [1] 67:25	generally [3] 27:1	86:3 86:21 86:25	45:10 58:16 63:11	114:25
fix [1] 110:7	67:15 96:3	87:21 87:23 87:24	72:3 74:4 74:18	
FL [1] 1:19		88:7 99:25 106:17	97:18 98:22 106:9	
flat [1] 111:22		great [1] 99:17	114:21 117:15 122:10	
Florida [4] 8:13		greater [1] 30:16	122:12	
		greatest [1] 84:2	heck [1] 98:6	
			held [1] 74:5	

immediate [1] 47:1	113:10 121:2	interesting [2] 87:7	judicata [7] 7:14	8:8 8:12 72:10
immediately [3] 4:14 85:13 113:2	indicate [1] 119:10	111:25	7:19 7:20 7:23	73:1 76:23 88:2
impact [12] 21:14	indicated [1] 30:3	interestingly [1] 73:25	9:25 14:14 106:13	97:3
22:2 27:24 28:2	indicating [1] 74:7	interference [1] 86:24	judicial [1] 8:11	laws [1] 26:5
30:25 31:24 32:9	indication [1] 40:23	interrupt [1] 64:6	Julie [1] 88:1	lawsuit [1] 80:1
42:17 55:2 89:5	individual [1] 41:23	into [9] 15:3 72:1	June [1] 15:2	lawyers [4] 64:7
112:18 116:1	ineffective [1] 79:18	74:1 77:1 77:3	jury [1] 73:5	64:13 100:22 102:14
impacted [2] 114:14	inescapable [1] 108:6	77:17 97:11 104:7	justification [2] 29:8 119:20	lay [1] 64:25
114:15	inferred [1] 61:12	118:23	justify [1] 36:16	learn [4] 46:24 54:22
impacts [18] 21:17	inflow [1] 25:8	introduce [1] 17:18	K [1] 28:12	55:22 55:24
25:24 26:9 26:25	informant [2] 80:25	introduced [1] 60:13	K-O-L-I-N-S [1] 97:2	least [3] 40:3 79:21
27:9 27:20 31:21	81:7	introduction [1] 7:4	Katz [1] 97:3	101:18
32:6 33:4 33:8	information [24] 22:23 27:19 33:14	invades [1] 78:5	keep [2] 64:4 117:15	leaving [1] 111:23
42:15 43:2 45:2	36:12 43:7 43:10	invalid [1] 75:23	Ken [1] 4:5	left-hand [2] 60:19
55:21 88:15 103:18	44:1 44:4 44:6	investigation [1] 79:22	Kendig [2] 88:1	91:19
104:3 107:6	44:12 44:16 44:20	investment [1] 99:5	key [4] 14:13 20:23	legal [2] 74:10 88:5
impeach [1] 49:7	45:9 45:14 46:25	involve [1] 72:22	27:18 31:8	legally [1] 25:3
important [12] 4:12	52:18 56:20 57:16	involved [3] 23:13	kind [3] 64:24 104:3	legislature [1] 6:3
5:4 5:24 19:19	57:25 58:10 58:12	69:9 69:10 69:19	112:1	length [1] 113:19
42:18 70:13 71:19	66:10 111:2 111:4	74:8 90:18 90:19	kinds [1] 103:18	Leslie [1] 2:6
71:24 71:25 75:5	ingress [1] 27:10	100:24	Kings [2] 90:16	Lesly [1] 2:3
102:2 108:15	inherently [3] 22:5	irrelevant [3] 97:13	91:6	less [3] 28:20 114:2
impose [3] 32:7	22:11 41:4	99:18 107:5	knew [2] 70:16	114:7
104:17 119:11	injury [2] 21:22	isn't [12] 9:19	104:22	let [23] 7:4 7:17
imposed [4] 104:23	22:2	37:1 41:16 48:13	knowing [3] 72:24	9:6 12:19 14:20
108:22 110:4 110:6	inordinate [3] 6:5	59:16 59:20 59:21	73:8 73:24	39:9 58:4 65:4
impossibility [2] 62:6 107:15	85:2 85:7	65:24 81:20 81:20	knowingly [1] 107:17	70:11 70:23 71:12
impossible [10] 39:20	inordinately [1] 84:19	111:14 111:17	knowledge [3] 59:1	75:15 75:18 77:15
41:9 58:22 63:16	insisted [1] 120:20	issue [15] 5:4	62:3 83:20	92:4 100:10 101:5
63:18 79:13 79:17	install [1] 16:1	16:6 16:10 16:10	known [4] 98:16	101:23 107:9 109:13
91:20 108:14 112:23	installation [1] 89:23	16:11 16:19 23:14	98:16 103:20 114:10	113:3 116:22 117:25
improper [1] 64:25	instance [2] 13:20	64:14 83:3 83:10	knows [1] 52:4	letter [17] 7:12
improve [1] 10:16	13:23	83:12 113:1 113:14	Kolins [22] 95:19	9:15 9:20 73:25
improved [2] 95:8	instead [2] 95:10	119:8 119:17	95:21 95:22 96:5	74:14 77:6 78:8
99:5	118:13	issued [2] 25:18	96:9 96:19 96:24	78:15 78:23 79:3
improving [1] 95:11	Institute [1] 18:14	25:21	97:1 97:2 97:3	80:14 80:15 89:18
in. [1] 3:25	instructed [1] 59:4	issues [5] 5:1	98:19 117:10 117:13	89:19 90:18 91:22
Inaudible [1] 88:3	insufficient [3] 36:1	7:24 17:20 17:24	117:18 117:24 118:11	92:21
Inc [2] 73:18 73:23	36:6 36:8	65:21	118:20 119:1 119:7	letters [9] 7:10
including [3] 30:6	integrity [5] 50:15	item [1] 71:13	119:19 120:10 120:25	7:11 72:1 77:16
97:22 103:19	51:15 51:16 53:21	items [2] 51:11	L [1] 28:15	78:9 78:18 78:21
incompatibility [4] 22:9 42:7 42:15	54:16	62:16	lack [2] 21:18 84:12	80:3 87:15
43:3	intelligence [1] 52:13	its [25] 11:13 11:19	lady [3] 90:14 95:20	level [5] 25:14 25:22
incompatible [7] 22:5 22:12 22:18	intelligent [4] 45:15	11:23 12:1 12:15	114:9	33:7 46:21 118:6
23:3 23:9 41:4	72:25 73:8 73:24	16:13 20:19 24:23	Lago [3] 88:4 88:14	levels [1] 26:9
103:16	intended [4] 22:21	24:25 26:18 28:16	88:20	life [1] 114:14
incompetent [2] 111:12 111:18	24:12 41:7 77:10	32:6 57:17 58:19	land [9] 24:8 29:22	lift [1] 29:2
inconsistent [1] 32:20	intensification [1] 31:4	78:2 78:6 84:2	42:4 46:20 47:5	lifted [1] 101:22
incorrect [2] 51:22	intensity [11] 22:13	84:22 98:23 103:13	63:12 63:17 84:22	Lifting [1] 28:23
91:22	24:9 24:11 29:24	103:15 104:7 105:20	89:6	light [3] 29:25 42:2
increase [4] 32:23	101:10 101:16 102:9	106:1 112:19	landscaping [2] 84:11	55:19
55:13 101:10 115:21	108:20 113:15 113:17	itself [1] 67:23	84:13	lighting [1] 27:22
increased [3] 29:24	114:4	Jack [1] 2:7	lanes [1] 60:20	lights [1] 35:10
30:18 119:14	intensive [1] 25:5	29:6	large [2] 21:15 103:14	likely [1] 25:13
increasing [2] 55:8	intent [6] 20:20	job [2] 48:13 76:3	last [9] 3:13 18:10	likewise [1] 95:3
121:5	23:1 23:4 23:10	John [1] 2:12	20:5 37:17 47:1	Lilja [3] 92:18 92:18
indeed [15] 11:23	29:1 29:21	joined [2] 16:4	56:1 67:2 68:18	93:11
65:5 66:24 73:1	interest [5] 11:7	16:16	100:1	limit [2] 22:13 107:20
75:8 99:3 102:8	31:14 31:17 45:1	judge [7] 22:11	later [3] 65:4 96:22	limitation [1] 55:10
104:19 104:25 106:2	81:19	44:4 44:12 48:14	110:21	limitations [10] 22:15
109:25 110:2 113:9	interested [3] 8:19	48:18 64:1 100:5	latest [1] 79:15	23:24 28:1 30:21
	10:2 13:11	judgement [1] 66:22	law [9] 4:6 6:13	30:24 31:7 31:9
				33:23 38:5 74:22
				limited [2] 78:4

limiting - moving

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Palm Beach Town Council

116:12	Madam [4]	4:4	87:10	88:13	88:16	measure [1]	112:19	middle [1]	3:14
limiting [4]	47:21	59:15	93:15	89:24	92:12	94:24	measures [1]	mightily [1]	103:2
23:2	27:21	42:9	made [26]	95:11	98:22	99:2	mediation [1]	million [1]	5:22
limits [5]	57:24	108:23	14:15	14:16	99:14	105:24	115:3	millions [1]	10:18
106:25	107:2	112:3	20:19	32:23	117:4		meet [23]	mind [4]	48:19
line [3]	10:8	63:20	50:14	51:7	marina [4]	89:18	19:1	19:23	21:19
63:22			71:23	82:10	89:20	89:24	24:5	24:20	25:22
list [9]	20:6	20:6	83:16	84:4	Massey [5]	97:6	26:4	26:14	30:10
20:19	59:4	59:5	85:16	88:7	97:10	113:7	33:10	33:15	36:2
59:8	59:21	78:25	100:12	103:20	114:7	114:6	36:3	44:2	54:7
109:17			109:10	110:17	Massey's [2]	113:1	56:7	58:3	58:7
listen [1]	58:15		111:25		117:6		63:4	64:9	67:18
listening [1]	94:14		magazine [2]	80:24	materials [1]	80:25	70:21		
little [8]	20:11	63:21	81:7		matter [11]	8:3	meeting [5]	1:7	15:13
66:25	91:15	99:9	maintain [3]	24:16	8:22	13:22	3:3	3:9	74:5
106:1	109:2	112:2	30:7	54:2	81:4	92:19	81:3		
liturgy [1]	62:16		maintained [1]	54:25	96:25	97:20	meets [3]	18:22	misrepresent [2]
live [5]	90:5	90:13	make [41]	7:2	102:21		33:12	54:14	12:4
92:12	104:5	117:7	10:14	11:18	matters [1]	99:24	member [1]	95:16	85:25
lived [1]	116:16		17:23	38:11	MATTOX [2]	122:8	members [31]	4:5	86:15
lives [2]	113:1	114:6	45:14	46:20	122:19		11:10	14:4	14:6
living [1]	11:3		48:19	53:1	Maurice [1]	81:10	34:18	37:14	37:23
Lo [1]	70:11		59:21	62:2	maximum [2]	86:1	38:16	39:12	60:23
loading [1]	27:12		65:13	66:11	86:11		78:5	90:2	96:6
local [2]	80:23	85:9	69:24	70:15	may [22]	7:17	97:23	98:24	103:3
located [9]	20:4		75:10	76:20	20:12	31:5	106:18	107:22	112:7
21:4	21:7	21:24	85:12	87:4	32:13	34:22	112:9	113:21	116:10
22:22	31:25	41:5	93:8	93:13	47:6	51:6	117:11	117:20	118:4
71:15	76:15		94:16	96:14	55:14	61:21	118:14	118:15	118:22
location [3]	28:5		104:2	107:24	69:25	70:24	119:3	120:23	121:7
103:13	105:25		114:2	115:17	74:5	77:15	membership [15]	11:3	11:6
locations [1]	28:17		119:23		84:15	120:25	11:3	11:6	11:8
logical [1]	49:24		makes [4]	10:15	maybe [9]	14:18	15:15	22:16	30:20
long [5]	75:2	96:2	99:15	110:9	27:17	27:17	32:24	49:24	55:10
96:25	110:13	114:9	makeup [1]	14:5	96:5	110:18	55:13	106:25	107:19
longer [12]	11:1		making [5]	5:17	111:13	111:13	118:6	118:18	119:1
12:5	20:2	20:12	29:8	45:2	Mayor [10]	2:4	memberships [2]	29:11	29:15
21:2	21:4	38:8	95:9		4:4	48:12	memo [2]	76:24	
38:21	38:24	39:8	man [1]	17:8	49:1	49:5	77:10		
116:12	116:25		manage [1]	95:6	88:21	98:18	memory [3]	97:17	
longstanding [1]			managed [1]	5:3	McClendon [3]	2:8	104:19	118:22	
100:19			management [1]	26:5	61:23	120:25	mention [2]	4:19	
look [8]	17:1	45:5	Manager [1]	2:9	McDonald [29]	2:7	6:10		
54:9	68:17	70:11	Manager's [2]	78:12	34:1	34:4	mentioned [11]	4:11	
72:9	84:6	88:23	79:7		65:15	66:1	5:25	9:14	40:2
looked [1]	29:7		mandated [2]	26:5	69:12	69:14	45:21	46:2	51:11
looking [3]	7:20		26:6		69:22	70:10	56:5	76:9	85:18
14:21	39:3		manner [1]	44:18	82:7	82:9	117:23		
lot [10]	13:4	27:18	manor [1]	17:8	82:22	83:1	mentioning [1]	46:6	
30:22	52:18	65:14	many [17]	10:17	83:13	84:1	merely [1]	51:21	
90:22	91:9	96:13	12:10	14:4	85:4	85:22	merit [1]	26:20	
98:21	99:1		60:17	60:20	89:1	96:7	meritorious [1]	106:6	
loud [1]	91:11		78:17	79:14	96:17		merits [1]	58:18	
loudest [1]	79:14		94:12	94:12	McDonald's [1]	86:17	mess [2]	110:10	110:15
low [3]	24:9	25:4	97:12	97:12	MCLENDON [15]		met [20]	9:18	27:17
108:20			115:14		9:13	9:17	28:9	28:14	41:16
lowering [1]	25:6		map [1]	88:22	35:14	50:22	41:19	54:3	54:5
lump [1]	101:11		Mar-A-Lago [43]		62:15	78:7	55:6	56:9	56:19
lunch [4]	95:23		4:14	4:16	117:14	117:22	63:2	63:4	66:19
95:25	121:10	121:14	11:1	11:16	118:17	118:25	66:24	67:4	67:20
M [1]	30:13		38:2	38:4	mean [10]	13:21	69:1	74:10	108:11
M-A-N-O-R [1]			39:5	39:12	43:14	43:19	metaphor [1]	109:3	
17:8			39:24	40:7	83:8	96:20	meter [2]	86:23	
ma'am [1]	35:23		40:24	42:1	110:16	111:7	methodology [1]		
			53:15	54:3	meaningless [1]		59:12		
			73:18	73:23	79:18		microphone [2]	90:3	
			75:12	76:8	means [3]	7:16	93:21		
			78:21	81:12	39:23	85:7			

Moyle [1] 97:3	55:17 55:22 56:5	55:18 84:7 84:13	observation [1] 90:24	103:6
Mrs [94] 3:5 3:7	56:15 56:18 56:22	86:24 87:5 87:6	obvious [1] 16:22	opposed [4] 34:21
3:13 3:23 4:13	57:2 57:6 57:10	87:15 89:10 91:10	obviously [4] 44:1	76:15 103:20 113:4
4:13 5:5 6:1	57:15 58:4 58:11	114:4	47:12 85:24 93:16	opposition [1] 88:9
10:12 14:21 14:23	59:1 59:10 59:25	noisy [1] 78:2	occupancy [2] 87:1	optional [1] 32:14
15:5 15:14 18:17	60:12 60:19 61:1	noncommercial [1] 24:11	87:3	order [7] 3:4 19:6
31:17 33:24 34:5	61:9 61:21 62:20	nonconforming [1] 20:14	Ocean [1] 113:2	36:2 41:3 45:14
34:17 34:18 35:19	65:17 66:5 67:9	none [6] 21:19 38:22	October [3] 1:20	104:9 106:22
45:7 47:7 47:18	68:8 68:9 68:13	38:23 68:24 99:24	76:25 77:8	orders [3] 25:15
49:14 50:17 52:1	68:17 68:23 69:3	109:1	odor [2] 26:24 27:8	25:18 26:8
52:3 52:11 53:4	93:9 93:13 96:20	nonetheless [2] 12:2	off-island [1] 28:17	ordinance [9] 20:9
59:14 59:23 60:16	101:16 107:8 110:25	13:15	off-site [2] 32:6	20:18 20:22 23:17
60:22 61:3 61:17	National [4] 50:12	nonresidential [1] 29:23	119:24	25:10 30:4 35:18
67:25 68:6 69:23	51:23 53:13 54:1	nor [2] 25:25 34:15	off-street [1] 27:11	39:1 79:24
70:11 70:16 77:3	nature [6] 22:7	Norm [1] 91:5	offer [1] 58:24	ordinances [2] 38:14
78:14 78:14 78:20	31:5 64:2 64:2	northwest [2] 4:15	offered [1] 95:1	64:13
80:2 80:11 81:5	108:5 112:24	4:17	office [5] 4:8	organized [1] 75:2
81:16 81:21 82:5	nauseam [1] 107:4	nose [1] 109:4	4:9 34:14 78:12	original [3] 35:12
82:7 82:13 83:20	necessarily [1] 64:21	note [2] 65:2 79:19	79:7	78:24 108:18
84:19 85:23 86:1	necessary [5] 24:20	noted [1] 49:14	often [1] 67:12	originally [1] 102:25
86:6 86:14 86:18	25:22 30:10 36:13	notes [1] 122:12	omission [1] 5:19	others [4] 15:16
86:22 87:20 87:23	40:22	nothing [7] 41:17	omissions [1] 33:7	75:16 100:3 115:14
89:17 89:20 89:25	need [18] 17:16	51:13 53:2 64:8	omitting [1] 79:25	Otherwise [1] 22:10
90:6 90:8 90:21	21:16 22:11 37:12	89:12 91:13 116:24	once [3] 47:21 83:22	ought [2] 55:15
91:1 92:16 92:20	41:21 44:12 46:9	notice [1] 68:13	109:3	56:2
93:8 93:16 93:20	49:25 50:2 53:18	noticed [1] 70:13	one-to-four [2] 37:12	ounce [1] 102:23
93:25 94:4 94:12	63:23 65:19 81:18	noting [1] 77:15	118:7	outlined [1] 19:2
94:25 95:12 95:15	98:8 112:12 117:1	notwithstanding [1] 101:14	ones [1] 111:9	outlines [1] 32:10
95:19 95:21 96:2	120:2 120:4	nuisance [3] 87:6	only [17] 17:19 24:18	outset [2] 103:5
96:6 96:15 96:23	needed [3] 101:4	87:11 87:11	25:20 25:21 30:9	103:6
97:10 113:1 113:7	112:13 116:24	number [20] 24:5	31:3 34:19 73:17	outside [4] 50:20
114:6 114:7 117:6	needs [4] 24:12	28:10 29:17 51:18	76:1 76:14 78:5	58:23 65:25 66:2
municipal [1] 30:18	24:20 30:11 36:3	60:9 97:22 100:14	81:11 96:10 105:14	over [8] 28:11 50:13
municipality [1] 85:9	negative [5] 31:24	101:20 103:19 105:6	105:19 111:21 115:8	94:10 98:11 98:21
music [2] 79:15	43:13 43:17 107:9	nuisance [3] 87:6	onto [1] 91:18	102:19 109:8 112:2
94:21	negatively [2] 104:4	87:11 87:11	open [9] 45:22 45:25	overall [1] 25:1
must [11] 3:17	104:4	number [20] 24:5	46:3 46:6 46:10	overnight [2] 76:16
12:24 15:8 19:8	neighbor [3] 11:17	28:10 29:17 51:18	46:15 89:15 92:8	76:18
33:4 37:12 41:7	41:1 109:25	60:9 97:22 100:14	121:12	overruled [1] 48:17
46:13 55:21 71:2	neighbor's [1] 45:1	101:20 103:19 105:6	opening [2] 82:9	overseer [3] 74:9
muster [1] 10:16	neighborhood [7] 21:23 31:22 32:2	111:12 113:18 113:20	83:15	74:17 74:18
myself [3] 67:16	53:23 54:16 77:24	113:21 113:22 113:23	operate [3] 12:9	overuse [1] 24:23
76:24 115:14	104:5	117:25 118:22 120:19	57:23 77:25	own [9] 24:1 29:15
N [2] 3:2 30:14	neighborhoods [1] 26:19	120:22	operated [5] 12:7	72:13 74:17 75:17
name [8] 4:5 79:25	neighboring [1] 22:3	numbers [2] 54:25	21:8 71:15 75:1	91:12 94:20 106:1
85:18 90:4 90:12	neighbors [3] 27:3	112:10	113:13	108:5
91:5 94:8 97:1	33:9 35:10	O [2] 3:2 30:14	operates [1] 58:1	owner [3] 73:20
Nancy [2] 4:13	never [8] 43:17	object [4] 47:22	operating [1] 109:18	73:23 75:6
Natale [91] 3:7	43:18 43:22 43:22	48:1 48:7 59:15	operation [2] 12:7	owners [3] 8:14
35:21 35:23 35:24	105:3 111:1 114:13	objected [1] 89:23	35:8	21:15 67:11
36:10 36:17 36:21	nevertheless [2] 101:4 105:2	objection [11] 39:14	operational [1] 32:7	owns [1] 88:11
36:24 37:4 37:7	105:3 111:1 114:13	44:15 44:25 47:3	opinion [27] 6:12	P [2] 3:2 30:14
37:9 37:18 38:1	114:21	50:16 50:19 66:14	13:14 18:21 18:23	p.m [2] 1:20 3:10
38:10 38:22 39:3	new [6] 11:7 15:5	77:16 89:18 89:19	18:23 21:2 24:4	P.S [1] 79:25
39:9 39:15 39:23	25:16 35:4 35:11	objectionable [1] 63:21	33:19 34:7 35:25	package [1] 41:21
40:2 40:12 41:15	58:3	objections [4] 49:14	43:8 43:9 43:25	packaging [1] 67:12
42:10 42:16 42:24	newspaper [1] 92:24	64:16 64:20 65:2	44:2 47:17 55:25	page [3] 10:8 15:13
43:5 43:11 43:16	next [4] 79:3 84:8	objective [5] 24:14	58:16 62:17 62:24	74:6
44:5 44:14 44:17	92:12 92:17	24:15 25:15 26:16	63:1 63:3 63:5	paid [1] 102:17
45:4 45:12 45:19	night [4] 3:13 37:17	30:6	66:18 67:19 67:24	Palm [20] 1:6
46:1 46:8 46:12	68:18 100:2	objectives [1] 66:6	68:24 85:1	1:19 4:8 4:10
46:19 46:24 47:6	Nine [1] 26:16	objector's [2] 9:2	oponents [1] 11:15	18:10 18:13 18:15
47:8 49:17 49:18	nobody [1] 111:5	obligation [4] 100:20	opportunity [6] 3:15	37:4 68:11 69:12
50:1 50:7 50:11	noise [14] 26:24	106:2 106:7 117:7	9:22 45:13 77:12	78:2 78:11 79:5
50:23 51:6 52:1	27:4 27:8 29:25	obligations [1] 109:2	93:14 100:18	79:7 81:7 90:13
52:5 52:25 53:7			oppose [2] 12:22	
54:8 54:18 54:22				

paper - property

Condenselt™

Palm Beach Town Council

97:4 108:8 108:8	permits [2] 25:16	45:22 46:4 46:7	Post [3] 94:12 94:25	previously [2] 4:11
122:5	25:17	46:18 50:6 51:10	95:12	32:21
paper [10] 68:14	permitted [16] 8:17	52:6 53:9 53:20	posture [1] 74:11	primarily [2] 24:12
80:4 93:9 93:10	19:24 20:2 20:6	54:4 58:20 64:3	potential [10] 27:5	67:10
93:15 93:18 93:24	20:9 20:15 20:19	64:4 64:12 65:20	29:21 31:21 31:24	principal [1] 28:16
94:1 94:3 94:5	21:3 21:6 30:17	66:9 67:6 84:10	32:6 43:1 47:9	principle [2] 102:18
paragraph [2] 70:8	30:25 31:2 31:6	116:5	53:11 88:15 90:10	102:21
80:17	35:12 38:8 38:24	planner [3] 18:9	potentially [3] 6:12	prior [7] 25:18 25:20
pardon [3] 12:19	person [4] 61:24	67:3 76:3	84:18 85:20	34:11 34:12 35:5
92:18 98:18	98:16 99:21 99:21	Planners [1] 18:14	power [1] 50:13	69:7 119:10
park [4] 116:2 116:8	personal [1] 98:4	planning [12] 2:10	practically [1] 91:19	private [14] 6:6
116:18 119:22	personally [3] 97:25	8:8 17:20 17:24	practice [1] 67:10	23:8 23:15 23:19
parking [34] 22:16	98:3 114:13	18:3 18:5 18:7	practicing [1] 18:9	24:9 24:10 29:12
24:23 27:5 27:12	persons [5] 24:13	18:15 33:20 40:21	preceding [1] 9:19	30:1 39:7 39:10
32:23 33:1 37:13	28:22 29:13 29:17	42:13 55:11	preclude [1] 15:10	40:15 46:20 74:23
38:16 39:11 49:20	perspective [2] 55:12	plans [1] 44:20	predecessor [1] 16:13	76:10
49:22 49:25 50:2	97:11	play [1] 98:8	predicate [2] 47:14	probability [1] 120:24
50:9 50:25 51:4	pertaining [1] 8:21	plays [1] 98:7	64:25	probably [6] 54:8
54:24 54:24 55:8	pertinence [1] 118:9	please [18] 3:11	predicated [1] 34:20	65:13 66:1 83:23
55:14 84:8 101:20	petitioner [1] 119:13	3:20 49:16 52:12	predict [2] 112:4	111:6 115:3
101:22 113:25 115:23	phalanx [1] 102:14	52:24 61:7 68:6	112:5	problem [6] 9:8
116:10 116:17 117:15	phone [2] 79:19	68:8 69:23 70:14	predicted [1] 12:10	15:6 58:8 109:15
118:19 119:8 119:20	80:4	78:20 90:2 90:9	predominantly [2] 24:17 30:8	109:18 110:22
119:24 120:19 121:5	Phonetic [5] 8:8	91:2 93:21 94:6	prefer [2] 68:15	problems [8] 27:5
part [17] 3:24 7:5	77:19 78:18 80:15	95:21 115:18	95:24	55:23 68:19 91:9
13:22 40:10 42:22	81:10	pleased [1] 113:5	preferred [1] 104:13	103:24 109:16 110:1
46:3 49:21 53:16	photograph [2] 60:3	plight [1] 90:22	premiered [1] 70:25	110:2
56:3 67:2 72:8	61:5	plow [1] 52:20	prepare [1] 51:2	procedure [1] 92:20
72:8 78:15 83:13	photographed [1] 94:24	Poinciana [1] 75:3	prescient [1] 112:5	procedures [1] 6:24
95:18 104:24 113:25	photographer [1] 94:9	point [16] 9:13	presence [1] 100:10	proceeding [4] 65:5
particular [4] 23:12	photographers [2] 94:22 94:22	11:19 12:4 17:18	present [8] 10:6	93:2 99:19 99:19
23:24 29:9 94:14	photographing [1] 94:11	60:1 64:22 67:22	38:17 53:7 58:10	proceedings [2] 8:11
parties [11] 7:25	photographs [1] 61:19	70:23 71:12 71:21	64:10 66:10 107:13	68:4
8:19 8:23 22:3	phrase [2] 48:21	74:20 77:11 84:5	117:21	process [9] 4:20
73:19 73:22 78:2	49:9	85:23 104:20 111:25	presentation [8] 5:3 10:7 17:23	4:22 4:24 5:21
79:14 91:10 94:12	phrased [1] 82:23	points [3] 69:25	38:11 59:13 68:24	5:23 6:7 64:18
94:20	pick [1] 41:8	88:5 88:7	96:25 121:11	64:23 65:7
party [3] 11:7 64:23	picture [2] 60:5	police [4] 30:18	presented [13] 7:2	processed [1] 69:18
96:19	91:21	87:16 91:12 109:17	20:24 29:7 29:10	produce [1] 59:7
pass [1] 12:14	pictures [1] 94:23	policies [3] 19:17	31:16 33:14 44:6	produced [1] 37:10
passed [1] 6:3	piece [5] 56:19 63:12	53:19 66:8	45:10 57:25 65:22	professional [5] 18:23 33:19 47:17
patronage [1] 25:14	63:17 68:13 88:11	policy [9] 7:18	77:11 79:1 103:11	66:7 67:3
pattern [1] 25:6	pinch [1] 100:22	8:6 24:22 25:9	presenting [1] 64:14	profile [1] 16:19
patterns [1] 25:6	place [12] 22:14	44:8 44:11 46:17	presents [1] 61:24	projections [2] 11:2
Paul [2] 2:4 91:23	30:16 37:13 38:16	54:3 54:15	preservation [9] 26:18 50:15 51:12	12:12
paying [1] 60:4	81:13 92:5 92:6	political [1] 16:18	52:8 53:9 53:14	promoted [1] 71:18
pedestrian [1] 27:14	111:15 113:5 115:2	poll [1] 96:3	53:15 53:19 54:12	pronounce [1] 7:22
people [27] 11:4	116:4 122:10	Pollitt [1] 78:14	51:14	proof [8] 12:20
11:5 12:10 15:8	placed [2] 8:14	Pollock [1] 109:13	preserving [1] 53:22	59:20 70:4 70:6
57:18 60:20 60:24	73:12	poppcock [1] 102:1	president [7] 2:3	70:19 70:22 107:16
87:10 91:3 92:11	placing [1] 15:11	population [2] 29:13	4:4 14:24 47:21	108:10
94:18 95:4 97:22	plan [48] 8:15 11:2	29:19	59:15 73:18 93:15	proper [2] 44:25
97:24 102:4 103:19	18:25 19:16 24:3	portion [1] 28:16	presume [1] 51:3	48:1
104:5 113:21 113:24	24:6 24:7 24:8	position [7] 17:10	presuming [1] 13:4	properly [3] 23:25
116:2 116:8 116:11	25:19 26:7 26:22	40:24 41:20 52:9	presumption [3] 66:20 67:20 86:16	41:3 45:3
116:13 116:18 119:3	29:3 30:5 31:20	61:25 70:3 70:4	prevent [2] 8:13	properties [10] 26:25
119:25 121:3	31:20 32:6 32:11	positive [2] 32:1	24:22	26:25 27:9 27:25
per [4] 117:20 118:14	32:12 32:16 32:20	56:19	prevents [1] 84:21	28:2 40:16 43:4
118:15 119:3	33:6 33:17 34:1	possess [2] 59:11	previous [2] 69:6	46:25 47:10 115:5
percent [1] 28:21	34:7 34:13 34:24	62:2	120:20	property [49] 4:13
performed [1] 41:7	35:7 35:8 36:15	possessing [1] 31:24		4:15 4:16 4:18
perhaps [4] 53:4		possibility [2] 56:6		5:7 6:4 6:6
79:23 98:16 99:13		80:20		8:14 19:7 21:14
permanent [1] 29:18		possible [8] 19:19		21:23 25:1 27:11
permanently [1] 5:9		25:7 58:5 62:8		37:1 37:24 54:9
permit [2] 39:20		66:11 79:21 108:16		61:11 67:11 69:10
75:11				

75:6 79:17 82:14	121:12	83:9	recess [2] 68:3	6:19 7:3 82:14
82:19 83:19 83:21	purchase [1] 82:19	Rampell [23] 3:5	121:14	82:17 82:18 82:19
84:4 84:19 85:2	purchasing [2] 5:7	3:6 10:4 10:7	recognized [4] 6:21	82:25 83:2 83:4
85:8 85:10 85:12	82:14	10:14 15:22 15:24	6:22 20:7 61:14	83:7
86:2 86:11 86:19	pure [2] 101:7 101:25	19:12 61:6 72:4	recognizing [1] 81:18	relief [3] 8:25
86:20 86:24 88:11	purpose [8] 8:9	72:6 74:1 91:23	recollection [2] 119:6	79:20 113:15
91:7 95:1 95:5	22:21 23:1 31:20	93:12 93:17 93:19	119:6	rely [2] 6:15 6:19
95:8 99:6 99:22	51:7 51:20 61:7	93:20 93:23 94:2	recommendations [1] 53:3	remain [1] 121:12
101:11 114:17 114:19	61:10	101:14 104:10 104:19	reconvene [1] 3:8	remark [1] 100:12
114:25 115:3 115:4	purposes [1] 32:4	109:12	record [23] 4:6	remember [4] 45:24
proposal [13] 24:5	pushed [1] 103:5	Randolph [14] 2:12	5:6 5:7 7:13	52:13 60:5 110:9
36:16 43:2 45:2	put [17] 9:7 12:17	15:9 15:17 48:15	14:10 15:2 15:3	remind [3] 4:12
49:21 53:8 53:10	15:3 48:3 60:17	48:18 49:3 49:7	50:18 61:4 65:2	removal [1] 22:1
56:4 57:1 57:4	61:5 61:6 61:14	49:13 64:6 76:25	76:23 77:1 77:4	remove [4] 20:18
57:22 57:23 58:3	63:13 67:3 71:10	77:5 77:14 92:21	77:5 77:10 78:16	20:25 29:21 121:2
proposed [6] 21:8	74:1 86:3 86:23	115:14	78:22 80:11 93:6	removed [4] 20:5
26:4 28:15 30:16	87:18 89:15 108:23	rather [3] 34:20	97:1 97:20 104:22	102:21 115:1 118:13
33:16 71:15	puts [1] 112:1	120:22 121:5	106:11	render [7] 18:21
proposes [1] 32:19	qualifications [2] 17:22 28:24	ratio [3] 37:13 118:7	records [1] 77:18	22:9 36:8 57:21
proposition [1] 89:13	qualified [1] 18:14	rational [2] 8:16	recreation [1] 30:1	58:16 66:17 67:23
pros [1] 94:15	qualifies [2] 21:3	113:25	recurring [1] 8:21	rendered [2] 20:14
prospective [1] 3:21	21:19	Rattkauf [1] 8:8	redevelopment [1] 25:16	repeat [2] 14:14
protect [4] 23:6	quality [1] 114:14	Raymond [1] 97:4	reduce [1] 115:23	78:7
26:18 45:1 81:18	quantifiable [1] 107:18	reach [3] 17:4	reduction [1] 113:24	repeated [1] 8:20
protected [3] 21:10	quarrel [2] 57:11	52:22 81:23	reference [4] 27:23	repeatedly [1] 8:23
71:17 71:19	57:13	reaches [1] 52:20	68:9 76:7 90:14	repetitive [1] 100:7
protecting [1] 29:23	quasi [1] 8:11	read [11] 8:7 10:9	referred [1] 100:11	report [1] 122:9
protection [16] 16:4	question [24] 17:15	10:11 16:3 69:15	referring [2] 36:11	reporter [3] 92:25
16:11 16:14 17:12	34:6 39:16 48:7	79:11 82:13 82:24	81:11	122:8 122:19
17:15 71:23 72:4	48:16 50:24 51:7	83:2 92:24 93:14	refreshed [1] 97:17	represent [1] 88:3
72:10 72:22 74:16	51:20 53:5 53:5	reading [2] 10:1	Refuse [1] 28:12	representation [3] 61:16 61:19 82:12
75:23 76:1 105:1	53:24 56:1 60:1	20:17	regard [2] 16:24	representations [2] 51:8 66:13
105:5 105:8 106:5	61:22 61:23 64:24	ready [1] 3:5	58:19	representative [1] 96:18
protections [1] 116:23	66:5 67:1 69:4	real [1] 109:14	regarding [3] 53:20	representatives [2] 111:18 115:12
provable [1] 110:24	87:4 92:22 93:22	realistically [1] 63:2	54:15 58:17	representing [5] 67:11 67:13 74:19
prove [14] 12:23	113:14 114:3	reality [5] 51:22	regional [2] 18:6	96:19 97:5
12:24 12:24 23:20	questioned [1] 10:4	57:11 61:12 108:6	25:14	request [5] 32:12
43:13 43:17 43:21	questioning [1] 63:20	108:7	regulate [1] 23:25	33:1 34:8 87:4
62:11 87:11 87:13	questions [16] 34:18	realize [1] 70:12	regulation [2] 29:5	89:15
107:9 107:11 108:2	35:19 41:18 48:14	realized [1] 81:12	37:25	requested [4] 34:15
111:7	49:10 55:9 66:14	really [11] 7:13	regulations [4] 20:1	34:25 36:8 113:16
proved [4] 111:11	69:3 80:19 82:6	14:12 16:17 60:16	23:18 59:17 67:7	require [2] 34:24
111:11 111:14 111:20	82:8 87:20 96:10	62:19 72:9 73:21	reiterate [1] 106:14	119:18
proven [1] 62:12	101:18 117:12 121:8	80:4 102:8 109:10	reiterated [1] 24:14	required [16] 10:20
proves [2] 110:3	queue [1] 57:8	110:14	relate [1] 53:21	26:15 27:13 32:16
provide [4] 23:4	quickly [2] 19:18	reason [14] 16:21	related [6] 23:18	32:18 34:1 34:8
36:1 64:17 120:5	100:10	22:25 26:3 34:23	31:11 48:4 56:25	34:14 42:3 47:24
provided [7] 27:12	quiet [1] 114:17	43:11 51:25 57:10	57:3 120:21	55:20 57:5 59:17
57:19 58:15 59:5	quietly [1] 78:1	57:13 61:21 73:15	relates [6] 22:15	62:18 67:16 106:21
71:5 116:5 120:21	quite [4] 22:17 33:18	91:8 98:5 98:24	26:17 37:1 41:24	requirement [5] 10:23
proving [2] 43:16	83:14 100:11	113:12	57:16 105:11	45:23 46:3 56:21
108:11	quote [1] 81:10	reasonable [3] 15:12	relating [1] 85:8	101:21
provision [8] 14:22	R [2] 3:2 122:2	96:1 113:13	relative [5] 6:4	requirements [17] 5:14 16:2 18:19
37:10 39:4 39:10	RAA [9] 20:4 23:19	reasonably [1] 29:17	48:9 69:25 71:22	30:6 30:15 32:10
39:17 45:20 52:7	39:7 75:9 76:12	reasons [4] 7:6	relevance [1] 43:24	33:11 33:15 38:13
provisions [2] 25:10	76:15 103:14 105:14	72:12 105:6 111:12	relevant [3] 15:23	45:25 46:6 46:10
public [26] 3:14	radio [1] 81:2	rebutted [1] 114:22	17:24 94:17	56:14 71:9 71:10
3:15 3:25 5:6	raise [4] 83:2 83:11	rebutting [1] 107:24	reliance [3] 5:18	74:10 84:12
7:18 8:6 21:8	106:7 107:19	recall [2] 46:6	5:23 6:18	
21:15 24:24 25:21	raised [6] 16:6	83:4	relied [17] 5:5	
31:14 31:17 44:7	16:7 17:15 53:5	recalled [2] 15:14	5:10 5:11 5:16	
44:10 71:16 77:17	65:22 83:15	15:20	5:19 6:15 6:16	
78:16 78:22 81:18	raises [2] 55:9	received [10] 71:1		
85:17 90:2 95:16		72:1 76:25 77:2		
95:17 97:24 117:5		77:17 77:21 78:23		
		79:6 80:16 87:14		

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Palm Beach Town Council

requires [10] 24:16 29:4 31:11 31:19 42:13 44:19 45:17 76:1 111:4 118:12	79:4 79:8 79:24 80:8 88:24 91:6 Robert [2] 2:9 2:10 role [1] 67:17 roll [2] 3:10 3:12 Ron [1] 97:2 room [2] 85:25 114:2 rule [1] 8:9 rules [8] 46:15 59:16 64:18 64:23 98:7 98:7 98:9 105:21 rush [1] 91:15 S [1] 3:2 S-C-A-I-F-E [1] 88:4 sacrifice [1] 101:3 safest [1] 65:7 safety [5] 21:9 27:14 27:23 28:7 71:16 same [22] 7:24 7:24 8:21 8:24 8:24 8:25 12:4 15:8 16:7 16:25 17:17 23:14 68:18 68:22 68:22 74:13 74:24 89:1 89:21 105:9 105:11 115:22 Samuel [1] 2:8 satisfactory [2] 28:7 28:20 satisfied [2] 111:2 111:5 save [1] 77:22 saw [6] 57:6 60:3 60:4 80:24 81:11 91:3 says [10] 30:23 32:16 37:11 37:14 37:21 39:10 52:7 73:15 74:1 81:14 Scaife [4] 88:3 88:19 89:19 89:20 scale [1] 24:11 schedule [3] 20:1 23:12 29:6 scheduled [1] 100:14 science [1] 18:4 scientifically [1] 62:12 scope [5] 40:10 50:20 53:16 58:23 66:2 Seaman [1] 88:2 season [1] 91:17 seats [1] 68:6 Second [2] 11:1 72:21 Secondly [2] 97:10 105:21 section [4] 5:14 31:10 32:10 68:10 seeing [1] 77:5 seek [1] 101:2	79:4 79:8 79:24 80:8 88:24 91:6 Robert [2] 2:9 2:10 role [1] 67:17 roll [2] 3:10 3:12 Ron [1] 97:2 room [2] 85:25 114:2 rule [1] 8:9 rules [8] 46:15 59:16 64:18 64:23 98:7 98:7 98:9 105:21 rush [1] 91:15 S [1] 3:2 S-C-A-I-F-E [1] 88:4 sacrifice [1] 101:3 safest [1] 65:7 safety [5] 21:9 27:14 27:23 28:7 71:16 same [22] 7:24 7:24 8:21 8:24 8:24 8:25 12:4 15:8 16:7 16:25 17:17 23:14 68:18 68:22 68:22 74:13 74:24 89:1 89:21 105:9 105:11 115:22 Samuel [1] 2:8 satisfactory [2] 28:7 28:20 satisfied [2] 111:2 111:5 save [1] 77:22 saw [6] 57:6 60:3 60:4 80:24 81:11 91:3 says [10] 30:23 32:16 37:11 37:14 37:21 39:10 52:7 73:15 74:1 81:14 Scaife [4] 88:3 88:19 89:19 89:20 scale [1] 24:11 schedule [3] 20:1 23:12 29:6 scheduled [1] 100:14 science [1] 18:4 scientifically [1] 62:12 scope [5] 40:10 50:20 53:16 58:23 66:2 Seaman [1] 88:2 season [1] 91:17 seats [1] 68:6 Second [2] 11:1 72:21 Secondly [2] 97:10 105:21 section [4] 5:14 31:10 32:10 68:10 seeing [1] 77:5 seek [1] 101:2	seeking [2] 8:14 8:24 seem [1] 62:15 seemed [2] 103:4 103:6 seeming [1] 101:1 seems [3] 16:17 90:21 114:1 seen [4] 22:17 23:9 84:9 117:16 sense [9] 30:23 30:23 40:3 55:11 85:20 102:23 110:23 115:15 115:17 sentence [1] 81:11 September [19] 7:9 7:12 9:4 9:15 9:21 10:1 13:11 47:25 52:19 72:3 77:21 78:10 78:13 79:4 79:6 79:7 80:16 80:17 97:18 series [2] 104:6 104:12 serve [1] 24:12 serves [1] 118:23 service [4] 25:23 26:9 28:6 28:12 services [5] 24:19 24:24 25:21 30:10 30:18 set [7] 11:2 18:25 19:25 23:12 68:25 107:10 122:14 seven [1] 29:12 several [5] 5:22 9:25 63:24 69:10 95:4 shall [7] 25:20 26:18 28:18 28:19 31:13 31:13 71:6 Shaw [10] 2:6 4:1 70:9 70:12 70:15 87:21 87:22 88:25 89:4 100:11 17:20 She'll [1] 84:23 she's [2] 62:16 Sheehan [1] 97:4 should [20] 7:7 7:7 32:17 43:2 55:12 55:17 56:10 59:5 61:13 65:1 71:24 74:21 75:13 93:5 95:11 111:5 116:6 116:8 117:2 119:13 shouldn't [1] 16:21 show [4] 60:9 105:9 116:8 119:21 showing [1] 60:16 shown [2] 56:8 106:16 shows [1] 33:6 side [1] 91:7 sides [1] 64:14 signature [1] 73:14	signed [3] 73:13 73:16 79:8 signs [4] 27:22 73:17 73:19 73:20 similar [1] 40:25 similarly [3] 8:23 76:2 76:19 simple [5] 16:24 17:6 17:9 17:11 101:7 simply [10] 7:23 23:8 76:4 80:9 84:25 85:16 85:19 87:12 109:14 118:1 since [7] 15:5 15:7 35:17 52:18 74:8 83:13 84:23 Sincerely [1] 80:22 single [6] 22:6 22:19 23:5 26:13 31:2 33:21 Single-family [1] 83:25 sit [2] 70:14 81:25 site [21] 31:20 31:20 32:5 32:11 32:12 32:16 32:20 33:3 33:5 34:1 34:7 34:13 34:24 35:7 35:8 36:15 50:6 53:20 84:10 116:5 119:23 sited [1] 31:25 sitting [4] 49:15 63:10 79:11 115:13 situated [2] 76:2 76:19 situation [1] 10:17 situations [2] 105:9 105:11 situs [1] 99:12 six [1] 115:13 skin [1] 120:1 skip [1] 28:10 skipping [1] 15:23 sleep [2] 79:12 79:17 slip [1] 91:15 Smith [63] 2:3 3:5 3:7 3:13 3:23 10:12 34:5 34:17 34:18 35:19 47:7 47:18 49:14 50:17 52:1 52:11 53:4 59:14 59:23 60:16 60:22 61:3 61:17 67:25 68:6 69:23 70:11 70:16 77:3 78:14 78:20 80:2 80:11 81:5 82:5 82:7 85:23 86:6 86:14 86:18 87:20 87:23 89:17 89:25 90:6 90:8 91:1 92:16 92:20 93:8 93:16 93:20 93:25 94:4 95:15 95:19 95:21 96:2 96:6 96:15 96:23	117:10 121:7 smoothly [2] 12:7 12:9 so-called [1] 105:5 social [8] 11:9 11:11 30:1 74:23 76:11 76:14 94:22 115:6 somebody [2] 7:20 75:8 somebody's [1] 80:6 somehow [2] 14:18 83:16 someone [5] 43:12 43:20 60:25 62:10 66:9 something [16] 43:17 43:21 44:14 50:3 50:23 53:12 61:11 62:4 75:9 85:8 86:15 107:10 107:12 115:11 116:22 118:8 sorry [3] 9:21 46:11 86:14 sort [5] 51:5 54:10 65:1 66:12 66:12 sorts [1] 12:12 sound [2] 44:8 79:23 South [2] 1:19 113:2 space [13] 39:11 45:22 45:25 46:3 46:6 46:10 46:15 61:13 86:18 117:20 118:14 118:15 120:5 spaces [15] 101:20 101:22 113:25 115:23 116:11 116:17 117:16 118:8 118:13 118:19 119:9 119:11 119:18 119:20 120:19 spacious [1] 23:6 speak [9] 3:17 3:19 3:24 4:2 90:9 91:3 91:4 95:17 95:20 SPEAKER [4] 88:19 89:3 89:8 89:21 speakers [2] 3:21 90:10 speaking [5] 67:5 67:6 70:17 92:17 94:6 special [45] 3:8 5:13 5:14 6:23 14:17 19:4 19:8 19:13 19:25 20:2 20:6 20:10 22:8 31:5 31:11 31:12 31:19 33:13 33:20 34:12 34:21 35:12 38:9 38:24 63:11 63:14 68:10 69:20 71:4 71:13 84:6 84:17 88:10 98:13 99:20 100:5 108:7 108:18 111:8 113:24 116:13 118:24 120:17
--	---	---	---	---	--

20:22 121:4	strategy [1]	110:20	superb [1]	76:3	42:22 47:4 47:4	thrown [1]	113:9
specialty [1] 18:5	street [4]	24:23	support [4]	24:19	48:4 50:21 51:8	throws [1]	91:10
specific [7]	40:14 91:18	113:2	30:10 56:23	88:7	57:20 65:3 76:5	thus [1]	113:5
39:16 53:14 53:21	streets [4]	88:12	supported [1]	72:11	76:20 86:3 114:21	time [29]	16:3 19:18
57:22 58:12 107:13	88:21 90:15	90:17	supposed [1]	62:21	119:8	20:16 26:13	65:4
specifically [1]	strongly [1]	33:14	supposing [1]	35:15	textbook [1]	69:16 77:6	77:11
spell [1] 7:21	structures [3]	25:5	sure [11]	9:19 11:24	thank [20]	77:22 78:6	83:24
spend [1]	26:19 27:11		45:2 53:1 61:19		34:17 49:18 69:22	90:23 94:14	94:24
spending [1]	struggled [3]	103:2	80:11 86:10 99:8		79:24 82:4 82:5	94:25 96:1	97:7
Spied [1]	103:9 103:9		104:2 104:14 117:25		85:22 87:23 87:24	102:16 103:10	104:10
spoke [1]	stuck [1]	109:4	surprisingly [1]	109:11	90:25 91:1 92:16	104:16 105:20	106:8
spoken [1]	stuff [1]	91:22	surrounding [1]	47:10	93:7 95:12 95:14	110:13 114:10	114:24
spokesman [1]	stupid [2]	111:13	suspect [2]	98:12	95:15 117:9 117:10	115:22 121:12	122:10
staff [10]	111:17		116:13		121:13	timely [1]	44:21
29:16 32:12 32:14	subdividing [1]	95:5	sustain [1]	104:15	thanks [1]	times [3]	12:14
44:11 45:8 57:17	subject [4]	16:2	swear [1]	119:5	their [26]	15:8 119:9	
76:21 113:23 120:20	74:21 74:24	105:15	sworn [8]	3:18	13:3 13:5 14:3	titled [1]	80:18
stamp [2]	submit [5]	13:2	3:20 3:22 3:25		32:2 40:16 40:19	today [21]	3:16
78:12	28:19 46:9 46:13		90:6 90:9 90:11		47:10 47:25 48:3	3:19 4:3 9:3	
stamped [2]	59:17		95:20		48:22 66:23 72:7	9:9 69:6 69:7	
80:17	submitted [11]	7:11			72:10 75:17 94:20	75:9 77:6 81:3	
Stan [1]	18:19 19:11 19:21		sympathy [1]	101:2	103:20 105:5 106:7	89:22 90:1 97:7	
stand [3]	21:12 22:24 32:17		T [2]	122:2 122:2	106:21 106:21 107:23	97:21 100:1 100:3	
90:9 91:4	32:18 44:21 58:15		table [1]	80:25	108:2 108:5 109:14	100:11 100:13 100:15	
standard [8]	67:17		taken [3]	68:3	117:20	101:18 113:14	
21:20 22:10 26:22	submitting [3]	44:24	86:19 122:12		theirs [1]	together [2]	67:4
35:16 35:17 38:19	67:12 96:15		takes [3]	84:17 87:1	themselves [4]	101:11	
39:2	subsequent [1]	65:5	96:25		72:19 107:11 112:24	told [2]	87:16 106:17
standards [28]	Subsequently [1]	105:17	taking [4]	11:24	theoretical [1]	tolerated [1]	60:15
19:2 19:4 19:14	105:17		42:8 90:21 91:18		thereby [2]	too [4]	90:18 100:7
19:15 19:18 23:21	substance [2]	36:7	talk [1]	97:24	29:23	110:15 118:25	
23:25 25:23 26:2	58:18		talked [2]	40:4	therefore [6]	took [1]	118:23
26:4 26:10 26:15	substantial [14]	12:25	110:8		60:20 62:22 108:16	totally [3]	50:20
30:12 39:7 39:21	14:10 17:3 21:1		talking [6]	15:4	109:19 111:21	99:18 101:9	
39:21 40:1 44:3	21:22 22:2 26:24		17:6 17:7 42:16		thereof [1]	tourism [1]	25:7
59:6 59:12 66:12	27:8 63:20 65:10		62:25 81:3		thereon [1]	towards [1]	25:11
66:19 66:21 66:23	71:2 71:7 99:4		talks [1]	6:4	Thereupon [5]	Town [73]	1:6
74:24 100:4 112:19	108:10		Tampa [1]	4:8	3:12 3:21 90:10	1:7 2:9 3:9	
standpoint [1]	successful [1]	99:16	target [1]	118:18	121:14	6:9 7:15 10:3	
stands [1]	such [13]	18:20	technical [5]	25:2	they've [8]	10:15 12:21 13:22	
started [2]	21:1 31:13 31:25		33:11 36:6 36:10		14:7 28:14 87:7	15:6 15:7 15:15	
121:9	32:7 32:8 35:4		58:18		106:10 111:5 112:23	15:18 15:19 18:20	
state [9]	40:20 51:2 64:24		television [1]	79:12	116:16	19:2 19:21 20:4	
46:14 50:17 53:12	71:5 107:19 109:25		telling [2]	41:25	thinking [1]	20:19 24:12 24:17	
60:11 73:6 95:3	sufficiency [2]	33:11	110:10		thinks [1]	24:20 25:2 26:18	
122:5	58:17		tendered [1]	98:12	third [3]	28:20 28:22 29:13	
stated [8]	sufficient [3]	29:15	tennis [9]	33:2	74:20	30:7 30:11 31:22	
23:9 29:20 36:14	55:14 58:2		35:4 35:8 40:6		thirdly [2]	32:3 32:4 35:17	
47:12 54:21 93:1	suggest [13]	13:8	40:10 40:14 42:1		106:11	37:4 45:10 46:9	
122:10	16:20 22:25 77:14		105:15 105:22		though [3]	46:13 48:13 52:17	
statement [9]	87:12 93:3 106:18		tent [2]	109:4 109:9	100:23 101:20	53:23 54:17 64:2	
81:9 82:9 83:16	107:3 109:21 111:17		terms [2]	29:7	thought [9]	66:22 69:11 69:12	
92:14 93:8 93:13	112:9 112:10 116:25		terrific [1]	98:6	60:6 72:17 76:3	69:20 71:1 71:7	
93:17 96:14	suggested [5]	87:8	test [3]	9:24 16:25	81:1 83:1 86:15	73:22 74:5 74:19	
stater [1]	87:9 101:18 108:13		48:24		89:17 97:17	77:12 78:4 78:11	
states [1]	109:22		testified [6]	48:2	thousand [2]	79:5 79:7 79:21	
stating [3]	suggesting [1]	44:23	48:8 48:8 48:10		112:9	88:22 89:1 90:22	
61:3 80:14	suggests [3]	33:14	65:25 114:20		thousands [1]	94:10 94:18 98:14	
statistics [1]	73:16 110:25		testify [2]	47:5	three [5]	98:17 103:12 103:18	
stay [1]	113:20		47:7		52:14 73:21	104:4 104:25 108:8	
staying [1]	summarize [4]	7:17	testimony [23]	13:3	78:8 88:21 102:24	114:9 114:14 117:5	
stays [2]	14:22 77:20 77:22		14:3 14:11 14:20		through [10]	Town's [6]	16:2
stenotype [1]	summary [5]	17:21	19:11 19:22 21:13		41:15 51:18 52:21	25:10 25:22 29:12	
still [3]	35:24 70:3 70:20		26:1 26:11 41:23		62:16 70:2 72:9	29:18 115:4	
116:24	79:1				82:1 91:24 110:25	Town-serving [2]	
stood [1]	sums [1]	6:17			throughout [2]	25:11 28:24	
					98:10	traffic [22]	12:12
					throwing [1]	15:18 22:15 26:12	
						27:14 27:15 27:23	

29:25	30:19	40:21	unconstitutional [3]	108:21	109:2	115:10	watch [1]	79:12	21:21	22:1	22:20
89:9	91:14	103:17	72:18 74:2 74:15	115:21	115:25	120:6	water [4]	5:1	23:11	23:21	23:23
107:4	107:6	107:21	under [10]	8:12	used [11]	11:13	88:13 89:3	89:6	24:2	25:2	26:23
109:16	110:1	112:6	8:25 10:20 48:23	11:19 11:23	12:1	12:15 35:17 54:10	Watson [5]	90:4	27:7	27:12	27:20
112:18	113:22	114:4	50:6 72:13 83:24	83:5 99:7	109:3	90:4 90:7	90:12	90:12	28:2	28:15	28:22
transcript [5]	7:21		84:20 109:4 120:6	119:10					30:16	30:21	30:24
10:1	10:8	10:10	understand [26]	3:23	uses [20]	20:10 20:12	way [23]	13:14 20:11	31:13	31:17	31:18
10:13			5:1 32:11 34:5		20:19 20:21	22:8	29:1 33:5	40:20	32:8	33:7	42:8
transcription [1]			35:24 38:10 40:12		23:8 23:15	24:9	43:20 44:22	45:1	43:17	47:20	49:21
122:11			41:20 41:21 42:16		24:11 25:12	25:13	50:14 55:2	55:24	50:12	52:20	55:13
transition [1]	25:4		43:6 52:11 52:16		25:20 31:23	31:25	64:11 64:15	65:6	58:3	61:9	65:17
treasured [2]	115:4		53:4 62:20 64:1		33:21 35:4	38:4	65:7 77:13	101:24	71:17	71:17	71:18
115:5			64:3 64:16 68:23		41:7 68:10	71:6	102:18 104:7	107:5	71:19	77:3	77:9
treat [2]	15:8	17:13	77:11 80:5 85:6				110:16 115:25	120:4	78:14	78:19	84:12
treated [4]		17:16	87:3 92:2 98:15		using [1]	68:15	WAYNE [2]	122:8	86:21	87:2	91:2
75:22 76:2	105:10		101:5		usually [1]	94:20	122:19		96:3	96:24	98:5
treating [1]	102:3		understanding [4]		utility [1]	28:6	ways [5]	4:22 85:21	106:24	107:1	107:6
treatment [2]	16:6		50:10 76:14 118:1		utilize [1]	46:20	98:12 113:18	120:1	111:20	114:11	114:14
16:11			118:3		utilizing [1]	84:22	we'd [2]	68:6 107:19	114:16	114:19	117:7
trepidation [1]	80:6		understood [1]	97:14	valid [2]	66:21 67:20	we've [9]	5:2	121:12		
trial [3]	63:25 73:4		Underwood [1]	114:20	valuations [1]	47:11	30:13 76:7	89:9	willing [1]	16:1	
100:15			undue [1]	8:13	value [5]	21:22	98:9 99:1	99:6	wise [2]	44:9	110:5
tried [1]	98:9		unfair [1]	62:13	46:25 47:10	84:22	99:25 111:16		within [5]	24:7	
tripods [1]	9:8		unfettered [1]	115:10	114:19		wear [1]	14:14	67:14 106:8	113:12	
trips [1]	113:22		unfinished [1]	92:23	values [2]	25:1	Weidman [3]	77:19	113:20		
true [4]	93:4 99:10		unique [2]	22:18	47:5		78:8 78:18		without [16]	8:17	
109:23 122:11			103:11		van [1]	113:23	Weidner [1]	61:15	23:2 28:1	28:23	
truly [2]	63:6 97:15		University [1]	18:7	variety [1]	113:18	welfare [4]	21:9	33:6 33:22	39:19	
Trump [24]	73:13		unlimited [2]	107:1	various [3]	15:4	71:16 117:5	117:6	41:13 57:23	77:16	
73:17 73:20 73:23			113:19		105:17 120:1		weren't [3]	70:14	101:1 112:20	115:22	
80:18 81:9 81:14			unmitigated [1]	12:10	verbal [1]	87:15	72:16 89:22		120:8 120:14	120:16	
91:10 95:7 97:25			unrealistic [1]	113:8	vested [2]	75:7	West [5]	4:8 4:9	witness [11]	17:19	
98:6 98:11 99:4			until [5]	20:16 87:1	75:20		18:10 18:12	97:4	49:8 49:9	49:12	
99:9 102:11 102:12			94:25 95:7 111:3		veto [1]	50:13	what's [12]	13:25	52:16 52:17	59:24	
104:11 108:25 111:16			unusual [1]	20:11	VI [1]	1:9	20:24 31:1	31:16	65:19 96:17	99:8	
114:8 115:8 115:12			uphold [1]	8:15	Via [3]	88:4 88:13	32:17 36:7	48:23	122:14		
115:19 117:3			upkeep [1]	95:2	88:19		49:1 58:15	59:21	witnesses [3]	47:23	
rump's [1]	81:15		upon [4]	8:20 34:9	viewed [1]	31:4	69:8 89:14		97:24 109:22		
trust [7]	50:12 51:23		37:19 70:25		views [1]	97:9	whatever [7]	40:21	wiz [1]	75:12	
53:14 54:1 115:11			urban [2]	18:3	violate [2]	52:12	66:8 102:15	104:21	won't [4]	13:21	
115:15 117:7			18:6		53:8		109:5 109:6	119:25	58:13 58:13	110:18	
ry [8]	4:25 7:17		use [89]	5:6 5:11	violated [1]	116:14	whatsoever [2]	107:2	wondered [1]	15:15	
43:13 96:21 97:7			6:20 10:20 15:5		violates [3]	26:21	115:16		wondering [1]	84:23	
97:10 100:6	101:5		19:6 19:8 19:24		28:25 52:7		whenever [1]	105:16	Woodbridge [6]		
ying [10]	47:13		19:25 20:1 20:3		violation [1]	74:15	whereof [1]	122:14	77:19 79:4	79:8	
47:22 48:6 59:23			20:6 21:2 21:3		Virginia [1]	18:7	Whereupon [1]	68:3	79:24 80:8	90:16	
62:14 63:25 64:1			21:7 21:21 22:4		virtually [2]	79:17	whether [16]	14:24	word [3]	52:12 71:20	
65:21 79:11 121:6			22:6 22:20 23:5		113:15		17:1 18:21	48:9	83:6		
uesday [1]	100:16		23:11 23:12 23:21		vital [1]	17:21	55:4 57:21	60:8	wording [1]	34:10	
urn [3]	48:6 60:19		23:24 24:2 24:8		voice [2]	44:15	63:6 66:15	66:18	words [2]	74:18	
1:19			25:5 26:3 26:23		44:25		67:2 78:15	99:20	101:23		
urns [1]	110:16		28:1 28:6 28:15		Volume [1]	1:9	99:22 106:4	120:3	work [6]	12:18 18:6	
V [1]	91:11		28:21 29:5 29:9		73:8		while [3]	14:20	40:11 40:19	110:18	
visting [1]	51:5		29:23 29:25 30:1		voluntary [2]	72:25	94:11 99:9		110:18		
o [11]	24:14 24:15		30:16 30:17 30:22		votes [1]	103:8	Whit [2]	90:4 90:12	worked [2]	110:5	
0:6 42:5 56:12			30:24 30:25 31:4		wait [1]	96:7	whoever [2]	3:19	110:6		
3:10 73:20 88:12			31:5 34:11 34:21		waive [1]	72:21	17:15		working [2]	102:16	
7:8 105:9 119:2			35:1 35:3 35:13		waived [2]	73:7	whole [5]	41:21	117:1		
de [5]	24:18 30:9		36:18 38:6 38:8		106:10		90:22 109:8	109:17	world [1]	52:2	
2:24 36:16 74:9			38:9 38:20 38:25		waiver [2]	72:25	114:13		world's [1]	115:5	
ically [1]	20:13		39:19 39:22 40:4		wants [5]	28:18	Wiener [3]	14:23	worn [2]	9:2 49:15	
timately [1]	104:7		40:5 40:17 40:25		91:23 108:25	114:2	15:5 15:14		worry [1]	101:24	
abrella [2]	112:2		41:3 41:24 42:4		115:9		will [72]	3:15 4:16	worse [1]	115:7	
3:17			42:9 42:19 42:23				4:25 10:2 10:9		worth [4]	10:19	
attainable [1]			47:22 66:23 71:14				10:11 11:18	12:21	80:4 80:10	80:12	
9			73:11 82:13 83:24				13:11 14:22	21:9	wouldn't [11]	37:18	
			84:2 85:10 92:2				21:13 21:17	21:19	39:25 40:23	43:12	
			92:4 95:4 101:10						44:5 51:2	73:3	
			101:16 104:8 106:4								

98:24 98:12 101:19
 116:1
 writes [1] 80:15
 written [2] 73:25
 74:14
 wrote [1] 91:23
 Wyatt [11] 2:5
 13:10 63:10 65:23
 78:23 86:22 87:14
 88:18 119:7 120:6
 120:13
 X [1] 62:11
 Y [1] 62:11
 year [2] 20:5 47:1
 years [5] 18:8 18:11
 63:11 94:10 102:24
 yesterday [20] 3:9
 5:25 6:11 26:12
 29:1 30:22 37:11
 47:25 52:19 57:7
 57:20 58:1 60:3
 92:19 92:20 97:21
 100:12 100:17 107:4
 117:24
 yet [1] 61:25
 yours [1] 81:16
 yourself [2] 92:22
 96:16
 Z [1] 62:11
 zero [1] 106:15
 zip [1] 106:15
 zoning [40] 2:11
 8:9 8:15 20:3
 20:13 21:3 21:6
 22:6 23:1 25:10
 29:9 31:1 31:6
 33:18 33:22 35:18
 36:25 37:3 37:5
 37:9 37:21 38:9
 38:13 38:13 38:17
 38:20 39:4 39:8
 39:22 41:4 51:9
 64:13 75:8 75:21
 85:9 103:14 105:14
 105:16 105:18 105:19
 zoo [1] 115:2

Page 1

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

VOLUME VII

360 South County Road
Palm Beach, Florida 33408
Friday, October 11, 1996
1:50 - 6:10 p.m.

CERTIFIED
COPY

Page 2

1 APPEARANCES:

2
3 Lesly Smith, President
4 Paul Ilyinsky, Mayor
5 Allen Wyett, Councilman
6 Leslie Shaw, Councilman
7 Jack McDonald, President Pro Tem
8 Samuel McLendon, Councilman
9 Robert Doney, Town Manager
10 Robert Moore, Director of
11 Planning, Zoning & Building
12 John Randolph, Town Attorney
13 Paul Castro, Zoning Administrator
14 Mary Pollitt, Town Clerk
15

*** Notes ***

Page 3

1 PROCEEDINGS

2
3 PRESIDENT SMITH: I'd like to reconvene the
4 town council meeting, Friday, August 11.

5 Before we continue, I'd like to read into
6 the record the newspaper article that was
7 referred to this morning.

8 "Trump boycotts Palm Beach meeting. Palm
9 Beach. Donald Trump was a no show at Part II of
10 the town council meeting on his Mar-a-Lago Club,
11 even though the council set the date a month ago
12 so he could attend. Trump didn't appear because
13 council president, Lesly Smith, and town
14 attorney, John Randolph, wouldn't disqualify
15 themselves, said his attorney, Paul Rampell. So
16 there. Rampell said the two are railroading the
17 proceedings. Trump wants the council to lift
18 membership, traffic and guest suite limits on
19 his club. The council listened to 11 hours of
20 talk, mostly by six lawyers representing Trump,
21 his neighbors and a civic group. Part III
22 resumes today." Tim O'Meila, by line.

23 So that there won't be any confusion, I
24 would like you to know I did not speak to
25 Mr. Rampell prior to meeting, so he did not know

Page 4

1 that I would be recusing myself; therefore, his
2 client couldn't have known either if he wasn't
3 here, but he must be clairvoyant.

4 Are you ready to continue?

5 MR. WYETT: Mrs. Smith, that sounds like a
6 trumped-up charge.

7 PRESIDENT SMITH: Is there any more public
8 comment? Mr. Manning, come up.

9 MR. MANNING: Madam President, members of
10 the town council, my name is Allen Manning.
11 It's spelled M-a-n-n-i-n-g. I have been a
12 resident and voter and owner of property in Palm
13 Beach for over 20 years.

14 I would like to congratulate the president
15 of the town council and the town council for the
16 fairness, for the time given to both Mr. Trump
17 and to us, the people of Palm Beach. It is a
18 very very open and fair proceeding and I don't
19 know how anyone could think anything different.

20 What surprises me during the last couple of
21 days, and I have been here, that I don't see any
22 members of the private club here, except two
23 members of the town council who have to be here
24 because they are members of the town council.

25 Listening to the debate, I think the real

*** Notes ***

Page 5

Page 6

1 issue is a zoning issue, and this has been said
2 before. Is Mar-a-Lago a private club? Is it a
3 commercial venture?

4 And from what I have heard, it appears to
5 have the assets of a commercial venture, because
6 I understand, correctly or incorrectly, because
7 I understand that there is no membership
8 directory. There is no by-line sheet. There
9 was not an annual meeting.

10 But I do understand that certain expenses,
11 certain losses of the club are taken as an IRS
12 deduction, which would make it a commercial
13 enterprise. Perhaps that is incorrect.

14 I think it's incumbent on the town council
15 and the enforcement department of the zoning to
16 make a determination whether we are talking
17 about a private club or a commercial enterprise.

18 Thank you.

19 PRESIDENT SMITH: Thank you, Mr. Manning.

20 Is there any further public comment? All
21 right, if there is no further public comment, we
22 will then move ahead. Mr. Randolph.

23 Public comment? Yes, please.

24 MR. GONZALEZ: Very briefly, for the record
25 my name is Rick Gonzalez. That's

1 G-o-n-z-a-l-e-z.

2 And I used to be a resident, not any
3 longer. I live now in West Palm Beach. I
4 purchased an historical home in the City of West
5 Palm Beach and I have been restoring it for
6 several years now.

7 And I have also been the architect for the
8 Mar-a-Lago Club for the past two years, almost
9 two years. And nothing has been done in that
10 project that does not require following the
11 ordinances and laws of the zoning code that this
12 town has.

13 And every time that we have come up with an
14 idea like the tennis courts and other things, we
15 have always presented a drawing for that and we
16 have come up in front of the Preservation
17 Committee. And even before that, we have taken
18 that to the National Trust to get their opinion
19 before we even have it reviewed at the local
20 level. So I just wanted to make that statement
21 today.

22 PRESIDENT SMITH: Thank you, Mr. Gonzalez.
23 Mr. Graves?

24 MR. GRAVES: I'm sorry, it was
25 Mr. Gonzalez?

*** Notes ***

Page 7

Page 8

1 MR. GONZALEZ: Yes.

2 MR. GRAVES: You are the architect that
3 handles the Mar-a-Lago architectural work?

4 MR. GONZALEZ: Yes.

5 MR. GRAVES: And you are a witness for the
6 applicant?

7 MR. GONZALEZ: I'm not a witness. I have
8 stated my personal opinion. I am not being paid
9 to be here today. This is my opinion.

10 MR. GRAVES: Are you aware of any
11 submittals to the National Trust site plans?

12 MR. GONZALEZ: Am I --

13 MR. GRAVES: Are you sworn, by the way?

14 MR. GONZALEZ: Yes. I have been here all
15 day.

16 MR. GRAVES: Are you aware of any site
17 plans for Mar-a-Lago submitted to the National
18 Trust?

19 MR. GONZALEZ: I'm not a witness.

20 MR. GRAVES: It's a simple question, yes or
21 no.

22 PRESIDENT SMITH: During the public
23 comment, Mr. Gonzalez, anyone who speaks is
24 subject to cross examination.

25 Will you answer Mr. Graves, please?

1 MR. GONZALEZ: Fine. I just wanted that
2 clarified.

3 Yes. Many times we have done that in the
4 last two years.

5 MR. GRAVES: What was the most recent
6 submittal?

7 MR. GONZALEZ: Recently we have submitted
8 drawings for -- well, the tennis courts were
9 recently and also -- that was last year,
10 actually.

11 This year we have been, we submitted some
12 plans that have been withdrawn for a proposed
13 ballroom project.

14 MR. GRAVES: And those plans have been
15 officially withdrawn from the National Trust?

16 MR. GONZALEZ: They have been withdrawn
17 verbally and it will be followed up with a
18 written documentation, yes, sir.

19 MR. GRAVES: Okay. Those plans showed what
20 again now that you submitted to the National
21 Trust?

22 MR. GONZALEZ: A proposed conceptual
23 design, very conceptual design for a proposed
24 ballroom.

25 MR. GRAVES: Was that outside the existing

*** Notes ***

Page 9

1 Mar-a-Lago structure?
 2 MR. GONZALEZ: Yes.
 3 MR. GRAVES: Your answer?
 4 MR. GONZALEZ: Yes.
 5 MR. GRAVES: Were there any other buildings
 6 shown on that site plan that you submitted?
 7 MR. GONZALEZ: No other buildings, no, sir.
 8 MR. GRAVES: No buildings?
 9 MR. GONZALEZ: No, sir.
 10 MR. GRAVES: Was there any other
 11 infrastructure, changes, additions, outside the
 12 Mar-a-Lago building shown on that site plan
 13 other than the ballroom?
 14 MR. GONZALEZ: You mean like a driveway or
 15 parking spaces or things like that?
 16 MR. GRAVES: Any structures.
 17 MR. GONZALEZ: Patio areas?
 18 MR. GRAVES: Right.
 19 MR. GONZALEZ: Yes.
 20 MR. GRAVES: That was again outside the
 21 structure of the building?
 22 MR. GONZALEZ: Yes. Conceptual sketches
 23 were submitted.
 24 MR. GRAVES: Do you have a site plan with
 25 you today?

*** Notes ***

Page 11

1 for a marina.
 2 MR. GRAVES: Thank you.
 3 Did the latest plan that we are talking
 4 about, that you are talking about being, or
 5 about to be withdrawn but hasn't been withdrawn
 6 officially yet, did it show any increase in
 7 guest suites or indicate any increase?
 8 MR. GONZALEZ: Nothing at all. It was just
 9 a conceptual dialogue with the National Trust
 10 about a possible ballroom.
 11 As a matter of fact, the idea came from,
 12 partially from the National Trust from their
 13 concerns with the use of the club and the
 14 deterioration to some of the areas.
 15 MR. GRAVES: How large was the ballroom?
 16 MR. GONZALEZ: Large enough to support 390
 17 people.
 18 MR. GRAVES: But that was in addition to
 19 the Mar-a-Lago building and the structure
 20 itself?
 21 MR. GONZALEZ: That was a stand-alone
 22 building.
 23 MR. GRAVES: Stand-alone building. Thank
 24 you. I have no further questions.
 25 PRESIDENT SMITH: Mr. Gonzalez, you are an

*** Notes ***

Page 10

1 MR. GONZALEZ: No. It will be here soon.
 2 MR. GRAVES: When is soon?
 3 MR. GONZALEZ: Here it is.
 4 PRESIDENT SMITH: I'm not sure we are going
 5 to submit the drawings under public comment.
 6 Mr. Rampell, are you representing the
 7 applicant or is Mr. Natale, and are those plans
 8 that you are going to present -- you are not?
 9 MR. RAMPPELL: These are plans we are going
 10 to present, but not at this time.
 11 PRESIDENT SMITH: I see. And is
 12 Mr. Gonzalez coming back at that time when you
 13 present the plans?
 14 MR. RAMPPELL: No.
 15 PRESIDENT SMITH: All right.
 16 MR. GRAVES: Did the submittal this year or
 17 even some of the most recent submittals also
 18 include a concept for a marina?
 19 MR. GONZALEZ: No, sir.
 20 MR. GRAVES: No, you have never
 21 submitted -- let me ask it a different way.
 22 Have you ever submitted plans, site plans
 23 to the National Trust for review that included a
 24 marina?
 25 MR. GONZALEZ: I have never submitted plans

Page 12

1 architect, so I know you know the square
 2 footage.
 3 What was the square footage of the
 4 stand-alone building?
 5 MR. GONZALEZ: It was 90 by about 120 feet
 6 long, so that's about a 12,000 square foot
 7 footprint.
 8 PRESIDENT SMITH: You are the architect.
 9 I'm going to count on you for -- 12,000 square
 10 feet?
 11 MR. GONZALEZ: That's about right.
 12 PRESIDENT SMITH: All right.
 13 MR. WYETT: Mr. Gonzalez, if that was built
 14 with facilities around it, access road, would
 15 that mean that the golf course would have to be
 16 abandoned?
 17 MR. GONZALEZ: It was not intended to
 18 occupy the space where the golf course was.
 19 MR. WYETT: And going back to the marina,
 20 since it was raised, the question was raised
 21 whether it was submitted to the National Trust.
 22 I was wondering whether it was ever submitted to
 23 various governing agencies.
 24 MR. GONZALEZ: Might have been by others,
 25 but not by us.

Page 13

1 MR. GRAVES: Mr. Gonzalez, one final
2 question. I apologize. Ken Graves for the
3 record.

4 Can you indicate where and how many parking
5 spaces would be placed to address the ballroom,
6 people attending functions at the ballroom?

7 MR. GONZALEZ: Indicate to whom?

8 MR. GRAVES: On the site plan was it
9 indicated how you were going to handle parking
10 requirements for the ballroom?

11 MR. GONZALEZ: No, it wasn't. It was just
12 a partial site plan. It was what we called
13 zone, based on the area of the site where we
14 thought the building was going to be. Again
15 this was a very conceptual, just deliberation,
16 ideas back and forth all summer, just discussing
17 things.

18 MR. GRAVES: This summer?

19 MR. GONZALEZ: This summer.

20 MR. GRAVES: Thank you.

21 MR. WYETT: How much parking would you
22 estimate would be needed to handle this
23 increased capacity?

24 MR. GONZALEZ: I don't think there will be
25 more parking required. I mean if there is 400

Page 14

1 people and there is four people can fit into a
2 car, 100 parking spaces. This is again to take
3 the load off the house and put it into another
4 building so that when there is a special event,
5 the building would have been used for that.

6 MR. WYETT: Do you go to special events
7 here in town?

8 MR. GONZALEZ: I have gone to some, yes.

9 MR. WYETT: The majority I arrive at, maybe
10 two people arrive in a car, maybe 2.1, 2.2, but
11 you never get anywhere near four.

