PUBLIC HEARING

INDIAN LAKE BOROUGH

Re: Comprehensive Amendments)
to Zoning Ordinance No. 144)
and repeal of all previous)
zoning ordinances, and the)
comprehensive enactment and)
recodification of proposed)
Zoning Ordinance No. 155)

PUBLIC HEARING, in the above-entitled matter, pursuant to the Municipalities Planning Code of the Commonwealth of Pennsylvania, before Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, at the Unity United Church of Christ, 2074 Huckleberry Highway, Berlin, PA 15530, on December 19, 2009, at 10:15 a.m.

WAWRZYNIAK REPORTING & VIDEO SERVICE
P. O. Box 368
Irwin, PA 15642
(724) 864-6993

APPEARANCES:

ON BEHALF OF INDIAN LAKE BOROUGH COUNCIL:

MICHAEL D. MISCOE, President
P. SCOTT MOORE, Member
ROBERT VOGEL, Member
RICHARD STERN, Member
CHARLES McCAULEY, Member
PATRICIA DEWAR, Member
BARRY S. LICHTY, Mayor
DANIEL W. RULLO, Solicitor

INDEX OF SPEAKERS

MR. MISCOE - PAGE 4

MR. RULLO - PAGE 8

KURT MORGESE - PAGE 23

BOB HANSON - PAGE 30

MICKEY MOSES - PAGE 31

JIM LYONS - PAGE 37

BOB BUSTAMANTE - PAGE 47

MR. MISCOE: This is a public hearing for you to discuss -- provide the council with any comments or concerns relative to the proposed Zoning Ordinance 155.

I won't go through the history, but the council appointed a zoning committee of five individuals.

They were myself, Mr. Scott Moore from Borough Council, and then public members were Karl Chapman, Ron Petrina, and our current zoning officer, Dean Snyder.

We worked in public hearings for approximately nine months. We met twice a month.

There was a lot of work by members of the committee in between.

We completed our work, I believe in October, submitted it to council.

Planning has been given the opportunity to review the ordinance as we posted our changes.

We went two sections at a time, sometimes one section.

As we completed that work it was posted to the Borough website.

We certainly encouraged everybody to read that as we went and submit any comments.

There are a number of communications that will be added to the record.

We got an e-mail communication from Brad Zerfoss in response to a question that I had sent him at the request of council.

The Somerset County Planning Commission did their review and simply published a letter that they had no comments.

Brad had indicated that he would perform a comprehensive review.

And there was a question as to whether he did that, and whether he had any comments.

I sent him an e-mail on December 11th at the request of council.

He responded and provided some additional comments which will go to the Planning Commission for review.

Brad is a professional planner, and he simply stated I wanted to get back to you about the review of the proposed Indian Lake zoning ordinance this week, although I didn't reflect it in my comment letter, I did review the ordinance in depth, and I had just a few minor comments and suggestions that I formed.

The author or authors of the draft ordinance are to be commended for an excellent job and for having a good grasp of the Pennsylvania Municipalities Planning Code.

I also read Mr. Moore's comments as well.

After speaking with Attorney Rullo today I will type up my notes and put them in a follow-up letter that I will fax to you and Attorney Rullo on Monday.

I know that you have a hearing scheduled for December 19th, so I'll expedite getting it to you in case you need to discuss my thoughts with Attorney Rullo.

I'll need your fax number or somebody can pick it up.

If I can be of any help in the future, let me know and so forth and so on. His comments were published.

They have been forwarded to members of council and the Planning Commission, and essentially he had comments relative to minerals extraction, forestry activities, heavy industrial uses, the zoning map and supplemental regulations relative to service mining, telecommunication facilities and towers, steep slopes and adult uses.

So those will be part of the record.

We also received a letter from Mr. Ed Smith of Northland's Golf Course and Lake Properties, Inc. objecting on the basis that in summary to the parking.

I won't read his whole letter, but to the

parking provisions and to his perception that they're losing the ability to develop multi-family dwellings despite having no plans to do so.

I drafted a letter back to him indicating that his comments would be forwarded to planning.

The Planning Commission completed its review and they published their comments in a mark up to the ordinance which I have printed, and I submitted back to them a section by section analysis of what the rationale was for those changes.

It's obviously too lengthy to read. That will also be made part of the record.

I will turn it over to Mr. Rullo right now who will go through the legal aspects of the process that we're in, the publications that we've done and where we are going forward.

Before I do that, though, I realize that the weather is a little bit inclement.

While it's not required by the Municipalities Planning Code or provision that was a holdover from Ordinance 99, I suggest a follow-up planning review after the public hearing for 30 days.

We will send an e-mail out to those who are not able to attend to submit their comments in writing and we will forward those to the Planning Commission so

they have an opportunity to be heard.

So as it turns out, that 30-day provision, because of the weather, may be fortuitous so that folks can get their comments in. Dan.

(Pause)

MR. RULLO: I think it's important just to set some context for this.

We have had under appellate review Ordinance 144 which it had been enacted, and there had been appeals to the Zoning Hearing Board.

The Zoning Hearing Board had taken testimony and rendered a decision and appeal that 144 had been taken, and it was under advisement for the better part of a year or longer, and the decision was rendered by Judge Klementik affirming 144 as a valid ordinance.

So 144 is the ordinance that we have been utilizing since its implementation and has now been affirmed by the Court of Common Pleas.

This ordinance is proposed to be a new number Ordinance 155, and it is a comprehensive revision of 144.

We are it treating as an amendment, although it will be recodified as 155 under the Borough Code.

The sections that are important, I think to you for you to understand relative to the process is that first this is governed by the Municipalities Planning Code.

And Section 609 of the Municipalities Planning Code is the governing section, although I'm going to read 608 just into the record so you're aware of the process of the public hearing.

It says before voting on the enactment of a zoning ordinance the governing body, which would be the Borough Council, shall hold a public hearing thereon pursuant to the public notice.

The vote on the enactment of the governing body shall be within 90 days after the last public hearing.

Within 30 days after enactment a copy of the zoning ordinance shall be forwarded to the county planning agency, or in counties where there is no planning agency existing, the governing body of the county in which the municipality is located.

When we had 144 there had been multiple public hearings and under that no action can be taken -- let me just say it this way.

We have 90 days from today's date, if there are no other public hearings, to take enactment. If we

don't, we have to start the process again.

Now, under section -- the process being the advertisement process and the public notice process.

Under 609, because there is provisions under this comprehensive change that also constitute a map change where there is actually going to be territories that either were unzoned or are being revised, there is additional process that has to be followed.

And under 609 it states this:

First of all for the purpose of identifying which of the sections we're following, 609 states that for the preparation of amendments to the zoning ordinance the procedure set forth in Section 607 for the preparation of proposed ordinance shall be option.

Section 607 is the portion of the Municipalities Planning Code where planning agency initiates the changes as opposed to the governing body. So we are following 609.

Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, which is the section I just referenced before.

Pursuant to public notice, in addition if the proposed amendment involves a zoning map change, notice of the public hearing shall be conspicuously posted by

the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens.

The affected tract or area shall be posted at least one week prior to the date of the hearing.

In addition to the requirement that notice be posted under clause 1, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least 30 days prior to the date of the hearing by first class mail to the addressees to which the real estate tax bills are sent for all real property located within the area being rezoned as evidenced by the tax records within the possession of the municipality.

The notice shall include the location, date and time of the public hearing, a good faith effort and substantial compliance shall satisfy the requirements of the subsection.

And then it states that this clause shall not apply when rezoning constitutes a comprehensive rezoning.

Council has taken the position that even though this is in our view a comprehensive rezoning it is intended to revoke all previous zoning ordinances, it is better to err on the side of caution by giving more

notice than less notice.

So from the standpoint of whether this is treated completely legally as a comprehensive rezoning, we're treating it as an amendment with map changes that has the higher level of notice requirements than otherwise would be needed.

So consequently, because you'll see there are areas, in particular the lake itself, which was not zoned previously, it is now a municipal lake.

The notice only needs to go to the owners of the property that is being rezoned.

Frankly the lake bed is owned by the Borough. So to be cautious we elected to give notice to everyone who even has -- is adjacent to the lake.

And as I understand it everybody, even the back lots, received the postcard that was mailed as if they would be affected by the map changes.

MR. MISCOE: Yes.

MR. RULLO: The advertisements under the Municipalities Planning Code we did, instead of publishing the full text of the ordinance which is over a hundred pages, we published it in accordance with Section 610 of the Municipalities Planning Code which permits the solicitor to prepare a summary. That summary is still pretty voluminous. It had been posted.

There was an affidavit of posting that it was posted at the county law library on Monday, November 16, 2009.

It had been advertised in the newspaper of general circulation, being the Somerset Daily American, on two occasions.

MR. MISCOE: November 20th and 27th.

MR. RULLO: November 20th and the 27th.

MR. MISCOE: That's correct.

MR. RULLO: And the proofs of publication are in the offices of the Borough manager.

Under the code we are also required to provide a copy of the full text and summary of the ordinance to the Somerset County Planning Commission.

And by my letter to Brad Zerfoss, director of the Somerset County Planning Commission on November 16, 2009, delivered by hand.

We can make a copy of that record available for anyone who wishes to see it. It's in the public records of the Borough. It's probably quicker for me to just read it.

I am delivering to you this date a comprehensive change to the Indian Lake Zoning Ordinance.

The version shall -- being provided to you has

a date of November 11, 2009.

The Borough Council has scheduled a public hearing on the comprehensive amendments to Ordinance 144, which is proposed to be Ordinance 155, if enacted.

Pursuant to the Municipalities Planning Code I'm providing this notification to you as agent of the Somerset County Planning Commission more than 30 days prior to the public hearing so that the planning agency will have the opportunity to submit comments and/or recommendations.

I'm also providing you with a copy of the notice of the public hearing and the summary of the modifications.

It is the intent of this proposed ordinance amendment to repeal all previous zoning ordinances and the comprehensive rezoning of the entire borough by reenactment previous provisions as well as amending the language from previous ordinances.

A recodification of this is being done so it would be recodified as proposed Zoning Ordinance Number 155.

If you have any questions about the foregoing, please don't hesitate to contact me, and I carbon copied this to council and to the Borough manager.

We received a response back from Mr. Zerfoss

dated November 25th, 2009, addressed to me regarding the proposed Indian Lake Borough zoning ordinance amendments.

Dear Attorney Rullo: I have reviewed -- I'm sorry. I have received and reviewed the proposed comprehensive changes to the Indian Lake Borough zoning ordinance that you submitted to the Somerset County Planning Commission for review pursuant to the Pennsylvania Municipalities Planning Code.

It is my understanding the proposed ordinance amendment will appeal all previous zoning ordinances, and the comprehensive rezoning of the entire borough by reenacting previous provisions as well as amending the language from previous ordinances.

The Somerset County Planning Commission has completed the review of the information and has no comments to offer at this time.

Please feel free to contact me if I can be of further assistance.

As Mr. Miscoe indicated, we did contact them and ask them if they could provide any additional assistance, and I understand that's the letter you referenced.

MR. MISCOE: Yes.

MR. RULLO: The last piece of business from

the standpoint of the notices is the notice that was given pursuant to the Municipalities Planning Code to our own Planning Commission, and that was delivered by the Borough manager by hand to the Planning Commission on November 16th also.

And it indicated under delivering this day a comprehensive change to the Indian Lake Zoning Ordinance, the version being provided to you has a date of November 11th, 2009.

The Borough Council has scheduled a public hearing on the comprehensive amendment to Ordinance 144 which was proposed to be Ordinance 155 as enacted.

Pursuant to the Municipalities Planning Code I am providing this notification to you as agent of the Indian Lake Borough Planning Commission more than 30 days prior to the public hearing so that the planning agency will have the opportunity to submit comments and/or recommendations.

I am also providing you with a copy of the notice of the public hearing and the summary of the modifications.

It is the intent of this proposed ordinance amendment to repeal all previous zoning ordinances and the comprehensive rezoning of the entire borough by reenacting previous provisions as well as amending the

language from previous ordinances.

A recodification of this also is being done so that it will be recodified as proposed Ordinance No. 155.

And that was signed by Theresa Weyant, Borough Manager.

Those are the provisions. Today is the time for any public comment about that.

The scriveners of those documents, most of them are here to answer any questions that you may have.

I will try to answer any legal questions that may come up relative to the procedure.

MR. MISCOE: Thank you, Dan.

I would also point out that after this meeting, as I pointed out earlier, the transcript of this hearing will go to the Planning Commission.

They will have 30 days -- a 30-day period subsequent to this meeting to review that.

We will also solicit comments from people who could not come in.

We have encouraged folks to submit those comments beforehand, and we have in fact received a few, but we will take advantage of this additional 30-day period.

The Planning Commission will then make its

recommendations to Borough Council.

The next council after the first of the year, when they reorganize, will then make the decision whether to move forward or not.

I would point out that because there are substantial amendments, Dan, please tell me if you disagree, we do have a requirement under Section 610 to advertise ten days prior to actually taking a vote.

And I, even though that -- it's an expensive ad because the summary was over five pages in length, I believe that we should probably do that as well.

So it will -- there is some additional time once planning comes forward with their recommendations, council decides whether they want to proceed to a vote or not, I believe there is one extra publication that we would have to do.

MR. RULLO: Yes. Section 610, which is the section I referenced about the summary of the ordinance about publishing in a newspaper in general circulation in accordance with the MPC, as well as posting it in the county law library.

It does provide in the event substantial amendments are made in the proposed ordinance or amendments before voting upon an act the governing body shall at least ten days prior to the enactment

readvertise in one newspaper of general circulation in the municipality a brief summary setting forth all of the previous provisions in reasonable detail together with the summary of the amendments.

So depending upon what adjustments are made, the question that would come in as to whether there are substantial amendments or not, but if they are --

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(Discussion off the record)

MR. MISCOE: Dan would like to note another interesting point.

There are -- I think the Planning Commission did an excellent job.

They identified a number of things that I think we should probably add to clarify provisions.

I don't believe that they constitute substantial changes, but based upon public comment relative to some of the provisions that I know that there is some question about should a substantial revision need to be made, we would have to readvertise, have another public hearing and go through this process again.

So we are, I would say, at the beginning phases of the enactment process.

We're certainly not going to take any action at this meeting for all the reasons that Dan just reviewed, and this is your opportunity to let members of council know what your concerns are, what you have questions about.

As I said, some of you may have gotten the December -- my December newsletter by e-mail.

I would not like to see this develop into a shouting match or a debate.

Present your concerns. Respect other people that are here.

If you can identify the specific section that you have concerns about, and what those concerns are. Those types of comments are very helpful to council.

Specifically if you think that we have overlooked a possibility or an impact that that change might have.

Those comments will be then -- they're being transcribed.

They will be submitted to planning. Planning will review them. They will make recommendations to council.

Council is here. They will make their own judgments and the process will go forward or stop at that point.

MR. RULLO: One other thing I want to mention. Dean Snyder is not here, right?

MR. MISCOE: No.

MR. RULLO: I have been informed that Dean has posted the notices conspicuously at various locations across the Borough, and the exact locations, I think he can make available.

MR. MISCOE: He did leave exemplars here of what he posted, but for each district he made these notices and publicly posted them around the boundaries of the property.

There is one for the CR to CRG which was posted around both golf courses, and it's apparent that at least the public golf course was aware of it because they sent us a letter.

They were posted around the lake and apparently those were noticeable because someone called me and asked me what are these orange signs around the lake.

And then the -- we posted the wildlife preserve area because we had a provision for it on the zoning map, but it wasn't defined in our zoning ordinance as a zoning district.

So those were the notices that were posted out there, and I even exercising caution asked Dean to take

pictures of them in the event that someone were to pull them down or allege that they weren't there.

So, and of course, this postcard, I believe everybody should have gotten one of these, but every property owner according to the tax rolls got this notice.

Even though we're only required to notify people that actually own the property being rezoned, we felt it prudent to notify everybody that might be affected.

So that's -- I think we have -- learning from some of the issues that came up in 144, we have tried to make this process as transparent as possible throughout.

I've even been accused of providing too much information, but better too much than not enough.

So now it's your turn. Please indicate your name for the record and go ahead and state your concern.

MR. MISCOE: Anyone?

(Discussion off the record)

MR. MISCOE: Go ahead.

(Pause)

MR. MORGESE: My name is Kurt Morgese, M-O-R-G-E-S-E.

And I own one of the little A frames where the little cute A frame cottages are.

My concern, I have two.

One. I'm not exactly sure anymore what we are zoned. I believe it's a recreational commercial.

And so in that I think I have a $750 building permit if I want to build, and I think everybody else is 50.

So I'm not real crazy about that. I'm hoping we can do something.

The second thing is, I'm concerned that if we're on a kind of need to -- when I read the ordinance, if we want something done it's on an ask and maybe you'll receive.

So that seems a little bit vague and I don't know. That's not comfortable to me. So those are my concerns.

We're kind of our little own community of eight, and we kind of don't really have a rule, and the one that we do have costs a lot of money for a 500 square foot A frame.

So those are just two concerns that I wanted to voice.

MR. MISCOE: I can certainly understand your concern.

And for those that aren't familiar, and I appreciate the comment because it's one of those problems that we have wrestled with.

The A frames are made of a for share a common septic system, and the lot sizes do not meet any of the lot sizes for single-family residential districts that exist throughout the rest of the Borough.

Ever since Ordinance 50 -- well, I don't know that they've ever had their own zone, but I can go back as far as Ordinance 50, and you have been part of -- in Ordinance 50 you were part of the CRH district.

In Ordinance 99 your area was rezoned CR. In Ordinance 144 you remained in CR.

And in Ordinance 144 returning back to CRH which is what it was in Ordinance 50.

The problem is is that single-family residential dwellings are not expressly permitted uses within either the CRH in 50 or the CR in 144 or in the CRH zone in proposed 155.

And as a non-conforming use within a district there are under the current ordinance. I agree you don't have a $750 building permit.

The building permit is still $50, but it will

get denied because you're not permitted to alter a prior non-conforming use.

It's a rule that you can keep what you have, but you don't -- you're not allowed to change it unless you can make it conforming, and unfortunately there is no way to do that.

Now, the options are to carve out a district and define limits that allow you to exist as conforming uses in which case then if you want to put dormers somebody put on and do those types of modifications, then as a conforming use you would submit a normal permit and be permitted to do that.

The problem that that creates is that we introduce a high density zone into the Borough, and currently we don't have any.

We sort of inherited the chalets as part of the original development plan because they weren't meant to be homes. They were meant to be rental properties for skiers.

They became homes. They got sold off, and they don't have lot sizes that have substantial setbacks and whatnot that you would find in a normal R-1 district.

So the density of that zone and intensity of use is such that if we were to carve out a zone and make

that conforming, we open the door for someone to say, well, hey, you have high density in the Borough. We want high density over here, and that makes me a bit nervous.

Now, input in the alternative, we very carefully considered what constitutes an alteration to ease some of the burden on existing prior non-conforming uses to permit you to do, you know, fix your roof or do things of that nature that would classify or constitute minor alterations.

So that that work can be done without getting clearance from the Zoning Hearing Board.

But the $750 comes into play when you want to make structural alterations, reconstruct, things of that nature such as a dormer.

To the extent and, Scott, help me out here, whether that would constitute a structural alteration.

MR. MOORE: With the A frames, yes, because unfortunately the entire wall is a structural system.

MR. MISCOE: Right. So, and unfortunately there is -- the only mechanism that exists for allowing the alteration of a prior non-conforming structure is a special exception process or a variance from the Zoning Hearing Board. That's all the MPC allows.

And unfortunately there's a fee for that, and

that stinks, but balancing the concern of the $750 for you or the potential introduction of high density development elsewhere in the Borough in areas that are capable of that development, we opted for changing the definition of what constitutes an alteration to allow you to do some of the minor things without having to pay that money, and, B, create special exception authority, which is a lower threshold of analysis for the Zoning Hearing Board than a variance which technically if you read Section 105 of the ordinance, the location and the density with which your properties were built is deemed already understandable and it wouldn't qualify you for a variance.

So that's I think the best that we can do, short of opening the door to high density development in the Borough.

And I know that that stinks for you, but we would like to roll back the clock 30 years and change a lot of things about what was done in the Borough, but we're stuck with it.

So that's the trade off and that's a judgment call that council will have to make as to whether they want to create that zone or not.

MR. MORGESE: Well, then could you clarify one other thing.

If it's zoned recreational commercial, and just, for instance, I decided to become a renter of golf clubs, is that my right?

MR. MISCOE: You're in a district.

So to the extent that you were going to convert your structure to a commercial structure, now you have some setback issues that I don't think you have enough property to meet but, you know, there's home occupations which are permitted elsewhere in the district.

But what would stop you from turning your A frame into a commercial building would be probably some labor and industry stuff, but setbacks.

MR. MOORE: A building of that size, labor and industry -- well, it's not involved anymore.

It's the building code official, number one, and it's small enough that the requirements for life safety issues would be met because it's very small.

It would be very feasible for you to ask for exception of easements or setbacks for the zoning variance and be granted a commercial use.

MR. MISCOE: Yes. I mean it's possible, but again you would have to go through the same process because there is going to be some requirement in that zone that you're not going to meet.

MR. MORGESE: So basically what you're telling me is I bought an A frame that I basically have no right to do anything I want to do without approval from someone else?

MR. MISCOE: Well, I wouldn't say no right. You have the right.

I mean there is a process by which you can get approval, and I think we have drilled some pretty big holes in that process recognizing that there are alterations that you may need to make, and I believe that the special exception requirements by lowering the threshold.

There is nothing I can do to change the MPC in terms of how that process works, but there is now, I think an easier mechanism for you to get that dormer put on, and in fact somebody went through that process and got an approval.

MR. MORGESE: I understand better.

MR. MISCOE: So it's doable. It just cost more and unfortunately that's just by virtue of the nature of how that area was laid out.

We're stuck with it and the only way to fix it is either to open up the door to high density in the Borough or leave it the way it is.

It's just going to cost you a little more, and

I apologize for that.

MR. MORGESE: Thank you.

MR. MISCOE: Anybody else?

(Pause)

MR. HANSON: My name is Bob Hanson, H-A-N-S-O-N. I'm chairman of the Planning Commission.

The Planning Commission has wrestled with this comment.

It's one of the only comments. I shouldn't say one of the only, but it's one of the comments that we are unanimous on that we need to address. We are not unanimous on how to address it.

So we have not yet made a recommendation to council as how it would be addressed.

As Mike said, there are a number of options, and we're looking at them.

Hopefully in January Brad Zerfoss from Somerset County, and a gentleman from Pittsburgh, the DCED, which is the Department of Community and Economic Development.

That department has been sponsored by the government to provide assistance in planning and zoning to municipalities, and they have also agreed to come to

a meeting in January.

So Brad and this gentleman from DCED are going to come and hopefully explain to us what some of the options are to try to address that situation, but I guess that's it.

MR. MISCOE: Thank you, Bob. Doctor Moses.

(Pause)

DR. MOSES: Yes. I'm Mickey Moses.

I'm at 121 North Peninsula, which is a lake front.

I want to congratulate you. This looks like the Senate health care bill.

MR. MOSES: My printer ran out of ink.

I want again to try to go over the clarification of one of the issues that was of significant concern to most of us when we began this process way back in '99, and then with 144 and now with the new printing that I have here, and that is with respect to the definition and the length of docks.

As I look at 144, and then I compare that to this present, there seems to be some differences.

There seem to be three different classifications. I am a lake front owner.

So I am allowed to have 30 feet of dock, no wider than eight feet, I believe.

There's a CR stipulation now with I think somewhere near 50 feet of dock, depending upon the shore line, topography, and then another one which I didn't see in 144 for commercial which goes back to 100 feet extending into the lake.

Is that -- am I correct on that and I need some clarification?

MR. MISCOE: Marine.

DR. MOSES: I think those were -- those were some significant issues of contention as to the length of dock extending into the lake and safety factors involved with it.

Again, my concern personally early on, a hundred feet into the lake is at least in my -- in my estimation a significant danger from the standpoint of encroachment into the lake and adequate boat utilization, skiing, tubing, et cetera.

I would like some clarification as to why that was changed, and what we may consider in the -- before this is ratified.

MR. MISCOE: Okay. As a point of clarification, what used to be Section 1307 of Ordinance 144 was foiled because we zoned --

UNIDENTIFIED SPEAKER: Did you memorize these things?

MR. MISCOE: I have been doing this a long time. That's scary enough.

UNIDENTIFIED SPEAKER: Holy mackerel.

MR. MISCOE: Trust me, never in my -- had I ever expected or even desired to want to know anything about zoning, but Section 1307 was the provision in Ordinance 144 that pertained to docking in the various districts.

We, due to comments that arose during the hearing process during the challenge of 144, it became apparent to me that zoning is about how you regulate -- what regulations the Borough places on your use of your property.

And the problem came in is that the lake isn't owned by -- you live on the lake. Your property line ends pretty much at the water line. There's pins and so when we start talking about regulating the use of the land beyond your property line, we're in effect not placing a restriction on you.

We are granting a use to you on property owned by the Borough.

And it was brought out, and the judge even made a comment about it, that that area was not zoned.

It was mentioned that all the land within the Borough has to be or should be zoned.

There was a question as to whether the Borough is responsible to zone its own property, and we elected to go ahead and take that area that is the lake, zone it municipal lake and create permissive uses for the adjoining property owners.

So we took 1307 and all the boat docking and boat ramp and boat house provisions relative to what you do on the other side of your property that you don't own and made those explicit permissive uses, and unfortunately we changed the ordinance.

Instead of going district by district we did use by use, and then put the district requirements underneath.

Both in Ordinance 144 and proposed 155, the CR district had that 50 lot size of 70 because there's a recession in the lake front there. So that hasn't changed.

The 100 foot provision applies to the CM district only, and that is the marina.

And I wish I could say that at the time more analysis -- when we put that into 144 more analysis went into it, but I went out to the marina and took a laser distance measuring gizmo and shot a line out to the end

of their docks and got 97 feet.

And I would point out that under Ordinance 99 docks were not a permissive use for the marina which is kind of ludicrous because they sort of need them.

And so we looked at what they had and had traditionally installed.

I think Jim Brant was responsible for most of the floating dock expansion out at the marina, but that's where the 100 feet came from.

Of course, you know we originally proposed a similar requirement for the lodge.

Based upon public concern it got scaled back to 70 and then it got scaled back to 50.

We had that issue studied, and while some challenged the depth of analysis that went into that docker's study of the safety issue for the docks at the lodge it was concluded that they did not present a safety hazard.

So to the extent that there is a 100 foot provision, and it applied to the CM area of the lake adjoining the CM district, they have 40 feet from the island which is granted by easement.

Many years ago there was a recorded easement that they can go 40 feet out from the island, but the 30 -- or the 100 feet applies in that cove area next to the

public ramp, and in reality they can't go much further than that or they start to block off access to the lake from the public ramp.

There's the other area over on the other side towards the spillway that they -- I didn't measure that, but I know it doesn't go out further than a hundred feet.

So the comments that I have received from people, there's apparently no concern about safety back there because they're back deep enough they're out of the main traffic ways anyway.

And that didn't seem to be a problem or -- and up to this point I had not heard a concern expressed about safety of docks going a hundred feet out from the shore line in that area. The R1 remains at 30.

We certainly have a number of places throughout the lake prior non-conforming uses where the docks go out substantially further.

So to the extent that they continue those uses we will have -- we have some docks that are longer than 30 feet, but I think 30 feet is a reasonable restriction being that pontoon boats can be 30 feet long.

And that I believe is where the 30 foot restriction originally came from, and I hope that answers your question.

(Pause)

MR. MISCOE: Jim.

(Pause)

MR. LYONS: My name is Jim Lyons. I live in Mohawk. I have a house there. I don't live there.

I guess my one question is that the zoning committee, it was appointed which I think, is it four people?

MR. MISCOE: Five.

MR. LYONS: Five people.

Did they take a vote when this was done?

From what I understand, I've asked three or four of them and they all said no.

I guess the conclusion was that you said that you were going to get this done by the end of the year, so you were done with it.

I just want to make sure that the committee, even at the Borough Council meeting made a conclusion that they weren't done. They said it needs some more work.

I understand you've put a lot of time on it,

hundreds of hours I think is the words I meant, but this affects a lot of people, a lot of lives, a lot of investment. I know there is a lot of problems.

I probably am the leader of a lot of the problems, but I think that this committee -- I know it's going back to planning. Planning has some questions.

I guess my request is, do you think the first committee was done with it yet?

Are you forcing it through the system to get done what you want to get done?

The CEHR district has a lot of questions. We had one here already.

This gentleman has a small townhouse that somebody could do something right across the 50 foot district, 50 foot lot. I mean it's so open for anybody to do anything there.

And I guess zoning was actually created so that no people next door or around or whatever will be hurt from anything, and it's a control factor.

This is one of my -- two of my questions.

One. Is the zoning committee done with it? And I know that they weren't.

Are we forcing this through, and have we given a lot of thought for the safety investment of the people of Indian Lake?

I don't want anymore issues brought up later.

I just to make sure that this costly thing is only one cost thing, not a several cost thing.

Obviously the 144 brought up a lot of problems, which I agree a lot of them were corrected. Some of them were changed. Maybe some of them are worse now. Some of them are better.

I just think that a little more time, a little more thought needs to be put in the whole ordinance, even though it has good changes.

Nobody wants to absorb anymore expenses, and nobody wants to lose anymore values of their properties or any lives taken because of some changes in some areas, for example, the docks. There is no control with the docks.

So that's my comment. It's not a detailed comment. It's not a particular zone.

I just feel that it was rushed through in conclusion, and some areas were really hammered and some people have some very tight ordinances to follow and some have none.

So I just thought we should have a little more thought.

MR. MISCOE: Do you have any specific -- I'm not sure I understand what's tight, what's loose.

UNIDENTIFIED SPEAKER: Do you have the sections?

MR. LYONS: No, I don't have any section.

What I'm saying is that it literally has no control whatsoever, the CRH district zoning around the lodge, around the ski slopes, anything.

There's no control whatsoever, and there is some very nice homes on either side of that and everything can be put in there.

Anything can be put in there, if you have that list, if you read the list.

MR. MISCOE: Thank you.

As far as the committee vote, we did take a vote as we were breaking up.

The only other member of the committee that was at that meeting was Ron Petrina.

Do you remember -- and I'll put it to him, if he recalls me asking if the committee approved submitting it to council.

MR. PETRINA: As far as I was aware, we were through with the ordinances. We were ready to present the ordinance to council.

MR. MISCOE: And Scott had recorded a no vote for you. You weren't there.

MR. PETRINA: That's correct. I was not there

or approved what was submitted.

MR. MISCOE: Right.

MR. PETRINA: But with that I submitted a letter dated 11-11 to council noting my concerns.

MR. MISCOE: Yes. And that letter -- do you recall I forwarded that to Brad?

MR. PETRINA: Yes.

MR. MISCOE: Along with that so he would have the benefit of your concerns when he conducted his review.

Above here where it says Petrina, it should be someone else.

MR. PETRINA: Mike, one other question.

I am Ron Petrina.

What we didn't tell the public is the public was invited to all of our meetings, every meeting we had biweekly.

If you had any doubt of what we were reviewing, revising, you were invited to come. It was open to the public.

Very few faces did we see there. Hopefully we could have seen you all there, but we didn't.

But these ordinances, we've spent a lot of time, did a lot of work on them. We put our heart into them, and I don't have anything else to say.

MR. MISCOE: Thank you, Ron.

I would point out that they were publicly advertised meetings.

They -- we had originally anticipated being done by June. We took almost twice that much time.

I will be the first to admit that that was not wasted time.

We wrestled with a number of provisions, and I empathize with the Planning Commission having 30 days to try and wrestle through the same stuff which is why we tried to keep everybody up to speed section by section as we went through so that it wouldn't be this giant go through 115 pages of ordinance to try to internalize what is -- not only what is in there, but all the potential impacts that occur in each zone.

The -- with -- you had mentioned the CRH zone. That area was reclassified to CRH simply to address the concerns that were raised with respect to 144 that we would end up with 9,000 townhomes or multi-family dwellings on a golf course should they be -- that was never perceived -- that was never the intent of that provision, adding that to that district in 144. It wasn't perceived to be practically possible.

However, to the extent that it might happen, theoretically, that -- and it wasn't consistent with

what I perceived council's intent was at the time, we reclassified that district accordingly.

We did increase the restrictions in that district relative to setbacks, parking provisions, grading, filling that apply throughout the Borough equally.

We've added to the -- we standardized the commercial setback requirements for all the commercial zones, and we have a section for all the commercial zones relative to special permitting requirements that did not exist before, but they apply to all the commercial zones equally.