12 I submit if you are going to have

13 400-person capacity plus staff to serve them --

14 MR. GONZALEZ: 390.

15 MR. WYETT: 390, that you don't have enough
16 parking.

17 PRESIDENT SMITH: Mr. Gonzalez, I'm sorry,
18 one more question.

19 You said you did a zone submittal. Where
20 was the location on the property?

21 MR. GONZALEZ: It was up on the hill, on
22 the southeast corner of the property.

23 PRESIDENT SMITH: All right, thank you.

24 Mr. Chopin.

25 MR. CHOPIN: No, I want to ask him --

*** Notes ***

Page 15

1 PRESIDENT SMITH: Okay, sorry,
2 Mr. Gonzalez.

3 MR. GONZALEZ: That's all right.

4 MR. CHOPIN: One brief question. What you
5 have been talking about is what you actually
6 sent in to the National --

7 MR. GONZALEZ: Trust Historical
8 Preservation.

9 MR. CHOPIN: You sent that in?

10 MR. GONZALEZ: Yes.

11 MR. CHOPIN: Have you ever done any other
12 conceptual drawings, master plan, proposed
13 future uses, even if they are idea type studies?

14 MR. GONZALEZ: Many sketches, yes, some
15 submitted, some not. A lot of sketches have
16 been done.

17 MR. CHOPIN: When were you asked to do
18 those?

19 MR. GONZALEZ: I have been asked since I
20 have been on the board to do sketches at
21 different times.

22 MR. CHOPIN: What would that master plan --
23 is that a fair statement of what to call it?

24 MR. GONZALEZ: Yes. We have done a couple.
25 We have done a land use study. We have done a

Page 16

1 master plan, if you want to call it that.

2 MR. CHOPIN: Let me ask you, I'm not an
3 architect, and so when you said a land use
4 study, would you tell me what that is?

5 MR. GONZALEZ: Sure. That's looking at the
6 site and looking at what is, what can be used on
7 the site; for example, where the golf course is,
8 where the tennis courts are, where the spa
9 section is, where the parking is.

10 It's more of a diagram type of a drawing.
11 You just kind of locate things to see where they
12 are in relationship to the site, where the beach
13 is, the swimming pool, beach area, that sort of
14 thing.

15 MR. CHOPIN: Help me. The tennis courts
16 are on what, the south --

17 MR. GONZALEZ: Southwest corner.

18 MR. CHOPIN: Southwest corner. The spa is
19 where the spa is. That's not a new building, is
20 it?

21 MR. GONZALEZ: No, that's within an
22 existing building.

23 MR. CHOPIN: Okay. But did you project
24 out, did you come to any conclusions of what the
25 rest of the space could be used for?

*** Notes ***

Page 17

Page 18

1 MR. GONZALEZ: Well, it's been discussed
2 here, the ballroom was one of the ideas and the
3 marina by others was another idea.

4 MR. CHOPIN: So the conceptual master plan
5 or land use plan, I'm sorry, you did reflect the
6 marina?

7 MR. GONZALEZ: In the land use bubble
8 diagram it was indicated that there was a
9 marina.

10 MR. CHOPIN: I see. Did it get so far --

11 MR. GONZALEZ: That was a future option.
12 We even put that word on the drawing.

13 MR. CHOPIN: Okay.

14 MR. GONZALEZ: Because we weren't preparing
15 those plans.

16 MR. CHOPIN: No, I mean this was a land use
17 study.

18 MR. GONZALEZ: Uh huh.

19 MR. CHOPIN: Anything else on that?

20 MR. GONZALEZ: That's about it.

21 MR. CHOPIN: That's all you put on the land
22 use study?

23 MR. GONZALEZ: Some conceptual renovations
24 of some of the quarters to the far north was
25 for, are in the process of being renovated for

1 quarters.

2 MR. CHOPIN: Those are not subject to the
3 preservation easement, are they?

4 MR. GONZALEZ: No.

5 MR. CHOPIN: So you didn't have to submit
6 that, did you?

7 MR. GONZALEZ: No.

8 MR. CHOPIN: So not everything is subject
9 to the preservation easement, is it?

10 MR. GONZALEZ: But as a courtesy, we did
11 submit that information to them.

12 MR. CHOPIN: Have you instructed them not
13 to submit that information to anybody?

14 MR. GONZALEZ: No, sir.

15 MR. CHOPIN: Now that was the land use
16 plan.

17 Did you in that land use plan track traffic
18 flows, people, movement, how you deal with
19 traffic and that sort of thing?

20 MR. GONZALEZ: No, I'm not a traffic
21 engineer.

22 MR. CHOPIN: Okay. Do you know if someone
23 else took your land use study and tried to
24 address those issues?

25 MR. GONZALEZ: It was very conceptual. We

*** Notes ***

Page 19

Page 20

1 didn't get that far, no.

2 MR. CHOPIN: I see. A lot of deterioration
3 to the building, to the main house, I thought I
4 heard you say; is that right?

5 MR. GONZALEZ: The concern has been that
6 there it's a successful club and that as more
7 people use the place, it would --

8 MR. CHOPIN: Has the usage of the place
9 picked up over a period of time?

10 MR. GONZALEZ: I think so, yes.

11 MR. CHOPIN: So as it gets more members,
12 more people use it?

13 MR. GONZALEZ: I mean I would imagine.

14 MR. CHOPIN: Well, I'd just like you to
15 give an opinion. You are the architect.

16 MR. GONZALEZ: Uh huh. That's not an
17 architectural question.

18 MR. CHOPIN: Well, I'll take your word for
19 whatever it is, but I mean it's being used more
20 as the membership increases, is that your
21 experience from having seen it?

22 MR. GONZALEZ: Sounds logical, yes.

23 MR. CHOPIN: Some correlation between
24 members and usage, right? You pay \$75,000 to
25 join, you are probably going to want to get your

1 money's worth, right?

2 MR. GONZALEZ: Sounds likely.

3 MR. CHOPIN: So if you join, you're likely
4 to go, and you're probably going to drive there
5 and park your car there, right?

6 Does that make sense to you?

7 MR. GONZALEZ: Sounds right.

8 MR. CHOPIN: Now let's talk about your
9 master plan. You also did what I think you said
10 was a master plan?

11 MR. GONZALEZ: We have done some conceptual
12 sketches for master plan.

13 MR. CHOPIN: Okay. What is a master plan?

14 MR. GONZALEZ: Master plan is a plan
15 showing how the site can be developed.

16 MR. CHOPIN: Okay. And you did this master
17 plan showing how the site could be developed.

18 How can it be developed? Tell us. We are
19 grasping at straws to find out how it can be
20 developed, because nobody else will tell us.

21 MR. GONZALEZ: It could have tennis courts,
22 which this was done last year, so since then, we
23 have already built these tennis courts.

24 MR. CHOPIN: Right.

25 MR. GONZALEZ: Parking areas, which we

*** Notes ***

Page 21

1 would improve the parking areas on the site.
 2 MR. CHOPIN: Right.
 3 MR. GONZALEZ: You might be aware there
 4 used to be a salt swimming pool on the beach
 5 side, so we did some sketches for renovating
 6 that area and making it a better beach club
 7 section.
 8 MR. CHOPIN: What's the Beach Club?
 9 MR. GONZALEZ: East side of A1A.
 10 MR. CHOPIN: A separate Beach Club?
 11 MR. GONZALEZ: It's not separate. It's
 12 where the sand is and there used to be a salt
 13 water swimming pool there.
 14 MR. CHOPIN: Are there cabanas planned or
 15 some sort of shelter of some sort as part of
 16 your master land use plan?
 17 MR. GONZALEZ: Again, it's not a master
 18 land use plan. They are just very rough
 19 sketches that we do.
 20 MR. CHOPIN: On those rough sketches, what
 21 did you rough in there?
 22 MR. GONZALEZ: As an artisan, yes, we
 23 sketched in some buildings and some swimming
 24 pool area.
 25 MR. CHOPIN: You did?

*** Notes ***

Page 22

1 MR. GONZALEZ: Yes.
 2 MR. CHOPIN: Okay, that's all I'm asking.
 3 I mean they are not plans, you couldn't build
 4 from that?
 5 MR. GONZALEZ: Never.
 6 MR. CHOPIN: But you did draw some lines on
 7 there and said -- what did you call it, what
 8 kind of building was it, by the way?
 9 MR. GONZALEZ: Small buildings.
 10 MR. CHOPIN: Small building?
 11 MR. GONZALEZ: Out buildings.
 12 MR. CHOPIN: Out buildings. For what
 13 purpose? What was your conceptual drive?
 14 MR. GONZALEZ: Similar to what we proposed
 15 for the tennis club, a small building to service
 16 the tennis courts. So we were thinking for the
 17 same idea for the beach area, small building to
 18 furnish the beach area.
 19 MR. CHOPIN: That beach area could function
 20 independently in the summertime, independently
 21 of the rest of the buildings, couldn't it?
 22 MR. GONZALEZ: Any of the buildings -- I
 23 don't manage the building.
 24 MR. CHOPIN: I understand. It's
 25 self-contained, I guess would be the best way,

Page 23

1 because the beach is a long way from the main
 2 facility, isn't it?
 3 MR. GONZALEZ: It's not that far away, but
 4 I guess, yes.
 5 MR. CHOPIN: I mean if I'm there hot in the
 6 sun dying for a drink, I shouldn't want to wait
 7 for them to run all the way under the tunnel,
 8 should I?
 9 MR. GONZALEZ: That's right.
 10 MR. CHOPIN: So then you could really
 11 separate I suppose the ownership if you wanted
 12 to, because it could be freestanding and
 13 independent, couldn't it?
 14 MR. GONZALEZ: I guess somebody could do
 15 that.
 16 MR. CHOPIN: Yes, okay. And were any of
 17 these drawings, designs, land use studies or
 18 anything like that ever given to the Town of
 19 Palm Beach?
 20 MR. GONZALEZ: Maybe some, but I'm not sure
 21 about that, not from our office. I mean a lot
 22 of copies have circulated of these sketches, so
 23 maybe some has taken place that I don't know.
 24 MR. CHOPIN: You don't know?
 25 MR. GONZALEZ: I don't know.

*** Notes ***

Page 24

1 MR. CHOPIN: Okay. But you have given
 2 drawings to the town in connection with previous
 3 applications in which you have done the
 4 planning?
 5 MR. GONZALEZ: Whenever there is a need for
 6 a drawing, we have submitted a drawing, yes.
 7 MR. CHOPIN: Okay. And you are sort of
 8 handing this out piecemeal as each of these
 9 things become more than just a concept?
 10 MR. GONZALEZ: If they become a reality,
 11 then we follow the process that everybody does.
 12 We make up a meeting with the Preservation
 13 Committee and submit it for review, and after we
 14 submit it for review to the National Trust to
 15 get their opinion on the project, then we submit
 16 it to the town.
 17 MR. CHOPIN: Okay.
 18 PRESIDENT SMITH: Mr. Chopin, could I
 19 interrupt you for a minute, please?
 20 MR. CHOPIN: Actually I think I was
 21 finished.
 22 PRESIDENT SMITH: All right, thank you.
 23 The applicant is currently handing out what
 24 Mr. Moore described as a planning study.
 25 Don't say a word, Mr. Natale, I'm not

Page 25

Page 26

1 finished. I'm going to ask you not to submit
2 any new documents to anyone on the staff of the
3 town or the council until the appropriate time.

4 Gentlemen, don't study those documents.
5 Give them back to the applicant. I mean we have
6 been pretty lax around here, but what happens?
7 But suddenly reading material is being handed
8 out by the applicant that has not been submitted
9 correctly, and there is a limit.

10 Give them back, please.

11 MR. WYETT: Mr. Gonzalez, has there been
12 any study for additional hotel rooms, suites?
13 Not formalized into a conceptual plan, but just
14 mental studies?

15 PRESIDENT SMITH: Is everything back?

16 MR. GONZALEZ: You mean up here?

17 MR. WYETT: Yes. Specifically for
18 increasing the capacity of the hotel business.

19 MR. GONZALEZ: No.

20 PRESIDENT SMITH: Is everything back?

21 MR. WYETT: No rooms?

22 MR. GONZALEZ: No rooms.

23 PRESIDENT SMITH: Was it submitted to the
24 council? We are having another discussion here.

25 Please, has everything been given back to

1 the applicant that has not been entered into the
2 record?

3 MR. MOORE: No.

4 PRESIDENT SMITH: All right. And that
5 booklet that you're handing back now has a town
6 stamp on it?

7 MR. MOORE: Right. It was given to us this
8 morning during the course of the presentation.

9 PRESIDENT SMITH: Whose presentation?

10 MR. MOORE: Public presentation.

11 PRESIDENT SMITH: But who in the public was
12 making a presentation that handed you that
13 booklet?

14 MR. MOORE: No one in the public. It was
15 the applicant.

16 PRESIDENT SMITH: All right. And it was
17 stamped in and not entered into the record?

18 MR. MOORE: Right. As any document that's
19 given to us would be stamped in, it was stamped
20 in.

21 PRESIDENT SMITH: I understand that, but I
22 think it would have been appropriate, Mr. Moore,
23 at that time that this document and the presence
24 of it here being entered into the record and
25 noted for the record at that time.

*** Notes ***

Page 27

Page 28

1 MR. MOORE: That's correct.
2 PRESIDENT SMITH: All right. Now is
3 everything back to the applicant?

4 MR. MOORE: Yes, ma'am.

5 PRESIDENT SMITH: Thank you.

6 Go ahead, Mr. Chopin.

7 MR. CHOPIN: Mr. Gonzalez, I started
8 talking you about deterioration and got
9 sidetracked from what I really wanted to find
10 out.

11 How many tables for serving meals are
12 outside of the dining room?

13 MR. GONZALEZ: You mean the patio area?

14 MR. CHOPIN: I don't know, I never --

15 MR. GONZALEZ: I don't know, I never
16 counted them.

17 MR. CHOPIN: But there are places to serve
18 meals outside the dining area?

19 MR. GONZALEZ: I'm sure when there is a
20 special event --

21 MR. CHOPIN: No, just regular membership
22 when there is no special event.

23 Has it ever been suggested to you that
24 people eat outside of the dining room?

25 MR. GONZALEZ: I have seen people having a

1 drink or eating at the patio area.

2 MR. CHOPIN: That's all you have seen?

3 MR. GONZALEZ: The patio area, yes.

4 MR. CHOPIN: Have they used, for example,
5 the living room to your -- I mean that's a poor
6 man's description of a drawing room, I suppose,
7 but have you ever heard of anybody eating in the
8 living room?

9 MR. GONZALEZ: I haven't seen that, no.

10 PRESIDENT SMITH: Mr. Chopin, let's get on
11 with it if we can, please.

12 MR. CHOPIN: Okay, thank you.

13 PRESIDENT SMITH: Thank you.

14 MR. KOLINS: Mr. Gonzalez, Ron Kolins for
15 the record. I just have one or two quick
16 questions for you.

17 Are there ongoing plans now as far as you
18 know for Mar-a-Lago to develop the Beach Club
19 area?

20 MR. GONZALEZ: No, those have been on hold
21 for about six months.

22 MR. KOLINS: Why have they been on hold?

23 MR. GONZALEZ: Owner hasn't been focusing
24 on that.

25 MR. KOLINS: But if indeed the owner were

*** Notes ***

Page 29

to focus on it and were to authorize that it be done, would you consider that to be an expansion of the club?

MR. GONZALEZ: No, I wouldn't. I would consider it to be an improvement of the existing club facilities.

MR. KOLINS: Well, the facility that's there now, the swimming pool --

MR. GONZALEZ: It's empty right now.

MR. KOLINS: Empty. So it would be a fool indeed who used it, right?

MR. GONZALEZ: It's full of sand, so I think they would have a hard time, yes.

MR. KOLINS: But if it were cleaned up and water were put in it, someone might use it, right?

MR. GONZALEZ: If they were to fix it and repair it, yes.

MR. KOLINS: And if you were to put these buildings which you talked about there, I suppose to service the people who wanted to use the Beach Club, we'll call it, there would in other words be facilities to make it attractive for people to use it that are not there now; is that right?

Page 30

MR. GONZALEZ: That could be inferred. It would really be meant for those that are going to the beach now, like somebody mentioned before, you know, and not have to run back to the house to get a drink or shower after going on the beach, those sort of things which are normal. No one wants to walk 300 feet full of sand, so those kinds of things.

MR. KOLINS: I guess what I'm getting at, though, is if and when the Beach Club were to become a reality, so you had cabanas and you had these out buildings, chairs for people to sit on and a nice new or refurbished swimming pool and all that, that would be an attraction, wouldn't it?

MR. GONZALEZ: It would be an attraction to the club, you mean?

MR. KOLINS: Yes, for people to use.

MR. GONZALEZ: For people to use it more? Yes.

MR. KOLINS: So isn't it likely that more people will come to the club because there will be an additional attraction at that time?

MR. GONZALEZ: That could happen, but also people that are members and are not using it now

*** Notes ***

Page 31

that will probably use it because of its pleasantness.

MR. KOLINS: So people that are members might come more often because they have got this additional attraction, right?

MR. GONZALEZ: That's right.

MR. KOLINS: And more people might come as guests because there is this new facility, right?

MR. GONZALEZ: That's possible, yes.

MR. KOLINS: And more people might join the club because it now would have the Beach Club facility, right?

MR. GONZALEZ: That's possible.

MR. KOLINS: So it would be an enhancement of the club, right?

MR. GONZALEZ: That's possible too, yes.

MR. KOLINS: That would be a draw, an attraction for people to come to the club to use?

MR. GONZALEZ: It's enhanced use of the beach area.

MR. KOLINS: Is that a yes?

MR. GONZALEZ: Well, attraction is, you know, attraction -- Disney World is an

Page 32

attraction. I don't know what you mean by attraction.

MR. KOLINS: Well, if you are over 12 years old, would this be an attraction?

MR. GONZALEZ: I --

MR. KOLINS: What's your idea of attraction?

MR. GONZALEZ: Attraction is something real special to go to, like Disney World.

MR. KOLINS: So in other words, to you, attraction is a big major deal, right?

MR. GONZALEZ: Sure.

MR. KOLINS: What word should we use for a small major deal, if not attraction? What word would be meaningful to you?

MR. GONZALEZ: That's tough. English is my second language.

MR. KOLINS: What word would you use in Spanish?

MR. GONZALEZ: Attracion.

MR. KOLINS: What does that mean?

PRESIDENT SMITH: We know what that means, thank you, attracion.

MR. KOLINS: Are you aware that my client, Mrs. Massey's home and property directly abuts

*** Notes ***

Page 33

Page 34

1 the Beach Club?

2 MR. GONZALEZ: Yes. Actually you said it
3 was across the street from the club. You are
4 not really across the street. You are just
5 north of the club on the east side.

6 MR. KOLINS: We are across the street from
7 the Mar-a-Lago estate, but we are directly
8 north, immediately north of the Beach Club?

9 MR. GONZALEZ: That's right. Previously
10 you said it was directly across from the club,
11 but you are really just north of the club.

12 MR. KOLINS: When we talk about the Beach
13 Club.

14 MR. GONZALEZ: Yes, I know where the house
15 is.

16 MR. KOLINS: Good. Do you think if and
17 when you put in this Beach Club attraction, that
18 that would have some impact on Mrs. Massey next
19 door?

20 MR. GONZALEZ: I don't know.

21 MR. KOLINS: You have no idea?

22 MR. GONZALEZ: I have no idea.

23 MR. KOLINS: As an architect, you have no
24 opinion?

25 MR. GONZALEZ: I have no opinion about

1 that. I mean it could and it could not. It
2 depends how --

3 MR. KOLINS: How could it not?

4 MR. GONZALEZ: You know, with buffers such
5 as landscaping, for example, and things like
6 that. There is an existing wall right there
7 right now, a lot of privacy on that side
8 already. She has a lot of landscaping on her
9 side.

10 MR. KOLINS: How tall is the wall?

11 MR. GONZALEZ: I don't know. Pretty high.

12 MR. KOLINS: I won't get any further into
13 the subject now, because it's a subject for
14 another day. All I want to confirm for the
15 record is that that Beach Club is not part of
16 today's application in any way, correct?

17 MR. GONZALEZ: Nothing is being asked for a
18 change at this time. That's why we haven't
19 submitted a site plan. We don't have any new
20 things to add. We are not showing anything.
21 Every time we have had something new to show, we
22 have submitted it and followed the procedure
23 that the town has.

24 MR. KOLINS: Let me ask it again. What we
25 have been talking about the Beach Club is not

*** Notes ***

Page 35

Page 36

1 part of the application that's being considered
2 today; is that yes or no?

3 MR. GONZALEZ: No.

4 MR. KOLINS: It is not part of today's
5 application, correct?

6 MR. GONZALEZ: Nothing new is being
7 proposed today.

8 MR. KOLINS: About the Beach Club?

9 MR. GONZALEZ: About anything, or the Beach
10 Club, yes.

11 MR. KOLINS: We'll leave it to the council
12 to decide whether anything else new is being
13 proposed, but as far as the Beach Club, it's not
14 part of today's application?

15 MR. GONZALEZ: That's right.

16 MR. KOLINS: If and when Mar-a-Lago decides
17 to go ahead with improvements to that area, will
18 that be subject to a separate application before
19 this council?

20 MR. GONZALEZ: Always.

21 MR. KOLINS: Thank you.

22 PRESIDENT SMITH: I think there is one
23 more.

24 MS. KENDIG: Julie Kendig, K-e-n-d-i-g.
25 Briefly I would like to place an objection on

1 the record to the entire line of questioning
2 that was just heard for the reason that while we
3 all want to know what's going to happen, it's
4 not part of the application that's before us
5 today.

6 PRESIDENT SMITH: Thank you.

7 Is there any further public comment?

8 Mrs. Rosinsky, are you going to state
9 anything different?

10 MS. ROSINSKY: Yes.

11 PRESIDENT SMITH: For the record?

12 MS. ROSINSKY: My name is Claude Rosinsky,
13 R-o-s-i-n-s-k-y, and I just want to reiterate
14 what the architect, Mr. Gonzalez, said.

15 The question about the beach was raised
16 only for one person, for my husband. And nobody
17 wants the beach at Mar-a-Lago. My husband
18 enjoys it on Saturday morning with me and Sunday
19 morning, and we just ask a little cabana not to
20 be too hot, and we swim. Nobody ever during
21 that year used the beach.

22 And the club, by the way, is closed the
23 whole summer. And I was amazed to see the,
24 yesterday with the traffic, I was amazed to see
25 the amount of coming in and going out of

*** Notes ***

Page 37

1 Mar-A-Lago Club. As a statistic next to the
2 whole year, you had like 413 cars coming in in
3 summer.

4 I had to ask permission to have my mother
5 and sister just visiting the club for half hour
6 this summer to step in and to show them. So I
7 really very much doubt about there was so much
8 traffic except maybe for reconstruction, and
9 that's all.

10 And I told you yesterday that the boardroom
11 was stated, they were concerned about using too
12 much the actual boardroom, and with the
13 preservation, Mr. Trump was concerned, and
14 that's why I think he called upon Mr. Gonzalez
15 that I had met one time at the meeting.

16 PRESIDENT SMITH: All right, thank you.
17 Would you spell your name for the record,
18 please?

19 MS. ROSINSKY: R-o-s-i-n-s-k-y.

20 MR. WYETT: I have a question. Do you dine
21 at the club on Saturday nights?

22 MS. ROSINSKY: No, sir. Once in awhile,
23 but very -- maybe I dined twice, but I can tell
24 you that the traffic is mostly around 8:00 when
25 the people go dining. People are some working,

Page 38

1 some are --

2 MR. WYETT: If you don't go there on
3 Saturday nights for dining, I don't think you
4 are an expert witness to tell us what's goes on
5 on Saturday night if you are not there.

6 PRESIDENT SMITH: I don't think that
7 Mrs. Rosinsky identified herself as an expert
8 witness.

9 MS. ROSINSKY: No.

10 MR. WYETT: You can't testify to what you
11 don't see.

12 PRESIDENT SMITH: She is giving us her
13 opinion, not as an expert witness.

14 MR. WYETT: I withdraw the word expert,
15 just a witness.

16 PRESIDENT SMITH: Right now she is speaking
17 as a member of the public as opposed to
18 September 16 when she spoke as a witness for the
19 applicant.

20 MS. ROSINSKY: Yes, madam, yes.

21 PRESIDENT SMITH: All right. Thank you.

22 Is there any further public comment? If
23 someone does wants to speak, will you put your
24 hand up now or we will move on.

25 All right, Mr. Randolph. Please, public

*** Notes ***

Page 39

1 comment section is closed.

2 MR. RANDOLPH: It's my understanding based
3 upon your procedures that now you will hear
4 rebuttal testimony from the applicant; however,
5 I'd like to cover one thing. It's in regard to
6 the ex parte communications.

7 Under your resolution, it provides, and I
8 think you stated this, Madam President, before
9 when we talked about ex parte communications,
10 that you should note not only whether you had
11 ex parte communications, but with whom and the
12 subject matter of those communications.

13 And the only reason I bring that up is I
14 just want the, the purpose of raising those is
15 to give the opportunity for people who want to
16 address it the opportunity to refute or respond
17 to the communication. That's why they should
18 know about the subject of those communications.

19 So if you will indulge me for a moment, I
20 have the copy from the first day when you talked
21 about this, and if I might ask each of you to
22 advise us on this so that it can be of the
23 record. I guess the first person that was
24 called upon was Mr. Shaw, who says I have not
25 spoken with anybody regarding this application.

Page 40

1 And then you called upon Mr. McDonald, who
2 says I have spoken to Stanley Silk, Rodney Fink,
3 Arthur Silverman and John Maddish, Paul Rampell
4 and Donald Trump.

5 Then you, Mrs. Smith, indicated you have
6 spoken to Dr. Lilia and to Mrs. Douthit.

7 Mayor Ilynski said that he felt somewhat
8 slighted that he had only spoken to his wife,
9 but that wasn't about Mar-a-Lago.

10 And then Mr. McLendon just indicated that
11 in attending meetings and walking the street and
12 whatever, I may have been exposed to a number of
13 people, he doesn't keep a list, so he won't even
14 attempt to mention, but it is the topic of town.

15 And then Mr. Wyett says I have had the same
16 experience that Mr. McLendon has had.

17 The only reason I'm reading this is to
18 refresh your recollection as to those that you
19 spoke to so that you can add now what the
20 subject matter of discussion was, so that people
21 in the audience can refute that if they so
22 choose.

23 PRESIDENT SMITH: All right. Why don't you
24 start, Mr. Wyett.

25 MR. WYETT: It was both pro and con, more

*** Notes ***

Page 41

1 con than pro. The subject matter was hold firm.
2 That was to be a summary of everything that was
3 con. And for those that were pro is the club is
4 a nice idea. Don't give it a hard time.

5 PRESIDENT SMITH: Mr. McLendon?

6 MR. MCLENDON: Yes. It's a little
7 difficult to put into words, because if I had to
8 guess, I have talked to at least 100 people
9 about it who have comments to me and mostly in a
10 negative posture with regard to the club, and
11 some even asked me what I proposed to do. I
12 said I can't discuss this with you.

13 Some have been a lot more negative than
14 others, even to the point that perhaps I might
15 be sorry if I didn't take a negative position to
16 the application. And I obviously took
17 resentment to that.

18 But most people were very nice and many
19 said we know you are going to do the fair thing
20 as you see it and that I appreciate it.

21 PRESIDENT SMITH: Mr. Mayor?

22 MAYOR ILYNSKY: Well, to be serious, I
23 would imagine the same answer. I have never
24 discussed this with any of the principals. As I
25 said, Mr. Trump has never blessed me with any

*** Notes ***

Page 42

1 advice. I haven't spoken to Mr. Rampell for
2 quite a long time. I never met his other
3 lawyers before.

4 And it's the talk of the town, so I mean
5 I'm not about to sit here and tell you all the
6 people who have asked me questions about it. It
7 would be insane, it would be stupid to even
8 attempt to do that. You say 100, I say 500. I
9 can't walk down the street without somebody
10 asking about it.

11 PRESIDENT SMITH: Obviously the mayor is
12 beloved.

13 MR. WYETT: You know more people than me.

14 PRESIDENT SMITH: Beloved. I spoke to
15 Mrs. Douthit. She called me and said she was
16 going to speak under citizens comments. I said
17 good.

18 Dr. Lilia called me. I called him back. I
19 referred all my phone calls. He told me he was
20 going to speak. I said good. That was the
21 extent of our conversations.

22 Mr. McDonald?

23 MR. MCDONALD: Mr. Randolph, would you read
24 the names off again, please?

25 MR. RANDOLPH: Yes. Do you want me to read

Page 43

1 the whole list or just one at a time?

2 MR. MCDONALD: Read the first four, because
3 I think that's the --

4 MR. RANDOLPH: Stanley Silk, Rodney Fink,
5 Arthur Silverman and John Maddish are the first
6 four.

7 MR. MCDONALD: All right. Those
8 discussions were all basically the same, and
9 they primarily dealt with what impact any
10 changes might have on the south end.

11 MR. RANDOLPH: And then there was Paul
12 Rampell and Donald Trump.

13 MR. MCDONALD: I spoke with Mr. Rampell I
14 think one or two days after the September 16th
15 hearing, and he asked me some questions about
16 the hearing.

17 And Mr. Trump and I spoke within the past
18 week about the photography and advance
19 reservations requirements.

20 MR. RANDOLPH: I think that covers it.

21 Mr. Shaw? It indicated he had not spoken
22 with anyone.

23 MR. SHAW: Anything that I hadn't spoken
24 with anyone was basically to say that I have
25 received no phone calls. I have not engaged in

*** Notes ***

Page 44

1 any lengthy conversations with anybody.

2 I think to say that I haven't had somebody
3 ask me what am I going to do and I'm saying, you
4 know, we are going to hear this and try to make
5 a fair decision, people have sent letters to the
6 town. A few have sort of made comments to me
7 walking on the street saying that as a member, I
8 shouldn't vote.

9 I generally replied back that I feel that
10 my voting on this issue and being part of the
11 dialogue is part of my responsibility as an
12 elected official to council, and that don't
13 prejudice me any more than you don't want me to
14 prejudice what's being presented to us. Let me
15 do what I feel is correct and fair.

16 You know, there has not actually been a
17 detailed analysis of the point of it. And I
18 think that if I were to count the number of
19 people that I have probably been in contact with
20 over the last few months or even since the last
21 hearing, it probably would be about 40 or 50
22 people. I have been away a great deal.

23 As far as being in town, I have not been
24 out that much, so that I haven't had the
25 opportunity to be in rooms with 20 or 30 people

Page 45

Page 46

1 to discuss it, and I wouldn't discuss it.
 2 MR. WYETT: Mrs. Smith?
 3 PRESIDENT SMITH: Mr. Wyett.
 4 MR. WYETT: I also want to state that I
 5 have attended two civic association meetings in
 6 which a great number of residents voiced their
 7 opinion. I sat there mute and just listened.
 8 I also did not have any conversations with
 9 Mr. Rampell.
 10 And it should be noted that in his written
 11 communication to the community which was sent
 12 out in mass mailing summarizing his opening
 13 statements on September 16, it was his position
 14 that I was not present.
 15 I would like the Town Clerk to certify that
 16 I was present and took part.
 17 MAYOR ILYNSKY: You were.
 18 MR. MCDONALD: I have one additional --
 19 that reminds me.
 20 PRESIDENT SMITH: Mr. McDonald.
 21 MR. MCDONALD: In my conversations with the
 22 first four people, there was also a lot of
 23 conversation dealing with recusal, because
 24 apparently the civic association was in the
 25 process of asking me to recuse myself, and the

1 Citizens Association was taking an opposite
 2 view, and I think they had some meetings with
 3 representatives from the Civic Association
 4 indicating that they felt that I should vote on
 5 every issue coming before the council.
 6 MR. RANDOLPH: And you have all already
 7 indicated, you don't need to go through this
 8 again, but I just wanted a brief reminder for
 9 the record, so to speak, that each of you have
 10 already indicated that your vote would be based
 11 upon the evidence that you hear today at these
 12 hearings -- not today at these hearings -- at
 13 these hearings and not on the basis of anything
 14 you have heard outside these hearings.
 15 MR. WYETT: Yes.
 16 PRESIDENT SMITH: Absolutely.
 17 MR. RANDOLPH: I think we are now ready for
 18 the rebuttal case.
 19 PRESIDENT SMITH: All right.
 20 MR. RAMPELL: Good afternoon, Mayor
 21 Ilynski, President Smith, Mr. McDonald,
 22 Mr. Shaw, Mr. McLendon and Mr. Wyett.
 23 To begin our rebuttal, I would like to
 24 clarify to some extent our application, because
 25 it's our position that it's been misconceived,

*** Notes ***

Page 47

Page 48

1 to put it nicely, or misinterpreted to some
 2 extent.
 3 First I would like to submit to the town my
 4 letters dated today and faxed today, one to the
 5 state of Florida in which the club withdraws its
 6 application for a marina or dockage at
 7 Mar-a-Lago.
 8 The second letter is to the National Trust
 9 in which the Mar-a-Lago Club withdraws its
 10 application for a ballroom.
 11 There has been a lot of discussion about
 12 these two potential amenities, and the decision
 13 has been made to withdraw these and there are no
 14 plans to pursue them.
 15 I would like to submit that into the
 16 record.
 17 PRESIDENT SMITH: Mr. Rampell, would you
 18 give them to the clerk, please.
 19 MR. CHOPIN: I would like to note an
 20 objection to the introduction of these in the
 21 record on a number of grounds.
 22 The application doesn't include either one
 23 of those items. Speculation as to the unknown
 24 elements of what would happen. The fact of the
 25 matter is the letter is self-serving.

1 In addition to that, it was written today,
 2 which is well beyond the date of the application
 3 and can be resubmitted tomorrow. So I don't
 4 think it's relevant and I think the record needs
 5 to reflect the objection.
 6 PRESIDENT SMITH: Thank you, Mr. Chopin.
 7 MR. RAMPELL: Secondly, there has been
 8 discussion for the first time today about the
 9 potential lack of a site plan as part of our
 10 application.
 11 It is our position that a site plan is not
 12 required in order for this application to be
 13 granted, since there are no physical changes to
 14 the property whatsoever contemplated within our
 15 application.
 16 There has been some discussion about the
 17 change of the number of parking spaces. 252
 18 parking spaces were approved pursuant to the
 19 Certificate of Occupancy, and 252 parking spaces
 20 will remain. And it could not be changed
 21 without prior permission of the National Trust.
 22 That's the holder of the preservation easement,
 23 the Landmark Preservation Commission and the
 24 Town Council.
 25 MR. MCLENDON: Does your application

*** Notes ***

Page 49

Page 50

1 contain anything about revising parking spaces?

2 MR. RAMPPELL: No, sir.

3 So secondly, just since this has been
4 looming as a specter, we haven't had a chance to
5 see a site plan, this has been a protestation we
6 have heard many many times.

7 To respond to that, we are submitting into
8 the record a site plan which shows Mar-a-Lago as
9 it's built today, before the application, after
10 the application. There is no change.

11 PRESIDENT SMITH: Gentlemen, one at a time,
12 please.

13 For the record, Mr. Chopin.

14 MR. CHOPIN: My name is Frank Chopin.

15 Is Mr. Rampell testifying as to the
16 authenticity of some drawings that he submitted?
17 I would like to understand that, because if he
18 is, I'd like to have an opportunity to voir
19 dire, which means question him as to his
20 expertise to certify that that's a site plan.

21 PRESIDENT SMITH: Mr. Rampell, would you
22 like to respond?

23 MR. RAMPPELL: I don't have to answer any
24 questions of Mr. Chopin's. Mr. Chopin has been
25 attempting to engage me for some time as if it's

1 some sort of test of machismo.

2 MR. CHOPIN: It would be entirely
3 one-sided, by the way.

4 PRESIDENT SMITH: Gentlemen, gentlemen,
5 that's enough.

6 Now, Mr. Rampell, let's stop going after
7 Mr. Chopin. You say he is trying to engage you.
8 Please, we have had enough personality here on
9 every level today directed at everyone. If you
10 choose not to answer, then you can simply say no
11 comment, which you say so well and so
12 frequently.

13 Now go ahead, Mr. Chopin, if you have
14 something else.

15 MR. CHOPIN: My point being is that how do
16 you know that's a site plan? You don't know who
17 prepared it. You don't know what it's supposed
18 to represent, and I'll tell you right now it is
19 not what's supposed to be submitted.

20 I will also tell you because that's
21 supposed to be a professionally detailed report
22 showing the effect of the development on the
23 town outside of your code which doesn't apply.

24 So I would ask you not to receive it. It
25 should have been submitted and is required to be

*** Notes ***

Page 51

Page 52

1 submitted in accordance with the code at the
2 time of the filing of the application, not
3 during rebuttal.

4 PRESIDENT SMITH: All right. Thank you.
5 For the record, please.

6 MR. GRAVES: Ken Graves. I raise
7 comparable objections for my client,
8 Mrs. DeMoss.

9 I think also significantly in some
10 instances the placing into evidence at this
11 point is violative of our clients' or my
12 client's due process rights.

13 In some instances it could be argued that
14 the burden shifts once certain evidence is put
15 into the record, if it is put, and that it would
16 then be the town and perhaps individual
17 aggrieved parties to counter that, if you will,
18 prima facie evidence that's put in. It can't be
19 put in now. We wouldn't have the opportunity to
20 respond if it had been put in at the proper
21 time.

22 Secondly, I would object to the suggestion,
23 and the application speaks for itself, 252
24 parking spaces. The provision for 252 parking
25 spaces should be eliminated. Application signed

1 by Mr. Rampell.

2 PRESIDENT SMITH: Mr. Kolins.

3 MR. KOLINS: Ron Kolins. I join in the
4 prior objections. I did think I heard
5 Mr. Rampell say that the application does not
6 deal with parking. Now if it doesn't, perhaps
7 we can eliminate discussing it, but I thought
8 that it clearly did.

9 And if you have 252 spaces as a requirement
10 and you want to eliminate that and you want to
11 replace it with one to four, you are changing
12 the number of parking spaces, unless I can't
13 read, and I'm not the brightest guy in the
14 world, but I think I can read.

15 So perhaps the staff can clarify for us
16 whether or not the application deals with
17 parking.

18 PRESIDENT SMITH: I'd like to have
19 Mr. Randolph respond to the direction in which
20 this is taking. I am not asking the staff to
21 respond.

22 MR. KOLINS: Okay. Well, that's my request
23 and my objection, and you can rule on it how you
24 wish.

25 PRESIDENT SMITH: All right. Thank you.

*** Notes ***

Page 53

Page 54

1 It seems we are moving ahead, Mr. Randolph.
2 MR. KOLINS: Am I finished?
3 PRESIDENT SMITH: No, I don't know if you
4 are finished. I'm not the one that's
5 clairvoyant.

6 MR. KOLINS: I would also like to object to
7 what amounts to in my judgment denial of due
8 process for my client and others in the room by
9 Mr. Rampell's refusal to answer appropriate
10 questions given comments that he makes.

11 And I think that is a denial of our
12 substantive and procedural due process, and I
13 would like to object on the record in that
14 respect as well.

15 PRESIDENT SMITH: Thank you, Mr. Kolins.

16 MS. KENDIG: Julie Kendig again. I would
17 like to incorporate the previous objections.
18 I'm only going to get up one time and make a
19 blanket objection to any receipt of new evidence
20 is not limited to rebuttal from this point
21 forward.

22 PRESIDENT SMITH: Thank you. Mr. McLendon
23 has a question.

24 MR. MCLENDON: I have a question. I'm only
25 curious and I have no intention of looking at

1 these plans without asking a question.

2 What's the latest date of revision on those
3 plans? That would have some key in my mind as
4 to whether I should even look at it or not.

5 MR. RAMPELL: They were prepared today as
6 rebuttal evidence.

7 MR. CHOPIN: Mrs. Smith?

8 PRESIDENT SMITH: Mr. Chopin.

9 MR. CHOPIN: I would ask yourself to
10 request Mr. Randolph to explain to the council a
11 point that I think is particularly relevant and
12 you perhaps will understand the concern that we
13 all have.

14 I think Skip explained to you in 1993 and
15 perhaps since then -- and if you have, then I
16 apologize about that, Skip -- that effectively
17 it is the applicant's obligation to establish
18 certain minimum criteria with respect to his
19 application.

20 At that point in time the burden shifts and
21 the obligation becomes up to I guess the town or
22 other people involved to in fact show adversity.

23 Our position is, of course, that once you
24 allow them to introduce new evidence that might
25 go to the point of establishing their threshold

*** Notes ***

Page 55

Page 56

1 burden in a rebuttal period when there is no
2 longer any opportunity to establish the
3 requisite adversity, then you are effectively
4 cutting off our opportunity to deal with this
5 issue.

6 So it's one thing to take in a great deal
7 of evidence, but understand -- this is all a
8 question, Skip, I know you know that, and I
9 really think it's important to be understood,
10 because it will have an impact on the burden of
11 proof and of the impossibility of dealing with
12 that.

13 All these things that they are going to do,
14 the new traffic study, as you know, the site
15 plan done today, the rushing to the county at
16 4:00 yesterday afternoon, the plans that they
17 brought over with Mr. Gonzalez, we are not going
18 to have an opportunity to deal with, because
19 this is rebuttal.

20 PRESIDENT SMITH: All right. Now
21 Mr. Chopin, let me ask Mr. Randolph.

22 Under -- the room is filled with lawyers,
23 so you can all argue this point. What exactly
24 defines rebuttal and what defines a new case?

25 We are talking about conception here and I,

1 as obviously not an attorney, which has been
2 pointed out to me, would have the impression
3 that a new traffic study, which I didn't know
4 about -- you mentioned it, Mr. Chopin. Perhaps
5 your information isn't correct. I'm going on
6 the assumption of what was said, new traffic
7 studies and new plans is a new case. And if
8 it's just -- please.

9 MR. CHOPIN: I thought you were asking me a
10 question.

11 PRESIDENT SMITH: No, I wasn't. And if
12 that is the case, then the town would have a
13 chance to review it and respond.

14 If it's rebuttal, you don't issue new
15 studies and new witnesses. So I'm going to ask
16 Mr. Randolph to respond, Mr. Natale.

17 MR. NATALE: Absolutely.

18 PRESIDENT SMITH: And clarify the situation
19 for those of us who are not attorneys.

20 MR. RANDOLPH: Rebuttal testimony is
21 normally testimony which an applicant or a
22 plaintiff, whoever goes first, did not have the
23 opportunity to put on in the first instance.
24 Rebuttal testimony is aimed strictly at
25 rebutting what came on after the closure of

*** Notes ***

Page 57

1 their case.

2 Obviously if you were to change that rule,
3 at least in a court of law, it would give an
4 opportunity for what some lawyers call trial by
5 ambush, because once they had closed their case
6 and once the other side had addressed everything
7 that had been presented, then new evidence could
8 be presented if it were other than true rebuttal
9 testimony, which in the normal course of events
10 in a trial, the side that's opposing would not
11 have an opportunity to address. That's the
12 reason for the rule.

13 I think if you were going to let in
14 rebuttal, new testimony that is not strictly
15 rebuttal testimony at this point, that you would
16 have to recognize that you are sort of reopening
17 the case, because then those people who didn't
18 have an opportunity to address this in the first
19 instance, such as those lawyers that are in the
20 room who are opposing this application, would
21 then have an opportunity to rebut what was put
22 on that was new.

23 You would have to allow that, if you are
24 going to allow in new testimony that is not
25 purely rebuttal, you will have to allow all of

Page 58

1 the attorneys in this room to address that new
2 evidence.

3 Now I don't know what's going to be
4 presented, so I can't comment at this point
5 whether what is being presented is true rebuttal
6 or new testimony. I think it's been represented
7 by the applicant that, I think they have assured
8 you that what they are going to present to you
9 is indeed rebuttal testimony.

10 I don't know whether it is or not, so I
11 can't comment on it at this particular point.

12 MAYOR ILYINSKY: Mr. Randolph, the plans in
13 question, I mean give me a ruling on that.
14 That's rebutting the rebuttal that's rebutting
15 the rebuttal? For Christ's sake, there has got
16 to be a stop to this someplace really. You
17 can't keep on telling us everything is
18 admissible and then say this isn't rebuttal.

19 MR. RANDOLPH: I think what came up after
20 the applicant closed their case was testimony
21 relating to whether or not a site plan was
22 needed. I don't think it related to the site
23 plan itself.

24 I would consider -- and this is for you to
25 decide -- I would consider a site plan presented

*** Notes ***

Page 59

1 now as new evidence, because I think that there
2 was an opportunity to present that in the first
3 instance. And I don't think there was an
4 opportunity for those who are opposed to this
5 application to address that site plan.

6 So if a site plan were to come in now,
7 those who are opposed would, out of fairness,
8 have an opportunity to address that again.

9 You know, again, it's a difficult thing to
10 deal with when you are not following the strict
11 rules of evidence and the strict rules of court.

12 What you are here to provide is fundamental
13 due process. And I think there may be some
14 arguments made, at least I have heard one, I
15 think Mr. Graves said that you get to the point
16 where you are perhaps hurting the fundamental
17 due process rights of those who object when you
18 allow new testimony in which they haven't had an
19 opportunity to address.

20 That's why I am saying that if you decide
21 to let it in, they are here and they would have
22 the opportunity to address it, and so I
23 understood you to say that -- well, that's all I
24 have to say at this point.

25 PRESIDENT SMITH: All right. I have one

Page 60

1 more question.

2 It was my understanding this morning,
3 sometime this morning or last night, we have
4 heard a lot of things said, that the council was
5 told that a site plan was not part or a
6 necessity of this application. And if that's
7 the case, then there is, unless you have changed
8 your mind that a site plan is part of the case,
9 I'll get to that, it would appear to me that it
10 is new evidence and a new case, which is fine
11 with me.

12 You, if you wish to reopen, in fairness, we
13 said everything would be put into the record,
14 then by all means, do that, but a site plan and
15 a new traffic study that we have not seen when
16 we have already heard from two of your traffic
17 engineers to me would be new evidence and a new
18 case.

19 And I'm willing to look at it, but then you
20 would have to be willing to have it cross
21 examined by the other people that have been
22 involved in this application.

23 MR. WYETT: Mrs. Smith?

24 PRESIDENT SMITH: Could I just wait? I
25 thought maybe Mr. Natale wanted to say

*** Notes ***

1 something.

2 MR. WYETT: Could I just address what you
3 just said?

4 PRESIDENT SMITH: No.

5 MR. NATALE: Madam President, basically
6 without getting into a legal debate as to what's
7 rebuttal and what isn't, we would like to have
8 this placed into the record regardless of how
9 the council wants it to be called, and if that
10 is the position that we are going to have this
11 open and put in the information, regardless of
12 what you want to call it, we can call it. We
13 just want it in the record.

14 PRESIDENT SMITH: What is this, Mr. Natale?

15 MR. NATALE: When you say the site plan and
16 the other documents that we plan to bring in
17 rebuttal.

18 PRESIDENT SMITH: I don't know what the
19 other documents are.

20 MR. NATALE: The other documents are --

21 PRESIDENT SMITH: Would you like to state
22 them now, what they are?

23 MR. NATALE: Yes. There is a traffic
24 impact analysis.

25 PRESIDENT SMITH: From Mr. Pollock or

1 Mr. Barr?

2 MR. NATALE: From Mr. Pollack. And then
3 there is a Professional Plan Study, Town of Palm
4 Beach, Recreation Open Space and Traffic
5 Concurrency Controls by Wesley Blackman.

6 PRESIDENT SMITH: Mr. Blackman, who spoke?

7 MR. NATALE: Yes, he already spoke.

8 PRESIDENT SMITH: Right.

9 MR. NATALE: And I think to forego my legal
10 analysis of what rebuttal is or not, if what you
11 are saying is you want us to consider your --
12 you are allowing us to reopen and present it,
13 that's fine with us. We would like to present
14 it.

15 MR. WYETT: Mrs. Smith?

16 MR. NATALE: Or I would like to remain to
17 have the opportunity to argue that this is
18 proper rebuttal.

19 So I either want to have the opportunity to
20 argue it is rebuttal or for you to say, you
21 know, if we wanted to reopen, you let us reopen
22 and put this in.

23 PRESIDENT SMITH: No, I'd like you to say,
24 Mr. Natale -- I'm not going to tell you -- is it
25 rebuttal?

*** Notes ***

1 MR. NATALE: Yes, I believe it is rebuttal.
2 Here is why I believe it's rebuttal.

3 First, I think that, as I understand
4 rebuttal as a trial attorney, that when
5 something is raised by the opposition, we have
6 the right to rebut that.

7 And one of the things which was raised
8 specifically as it relates to the site plan is
9 we say that a site plan isn't needed. Others
10 say that it is.

11 Now, we are saying that in determination as
12 to whether it is needed or not, all right, it
13 would be rebuttal for us to submit this site
14 plan to see if it does in fact constitute a
15 change from the prior site plans that have been
16 introduced and therefore to see, to argue from
17 it that it rebuts the fact, that the very fact
18 that we have a site plan and you look at it
19 shows that there are no physical changes which
20 need to be made as it relates to the application
21 that's pending.

22 So that's why I believe that it would be in
23 fact rebuttal, and in numerous cases I have been
24 involved in trying, that it is an established
25 procedure.

1 Further, I think we need to note that the
2 Brisson report and the Tipton statements and
3 many of these other things were provided on the
4 day of when they testified, and that we were
5 cast in a position really no different in our
6 ability to respond.

7 PRESIDENT SMITH: All right. If I could
8 just stop. You will clarify that the Brisson
9 report was from a town planner and the Tipton
10 report was not?

11 MR. NATALE: That's correct.

12 PRESIDENT SMITH: All right. This is two
13 different things.

14 When you spoke about the opponents to your
15 application, are you referring to the town?

16 MR. NATALE: No. What I should say is the
17 town's report, that the town's report we were
18 given on the same sort of circumstances, which
19 the people who are in opposition are saying is
20 somehow unfair.

21 PRESIDENT SMITH: No, because the position
22 of the town and the staff which was said this
23 morning was that a site plan was not necessary.

24 So we, the town council, have not asked you
25 for a site plan, because staff determined it was

*** Notes ***

Page 65

Page 66

1 not necessary.

2 MAYOR ILYINSKY: Where did the necessity of
3 producing these site plans come from?

4 MR. NATALE: To be frank, it was because we
5 were concerned that if the council was to change
6 and say hey, we can't approve this because there
7 was no site plan, then we wanted to rebut the
8 evidence that there was even need to have one.

9 MAYOR ILYINSKY: I think you are getting
10 mixed up now.

11 MR. NATALE: No, I'm not, sir.

12 MAYOR ILYINSKY: Just a little bit.

13 MR. NATALE: What I'm saying to you, sir,
14 is the following, that people have argued to you
15 that you just reject this purely and simply
16 because there is no site plan. Your staff has
17 said they believe there is no need for a site
18 plan. Therefore, none was submitted.

19 However, if that is a valid and viable
20 issue which was raised by the opposition, in
21 rebuttal of that, we would submit the site plan
22 and then see whether or not, for the purposes of
23 seeing whether or not that site plan is really
24 necessary in the opinion of your own staff.

25 PRESIDENT SMITH: The staff has said the

1 site plan was not necessary.

2 Are you saying that your application was
3 not complete?

4 MAYOR ILYINSKY: Who's on first?

5 PRESIDENT SMITH: The staff said this
6 morning -- Mr. Moore, would you like to
7 reiterate or would you like to have it read, the
8 statement that was made this morning by the town
9 staff?

10 MR. MOORE: Either way, but I know exactly
11 what I said.

12 PRESIDENT SMITH: Well, why don't you
13 repeat it for the record.

14 MR. MOORE: We made the determination upon
15 the application for special exception that upon
16 the content and the request for special
17 exception that a site plan was not required
18 under the terms of ordinance 274 as amended and
19 under any other circumstances of similar to this
20 and prior applications since ordinance 274 it
21 was not required.

22 MR. NATALE: If that is the position of the
23 council, then we will withdraw the site plan.

24 PRESIDENT SMITH: That was the position of
25 the council.

*** Notes ***

Page 67

Page 68

1 MR. NATALE: Then we will remove that site
2 plan.

3 MR. WYETT: Mr. Natale, I see in your hands
4 two substantial book binders there.

5 Could you tell us how many pages of new
6 evidence you are planning to introduce?

7 MR. NATALE: I can tell you how many pages
8 of rebuttal evidence.

9 MR. RANDOLPH: I think it's important to
10 note that we don't know at this point what is
11 being rebutted.

12 MR. WYETT: Whatever it is, can you tell us
13 how many pages you have there?

14 PRESIDENT SMITH: Mary, they withdrew the
15 site plans.

16 MR. WYETT: Mr. Natale?

17 PRESIDENT SMITH: We don't know what
18 Mr. Natale has in his hands.

19 MR. WYETT: I just asked him how many
20 pages.

21 MR. NATALE: There was conversation and I
22 wanted to make sure I was listening.

23 PRESIDENT SMITH: You could be holding your
24 crib notes, for all we know. We don't know what
25 you are holding Mr. Natale.

1 MR. NATALE: One of them appears to be in
2 excess of 15, 16 pages, and a great deal of that
3 is attachments. And then the other is 13 pages.

4 So the traffic impact analysis is 13 pages,
5 and the Professional Planning Study, Town of
6 Palm Beach, Recreation Open Space and Traffic
7 Concurrency Control report by Wesley Blackman is
8 approximately 15 to 17 pages.

9 MR. WYETT: Do you think it would be fair
10 for the opposing attorneys representing their
11 clients to have a chance to examine these
12 documents?

13 MR. NATALE: I have no problem with them
14 looking at these documents and examining them.

15 All I want to do is put them in the record,
16 sir, because I believe they are legitimate
17 rebuttal. I have no problem with anyone wanting
18 to look at it, to criticize it, to have their
19 own expert look at it and review it.

20 I see Mr. Randolph nodding your head. We
21 have no problem with that.

22 MR. WYETT: I have no problem with your
23 submitting it. I have a problem that at this
24 late hour when we were hoping to wind things up
25 later this afternoon that the other attorneys

*** Notes ***

Page 69

1 who have all come forward have inadequate amount
2 of time to look at it, consider it and prepare
3 for a counter position.

4 MR. MCLENDON: May I?

5 PRESIDENT SMITH: Mr. McLendon.

6 MR. MCLENDON: This may be an earth-shaking
7 question, but it's serious.

8 Have you considered the or reconsidered the
9 application? Shouldn't this application have
10 come at some future time like a year for now or
11 two years from now when you are much nearer your
12 membership? We do a lot of guessing otherwise.

13 MR. NATALE: No. What we are doing -- we
14 don't believe that's correct, sir. And I think
15 that would be the point I think that we would be
16 addressing, you know, in our closing argument.

17 In other words, when we get to the argument
18 when both sides sort of argue the legal aspects
19 of it, I think we would say that it is in fact
20 the time, the time now is in fact ripe. That
21 would obviously be something for you as a
22 council to determine, but we think it is.

23 And the issue that we are saying now is
24 that this is rebuttal and we believe that it
25 should be in the record.

Page 70

1 Now whether the council would review
2 everything and say we think there is
3 insufficient data, that's your decision to make.

4 MR. MCLENDON: I understand that. Thank
5 you.

6 PRESIDENT SMITH: Mr. Chopin?

7 MR. CHOPIN: Yes, Mrs. Smith. As a matter
8 of fundamental fairness, and I just said this to
9 your counsel, both of the people, Mr. -- I can't
10 think of his name, Blackman, is it? Excuse me,
11 I just had a mental breakdown, I guess, which I
12 need one. I think I deserve it.

13 PRESIDENT SMITH: Mr. Blackman is right
14 behind you.

15 MR. CHOPIN: Okay. Well, I'm really not
16 making fun. My mind went blank.

17 But both of those gentlemen testified
18 during the case in chief. I don't know about
19 Mr. Blackman. Mr. Pollock presented a report
20 for your consideration.

21 This is not rebuttal. It isn't. It's new
22 evidence. It's the second bite at the apple.
23 But it's a bare minimum to say I want to give it
24 to you, you guys will study it.

25 The fact is Mr. Rampell won't answer any

*** Notes ***

Page 71

1 questions. The people that prepared those
2 reports are subject to being cross examined on
3 them. They both already have been cross
4 examined. It is not rebuttal.

5 Mr. Natale's definition of rebuttal leaves
6 everything entirely open. The fact is you don't
7 call back these witnesses to bolster their own
8 testimony with studies that they could have done
9 in the first instance. And that's where you
10 are, and I think you have got to draw the line
11 someplace, Mrs. Smith.

12 PRESIDENT SMITH: Mr. Kolins?

13 MR. KOLINS: Thank you. I would argue or
14 urge that we deal with each one of these new
15 documents when they are individually introduced.

16 I don't know what they are and I'm not
17 going to argue about them now, but what I do
18 want to deal with, Mrs. Smith, is I strongly,
19 with all due respect, disagree with your
20 statements a few moments ago that we can open
21 this record up again for new evidence.

22 I realize that this council, because it
23 wants to be so fair, is bending over backwards
24 to accommodate Mr. Trump and the lawyers and
25 people who represent him. And I might not be

Page 72

1 crazy about that, but I understand it and I'll
2 live with it. But bending over backwards is one
3 thing. Falling down is another thing.

4 There is another side of this case that
5 also deserves fairness. And when you say they
6 can keep reopening with new stuff, that is
7 fundamentally unfair, not only to the other side
8 of the case, but I think unfair to the town,
9 because in addition to the hardship it puts on
10 me, Mr. Chopin and others to be able to
11 effectively deal with this new stuff on the fly
12 at the last minute, stuff that may well, and
13 we'll deal with it individually, have been able
14 to have been presented at the proper time, think
15 about your staff.

16 How can your staff give you any significant
17 and meaningful advice about any of this stuff
18 when they get it at the very last second? Every
19 time the attorneys for Mr. Trump realize their
20 case is deficient, we better go out and make
21 something else.

22 And so I would suggest that the threshold
23 question every time they want to put anything
24 else in at this point is whether or not it is
25 true rebuttal as defined by your attorney. If

*** Notes ***

Page 73

1 it is, it is, and we'll deal with it.

2 If it isn't, it shouldn't come in, and this
3 case in chief should not be opened and closed,
4 opened and closed, opened and closed a number of
5 times. Thank you.

6 PRESIDENT SMITH: Thank you, Mr. Kolins. I
7 did not say that I was reopening the case. I
8 asked the question as a layman. I take offense
9 at your remark of falling over backwards or
10 dropping down dead, whatever it is you said. I
11 am trying to ask exactly what they were
12 intending to do.

13 Mr. Natale said he was totally rebutting.
14 As far as the staff giving their opinion on two
15 documents, I don't think anybody in their right
16 mind would attempt to give an opinion on a
17 document they haven't read.

18 MR. KOLINS: And if I offended you, I
19 apologize. All I meant by that remark is it's
20 one thing to try to be extra fair, but there
21 comes a point where you pass that line and you
22 completely throw out organized process. And I
23 just don't want us to cross that line. That's
24 really all I'm saying. If I expressed it in an
25 unfortunate way, I apologize.

*** Notes ***

Page 75

1 course you could make a determination without
2 any evidence that they haven't met that
3 threshold, but the burden next if they have met
4 that threshold test of showing through their
5 evidence that they have met your criteria, then
6 the burden shifts to the governmental entity or
7 whoever is opposed to this to show why they have
8 not met those criteria.

9 I guess the reason the question was asked
10 of me was to show the significance of an order
11 to the process, that the applicant has a burden,
12 then there is a determination made as to whether
13 they have met that burden.

14 If they have met that burden, then the
15 burden shifts to the government or to whoever is
16 opposed, and then of course there should be an
17 opportunity for rebuttal.

18 I think that's the importance of not
19 reopening a case with new testimony, because you
20 are really starting all over at that point by
21 allowing the applicant then to, if they haven't
22 met the burden or if the other side has rebutted
23 the burden, to allow the applicant to then say
24 well, wait a minute, I want another opportunity
25 to meet my burden.

*** Notes ***

Page 74

1 PRESIDENT SMITH: I understand. Thank you,
2 Mr. Kolins.

3 Mr. McDonald.

4 MR. MCDONALD: Mr. Kolins, I tend to agree
5 with you and say why don't we deal with it at
6 the point they want to introduce it, those two.
7 I think the site plan has been withdrawn, so
8 it's really what other additional documents they
9 may have.

10 Let them try and introduce it under
11 rebuttal and convince that it's rebuttal
12 evidence.

13 MR. RANDOLPH: Madam President?

14 PRESIDENT SMITH: Mr. Randolph.

15 MR. RANDOLPH: A question was asked of me
16 and I think in order that the record be complete
17 that I should answer it, and it relates to
18 special exceptions.

19 Indeed, the law as it relates to special
20 exception is as follows. The burden first rests
21 with the applicant to meet the threshold of
22 proving that they are entitled to a special
23 exception by virtue of the presentation of their
24 testimony.

25 The burden, once that is done, and of

Page 76

1 I'm not saying you can't do that. I heard
2 a couple council members say at the beginning of
3 this hearing let's let it all in and then let's
4 make a determination.

5 I'm just explaining to you the process and
6 that if you do let in new evidence, that you are
7 going to then have to allow others to meet their
8 burden of showing why the applicant hasn't met
9 it.

10 PRESIDENT SMITH: Mr. McDonald and then
11 Mr. Graves, do you want to speak?

12 MR. MCDONALD: I don't think, I mean I
13 don't feel that new evidence should be
14 submitted. So I think that it really has to
15 sink or swim on if it is indeed rebuttal
16 evidence. Otherwise -- and I was one of the
17 ones who said let's let everything in, but I
18 don't think letting new evidence in at the last
19 moment that is not directed to rebuttal, I would
20 not recommend that.

21 MR. WYETT: I concur.

22 PRESIDENT SMITH: Mr. Shaw.

23 MR. SHAW: We have already proven we have
24 great stamina, but let's assume we had better
25 stamina and we had not gone home last night and

Page 77

1 we just continued.

2 What were you planning to do? I mean if
3 every time we take a break there is going to be
4 another pile of documents, I guess where does it
5 end? And had we not, as I said, not broken,
6 would these have materialized?

7 MR. NATALE: These actually we would have
8 had to present. These two we would have had to
9 present and were prepared to present our
10 rebuttal yesterday.

11 So to answer your question, yes.

12 MR. SHAW: So you had these documents
13 prior --

14 MR. NATALE: Last night we got -- if I
15 remember correctly, we got these yesterday.

16 MR. SHAW: You got them yesterday?

17 MR. NATALE: Yesterday. And I don't
18 remember exactly when I personally got a chance
19 to look at them, but I know definitely late last
20 night after we left, I had the opportunity to
21 look at them.

22 I can tell you, Councilman Shaw, that our
23 presentation would have been complete in the
24 time that it took to argue this and that our
25 position is that this is nothing more than

Page 78

1 documentation which is in direct rebuttal to
2 what was raised.

3 MR. SHAW: So if we had continued going
4 last night and had never stopped and you had not
5 had an opportunity to review those documents,
6 you would not have submitted them?

7 MR. NATALE: No, I would say that probably
8 what I would have done is I would have taken the
9 time to look at them and -- because remember, we
10 are still in public comment. So I would have --

11 MR. SHAW: We had almost finished public
12 comment at that point, but you didn't know how
13 much longer public comment was going to go, so
14 we could have reached a point where we are now,
15 which is too many days later.

16 Let's be philosophical, because if it
17 wasn't going to be used last night had we
18 continued then, basically it doesn't need to be
19 used now.

20 MR. NATALE: It would have been used,
21 because had we known that we were going to go
22 until it finished, everyone was here yesterday
23 and last night, and we would have stayed here
24 and we would have presented it last night, yes.

25 PRESIDENT SMITH: Mr. Graves, please.

*** Notes ***

Page 79

1 MR. GRAVES: Madam President, clearly then
2 since they were prepared last night, if I
3 understand it correctly, none of this is in
4 rebuttal to Anna Cottrell's testimony. It can't
5 be; is that correct?

6 MR. NATALE: None of this is in I think
7 rebuttal -- this is purely in rebuttal to the
8 testimony which was presented by the experts,
9 who were I believe Mr. Brisson and Mr. Tipton.

10 MR. GRAVES: When was the rebuttal to
11 Mr. Tipton's testimony prepared?

12 MR. NATALE: I believe that it was prepared
13 after we saw where he was going and what was
14 going on and we said this is something we need
15 to deal with. Typical rebuttal.

16 The question of rebuttal --

17 MR. GRAVES: The document was prepared by
18 whom?

19 MR. NATALE: Council, the concept of
20 rebuttal has nothing to do -- for example, I
21 have had cases where prosecution has brought in
22 witnesses they just found to testify.

23 PRESIDENT SMITH: That's in a court case,
24 Mr. Natale. Let's not go to a court case.

25 MR. NATALE: I understand, let's not.

Page 80

1 PRESIDENT SMITH: Mr. Graves, did
2 Mr. Natale answer your question?

3 MR. GRAVES: No. I asked who prepared your
4 traffic document?

5 MR. NATALE: Mr. Pollock.

6 MR. GRAVES: Was Mr. Pollock here all day
7 yesterday?

8 MR. NATALE: I believe he was here for part
9 of the day.

10 MAYOR ILYNSKY: Part of the day is about
11 six hours.

12 MR. GRAVES: What time did Mr. Pollock
13 leave?

14 MR. NATALE: I didn't monitor his comings
15 and goings.

16 MR. WYETT: Ask him.

17 MR. NATALE: To be quite frank, I don't see
18 the relevance as to his comings and goings.

19 MR. GRAVES: I think there is extreme
20 relevance here, because if this is in rebuttal
21 to Mr. Tipton's testimony, Mr. Tipton by my
22 rough estimate, based on the transcript of
23 yesterday's hearing, completed his testimony and
24 I was the final one to ask him a cross
25 examination question, at approximately noon

*** Notes ***

Page 81

1 yesterday.

2 And we have put together and delivered to
3 the county by 4:00 a however-many-page document?

4 I mean this strains my sense of what -- I mean
5 this is hide the ball. I mean this is just what
6 we have been putting up with all along, and it's
7 objectionable.

8 And the reason it's objectionable, and I
9 would like --

10 MR. MCDONALD: Mr. Graves, let me just
11 interrupt you and let me just make the same
12 comments I directed to Mr. Kolins.

13 Rather than trying to sit around and try to
14 figure out when they may have prepared it, why
15 don't we deal with it when they are trying to
16 introduce it and see if it's truly rebuttal
17 evidence or not. If it's not rebuttal evidence,
18 then it won't be admissible. If it is truly
19 rebuttal evidence, maybe it's admissible.

20 MR. GRAVES: As to yesterday's testimony,
21 perhaps that's appropriate. It certainly isn't
22 appropriate as to today's testimony.

23 MR. MCDONALD: Well, they are indicating it
24 has to do with yesterday's testimony. So just
25 for the moment if we perceive that to be

*** Notes ***

Page 82

1 correct, why don't we just move along, and at
2 the point they try and introduce it, make your
3 objections.

4 MR. GRAVES: I appreciate that,
5 Mr. McDonald. If I may, let me clarify my
6 previous objection based on what Mr. Randolph
7 just advised you.

8 My objection is that the introduction of
9 new evidence at this point in the proceeding is
10 violative of my client's due process rights,
11 which are equal to, at least equal to the
12 applicant's due process rights.

13 I want to clarify, however, why I think
14 it's important, and then I'm going to make this
15 a continuing objection and I'll sit down. It
16 isn't just if the petitioner has put on his
17 prima facie case, compliance with all the
18 standards and factors that are set forth.

19 It's the fact that the burden shifts, and
20 as to my client, if we then allow new evidence
21 in, I wouldn't have put on my case in the same
22 way. I may have had different experts here. I
23 may have had a different order of presentation.

24 So it goes to that aspect. That I think is
25 simply, if you will, an elaboration of what your

Page 83

1 town attorney has said to you, but I wanted to
2 clarify that there is a distinction there, a
3 slight distinction, and I think it is also that
4 the burden of proof shifts to demonstrate that
5 the proposed use would be adverse to the public
6 interest. That's a difficult task. That takes
7 some preparation.

8 And I'll just cite Irvine versus Duval
9 County Planning Commission, 495 So.2d 1167,
10 which cites an earlier case, Rural New Town
11 versus Palm Beach County, 315 So.2d 478, for the
12 record.

13 That will be a continuing objection as to
14 the introduction of new evidence. That's all.
15 You won't hear me again on that. If I may, I
16 will make a continuing objection.

17 PRESIDENT SMITH: Thanks, Mr. Graves.
18 Mr. Kolins.

19 MR. KOLINS: Just one question, Madam
20 Chairman, and I'll sit down. I agree with
21 Mr. McDonald. He was in effect agreeing with me
22 as to dealing with these when they come up. I
23 stepped into the men's room and then I heard
24 this discussion.

25 So if I understand, there is not now being

*** Notes ***

Page 84

1 an effort made to introduce those, and I'll sit
2 down. If this is an effort to introduce them,
3 then I need to know the answer to that.

4 MR. MCDONALD: Mr. Natale, have you moved
5 them into evidence at this point?

6 MR. NATALE: I moved them into evidence at
7 this point and that's what started this
8 discussion.

9 MR. MCDONALD: All right. Any time is
10 appropriate.

11 MR. KOLINS: All right. First of all, I
12 have a number of objections over and above the
13 ones you have already heard which I joined in.

14 First of all, to this moment, I do not have
15 a copy. Counsel has not even had the courtesy
16 to provide other counsel with a copy. I don't
17 know what documents we are talking about, but I
18 do know from what I heard, one deals with
19 traffic and one deals with planning.

20 Now unless counsel is offering himself up
21 as an expert in those fields, then this document
22 should not be introduced by counsel. It needs
23 to be authenticated, explained and discussed by
24 the appropriate expert who prepared it, and then
25 that person needs to be cross examined before

Page 85

1 you decide to accept it.

2 So I object strenuously to how this is
3 being offered to you as a threshold matter.

4 And secondly, I would like copies.

5 And thirdly, I'd like their witnesses to
6 come up here so we have the right target for
7 cross examination, and the issue being is this
8 new or rebuttal evidence.

9 PRESIDENT SMITH: Thank you, Mr. Kolins.
10 Mr. Chopin.

11 MR. CHOPIN: I'm not going to repeat what
12 Ron said. He is absolute absolutely right.
13 Attorneys don't introduce evidence. Witnesses
14 introduce evidence.

15 It might be appropriate, Madam Chairman, if
16 the council would take whatever advice it thinks
17 appropriate and make a ruling on his objection,
18 and then I'll say something or not say
19 something, depending, but I don't want to get
20 into other matters until I know what you are
21 going to do.

22 MR. NATALE: Madam President, if you wish,
23 we would call Mr. Pollock to the stand.

24 PRESIDENT SMITH: Please, could we finish
25 the objection part? Council has not determined

Page 86

1 what the course of action is going to be here
2 yet, Mr. Natale, I believe.

3 MS. KENDIG: Briefly, Julie Kendig. I
4 would like to object and point out the fact that
5 they had a traffic expert up here for three
6 hours yesterday. They had three hours to rebut
7 and bring in any evidence that they felt
8 necessary.

9 MR. MCDONALD: Okay. Mr. Kolins, was there
10 three parts to your request? Why don't we deal
11 with them in order?

12 MR. KOLINS: One, I would like to get
13 copies of what we are talking about.

14 Number two, the people who prepared them
15 ought to be the ones to produce them to counsel.

16 MR. MCDONALD: And number three?

17 MR. CHOPIN: I'll tell you what it is,
18 procedure.

19 PRESIDENT SMITH: For the record,
20 Mr. Chopin.

21 MR. CHOPIN: Frank Chopin. The procedure
22 ought to be, he should call Mr. Pollock as a
23 witness. He should have Mr. Pollock identify
24 this report that he has prepared.

25 At that point in time, there should be an

*** Notes ***

Page 87

1 opportunity of cross examination for the
2 specific purpose of determining whether it's new
3 evidence or rebuttal, which was his third point,
4 Mr. McDonald.

5 I'm not telling you what to do, but I think
6 that's the way you really have to deal with it.

7 MR. MCDONALD: All right. So the first
8 part would be calling of the experts.

9 MR. KOLINS: First part would be to give us
10 copies.

11 MR. MCDONALD: Is that acceptable to you,
12 Mr. Natale, to provide copies and then call your
13 expert?

14 MR. NATALE: I have no problem.

15 PRESIDENT SMITH: I believe that the rest
16 of the council concurs with Mr. McDonald?

17 MR. WYETT: Yes.

18 PRESIDENT SMITH: Mr. Randolph?

19 MR. RANDOLPH: Do you want to take a break
20 to have an opportunity to look at these?

21 MR. NATALE: Madam President, I don't want
22 to interrupt, but what I suggest is that we give
23 them the two copies.

24 There is a very short rebuttal witness, no
25 more than five minutes, Ms. Ellis, who has been

Page 88

1 here to deal with that issue regarding the
2 destination aspects of the spa, that we could
3 deal with this and get back to this other area.

4 PRESIDENT SMITH: No, I don't want to do
5 that. I don't want to interrupt -- I mean the
6 copies are going to be passed out to everyone.
7 They are going to be --

8 MR. NATALE: The copies we have will be
9 provided to them, yes.

10 MR. MCDONALD: Why don't we give them the
11 copies and take a five-minute break.

12 PRESIDENT SMITH: All right. We are going
13 to take a ten-minute break.

14 (Thereupon, a recess was taken.)

15 PRESIDENT SMITH: Mr. Natale.

16 MR. NATALE: Yes, we would like to call at
17 this time Mr. Wes Blackman.

18 PRESIDENT SMITH: Mr. Chopin?

19 MR. CHOPIN: He already said he was going
20 to call Mr. Pollock. He already called
21 Mr. Pollack. We are working on ten minutes to
22 read the book here. Let him call Mr. Pollack.

23 PRESIDENT SMITH: You did say Mr. Pollock.

24 MR. NATALE: Mr. Pollock stepped out and
25 I'm waiting for him to return. What I'm

*** Notes ***

Page 89

Page 90

1 expecting in the interest is to just -- we gave
2 both of them, so I mean that's why --

3 MR. MCDONALD: How long will it take
4 Mr. Pollock to come back, Mr. Natale?

5 MR. NATALE: I don't know. We can send
6 someone after him.

7 PRESIDENT SMITH: We'll wait for
8 Mr. Pollock, Mr. Natale.

9 MR. NATALE: Yes, thank you.

10 (Discussion held off the record.)

11 MR. MCDONALD: Does the council have any
12 problem with perhaps calling the spa director
13 and dealing with her while we are waiting? That
14 will give the attorneys a little more time to
15 read the report.

16 Would that be all right with the members of
17 the council to hear that rebuttal testimony from
18 the spa director?

19 MAYOR ILYINSKY: Fine with me.

20 PRESIDENT SMITH: Mr. Shaw?

21 MR. SHAW: Fine with me.

22 PRESIDENT SMITH: Mr. Wyett? All right, we
23 will hear from the spa director.

24 MR. NATALE: We would like to call
25 Ms. Ellis to the podium.

1 PRESIDENT SMITH: Mr. Natale, are you
2 saying that Ms. Ellis is a rebuttal witness?

3 MR. NATALE: Yes. I believe I stated
4 previously why.

5 PRESIDENT SMITH: So many things have been
6 stated, please continue to state the obvious.
7 Thank you.

8 MR. RANDOLPH: She is rebutting the
9 testimony of your witness, Mr. Blackman?

10 MR. NATALE: No. What she is doing, sir,
11 is you raised the question in cross examination
12 as far as that this was a destination spa, and
13 isn't this in fact a destination spa, and that
14 there has also been since then numerous people
15 who have said that this is in fact a destination
16 spa.

17 And a number of people have said people are
18 going to come from all over the world to come
19 here and all of that stuff, so I think it is
20 proper rebuttal.

21 PRESIDENT SMITH: Mr. Chopin?

22 MR. CHOPIN: For the record, I don't think
23 it's going to do any good, but I'm going to tell
24 you. Mr. Randolph's asking the question.
25 Whatever the answer, let's say that whoever the

*** Notes ***

Page 91

Page 92

1 witness was said no, it's not a destination spa.

2 Asking the question and getting a negative
3 answer is not evidence that you rebut. There is
4 no record of evidence from anybody with any
5 knowledge that can testify that this is a
6 destination spa. There is nothing in the record
7 factually that says it's a destination spa.
8 That being the case, there is nothing to rebut.

9 MR. MCDONALD: I would disagree with that,
10 if there is nothing in the record. Is there
11 anything in the record about being --

12 MR. NATALE: I believe that there were
13 people who testified that there was going to be
14 a destination spa, and I believe Mr. Chopin last
15 night was talking about one of the problems that
16 this was a destination spa, people were going to
17 come here.

18 MR. CHOPIN: I said no such thing. Never
19 did the words destination spa exit my lips. I
20 don't know, I didn't say it, and I object to and
21 resent the fact that I am being misrepresented.

22 MR. MCDONALD: Does anyone have any memory
23 of the destination spa?

24 PRESIDENT SMITH: Instead of memory, we
25 know Mr. Natale has the transcript. Is it in

1 the transcript, Mr. Natale?

2 MR. NATALE: I haven't had a chance to
3 review the transcript to see exactly where it
4 has been said. I just know there have been
5 numerous times where people have said this is
6 going to be the destination spa. People are
7 going to come from all over the world, that it's
8 a commercial enterprise, that it's going to be
9 open to the public, that the public can all come
10 here.