We're trying to achieve -- we're not trying to single anybody out and we're not trying to treat anybody specially.

So to the extent that those requirements make sense for commercial activity, they were written to apply equally throughout the ordinance, and if you can provide some more specific issues that you have, Jim, relative to things, I'm sure the Planning Commission will look at that and council will look at that as they go through it, but let's face it, a lot of the things are going to be judgment calls as to whether -- how do you balance this person's use against that person's right to enjoyment.

And zoning as I see is it not about eliminating every possible annoyance from your neighbor. It's substantial impacts.

If you were to eliminate every possible annoyance, lot sizes would have to be 20 acres so you couldn't see your neighbor or hear them or be bothered by them at all.

We have a community. We have one acre lots. You've got neighbors and that's the juggling act, and for anybody that has sat through the meetings, Dick was kind enough to show up and lend us some input as well.

We had a pretty diverse group in the zoning committee with Karl who has been around the Borough for years and years and years and was especially helpful because of his ability to say okay, here on this guy's lot over here in this particular area this is how that's going to play out, and this is the issue over here.

And Ron, as the zoning officer in dealing with zoning issues and what people want to do with their lots, had a lot of input specific to individual areas of the lake and that's understanding how a provision is going to impact people is the hardest thing to do because you can't possibly anticipate every person's use. We did the best we could.

I will tell you it's never going to be

perfect. It's never going to anticipate every use, but by refining our definition, refining our provision we hope to have an ordinance that our zoning officer can actually apply objectively with a minimum amount of subjectivity.

And to the extent that somebody is not permitted to do what they want to do, provide an easier process for getting minimal changes that account for weird stuff that happens in the Borough because frankly I agree with Scott there wasn't a whole lot of comprehensive planning done when the Borough was laid out 30, 40 years ago.

They didn't think of all these things, and if they had we would probably have an easier job, but they didn't, and so there is some judgment issues in here as to what's the best way to do something, and that will be for the next council to figure out.

Did I want to get this done, to answer Jim's question? I really did.

We have been -- because for the things that are wrong with 144, sections that we didn't address, we didn't do the comprehensive. We did a pretty comprehensive job.

There was a lot of stuff that was left untouched from '99. The members of the committee, we

all agree Ordinance 99 was a very, very bad ordinance. Ordinance was a little better.

We think 155 is substantially better. Is it perfect? No, but you'll never find a perfect ordinance.

The issue is it boils down to how much thought went into it, how much diversity of opinion was involved in coming up with the provisions.

And I would have to say that it was pretty diverse through many of the provisions.

We, you know -- frustrated over it for a substantial period of time.

So there's always going to be something to tweak here and there, but at the end of the day I think we're down to judgment call issues about what is the best way to do something, and that's going to ultimately be a decision for the next council to make.

If they think we need to take more time and revise and go through the process again, that will be their decision to make.

But I appreciate the comment from both Jim and Ron.

Anyone else?

(Pause)

MR. MISCOE: Yes.

MR. BUSTAMANTE: Bob Bustamante, B-U-S-T-A-M-A-N-T-E.

I'm a fairly new resident of Indian Lake. I haven't even been here for about a half year now.

And I think it's fantastic and I really am looking forward to many, many years of enjoyment here.

And I understand there's a lot of things that you've done, a municipal lake creating and actually zoning for the municipal lake and setting a site or refining the terms for docks and things like that, but there's -- in reading the ordinance, and I went through -- I guess I looked at not word for word, but I went through it pretty well.

I'm just kind of wondering what was the objective?

There's a lot of reasons why you did different things in there, but not knowing the history of Indian Lake and everything that's happened around here, what was the objective in changing the commercial, the recreational and all that zoning to the way you're doing it now?

Was there something that is going to make it -- is it going to make it more definitive or is it something that's going to -- was the objective to keep

something from happening or was the objective to allow something to happen in those areas?

I didn't really understand that part.

MR. MISCOE: Well, historically we had -- this is our -- thank you.

We had Ordinance 22, Ordinance 50, Ordinance 99, 144, and now we're looking at 155.

Prior to Ordinance 99, the lodge area was its own little district. It was CRH, and it allowed for a mixture of commercial, recreational and residential uses.

In Ordinance 99 they abandoned the CRH district and combined the golf courses and the lodge into one district called CR, and took away the ability for residential uses which is where they created your non-conforming situation to a degree.

You had other non-conforms as relative to setbacks in Ordinance 50, but you were at least a permitted residential structure back then.

So the -- Mr. St. Clair presented council a development proposal in 2000 -- Terry, help he out, 4, 6?

MR. ST. CLAIR: No. It was about '05.

MR. MISCOE: 2005. And this wasn't the first time, I would point out, that the owner of the lodge

property has had development.

The Smiths before Terry subdivided and created Cheyenne, and I forget what the other subdivision was, but they did that in R-1.

Back in the 80s there was someone that did -- came to council and wanted to build multi-family structures on the ski slope since it was no longer being used as a ski slope and they ran out of money.

Because the dam remediation effort is going to be so costly it is a means of trying to mitigate the tax burden.

Me personally, I was very much in favor of doing what we could to promote development, and there is the Pine Cove subdivision that Bob Hampton and Jim Brant are doing.

That is a development project that I think, I hope goes forward and is successful.

There was the one at the lodge, and the golf course is looking at a development effort.

So from a financial perspective, I think we need to seriously consider allowing for development.

That was the motivation, at least in my mind, for restoring the multi-family development possibility in the CR, what became the CR district.

Well, when that ordinance was challenged it

was brought up that now we can build multi-family dwellings on the golf courses, plural. We have two private and public.

So the concern was that the golf course would be bulldozed, and from a density perspective, and setbacks that there would be just an insane number. I think it was 909,000. I don't know what it was.

But certainly that was neither our intent or our belief that that could actually occur.

For one reason there is no sewage. There is just no way. They don't have the sewage capacity to build all that stuff.

But recognizing that things change over time, and as Scott is a good mentor relative to things in zoning ordinances exist, because they might happen or you take away things because they might happen, it was decided that we needed to correct that problem because we do not want the golf courses tuning into high density multi-family developments.

So we restored the CRH designation to that area of the lodge as it traditionally existed and restored the uses consistent with what that area was designed for in the original Indian Lake plan.

We have a lodge there. There's a hotel there. There are existing townhomes there.

And the proposal to build 21 dwelling units, that number being limited by the capacity of our sewage plan, that's how the plan came about.

So this change from CR to CRH for that zone was to address the concern that someone would bulldoze the golf courses and build a gazillion multi-family dwellings, which I don't believe anybody thinks would be a really good idea, especially the golfers. That was supposed to be a joke.

So I don't want to see high density development in the Borough. I think some development is good. It's productive. It brings new people in here and increases our tax base.

But I don't believe anybody wants to do high density development because I think that would destroy the character of what Indian Lake is.

It's a nice quiet little community and everybody has their space, and if you want to get together socially you can, but you're not forced to, by virtue of living on top of your neighbor. So that was the reason for that redesignation.

You'll note that the provisions relative to the lodge have not changed much.

The CRG, which is the golf area, was a redesignation as well, and their provisions were

restored back to those that were traditionally there for the golf courses, and that's why it was done.

(Pause)

MR. MISCOE: Are there any other comments, questions, members of council? Scott?

MR. MOORE: Yes. This is really in respect to the small A frames, essentially a cluster of elements, and I believe in what I suggested to the planning concerns to the Borough, and also to the commission is that that should be designated its own area.

I do disagree with Michael as to does it allow dense -- a more dense condition? Yes, but it can be limited in how it's proposed.

The amount of units that be clustered to the amount of land that is required, and I believe that the A frame should be its own designated area.

I also believe that most of the residential that's being done in the CRH district should be done under residential areas. They are residential. They are not commercial.

And that would also eliminate the potential of people coming in and reorganizing the residential to a commercial use.

Have some of the neighbors, even though they can in relationship to going to a zoning variance. It would eliminate that problem.

I have recommended that we reevaluate all of the residential areas for single-family, multi or duplex, two units, look at multi-family and how many units can be put together.

And also how we dwell with the mobile home situation that we are required by planning.

So those elements need to really be addressed in further direction.

And I hope the Planning Commission and the new Borough Council will adopt a different resolution as to what we have now.

MR. MISCOE: This is one of those issues where Scott and I have had a difference of opinion.

And I'm not sure that we'll ever resolve it, but I would suggest possibly that planning, as you're permitted to seek the input of our borough solicitor and have him evaluate the impact of creating a high density zone within the Borough and what potential impact that could have to a developer of another area where maybe high density isn't expressly permitted, but in my analysis of just zoning issues in general, I tripped across a case that scared the heck out of me.

So probably it's not appropriate for me to give planning that particular advice, but I would suggest that you get that analysis from our solicitor because I am concerned that as soon as we create a district, and in the area of the A frames we don't have -- they don't have the land capacity to say that you need this density.

Their density is very, very high just because they have such small lots, and that unfortunately we can't change that now.

So when you create a density factor of 60 or 70 -- I don't know what it would be, with their driveways or whatever they have, but it's going to be a whole heck of a lot higher than what we have in our one currently, and I'm just concerned about the impact that that may create in our ability to stop high density development somewhere else within the Borough with a developer that has the money. Push that into the board.

MR. MOORE: Again, it can be done by the amount of units that you can use within a cluster system and the land available.

There are ways to resolve that issue and do what's best for the owners of the A frames.

MR. MISCOE: Well, I understand that, but we have, when you talk about making that a conforming use,

there are eight units currently and they're in a defined area.

And my point is, is that now that you've created that as a permissible use within the Borough.

Imagine say UAI up at the airport replicating that one after the other in the some 20 acres that they have there, and then you would have a city of A frames.

MR. MOORE: Again, you can do that by maximizing or minimizing the amount of units that you can do.

MR. MISCOE: But you're already going to permit what we have. That's my point.

And now you're going to say that something different should apply somewhere else.

And my concern is our ability to justify that as to why we permit it here and not here becomes compromised.

And I think you should have some, if you really believe that that's the way to go, get a legal opinion as to the potential impact that that would create in the future should a developer come in and try to replicate what we have in the A frames somewhere else in the Borough.

MR. MOORE: I do agree with you.

We do need the legal review of it, but we also

need a better planning review from some people that have worked with high density developments and the organization of those.

And I think Bob Hanson has already alluded that he is in the process of doing that, which I think is excellent.

MR. MISCOE: We have, but at the end of the day it's a judgment call for the members of council as to whether they want to permit that or they don't want to permit that.

It's not an issue of whether it's a good idea or a bad idea or you're required to have high density or you're not required to have high density.

It's just -- it's more of a, is that something that we want within the Borough or not?

It's going to be up to the judgment of council to decide that, and I think we should probably close off there or we're going to continue to do this.

MR. MOORE: I can give you more comment.

MR. MISCOE: Please.

MR. MOORE: Based on that is that we look at the little A frames, and they're probably the most expensive per square feet element that we have, building that we have within our district.

Our main concern is, yes, we want more

development with respect to a larger tax base as with that type of a cluster system is that you could proceed and generate more tax base than anything in the residential area if it is done correctly.

So, therefore, we're saying what we don't want to hear, but we want to hear it.

So there has to be even out not only for the people who own essentially the A frame clusters, but potential with developing it in another location to the betterment of the community.

MR. MISCOE: I totally get what you're saying, and that's a little bit contrary to what you were saying about densities in R-2s and whatnot.

MR. MOORE: It's density factors -- we have no density factors.

Well, we have density factors, but the way that we have organized, there are ones which essentially don't have densities because one unit per lot is that we have an R -- CRH which is the only area that you can do multi-family.

MR. MISCOE: Right. And we have R-2 as well, but we did add density factors to those to prohibit development beyond what we have in R-1.

MR. MOORE: That can be done with the cluster system.

MR. MISCOE: All right. We won't --

MR. MOORE: This with what we have been wrestling with.

MR. HANSON: This is resolvable.

I mentioned before Planning Commission is going to resolve this. The chalets are four chalets per three-quarter acres. There's eight of them in a half-acre parcel which is almost identical to four townhomes.

MR. MISCOE: Say that again. Eight-and-a-half acres?

MR. HANSON: There are eight on one-and-a-half acres.

MR. MISCOE: Okay.

MR. HANSON: It's exactly one-and-a-half acres.

It's four on three-quarters acre, if you ratio it which is identical to four townhomes on a three-quarter acre lot.

MR. MISCOE: Right. The difference being we're looking at the densities, structural density like how big of a structure you can have to the extent we can somehow carve a density factor.

MR. HANSON: Four townhomes on a three-quarter acre lot each with -- what's the footprint of your

townhomes?

MR. ST. CLAIR: I'm not sure.

MR. HANSON: It's going to be at least -- there are going to at least a thousand square feet for each one.

So the density of the townhomes is going to be greater than the chalets.

That's why -- my only point is I don't want to debate the issue just to state that it's -- I think it's resolvable and we need to look at it.

MR. MISCOE: I agree.

MR. HANSON: As Scott said in terms of just the densities, density of dwellings per acre and density in terms of coverage per acre.

MR. MISCOE: Well, and just understand that the densities that we're looking at is structural density, not dwelling density. So that's the difference.

MR. MOORE: Density is density.

And I totally agree with Bob. It can be resolved very easily.

MR. HANSON: Yes. We just need to look at the numbers.

I think we need to come up with standards, and I don't want to resolve it here.

I just wanted to point out that I think it is resolvable.

MR. MISCOE: And I agree to the extent that that may be something that council wants to do.

I would only point out that there is a whole lot in this ordinance that we really need before we go into a building season, and there is nothing that stops the council from taking that issue specifically and maybe hire a professional planner to do that piece of it after 155 is either enacted or not enacted.

But it's up to the council to decide whether they want to do that or not do that.

The question is, do you want to hold up the beneficial provision and the corrections that are put in 155 because of a perception that it's not perfect?

So that will be the issue for council.

Are there any questions, concerns, comments?

Yes, Doctor Moses.

(Pause)

DR. MOSES: If I understand correctly, this ordinance, and it's certainly an area that I think we need to address, this ordinance gives the Borough and/or the enforcement officer the right to make determinations

as to unsafe structures, unsightly structures, unmaintained structures, and gives the Borough a mechanism by which this can be dealt with notification and/or removal of.

Are there guidelines by which the enforcement -- the enforcement officer is deemed?

MR. MISCOE: Dean Snyder.

DR. MOSES: Okay. Are there guidelines by which these determinations will be made that we can rely on on a conforming basis?

And if so, will that -- I mean is the Borough legally within its means to be able to do this?

And I mean I agree that this is an issue that we need to deal with.

And does this issue deal with also off lake structures, not just structures that are on the lake, but any structure within the Borough?

MR. MISCOE: Correct.

DR. MOSES: Okay.

MR. MISCOE: I will let Dan answer.

DR. MOSES: I just want to make sure that we have a mechanism in place by which this can be enforced and maintained.

MS. DEWAR: We just handled one situation.

MR. MISCOE: The genesis --

DR. MOSES: I can imagine which situation it is.

MR. MISCOE: The genesis of those provisions was a problem that was on the lake with the boat house that we spent years and years and years trying to get resolved, and we found out that we really didn't have the teeth in our zoning ordinance to do anything about it.

We had a nuisance ordinance, and we tried to argue that some pieces of the structure fell into the lake and creating a safety oriented nuisance and that has been in litigation, I won't say active litigation, but it has been back and forth between our solicitor and their lawyer for five years.

And we put a provision in 144 to address that situation.

And then, of course, the eventual legal counter argument comes up and we tightened the screws down on that.

And I will be -- I go to every Zoning Hearing Board meeting just to listen to how lawyers argue or interpret our ordinance.

And then after every single one of those we came back to the zoning committee and we have to tighten this up, we have to -- you know, words like device, and

I had made a comment to Bob where they asked to reinsert that word. No, no, no.

We are not going to reinsert that word, but I will let Dan speak to what the zoning enforcement officer's authority is with respect to declaring a structure under the MPC non -- I guess -- what would the word be, decretive or active or whatever.

MR. RULLO: We have a separate nuisance ordinance, and in addition to the enforcement provisions the zoning enforcement officer has the ability to issue a notice of cease and desist.

And if that notice is issued, people have the ability to appeal his determination to the Zoning Hearing Board.

So there is a mechanism in place, but the enforcement officer has to first make a determination as to whether there is a danger to the health, safety and welfare of the community by the condition of the premises like the boat house we talked about.

It was in a dilapidated state, but it wasn't until we saw debris in the water that suggested that that could create a hazard to the health, safety and welfare of the boating public we had the ability to do something under the nuisance ordinance, because the zoning ordinance didn't really address it at that point.

Now, our zoning enforcement officer would have the ability to issue the termination.

If that person believed that that was not a correct determination, they have the ability to pay the money to have a hearing before the Zoning Hearing Board.

The Zoning Hearing Board would then have a fact finding hearing to determine if in fact there should be a reversal of the decision made by the zoning enforcement officer, and then that could be appealed to the Court too.

The section that Mike just showed me is the substandard dwelling section that's under our ordinance, Section 404.

MR. MISCOE: And you'll note that that extends to any structure, and it is not limited to boat houses. In fact, I will read it to you.

Any structure, including those that are incidental to the primary dwelling such as accessory buildings, boat docks, boat houses -- I'm sorry, I'll read that -- I have to read it slowly.

MR. McCAULEY: My concern is I would like to eliminate as much as possible the haggling of lawyers.

MR. MISCOE: That's inevitable.

MR. McCAULEY: And being able to somehow that we're clear on our definitions and our regulations so

that this can be upheld and maintained.

MR. MISCOE: The point that I was getting to, and I have to read this for the record because I read it too fast, including those that are incidental to the primary dwelling such as accessory buildings, boat docks, boat houses, garages, storage sheds or the like that is in need of such major structural repairs such that it is unsafe as determined by the Borough building code official. That's Somerset County Building Inspector.

So if Dean believes that a problem exists, we call Somerset County Building Inspectors who is the BCO. They come in and make a determination as to whether the structure is safe or not.

And if their determination under the UCC that the structure is unsafe, I think we're pretty solid.

Now, are they going to challenge? Probably.

And can you avoid the eventual legal haggling that goes on? No.

I mean if the person that's on the other side of that has enough money to pay a lawyer to fight, we're going to have a fight. It's inevitable.

The last two years have taught me that unfortunately common sense sometimes doesn't prevail.

Lawyers are like nuclear missiles, and I say

that being one.

Everybody has them. That's great, but as soon as you push the button on one, things get real messy.

And that's unfortunate, but that is the process by which these types of things get resolved, and I hope that answers your question.

MR. RULLO: I object to the definition of the words nuclear missile.

(Discussion off the record)

MR. MISCOE: All right. Are there any other questions?

(No response)

MR. MISCOE: I appreciate those of you that braved the wintry conditions to come here and provide your input.

I think this was a very good hearing. There were some great questions, and I appreciate the respectful manner in which you addressed the council.

I will send an e-mail out through the Borough website asking people who were not able to attend to please feel free to submit comments both to council and

planning, and I will provide the e-mail addresses for that and our informal notification system through Gay Reed. She has a very broad e-mail database, but -- and I use it only because we just want to make sure that everybody has an opportunity to comment.

The next Planning Commission meeting where they will address this issue is January the 11th, and that will be at the Borough building for those who are interested in attending.

The Borough council's next meeting will be January the 4th. It will be our reorganization meeting. It is also advertised for business where the new members of council will be seated and the council will reorganize.

I thank you for attending and at this point --

MR. VOGEL: Before you close, how long is the record going to remain open for people that were not able to be here today to make comment?

MR. MISCOE: We have -- you'll recall at the last council meeting under the provision of our ordinance that allows for a zoning or, I'm sorry, a Planning Commission final review, you have 30 days from the close of the public hearing to review public comments.

Then as I pointed out, the Planning Commission

will submit its comment to council. I don't know what meeting that will be.

Council will decide whether to proceed or not, and if it's decided to proceed, there is an additional advertisement and 10-day period. So I would imagine that we're 30 plus 10 plus a couple days.

There's probably a minimum of 45 days before council to even -- thank you. A minimum of 45 days before council could actually vote on this issue.

So I haven't done the math and the days because we don't know when council is going to establish their meeting dates, but under the presumption that they do the second and fourth Wednesday of the month as we traditionally have, I would think that that would occur sometime in February, but I'm going to ask people to get their comments to planning within that 30-day period because it's planning's responsibility to review the comments and make a recommendation to council.

Members of the public can always provide input to members of council.

MR. LYONS: Jim Lyons.

Is this limited to just people who haven't been here? That's how you're --

MR. MISCOE: No.

MR. LYONS: Okay. That's how you're labeling

it.

MR. MISCOE: Forgive me.

Anybody can submit -- if you think of something you didn't think of before, certainly, continue to feed comments to planning.

MR. LYONS: And the people that submit these can read them on the e-mail?

I mean can they retrieve them back?

Like if Bob puts one in, can they retrieve them and --

MR. MISCOE: I don't understand what you're saying.

MR. LYONS: I guess what you're trying to say is, is everybody going to be able to read everybody's comments?

That's how I guess I should say it.

MR. MISCOE: Well --

MR. LYONS: Is it just going to be submitted to Gay Reed or to --

MR. MISCOE: No. It would be submitted to the Planning Commission and the Planning Commission -- I mean all of this stuff becomes part of a giant pile of records.

MR. LYONS: There is a lot of people I know that couldn't come here today.

Some of them are in Baltimore, Maryland, some called me and said can they get it postponed? And I said I'm not in charge of it.

That's why I'm saying, to make sure that everybody knows what -- so it's not repetitive or everybody has an idea they want to put into it, it's all passed around.

MR. MISCOE: Well, I think at the end of the day, I don't want to get into a situation where I'm telling people don't submit comments that other people have submitted.

If they have comments, submit them. It's planning's job to sort out --

MR. LYONS: I understand.

MR. MISCOE: -- if they get 221 comments, if you forgot a period at the end of the sentence -- that's why they get paid the big bucks.

MR. HANSON: Each and every comment can be posted to the Borough website for anyone to see.

MR. MISCOE: Okay. But I don't want to restrict people that that's the only mechanism --

MR. HANSON: You can post just as easily as anyone else can.

MR. LYONS: I'm not a computer guru.

MR. HANSON: If you send it to me I will post

it for you.

MR. MISCOE: And whether planning wants to submit all the comments on their website, that's up to them. It's not necessarily required.

I think that would be a useful idea, just so people can see what folks are complaining about or what their comments are, even to the extent that they're positive, but that is not required.

My point is that there is a mechanism to get comments to planning via mail or e-mail.

MR. LYONS: And if there is substantial changes we have to have a hearing again, am I correct?

MR. MISCOE: If there are substantive changes that council agrees to make, planning makes recommendations.

It will be once the recommendations go to council, if council -- let's say there is a substitute change, we're going to create new zoning districts and we're going to do all these different things, if council agrees to that, then that would be a substitute change in which case those changes would have to be adopted, they would have to be published, you have to readvertise.

MR. LYONS: I understand the process, but what do you classify as a substantial change besides a map

change?

MR. MISCOE: That will be up to the --

MR. RULLO: Depending upon what's -- we'll have to look at the time. If it's --

MR. LYONS: So you don't have an example?

MR. RULLO: We received a red line version from planning already. Many of them are grammatical issues.

MR. LYONS: Planning, Somerset Planning?

MR. RULLO: Indian Lake Borough.

MR. LYONS: Oh, I'm sorry. Okay.

I guess I recognize also Somerset planning is just reviewing the zoning ordinance, I guess, which hasn't been cleared up here, I guess.

Correct me if I'm wrong. Somerset Planning just reviews it, there's no conflict with Somerset County Zoning is really what he's reviewing?

MR. MISCOE: No.

MS. DEWAR: I don't understand.

MR. RULLO: I'm not sure.

MR. MISCOE: Somerset County doesn't have a zoning ordinance, number 1.

MR. LYONS: Correct.

MR. MISCOE: The Somerset County Planning Commission who does administer the Somerset County's

subdivision land development ordinance, okay.

MR. LYONS: Okay.

MR. MISCOE: Now, subdivision land development is a whole different section of the MPC from zoning.

But the MPC does require us to submit our zoning ordinance to the county planning agency for review and comment, and their review and comment like.

For example, in Ordinance 99 there were a number of things that they made comment on that they felt were deficient.

Ordinance 144 they had not make comment.

Ordinance 155 they didn't make comment.

We managed to dig a few extra things out of them with some further prodding, but it will be up to planning to decide whether we really want to put conditional uses for adult uses and windmills and whether we need provisions for surface mining. So those are the substance of their comments.

They are going to be -- those subsequent comments will be made part of the record.

They've already been forwarded to all the members of council as well as the Planning Commission.

If you'd like to see a copy, send me an e-mail. I have it on PDF.

And, Bob, I think you can post that up on the

website as well.

MR. VOGEL: Yes. I was going to ask if council has no objection, I can post everything that I have or have gotten or that we come up with on the website.

All I need is permission.

MR. MISCOE: I don't think we can take a vote, but I see no reason why --

MR. RULLO: In addition to the regular postings and advertisements we have also been posting the ordinance on the website which is not required.

So there is already, if you have the link to it, you can go on and see the ordinance.

If you have additional documentation you can submit that. That would just make sense to me in the scheme of trying to keep this as transparent as we possibly can, provide all the comments you wish, and because all the recommendations either from the Planning Commission in the county or the Planning Commission of Indian Lake Borough are advisory only.

It's going to be planning and city council that make the final decision on this.

But you want an example of what would be a substantial change, the comments we heard about the townhouses and changing that zone, that would be a

substantial change and that would require then a public hearing, another advertisement.

If we're talking about grammatical changes or rewording certain things, that is probably not -- it's going to depend on what we're looking at at the time.

MR. MISCOE: Some of the changes you asked about the height, the maximum height, the minimum height, you know, and to the extent that those things need to be clarified consistent with what's already there, I think those are non-substantive changes.

The majority of the things that you suggested were not substantive.

When you talk about -- I think there was a thing you want to remove whole sections, I would think that would be substantive.

Are there any other comments or questions or concerns from members of council?

(No response)

MR. MISCOE: Hearing none, I'll go ahead and move that we close the public hearing.

I thank you for your attendance, and I appreciate your interest because I agree with Jim, dare I say it, that this does have a big impact on the

property value and that and that's why we go through this process.

(Public hearing concluded at 11:50 a.m.)

Commonwealth of Pennsylvania)
County of Westmoreland)

I, Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the speakers, were recorded stenographically at that the time and place indicated herein, and that said comments were then reduced to typewriting under my direction, and constitutes a true record of the comments given by said speakers.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this _____day of_____, 2010. _____
Theodore E. Wawrzyniak, Notary Public-Registered Professional and Merit Reporter.

PUBLIC HEARING

INDIAN LAKE BOROUGH

Re: Comprehensive Amendments)
to Zoning Ordinance No. 144)
and repeal of all previous)
zoning ordinances, and the)
comprehensive enactment and)
recodification of proposed)
Zoning Ordinance No. 155)

PUBLIC HEARING, in the above-entitled matter, pursuant to the Municipalities Planning Code of the Commonwealth of Pennsylvania, before Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, at the Unity United Church of Christ, 2074 Huckleberry Highway, Berlin, PA 15530, on December 19, 2009, at 10:15 a.m.

WAWRZYNIAK REPORTING & VIDEO SERVICE
P. O. Box 368
Irwin, PA 15642
(724) 864-6993

APPEARANCES:

ON BEHALF OF INDIAN LAKE BOROUGH COUNCIL:

MICHAEL D. MISCOE, President
P. SCOTT MOORE, Member
ROBERT VOGEL, Member
RICHARD STERN, Member
CHARLES McCAULEY, Member
PATRICIA DEWAR, Member
BARRY S. LICHTY, Mayor
DANIEL W. RULLO, Solicitor

INDEX OF SPEAKERS

MR. MISCOE - PAGE 4

MR. RULLO - PAGE 8

KURT MORGESE - PAGE 23

BOB HANSON - PAGE 30

MICKEY MOSES - PAGE 31

JIM LYONS - PAGE 37

BOB BUSTAMANTE - PAGE 47

MR. MISCOE: This is a public hearing for you to discuss -- provide the council with any comments or concerns relative to the proposed Zoning Ordinance 155.

I won't go through the history, but the council appointed a zoning committee of five individuals.

They were myself, Mr. Scott Moore from Borough Council, and then public members were Karl Chapman, Ron Petrina, and our current zoning officer, Dean Snyder.

We worked in public hearings for approximately nine months. We met twice a month.

There was a lot of work by members of the committee in between.

We completed our work, I believe in October, submitted it to council.

Planning has been given the opportunity to review the ordinance as we posted our changes.

We went two sections at a time, sometimes one section.

As we completed that work it was posted to the Borough website.

We certainly encouraged everybody to read that as we went and submit any comments.

There are a number of communications that will be added to the record.

We got an e-mail communication from Brad Zerfoss in response to a question that I had sent him at the request of council.

The Somerset County Planning Commission did their review and simply published a letter that they had no comments.

Brad had indicated that he would perform a comprehensive review.

And there was a question as to whether he did that, and whether he had any comments.

I sent him an e-mail on December 11th at the request of council.

He responded and provided some additional comments which will go to the Planning Commission for review.

Brad is a professional planner, and he simply stated I wanted to get back to you about the review of the proposed Indian Lake zoning ordinance this week, although I didn't reflect it in my comment letter, I did review the ordinance in depth, and I had just a few minor comments and suggestions that I formed.

The author or authors of the draft ordinance are to be commended for an excellent job and for having a good grasp of the Pennsylvania Municipalities Planning Code.

I also read Mr. Moore's comments as well.

After speaking with Attorney Rullo today I will type up my notes and put them in a follow-up letter that I will fax to you and Attorney Rullo on Monday.

I know that you have a hearing scheduled for December 19th, so I'll expedite getting it to you in case you need to discuss my thoughts with Attorney Rullo.

I'll need your fax number or somebody can pick it up.

If I can be of any help in the future, let me know and so forth and so on. His comments were published.

They have been forwarded to members of council and the Planning Commission, and essentially he had comments relative to minerals extraction, forestry activities, heavy industrial uses, the zoning map and supplemental regulations relative to service mining, telecommunication facilities and towers, steep slopes and adult uses.

So those will be part of the record.

We also received a letter from Mr. Ed Smith of Northland's Golf Course and Lake Properties, Inc. objecting on the basis that in summary to the parking.

I won't read his whole letter, but to the

parking provisions and to his perception that they're losing the ability to develop multi-family dwellings despite having no plans to do so.

I drafted a letter back to him indicating that his comments would be forwarded to planning.

The Planning Commission completed its review and they published their comments in a mark up to the ordinance which I have printed, and I submitted back to them a section by section analysis of what the rationale was for those changes.

It's obviously too lengthy to read. That will also be made part of the record.

I will turn it over to Mr. Rullo right now who will go through the legal aspects of the process that we're in, the publications that we've done and where we are going forward.

Before I do that, though, I realize that the weather is a little bit inclement.

While it's not required by the Municipalities Planning Code or provision that was a holdover from Ordinance 99, I suggest a follow-up planning review after the public hearing for 30 days.

We will send an e-mail out to those who are not able to attend to submit their comments in writing and we will forward those to the Planning Commission so

they have an opportunity to be heard.

So as it turns out, that 30-day provision, because of the weather, may be fortuitous so that folks can get their comments in. Dan.

(Pause)

MR. RULLO: I think it's important just to set some context for this.

We have had under appellate review Ordinance 144 which it had been enacted, and there had been appeals to the Zoning Hearing Board.

The Zoning Hearing Board had taken testimony and rendered a decision and appeal that 144 had been taken, and it was under advisement for the better part of a year or longer, and the decision was rendered by Judge Klementik affirming 144 as a valid ordinance.

So 144 is the ordinance that we have been utilizing since its implementation and has now been affirmed by the Court of Common Pleas.

This ordinance is proposed to be a new number Ordinance 155, and it is a comprehensive revision of 144.

We are it treating as an amendment, although it will be recodified as 155 under the Borough Code.

The sections that are important, I think to you for you to understand relative to the process is that first this is governed by the Municipalities Planning Code.

And Section 609 of the Municipalities Planning Code is the governing section, although I'm going to read 608 just into the record so you're aware of the process of the public hearing.

It says before voting on the enactment of a zoning ordinance the governing body, which would be the Borough Council, shall hold a public hearing thereon pursuant to the public notice.

The vote on the enactment of the governing body shall be within 90 days after the last public hearing.