11 PRESIDENT SMITH: Wait. I have no
12 recollection of that. That may be your
13 recollection, but it's not mine.

14 Who said it? Whose testimony is being
15 rebutted by Ms. Ellis?

16 MR. NATALE: It is my understanding based
17 on what I read of the transcript that it deals
18 with what was raised by Mr. Randolph, and it
19 would be based on the comments that were made
20 yesterday.

21 And as far as citations to the actual
22 record, I don't have citations to the actual
23 record, but my recollection was that there were
24 people who referred to this and presented to you
25 that this was a destination spa, that it was a

*** Notes ***

Page 93

commercially-operated spa and that this would in fact generate more traffic, that it was the sort of thing which was considered to be an impact.

MR. SHAW: If nobody recalls it, why discuss it?

MR. MCLENDON: The only thing that I can remember, that in some of the cross examination, as I recall it, questions were asked of the traffic expert if the spa were in operation, would it not generate more traffic? That's all I can recall.

MR. MCDONALD: Mr. Chopin, from a practical standpoint, do you see this testimony as being --

MR. CHOPIN: No. If anything, I might get more out of cross examination than by keeping her off the stand, but the fact is the principle is going to be more important when you hear the next two witnesses.

And I think we do ourselves a disservice not to make the point. The point I really wanted to make, because Mr. Natale has said at least 11 times that you will all recall and I certainly recall, that the reason for putting this on is to rebut the questions that Mr. Randolph has asked.

Page 94

The fact is he asked the question, that is not evidence. His question is not evidence. You do not rebut a question. You rebut evidence.

So again, I agree with you completely, Mr. McDonald, but as long as everybody understands that the same principle is going to apply the next time up where it's going to be important. So I leave it to you.

MR. MCDONALD: Mr. Natale, I have to agree with Mr. Chopin. The only context I remember hearing it in was in the context of Mr. Randolph's comments to you.

MR. NATALE: I don't have the record. I think what I guess I'm reacting most to is the quasi-legislative part of this and that part of our scope of rebuttal is also to deal with the comments that were made and the inferences that can be drawn from the questions.

So when people are making statements that this is a destination spa, that that is something that we have the right to rebut. So that in considering it in any way, the council has all of the facts that relate to the spa in making that determination.

*** Notes ***

Page 95

MR. MCDONALD: Then I would probably ask Mr. Randolph if he feels, based on what Mr. Natale just said, that we should hear this witness.

MR. RANDOLPH: Not necessarily on the basis of what he said, but I believe that because no one can recall exactly what was said in regard to this over the last two days of hearing, that it would be better for you to go ahead and hear what she has to say in that regard.

MR. MCDONALD: Yes.

MR. CHOPIN: I would be willing to stipulate with Mr. Natale that there is evidence in the record if he would like to that this is a destination spa.

Would you like to stipulate that there is evidence in the record that this is a destination spa? In which event your rebuttal testimony would be appropriate.

MR. NATALE: What I am saying is that people have testified that this is a destination spa.

PRESIDENT SMITH: No, we don't remember it, Mr. Natale.

Now Mr. Chopin asked you a question, a yes

Page 96

or a no.

MR. NATALE: Yes, I'll stipulate that there is in the record, that there has been testimony that there is a destination spa.

MR. CHOPIN: Evidence in the record that this is a destination spa.

MR. NATALE: That there has been testimony, yes.

MR. CHOPIN: That is evidence.

MR. NATALE: Testimony, as far as I understand, is evidence for this.

MR. CHOPIN: Fine. I withdraw my objection.

PRESIDENT SMITH: You are stipulating that the testimony is evidence?

MR. NATALE: Yes.

PRESIDENT SMITH: Thank you, Mr. Natale, that this is a destination spa.

Go ahead, please.

MR. NATALE: Ma'am, could you please introduce yourself to the council?

MS. ELLIS: My name is Susie Ellis, S-u-s-i-e, E-l-l-i-s.

MR. NATALE: Where do you work?

MS. ELLIS: I work at Greenhouse

*** Notes ***

Page 97

Page 98

1 Mar-a-Lago, spa director.
 2 MR. NATALE: Have you heard comments that
 3 the spa is a destination spa?
 4 MS. ELLIS: I have heard that comment.
 5 Mr. Randolph mentioned it in the article that
 6 was written in the newspaper. And I believe the
 7 one gentleman, and I am sorry, I have forgotten
 8 your name, but I think you mentioned it
 9 yesterday in your comments.
 10 Since I am in the spa area, I pick up on
 11 anything that is referenced with spa, and I did
 12 hear the words destination spa referred to.
 13 MR. NATALE: Could you please tell the
 14 council why you believe this is not a
 15 destination spa?
 16 MS. ELLIS: This is not a destination spa
 17 because the Mar-a-Lago Club is a private club.
 18 It's a social club, and the spa will be
 19 available just for the members of the Mar-a-Lago
 20 Club.
 21 MR. NATALE: And what is the size of the
 22 spa?
 23 MS. ELLIS: Well, the size is really quite
 24 small. It's about 1800 square feet.
 25 And if you will allow me, I did prepare

1 just a few brief remarks, because I thought I
 2 might be a little bit nervous.
 3 PRESIDENT SMITH: No, no, no. There is a
 4 limit. You are asking her questions in
 5 rebuttal.
 6 A brief statement of a few sentences -- I'm
 7 sorry, Mrs. Ellis, I don't mean to jump on
 8 you -- is not rebuttal.
 9 MR. NATALE: Very well. Now the spa, when
 10 we hear the term destination spa, could you tell
 11 what that means as a terms of art within the spa
 12 world?
 13 MS. ELLIS: Well, a destination spa is a
 14 term that we use for a total immersion
 15 experience. A destination spa, for example,
 16 would be a place such as the Golden Door,
 17 perhaps the Greenhouse in Dallas, where people
 18 would come and stay for a period of time. That
 19 would be a destination spa. It's a total
 20 immersion experience.
 21 MR. NATALE: Now, those other two that you
 22 mentioned, those are open to the public; is that
 23 correct?
 24 MS. ELLIS: That's correct.
 25 MR. NATALE: How would they differ from

*** Notes ***

Page 99

Page 100

1 Mar-a-Lago?
 2 MS. ELLIS: Well, Mar-a-Lago, the spa is
 3 only available to members of the Mar-a-Lago
 4 Club, so there is a great distinction.
 5 MR. NATALE: As it relates to the term
 6 designation, you say submersion?
 7 MS. ELLIS: Immersion.
 8 MR. NATALE: Immersion. Is the Mar-a-Lago
 9 going to -- excuse me, the Greenhouse Mar-a-Lago
 10 spa going to be an immersion experience; that
 11 is, a 24-hour, 10-hour, whatever it is,
 12 experience of the person who is there?
 13 MS. ELLIS: Well, the Mar-a-Lago Club, the
 14 Greenhouse Mar-a-Lago is a spa just for the
 15 members of the Mar-a-Lago Club. And it will
 16 operate as a day spa.
 17 However, what I had mentioned in the
 18 article in the newspaper is that we have had
 19 members request to have a total immersion
 20 experience.
 21 So, for example, we have scheduled in
 22 January one week in which the members would be
 23 able to come and stay on property, that would be
 24 ten people, ten members, and have a total
 25 immersion spa experience for a week.

1 So in that respect, it would be a
 2 destination opportunity which is what I had
 3 mentioned in the article. But it is not a
 4 destination spa.
 5 MR. NATALE: Now when you say a day-long
 6 immersion, I don't mean to be sarcastic, but
 7 what are the things, what would a day-long thing
 8 be?
 9 What are the sort of things they would do
 10 for that day-long immersion?
 11 MS. ELLIS: Well, the spa experience,
 12 obviously we have fitness and we have body
 13 treatments, massage, so on. And we also have
 14 Greenhouse spa cuisine on the menu.
 15 So a total immersion experience would
 16 include being totally involved in the spa. And
 17 if a person is staying at the Mar-a-Lago Club,
 18 then all of the meals would be Greenhouse spa
 19 cuisine meals, the fitness, the treatments would
 20 all be part of a day immersion experience.
 21 MR. NATALE: They would have lunch there in
 22 a day? It would be part of facials and the
 23 like?
 24 MS. ELLIS: Right, exactly.
 25 MR. NATALE: I have no further questions.

*** Notes ***

Page 101

Page 102

1 PRESIDENT SMITH: All right, thank you.
2 MR. NATALE: Wait. Would anyone from the
3 public just be able to walk in there and say let
4 me enjoy this?

5 MS. ELLIS: No. The Greenhouse Mar-a-Lago
6 is only for members of the Mar-a-Lago Club.

7 PRESIDENT SMITH: All right, just a minute,
8 please. The mayor has a question.

9 MAYOR ILYNSKY: Ms. Ellis, I don't intend
10 to be rude. You are a pretty pretty lady and I
11 wish you very big success.

12 Tell me, the hundreds of thousands of names
13 you come up to, why do you correlate it to the
14 Greenhouse in Dallas, which is one of the most
15 famous spas in the world? I saved money for
16 four years to send my wife there once. Why do
17 you call it the Greenhouse? Why not come up
18 with a different name?

19 I'll tell you why, because the correlation,
20 the suggestion in Dallas that you can get on an
21 airplane and fly to the same type of Greenhouse
22 at Mar-a-Lago is what you are after, isn't it?

23 Tell me that's not true, that there is no
24 correlation at all between the two spas. Tell
25 me that.

1 MS. ELLIS: I think the correlation is the
2 fact that the Greenhouse in Dallas, which has a
3 very legendary reputation, as you mentioned,
4 being in existence for 30 years. And I know
5 there are people here that have attended the
6 Greenhouse, and we certainly have a reputation
7 of royalty and first ladies and that kind of
8 reputation.

9 And so in that respect, yes, the Greenhouse
10 Mar-a-Lago will have that same exclusiveness,
11 the same intimacy, the same refinement.

12 MAYOR ILYNSKY: But why wouldn't the
13 Greenhouse in Dallas call you up and say now
14 wait a minute, we are the Greenhouse, you are
15 not, unless there is some sort of correlation?
16 I don't have a shop in this --

17 MS. ELLIS: Well, I work with the
18 Greenhouse in Dallas.

19 MAYOR ILYNSKY: So there is a relationship
20 between the two of you?

21 MS. ELLIS: Yes. Let me say this. A lot
22 of people have asked me this question.

23 If someone has attended the Greenhouse in
24 Dallas, that does not mean they would be able to
25 attend the Greenhouse at Mar-a-Lago, because the

*** Notes ***

Page 103

Page 104

1 Mar-a-Lago Greenhouse is a private spa, just for
2 the members of Mar-a-Lago.

3 PRESIDENT SMITH: Ms. Ellis, are you
4 employed by the Greenhouse or by the Mar-a-Lago
5 Club?

6 MS. ELLIS: I am employed by the
7 Greenhouse.

8 PRESIDENT SMITH: In Dallas?

9 MS. ELLIS: Yes.

10 PRESIDENT SMITH: And when you state it's
11 just for the members, that means to the
12 exclusion of guests?

13 MS. ELLIS: Members will be able to bring
14 guests, yes.

15 PRESIDENT SMITH: All right. Has the spa
16 been open yet?

17 MS. ELLIS: No.

18 PRESIDENT SMITH: So you really are unable
19 to say how much demand there will be for the spa
20 services, the Greenhouse, for your spa?

21 Have you reservations already?

22 MS. ELLIS: Yes, some.

23 PRESIDENT SMITH: How many?

24 MS. ELLIS: We have phone calls. We
25 haven't actually booked appointments yet. We

1 are opening November 1st.

2 PRESIDENT SMITH: So you actually have no
3 reservations yet? You do or you don't?

4 MS. ELLIS: Well, we have five,
5 approximately.

6 PRESIDENT SMITH: Okay, that's fine. Thank
7 you.

8 MR. CHOPIN: Susie, let me just ask you a
9 couple of questions. This term destination spa
10 is a word of art in the spa business, right?

11 MS. ELLIS: Yes.

12 MR. CHOPIN: Is that what you testified to
13 before? And you do concede now it could be
14 members and guests.

15 Can a guest come to the spa without the
16 member who sponsors?

17 MS. ELLIS: No.

18 MR. CHOPIN: How do you know that?

19 MS. ELLIS: The policy of the club is that
20 members would introduce their guest to the spa.

21 MR. CHOPIN: I'd like to know who controls
22 the policies of the Greenhouse spa. Is it the
23 Greenhouse in Dallas or is it Mar-a-Lago?

24 MS. ELLIS: Mar-a-Lago.

25 MR. CHOPIN: Mar-a-Lago controls

*** Notes ***

Page 105

1 Greenhouse?
 2 MS. ELLIS: Yes.
 3 MR. CHOPIN: So that if Mar-a-Lago did
 4 something to impinge or infringe on the
 5 reputation and quality of the spa in Dallas,
 6 that would be okay?
 7 MS. ELLIS: That's why I'm here.
 8 MR. CHOPIN: Okay. You are here now.
 9 What happens if on December 1st they change
 10 their policy and say it was nice knowing you,
 11 Susie, we got somebody else, and they then have
 12 these total immersion spas?
 13 Would it then be a destination spa?
 14 MS. ELLIS: I don't understand your
 15 question.
 16 MR. CHOPIN: Let me try again, I'm sorry.
 17 You say right now that you define a
 18 destination spa as one where you have total
 19 immersion for some period of time; is that
 20 pretty close?
 21 MS. ELLIS: Yes.
 22 MR. CHOPIN: I have never been to a spa, I
 23 want you to know.
 24 MS. ELLIS: I understand.
 25 MR. CHOPIN: And right now you are not

Page 106

1 going to do that; is that correct?
 2 MS. ELLIS: I had said that we will have a
 3 destination opportunity.
 4 MR. CHOPIN: I heard that. I'm going to
 5 come back to that opportunity, but let me have
 6 an opportunity to ask you a question.
 7 You said that right now you don't intend to
 8 have this distinguishing characteristic and
 9 immersion type spa experience over some period
 10 of time, and therefore it's not a destination
 11 spa.
 12 Is that a fair statement of your testimony?
 13 MS. ELLIS: No, I did not say that.
 14 MR. CHOPIN: I'm really not trying to put
 15 words in your mouth. I'm grappling with an area
 16 which I find very hard to deal with.
 17 I thought that the distinction between a
 18 destination spa and one that only offers a
 19 destination opportunity is the fact that the
 20 immersion could take place over some ten-day
 21 period of time or some week or something like
 22 that.
 23 Is that not what you said?
 24 MS. ELLIS: No. Would it help if I perhaps
 25 read what I didn't say?

*** Notes ***

Page 107

1 MR. CHOPIN: No, it wouldn't. It would
 2 help a lot, though, if you would answer my
 3 question.
 4 My question is what makes something a
 5 destination spa?
 6 MS. ELLIS: A destination spa is a spa
 7 where everyone that's in attendance has a total
 8 immersion and focus on the spa experience.
 9 MR. CHOPIN: And you can't do that now at
 10 the Greenhouse spa at Club Mar-a-Lago in Palm
 11 Beach?
 12 MS. ELLIS: That's not what we are doing,
 13 no.
 14 MR. CHOPIN: You cannot do that now?
 15 MS. ELLIS: No.
 16 MR. CHOPIN: Okay. On November 15,
 17 Mr. Trump decides that he wants somebody to have
 18 more than just an opportunity. He wants them to
 19 have a destination.
 20 Is there anything that prohibits him from
 21 doing that?
 22 MS. ELLIS: Yes. It's a private club and
 23 it's not available for outside guests to have a
 24 destination spa.
 25 MR. CHOPIN: I'll come back to that in just

Page 108

1 a minute. Let's just say it's limited to the
 2 members and their guests.
 3 MS. ELLIS: Okay.
 4 MR. CHOPIN: You do know Mr. Trump owns the
 5 club, don't you?
 6 MS. ELLIS: I understand.
 7 MR. CHOPIN: I mean it's not a mystery to
 8 you, right?
 9 Okay, Mr. Trump is in fact I guess Mr. Spa,
 10 since he owns it. But Mr. Trump says we are
 11 going to change our policy, because I have had
 12 so many requests, and we in fact are going to
 13 allow people to, all people that are in the spa
 14 to have this total immersion experience.
 15 MS. ELLIS: You mean the members?
 16 MR. CHOPIN: Sure. Are you with me so far?
 17 MS. ELLIS: Okay.
 18 MR. CHOPIN: Let's say he does that on
 19 November 15. Okay?
 20 Would that make it a destination spa?
 21 MS. ELLIS: It would make it a destination
 22 opportunity for the members of Mar-a-Lago. I
 23 wouldn't define that as a destination spa.
 24 MR. CHOPIN: But you did define a
 25 destination spa within the last 30 seconds as

*** Notes ***

Page 109

Page 110

1 being a place where all of the participants had
 2 a total immersion experience, right?
 3 MS. ELLIS: Okay.
 4 MR. CHOPIN: That's what you said it was.
 5 MS. ELLIS: All right.
 6 MR. CHOPIN: I want you to focus on those
 7 words, think about those words and hear them
 8 coming from Mr. Trump on November 15 as saying
 9 this is what we are going to offer. Okay?
 10 MS. ELLIS: Right.
 11 MR. CHOPIN: Would it then make Club
 12 Mar-a-Lago a destination spa?
 13 MS. ELLIS: I think that the way I am
 14 hearing people define destination spa is an
 15 immersion spa --
 16 MR. CHOPIN: That's not my question. Did
 17 you hear my question?
 18 MR. NATALE: Madam President, I would
 19 object to interrupting the person while she is
 20 speaking.
 21 PRESIDENT SMITH: Your objection is so
 22 noted, Mr. Natale.
 23 MR. CHOPIN: I am going to withdraw the
 24 question.
 25 Mr. Trump does have the power to turn this

1 into a destination spa if he wants to, right?
 2 MS. ELLIS: Well, how are you defining
 3 destination spa?
 4 MR. CHOPIN: I don't have a clue. I'm just
 5 listening to whatever you tell me, Susie.
 6 Now let me ask you this. What's wrong with
 7 a destination spa in your mind?
 8 MS. ELLIS: There is nothing wrong with a
 9 destination spa. I do feel that people have
 10 used the term destination spa to mean
 11 commercial, open to the public, and that would
 12 not be a definition of destination spa.
 13 MR. CHOPIN: In your mind, open to the
 14 public would make it a destination spa?
 15 MS. ELLIS: I think there has been some
 16 usage of that.
 17 MR. CHOPIN: You said the spa was 1800
 18 square feet. I didn't have a chance to
 19 double-check it, but my recollection was that it
 20 had 3500 square feet.
 21 Am I wrong about that?
 22 MS. ELLIS: We have a fitness area that's
 23 about 900 square feet and our treatment areas
 24 are about the rest of that.
 25 MR. CHOPIN: Just answer my question.

*** Notes ***

Page 111

Page 112

1 Did you never hear that there is 3500
 2 square feet in the spa?
 3 MS. ELLIS: I have heard the numbers, but I
 4 haven't been keeping track of exactly the square
 5 footage.
 6 MR. CHOPIN: Now you have a certain limited
 7 capacity, right?
 8 MS. ELLIS: Yes.
 9 MR. CHOPIN: And if you were at full
 10 capacity -- how many people are full capacity,
 11 by the way?
 12 MS. ELLIS: Well, we have 16.
 13 MR. CHOPIN: 16?
 14 MS. ELLIS: That is our occupancy. We have
 15 six treatment rooms.
 16 MR. CHOPIN: If it were a destination spa
 17 as you defined a destination spa, you would have
 18 16 people immersed over a ten-day period of
 19 time? Don't hold me to ten days, whatever you
 20 think is a fair number of days.
 21 Is that right?
 22 MS. ELLIS: If it was just --
 23 MR. CHOPIN: Yes, ma'am.
 24 MS. ELLIS: At Mar-a-Lago? There are only
 25 ten suites.

1 MR. CHOPIN: So they would have to be
 2 checked into the hotel?
 3 MS. ELLIS: Yes, for it to be a total
 4 immersion experience, that's right.
 5 MR. CHOPIN: I see, okay. If it wasn't a
 6 destination spa, then you can have people coming
 7 in and out, having a facial, massage, do a
 8 little exercise, and it increases the capacity
 9 that you can service folks; is that not right?
 10 MS. ELLIS: Well, that's right, and that
 11 would be more of a description of what we call
 12 in our industry the day spa.
 13 MR. CHOPIN: So you actually would have
 14 more traffic to and from Mar-a-Lago with your
 15 day spa than you would if in fact it were a
 16 destination spa, right?
 17 MS. ELLIS: Yes.
 18 MR. CHOPIN: I have nothing else.
 19 PRESIDENT SMITH: Thank you, Mr. Chopin.
 20 Members of the council, anything for
 21 Ms. Ellis? No. Thank you.
 22 I would like to state I have visited the
 23 Greenhouse in Dallas, but my mother took me.
 24 MS. ELLIS: We would love to have you come
 25 again. I might say we could all use the spa

*** Notes ***

Page 113

Page 114

1 experience about now.
 2 MR. WYETT: Excuse me, I do have a
 3 question.
 4 Will the outside usage by guests of members
 5 be subject to the same guest restrictions rules
 6 I understand are about to be imposed at
 7 Mar-a-Lago?
 8 MS. ELLIS: Yes.
 9 MR. WYETT: And do I understand -- I was
 10 told just the other night by a member but it
 11 wasn't official -- that the membership guests
 12 are going to be two visits per year?
 13 MS. ELLIS: That's my understanding, yes.
 14 MR. WYETT: Would two visits a year to the
 15 spa be like two immersions, like staying there
 16 for a week, or would it be two one-day trips?
 17 MS. ELLIS: That might -- I am not sure.
 18 It could possibly two immersion experiences,
 19 except we are only offering one this year, so --
 20 MR. WYETT: And do I understand correctly
 21 that if I was a member -- I'm not -- and I
 22 invited Mr. McLendon here to be my guest --
 23 MR. MCLENDON: I accept.
 24 MR. WYETT: He would have full use of the
 25 spa?

1 MS. ELLIS: If he was a guest?
 2 MR. WYETT: A guest at the so-called hotel
 3 section of the club.
 4 MS. ELLIS: Yes, and you would be paying
 5 for it.
 6 MR. WYETT: Sam, I expect you to reimburse
 7 me.
 8 MR. NATALE: Questions on redirect, Madam
 9 President?
 10 PRESIDENT SMITH: Mr. Natale.
 11 MR. NATALE: Thank you.
 12 Would it refresh your memory as to the
 13 exact footage if you had a chance to look at a
 14 scheme or a floor plan of the spa area?
 15 MS. ELLIS: Yes, that would help.
 16 PRESIDENT SMITH: Why don't you just
 17 stipulate what the square footage is. We have
 18 heard it's 3500. If it's anything different,
 19 just tell us. We are not arguing the square
 20 footage of the spa.
 21 MR. NATALE: That's what it is, 3500.
 22 PRESIDENT SMITH: Good, thank you.
 23 MR. NATALE: How many people do you believe
 24 at any one time would be able to utilize that
 25 facility?

*** Notes ***

Page 115

Page 116

1 MS. ELLIS: 16. It's a very small,
 2 intimate spa.
 3 MR. NATALE: I have no further questions.
 4 Oh, one other.
 5 When you say the Greenhouse, so we
 6 understand this, is that to say that it is the,
 7 if you will, the technique or the type and
 8 quality of the treatment, sort of like when we
 9 use the term Montessori school, that it
 10 describes the nature of it and not necessarily
 11 where it's located or anything like that?
 12 MS. ELLIS: Yes, I would say that's exactly
 13 right. The 30-year history of the Greenhouse,
 14 the way we treat clients, the refinement, the
 15 intimacy, the exclusivity of the Greenhouse is
 16 what we are incorporating at Mar-a-Lago. It's
 17 really a perfect match.
 18 MR. MCLENDON: I have a question.
 19 PRESIDENT SMITH: Mr. McLendon.
 20 MR. MCLENDON: I know some of it is not my
 21 business, so I'll try to be careful what I'm
 22 asking.
 23 Is there a franchise arrangement between
 24 the home Greenhouse and Trump Greenhouse? Is he
 25 a franchisee?

1 What's the relationship?
 2 MS. ELLIS: Mr. and Mrs. Katzhoff are the
 3 owners of the Greenhouse and they have made an
 4 arrangement with the Mar-a-Lago Club, and I'm
 5 not sure of all of the details of that.
 6 MAYOR ILYINSKY: Do they have a closed
 7 system in Dallas?
 8 MS. ELLIS: In Dallas we have 39 guests a
 9 week, and we have been in existence for 30
 10 years. And all of the guests in Dallas stay for
 11 one week. They arrive on Sunday and they leave
 12 the following Sunday. And it's women only,
 13 which is different than the Greenhouse
 14 Mar-a-Lago, which will be co-ed and a day spa
 15 experience for members only of the Mar-a-Lago
 16 Club.
 17 MR. NATALE: Madam President, just to make
 18 sure, the square footage of the spa is
 19 approximately 1800 square foot.
 20 MAYOR ILYINSKY: Where did the 3500 come
 21 from?
 22 PRESIDENT SMITH: So in other words, the
 23 town had the incorrect figure? Because I know
 24 somewhere in this pile of papers it said
 25 3500-foot spa.

*** Notes ***

Page 117

1 MR. NATALE: Here is what happens. When we
2 look at the 1993 letter from the county and they
3 articulate one golf course, one tennis court and
4 they say one spa, that's where it says 3500
5 square feet. What is actually being built is
6 only the 1800 square feet.

7 So what's actually going to be there is
8 significantly less than what the county was
9 anticipating in that 1993 letter, which is one
10 that's approximately almost twice, they were
11 anticipating twice the square footage than what
12 was actually being produced.

13 PRESIDENT SMITH: All right. Ms. Ellis,
14 did you say that you are not aware of the
15 financial arrangements between the Club
16 Mar-A-Lago and the Greenhouse?

17 MS. ELLIS: I'm not aware of all of the
18 details of it.

19 PRESIDENT SMITH: You know, some, none or
20 all?

21 MS. ELLIS: I know some of it, but I don't
22 know all of it, and I would imagine that's
23 something you would want to ask Mr. and Mrs.
24 Katzhoff.

25 PRESIDENT SMITH: Are they here? That

Page 118

1 would definitely be new people, wouldn't it?

2 MR. NATALE: I don't even know those
3 people.

4 PRESIDENT SMITH: Don't look at me. If you
5 don't know them, how would I know them?

6 MR. NATALE: You at least were there with
7 your mother.

8 PRESIDENT SMITH: No, they were not there.

9 How long have the owners owned the
10 Greenhouse?

11 MS. ELLIS: I believe they have owned it
12 since maybe '87. I'm not sure of the exact
13 date.

14 PRESIDENT SMITH: I was there prior to
15 that.

16 MR. WYETT: Can we move on? This doesn't
17 seem to have any pertinence to the application
18 at this particular time, beyond the testimony we
19 now have. At the rate we are going, we are
20 going to be here until New Year's.

21 MR. NATALE: I have no further questions.

22 The next person we would call, Madam
23 President, is Mr. Pollock.

24 Mr. Pollock, I would like to direct your
25 attention to your cross examination and to other

*** Notes ***

Page 119

1 comments that you have heard from people who
2 have testified here that the Mar-a-Lago Club
3 does not meet and cannot meet the concurrency or
4 the level of service standards for the road with
5 which it is contiguous with, and those two roads
6 being A1A and Southern Boulevard.

7 Do you recall that?

8 MR. POLLOCK: Yes, I do.

9 MR. NATALE: As a consequence of those
10 representations, as a consequence and in
11 response to those representations, is there
12 anything that you wish to say to rebut that
13 evidence that has been presented that you
14 cannot, that the club cannot and has not
15 presented that?

16 MR. POLLOCK: Yes.

17 MR. NATALE: And what would that be, sir?

18 MR. POLLOCK: Well, there was quite a bit
19 of discussion about the validity of the 1995/'96
20 traffic count information as to its accuracy and
21 validity. And subsequent to my prior testimony,
22 the 1996 traffic count information from Palm
23 Beach County has become available.

24 MR. NATALE: Was that available to you
25 prior to your testimony?

Page 120

1 MR. POLLOCK: No, it was not.

2 MR. NATALE: So there was no way that you
3 could present that?

4 MR. POLLOCK: No.

5 MR. NATALE: Now based on that and what you
6 heard that refuted your conclusions and the
7 information, did you conduct a study of, a
8 traffic study, and have you produced the traffic
9 impact analysis?

10 MR. POLLOCK: Yes, I have.

11 MR. NATALE: I'd like to show you and at
12 this point ask you, sir, if the copy I am
13 presenting to you is in fact what you developed
14 and generated.

15 MR. POLLOCK: Yes, it is.

16 MR. CHOPIN: May I interrupt?

17 I would request the opportunity to voir
18 dire Mr. Pollock on the question of whether his
19 testimony is going to be rebuttal and whether
20 his report is going to add new evidence that
21 really is rebuttal or evidence that he could
22 have introduced at the time.

23 MR. NATALE: Madam President, I haven't
24 tendered the evidence as of yet, and generally --
25 and, Mr. Randolph, correct me if I'm wrong --

*** Notes ***

Page 121

1 the voir dire becomes a relevant consideration
 2 when the evidence is tendered; is that correct,
 3 sir?
 4 MR. RANDOLPH: Yes, but I thought you said
 5 you were introducing the report.
 6 PRESIDENT SMITH: You had handed it to
 7 Mr. Pollock and then you took it back.
 8 MR. NATALE: Yes, I was going to ask him to
 9 identify it.
 10 PRESIDENT SMITH: But it was in his hands.
 11 MR. NATALE: That's correct. I wanted to
 12 see if he can identify this and authenticate the
 13 report.
 14 MR. RANDOLPH: That's reasonable.
 15 MR. NATALE: Thank you.
 16 MR. POLLOCK: Yes, I can. It is my report.
 17 MR. NATALE: Okay. Now, sir, do you
 18 believe that what is contained in that report --
 19 MR. CHOPIN: Objection, Your Honor.
 20 PRESIDENT SMITH: Mr. Natale, if you are
 21 going to question him on the report, are you
 22 entering the report or not entering the report
 23 at this time?
 24 MR. NATALE: Not at this time. I'm going
 25 to ask him does he believe that this is what he

*** Notes ***

Page 122

1 believes this to be, and then I will enter the
 2 report.
 3 PRESIDENT SMITH: Did he not identify it as
 4 the report that he made?
 5 MR. NATALE: Right, but now I'm going to
 6 ask him questions as to the circumstances under
 7 which he made it.
 8 MR. CHOPIN: That's the point.
 9 PRESIDENT SMITH: But that's what is in the
 10 thing.
 11 MR. NATALE: I will tender the report at
 12 this moment for council's consideration.
 13 MR. CHOPIN: Note my objection to the
 14 report.
 15 PRESIDENT SMITH: All right.
 16 MR. CHOPIN: Am I free to question him?
 17 PRESIDENT SMITH: Mr. Chopin.
 18 MR. CHOPIN: Mr. Pollock, you heard -- I
 19 agree with you that you may not have had the
 20 third quarter 1996 numbers.
 21 Is that what you were referring to?
 22 MR. POLLOCK: Yes, sir.
 23 MR. CHOPIN: And you heard those numbers
 24 from Mr. Tipton?
 25 MR. POLLOCK: No.

Page 123

1 MR. CHOPIN: From Mr. Barr?
 2 MR. POLLOCK: No.
 3 MR. CHOPIN: Mr. Barr testified yesterday,
 4 did he not?
 5 MR. POLLOCK: Yes, he did.
 6 MR. CHOPIN: As an expert?
 7 MR. POLLOCK: Yes.
 8 MR. CHOPIN: For Mr. Trump?
 9 MR. POLLOCK: Yes.
 10 MR. CHOPIN: Were those numbers available
 11 to him?
 12 MR. POLLOCK: I think so, yes.
 13 MR. CHOPIN: They should have been if they
 14 weren't, right?
 15 MR. POLLOCK: Yes. They were available to
 16 me.
 17 MR. CHOPIN: You don't have special
 18 connections inside anywhere, do you?
 19 MR. POLLOCK: No, sir.
 20 MR. CHOPIN: Okay. Did the results of
 21 those numbers offer any substantial change to
 22 the testimony that you gave on September 16 as
 23 to what the average daily traffic count was?
 24 MR. POLLOCK: Yes.
 25 MR. CHOPIN: Did it reduce it perhaps

*** Notes ***

Page 124

1 slightly?
 2 MR. POLLOCK: In some cases it reduced and
 3 in other cases it increased.
 4 MR. CHOPIN: Okay. Well, did you hear
 5 Mr. Tipton's testimony that the average daily
 6 traffic count for 1990 -- the current daily
 7 traffic count based on first and third quarter
 8 1996 numbers were 260?
 9 MR. POLLOCK: No, I did not.
 10 MR. CHOPIN: You did not. Your testimony
 11 on September 16 was that it was 270, did you
 12 not?
 13 MR. POLLOCK: That's correct.
 14 MR. CHOPIN: Do you disagree with
 15 Mr. Tipton's testimony as to the average daily
 16 count adjusted for some of the defects in the
 17 third quarter and first quarter statistics?
 18 MR. POLLOCK: Yes, I do disagree.
 19 MR. CHOPIN: Do you disagree with
 20 Mr. Barr's testimony that the average daily
 21 count was 267?
 22 MR. POLLOCK: I stand by my 270 number.
 23 MR. CHOPIN: You do stand by your 270?
 24 MR. POLLOCK: Yes.
 25 MR. CHOPIN: Is 260 not better for you?

Page 125	Page 126
1MR. POLLOCK: 270 is what I said and I 2stand by it. 3MR. CHOPIN: Well, who are you rebutting? 4MR. POLLOCK: I am rebutting the comments 5that have been made by a member of the public 6and testimony. 7MR. CHOPIN: May I ask you who that is, 8please? 9MR. POLLOCK: I don't remember specifically 10the individual. There has been statements 11made -- 12MR. CHOPIN: Let me ask you if I can, and I 13don't mean to interrupt you. 14MR. NATALE: Your Honor, I would object. 15If he asks a question, he should allow the 16answer. It's proper courtroom etiquette and 17it's proper etiquette. Then he can ask whatever 18questions he wants to afterwards. 19MR. CHOPIN: I submit to you, do you know 20the name of who you are rebutting? 21MR. RANDOLPH: Can I interject? 22PRESIDENT SMITH: Mr. Randolph. 23MR. RANDOLPH: I agree that the witness 24ought to have an opportunity to complete the 25answer. It sounded like the witness was	1interrupted in the middle of an answer. 2MR. CHOPIN: Let me suggest my question was 3who he was rebutting, and he said he did not 4remember the names, and I thought that was his 5answer. 6What I was going to ask him just to move 7things along was you do know who the experts are 8who testified here in the course of these 9proceedings? 10MR. POLLOCK: Yes. 11MR. CHOPIN: You are an expert. As a 12traffic consultant, we all recognize that 13Mr. Pollack as a consequence spent, as an expert 14duly qualified, you have the right as a matter 15of law to offer your opinion with respect to 16traffic matters, correct? 17MR. POLLOCK: Yes, sir. 18MR. CHOPIN: With the exception of Mr. Barr 19and Mr. Tipton, have any other experts testified 20in this matter on traffic issues? 21MR. POLLOCK: Mr. Brisson and Mr. Weidner. 22MR. CHOPIN: Are you rebutting Mr. Brisson 23or Mr. Weidner? 24MR. POLLOCK: Some of the statements or 25inferences have been made that we have not

*** Notes ***

Page 127	Page 128
1complied with traffic performance standards or 2could not comply in the specifics that the 31995/1996 traffic counts, average daily traffic 4count information was flawed, and the 5conclusions that I reached related to that. I'd 6like to rebut that. 7MR. CHOPIN: Let me just keep this simple, 8because we are not traffic experts. And if I 9can, as it relates to the average daily traffic 10counts, are you here to rebut anybody as to what 11they concluded based on '95/'96 combination 12numbers and all '96 numbers, what they concluded 13regarding the average daily traffic counts? 14MR. POLLOCK: Yes, sir. 15MR. CHOPIN: Who is that, please? 16MR. POLLOCK: As I said, Mr. Brisson, 17Mr. Weidner and others that have testified at 18this hearing. 19MR. CHOPIN: As to the average daily trip 20counts for the period -- 21MR. POLLOCK: As to the conclusions related 22to that. 23MR. CHOPIN: All right. But I'm just 24asking you to let me stick with one issue at a 25time so I can determine if your testimony is	1rebuttal or not. 2Do you understand my purpose in this 3question? 4MR. POLLOCK: No, I do not. 5MR. CHOPIN: Well, then just answer my 6question and it really isn't necessary for you 7to understand. 8I'm asking you -- 9MR. POLLOCK: It is necessary for me to 10understand to answer your question. 11MR. CHOPIN: Well, let me try and ask it to 12you again, Mr. Pollock. 13The testimony with respect to the 14calculation based on hard data coming from the 15monitoring at Mar-a-Lago has I thought produced 16a fairly consistent actual average daily trip 17calculation within only a slight variation. 18MR. POLLOCK: I'm not referring to that. 19MR. CHOPIN: Okay. Well, that's what I'm 20asking. You are not here to rebut that 21testimony? 22MR. POLLOCK: No, sir. 23MR. CHOPIN: Okay, one step at a time, and 24that way we will know what you are here to 25rebut.

*** Notes ***

Page 129

Page 130

1 Now, are you here to rebut the assertion
2 that Mar-a-Lago is not in compliance with the
3 Palm Beach County traffic standards, performance
4 standards test at the present time?

5 MR. POLLOCK: No.

6 MR. CHOPIN: You are not?

7 MR. POLLOCK: Uh uh.

8 MR. CHOPIN: Have you ever heard anybody
9 say that they are not in compliance at the
10 present time?

11 MR. POLLOCK: No.

12 MR. CHOPIN: Okay. And the focus --

13 MR. POLLOCK: Yes, I have heard that.

14 MR. CHOPIN: You have heard one of the
15 experts say that?

16 MR. POLLOCK: Including yourself, yes.

17 MR. CHOPIN: Well, I'm just asking the
18 questions, Mr. Tipton.

19 MR. POLLOCK: Mr. Pollock.

20 MR. CHOPIN: And if I can testify asking
21 you questions, you are going to hear some doozy
22 of questions, but the experts are the only ones
23 who testified.

24 If any of them testified that Mar-a-Lago is
25 not today in compliance with Palm Beach County

1 traffic performance standards, I'd like for you
2 to tell me who said that so that we would know
3 who it is that you are rebutting.

4 MR. POLLOCK: I'm not sure that one of the
5 experts that has testified actually made that
6 statement, but there, that certainly has been a
7 statement made by others who have been at this
8 microphone.

9 MR. CHOPIN: But to the best of your
10 knowledge, none of the experts made that
11 statement?

12 MR. POLLOCK: I don't remember
13 specifically. I can't remember specifically
14 whether Ms. Cottrell addressed that in her
15 testimony.

16 MR. CHOPIN: Ms. Cottrell is not a traffic
17 expert, or are you?

18 MS. COTTRELL: I am not a traffic expert.

19 MR. CHOPIN: She is not a traffic expert.
20 She didn't testify in that fashion. Let me go
21 on.

22 MR. POLLOCK: But she did testify about
23 compliance with the use agreement. One of the
24 avenues was traffic concurrency.

25 MR. CHOPIN: If everybody stipulated along

*** Notes ***

Page 131

Page 132

1 with you that today Mar-a-Lago is in compliance
2 with the Palm Beach County traffic standards,
3 performance standards, stipulated, then you
4 wouldn't have anything to rebut, would you, on
5 that particular point?

6 MR. POLLOCK: On that particular point,
7 right.

8 MR. CHOPIN: Okay, fine.

9 PRESIDENT SMITH: Mr. Chopin, could I ask a
10 question at this point?

11 I understood that Mr. Pollock's, I
12 understood from Mr. Natale that Mr. Pollack's
13 report was ready last night and you would have
14 presented it last night if we had continued.

15 And he just questioned about Ms. Cottrell,
16 and I realize we have all been here a long time,
17 but I believe she testified this morning.

18 MR. NATALE: May I respond?

19 PRESIDENT SMITH: Well, when I can finish
20 my question. I mean I'm not asking you to
21 rebut. I'm asking you to clarify.

22 MR. NATALE: Let me clarify that.

23 PRESIDENT SMITH: Is this report, was this
24 report finished yesterday?

25 MR. NATALE: Yes. And I think what you

1 have here is the attorney is asking him --

2 PRESIDENT SMITH: No, I'm asking you.

3 MR. NATALE: Yes.

4 PRESIDENT SMITH: Because Ms. Cottrell said
5 he was rebutting -- excuse me, Mr. Pollack said
6 he was rebutting Ms. Cottrell. You said his
7 report was finished yesterday.

8 MR. NATALE: Yes.

9 PRESIDENT SMITH: And she spoke this
10 morning.

11 MR. NATALE: That is correct. Let me
12 explain what -- if you understand what he is
13 saying -- let's listen to the question.

14 The question was saying what testimony are
15 you rebutting? He said that he was rebutting he
16 believed the testimony of Mr. Brisson, other
17 people, and one of the people he mentioned was
18 Ms. Cottrell. He didn't say that this testimony
19 was prepared in response to her.

20 What he is just saying, that the substance
21 of his testimony rebuts not only what people
22 said prior to her and prior to -- and post his
23 testimony, but prior to what they said.

24 PRESIDENT SMITH: But this report is not in
25 rebuttal to Ms. Cottrell?

*** Notes ***

Page 133

Page 134

1 MR. NATALE: It is -- it was not generated
2 in rebuttal to Ms. Cottrell.

3 Now if the substance of that report,
4 because it deals with issues that were raised by
5 Mr. Weidner or by Mr. Brisson, if it rebuts them
6 and it in turn rebuts somebody else, then it's
7 rebuttal. But basically we are saying this
8 was --

9 PRESIDENT SMITH: I know basically what you
10 are saying. I have another question when we are
11 finished.

12 Go ahead, Mr. Chopin.

13 MR. CHOPIN: Very appropriate choice of
14 words, Mr. Natale.

15 Would you turn to page 1 of your report
16 where it says introduction, right at the
17 beginning. Are you with me?

18 MR. POLLOCK: Yes, sir.

19 MR. CHOPIN: I'm reading from that report
20 and I'd like you to answer me yes or no first as
21 to whether I'm reading it accurately.

22 It says "Kimley-Horn and Associates, Inc.
23 was retained to prepare a traffic impact
24 analysis for the club to address potential
25 increases in traffic which might be associated

1 with the club increasing its membership to
2 1,008."

3 Did I read that right?

4 MR. POLLOCK: That's correct.

5 MR. CHOPIN: Now I have a couple of
6 questions I'd like to ask you about that.

7 Are you familiar with the application
8 that's been filed in this matter?

9 MR. POLLOCK: Yes.

10 MR. CHOPIN: Is there an application which
11 is pending that asks for the authority to
12 increase the membership to 1,008?

13 MR. POLLOCK: Not specifically, no.

14 MR. CHOPIN: Well, the number 1,008 is not
15 in the application; is that correct?

16 MR. POLLOCK: No, it's not.

17 MR. CHOPIN: The application asks for an
18 unlimited membership; is that correct?

19 MR. POLLOCK: It asks for a waiver on the
20 limitation, yes.

21 MR. CHOPIN: Well, if I put it my way, that
22 would make it unlimited?

23 You wouldn't disagree with that?

24 MR. POLLOCK: That's true.

25 MR. CHOPIN: Okay. At the time you

*** Notes ***

Page 135

Page 136

1 presented your original report, it was based
2 upon an unlimited membership, based upon the
3 application; is that correct?

4 MR. POLLOCK: My statement was based upon
5 traffic conditions at the point in time of
6 1995/'96 or at this point and time frame.

7 MR. CHOPIN: What I'm asking you, sir, the
8 application asks for unlimited membership.

9 Had you been retained prior to the
10 presentation of your report on September 16 to
11 do an evaluation of traffic analysis of the
12 impact that a membership of 1,008 would have?

13 MR. POLLOCK: Not specifically, no.

14 MR. CHOPIN: You were not. Was there an
15 opportunity for you to have been retained to
16 prepare such a report at that time?

17 MR. POLLOCK: I guess maybe there was.

18 MR. CHOPIN: But you were not asked to do
19 that?

20 MR. POLLOCK: No.

21 MR. CHOPIN: Were you told that the
22 membership target was 1,008 at that time?

23 MR. POLLOCK: The -- no.

24 MR. CHOPIN: The answer is no? So then in
25 effect, this is new work based upon a definition

1 of the proposed membership target that has
2 occurred since you were first retained and since
3 September 16?

4 MR. POLLOCK: No, this is a demonstration
5 of and rebutting that we cannot comply with an
6 increase in membership at Mar-a-Lago and
7 specifically that we could not exceed 500 or 400
8 some odd.

9 MR. CHOPIN: I want to come back to that in
10 just a minute, Mr. Pollock.

11 The fact of the matter is that you were not
12 retained to do a traffic analysis keyed to 1,008
13 members prior to your testimony on September 16
14 or at the time that the application was filed or
15 at any other time, is that correct, other than
16 in connection with this report?

17 MR. POLLOCK: That's true.

18 MR. CHOPIN: When were you retained to do
19 this report?

20 MR. POLLOCK: I have been retained for a
21 number of weeks.

22 MR. CHOPIN: When were you --

23 MR. POLLOCK: I don't remember exactly when
24 I became involved in this application and
25 discussion.

*** Notes ***

Page 137

Page 138

1 MR. CHOPIN: This is a big report. So will
2 you give me a hand and tell me when were you
3 asked to prepare it?

4 MR. POLLOCK: We had a discussion, made a
5 decision that we should prepare a document to
6 demonstrate and rebut the testimony on the 16th.

7 MR. CHOPIN: The only testimony on the 16th
8 was yours, sir.

9 MR. POLLOCK: Mr. Brisson did testify on
10 the 16th.

11 MR. CHOPIN: So you were asked to rebut
12 Mr. Brisson's testimony; is that right?

13 MR. POLLOCK: To prepare a document that
14 demonstrates that we can comply with traffic
15 performance standards and to address the
16 discussion about the validity of the 1995/'96
17 traffic count information.

18 MR. CHOPIN: Do you have a copy of
19 Mr. Brisson's report?

20 MR. POLLOCK: No, I do not.

21 MR. CHOPIN: Does Mr. Brisson's report
22 address a membership of 1,008?

23 MR. POLLOCK: I don't think it does
24 specifically.

25 MR. CHOPIN: You don't think it does.

1 So when you make the statement that you
2 were retained to prepare a traffic impact
3 analysis for the club to address potential
4 increases in traffic which might be associated
5 with the club increasing its membership to
6 1,008, you were not being retained to rebut
7 Mr. Brisson's testimony on that point, were you?

8 MR. POLLOCK: We were being retained to
9 rebut the testimony that we could not comply
10 with traffic performance standards with an
11 increase in membership.

12 And 1,008 is a number that was used
13 originally in 1993 and it also happens to be a
14 number that equates to four times 252 parking
15 spaces.

16 MR. CHOPIN: Mr. Pollock, do you remember
17 when I was standing over here asking you a
18 question and the more effervescent Mr. Rampell
19 snuck up and whispered in your ear when I was
20 questioning you on the 16th of September?

21 MR. POLLOCK: I remember something like
22 that happened, yes.

23 MR. CHOPIN: And then because I have got
24 hutzpah, I said what did he tell you?

25 Do you remember what you told me?

*** Notes ***

Page 139

Page 140

1 MR. POLLOCK: No, I do not.

2 MR. CHOPIN: "He reminded me that the
3 original application of the Mar-a-Lago Club was
4 for 1,003 members." It's on page 113 of the
5 transcript prepared by Mudrick, Witt, Levy &
6 Consor.

7 Do you remember that? Does that help
8 refresh your recollection?

9 MR. POLLOCK: Yes.

10 MR. CHOPIN: So 1,008 didn't come up, did
11 it, on September 16?

12 MR. POLLOCK: 1,003, 1,008 --

13 MR. CHOPIN: Did Mr. Brisson refer to
14 1,008?

15 MR. POLLOCK: No, he did not.

16 MR. CHOPIN: When he was whispering in your
17 ear, he wasn't talking about 1,008, was he?

18 MR. POLLOCK: Who?

19 MR. CHOPIN: Rampell.

20 MR. POLLOCK: Mr. Rampell?

21 MR. CHOPIN: Yes, sir.

22 MR. POLLOCK: I think he said 1,008, yes.

23 MR. CHOPIN: Transcript says 1,003.

24 MR. POLLOCK: That might be a typo. I
25 haven't looked at the --

1 MR. CHOPIN: Okay. But now the application
2 was for an unlimited number of members; is that
3 correct?

4 MR. POLLOCK: Yes. As I said earlier, it
5 was to remove the limitation gap, yes.

6 MR. CHOPIN: So it would be an unlimited
7 number of members?

8 MR. POLLOCK: Yes.

9 MR. CHOPIN: And you capped your report at
10 1,008?

11 MR. POLLOCK: Because we do have to -- I
12 wanted to provide a document that was
13 reasonable, and we had to, because of all of the
14 discussions that had gone on, I saw no other, I
15 concluded that there was really no other choice
16 to demonstrate compliance without evaluating
17 some level of membership.

18 MR. CHOPIN: What you are really trying to
19 do in this testimony is bolster your original
20 testimony and to deal with matters you didn't
21 deal with originally; is that not true?

22 MR. POLLOCK: No. I'm trying to rebut the
23 issues that we could not comply with traffic
24 performance standards.

25 MR. POLLOCK: Would this report demonstrate

*** Notes ***

Page 141

1 that you could comply with traffic conformance
2 standards irrespective of what the membership
3 was?

4 MR. POLLOCK: It demonstrates that we at
5 least through 1,008 members, that it could.

6 MR. CHOPIN: Let me ask you again. Does
7 this report address that you can comply with
8 traffic performance standards for any number
9 above 1,008?

10 MR. POLLOCK: It demonstrates that it
11 could. But it's not specifically addressed, no.

12 MR. CHOPIN: It's not addressed in your
13 report. So what in effect is that somehow we
14 have had a metamorphosis take place, the tadpole
15 has turned into a frog and the application for
16 unlimited membership has become an application
17 for 1,008 members; is that not correct?

18 MR. POLLOCK: No, sir, it's not. As I
19 said, the 1,008 is a number that has been used
20 in this evaluation to project traffic, potential
21 traffic.

22 As this document states, we believe and our
23 professional belief, we state that the traffic
24 presented here is a significant over-statement
25 of what the real traffic would be.

Page 142

1 So in terms of the impact of the
2 Mar-a-Lago, traffic impact of the Mar-a-Lago
3 Club, I professionally believe and have that
4 opinion that the traffic as presented here would
5 be equivalent to more than 1,008 members at
6 Mar-a-Lago.

7 MR. CHOPIN: Mr. Pollock, were you asked to
8 prepare that analysis prior to the first
9 hearing?

10 MR. POLLOCK: No, sir.

11 MR. CHOPIN: Okay. And what happened --

12 MR. POLLOCK: Not in specific, no.

13 MR. CHOPIN: But you did prepare a report,
14 did you not?

15 MR. POLLOCK: I prepared a letter report.

16 MR. CHOPIN: You prepared a letter report
17 which obviously in the real world of hiring
18 experts was a lot less expensive than going to
19 all the expense of doing a big thick report?

20 MR. POLLOCK: The basics are there in terms
21 of conclusions. What this does is to document
22 what I was testifying to previously.

23 MR. NATALE: Madam President, I don't mean
24 to interrupt, but again, counsel keeps
25 interrupting his answers.

*** Notes ***

Page 143

1 MR. CHOPIN: I think you will find that I
2 shut up because I thought that he was finished,
3 and when I found that he wasn't, I let him
4 continue.

5 PRESIDENT SMITH: All right. But,
6 Mr. Chopin, don't interrupt Mr. Pollock.

7 MR. CHOPIN: No. I thought he had come to
8 an end, and when he wasn't, I let him finish.

9 Mr. Pollack, answer my question, sir. What
10 happened was on September 16 when it became
11 apparent that Mr. Rampell rested his case in
12 chief that not sufficient testimony had been
13 presented by you in the abbreviated report that
14 you had presented in letter form, so as to be
15 able to carry the burden that he was going to
16 have to carry, so what he asked you to do
17 immediately afterwards is to go on and prepare a
18 new report much more substantial in character
19 and to address a specific number?

20 Isn't that what happened?

21 MR. POLLOCK: No, sir.

22 MR. CHOPIN: Not what happened. Well, in
23 your letter that you submitted on September 13,
24 sir, you indicated in paragraph two that there
25 was excess capacity to absorb additional

Page 144

1 membership and additional uses, did you not?

2 MR. POLLOCK: That's correct.

3 MR. CHOPIN: Is your conclusion any
4 different in your new report than what it was in
5 your letter of September 13?

6 MR. POLLOCK: No, sir. It is not.

7 MR. CHOPIN: It is not. So your report
8 here is no different than the testimony and the
9 letter that you offered on September 13?

10 MR. POLLOCK: The difference is that the
11 magnitude of the unused capacity is different
12 based on the 1996 traffic counts.

13 MR. CHOPIN: Your letter of September --

14 MR. POLLOCK: But the conclusion that is
15 stated that the Mar-a-Lago Club could and does
16 comply with the countywide traffic performance
17 standards is still true, as well as the other
18 statements that are in that letter of
19 September 13.

20 MR. CHOPIN: Sir, in the second paragraph
21 of your letter when you said that there was
22 sufficient unused capacity to absorb additional
23 traffic, did you then have in mind a membership
24 of 1,008?

25 MR. POLLOCK: In the general frame of mind,

*** Notes ***

1 yes.

2 MR. CHOPIN: Okay. So that what you have
3 done here is defined and refined and amplified
4 and gone on to do a great deal more; is that
5 right?

6 MR. POLLOCK: No, this just presents the
7 details that --

8 MR. CHOPIN: That you could have presented
9 on September 16 had they hired you and paid to
10 you do it?

11 MR. POLLOCK: Well, but I did not have
12 everything documented at that point in time.

13 MR. CHOPIN: You could have done it had
14 they asked you to, right?

15 MR. POLLOCK: No, and because of the 1996
16 traffic information having become available that
17 was not available at that time.

18 MR. CHOPIN: But on the basis of what you
19 did was take third quarter '95 and first quarter
20 '96, you could have prepared the same report on
21 September 16 and submitted it at that time, with
22 the one exception of not having full third
23 quarter numbers for '96?

24 MR. POLLOCK: That is true.

25 MR. CHOPIN: You could have done that?

1 MR. POLLOCK: Yes.

2 MR. CHOPIN: You were not asked to do that,
3 were you?

4 MR. POLLOCK: No, sir.

5 MR. CHOPIN: You were not asked to do that?

6 MR. POLLOCK: That is correct.

7 MR. CHOPIN: You could have done it?

8 MR. POLLOCK: I testified to that fact on
9 the 16th.

10 MR. CHOPIN: But you were not asked to do
11 that?

12 MR. POLLOCK: No, sir.

13 MR. CHOPIN: Not until after the fact that
14 it became apparent that there was something less
15 than what in fact should have been presented,
16 and therefore they have taken a second bite at
17 the apple.

18 Let me ask you a few other questions, if I
19 may.

20 MR. NATALE: Madam President, may he
21 respond to that question?

22 PRESIDENT SMITH: The last question that I
23 heard, that Mr. Pollack did respond, he was not
24 asked to do that? He said no, I was not.

25 The next thing I heard was Mr. Chopin

*** Notes ***

1 taking a bite from the apple. What was the
2 question?

3 MR. NATALE: Was that a statement or a
4 question? If it is a question, then he has a
5 right to answer.

6 PRESIDENT SMITH: About biting the apple?
7 Perhaps you'd like to reiterate that,
8 Mr. Chopin.

9 MR. CHOPIN: Why don't I withdraw it,
10 because we have too much focus on the big apple
11 here.

12 PRESIDENT SMITH: All right. I didn't hear
13 the verb.

14 Go ahead.

15 MR. CHOPIN: You are a traffic expert; is
16 that correct?

17 MR. POLLOCK: Yes, sir.

18 MR. CHOPIN: Under planning data, you list
19 the club has approval for the following uses,
20 3500 square foot spa.

21 MR. POLLOCK: That's correct.

22 MR. CHOPIN: Is that correct?

23 MR. POLLOCK: Yes, sir.

24 MR. CHOPIN: But they didn't build a 3500
25 square foot spa; is that correct?

1 MR. POLLOCK: Well, that's what, there has
2 been some testimony to that effect today, yes.

3 MR. CHOPIN: Last five minutes, okay. And
4 you list pool, five courts, 70 persons, 75
5 people, ten units.

6 You only know that because someone else
7 told you that; is that correct?

8 MR. POLLOCK: That's what the previous
9 approval was based upon.

10 MR. CHOPIN: The previous approval?

11 MR. POLLOCK: The current approval is based
12 upon that.

13 MR. CHOPIN: The use agreement was based on
14 that?

15 MR. POLLOCK: The use agreement and
16 subsequent tennis courts have been approved
17 since the original use agreement, is my
18 understanding complies with that, yes, with the
19 exception of the golf course, which is addressed
20 later on.

21 MR. CHOPIN: Well, it's addressed in your
22 report, sir?

23 MR. POLLOCK: Yes, it is addressed later
24 on.

25 MR. CHOPIN: Your report addresses the fact

*** Notes ***

Page 149

1 that the golf course has been wholly or
2 partially decommissioned?
3 MR. POLLOCK: Yes.
4 MR. CHOPIN: You are familiar with the land
5 use agreement, the development use agreement,
6 the declaration-of-use agreement, I think you
7 testified a moment ago?
8 MR. POLLOCK: I'm familiar with the, more
9 or less the traffic parts of it, but not all of
10 the, not the entire --
11 MR. CHOPIN: Would it surprise you, sir, to
12 know that as recently as last night, that we
13 were advised in these late night proceedings
14 that if there was any intention to decommission
15 the golf course, that it would be necessary
16 under the terms of the use agreement to come
17 back to this council for approval of that?
18 MR. POLLOCK: I did not hear that last
19 night.
20 MR. CHOPIN: No, you weren't here, but in
21 fact, you are in fact verifying for us that it
22 has been decommissioned?
23 MR. POLLOCK: The use of it as a nine-hole
24 golf course with the tennis courts that are
25 there would in effect render it unusable as a

Page 150

1 nine-hole golf course.
2 MR. CHOPIN: Sir, my question is has it
3 been decommissioned?
4 MR. POLLOCK: I don't know for sure that it
5 has been totally decommissioned. I think the
6 holes are still there, so someone could go out
7 and hit balls.
8 MR. RANDOLPH: Can I ask a question, Madam
9 President?
10 PRESIDENT SMITH: Mr. Randolph.
11 MR. RANDOLPH: Are you cross examining him
12 on the report now, Mr. Chopin, or are you still
13 trying to voir dire?
14 MR. CHOPIN: I'm trying to voir dire him
15 and I'm forced to go through the report in order
16 to be able to do that, because once they offer
17 the report, it will have been in evidence.
18 So what I'm trying to do, and it's really
19 very very difficult under the circumstances, I
20 have to tell you, but the circumstances are
21 dictated by the fact that they are trying to
22 introduce new evidence, is to get into areas
23 which he is not rebutting. For example, my next
24 question would have been who are you rebutting
25 with respect to the decommissioning of the golf

*** Notes ***

Page 151

1 course, yet that is in this report.
2 So I don't know how else to do it, Skip,
3 because of the fact that they are trying to
4 offer a new beefed-up report that they could
5 have done in September for some kind of modified
6 application that I have never seen through
7 Mr. Pollock on rebuttal.
8 I'm happy to change what I'm doing if you
9 give me some help and guidance as to how I am
10 supposed to do it.
11 PRESIDENT SMITH: I think Mr. Chopin asked
12 a question, Mr. Randolph.
13 Mr. Randolph, would you answer the
14 question, please?
15 MR. RANDOLPH: Well, you know, I haven't
16 heard any objection by the applicant in regard
17 to the way you are proceeding, and I guess if
18 what you are saying is that you are indeed
19 questioning him to see whether or not this is
20 true rebuttal, you have the right to do that,
21 but it seems to me that it's taking an awful
22 long time to -- I don't know how long cross
23 examination would take or direct examination,
24 and we are taking a long time to determine this.
25 You know, it might benefit this council to

Page 152

1 learn how long the applicant wishes to place
2 this witness on direct and then find out what
3 other witnesses they have, who their witnesses
4 are, and what they are going to talk about in
5 order that this council can determine whether or
6 not there is a reasonable opportunity for this
7 case to be finished today.
8 I just don't know that there is, the way
9 this is going now. I don't know, but it seems
10 to me you ought to inquire as to those things so
11 that you can make a determination. It might
12 help you in regard to these proceedings.
13 MR. WYETT: I so inquire.
14 MR. CHOPIN: From my point, I don't intend
15 to ask him more than two or three, four minutes
16 more of questions on this voir dire part.
17 MR. RANDOLPH: I still think, regardless of
18 whether he does that, it would behoove this
19 council to find out from the applicant who else
20 they are going to present and what the nature of
21 their testimony will be.
22 MR. NATALE: May I respond?
23 As it relates to this witness, I don't
24 anticipate asking any questions after the
25 council would admit the report into evidence.

*** Notes ***

Page 153

Page 154

1 MR. RANDOLPH: So you won't put on any
2 direct evidence. You just want to put in a
3 report and then allow cross examination to take
4 place in regard to the report?

5 MR. NATALE: That's correct. And I would
6 do the same thing as it relates to the other one
7 witness that we have, which is Mr. Blackman.

8 MR. RANDOLPH: And that's the last witness
9 that you have?

10 MR. NATALE: That is correct.

11 PRESIDENT SMITH: And how long are you
12 anticipating, Mr. Natale, for Mr. Blackman?

13 MR. NATALE: I think that if the -- how
14 long I'm anticipating? Probably as long as my
15 questions were of Mr. Pollock or maybe even
16 shorter, my questions. That's the only time I
17 want.

18 The only amount of time I want is that
19 which is necessary to get these reports into
20 evidence. That's all I want. That's all I
21 need.

22 PRESIDENT SMITH: Mr. McDonald?

23 MR. MCDONALD: Mr. Chopin, I obviously have
24 not seen this report, but what is the bottom,
25 what is the conclusion of that report?

1 Is it that they are currently in conformity
2 with the traffic standards at their current
3 membership?

4 MR. CHOPIN: I don't know anybody has ever
5 questioned that, but since his position, really
6 bottom line is that they can go up to 1,008
7 members and meet the standards based on a lot of
8 assumptions as to growth and traffic, number of
9 trips and things like that. That's the bottom
10 line. They can go to 1,008 members and do it.

11 MR. MCDONALD: Thank you.

12 Mr. Natale, what is Mr. Blackman going to
13 testify?

14 MR. NATALE: I believe he is going to rebut
15 what was Roman numeral one of Mr. Brisson's
16 report. And I believe that's the primary matter
17 of his rebuttal.

18 MR. MCDONALD: Thank you.

19 PRESIDENT SMITH: Mr. Randolph?

20 MR. RANDOLPH: You aren't judges, and I
21 think it's going to be very difficult for you
22 after three solid days of testimony to make a
23 determination as to whether or not something is
24 or is not true rebuttal.
25 It's been, you have been advised that there

*** Notes ***

Page 155

Page 156

1 are only two more witnesses, that there are two
2 reports to put in. The attorneys for those who
3 appear to be opposed to this application are
4 here. They have an opportunity to cross
5 examine.

6 Because you are not following formal rules
7 of evidence and that you are simply trying to
8 offer fundamental due process, I would suggest
9 to you that if you want to get through these
10 hearings, that perhaps you just go ahead and
11 hear this information and allow the opportunity
12 for cross examination. And of course if there
13 are any other witnesses that need to be put on,
14 if you consider any of this new testimony as
15 opposed to rebuttal, that you do it.

16 MR. CHOPIN: May I be heard on that point?

17 PRESIDENT SMITH: Mr. Chopin.

18 MR. CHOPIN: Skip, that's really dangerous,
19 because the fact of the matter is they didn't
20 meet their burden, didn't meet their burden in
21 the case in chief. They have got a report here
22 which for the first time is trying to deal --
23 don't misunderstand. I think traffic is a small
24 element of all the factors that go into
25 consideration.

1 You are saying put this in. If you let
2 them put it in now and if you assume with me
3 hypothetically that that crosses over the
4 threshold and allows them to in fact meet the
5 burden they hadn't previously met, then what
6 happens is that the obligation shifts.

7 MR. RANDOLPH: That's right.

8 MR. CHOPIN: And back in '93 you told this
9 council that once that happened, they were under
10 an obligation to grant the application unless,
11 and you can fill in the blanks.

12 And that shouldn't happen this time,
13 because I don't think there is anybody alive,
14 including Mr. Rampell, that believes they met
15 their burden when their case in chief rested on
16 September 16.

17 And the reason that he is trying to do
18 this, which is to open his case again and put in
19 new testimony, is to be able to cross over the
20 threshold at a point in time that there is no
21 opportunity for us to rebut. And that's what's
22 wrong with it. It's a shame that it's that way,
23 but that is the law and we all have to comply
24 with it.

25 MR. RANDOLPH: And I think you make a good

*** Notes ***

Page 157

1 argument and I think that's an argument that
2 could be looked at as possibly affecting your
3 due process, but I don't think your due process
4 rights would be invaded if indeed you had the
5 opportunity to cross examine and if indeed you
6 considered any of it to be new evidence to put
7 on any evidence that you wished.

8 I agree that you are allowing the
9 opportunity to cross a threshold which had not
10 been crossed, but so what? The so what of it is
11 is this council here to just, to get to the
12 bottom of it and to render a fair and impartial
13 decision, or are they concerned about the order
14 of the presentation?

15 I mean they have invested three full days
16 in this hearing now and I know everybody wants
17 to see this concluded.

18 MR. CHOPIN: Well, so do I, I can promise
19 you.

20 MR. RANDOLPH: But I think there is some
21 risk to this council in not allowing this
22 testimony to come in.

23 MR. CHOPIN: I can't argue with you. And
24 Ken made this remark before. We listened to
25 this testimony on the 16th and it stunk. It was

Page 158

1 so weak it wouldn't have made it past a motion
2 to dismiss. Every one of us did the best we
3 could to prepare a case commensurate with what
4 we had to deal with based upon the hearing on
5 September 16th.

6 Lo and behold, three weeks later, in spite
7 of Mr. Trump's boycott, they come in and may
8 want to introduce new evidence that they could
9 have introduced at the time. They didn't. We
10 are prepared to respond to what we, as
11 professionals, needed to respond to based upon
12 the level of service and quality of their
13 presentation on the 16th.

14 So the fact of the matter is, Skip, you are
15 a lawyer, you know, and I think probably
16 Mr. McDonald can appreciate -- the others maybe
17 not -- how much time, effort and work goes into
18 dealing with these things. It does not happen
19 overnight.

20 And the reality is that we can play by any
21 rules, any rules you want, but we have a hard
22 time playing by the rules when they change every
23 five minutes. And it does deny due process,
24 which is only notice and opportunity to be heard
25 to all of the people in this town when this

*** Notes ***

Page 159

1 keeps happening.

2 And I'll tell you something. This council
3 could have set a limit on the amount of
4 testimony that it was willing to accept right
5 from the outset, and as long as that testimony
6 limit was reasonable, that would have been fine.
7 You didn't have to be here this long a period of
8 time, but I think we are all learning from this
9 process. And we are going to have a lot more of
10 these because of the case law decision, but the
11 reality is it does matter. It's not a so what
12 type of thing.

13 I would move -- I would like to ask another
14 couple of questions, but to move it a long, a
15 report which says on its face that I was
16 retained to prepare a traffic impact analysis
17 for the club to address potential increases in
18 traffic which might be associated with the club,
19 increasing its membership to 1,008, is new
20 evidence that could have been presented on the
21 16th of September or at any time prior to that,
22 including in connection with the site plan. And
23 it wasn't and it ought to not be received into
24 evidence.

25 MAYOR ILYNSKY: I agree with him.

Page 160

1 MR. CHOPIN: And the fact of the matter is
2 it's appropriate to perhaps call the question.
3 I don't want to stop anybody else who might want
4 to pursue this.

5 I'm just also saying to you that the other
6 point I would make if I could proffer in the
7 interest of time is this report is replete with
8 information and statements that are beyond
9 Mr. Pollack's level of expertise, that he
10 doesn't have independent knowledge of, which are
11 hearsay and which should not be admitted into
12 the record.

13 MR. RANDOLPH: Let me just say this about
14 hearsay evidence. Indeed, this council
15 shouldn't rely on hearsay in making, solely on
16 hearsay in making its determination, but
17 normally hearsay does come into these kinds of
18 hearings, and the council at the end of the
19 process just ferrets out what is competent
20 substantial evidence, and hearsay is not
21 competent substantial evidence.

22 MR. CHOPIN: But it's coming in in this
23 case, Skip, in the context of an expert report
24 from an expert witness who is basing a lot of
25 his assumptions -- and this whole thing is based

*** Notes ***

Page 161

Page 162

1 on assumptions -- based upon things that he has
2 not independently verified other than what he
3 has heard from somebody.

4 And that I think in the context of this
5 witness -- and look, town people want to talk.
6 They hear things. They say things. Some are
7 accurate and some are not accurate, and we all
8 know the process and he ought to have that
9 opportunity and nobody should give him a hard
10 time.

11 But an expert ought to be held to a higher
12 standard than that, and that would be a
13 distinction I think entirely appropriate.

14 MR. WYETT: Mr. Chopin, is it your
15 contention that since the applicant has applied
16 for unlimited membership and this report refers
17 to 1,008, that it has no bearing?

18 MR. CHOPIN: It has no bearing. It's not
19 relevant, it's redundant, repetitive. It says
20 nothing more than what he said on September 16.
21 It says it better, because they didn't pay him
22 on September 16, and they decided they better go
23 out and pay him to do a better report. The fact
24 of the matter is it's new evidence. It's not
25 rebuttal of anything. Nobody has ever

1 questioned that they meet the standards now.

2 If you remember, Mr. Wyett, I said some
3 smart thing -- I was going to say something
4 else, but a smart-aleck thing on September 16
5 that I felt like I was on The Today Show,
6 because that's what this report talks about.

7 They are in compliance today. They are
8 meeting all the standards today, today, today,
9 today. It goes all the way through that. This
10 report doesn't do anything other than that.
11 It's not relevant.

12 Has there been a modification of the
13 application or has there not been a
14 modification? 1,008 would suggest to me a
15 modification. I know how they come up with the
16 number. I don't need it explained to me. 252
17 parking places, which they don't want to have
18 either. We can go around this circle all day
19 long and we are going to chase our tail and be
20 here till 9:30 again tonight.

21 MR. WYETT: Is this your opinion as a
22 witness or --

23 MR. CHOPIN: What would you like?

24 MR. WYETT: The truth.

25 MR. CHOPIN: The absolute truth is there is

*** Notes ***

Page 163

Page 164

1 no question if this were in court, this
2 testimony would not come in, not a chance that
3 it would come in, not a chance.

4 MR. WYETT: I know you are trying to be
5 very helpful, but that still didn't answer the
6 question.

7 Is this opinion based on being a witness or
8 an expert?

9 MR. CHOPIN: You know, it's hard to
10 distinguish the fact that all lawyers are by
11 definition experts, even if we don't know
12 anything.

13 MR. WYETT: This is a legal opinion?

14 MR. CHOPIN: That would certainly be my
15 legal opinion, but you have far more competent
16 legal experts in this room, especially if you
17 ask Mr. Kolins or if you ask Ken.

18 PRESIDENT SMITH: Don't get humble now,
19 Mr. Chopin. This is not the time.

20 MR. CHOPIN: Humble is not my thing, you
21 say?

22 PRESIDENT SMITH: No.

23 MR. CHOPIN: But, Mr. Wyett, let me answer
24 your question. It is my expert opinion this is
25 new testimony. It's sleazeball lawyering that

1 that attempts to sandbag people by introducing
2 new evidence. That's a legal opinion.

3 PRESIDENT SMITH: That's enough. That is
4 not a legal opinion. You wouldn't use those
5 words in court, Mr. Chopin. Please don't use
6 them here. I appreciate it.

7 Mr. Graves, you have something you want to
8 say and then we are going to decide on this.

9 MR. GRAVES: Madam President, yes, I do
10 have some questions of Mr. Pollock. It does
11 relate and I think it is critically important
12 that you understand and that we understand from
13 a legal perspective whether this is in fact
14 rebuttal or whether it's testimony that could
15 have been provided earlier and is part of a full
16 and complete application.

17 To that end, I would like to ask
18 Mr. Pollack just a few questions.

19 Mr. Pollock, you have indicated that this
20 is in rebuttal, if I understood it correctly,
21 and correct me if I'm wrong, that this is in
22 rebuttal to testimony that was presented, and I
23 apologize if I mispronounce his name, but
24 Mr. Brisson, is it? Mr. Brisson?

25 MR. POLLOCK: Yes.

*** Notes ***

Page 165

Page 166

1 MR. GRAVES: And Mr. Brisson only?
 2 MR. POLLOCK: And Mr. Weidner.
 3 MR. GRAVES: And Mr. Weidner?
 4 MR. POLLOCK: Yes.
 5 MR. GRAVES: And you are suggesting that
 6 this is not material that you could have
 7 provided before?
 8 MR. POLLOCK: That's correct.
 9 MR. GRAVES: Let me ask you what is it
 10 that's new in this report, what information is
 11 new in this report that you couldn't have given
 12 us on September 16?
 13 MR. POLLOCK: The 1996 third quarter
 14 traffic count information.
 15 MR. GRAVES: Okay. Let me ask you, this is
 16 third quarter?
 17 MR. POLLOCK: Third quarter 1996.
 18 MR. GRAVES: What date were those run?
 19 MR. POLLOCK: The county completed those
 20 counts according to those documents in July, I
 21 think.
 22 MR. GRAVES: July, two months before
 23 September?
 24 MR. POLLOCK: Yes.
 25 MR. GRAVES: Do you consider this a public

1 record?
 2 MR. POLLOCK: When it becomes available,
 3 yes.
 4 MR. GRAVES: Is this a public record in
 5 your opinion?
 6 MR. POLLOCK: I think so, yes.
 7 MR. GRAVES: Yes, okay. So that, in fact,
 8 you could have gone and gotten this material on
 9 July 10th?
 10 MR. POLLOCK: That might have been
 11 possible.
 12 MR. GRAVES: Did you call?
 13 MR. POLLOCK: No, I did not.
 14 MR. GRAVES: Why?
 15 MR. POLLOCK: Because the information is
 16 typically not available until quite sometime
 17 later on in the year.
 18 MR. GRAVES: But this was important and you
 19 could have called, couldn't you?
 20 MR. POLLOCK: Well, the question about the
 21 1995/'96 traffic count came up at the hearing on
 22 the 16th and the validity of those.
 23 MR. GRAVES: Oh. So what we are saying
 24 here is that -- let me refresh your
 25 recollection. You were asked a question in

*** Notes ***

Page 167

Page 168

1 September, have you run projections on what
 2 effect concurrency might have with respect to
 3 future uses? And your answer was?
 4 MR. POLLOCK: Well, you tell me. I don't
 5 have the document.
 6 MR. GRAVES: The answer was no, I have not.
 7 MR. POLLOCK: Okay.
 8 MR. GRAVES: You could have, though,
 9 couldn't you?
 10 MR. POLLOCK: Yes.
 11 MR. GRAVES: And you could have used the
 12 third quarter '96 figures if you had really
 13 wanted to go over, probably all the way over to
 14 Palm Beach engineering and get the figures,
 15 couldn't you?
 16 MR. POLLOCK: That is possible.
 17 MR. GRAVES: It was absolutely possible for
 18 you to go and get it, wasn't it?
 19 You just didn't get it, did you?
 20 MR. POLLOCK: Because they had not been
 21 published and made available.
 22 MR. GRAVES: But it was public record and
 23 available?
 24 MR. POLLOCK: It is if --
 25 MR. GRAVES: If you ask for it?

1 MR. POLLOCK: If it becomes necessary, yes.
 2 It became necessary to refute and rebut the
 3 veracity of the testimony which I had provided.
 4 MR. GRAVES: I'm going to object to the
 5 introduction of this report. This is not
 6 rebuttal.
 7 It is clear that had they done their work,
 8 which Mr. Pollack was not asked to do, they
 9 could have presented this complete report,
 10 including this traffic data, on September 16,
 11 1996 as part of their case in chief.
 12 This is not rebuttal. This is bolstering
 13 the figures in his report. That's plain and
 14 simple. And it doesn't take, I don't think, if
 15 I can see it, it doesn't take a rocket scientist
 16 to see this. I object to it.
 17 MR. MCDONALD: Mr. Graves, you have
 18 objected to that, but you didn't cover any new
 19 testimony, so I think what I want to ask
 20 Mr. Randolph -- I think you asked the same
 21 questions basically Mr. Chopin did.
 22 MR. GRAVES: No, I don't think I did.
 23 MR. CHOPIN: I think he clarified.
 24 MR. GRAVES: I think I clarified that
 25 information was available prior to September 16

*** Notes ***

Page 169

1 that Mr. Pollock could have used.

2 MR. MCDONALD: Mr. Graves, I understand
3 your objection and I understand what your
4 objection is, and what I want to ask
5 Mr. Randolph now is if his recommendation has
6 changed from five minutes ago when he felt it
7 probably should come in.