Within 30 days after enactment a copy of the zoning ordinance shall be forwarded to the county planning agency, or in counties where there is no planning agency existing, the governing body of the county in which the municipality is located.

When we had 144 there had been multiple public hearings and under that no action can be taken -- let me just say it this way.

We have 90 days from today's date, if there are no other public hearings, to take enactment. If we

don't, we have to start the process again.

Now, under section -- the process being the advertisement process and the public notice process.

Under 609, because there is provisions under this comprehensive change that also constitute a map change where there is actually going to be territories that either were unzoned or are being revised, there is additional process that has to be followed.

And under 609 it states this:

First of all for the purpose of identifying which of the sections we're following, 609 states that for the preparation of amendments to the zoning ordinance the procedure set forth in Section 607 for the preparation of proposed ordinance shall be option.

Section 607 is the portion of the Municipalities Planning Code where planning agency initiates the changes as opposed to the governing body. So we are following 609.

Before voting on the enactment of an amendment, the governing body shall hold a public hearing thereon, which is the section I just referenced before.

Pursuant to public notice, in addition if the proposed amendment involves a zoning map change, notice of the public hearing shall be conspicuously posted by

the municipality at points deemed sufficient by the municipality along the tract to notify potentially interested citizens.

The affected tract or area shall be posted at least one week prior to the date of the hearing.

In addition to the requirement that notice be posted under clause 1, where the proposed amendment involves a zoning map change, notice of the public hearing shall be mailed by the municipality at least 30 days prior to the date of the hearing by first class mail to the addressees to which the real estate tax bills are sent for all real property located within the area being rezoned as evidenced by the tax records within the possession of the municipality.

The notice shall include the location, date and time of the public hearing, a good faith effort and substantial compliance shall satisfy the requirements of the subsection.

And then it states that this clause shall not apply when rezoning constitutes a comprehensive rezoning.

Council has taken the position that even though this is in our view a comprehensive rezoning it is intended to revoke all previous zoning ordinances, it is better to err on the side of caution by giving more

notice than less notice.

So from the standpoint of whether this is treated completely legally as a comprehensive rezoning, we're treating it as an amendment with map changes that has the higher level of notice requirements than otherwise would be needed.

So consequently, because you'll see there are areas, in particular the lake itself, which was not zoned previously, it is now a municipal lake.

The notice only needs to go to the owners of the property that is being rezoned.

Frankly the lake bed is owned by the Borough. So to be cautious we elected to give notice to everyone who even has -- is adjacent to the lake.

And as I understand it everybody, even the back lots, received the postcard that was mailed as if they would be affected by the map changes.

MR. MISCOE: Yes.

MR. RULLO: The advertisements under the Municipalities Planning Code we did, instead of publishing the full text of the ordinance which is over a hundred pages, we published it in accordance with Section 610 of the Municipalities Planning Code which permits the solicitor to prepare a summary. That summary is still pretty voluminous. It had been posted.

There was an affidavit of posting that it was posted at the county law library on Monday, November 16, 2009.

It had been advertised in the newspaper of general circulation, being the Somerset Daily American, on two occasions.

MR. MISCOE: November 20th and 27th.

MR. RULLO: November 20th and the 27th.

MR. MISCOE: That's correct.

MR. RULLO: And the proofs of publication are in the offices of the Borough manager.

Under the code we are also required to provide a copy of the full text and summary of the ordinance to the Somerset County Planning Commission.

And by my letter to Brad Zerfoss, director of the Somerset County Planning Commission on November 16, 2009, delivered by hand.

We can make a copy of that record available for anyone who wishes to see it. It's in the public records of the Borough. It's probably quicker for me to just read it.

I am delivering to you this date a comprehensive change to the Indian Lake Zoning Ordinance.

The version shall -- being provided to you has

a date of November 11, 2009.

The Borough Council has scheduled a public hearing on the comprehensive amendments to Ordinance 144, which is proposed to be Ordinance 155, if enacted.

Pursuant to the Municipalities Planning Code I'm providing this notification to you as agent of the Somerset County Planning Commission more than 30 days prior to the public hearing so that the planning agency will have the opportunity to submit comments and/or recommendations.

I'm also providing you with a copy of the notice of the public hearing and the summary of the modifications.

It is the intent of this proposed ordinance amendment to repeal all previous zoning ordinances and the comprehensive rezoning of the entire borough by reenactment previous provisions as well as amending the language from previous ordinances.

A recodification of this is being done so it would be recodified as proposed Zoning Ordinance Number 155.

If you have any questions about the foregoing, please don't hesitate to contact me, and I carbon copied this to council and to the Borough manager.

We received a response back from Mr. Zerfoss

dated November 25th, 2009, addressed to me regarding the proposed Indian Lake Borough zoning ordinance amendments.

Dear Attorney Rullo: I have reviewed -- I'm sorry. I have received and reviewed the proposed comprehensive changes to the Indian Lake Borough zoning ordinance that you submitted to the Somerset County Planning Commission for review pursuant to the Pennsylvania Municipalities Planning Code.

It is my understanding the proposed ordinance amendment will appeal all previous zoning ordinances, and the comprehensive rezoning of the entire borough by reenacting previous provisions as well as amending the language from previous ordinances.

The Somerset County Planning Commission has completed the review of the information and has no comments to offer at this time.

Please feel free to contact me if I can be of further assistance.

As Mr. Miscoe indicated, we did contact them and ask them if they could provide any additional assistance, and I understand that's the letter you referenced.

MR. MISCOE: Yes.

MR. RULLO: The last piece of business from

the standpoint of the notices is the notice that was given pursuant to the Municipalities Planning Code to our own Planning Commission, and that was delivered by the Borough manager by hand to the Planning Commission on November 16th also.

And it indicated under delivering this day a comprehensive change to the Indian Lake Zoning Ordinance, the version being provided to you has a date of November 11th, 2009.

The Borough Council has scheduled a public hearing on the comprehensive amendment to Ordinance 144 which was proposed to be Ordinance 155 as enacted.

Pursuant to the Municipalities Planning Code I am providing this notification to you as agent of the Indian Lake Borough Planning Commission more than 30 days prior to the public hearing so that the planning agency will have the opportunity to submit comments and/or recommendations.

I am also providing you with a copy of the notice of the public hearing and the summary of the modifications.

It is the intent of this proposed ordinance amendment to repeal all previous zoning ordinances and the comprehensive rezoning of the entire borough by reenacting previous provisions as well as amending the

language from previous ordinances.

A recodification of this also is being done so that it will be recodified as proposed Ordinance No. 155.

And that was signed by Theresa Weyant, Borough Manager.

Those are the provisions. Today is the time for any public comment about that.

The scriveners of those documents, most of them are here to answer any questions that you may have.

I will try to answer any legal questions that may come up relative to the procedure.

MR. MISCOE: Thank you, Dan.

I would also point out that after this meeting, as I pointed out earlier, the transcript of this hearing will go to the Planning Commission.

They will have 30 days -- a 30-day period subsequent to this meeting to review that.

We will also solicit comments from people who could not come in.

We have encouraged folks to submit those comments beforehand, and we have in fact received a few, but we will take advantage of this additional 30-day period.

The Planning Commission will then make its

recommendations to Borough Council.

The next council after the first of the year, when they reorganize, will then make the decision whether to move forward or not.

I would point out that because there are substantial amendments, Dan, please tell me if you disagree, we do have a requirement under Section 610 to advertise ten days prior to actually taking a vote.

And I, even though that -- it's an expensive ad because the summary was over five pages in length, I believe that we should probably do that as well.

So it will -- there is some additional time once planning comes forward with their recommendations, council decides whether they want to proceed to a vote or not, I believe there is one extra publication that we would have to do.

MR. RULLO: Yes. Section 610, which is the section I referenced about the summary of the ordinance about publishing in a newspaper in general circulation in accordance with the MPC, as well as posting it in the county law library.

It does provide in the event substantial amendments are made in the proposed ordinance or amendments before voting upon an act the governing body shall at least ten days prior to the enactment

readvertise in one newspaper of general circulation in the municipality a brief summary setting forth all of the previous provisions in reasonable detail together with the summary of the amendments.

So depending upon what adjustments are made, the question that would come in as to whether there are substantial amendments or not, but if they are --

---

(Discussion off the record)

MR. MISCOE: Dan would like to note another interesting point.

There are -- I think the Planning Commission did an excellent job.

They identified a number of things that I think we should probably add to clarify provisions.

I don't believe that they constitute substantial changes, but based upon public comment relative to some of the provisions that I know that there is some question about should a substantial revision need to be made, we would have to readvertise, have another public hearing and go through this process again.

So we are, I would say, at the beginning phases of the enactment process.

We're certainly not going to take any action at this meeting for all the reasons that Dan just reviewed, and this is your opportunity to let members of council know what your concerns are, what you have questions about.

As I said, some of you may have gotten the December -- my December newsletter by e-mail.

I would not like to see this develop into a shouting match or a debate.

Present your concerns. Respect other people that are here.

If you can identify the specific section that you have concerns about, and what those concerns are. Those types of comments are very helpful to council.

Specifically if you think that we have overlooked a possibility or an impact that that change might have.

Those comments will be then -- they're being transcribed.

They will be submitted to planning. Planning will review them. They will make recommendations to council.

Council is here. They will make their own judgments and the process will go forward or stop at that point.

MR. RULLO: One other thing I want to mention. Dean Snyder is not here, right?

MR. MISCOE: No.

MR. RULLO: I have been informed that Dean has posted the notices conspicuously at various locations across the Borough, and the exact locations, I think he can make available.

MR. MISCOE: He did leave exemplars here of what he posted, but for each district he made these notices and publicly posted them around the boundaries of the property.

There is one for the CR to CRG which was posted around both golf courses, and it's apparent that at least the public golf course was aware of it because they sent us a letter.

They were posted around the lake and apparently those were noticeable because someone called me and asked me what are these orange signs around the lake.

And then the -- we posted the wildlife preserve area because we had a provision for it on the zoning map, but it wasn't defined in our zoning ordinance as a zoning district.

So those were the notices that were posted out there, and I even exercising caution asked Dean to take

pictures of them in the event that someone were to pull them down or allege that they weren't there.

So, and of course, this postcard, I believe everybody should have gotten one of these, but every property owner according to the tax rolls got this notice.

Even though we're only required to notify people that actually own the property being rezoned, we felt it prudent to notify everybody that might be affected.

So that's -- I think we have -- learning from some of the issues that came up in 144, we have tried to make this process as transparent as possible throughout.

I've even been accused of providing too much information, but better too much than not enough.

So now it's your turn. Please indicate your name for the record and go ahead and state your concern.

MR. MISCOE: Anyone?

(Discussion off the record)

MR. MISCOE: Go ahead.

(Pause)

MR. MORGESE: My name is Kurt Morgese, M-O-R-G-E-S-E.

And I own one of the little A frames where the little cute A frame cottages are.

My concern, I have two.

One. I'm not exactly sure anymore what we are zoned. I believe it's a recreational commercial.

And so in that I think I have a $750 building permit if I want to build, and I think everybody else is 50.

So I'm not real crazy about that. I'm hoping we can do something.

The second thing is, I'm concerned that if we're on a kind of need to -- when I read the ordinance, if we want something done it's on an ask and maybe you'll receive.

So that seems a little bit vague and I don't know. That's not comfortable to me. So those are my concerns.

We're kind of our little own community of eight, and we kind of don't really have a rule, and the one that we do have costs a lot of money for a 500 square foot A frame.

So those are just two concerns that I wanted to voice.

MR. MISCOE: I can certainly understand your concern.

And for those that aren't familiar, and I appreciate the comment because it's one of those problems that we have wrestled with.

The A frames are made of a for share a common septic system, and the lot sizes do not meet any of the lot sizes for single-family residential districts that exist throughout the rest of the Borough.

Ever since Ordinance 50 -- well, I don't know that they've ever had their own zone, but I can go back as far as Ordinance 50, and you have been part of -- in Ordinance 50 you were part of the CRH district.

In Ordinance 99 your area was rezoned CR. In Ordinance 144 you remained in CR.

And in Ordinance 144 returning back to CRH which is what it was in Ordinance 50.

The problem is is that single-family residential dwellings are not expressly permitted uses within either the CRH in 50 or the CR in 144 or in the CRH zone in proposed 155.

And as a non-conforming use within a district there are under the current ordinance. I agree you don't have a $750 building permit.

The building permit is still $50, but it will

get denied because you're not permitted to alter a prior non-conforming use.

It's a rule that you can keep what you have, but you don't -- you're not allowed to change it unless you can make it conforming, and unfortunately there is no way to do that.

Now, the options are to carve out a district and define limits that allow you to exist as conforming uses in which case then if you want to put dormers somebody put on and do those types of modifications, then as a conforming use you would submit a normal permit and be permitted to do that.

The problem that that creates is that we introduce a high density zone into the Borough, and currently we don't have any.

We sort of inherited the chalets as part of the original development plan because they weren't meant to be homes. They were meant to be rental properties for skiers.

They became homes. They got sold off, and they don't have lot sizes that have substantial setbacks and whatnot that you would find in a normal R-1 district.

So the density of that zone and intensity of use is such that if we were to carve out a zone and make

that conforming, we open the door for someone to say, well, hey, you have high density in the Borough. We want high density over here, and that makes me a bit nervous.

Now, input in the alternative, we very carefully considered what constitutes an alteration to ease some of the burden on existing prior non-conforming uses to permit you to do, you know, fix your roof or do things of that nature that would classify or constitute minor alterations.

So that that work can be done without getting clearance from the Zoning Hearing Board.

But the $750 comes into play when you want to make structural alterations, reconstruct, things of that nature such as a dormer.

To the extent and, Scott, help me out here, whether that would constitute a structural alteration.

MR. MOORE: With the A frames, yes, because unfortunately the entire wall is a structural system.

MR. MISCOE: Right. So, and unfortunately there is -- the only mechanism that exists for allowing the alteration of a prior non-conforming structure is a special exception process or a variance from the Zoning Hearing Board. That's all the MPC allows.

And unfortunately there's a fee for that, and

that stinks, but balancing the concern of the $750 for you or the potential introduction of high density development elsewhere in the Borough in areas that are capable of that development, we opted for changing the definition of what constitutes an alteration to allow you to do some of the minor things without having to pay that money, and, B, create special exception authority, which is a lower threshold of analysis for the Zoning Hearing Board than a variance which technically if you read Section 105 of the ordinance, the location and the density with which your properties were built is deemed already understandable and it wouldn't qualify you for a variance.

So that's I think the best that we can do, short of opening the door to high density development in the Borough.

And I know that that stinks for you, but we would like to roll back the clock 30 years and change a lot of things about what was done in the Borough, but we're stuck with it.

So that's the trade off and that's a judgment call that council will have to make as to whether they want to create that zone or not.

MR. MORGESE: Well, then could you clarify one other thing.

If it's zoned recreational commercial, and just, for instance, I decided to become a renter of golf clubs, is that my right?

MR. MISCOE: You're in a district.

So to the extent that you were going to convert your structure to a commercial structure, now you have some setback issues that I don't think you have enough property to meet but, you know, there's home occupations which are permitted elsewhere in the district.

But what would stop you from turning your A frame into a commercial building would be probably some labor and industry stuff, but setbacks.

MR. MOORE: A building of that size, labor and industry -- well, it's not involved anymore.

It's the building code official, number one, and it's small enough that the requirements for life safety issues would be met because it's very small.

It would be very feasible for you to ask for exception of easements or setbacks for the zoning variance and be granted a commercial use.

MR. MISCOE: Yes. I mean it's possible, but again you would have to go through the same process because there is going to be some requirement in that zone that you're not going to meet.

MR. MORGESE: So basically what you're telling me is I bought an A frame that I basically have no right to do anything I want to do without approval from someone else?

MR. MISCOE: Well, I wouldn't say no right. You have the right.

I mean there is a process by which you can get approval, and I think we have drilled some pretty big holes in that process recognizing that there are alterations that you may need to make, and I believe that the special exception requirements by lowering the threshold.

There is nothing I can do to change the MPC in terms of how that process works, but there is now, I think an easier mechanism for you to get that dormer put on, and in fact somebody went through that process and got an approval.

MR. MORGESE: I understand better.

MR. MISCOE: So it's doable. It just cost more and unfortunately that's just by virtue of the nature of how that area was laid out.

We're stuck with it and the only way to fix it is either to open up the door to high density in the Borough or leave it the way it is.

It's just going to cost you a little more, and

I apologize for that.