8 Has that changed based on what Mr. Graves
9 has now added to the, has added as his
10 objection?

11 MR. RANDOLPH: No, not on the basis of --
12 no.

13 MR. WYETT: Could I ask a question of
14 Mr. Weidner, please?

15 Mr. Weidner, do you have a copy of this
16 information that was available that he is
17 referring to from the state?

18 MR. WEIDNER: Talking about the third
19 quarter 1996 count?

20 MR. WYETT: Yes.

21 MR. WEIDNER: Yes, sir. I contacted -- I
22 don't have a copy. I contacted Dan Weisburg by
23 telephone.

24 MR. WYETT: When?

25 MR. WEIDNER: I don't have a record of the

Page 170

1 telephone conversation, but it was a couple
2 weeks prior to the September 16 meeting. I was
3 made aware of the 1995 count that we felt was
4 low and faulty. I called Mr. Weisburg to talk
5 about that and figure out why.

6 He indicated to me Southern Boulevard
7 bridge was closed at that time. He says oh,
8 yes, you know we have got the 1996 third quarter
9 counts available. Here they are. And he gave
10 me the number over the phone.

11 MR. WYETT: Why the hadn't you received it
12 by mail if it was available?

13 PRESIDENT SMITH: Who is that question to,
14 Mr. Wyett?

15 MR. WYETT: Mr. Weidner.

16 MR. WEIDNER: Probably because I didn't ask
17 him to send it to me, but I do have my telephone
18 conversation written down with Mr. Weisburg.

19 MR. WYETT: Are you prepared to respond to
20 the comments based on the 1996 report?

21 MR. WEIDNER: This report?

22 MR. WYETT: Yes, I have to assume that one,
23 because I haven't seen it.

24 PRESIDENT SMITH: Mr. Wyett, excuse me for
25 interrupting, but how could Mr. Weidner be

*** Notes ***

Page 171

1 prepared to discuss anything?

2 MR. WYETT: Mrs. Smith, I'm trying to
3 establish that.

4 MR. WEIDNER: I read the report at lunch.

5 MR. WYETT: Do you have at this moment
6 enough chance to consider that report and
7 respond?

8 MR. WEIDNER: Sir, no. The report is
9 prefaced, the initial pages indicate a number of
10 assumptions that I would have to bring back to
11 my staff to do a thorough technical review, and
12 I am not prepared to make a recommendation on
13 this report.

14 MR. WYETT: Do you consider that new
15 evidence?

16 MR. WEIDNER: That's a lawyer term, and I
17 can't answer that.

18 PRESIDENT SMITH: How would the members of
19 the council like to proceed with this? We have
20 the opinion of Mr. Randolph.

21 I have listened to this. I would question
22 why you didn't submit it. You could have. You
23 didn't. If you are doing it today, it's new to
24 me, but I will go with the members of the
25 council in discussing this. An incomplete

Page 172

1 application doesn't have to be made complete.
2 Under that auspices it's new -- or not an
3 application, but a speech by Mr. Pollack. If I
4 could say one more thing, Mr. Wyett.

5 When you were asked on September 16,
6 Mr. Pollock, if you had asked the town for the
7 count provided by Mar-a-Lago, your answer was
8 no.

9 MR. POLLOCK: That's correct, because I had
10 the count information.

11 PRESIDENT SMITH: You did have it?

12 MR. POLLOCK: I did, yes.

13 PRESIDENT SMITH: So if you had the
14 Mar-a-Lago information or provided by
15 Mar-a-Lago, you could have by the same token had
16 the county information? I understood you to say
17 that you could have asked for it because it was
18 public record? You just said that.

19 MR. POLLOCK: Yes. And the reason for that
20 is the county publishes that information as an
21 overall document several months after the date
22 of collection.

23 PRESIDENT SMITH: I understand that.

24 MR. POLLOCK: It went through a validation
25 process after the data is collected, so you

*** Notes ***

Page 173

1 don't always know exactly when it will be
2 available.
3 PRESIDENT SMITH: Right, but any paper
4 that's public, if you go in and insist and ask
5 for it, you will get it, the same way any paper
6 in the Town of Palm Beach is a matter of public
7 record, is available to Mr. Rampell and
8 Mr. Natale, anybody, they can go right
9 downstairs and get those papers now.
10 MR. POLLOCK: That is true.
11 PRESIDENT SMITH: Thank you very much.
12 MR. WYETT: Mrs. Smith?
13 PRESIDENT SMITH: Mr. Wyett.
14 MR. WYETT: If I understand correctly, this
15 information was available two weeks ago, maybe
16 three? Based on the question I just asked
17 Mr. Weidner.
18 When did you receive this information?
19 MR. POLLOCK: I think on the 19th of
20 September.
21 MR. WYETT: So you had adequate time to
22 present this information to us on your, on
23 Thursday?
24 MR. POLLOCK: If I had been called, yes.
25 MR. WYETT: However, what you are really

Page 174

1 giving us is a report on the basis of 1,008 and
2 the petition is for unlimited.
3 I would find the two not relative at this
4 particular time. They would be relative at a
5 later petition should they decide to come in for
6 a specific number, but he is not coming in right
7 now for a specific number, so therefore, I don't
8 find it relative.
9 Equally important, our expert just
10 testified that he would need time to go over the
11 numbers and interpolate them. And since he
12 cannot do that today, and this being almost
13 quarter past five on Friday, I don't find it
14 relevant to listen to it.
15 I do find it relevant to listen to it with
16 a proper petition. This petition relative to
17 your report I don't find proper.
18 MR. NATALE: Madam President, may I?
19 Briefly, council, I think that as far as
20 when we are talking about whether it's relevant,
21 I think the council could interpret that the
22 application as presented as tying the number of
23 parking places to membership, and therefore it
24 would be relevant if that was an interpretation
25 that the only thing you could, that the -- for

*** Notes ***

Page 175

1 example, you could say that the two, I think
2 it's 252 parking spaces, that based on taking
3 that number, compare it to our zoning
4 regulations with the one to four ratio that you
5 come up with. So to that degree I believe that
6 it's relevant.
7 However, if what you are saying, sir, in
8 essence, is that maybe these matters should be,
9 there needs more time for them to be considered
10 or people want more time to consider them or the
11 like, I have no objection and we have no
12 objection to that.
13 However, what I would like to do is have
14 these entered into the record, because I believe
15 they qualify.
16 PRESIDENT SMITH: Mr. Natale, please,
17 that's what we are discussing, and I was polling
18 the council.
19 MR. NATALE: I'm sorry.
20 PRESIDENT SMITH: That's all right.
21 MR. WYETT: Mr. Natale, that just added
22 another aspect to parking. I just want to know,
23 was there testimony given by your experts or
24 your witnesses that at many times or at times
25 200 to 252 spaces were occupied?

Page 176

1 MR. NATALE: Yes, sir.
2 MR. WYETT: So I don't understand how you
3 could present a position of not needing 252
4 spaces.
5 Furthermore, I would like to ask Mr. Moore
6 that when we changed the parking relative to the
7 tennis court change, did that increase the
8 parking or --
9 PRESIDENT SMITH: There are no cellular
10 phones allowed in the town council, please. The
11 sign is up. There are no phones allowed in
12 council chambers.
13 MR. KOLINS: It's not my phone.
14 PRESIDENT SMITH: I didn't say it's your
15 phone, Mr. Kolins. I'm looking out. I can
16 barely see you. I don't know who is ringing.
17 MR. WYETT: Mr. Moore, when we made the
18 change with the tennis courts, did that leave
19 the 252 spaces or did it increase the spaces?
20 MR. MOORE: I believe, and I would have to
21 check, I believe it was 252 remained. Some of
22 them were changed from non-paved to paved
23 spaces.
24 Mr. Castro, do you recall?
25 MR. CASTRO: Paul Castro, zoning

*** Notes ***

Page 177

1 administrator. That's my recollection, but I
2 would have to check the records.
3 MR. WYETT: In addition, I think you are
4 petitioning us to eliminate the parking
5 requirements? No?
6 MR. NATALE: No.
7 MR. WYETT: Then I don't know why we are
8 discussing parking.
9 MR. NATALE: I think it comes up as to
10 whether it relates to the membership numbers.
11 MR. WYETT: No, it doesn't relate to
12 membership numbers.
13 MR. NATALE: People have argued that. What
14 I'm saying, sir, is just like people have said
15 we want to reduce the parking to 15 or 17
16 places, there is nothing in this application
17 that says we want to reduce the parking from
18 what it presently is.
19 MR. WYETT: No, I accept that, and would
20 like to remind everyone that the 252 is imposed
21 by the council in 1993 as being a reasonable
22 number of parking that this club needed.
23 Subsequent experience has confirmed that.
24 Let's stop talking about parking and start
25 talking about the issues instead.

*** Notes ***

Page 179

1 MR. WYETT: I think it's not relevant.
2 PRESIDENT SMITH: This is a legal point,
3 though.
4 MR. RANDOLPH: The relevancy would not be
5 proper in a due process hearing. Everything
6 comes in.
7 MR. WYETT: It's obviously new evidence.
8 It wasn't mentioned before, not today.
9 PRESIDENT SMITH: Mr. McLendon?
10 MR. MCLENDON: I agree that it's new
11 evidence and should not be put in.
12 I also suggest to the applicant that they
13 might consider withdrawing the application and
14 coming back when it's more complete.
15 PRESIDENT SMITH: Mr. McDonald?
16 MR. MCDONALD: I need to ask a question
17 before I can vote, and that question is to
18 Mr. Natale.
19 You put on your traffic expert yesterday,
20 Mr. Barr. And I'm wondering why you didn't put
21 on Mr. Pollack's testimony yesterday.
22 MR. NATALE: If you may remember, the
23 reason why Mr. Barr was put on was because there
24 was a desire to have, there was that provision
25 to call things out of order.

*** Notes ***

Page 178

1 PRESIDENT SMITH: Mr. Wyett, would you
2 stipulate whether or not you would like this
3 document entered or not entered? I'm polling
4 the council.
5 MR. RANDOLPH: May I ask one question
6 before you do that?
7 PRESIDENT SMITH: Yes.
8 MR. RANDOLPH: Mr. Weidner, how long would
9 you need to examine this document in order to
10 give professional advice and response to it?
11 MR. WEIDNER: Well, understanding that I
12 have other commitments to other clients, I would
13 need at least two weeks at the very least and a
14 maximum of a month.
15 PRESIDENT SMITH: Mr. Wyett?
16 MR. WYETT: Based on Mr. Weidner's need of
17 several weeks or more, I think it would be
18 futile to listen to it right now. You would
19 have to relisten to it a month from now.
20 PRESIDENT SMITH: Are we entering into the
21 record or not entering?
22 MR. WYETT: Not at this moment.
23 PRESIDENT SMITH: Mr. McLendon -- is that
24 on the basis it's new evidence or rebuttal
25 evidence? Please clarify your position.

Page 180

1 If you remember, what I had said to you was
2 that we put on witnesses --
3 MR. MCDONALD: I know, but I want to know
4 why you didn't put Mr. Pollack on yesterday,
5 because he had the information yesterday. In
6 fact, he has had the information since
7 September 16, or it's been available.
8 Why didn't you put him on yesterday when
9 you were rebutting the traffic testimony of
10 Mr. Tipton?
11 MR. NATALE: Because the only testimony
12 that they, that you said that you wanted to take
13 out of order was the two witnesses that we had.
14 And I think that that was the restriction.
15 In other words, if what you would have said --
16 in fact, I believe I asked, I said do you want
17 us to put on our entire rebuttal case? I was
18 told no, we don't want your entire rebuttal
19 case. We only want these particular people. I
20 believe I was expressly told that.
21 If that's an incorrect recollection, I'd
22 like someone to correct me, but I believe the
23 answer to your question is I was following the
24 recommendation that I received from the council
25 as to how it wanted to proceed.

Page 181	Page 182
1 MR. MCDONALD: Thank you, Mr. Natale. 2 Mr. Randolph, is your recommendation the 3 same that this should come in? 4 MR. RANDOLPH: I believe that at a hearing 5 such as this, that you should hear all of the 6 evidence that there is to offer and to then make 7 a decision. 8 You are sitting here to make a fair and 9 impartial decision based upon all of the 10 evidence, but in saying that, you need to 11 recognize the problems with that. 12 You have been here now for three days. 13 There is arguments that new information is being 14 presented. Your traffic engineer believes that 15 new information is being presented. He has 16 indicated that he needs at least two weeks to 17 look at it in order to respond. 18 What you have to recognize that you are 19 doing, if indeed this is new evidence as opposed 20 to rebuttal, is you are allowing the threshold 21 to be reached, if it wasn't reached before, and 22 you are trying to conclude without your own 23 traffic engineer, without giving your staff an 24 opportunity to look at this and rebut it, if 25 it's new evidence.	1 So I think you should recognize that if you 2 decide that you want to hear it all, that 3 everybody here needs to have as much opportunity 4 as possible to review the information and deal 5 with it. 6 MR. MCDONALD: All right. I'm going to 7 have to vote -- 8 MAYOR ILYNSKY: Becoming newer and newer 9 and newer. 10 MR. MCDONALD: I'm going to have to vote 11 no. 12 PRESIDENT SMITH: Mr. Shaw? 13 MR. SHAW: Without the experience of years 14 of legal understanding of what we are going 15 through, but just trying to use hopefully a 16 little bit of common sense, to me this is a 17 special exception on an issue that's related to 18 zoning. We have gone over issues. We have been 19 going over basically one issue of roughly 18 of 20 them that are presented. And I don't know how 21 many more ways I can hear a traffic count. 22 So in the essence of brevity and the fact 23 that I would like to have breakfast tomorrow 24 morning, I say no. 25 PRESIDENT SMITH: All right. Mr. Natale,

*** Notes ***

Page 183	Page 184
1 before I vote, I have a question for you and 2 also a point I'd like to clarify. 3 The other evening when we got into the 4 discussion about who was going to speak for your 5 rebuttal witnesses, I specifically asked you how 6 many people you had to speak, and first you said 7 two and then you said three. The council did 8 not limit the number of people that you had to 9 speak. 10 Was that as you remember it, since you and 11 I seem to have different recollections of the 12 events? 13 MR. NATALE: When we were talking about the 14 rebuttal, it was, my understanding was that we 15 were not opening our rebuttal to come do our 16 complete rebuttal, because all of the public 17 comment wasn't heard. 18 PRESIDENT SMITH: Right, I understand that. 19 MR. NATALE: So that's where I think the -- 20 PRESIDENT SMITH: Surely you were not 21 limited in the number of people -- 22 MR. NATALE: Oh, no, you didn't, it was 23 just from a guidance as far as you -- 24 housekeeping. We wanted to do these two, we 25 would hear public comment and the rest.	1 PRESIDENT SMITH: We were talking about 2 numbers. 3 Mr. Natale, you did present Mr. Barr 4 yesterday, I believe. 5 MR. NATALE: That's correct. 6 PRESIDENT SMITH: As a traffic engineering 7 expert. 8 MR. NATALE: That's correct. 9 PRESIDENT SMITH: Why didn't Mr. Barr give 10 this testimony yesterday? 11 MR. NATALE: Because Mr. Barr's testimony 12 came from a totally different approach as far as 13 a different expert. 14 PRESIDENT SMITH: Right. But if I could go 15 on that, when he testified in 1993, he also 16 testified in conjunction with Mr. Pollock. They 17 used the, they came up with the same figures. 18 They both agreed, as Mr. Barr testified 19 yesterday, they came up with the same figures. 20 So my question probably is was this 21 information not available to Mr. Barr and could 22 he have not so testified yesterday? 23 MR. NATALE: When you mean could Mr. Barr 24 testify -- 25 PRESIDENT SMITH: Could he not have asked

*** Notes ***

Page 185

Page 186

1 for the Palm Beach County figures in July and
2 testified to that yesterday?

3 MR. NATALE: I believe that he actually did
4 testify as to those figures. In fact, I believe
5 that he testified as to those Palm Beach County
6 figures.

7 As far as him testifying as to what
8 Mr. Pollack was saying as it relates to the
9 limitations and whether or not we exceed or meet
10 those, he could not. I mean he could not have
11 testified --

12 PRESIDENT SMITH: He didn't have to.
13 Mr. Pollack is your witness.

14 MR. NATALE: I understand, but Mr. Barr
15 could not have made the presentation that
16 Mr. Pollack is making.

17 PRESIDENT SMITH: Thank you.

18 Mr. Chopin?

19 MR. CHOPIN: Because it seems to be
20 relevant to your decision, Mrs. Smith, I'd like
21 to see if I can help refresh memories as to what
22 transpired yesterday when I was here.

23 MR. MCDONALD: Mr. Chopin, it has past.
24 Mrs. Smith hasn't voted, but it has past.

25 MR. CHOPIN: I hear you, but I think it's

1 relevant for the record if you give me 30
2 seconds.

3 Mr. Natale said yes. He ran back to
4 Mr. Rampell, he said I got three. He listed
5 them for us. You then asked -- well, we had the
6 big debate about rebuttal.

7 What he said yesterday, well, if I hear
8 something more today, I may have to call
9 somebody as a rebuttal witness. That's what he
10 said.

11 Now he always intended to call Mr. Pollack
12 to put this statement in. He hid the fact that
13 he intended to do it. He didn't respond to what
14 he heard later in the day yesterday by putting
15 Mr. Pollack on, and that's what the record will
16 show, and I'll submit the transcript that that's
17 exactly what he said.

18 PRESIDENT SMITH: Thank you, Mr. Chopin.
19 No.

20 Mr. McDonald would like a five-minute
21 break.

22 (Thereupon, a recess was taken.)

23 PRESIDENT SMITH: Would you please take
24 your seats? I'd like to reconvene the meeting.
25 Mr. Natale, ready?

*** Notes ***

Page 187

Page 188

1 MR. NATALE: Yes, Madam President. For
2 clarification, you have denied the entry of the
3 report as rebuttal; is that correct?

4 PRESIDENT SMITH: I will poll the council
5 again if you like, Mr. Natale.

6 MR. NATALE: No, I don't want you to do it
7 again. I just want to know if that is in fact
8 the ruling of the council, that we are being
9 denied to present that in our rebuttal.

10 PRESIDENT SMITH: Mr. Kolins?

11 MR. KOLINS: Madam President, members of
12 council, I would just like to make a suggestion
13 to you.

14 I have not spoken on the matter of that
15 report, because it was just going on too long
16 and you didn't need to hear from me also, but on
17 reflection, I would like to offer a thought and
18 a suggestion to you. You may do what you like,
19 of course.

20 I think the relevance and substance or lack
21 thereof in that report has been explored
22 reasonably well, but nevertheless, apparently
23 Mar-a-Lago's attorneys would still like it
24 entered into the record. And perhaps to avoid
25 any further debate or dispute about it, take it

1 into the record and give it the weight and
2 credibility you think it deserves, if any.
3 That's just a suggestion.

4 MR. MCDONALD: I think that's good advice.

5 Mr. Chopin, do you have a response to that
6 too and then we will hear Mr. Natale's answer,
7 but I think that's good advice.

8 PRESIDENT SMITH: I don't think Mr. Natale
9 has an answer.

10 MR. MCDONALD: I'm sorry, a comment.

11 MR. CHOPIN: One of you asked me what I
12 thought and I said I thought that was a good
13 idea, but I thought he was talking about this
14 next report, which I say let in, because I don't
15 care if Town of Palm Beach is in compliance with
16 open space requirements. Doesn't do anything
17 with this application.

18 I have a reservation about the traffic. I
19 don't think traffic is controlling. I think
20 there is a lot of testimony. I am concerned for
21 the same reason I think Skip is concerned. It's
22 a fundamental issue of fairness here and
23 principle dictates that I say I disagree with
24 Ron, but as a practical matter, the point has
25 been made, let it in.

*** Notes ***

Page 189

Page 190

1 PRESIDENT SMITH: All right.
 2 MR. MCDONALD: Motion to reconsider, I
 3 think.
 4 MR. WYETT: I confirm that or second that
 5 motion.
 6 I would like to ask Mr. Natale --
 7 MR. NATALE: I --
 8 PRESIDENT SMITH: All right, wait, excuse
 9 me. We do know how to do it, right? We have a
 10 motion, we have a second. We have to take a
 11 vote.
 12 MR. WYETT: We have a discussion first.
 13 MR. NATALE: I just was responding to him.
 14 I should have waited. I apologize.
 15 PRESIDENT SMITH: We did vote the first
 16 time. We polled, we voted.
 17 Ms. Reid?
 18 THE CLERK: Mr. Wyett made the motion?
 19 PRESIDENT SMITH: Mr. McDonald made the
 20 motion to reconsider, seconded by Mr. Wyett.
 21 THE CLERK: Mr. McDonald?
 22 MR. MCDONALD: Yes.
 23 THE CLERK: Mr. Wyett?
 24 MR. WYETT: I'm voting yes because I want
 25 to make sure we are not depriving the plaintiff

1 of our due process and I want to make sure we
 2 don't violate his civil rights.
 3 THE CLERK: Mr. McLendon?
 4 MR. MCLENDON: Yes.
 5 THE CLERK: Mrs. Smith?
 6 PRESIDENT SMITH: Yes.
 7 THE CLERK: Mr. Shaw?
 8 MR. SHAW: Yes.
 9 PRESIDENT SMITH: All right, motion to
 10 reconsider, the matter is reopened.
 11 Did you want to speak to it now,
 12 Mr. Natale?
 13 MR. NATALE: I would just ask that you
 14 admit the report submitted by the applicant
 15 through the testimony of Joseph Pollock.
 16 PRESIDENT SMITH: All right. Members of
 17 the council like to vote?
 18 MR. MCDONALD: I move approval or I move
 19 that it be admitted.
 20 MR. SHAW: Second.
 21 PRESIDENT SMITH: Any further discussion?
 22 Ms. Reid?
 23 THE CLERK: Mr. McDonald?
 24 MR. MCDONALD: Yes.
 25 THE CLERK: Mr. Shaw?

*** Notes ***

Page 191

Page 192

1 MR. SHAW: Yes.
 2 THE CLERK: Mr. McLendon?
 3 MR. MCLENDON: Yes.
 4 THE CLERK: Mr. Wyett?
 5 MR. WYETT: Yes.
 6 THE CLERK: Mrs. Smith?
 7 PRESIDENT SMITH: Yes, in the interest of
 8 affording the applicant due process.
 9 MR. NATALE: Thank you. May I tender this
 10 to the Town Clerk?
 11 PRESIDENT SMITH: I would.
 12 MR. NATALE: Thank you.
 13 PRESIDENT SMITH: To the town clerk,
 14 please.
 15 When I say this, I was referring to the
 16 traffic impact analysis of Mr. Pollack, so the
 17 record is clear.
 18 PRESIDENT SMITH: Thank you.
 19 MR. NATALE: I have no further questions of
 20 Mr. Pollack:
 21 PRESIDENT SMITH: All right, would you like
 22 to go ahead, please, Mr. Natale?
 23 MR. NATALE: Yes. My next witness is
 24 Mr. Wes Blackman.
 25 Sir, could you please introduce -- I should

1 say reintroduce yourself to the members of the
 2 council?
 3 MR. BLACKMAN: Yes, good afternoon, members
 4 of the panel. My name is Wes Blackman.
 5 MR. NATALE: Did you testify as it relates
 6 to this application?
 7 MR. BLACKMAN: Yes, I did.
 8 MR. NATALE: After your testimony which you
 9 gave, did you become aware of any testimony
 10 submitted in this record which refuted your
 11 contentions that there were, regarding the issue
 12 of pertinent differences between the Mar-a-Lago
 13 Club and other private social clubs in the town?
 14 MR. BLACKMAN: Yes.
 15 MR. NATALE: And where was that testimony
 16 and evidence produced?
 17 MR. BLACKMAN: I believe that was given by
 18 Mr. Brisson in his report and that followed my
 19 presentation.
 20 MR. NATALE: Did you have a copy of
 21 Mr. Brisson's report before your presentation?
 22 MR. BLACKMAN: No, I did not.
 23 MR. NATALE: Did you have any knowledge as
 24 to what Mr. Brisson would be saying or what his
 25 report would contain prior to giving your

*** Notes ***

Page 193

Page 194

1 testimony?
 2 MR. BLACKMAN: No, I did not.
 3 MR. NATALE: Do you have testimony which is
 4 rebuttal, that is, contradicts the testimony
 5 given by Mr. Brisson orally and in his report?
 6 MR. BLACKMAN: Yes, I do.
 7 MR. NATALE: And in preparing that, your
 8 rebuttal, did you compile a report?
 9 MR. BLACKMAN: Yes.
 10 MR. NATALE: For the record, I'd like to
 11 show you a report which purports to be done by
 12 you, a member of the American Institute of
 13 Certified Planners, entitled Professional
 14 Planning Study, Town of Palm Beach, Open
 15 Recreation Space and Traffic Concurrency
 16 Controls.
 17 Sir, do you identify that document?
 18 MR. BLACKMAN: Yes, Professional Planning
 19 Study, Town of Palm Beach, Open Recreation Space
 20 and Traffic Concurrency Controls.
 21 MR. NATALE: Did you draft that document in
 22 response to the testimony presented by and the
 23 evidence presented by the Brisson, either
 24 Mr. Brisson personally or by his report?
 25 MR. BLACKMAN: Yes.

1 MR. NATALE: I don't know if at this point
 2 you want to go through the voir dire.
 3 At this point I would tender this for entry
 4 into the record as rebuttal.
 5 PRESIDENT SMITH: This is what we did with
 6 the previous application, Mr. Natale.
 7 MR. NATALE: Exactly.
 8 PRESIDENT SMITH: And you didn't have any
 9 objection at that time, so I think it would be
 10 appropriate to do that at this time now.
 11 MR. NATALE: Yes.
 12 PRESIDENT SMITH: All right, thank you.
 13 MR. CHOPIN: I would like to just ask a
 14 couple of questions.
 15 PRESIDENT SMITH: For the record.
 16 MR. CHOPIN: For the record, my name is
 17 Frank Chopin. We should put the television in
 18 the record and then we wouldn't have to say our
 19 names.
 20 In any event, I didn't hear your original
 21 testimony, but I'd like to just ask you what new
 22 information you have that you didn't have when
 23 you testified previously.
 24 MR. BLACKMAN: The assumptions and
 25 assertions made in this person's report.

*** Notes ***

Page 195

Page 196

1 MR. CHOPIN: Okay, but your summary says
 2 that Palm Beach improperly and illegally uses
 3 private discriminatory clubs to meet open spaces
 4 requirements.
 5 Did you know that then?
 6 MR. BLACKMAN: Yes.
 7 MR. CHOPIN: You did know that?
 8 MR. BLACKMAN: No, as a matter of fact,
 9 during my research and preparing my remarks in
 10 response to Mr. Brisson's report, I discovered
 11 that.
 12 MR. CHOPIN: But the information was there,
 13 right?
 14 MR. BLACKMAN: It was part of the public
 15 record, yes.
 16 MR. CHOPIN: Absolutely. And the fact you
 17 are a certified planner of some sort, the fact
 18 you didn't know it doesn't mean that it wasn't
 19 there, it wasn't available for you to learn?
 20 Had you done your research before, you
 21 would have known that, right?
 22 MR. BLACKMAN: It was in this building.
 23 MR. CHOPIN: Okay, you could have looked it
 24 up? It was available to you? It's not new
 25 information that developed since you gave your

1 last report, right?
 2 MR. BLACKMAN: It is new as it relates to
 3 the Mar-a-Lago Club and Mr. Brisson's report.
 4 MR. CHOPIN: Okay, but you didn't know it
 5 only because you hadn't done your homework.
 6 Now you say the Town of Palm Beach
 7 exacerbates --
 8 MR. NATALE: Excuse me, Madam President,
 9 was that a question, that the reason why he
 10 didn't know it was because he didn't --
 11 PRESIDENT SMITH: Mr. Natale, for the
 12 record, please.
 13 MR. NATALE: Madam President, for the
 14 record, Anthony Natale.
 15 The question was that's because you didn't
 16 do your homework that you didn't know this?
 17 I would like to know if that is in fact a
 18 question, the witness should be allowed to
 19 answer. If it is not a question, then counsel
 20 should not be giving a speech.
 21 PRESIDENT SMITH: All right. Mr. Chopin,
 22 was that a question?
 23 MR. CHOPIN: Absolutely.
 24 PRESIDENT SMITH: Then will you please let
 25 Mr. Blackman answer?

*** Notes ***

Page 197

Page 198

1 MR. CHOPIN: I thought he said yes, I'm
2 sorry.
3 PRESIDENT SMITH: I didn't hear him.
4 THE WITNESS: I think the existence of the
5 report is evidence that I did my homework
6 MR. CHOPIN: Doesn't answer my question.
7 PRESIDENT SMITH: Why don't you repeat the
8 question, Mr. Chopin. Perhaps you can clarify
9 it for Mr. Blackman.
10 MR. CHOPIN: The fact that in -- what is
11 it, the Comprehensive Land Use Plan, that these
12 clubs are included under recreation, that has
13 been true for some period of time, right?
14 MR. BLACKMAN: Yes.
15 MR. CHOPIN: And the information with
16 respect to the fact that it is there has been
17 available for some period of time; is that
18 correct?
19 MR. BLACKMAN: Yes.
20 MR. CHOPIN: And had you done some research --
21 your word, research, if you remember -- you
22 would have known that prior to your original
23 testimony; is that correct?
24 MR. BLACKMAN: If I knew that Mr. Brisson
25 was going to discuss the pertinent differences

1 between private clubs and Mar-a-Lago in his
2 report, I would have prepared it beforehand, but
3 since I didn't --
4 MR. CHOPIN: Okay, that's fine.
5 Now did you know that the only regulation
6 outside of all -- first of all, Mar-a-Lago Club
7 is subject to zoning requirements, right?
8 MR. BLACKMAN: That's right.
9 MR. CHOPIN: Did you know that prior to
10 your last testimony?
11 MR. BLACKMAN: Yes.
12 MR. CHOPIN: Mar-a-Lago is also subject to
13 a declaration-of-use agreement between Mr. Trump
14 and the Town of Palm Beach; is that correct?
15 MR. BLACKMAN: That's correct.
16 MR. CHOPIN: Did you know that?
17 MR. BLACKMAN: Yes.
18 MR. CHOPIN: Is there any other regulation
19 that you are referring to that is applicable to
20 Mar-a-Lago?
21 MR. BLACKMAN: For example?
22 MR. CHOPIN: I can't think of any. How can
23 I give you an example? Can you think of any?
24 You are the expert.
25 MR. BLACKMAN: Well, the National Trust for

*** Notes ***

Page 199

Page 200

1 Historic Preservation easement.
2 MR. CHOPIN: Were you aware of that prior
3 to your testimony?
4 MR. BLACKMAN: Yes.
5 MR. CHOPIN: Can you think of any
6 regulation that governs Mar-a-Lago, any rule of
7 law, any code, any zoning code, any private
8 agreement that exists and regulates -- your word --
9 that you were not aware of prior to your
10 previous testimony?
11 MR. BLACKMAN: No, nothing has come to
12 light in the weeks since September 16.
13 MR. CHOPIN: So when you said the Town of
14 Palm Beach exacerbates this public accessibility
15 shortage by excessive regulation of a
16 non-discriminatory club, aside from being
17 inflammatory, you certainly knew all of that
18 prior to your last testimony?
19 MR. BLACKMAN: No, because the research
20 that I accomplished in the response to
21 Mr. Brisson's report gave validity to that
22 statement.
23 MR. CHOPIN: Okay. Your next item, which I
24 confess right in the beginning I haven't got a
25 clue what it means, it says the Town of Palm

1 Beach selectively enforces its consistency and
2 concurrency management system.
3 Did you know that prior to your testimony
4 of September 16?
5 MR. BLACKMAN: Yes, and in fact I did
6 testify to that effect at that hearing.
7 MR. CHOPIN: Okay. So this is bolstering
8 or repetitive of --
9 MR. NATALE: Objection.
10 MR. CHOPIN: He answered the question.
11 MR. NATALE: He was trying to finish his
12 answer, and we all know that. Let him finish
13 the answer. Extend to him the courtesy that you
14 would anyone else and the courtesy that Madam
15 President has repeatedly asked to you do.
16 MR. CHOPIN: My question, Mrs. Smith, was
17 did he know, and he said yes. That's all I
18 asked him and he answered my question.
19 MR. BLACKMAN: There was a continuation to
20 that answer.
21 PRESIDENT SMITH: Well, then go ahead,
22 Mr. Blackman. When you stop, we all think you
23 are finished.
24 MR. BLACKMAN: All right. And that is that
25 I included it in this report just for the sake

*** Notes ***

Page 201

Page 202

1 of continuity. If someone picked this report up
2 independently, they would know what my previous
3 testimony was. So that's why it is included
4 here.

5 MR. CHOPIN: My question then, sir, it's a
6 fair statement that under the summary provisions
7 of your report, paragraph Roman numeral three,
8 is in fact nothing more than what you previously
9 testified to?

10 MR. BLACKMAN: There is one addition, a
11 traffic study that was provided by the county in
12 the -- this is one item that did come to light
13 during the past two weeks, is that the county
14 does have a traffic study from a special use
15 application in the Town of Palm Beach that was
16 approved and then the traffic study was
17 submitted to the county after the approval.

18 MR. CHOPIN: When was that?

19 MR. BLACKMAN: It's included in the report.
20 I believe it's special exception 19-96, concerns
21 NationsBank.

22 MR. CHOPIN: When was that special
23 exception filed?

24 MR. BLACKMAN: Well, it was heard at the
25 June meeting.

1 MR. CHOPIN: So it was available in June of
2 this year?

3 PRESIDENT SMITH: Yes.

4 MR. CHOPIN: So then you would have known
5 or could have known or should have known about
6 it prior?

7 PRESIDENT SMITH: I'm sorry, Mr. Chopin. I
8 interrupted and I answered yes. I didn't allow
9 Mr. Blackman to answer the question. I'm sorry.

10 In 1996 it was heard in June, and the
11 question I believe was so it was available
12 before the September meeting?

13 MR. BLACKMAN: Yes. In summing up the
14 documentation for this report, I was made, the
15 county made available to me another copy of --
16 not another copy, but a copy of this report that
17 I mentioned.

18 MR. CHOPIN: If you had walked in this
19 building in June or July or August and asked for
20 that, you would have been given it as a matter
21 of the fact that it's a public record?

22 MR. BLACKMAN: Yes.

23 MR. CHOPIN: You are aware, sir, that
24 Mr. Rampell has written to the town and says I
25 want everything. You are aware of that?

*** Notes ***

Page 203

Page 204

1 Simple question. You are either aware of
2 it or you are not.

3 MR. BLACKMAN: Well, I'm not sure what
4 everything includes.

5 MR. CHOPIN: I don't think the town knew
6 either, but there was a long list of things, but
7 the fact is it was a public record and you could
8 have had it, right?

9 MR. BLACKMAN: Yes.

10 MR. CHOPIN: The sum and substance, if I
11 understand it, of your report is that the Town
12 of Palm Beach is not in compliance.

13 You are not suggesting that the applicant
14 is not in compliance with the open space
15 requirements, are you?

16 MR. BLACKMAN: No, I'm not.

17 MR. CHOPIN: Okay, I don't have any other
18 questions.

19 PRESIDENT SMITH: Mr. Chopin, leave the
20 microphone, please.

21 MR. CHOPIN: Never know when you are going
22 to need it.

23 MR. NATALE: Mr. Blackman, did you finish
24 with your answer?

25 MR. BLACKMAN: Yes.

1 MR. NATALE: At this time, I would tender
2 the report to be considered as part of the
3 record in this case.

4 PRESIDENT SMITH: All right.

5 Mr. Kolins, are you stepping to the
6 microphone?

7 MR. KOLINS: I am.

8 MR. CHOPIN: If I may, Frank Chopin -- I
9 think Mr. Kolins intends to question on the
10 report.

11 I want to lodge an objection to its
12 introduction on the grounds of relevancy, which
13 knowing that relevancy is not a valid basis for
14 objection, I think it's irrelevant, I tell you
15 it's irrelevant, but I assume you're going to
16 admit it because that's not a valid ground, but
17 it is irrelevant.

18 PRESIDENT SMITH: Mr. Kolins, would you
19 like to tell us what you are going to question
20 Mr. Blackman on, please?

21 MR. KOLINS: What I was going to say was I
22 would like to examine him on the report, so it
23 would be appropriate first I think if you were
24 to decide whether or not you are going to
25 receive it in evidence. If you don't, you

*** Notes ***

Page 205

Page 206

1 don't. If you do, I'd like to examine him on
 2 the report.
 3 MR. MCDONALD: So move to move it into
 4 evidence.
 5 PRESIDENT SMITH: Is there a second?
 6 THE CLERK: Mr. McDonald?
 7 MR. MCDONALD: Yes.
 8 THE CLERK: Mr. Shaw?
 9 MR. SHAW: Yes.
 10 THE CLERK: Mr. McLendon?
 11 MR. MCLENDON: Yes.
 12 THE CLERK: Mr. Wyatt?
 13 MR. WYETT: Yes, but I find the report is
 14 based on discrimination and I find it
 15 abominable.
 16 THE CLERK: Mrs. Smith?
 17 PRESIDENT SMITH: Yes. We'll find out if
 18 it's based on discrimination or not.
 19 MR. WYETT: He mentioned it up front.
 20 PRESIDENT SMITH: Mr. Blackman said it was
 21 discriminatory. Perhaps Mr. Kolins will find
 22 out.
 23 MR. KOLINS: May I proceed?
 24 PRESIDENT SMITH: Mr. Kolins.
 25 MR. KOLINS: Thank you. For the record,

1 Ron Kolins.
 2 Mr. Blackman, would you agree with me that
 3 together with its exhibits, this report is about
 4 85 pages long?
 5 MR. BLACKMAN: Yes.
 6 MR. KOLINS: So when your council earlier
 7 today said it was 12 or 16 or 18 or something
 8 like that, that was wrong?
 9 MR. BLACKMAN: No. It was correct, because
 10 the actual text that was under my authorship is
 11 about 12 pages or so, and the rest is exhibits.
 12 MR. KOLINS: But if someone were analyzing
 13 your report, they would have to look at the
 14 exhibits as well as the text of your report,
 15 right?
 16 MR. BLACKMAN: If they were not familiar
 17 with the comprehensive plan of the Town of Palm
 18 Beach or the concurrency standards.
 19 MR. KOLINS: Right, but even if they were,
 20 they would want to see what you were using of
 21 them, correct?
 22 MR. BLACKMAN: It wouldn't take them as
 23 much time.
 24 MR. KOLINS: Is your answer -- you don't
 25 know how fast or slow I can read, do you?

*** Notes ***

Page 207

Page 208

1 MR. BLACKMAN: No, but I'm thinking that if
 2 staff is reviewing this, that they could
 3 assimilate it rather quickly.
 4 MR. KOLINS: Is that right? It is
 5 something that would have to be assimilated, all
 6 85 pages, right?
 7 MR. BLACKMAN: Yes.
 8 MR. KOLINS: And we received this what, an
 9 hour, hour and a half ago, during which time,
 10 most of that time we have been involved in other
 11 testimony; is that right?
 12 MR. BLACKMAN: Correct.
 13 MR. KOLINS: Okay. So you will understand
 14 when I say that I really don't feel I have had a
 15 full opportunity to review this report in any
 16 kind of detail and therefore my cross
 17 examination of you today by definition would
 18 have to be cursory, correct?
 19 MR. BLACKMAN: Unfortunately, yes.
 20 MR. KOLINS: Okay. Now when was it that
 21 you prepared this report?
 22 MR. BLACKMAN: During the bulk of last
 23 week.
 24 MR. KOLINS: And I think you stated that
 25 everything in it was available to you before

1 that, correct?
 2 MR. BLACKMAN: Yes.
 3 MR. KOLINS: So would you agree with me
 4 that this is not rebuttal, but constitutes new
 5 evidence?
 6 MR. BLACKMAN: I think it is rebuttal of
 7 Mr. Brisson's testimony, because it was prepared
 8 in response to Mr. Brisson's testimony. Even
 9 though the information was available, we weren't
 10 aware what direction Mr. Brisson's testimony was
 11 leading.
 12 MR. KOLINS: So we are going to talk about
 13 Mr. Brisson's testimony now and see what you
 14 have done to rebut it, but just one question
 15 before that.
 16 Are you a graduate, do you have a degree in
 17 land planning?
 18 MR. BLACKMAN: I have a degree in business
 19 administration from (inaudible) College in
 20 Michigan. I have taken some graduate level
 21 course work in public administration.
 22 MR. KOLINS: What is the basis of your
 23 holding yourself out as an expert in land
 24 planning?
 25 MR. BLACKMAN: That I have worked for the

*** Notes ***

Page 209

Page 210

1 City of West Palm Beach as an urban planner for
2 four years prior to my current job as director
3 of projects at the Mar-a-Lago Club.

4 Prior to that, I worked in Michigan in
5 various settings in a municipality, the city of
6 East Lansing, Wilkinson Wheat & Engineering, a
7 private consulting firm in Kalamazoo, and the
8 State of Michigan. So all told, I have about 13
9 years' experience.

10 MR. KOLINS: All of that work was in
11 planning?

12 MR. BLACKMAN: Yes.

13 MR. KOLINS: Now what degrees do you have,
14 what is your educational background in traffic
15 engineering?

16 MR. BLACKMAN: No formal training.
17 Experience.

18 MR. KOLINS: Do you hold yourself out as a
19 traffic engineer?

20 MR. BLACKMAN: No, I do not.

21 MR. KOLINS: Are you licensed as a traffic
22 engineer?

23 MR. BLACKMAN: No, I am not.

24 MR. KOLINS: What is the scope of this
25 experience of yours?

1 MR. BLACKMAN: The scope is through the
2 review of land use plans and petition for the
3 City of West Palm Beach, meeting the growth
4 management requirements, the Florida
5 Administrative Code Rule 9J5 of the
6 Comprehensive Land Use Plan, working with
7 putting together the traffic element of the City
8 of West Palm Beach, working as a person to
9 create the concurrency management system for the
10 City of West Palm Beach.

11 MR. KOLINS: Does the City of West Palm
12 Beach have a traffic engineer?

13 MR. BLACKMAN: Yes, they do.

14 MR. KOLINS: So would it be fair to say
15 that whatever work you did on those things, you
16 did in conjunction with him or her?

17 MR. BLACKMAN: Definitely.

18 MR. KOLINS: Have you ever prepared a
19 traffic impact report yourself?

20 MR. BLACKMAN: No, I have not.

21 MR. KOLINS: So you are not holding
22 yourself out here today as a traffic expert, are
23 you?

24 MR. BLACKMAN: Not at all.

25 MR. KOLINS: Okay. So now let's look at

*** Notes ***

Page 211

Page 212

1 your report and let's juxtapose it to
2 Mr. Brisson, okay? And I heard your lawyer say
3 that what you are ostensibly here to rebut is
4 Roman numeral one of Mr. Brisson report.

5 Do agree with that?

6 MR. BLACKMAN: Yes.

7 MR. KOLINS: That begins on page 3 of his
8 report and it is entitled Pertinent Differences
9 Between the Mar-a-Lago Club and Other Private
10 Social Clubs in Town, correct?

11 MR. BLACKMAN: Yes.

12 MR. KOLINS: Okay. And where is it in his
13 report, Roman numeral one, where he discusses
14 that the Town of Palm Beach improperly and
15 illegally uses private discriminatory clubs to
16 meet public recreation and open space
17 requirements?

18 MR. BLACKMAN: Could I refer to the report?

19 MR. KOLINS: You certainly can.

20 MR. BLACKMAN: This, the first sentence,
21 the applicant refers to the fact that the
22 Mar-a-Lago Club is regulated differently from
23 the other private clubs in the town. This
24 statement is not germane to the issues at hand.

25 MR. KOLINS: Well, he goes on, does he not,

1 in that page and a quarter or so to list the
2 differences in how clubs are regulated in town,
3 doesn't he?

4 MR. BLACKMAN: Yes. And he may have missed
5 some. That's why I included that in this
6 report.

7 MR. KOLINS: But if he missed it, then he
8 wasn't alleging it, isn't that correct, or are
9 you trying to make his case for him?

10 MR. BLACKMAN: I'm trying to say that there
11 are issues here --

12 MR. KOLINS: Just answer my question.

13 If he didn't allege it, what is it that you
14 are rebutting?

15 MR. BLACKMAN: I think the first two
16 sentences.

17 MR. KOLINS: Where in the first two
18 sentences does it refer to the improper and
19 illegal use of private discriminatory clubs to
20 meet public -- where do they talk about public
21 regulation and open space requirements in the
22 first two sentences or, for that matter,
23 anywhere in Roman numeral one?

24 Aren't you going well beyond Roman numeral
25 one?

*** Notes ***

Page 213

Page 214

1 MR. BLACKMAN: Yes.
 2 PRESIDENT SMITH: We are giving you,
 3 Mr. Blackman, plenty of time to answer the
 4 question, so take your time and answer
 5 Mr. Kolins' question when you are ready, please.
 6 MR. BLACKMAN: Right. I appreciate the
 7 time.

8 Throughout the report it deals with
 9 concurrency, and one of the six items that the
 10 town looks out for concurrency requirements
 11 deals with recreation in open space. And that
 12 was not -- if the town is not meeting its
 13 recreation and open space standards, then I
 14 think all applicants might have a problem with
 15 applying for development applications.

16 PRESIDENT SMITH: If I could ask you a
 17 question, Mr. Blackman, at this time, because we
 18 are trying to follow the questioning. And this
 19 is on page 3 of Mr. Brisson's report, Pertinent
 20 Differences Between the Mar-a-Lago Club and
 21 Other Private Social Clubs.

22 And where on page 3 up until the paragraph
 23 on guest suites does it talk about the
 24 recreation uses and the discriminatory practices?
 25 So I don't have to sit here and read the whole

1 two pages. If it's not there, just tell me and
 2 I'll stop reading.
 3 MR. BLACKMAN: Well, it's not there, but
 4 like I said, it is throughout the report.
 5 PRESIDENT SMITH: All right.
 6 MR. BLACKMAN: It talks about the
 7 concurrency management system.
 8 PRESIDENT SMITH: All right, thank you.
 9 Mr. Kolins.
 10 MR. KOLINS: Are you telling me that you
 11 are here to rebut more than Roman numeral one,
 12 notwithstanding your attorney's representation?
 13 MR. BLACKMAN: Yes.
 14 MR. KOLINS: Okay. Then show me where,
 15 anywhere in the report it talks about the Town
 16 of Palm Beach improperly and illegally using
 17 private discriminatory clubs to meet public
 18 recreation and open space requirements.
 19 MR. BLACKMAN: On page eight it talks about
 20 traffic concurrency, and I would include
 21 concurrency in that as a general topic.
 22 MR. KOLINS: Wait a minute, let's
 23 understand each other here, Mr. Blackman.
 24 Are you saying nowhere in the report,
 25 nowhere does it discuss open space requirements

*** Notes ***

Page 215

Page 216

1 and recreation requirements? Is that your
 2 testimony, yes or no?

3 MR. BLACKMAN: That's correct.

4 MR. KOLINS: So what you are doing is you
 5 saw somewhere in this report the phrase traffic
 6 concurrency, right?

7 MR. BLACKMAN: It refers to the town's
 8 concurrency management.

9 MR. KOLINS: What is it about that
 10 reference that you are rebutting when you allege
 11 the Town of Palm Beach improperly and illegally
 12 uses private discriminatory clubs to meet public
 13 recreation and open space requirements?

14 MR. BLACKMAN: Part of the six public
 15 facilities that the town has to analyze for its
 16 concurrency standards relates to recreation and
 17 open space.

18 MR. KOLINS: What are you rebutting that
 19 Mr. Brisson's report or testimony said?

20 I'm not asking you for a prophesorial
 21 analysis of comprehensive plans. I want to know
 22 what you are rebutting.

23 MR. NATALE: Madam President, I object.
 24 Rebuttal is actually maybe a legal definition.

25 PRESIDENT SMITH: To the microphone,

1 please, and I think it's a very logical
 2 question, which part of the report -- because I
 3 am going through it too -- is Mr. Blackman
 4 rebutting?

5 MR. NATALE: So long as we are not using
 6 rebuttal as a legal term.

7 PRESIDENT SMITH: We have heard rebuttal
 8 about as much as we have heard concurrency, so
 9 we now know what you are talking about.

10 Mr. Blackman, please, if you would answer
 11 the question.

12 MR. BLACKMAN: Can you refresh my memory?

13 MR. KOLINS: Certainly. What part of
 14 Mr. Brisson's report are you rebutting when you
 15 conclude and in your report discuss that the
 16 Town of Palm Beach improperly and illegally uses
 17 private discriminatory clubs to meet public
 18 recreation and open space requirements?

19 MR. BLACKMAN: I think I have answered the
 20 question.

21 PRESIDENT SMITH: Would you repeat your
 22 answer, Mr. Blackman?

23 MR. BLACKMAN: That it does, the report
 24 does refer to the town's concurrency management
 25 system.

*** Notes ***

Page 217

Page 218

1 PRESIDENT SMITH: On the open space and the
 2 recreation? I can't find it.
 3 MR. BLACKMAN: Not as it applies to
 4 recreation and open space, but in the umbrella
 5 term of the concurrency regulations, recreation
 6 and open space is one of those facilities that
 7 has to be --
 8 PRESIDENT SMITH: You have lost me
 9 MR. KOLINS: What did Mr. Brisson say about
 10 recreation and open space that you are
 11 rebutting?
 12 MR. BLACKMAN: He did not.
 13 MR. KOLINS: So you are not rebutting
 14 anything, are you, in his report with that
 15 allegation?
 16 MAYOR ILYNSKY: Didn't tell him what
 17 rebuttal means. He hasn't been coached
 18 properly.
 19 MR. McDONALD: Mr. Kolins, why don't you,
 20 based on his answer, wrap up?
 21 MR. KOLINS: I'll take your advice on that,
 22 Mr. McDonald.
 23 Could you, by the way, just as an aside,
 24 could you have rephrased that allegation to say
 25 the following and still have said the same

1 thing: The Town of Palm Beach improperly and
 2 illegally uses private clubs to meet public
 3 recreation and open space requirements?
 4 Is there something relevant about the word
 5 discriminatory here that I don't understand?
 6 MR. BLACKMAN: Yes, because there is a
 7 difference between the Mar-a-Lago Club and other
 8 private clubs.
 9 MR. KOLINS: So if all the other clubs are
 10 discriminatory clubs, you could have referred to
 11 them as all the other clubs in town; isn't that
 12 right?
 13 MR. BLACKMAN: Yes.
 14 MR. KOLINS: Your second point here is the
 15 Town of Palm Beach exacerbates this public
 16 accessibility shortage.
 17 I take it you are referring to recreation
 18 and open space?
 19 MR. BLACKMAN: Yes.
 20 MR. KOLINS: By excessive regulation of a
 21 non-discriminatory club, which I take it to mean
 22 Mar-a-Lago?
 23 MR. BLACKMAN: Yes.
 24 MR. KOLINS: You could have said
 25 Mar-a-Lago, right?

*** Notes ***

Page 219

Page 220

1 MR. BLACKMAN: Yes, and I do in the report.
 2 MR. KOLINS: But you don't here. This is
 3 non-discriminatory. Is there a message there?
 4 MR. BLACKMAN: If you wish.
 5 MR. KOLINS: All right. So that also deals
 6 with open space, correct, and recreation?
 7 MR. BLACKMAN: Yes.
 8 MR. KOLINS: So your answers on I take it
 9 Roman numeral two would be the same as Roman
 10 numeral one in terms of what you rebut?
 11 MR. BLACKMAN: Yes.
 12 MR. KOLINS: So that leaves one other
 13 allegation, The Town of Palm Beach selectively
 14 enforces its consistency and concurrency
 15 management system.
 16 Now where is it in the Brisson report that
 17 you are responding to something with that
 18 statement?
 19 MR. BLACKMAN: Well, in the comments again
 20 on page eight, the Mar-a-Lago Club is required
 21 to meet the traffic concurrency requirements
 22 above the town in Palm Beach County.
 23 And I don't think the same could be said
 24 for other applicants, for special exception
 25 applications in the town.

1 MR. KOLINS: What other club, private club
 2 in the town, has applied for regulatory
 3 authority at a time when it was a concurrency
 4 management system when they weren't required to
 5 comply with it?
 6 MR. BLACKMAN: You really don't have to
 7 just look at the private clubs. I think you can
 8 look at restaurant uses, which I did. That's
 9 described in the report, and this particular
 10 special exception application 1996 that I
 11 mentioned.
 12 MR. KOLINS: Do you think the concurrency
 13 management system should not have been applied
 14 to Mar-a-Lago?
 15 MR. BLACKMAN: No. I think it should have
 16 been applied. I think all zoning code
 17 requirements and so forth should apply to
 18 Mar-a-Lago, but I also think they should apply
 19 to other properties.
 20 MR. KOLINS: Okay, now if -- and I haven't
 21 had an opportunity to read this in much detail,
 22 as you told you up front, but if -- I'm
 23 assuming, but I don't necessarily agree at all,
 24 but if indeed there were other applicants for
 25 other kinds of uses who should have been subject

*** Notes ***

Page 221

Page 222

1 to that management system but were not, for
 2 whatever reason, who should be the one to
 3 complain?
 4 If you agree that Mar-a-Lago should be
 5 subject to those rules, indeed they have to be,
 6 who should complain?
 7 MR. BLACKMAN: The Mar-a-Lago Club, because
 8 they are selective enforced, while other people
 9 are allowed to develop their property.
 10 MR. KOLINS: Okay. So they have got it in
 11 for Mar-a-Lago, is that the idea?
 12 MR. BLACKMAN: Your perception is your own.
 13 MR. KOLINS: I'm asking for yours. I'll
 14 withdraw that question.
 15 I tell you what, Mr. Blackman. You've got
 16 a real thick bunch of stuff here, but my
 17 co-council in his wisdom suggests that the hour
 18 is getting late and I'm probably droning on far
 19 too long and maybe this council has probably
 20 heard all of me that they want to, and I
 21 wouldn't blame them, so I'm going to stop here.
 22 Thank you.
 23 MR. GRAVES: Madam President, I would
 24 simply raise an objection on relevancy.
 25 PRESIDENT SMITH: Thank you, Mr. Graves.

1 MR. KOLINS: An objection in which I
 2 heartily join, by the way.
 3 PRESIDENT SMITH: All right. So noted.
 4 Mr. Natale, come, but I do want to ask,
 5 does the court reporter want to change? Yes.
 6 Would you come up and change? I'm trying to
 7 accommodate the applicant with the court
 8 reporter. If you want to make a change, make a
 9 change, please.
 10 Go ahead, Mr. Natale.
 11 MR. NATALE: Your Honor, at this time we
 12 would tender the report into -- oh, it's already
 13 in. Then I have no further questions.
 14 PRESIDENT SMITH: Thank you.
 15 Members of the council, any questions for
 16 Mr. Blackman?
 17 MR. WYETT: Mrs. Smith, I have a statement
 18 I would like to make.
 19 PRESIDENT SMITH: For Mr. Blackman?
 20 MR. WYETT: No, when he is done.
 21 PRESIDENT SMITH: All right, when
 22 Mr. Blackman is finished.
 23 We obviously can't question you on the
 24 report, Mr. Blackman. We haven't seen it.
 25 Thank you.

*** Notes ***

Page 223

Page 224

1 MR. BLACKMAN: Thank you.
 2 PRESIDENT SMITH: Before you make your
 3 statement, Mr. Wyett, Mr. Natale, would you --
 4 who is next?
 5 MR. NATALE: We have no more testimony. We
 6 just have our legal argument on behalf of the
 7 application.
 8 PRESIDENT SMITH: This is your closing
 9 statement?
 10 MR. NATALE: That's all we have left is our
 11 closing statement.
 12 PRESIDENT SMITH: You are finished with
 13 your rebuttal?
 14 MR. NATALE: We are finished with
 15 presenting rebuttal testimony.
 16 PRESIDENT SMITH: Thank you.
 17 Mr. Randolph, is there anything you would
 18 like to say at this time?
 19 MR. RANDOLPH: No, other than the fact that
 20 there has been some argument made that there has
 21 been some new testimony, and I understand your
 22 staff has looked at this for the first time
 23 today.
 24 I don't know whether anybody has any
 25 questions of any of our staff members, but that

1 would be, this would be the opportunity to do
 2 that if anyone did.
 3 MR. WYETT: I find questions difficult when
 4 I don't have a copy of the two reports that we
 5 admitted into evidence.
 6 MR. SHAW: When could we get copies of
 7 these reports?
 8 MR. MCLENDON: How many copies were
 9 submitted?
 10 PRESIDENT SMITH: Mr. Natale, how many
 11 copies did you submit?
 12 MR. NATALE: I don't know, I had them in a
 13 box over here and now they are gone.
 14 PRESIDENT SMITH: Well, they were here this
 15 morning because you had them in the box. Didn't
 16 you keep an eye on your box?
 17 MR. NATALE: The reason why I put -- yes,
 18 the box has been here, but all of a sudden I
 19 looked at it and it's empty, so I don't know
 20 where they went. I'll see if I can locate them.
 21 I know we gave them to the attorneys, the three
 22 attorneys.
 23 MR. MOORE: The staff has them here. We
 24 can lend them to you if you wish.
 25 PRESIDENT SMITH: I'm sorry, I didn't hear

*** Notes ***

Page 225

Page 226

1 you, Mr. Moore.
 2 MR. MOORE: Staff has copies here and we
 3 can lend them to you if you wish at this point.
 4 PRESIDENT SMITH: I don't want you to lend
 5 me anything, Mr. Moore. I'd like a copy of the
 6 document.
 7 Mr. Wyett asked that the council have
 8 copies. Mr. Wyett would like to look at it
 9 before he asks a question.
 10 Are you denying him the right to look at
 11 it?
 12 MR. NATALE: Madam President, I was told
 13 that we had 15 copies and somehow they were
 14 given to the people who are here, so I am trying
 15 to find out --
 16 PRESIDENT SMITH: Given to the council?
 17 Are you saying they were given to the council?
 18 MR. NATALE: What I'm saying is that when
 19 they were there and I originally gave them to
 20 the clerk, and then they were collected, that
 21 they were given back. I don't know where they
 22 went.
 23 PRESIDENT SMITH: We are not responsible
 24 for your copies.
 25 MR. NATALE: I understand that. What I

1 would like to know is how many --
 2 PRESIDENT SMITH: There is six people on
 3 the town council.
 4 MR. NATALE: We need two more.
 5 MR. WYETT: Mrs. Smith, I would like to ask
 6 Mr. Natale one question before he sums up.
 7 PRESIDENT SMITH: All right. We are just
 8 trying to straighten out the report thing and
 9 then yes.
 10 MR. NATALE: I just want to honor Madam
 11 President's request to get it to you right now.
 12 PRESIDENT SMITH: All right.
 13 (Thereupon, there was a change
 14 of court reporters.)

*** Notes ***

Page 227

CERTIFICATE

1
 2
 3 STATE OF FLORIDA)
 4 COUNTY OF PALM BEACH)
 5
 6 I, Rachel W. Bridge, Registered Professional
 7 Reporter, certify that I was authorized to and did
 8 stenographically report the foregoing proceedings and
 9 that the transcript is a true record.

10
 11 Dated this ____ day of _____, 1996.
 12
 13
 14

15 Rachel W. Bridge, RPR, CM
 16 Notary Public - State of Florida
 17 My commission expires 1-15-99.
 18
 19
 20
 21
 22
 23
 24
 25

*** Notes ***

\$75,000 [1]	19:24	1995/'96 [4]	119:19	4:17	5:1	5:2	83:6	83:13	83:16	149:7	149:23	149:25	
'87 [1]	118:12	135:6	137:16	166:21	5:2	5:5	5:12	84:12	84:15	84:16	150:8	151:4	151:12
'93 [1]	156:8	1995/1996 [1]	127:3		5:16	5:17	5:17	85:3	85:17	86:5	151:24	152:6	152:11
'95 [1]	145:19	1996 [15]	1:22		6:2	6:15	7:5	86:22	87:19	87:24	153:2	154:7	154:22
'95/'96 [1]	127:11	119:22	122:20	124:8	7:7	7:19	7:20	88:11	88:13	88:14	155:21	155:23	156:20
'96 [4]	127:12	144:12	145:15	165:13	8:12	8:17	8:22	89:14	90:2	90:12	156:22	156:25	157:9
145:23	167:12	165:17	168:11	169:19	8:23	9:14	9:24	90:13	90:15	90:17	157:12	158:1	158:3
00 [3]	37:24	170:8	170:20	202:10	10:18	10:18	10:21	91:1	91:2	91:5	158:15	158:21	159:3
81:3		220:10	227:11		10:23	11:1	11:9	91:7	91:14	91:16	159:7	159:9	159:11
1 [2]	1:22	19th [1]	173:19		11:10	11:11	11:21	92:2	92:8	92:25	159:14	159:14	159:16
1,003 [3]	139:4	1st [2]	104:1	105:9	12:6	13:12	13:15	92:25	93:12	93:19	160:24	161:9	161:11
139:12	139:23	2.1 [1]	14:10		14:1	14:4	14:10	94:3	94:21	95:14	161:12	161:23	162:4
1,008 [27]	134:2	2.2 [1]	14:10		14:19	15:15	15:23	95:17	95:21	95:25	162:12	162:13	162:14
134:12	134:14	20 [2]	4:13	44:25	15:24	15:25	15:25	95:25	96:1	96:4	162:21	163:2	163:3
135:22	136:12	200 [1]	175:25		16:3	16:10	16:10	96:6	96:18	97:3	163:7	163:13	164:2
138:6	138:12	24-hour [1]	99:11		16:19	17:8	17:11	97:14	97:16	97:17	164:4	164:13	164:15
139:12	139:14	252 [13]	48:17	48:19	17:16	18:10	18:20	97:18	98:1	98:2	164:18	165:25	166:4
139:22	140:10	51:23	51:24	52:9	19:2	19:6	19:9	98:3	98:6	98:6	166:25	168:15	169:13
141:9	141:17	138:14	162:16	175:2	20:10	20:13	20:14	98:11	98:13	98:13	169:15	169:22	169:25
142:5	144:24	175:25	176:3	176:19	21:4	21:6	21:10	98:14	98:15	98:16	170:1	171:9	171:11
154:10	159:19	176:21	177:20		21:12	21:17	22:15	98:18	98:19	98:19	171:12	171:16	172:3
162:14	174:1	260 [2]	124:8	124:25	23:1	23:6	23:21	99:4	99:11	99:14	172:24	173:6	174:1
1-15-99 [1]	227:17	267 [1]	124:21		24:5	24:6	24:6	99:16	99:19	99:24	174:4	174:6	174:7
10-hour [1]	99:11	270 [4]	124:11	124:22	24:9	24:10	24:12	99:25	100:1	100:3	174:16	176:3	177:21
100 [3]	14:2	124:23	125:1		24:19	24:24	24:25	100:5	100:7	100:15	178:13	178:14	178:19
42:8		274 [2]	66:18	66:20	25:9	25:13	26:5	100:17	100:20	100:22	179:2	179:5	179:16
10th [1]	166:9	3 [3]	211:7	213:19	26:12	27:19	27:25	101:7	101:8	101:10	179:24	181:4	181:7
11 [4]	1:22	30 [6]	44:25	102:4	28:5	28:6	29:10	101:18	102:2	102:6	181:8	182:15	182:16
3:19	93:22	108:25	116:9	162:20	29:13	30:5	30:11	102:14	102:16	102:19	182:21	183:1	183:2
113 [1]	139:4	186:1			30:13	31:18	31:23	102:21	103:1	104:8	183:23	184:6	184:12
1167 [1]	83:9	30-year [1]	115:13		32:11	32:13	34:7	104:10	104:15	105:13	184:13	186:9	186:20
12 [3]	32:3	300 [1]	30:7		34:8	34:13	34:17	105:17	105:22	106:2	186:22	187:12	187:17
206:11		315 [1]	83:11		34:19	35:18	36:19	106:6	106:10	106:12	187:18	188:3	188:5
12,000 [2]	12:6	33408 [1]	1:21		37:1	37:20	38:15	106:17	106:18	107:2	188:10	188:12	188:18
120 [1]	12:5	3500 [8]	110:20	111:1	38:17	38:18	39:19	107:4	107:6	107:6	188:20	188:22	188:24
13 [7]	68:3	114:18	114:21	116:20	40:12	40:13	41:2	107:7	107:19	107:22	189:9	189:10	189:10
143:23	144:5	117:4	147:20	147:24	41:4	41:4	41:6	107:23	108:1	108:7	189:12	192:20	193:8
144:19	209:8	3500-foot [1]	116:25		41:9	41:13	41:15	108:20	108:21	108:23	193:11	193:12	194:13
15 [7]	68:2	4 [2]	55:16	81:3	42:2	43:1	44:5	108:24	109:1	109:2	195:8	195:17	196:9
107:16	108:19	40 [1]	44:21		44:6	44:7	44:16	109:12	110:1	110:4	196:17	196:19	196:20
177:15	225:13	400 [2]	13:25	136:7	44:22	45:6	45:22	110:7	110:8	110:12	196:22	198:13	199:15
16 [29]	38:18	400-person [1]	14:13		46:8	47:6	47:10	110:14	110:18	110:22	199:24	200:19	201:5
68:2	111:12	413 [1]	37:2		47:11	47:21	48:9	111:6	111:16	111:17	201:10	201:14	201:14
111:18	115:1	478 [1]	83:11		48:11	49:4	49:4	111:18	111:20	112:3	202:16	202:20	202:21
124:11	135:10	495 [1]	83:9		49:5	49:5	49:8	112:5	112:7	112:7	203:6	203:7	204:13
136:13	139:11	50 [2]	1:22	44:21	49:11	49:20	50:16	112:11	112:15	113:2	204:16	205:5	207:9
145:9	145:21	500 [2]	42:8	136:7	50:21	52:9	53:11	113:10	113:14	113:16	207:14	208:16	208:16
161:20	161:22	6 [1]	1:22		53:18	53:23	53:24	113:21	114:1	114:2	208:18	209:5	209:6
165:12	168:10	70 [1]	148:4		54:1	54:10	55:1	114:13	114:13	114:14	209:18	209:21	210:8
170:2	172:5	75 [1]	148:4		55:6	55:7	55:24	115:1	115:17	115:18	210:12	210:18	210:22
199:12	200:4	8 [1]	37:24		56:3	56:7	56:9	115:23	115:25	116:6	212:1	213:14	213:16
16th [11]	43:14	85 [2]	206:4	207:6	56:12	56:21	57:3	116:8	116:14	119:9	214:21	214:22	215:20
137:7	137:10	9 [1]	162:20		57:10	58:13	58:16	119:10	119:18	120:7	215:24	216:1	216:6
146:9	157:25	90 [1]	12:5		58:21	58:25	59:6	120:7	121:1	125:5	218:6	218:20	219:3
158:13	159:21	90J [1]	210:5		59:9	60:4	60:5	125:15	126:11	126:13	220:3	220:3	221:16
17 [2]	68:8	a [625]	3:9	3:11	60:5	60:8	60:10	126:14	127:24	128:16	222:8	222:8	222:17
18 [2]	182:19	3:21	4:5	4:11	60:14	60:15	60:17	128:17	128:23	130:6	224:4	224:12	224:18
1800 [4]	97:24				61:6	61:23	62:3	130:16	130:18	130:19	225:5	225:9	226:13
116:19	117:6				63:4	63:9	63:14	131:9	131:16	133:23	227:1	227:9	
19-96 [1]	201:20				63:18	64:5	64:9	134:5	134:19	135:12	A1A [2]	21:9	119:6
1990 [1]	124:6				64:23	64:25	65:12	135:16	135:25	136:4	abandoned [1]	12:16	
1993 [6]	54:14				65:17	65:19	66:17	136:10	136:12	136:20	abbreviated [1]	143:13	
117:9	138:13				68:2	68:11	68:23	137:1	137:2	137:4	ability [1]	64:6	
184:15					69:3	69:10	69:12	137:4	137:5	137:13	able [10]	72:10	72:13
1995 [1]	170:3				69:21	70:7	70:11	137:18	137:22	138:2	99:23	101:3	102:24
					70:19	70:23	71:20	138:12	138:13	138:17	103:13	114:24	143:15
					73:4	73:8	73:16	139:24	140:12	141:14	150:16	156:19	
					73:21	74:15	74:22	141:15	141:19	141:24	abominable [1]	205:15	
					75:1	75:11	75:12	142:13	142:15	142:16	above [3]	84:12	
					75:19	75:24	76:2	142:18	142:19	143:17	141:9	219:22	
					76:4	77:3	77:18	143:19	144:23	145:4	absolute [2]	85:12	
					78:14	79:23	79:24	146:16	146:18	147:1	162:25		
					80:24	81:3	82:15	147:3	147:3	147:4			
					82:23	83:2	83:2	147:4	147:15	147:24			

absolutely [6] 46:16 56:17 85:12 167:17 195:16 196:23	admissible [3] 58:18 81:18 81:19	alleging [1] 212:8	151:13 163:5 163:23	application [64] 34:16
absorb [2] 143:25 144:22	admit [3] 152:25 190:14 204:16	Allen [2] 2:5 4:10	167:3 167:6 171:17 172:7 180:23 188:6 188:9 196:19 196:25 197:6 200:12 200:13 200:20 202:9 203:24 206:24 212:12 213:3 213:4 216:10 216:22 217:20	35:1 35:5 35:14 35:18 36:4 39:25 41:16 46:24 47:6 47:10 47:22 48:2 48:10 48:12 48:15 48:25 49:9 49:10 51:2 51:23 51:25 52:5 52:16 54:19 57:20 59:5 60:6 60:22 63:20 64:15 66:2 66:15 69:9 69:9 118:17 134:7 134:10 134:15 134:17 135:3 135:8 136:14 136:24 139:3 140:1 141:15 141:16 151:6 155:3 156:10 162:13 164:16 172:1 172:3 174:22 177:16 179:13 188:17 192:6 194:6 201:15 220:10 223:7
abuts [1] 32:25	admitted [3] 160:11 190:19 224:5	allow [14] 54:24 57:23 57:24 57:25 59:18 75:23 76:7 82:20 97:25 108:13 125:15 153:3 155:11 202:8	200:18 202:8 216:19	219:8
accept [4] 85:1 113:23 159:4 177:19	advance [1] 43:18	allowed [4] 176:10 176:11 196:18 221:9	answered [4] 200:10	answers [2] 142:25
acceptable [1] 87:11	adverse [1] 83:5	allowing [5] 62:12 75:21 157:8 157:21 181:20	Anthony [1] 196:14	anticipate [1] 152:24
access [1] 12:14	adversity [2] 54:22 55:3	allows [1] 156:4	anticipating [4] 117:9 117:11 153:12 153:14	anybody [13] 18:13 28:7 39:25 44:1 73:15 91:4 127:10 129:8 154:4 156:13 160:3 173:8 223:24
accessibility [2] 199:14 218:16	advice [7] 42:1 72:17 85:16 178:10 188:4 188:7 217:21	almost [4] 6:8 78:11 117:10 174:12	anyone [10] 4:19 7:23 25:2 43:22 43:24 68:17 91:22 101:2 200:14 224:2	anything [28] 4:19 17:19 23:18 34:20 35:9 35:12 36:9 43:23 46:13 49:1 72:23 91:11 93:14 97:11 107:20 112:20 114:18 115:11 119:12 131:4 161:25 162:10 163:12 171:1 188:16 217:14 223:17 225:5
accommodate [2] 71:24 222:7	advise [1] 39:22	along [4] 81:6 82:1 126:7 130:25	apologize [6] 13:2 54:16 73:19 73:25 164:23 189:14	apparent [2] 143:11 146:14
accomplished [1] 199:20	advised [3] 82:7 149:13 154:25	already [13] 20:23 34:8 46:6 46:10 60:16 62:7 71:3 76:23 84:13 88:19 88:20 103:21 222:12	apparently [2] 45:24 187:22	appear [3] 3:12 60:9 155:3
accordance [1] 51:1	affecting [1] 157:2	also [25] 6:7 8:9 10:17 20:9 30:24 45:4 45:8 45:22 50:20 51:9 53:6 72:5 83:3 90:14 94:17 100:13 138:13 160:5 179:12 183:2 184:15 187:16 198:12 219:5 220:18	APPEARANCES [1] 2:1	appears [2] 5:4 68:1
according [1] 165:20	affording [1] 191:8	always [4] 6:15 35:20 173:1 186:11	apple [5] 70:22 146:17 147:1 147:6 147:10	applicable [1] 198:19
accuracy [1] 119:20	after [18] 24:13 30:5 43:14 49:9 50:6 56:25 58:19 77:20 79:13 89:6 101:22 146:13 152:24 154:22 172:21 172:25 192:8 201:17	amazed [2] 36:23 36:24	applicant [28] 7:6 10:7 24:23 25:5 25:8 26:1 26:15 27:3 38:19 39:4 56:21 58:7 58:20 74:21 75:11 75:21 75:23 76:8 151:16 152:1 152:19 161:15 179:12 190:14 191:8 203:13 211:21 222:7	applicant's [2] 54:17 82:12
accurate [2] 161:7 161:7	afternoon [4] 46:20 55:16 68:25 192:3	ambush [1] 57:5	applicants [3] 213:14 219:24 220:24	
accurately [1] 133:21	afterwards [2] 125:18 143:17	amended [1] 66:18		
across [4] 33:3 33:4 33:6 33:10	again [24] 8:20 9:20 13:14 14:2 21:17 34:24 42:24 46:8 53:16 59:8 59:9 71:21 83:15 94:5 105:16 112:25 128:12 141:6 142:24 156:18 162:20 187:5 187:7 219:19	amenities [1] 47:12		
action [1] 86:1	agencies [1] 12:23	American [1] 193:12		
actual [5] 37:12 92:21 92:22 128:16 206:10	aggrieved [1] 51:17	amount [4] 36:25 69:1 153:18 159:3		
actually [15] 8:10 15:5 24:20 33:2 44:16 77:7 103:25 104:2 112:13 117:5 117:7 117:12 130:5 185:3 215:24	ago [6] 3:11 71:20 149:7 169:6 173:15 207:9	amounts [1] 53:7		
add [3] 34:20 40:19 120:20	agree [14] 74:4 83:20 94:5 94:10 122:19 125:23 157:8 159:25 179:10 206:2 208:3 211:5 220:23 221:4	amplified [1] 145:3		
added [3] 169:9 169:9 175:21	agreed [1] 184:18	analysis [13] 44:17 61:24 62:10 68:4 120:9 133:24 135:11 136:12 138:3 142:8 159:16 191:16 215:21		
addition [5] 11:18 48:1 72:9 177:3 201:10	agreeing [1] 83:21	analyze [1] 215:15		
additional [8] 25:12 30:23 31:5 45:18 74:8 143:25 144:1 144:22	agreement [10] 130:23 148:13 148:15 148:17 149:5 149:5 149:6 149:16 198:13 199:8	analyzing [1] 206:12		
additions [1] 9:11	ahead [13] 5:22 27:6 35:17 50:13 53:1 95:9 96:19 133:12 147:14 155:10 191:22 200:21 222:10	Anna [1] 79:4		
address [18] 13:5 18:24 39:16 57:11 57:18 58:1 59:5 59:8 59:19 59:22 61:2 133:24 137:15 137:22 138:3 141:7 143:19 159:17	aimed [1] 56:24	annual [1] 5:9		
addressed [7] 57:6 130:14 141:11 141:12 148:19 148:21 148:23	airplane [1] 101:21	another [13] 14:3 17:3 25:24 34:14 72:3 72:4 75:24 77:4 133:10 159:13 175:22 202:15 202:16		
addresses [1] 148:25	alive [1] 156:13	answer [50] 7:25 9:3 41:23 49:23 50:10 53:9 70:25 74:17 77:11 80:2 84:3 90:25 91:3 107:2 110:25 125:16 125:25 126:1 126:5 128:5 128:10 133:20 135:24 143:9 147:5		
addressing [1] 69:16	allegation [3] 217:15 217:24 219:13			
adequate [1] 173:21	allege [2] 212:13 215:10			
adjusted [1] 124:16				
administration [2] 208:19 208:21				
Administrative [1] 210:5				
administrator [2] 2:13 177:1				

212:24	91:2	98:4	115:22	auspices [1]	172:2	82:6	92:16	92:19	beginning [3]	76:2
argue [9]	55:23	127:24	128:8	128:20	authenticate [1]	95:2	120:5	124:7	133:17	199:24
62:17	62:20	63:16	129:17	129:20	131:20	127:11	128:14	135:1	begins [1]	211:7
69:18	71:13	71:17	131:21	132:1	132:2	135:2	135:4	135:25	behalf [1]	223:6
77:24	157:23	135:7	135:7	138:17	152:24	144:12	148:9	148:11	behind [1]	70:14
argued [3]	51:13	215:20	221:13	authenticity [1]	49:16	148:13	154:7	158:4	behold [1]	158:6
65:14	177:13	asks [6]	125:15	134:11	authority [2]	158:11	160:25	161:1	behoove [1]	152:18
arguing [1]	114:19	134:17	134:19	135:8	220:3	163:7	169:8	170:20	being [40]	7:8
argument [6]	69:16	225:9	aspect [2]	82:24	authorize [1]	173:16	175:2	178:16	11:4	17:25
69:17	157:1	157:1	175:22	aspects [2]	227:7	181:9	205:14	205:18	25:7	26:24
223:6	223:20	aspect [2]	69:18	88:2	authorship [1]	217:20	basically [8]	43:8	35:1	35:6
arguments [2]	59:14	assertion [1]	129:1	assertions [1]	206:10	43:24	61:5	78:18	35:12	35:12
181:13	around [5]	12:14	25:6	37:24	81:13	133:7	133:9	168:21	44:10	44:14
162:18	arrangement [2]	115:23	116:4	arrangements [1]	117:15	182:19	basics [1]	142:20	50:15	58:5
arrive [3]	14:9	14:10	116:11	art [2]	98:11	104:10	Arthur [2]	40:3	71:2	83:25
43:5	article [4]	3:6	97:5	99:18	100:3	articulate [1]	117:3	artisan [1]	85:7	91:8
aside [2]	199:16	217:23	ask [58]	10:21	14:25	16:2	25:1	34:24	91:21	92:14
16:2	25:1	34:24	36:19	37:4	39:21	44:3	50:24	54:9	100:16	102:4
55:21	56:15	73:11	80:16	80:24	95:1	104:8	106:6	110:6	117:5	117:12
117:23	120:12	121:8	121:25	122:6	125:7	125:12	125:17	126:6	138:6	138:8
128:11	131:9	134:6	141:6	146:18	150:8	152:15	159:13	163:17	174:12	177:21
163:17	164:17	165:9	165:15	167:25	168:19	169:4	169:13	170:16	181:15	187:8
173:4	176:5	178:5	179:16	189:6	190:13	194:13	194:21	213:16	belief [1]	141:23
222:4	226:5	asked [44]	15:17	15:19	34:17	41:11	42:6	43:15	63:2	63:22
67:19	73:8	74:15	75:9	80:3	93:8	93:25	94:1	95:25	68:16	69:14
102:22	135:18	137:3	137:11	142:7	143:16	145:14	146:2	146:5	79:9	79:12
146:10	146:24	151:11	166:25	168:8	168:20	172:5	172:6	172:17	86:2	87:15
173:16	180:16	183:5	184:25	186:5	188:11	200:15	200:18	202:19	91:12	91:14
225:7	asking [24]	22:2	42:10	45:25	52:20	54:1	56:9	90:24	97:6	97:14
272:24	98:4	115:22	127:24	128:8	128:20	129:17	129:20	131:20	118:11	121:18
131:21	132:1	132:2	135:7	138:17	152:24	215:20	221:13	authenticity [1]	129:1	194:25
134:17	134:19	135:8	225:9	aspect [2]	82:24	aspects [2]	69:18	88:2	207:3	207:5
assimilate [1]	207:3	assimilated [1]	207:5	associated [3]	133:25	138:4	159:18	Associates [1]	133:22	association [4]
45:5	46:1	46:3	assume [4]	76:24	156:2	170:22	204:15	assuming [1]	220:23	assumption [1]
56:6	assumptions [5]	154:8	160:25	161:1	171:10	194:24	assured [1]	58:7	attachments [1]	68:3
40:14	attempt [3]	42:8	73:16	attempting [1]	49:25	attempts [1]	164:1	attend [2]	3:12	102:25
107:7	attendance [1]	107:7	attended [3]	45:5	102:5	102:23	attending [2]	13:6	40:11	attention [1]
118:25	attorney [8]	2:12	3:14	3:15	56:1	63:4	72:25	83:1	132:1	attorney's [1]
214:12	attorneys [11]	56:19	58:1	68:10	68:25	72:19	85:13	89:14	155:2	187:23
224:21	224:22	attraction [3]	32:20	32:23	33:17	attraction [14]	30:14	30:16	30:23	31:5
31:19	31:24	31:25	32:1	32:2	32:4	32:7	32:8	32:11	32:14	attractive [1]
29:23	audience [1]	40:21	August [2]	3:4	202:19	auspices [1]	172:2	authenticate [1]	121:12	authenticated [1]
49:16	authority [2]	134:11	220:3	authorize [1]	29:1	authorized [1]	227:7	authorship [1]	206:10	available [30]
119:23	119:23	123:15	145:16	145:17	166:2	166:16	167:21	167:23	168:25	169:16
170:9	170:12	173:2	173:7	173:15	180:7	184:21	195:19	195:24	197:17	202:1
202:11	202:15	207:25	208:9	avenues [1]	130:24	average [9]	123:23	124:5	124:15	124:20
127:3	127:9	127:13	127:19	128:16	avoid [1]	187:24	aware [14]	7:10	7:16	21:3
32:24	117:14	117:17	170:3	192:9	199:2	202:23	202:25	203:1	208:10	away [2]
23:3	44:22	awful [1]	151:21	awhile [1]	37:22	back [26]	10:12	12:19	13:16	25:5
25:10	25:15	25:20	25:25	26:5	27:3	30:4	42:18	44:9	71:7	88:3
89:4	106:5	107:25	121:7	136:9	149:17	156:8	171:10	179:14	186:3	225:21
209:14	background [1]	209:14	backwards [3]	71:23	72:2	73:9	ball [1]	81:5	ballroom [10]	8:13
8:13	8:24	9:13	11:10	11:15	13:5	13:6	13:10	17:2	47:10	balls [1]
150:7	bare [1]	70:23	barely [1]	176:16	Barr [12]	62:1	123:1	123:3	126:18	179:20
179:23	184:3	184:9	184:18	184:21	184:23	185:14	Barr's [2]	124:20	184:11	based [35]
13:13	39:2	46:10	80:22	82:6	92:16	92:19	95:2	120:5	124:7	127:11
128:14	135:1	135:25	144:12	148:9	148:11	148:13	154:7	158:4	158:11	160:25
161:1	163:7	169:8	170:20	173:16	175:2	178:16	181:9	205:14	205:18	217:20
43:8	43:24	61:5	78:18	133:7	133:9	168:21	basics [1]	142:20	160:24	basing [1]
46:13	95:5	145:18	169:11	174:1	178:24	204:13	208:22	beach [75]	1:8	1:21
3:8	3:9	4:13	4:17	6:3	6:5	16:12	16:13	21:4	21:6	21:8
22:17	22:18	22:19	23:1	23:19	28:18	29:22	30:3	30:6	30:10	31:12
31:22	33:1	33:8	33:12	33:17	34:15	34:25	35:8	35:9	35:13	36:15
36:17	36:21	62:4	68:6	83:11	107:11	119:23	129:3	129:25	131:2	167:14
173:6	185:1	185:5	188:15	193:14	193:19	195:2	196:6	198:14	199:14	200:1
201:15	203:12	206:18	209:1	210:3	210:8	210:10	210:12	211:14	214:16	215:11
216:16	218:1	218:15	219:13	219:22	227:4	bearing [2]	161:17	became [4]	136:24	143:10
146:14	168:2	become [7]	24:9	24:10	30:11	119:23	141:16	145:16	192:9	becomes [4]
54:21	121:1	166:2	168:1	Becoming [1]	182:8	beefed-up [1]	151:4	before [29]	3:5	5:2
6:19	30:4	35:18	36:4	39:8	42:3	46:5	49:9	84:25	104:13	157:24
165:7	165:22	178:6	179:8	179:17	181:21	183:1	192:21	195:20	202:12	207:25
208:15	223:2	225:9	226:6	beforehand [1]	198:2	begin [1]	46:23	beginning [3]	76:2	133:17
199:24	begins [1]	211:7	behalf [1]	223:6	behind [1]	70:14	behold [1]	158:6	behoove [1]	152:18
being [40]	7:8	11:4	17:25	19:19	25:7	26:24	34:17	35:1	35:6	35:12
44:10	44:14	44:23	50:15	58:5	67:11	71:2	83:25	85:3	85:7	91:8
91:21	92:14	93:13	100:16	102:4	109:1	117:5	117:12	119:6	138:6	138:8
163:7	174:12	177:21	181:13	181:15	187:8	199:16	belief [1]	141:23	believe [41]	63:1
63:2	63:22	65:17	68:16	69:14	69:24	79:9	79:12	80:8	86:2	87:15
90:3	91:12	91:14	95:6	97:6	97:14	114:23	118:11	121:18	121:25	131:17
141:22	142:3	154:14	154:16	175:5	175:14	176:20	176:21	180:16	180:20	180:22
181:4	184:4	185:3	185:4	192:17	201:20	202:11	believed [1]	132:16	believes [3]	122:1
156:14	181:14	beloved [2]	42:12	42:14	bending [2]	71:23	72:2	benefit [1]	151:25	best [3]
22:25	130:9	158:2	better [8]	21:6	72:20	76:24	95:9	124:25	161:21	161:22
161:23	between [12]	19:23	101:24	102:20	106:17	115:23	117:15	192:12	198:1	198:13
211:9	213:20	218:7	beyond [4]	48:2	118:18	160:8	212:24	big [6]	32:11	101:11
137:1	142:19	147:10	186:6	binders [1]	67:4	bit [4]	65:12	98:2	119:18	182:16
bite [3]	70:22	146:16	147:1	biting [1]	147:6	Blackman [129]	62:5	beginning [3]	76:2	133:17

blame - Chopin

CondenseIt™

TOWN OF PALM BEACH 10-11-96

62:6	68:7	70:10	boycott [1]	158:7	C [3]	3:1	227:1	certify [3]	45:15	88:19	90:21	90:22
70:13	70:19	88:17	boycotts [1]	3:8	227:1			49:20	227:7	91:14	91:18	93:12
90:9	153:7	153:12	break [5]	77:3	cabana [1]	36:19		Chairman [2]	83:20	93:14	94:11	95:12
154:12	191:24	192:3	87:19	88:11	88:13	cabanas [2]	21:14	85:15		95:25	96:5	96:9
192:4	192:7	192:14	186:21			30:11		chairs [1]	30:12	96:12	104:8	104:12
192:17	192:22	193:2	breakdown [1]	70:11	calculation [2]	128:14		chambers [1]	176:12	104:18	104:21	104:25
193:6	193:9	193:18	breakfast [1]	182:23	128:17			chance [10]	49:4	105:3	105:8	105:16
193:25	194:24	195:6	brevity [1]	182:22	call [24]	15:23	16:1	56:13	68:11	105:22	105:25	106:4
195:8	195:14	195:22	bridge [3]	170:7	22:7	29:22	57:4	92:2	110:18	106:14	107:1	107:9
196:2	196:25	197:9	227:6	227:15	61:12	61:12	71:7	163:2	163:3	107:14	107:16	107:25
197:14	197:19	197:24	brief [4]	15:4	85:23	86:22	87:12	change [18]	34:18	108:4	108:7	108:16
198:8	198:11	198:15	98:1	98:6	88:16	88:20	88:22	48:17	49:10	108:18	108:24	109:4
198:17	198:21	198:25	briefly [4]	5:24	89:24	101:17	102:13	63:15	65:5	109:6	109:11	109:16
199:4	199:11	199:19	35:25	86:3	112:11	118:22	160:2	108:11	123:21	109:23	110:4	110:13
200:5	200:19	200:22	brightest [1]	52:13	166:12	179:25	186:8	158:22	176:7	110:17	110:25	111:6
200:24	201:10	201:19	bring [5]	39:13	186:11			222:5	222:6	111:9	111:13	111:16
201:24	202:9	202:13	86:7	103:13	called [12]	13:12		222:9	226:13	111:23	112:1	112:5
202:22	203:3	203:9	Brisson [23]	64:2	37:14	39:24	40:1	changed [6]	48:20	112:13	112:18	112:19
203:16	203:23	203:25	64:8	79:9	42:15	42:18	42:18	60:7	169:6	120:16	121:19	122:8
204:20	205:20	206:2	126:22	127:16	61:9	88:20	166:19	176:6	176:22	122:13	122:16	122:17
206:5	206:9	206:16	133:5	137:9	170:4	173:24		changes [4]	9:11	122:18	122:23	123:1
206:22	207:1	207:7	164:24	164:24	calling [2]	87:8		43:10	48:13	123:3	123:6	123:8
207:12	207:19	207:22	192:18	192:24	89:12			changing [1]	52:11	123:10	123:13	123:17
208:2	208:6	208:18	193:23	193:24	calls [3]	42:19	43:25	character [1]	143:18	123:20	123:25	124:4
208:25	209:12	209:16	211:2	211:4	103:24			characteristic [1]		124:10	124:14	124:19
209:20	209:23	210:1	219:16		cannot [6]	107:14		106:8		124:23	124:25	125:3
210:13	210:17	210:20	Brisson's [16]	137:12	119:3	119:14	119:14	charge [1]	4:6	125:7	125:12	125:19
210:24	211:6	211:11	137:19	137:21	136:5	174:12		chase [1]	162:19	126:2	126:11	126:18
211:18	211:20	212:4	154:15	192:21	capacity [10]	13:23		check [2]	176:21	126:22	127:7	127:15
212:10	212:15	213:1	196:3	199:21	14:13	25:18	111:7	177:2		127:19	127:23	128:5
213:3	213:6	213:17	208:8	208:10	111:10	111:10	112:8	checked [1]	112:2	128:11	128:19	128:23
214:3	214:6	214:13	213:19	215:19	143:25	144:11	144:22	chief [6]	70:18	129:6	129:8	129:12
214:19	214:23	215:3	broken [1]	77:5	capped [1]	140:9		143:12	155:21	129:14	129:17	129:20
215:7	215:14	216:3	brought [2]	55:17	car [3]	14:2	14:10	168:11		130:9	130:16	130:19
216:10	216:12	216:19	79:21		20:5			choice [2]	133:13	130:25	131:8	131:9
216:22	216:23	217:3	bubble [1]	17:7	care [1]	188:15		140:15		133:12	133:13	133:19
217:12	218:6	218:13	buffers [1]	34:4	careful [1]	115:21		choose [2]	40:22	134:5	134:10	134:14
218:19	218:23	219:1	build [2]	22:3	carry [2]	143:15	143:16	50:10		134:17	134:21	134:25
219:4	219:7	219:11	building [20]	2:11	cars [1]	37:2		Chopin [350]	14:24	135:7	135:14	135:18
219:19	220:6	220:15	9:12	9:21	case [38]	46:18	55:24	14:25	15:4	135:21	135:24	136:9
221:7	221:12	221:15	11:22	11:23	56:7	56:12	57:1	15:11	15:17	136:18	136:22	137:1
222:16	222:19	222:22	13:14	14:4	57:5	57:17	58:20	16:2	16:15	137:7	137:11	137:18
222:24	223:1		16:19	16:22	60:7	60:8	60:10	16:23	17:4	137:21	137:25	138:16
			22:8	22:10	60:18	70:18	72:4	17:13	17:16	138:23	139:2	139:10
			22:17	22:23	72:8	72:20	73:3	17:21	18:2	139:13	139:16	139:19
			202:19		73:7	75:19	79:23	18:8	18:12	139:21	139:23	140:1
			buildings [11]	9:5	79:24	82:17	82:21	18:22	19:2	140:6	140:9	140:18
			9:7	9:8	83:10	91:8	143:11	19:11	19:14	141:6	141:12	142:7
			22:9	22:11	152:7	155:21	156:15	19:23	20:3	142:11	142:13	142:16
			22:21	22:22	156:18	158:3	159:10	20:13	20:16	143:1	143:6	143:7
			30:12		160:23	168:11	180:17	21:2	21:8	143:22	144:3	144:7
			built [4]	12:13	180:19	204:3	212:9	21:14	21:20	144:13	144:20	145:2
			49:9	117:5	cases [4]	63:23	79:21	22:2	22:6	145:8	145:13	145:18
			bulk [1]	207:22	124:2	124:3		22:12	22:19	145:25	146:2	146:5
			bunch [1]	221:16	cast [1]	64:5		23:5	23:10	146:7	146:10	146:13
			burden [23]	51:14	Castro [4]	2:13		23:24	24:1	146:25	147:8	147:9
			54:20	55:1	176:24	176:25	176:25	24:17	24:18	147:15	147:18	147:22
			74:20	74:25	cellular [1]	176:9		27:6	27:7	147:24	148:3	148:10
			75:6	75:11	certain [5]	5:10		27:17	27:21	148:13	148:21	148:25
			75:14	75:15	5:11	51:14	54:18	28:4	28:10	149:4	149:11	149:20
			75:23	75:25	111:6			28:19	48:6	150:2	150:12	150:14
			82:19	83:4	certainly [8]	81:21		49:14	49:14	151:11	152:14	153:23
			155:20	155:20	93:23	102:6	130:6	50:2	50:7	154:4	155:16	155:17
			156:15		163:14	199:17	211:19	50:15	54:7	155:18	156:8	157:18
					216:13			54:9	55:21	157:23	160:1	160:22
			business [4]	25:18	Certificate [1]	48:19		56:9	70:6	161:14	161:18	162:23
			104:10	115:21	certified [2]	193:13		70:15	72:10	162:25	163:9	163:14
			by-line [1]	5:8	195:17			85:11	86:17	163:19	163:20	163:23
								86:21	86:21	164:5	168:21	168:23
										185:18	185:19	185:23
										185:25	186:18	188:5
										188:11	194:13	194:16
										194:17	195:1	195:7
										195:12	195:16	195:23

196:4	196:21	196:23	73:3	73:4	73:4	162:15	163:2	163:3	comply [10]	127:2	29:5	58:24	58:25	
197:1	197:6	197:8	116:6	170:7		169:7	174:5	175:5	136:5	137:14	62:11	69:2	155:14	
197:10	197:15	197:20	closing [3]		69:16	181:3	183:15	199:11	140:23	141:1	165:25	171:6	171:14	
198:4	198:9	198:12	223:8	223:11		201:12	222:4	222:6	144:16	156:23	175:10	179:13		
198:16	198:18	198:22	closure [1]		56:25	comes [3]		73:21	comprehensive [4]		consideration [4]			
199:2	199:5	199:13	club [91]	3:10	3:19	177:9	179:6		197:11	206:17	70:20	121:1	122:12	
199:23	200:7	200:10	4:22	5:2	5:11	coming [10]		10:12	215:21		155:25			
200:16	201:5	201:18	5:17	6:8	11:13	36:25	37:2	46:5	con [3]	40:25	considered [6]	35:1		
201:22	202:1	202:4	19:6	21:6	21:8	109:8	112:6	128:14	41:3		69:8	93:3	157:6	
202:7	202:18	202:23	21:10	22:15	28:18	160:22	174:6	179:14	concede [1]	104:13	175:9	204:2		
203:5	203:10	203:17	29:3	29:6	29:22	comings [2]		80:14	concept [3]	10:18	considering [1]	94:23		
203:19	203:21	204:8	30:10	30:17	30:22	80:18			24:9	79:19	consistency [2]	200:1		
			31:12	31:12	31:16	commensurate [1]			conception [1]	55:25	219:14			
Chopin's [1]	49:24		31:19	33:1	33:3	158:3			conceptual [12]	8:22	consistent [1]	128:16		
Christ's [1]	58:15		33:5	33:8	33:10	comment [19]	4:8		8:23	9:22	Consort [1]	139:6		
circle [1]	162:18		33:11	33:13	33:17	5:20	5:21	5:23	13:15	15:12	constitute [1]	63:14		
circulated [1]	23:22		34:15	34:25	35:8	7:23	10:5	36:7	17:23	18:25	constitutes [1]	208:4		
circumstances [5]			35:10	35:13	36:22	38:22	39:1	50:11	22:13	25:13	consultant [1]	126:12		
64:18	66:19	122:6	37:1	37:5	37:21	58:4	58:11	78:10	concern [2]	19:5	consulting [1]	209:7		
150:19	150:20		41:3	41:10	47:5	78:12	78:13	97:4	54:12		contact [1]	44:19		
citations [2]	92:21		47:9	97:17	97:17	183:17	183:25	188:10	concerned [6]	37:11	contacted [2]	169:21		
92:22			97:18	97:20	99:4	comments [14]	41:9		37:13	65:5	169:22			
cite [1]	83:8		99:13	99:15	100:17	42:16	44:6	53:10	188:20	188:21	contain [2]	49:1		
cites [1]	83:10		101:6	103:5	104:19	81:12	92:19	94:13	concerns [2]	11:13	192:25			
citizens [2]	42:16		107:10	107:22	108:5	94:18	97:2	97:9	201:20		contained [1]	121:18		
46:1			109:11	114:3	116:4	119:1	125:4	170:20	conclude [2]	181:22	contemplated [1]			
city [7]	6:4	209:1	116:16	117:15	119:2	219:19			216:15		48:14			
209:5	210:3	210:7	119:14	133:24	134:1	commercial [6]	5:3		concluded [4]	127:11	content [1]	66:16		
210:10	210:11		138:3	138:5	139:3	5:5	5:12	5:17	127:12	140:15	contention [1]	161:15		
civic [4]	3:21	45:5	142:3	144:15	147:19	92:8	110:11		conclusion [3]	144:3	contentions [1]	192:11		
45:24	46:3		159:17	159:18	177:22	commercially-operated			144:14	153:25	context [4]	94:11		
civil [1]	190:2		192:13	196:3	198:6	[1]	93:1		conclusions [5]	16:24	94:12	160:23	161:4	
clairvoyant [2]	4:3		199:16	209:3	211:9	commission [3]	48:23		120:6	127:5	contiguous [1]	119:5		
53:5			211:22	213:20	218:7	83:9	227:17		142:21		continuation [1]			
clarification [1]			218:21	219:20	220:1	commitments [1]			concur [1]	76:21	200:19			
187:2			220:1	221:7		178:12			concurrency [25]		continue [4]	3:5		
clarified [3]	8:2		clubs [19]	192:13		Committee [2]	6:17		62:5	68:7	4:4	90:6	143:4	
168:23	168:24		195:3	197:12	198:1	24:13			130:24	167:2	continued [4]	77:1		
clarify [12]	46:24		211:10	211:15	211:23	common [1]	182:16		193:20	200:2	78:3	78:18	131:14	
52:15	56:18	64:8	212:2	212:19	213:21	communication [2]			210:9	213:9	continuing [3]	82:15		
82:5	82:13	83:2	214:17	215:12	216:17	39:17	45:11		214:7	214:20	83:13	83:16		
131:21	131:22	178:25	218:2	218:8	218:9	communications [5]			215:6	215:8	continuity [1]	201:1		
183:2	197:8		218:10	218:11	220:7	39:6	39:9	39:11	216:8	216:24	contradicts [1]	193:4		
Claude [1]	36:12		clue [2]	110:4	199:25	39:12	39:18		219:14	219:21	Control [1]	68:7		
cleaned [1]	29:14		CM [1]	227:15		community [1]	45:11		220:12		controlling [1]	188:19		
clear [2]	168:7	191:17	co-council [1]	221:17		comparable [1]	51:7		concur [1]	87:16	controls [5]	62:5		
clearly [2]	52:8		co-ed [1]	116:14		compare [1]	175:3		conduct [1]	120:7	104:21	104:25	193:16	
79:1			coached [1]	217:17		competent [3]	160:19		confess [1]	199:24	193:20			
clerk [22]	2:14		code [7]	6:11	50:23	160:21	163:15		confirm [2]	34:14	conversation [4]	45:23	67:21	170:1
45:15	47:18	189:18	51:1	199:7	199:7	compile [1]	193:8		189:4		170:18			
189:21	189:23	190:3	210:5	220:16		complain [2]	221:3		confirmed [1]	177:23	conversations [4]	42:21	44:1	45:8
190:5	190:7	190:23	collected [2]	172:25		221:6			conformance [1]		45:21			
190:25	191:2	191:4	225:20			complete [9]	66:3		141:1		convince [1]	74:11		
191:6	191:10	191:13	collection [1]	172:22		74:16	77:23	125:24	conformity [1]	154:1	copies [16]	23:22		
205:6	205:8	205:10	College [1]	208:19		164:16	168:9	172:1	confusion [1]	3:23	85:4	86:13	87:10	
205:12	205:16	225:20	combination [1]	127:11		179:14	183:16		congratulate [1]		87:12	87:23	88:6	
client [5]	4:2		come [49]	4:8		completed [2]	80:23		4:14		88:8	88:11	224:6	
32:24	51:7	53:8	6:13	6:16	16:24	165:19			conjunction [2]	184:16	224:8	224:11	225:2	
82:20			30:22	31:4	31:7	compliance [11]			210:16		225:8	225:13	225:24	
client's [2]	51:12		31:19	59:6	65:3	82:17	129:2	129:9	connection [3]	24:2	copy [13]	39:20		
82:10			69:1	69:10	73:2	129:25	130:23	131:1	136:16	159:22	84:15	84:16	120:12	
clients [3]	68:11		83:22	85:6	89:4	140:16	162:7	188:15	connections [1]	123:18	137:18	169:15	169:22	
115:14	178:12		90:18	90:18	91:17	203:12	203:14		consequence [3]		192:20	202:15	202:16	
clients' [1]	51:11		92:7	92:9	98:18	complied [1]	127:1		119:9	119:10				
close [1]	105:20		99:23	101:13	101:17	complies [1]	148:18		29:2					
closed [9]	36:22		104:15	106:5	107:25									
39:1	57:5	58:20	112:24	116:20	136:9									
			139:10	143:7	149:16									
			157:22	158:7	160:17									

202:16 224:4 225:5	196:19	crosses [1]	156:3	decided [1]	161:22	8:23	
corner [3]	14:22	cuisine [2]	100:14	decides [2]	35:16	designation [1]	99:6
16:17 16:18		100:19		107:17		designs [1]	23:17
correct [54]	27:1	curious [1]	53:25	decision [9]	44:5	desire [1]	179:24
34:16 35:5 44:15		current [4]	124:6	47:12 70:3 137:5		destination [58]	88:2
56:5 64:11 69:14		148:11 154:2 209:2		157:13 159:10 181:7		90:12 90:13 90:15	
79:5 82:1 98:23		currently [2]	24:23	181:9 185:20		91:1 91:6 91:7	
98:24 106:1 120:25		154:1		declaration-of-use [2]		91:14 91:16 91:19	
121:2 121:11 124:13	counted [1]	27:16		149:6 198:13		91:23 92:6 92:25	
126:16 132:11 134:4	counter [2]	51:17		decommission [1]		94:21 95:15 95:18	
134:15 134:18 135:3	69:3			149:14		95:21 96:4 96:6	
136:15 140:3 141:17	counts [7]	127:3		decommissioned [4]		96:18 97:3 97:12	
144:2 146:6 147:16	127:10 127:13 127:20			149:2 149:22 150:3		97:15 97:16 98:10	
147:21 147:22 147:25	144:12 165:20 170:9			150:5		98:13 98:15 98:19	
148:7 153:5 153:10	county [22]	1:21		decommissioning [1]		100:2 100:4 104:9	
164:21 165:8 172:9	55:15 81:3 83:9			150:25		105:13 105:18 106:3	
180:22 184:5 184:8	83:11 117:2 117:8			deduction [1]	5:12	106:10 106:18 106:19	
187:3 197:18 197:23	119:23 129:3 129:25			defects [1]	124:16	107:5 107:6 107:19	
198:14 198:15 206:9	131:2 165:19 172:16			deficient [1]	72:20	107:24 108:20 108:21	
206:21 207:12 207:18	172:20 185:1 185:5			define [4]	105:17	108:23 108:25 109:12	
208:1 211:10 212:8	201:11 201:13 201:17			108:23 108:24 109:14		109:14 110:1 110:3	
215:3 219:6	202:15 219:22 227:4			defined [3]	72:25	110:7 110:9 110:10	
correctly [7]	5:6			111:17 145:3		110:12 110:14 111:16	
25:9 77:15 79:3	countywide [1]	144:16		defines [2]	55:24	111:17 112:6 112:16	
113:20 164:20 173:14	couple [8]	4:20		55:24		detail [2]	207:16
correlate [1]	101:13			defining [1]	110:2	220:21	
correlation [5]	19:23			definitely [3]	77:19	detailed [2]	44:17
101:19 101:24 102:1	102:15			118:1 210:17		50:21	
Cottrell [9]	130:14			definition [6]	71:5	details [3]	116:5
130:16 130:18 131:15				110:12 135:25 163:11		117:18 145:7	
132:4 132:6 132:18				207:17 215:24		deterioration [3]	
132:25 133:2				degree [3]	175:5	11:14 19:2 27:8	
Cottrell's [1]	79:4			208:16 208:18		determination [10]	
couldn't [8]	4:2			degrees [1]	209:13	5:16 63:11 66:14	
22:3 22:21 23:13				deliberation [1]	13:15	75:1 75:12 76:4	
165:11 166:19 167:9				delivered [1]	81:2	94:25 152:11 154:23	
167:15				demand [1]	103:19	160:16	
council [75]	1:9			demonstrate [4]		determine [4]	69:22
3:4 3:10 3:11				83:4 137:6 140:16		127:25 151:24 152:5	
3:13 3:17 3:19				140:25		determined [2]	64:25
4:10 4:15 4:15				demonstrates [3]		85:25	
4:23 4:24 5:14				137:14 141:4 141:10		determining [1]	87:2
25:3 25:24 35:11				demonstration [1]		develop [2]	28:18
35:19 44:12 46:5				136:4		221:9	
48:24 54:10 60:4				DeMoss [1]	51:8	developed [6]	20:15
61:9 64:24 65:5				denial [2]	53:7	20:17 20:18 20:20	
66:23 66:25 69:22				53:11		120:13 195:25	
70:1 71:22 76:2				denied [2]	187:2	development [3]	
79:19 85:16 85:25				187:9		50:22 149:5 213:15	
87:16 89:11 89:17				deny [1]	158:23	diagram [2]	16:10
94:23 96:21 97:14				denying [1]	225:10	17:8	
112:20 149:17 151:25				department [1]	5:15	dialogue [2]	11:9
152:5 152:19 152:25				depending [1]	85:19	44:11	
156:9 157:11 157:21				depends [1]	34:2	dictated [1]	150:21
159:2 160:14 160:18				depriving [1]	189:25	dictates [1]	188:23
171:19 171:25 174:19				described [2]	24:24	differ [1]	98:25
174:21 175:18 176:10				220:9		difference [2]	144:10
176:12 177:21 178:4				describes [1]	115:10	218:7	
180:24 183:7 187:4				description [2]	28:6	differences [5]	192:12
187:8 187:12 190:17				112:11		197:25 211:8 212:2	
192:2 206:6 221:19				deserve [1]	70:12	213:20	
222:15 225:7 225:16				deserves [2]	72:5	different [17]	4:19
225:17 226:3				188:2		10:21 15:21 36:9	
council's [1]	122:12			design [2]	8:23	64:5 64:13 82:22	
Councilman [4]						82:23 101:18 114:18	
2:5 2:6 2:8						116:13 144:4 144:8	
77:22						144:11 183:11 184:12	
counsel [8]	70:9					184:13	
84:15 84:16 84:20							
84:22 86:15 142:24							
count [18]	12:9						
44:18 119:20 119:22							
123:23 124:6 124:7							
124:16 124:21 127:4							
137:17 165:14 166:21							
169:19 170:3 172:7							
172:10 182:21							
counted [1]	27:16						
counter [2]	51:17						
69:3							
counts [7]	127:3						
127:10 127:13 127:20							
144:12 165:20 170:9							
county [22]	1:21						
55:15 81:3 83:9							
83:11 117:2 117:8							
119:23 129:3 129:25							
131:2 165:19 172:16							
172:20 185:1 185:5							
201:11 201:13 201:17							
202:15 219:22 227:4							
countywide [1]	144:16						
couple [8]	4:20						
15:24 76:2 104:9							
134:5 159:14 170:1							
194:14							
course [20]	12:15						
12:18 16:7 26:8							
54:23 57:9 75:1							
75:16 86:1 117:3							
126:8 148:19 149:1							
149:15 149:24 150:1							
151:1 155:12 187:19							
208:21							
court [11]	57:3						
59:11 79:23 79:24							
117:3 163:1 164:5							
176:7 222:5 222:7							
226:14							
courtesy [4]	18:10						
84:15 200:13 200:14							
courtroom [1]	125:16						
courts [11]	6:14						
8:8 16:8 16:15							
20:21 20:23 22:16							
148:4 148:16 149:24							
176:18							
cover [2]	39:5						
168:18							
covers [1]	43:20						
crazy [1]	72:1						
create [1]	210:9						
credibility [1]	188:2						
crib [1]	67:24						
criteria [3]	54:18						
75:5 75:8							
critically [1]	164:11						
criticize [1]	68:18						
cross [22]	7:24						
60:20 71:2 71:3							
73:23 80:24 84:25							
85:7 87:1 90:11							
93:7 93:15 118:25							
150:11 151:22 153:3							
155:4 155:12 156:19							
157:5 157:9 207:16							
crossed [1]	157:10						
crosses [1]	156:3						
cuisine [2]	100:14						
100:19							
curious [1]	53:25						
current [4]	124:6						
148:11 154:2 209:2							
currently [2]	24:23						
154:1							
cursor [1]	207:18						
cutting [1]	55:4						
D [1]	3:1						
daily [10]	123:23						
124:5 124:6 124:15							
124:20 127:3 127:9							
127:13 127:19 128:16							
Dallas [14]	98:17						
101:14 101:20 102:2							
102:13 102:18 102:24							
103:8 104:23 105:5							
112:23 116:7 116:8							
116:10							
Dan [1]	169:22						
dangerous [1]	155:18						
data [5]	70:3 128:14						
147:18 168:10 172:25							
date [6]	3:11 48:2						
54:2 118:13 165:18							
172:21							
dated [2]	47:4						
227:11							
day [16]	7:15 34:14						
39:20 64:4 80:6							
80:9 80:10 99:16							
100:20 100:22 112:12							
112:15 116:14 162:18							
186:14 227:11							
day-long [3]	100:5						
100:7 100:10							
days [9]	4:21 43:14						
78:15 95:8 111:19							
111:20 154:22 157:15							
181:12							
dead [1]	73:10						
deal [30]	18:18 32:11						
32:14 44:22 52:6							
55:4 55:6 55:18							
59:10 68:2 71:14							
71:18 72:11 72:13							
73:1 74:5 79:15							
81:15 86:10 87:6							
88:1 88:3 94:17							
106:16 140:20 140:21							
145:4 155:22 158:4							
182:4							
dealing [5]	45:23						
55:11 83:22 89:13							
158:18							
deals [8							

differently [1] 211:22	distinguishing [1] 106:8	droning [1] 221:18	105:14 105:21 105:24	equal [2] 82:11
difficult [6] 41:7	dockage [1] 47:6	dropping [1] 73:10	106:2 106:13 106:24	82:11
59:9 83:6 150:19	document [19] 26:18	due [15] 51:12 53:7	107:6 107:12 107:15	Equally [1] 174:9
154:21 224:3	26:23 73:17 79:17	53:12 59:13 59:17	107:22 108:3 108:6	equates [1] 138:14
dine [1] 37:20	80:4 81:3 84:21	71:19 82:10 82:12	108:15 108:17 108:21	equivalent [1] 142:5
dined [1] 37:23	137:5 137:13 140:12	155:8 157:3 157:3	109:3 109:5 109:10	especially [1] 163:16
dining [5] 27:12	141:22 142:21 167:5	158:23 179:5 190:1	109:13 110:2 110:8	essence [2] 175:8
27:18 27:24 37:25	172:21 178:3 178:9	duly [1] 126:14	110:15 110:22 111:3	182:22
38:3	193:17 193:21 225:6	during [10] 4:20	111:8 111:12 111:14	establish [3] 54:17
dire [7] 49:19 120:18	documentation [3] 8:18 78:1 202:14	7:22 26:8 36:20	111:22 111:24 112:3	55:2 171:3
121:1 150:13 150:14	documented [1] 145:12	51:3 70:18 195:9	112:10 112:17 112:21	established [1] 63:24
152:16 194:2	documents [15] 25:2	201:13 207:9 207:22	112:24 113:8 113:13	establishing [1] 54:25
direct [5] 78:1	25:4 61:16 61:19	Duval [1] 83:8	113:17 114:1 114:4	estate [1] 33:7
118:24 151:23 152:2	61:20 68:12 68:14	dying [1] 23:6	114:15 115:1 115:12	estimate [2] 13:22
153:2	71:15 73:15 74:8	E-l-l-i-s [1] 96:23	116:2 116:8 117:13	80:22
directed [3] 50:9	77:4 77:12 78:5	each [5] 24:8 39:21	117:17 117:21 118:11	etiquette [2] 125:16
76:19 81:12	doesn't [16] 40:13	46:9 71:14 214:23	else [16] 17:19 18:23	125:17
direction [2] 52:19	47:22 50:23 52:6	ear [2] 138:19 139:17	20:20 35:12 50:14	evaluating [1] 140:16
208:10	78:18 118:16 160:10	earlier [4] 83:10	72:21 72:24 105:11	evaluation [2] 135:11
directly [3] 32:25	162:10 168:14 168:15	140:4 164:15 206:6	112:18 133:6 148:6	141:20
33:7 33:10	172:1 177:11 188:16	earth-shaking [1] 69:6	151:2 152:19 160:3	even [19] 3:11
director [6] 2:10	195:18 197:6 212:3	ease [4] 18:3	162:4 200:14	6:17 6:19 10:17
89:12 89:18 89:23	doing [9] 69:13	18:9 48:22 199:1	employed [2] 103:4	15:13 17:12 40:13
97:1 209:2	90:10 107:12 107:21	east [3] 21:9 33:5	103:6	41:11 41:14 42:7
directory [1] 5:8	142:19 151:8 171:23	209:6	empty [3] 29:9	44:20 54:4 65:8
disagree [7] 71:19	181:19 215:4	eat [1] 27:24	29:10 224:19	84:15 118:2 153:15
91:9 124:14 124:18	Donald [3] 3:9	eating [2] 28:1	end [5] 43:10 77:5	163:11 206:19 208:8
124:19 134:23 188:23	40:4 43:12	28:7	143:8 160:18 164:17	enforcement [1] 183:3
discovered [1] 195:10	done [27] 6:9	educational [1] 209:14	enforced [1] 221:8	event [5] 14:4
discriminary [1] 213:24	8:3 15:11 15:16	effect [8] 50:22	5:15	27:20 27:22 95:18
discrimination [2] 205:14 205:18	15:24 15:25 15:25	83:21 135:25 141:13	219:14	194:20
discriminatory [9] 195:3 205:21 211:15	20:11 20:22 24:3	148:2 149:25 167:2	engage [2] 49:25	events [3] 14:6
212:19 214:17 215:12	29:2 55:15 71:8	200:6	50:7	57:9 183:12
216:17 218:5 218:10	74:25 78:8 145:3	effectively [3] 54:16	engaged [1] 43:25	ever [11] 10:22 12:22
discuss [8] 41:12	145:13 145:25 146:7	55:3 72:11	engineer [6] 18:21	15:11 23:18 27:23
45:1 45:1 93:5	151:5 168:7 193:11	effervescent [1] 138:18	181:14 181:23 209:19	28:7 36:20 129:8
171:1 197:25 214:25	195:20 196:5 197:20	effort [3] 84:1	209:22 210:12	154:4 161:25 210:18
216:15	208:14 222:20	84:2 158:17	engineering [4] 167:14	every [9] 6:13
discussed [3] 17:1	Doney [1] 2:9	eight [2] 214:19 219:20	184:6 209:6 209:15	34:21 46:5 50:9
41:24 84:23	door [2] 33:19 98:16	either [8] 4:2	engineers [1] 60:17	72:18 72:23 77:3
discusses [1] 211:13	doozy [1] 129:21	47:22 62:19 66:10	English [1] 32:16	158:2 158:22
discussing [5] 13:16	double-check [1] 110:19	162:18 193:23 203:1	enhanced [1] 31:21	everybody [5] 24:11
52:7 171:25 175:17	doubt [1] 37:7	203:6	enhancement [1] 31:15	94:6 130:25 157:16
177:8	Douthit [2] 40:6	elaboration [1] 82:25	enjoy [1] 101:4	182:3
discussion [15] 25:24	42:15	elected [1] 44:12	enjoys [1] 36:18	everyone [5] 50:9
40:20 47:11 48:8	down [7] 42:9	element [2] 155:24	enough [6] 11:16	78:22 88:6 107:7
48:16 83:24 84:8	72:3 73:10 82:15	210:7	14:15 50:5 50:8	177:20
89:10 119:19 136:25	83:20 84:2 170:18	elements [1] 47:24	enter [1] 122:1	everything [17] 18:8
137:4 137:16 183:4	downstairs [1] 173:9	eliminate [3] 52:7	26:17 26:24 175:14	25:15 25:20 25:25
189:12 190:21	draft [1] 193:21	52:10 177:4	178:3 178:3 187:24	27:3 41:2 57:6
discussions [2] 43:8	draw [3] 22:6 31:18	eliminated [1] 51:25	entered [7] 26:1	58:17 60:13 70:2
140:14	71:10	87:25	26:17 26:24 175:14	71:6 76:17 145:12
dismiss [1] 158:2	drawing [6] 6:15	Ellis [85] 87:25	178:3 178:3 187:24	179:5 202:25 203:4
Disney [2] 31:25	16:10 17:12 24:6	89:25 90:2 92:15	entering [4] 121:22	evidence [87] 46:11
32:9	24:6 28:6	96:22 96:22 96:25	121:22 178:20 178:21	51:10 51:14 51:18
dispute [1] 187:25	drawings [6] 8:8	97:4 97:16 97:23	enterprise [3] 5:13	53:19 54:6 54:24
disqualify [1] 3:14	10:5 15:12 23:17	98:7 98:13 98:24	5:17 92:8	55:7 57:7 58:2
disservice [1] 93:19	24:2 49:16	99:2 99:7 99:13	entire [4] 36:1	59:1 59:11 60:10
distinction [5] 83:2	drawn [1] 94:19	100:11 100:24 101:5	149:10 180:17 180:18	60:17 65:8 67:6
83:3 99:4 106:17	drink [3] 23:6	101:9 102:1 102:17	entirely [3] 50:2	67:8 70:22 71:21
161:13	28:1 30:5	102:21 103:3 103:6	71:6 161:13	74:12 75:2 75:5
distinguish [1] 163:10	drive [2] 20:4 22:13	103:9 103:13 103:17	entitled [3] 74:22	76:6 76:13 76:16
	driveway [1] 9:14	103:22 103:24 104:4	193:13 211:8	76:18 81:17 81:17
		104:11 104:17 104:19	entity [1] 75:6	81:19 82:9 82:20
		104:24 105:2 105:7	entry [2] 187:2 194:3	83:14 84:5 84:6
				85:8 85:13 85:14
				86:7 87:3 91:3

91:494:294:2

94:495:1395:17

96:596:996:11

96:15119:13120:20

120:21120:24121:2

150:17150:22152:25

153:2153:20155:7

157:6157:7158:8

159:20159:24160:14

160:20160:21161:24

164:2171:15178:24

178:25179:7179:11

181:6181:10181:19

181:25192:16193:23

197:5204:25205:4

208:5224:5

ex [3]39:639:9

39:11

exacerbates [3]196:7

199:14218:15

exact [2]114:13118:12

exactly [13]55:23

66:1073:1177:18

92:395:7100:24

111:4115:12136:23

173:1186:17194:7

examination [13]

7:2480:2585:7

87:190:1193:7

93:15118:25151:23

151:23153:3155:12

207:17

examine [6]68:11

155:5157:5178:9

204:22205:1

examined [4]60:21

71:271:484:25

examining [2]68:14

150:11

example [10]16:7

28:434:579:20

98:1599:21150:23

175:1198:21198:23

exceed [2]136:7

185:9

except [3]4:22

37:8113:19

exception [12]66:15

66:1774:2074:23

126:18145:22148:19

182:17201:20201:23

219:24220:10

exceptions [1]74:18

excess [2]68:2

143:25

excessive [2]199:15

218:20

exclusion [1]103:12

exclusiveness [1]

102:10

exclusivity [1]115:15

excuse [7]70:10

99:9113:2132:5

170:24189:8196:8

exercise [1]112:8

exhibits [3]206:3

206:11206:14

existence [3]102:4

116:9197:4

existing [4]8:25

16:2229:534:6

exists [1]199:8

exit [1]91:19

expansion [1]29:2

expect [1]114:6

expecting [1]89:1

expense [1]142:19

expenses [1]5:10

expensive [1]142:18

experience [23]19:21

40:1698:1598:20

99:1099:1299:20

99:25100:11100:15

100:20106:9107:8

108:14109:2112:4

113:1116:15177:23

182:13209:9209:17

209:25

experiences [1]113:18

expert [29]38:4

38:738:1338:14

68:1984:2184:24

86:587:1393:9

123:6126:11126:13

130:17130:18130:19

147:15160:23160:24

161:11163:8163:24

174:9179:19184:7

184:13198:24208:23

210:22

expertise [2]49:20

160:9

experts [14]79:8

82:2287:8126:7

126:19127:8129:15

129:22130:5130:10

142:18163:11163:16

175:23

expires [1]227:17

explain [2]54:10

132:12

explained [3]54:14

84:23162:16

explaining [1]76:5

explored [1]187:21

exposed [1]40:12

expressed [1]73:24

expressly [1]180:20

Extend [1]200:13

extent [3]42:21

46:2447:2

extra [1]73:20

extreme [1]80:19

eye [1]224:16

F [1]227:1

face [1]159:15

facial [1]112:7

facials [1]100:22

facie [2]51:1882:17

facilities [5]12:14

29:629:23215:15

217:6

facility [5]23:2

29:731:831:13

114:25

fact [60]11:1147:24

54:2263:1463:17

63:1763:2369:19

69:2070:2571:6

82:1986:490:13

90:1591:2193:2

93:1694:1102:2

106:19108:9108:12

112:15120:13136:11

146:8146:13146:15

148:25149:21149:21

150:21151:3155:19

156:4158:14160:1

161:23163:10164:13

166:7180:6180:16

182:22185:4186:12

187:7195:8195:16

195:17196:17197:10

197:16200:5201:8

202:21203:7211:21

223:19

factors [2]82:18

155:24

facts [1]94:24

factually [1]91:7

fair [14]4:1815:23

41:1944:544:15

68:971:2373:20

106:12111:20157:12

181:8201:6210:14

fairly [1]128:16

fairness [6]4:16

59:760:1270:8

72:5188:22

falling [2]72:3

73:9

familiar [4]134:7

149:4149:8206:16

famous [1]101:15

far [18]17:1017:24

19:123:328:17

35:1344:2373:14

90:1292:2196:10

108:16163:15174:19

183:23184:12185:7

221:18

fashion [1]130:20

fast [1]206:25

faulty [1]170:4

faxed [1]47:4

feel [5]44:944:15

76:13110:9207:14

feels [1]95:2

feet [10]12:512:10

30:797:24110:18

110:20110:23111:2

117:5117:6

felt [6]40:746:4

86:7162:5169:6

170:3

ferrets [1]160:19

few [7]44:644:20

71:2098:198:6

146:18164:18

fields [1]84:21

figure [3]81:14

116:23170:5

figures [8]167:12

167:14168:13184:17

184:19185:1185:4

185:6

filed [3]134:8136:14

201:23

filing [1]51:2

fill [1]156:11

filled [1]55:22

final [2]13:180:24

financial [1]117:15

find [18]20:1927:9

106:16143:1152:2

152:19174:3174:8

174:13174:15174:17

205:13205:14205:17

205:21217:2224:3

225:15

fine [10]8:160:10

62:1389:1989:21

96:12104:6131:8

159:6198:4

finish [6]85:24

131:19143:8200:11

200:12203:23

finished [15]24:21

25:153:253:4

78:1178:22131:24

132:7133:11143:2

152:7200:23222:22

223:12223:14

Fink [2]40:243:4

firm [2]41:1209:7

first [37]39:2039:23

43:243:545:22

47:348:856:22

56:2357:1859:2

63:366:471:9

74:2084:1184:14

87:787:9102:7

124:7124:17133:20

136:2142:8145:19

155:22183:6189:12

189:15198:6204:23

211:20212:15212:17

212:22223:22

fit [1]14:1

fitness [3]100:12

100:19110:22

five [7]87:25104:4

148:3148:4158:23

169:6174:13

five-minute [2]88:11

186:20

fix [1]29:17

flawed [1]127:4

floor [1]114:14

Florida [5]1:21

47:5210:4227:3

227:16

flows [1]18:18

fly [2]72:11101:21

focus [5]29:1

107:8109:6129:12

147:10

focusing [1]28:23

folks [1]112:9

follow [2]24:11

213:18

followed [3]8:17

34:22192:18

following [8]6:10

59:1065:14116:12

147:19155:6180:23

217:25

follows [1]74:20

fool [1]29:10

foot [4]12:6116:19

147:20147:25

footage [8]12:2

12:3111:5114:13

114:17114:20116:18

117:11

footprint [1]12:7

forced [1]150:15

forego [1]62:9

foregoing [1]227:8

forgotten [1]97:7

form [1]143:14

formal [2]155:6

209:16

formalized [1]25:13

forth [3]13:1682:18

220:17

forward [2]53:21

69:1

found [2]79:22

143:3

four [11]14:114:11

43:243:645:22

52:11101:16138:14

152:15175:4209:2

frame [2]135:6

144:25

franchise [1]115:23

franchisee [1]115:25

frank [6]49:14

65:480:1786:21

194:17204:8

free [1]122:16

freestanding [1]

23:12

frequently [1]50:12

Friday [3]1:22

3:4174:13

frog [1]141:15

front [3]6:16205:19

220:22

full [9]29:1230:7

111:9111:10113:24

145:22157:15164:15

207:15

fun [1]70:16

function [1]22:19

functions [1]13:6

fundamental [5]

59:1259:1670:8

155:8188:22

fundamentally [1]

72:7

furnish [1]22:18

further [14] 5:20 5:21 11:24 34:12 36:7 38:22 64:1 100:25 115:3 118:21 187:25 190:21 191:19 222:13 Furthermore [1] 176:5 futile [1] 178:18 future [4] 15:13 17:11 69:10 167:3 G [1] 3:1 G-o-n-z-a-l-e-z [1] 6:1 gap [1] 140:5 gave [8] 89:1 123:22 170:9 192:9 195:25 199:21 224:21 225:19 general [2] 144:25 214:21 generally [2] 44:9 120:24 generate [2] 93:2 93:10 generated [2] 120:14 133:1 gentleman [1] 97:7 gentlemen [5] 25:4 49:11 50:4 50:4 70:17 germane [1] 211:24 gets [1] 19:11 getting [5] 30:9 61:6 65:9 91:2 221:18 give [23] 19:15 25:5 25:10 39:15 41:4 47:18 57:3 58:13 70:23 72:16 73:16 87:9 87:22 88:10 89:14 137:2 151:9 161:9 178:10 184:9 186:1 188:1 198:23 given [17] 4:16 23:18 24:1 25:25 26:7 26:19 53:10 64:18 165:11 175:23 192:17 193:5 202:20 225:14 225:16 225:17 225:21 giving [7] 38:12 73:14 174:1 181:23 192:25 196:20 213:2 goings [2] 80:15 80:18 Golden [1] 98:16 golf [10] 12:15 12:18 16:7 117:3 148:19 149:1 149:15 149:24 150:1 150:25 gone [7] 14:8 76:25 140:14 145:4 166:8 182:18 224:13 Gonzalez [148] 5:24 5:25 6:22 6:25 7:1 7:4 7:7 7:12 7:14 7:19 7:23 8:1 8:7	8:16 8:22 9:2 9:4 9:7 9:9 9:14 9:17 9:19 9:22 10:1 10:3 10:12 10:19 10:25 11:8 11:16 11:21 11:25 12:5 12:11 12:13 12:17 12:24 13:1 13:7 13:11 13:19 13:24 14:8 14:14 14:17 14:21 15:2 15:3 15:7 15:10 15:14 15:19 15:24 16:5 16:17 16:21 17:1 17:7 17:11 17:14 17:18 17:20 17:23 18:4 18:7 18:10 18:14 18:20 18:25 19:5 19:10 19:13 19:16 19:22 20:2 20:7 20:11 20:14 20:21 20:25 21:3 21:9 21:11 21:17 21:22 22:1 22:5 22:9 22:11 22:14 22:22 23:3 23:9 23:14 23:20 23:25 24:5 24:10 25:11 25:16 25:19 25:22 27:7 27:13 27:15 27:19 27:25 28:3 28:9 28:14 28:20 28:23 29:4 29:9 29:12 29:17 30:1 30:16 30:19 30:24 31:6 31:10 31:14 31:17 31:21 31:24 32:5 32:8 32:12 32:16 32:20 33:2 33:9 33:14 33:20 33:22 33:25 34:4 34:11 34:17 35:3 35:6 35:9 35:15 35:20 36:14 37:14 55:17 good [11] 33:16 42:17 42:20 46:20 90:23 114:22 156:25 188:4 188:7 188:12 192:3 gotten [1] 166:8 governing [1] 12:23 government [1] 75:15 governmental [1] 75:6 governs [1] 199:6 graduate [2] 208:16 208:20 grant [1] 156:10 granted [1] 48:13 grappling [1] 106:15 grasping [1] 20:19 Graves [80] 6:23 6:24 7:2 7:5 7:10 7:13 7:16 7:20 7:25 8:5 8:14 8:19 8:25 9:3 9:5 9:8 9:10 9:16 9:18 9:20 9:24 10:2 10:16 10:20 11:2	11:15 11:18 11:23 13:1 13:2 13:8 13:18 13:20 51:6 51:6 59:15 76:11 78:25 79:1 79:10 79:17 80:1 80:3 80:6 80:12 80:19 81:10 81:20 82:4 83:17 164:7 164:9 165:1 165:3 165:5 165:9 165:15 165:18 165:22 165:25 166:4 166:7 166:12 166:14 166:18 166:23 167:6 167:8 167:11 167:17 167:22 167:25 168:4 168:17 168:22 168:24 169:2 169:8 221:23 great [7] 44:22 45:6 55:6 68:2 76:24 99:4 145:4 Greenhouse [36] 96:25 98:17 99:9 99:14 100:14 100:18 101:5 101:14 101:17 101:21 102:2 102:6 102:9 102:13 102:14 102:18 102:23 102:25 103:1 103:4 103:7 103:20 104:22 104:23 105:1 107:10 112:23 115:5 115:13 115:15 115:24 115:24 116:3 116:13 117:16 118:10 ground [1] 204:16 grounds [2] 47:21 204:12 group [1] 3:21 growth [2] 154:8 210:3 guess [14] 22:25 23:4 23:14 30:9 39:23 41:8 54:21 70:11 75:9 77:4 94:15 108:9 135:17 151:17 guessing [1] 69:12 guest [9] 3:18 11:7 104:15 104:20 113:5 113:22 114:1 114:2 213:23 guests [10] 31:8 103:12 103:14 104:14 107:23 108:2 113:4 113:11 116:8 116:10 guidance [2] 151:9 183:23 guy [1] 52:13 guys [1] 70:24 hadn't [4] 43:23 156:5 170:11 196:5 half [2] 37:5 207:9 hand [3] 38:24 137:2 211:24 handed [3] 25:7 26:12 121:6 handing [3] 24:8 24:23 26:5	handle [2] 13:9 13:22 handles [1] 7:3 hands [3] 67:3 67:18 121:10 happen [5] 30:24 36:3 47:24 156:12 158:18 happened [6] 138:22 142:11 143:10 143:20 143:22 156:9 happening [1] 159:1 happens [5] 25:6 105:9 117:1 138:13 156:6 happy [1] 151:8 hard [7] 29:13 41:4 106:16 128:14 158:21 161:9 163:9 hardship [1] 72:9 head [1] 68:20 hear [31] 39:3 44:4 46:11 83:15 89:17 89:23 93:17 95:3 95:9 97:12 98:10 109:7 109:17 111:1 124:4 129:21 147:12 149:18 155:11 161:6 181:5 182:2 182:21 183:25 185:25 186:7 187:16 188:6 194:20 197:3 224:25 heard [40] 5:4 19:4 28:7 36:2 46:14 49:6 52:4 59:14 60:4 60:16 76:1 83:23 84:13 84:18 97:2 97:4 106:4 111:3 114:18 119:1 120:6 122:18 122:23 129:8 129:13 129:14 146:23 146:25 151:16 155:16 158:24 161:3 183:17 186:14 201:24 202:10 211:2 216:7 216:8 221:20 hearing [16] 43:15 43:16 44:21 76:3 80:23 94:12 95:8 109:14 127:18 142:9 157:16 158:4 166:21 179:5 181:4 200:6 hearings [6] 46:12 46:12 46:13 46:14 155:10 160:18 hearsay [6] 160:11 160:14 160:15 160:16 160:17 160:20 heartily [1] 222:2 held [2] 89:10 161:11 help [8] 16:15 106:24 107:2 114:15 139:7 151:9 152:12 185:21 helpful [1] 163:5 herself [1] 38:7 hey [1] 65:6 hid [1] 186:12 hide [1] 81:5	high [1] 34:11 higher [1] 161:11 hill [1] 14:21 himself [1] 84:20 hired [1] 145:9 hiring [1] 142:17 Historic [1] 199:1 historical [2] 6:4 15:7 history [1] 115:13 hit [1] 150:7 hold [5] 28:20 28:22 41:1 111:19 209:18 holder [1] 48:22 holding [4] 67:23 67:25 208:23 210:21 holes [1] 150:6 home [4] 6:4 32:25 76:25 115:24 homework [3] 196:5 196:16 197:5 honor [4] 121:19 125:14 222:11 226:10 hopefully [1] 182:15 hoping [1] 68:24 hot [2] 23:5 36:20 hotel [4] 25:12 25:18 112:2 114:2 hour [5] 37:5 68:24 207:9 207:9 221:17 hours [4] 3:19 80:11 86:6 86:6 house [4] 14:3 19:3 30:5 33:14 housekeeping [1] 183:24 however [7] 39:4 65:19 82:13 99:17 173:25 175:7 175:13 however-many-page [1] 81:3 hub [2] 17:18 19:16 humble [2] 163:18 163:20 hundreds [1] 101:12 hurting [1] 59:16 husband [2] 36:16 36:17 hutzpah [1] 138:24 hypothetically [1] 156:3 idea [11] 6:14 11:11 15:13 17:3 22:17 32:6 33:21 33:22 41:4 188:13 221:11 ideas [2] 13:16 17:2 identified [1] 38:7 identify [5] 86:23 121:9 121:12 122:3 193:17 II [1] 3:9 III [1] 3:21 illegal [1] 212:19 illegally [6] 195:2
---	---	---	---	---

211:15 214:16 215:11 216:16 218:2	incorporating [1] 115:16	insist [1] 173:4	involved [6] 54:22 60:22 63:24 100:16 136:24 207:10	Kendig [6] 35:24 35:24 53:16 53:16 86:3 86:3
Ilyinsky [18] 2:4 41:22 45:17 58:12 65:2 65:9 65:12 66:4 80:10 89:19 101:9 102:12 102:19 116:6 116:20 159:25 182:8 217:16	incorrect [3] 5:13 116:23 180:21	instance [4] 56:23 57:19 59:3 71:9	irrelevant [3] 204:14 204:15 204:17	key [1] 54:3
Ilynski [2] 40:7 46:21	incorrectly [1] 5:6	instances [2] 51:10 51:13	irrespective [1] 141:2	keyed [1] 136:12
imagine [3] 19:13 41:23 117:22	increase [7] 11:6 11:7 134:12 136:6 138:11 176:7 176:19	instead [2] 91:24 177:25	IRS [1] 5:11	Kimley-Horn [1] 133:22
immediately [2] 33:8 143:17	increased [2] 13:23 124:3	Institute [1] 193:12	Irvine [1] 83:8	kind [5] 16:11 22:8 102:7 151:5 207:16
immersed [1] 111:18	increases [5] 19:20 112:8 133:25 138:4 159:17	instructed [1] 18:12	isn't [16] 23:2 30:21 56:5 58:18 61:7 63:9 70:21 73:2 81:21 82:16 90:13 101:22 128:6 143:20 212:8 218:11	kinds [3] 30:8 160:17 220:25
immersion [21] 98:14 98:20 99:7 99:8 99:10 99:19 99:25 100:6 100:10 100:15 100:20 105:12 105:19 106:9 106:20 107:8 108:14 109:2 109:15 112:4 113:18	increasing [4] 25:18 134:1 138:5 159:19	insufficient [1] 70:3	issue [15] 5:1 5:1 44:10 46:5 55:5 56:14 65:20 69:23 85:7 88:1 127:24 182:17 182:19 188:22 192:11	knew [3] 197:24 199:17 203:5
immersions [1] 113:15	incumbent [1] 5:14	intend [3] 101:9 106:7 152:14	issues [8] 18:24 126:20 133:4 140:23 177:25 182:18 211:24 212:11	knowing [2] 105:10 204:13
impact [15] 33:18 43:9 55:10 61:24 68:4 93:3 120:9 133:23 135:12 138:2 142:1 142:2 159:16 191:16 210:19	indeed [12] 28:25 29:11 58:9 74:19 76:15 151:18 157:4 157:5 160:14 181:19 220:24 221:5	intended [3] 12:17 186:11 186:13	item [2] 199:23 201:12	knowledge [4] 91:5 130:10 160:10 192:23
impartial [2] 157:12 181:9	independent [2] 23:13 160:10	interest [4] 83:6 89:1 160:7 191:7	items [2] 47:23 213:9	known [7] 4:2 78:21 195:21 197:22 202:4 202:5 202:5
impinge [1] 105:4	independently [4] 22:20 22:20 161:2 201:2	interject [1] 125:21	its [15] 31:1 47:5 47:9 119:20 134:1 138:5 159:15 159:19 160:16 200:1 204:11 206:3 213:12 215:15 219:14	Kolins [129] 28:14 28:14 28:22 28:25 29:7 29:10 29:14 29:19 30:9 30:18 30:21 31:3 31:7 31:11 31:15 31:18 31:23 32:3 32:6 32:10 32:13 32:18 32:21 32:24 33:6 33:12 33:16 33:21 33:23 34:3 34:10 34:12 34:24 35:4 35:8 35:11 35:16 35:21 52:2 52:3 52:3 52:22 53:2 53:6 53:15 71:12 71:13 73:6 73:18 74:2 74:4 81:12 83:18 83:19 84:11 85:9 86:9 86:12 87:9 163:17 176:13 176:15 187:10 187:11 204:5 204:7 204:9 204:18 204:21 205:21 205:23 205:24 205:25 206:1 206:6 206:12 206:19 206:24 207:4 207:8 207:13 207:20 207:24 208:3 208:12 208:22 209:10 209:13 209:18 209:21 209:24 210:11 210:14 210:18 210:21 210:25 211:7 211:12 211:19 211:25 212:7 212:12 212:17 214:9 214:10 214:14 214:22 215:4 215:9 215:18 216:13 217:9 217:13 217:19 217:21 218:9 218:14 218:20 218:24 219:2 219:5 219:8 219:12 220:1 220:12 220:20 221:10 221:13 222:1
importance [1] 75:18	indicating [2] 46:4 81:23	interpolate [1] 174:11	Jack [1] 2:7	
important [8] 55:9 67:9 82:14 93:17 94:9 164:11 166:18 174:9	individual [2] 51:16 125:10	interpret [1] 174:21	January [1] 99:22	
imposed [2] 113:6 177:20	individually [2] 71:15 72:13	interpretation [1] 174:24	job [1] 209:2	
impossibility [1] 55:11	indulge [1] 39:19	interrupt [8] 24:19 81:11 87:22 88:5 120:16 125:13 142:24 143:6	John [4] 2:12 3:14 40:3 43:5	
impression [1] 56:2	industry [1] 112:12	interrupted [2] 126:1 202:8	join [5] 19:25 20:3 31:11 52:3 222:2	
improper [1] 212:18	inferences [2] 94:18 126:25	interrupting [3] 109:19 142:25 170:25	joined [1] 84:13	
improperly [6] 195:2 211:14 214:16 215:11 216:16 218:1	inferred [1] 30:1	intimacy [2] 102:11 115:15	Joseph [1] 190:15	
improve [1] 21:1	inflammatory [1] 199:17	intimate [1] 115:2	judges [1] 154:20	
improvement [1] 29:5	information [35] 18:11 18:13 56:5 61:11 119:20 119:22 120:7 127:4 137:17 145:16 155:11 160:8 165:10 165:14 166:15 168:25 169:16 172:10 172:14 172:16 172:20 173:15 173:18 173:22 180:5 180:6 181:13 181:15 182:4 184:21 194:22 195:12 195:25 197:15 208:9	into [40] 3:5 14:1 14:3 25:13 26:1 26:17 26:24 34:12 41:7 47:15 49:7 51:10 51:15 60:13 61:6 61:8 83:23 84:5 84:6 85:20 110:1 112:2 141:15 150:22 152:25 153:19 155:24 158:17 159:23 160:11 160:17 175:14 178:20 183:3 187:24 188:1 194:4 205:3 222:12 224:5	judgment [1] 53:7	
improvements [1] 35:17	infrastructure [1] 9:11	introduced [5] 63:16 71:15 84:22 120:22 158:9	Julie [3] 35:24 53:16 86:3	
inadequate [1] 69:1	infringe [1] 105:4	introduce [15] 54:24 67:6 74:6 74:10 81:16 82:2 84:1 84:2 85:13 85:14 96:21 104:20 150:22 158:8 191:25	July [5] 165:20 165:22 166:9 185:1 202:19	
inaudible [1] 208:19	initial [1] 171:9	introduced [5] 63:16 71:15 84:22 120:22 158:9	jump [1] 98:7	
Inc [1] 133:22	inquire [2] 152:10 152:13	introducing [2] 121:5 164:1	June [4] 201:25 202:1 202:10 202:19	
include [4] 10:18 47:22 100:16 214:20	insane [1] 42:7	introduction [6] 47:20 82:8 83:14 133:16 168:5 204:12	juxtapose [1] 211:1	
included [6] 10:23 197:12 200:25 201:3 201:19 212:5	inside [1] 123:18	invaded [1] 157:4	K-e-n-d-i-g [1] 35:24	
includes [1] 203:4		invested [1] 157:15	Kalamazoo [1] 209:7	
including [4] 129:16 156:14 159:22 168:10		invited [1] 113:22	Katzhoff [2] 116:2 117:24	
incomplete [1] 171:25			keep [5] 40:13 58:17 72:6 127:7 224:16	
incorporate [1] 53:17			keeping [2] 93:15 111:4	
			keeps [2] 142:24 159:1	
			Ken [4] 13:2 51:6 157:24 163:17	
				Kolins' [1] 213:5 10 [1] 1:22 lack [2] 48:9 187:20 ladies [1] 102:7 lady [1] 101:10 land [18] 15:25 16:3

17:5	17:7	17:16	Lesly [2]	2:3	load [1]	14:3	66:8	66:14	75:12	103:4	104:23	104:24
17:21	18:15	18:17	3:13		local [1]	6:19	84:1	92:19	94:18	104:25	105:3	107:10
18:23	21:16	21:18	less [4]	117:8	142:18	locate [2]	16:11	116:3	122:4	108:22	109:12	111:24
23:17	149:4	197:11	146:14	149:9		224:20		125:5	125:11	112:14	113:7	115:16
208:17	208:23	210:2	let [44]	10:21	16:2	located [1]	115:11	130:5	130:7	116:4	116:14	116:15
210:6			34:24	44:14	55:21	location [1]	14:20	137:4	157:24	117:16	119:2	128:15
Landmark [1]	48:23		57:13	59:21	62:21	lodge [1]	204:11	167:21	170:3	129:2	129:24	131:1
landscaping [2]	34:5		74:10	76:3	76:6	logical [2]	19:22	176:17	185:15	136:6	139:3	142:2
34:8			76:17	81:10	81:11	216:1		189:18	189:19	142:2	142:6	144:15
language [1]	32:17		82:5	88:22	101:3	long [24]	12:6	202:14	202:15	172:7	172:14	172:15
Lansing [1]	209:6		102:21	104:8	105:16	42:2	89:3	magnitude [1]	144:11	192:12	196:3	198:1
large [2]	11:15	11:16	106:5	110:6	125:12	118:9	131:16	mail [1]	170:12	198:6	198:12	198:20
last [32]	4:20	8:4	126:2	127:7	127:24	151:22	151:24	mailing [1]	45:12	199:6	209:3	211:9
8:9	20:22	44:20	128:11	130:20	131:22	152:1	153:14	main [2]	19:3	211:22	213:20	218:7
44:20	60:3	72:12	132:11	141:6	143:3	153:11	153:14	major [2]	32:11	218:22	218:25	219:20
72:18	76:18	76:25	143:8	146:18	156:1	159:5	159:7	32:14		220:14	220:18	221:4
77:14	77:19	78:4	160:13	163:23	165:9	162:19	178:8	majority [1]	14:9	221:7	221:11	
78:17	78:23	78:24	165:15	166:24	188:14	203:6	206:4	make [42]	5:12	Mar-a-Lago's [1]		
79:2	91:14	95:8	188:25	196:24	200:12	221:19		5:16	6:20	187:23		
108:25	131:13	131:14	letter [13]	47:8		longer [3]	6:3	24:12	29:23	marina [8]	10:18	
146:22	148:3	149:12	47:25	117:2	117:9	55:2	78:13	53:18	67:22	10:24	11:1	12:19
149:18	153:8	196:1	142:15	142:16	143:14	look [22]	54:4	72:20	75:1	17:3	17:6	17:9
198:10	199:18	207:22	143:23	144:5	144:9	63:18	68:18	81:11	82:2	47:6		
late [4]	68:24	77:19	144:13	144:18	144:21	69:2	77:19	83:16	85:17	Mary [2]		
149:13	221:18		letters [2]	44:5		78:9	87:20	93:21	108:20	67:14	2:14	
later [8]	68:25	78:15	47:4			117:2	118:4	109:11	110:14	mass [1]		
148:20	148:23	158:6	letting [1]	76:18		181:17	181:24	134:22	138:1	45:12		
166:17	174:5	186:14	level [7]	6:20	50:9	210:25	220:7	154:22	156:25	message [2]	100:13	
latest [2]	11:3		119:4	140:17	158:12	225:8	225:10	171:12	181:6	112:7		
54:2			160:9	208:20		looked [5]	139:25	187:12	189:25	Massey [1]	33:18	
law [6]	57:3	74:19	Levy [1]	139:5		157:2	195:23	212:9	222:8	Massey's [1]	32:25	
126:15	156:23	159:10	licensed [1]	209:21		224:19		222:18	223:2	master [12]	15:12	
199:7			lift [1]	3:17		looking [5]	16:5	makes [2]	53:10	15:22	16:1	17:4
laws [1]	6:11		light [2]	199:12	201:12	16:6	53:25	107:4		20:9	20:10	20:12
lawyer [3]	158:15		likely [3]	20:2		176:15		making [8]	21:6	20:13	20:14	20:16
171:16	211:2		20:3	30:21		looks [1]	213:10	26:12	70:16	21:16	21:17	
lawyering [1]	163:25		Lilia [2]	40:6	42:18	looming [1]	49:4	94:25	160:15	match [1]		
lawyers [7]	3:20		limit [5]	25:9	98:4	losses [1]	5:11	185:16		115:17		
42:3	55:22	57:4	159:3	159:6	183:8	lost [1]	217:8	man's [1]	28:6	material [3]		
57:19	71:24	163:10	limitation [2]	134:20		lot [17]	15:15	manage [1]	22:23	165:6	166:8	
lax [1]	25:6		140:5			23:21	34:7	management [10]		materialized [1]		
layman [1]	73:8		limitations [1]	185:9		41:13	45:22	200:2	210:4	77:6		
leading [1]	208:11		limited [4]	53:20		60:4	69:12	214:7	215:8	matter [24]		
learn [2]	152:1	195:19	108:1	111:6	183:21	107:2	142:18	219:15	220:4	39:12	40:20	41:1
learning [1]	159:8		limits [1]	3:18		159:9	160:24	221:1		47:25	70:7	85:3
least [10]	41:8		line [7]	3:22	36:1	love [1]			2:9	126:14	126:20	134:8
57:3	59:14	82:11	71:10	73:21	73:23	low [1]			4:8	136:11	154:16	155:19
93:22	118:6	141:5	154:6	154:10		lunch [2]			4:9	158:14	159:11	160:1
178:13	178:13	181:16	lines [1]	22:6		171:4			4:10	161:24	173:6	187:14
leave [6]	35:11	80:13	lips [1]	91:19		M-a-n-n-i-n-g [1]			8:3	188:24	190:10	195:8
94:9	116:11	176:18	list [6]	40:13	43:1	4:11		Manager [1]	2:9	202:20	212:22	
203:19			147:18	148:4	203:6	ma'am [3]	27:4	Manning [4]	4:8	matters [4]		
leaves [2]	71:5		212:1			96:20	111:23	4:9	5:19	126:16	140:20	175:8
219:12			listed [1]	186:4		machismo [1]	50:1	67:13	67:19	maximum [1]		
left [2]	77:20	223:10	listen [4]	132:13		madam [29]	4:9	90:5	103:23	may [30]	40:12	59:13
legal [14]	61:6		174:14	174:15	178:18	38:20	39:8	111:10	114:23	69:4	69:6	72:12
62:9	69:18	163:13	listened [4]	3:19		74:13	79:1	182:21	183:6	74:9	81:14	82:5
163:15	163:16	164:2	45:7	157:24	171:21	85:15	85:22	224:10	226:1	82:22	82:23	83:15
164:4	164:13	179:2	67:22	110:5		109:18	114:8	Mar-a-Lago [86]		92:12	120:16	122:19
182:14	215:24	216:6	listening [3]	4:25		118:22	120:23	3:10	5:2	125:7	131:18	146:19
223:6			67:22	110:5		146:20	150:8	7:3	7:17	146:20	152:22	155:16
legendary [1]	102:3		little [7]	36:19	41:6	174:18	187:1	9:12	11:19	158:7	174:18	178:5
legitimate [1]	68:16		65:12	89:14	98:2	196:8	196:13	33:7	35:16	179:22	186:8	187:18
lend [3]	224:24	225:3	112:8	182:16		215:23	221:23	37:1	40:9	191:9	204:8	205:23
225:4			live [2]	6:3	72:2	226:10		47:9	49:8	212:4		
lengthy [1]	44:1		living [2]	28:5		Maddish [2]	40:3	97:17	97:19	maybe [16]		
Leslie [1]	2:6		28:8			43:5		99:2	99:3	14:10	23:20	23:23
			Lo [1]	158:6		made [34]	44:6	99:9	99:13	37:8	37:23	60:25
						47:13	59:14	99:15	100:17	81:19	118:12	135:17
								101:6	101:22	153:15	158:16	173:15
								102:25	103:1	175:8	215:24	221:19
										mayor [23]		
										2:4		