MR. MORGESE: Thank you.

MR. MISCOE: Anybody else?

(Pause)

MR. HANSON: My name is Bob Hanson, H-A-N-S-O-N. I'm chairman of the Planning Commission.

The Planning Commission has wrestled with this comment.

It's one of the only comments. I shouldn't say one of the only, but it's one of the comments that we are unanimous on that we need to address. We are not unanimous on how to address it.

So we have not yet made a recommendation to council as how it would be addressed.

As Mike said, there are a number of options, and we're looking at them.

Hopefully in January Brad Zerfoss from Somerset County, and a gentleman from Pittsburgh, the DCED, which is the Department of Community and Economic Development.

That department has been sponsored by the government to provide assistance in planning and zoning to municipalities, and they have also agreed to come to

a meeting in January.

So Brad and this gentleman from DCED are going to come and hopefully explain to us what some of the options are to try to address that situation, but I guess that's it.

MR. MISCOE: Thank you, Bob. Doctor Moses.

(Pause)

DR. MOSES: Yes. I'm Mickey Moses.

I'm at 121 North Peninsula, which is a lake front.

I want to congratulate you. This looks like the Senate health care bill.

MR. MOSES: My printer ran out of ink.

I want again to try to go over the clarification of one of the issues that was of significant concern to most of us when we began this process way back in '99, and then with 144 and now with the new printing that I have here, and that is with respect to the definition and the length of docks.

As I look at 144, and then I compare that to this present, there seems to be some differences.

There seem to be three different classifications. I am a lake front owner.

So I am allowed to have 30 feet of dock, no wider than eight feet, I believe.

There's a CR stipulation now with I think somewhere near 50 feet of dock, depending upon the shore line, topography, and then another one which I didn't see in 144 for commercial which goes back to 100 feet extending into the lake.

Is that -- am I correct on that and I need some clarification?

MR. MISCOE: Marine.

DR. MOSES: I think those were -- those were some significant issues of contention as to the length of dock extending into the lake and safety factors involved with it.

Again, my concern personally early on, a hundred feet into the lake is at least in my -- in my estimation a significant danger from the standpoint of encroachment into the lake and adequate boat utilization, skiing, tubing, et cetera.

I would like some clarification as to why that was changed, and what we may consider in the -- before this is ratified.

MR. MISCOE: Okay. As a point of clarification, what used to be Section 1307 of Ordinance 144 was foiled because we zoned --

UNIDENTIFIED SPEAKER: Did you memorize these things?

MR. MISCOE: I have been doing this a long time. That's scary enough.

UNIDENTIFIED SPEAKER: Holy mackerel.

MR. MISCOE: Trust me, never in my -- had I ever expected or even desired to want to know anything about zoning, but Section 1307 was the provision in Ordinance 144 that pertained to docking in the various districts.

We, due to comments that arose during the hearing process during the challenge of 144, it became apparent to me that zoning is about how you regulate -- what regulations the Borough places on your use of your property.

And the problem came in is that the lake isn't owned by -- you live on the lake. Your property line ends pretty much at the water line. There's pins and so when we start talking about regulating the use of the land beyond your property line, we're in effect not placing a restriction on you.

We are granting a use to you on property owned by the Borough.

And it was brought out, and the judge even made a comment about it, that that area was not zoned.

It was mentioned that all the land within the Borough has to be or should be zoned.

There was a question as to whether the Borough is responsible to zone its own property, and we elected to go ahead and take that area that is the lake, zone it municipal lake and create permissive uses for the adjoining property owners.

So we took 1307 and all the boat docking and boat ramp and boat house provisions relative to what you do on the other side of your property that you don't own and made those explicit permissive uses, and unfortunately we changed the ordinance.

Instead of going district by district we did use by use, and then put the district requirements underneath.

Both in Ordinance 144 and proposed 155, the CR district had that 50 lot size of 70 because there's a recession in the lake front there. So that hasn't changed.

The 100 foot provision applies to the CM district only, and that is the marina.

And I wish I could say that at the time more analysis -- when we put that into 144 more analysis went into it, but I went out to the marina and took a laser distance measuring gizmo and shot a line out to the end

of their docks and got 97 feet.

And I would point out that under Ordinance 99 docks were not a permissive use for the marina which is kind of ludicrous because they sort of need them.

And so we looked at what they had and had traditionally installed.

I think Jim Brant was responsible for most of the floating dock expansion out at the marina, but that's where the 100 feet came from.

Of course, you know we originally proposed a similar requirement for the lodge.

Based upon public concern it got scaled back to 70 and then it got scaled back to 50.

We had that issue studied, and while some challenged the depth of analysis that went into that docker's study of the safety issue for the docks at the lodge it was concluded that they did not present a safety hazard.

So to the extent that there is a 100 foot provision, and it applied to the CM area of the lake adjoining the CM district, they have 40 feet from the island which is granted by easement.

Many years ago there was a recorded easement that they can go 40 feet out from the island, but the 30 -- or the 100 feet applies in that cove area next to the

public ramp, and in reality they can't go much further than that or they start to block off access to the lake from the public ramp.

There's the other area over on the other side towards the spillway that they -- I didn't measure that, but I know it doesn't go out further than a hundred feet.

So the comments that I have received from people, there's apparently no concern about safety back there because they're back deep enough they're out of the main traffic ways anyway.

And that didn't seem to be a problem or -- and up to this point I had not heard a concern expressed about safety of docks going a hundred feet out from the shore line in that area. The R1 remains at 30.

We certainly have a number of places throughout the lake prior non-conforming uses where the docks go out substantially further.

So to the extent that they continue those uses we will have -- we have some docks that are longer than 30 feet, but I think 30 feet is a reasonable restriction being that pontoon boats can be 30 feet long.

And that I believe is where the 30 foot restriction originally came from, and I hope that answers your question.

(Pause)

MR. MISCOE: Jim.

(Pause)

MR. LYONS: My name is Jim Lyons. I live in Mohawk. I have a house there. I don't live there.

I guess my one question is that the zoning committee, it was appointed which I think, is it four people?

MR. MISCOE: Five.

MR. LYONS: Five people.

Did they take a vote when this was done?

From what I understand, I've asked three or four of them and they all said no.

I guess the conclusion was that you said that you were going to get this done by the end of the year, so you were done with it.

I just want to make sure that the committee, even at the Borough Council meeting made a conclusion that they weren't done. They said it needs some more work.

I understand you've put a lot of time on it,

hundreds of hours I think is the words I meant, but this affects a lot of people, a lot of lives, a lot of investment. I know there is a lot of problems.

I probably am the leader of a lot of the problems, but I think that this committee -- I know it's going back to planning. Planning has some questions.

I guess my request is, do you think the first committee was done with it yet?

Are you forcing it through the system to get done what you want to get done?

The CEHR district has a lot of questions. We had one here already.

This gentleman has a small townhouse that somebody could do something right across the 50 foot district, 50 foot lot. I mean it's so open for anybody to do anything there.

And I guess zoning was actually created so that no people next door or around or whatever will be hurt from anything, and it's a control factor.

This is one of my -- two of my questions.

One. Is the zoning committee done with it? And I know that they weren't.

Are we forcing this through, and have we given a lot of thought for the safety investment of the people of Indian Lake?

I don't want anymore issues brought up later.

I just to make sure that this costly thing is only one cost thing, not a several cost thing.

Obviously the 144 brought up a lot of problems, which I agree a lot of them were corrected. Some of them were changed. Maybe some of them are worse now. Some of them are better.

I just think that a little more time, a little more thought needs to be put in the whole ordinance, even though it has good changes.

Nobody wants to absorb anymore expenses, and nobody wants to lose anymore values of their properties or any lives taken because of some changes in some areas, for example, the docks. There is no control with the docks.

So that's my comment. It's not a detailed comment. It's not a particular zone.

I just feel that it was rushed through in conclusion, and some areas were really hammered and some people have some very tight ordinances to follow and some have none.

So I just thought we should have a little more thought.

MR. MISCOE: Do you have any specific -- I'm not sure I understand what's tight, what's loose.

UNIDENTIFIED SPEAKER: Do you have the sections?

MR. LYONS: No, I don't have any section.

What I'm saying is that it literally has no control whatsoever, the CRH district zoning around the lodge, around the ski slopes, anything.

There's no control whatsoever, and there is some very nice homes on either side of that and everything can be put in there.

Anything can be put in there, if you have that list, if you read the list.

MR. MISCOE: Thank you.

As far as the committee vote, we did take a vote as we were breaking up.

The only other member of the committee that was at that meeting was Ron Petrina.

Do you remember -- and I'll put it to him, if he recalls me asking if the committee approved submitting it to council.

MR. PETRINA: As far as I was aware, we were through with the ordinances. We were ready to present the ordinance to council.

MR. MISCOE: And Scott had recorded a no vote for you. You weren't there.

MR. PETRINA: That's correct. I was not there

or approved what was submitted.

MR. MISCOE: Right.

MR. PETRINA: But with that I submitted a letter dated 11-11 to council noting my concerns.

MR. MISCOE: Yes. And that letter -- do you recall I forwarded that to Brad?

MR. PETRINA: Yes.

MR. MISCOE: Along with that so he would have the benefit of your concerns when he conducted his review.

Above here where it says Petrina, it should be someone else.

MR. PETRINA: Mike, one other question.

I am Ron Petrina.

What we didn't tell the public is the public was invited to all of our meetings, every meeting we had biweekly.

If you had any doubt of what we were reviewing, revising, you were invited to come. It was open to the public.

Very few faces did we see there. Hopefully we could have seen you all there, but we didn't.

But these ordinances, we've spent a lot of time, did a lot of work on them. We put our heart into them, and I don't have anything else to say.

MR. MISCOE: Thank you, Ron.

I would point out that they were publicly advertised meetings.

They -- we had originally anticipated being done by June. We took almost twice that much time.

I will be the first to admit that that was not wasted time.

We wrestled with a number of provisions, and I empathize with the Planning Commission having 30 days to try and wrestle through the same stuff which is why we tried to keep everybody up to speed section by section as we went through so that it wouldn't be this giant go through 115 pages of ordinance to try to internalize what is -- not only what is in there, but all the potential impacts that occur in each zone.

The -- with -- you had mentioned the CRH zone. That area was reclassified to CRH simply to address the concerns that were raised with respect to 144 that we would end up with 9,000 townhomes or multi-family dwellings on a golf course should they be -- that was never perceived -- that was never the intent of that provision, adding that to that district in 144. It wasn't perceived to be practically possible.

However, to the extent that it might happen, theoretically, that -- and it wasn't consistent with

what I perceived council's intent was at the time, we reclassified that district accordingly.

We did increase the restrictions in that district relative to setbacks, parking provisions, grading, filling that apply throughout the Borough equally.

We've added to the -- we standardized the commercial setback requirements for all the commercial zones, and we have a section for all the commercial zones relative to special permitting requirements that did not exist before, but they apply to all the commercial zones equally.

We're trying to achieve -- we're not trying to single anybody out and we're not trying to treat anybody specially.

So to the extent that those requirements make sense for commercial activity, they were written to apply equally throughout the ordinance, and if you can provide some more specific issues that you have, Jim, relative to things, I'm sure the Planning Commission will look at that and council will look at that as they go through it, but let's face it, a lot of the things are going to be judgment calls as to whether -- how do you balance this person's use against that person's right to enjoyment.

And zoning as I see is it not about eliminating every possible annoyance from your neighbor. It's substantial impacts.

If you were to eliminate every possible annoyance, lot sizes would have to be 20 acres so you couldn't see your neighbor or hear them or be bothered by them at all.

We have a community. We have one acre lots. You've got neighbors and that's the juggling act, and for anybody that has sat through the meetings, Dick was kind enough to show up and lend us some input as well.

We had a pretty diverse group in the zoning committee with Karl who has been around the Borough for years and years and years and was especially helpful because of his ability to say okay, here on this guy's lot over here in this particular area this is how that's going to play out, and this is the issue over here.

And Ron, as the zoning officer in dealing with zoning issues and what people want to do with their lots, had a lot of input specific to individual areas of the lake and that's understanding how a provision is going to impact people is the hardest thing to do because you can't possibly anticipate every person's use. We did the best we could.

I will tell you it's never going to be

perfect. It's never going to anticipate every use, but by refining our definition, refining our provision we hope to have an ordinance that our zoning officer can actually apply objectively with a minimum amount of subjectivity.

And to the extent that somebody is not permitted to do what they want to do, provide an easier process for getting minimal changes that account for weird stuff that happens in the Borough because frankly I agree with Scott there wasn't a whole lot of comprehensive planning done when the Borough was laid out 30, 40 years ago.

They didn't think of all these things, and if they had we would probably have an easier job, but they didn't, and so there is some judgment issues in here as to what's the best way to do something, and that will be for the next council to figure out.

Did I want to get this done, to answer Jim's question? I really did.

We have been -- because for the things that are wrong with 144, sections that we didn't address, we didn't do the comprehensive. We did a pretty comprehensive job.

There was a lot of stuff that was left untouched from '99. The members of the committee, we

all agree Ordinance 99 was a very, very bad ordinance. Ordinance was a little better.

We think 155 is substantially better. Is it perfect? No, but you'll never find a perfect ordinance.

The issue is it boils down to how much thought went into it, how much diversity of opinion was involved in coming up with the provisions.

And I would have to say that it was pretty diverse through many of the provisions.

We, you know -- frustrated over it for a substantial period of time.

So there's always going to be something to tweak here and there, but at the end of the day I think we're down to judgment call issues about what is the best way to do something, and that's going to ultimately be a decision for the next council to make.

If they think we need to take more time and revise and go through the process again, that will be their decision to make.

But I appreciate the comment from both Jim and Ron.

Anyone else?

(Pause)

MR. MISCOE: Yes.

MR. BUSTAMANTE: Bob Bustamante, B-U-S-T-A-M-A-N-T-E.

I'm a fairly new resident of Indian Lake. I haven't even been here for about a half year now.

And I think it's fantastic and I really am looking forward to many, many years of enjoyment here.

And I understand there's a lot of things that you've done, a municipal lake creating and actually zoning for the municipal lake and setting a site or refining the terms for docks and things like that, but there's -- in reading the ordinance, and I went through -- I guess I looked at not word for word, but I went through it pretty well.

I'm just kind of wondering what was the objective?

There's a lot of reasons why you did different things in there, but not knowing the history of Indian Lake and everything that's happened around here, what was the objective in changing the commercial, the recreational and all that zoning to the way you're doing it now?

Was there something that is going to make it -- is it going to make it more definitive or is it something that's going to -- was the objective to keep

something from happening or was the objective to allow something to happen in those areas?

I didn't really understand that part.

MR. MISCOE: Well, historically we had -- this is our -- thank you.

We had Ordinance 22, Ordinance 50, Ordinance 99, 144, and now we're looking at 155.

Prior to Ordinance 99, the lodge area was its own little district. It was CRH, and it allowed for a mixture of commercial, recreational and residential uses.

In Ordinance 99 they abandoned the CRH district and combined the golf courses and the lodge into one district called CR, and took away the ability for residential uses which is where they created your non-conforming situation to a degree.

You had other non-conforms as relative to setbacks in Ordinance 50, but you were at least a permitted residential structure back then.

So the -- Mr. St. Clair presented council a development proposal in 2000 -- Terry, help he out, 4, 6?

MR. ST. CLAIR: No. It was about '05.

MR. MISCOE: 2005. And this wasn't the first time, I would point out, that the owner of the lodge

property has had development.

The Smiths before Terry subdivided and created Cheyenne, and I forget what the other subdivision was, but they did that in R-1.

Back in the 80s there was someone that did -- came to council and wanted to build multi-family structures on the ski slope since it was no longer being used as a ski slope and they ran out of money.

Because the dam remediation effort is going to be so costly it is a means of trying to mitigate the tax burden.

Me personally, I was very much in favor of doing what we could to promote development, and there is the Pine Cove subdivision that Bob Hampton and Jim Brant are doing.

That is a development project that I think, I hope goes forward and is successful.

There was the one at the lodge, and the golf course is looking at a development effort.

So from a financial perspective, I think we need to seriously consider allowing for development.

That was the motivation, at least in my mind, for restoring the multi-family development possibility in the CR, what became the CR district.

Well, when that ordinance was challenged it

was brought up that now we can build multi-family dwellings on the golf courses, plural. We have two private and public.

So the concern was that the golf course would be bulldozed, and from a density perspective, and setbacks that there would be just an insane number. I think it was 909,000. I don't know what it was.