40:7	41:21	41:22	meeting [15]	1:9	70:23	132:10	182:24	224:15	90:1	90:3	90:10			
42:11	45:17	46:20	3:4	3:8	3:10	minute [8]	24:19	most [6]	8:5	10:17	91:12	91:25	92:1	
58:12	65:2	65:9	3:25	5:9	24:12	72:12	75:24	101:7	41:18	94:15	101:14	92:2	92:16	93:21
65:12	66:4	80:10	37:15	162:8	170:2	102:14	108:1	136:10	207:10			94:10	94:14	95:3
89:19	101:8	101:9	186:24	201:25	202:12	214:22			mostly [3]	3:20		95:13	95:20	95:24
102:12	102:19	116:6	210:3	213:12		minutes [6]	87:25		37:24	41:9		96:2	96:7	96:10
116:20	159:25	182:8	meetings [3]	40:11		88:21	148:3	152:15	mother [3]	37:4		96:16	96:17	96:20
217:16			45:5	46:2		158:23	169:6		112:23	118:7		96:24	97:2	97:13
McDonald [66]	2:7		member [7]	38:17		misconceived [1]						97:21	98:9	98:21
40:1	42:22	42:23	44:7	104:16	113:10	46:25			motion [7]	158:1		98:25	99:5	99:8
43:2	43:7	43:13	113:21	125:5	193:12	misinterpreted [1]			189:2	189:5	189:10	100:5	100:21	100:25
45:18	45:20	45:21	members [45]	4:9		47:1			189:18	189:20	190:9	101:2	109:18	109:22
46:21	74:3	74:4	4:22	4:23	4:24	mispronounce [1]			mouth [1]	106:15		114:8	114:10	114:11
76:10	76:12	81:10	19:11	19:24	30:25	164:23			move [11]	5:22		114:21	114:23	115:3
81:23	82:5	83:21	31:3	76:2	89:16	misrepresented [1]			38:24	82:1	118:16	116:17	117:1	118:2
84:4	84:9	86:9	97:19	99:3	99:15	91:21			126:6	159:13	159:14	118:6	118:21	119:9
86:16	87:4	87:7	99:19	99:22	99:24	missed [2]	212:4		190:18	190:18	205:3	119:17	119:24	120:2
87:11	87:16	88:10	101:6	103:2	103:11	212:7			205:3			120:5	120:11	120:23
89:3	89:11	91:9	103:13	104:14	104:20	misunderstand [1]			moved [2]	84:4		121:8	121:11	121:15
91:22	93:12	94:6	108:2	108:15	108:22	155:23			84:6			121:17	121:20	121:24
94:10	95:1	95:11	112:20	113:4	116:15	mixed [1]	65:10		movement [1]	18:18		122:5	122:11	125:14
153:22	153:23	154:11	136:13	139:4	140:2	modification [3]			moving [1]	53:1		131:12	131:18	131:22
154:18	158:16	168:17	140:7	141:5	141:17	162:12	162:14	162:15	Mrs [29]	4:5	32:25	131:25	132:3	132:8
169:2	179:15	179:16	142:5	154:7	154:10	modified [1]	151:5		33:18	36:8	38:7	132:11	133:1	133:14
180:3	181:1	182:6	171:18	171:24	187:11	moment [8]	39:19		40:5	40:6	42:15	142:23	146:20	147:3
182:10	185:23	186:20	190:16	192:1	192:3	76:19	81:25	84:14	45:2	51:8	54:7	152:22	153:5	153:10
188:4	188:10	189:2	222:15	223:25		122:12	149:7	171:5	60:23	62:15	70:7	153:12	153:13	154:12
189:19	189:21	189:22	membership [29]	3:18	5:7	178:22			71:11	71:18	98:7	154:14	173:8	174:18
190:18	190:23	190:24	27:21	69:12	113:11	moments [1]	71:20		116:2	117:23	171:2	175:16	175:19	175:21
205:3	205:6	205:7	134:1	134:12	134:18	money [1]	101:15		173:12	185:20	185:24	176:1	177:6	177:9
217:19	217:22		135:2	135:8	135:12	money's [1]	20:1		190:5	191:6	200:16	177:13	179:18	179:22
McLendon [29]	2:8		135:22	136:1	136:6	monitor [1]	80:14		205:16	222:17	226:5	180:11	181:1	182:25
40:10	40:16	41:5	137:22	138:5	138:11	monitoring [1]	128:15		Mudrick [1]	139:5		183:13	183:19	183:22
41:6	46:22	48:25	140:17	141:2	141:16	Montessori [1]	115:9		municipality [1]			184:3	184:5	184:8
53:22	53:24	69:4	144:1	144:23	154:3	month [3]	3:11		209:5			184:11	184:23	185:3
69:5	69:6	70:4	159:19	161:16	174:23	months [4]	28:21		must [1]	4:3		185:14	186:3	186:25
93:6	113:22	113:23	177:10	177:12		Moore [20]	2:10		mute [1]	45:7		187:1	187:5	187:6
115:18	115:19	115:20	memories [1]	185:21		24:24	26:3	26:7	myself [2]	4:1		188:8	189:6	189:7
178:23	179:9	179:10	memory [4]	91:22		26:10	26:14	26:18	45:25			189:13	190:12	190:13
190:3	190:4	191:2	91:24	114:12	216:12	26:22	27:1	27:4	mystery [1]	108:7		191:9	191:12	191:19
191:3	205:10	205:11	men's [1]	83:23		66:6	66:10	66:14	N [1]	3:1		191:22	191:23	192:5
224:8			mental [2]	25:14		176:5	176:17	176:20	name [13]	4:10		192:8	192:15	192:20
meals [4]	27:11		mention [1]	40:14		224:23	225:1	225:2	5:25	36:12	37:17	192:23	193:3	193:7
27:18	100:18	100:19	mentioned [13]	30:3		225:5			49:14	70:10	96:22	193:10	193:21	194:1
mean [40]	9:14		56:4	97:5	97:8	more [52]	4:7		97:8	101:18	125:20	194:6	194:7	194:11
12:15	13:25	17:16	98:22	99:17	100:3	13:25	14:18	16:10	164:23	192:4	194:16	196:8	196:11	196:13
19:13	19:19	22:3	102:3	132:17	179:8	19:6	19:11	19:12				196:14	200:9	200:11
23:5	23:21	25:5	202:17	205:19	220:11	26:22	27:1	27:4	names [4]	42:24		203:23	204:1	215:23
25:16	27:13	28:5	menu [1]	100:14		66:6	66:10	66:14	101:12	126:4	194:19	216:5	222:4	222:10
30:17	32:1	32:21	message [1]	219:3		224:23	225:1	225:2				222:11	223:3	223:5
34:1	42:4	58:13	met [12]	37:15	42:2	225:5						223:10	223:14	224:10
76:12	77:2	81:4	75:2	75:3	75:5	more [52]	4:7					224:12	224:17	225:12
81:4	81:5	88:5	75:8	75:13	75:14	13:25	14:18	16:10				225:18	225:25	226:4
89:2	98:7	100:6	75:22	76:8	156:5	19:6	19:11	19:12				226:6	226:10	
102:24	108:7	108:15	156:14			19:19	24:9	30:19				Natale's [2]	71:5	
110:10	125:13	131:20	metamorphosis [1]	141:14		30:21	31:4	31:7				188:6		
142:23	157:15	184:23	Michigan [3]	208:20		31:11	35:23	40:25				National [14]	6:18	
185:10	195:18	218:21	209:4	209:8		41:13	42:13	44:13				7:11	7:17	8:15
meaningful [2]	32:15		microphone [4]	130:8		60:1	77:25	87:25				8:20	10:23	11:9
72:17			203:20	204:6	215:25	89:14	93:2	93:10				11:12	12:21	15:6
means [7]	32:22		middle [1]	126:1		93:15	93:17	107:18				24:14	47:8	48:21
49:19	60:14	98:11	mind [8]	54:3	60:8	112:11	112:14	138:18				198:25		
103:11	199:25	217:17	70:16	73:16	110:7	142:5	143:18	145:4				NationsBank [1]		
meant [2]	30:2		110:13	144:23	144:25	149:8	152:15	152:16				201:21		
73:19			mine [1]	92:13		155:1	159:9	161:20				nature [2]	115:10	
meet [19]	74:21		minimum [2]	54:18		163:15	172:4	175:9				152:20		
75:25	76:7	119:3				175:10	178:17	179:14				near [1]	14:11	
119:3	154:7	155:20				182:21	186:8	201:8				nearer [1]	69:11	
155:20	156:4	162:1				214:11	223:5	226:4				necessarily [3]	95:5	
185:9	195:3	211:16				morning [13]	3:7					115:10	220:23	
212:20	214:17	215:12				26:8	36:18	36:19				necessary [11]	64:23	
216:17	218:2	219:21				60:2	60:3	64:23				65:1	65:24	66:1
						66:6	66:8	131:17						

86:8 128:6 128:9	41:18 105:10	212:23 212:24 214:11	ongoing [1] 28:17	order [12] 48:12
149:15 153:19 168:1	nicely [1] 47:1	219:9 219:10	only [33] 36:16 39:10	74:16 75:10 82:23
168:2	night [17] 38:5	numerous [3] 63:23	39:13 40:8 40:17	86:11 150:15 152:5
necessity [2] 60:6	60:3 76:25 77:14	90:14 92:5	53:18 53:24 72:7	157:13 178:9 179:25
65:2	77:20 78:4 78:17	O [1] 3:1	93:6 94:11 99:3	180:13 181:17
need [22] 24:5	78:23 78:24 79:2	O'Meila [1] 3:22	101:6 106:18 111:24	ordinance [2] 66:18
46:7 63:20 64:1	91:15 113:10 131:13	object [12] 51:22	113:19 116:12 116:15	66:20
65:8 65:17 70:12	131:14 149:12 149:13	53:6 53:13 59:17	117:6 128:17 129:22	ordinances [1] 6:11
78:18 79:14 84:3	149:19	85:2 86:4 91:20	132:21 137:7 148:6	organized [1] 73:22
153:21 155:13 162:16	nights [2] 37:21	109:19 125:14 168:4	153:16 153:18 155:1	original [6] 135:1
174:10 178:9 178:13	38:3	168:16 215:23	158:24 165:1 174:25	139:3 140:19 148:17
178:16 179:16 181:10	nine-hole [2] 149:23	objected [1] 168:18	180:11 180:19 196:5	194:20 197:22
187:16 203:22 226:4	150:1	objection [28] 35:25	open [33] 4:18	originally [3] 138:13
needed [6] 13:22	nobody [6] 20:20	47:20 48:5 52:23	61:11 62:4 68:6	140:21 225:19
58:22 63:9 63:12	36:16 36:20 93:4	53:19 82:6 82:8	71:6 71:20 92:9	ostensibly [1] 211:3
158:11 177:22	161:9 161:25	82:15 83:13 83:16	98:22 103:16 110:11	others [10] 12:24
needing [1] 176:3	nodding [1] 68:20	85:17 85:25 96:13	110:13 156:18 188:16	17:3 41:14 53:8
needs [6] 48:4	non-discriminatory [3] 199:16 218:21	109:21 121:19 122:13	193:14 193:19 195:3	63:9 72:10 76:7
84:22 84:25 175:9	219:3	151:16 169:3 169:4	203:14 211:16 212:21	127:17 130:7 158:16
181:16 182:3	non-paved [1] 176:22	169:10 175:11 175:12	213:11 213:13 214:18	otherwise [2] 69:12
negative [4] 41:10	none [5] 65:18 79:3	194:9 200:9 204:11	214:25 215:13 215:17	76:16
41:13 41:15 91:2	79:6 117:19 130:10	204:14 221:24 222:1	216:18 217:1 217:4	ought [7] 86:15
neighbors [1] 3:21	noon [1] 80:25	objectionable [2] 81:7 81:8	217:6 217:10 218:3	86:22 125:24 152:10
nervous [1] 98:2	normal [2] 30:7	objections [5] 51:7	218:18 219:6	159:23 161:8 161:11
never [15] 10:20	57:9	52:4 53:17 82:3	opened [3] 73:3	ourselves [1] 93:19
10:25 14:11 22:5	normally [2] 56:21	84:12	73:4 73:4	outset [1] 159:5
27:14 27:15 41:23	160:17	obligation [4] 54:17	opening [3] 45:12	outside [11] 8:25
41:25 42:2 78:4	north [5] 17:24 33:5	54:21 156:6 156:10	104:1 183:15	9:11 9:20 27:12
91:18 105:22 111:1	33:8 33:8 33:11	obvious [1] 90:6	operate [1] 99:16	27:18 27:24 46:14
151:6 203:21	Notary [1] 227:16	obviously [10] 41:16	operation [1] 93:9	50:23 107:23 113:4
nevertheless [1] 187:22	note [5] 39:10 47:19	42:11 56:1 57:2	opinion [23] 6:18	198:6
new [81] 16:19 25:2	64:1 67:10 122:13	69:21 100:12 142:17	7:8 7:9 19:15	over [26] 4:13 19:9
30:13 31:8 34:19	noted [4] 26:25	153:23 179:7 222:23	24:15 33:24 33:25	32:3 44:20 55:17
34:21 35:6 35:12	45:10 109:22 222:3	occupancy [2] 48:19	38:13 45:7 65:24	71:23 72:2 73:9
53:19 54:24 55:14	notes [1] 67:24	111:14	73:14 73:16 126:15	75:20 84:12 90:18
55:24 56:3 56:6	nothing [15] 6:9	occupied [1] 175:25	142:4 162:21 163:7	92:7 95:8 106:9
56:7 56:7 56:14	11:8 34:17 35:6	occupy [1] 12:18	163:13 163:15 163:24	106:20 111:18 138:17
56:15 57:7 57:14	77:25 79:20 91:6	occurred [1] 136:2	164:2 164:4 166:5	156:3 156:19 167:13
57:22 57:24 58:1	91:8 91:10 110:8	October [1] 1:22	171:20	167:13 170:10 174:10
58:6 59:1 59:18	112:18 161:20 177:16	odd [1] 136:8	opponents [1] 64:14	182:18 182:19 224:13
60:10 60:10 60:15	199:11 201:8	offended [1] 73:18	opportunity [49] 39:15 39:16 44:25	over-statement [1] 141:24
60:17 60:17 67:5	notice [1] 158:24	offense [1] 73:8	49:18 51:19 55:2	overall [1] 172:21
70:21 71:14 71:21	notwithstanding [1] 214:12	offer [8] 109:9 123:21	55:4 55:18 56:23	overnight [1] 158:19
72:6 72:11 75:19	November [4] 104:1	126:15 150:16 151:4	57:4 57:11 57:18	own [5] 65:24 68:19
76:6 76:13 76:18	107:16 108:19 109:8	155:8 181:6 187:17	57:21 59:2 59:4	71:7 181:22 221:12
82:9 82:20 83:10	nowhere [2] 214:24	offered [2] 85:3	59:8 59:19 59:22	owned [2] 118:9
83:14 85:8 87:2	214:25	144:9	62:17 62:19 75:17	118:11
118:1 118:20 120:20	number [33] 40:12	offering [2] 84:20	75:24 77:20 78:5	owner [3] 4:12
135:25 143:18 144:4	44:18 45:6 47:21	113:19	87:1 87:20 100:2	28:23 28:25
150:22 151:4 155:14	48:17 52:12 73:4	offers [1] 106:18	106:3 106:5 106:6	owners [2] 116:3
156:19 157:6 158:8	84:12 86:14 86:16	office [1] 23:21	106:19 107:18 108:22	118:9
159:19 161:24 163:25	90:17 111:20 124:22	official [2] 44:12	120:17 125:24 135:15	ownership [1] 23:11
164:2 165:10 165:11	134:14 136:21 138:12	113:11	152:6 155:4 155:11	owns [2] 108:4 108:10
168:18 171:14 171:23	138:14 140:2 140:7	officially [2] 8:15	156:21 157:5 157:9	P [1] 3:1
172:2 178:24 179:7	141:8 141:19 143:19	11:6	158:24 161:9 181:24	p.m [1] 1:22
179:10 181:13 181:15	154:8 162:16 170:10	often [1] 31:4	182:3 207:15 220:21	page [8] 133:15 139:4
181:19 181:25 194:21	171:9 174:6 174:7	old [1] 32:4	224:1	211:7 212:1 213:19
195:24 196:2 208:4	174:22 175:3 177:22	once [9] 37:22 51:14	opposed [8] 38:17	213:22 214:19 219:20
223:21	183:8 183:21	54:23 57:5 57:6	59:4 59:7 75:7	pages [13] 67:5
newer [3] 182:8	numbers [13] 111:3	74:25 101:16 150:16	75:16 155:3 155:15	67:7 67:13 67:20
182:8 182:9	122:20 122:23 123:10	156:9	181:19	68:2 68:3 68:4
newspaper [3] 3:6	123:21 124:8 127:12	one-day [1] 113:16	opposing [3] 57:10	68:8 171:9 206:4
97:6 99:18	127:12 145:23 174:11	one-sided [1] 50:3	57:20 68:10	206:11 207:6 214:1
next [12] 33:18 37:1	177:10 177:12 184:2	ones [4] 76:17 84:13	opposite [1] 46:1	paid [2] 7:8 145:9
75:3 93:18 94:8	numeral [9] 154:15	86:15 129:22	opposition [3] 63:5	Palm [46] 1:8
118:22 146:25 150:23	201:7 211:4 211:13		64:19 65:20	1:21 3:8 3:8
188:14 191:23 199:23			option [1] 17:11	
223:4			orally [1] 193:5	
nice [4] 30:13 41:4				

panel - possible

Condenselt™

TOWN OF PALM BEACH 10-11-96

4:12	4:17	6:3	pay [3]	19:24	161:21	pertinence [1]	118:17	209:11	70:19	80:5	80:6
6:5	23:19	62:3	161:23			pertinent [4]	192:12	7:11	80:12	85:23	86:22
68:6	83:11	107:10	paying [1]	114:4		197:25	211:8	8:14	86:23	88:20	88:23
119:22	129:3	129:25	pending [2]	63:21		petition [5]	174:2	10:9	88:24	89:4	89:8
131:2	167:14	173:6	134:11			174:5	174:16	10:22	118:23	118:24	119:8
185:1	185:5	188:15	people [87]	4:17		210:2		22:3	119:16	119:18	120:1
193:14	193:19	195:2	11:17	13:6	14:1	petitioner [1]	82:16	28:17	120:4	120:10	120:15
196:6	198:14	199:14	14:1	14:10	18:18	petitioning [1]	177:4	54:3	120:18	121:7	121:16
199:25	201:15	203:12	19:7	19:12	27:24	philosophical [1]		58:12	122:18	122:22	122:25
206:17	209:1	210:3	27:25	29:21	29:24	78:16		67:15	123:2	123:5	123:7
210:8	210:10	210:11	30:12	30:18	30:19	phone [6]	42:19	158:20	123:9	123:12	123:15
211:14	214:16	215:11	30:22	30:25	31:3	43:25	103:24	158:22	123:19	123:24	124:2
216:16	218:1	218:15	31:7	31:11	31:19	176:13	176:15		124:9	124:13	124:18
219:13	219:22	227:4	37:25	37:25	39:15	phones [2]	176:10		124:22	124:24	125:1
panel [1]	192:4		40:13	40:20	41:8	176:11			125:4	125:9	126:10
paper [2]	173:3		41:18	42:6	42:13	photography [1]			126:17	126:21	126:24
173:5			44:5	44:19	44:22	43:18			127:14	127:16	127:21
papers [2]	116:24		44:25	45:22	54:22	phrase [1]	215:5		128:4	128:9	128:12
173:9			57:17	60:21	64:19	physical [2]	48:13		128:18	128:22	129:5
paragraph [4]	143:24		65:14	70:9	71:1	63:19			129:7	129:11	129:13
144:20	201:7	213:22	71:25	86:14	90:14	pick [1]	97:10		129:16	129:19	129:19
park [1]	20:5		90:17	90:17	91:13	picked [2]	19:9		130:4	130:12	130:22
parking [32]	9:15		91:16	92:5	92:6	201:1			131:6	133:18	134:4
13:4	13:9	13:21	92:24	94:20	95:21	piecemeal [1]	24:8		134:9	134:13	134:16
13:25	14:2	14:16	98:17	99:24	102:5	pile [2]	77:4		134:19	134:24	135:4
16:9	20:25	21:1	102:22	108:13	108:13	place [10]	19:7		135:13	135:17	135:20
48:17	48:18	48:19	109:14	110:9	111:10	19:8	23:23		135:23	136:4	136:10
49:1	51:24	51:24	111:18	112:6	114:23	98:16	106:20		136:17	136:20	136:23
52:6	52:12	52:17	118:1	118:3	119:1	141:14	152:1		137:4	137:9	137:13
138:14	162:17	174:23	132:17	132:17	132:21	placed [2]	13:5		137:20	137:23	138:8
175:2	175:22	176:6	148:5	158:25	161:5	61:8			138:16	138:21	139:1
176:8	177:4	177:8	164:1	175:10	177:13	places [4]	27:17		139:9	139:12	139:15
177:15	177:17	177:22	177:14	180:19	183:6	162:17	174:23		139:18	139:20	139:22
177:24			183:8	183:21	221:8	placing [1]	51:10		139:24	140:4	140:8
part [31]	3:9	3:21	225:14	226:2		plain [1]	168:13		140:11	140:22	140:25
21:15	34:15	35:1	per [1]	113:12		plaintiff [2]	56:22		141:4	141:10	141:18
35:4	35:14	36:4	perceive [1]	81:25		189:25			142:7	142:10	142:12
44:10	44:11	45:16	perception [1]	221:12		plan [63]	9:6		142:15	142:20	143:6
48:9	60:5	60:8	perfect [1]	115:17		9:24	11:3		143:21	144:2	144:6
80:8	80:10	85:25	performance [9]			13:12	15:12		144:10	144:14	144:25
87:8	87:9	94:16	127:1	129:3	130:1	16:1	17:4		145:6	145:11	145:15
94:16	100:20	100:22	131:3	137:15	138:10	18:16	18:17		145:24	146:1	146:4
152:16	164:15	168:11	140:24	141:8	144:16	20:10	20:12		146:6	146:8	146:12
195:14	204:2	215:14	perhaps [20]	5:13		20:14	20:14		147:17	147:21	147:23
216:2	216:13		41:14	51:16	52:6	21:16	21:18		148:1	148:8	148:11
parte [3]	39:6	39:9	52:15	54:12	54:15	34:19	48:9		148:15	148:23	149:3
39:11			56:4	59:16	81:21	49:5	49:8		149:8	149:18	149:23
partial [1]	13:12		89:12	98:17	106:24	50:16	55:15		150:4	151:7	153:15
partially [2]	11:12		123:25	147:7	155:10	58:23	58:25		164:10	164:19	164:25
149:2			160:2	187:24	197:8	59:6	60:5		165:2	165:4	165:8
participants [1]	109:1		205:21			60:14	61:15		165:13	165:17	165:19
particular [7]	58:11		period [11]	19:9		62:3	63:8		165:24	166:2	166:6
118:18	131:5	131:6	55:1	98:18	105:19	63:14	63:18		166:10	166:13	166:15
174:4	180:19	220:9	106:9	106:21	111:18	64:25	65:7		166:20	167:4	167:7
particularly [1]	54:11		127:20	159:7	197:13	65:18	65:21		167:10	167:16	167:20
parties [1]	51:17		197:17			66:1	66:17		167:24	168:1	169:1
parts [2]	86:10	149:9	per [1]	48:21		67:2	74:7		172:6	172:9	172:12
pass [1]	73:21		person [8]	36:16		159:22	197:11		172:19	172:24	173:10
passed [1]	88:6		39:23	84:25	99:12	210:6			173:19	173:24	184:16
past [7]	6:8	43:17	100:17	109:19	118:22	planned [1]	21:14		190:15		
158:1	174:13	185:23	210:8			planner [3]	64:9		Pollock's [1]	131:11	
185:24	201:13		person's [1]	194:25		195:17	209:1		pool [7]	16:13	21:4
patio [4]	9:17	27:13	personality [1]	7:8		Planners [1]	193:13		21:13	21:24	29:8
28:1	28:3		personally [2]	77:18		planning [14]	2:11		30:13	148:4	
Paul [6]	2:4	2:13	193:24			24:4	24:24		poor [1]	28:5	
3:15	40:3	43:11	persons [1]	148:4		68:5	77:2		position [15]	41:15	
176:25			perspective [1]	164:13		84:19	147:18		45:13	46:25	48:11
paved [1]	176:22					193:18	208:17		54:23	61:10	64:5
									64:21	66:22	66:24
									69:3	77:25	154:5
									176:3	178:25	
									possible [8]	11:10	
									31:10	31:14	31:17

166:11 167:16 167:17 182:4 possibly [2] 113:18 157:2 post [1] 132:22 posture [1] 41:10 potential [4] 47:12 48:9 133:24 138:3 141:20 159:17 power [1] 109:25 practical [2] 93:12 188:24 practices [1] 213:24 prefaced [1] 171:9 prejudice [2] 44:13 44:14 preparation [1] 83:7 prepare [13] 69:2 97:25 133:23 135:16 137:3 137:5 137:13 138:2 142:8 142:13 143:17 158:3 159:16 prepared [26] 50:17 54:5 71:1 77:9 79:2 79:11 79:12 79:17 80:3 81:14 84:24 86:14 86:24 132:19 139:5 142:15 142:16 145:20 158:10 170:19 171:1 171:12 198:2 207:21 208:7 210:18 preparing [3] 17:14 193:7 195:9 presence [1] 26:23 present [20] 10:8 10:10 10:13 45:14 45:16 58:8 59:2 62:12 62:13 77:8 77:9 77:9 120:3 129:4 129:10 152:20 173:22 176:3 184:3 187:9 presentation [13] 26:8 26:9 26:10 26:12 74:23 77:23 82:23 135:10 157:14 158:13 185:15 192:19 192:21 presented [31] 6:15 44:14 57:7 57:8 58:4 58:5 58:25 70:19 72:14 78:24 79:8 92:24 119:13 119:15 131:14 135:1 141:24 142:4 143:13 143:14 145:8 146:15 159:20 164:22 168:9 174:22 181:14 181:15 182:20 193:22 193:23 presenting [2] 120:13 223:15 presently [1] 177:18 presents [1] 145:6 preservation [9] 6:16 15:8 18:3 18:9 24:12 37:13 48:22 48:23 199:1	president [295] 2:3 2:7 3:3 3:13 4:7 4:9 4:14 5:19 6:22 7:22 10:4 10:11 10:15 11:25 12:8 12:12 14:17 14:23 15:1 24:18 24:22 25:15 25:20 25:23 26:4 26:9 26:11 26:16 26:21 27:2 27:5 28:10 28:13 32:22 35:22 36:6 36:11 37:16 38:6 38:12 38:16 38:21 39:8 40:23 41:5 41:21 42:11 42:14 45:3 45:20 46:16 46:19 46:21 47:17 48:6 49:11 49:21 50:4 51:4 52:2 52:18 52:25 53:3 53:15 53:22 54:8 55:20 56:11 56:18 59:25 60:24 61:4 61:5 61:14 61:18 61:21 61:25 62:6 62:8 62:23 64:7 64:12 64:21 65:25 66:5 66:12 66:24 67:14 67:17 67:23 69:5 70:6 70:13 71:12 73:6 74:1 74:13 74:14 76:10 76:22 78:25 79:1 79:23 80:1 83:17 85:9 85:22 85:24 86:19 87:15 87:18 87:21 88:4 88:12 88:15 88:18 88:23 89:7 89:20 89:22 90:1 90:5 90:21 91:24 92:11 95:23 96:14 96:17 98:3 101:1 101:7 103:3 103:8 103:10 103:15 103:18 103:23 104:2 104:6 109:18 109:21 112:19 114:9 114:10 114:16 114:22 115:19 116:17 116:22 117:13 117:19 117:25 118:4 118:8 118:14 118:23 120:23 121:6 121:10 121:20 122:3 122:9 122:15 122:17 125:22 131:9 131:19 131:23 132:2 132:4 132:9 132:24 133:9 142:23 143:5 146:20 146:22 147:6 147:12 150:9 150:10 151:11 153:11 153:22 154:19 155:17 163:18 163:22 164:3 164:9 170:13 170:24 171:18 172:11 172:13 172:23 173:3 173:11 173:13 174:18 175:16 175:20 176:9 176:14 178:1 178:7 178:15 178:20 178:23 179:2 179:9 179:15 182:12 182:25 183:18 183:20 184:1 184:6 184:9 184:14	184:25 185:12 185:17 186:18 186:23 187:1 187:4 187:10 187:11 188:8 189:1 189:8 189:15 189:19 190:6 190:9 190:16 190:21 191:7 191:11 191:13 191:18 191:21 194:5 194:8 194:12 194:15 196:8 196:11 196:13 196:21 196:24 197:3 197:7 200:15 200:21 202:3 202:7 203:19 204:4 204:18 205:5 205:17 205:20 205:24 213:2 213:16 214:5 214:8 215:23 215:25 216:7 216:21 217:1 217:8 221:23 221:25 222:3 222:14 222:19 222:21 223:2 223:8 223:12 223:16 224:10 224:14 224:25 225:4 225:12 225:16 225:23 226:2 226:7 226:12 President's [1] 226:11 pretty [5] 25:6 34:11 101:10 101:10 105:20 previous [8] 24:2 53:17 82:6 148:8 148:10 194:6 199:10 201:2 previously [6] 33:9 90:4 142:22 156:5 194:23 201:8 prima [2] 51:18 82:17 primarily [1] 43:9 primary [1] 154:16 principals [1] 41:24 principle [3] 93:16 94:7 188:23 prior [28] 3:25 48:21 52:4 63:15 66:20 77:13 118:14 119:21 119:25 132:22 132:22 132:23 135:9 136:13 142:8 159:21 168:25 170:2 192:25 197:22 198:9 199:2 199:9 199:18 200:3 202:6 209:2 209:4 privacy [1] 34:7 private [23] 4:22 5:2 5:17 97:17 103:1 107:22 192:13 195:3 198:1 199:7 209:7 211:9 211:15 211:23 212:19 213:21 214:17 215:12 216:17 218:2 218:8 220:1 220:7 pro [4] 2:7 40:25 41:1 41:3 probably [15] 19:25 20:4 31:1 44:19 44:21 78:7 95:1 153:14 158:15 167:13 169:7 170:16 184:20	221:18 221:19 problem [8] 68:13 68:17 68:21 68:22 68:23 87:14 89:12 213:14 problems [2] 91:15 181:11 procedural [1] 53:12 procedure [4] 34:22 63:25 86:18 86:21 procedures [1] 39:3 proceed [3] 171:19 180:25 205:23 proceeding [3] 4:18 82:9 151:17 proceedings [5] 3:17 126:9 149:13 152:12 227:8 process [24] 17:25 24:11 45:25 51:12 53:8 53:12 59:13 59:17 73:22 75:11 76:5 82:10 82:12 155:8 157:3 157:3 158:23 159:9 160:19 161:8 172:25 179:5 190:1 191:8 produce [1] 86:15 produced [4] 117:12 120:8 128:15 192:16 producing [1] 65:3 professional [7] 62:3 68:5 141:23 178:10 193:13 193:18 227:6 professionally [2] 50:21 142:3 professionals [1] 158:11 proffer [1] 160:6 prohibits [1] 107:20 project [5] 6:10 8:13 16:23 24:15 141:20 projections [1] 167:1 projects [1] 209:3 promise [1] 157:18 proof [2] 55:11 83:4 proper [9] 51:20 62:18 72:14 90:20 125:16 125:17 174:16 174:17 179:5 properly [1] 217:18 properties [1] 220:19 property [7] 4:12 14:20 14:22 32:25 48:14 99:23 221:9 prophesial [1] 215:20 proposed [10] 8:12 8:22 8:23 15:12 22:14 35:7 35:13 41:11 83:5 136:1 prosecution [1] 79:21 protestation [1] 49:5	proven [1] 76:23 provide [4] 59:12 84:16 87:12 140:12 provided [8] 64:3 88:9 164:15 165:7 168:3 172:7 172:14 201:11 provides [1] 39:7 proving [1] 74:22 provision [2] 51:24 179:24 provisions [1] 201:6 public [47] 4:7 5:20 5:21 5:23 7:22 10:5 26:10 26:11 26:14 36:7 38:17 38:22 38:25 78:10 78:11 78:13 83:5 92:9 92:9 98:22 101:3 110:11 110:14 125:5 165:25 166:4 167:22 172:18 173:4 173:6 183:16 183:25 195:14 199:14 202:21 203:7 208:21 211:16 212:20 212:20 214:17 215:12 215:14 216:17 218:2 218:15 227:16 published [1] 167:21 publishes [1] 172:20 purchased [1] 6:4 purely [3] 57:25 65:15 79:7 purports [1] 193:11 purpose [4] 22:13 39:14 87:2 128:2 purposes [1] 65:22 pursuant [1] 48:18 pursue [2] 47:14 160:4 put [45] 14:3 17:12 17:21 29:15 29:19 33:17 38:23 41:7 47:1 51:14 51:15 51:18 51:19 51:20 56:23 57:21 60:13 61:11 62:22 68:15 72:23 81:2 82:16 82:21 106:14 134:21 153:1 153:2 155:2 155:13 156:1 156:2 156:18 157:6 179:11 179:19 179:20 179:23 180:2 180:4 180:8 180:17 186:12 194:17 224:17 puts [1] 72:9 putting [4] 81:6 93:23 186:14 210:7 qualified [1] 126:14 qualify [1] 175:15 quality [3] 105:5 115:8 158:12 quarter [15] 122:20 124:7 124:17 124:17 145:19 145:19 145:23 165:13 165:16 165:17
---	---	--	---	---

quarters - regulation

Condenselt™

TOWN OF PALM BEACH 10-11-96.

167:12 169:19 170:8 174:13 212:1	227:15	realize [3] 71:22 72:19 131:16	216:6 216:7 217:17 223:13 223:15	175:14 178:21 186:1 186:15 187:24 188:1
quarters [2] 17:24 18:1	railroading [1] 3:16	really [32] 23:10 27:9 30:2 33:4	rebutted [3] 67:11 75:22 92:15	191:17 192:10 193:10 194:4 194:15 194:16
quasi-legislative [1] 94:16	raise [2] 51:6 221:24 raised [10] 12:20 36:15 63:5 63:7 65:20 78:2 90:11 92:18 133:4	33:11 37:7 55:9 58:16 64:5 65:23 70:15 73:24 74:8 75:20 76:14 87:6 93:20 97:23 103:18 106:14 115:17 120:21 128:6 140:15 140:18 150:18 154:5 155:18 167:12 173:25 207:14 220:6	rebutting [27] 56:25 58:14 58:14 73:13 90:8 125:3 125:4 125:20 126:3 126:22 130:3 132:5 132:6 132:15 132:15 136:5 150:23 150:24 180:9 212:14 215:10 215:18 215:22 216:4 216:14 217:11 217:13	194:18 195:15 196:12 196:14 202:21 203:7 204:3 205:25 227:9
question [114] 7:20 12:20 13:2 14:18 15:4 19:17 36:15 37:20 49:19 53:23 53:24 54:1 55:8 56:10 58:13 60:1 69:7 72:23 73:8 74:15 75:9 77:11 79:16 80:2 80:25 83:19 90:11 90:24 91:2 94:1 94:2 94:3 95:25 101:8 102:22 105:15 106:6 107:3 107:4 109:16 109:17 109:24 110:25 113:3 115:18 120:18 121:21 122:16 125:15 126:2 128:3 128:6 128:10 131:10 131:20 132:13 132:14 133:10 138:18 143:9 146:21 146:22 147:2 147:4 147:4 150:2 150:8 150:24 151:12 151:14 160:2 163:1 163:6 163:24 166:20 166:25 169:13 170:13 171:21 173:16 178:5 179:16 179:17 180:23 183:1 184:20 196:9 196:15 196:18 196:19 196:22 197:6 197:8 200:10 200:16 200:18 201:5 202:9 202:11 203:1 204:9 204:19 208:14 212:12 213:4 213:5 213:17 216:2 216:11 216:20 221:14 222:23 225:9 226:6	raising [1] 39:14 Rampell [31] 3:15 3:16 3:25 10:6 10:9 10:14 40:3 42:1 43:12 43:13 45:9 46:20 47:17 48:7 49:2 49:15 49:21 49:23 50:6 52:1 52:5 54:5 70:25 138:18 139:19 139:20 143:11 156:14 173:7 186:4 202:24 Rampell's [1] 53:9 ran [1] 186:3 Randolph [66] 2:12 3:14 5:22 38:25 39:2 42:23 42:25 43:4 43:11 43:20 46:6 46:17 52:19 53:1 54:10 55:21 56:16 56:20 58:12 58:19 67:9 68:20 74:13 74:14 74:15 82:6 87:18 87:19 90:8 92:18 93:25 95:2 95:5 97:5 120:25 121:4 121:14 125:21 125:22 125:23 150:8 150:10 150:11 151:12 151:13 151:15 152:17 153:1 153:8 154:19 154:20 156:7 156:25 157:20 160:13 168:20 169:5 169:11 171:20 178:5 178:8 179:4 181:2 181:4 223:17 223:19 Randolph's [2] 90:24 94:13 rate [1] 118:19 rather [2] 81:13 207:3 ratio [1] 175:4 reached [4] 78:14 127:5 181:21 181:21 reacting [1] 94:15 read [17] 3:5 42:23 42:25 43:2 52:13 52:14 66:7 73:17 88:22 89:15 92:17 106:25 134:3 171:4 206:25 213:25 220:21 reading [5] 25:7 40:17 133:19 133:21 214:2 ready [5] 4:4 46:17 131:13 186:25 213:5 real [5] 4:25 32:8 141:25 142:17 221:16 reality [4] 24:10 30:11 158:20 159:11	reason [14] 36:2 39:13 40:17 57:12 75:9 81:8 93:23 156:17 172:19 179:23 188:21 196:9 221:2 224:17 reasonable [5] 121:14 140:13 152:6 159:6 177:21 reasonably [1] 187:22 rebut [31] 57:21 63:6 65:7 86:6 91:3 91:8 93:24 94:3 94:3 94:22 119:12 127:6 127:10 128:20 128:25 129:1 131:4 131:21 137:6 137:11 138:6 138:9 140:22 154:14 156:21 168:2 181:24 208:14 211:3 214:11 219:10 rebutts [4] 63:17 132:21 133:5 133:6 rebuttal [108] 39:4 46:18 46:23 51:3 53:20 54:6 55:1 55:19 55:24 56:14 56:20 56:24 57:8 57:14 57:15 57:25 58:5 58:9 58:14 58:15 58:18 61:7 61:17 62:10 62:18 62:20 62:25 63:1 63:2 63:4 63:13 63:23 65:21 67:8 68:17 69:24 70:21 71:4 71:5 72:25 74:11 74:11 75:17 76:15 76:19 77:10 78:1 79:4 79:7 79:7 79:10 79:15 79:16 79:20 80:20 81:16 81:17 81:19 85:8 87:3 87:24 89:17 90:2 90:20 94:17 95:18 98:5 98:8 120:19 120:21 128:1 132:25 133:2 133:7 151:7 151:20 154:17 154:24 155:15 161:25 164:14 164:20 164:22 168:6 168:12 178:24 180:17 180:18 181:20 183:5 183:14 183:15 183:16 186:6 186:9 187:3 187:9 193:4 193:8 194:4 208:4 208:6 215:24	recent [2] 8:5 10:17 recently [3] 8:7 8:9 149:12 recess [2] 88:14 186:22 recognize [5] 57:16 126:12 181:11 181:18 182:1 recollection [9] 40:18 92:12 92:13 92:23 110:19 139:8 166:25 177:1 180:21 recollections [1] 183:11 recommend [1] 76:20 recommendation [4] 169:5 171:12 180:24 181:2 reconsider [3] 189:2 189:20 190:10 reconsidered [1] 69:8 reconstruction [1] 37:8 reconvene [2] 3:3 186:24 record [73] 3:6 5:24 13:3 26:2 26:17 26:24 26:25 28:15 34:15 36:1 36:11 37:17 39:23 46:9 47:16 47:21 48:4 49:8 49:13 51:5 51:15 53:13 60:13 61:8 61:13 66:13 68:15 69:25 71:21 74:16 83:12 86:19 89:10 90:22 91:4 91:6 91:10 91:11 92:22 92:23 94:14 95:14 95:17 96:3 96:5 160:12 166:1 166:4 167:22 169:25 172:18 173:7	records [1] 177:2 recreation [21] 62:4 68:6 193:15 193:19 197:12 211:16 213:11 213:13 213:24 214:18 215:1 215:13 215:16 216:18 217:2 217:4 217:5 217:10 218:3 218:17 219:6 recusal [1] 45:23 recuse [1] 45:25 recusing [1] 4:1 redirect [1] 114:8 reduce [3] 123:25 177:15 177:17 reduced [1] 124:2 redundant [1] 161:19 refer [4] 139:13 211:18 212:18 216:24 reference [1] 215:10 referenced [1] 97:11 referred [5] 3:7 42:19 92:24 97:12 218:10 referring [7] 64:15 122:21 128:18 169:17 191:15 198:19 218:17 refers [3] 161:16 211:21 215:7 refined [1] 145:3 refinement [2] 102:11 115:14 reflect [2] 17:5 48:5 reflection [1] 187:17 refresh [6] 40:18 114:12 139:8 166:24 185:21 216:12 refurbished [1] 30:13 refusal [1] 53:9 refute [3] 39:16 40:21 168:2 refuted [2] 120:6 192:10 regard [7] 39:5 41:10 95:7 95:10 151:16 152:12 153:4 regarding [4] 39:25 88:1 127:13 192:11 regardless [3] 61:8 61:11 152:17 Registered [1] 227:6 regular [1] 27:21 regulated [2] 211:22 212:2 regulates [1] 199:8 regulation [6] 198:5 198:18 199:6 199:15 212:21 218:20

regulations [2] 175:4 217:5	reopening [4] 57:16 72:6 73:7 75:19	representation [1] 214:12	restoring [1] 6:5	158:21 158:22 221:5
regulatory [1] 220:2	repair [1] 29:18	representations [2] 119:10 119:11	restriction [1] 180:14	ruling [3] 58:13 85:17 187:8
Reid [2] 189:17 190:22	repeat [4] 66:13 85:11 197:7 216:21	representatives [1] 46:3	restrictions [1] 113:5	run [4] 23:7 30:4 165:18 167:1
reimburse [1] 114:6	repeatedly [1] 200:15	represented [1] 58:6	rests [1] 74:20	Rural [1] 83:10
reintroduce [1] 192:1	repetitive [2] 161:19 200:8	representing [3] 3:20 10:6 68:10	resubmitted [1] 48:3	rushing [1] 55:15
reiterate [3] 36:13 66:7 147:7	rephrased [1] 217:24	reputation [4] 102:3 102:6 102:8 105:5	results [1] 123:20	S [1] 3:1
reject [1] 65:15	replace [1] 52:11	request [7] 52:22 54:10 66:16 86:10 99:19 120:17 226:11	resumes [1] 3:22	S-u-s-i-e [1] 96:23
relate [3] 94:24 164:11 177:11	replete [1] 160:7	requests [1] 108:12	retained [11] 133:23 135:9 135:15 136:2 136:12 136:18 136:20 138:2 138:6 138:8 159:16	sake [2] 58:15 200:25
related [4] 58:22 127:5 127:21 182:17	replied [1] 44:9	required [7] 13:25 48:12 50:25 66:17 66:21 219:20 220:4	return [1] 88:25	salt [2] 21:4 21:12
relates [13] 63:8 63:20 74:17 74:19 99:5 127:9 152:23 153:6 177:10 185:8 192:5 196:2 215:16	report [147] 50:21 64:2 64:9 64:10 64:17 64:17 68:7 70:19 86:24 89:15 120:20 121:5 121:13 121:16 121:18 121:21 121:22 121:22 122:2 122:4 122:11 122:14 131:13 131:23 131:24 132:7 132:24 133:3 133:15 133:19 135:1 135:10 135:16 136:16 136:19 137:1 137:19 137:21 140:9 140:25 141:7 141:13 142:13 142:15 142:16 142:19 143:13 143:18 144:4 144:7 145:20 148:22 148:25 150:12 150:15 150:17 151:1 151:4 152:25 153:3 153:4 153:24 153:25 154:16 155:21 159:15 160:7 160:23 161:16 161:23 162:6 162:10 165:10 165:11 168:5 168:9 168:13 170:20 170:21 171:4 171:6 171:8 171:13 174:1 174:17 187:3 187:15 187:21 188:14 190:14 192:18 192:21 192:25 193:5 193:8 193:11 193:24 194:25 195:10 196:1 196:3 197:5 198:2 199:21 200:25 201:1 201:7 201:19 202:14 202:16 203:11 204:2 204:10 204:22 205:2 205:13 206:3 206:13 206:14 207:15 207:21 210:19 211:1 211:4 211:8 211:13 211:18 212:6 213:8 213:19 214:4 214:15 214:24 215:5 215:19 216:2 216:14 216:15 216:23 217:14 219:1 219:16 220:9 222:12 222:24 226:8 227:8	requirement [1] 52:9	review [12] 10:23 24:13 24:14 56:13 68:19 70:1 78:5 92:3 171:11 182:4 207:15 210:2	Sam [1] 114:6
relating [1] 58:21	relationships [3] 16:12 102:19 116:1	requirements [19] 13:10 43:19 177:5 188:16 195:4 198:7 203:15 210:4 211:17 212:21 213:10 214:18 214:25 215:1 215:13 216:18 218:3 219:21 220:17	reviewed [1] 6:19	same [25] 22:17 40:15 41:23 43:8 64:18 81:11 82:21 94:7 101:21 102:10 102:11 102:11 113:5 145:20 153:6 168:20 172:15 173:5 181:3 184:17 184:19 188:21 217:25 219:9 219:23
relationship [3] 16:12 102:19 116:1	relative [5] 174:3 174:4 174:8 174:16 176:6	requisite [1] 55:3	reviewing [1] 207:2	Samuel [1] 2:8
relevance [3] 80:18 80:20 187:20	relevancy [4] 179:4 204:12 204:13 221:24	research [5] 195:9 195:20 197:20 197:21 199:19	revising [1] 49:1	sand [3] 21:12 29:12 30:8
relevant [14] 48:4 54:11 121:1 161:19 162:11 174:14 174:15 174:20 174:24 175:6 179:1 185:20 186:1 218:4	relisten [1] 178:19	resent [1] 91:21	revision [1] 54:2	sandbag [1] 164:1
rely [1] 160:15	remain [2] 48:20 62:16	resentment [1] 41:17	Rick [1] 5:25	sarcastic [1] 100:6
remained [1] 176:21	remark [3] 73:9 73:19 157:24	reservation [1] 188:18	rights [6] 51:12 59:17 82:10 82:12 157:4 190:2	sat [1] 45:7
remarks [2] 98:1 195:9	remember [20] 77:15 77:18 78:9 93:7 94:11 95:23 125:9 126:4 130:12 130:13 136:23 138:16 138:21 138:25 139:7 162:2 179:22 180:1 183:10 197:21	reservations [3] 43:19 103:21 104:3	ringing [1] 176:16	Saturday [4] 36:18 37:21 38:3 38:5
remind [1] 177:20	reminded [1] 139:2	resident [2] 4:12 6:2	ripe [1] 69:20	saved [1] 101:15
reminder [1] 46:8	reminds [1] 45:19	residents [1] 45:6	risk [1] 157:21	saw [3] 79:13 140:14 215:5
remove [2] 67:1 140:5	render [2] 149:25 157:12	resolution [1] 39:7	road [3] 1:21 12:14 119:4	says [17] 39:24 40:2 40:15 91:7 108:10 117:4 133:16 133:22 139:23 159:15 161:19 161:21 170:7 177:17 195:1 199:25 202:24
renovated [1] 17:25	renovating [1] 21:5	respect [10] 53:14 54:18 71:19 100:1 102:9 126:15 128:13 150:25 167:2 197:16	roads [1] 119:5	scheduled [1] 99:21
renovations [1] 17:23	reopen [4] 60:12 62:12 62:21 62:21	respond [19] 39:16 49:7 49:22 51:20 52:19 52:21 56:13 56:16 64:6 131:18 146:21 146:23 152:22 158:10 158:11 170:19 171:7 181:17 186:13	Robert [2] 2:9 2:10	scheme [1] 114:14
reopened [1] 190:10	reporter [3] 222:5 222:8 227:7	responding [2] 189:13 219:17	rocket [1] 168:15	school [1] 115:9
	reporters [1] 226:14	response [8] 119:11 132:19 178:10 188:5 193:22 195:10 199:20 208:8	Rodney [2] 40:2 43:4	scientist [1] 168:15
	reports [5] 71:2 153:19 155:2 224:4 224:7	responsibility [1] 44:11	Roman [9] 154:15 201:7 211:4 211:13 212:23 212:24 214:11 219:9 219:9	scope [3] 94:17 209:24 210:1
	represent [2] 50:18 71:25	responsible [1] 225:23 rest [6] 16:25 22:21 87:15 110:24 183:25 206:11	Ron [5] 28:14 52:3 85:12 188:24 206:1	seats [1] 186:24
		restaurant [1] 220:8	room [11] 27:12 27:24 28:5 28:6 28:8 53:8 55:22 57:20 58:1 83:23 163:16	second [11] 32:17 47:8 70:22 72:18 144:20 146:16 189:4 189:10 190:20 205:5 218:14
		rested [2] 143:11 156:15	rooms [5] 25:12 25:21 25:22 44:25 111:15	seconded [1] 189:20
			Rosinsky [9] 36:8 36:10 36:12 36:12 37:19 37:22 38:7 38:9 38:20	secondly [4] 48:7 49:3 51:22 85:4
			rough [4] 21:18 21:20 21:21 80:22	seconds [2] 108:25 186:2
			roughly [1] 182:19	section [4] 16:9 21:7 39:1 114:3
			royalty [1] 102:7	seeing [1] 65:23
			RPR [1] 227:15	seem [2] 118:17 183:11
			rude [1] 101:10	seems [4] 53:1 151:21 152:9 185:19
			rule [5] 52:23 57:2 57:12 199:6 210:5	seen [9] 19:21 27:25 28:2 28:9 60:15 151:6 153:24 170:23 222:24
			rules [8] 59:11 59:11 113:5 155:6 158:21	

selective - spa

Condenselt™

TOWN OF PALM BEACH 10-11-96

selective [1] 221:8	69:25 73:3 74:17	84:1 213:25	61:14 61:18 61:21	so-called [1] 114:2
selectively [2] 200:1	75:16 76:13 84:22	site [52] 7:11 7:16	61:25 62:6 62:8	So.2d [2] 83:9
219:13	86:22 86:23 86:25	9:6 9:12 9:24	62:15 62:23 64:7	83:11
self-contained [1] 22:25	95:3 123:13 125:15	10:22 13:8 13:12	64:12 64:21 65:25	social [4] 97:18
self-serving [1] 47:25	137:5 146:15 160:11	13:13 16:6 16:7	66:5 66:12 66:24	192:13 211:10 213:21
send [3] 89:5 101:16	161:9 169:7 174:5	16:12 20:15 20:17	67:14 67:17 67:23	solely [1] 160:15
170:17	175:8 179:11 181:3	21:1 34:19 48:9	69:5 70:6 70:7	solid [1] 154:22
sense [3] 20:6	181:5 182:1 189:14	48:11 49:5 49:8	70:13 71:11 71:12	somebody [9] 23:14
81:4 182:16	191:25 194:17 196:18	49:20 50:16 55:14	71:18 73:6 74:1	30:3 42:9 44:2
sent [4] 15:6 15:9	196:20 202:5 220:13	58:21 58:22 58:25	74:14 76:10 76:22	105:11 107:17 133:6
44:5 45:11	220:15 220:17 220:18	59:5 59:6 60:5	78:25 79:23 80:1	161:3 186:9
sentence [1] 211:20	220:25 221:2 221:4	60:8 60:14 61:15	83:17 85:9 85:24	somehow [3] 64:20
sentences [4] 98:6	221:6	63:8 63:9 63:13	86:19 87:15 87:18	141:13 225:13
212:16 212:18 212:22	shouldn't [6] 23:6	63:15 63:18 64:23	88:4 88:12 88:15	someone [10] 18:22
separate [4] 21:10	44:8 69:9 73:2	64:25 65:3 65:7	88:18 88:23 89:7	29:15 38:23 89:6
21:11 23:11 35:18	156:12 160:15	65:16 65:17 65:21	89:20 89:22 90:1	102:23 148:6 150:6
September [37] 38:18	show [12] 3:9	65:23 66:1 66:17	90:5 90:21 91:24	180:22 201:1 206:12
43:14 45:13 123:22	11:6 34:21 37:6	66:23 67:1 67:15	92:11 95:23 96:14	someplace [2] 58:16
124:11 135:10 136:3	54:22 75:7 75:10	74:7 159:22	96:17 98:3 101:1	71:11
136:13 138:20 139:11	120:11 162:5 186:16	sitting [1] 181:8	101:7 103:3 103:8	something [26] 32:8
143:10 143:23 144:5	193:11 214:14	situation [1] 56:18	103:10 103:15 103:18	34:21 50:14 61:1
144:9 144:13 144:19	showed [1] 8:19	six [7] 3:20 28:21	103:23 104:2 104:6	63:5 69:21 72:21
145:9 145:21 151:5	shower [1] 30:5	80:11 111:15 213:9	109:21 112:19 114:10	79:14 85:18 85:19
156:16 158:5 159:21	showing [6] 20:15	215:14 226:2	114:16 114:22 115:19	94:22 105:4 106:21
161:20 161:22 162:4	20:17 34:20 50:22	size [2] 97:21 97:23	116:22 117:13 117:19	107:4 117:23 138:21
165:12 165:23 167:1	75:4 76:8	sketched [1] 21:23	117:25 118:4 118:8	146:14 154:23 159:2
168:10 168:25 170:2	shown [2] 9:6	sketches [9] 9:22	118:14 121:6 121:10	162:3 164:7 186:8
172:5 173:20 180:7	9:12	15:14 15:15 15:20	121:20 122:3 122:9	206:7 207:5 218:4
199:12 200:4 202:12	shows [2] 49:8	20:12 21:5 21:19	122:15 122:17 125:22	219:17
serious [2] 41:22	63:19	21:20 23:22	131:9 131:19 131:23	sometime [2] 60:3
69:7	shut [1] 143:2	Skip [8] 54:14 54:16	132:2 132:4 132:9	166:16
serve [2] 14:13 27:17	side [10] 21:5 21:9	55:8 151:2 155:18	132:24 133:9 143:5	somewhat [1] 40:7
service [5] 22:15	33:5 34:7 34:9	158:14 160:23 188:21	146:22 147:6 147:12	somewhere [2] 116:24
29:21 112:9 119:4	57:6 57:10 72:4	sleazeball [1] 163:25	150:10 151:11 153:11	215:5
158:12	72:7 75:22	slight [2] 83:3	153:22 154:19 155:17	soon [2] 10:1 10:2
services [1] 103:20	sides [1] 69:18	128:17	163:18 163:22 164:3	sorry [14] 6:24
serving [1] 27:11	sidetracked [1] 27:9	slighted [1] 40:8	170:13 170:24 171:2	14:17 15:1 17:5
set [3] 3:11 82:18	sign [1] 176:11	slightly [1] 124:1	171:18 172:11 172:13	41:15 97:7 98:7
159:3	signed [1] 51:25	slow [1] 206:25	172:23 173:3 173:11	105:16 175:19 188:10
settings [1] 209:5	significance [1] 75:10	small [8] 22:9	173:12 173:13 175:16	197:2 202:7 202:9
several [3] 6:6	significant [2] 72:16	22:10 22:15 22:17	175:20 176:9 176:14	224:25
172:21 178:17	141:24	32:14 97:24 115:1	178:1 178:7 178:15	sort [16] 16:13 18:19
shame [1] 156:22	significantly [2] 51:9 117:8	155:23	178:20 178:23 179:2	21:15 21:15 24:7
Shaw [25] 2:6	Silk [2] 40:2 43:4	smart [1] 162:3	179:9 179:15 182:12	30:6 44:6 50:1
39:24 43:21 43:23	Silverman [2] 40:3	smart-aleck [1] 162:4	182:25 183:18 183:20	57:16 64:18 69:18
46:22 76:22 76:23	43:5	Smith [287] 2:3	184:1 184:6 184:9	93:2 100:9 102:15
77:12 77:16 77:22	similar [2] 22:14	3:3 3:13 4:5	184:14 184:25 185:12	115:8 195:17
78:3 78:11 89:20	66:19	4:7 5:19 6:22	185:17 185:20 185:24	sounded [1] 125:25
89:21 93:4 182:12	simple [4] 7:20	7:22 10:4 10:11	186:18 186:23 187:4	sounds [4] 4:5
182:13 190:7 190:8	127:7 168:14 203:1	10:15 11:25 12:8	187:10 188:8 189:1	19:22 20:2 20:7
190:20 190:25 191:1	simply [5] 50:10	12:12 14:17 14:23	189:8 189:15 189:19	south [3] 1:21
205:8 205:9 224:6	65:15 82:25 155:7	15:1 24:18 24:22	190:5 190:6 190:9	16:16 43:10
sheet [1] 5:8	221:24	25:15 25:20 25:23	190:16 190:21 191:6	southeast [1] 14:22
shelter [1] 21:15	since [24] 12:20	26:4 26:9 26:11	191:7 191:11 191:13	Southern [2] 119:6
shifts [7] 51:14	15:19 20:22 44:20	26:16 26:21 27:2	191:18 191:21 194:5	170:6
54:20 75:6 75:15	48:13 49:3 54:15	27:5 28:10 28:13	194:8 194:12 194:15	Southwest [2] 16:17
82:19 83:4 156:6	66:20 79:2 90:14	32:22 35:22 36:6	196:11 196:21 196:24	16:18
shop [1] 102:16	97:10 108:10 118:12	36:11 37:16 38:6	197:3 197:7 200:16	spa [112] 16:8 16:18
short [1] 87:24	136:2 136:2 148:17	38:12 38:16 38:21	200:21 202:3 202:7	16:19 88:2 89:12
shortage [2] 199:15	154:5 161:15 174:11	40:5 40:23 41:5	203:19 204:4 204:18	89:18 89:23 90:12
218:16	180:6 183:10 195:25	41:21 42:11 42:14	205:5 205:16 205:17	90:13 90:16 91:1
shorter [1] 153:16	198:3 199:12	45:2 45:3 45:20	205:20 205:24 213:2	91:6 91:7 91:14
should [47] 23:8	sink [1] 76:15	46:16 46:19 46:21	213:16 214:5 214:8	91:16 91:19 91:23
32:13 39:10 39:17	sister [1] 37:5	47:17 48:6 49:11	215:25 216:7 216:21	92:6 92:25 93:1
45:10 46:4 50:25	sit [7] 30:12 42:5	49:21 50:4 51:4	217:1 217:8 221:25	93:9 94:21 94:24
51:25 54:4 64:16	81:13 82:15 83:20	52:2 52:18 52:25	222:3 222:14 222:17	95:15 95:18 95:22
		53:3 53:15 53:22	222:19 222:21 223:2	96:4 96:6 96:18
		54:7 54:8 55:20	223:8 223:12 223:16	97:1 97:3 97:3
		56:11 56:18 59:25	224:10 224:14 224:25	
		60:23 60:24 61:4	225:4 225:16 225:23	
			226:2 226:5 226:7	
			226:12	
			snuck [1] 138:19	

97:10	97:11	97:12	Speculation [1]	47:23	15:23	66:8	98:6	221:16	summary [3]	41:2
97:15	97:16	97:18	speech [2]	172:3	106:12	130:6	130:7	stunk [1]	157:25	195:1 201:6
97:22	98:9	98:10	196:20		130:11	135:4	138:1	stupid [1]	42:7	summer [6]
98:11	98:13	98:15	spell [1]	37:17	147:3	186:12	199:22	subject [16]	7:24	13:18 13:19
98:19	99:2	99:10	spelled [1]	4:11	201:6	211:24	219:18	18:2 18:8	34:13	37:3 37:6
99:14	99:16	99:25	spent [1]	126:13	222:17	223:3	223:9	34:13 35:18	39:12	summertime [1]
100:4	100:11	100:14	spite [1]	158:6	223:11			39:18 40:20	41:1	22:20
100:16	100:18	103:1	spoke [9]	38:18	statements [8]	45:13		71:2 113:5	198:7	summing [1]
103:15	103:19	103:20	40:19 42:14	43:13	64:2 71:20	94:20		198:12 220:25	221:5	sums [1]
104:9	104:10	104:15	43:17 62:6	62:7	125:10 126:24	144:18		submersion [1]	99:6	sun [1]
104:20	104:22	105:5	64:14 132:9		160:8			submit [17]	10:5	23:6
105:13	105:18	105:22	spoken [8]	39:25	states [1]	141:22		14:12 18:5	18:11	Sunday [3]
106:9	106:11	106:18	40:2 40:6	40:8	statistic [1]	37:1		18:13 24:13	24:14	116:11 116:12
107:5	107:6	107:6	42:1 43:21	43:23	statistics [1]	124:17		24:15 25:1	47:3	support [1]
107:8	107:10	107:24	187:14		stay [3]	98:18 99:23		47:15 63:13	65:21	suppose [3]
108:9	108:13	108:20	sponsors [1]	104:16	116:10			125:19 171:22	186:16	28:6 29:21
108:23	108:25	109:12	square [19]	12:1	stayed [1]	78:23		224:11		supposed [4]
109:14	109:15	110:1	12:3 12:6	12:9	staying [2]	100:17		submittal [3]	8:6	50:19 50:21
110:3	110:7	110:9	97:24 110:18	110:20	113:15			10:16 14:19		sure [16]
110:10	110:12	110:14	110:23 111:2	111:4	stenographically [1]			10:17		10:4 16:5
110:17	111:2	111:16	114:17 114:19	116:18	227:8			submittals [2]	7:11	23:20 27:19
111:17	112:6	112:12	116:19 117:5	117:6	step [2]	37:6 128:23		10:17		67:22 108:16
112:15	112:16	112:25	117:11 147:20	147:25	stepped [2]	83:23		submitted [30]	7:17	116:5 116:18
113:15	113:25	114:14	staff [21]	14:13	88:24			8:7 8:11	8:20	130:4 150:4
114:20	115:2	116:14	25:2 52:15	52:20	stepping [1]	204:5		9:6 9:23	10:21	190:1 203:3
116:18	116:25	117:4	64:22 64:25	65:16	stick [1]	127:24		10:22 10:25	12:21	Surely [1]
147:20	147:25		65:24 65:25	66:5	still [8]	78:10 144:17		12:22 15:15	24:6	surprise [1]
space [24]	12:18		66:9 72:15	72:16	150:6 150:12	152:17		25:8 25:23	34:19	149:11
16:25 62:4	68:6		73:14 171:11	181:23	163:5 187:23	217:25		34:22 49:16	50:19	surprises [1]
188:16 193:15	193:19		207:2 223:22	223:25	stipulate [5]	95:13		50:25 51:1	65:18	4:20
203:14 211:16	212:21		224:23 225:2		95:16 96:2	114:17		76:14 78:6	143:23	Susie [4]
213:11 213:13	214:18		stamina [2]	76:24	178:2			145:21 190:14	192:10	104:8 105:11
214:25 215:13	215:17		76:25		stipulated [2]	130:25		201:17 224:9		swim [2]
216:18 217:1	217:4		stamp [1]	26:6	131:3			submitting [2]	49:7	76:15
217:6 217:10	218:3		stamped [3]	26:17	stipulating [1]	96:14		68:23		swimming [6]
218:18 219:6			26:19 26:19		stop [8]	50:6 58:16		148:16 177:23		21:4 21:13
spaces [19]	9:15		stand [5]	85:23	64:8 160:3	177:24		subsequent [3]	119:21	29:8 30:13
13:5 14:2	48:17		93:16 124:22	124:23	200:22 214:2	221:21		148:16 177:23		sworn [1]
48:18 48:19	49:1		125:2		stopped [1]	78:4		substance [4]	132:20	7:13
51:24 51:25	52:9		stand-alone [3]	11:21	straighten [1]	226:8		133:3 187:20	203:10	system [9]
52:12 138:15	175:2		11:23 12:4		strains [1]	81:4		substantial [5]	67:4	200:2 210:9
175:25 176:4	176:19		standard [1]	161:12	straws [1]	20:19		123:21 143:18	160:20	216:25 219:15
176:19 176:23	195:3		standards [21]	82:18	street [6]	33:3		160:21		220:13 221:1
Spanish [1]	32:19		119:4 127:1	129:3	33:4 33:6	40:11		substantive [1]	53:12	T [2]
spas [3]	101:15 101:24		129:4 130:1	131:2	42:9 44:7			success [1]	101:11	227:1
105:12			131:3 137:15	138:10	strenuously [1]	85:2		successful [1]	19:6	tables [1]
speak [10]	3:24		140:24 141:2	141:8	strict [2]	59:10 59:11		such [6]	34:4 57:19	tadpole [1]
38:23 42:16	42:20		144:17 154:2	154:7	strictly [2]	56:24		91:18 98:16	135:16	141:14
46:9 76:11	183:4		162:1 162:8	206:18	57:14			181:5		tail [1]
183:6 183:9	190:11		213:13 215:16		strongly [1]	71:18		sudden [1]	224:18	162:19
speaking [2]	38:16		standing [1]	138:17	structure [3]	9:1		suddenly [1]	25:7	taken [8]
109:20			standpoint [1]	93:13	9:21 11:19			sufficient [2]	143:12	5:11
speaks [2]	7:23		Stanley [2]	40:2	structures [1]	9:16		144:22		6:17 23:23
51:23			start [2]	40:24 177:24	studies [6]	15:13		suggest [6]	72:22	78:8
special [17]	14:4		started [2]	27:7	23:17 25:14	56:7		87:22 126:2	155:8	88:14 146:16
14:6 27:20	27:22		84:7		56:15 71:8			162:14 179:12		208:20
32:9 66:15	66:16		starting [1]	75:20	study [21]	15:25		suggested [1]	27:23	takes [1]
74:18 74:19	74:22		state [12]	36:8	16:4 17:17	17:22		suggesting [2]	165:5	83:6
123:17 182:17	201:14		45:4 47:5	61:21	18:23 24:24	25:4		203:13		taking [6]
201:20 201:22	219:24		90:6 103:10	112:22	25:12 55:14	56:3		suggestion [5]	51:22	46:1
220:10			141:23 169:17	209:8	60:15 62:3	68:5		101:20 187:12	187:18	52:20 147:1
specific [5]	87:2		227:3 227:16		70:24 120:7	120:8		188:3		151:24 175:2
142:12 143:19	174:6		stated [7]	7:8	193:14 193:19	201:11		suggests [1]	221:17	talk [10]
174:7			37:11 39:8	90:3	201:14 201:16			suite [1]	3:18	3:20 20:8
specifically [11]			90:6 144:15	207:24	stuff [6]	72:6 72:11		suites [4]	11:7	33:12 42:4
25:17 63:8	125:9		statement [20]	6:20	72:12 72:17	90:19		25:12 111:25	213:23	161:5 170:4
130:13 130:13	134:13							sum [1]	203:10	212:20 213:23
135:13 136:7	137:24							summarizing [1]		talked [4]
141:11 183:5								45:12		39:9 39:20
specifics [1]	127:2									41:8
specter [1]	49:4									talking [19]

target [3]	85:6	127:25	128:13	128:21	165:16	165:17	167:12	223:18	223:22	1888:15	191:10	191:13
135:22	136:1	130:15	132:14	132:16	169:18	170:8		times [9]	8:3	192:13	193:14	193:19
task [1]	83:6	132:18	132:21	132:23	thirdly [1]	85:5		15:21	49:6	196:6	198:14	199:13
technical [1]	171:11	136:13	137:6	137:7	thorough [1]	171:11		92:5	93:22	199:25	201:15	202:24
technique [1]	115:7	137:12	138:7	138:9	though [6]	3:11		175:24	175:24	203:5	203:11	206:17
telephone [3]	169:23	140:19	140:20	143:12	30:10	107:2	167:8	Tipton [8]	64:2	211:10	211:14	211:23
170:1	170:17	144:8	148:2	152:21	179:3	208:9		64:9	79:9	212:2	213:10	213:12
television [1]	194:17	154:22	155:14	156:19	thought [17]	13:14		122:24	126:19	214:15	215:11	215:15
telling [3]	58:17	157:22	157:25	159:4	19:3	52:7	56:9	180:10		216:16	218:1	218:11
87:5	214:10	159:5	163:2	163:25	60:25	98:1	106:17	Tipton's [4]	79:11	218:15	219:13	219:22
Tem [1]	2:7	164:14	164:22	168:3	121:4	126:4	128:15	80:21	124:5	219:25	220:2	226:3
ten [6]	88:21	168:19	175:23	179:21	143:2	143:7	187:17	today [35]	3:22	town's [4]	64:17	216:24
99:24	111:19	180:9	180:11	184:10	188:12	188:12	188:13	6:21	7:9	64:17	215:7	216:24
148:5		184:11	188:20	190:15	197:1			35:2	35:7	track [2]	18:17	111:4
ten-day [2]	106:20	192:8	192:9	192:15	thousands [1]	101:12		46:11	46:12	traffic [103]	3:18	
111:18		193:1	193:3	193:4	three [14]	86:5		47:4	48:1	18:17	18:19	18:20
ten-minute [1]	88:13	193:22	194:21	197:23	86:6	86:10	86:16	49:9	50:9	36:24	37:8	37:24
tend [1]	74:4	198:10	199:3	199:10	152:15	154:22	157:15	55:15	129:25	55:14	56:3	56:6
tender [5]	122:11	199:18	200:3	201:3	158:6	173:16	181:12	148:2	152:7	60:15	60:16	61:23
191:9	194:3	207:11	208:7	208:8	183:7	186:4	201:7	162:7	162:8	62:4	68:4	68:6
222:12		208:10	208:13	215:2	224:21			162:8	162:9	80:4	84:19	86:5
tendered [2]	120:24	215:19	223:5	223:15	threshold [10]	54:25		174:12	179:8	93:2	93:9	93:10
121:2		223:21			72:22	74:21	75:3	206:7	207:17	112:14	119:20	119:22
tennis [13]	6:14	text [2]	206:10	206:14	75:4	85:3	156:4	223:23		120:8	120:8	123:23
8:8	16:8	thank [55]	5:18		156:20	157:9	181:20	today's [4]	34:16	124:6	124:7	126:12
20:21	20:23	5:19	6:22	11:2	through [13]	46:7		35:4	35:14	126:16	126:20	127:1
22:16	117:3	11:23	13:20	14:23	75:4	141:5	150:15	together [3]	81:2	127:3	127:3	127:8
149:24	176:7	24:22	27:5	28:12	151:6	155:9	162:9	206:3	210:7	127:9	127:13	129:3
term [9]	98:10	28:13	32:23	35:21	172:24	182:15	190:15	token [1]	172:15	130:1	130:16	130:18
99:5	104:9	36:6	37:16	38:21	194:							

truly [2] 81:16 81:18	172:2 197:12 201:6	164:4 164:5 182:15	101:2 102:14 189:8	85:16 90:25 99:11
Trump [22] 3:8	206:10	197:11 201:14 210:2	214:22	110:5 111:19 125:17
3:9 3:12 3:17	understand [42] 5:6	210:6 212:19	waited [1] 189:14	210:15 221:2
3:20 4:16 37:13	5:7 5:10 22:24	used [19] 6:2	waiting [2] 88:25	whatsoever [1] 48:14
40:4 41:25 43:12	26:21 49:17 54:12	14:5 16:6 16:25	89:13	Wheat [1] 209:6
43:17 71:24 72:19	55:7 63:3 70:4	19:19 21:4 21:12	waiver [1] 134:19	Whenever [1] 24:5
107:17 108:4 108:9	72:1 74:1 79:3	28:4 29:11 36:21	walk [3] 30:7 42:9	whether [33] 5:16
108:10 109:8 109:25	79:25 83:25 96:11	78:17 78:19 78:20	101:3	12:21 12:22 35:12
115:24 123:8 198:13	105:14 105:24 108:6	110:10 138:12 141:19	walked [1] 202:18	39:10 52:16 54:4
Trump's [1] 158:7	113:6 113:9 113:20	167:11 169:1 184:17	walking [2] 40:11	58:5 58:10 58:21
trumped-up [1] 4:6	115:6 128:2 128:7	uses [12] 15:13 144:1	44:7	63:12 65:22 65:23
Trust [14] 6:18	128:10 132:12 164:12	147:19 167:3 195:2	wall [2] 34:6 34:10	70:1 72:24 75:12
7:11 7:18 8:15	164:12 169:2 169:3	211:15 213:24 215:12	wanting [1] 68:17	87:2 120:18 120:19
8:21 10:23 11:9	172:23 173:14 176:2	216:16 218:2 220:8	wants [11] 3:17	130:14 133:21 151:19
11:12 12:21 15:7	183:18 185:14 203:11	220:25	30:7 36:17 38:23	152:5 152:18 154:23
24:14 47:8 48:21	207:13 214:23 218:5	using [5] 30:25	61:9 71:23 107:17	164:13 164:14 174:20
198:25	223:21 225:25	37:11 206:20 214:16	107:18 110:1 125:18	177:10 178:2 185:9
truth [2] 162:24 162:25	understanding [8] 39:2 60:2 92:16	216:5	157:16	204:24 223:24
try [8] 44:4 73:20	113:13 148:18 178:11	utilize [1] 114:24	water [2] 21:13	while [4] 36:2
74:10 81:13 82:2	182:14 183:14	valid [3] 65:19 204:13	29:15	89:13 109:19 221:8
105:16 115:21 128:11	understands [1] 94:7	204:16	way [28] 7:13 10:21	whispered [1] 138:19
trying [27] 50:7	understood [6] 55:9	validation [1] 172:24	22:8 22:25 23:1	whispering [1] 139:16
63:24 73:11 81:13	59:23 131:11 131:12	validity [5] 119:19	23:7 34:16 36:22	whoever [4] 56:22
81:15 106:14 140:18	164:20 172:16	119:21 137:16 166:22	50:3 66:10 73:25	75:7 75:15 90:25
140:22 150:13 150:14	unfair [3] 64:20	199:21	82:22 87:6 94:23	whole [5] 36:23
150:18 150:21 151:3	72:7 72:8	variation [1] 128:17	109:13 111:11 115:14	37:2 43:1 160:25
155:7 155:22 156:17	unfortunate [1] 73:25	various [2] 12:23	120:2 128:24 134:21	213:25
163:4 171:2 181:22	Unfortunately [1] 207:19	209:5	151:17 152:8 156:22	wholly [1] 149:1
182:15 200:11 212:9	units [1] 148:5	venture [2] 5:3	162:9 167:13 173:5	whom [3] 13:7
212:10 213:18 222:6	unknown [1] 47:23	5:5	217:23 222:2	39:11 79:18
225:14 226:8	unless [5] 52:12	veracity [1] 168:3	ways [1] 182:21	Whose [2] 26:9
tunnel [1] 23:7	60:7 84:20 102:15	verb [1] 147:13	weak [1] 158:1	92:14
turn [3] 109:25 133:6	156:10	verbally [1] 8:17	week [8] 43:18 99:22	wife [2] 40:8 101:16
133:15	unlimited [9] 134:18	verified [1] 161:2	99:25 106:21 113:16	Wilkinson [1] 209:6
turned [1] 141:15	140:2 140:6 141:16	verifying [1] 149:21	116:9 116:11 207:23	will [58] 5:22 7:25
twice [3] 37:23	161:16 174:2	versus [2] 83:8	weeks [9] 136:21	8:17 10:1 13:24
117:10 117:11	until [7] 25:3 78:22	83:11	158:6 170:2 173:15	20:20 30:22 30:22
two [51] 3:16 4:22	85:20 118:20 146:13	viable [1] 65:19	178:13 178:17 181:16	31:1 35:17 38:23
6:8 6:9 8:4	166:16 213:22	view [1] 46:2	199:12 201:13	38:24 39:3 39:19
14:10 28:15 43:14	unusable [1] 149:25	VII [1] 1:12	Weidner [21] 126:21	48:20 50:20 51:17
45:5 47:12 60:16	unused [2] 144:11	violate [1] 190:2	126:23 127:17 133:5	54:12 55:10 57:25
64:12 67:4 69:11	upon [17] 37:14	violative [2] 51:11	165:2 165:3 169:14	64:8 66:23 67:1
73:14 74:6 77:8	39:3 39:24 40:1	82:10	169:15 169:18 169:21	70:24 82:25 83:13
86:14 87:23 93:18	46:11 66:14 66:15	virtue [1] 74:23	169:25 170:15 170:16	83:16 88:8 89:3
95:8 98:21 101:24	135:2 135:2 135:4	visited [1] 112:22	170:21 170:25 171:4	89:14 89:23 93:22
102:20 113:12 113:14	135:25 148:9 148:12	visiting [1] 37:5	171:8 171:16 173:17	97:18 97:25 99:15
113:15 113:16 113:18	158:4 158:11 161:1	visits [2] 113:12	178:8 178:11	102:10 103:13 103:19
119:5 143:24 152:15	181:9	113:14	Weidner's [1] 178:16	106:2 113:4 115:7
155:1 155:1 165:22	urban [1] 209:1	voiced [1] 45:6	weight [1] 188:1	116:14 122:1 122:11
173:15 174:3 175:1	urge [1] 71:14	voir [7] 49:18 120:17	Weisburg [3] 169:22	128:24 137:1 143:1
178:13 180:13 181:16	usage [4] 19:8	121:1 150:13 150:14	170:4 170:18	150:17 152:21 171:24
183:7 183:24 201:13	19:24 110:16 113:4	152:16 194:2	were't [5] 17:14	173:1 173:5 186:15
212:15 212:17 212:22	use [46] 11:13 15:25	VOLUME [1] 1:12	123:14 149:20 208:9	187:4 188:6 196:24
214:1 219:9 224:4	16:3 17:5 17:7	vote [10] 44:8 46:4	220:4	205:21 207:13
226:4	17:16 17:22 18:15	46:10 179:17 182:7	Wes [3] 88:17 191:24	willing [4] 60:19
tying [1] 174:22	18:17 18:23 19:7	182:10 183:1 189:11	192:4	60:20 95:12 159:4
type [6] 15:13 16:10	19:12 21:16 21:18	189:15 190:17	Wesley [2] 62:5	wind [1] 68:24
101:21 106:9 115:7	23:17 29:15 29:21	voted [2] 185:24	68:7	wisdom [1] 221:17
159:12	29:24 30:18 30:19	189:16	West [7] 6:3 6:4	wish [8] 52:24 60:12
Typical [1] 79:15	31:1 31:20 31:21	voter [1] 4:12	209:1 210:3 210:8	85:22 101:11 119:12
typically [1] 166:16	32:13 32:18 83:5	voting [2] 44:10	210:10 210:11	219:4 224:24 225:3
typo [1] 139:24	98:14 112:25 113:24	189:24	what's [13] 21:8	wished [1] 157:7
umbrella [1] 217:4	115:9 130:23 148:13	W [2] 227:6 227:15	32:6 36:3 38:4	wishes [1] 152:1
unable [1] 103:18	148:15 148:17 149:5	wait [9] 23:6 60:24	44:14 50:19 54:2	withdraw [7] 38:14
under [17] 10:5	149:5 149:16 149:23	75:24 89:7 92:11	58:3 61:6 110:6	47:13 66:23 96:12
23:7 39:7 42:16			116:1 117:7 156:21	109:23 147:9 221:14
55:22 66:18 66:19			whatever [12] 19:19	withdrawing [1] 179:13
74:10 122:6 147:18			40:12 67:12 73:10	
149:16 150:19 156:9				

withdrawn [6]	8:12	45:10	48:1	97:6	96:21	129:16	192:1
8:15	8:16	11:5	11:5	170:18	202:24	208:23	209:18
11:5	74:7	110:6	110:6	210:22	210:22	210:19	210:22
withdraws [2]	47:5	wrong [7]	110:8	110:21	120:25	zone [2]	13:13
47:9		156:22	164:21	206:8		14:19	
withdrew [1]	67:14	Wyett [102]	2:5			zoning [11]	2:11
within [6]	16:21	4:5	12:13	12:19		2:13	5:1
43:17	48:14	13:21	14:6	14:9		5:15	5:15
108:25	128:17	14:15	25:11	25:17		6:11	175:3
without [10]	42:9	25:21	37:20	38:2		182:18	198:7
48:21	54:1	38:10	38:14	40:15		220:16	199:7
75:1	104:15	40:24	40:25	42:13			
181:22	181:23	45:2	45:3	45:4			
witness [29]	7:5	46:15	46:22	60:23			
7:7	7:19	61:2	62:15	67:3			
38:8	38:13	67:12	67:16	67:19			
38:18	86:23	68:9	68:22	76:21			
90:2	90:9	80:16	87:17	89:22			
95:4	125:23	113:2	113:9	113:14			
152:2	152:23	113:20	113:24	114:2			
153:8	160:24	114:6	118:16	152:13			
162:22	163:7	161:14	162:2	162:21			
186:9	191:23	162:24	163:4	163:13			
197:4		163:23	169:13	169:20			
witnesses [14]	56:15	169:24	170:11	170:14			
71:7	79:22	170:15	170:19	170:22			
85:13	93:18	170:24	171:2	171:5			
152:3	155:1	171:14	172:4	173:12			
175:24	180:2	173:13	173:14	173:21			
183:5		173:25	175:21	176:2			
Witt [1]	139:5	176:17	177:3	177:7			
women [1]	116:12	177:11	177:19	178:1			
won't [7]	3:23	178:15	178:16	178:22			
34:12	40:13	179:1	179:7	189:4			
81:18	83:15	189:12	189:18	189:20			
wondering [2]	12:22	189:23	189:24	191:4			
179:20		191:5	205:12	205:13			
word [11]	17:12	205:19	222:17	222:20			
19:18	24:25	223:3	224:3	225:7			
32:14	32:18	225:8	226:5				
104:10	197:21	year [12]	8:9	8:11			
218:4		10:16	20:22	36:21			
words [13]	29:23	37:2	69:10	113:12			
32:10	41:7	113:14	113:19	166:17			
91:19	97:12	202:2					
109:7	109:7	Year's [1]	118:20				
133:14	164:5	years [12]	4:13				
work [10]	7:3	6:6	6:8	6:9			
96:24	96:25	8:4	32:3	69:11			
135:25	158:17	101:16	102:4	116:10			
208:21	209:10	182:13	209:2				
worked [2]	208:25	years' [1]	209:9				
209:4		yesterday [29]	36:24				
working [4]	37:25	37:10	55:16	77:10			
88:21	210:6	77:15	77:16	77:17			
world [8]	31:25	78:22	80:7	81:1			
32:9	52:14	86:6	92:20	97:9			
92:7	98:12	123:3	131:24	132:7			
142:17		179:19	179:21	180:4			
worth [1]	20:1	180:5	180:8	184:4			
wouldn't [17]	3:14	184:10	184:19	184:22			
29:4	30:14	185:2	185:22	186:7			
51:19	82:21	186:14					
107:1	108:23	yesterday's [3]	80:23				
131:4	134:23	81:20	81:24				
164:4	194:18	yet [7]	11:6	86:2			
221:21		103:16	103:25	104:3			
wrap [1]	217:20	120:24	151:1				
written [6]	8:18	yours [3]	137:8				
		209:25	221:13				
		yourself [8]	54:9				

Page 1

TOWN OF PALM BEACH
TOWN COUNCIL MEETING

Volume VIII

360 South County Road
Palm Beach, FL 33408
Friday, October 11, 1996
6:00 - 8:30 p.m.**CERTIFIED
COPY**

Page 2

APPEARANCES:

Lesly Smith, President
 Paul Ilyinsky, Mayor
 Allen Wyett, Councilman.
 Leslie Shaw, Councilman
 Jack McDonald, Councilman
 Samuel McClendon, Councilman
 Robert Doney, Town Manager.
 Robert Moore, Director, Planning,
 Zoning & Building
 John Randolph, City Attorney

*** Notes ***

Page 3

(No Hiatus.)