But certainly that was neither our intent or our belief that that could actually occur.

For one reason there is no sewage. There is just no way. They don't have the sewage capacity to build all that stuff.

But recognizing that things change over time, and as Scott is a good mentor relative to things in zoning ordinances exist, because they might happen or you take away things because they might happen, it was decided that we needed to correct that problem because we do not want the golf courses tuning into high density multi-family developments.

So we restored the CRH designation to that area of the lodge as it traditionally existed and restored the uses consistent with what that area was designed for in the original Indian Lake plan.

We have a lodge there. There's a hotel there. There are existing townhomes there.

And the proposal to build 21 dwelling units, that number being limited by the capacity of our sewage plan, that's how the plan came about.

So this change from CR to CRH for that zone was to address the concern that someone would bulldoze the golf courses and build a gazillion multi-family dwellings, which I don't believe anybody thinks would be a really good idea, especially the golfers. That was supposed to be a joke.

So I don't want to see high density development in the Borough. I think some development is good. It's productive. It brings new people in here and increases our tax base.

But I don't believe anybody wants to do high density development because I think that would destroy the character of what Indian Lake is.

It's a nice quiet little community and everybody has their space, and if you want to get together socially you can, but you're not forced to, by virtue of living on top of your neighbor. So that was the reason for that redesignation.

You'll note that the provisions relative to the lodge have not changed much.

The CRG, which is the golf area, was a redesignation as well, and their provisions were

restored back to those that were traditionally there for the golf courses, and that's why it was done.

(Pause)

MR. MISCOE: Are there any other comments, questions, members of council? Scott?

MR. MOORE: Yes. This is really in respect to the small A frames, essentially a cluster of elements, and I believe in what I suggested to the planning concerns to the Borough, and also to the commission is that that should be designated its own area.

I do disagree with Michael as to does it allow dense -- a more dense condition? Yes, but it can be limited in how it's proposed.

The amount of units that be clustered to the amount of land that is required, and I believe that the A frame should be its own designated area.

I also believe that most of the residential that's being done in the CRH district should be done under residential areas. They are residential. They are not commercial.

And that would also eliminate the potential of people coming in and reorganizing the residential to a commercial use.

Have some of the neighbors, even though they can in relationship to going to a zoning variance. It would eliminate that problem.

I have recommended that we reevaluate all of the residential areas for single-family, multi or duplex, two units, look at multi-family and how many units can be put together.

And also how we dwell with the mobile home situation that we are required by planning.

So those elements need to really be addressed in further direction.

And I hope the Planning Commission and the new Borough Council will adopt a different resolution as to what we have now.

MR. MISCOE: This is one of those issues where Scott and I have had a difference of opinion.

And I'm not sure that we'll ever resolve it, but I would suggest possibly that planning, as you're permitted to seek the input of our borough solicitor and have him evaluate the impact of creating a high density zone within the Borough and what potential impact that could have to a developer of another area where maybe high density isn't expressly permitted, but in my analysis of just zoning issues in general, I tripped across a case that scared the heck out of me.

So probably it's not appropriate for me to give planning that particular advice, but I would suggest that you get that analysis from our solicitor because I am concerned that as soon as we create a district, and in the area of the A frames we don't have -- they don't have the land capacity to say that you need this density.

Their density is very, very high just because they have such small lots, and that unfortunately we can't change that now.

So when you create a density factor of 60 or 70 -- I don't know what it would be, with their driveways or whatever they have, but it's going to be a whole heck of a lot higher than what we have in our one currently, and I'm just concerned about the impact that that may create in our ability to stop high density development somewhere else within the Borough with a developer that has the money. Push that into the board.

MR. MOORE: Again, it can be done by the amount of units that you can use within a cluster system and the land available.

There are ways to resolve that issue and do what's best for the owners of the A frames.

MR. MISCOE: Well, I understand that, but we have, when you talk about making that a conforming use,

there are eight units currently and they're in a defined area.

And my point is, is that now that you've created that as a permissible use within the Borough.

Imagine say UAI up at the airport replicating that one after the other in the some 20 acres that they have there, and then you would have a city of A frames.

MR. MOORE: Again, you can do that by maximizing or minimizing the amount of units that you can do.

MR. MISCOE: But you're already going to permit what we have. That's my point.

And now you're going to say that something different should apply somewhere else.

And my concern is our ability to justify that as to why we permit it here and not here becomes compromised.

And I think you should have some, if you really believe that that's the way to go, get a legal opinion as to the potential impact that that would create in the future should a developer come in and try to replicate what we have in the A frames somewhere else in the Borough.

MR. MOORE: I do agree with you.

We do need the legal review of it, but we also

need a better planning review from some people that have worked with high density developments and the organization of those.

And I think Bob Hanson has already alluded that he is in the process of doing that, which I think is excellent.

MR. MISCOE: We have, but at the end of the day it's a judgment call for the members of council as to whether they want to permit that or they don't want to permit that.

It's not an issue of whether it's a good idea or a bad idea or you're required to have high density or you're not required to have high density.

It's just -- it's more of a, is that something that we want within the Borough or not?

It's going to be up to the judgment of council to decide that, and I think we should probably close off there or we're going to continue to do this.

MR. MOORE: I can give you more comment.

MR. MISCOE: Please.

MR. MOORE: Based on that is that we look at the little A frames, and they're probably the most expensive per square feet element that we have, building that we have within our district.

Our main concern is, yes, we want more

development with respect to a larger tax base as with that type of a cluster system is that you could proceed and generate more tax base than anything in the residential area if it is done correctly.

So, therefore, we're saying what we don't want to hear, but we want to hear it.

So there has to be even out not only for the people who own essentially the A frame clusters, but potential with developing it in another location to the betterment of the community.

MR. MISCOE: I totally get what you're saying, and that's a little bit contrary to what you were saying about densities in R-2s and whatnot.

MR. MOORE: It's density factors -- we have no density factors.

Well, we have density factors, but the way that we have organized, there are ones which essentially don't have densities because one unit per lot is that we have an R -- CRH which is the only area that you can do multi-family.

MR. MISCOE: Right. And we have R-2 as well, but we did add density factors to those to prohibit development beyond what we have in R-1.

MR. MOORE: That can be done with the cluster system.

MR. MISCOE: All right. We won't --

MR. MOORE: This with what we have been wrestling with.

MR. HANSON: This is resolvable.

I mentioned before Planning Commission is going to resolve this. The chalets are four chalets per three-quarter acres. There's eight of them in a half-acre parcel which is almost identical to four townhomes.

MR. MISCOE: Say that again. Eight-and-a-half acres?

MR. HANSON: There are eight on one-and-a-half acres.

MR. MISCOE: Okay.

MR. HANSON: It's exactly one-and-a-half acres.

It's four on three-quarters acre, if you ratio it which is identical to four townhomes on a three-quarter acre lot.

MR. MISCOE: Right. The difference being we're looking at the densities, structural density like how big of a structure you can have to the extent we can somehow carve a density factor.

MR. HANSON: Four townhomes on a three-quarter acre lot each with -- what's the footprint of your

townhomes?

MR. ST. CLAIR: I'm not sure.

MR. HANSON: It's going to be at least -- there are going to at least a thousand square feet for each one.

So the density of the townhomes is going to be greater than the chalets.

That's why -- my only point is I don't want to debate the issue just to state that it's -- I think it's resolvable and we need to look at it.

MR. MISCOE: I agree.

MR. HANSON: As Scott said in terms of just the densities, density of dwellings per acre and density in terms of coverage per acre.

MR. MISCOE: Well, and just understand that the densities that we're looking at is structural density, not dwelling density. So that's the difference.

MR. MOORE: Density is density.

And I totally agree with Bob. It can be resolved very easily.

MR. HANSON: Yes. We just need to look at the numbers.

I think we need to come up with standards, and I don't want to resolve it here.

I just wanted to point out that I think it is resolvable.

MR. MISCOE: And I agree to the extent that that may be something that council wants to do.

I would only point out that there is a whole lot in this ordinance that we really need before we go into a building season, and there is nothing that stops the council from taking that issue specifically and maybe hire a professional planner to do that piece of it after 155 is either enacted or not enacted.

But it's up to the council to decide whether they want to do that or not do that.

The question is, do you want to hold up the beneficial provision and the corrections that are put in 155 because of a perception that it's not perfect?

So that will be the issue for council.

Are there any questions, concerns, comments?

Yes, Doctor Moses.

(Pause)

DR. MOSES: If I understand correctly, this ordinance, and it's certainly an area that I think we need to address, this ordinance gives the Borough and/or the enforcement officer the right to make determinations

as to unsafe structures, unsightly structures, unmaintained structures, and gives the Borough a mechanism by which this can be dealt with notification and/or removal of.

Are there guidelines by which the enforcement -- the enforcement officer is deemed?

MR. MISCOE: Dean Snyder.

DR. MOSES: Okay. Are there guidelines by which these determinations will be made that we can rely on on a conforming basis?

And if so, will that -- I mean is the Borough legally within its means to be able to do this?

And I mean I agree that this is an issue that we need to deal with.

And does this issue deal with also off lake structures, not just structures that are on the lake, but any structure within the Borough?

MR. MISCOE: Correct.

DR. MOSES: Okay.

MR. MISCOE: I will let Dan answer.

DR. MOSES: I just want to make sure that we have a mechanism in place by which this can be enforced and maintained.

MS. DEWAR: We just handled one situation.

MR. MISCOE: The genesis --

DR. MOSES: I can imagine which situation it is.

MR. MISCOE: The genesis of those provisions was a problem that was on the lake with the boat house that we spent years and years and years trying to get resolved, and we found out that we really didn't have the teeth in our zoning ordinance to do anything about it.

We had a nuisance ordinance, and we tried to argue that some pieces of the structure fell into the lake and creating a safety oriented nuisance and that has been in litigation, I won't say active litigation, but it has been back and forth between our solicitor and their lawyer for five years.

And we put a provision in 144 to address that situation.

And then, of course, the eventual legal counter argument comes up and we tightened the screws down on that.

And I will be -- I go to every Zoning Hearing Board meeting just to listen to how lawyers argue or interpret our ordinance.

And then after every single one of those we came back to the zoning committee and we have to tighten this up, we have to -- you know, words like device, and

I had made a comment to Bob where they asked to reinsert that word. No, no, no.

We are not going to reinsert that word, but I will let Dan speak to what the zoning enforcement officer's authority is with respect to declaring a structure under the MPC non -- I guess -- what would the word be, decretive or active or whatever.

MR. RULLO: We have a separate nuisance ordinance, and in addition to the enforcement provisions the zoning enforcement officer has the ability to issue a notice of cease and desist.

And if that notice is issued, people have the ability to appeal his determination to the Zoning Hearing Board.

So there is a mechanism in place, but the enforcement officer has to first make a determination as to whether there is a danger to the health, safety and welfare of the community by the condition of the premises like the boat house we talked about.

It was in a dilapidated state, but it wasn't until we saw debris in the water that suggested that that could create a hazard to the health, safety and welfare of the boating public we had the ability to do something under the nuisance ordinance, because the zoning ordinance didn't really address it at that point.

Now, our zoning enforcement officer would have the ability to issue the termination.

If that person believed that that was not a correct determination, they have the ability to pay the money to have a hearing before the Zoning Hearing Board.

The Zoning Hearing Board would then have a fact finding hearing to determine if in fact there should be a reversal of the decision made by the zoning enforcement officer, and then that could be appealed to the Court too.

The section that Mike just showed me is the substandard dwelling section that's under our ordinance, Section 404.

MR. MISCOE: And you'll note that that extends to any structure, and it is not limited to boat houses. In fact, I will read it to you.

Any structure, including those that are incidental to the primary dwelling such as accessory buildings, boat docks, boat houses -- I'm sorry, I'll read that -- I have to read it slowly.

MR. McCAULEY: My concern is I would like to eliminate as much as possible the haggling of lawyers.

MR. MISCOE: That's inevitable.

MR. McCAULEY: And being able to somehow that we're clear on our definitions and our regulations so

that this can be upheld and maintained.

MR. MISCOE: The point that I was getting to, and I have to read this for the record because I read it too fast, including those that are incidental to the primary dwelling such as accessory buildings, boat docks, boat houses, garages, storage sheds or the like that is in need of such major structural repairs such that it is unsafe as determined by the Borough building code official. That's Somerset County Building Inspector.

So if Dean believes that a problem exists, we call Somerset County Building Inspectors who is the BCO. They come in and make a determination as to whether the structure is safe or not.

And if their determination under the UCC that the structure is unsafe, I think we're pretty solid.

Now, are they going to challenge? Probably.

And can you avoid the eventual legal haggling that goes on? No.

I mean if the person that's on the other side of that has enough money to pay a lawyer to fight, we're going to have a fight. It's inevitable.

The last two years have taught me that unfortunately common sense sometimes doesn't prevail.

Lawyers are like nuclear missiles, and I say

that being one.

Everybody has them. That's great, but as soon as you push the button on one, things get real messy.

And that's unfortunate, but that is the process by which these types of things get resolved, and I hope that answers your question.

MR. RULLO: I object to the definition of the words nuclear missile.

(Discussion off the record)

MR. MISCOE: All right. Are there any other questions?

(No response)

MR. MISCOE: I appreciate those of you that braved the wintry conditions to come here and provide your input.

I think this was a very good hearing. There were some great questions, and I appreciate the respectful manner in which you addressed the council.

I will send an e-mail out through the Borough website asking people who were not able to attend to please feel free to submit comments both to council and

planning, and I will provide the e-mail addresses for that and our informal notification system through Gay Reed. She has a very broad e-mail database, but -- and I use it only because we just want to make sure that everybody has an opportunity to comment.

The next Planning Commission meeting where they will address this issue is January the 11th, and that will be at the Borough building for those who are interested in attending.

The Borough council's next meeting will be January the 4th. It will be our reorganization meeting. It is also advertised for business where the new members of council will be seated and the council will reorganize.

I thank you for attending and at this point --

MR. VOGEL: Before you close, how long is the record going to remain open for people that were not able to be here today to make comment?

MR. MISCOE: We have -- you'll recall at the last council meeting under the provision of our ordinance that allows for a zoning or, I'm sorry, a Planning Commission final review, you have 30 days from the close of the public hearing to review public comments.

Then as I pointed out, the Planning Commission

will submit its comment to council. I don't know what meeting that will be.

Council will decide whether to proceed or not, and if it's decided to proceed, there is an additional advertisement and 10-day period. So I would imagine that we're 30 plus 10 plus a couple days.

There's probably a minimum of 45 days before council to even -- thank you. A minimum of 45 days before council could actually vote on this issue.

So I haven't done the math and the days because we don't know when council is going to establish their meeting dates, but under the presumption that they do the second and fourth Wednesday of the month as we traditionally have, I would think that that would occur sometime in February, but I'm going to ask people to get their comments to planning within that 30-day period because it's planning's responsibility to review the comments and make a recommendation to council.

Members of the public can always provide input to members of council.

MR. LYONS: Jim Lyons.

Is this limited to just people who haven't been here? That's how you're --

MR. MISCOE: No.

MR. LYONS: Okay. That's how you're labeling

it.

MR. MISCOE: Forgive me.

Anybody can submit -- if you think of something you didn't think of before, certainly, continue to feed comments to planning.

MR. LYONS: And the people that submit these can read them on the e-mail?

I mean can they retrieve them back?

Like if Bob puts one in, can they retrieve them and --

MR. MISCOE: I don't understand what you're saying.

MR. LYONS: I guess what you're trying to say is, is everybody going to be able to read everybody's comments?

That's how I guess I should say it.

MR. MISCOE: Well --

MR. LYONS: Is it just going to be submitted to Gay Reed or to --

MR. MISCOE: No. It would be submitted to the Planning Commission and the Planning Commission -- I mean all of this stuff becomes part of a giant pile of records.

MR. LYONS: There is a lot of people I know that couldn't come here today.

Some of them are in Baltimore, Maryland, some called me and said can they get it postponed? And I said I'm not in charge of it.

That's why I'm saying, to make sure that everybody knows what -- so it's not repetitive or everybody has an idea they want to put into it, it's all passed around.

MR. MISCOE: Well, I think at the end of the day, I don't want to get into a situation where I'm telling people don't submit comments that other people have submitted.

If they have comments, submit them. It's planning's job to sort out --

MR. LYONS: I understand.