MR. NATALE: Madam President, I spoke to the other counsel that have -- who have three copies, three lawyers, they each have three, and I have asked them if they would make available those copies.

However, they have all informed me that they have made notes in them and that as a result of the fact that they made notes in them, that think want to retain them. I would ask your indulgence that -- I believe there is one copy with the Town Clerk --

MRS. SMITH: Go ahead. It was Mr. Wyett mentioned that he wanted copies of the reports. I understand no one wants to give up their copy.

MR. WYETT: Mr. Natale, are you ready to answer a question?

MR. NATALE: We now have another copy for you.

MR. WYETT: Mr. Natale, are you ready to answer a question?

MR. NATALE: Ready.

MR. WYETT: I note on Thursday and again Friday Mr. Trump is not present. I take note

Page 4

on September 16 he made a major issue he did not want this, to continue on to Friday, September 17, because he couldn't be present. It took three and a half weeks to plan his trips and again he is not present.

I am asking you, is Mr. Trump afraid to be present and answer the question of discrimination that he has raised in this town?

MR. GREEN: I will answer that, sir, in a few moments.

MR. WYETT: Yes or no?

MR. NATALE: My understanding is that he is absolutely not. However, I have to tell you, quite honestly, I haven't spoken directly to him, nor have I asked him directly that question, sir.

MR. WYETT: I was under the impression you were summarizing and now I understand one of your associate attorneys has a statement to make?

MR. NATALE: What I was going to tell you is that I am not making the summation; that other counsel will be making the summation on behalf of the applicant.

*** Notes ***

Page 5

Page 6

1 MRS. SMITH: What are you making,
2 Mr. Natale?

3 MR. NATALE: My hopefully graceful exit.

4 MRS. SMITH: Is that a legal or social
5 term?

6 MR. NATALE: I am trying to be polite and
7 I would like to thank you all for allowing me
8 to practice before you and I will now defer to
9 my co-counsel. Thank you very much.

10 SPEAKER: I am James Green and I
11 represent the Mar-A-Lago Club. What I am
12 going to talk about in the summation is an
13 issue that has troubled members of this
14 Council, troubled members of this audience,
15 and troubled this entire community.

16 This is an issue that none of us want to
17 talk about. None of us want to think about.
18 None of us want to accept as a reality.

19 I was a partner in the West Palm Beach
20 law firm of Green, Isenberg & Cohen from 1979
21 until 1991 when Mr. Cohen became a judge.
22 During that time I litigated two fee cases
23 against the Town of Palm Beach. Both of my
24 partners were Jewish. I am not Jewish.

25 My grandfather and my great grandfather

1 belonged to restricted clubs. When I filed
2 the DeWeis (Phonetic) versus Town of Palm
3 Beach case which challenged the shirtless
4 jogging ordinance in the Town of Palm Beach,
5 my client was told by a resident of the Town
6 of Palm Beach, not knowing he was Jewish, that
7 the purpose of the ordinance was to keep
8 hairy-chested Jews from running in this Town.

9 MAYOR ILYINSKY: Mr. Randolph, do we have
10 to listen to this? Do we have to listen to
11 this nonsense?

12 I spent 30 years in the Marine Corps,
13 sir, and served with Jewish officers and
14 Christian officers. I am not anti-Semitic and
15 to listen to this trash coming from you and
16 Mr. Rampell, frankly, is going to make me
17 throw-up.

18 MR. GREEN: Do so, sir.

19 MAYOR ILYINSKY: I may do so on you.

20 MR. GREEN: Try it.

21 MAYOR ILYINSKY: I want to be put on
22 record --

23 MR. RANDOLPH: This is not testimony. It
24 is not fact. It is argument and I guess one
25 of the allegations that has been made is that

*** Notes ***

Page 7

Page 8

1 there is somehow discrimination involved
2 against the Mar-A-Lago Club. I assume that's
3 what this argument is based on.

4 But, it seems to me that the argument
5 should be confined to the summarizing of the
6 testimony that's come before this Council,
7 rather than relating facts which have not come
8 before this Council.

9 SPEAKER: The hostility and invective
10 directed towards my client and towards
11 Mr. Rampell in particular, either relate to
12 one of two things. And I need to confront, as
13 I would before a jury, prejudices,
14 hostilities, either conscious or unconscious.

15 MR. RANDOLPH: Why wouldn't you confine
16 your remarks, as a judge would make you,
17 confine your remarks to the testimony that has
18 come before the finder of fact, rather than
19 raise new hearsay testimony in order to
20 buttress your argument? I don't understand
21 that and I think a judge would ask you that
22 question.

23 MR. GREEN: I can speak from common
24 experience as a lawyer and I can speak from
25 common community experience as a lawyer to a

1 jury and that is what I am attempting to do
2 here, sir.

3 MR. RANDOLPH: Just as long as this
4 Council understands that this is argument and
5 it is in no way fact, and I don't believe that
6 it would be reviewed by anyone as fact. You
7 can do what you want, Council, in regard to
8 hearing it as argument.

9 MR. GREEN: A couple of years later I
10 filed the case of Wallace versus Town of Palm
11 Beach. The case of Wallace versus Town of
12 Palm Beach elicited similar ugliness. That
13 ugliness was sent to me in the form of
14 letters; was called to my office. And it
15 called in to question some serious and painful
16 community attitudes.

17 These painful community attitudes are not
18 limited to this Town. They are not limited to
19 this time. They have occurred for years and
20 not only in this community, but in other
21 communities.

22 Many people, many of my friends who live
23 in this Town, have urged me not to take this
24 case, not to discuss these issues. I've seen
25 much progress over the last 20 years and hear

*** Notes ***

Page 9

1 much fewer anti-Semitic comments and hear much
2 fewer racist comments, not just in this
3 community, but throughout Palm Beach County,
4 and that is progress.

5 And Ms. Smith and Mayor Ilyinsky, I
6 apologize if what I am saying is going to hurt
7 you.

8 MAYOR ILYINSKY: It is. It offends me
9 deeply.

10 MR. GREEN: I don't contend, sir, that
11 you are a racist or anti-Semite. Nor do I
12 contend that of you, President Smith.
13 However, I need to share with you some other
14 experiences.

15 Mr. Lipman, who has spent years in
16 Mississippi with the Lawyers Committee For
17 Civil Rights Under Law and the NAACP Defense
18 Fund can share similar experiences about
19 walking into courthouses in the south where
20 Confederate flags were flying and murals of
21 scenes depicting slavery, seeking to get fair
22 hearings before and on behalf of African
23 American plaintiffs.

24 When I walk into this room, when I hear
25 the invective that's directed to my client and

Page 10

1 directed against Mr. Rampell, I wonder whether
2 that hostility is personal, whether it is due
3 to some immutable characteristic or whether it
4 is just out right hostility to Donald Trump.
5 I hope it is none of those. But I need to
6 address this hostility so that my client can
7 get a fair shake.

8 I listened to Mr. Chopin yesterday and he
9 is a very skilled lawyer, an excellent
10 cross-examiner, and I heard him say, this is
11 on page 29 of volume 5 of yesterday's
12 transcript, referring to Mr. Trump, "You don't
13 know what he wants to do with this property.
14 He just doesn't have enough faith in you to
15 tell you what it is and to justify where he
16 wants to do it and how it fits in the
17 neighborhood. I don't think you can do it.
18 So my, if I were voting, I would tell him to
19 go do what he should have done like everybody
20 else. I would scold him for accusing me of
21 anti-Semitism and then I would look at exactly
22 what he wants to do."

23 He then goes on to say on page 38, "I
24 want you to understand something in this case;
25 I have a bigger mission involved and that's to

*** Notes ***

Page 11

1 deal with Mr. Trump's allegations of
2 anti-Semitism. We have to stand up, we've got
3 to be counted and we've got to confront that
4 issue and no one has done it, so that's part
5 of my mission."

6 His client, the Preservation Foundation
7 of Palm Beach, took out a -- I believe it is a
8 half page ad in the shiny sheet indicating
9 that Mr. Trump had not offered "A single
10 example of how -- through whom any
11 discrimination occurred. If discrimination
12 charges are true, the Council should rectify
13 what is unconscionable by any standard."

14 Mr. Rampell has been asked to come
15 forward with evidence. He's wanted to do so
16 for some time. He's wanted to come forward,
17 but I've advised him not to, and unfortunately
18 Mr. Rampell has taken, I think, unfair
19 criticism.

20 We have come forward and Mr. Lipman will
21 explain to you the fundamental problem facing
22 this Council. It is a difficult question.

23 MR. RANDOLPH: Can I interrupt a minute.
24 You said Mr. Lipman will explain. I
25 understand that Mr. Natale yielded his

Page 12

1 summation to you and that you were giving the
2 summation.

3 Are there going to be others that are
4 going to participate in the summation here?

5 MR. GREEN: Yes, sir. Mr. Lipman will
6 assist me with one point and it will be fairly
7 brief, but I want to address -- he can address
8 it more eloquently than I can.

9 When Mr. Chopin's client suggested that
10 if discrimination charges are true that the
11 Council should rectify what is unconscionable
12 by any standard, I took him at his word.

13 What we are going to ask that you do is
14 grant the application for Special Exception.
15 We don't want to litigate. We feel that we've
16 put on a compelling case that this club should
17 be treated as other clubs. We are not asking
18 for any more or any less.

19 One thing that this Council can do, and
20 Mr. Lipman will explain the connection and
21 your power to do so, is adopt an
22 antidiscrimination ordinance.

23 Seven years ago the United States Supreme
24 Court, and I will hand out copies of this
25 decision, upheld an ordinance that barred

*** Notes ***

Page 13

1 discrimination by certain clubs. That case is
 2 New York State Club Association Inc. versus
 3 City of New York.
 4 MRS. SMITH: Mr. Green, do you want to use
 5 the portable microphone. I am afraid we're not
 6 getting you if you do both. Please.
 7 MR. GREEN: If this Council is serious
 8 about addressing discrimination and
 9 discrimination in private clubs, then we would
 10 ask at the very least that you adopt an
 11 ordinance that was held to be constitutional
 12 by the United States Supreme Court seven years
 13 ago.
 14 You heard some brief testimony about the
 15 connection between the meeting the Town's open
 16 space requirement and the private clubs. We
 17 contend that that is sufficient to trigger
 18 enactment and application of an ordinance
 19 along the lines that the United States Supreme
 20 Court sanctioned seven years ago.
 21 At this time I would like to thank you
 22 for the opportunity to address you. I
 23 apologize, Mayor Ilyinsky, if I have offended
 24 you personally. I did not mean to offend you
 25 personally.

Page 14

1 MAYOR ILYINSKY: You did. You insulted
 2 every person on this earth that tried to do
 3 something. All you are is a rabble-rouser. I
 4 indeed resent it.
 5 MR. GREEN: Then I ask that you recuse
 6 yourself.
 7 MAYOR ILYINSKY: I don't have to recuse
 8 myself. I am Mayor of this Town. I will stay
 9 exactly as I want to.
 10 MR. GREEN: Then I ask you to recuse
 11 yourself.
 12 MR. MOORE: He doesn't have a vote.
 13 MR. GREEN: My understanding is that you
 14 will participate in the vote in the discussion
 15 in the executive session, based on your
 16 recently professed comment.
 17 MAYOR ILYINSKY: There is a lot of
 18 Christians I can't stand either.
 19 MR. GREEN: Mr. Lipman was co-counsel
 20 with me in the Wallace versus Town of Palm
 21 Beach case, the worker identification
 22 challenge.
 23 MR. LIPMAN: With the Council's
 24 permission and Madam President --
 25 MRS. SMITH: For the record, state your

*** Notes ***

Page 15

1 name.
 2 MR. LIPMAN: L-I-P-M-A-N, I am an
 3 attorney in Miami, Florida. And along with
 4 Mr. Green and other counsel I represent
 5 Mar-A-Lago.
 6 I would like to pick up where Mr. Green,
 7 my colleague and friend, has left us off. Let
 8 me state, Mr. Randolph, relating to the
 9 comment that you made that my comments
 10 specifically relate to record evidence that is
 11 part of the proceeding and specifically the
 12 record evidence is contained in the report
 13 fashioned by the planner expert that has
 14 previously testified this afternoon,
 15 Mr. Blackman.
 16 Mr. Green has indicated that we have
 17 presented evidence in the record and I would
 18 like to share it with -- at this late hour and
 19 I will be brief, with counsel, relating to
 20 racial and ethnic discriminatory practices
 21 that are maintained in this Town and are
 22 continued and are involved insofar as the Town
 23 of Palm Beach. I have two hand-outs and I can
 24 do this very briefly. May I?
 25 MRS. SMITH: Mr. Natale I believe will

Page 16

1 hand them out for you.
 2 MR. CHOPIN: I would like to be heard, if
 3 I might.
 4 I don't know what the hand-outs are, but
 5 this is supposed to be closing argument and if
 6 this is somehow supposed to be something else
 7 that goes in the record after they are
 8 resting, and now they are making argument. I
 9 would like somebody to identify what this is.
 10 MRS. SMITH: If you identify it for the
 11 counsel.
 12 MR. LIPMAN: As often has happened in
 13 this proceeding, had I been given an
 14 opportunity to explain, I would have told you
 15 that these hand-outs are nothing more than
 16 portions of Mr. Blackman's exhibit which has
 17 already been admitted into evidence, but which
 18 is rather lengthy, I think he indicated 85
 19 pages. And I copied two pages on summary and
 20 four or five pages from your Comprehensive
 21 Plan and I've done it so that it is easily
 22 accessible to you and I've yellow highlighted
 23 it.
 24 So Mr. Ilyinsky and Mr. Wyett, I can
 25 specifically without --I can show you

*** Notes ***

Page 17

specifically what the problem is at hand and why the Town perpetuates discrimination.

MR. WYETT: As a Jew having lived 63 years on this earth and having lived and traveled throughout the world, I know what discrimination is. I have experienced discrimination. And I don't find it pertinent for you to be claiming discrimination before this Council, which has no record of discrimination.

MR. LIPMAN: Let me show you, because you have it in your left hand.

Our position is simple and it is in our summary and I will then illustrate exactly the evidentiary basis for these assertions. I am reading from the summary: "The Town of Palm Beach improperly and illegally uses private discriminatory clubs to meet public recreation and open space requirements. Under the laws of the State of Florida and the Town of Palm Beach, 10 acres of recreation and open space must be provided within the Town's boundaries for ever 1,000 people based on peak seasonal population. The Town illegally and improperly includes private discriminatory clubs to meet

Page 18

minimum public recreation and open space requirements. Therefore the Town participates in discrimination."

MR. SHAW: May I ask you, how does the effect, the alleged effect of this affect the outcome of a zoning request? Assuming we say you walk away, assuming we say no, you file this? What does one have to do with the other?

If you feel there is something that's improper going on in the Town of Palm Beach, it doesn't change in my mind by what the applicant has asked today.

Regardless of how I feel about it, I would like you to tell me how this connects, not the decision. That's what I don't understand.

MR. LIPMAN: Our position has always been -- I wasn't here in September, but you've heard it for the past two days that Mr. Trump's club is being treated differently than the other private clubs. It's been set forth through charts, it's been set forth through testimony. It's been set forth in argument.

*** Notes ***

Page 19

And I wanted to first establish the fact, particularly in light of at least two Councilmen's comments, that race and ethnic discrimination does exist in the Town of Palm Beach.

MR. SHAW: How does including or excluding private clubs, the land, from the recreational and open space requirements, affect this application? I mean, if you take the position that you are correct, does that mean anything as far as the granting of this application?

MR. LIPMAN: I think it sheds light -- I believe it sheds light on the motive involving and as a basis for the attacks upon Mr. Trump's counsel and the positions taken by the applicant during these proceedings.

MR. SHAW: If we took the position we approve the zoning regulation, you are telling me none of this is applicable?

MR. LIPMAN: No. This is applicable as well.

MR. SHAW: Therefore this has nothing to do with the application. This may be something you feel this, but I don't understand how our vote is going to change

Page 20

your claim that the use of private discriminatory clubs used to meet open space requirements affects this zoning application.

MR. LIPMAN: Our position is that it serves as an underpinning for the basis for opposition to Mr. Trump's application.

MR. SHAW: You haven't heard our decision, so how do you know what we're going to do?

MR. LIPMAN: We haven't heard your decision. I am strictly limited to the opposition that you've heard, not your decision.

MR. MCLENDON: Would you be more elaborate on what we did to Mr. Rampell?

MRS. SMITH: Let him finish his statement. We don't want to interrupt your statement, so please go ahead and finish your statement and then we'll -- the Council will have the opportunity to question you.

MR. LIPMAN: Step one; a Comprehensive Plan is required by Florida law. The Comprehensive Plan, which I understand was promulgated in 1990, addresses various matters, including planning for recreation and open space.

*** Notes ***

Page 21

1 Step two; as I just indicated, this Town
2 has adopted a Comprehensive Plan.

3 Step three; the plan cites certain
4 standards for recreational facilities
5 developed by the National Park and Recreation
6 Association, which requires 10 acres of park
7 and recreational public open space per one
8 thousand residents. And that's contained in
9 the second hand-out at page Roman numeral 5-1,
10 page 6, and I've yellow highlighted it for the
11 Council's convenience.

12 Step four; the Town has adopted these
13 provisions of the National Park and Recreation
14 Facilities for delivery of recreational
15 facilities and we know that, it appears in
16 policy 3.1 at page Roman numeral 6-9, in which
17 the policy of the Town of Palm Beach states
18 the Town of Palm Beach adopts a minimum
19 recreation standard of 10 acres per one
20 thousand population.

21 Step five; it has been estimated that the
22 seasonal population in 1996 is projected for
23 this Town at 22,120, so more than 22,000
24 residents, which would require, based on the
25 standards which the Town adopted, 221.2 acres

Page 22

1 of recreational facilities.

2 Now, if you follow the table which is
3 attached to the summary, Mr. Ilyinsky if you
4 care to and Mr. Wyett, we urge you to look at
5 it. We've accounted for, in an analytical
6 analysis manner, the total acreage of all park
7 and recreational facilities.

8 As you can see, first in the top series
9 of lines --

10 MRS. SMITH: Mr. Lipman, can you stop for
11 a minute and tell me which stack of papers you
12 are working from.

13 MR. LIPMAN: The attached sheet of the
14 summary.

15 MRS. SMITH: This one?

16 MR. LIPMAN: The second page of the
17 summary.

18 MRS. SMITH: Thank you.

19 MR. LIPMAN: Again, this is part of
20 Mr. Blackman's prepared submission which
21 appears as table one in his materials.

22 What I've done is, just to facilitate
23 this and to do it briefly, I've taken the
24 literal two pages from the notebook and
25 provided that to the Council.

*** Notes ***

Page 23

1 As you can see, Mr. Blackman has outlined
2 the parks, he has adjusted acreage by
3 discounting or deleting the Lake Worth Casino,
4 which based upon his research is not within
5 the Town of Palm Beach. Which thus we arrive
6 at the actual public acreage.

7 We've identified the actual public
8 acreage in the context of the Everglades Club,
9 Sailfish Club, Bath and Tennis Club. We've
10 then provided a later category for additional
11 facilities. And, as you can see, the total
12 actual public acreage, if you count all those
13 facilities, is 201 acres per person. And, if
14 you deduct the private clubs, it is
15 approximately 165 acres per person, which
16 based on the Town standards makes it deficient
17 insofar as complying with the recreational
18 standard.

19 Now here is the rub: This Town has
20 stated its policy in the document which you
21 prepared, which you promulgated, and it states
22 specifically and it states unambiguously, and
23 I've highlighted it and I would like to read
24 it into the record. This is your
25 constitution, not the applicant's. "The key

Page 24

1 role which private clubs play in the Town of
2 Palm Beach recreational scene is very apparent
3 in their relations with the civic clubs and
4 associations activities."

5 The next page, page 6: "Private clubs
6 and golf courses represent a very real and
7 active sector of the recreation scene in the
8 Town of Palm Beach."

9 Finally, the last page of the hand-out
10 under goals, objectives and policy, page 9:
11 Policy 2.1: "The Town will offer regulatory
12 assistance to protect private sector
13 recreational providers."

14 We submit that based upon that empirical
15 data which flows from your own body of law
16 that this Town has made a conscious,
17 intentional, deliberate decision to "Offer
18 regulatory assistance to protect private
19 sector recreational providers," some of which
20 discriminate based on race and ethnic
21 background.

22 Thank you very much.

23 MR. WYETT: I have a question for you.

24 MR. LIPMAN: Yes, sir.

25 MR. WYETT: Do you contend the Sailfish

*** Notes ***

Page 25

Page 26

1 Club, which does have Jewish members as of
2 this last year or two, is a discriminatory
3 club?
4 MR. LIPMAN: Yes, sir.
5 MR. WYETT: Then I must ask you to
6 include the Palm Beach Country Club with one
7 Gentile member is the same and add that 80
8 acres.
9 MR. LIPMAN: We contend the Bath and
10 Tennis and Everglades Club is a racially
11 discriminatory club.
12 MR. WYETT: I don't deny the Everglades,
13 and Bath and Tennis to a lesser degree,
14 practices some discrimination on some level.
15 But, I contend private clubs have a right to
16 decide who they admit as members. But I abhor
17 the they deny the right of their members as
18 to who is a guest and make any Jewish member
19 of this community or any other minority feel
20 like second citizens.
21 However, you must acknowledge that the
22 Palm Beach Country Club falls into the same
23 category and therefore let's be fair and let's
24 not discriminate as a Jew against the
25 Gentiles.

1 MR. LIPMAN: Mr. Wyett, if you recognize
2 that discrimination, then we urge you, sir, to
3 initiate an action to repel policy 2.1 which
4 this Town, and as you are aware and as you are
5 a Councilman, and you are sworn to enforce the
6 laws, the Town offers regulatory assistance to
7 protect private sector recreational
8 providers.
9 We urge you to take action then, to
10 disassociate yourself with these private
11 clubs, as a matter of policy, and to not allow
12 them to exist in your Town, as the City of New
13 York instituted a policy. And furthermore, to
14 reject them as an element in the consideration
15 of the planning features for your park and
16 recreational facilities, sir.
17 MR. WYETT: I have no difficulty as a
18 member of this Council, as a resident of this
19 Town, to take that matter up and give it the
20 proper consideration.
21 However, you must realize that this Town
22 is one evolving. I remember coming to this
23 Town as a youngster in which I was only
24 welcome in certain hotels and not welcome at
25 others. There has been a tremendous amount of

*** Notes ***

Page 27

Page 28

1 progress in this Town and that should also be
2 recognized.
3 Change doesn't happen overnight and you
4 may be right that it is now time to change.
5 However, I do not find how you can say that we
6 should grant to Donald Trump his request for
7 zoning change based on discrimination -- I
8 will base my thinking pattern and my vote on
9 the zoning issues that protect and defend the
10 Town of Palm Beach.
11 MR. LIPMAN: Thank you, Council.
12 MRS. SMITH: Mr. Lipman, are you
13 finished?
14 MR. LIPMAN: Yes.
15 MRS. SMITH: Mr. Green, are you finished?
16 MR. GREEN: Yes, ma'am.
17 MRS. SMITH: Mr. Green, I understood you
18 were going to explain why Mr. Trump was not
19 here. You stood when the question was asked
20 of Mr. Natale and said you were going to
21 explain that. Because the Council delayed the
22 hearings for 20 some odd days to accommodate
23 his schedule and I did understand you were
24 going to explain why he wasn't here yesterday
25 or today; was that right?

1 MR. GREEN: I stood in response to
2 Mr. Wyett's request for information about
3 discrimination.
4 MR. WYETT: I asked why Mr. Trump is not
5 here to answer the charges that he has made
6 through his attorney, Mr. Rampell, that why he
7 bases his case on discrimination.
8 MR. GREEN: Well, I have addressed why
9 discrimination is a significant concern in
10 this case. And with respect to Mr. Trump not
11 being here, he has decided to retain
12 Mr. Lipman and myself to address the
13 constitutional issues raised by this
14 application and hopefully persuade you to
15 grant the application.
16 MR. MCLENDON: Can I ask Mr. Green a
17 question?
18 MRS. SMITH: Yes.
19 MR. MCLENDON: What basis or what people
20 are accused of discriminating against
21 Mar-A-Lago, when this agreement was prepared
22 and executed apparently in unison by both
23 parties?
24 MR. GREEN: Sir, it is difficult to
25 answer that question, other than as a lawyer

*** Notes ***

Page 29

Page 30

1 who is trained in proving discrimination in
2 violation of the equal protection clause.
3 If I may step back for a minute. Back in
4 the 1950s with Brown versus Board of
5 Education, which was the case that overturned
6 Plessy (Phonetic) vs. Ferguson, the separate
7 but equal doctrine, a body of case law
8 developed whereby school segregation patterns
9 could be challenged.

10 Now, a lot of times school segregation
11 results from housing patterns. Some
12 neighborhoods are predominantly black, some
13 neighborhoods are predominantly white, some
14 neighborhoods are predominantly Asian. Just
15 because there is a disparity in housing
16 patterns does not necessarily mean there has
17 been discrimination in the construction and
18 assignment of pupils to schools.

19 What you have to show, there are
20 different ways that you can show that the
21 school desegregation that you see has resulted
22 from discrimination. One method is called
23 defacto discrimination and the other is called
24 de jure discrimination.

25 De jure discrimination is a shortcut way

1 of proving discrimination, or at least calling
2 into question disparate treatment or
3 differential treatment.

4 In this case we're talking about the
5 differential treatment between Mar-A-Lago Club
6 and the other clubs in the Town of Palm
7 Beach.

8 Once you show de jure discrimination,
9 there is a presumption of discrimination. It
10 can be overcome. I am just telling you what
11 the law is. It can be overcome.

12 De jure discrimination is shown in a
13 number of ways. One is we can bring in a copy
14 of the 1933 Palm Beach ordinance that required
15 segregation of the races in housing. We have
16 not done that, but we can. That is of record
17 on the first floor of this building.

18 Another way we can do it is through the
19 policy and the plan that Mr. Lipman just
20 addressed. All that does is calls into
21 question the fairness of the decision-making
22 process. It creates a legal presumption.

23 And all we're suggesting to this Council
24 is that problem exists for the Town. We
25 don't -- we think it is a problem and we hope

*** Notes ***

Page 31

Page 32

1 that you will fix it. But, it does exist and
2 unfortunately, and I think Mr. Randolph will
3 advise you in executive session, that that
4 creates a serious legal concern were you to
5 deny this application.

6 MR. MCLENDON: Well, I have no feeling at
7 the moment what this decision might be.
8 However, I have a big problem in responding or
9 in accepting what you gentlemen have tried to
10 say.

11 I was not on the previous Council that
12 approved this Declaration of Use Agreement,
13 but the majority of that Council were Jewish
14 people. My wife happens to be a director of
15 the Fellowship of Christians and Jews and she
16 has worked her butt off to try and promote
17 this, and certainly this Council is not
18 discriminatory.

19 So I am really having a big problem with
20 where you are coming from.

21 MR. GREEN: Where we're coming from, sir,
22 I realize that these issues are painful,
23 they're painful for me. I've experienced them
24 as a partner of Jewish partners. I've
25 experienced anti-Semitism directed to me,

1 thinking I was Jewish, because I was
2 associated with Jewish partners.

3 MR. MCLENDON: It is prevalent, no
4 question that it happens.

5 MR. GREEN: All I am saying is that --
6 and sir, I am not suggesting that you have an
7 anti-Semitic bone in your body. I am not
8 suggesting that.

9 MR. MCLENDON: What are you suggesting?

10 MR. GREEN: I am suggesting that this
11 Town, unfortunately, has a discriminatory
12 policy on the books that benefits private
13 clubs. And by having that policy on the books
14 that benefits private clubs, it calls into
15 question, as a matter of law, as a matter of
16 Federal equal protection law, whatever
17 decision you make that does not eradicate the
18 differential treatment between the Mar-A-Lago
19 Club and other clubs.

20 All we're seeking is to be subjected to
21 the one-to-four four parking ratio. That is
22 the primary objective of our application.

23 MR. MCLENDON: Let's go back one point on
24 that issue. Those conditions put on that use
25 agreement were hammered out by two different

*** Notes ***

Page 33

Page 34

1 factions and agreed to.

2 As far as I'm concerned, the parking
3 requirement was more related to the one event
4 limitation of 390 and something probably less
5 than two people on the average per car. I
6 mean, I wasn't there, so I don't know who did
7 what, but that makes more sense to me than on
8 the basis of membership.

9 MRS. SMITH: Mr. Wyett, before you go on.

10 When Mr. McClendon asked you who
11 discriminated when the Council came to this
12 agreement, which was signed by everyone in
13 1993, I had a little trouble following you in
14 the cases that you were describing.

15 MR. GREEN: The school desegregation
16 cases -- are you finished?

17 MRS. SMITH: Can you tell me in laymen's
18 terms, can you relate that in a way that I
19 would understand it, please.

20 MR. GREEN: Things happen, results occur
21 with bodies such as yours that --

22 MRS. SMITH: You mean the Council?

23 MR. GREEN: Yes.

24 MRS. SMITH: I don't know. Earlier on,
25 Mr. Green, you said you didn't want to insult

1 me personally and I wasn't sure if we had
2 taken a different direction.

3 MR. GREEN: Madam President, I would
4 compliment you.

5 MRS. SMITH: You are referring to the
6 Council. I am serious. So you are referring
7 to the Council, okay.

8 MR. GREEN: In the school desegregation
9 cases, the desegregation cases occurred by law
10 that had effects of generations and
11 generations and generations.

12 MRS. SMITH: Right.

13 MR. GREEN: This Town has had a policy
14 for years and years and years that facilitates
15 the private clubs and utilizes the private
16 clubs for the purposes that Mr. Lipman
17 discussed.

18 Whether this Council or whether the 1993
19 Council were involved in promulgating that
20 policy that Mr. Lipman addressed, that doesn't
21 necessarily control. I don't need to identify
22 and I don't want to have to point fingers at
23 who is discriminatory or who is not.

24 MRS. SMITH: I am following your
25 explanation.

*** Notes ***

Page 35

Page 36

1 MR. GREEN: What the prior enactment of a
2 law, which either discriminates on its face or
3 in effect in favor of some private club, in
4 this case, or in the past that required
5 segregation of the races in schools or
6 housing, all that does is create a
7 presumption, and that's a legal term.

8 MRS. SMITH: I understand that one.

9 MR. GREEN: That there is something wrong
10 with the decision-making process when two
11 groups are treated differently. And what
12 we've suggested here is that the Mar-A-Lago
13 Club is being treated differently from the
14 other clubs in the Town.

15 MRS. SMITH: Okay.

16 MR. GREEN: I am not sure I answered your
17 question, Mr. McClendon. I keep coming back
18 to that.

19 MR. MCLENDON: As far as I know, and I
20 wasn't here when this other agreement was
21 done, but there were many, many things and a
22 long time in coming up with what was wanted
23 and what was required and negotiated between
24 them.

25 But I just cannot conceive that anyone

1 can say that discrimination was part of those
2 decisions. I just can't buy that.

3 Another point I would like to make. It
4 may be of no solace to you, but I think you
5 know it. There is a great deal of progress
6 made in this regard in Palm Beach in the last
7 few years. It is obvious.

8 MR. GREEN: I congratulate that.

9 MR. MCLENDON: You get a lot more progress
10 by people working to do things behind the
11 scenes, or whatever you want to call it, to
12 get it done gradually. If you come out with
13 an edict, you are going to destroy half of
14 what's been accomplished.

15 MR. GREEN: Mr. McClendon, I would be
16 less than candid with you if that same
17 statement had not been made by a number of my
18 close friends who reside here in the Town of
19 Palm Beach, and I've waited for a number of
20 years, I'd hoped that there would be quicker
21 progress. And maybe I am wrong in attempting
22 to accelerate that progress or maybe my
23 efforts might be counterproductive.

24 MR. MCLENDON: That's what I suspect.

25 MR. GREEN: I acknowledge I am not

*** Notes ***

	Page 37		Page 38
1	perfect as a civil rights lawyer, as a civil	1	If the Town was to drop its inclusion of
2	rights activist. I acknowledge that	2	all the country clubs, and we'd have to drop
3	possibility.	3	the Palm Beach Country Club, then we'd be in
4	However, we do have -- we have identified	4	violation of state law to maintain X number of
5	a discriminatory policy that is a matter of	5	acres as open space.
6	law in this Town and we have asked that this	6	If we can find no other solution, we
7	Council take two steps: Number one, adopt an	7	would have to go out and buy private homes and
8	antidiscrimination ordinance. And number two,	8	tear the houses down and create that open
9	rectify, correct the problem that Mr. Lipman	9	space.
10	addressed in his summation.	10	MR. GREEN: Or adopt the
11	MR. WYETT: I have two questions,	11	antidiscrimination ordinance similar to the
12	please.	12	one in New York.
13	MRS. SMITH: Mr. Moore is not here.	13	MR. WYETT: But, according to you, as
14	MR. WYETT: Mr. Castro, I think you can	14	long as we use private clubs, because they
15	answer the question, too.	15	have the right to continue the discrimination,
16	MRS. SMITH: The mayor was going to say	16	we can't stop them from choosing their
17	something.	17	members --
18	MAYOR ILYINSKY: That's okay.	18	MR. GREEN: The United States Supreme
19	MR. WYETT: Mr. Castro, the open space	19	Court held in the New York case that while the
20	plan in which we utilize private property in	20	ordinance did infringe on the right of
21	the form of clubs and private property, that	21	association, there was a compelling
22	is done to accumulate how many acres?	22	governmental interest. And in this case you
23	MR. CASTRO: I don't know that answer.	23	could find a compelling governmental interest
24	MR. WYETT: I will give it to you,	24	in a number of areas to justify an
25	roughly 300 acres, give or take a few.	25	antidiscrimination ordinance.

*** Notes ***

	Page 39		Page 40
1	MR. WYETT: I have a question of	1	After that's over, fine.
2	Mr. Rampell. Does Mar-A-Lago contribute to	2	But I was one of the signers that signed
3	the acreage of the Town's open space plan?	3	off on the Mar-A-Lago Club to begin with. And
4	MR. NATALE: I can answer that. It is my	4	I think Mrs. Dalfit (Phonetic) sitting in the
5	understanding that the chart that was prepared	5	back of the room may have been a member of the
6	does include Mar-A-Lago and, in fact, it is in	6	Town Council. Anybody else?
7	your materials as the blue portion.	7	MRS. SMITH: Me.
8	MR. RAMPPELL: The Palm Beach Country Club	8	MAYOR ILYINSKY: And I say this with all
9	is excluded.	9	sincerity, there was a lot of hammering that
10	MR. WYETT: I have a statement I would	10	went on before that document was finished.
11	like to read.	11	There was a lot of agreement and disagreement
12	MRS. SMITH: Before you get to your	12	among both parties.
13	statement, the mayor has one statement he	13	Never one time did the anti-Semitic
14	wanted to make. Mr. Shaw, I understand, has a	14	business come out. And I would question
15	question and it is getting late.	15	Mr. Rampell, who doesn't talk very much any
16	I was asked what time we were going to	16	more at public meetings, why at the time,
17	stop; I said who knows. I said that last	17	Paul, if you don't mind my calling you that,
18	night, too. But in the interest of	18	why in the name of all that's good and holy
19	continuing, then I would like to have, if	19	didn't you object? Why did you happily sign
20	there are others that want to speak, so we can	20	on behalf of your client, everybody walked
21	move it along.	21	home, some grumbling, but most of us happy
22	MAYOR ILYINSKY: I apologize for being	22	that we finally reached a very, very
23	rude to you. And while I may disagree with	23	complicated solution?
24	every single thing you say, I promise I will	24	Now all of a sudden you start sending us
25	defend to the death your right to say it.	25	movies. I wish you would send me a John Wayne

*** Notes ***

Page 41

1 western, by the way, next time, and we're
2 continually getting educated.

3 I am 68 years old. I have been around,
4 and believe it or not Mr. Rampell or Paul, I
5 still like you. But you are making it very
6 difficult to talk to when you bring these
7 issues up that did not exist when Mrs. Dalfit
8 (Phonetic) and you, Mrs. Smith, sat around
9 watching this being signed.

10 All I hear from people is what a
11 wonderful club it is. We've had ladies
12 testifying what a lovely job Mr. Trump has
13 done and, by God, from that point of view he
14 has. And that series of buildings have never
15 looked so beautiful in their life. And as a
16 Palm Beacher I am proud to have it looking the
17 way it is.

18 It doesn't necessarily mean I agree with
19 what Mr. Trump is doing. Why all of a sudden
20 this vicious attack against this Council with
21 three members that are Jewish sitting here?

22 MR. SHAW: Two.

23 MRS. SMITH: Mr. Mayor, please go ahead
24 and finish.

25 MAYOR ILYINSKY: That's not funny. I beg

*** Notes ***

Page 43

1 question, but how can you represent as a
2 public official everyone in the community and
3 still be a member of a club that excludes a
4 third or a half of the community?

5 MAYOR ILYINSKY: They returned me to
6 office, specially the south end, for 14 years.

7 MR. GREEN: Because you are a charming
8 and intelligent man.

9 MAYOR ILYINSKY: Be careful Mr. Green,
10 I'll have lunch with you pretty soon. Get
11 away from that.

12 But you see what I am getting at.

13 MR. GREEN: Yes, I do. Again, as I said,
14 I was not intending to attack you personally.

15 MR. SHAW: I would like to get this off my
16 chest at least for now. I don't know what I
17 will come up with later.

18 I guess what bothers me about this so
19 much is not the issue, right or wrong, and I
20 am not going to qualify it, but the timing.
21 The fact that you, as an individual, as an
22 attorney who has ventured out to protect those
23 that seem to have been abused or discriminated
24 against by society, by municipalities, why did
25 you pick a simple Special Exception? Why

*** Notes ***

Page 42

1 your pardon, I wasn't trying to be funny.

2 Do you remember a great dancer called
3 Arthur Murray?

4 MR. GREEN: I do.

5 MAYOR ILYINSKY: Guess who my son is
6 married to; his granddaughter.

7 MR. GREEN: Good.

8 MAYOR ILYINSKY: Damn right it's good.
9 My oldest daughter is married to Tim Komisar
10 (Phonetic), Jewish. That's why I get upset
11 when you stand there and look at me and you
12 say these -- Paul, give him the proper advice
13 -- because I really rather like both of you.

14 But why did this happen all of a sudden?
15 As Mr. McClendon said, where did this sudden
16 explosion of hatred and discrimination come
17 from? I know the Town as well as anybody.
18 I've taken my Jewish friends to lunch at the
19 Bath and Tennis whenever I want to. There are
20 a lot of Christians I would get kicked out of
21 the club for taking them to lunch.

22 MR. GREEN: Sir, you are a Town Council
23 member. You are sworn to represent everyone
24 in the community.

25 How, sir, and this is a difficult

Page 44

1 didn't you come to the Council when we deal
2 with other properties in Town that are part of
3 our community?

4 Your own presentation, cultural
5 facilities, the Town is involved with every
6 one of them. Why didn't you bring that to an
7 issue and say you are not in compliance with
8 your own plan; how can you go forward with
9 this?

10 MR. GREEN: Sir, let me apologize for not
11 doing that earlier. Right now I am
12 representing a class of several thousand
13 mental patients or former mental patients in
14 the Middle District of Florida in Tampa.
15 Approximately one-third to one-half of my time
16 is being spent on that Federal court case.

17 Another third of my time is being spent
18 on a class action against the Fanjuls and U.S.
19 Sugar on behalf of the sugar cane cutters.

20 I don't have time to -- to inject myself
21 in every single case or problem in the
22 community. I wish I had participated in the
23 planning process when that policy was
24 enacted. I just don't have time to do it. I
25 have a limited -- my law firm is a small law

Page 45

Page 46

1 firm.

2 MR. SHAW: But why do you feel the
3 Mar-A-Lago application, the zoning
4 application, that is not asking to be counted
5 as anything else, it is not as thought the
6 Town is trying to include Mar-A-Lago in
7 something or exclude Mar-A-Lago. It is a
8 simple issue of amending an agreement that was
9 signed by willing parties, basically three,
10 even though it is two people, two of them are
11 the same, they agreed to something; they've
12 come before the Council, they've asked to make
13 a change.

14 How does that have any bearing on what
15 the Comprehensive Plan says as far as green
16 space, open public facilities? I understand
17 what you are saying as far as you feel that
18 there is a flaw in what we're doing. But
19 correcting that flaw does not address this
20 zoning application.

21 MR. GREEN: You can avoid -- granting
22 this application can put Mar-A-Lago on the
23 same zoning footing and subject to the same
24 zoning requirements that the other private
25 restrictive clubs are.

1 MR. SHAW: But, as a champion of the
2 discriminated against, you haven't met your
3 purpose. Everything you are saying is still
4 here, nothing has been accomplished.
5 Forgetting your client, I am talking about
6 your principles. I assume you do this because
7 of principles and not just financial gain. I
8 assume you are involved in these cases because
9 you really feel that someone has to champion
10 those that need to be helped.

11 And I don't see how taking that position
12 you are going to resolve that position or that
13 situation by saying Mar-A-Lago should join
14 with the rest of the groups that
15 discriminate.

16 MR. GREEN: Well, one way to address the
17 differential treatment, the disparate
18 treatment between Mar-A-Lago and the
19 declaration of use that was entered into three
20 years ago and the other clubs, is to make the
21 adjustments, make the corrections that have
22 been urged in this application for Special
23 Exception.

24 MR. SHAW: To me that means Mar-A-Lago is
25 just joining the rest of the clubs that you

*** Notes ***

Page 47

Page 48

1 don't agree with their policies.

2 MR. GREEN: In terms of restrictions,
3 yes.

4 MR. SHAW: What have you accomplished?

5 MR. GREEN: That's all they're asking.
6 There are ways that this Council, this
7 application, sir --

8 MR. SHAW: I'm listening.

9 MR. GREEN: Is also a vehicle for
10 identifying the problems that Mr. Lipman
11 addressed in the Town policy, and it is also a
12 vehicle for bringing to this Council the need
13 for adoption of an antidiscrimination
14 ordinance.

15 Adopting an antidiscrimination ordinance,
16 enforcing an antidiscrimination ordinance,
17 will solve your problem with respect to open
18 space.

19 MR. SHAW: But it has nothing to do with
20 Mar-A-Lago's application.

21 MR. GREEN: Sir, as I explained to
22 Ms. Smith, there is a legal basis for raising
23 this de jure problem. We've done that. We've
24 brought that to your attention. And your
25 lawyer can explain that to you in executive

1 session, the significance of that problem.

2 MR. KOLINS: Madam President, may I speak
3 for a moment as a point of order?

4 MRS. SMITH: Please go ahead.

5 MR. KOLINS: I can very easily understand
6 how the remarks of Mr. Lipman and Mr. Green
7 have been painful to hear, because of their
8 seeming allegations to members of this
9 Council.

10 MRS. SMITH: Speak a little louder
11 Mr. Kolins. I can't hear you.

12 MR. KOLINS: I was saying that I could
13 easily understand how Mr. Lipman and
14 Mr. Green's remarks could be painful to many
15 people on this Council who would consider them
16 an indictment and an undeserved one at that,
17 and the natural instinct is to challenge that
18 indictment and argue with these two
19 attorneys.

20 But I suggest to you further that, if
21 nothing else, that plays into the hands of the
22 person making the indictment.

23 These gentlemen held themselves out as
24 making the closing argument, the summation on
25 behalf of the Mar-A-Lago application. I heard

*** Notes ***

1 no summation.

2 What I heard was a civil rights
3 discussion, which in my judgement is
4 completely irrelevant to this case, as
5 Mr. Shaw's questions may suggest, and in any
6 event have nothing to do with any evidence
7 presented in this case.

8 Indeed, when one of you asked why
9 Mr. Rampell didn't present that evidence,
10 Mr. Green or Mr. Lipman responded that he was
11 told not to do it.

12 So I would urge now that they have
13 completed their closing argument, for better
14 or for worse, meritorious or not, the time has
15 come, the hour is late, many days have been
16 spent on this. The evidence or lack thereof
17 is in and it is time now simply for you to
18 make a decision in this case.

19 Thank you.

20 MR. CHOPIN: And I would add that
21 according to your own procedure, you really
22 are supposed to go into executive session and
23 by what's going on now you are simply
24 foreclosing us from being able to respond to
25 all this late stuff.

1 You said you were going into executive
2 session. They finished their summation and
3 you really should do that.

4 MRS. SMITH: We'll go into executive
5 session when we're ready.

6 Are you finished, Mr. Rampell?

7 MR. RAMPELL: No. I would like to make
8 about a five-minute statement.

9 MRS. SMITH: This is your closing
10 statement?

11 MR. RAMPELL: This is the end of our
12 remarks.

13 I want to bring you back in time a little
14 bit to the process that we went through when
15 the club was approved. In 1992 and 1993 the
16 Town was involved in subdivision litigation,
17 if you recall, when Mr. Trump's application
18 for subdivision had been denied.

19 I put together a draft of an application
20 for Special Exception and I tried to do it in
21 great detail. I circulated it to the various
22 members of the Town Council at the time,
23 members of the Town staff. I sent it to the
24 Preservation Foundation, both its officers or
25 the president, and Mr. Chopin as the attorney

*** Notes ***

1 for the Preservation Foundation at the time.
2 I also sent it to the Civic Association. I
3 sent it to Bob Grace.

4 I sent it to all people who expressed an
5 interest in the preservation of Mar-A-Lago and
6 who protested the subdivision of the property.

7 I could barely get any feedback from
8 anybody. We made a presentation, Mr. Trump
9 and I, to the Preservation Foundation. We
10 made a presentation as well to the Palm Beach
11 Civic Association.

12 Neither group would give us any feedback
13 on our application. They would not tell us
14 maybe you should add a gate here or maybe you
15 should add a roadway there. They were silent
16 as to our proposal all together.

17 Some parties did give us some input. For
18 instance, the State of Florida Historic
19 Preservation Department, and we incorporated
20 that input. And some consultants gave us some
21 suggestions and we incorporated those
22 suggestions. But mainly it was
23 preservationists.

24 When we came before the Town Council in
25 1993 we presented our application. We

1 presented our experts and we were, after we
2 concluded, we were fired upon from every
3 direction.

4 Mainly the charge was led by Mr. Kolins
5 and Mr. Chopin. They made all sorts of dire
6 predictions at the time that this club would
7 have enormously adverse problems with traffic
8 and both of them emphatically urged this
9 Council to deny the application.

10 The Council entered a development order,
11 the Declaration of Use Agreement, and
12 Mr. Trump signed it. He signed it on behalf
13 of the Mar-A-Lago Club and he signed it
14 personally.

15 In that agreement itself there is the
16 provision for its own amendment. It can be
17 amended. It has been amended before, I remind
18 you, in order to enable the four additional
19 tennis courts and the parking area. We have
20 argued that there has been a change in
21 circumstances.

22 Now, I would like to digress for a minute
23 and talk with you about what immediately
24 preceded this application. I obviously mailed
25 to you each a copy of two videotapes,

*** Notes ***

1 Gentlemen's Agreement and Guess Who's Coming
2 to Dinner.
3 And by doing so, Mr. Shaw, I did not mean
4 to state or imply in any way that you were a
5 bigot or anti-Semite.
6 Mr. McDonald, I did not mean to state or
7 imply in any way that you are a bigot or
8 anti-Semite.
9 President Smith, I meant no implication
10 whatsoever that you are a bigot or
11 anti-Semite.
12 Mr. McLendon, I say the same thing to
13 you. I had no intention of implying or
14 stating that you are an anti-Semite.
15 And Mr. Wyett, I say the same thing with
16 respect to you. I did not allege or imply
17 that.
18 My purpose was more philosophical that
19 this Town does resemble in certain ways
20 Darien, Connecticut, the town in which
21 Gentlemen's Agreement portrays as a heavily
22 segregated community. And the movie was made
23 50 years ago next year.
24 When I sent the copy of Guess Who's
25 Coming to Dinner, my point was not to accuse

1 or allege that any of you as Council members
2 as engaging in some sort of discriminatory or
3 malicious conduct. It was really another
4 story about bigotry and I was hoping that it
5 would sort of heighten the sensitivity,
6 because the Mar-A-Lago Club not only welcomes
7 Jews and Christians, but Muslims, Hindus,
8 African Americans, black Africans, whites, all
9 sorts of people from around the world.
10 And further, it is the story of a
11 interracial marriage that is about to be
12 consummated. And that's somewhat what the
13 Mar-A-Lago Club is like in this Town. It is
14 sort of like an interracial marriage or
15 interreligious marriage and that is there
16 are -- it is like a white and black couple. A
17 lot of whites don't like to see the couple and
18 a lot of blacks don't like to see the couple.
19 If I interpret the movie incorrectly or
20 different from you, that's subjectivity. But
21 in any event, it was simply to heighten
22 sensitivity and nothing more, nothing less.
23 But I did say a few things on September
24 16 and I will just briefly remind you of them,
25 because our application has been distorted all

*** Notes ***

1 out of proportion when it comes to some of the
2 details within it.
3 I pointed out to you that the agreement
4 can be amended by its own terms. So, Mayor
5 Ilyinsky, when you asked me why did we sign it
6 then, we signed it partly because it also had
7 a provision in it that it can be amended, and
8 we didn't know what circumstances might arise
9 in the future that would give rise to our
10 application for amendment.
11 I even said at the hearing, Mrs. Smith
12 had asked me where do you think you might
13 place additional tennis courts, and I said I
14 don't know; depends upon whether members want
15 additional tennis courts.
16 MRS. SMITH: Yes.
17 MR. RAMPALL: As time went by and the club
18 opened, there is a very big demand for
19 tennis. I applied to you, following proper
20 zoning procedures, which are quite rigorous,
21 and thank you for granting that first
22 amendment to the Declaration of Use
23 Agreement.
24 We signed it. But Mayor Ilyinsky, it
25 wasn't like the preservation easement that we

1 gave to the National Trust, which cannot be
2 changed. It is irrevocable and cannot be
3 amended.
4 It cannot even be assigned, contrary to
5 what was said, to any other 501(C)(3) tax
6 exempt organization that Mr. Trump might
7 choose to assign it to. It cannot be
8 willy-nilly assigned. But that is an
9 irrevocable agreement and can't be changed.
10 The Declaration of Use Agreement, by its
11 own terms, can be changed. We have attempted
12 to put on testimony. It may not have been
13 presented in the way in which Mr. Kolins and
14 Mr. Chopin would have preferred, but we do
15 believe sincerely that there have been changes
16 in circumstances.
17 We do believe that there have been
18 changes in the traffic levels in the area.
19 There is far more utilization of the property
20 for charitable events than was ever discussed
21 at the 1993 hearings and consequently those,
22 together with other changes, have motivated us
23 to come before you.
24 And I remind you, this all started over
25 one sentence that we've asked to be included

*** Notes ***

Page 57

1 and that sentence was that the club shall be
2 subject to only those regulations which govern
3 other clubs in the Town of Palm Beach,
4 notwithstanding any other agreement.

5 Now, I would like to clarify that what
6 this means is that we would be subject to the
7 code of ordinances. Every one of them. And I
8 walked through the table of contents, but
9 notwithstanding that, it's been stated to you
10 in many different ways that we're trying to
11 make all sorts of changes to the physical
12 property.

13 We would not be exempt from the zoning
14 code by the change that -- by the amendment
15 that we're proposing today. We would not be
16 exempt. We would not receive some sort of
17 grandfathering status. We would be governed
18 the same way all of the other properties in
19 this Town are governed.

20 For example, we have permission right now
21 for 252 parking spaces. If the application
22 were granted, we must keep 252 parking spaces,
23 because that's tied to our certificate of
24 occupancy.

25 Any physical changes must be approved,

*** Notes ***

Page 59

1 pointed out even in an editorial in the paper
2 some time ago that the photography paragraph
3 says two conflicting things. One part of the
4 paragraph says that the photography at the
5 club will be consistent with photography at
6 all other clubs. The second sentence in that
7 paragraph goes on to prohibit virtually all
8 photography.

9 But, I just want to emphasize that if the
10 application is granted, it really comes down
11 to about eight different issues. We presently
12 have approval of 10 guest suites prior to the
13 application. We would have 10 afterwards. If
14 we wanted more, the Declaration of Use
15 wouldn't be involved. We would still have to
16 go and obtain permission from you, just like
17 the Everglades Club. If they wanted to add
18 guest suites, they would have to ask
19 permission from you.

20 In the agreement itself, and I again get
21 back to this idea of amending the agreement,
22 the agreement itself says 500 members subject
23 to adjustment. So, in other words, when we
24 ask you to adjust the membership, the
25 agreement contemplates it on its face.

*** Notes ***

Page 58

1 because this is a landmark by the National
2 Trust, by the Landmarks Preservation
3 Commission, and by you. So the 252 couldn't
4 change.

5 Taking the 252 parking spaces, we would
6 have the ability to enlarge membership to
7 1,008. We think our testimony has been pretty
8 compelling that there is no correlation within
9 the traffic industry standards, in particular
10 the Institute of Traffic Engineers' Manual
11 incorporated by reference into our code of
12 ordinances, which states that there is no
13 correlation.

14 There are some incongruities within the
15 agreement, on the face of the agreement.
16 We're limited to 390 people per special
17 event. We could sell our membership out and
18 reach the 500 level and not all 500 members
19 can even come to the club for a membership
20 meeting if we wanted.

21 The club is required to have -- the club
22 is limited in its membership, but it can have
23 an unlimited number of guests and unlimited
24 number of employees.

25 We also have pointed out and it has been

Page 60

1 Some people have said well, why don't you
2 wait until you have 500 members. We could
3 come back in two weeks and have 500 members if
4 we sold summer memberships, or at least took
5 their applications, take 300 people at \$500
6 per capita and we'd reach it as soon as we'd
7 like.

8 We've taken the position as expressed by
9 the traffic engineers that there is no
10 correlation between members and trips. That's
11 why Club Collette operates so well. It only
12 has seating for 125 people. But we understand
13 that it has somewhere between 1,000 and 1,500
14 members.

15 I think that the allegations that we have
16 unlimited membership are incorrect. Under the
17 zoning code we would have 1,008. The
18 allegations that we're going to change
19 parking, increase it or decrease it, they are
20 incorrect. Those types of changes are nowhere
21 in our application.

22 The Palm Beach Civic Association has
23 stated that some changes should be made, but
24 not others. Mr. Chopin on behalf of the
25 Preservation Foundation last night expressed

Page 61

1 his lack of objection to certain changes.

2 Certain changes he said would not matter to
3 him.

4 The acrimony that's surrounding this
5 application is really regrettable. It reminds
6 me of something Albert Einstein wrote. He
7 wrote that, "In two weeks the sheep, like
8 masses of any country, can be worked up by the
9 newspapers into such a state of excited fury
10 that men are prepared to put on uniforms and
11 kill and be killed for the sake of the sordid
12 ends of a few interested parties."

13 I have to told you that I am not enjoying
14 at all the wrath that exists towards this
15 application and this club and my client. But
16 we aren't seeking anything unreasonable,
17 except for the equal treatment of this club.

18 We would discuss the specific provisions
19 within the Declaration of Use Agreement that
20 should or should not be modified in connection
21 with my statement of trying to put this club
22 on an equal basis, but the fact is it is
23 indisputable, the idea of the Mar-A-Lago Club
24 has arrived.

25 Thank you very much.

Page 62

1 MRS. SMITH: Thank you, Mr. Rampell.

2 MR. RAMPPELL: That concludes our closing
3 statements. Thank you.

4 MRS. SMITH: Thank you very much.

5 I have been, as have been other members
6 of the Council, sitting in this chair for
7 almost 34 hours in the last three days and I
8 am going to take a 10-minute break and
9 stretch. Thank you.

10
11 (Whereupon a brief recess was taken after which
12 the following proceedings were had.)

13
14 MRS. SMITH: I would like to reconvene the
15 Town Council meeting of October 11. This is a
16 continuation of the October 11 hearing which
17 was a continuation of the October 10 special
18 Town Council meeting.

19 Members of the Council, we have heard the
20 testimony and the closing statements by the
21 applicant. We have stated that we would go
22 into executive session following that, the
23 completion of the application. What would you
24 like to do now?

25 MR. WYETT: I would like to make a

*** Notes ***

Page 63

1 statement before we make that decision.

2 MRS. SMITH: All right Mr. Wyett.

3 MR. WYETT: As a citizen of the United
4 States, as a resident of the State of Florida,
5 as a Council person, as a concerned Jewish
6 member of Palm Beach, and as a member of no
7 social clubs or golf clubs, I find the
8 position of the issue of discrimination by
9 Mr. Rampell and Mr. Trump to be unacceptable,
10 wrong and injurious to all the good people of
11 Palm Beach, Jew and Christian alike. His
12 intent to gain zoning approval based on this
13 position is irresponsible. The Council does
14 not discriminate. We'll fairly judge the
15 application to amend based on zoning alone. I
16 call on all private clubs to eliminate
17 discrimination, drop your guest privilege
18 restrictions. You are not in step with
19 America today. It hurts you and the
20 community. Help make Palm Beach
21 discrimination free. I acknowledge private
22 clubs are free to determine who they shall
23 admit, subject to the rulings of the United
24 States Supreme Court. Leave the judgement to
25 your individual members as to who will be

Page 64

1 their guests.

2 I call on Mr. Rampell to formally
3 withdraw his claim of discrimination as a
4 basis for his zoning petition. Attorneys
5 Green and Lipman, this claim is not a claim
6 that's relevant before this Council.
7 Mr. Rampell recognized the position of the
8 Anti-Defamation League. There is no
9 discrimination on this issue. End this
10 nonsense and stop polarizing this wonderful
11 Town we all love and share. Thank you.

12 MRS. SMITH: Are you finished Mr. Wyett?

13 MR. WYETT: Yes.

14 MRS. SMITH: Mr. McDonald?

15 MR. MCDONALD: I have no comments.

16 MRS. SMITH: I am not asking you to
17 comment on what Mr. Wyett said. Do you have
18 anything to say?

19 MR. MCDONALD: No, I have no comments.

20 MR. MCLENDON: I will make a comment.

21 MRS. SMITH: Mr. McClendon, and then let's
22 decide what action this Council is going to
23 take. Are we going into executive session now
24 or not, but go ahead Mr. McClendon.

25 MR. MCLENDON: To me it is immaterial it

*** Notes ***

Page 65

1 is executive session or not, and I hope other
2 people agree, that the stuff presented this
3 afternoon we haven't had time to read or be
4 exposed to and I do not feel prepared to vote
5 tonight. I would prefer it to be deferred
6 until an agreeable date in the as near future
7 as possible. I would say a minimum of two
8 days.
9 MRS. SMITH: Members of the Council, would
10 you like to speak to Mr. McClendon's
11 recommendation?
12 MR. SHAW: I've looked at my calendar and
13 in all honesty I cannot do it next week at
14 all. I guess, to use your expression, let's
15 get out our appointment books.
16 MRS. SMITH: Members of the Council, get
17 out your books, please.
18 MR. SHAW: While you are doing that, I
19 would like to say I would like to sort of look
20 at the application and just briefly amongst
21 ourselves in executive session discuss some of
22 the issues, but I agree with you that with the
23 amount of material that's been given to us, I
24 don't see how we can render an opinion based
25 on the volumes of material that's been given

*** Notes ***

Page 67

1 because we are under the Sunshine Law.
2 MR. KOLINS: That's why I was inquiring.
3 The other thing I would like to make a
4 suggestion that is quite important, if you are
5 going to defer deciding this case, for however
6 long it might be.
7 There has been, as you've all testified
8 to earlier today, a lot of discussion by
9 citizens and parties and what-not with you
10 about this case. The process has gotten a
11 little bit confused and I don't think it is
12 appropriate, certainly from this point on,
13 that you allow yourselves to have any
14 discussions with anybody about this case,
15 whether it be Mr. Trump, Mr. Rampell, members
16 of the public, me, anybody else.
17 I would urge that you agree now to not
18 have discussions, telephonic or otherwise,
19 with anybody. If somebody approaches you in
20 the street to talk about it, I simply suggest
21 you say you are not free to discuss it at this
22 time.
23 Because, I think otherwise, now that the
24 evidence is in and you want more time to
25 review it, which is okay with me, that record

*** Notes ***

Page 66

1 to us today, which obviously the applicant
2 feels is germane to the case. So, in fairness
3 to that, I think we have to postpone.
4 Obviously the applicant can withdraw the
5 application, but at this point I don't know
6 when we're going to be able to...
7 MRS. SMITH: Members of the Council,
8 please check your books. Please, I do feel
9 that in the interest of coming to a fair and
10 equitable and intelligent decision on the
11 application before us, I would like the
12 opportunity to review all of the information
13 that was submitted from the 16th, yesterday,
14 today and tonight.
15 MR. KOLINS: May I have a word,
16 Mrs. Smith?
17 MRS. SMITH: I'm finished Mr. Kolins.
18 Yes, you may.
19 MR. KOLINS: Two things. One, I have a
20 question: When you refer to executive
21 session, are you referring to a private
22 session or in public just --
23 MRS. SMITH: I am referring to the Town
24 Council sitting in executive session in this
25 chamber. We hold all our meetings in public,

Page 68

1 shouldn't be skewed or influenced by anybody
2 else at this point.
3 MRS. SMITH: Perhaps if we were in court,
4 the judge would put a gag order on anyone. I
5 am sort of throwing it out there Mr. Natale.
6 They've already said that -- and I'm Judge
7 Ito, thank you. They've said we're not judges
8 and not a jury, but we attempted during the
9 process to allow all information into the
10 process and I need some time to discuss it.
11 I, myself, have no problem in not
12 discussing it. Either people decide not to
13 approach me on it, however for the main
14 instance they don't, they don't talk to me
15 about it and I am running out of conversation
16 on every subject at the moment, including
17 this.
18 So I am very happy to state that I will
19 not discuss it with anyone and I would hope
20 that there would be no more Town-wide
21 discussion of this application while the
22 members of the Council are preparing to go
23 into executive session and reach a decision.
24 Thank you for your thoughts on it,
25 Mr. Kolins.

Page 69

1 MR. KOLINS: If I may, I don't mean to
2 belabor this and I appreciate your sentiments
3 speaking for yourself, but I think since the
4 record is now closed and what you all have to
5 base your decision on is all in, that there
6 shouldn't be anything more in indirectly by
7 those conversations and I think that you
8 should as a group consider whether or not you
9 would adhere to what I am suggesting so that
10 we really know the record is closed and
11 whatever you do is based on that record.

12 MR. RANDOLPH: I concur with the fact that
13 it is a good idea that this Council not
14 involve itself in any conversation about this
15 between now and when it deliberates. But I
16 don't know that you need to make an oral
17 commitment or take a vote on that.

18 I wouldn't want to see someone make a
19 commitment and then for some reason
20 unintentionally be involved in some
21 conversation and then someone come back later
22 and say that the record is tainted.

23 It is not illegal for you to have
24 ex-parte communications. So I don't know that
25 you want to put any more of a burden on

Page 70

1 yourself than the law puts on you. But I do
2 concur that it is a wise thing for this
3 Council to not to engage itself in
4 conversations in regard to this application
5 until you've got an opportunity to deliberate
6 on it.

7 I think -- I would encourage you to avoid
8 meetings where this is discussed, to avoid
9 phone calls, to avoid conversations, to avoid
10 it to the extent -- to the fullest extent that
11 you can.

12 MR. WYETT: It would be helpful if the
13 newspaper picked up the situation that we
14 cannot discuss it with residents so that they
15 understand it, rather than think we're being
16 difficult.

17 MR. RANDOLPH: Blame the lawyer.

18 MRS. SMITH: Members of the Council, would
19 you like to discuss what would be a date.
20 Mr. Natale, do you want to say anything at
21 this time?

22 MR. NATALE: Absolutely not.

23 MRS. SMITH: What a disappointment.

24 MR. MCLENDON: As far as dates are
25 concerned, I have no plans to be out of Town.

*** Notes ***

Page 71

1 There are days here and there that would be
2 inconvenient, but you can assume at this
3 moment that I will be around.

4 MRS. SMITH: For the executive session
5 we'll need all the staff. Mr. Doney do you
6 have a calendar?

7 MR. DONEY: Yes.

8 MRS. SMITH: Members of the Council, what
9 specifically are the dates?

10 MR. WYETT: There is a couple days you
11 can't have it; one is a holiday and one is a
12 Council meeting date.

13 MRS. SMITH: We'll get to that,
14 Mr. Wyett.

15 What dates are good or not good for the
16 members of the Council and the applicant? The
17 applicant is present for executive session.
18 I'll make that a question. Are the
19 applicants --

20 MR. RAMPPELL: We would like to be
21 present.

22 MR. SHAW: Mrs. Smith, may I suggest if it
23 is possible that we have a scheduled meeting
24 on the 29th of October in the morning. I
25 don't know if you feel that following lunch,

Page 72

1 if we were to come in at 2:00 o'clock on that
2 day, since we know we're all in Town.

3 MR. MOORE: Mr. Shaw, I will not be here
4 on the 29th.

5 MR. SHAW: 10:00 to 12:00 is the water,
6 but you're out of Town. Okay.

7 MRS. SMITH: Say that for the record
8 Mr. Moore.

9 MR. MOORE: And the 29th, 30th, 31st I'm
10 out of Town.

11 MRS. SMITH: Mr. Rampell, are you looking
12 at your schedule; are there any dates that you
13 are not available and Mr. Natale and Mr. Green
14 and Mr. Lipman, are you going to be here for
15 the proceedings also?

16 MR. GREEN: We hope to, but Mr. Natale
17 and Mr. Rampell are the key people for this
18 proceeding.

19 MRS. SMITH: Thank you.

20 MR. WYETT: Mr. Moore, are you out of
21 Town the 28th?

22 MR. MOORE: That week until Friday.

23 MR. WYETT: Mr. Shaw, you said you are
24 out of Town next week?

25 MR. SHAW: Out of Town and occupied next

*** Notes ***

Page 73

Page 74

1 week.
 2 MRS. SMITH: Mr. Moore, are you out the
 3 31st and the 1st?
 4 MR. MOORE: Not the 1st.
 5 MR. WYETT: How is the 4th or 5th of
 6 November?
 7 MRS. SMITH: The 5th is election day. I
 8 don't know if we can meet that day.
 9 MR. RAMPPELL: The 4th is fine with us.
 10 MRS. SMITH: Members of the Council, do
 11 you want to get your books?
 12 MR. MCDONALD: November 15 would be my
 13 first day back.
 14 MRS. SMITH: November 15 is Mr. McDonald's
 15 first day back.
 16 MR. WYETT: I'll be out of Town that day.
 17 MR. SHAW: I'll be out of Town that day.
 18 MR. MCDONALD: I'll be back for the Town
 19 Council meeting that week, but I can't do it
 20 the next day. I mean, I can't do it the next
 21 day after the Town Council meeting, so the
 22 following day is the 15th.
 23 MRS. SMITH: You are all looking at a
 24 calendar and I am not. The Thursday after the
 25 Council meeting is what day?

1 MR. MCLENDON: The 14th.
 2 MR. MCDONALD: I can make a change if
 3 that day works for everybody else.
 4 MRS. SMITH: November 14.
 5 MR. RAMPPELL: Mr. Natale can't make it
 6 that day.
 7 MR. SHAW: I can't either. 14th and 15th
 8 I'm out. So we're now up to November 18.
 9 MR. MCDONALD: Zoning commission hearings
 10 start that day.
 11 MR. MCLENDON: 14th and 15th are out for
 12 me, too.
 13 MRS. SMITH: The 14th is out for
 14 Mr. Natale and the 15th is out for
 15 Mr. McClendon.
 16 MR. MCDONALD: How about Sunday morning?
 17 MRS. SMITH: Was that a proposal?
 18 MRS. SMITH: I cannot do it this Sunday
 19 morning.
 20 MAYOR ILYNSKY: To do what?
 21 MR. MCDONALD: Meet.
 22 MR. MCDONALD: Well, we're into the 18th.
 23 MR. WYETT: Are you going to be back the
 24 18th?
 25 MR. MCDONALD: There are days earlier

*** Notes ***

Page 75

Page 76

1 than that I can do it, but other people are
 2 out of Town. I am saying I can do it on the
 3 14th or 15th, but that's not good for other
 4 people, and then we're over to the 18th I
 5 guess.
 6 MR. DONEY: November 18 and 19 in this
 7 chamber are the annual zoning hearings.
 8 MR. SHAW: How about November 20.
 9 MRS. SMITH: Mr. Rampell?
 10 MR. DONEY: The 20th, if Bob can rearrange
 11 it, is the Landmarks meeting.
 12 MR. MOORE: That could be moved if the
 13 Council wishes to usurp and we can move them
 14 to the conference room. We've done that once
 15 before.
 16 MRS. SMITH: Let me ask the other members
 17 of the Council.
 18 MR. MCLENDON: The 20th okay with me.
 19 MR. WYETT: 20th is okay by me.
 20 MAYOR ILYNSKY: Fine.
 21 MR. SHAW: Just for the record, there is a
 22 public safety meeting the next day which is
 23 the 21st at 10:00 o'clock a.m.
 24 MRS. SMITH: I bet you could move your
 25 public safety meeting.

1 MR. SHAW: Or go right after it.
 2 MR. MCDONALD: Chief, have you made any
 3 plans?
 4 CHIEF TERLIZZESE: For the last week in
 5 November, yes.
 6 MR. MCDONALD: You mean your Crime Watch
 7 meeting?
 8 MR. DONEY: The 20th is okay for the chief
 9 and if any other staff has a conflict, now is
 10 the time to speak out.
 11 MR. WYETT: We're trying to use the 20th
 12 for the purposes of this hearing. Do you want
 13 to move to the 21st?
 14 MRS. SMITH: We're talking about the
 15 continuation of this hearing on November 20.
 16 Is that date clear for everyone?
 17 MR. MOORE: Except for the Landmarks
 18 Commission.
 19 MR. SHAW: That's why I said do you want
 20 to move it to the 21st, because we're
 21 scheduled to be here.
 22 MR. WYETT: Move the Landmarks to the
 23 other room.
 24 MR. MCDONALD: Move the Landmarks and
 25 we'll do it on the 20th.

*** Notes ***

Page 77

Page 78

1 MR. NATALE: On behalf of the applicant,
 2 the 20th is acceptable.
 3 MR. WYETT: I would like -- I hope to
 4 conclude in less than a day, but because this
 5 history of this thing going so long, I would
 6 like to clear the 21st for all parties so that
 7 nobody can say they can't meet the next day.
 8 MR. MCDONALD: It is the decision-making
 9 process. I don't know what would take you all
 10 day.
 11 MRS. SMITH: I can promise you, Mr. Wyett,
 12 we'll stay here and finish on November 20. It
 13 is the Council in executive session and that's
 14 no outside comment.
 15 MAYOR ILYINSKY: The 20st of November?
 16 MRS. SMITH: I was about to state the
 17 time. Something you want to say, Mr. Doney,
 18 before I do that?
 19 MR. DONEY: No, thank you.
 20 MRS. SMITH: We have been starting all
 21 these meetings at 9:30 a.m.; is that agreeable
 22 to everyone, Mr. Rampell?
 23 MR. RAMPPELL: Yes, ma'am.
 24 MRS. SMITH: 9:30 on November 20.
 25 Is there an a pregnant pause for some

1 reason?
 2 MR. SHAW: It's a wrap.
 3 MRS. SMITH: That concludes this part of
 4 the agenda. We are now moving on to item I
 5 believe 5 which is any other matters
 6 * * * * *
 7
 8 (Thereupon the meeting was concluded.)
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*** Notes ***

Page 79

1
 2 CERTIFICATE
 3
 4 THE STATE OF FLORIDA)
 5 COUNTY OF PALM BEACH
 6
 7
 8 I, ALBERT WAYNE MATTOX, court reporter, do
 9 hereby certify that I was authorized to and did report
 10 the above meeting at the time and place herein stated,
 11 and that it is a true and correct transcription of my
 12 stenotype notes taken during said meeting.
 13
 14 In witness whereof I have hereunto set my hand
 15 this _____ day of _____ 1996.
 16
 17
 18 ALBERT WAYNE MATTOX,
 19 COURT REPORTER.
 20
 21
 22
 23
 24
 25

*** Notes ***

Palm Beach Town Council

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\$500 - approval

\$500 [1] 60:5	3.1 [1] 21:16	23:13 23:15 25:8	ago [6] 12:23 13:13	answer [9] 3:18
00 [5] 1:20 72:1	30 [4] 1:20 6:12	37:22 37:25 38:5	13:20 46:20 53:23	3:22 4:7 4:10
72:5 72:5 75:23	77:21 77:24	acrimony [1] 61:4	59:2	28:5 28:25 37:15
1,000 [2] 17:23	300 [2] 37:25 60:5	action [4] 26:3	agree [5] 41:18 47:1	37:23 39:4
60:13	30th [1] 72:9	26:9 44:18 64:22	65:2 65:22 67:17	answered [1] 35:16
1,008 [2] 58:7	31st [2] 72:9 73:3	active [1] 24:7	agreeable [2] 65:6	Anti-Defamation [1] 64:8
60:17	33408 [1] 1:19	activist [1] 37:2	77:21	anti-Semite [5] 9:11
1,500 [1] 60:13	34 [1] 62:7	activities [1] 24:4	agreed [2] 33:1	53:5 53:8 53:11
10 [8] 17:21 21:6	360 [1] 1:19	actual [3] 23:6	45:11	53:14
21:19 59:12 59:13	38 [1] 10:23	23:7 23:12	agreement [23] 28:21	anti-Semitic [4] 6:14 9:1 32:7
62:17 72:5 75:23	390 [2] 33:4 58:16	ad [1] 11:8	31:12 32:25 33:12	40:13
10-minute [1] 62:8	4th [2] 73:5 73:9	add [5] 25:7 49:20	35:20 40:11 45:8	anti-Semitism [3] 10:21 11:2 31:25
11 [3] 1:20 62:15	5 [2] 10:11 78:5	51:14 51:15 59:17	52:11 52:15 53:1	antidiscrimination [7] 12:22 37:8 38:11
12 [1] 72:5	5-1 [1] 21:9	additional [4] 23:10	53:21 55:3 55:23	38:25 47:13 47:15
125 [1] 60:12	50 [1] 53:23	52:18 55:13 55:15	56:9 56:10 57:4	47:16
14 [2] 43:6 74:4	500 [5] 58:18 58:18	address [7] 10:6	58:15 58:15 59:20	anybody [7] 40:6
14th [5] 74:1 74:7	59:22 60:2 60:3	12:7 12:7 13:22	59:21 59:22 59:25	42:17 51:8 67:14
74:11 74:13 75:3	501 [1] 56:5	28:12 45:19 46:16	61:19	67:16 67:19 68:1
15 [2] 73:12 73:14	5th [2] 73:5 73:7	addressed [5] 28:8	ahead [5] 3:13	anyone [4] 8:6
15th [5] 73:22 74:7	6 [3] 1:20 21:10	30:20 34:20 37:10	20:17 41:23 48:4	35:25 68:4 68:19
74:11 74:14 75:3	24:5	47:11	64:24	anything [6] 19:10
16 [2] 4:1 54:24	6-9 [1] 21:16	addresses [1] 20:23	Albert [3] 61:6	45:5 61:16 64:18
165 [1] 23:15	63 [1] 17:3	addressing [1] 13:8	79:8 79:19	69:6 70:20
16th [1] 66:13	68 [1] 41:3	adhere [1] 69:9	alike [1] 63:11	apologize [4] 9:6
17 [1] 4:3	8 [1] 1:20	adjust [1] 59:24	allegations [5] 6:25	13:23 39:22 44:10
18 [2] 74:8 75:6	80 [1] 25:7	adjusted [1] 23:2	11:1 48:8 60:15	apparent [1] 24:2
18th [3] 74:22 74:24	85 [1] 16:18	adjustment [1] 59:23	60:18	apparently [1] 28:22
75:4	9 [3] 24:10 77:21	adjustments [1] 46:21	allege [2] 53:16	APPEARANCES [1] 2:2
19 [1] 75:6	77:24	admit [2] 25:16	54:1	appears [2] 21:15
1933 [1] 30:14	a.m. [1] 75:23	63:23	alleged [1] 18:5	22:21
1950s [1] 29:4	a.m. [1] 77:21	admitted [1] 16:17	Allen [1] 2:5	applicable [2] 19:19
1979 [1] 5:20	abhor [1] 25:16	adopt [4] 12:21	allow [3] 26:11	19:20
1990 [1] 20:23	ability [1] 58:6	13:10 37:7 38:10	67:13 68:9	applicant [9] 4:25
1991 [1] 5:21	able [2] 49:24 66:6	adopted [3] 21:2	allowing [1] 5:7	18:13 19:16 62:21
1992 [1] 50:15	above [1] 79:10	21:12 21:25	almost [1] 62:7	66:1 66:4 71:16
1993 [5] 33:13 34:18	absolutely [2] 4:14	Adopting [1] 47:15	alone [1] 63:15	71:17 77:1
50:15 51:25 56:21	70:22	adoption [1] 47:13	along [3] 13:19	applicant's [1] 23:25
1996 [3] 1:20 21:22	abused [1] 43:23	adopts [1] 21:18	15:3 39:21	applicants [1] 71:19
79:15	accelerate [1] 36:22	adverse [1] 52:7	already [2] 16:17	application [40] 12:14
1st [2] 73:3 73:4	accept [1] 5:18	advice [1] 42:12	68:6	13:18 19:9 19:11
2 [1] 72:1	acceptable [1] 77:2	advise [1] 31:3	also [7] 27:1 47:9	19:23 20:3 20:6
2.1 [2] 24:11 26:3	accepting [1] 31:9	advised [1] 11:17	47:11 51:2 55:6	28:14 28:15 31:5
20 [6] 8:25 27:22	accessible [1] 16:22	affect [2] 18:5	58:25 72:15	32:22 45:3 45:4
75:8 76:15 77:12	accommodate [1] 27:22	19:8	52:17 55:4 55:7	45:20 45:22 46:22
77:24	accomplished [3] 36:14 46:4 47:4	affects [1] 20:3	56:3	47:7 47:20 48:25
201 [1] 23:13	according [2] 38:13	afraid [2] 4:6	amending [2] 45:8	50:17 50:19 51:13
20st [1] 77:15	49:21	13:5	59:21	51:25 52:9 52:24
20th [7] 75:10 75:18	accounted [1] 22:5	African [2] 9:22	amendment [4] 52:16	54:25 55:10 57:21
75:19 76:8 76:11	accumulate [1] 37:22	54:8	55:10 55:22 57:14	59:10 59:13 60:21
76:25 77:2	accuse [1] 53:25	Africans [1] 54:8	America [1] 63:19	61:5 61:15 62:23
21st [4] 75:23 76:13	accused [1] 28:20	after [7] 16:7 40:1	American [1] 9:23	63:15 65:20 66:5
76:20 77:6	accusing [1] 10:20	52:1 62:11 73:21	Americans [1] 54:8	66:11 68:21 70:4
22,000 [1] 21:23	acknowledge [4] 25:21 36:25 37:2	73:24 76:1	among [1] 40:12	applications [1] 60:5
22,120 [1] 21:23	63:21	afternoon [2] 15:14	amongst [1] 65:20	applied [1] 55:19
221.2 [1] 21:25	acknowledged [4] 25:21 36:25 37:2	65:3	amount [2] 26:25	appointment [1] 65:15
252 [4] 57:21 57:22	25:21 36:25 37:2	afterwards [1] 59:13	65:23	appreciate [1] 69:2
58:3 58:5	63:21	again [5] 3:24	analysis [1] 22:6	approach [1] 68:13
28th [1] 72:21	acreage [6] 22:6	4:5 22:19 43:13	analytical [1] 22:5	approaches [1] 67:19
29 [1] 10:11	23:2 23:6 23:8	59:20	annual [1] 75:7	appropriate [1] 67:12
29th [3] 71:24 72:4	23:12 39:3	against [9] 5:23	another [5] 3:19	approval [2] 59:12
72:9	acres [10] 17:21	7:2 10:1 25:24	30:18 36:3 44:17	
3 [1] 56:5	21:6 21:19 21:25	28:20 41:20 43:24	54:3	
		44:18 46:2		
		agenda [1] 78:4		

approve - club

Condenselt™

Palm Beach Town Council

63:12	attention [1]	47:24	9:22	40:20	44:19	buildings [1]	41:14	74:2	
approve [1]	attitudes [2]	8:16	48:25	52:12	60:24	burden [1]	69:25	changed [3]	56:2
approved [3]	8:17		77:1			business [1]	40:14	56:9	56:11
50:15	attorney [5]	2:12	behind [1]	36:10		butt [1]	31:16	changes [9]	56:15
57:25	15:3	28:6	being [9]	18:21		butress [1]	7:20	56:18	56:22
approximately [2]	50:25	43:22	28:11	35:13	39:22	buy [2]	36:2	57:25	60:20
23:15	attorneys [3]	4:20	41:9	44:16	44:17	C [3]	56:5	61:1	61:2
area [2]	48:19	64:4	49:24	70:15		79:2		characteristic [1]	
areas [1]	audience [1]	5:14	belabor [1]	69:2		calendar [3]	65:12	10:3	
aren't [1]	authorized [1]	79:9	believe [9]	3:11		71:6	73:24	charge [1]	52:4
argue [1]	available [2]	3:6	8:5	11:7	15:25	call [3]	36:11	charges [3]	11:12
argued [1]	72:13		19:13	41:4	56:15	64:2		12:10	28:5
argument [11]	average [1]	33:5	56:17	78:5		called [5]	8:14	charitable [1]	56:20
7:3	avoid [5]	45:21	belonged [1]	6:1		8:15	29:22	charming [1]	43:7
7:4	70:7	70:8	benefits [2]	32:12		42:2		chart [1]	39:5
8:4	70:9		32:14			calling [2]	30:1	charts [1]	18:23
16:8	aware [1]	26:4	bet [1]	75:24		40:17		check [1]	66:8
49:13	away [2]	18:7	better [1]	49:13		calls [3]	30:20	chest [1]	43:16
arise [1]	back [13]	29:3	between [8]	13:15		70:9		chief [3]	76:2
around [4]	29:3	32:23	30:5	32:18	35:23	candid [1]	36:16	76:8	
41:8	40:5	50:13	46:18	60:10	60:13	cane [1]	44:19	choose [1]	56:7
54:9	60:3	69:21	69:15			cannot [8]	35:25	choosing [1]	38:16
arrive [1]	73:15	73:18	big [3]	31:8	31:19	56:1	56:2	Chopin [7]	10:8
arrived [1]	background [1]	24:21	55:18			56:7	65:13	16:2	49:20
Arthur [1]	barely [1]	51:7	bigger [1]	10:25		74:18		52:5	56:14
42:3	barred [1]	12:25	bigot [3]	53:5	53:7	capita [1]	60:6	60:24	
Asian [1]	base [2]	27:8	53:10			car [1]	33:5	Chopin's [1]	12:9
29:14	based [13]	7:3	bigotry [1]	54:4		care [1]	22:4	Christian [2]	6:14
ask [12]	14:15	17:23	bit [2]	50:14	67:11	careful [1]	43:9	63:11	
3:11	23:4	23:16	black [3]	29:12		case [25]	6:3	Christians [4]	14:18
12:13	24:20	27:7	54:8	54:16		8:11	8:24	31:15	42:20
13:10	63:15	65:24	Blackman [2]	15:15		12:16	13:1	54:7	
14:10	bases [1]	28:7	23:1			28:7	28:10	circulated [1]	50:21
18:4	basically [1]	45:9	Blackman's [2]	16:16		29:7	30:4	circumstances [3]	
25:5	basis [8]	17:15	22:20			38:19	38:22	52:21	55:8
28:16	20:5	28:19	blacks [1]	54:18		44:21	49:4	56:16	
59:18	47:22	61:22	Blame [1]	70:17		49:18	66:2	cites [1]	21:3
59:24	Bath [4]	23:9	blue [1]	39:7		67:10	67:14	citizen [1]	63:3
75:16	25:13	42:19	Board [1]	29:4		cases [6]	5:22	citizens [2]	25:20
asked [14]	Beach [38]	1:6	Bob [2]	51:3	75:10	33:16	34:9	67:9	
3:5	1:19	5:19	bodies [1]	33:21		46:8		City [3]	2:12
4:16	6:3	6:4	body [3]	24:15	29:7	Casino [1]	23:3	26:12	13:3
11:14	8:11	8:12	32:7			Castro [3]	37:14	civic [4]	24:3
18:13	11:7	14:21	bone [1]	32:7		37:19	37:23	51:11	60:22
27:19	17:17	17:21	books [6]	32:12		category [2]	23:10	civil [4]	9:17
28:4	19:5	21:17	32:13	65:15	65:17	25:23		37:1	49:2
33:10	23:5	24:2	66:8	73:11		21:3	26:24	claim [4]	20:1
37:6	30:7	30:14	both [7]	5:23	13:6	61:1	61:2	64:3	64:5
39:16	36:19	38:3	28:22	40:12	42:13	67:12		claiming [1]	17:8
45:12	51:10	57:3	50:24	52:8		certainly [2]	31:17	clarify [1]	57:5
55:12	63:6	63:11	bothers [1]	43:18		67:12		class [2]	44:12
56:25	79:5		boundaries [1]	17:22		certificate [1]	57:23	clause [1]	29:2
asking [5]	Beacher [1]	41:16	break [1]	62:8		certify [1]	79:9	clear [2]	76:16
4:6	bearing [1]	45:14	brief [4]	12:7	13:14	chair [1]	62:6	Clerk [1]	3:12
12:17	beautiful [1]	41:15	15:19	62:11		challenge [2]	14:22	client [9]	6:5
45:4	became [1]	5:21	briefly [4]	15:24		48:17		7:10	9:25
47:5	before [19]	5:8	22:23	54:24	65:20	challenged [2]	6:3	11:6	12:9
64:16	7:6	7:8	bring [4]	30:13	41:6	29:9		46:5	61:15
assertions [1]	7:18	9:22	44:6	50:13		chamber [2]	66:25	close [1]	36:18
17:15	33:9	39:12	bringing [1]	47:12		75:7		closed [2]	69:4
56:7	45:12	51:24	brought [1]	47:24		champion [2]	46:1	69:10	
56:4	56:23	63:1	Brown [1]	29:4		46:9		closing [6]	16:5
56:8	66:11	75:15	building [2]	2:11		change [11]	18:12	48:24	49:13
assigned [2]	beg [1]	41:25	30:17			19:25	27:3	62:2	62:20
56:8	begin [1]	40:3				27:7	45:13	club [41]	5:11
56:8	behalf [8]	4:25				57:14	58:4	12:16	13:2
assignment [1]								23:8	23:9
29:18									
assist [1]									
12:6									
assistance [3]									
24:12									
24:18									
26:6									
associate [1]									
4:20									
associated [1]									
32:2									
association [6]									
13:2									
21:6									
38:21									
51:2									
51:11									
60:22									
associations [1]									
24:4									
assume [4]									
7:2									
46:6									
46:8									
71:2									
assuming [2]									
18:6									
18:7									
attached [2]									
22:3									
22:13									
attack [2]									
41:20									
43:14									
attacks [1]									
19:14									
attempted [2]									
56:11									
68:8									
attempting [2]									
8:1									
36:21									

Palm Beach Town Council

Condenselt™

clubs - directed

25:1	25:3	25:6	38:21	38:23	58:8	contend [6]	9:10	counsel [6]	3:3	18:16	20:7	20:10
25:10	25:11	25:22	completed [1]	49:13		9:12	13:17	4:24	15:4	20:12	24:17	31:7
30:5	32:19	35:3	completely [1]	49:4		25:9	25:15	16:11	19:15	32:17	49:18	63:1
35:13	38:3	39:8	completion [1]	62:23		contents [1]	57:8	count [1]	23:12	66:10	68:23	69:5
40:3	41:11	42:21	compliance [1]	44:7		context [1]	23:8	counted [2]	11:3	decision-making [3]	30:21	35:10
43:3	50:15	52:6	complicated [1]	40:23		continually [1]	41:2	45:4		decisions [1]	36:2	
52:13	54:6	54:13	compliment [1]	34:4		continuation [3]	62:16	36:23		declaration [7]	31:12	
55:17	57:1	58:19	complying [1]	23:17		continue [2]	4:2	country [6]	25:6	46:19	52:11	55:22
58:21	58:21	59:5	Comprehensive [5]	16:20	20:20	38:15		25:22	38:2	56:10	59:14	61:19
59:17	60:11	61:15	16:20	20:20	20:22	continued [1]	15:22	39:8	61:8	decrease [1]	60:19	
61:17	61:21	61:23	21:2	45:15		continuing [1]	39:19	County [3]	1:19	deduct [1]	23:14	
clubs [35]	6:1		conceive [1]	35:25		contrary [1]	56:4	9:3	79:5	deeply [1]	9:9	
12:17	13:1	13:9	concern [2]	28:9		contribute [1]	39:2	couple [5]	8:9	defacto [1]	29:23	
13:16	17:18	17:25	31:4			control [1]	34:21	54:16	54:17	defend [2]	27:9	
18:22	19:7	20:2	concerned [3]	33:2		convenience [1]	21:11	71:10		39:25		
23:14	24:1	24:3	63:5	70:25		conversation [3]		courses [1]	24:6	Defense [1]	9:17	
24:5	25:15	26:11	conclude [1]	77:4		68:15	69:14	court [9]	12:24	defer [2]	5:8	67:5
30:6	32:13	32:14	concluded [2]	52:2		69:7	70:4	13:20	38:19	deferred [1]	65:5	
32:19	34:15	34:16	78:8			conversations [3]	70:9	63:24	68:3	deficient [1]	23:16	
35:14	37:21	38:2	concludes [2]	62:2		69:7	70:4	79:19		degree [1]	25:13	
38:14	45:25	46:20	78:3			copied [1]	16:19	courthouses [1]	9:19	delayed [1]	27:21	
46:25	57:3	59:6	concur [2]	69:12		copies [4]	3:4	courts [3]	52:19	deleting [1]	23:3	
63:7	63:7	63:16	70:2			3:6	3:14	55:13	55:15	deliberate [2]	24:17	
63:22			conditions [1]	32:24		copy [6]	3:12	create [2]	35:6	70:5		
co-counsel [2]	5:9		conduct [1]	54:3		3:19	30:13	38:8		deliberates [1]	69:15	
14:19			Confederate [1]	9:20		53:24		31:4		delivery [1]	21:14	
code [4]	57:7	57:14	conference [1]	75:14		Corps [1]	6:12	Crime [1]	76:6	demand [1]	55:18	
58:11	60:17		confine [2]	7:15		correct [3]	19:10	criticism [1]	11:19	denied [1]	50:18	
Cohen [2]	5:20		7:17			37:9	79:11	cross-examiner [1]	10:10	deny [4]	25:12	25:17
colleague [1]	15:7		confined [1]	7:5		correcting [1]	45:19	10:10		31:5	52:9	
Collette [1]	60:11		conflict [1]	76:9		corrections [1]	46:21	cultural [1]	44:4	Department [1]	51:19	
come [18]	7:6		conflicting [1]	59:3		correlation [3]	58:8	cutters [1]	44:19	depends [1]	55:14	
7:7	7:18	11:14	confront [2]	7:12		58:13	60:10	Dalfit [2]	40:4	depicting [1]	9:21	
11:16	11:20	36:12	11:3			couldn't [2]	4:3	41:7		describing [1]	33:14	
40:14	42:16	43:17	confused [1]	67:11		58:3		Damn [1]	42:8	desegregation [4]		
44:1	45:12	49:15	congratulate [1]	36:8		Council [68]	1:7	dancer [1]	42:2	29:21	33:15	34:8
56:23	58:19	60:3	Connecticut [1]	53:20		5:14	7:6	Darien [1]	53:20	34:9		
69:21	72:1		connection [3]	12:20		8:4	8:7	data [1]	24:15	destroy [1]	36:13	
comes [2]	55:1		13:15	61:20		11:22	12:11	date [4]	65:6	detail [1]	50:21	
59:10			connects [1]	18:15		13:7	17:9	date [4]	70:19	details [1]	55:2	
coming [9]	6:15		conscious [2]	7:14		22:25	26:18	dates [4]	70:24	determine [1]	63:22	
26:22	31:20	31:21	24:16			27:21	30:23	71:12	76:16	developed [2]	21:5	
35:17	35:22	53:1	consequently [1]	56:21		31:13	31:17	71:15	72:12	29:8		
53:25	66:9		consider [2]	48:15		33:22	34:6	daughter [1]	42:9	development [1]		
comment [5]	14:16		26:14	26:20		34:18	34:19	day [19]	72:2	52:10		
15:9	64:17	64:20	consideration [2]			40:6	41:20	73:8	73:13	DeWeis [1]	6:2	
77:14			consistent [1]	59:5		44:1	45:12	73:16	73:17	different [6]	29:20	
comes [6]	9:1		constitution [1]	23:25		47:12	48:9	73:21	73:22	32:25	34:2	54:20
9:2	15:9	19:3	constitutional [2]			50:22	51:24	74:3	74:6	57:10	59:11	
64:15	64:19		13:11	28:13		52:10	54:1	75:22	77:4	differential [4]	30:3	
commission [3]	58:3		construction [1]	29:17		62:15	62:18	77:10	79:15	30:5	32:18	46:17
74:9	76:18		consultants [1]	51:20		63:5	63:13	days [8]	18:20	35:11	35:13	18:21
commitment [2]			consummated [1]	54:12		64:22	65:9	de [5]	29:24	difficult [5]	11:22	
69:17	69:19		contained [2]	15:12		66:7	66:24	30:8	30:12	28:24	41:6	42:25
Committee [1]	9:16		21:8			69:13	70:3	44:1		70:16		
common [2]	7:23		contemplates [1]	59:25		71:8	71:12	death [1]	39:25	difficulty [1]	26:17	
7:25						73:10	73:19	decide [3]	25:16	digress [1]	52:22	
communications [1]						73:25	75:13	64:22	68:12	Dinner [2]	53:2	
69:24						77:13		decided [1]	28:11	53:25		
communities [1]						Council's [2]	14:23	deciding [1]	67:5	dire [1]	52:5	
8:21						21:11		decision [13]	12:25	directed [4]	7:10	
community [14]	5:15					Councilman [5]						
7:25	8:16	8:17				2:5	2:6					
8:20	9:3	25:19				2:8	26:5					
42:24	43:2	43:4				Councilmen's [1]	19:3					
44:3	44:22	53:22										
63:20												
compelling [4]	12:16											

direction - forward

Condenselt™

Palm Beach Town Council

9:25	10:1	31:25	Donald [2]	10:4	engage [1]	70:3	71:4	71:17	77:13	feedback [2]	51:7
direction [2]	34:2		27:6		engaging [1]	54:2	exempt [3]		56:6	51:12	
52:3			done [11]	10:19	engineers [1]	60:9	57:13	57:16		feel [11]	12:15 18:10
directly [2]	4:15		11:4 16:21 22:22		Engincers' [1]	58:10	exhibit [1]		16:16	18:14 19:24 25:19	
4:16			30:16 35:21 36:12		enjoying [1]	61:13	exist [4]	19:4 26:12		45:2 45:17 46:9	
director [2]	2:10		37:22 41:13 47:23		enlarge [1]	58:6	31:1 41:7			65:4 66:8 71:25	
31:14			75:14		enormously [1]	52:7	exists [2]	30:24		feeling [1]	31:6
disagree [1]	39:23		Doney [8]	2:9	enough [1]	10:14	61:14			feels [1]	66:2
disagreement [1]			71:5 71:7 75:6		entered [2]	46:19	exit [1]	5:3		Fellowship [1]	31:15
40:11			75:10 76:8 77:17		52:10		experience [2]	7:24		Ferguson [1]	29:6
disappointment [1]			down [2]	38:8	entire [1]	5:15	7:25			few [5]	4:11 36:7
70:23			59:10		equal [5]	29:2	experienced [3]	17:6		37:25 54:23 61:12	
disassociate [1]	26:10		draft [1]	50:19	29:7 32:16 61:17		31:23 31:25			fewer [2]	9:1
discounting [1]	23:3		drop [3]	38:1 38:2	61:22		experiences [2]	9:14		9:2	
discriminate [4]			63:17		equitable [1]	66:10	9:18			file [1]	18:7
24:20 25:24 46:15			due [1]	10:2	eradicate [1]	32:17	expert [1]	15:13		filed [2]	6:1 8:10
63:14			during [4]	5:22	establish [1]	19:1	experts [1]	52:1		finally [2]	24:9
discriminated [3]			19:16 68:8 79:12		estimated [1]	21:21	explain [8]	11:21		40:22	
discriminates [1]			each [2]	3:4 52:25	ethnic [3]	15:20	11:24 12:20 16:14			financial [1]	46:7
35:2			earlier [4]	33:24 74:25	19:3 24:20		27:18 27:21 27:24			find [5]	17:7 27:5
discriminating [1]			44:11 67:8		even [5]	45:10 55:11	47:25			38:6 38:23 63:7	
28:20			earth [2]	14:2 17:4	56:4 58:19		explained [1]	47:21		finder [1]	7:18
discrimination [39]			easement [1]	55:25	event [4]	33:3	explanation [1]	34:25		fine [3]	40:1 73:9
4:8 7:1 11:11			easily [3]	16:21	49:6 54:21 58:17		explosion [1]	42:16		75:20	
11:11 12:10 13:1			48:5 48:13		events [1]	56:20	exposed [1]	65:4		fingers [1]	34:22
13:8 13:9 17:2			edict [1]	36:13	ever [2]	17:23 56:20	expressed [3]	51:4		finish [4]	20:15
17:6 17:7 17:8			editorial [1]	59:1	Everglades [4]	23:8	60:8 60:25			20:17 41:24 77:12	
17:10 18:3 19:4			educated [1]	41:2	25:10 25:12 59:17		expression [1]	65:14		finished [8]	27:13
25:14 26:2 27:7			Education [1]	29:5	every [7]	14:2	extent [2]	70:10		27:15 33:16 40:10	
28:3 28:7 28:9			effect [3]	18:5	39:24 44:5 44:21		70:10			50:2 50:6 64:12	
29:1 29:17 29:22			18:5 35:3		52:2 57:7 68:16		F [1]	79:2		66:17	
29:23 29:24 29:25			effects [1]	34:10	everybody [3]	10:19	face [3]	35:2 58:15		fired [1]	52:2
30:1 30:8 30:9			efforts [1]	36:23	40:20 74:3		59:25			firm [3]	5:20 44:25
30:12 36:1 38:15			eight [1]	59:11	everyone [5]	33:12	facilitate [1]	22:22		45:1	
42:16 63:8 63:17			Einstein [1]	61:6	42:23 43:2 76:16		facilitates [1]	34:14		first [6]	19:1 22:8
63:21 64:3 64:9			either [6]	7:11	77:22		facilities [10]	21:4		30:17 55:21 73:13	
discriminatory [11]			7:14 14:18 35:2		Everything [1]	46:3	21:14 21:15 22:1			73:15	
15:20 17:18 17:25			68:12 74:7		evidence [9]	11:15	22:7 23:11 23:13			fits [1]	10:16
20:2 25:2 25:11			elaborate [1]	20:13	15:10 15:12 15:17		26:16 44:5 45:16			five [2]	16:20 21:21
31:18 32:11 34:23			election [1]	73:7	16:17 49:6 49:9		facing [1]	11:21		five-minute [1]	50:8
37:5 54:2			element [1]	26:14	49:16 67:24		fact [10]	3:9 6:24		fix [1]	31:1
discuss [8]	8:24		elicited [1]	8:12	evidentiary [1]	17:15	7:18 8:5 8:6			FL [1]	1:19
61:18 65:21 67:21			eliminate [1]	63:16	evolving [1]	26:22	19:1 39:6 43:21			flags [1]	9:20
68:10 68:19 70:14			eloquently [1]	12:8	ex-parte [1]	69:24	61:22 69:12			flaw [2]	45:18 45:19
70:19			else [8]	10:20 16:6	exactly [3]	10:21	factions [1]	33:1		floor [1]	30:17
discussed [3]	34:17		40:6 45:5 48:21		14:9 17:14		facts [1]	7:7		Florida [7]	15:3
56:20 70:8			67:16 68:2 74:3		example [2]	11:10	fair [4]	9:21 10:7		17:20 20:21 44:14	
discussing [1]	68:12		emphasize [1]	59:9	57:20		25:23 66:9			51:18 63:4 79:5	
discussing [1]	68:12		emphatically [1]		excellent [1]	10:9	fairly [2]	12:6		flows [1]	24:15
discussion [4]	14:14		52:8		except [2]	61:17	63:14			flying [1]	9:20
49:3 67:8 68:21			empirical [1]	24:14	76:17		fairness [2]	30:21		follow [1]	22:2
discussions [2]	67:14		employees [1]	58:24	Exception [4]	12:14	66:2			following [7]	33:13
67:18			enable [1]	52:18	43:25 46:23 50:20		faith [1]	10:14		34:24 55:19 62:12	
disparate [2]	30:2		enacted [1]	44:24	excited [1]	61:9	falls [1]	25:22		62:22 71:25 73:22	
46:17			enactment [2]	13:18	exclude [1]	45:7	Fanjuls [1]	44:18		footing [1]	45:23
disparity [1]	29:15		35:1		excluded [1]	39:9	far [7]	19:11 33:2		foreclosing [1]	49:24
distorted [1]	54:25		encourage [1]	70:7	excludes [1]	43:3	35:19 45:15 45:17			Forgetting [1]	46:5
District [1]	44:14		64:9		excluding [1]	19:6	56:19 70:24			form [2]	8:13 37:21
doctrine [1]	29:7		ends [1]	61:12	executed [1]	28:22	fashioned [1]	15:13		formally [1]	64:2
document [2]	23:20		enforce [1]	26:5	executive [16]	14:15	favor [1]	35:3		former [1]	44:13
40:10			enforcing [1]	47:16	31:3 47:25 49:22		features [1]	26:15		forth [3]	18:23 18:23
doesn't [7]	10:14				50:1 50:4 62:22		Federal [2]	32:16		18:24	
14:12 18:12 27:3					64:23 65:1 65:21		44:16			forward [4]	11:15
34:20 40:15 41:18					66:20 66:24 68:23		fee [1]	5:22		11:16 11:20 44:8	
doing [5]	41:19										
44:11 45:18 53:3											
65:18											

Foundation [5] 11:6 50:24 51:1 51:9 60:25	5:25 grandfathering [1] 57:17	hatred [1] 42:16 hear [6] 8:25 9:1 9:24 41:10 48:7 48:11	identification [1] 14:21 identified [2] 23:7 37:4	industry [1] 58:9 influenced [1] 68:1 information [3] 28:2 66:12 68:9
four [4] 16:20 21:12 32:21 52:18	grant [3] 12:14 27:6 28:15	heard [10] 10:10 13:14 16:2 18:20 20:7 20:9 20:11 48:25 49:2 62:19	identify [3] 16:9 16:10 34:21	informed [1] 3:7 infringe [1] 38:20
frankly [1] 6:16	granted [2] 57:22 59:10	hearing [5] 8:8 55:11 62:16 76:12 76:15	identifying [1] 47:10 illegal [1] 69:23 illegally [2] 17:17 17:24	initiate [1] 26:3 inject [1] 44:20 injurious [1] 63:10
free [3] 63:21 63:22 67:21	granting [3] 19:11 45:21 55:21	hearings [5] 9:22 27:22 56:21 74:9 75:7	illustrate [1] 17:14 Ilyinsky [25] 2:4 6:9 6:19 6:21 9:5 9:8 13:23 14:1 14:7 14:17 16:24 22:3 37:18 39:22 40:8 41:25 42:5 42:8 43:5 43:9 55:5 55:24 74:20 75:20 77:15	input [2] 51:17 51:20 inquiring [1] 67:2 insofar [2] 15:22 23:17
Friday [4] 1:20 3:25 4:2 72:22	great [4] 5:25 36:5 42:2 50:21	hearsay [1] 7:19 heavily [1] 53:21 heighten [2] 54:5 54:21	immaterial [1] 64:25 immediately [1] 52:23	instance [2] 51:18 68:14
friend [1] 15:7	green [62] 4:10 5:10 5:20 6:18 6:20 7:23 8:9 9:10 12:5 13:4 13:7 14:5 14:10 14:13 14:19 15:4 15:6 15:16 27:15 27:16 27:17 28:1 28:8 28:16 28:24 31:21 32:5 32:10 33:15 33:20 33:23 33:25 34:3 34:8 34:13 35:1 35:9 35:16 36:8 36:15 36:25 38:10 38:18 42:4 42:7 42:22 43:7 43:9 43:13 44:10 45:15 45:21 46:16 47:2 47:5 47:9 47:21 48:6 49:10 64:5 72:13 72:16	held [3] 13:11 38:19 48:23 Help [1] 63:20 helped [1] 46:10 helpful [1] 70:12 hereby [1] 79:9 herein [1] 79:10 hereunto [1] 79:14 Hiatus [1] 3:1 highlighted [3] 16:22 21:10 23:23 Hindus [1] 54:7 Historic [1] 51:18 history [1] 77:5 hold [1] 66:25 holiday [1] 71:11 holy [1] 40:18 home [1] 40:21 homes [1] 38:7 honestly [1] 4:15 honesty [1] 65:13 hope [6] 10:5 30:25 65:1 68:19 72:16 77:3 hoped [1] 36:20 hopefully [2] 5:3 28:14 hoping [1] 54:4 hostilities [1] 7:14 hostility [4] 7:9 10:2 10:4 10:6 hotels [1] 26:24 hour [2] 15:18 49:15 hours [1] 62:7 houses [1] 38:8 housing [4] 29:11 29:15 30:15 35:6 however [10] 3:7 4:14 9:13 25:21 26:21 27:5 31:8 37:4 67:5 68:13 hurt [1] 9:6 hurts [1] 63:19 idea [3] 59:21 61:23 69:13	imply [3] 53:4 53:7 53:16 implying [1] 53:13 important [1] 67:4 impression [1] 4:18 improper [1] 18:11 improperly [2] 17:17 17:24 Inc [1] 13:2 include [3] 25:6 39:6 45:6 included [1] 56:25 includes [1] 17:25 including [3] 19:6 20:24 68:16 inclusion [1] 38:1 incongruities [1] 58:14 inconvenient [1] 71:2 incorporated [3] 51:19 51:21 58:11 incorrect [2] 60:16 60:20 incorrectly [1] 54:19 increase [1] 60:19 indeed [2] 14:4 49:8 indicated [3] 15:16 16:18 21:1 indicating [1] 11:8 indictment [3] 48:16 48:18 48:22 indirectly [1] 69:6 indisputable [1] 61:23 individual [2] 43:21 63:25 indulgence [1] 3:11	insult [1] 33:25 insulted [1] 14:1 intelligent [2] 43:8 66:10 intending [1] 43:14 intent [1] 63:12 intention [1] 53:13 intentional [1] 24:17 interest [5] 38:22 38:23 39:18 51:5 66:9 interested [1] 61:12 interpret [1] 54:19 interracial [2] 54:11 54:14 interreligious [1] 54:15 interrupt [2] 11:23 20:16 into [20] 9:19 9:24 16:17 23:24 25:22 30:2 30:20 32:14 46:19 48:21 49:22 50:1 50:4 58:11 61:9 62:22 64:23 68:9 68:23 74:22 invective [2] 7:9 9:25 involve [1] 69:14 involved [9] 7:1 10:25 15:22 34:19 44:5 46:8 50:16 59:15 69:20 involving [1] 19:13 irrelevant [1] 49:4 irresponsible [1] 63:13 irrevocable [2] 56:2 56:9 Isenberg [1] 5:20 issue [10] 4:1 5:13 5:16 11:4 32:24 43:19 44:7 45:8 63:8 64:9 issues [7] 8:24 27:9 28:13 31:22
fund [1] 9:18 fundamental [1] 11:21 funny [2] 41:25 42:1 further [2] 48:20 54:10 furthermore [1] 26:13 fury [1] 61:9 future [2] 55:9 65:6 gag [1] 68:4 gain [2] 46:7 63:12 gate [1] 51:14 gave [2] 51:20 56:1 generations [3] 34:10 34:11 34:11 Gentile [1] 25:7 Gentiles [1] 25:25 gentlemen [2] 31:9 48:23 Gentlemen's [2] 53:1 53:21 germane [1] 66:2 getting [4] 13:6 39:15 41:2 43:12 give [8] 3:15 26:19 37:24 37:25 42:12 51:12 51:17 55:9 given [3] 16:13 65:23 65:25 giving [1] 12:1 goals [1] 24:10 God [1] 41:13 golf [2] 24:6 63:7 good [8] 40:18 42:7 42:8 63:10 69:13 71:15 71:15 75:3 gotten [1] 67:10 govern [1] 57:2 governed [2] 57:17 57:19 governmental [2] 38:22 38:23 Grace [1] 51:3 graceful [1] 5:3 gradually [1] 36:12 granddaughter [1] 42:6 grandfather [2] 5:25	group [2] 51:12 69:8 groups [2] 35:11 46:14 grumbling [1] 40:21 guess [7] 6:24 42:5 43:18 53:1 53:24 65:14 75:5 guest [4] 25:18 59:12 59:18 63:17 guests [2] 58:23 64:1 hairy-chested [1] 6:8 half [4] 4:4 11:8 36:13 43:4 hammered [1] 32:25 hammering [1] 40:9 hand [5] 12:24 16:1 17:1 17:12 79:14 hand-out [2] 21:9 24:9 hand-outs [3] 15:23 16:4 16:15 hands [1] 48:21 happen [3] 27:3 33:20 42:14 happened [1] 16:12 happens [2] 31:14 32:4 happily [1] 40:19 happy [2] 40:21 68:18	idea [3] 59:21 61:23 69:13	immutability [1] 10:3 implication [1] 53:9 imply [3] 53:4 53:7 53:16 implying [1] 53:13 important [1] 67:4 impression [1] 4:18 improper [1] 18:11 improperly [2] 17:17 17:24 Inc [1] 13:2 include [3] 25:6 39:6 45:6 included [1] 56:25 includes [1] 17:25 including [3] 19:6 20:24 68:16 inclusion [1] 38:1 incongruities [1] 58:14 inconvenient [1] 71:2 incorporated [3] 51:19 51:21 58:11 incorrect [2] 60:16 60:20 incorrectly [1] 54:19 increase [1] 60:19 indeed [2] 14:4 49:8 indicated [3] 15:16 16:18 21:1 indicating [1] 11:8 indictment [3] 48:16 48:18 48:22 indirectly [1] 69:6 indisputable [1] 61:23 individual [2] 43:21 63:25 indulgence [1] 3:11	intending [1] 43:14 intent [1] 63:12 intention [1] 53:13 intentional [1] 24:17 interest [5] 38:22 38:23 39:18 51:5 66:9 interested [1] 61:12 interpret [1] 54:19 interracial [2] 54:11 54:14 interreligious [1] 54:15 interrupt [2] 11:23 20:16 into [20] 9:19 9:24 16:17 23:24 25:22 30:2 30:20 32:14 46:19 48:21 49:22 50:1 50:4 58:11 61:9 62:22 64:23 68:9 68:23 74:22 invective [2] 7:9 9:25 involve [1] 69:14 involved [9] 7:1 10:25 15:22 34:19 44:5 46:8 50:16 59:15 69:20 involving [1] 19:13 irrelevant [1] 49:4 irresponsible [1] 63:13 irrevocable [2] 56:2 56:9 Isenberg [1] 5:20 issue [10] 4:1 5:13 5:16 11:4 32:24 43:19 44:7 45:8 63:8 64:9 issues [7] 8:24 27:9 28:13 31:22

item - more

Condenselt™

Palm Beach Town Council

41:7 59:11 65:22	late [4] 15:18 39:15	litigation [1] 50:16	35:12 39:2 39:6	means [2] 46:24
item [1] 78:4	49:15 49:25	little [4] 33:13 48:10	40:3 45:3 45:6	57:6
lto [1] 68:7	later [4] 8:9 23:10	50:13 67:11	45:7 45:22 46:13	meant [1] 53:9
its [9] 23:20 35:2	43:17 69:21	live [1] 8:22	46:18 46:24 48:25	meet [6] 17:18 17:25
38:1 50:24 52:16	law [16] 5:20 9:17	lived [2] 17:3 17:4	51:5 52:13 54:6	20:2 73:8 74:21
55:4 56:10 58:22	20:21 24:15 29:7	long [5] 8:3 35:22	54:13 61:23	77:7
59:25	30:11 32:15 32:16	38:14 67:6 77:5	Mar-A-Lago's [1]	meeting [17] 1:7
itself [5] 52:15 59:20	34:9 35:2 37:6	look [4] 10:21 22:4	47:20	13:15 58:20 62:15
59:22 69:14 70:3	38:4 44:25 44:25	42:11 65:19	Marine [1] 6:12	62:18 71:12 71:23
Jack [1] 2:7	67:1 70:1	looked [2] 41:15	marriage [3] 54:11	73:19 73:21 73:25
James [1] 5:10	laws [2] 17:19 26:6	65:12	54:14 54:15	75:11 75:22 75:25
Jew [3] 17:3 25:24	lawyer [7] 7:24	looking [3] 41:16	married [2] 42:6	76:7 78:8 79:10
63:11	7:25 10:9 28:25	72:11 73:23	42:9	79:12
Jewish [14] 5:24	37:1 47:25 70:17	lot [9] 14:17 29:10	masses [1] 61:8	meetings [4] 40:16
5:24 6:6 6:13	lawyers [2] 3:4	36:9 40:9 40:11	material [2] 65:23	66:25 70:8 77:21
25:1 25:18 31:13	9:16	42:20 54:17 54:18	65:25	member [8] 25:7
31:24 32:1 32:2	laymen's [1] 33:17	67:8	materials [2] 22:21	25:18 26:18 40:5
41:21 42:10 42:18	League [1] 64:8	louder [1] 48:10	39:7	42:23 43:3 63:6
63:5	least [5] 13:10 19:2	love [1] 64:11	matter [6] 26:11	members [31] 5:13
Jews [3] 6:8 31:15	30:1 43:16 60:4	lovely [1] 41:12	26:19 32:15 32:15	5:14 25:1 25:16
54:7	Leave [1] 63:24	lunch [4] 42:18	37:5 61:2	25:17 38:17 41:21
job [1] 41:12	led [1] 52:4	42:21 43:10 71:25	matters [2] 20:24	48:8 50:22 50:23
jogging [1] 6:4	left [2] 15:7 17:12	ma'am [2] 27:16	78:5	54:1 55:14 58:18
John [2] 2:12 40:25	legal [5] 5:4 30:22	77:23	MATTOX [2] 79:8	59:22 60:2 60:3
join [1] 46:13	31:4 35:7 47:22	Madam [4] 3:2	79:19	60:10 60:14 62:5
joining [1] 46:25	lengthy [1] 16:18	14:24 34:3 48:2	may [16] 6:19 15:24	62:19 63:25 65:9
judge [6] 5:21	Leslie [1] 2:6	made [15] 3:8	18:4 19:23 27:4	65:16 66:7 67:15
7:16 7:21 63:14	Lesly [1] 2:3	3:9 4:1 6:25	29:3 36:4 39:23	68:22 70:18 71:8
68:4 68:6	less [5] 12:18 33:4	15:9 24:16 28:5	40:5 48:2 49:5	71:16 73:10 75:16
judgement [2] 49:3	36:16 54:22 77:4	36:6 36:17 51:8	56:12 66:15 66:18	membership [7]
63:24	lesser [1] 25:13	51:10 52:5 53:22	69:1 71:22	33:8 58:6 58:17
judges [1] 68:7	let [5] 15:7 17:11	60:23 76:2	maybe [4] 36:21	58:19 58:22 59:24
jure [5] 29:24 29:25	20:15 44:10 75:16	mailed [1] 52:24	36:22 51:14 51:14	60:16
30:8 30:12 47:23	letters [1] 8:14	main [1] 68:13	mayor [27] 2:4	memberships [1]
jury [3] 7:13 8:1	level [2] 25:14 58:18	mainly [2] 51:22	6:9 6:19 6:21	60:4
68:8	levels [1] 56:18	52:4	9:5 9:8 13:23	men [1] 61:10
justify [2] 10:15	life [1] 41:15	maintain [1] 38:4	14:1 14:7 14:8	mental [2] 44:13
38:24	light [3] 19:2 19:12	maintained [1] 15:21	14:17 37:16 37:18	44:13
keep [3] 6:7 35:17	19:13	major [1] 4:1	39:13 39:22 40:8	mentioned [1] 3:14
57:22	limitation [1] 33:4	majority [1] 31:13	41:23 41:25 42:5	meritorious [1] 49:14
key [2] 23:25 72:17	limited [6] 8:18	make [24] 3:5	42:8 43:5 43:9	met [1] 46:2
kicked [1] 42:20	8:18 20:10 44:25	4:21 6:16 7:16	55:4 55:24 74:20	method [1] 29:22
kill [1] 61:11	58:16 58:22	25:18 32:17 36:3	75:20 77:15	Michigan [1] 15:3
killed [1] 61:11	lines [2] 13:19 22:9	39:14 45:12 46:20	McClendon [9] 2:8	microphone [1] 13:5
knowing [1] 6:6	Lipman [38] 9:15	46:21 49:18 50:7	33:10 35:17 36:15	Middle [1] 44:14
knows [1] 39:17	11:20 11:24 12:5	57:11 62:25 63:1	42:15 64:21 64:24	Mind [2] 18:12 40:17
Kolins [12] 48:2	12:20 14:19 14:23	63:20 64:20 67:3	64:25 74:15	minimum [3] 18:1
48:5 48:11 48:12	15:2 16:12 17:11	69:16 69:18 71:18	McClendon's [1]	21:18 65:7
52:4 56:13 66:15	18:18 19:12 19:20	74:2 74:5	65:10	minority [1] 25:19
66:17 66:19 67:2	20:4 20:9 20:20	makes [2] 23:16	53:6 64:14 64:15	minute [4] 11:23
68:25 69:1	22:10 22:13 22:16	33:7	64:19 73:12 73:18	22:11 29:3 52:22
Komisar [1] 42:9	22:19 24:24 25:4	making [7] 4:23	74:2 74:9 74:16	mission [2] 10:25
L-I-P-M-A-N [1]	25:9 26:1 27:11	4:24 5:1 16:8	74:21 74:22 74:25	11:5
15:2	27:12 27:14 28:12	41:5 48:22 48:24	76:2 76:6 76:24	Mississippi [1] 9:16
lack [2] 49:16 61:1	30:19 34:16 34:20	malicious [1] 54:3	77:8	modified [1] 61:20
ladies [1] 41:11	37:9 47:10 48:6	man [1] 43:8	McDonald's [1]	moment [4] 31:7
Lake [1] 23:3	48:13 49:10 64:5	Manager [1] 2:9	73:14	48:3 68:16 71:3
land [1] 19:7	72:14	manner [1] 22:6	McLendon [16] 20:13	moments [1] 4:11
landmark [1] 58:1	listen [3] 6:10 6:15	Manual [1] 58:10	28:16 28:19 31:6	Moore [12] 2:10
Landmarks [5] 58:2	listened [1] 10:8	many [8] 8:22	32:3 32:9 32:23	14:12 37:13 72:3
75:11 76:17 76:22	listening [1] 47:8	8:22 35:21 35:21	35:19 36:9 36:24	72:8 72:9 72:20
76:24	literal [1] 22:24	37:22 48:14 49:15	53:12 64:20 70:24	72:22 73:2 73:4
last [8] 8:25 24:9	litigate [1] 12:15	57:10	74:1 74:11 75:18	75:12 76:17
25:2 36:6 39:17	litigated [1] 5:22	Mar-A-Lago [23]	mean [12] 13:24	more [17] 12:8
60:25 62:7 76:4		5:11 7:2 15:5	19:9 19:10 29:16	12:18 16:15 20:13
		28:21 30:5 32:18	33:6 33:22 41:18	21:23 33:3 33:7
			53:3 53:6 69:1	
			73:20 76:6	

Palm Beach Town Council

CondenseIt™

morning - pointed

36:9 40:16 53:18	necessarily [3] 29:16	occurred [3] 8:19	30:11	Paul [4] 2:4 40:17
54:22 56:19 59:14	34:21 41:18	11:11 34:9	overnight [1] 27:3	41:4 42:12
67:24 68:20 69:6	need [9] 7:12 9:13	October [5] 1:20	overturned [1] 29:5	pause [1] 77:25
69:25	10:5 34:21 46:10	62:15 62:16 62:17	own [7] 24:15 44:4	peak [1] 17:23
morning [3] 71:24	47:12 68:10 69:16	71:24	44:8 49:21 52:16	people [21] 8:22
74:16 74:19	71:5	odd [1] 27:22	55:4 56:11	17:23 28:19 31:14
most [1] 40:21	negotiated [1] 35:23	offend [1] 13:24	p.m [1] 1:20	33:5 36:10 41:10
motivated [1] 56:22	neighborhood [1] 10:17	offended [1] 13:23	page [11] 10:11	45:10 48:15 51:4
motive [1] 19:13	neighborhoods [3] 29:12 29:13 29:14	offends [1] 9:8	10:23 11:8 21:9	54:9 58:16 60:1
move [7] 39:21	Neither [1] 51:12	offer [2] 24:11 24:17	21:10 21:16 22:16	60:5 60:12 63:10
75:13 75:24 76:13	never [2] 40:13	offered [1] 11:9	24:5 24:5 24:9	65:2 68:12 72:17
76:20 76:22 76:24	41:14	offers [1] 26:6	24:10	75:1 75:4
moved [1] 75:12	new [6] 7:19 13:2	office [2] 8:14	pages [4] 16:19 16:20 22:24	per [7] 21:7 21:19
movie [2] 53:22	13:3 26:12 38:12	43:6	16:19 16:20 22:24	23:13 23:15 33:5
54:19	38:19	officers [3] 6:13	painful [6] 8:15	58:16 60:6
movies [1] 40:25	newspaper [1] 70:13	6:14 50:24	8:17 31:22 31:23	perfect [1] 37:1
moving [1] 78:4	newspapers [1] 61:9	official [1] 43:2	48:7 48:14	Perhaps [1] 68:3
Mrs [80] 3:13 5:1	next [10] 24:5 41:1	often [1] 16:12	Palm [39] 1:6	permission [4] 14:24
5:4 13:4 14:25	53:23 65:13 72:24	old [1] 41:3	1:19 5:19 5:23	57:20 59:16 59:19
15:25 16:10 20:15	72:25 73:20 73:20	oldest [1] 42:9	6:2 6:4 6:6	perpetuates [1] 17:2
22:10 22:15 22:18	75:22 77:7	once [2] 30:8 75:14	8:10 8:12 9:3	person [5] 14:2
27:12 27:15 27:17	night [2] 39:18 60:25	one-half [1] 44:15	11:7 14:20 15:23	23:13 23:15 48:22
28:18 33:9 33:17	nobody [1] 77:7	one-third [1] 44:15	17:16 17:20 18:11	63:5
33:22 33:24 34:5	none [5] 5:16 5:17	one-to-four [1] 32:21	19:4 21:17 21:18	personal [1] 10:2
34:12 34:24 35:8	5:18 10:5 19:19	only [5] 8:20 26:23	23:5 24:2 24:8	personally [5] 13:24
35:15 37:13 37:16	nonsense [2] 6:11	54:6 57:2 60:11	25:6 25:22 27:10	13:25 34:1 43:14
39:12 40:4 40:7	nor [2] 4:16 9:11	open [14] 13:15	30:6 30:14 36:6	52:14
41:7 41:8 41:23	note [2] 3:24 3:25	17:19 17:21 18:1	36:19 38:3 39:8	persuade [1] 28:14
48:4 48:10 50:4	notebook [1] 22:24	19:8 20:2 20:25	41:16 51:10 57:3	pertinent [1] 17:7
50:9 55:11 55:16	notes [3] 3:8 3:9	21:7 37:19 38:5	60:22 63:6 63:11	petition [1] 64:4
62:1 62:4 62:14	nothing [8] 16:15	38:8 39:3 45:16	63:20 79:5	philosophical [1] 53:18
63:2 64:12 64:14	19:22 46:4 47:19	47:17	paper [1] 59:1	phone [1] 70:9
64:16 64:21 65:9	48:21 49:6 54:22	opened [1] 55:18	papers [1] 22:11	Phonetic [5] 6:2
65:16 66:7 66:16	notwithstanding [2] 57:4 57:9	operates [1] 60:11	paragraph [3] 59:2	29:6 40:4 41:8
66:17 66:23 68:3	November [12] 73:6	opinion [1] 65:24	59:4 59:7	42:10
70:18 70:23 71:4	73:12 73:14 74:4	opportunity [5] 13:22	pardon [1] 42:1	photography [4] 59:2 59:4 59:5
71:8 71:13 71:22	74:8 75:6 75:8	16:14 20:19 66:12	park [5] 21:5 21:6	59:8
72:7 72:11 72:19	76:5 76:15 77:12	70:5	21:13 22:6 26:15	physical [2] 57:11
73:2 73:7 73:10	77:15 77:24	opposition [2] 20:6	27:22 58:5 60:19	57:25
73:14 73:23 74:4	nowhere [1] 60:20	20:11	57:22 58:5 60:19	pick [2] 15:6 43:25
74:13 74:17 74:18	number [9] 30:13	oral [1] 69:16	57:22 58:5 60:19	picked [1] 70:13
75:9 75:16 75:24	36:17 36:19 37:7	order [5] 7:19 48:3	57:22 58:5 60:19	place [2] 55:13 79:10
76:14 77:11 77:16	37:8 38:4 38:24	52:10 52:18 68:4	57:22 58:5 60:19	plaintiffs [1] 9:23
77:20 77:24 78:3	58:23 58:24	ordinance [14] 6:4	57:22 58:5 60:19	plan [11] 4:4 16:21
municipalities [1] 43:24	numeral [2] 21:9	6:7 12:22 12:25	57:22 58:5 60:19	20:21 20:22 21:2
murals [1] 9:20	o'clock [2] 72:1	13:11 13:18 30:14	57:22 58:5 60:19	21:3 30:19 37:20
Murray [1] 42:3	object [1] 40:19	37:8 38:11 38:20	57:22 58:5 60:19	39:3 44:8 45:15
Muslins [1] 54:7	objection [1] 61:1	38:25 47:14 47:15	57:22 58:5 60:19	planner [1] 15:13
must [6] 17:22 25:5	objective [1] 32:22	47:16	57:22 58:5 60:19	planning [4] 2:10
25:21 26:21 57:22	objectives [1] 24:10	ordinances [2] 57:7	57:22 58:5 60:19	20:24 26:15 44:23
57:25	obtain [1] 59:16	58:12	57:22 58:5 60:19	plans [2] 70:25
myself [4] 14:8	obvious [1] 36:7	organization [1] 56:6	57:22 58:5 60:19	76:3
28:12 44:20 68:11	obviously [3] 52:24	others [4] 12:3	57:22 58:5 60:19	play [1] 24:1
NAACP [1] 9:17	66:1 66:4	26:25 39:20 60:24	57:22 58:5 60:19	plays [1] 48:21
name [2] 15:1 40:18	occupancy [1] 57:24	otherwise [2] 67:18	57:22 58:5 60:19	please [9] 13:6
Natale [22] 3:2	occupied [1] 72:25	67:23	57:22 58:5 60:19	20:17 33:19 37:12
3:17 3:19 3:21	occur [1] 33:20	ourselves [1] 65:21	57:22 58:5 60:19	41:23 48:4 65:17
3:23 4:13 4:22		outcome [1] 18:6	57:22 58:5 60:19	66:8 66:8
5:2 5:3 5:6		outlined [1] 23:1	57:22 58:5 60:19	Plessy [1] 29:6
11:25 15:25 27:20		outside [1] 77:14	57:22 58:5 60:19	point [10] 12:6
39:4 68:5 70:20		over [4] 8:25 40:1	57:22 58:5 60:19	32:23 34:22 36:3
70:22 72:13 72:16		56:24 75:4	57:22 58:5 60:19	41:13 48:3 53:25
74:5 74:14 77:1		overcome [2] 30:10	57:22 58:5 60:19	66:5 67:12 68:2
National [4] 21:5			57:22 58:5 60:19	pointed [3] 55:3
21:13 56:1 58:1			57:22 58:5 60:19	
natural [1] 48:17			57:22 58:5 60:19	
near [1] 65:6			57:22 58:5 60:19	

58:25 59:1	prevalent [1]	32:3	proud [1]	41:16	6:9 6:23 7:15	regulations [1]	57:2
polarizing [1]	64:10	previous [1]	31:11	provided [3]	17:22	regulatory [3]	24:11
policies [1]	47:1	previously [1]	15:14	22:25 23:10		24:18 26:6	
policy [14]	21:16	primary [1]	32:22	providers [3]	24:13	reject [1]	26:14
21:17 23:20 24:10		principles [2]	46:6	24:19 26:8		relate [3]	7:11
24:11 26:3 26:11		46:7		proving [2]	29:1	15:10 33:18	
26:13 30:19 32:12		prior [2]	35:1 59:12	30:1		related [1]	33:3
32:13 34:13 34:20		private [28]	13:9	provision [2]	52:16	relating [3]	7:7
37:5 44:23 47:11		13:16 17:17 17:25		55:7		15:8 15:19	
polite [1]	5:6	18:22 19:7 20:1		provisions [2]	21:13	relations [1]	24:3
population [3]	17:24	23:14 24:1 24:5		61:18		relevant [1]	64:6
21:20 21:22		24:12 24:18 25:15		public [14]	17:18	remarks [5]	7:16
portable [1]	13:5	26:7 26:10 32:12		18:1 21:7 23:6		7:17 48:6 48:14	
portion [1]	39:7	32:14 34:15 34:15		23:7 23:12 40:16		50:12	
portions [1]	16:16	35:3 37:20 37:21		43:2 45:16 66:22		remember [2]	26:22
portrays [1]	53:21	38:7 38:14 45:24		66:25 67:16 75:22		42:2	
position [11]	17:13	63:16 63:21 66:21		pupils [1]	29:18	remind [3]	52:17
18:18 19:9 19:17		privilege [1]	63:17	purpose [3]	6:7	54:24 56:24	
20:4 46:11 46:12		probably [1]	33:4	46:3 53:18		reminds [1]	61:5
60:8 63:8 63:13		problem [12]	11:21	purposes [2]	34:16	render [1]	65:24
64:7		17:1 30:24 30:25		76:12		repel [1]	26:3
positions [1]	19:15	31:8 31:19 37:9		put [10]	6:21 12:16	report [2]	15:12
possibility [1]	37:3	44:21 47:17 47:23		32:24 45:22 50:19		79:9	
possible [2]	65:7	48:1 68:11		56:12 61:10 61:21		reporter [2]	79:8
71:23		problems [2]	47:10	68:4 69:25		79:19	
postpone [1]	66:3	52:7		puts [1]	70:1	reports [1]	3:15
power [1]	12:21	procedure [1]	49:21	qualify [1]	43:20	represent [5]	5:11
practice [1]	5:8	procedures [1]	55:20	question [24]	3:18	15:4 24:6 42:23	
practices [2]	15:20	proceeding [3]	15:11	3:22 4:7 4:17		43:1	
25:14		16:13 72:18		7:22 8:15 11:22		representing [1]	
preceded [1]	52:24	proceedings [3]	19:16	20:19 24:23 27:19		44:12	
predictions [1]	52:6	62:12 72:15		28:17 28:25 30:2		request [3]	18:6
predominantly [3]		process [8]	30:22	30:21 32:4 32:15		27:6 28:2	
29:12 29:13 29:14		35:10 44:23 50:14		35:17 37:15 39:1		require [1]	21:24
prefer [1]	65:5	67:10 68:9 68:10		39:15 40:14 43:1		required [5]	20:21
preferred [1]	56:14	77:9		66:20 71:18		30:14 35:4 35:23	
pregnant [1]	77:25	professed [1]	14:16	questions [2]	37:11	58:21	
prejudices [1]	7:13	progress [7]	8:25	49:5		requirement [2]	13:16
prepared [6]	22:20	9:4 27:1 36:5		quicker [1]	36:20	33:3	
23:21 28:21 39:5		36:9 36:21 36:22		quite [3]	4:15 55:20	requirements [5]	
61:10 65:4		prohibit [1]	59:7	67:4		17:19 18:2 19:8	
preparing [1]	68:22	projected [1]	21:22	R [1]	79:2	20:3 45:24	
present [7]	3:25	promise [2]	39:24	rabble-rouser [1]		requires [1]	21:6
4:3 4:5 4:7		77:11		14:3		research [1]	23:4
49:9 71:17 71:21		promote [1]	31:16	race [2]	19:3 24:20	resemble [1]	53:19
presentation [3]		promulgated [2]		20:23 23:21		resent [1]	14:4
44:4 51:8 51:10		promulgating [1]		34:19		reside [1]	36:18
presented [6]	15:17	proper [3]	26:20	racial [1]	15:20	resident [3]	6:5
49:7 51:25 52:1		42:12 55:19		racially [1]	25:10	26:18 63:4	
56:13 65:2		properties [2]	44:2	racist [2]	9:2	residents [3]	21:8
presently [1]	59:11	57:18		raise [1]	7:19	21:24 70:14	
preservation [9]		property [6]	10:13	raised [2]	4:8	resolve [1]	46:12
11:6 50:24 51:1		37:20 37:21 51:6		28:13		respect [3]	28:10
51:5 51:9 51:19		56:19 57:12		raising [1]	47:22	47:17 53:16	
55:25 58:2 60:25		proportion [1]	55:1	Rampell [30]	6:16	respond [1]	49:24
preservationists [1]		proposal [2]	51:16	7:11 10:1 11:14		responded [1]	49:10
51:23		74:17		11:18 20:14 28:6		responding [1]	31:8
president [8]	2:3	proposing [1]	57:15	39:2 39:8 40:15		response [1]	28:1
3:2 9:12 14:24		protect [5]	24:12	41:4 49:9 50:6		rest [2]	46:14 46:25
34:3 48:2 50:25		24:18 26:7 27:9		50:7 50:11 55:17		resting [1]	16:8
53:9		43:22		62:1 62:2 63:9		restricted [1]	6:1
presumption [3]		protection [2]	29:2	64:2 64:7 67:15		restrictions [2]	47:2
30:9 30:22 35:7		32:16		71:20 72:11 72:17		63:18	
pretty [2]	43:10	protested [1]	51:6	73:9 74:5 75:9		restrictive [1]	45:25
58:7				77:22 77:23			
				Randolph [10]	2:12		

Palm Beach Town Council

Condenselt™

result - suggesting

result [1]	3:9	seeking [3]	9:21	should [15]	7:5	78:3	12:12	21:19	23:18
resulted [1]	29:21	32:20	61:16	10:19	11:12	12:11	standards [4]	21:4	
results [2]	29:11	seem [1]	43:23	12:16	27:1	27:6	21:25	23:16	58:9
33:20		seeming [1]	48:8	46:13	50:3	51:14	start [2]	40:24	74:10
retain [2]	3:10	seems [1]	7:4	51:15	60:23	61:20	started [1]	56:24	
28:11		seen [1]	8:24	61:20	69:8		starting [1]	77:20	
returned [1]	43:5	segregated [1]	53:22	shouldn't [2]	68:1		state [13]	13:2	
review [2]	66:12	segregation [4]	29:8	69:6			14:25	15:8	17:20
67:25		29:10	30:15	show [5]	16:25	17:11	38:4	51:18	53:4
reviewed [1]	8:6	sell [1]	58:17	29:19	29:20	30:8	53:6	61:9	63:4
rights [4]	9:17	send [1]	40:25	shown [1]	30:12		68:18	77:16	79:5
37:1	37:2	sending [1]	40:24	sign [2]	40:19	55:5	stated [5]	23:20	
49:2		sense [1]	33:7	signed [9]	33:12		57:9	60:23	62:21
rigorous [1]	55:20	sensitivity [2]	54:5	40:2	41:9	45:9	79:10		
rise [1]	55:9	54:22		52:12	52:12	52:13	statement [12]	4:20	
Road [1]	1:19	sent [6]	8:13	55:6	55:24		20:16	20:17	20:18
roadway [1]	51:15	51:2	51:3	signers [1]	40:2		36:17	39:10	39:13
Robert [2]	2:9	53:24	51:4	significance [1]			39:13	50:8	50:10
2:10		sentence [3]	56:25	48:1			61:21	63:1	
role [1]	24:1	57:1	59:6	significant [1]	28:9		statements [2]	62:3	
Roman [2]	21:9	sentiments [1]	69:2	silent [1]	51:15		62:20		
21:16		separate [1]	29:6	similar [3]	8:12		states [10]	12:23	
room [4]	9:24	September [4]	4:1	9:18	38:11		13:12	13:19	21:17
75:14	76:23	4:3	18:19	simple [3]	17:13		23:21	23:22	38:18
roughly [1]	37:25	43:25	45:8	43:25	45:8		58:12	63:4	63:24
rub [1]	23:19	series [2]	22:8	simply [4]	49:17		stating [1]	53:14	
rude [1]	39:23	41:14		49:23	54:21	67:20	status [1]	57:17	
rulings [1]	63:23	serious [4]	8:15	since [2]	69:3	72:2	stay [2]	14:8	77:12
running [2]	6:8	13:7	31:4	sincerely [1]	56:15		stenotype [1]	79:12	
68:15		served [1]	6:13	sincerity [1]	40:9		step [7]	20:20	21:1
safety [2]	75:22	serves [1]	20:5	single [3]	11:9		21:3	21:12	21:21
75:25		session [17]	14:15	39:24	44:21		29:3	63:18	
Sailfish [2]	23:9	31:3	48:1	sitting [4]	40:4		steps [1]	37:7	
24:25		50:2	50:5	41:21	62:6	66:24	still [4]	41:5	43:3
sake [1]	61:11	64:23	65:1	situation [2]	46:13		46:3	59:15	
same [9]	25:7	66:21	66:22	70:13			stood [2]	27:19	
36:16	45:11	68:23	71:4	skewed [1]	68:1		28:1		
45:23	53:12	77:13		skilled [1]	10:9		stop [4]	22:10	38:16
53:15		18:24	79:14	slavery [1]	9:21		39:17	64:10	
Samuel [1]	2:8	seven [3]	12:23	small [1]	44:25		story [2]	54:4	54:10
sanctioned [1]	13:20	13:12	13:20	Smith [83]	2:3		street [1]	67:20	
sat [1]	41:8	several [1]	44:12	3:13	5:1	5:4	stretch [1]	62:9	
says [4]	45:15	shake [1]	10:7	9:5	9:12	13:4	strictly [1]	20:10	
59:4	59:22	shall [2]	57:1	14:25	15:25	16:10	stuff [2]	49:25	65:2
scene [2]	24:2	share [4]	9:13	20:15	22:10	22:15	subdivision [3]	50:16	
24:7		15:18	64:11	22:18	27:12	27:15	50:18	51:6	
scenes [2]	9:21	Shaw [30]	2:6	27:17	28:18	33:9	subject [6]	45:23	
36:11		18:4	19:6	33:17	33:22	33:24	57:2	57:6	59:22
schedule [2]	27:23	19:22	20:7	34:5	34:12	34:24	63:23	68:16	
72:12		41:22	43:15	35:8	35:15	37:13	subjected [1]	32:20	
scheduled [2]	71:23	46:1	46:24	37:16	39:12	40:7	subjectivity [1]	54:20	
76:21		47:8	47:19	41:8	41:23	47:22	submission [1]	22:20	
school [5]	29:8	65:12	65:18	48:4	48:10	50:4	submit [1]	24:14	
29:10	29:21	72:3	72:5	50:9	53:9	55:11	submitted [1]	66:13	
34:8		72:25	73:17	55:16	62:1	62:4	such [2]	33:21	61:9
schools [2]	29:18	75:8	75:21	62:14	63:2	64:12	sudden [4]	40:24	
35:5		76:19	78:2	64:14	64:16	64:21	41:19	42:14	42:15
scold [1]	10:20	Shaw's [1]	49:5	65:9	65:16	66:7	sufficient [1]	13:17	
seasonal [2]	17:23	Shaw's [1]	49:5	66:16	66:17	66:23	sugar [2]	44:19	
21:22		sheds [2]	19:12	68:3	70:18	70:23	suggest [4]	48:20	
seating [1]	60:12	19:13		71:4	71:8	71:13	49:5	67:20	71:22
second [4]	21:9	sheep [1]	61:7	71:22	72:7	72:11	suggested [2]	12:9	
22:16	25:20	sheet [2]	11:8	72:19	73:2	73:7	35:12		
59:6		shiny [1]	11:8	73:10	73:14	73:23	suggesting [6]	30:23	
sector [4]	24:7	shirtless [1]	6:3	74:4	74:13	74:17			
24:12	24:19	shortcut [1]	29:25	74:18	75:9	75:16			
26:7				75:24	76:14	77:11			
				77:16	77:20	77:24			

suggestion - we'd

Condenselt™

Palm Beach Town Council

32:6 32:8 32:9	13:14 18:24 56:12	too [3] 37:15 39:18	28:4 28:10 41:12	upon [5] 19:14 23:4
32:10 69:9	58:7 62:20	74:12	41:19 51:8 52:12	24:14 52:2 55:14
suggestion [1] 67:4	thank [18] 5:7	took [5] 4:4 11:7	56:6 63:9 67:15	upset [1] 42:10
suggestions [2] 51:21	5:9 13:21 22:18	12:12 19:17 60:4	Trump's [5] 11:1	urge [5] 22:4 26:2
51:22	24:22 27:11 49:19	top [1] 22:8	18:21 19:15 20:6	26:9 49:12 67:17
suites [2] 59:12	55:21 61:25 62:1	total [2] 22:6 23:11	50:17	urged [3] 8:23
59:18	62:3 62:4 62:9	towards [3] 7:10	Trust [2] 56:1	46:22 52:8
summarizing [2]	64:11 68:7 68:24	7:10 61:14	58:2	use [13] 13:4 20:1
4:19 7:5	72:19 77:19	town [86] 1:6	try [2] 6:20 31:16	31:12 32:24 38:14
summary [6] 16:19	their [11] 3:16	1:7 2:9 3:12	trying [6] 5:6	46:19 52:11 55:22
17:14 17:16 22:3	24:3 25:17 38:16	4:9 5:23 6:2	42:1 45:6 57:10	56:10 59:14 61:19
22:14 22:17	41:15 47:1 48:7	6:4 6:5 6:8	61:21 76:11	65:14 76:11
summation [10] 4:23	49:13 50:2 60:5	8:10 8:11 8:18	two [25] 5:22 7:12	used [1] 20:2
4:24 5:12 12:1	themselves [1] 48:23	8:23 14:8 14:20	15:23 16:19 18:20	uses [1] 17:17
12:2 12:4 37:10	therefore [3] 18:2	15:21 15:22 17:2	19:2 21:1 22:24	usurp [1] 75:13
48:24 49:1 50:2	19:22 25:23	17:16 17:20 17:24	25:2 32:25 33:5	utilization [1] 56:19
summer [1] 60:4	thereof [1] 49:16	18:2 18:11 19:4	35:10 37:7 37:8	utilize [1] 37:20
Sunday [2] 74:16	Thereupon [1] 78:8	21:1 21:12 21:17	37:11 41:22 45:10	utilizes [1] 34:15
74:18	they've [4] 45:11	21:18 21:23 21:25	45:10 48:18 52:25	various [2] 20:23
Sunshine [1] 67:1	45:12 68:6 68:7	23:5 23:16 23:19	59:3 60:3 61:7	50:21
supposed [3] 16:5	thinking [2] 27:8	24:1 24:8 24:11	types [1] 60:20	vehicle [2] 47:9
16:6 49:22	32:1	24:16 26:4 26:6	U.S [1] 44:18	47:12
Supreme [5] 12:23	third [2] 43:4 44:17	26:12 26:19 26:21	ugliness [2] 8:12	ventured [1] 43:22
13:12 13:19 38:18	though [1] 45:10	26:23 27:1 27:10	8:13	versus [6] 6:2
63:24	thought [1] 45:5	30:6 30:24 32:11	unacceptable [1]	8:10 8:11 13:2
sure [2] 34:1 35:16	thoughts [1] 68:24	34:13 35:14 36:18	63:9	14:20 29:4
surrounding [1] 61:4	thousand [3] 21:8	37:6 38:1 40:6	unambiguously [1]	vicious [1] 41:20
suspect [1] 36:24	21:20 44:12	42:17 42:22 44:2	23:22	videotapes [1] 52:25
sworn [2] 26:5	three [9] 3:3 3:4	44:5 45:6 47:11	unconscionable [2]	view [1] 41:13
42:23	3:4 4:4 21:3	50:16 50:22 50:23	11:13 12:11	VIII [1] 1:9
T [2] 79:2 79:2	41:21 45:9 46:19	51:24 53:19 53:20	unconscious [1]	violation [2] 29:2
table [3] 22:2 22:21	62:7	54:13 57:3 57:19	7:14	38:4
57:8	through [7] 11:10	62:15 62:18 64:11	under [6] 4:18	virtually [1] 59:7
tainted [1] 69:22	18:23 18:24 28:6	66:23 70:25 72:2	9:17 17:19 24:10	volume [2] 1:9
taken [8] 11:18	30:18 50:14 57:8	72:6 72:10 72:21	60:16 67:1	10:11
19:15 22:23 34:2	throughout [2] 9:3	72:24 72:25 73:16	underpinning [1]	volumes [1] 65:25
42:18 60:8 62:11	throw-up [1] 6:17	73:17 73:18 73:21	20:5	vote [6] 14:12 14:14
79:12	throwing [1] 68:5	Town's [3] 13:15	understand [17] 3:15	19:25 27:8 65:4
taking [3] 42:21	Thursday [2] 3:24	17:22 39:3	4:19 7:20 10:24	69:17
46:11 58:5	73:24	Town-wide [1] 68:20	11:25 18:17 19:25	voting [1] 10:18
talk [7] 5:12 5:17	thus [1] 23:5	traffic [5] 52:7	20:22 27:23 33:19	vs [1] 29:6
40:15 41:6 52:23	tied [1] 57:23	56:18 58:9 58:10	35:8 39:14 45:16	wait [1] 60:2
67:20 68:14	Tim [1] 42:9	60:9	48:5 48:13 60:12	waited [1] 36:19
talking [3] 30:4	time [30] 5:22 8:19	trained [1] 29:1	70:15	walk [2] 9:24 18:7
46:5 76:14	11:16 13:21 27:4	transcript [1] 10:12	understanding [3]	walked [2] 40:20
Tampa [1] 44:14	35:22 39:16 40:13	transcription [1]	4:13 14:13 39:5	57:8
tax [1] 56:5	40:16 41:1 44:15	79:11	understands [1] 8:4	walking [1] 9:19
tear [1] 38:8	44:17 44:20 44:24	trash [1] 6:15	understood [1] 27:17	Wallace [3] 8:10
telephonic [1] 67:18	49:14 49:17 50:13	traveled [1] 17:5	undeserved [1] 48:16	8:11 14:20
telling [2] 19:18	50:22 51:1 52:6	treated [4] 12:17	unfair [1] 11:18	wants [4] 3:15
30:10	55:17 59:2 65:3	18:21 35:11 35:13	unfortunately [3]	10:13 10:16 10:22
tennis [8] 23:9	67:22 67:24 68:10	treatment [7] 30:2	11:17 31:2 32:11	Watch [1] 76:6
25:10 25:13 42:19	70:21 76:10 77:17	30:3 30:5 32:18	uniforms [1] 61:10	watching [1] 41:9
52:19 55:13 55:15	79:10	46:17 46:18 61:17	unintentionally [1]	water [1] 72:5
55:19	times [1] 29:10	tremendous [1] 26:25	69:20	way [11] 8:5 29:25
TERLIZZESE [1]	timing [1] 43:20	tried [3] 14:2 31:9	unison [1] 28:22	30:18 33:18 41:1
76:4	today [7] 18:13	50:20	United [6] 12:23	41:17 46:16 53:4
term [2] 5:5 35:7	27:25 57:15 63:19	trigger [1] 13:17	13:12 13:19 38:18	53:7 56:13 57:18
terms [4] 33:18	66:1 66:14 67:8	trips [2] 4:5 60:10	63:3 63:23	Wayne [3] 40:25
47:2 55:4 56:11	together [3] 50:19	trouble [1] 33:13	unlimited [3] 58:23	79:8 79:19
testified [2] 15:14	51:16 56:22	troubled [3] 5:13	58:23 60:16	ways [5] 29:20 30:13
67:7	told [4] 6:5 16:14	5:14 5:15	unreasonable [1]	47:6 53:19 57:10
testifying [1] 41:12	49:11 61:13	true [3] 11:12 12:10	61:16	we'd [4] 38:2 38:3
testimony [9] 6:23	tonight [2] 65:5	79:11	until [5] 5:21 60:2	60:6 60:6
7:6 7:17 7:19	66:14	Trump [16] 3:25	65:6 70:5 72:22	
		4:6 10:4 10:12	upheld [1] 12:25	
		11:9 27:6 27:18		

we've [13]	11:2	worked [2]	31:16
11:3 12:15 22:5		61:8	
23:7 23:9 35:12		worker [1]	14:21
41:11 47:23 47:23		working [2]	22:12
56:25 60:8 75:14		36:10	
week [6] 65:13 72:22		works [1]	74:3
72:24 73:1 73:19		world [2]	17:5
76:4		54:9	
weeks [3]	4:4	worse [1]	49:14
60:3 61:7		Worth [1]	23:3
welcome [2]	26:24	wouldn't [3]	7:15
26:24		59:15 69:18	
welcomes [1]	54:6	wrap [1]	78:2
West [1] 5:19		wrath [1]	61:14
western [1]	41:1	wrong [4]	35:9
what's [2]	36:14	36:21 43:19 63:10	
49:23		wrote [2]	61:6
what-not [1]	67:9	61:7	
whatever [3]	32:16	Wyett [45]	2:5
36:11 69:11		3:13 3:17 3:21	
whatsoever [1]	53:10	3:24 4:12 4:18	
whenever [1]	42:19	16:24 17:3 22:4	
whereby [1]	29:8	24:23 24:25 25:5	
whereof [1]	79:14	25:12 26:1 26:17	
Whereupon [1]	62:11	28:4 33:9 37:11	
whether [8]	10:1	37:14 37:19 37:24	
10:2 10:3 34:18		38:13 39:1 39:10	
34:18 55:14 67:15		53:15 62:25 63:2	
69:8		63:3 64:12 64:13	
while [4]	38:19	64:17 70:12 71:10	
39:23 65:18 68:21		71:14 72:20 72:23	
white [2]	29:13	73:5 73:16 74:23	
54:16		75:19 76:11 76:22	
whites [2]	54:8	77:3 77:11	
54:17		Wyett's [1]	28:2
whom [1]	11:10	X [1]	38:4
wife [1]	31:14	year [2]	25:2 53:23
will [30] 4:10 4:24		years [18]	6:12
5:8 11:20 11:24		8:9 8:19 8:25	
12:5 12:6 12:20		9:15 12:23 13:12	
12:24 14:8 14:14		13:20 17:4 34:14	
15:19 15:25 17:14		34:14 34:14 36:7	
20:18 24:11 27:8		36:20 41:3 43:6	
31:1 31:2 37:24		46:20 53:23	
39:24 43:17 47:17		yellow [2]	16:22
54:24 59:5 63:25		21:10	
64:20 68:18 71:3		yesterday [3]	10:8
72:3		27:24 66:13	
willing [1]	45:9	yesterday's [1]	10:11
willy-nilly [1]	56:8	yielded [1]	11:25
wise [1]	70:2	York [5]	13:3
wish [2]	40:25 44:22	26:13 38:12 38:19	
wishes [1]	75:13	youngster [1]	26:23
withdraw [2]	64:3	yours [1]	33:21
66:4		yourself [5]	14:6
within [6]	17:22	14:11 26:10 69:3	
23:4 55:2 58:8		70:1	
58:14 61:19		yourselves [1]	67:13
without [1]	16:25	zoning [18]	2:11
witness [1]	79:14	18:6 19:18 20:3	
wonder [1]	10:1	27:7 27:9 45:3	
wonderful [2]	41:11	45:20 45:23 45:24	
64:10		55:20 57:13 60:17	
word [2]	12:12 66:15	63:12 63:15 64:4	
words [1]	59:23	74:9 75:7	