MR. MISCOE: -- if they get 221 comments, if you forgot a period at the end of the sentence -- that's why they get paid the big bucks.

MR. HANSON: Each and every comment can be posted to the Borough website for anyone to see.

MR. MISCOE: Okay. But I don't want to restrict people that that's the only mechanism --

MR. HANSON: You can post just as easily as anyone else can.

MR. LYONS: I'm not a computer guru.

MR. HANSON: If you send it to me I will post

it for you.

MR. MISCOE: And whether planning wants to submit all the comments on their website, that's up to them. It's not necessarily required.

I think that would be a useful idea, just so people can see what folks are complaining about or what their comments are, even to the extent that they're positive, but that is not required.

My point is that there is a mechanism to get comments to planning via mail or e-mail.

MR. LYONS: And if there is substantial changes we have to have a hearing again, am I correct?

MR. MISCOE: If there are substantive changes that council agrees to make, planning makes recommendations.

It will be once the recommendations go to council, if council -- let's say there is a substitute change, we're going to create new zoning districts and we're going to do all these different things, if council agrees to that, then that would be a substitute change in which case those changes would have to be adopted, they would have to be published, you have to readvertise.

MR. LYONS: I understand the process, but what do you classify as a substantial change besides a map

change?

MR. MISCOE: That will be up to the --

MR. RULLO: Depending upon what's -- we'll have to look at the time. If it's --

MR. LYONS: So you don't have an example?

MR. RULLO: We received a red line version from planning already. Many of them are grammatical issues.

MR. LYONS: Planning, Somerset Planning?

MR. RULLO: Indian Lake Borough.

MR. LYONS: Oh, I'm sorry. Okay.

I guess I recognize also Somerset planning is just reviewing the zoning ordinance, I guess, which hasn't been cleared up here, I guess.

Correct me if I'm wrong. Somerset Planning just reviews it, there's no conflict with Somerset County Zoning is really what he's reviewing?

MR. MISCOE: No.

MS. DEWAR: I don't understand.

MR. RULLO: I'm not sure.

MR. MISCOE: Somerset County doesn't have a zoning ordinance, number 1.

MR. LYONS: Correct.

MR. MISCOE: The Somerset County Planning Commission who does administer the Somerset County's

subdivision land development ordinance, okay.

MR. LYONS: Okay.

MR. MISCOE: Now, subdivision land development is a whole different section of the MPC from zoning.

But the MPC does require us to submit our zoning ordinance to the county planning agency for review and comment, and their review and comment like.

For example, in Ordinance 99 there were a number of things that they made comment on that they felt were deficient.

Ordinance 144 they had not make comment.

Ordinance 155 they didn't make comment.

We managed to dig a few extra things out of them with some further prodding, but it will be up to planning to decide whether we really want to put conditional uses for adult uses and windmills and whether we need provisions for surface mining. So those are the substance of their comments.

They are going to be -- those subsequent comments will be made part of the record.

They've already been forwarded to all the members of council as well as the Planning Commission.

If you'd like to see a copy, send me an e-mail. I have it on PDF.

And, Bob, I think you can post that up on the

website as well.

MR. VOGEL: Yes. I was going to ask if council has no objection, I can post everything that I have or have gotten or that we come up with on the website.

All I need is permission.

MR. MISCOE: I don't think we can take a vote, but I see no reason why --

MR. RULLO: In addition to the regular postings and advertisements we have also been posting the ordinance on the website which is not required.

So there is already, if you have the link to it, you can go on and see the ordinance.

If you have additional documentation you can submit that. That would just make sense to me in the scheme of trying to keep this as transparent as we possibly can, provide all the comments you wish, and because all the recommendations either from the Planning Commission in the county or the Planning Commission of Indian Lake Borough are advisory only.

It's going to be planning and city council that make the final decision on this.

But you want an example of what would be a substantial change, the comments we heard about the townhouses and changing that zone, that would be a

substantial change and that would require then a public hearing, another advertisement.

If we're talking about grammatical changes or rewording certain things, that is probably not -- it's going to depend on what we're looking at at the time.

MR. MISCOE: Some of the changes you asked about the height, the maximum height, the minimum height, you know, and to the extent that those things need to be clarified consistent with what's already there, I think those are non-substantive changes.

The majority of the things that you suggested were not substantive.

When you talk about -- I think there was a thing you want to remove whole sections, I would think that would be substantive.

Are there any other comments or questions or concerns from members of council?

(No response)

MR. MISCOE: Hearing none, I'll go ahead and move that we close the public hearing.

I thank you for your attendance, and I appreciate your interest because I agree with Jim, dare I say it, that this does have a big impact on the

property value and that and that's why we go through this process.

(Public hearing concluded at 11:50 a.m.)

Commonwealth of Pennsylvania)
County of Westmoreland)

I, Theodore E. Wawrzyniak, Registered Merit Reporter-Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, , was first duly sworn by me to testify to the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was taken at the time and place stated herein; and that said deposition was recorded stenographically by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witness.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this _____day of_____, 2010. _____

Theodore E. Wawrzyniak, Notary Public-Registered Professional and Merit Reporter.

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'05 48:23
'99 31:19; 45:25
-
----- 2:14; 3:17; 8:5,7; 19:8,10; 22:19,21,23, 25; 30:4,6; 31:7,9; 37:1, 3,5,7; 46:23, 25; 52:3,5; 60:19,21; 66:9,11,14, 16; 75:18,20; 76:3,5
1
1 11:7; 72:22
10 68:6
10-day 68:5
100 32:6; 34:20; 35:9, 19,25
105 27:10
10:15 1:16
11 14:1
11-11 41:4
115 42:13
11:50 76:4
11th 5:11; 16:9; 67:7
121 31:11
1307 32:24; 33:8; 34:8
144 1:4; 8:11, 14,17,18,23; 9:21; 14:4; 16:11; 22:12; 24:15,16,20; 31:19,22; 32:6,25; 33:9,12; 34:16,23; 39:4; 42:18, 22; 45:21; 48:7; 62:15; 73:11
155 1:9; 4:3; 8:22,25; 14:4,21; 16:12; 17:4; 24:21; 34:16; 46:3; 48:7; 60:10,15; 73:12
15530 1:15
15642 1:24
16 13:2,16
16th 16:5
19 1:15
19th 6:6
2
20 44:5; 55:6
2000 48:21
2005 48:24
2009 1:15; 13:3,17; 14:1; 15:1; 16:9
2010 77:16
2074 1:14
20th 13:7,8
21 51:1
22 48:6
221 70:15
23 3:7
25th 15:1
27th 13:7,8
3
30 3:9; 7:22; 9:16; 11:9; 14:7; 16:15; 17:17; 27:18; 32:1; 35:24; 36:15,21,22, 23; 42:9; 45:12; 67:22; 68:6
30-day 8:2; 17:17,23; 68:16
31 3:11
368 1:23
37 3:13
4
4 3:3; 48:21
40 35:21,24; 45:12
404 64:13
45 68:7,8
47 3:15
4th 67:11
5
50 23:10; 24:10,12,13, 17,20,25; 32:4; 34:17; 35:13; 38:14, 15; 48:6,18
500 23:22
6
6 48:22
60 54:11
607 10:13,15
608 9:7
609 9:5; 10:4, 9,11,18
610 12:23; 18:7,17
7
70 34:17; 35:13; 54:12
724 1:25
750 23:8; 24:24; 26:13; 27:1
8
8 3:5
80s 49:5
864-6993 1:25
9
9,000 42:19
90 9:14,24
909,000 50:7
97 35:1
99 7:21; 24:14; 35:2; 46:1; 48:7,8, 12; 73:8
A
a.m 1:16; 76:4
abandoned 48:12
ability 7:2; 44:15; 48:14; 54:16; 55:15; 63:10,13,23; 64:2,4
able 7:24; 61:12; 64:24; 66:24; 67:18; 69:14
Above 41:11
above-entitled 1:10
absorb 39:11
access 36:2
accessory 64:18; 65:5
accordance 12:22; 18:20
according 22:5
accordingly 43:2
account 45:8
accused 22:14
achieve 43:13
acre 44:8; 58:17,19,25; 59:13,14
acres 44:5; 55:6; 58:7, 11,13,16
across 21:6; 38:14; 53:25
act 18:24; 44:9
action 9:22; 20:1
active 62:12; 63:7
activities 6:17
activity 43:17
actually 10:6; 18:8; 22:8; 38:17; 45:4; 47:9; 50:9; 68:9
ad 18:10
add 19:16; 57:22
added 4:25; 43:7
adding 42:22
addition 10:23; 11:6; 63:9; 74:9
additional 5:13; 10:8; 15:21; 17:23; 18:12; 68:4; 74:14
address 30:13, 14; 31:4; 42:17; 45:21;

51:5; 60:24; 62:15; 63:25; 67:7
addressed 15:1; 30:16; 53:10; 66:22
addressees 11:11
addresses 67:1
adequate 32:18
adjacent 12:14
adjoining 34:7; 35:21
adjustments 19:5
administer 72:25
admit 42:6
adopt 53:13
adopted 71:21
adult 6:20; 73:16
advantage 17:23
advertise 18:8
advertised 13:4; 42:3; 67:12
advertisement 10:3; 68:5; 75:2
advertisements 12:19; 74:10
advice 54:2
advisement 8:15
advisory 74:20
affected 11:4; 12:17; 22:10
affects 38:2
affidavit 13:1
affirmed 8:20
affirming 8:17
affixed 77:15
agency 9:18, 19; 10:16; 14:8; 16:17; 73:6
agent 14:6; 16:14
ago 35:23; 45:12
agree 24:23; 39:5; 45:10; 46:1; 55:24; 59:11,20; 60:3; 61:13; 75:24
agreed 30:25
agrees 71:14, 20
ahead 22:17, 22; 34:5; 75:21
airport 55:5
allege 22:2
allow 25:8; 27:5; 48:1; 52:13
allowed 25:4; 32:1; 48:9
allowing 26:21; 49:21
allows 26:24; 67:21
alluded 56:4
almost 42:5; 58:8
already 27:12; 38:12; 55:11; 56:4; 72:7; 73:21; 74:12; 75:9
alter 25:1
alteration 26:6,17,22; 27:5
alterations 26:10,14; 29:10
alternative 26:5
although 5:19; 8:24; 9:6
amending 14:17; 15:13; 16:25
amendment 8:24; 10:20, 24; 11:7; 12:4; 14:15; 15:11; 16:11, 23
amendments 1:3; 10:12; 14:3; 15:3; 18:6,23,24; 19:4,7
American 13:5
amount 45:4; 52:16,17; 54:20; 55:9
analysis 7:9; 27:8; 34:23; 35:15; 53:24; 54:3
and/or 14:9; 16:18; 60:24; 61:4
annoyance 44:2,5
another 19:11, 22; 32:5; 53:22; 57:9; 75:2
answer 17:10, 11; 45:18; 61:20
answers 36:25; 66:6
anticipate 44:23; 45:1
anticipated 42:4
anybody 30:3; 38:15; 43:14; 44:10; 51:7, 14; 69:3
anyway 36:11
apologize 30:1
apparent 21:13; 33:13
apparently 21:17; 36:9
appeal 8:14; 15:11; 63:13
appealed 64:9
appeals 8:12
APPEARANCES 2:1
appellate 8:10
applied 35:20
applies 34:20; 35:25
apply 11:20; 43:5,11,18; 45:4; 55:14
appointed 4:5; 37:11
appreciate 24:4; 46:20; 66:17,21; 75:24
appropriate 54:1
approval 29:3, 8,17
approved 40:18; 41:1
approximately 4:10
area 11:4,13; 21:21; 24:14; 29:21; 33:25; 34:5; 35:20, 25; 36:4,15; 42:17; 44:16; 48:8; 50:21, 22; 51:24; 52:12,18; 53:22; 54:5; 55:2; 57:4, 19; 60:23
areas 12:8; 27:3; 39:14, 19; 44:20; 48:2; 52:21; 53:5
aren't 24:3
argue 62:10,21
argument 62:18
arose 33:11
around 21:10, 13,16,18; 38:18; 40:5, 6; 44:13; 47:19; 70:7
aspects 7:14
assistance 15:19,22; 30:24
attend 7:24; 66:24
attendance 75:23
attending 67:9,15
author 5:22
authority 27:7; 63:5
authors 5:22
available 13:18; 21:7; 54:21
avoid 65:18
aware 9:7; 21:14; 40:20
away 48:14; 50:16

B

B-U-S-T-A-M-A--N-T-E 47:3
back 5:17; 7:4,8; 12:16; 14:25; 24:11, 16; 27:18; 31:19; 32:6; 35:12,13; 36:9,10; 38:6; 48:19;

49:5; 52:1; 62:13,24; 69:8
bad 46:1; 56:12
balance 43:24
balancing 27:1
Baltimore 70:1
BARRY 2:11
base 51:13; 57:1,3
based 19:18; 35:12; 56:21
basically 29:1,2
basis 6:24; 61:10
BCO 65:12
became 25:20; 33:12; 49:24
become 28:2
becomes 55:16; 69:22
bed 12:12
beforehand 17:22
began 31:18
beginning 19:24
BEHALF 2:3
belief 50:9
believe 4:14; 18:11,15; 19:17; 22:3; 23:7; 29:10; 32:2; 36:23; 51:7,14; 52:10,17,19; 55:19
believed 64:3
believes 65:11
beneficial 60:14
benefit 41:9
Berlin 1:15
besides 71:25
best 27:14; 44:24; 45:16; 46:15; 54:23
better 8:15; 11:25; 22:15; 29:18; 39:7; 46:2,3; 56:1
betterment 57:10
between 4:13; 62:13
beyond 33:20; 57:23
big 29:8; 58:22; 70:17; 75:25
bill 31:14
bills 11:12
bit 7:18; 23:17; 26:3; 57:12
biweekly 41:17
block 36:2
board 8:12,13; 26:12,24; 27:9; 54:18; 62:21; 63:14; 64:5,6
boat 32:18; 34:8,9; 62:4; 63:19; 64:15, 19; 65:5,6
boating 63:23
boats 36:22
BOB 3:9,15; 30:7; 31:6; 47:2; 49:14; 56:4; 59:20; 63:1; 69:9; 73:25
body 9:10,14, 19; 10:17,20; 18:24
boils 46:5
borough 1:2; 2:3; 4:7,21; 8:25; 9:11; 12:12; 13:11, 20; 14:2,16, 24; 15:2,6, 12; 16:4,10, 15,24; 17:5; 18:1; 21:6; 24:9; 25:14; 26:2; 27:3, 16,19; 29:24; 33:14,23; 34:2,3; 37:22; 43:5; 44:13; 45:9, 11; 51:11; 52:11; 53:13, 19,21; 54:17; 55:4,23; 56:15; 60:24; 61:2,11,17; 65:8; 66:23; 67:8,10; 70:19; 72:10; 74:20
both 21:13; 34:16; 46:20; 66:25
bothered 44:6
bought 29:2
boundaries 21:10
Box 1:23
Brad 5:1,7,16; 13:15; 30:19; 31:2; 41:6
Brant 35:7; 49:14
braved 66:18
breaking 40:14
brief 19:2
brings 51:12
broad 67:3
brought 33:24; 39:1,4; 50:1
bucks 70:17
build 23:9; 49:6; 50:1, 12; 51:1,6
building 23:8; 24:24,25; 28:12,14,16; 56:23; 60:7; 65:8,9,12; 67:8
buildings 64:19; 65:5
built 27:11
bulldoze 51:5
bulldozed 50:5
burden 26:7; 49:11
business 15:25; 67:12
BUSTAMANTE 3:15; 47:2
button 66:3

C

---

call 27:22; 46:14; 56:8; 65:12
called 21:17; 48:14; 70:2
calls 43:23
came 22:12; 33:16; 35:9; 36:24; 49:6; 51:3; 62:24
capable 27:4
capacity 50:11; 51:2; 54:6
carbon 14:23
care 31:14
carefully 26:6
carve 25:7,25; 58:23
case 6:7; 25:9; 53:25; 71:21
caution 11:25; 21:25
cautious 12:13
cease 63:11
CEHR 38:11
certain 75:4
certainly 4:22; 20:1; 24:1; 36:16; 50:8; 60:23; 69:4
certify 77:5
cetera 32:19
chairman 30:8
chalets 25:16; 58:6; 59:7
challenge 33:12; 65:17
challenged 35:15; 49:25
change 10:5,6, 24; 11:8; 13:23; 16:7; 20:16; 25:4; 27:18; 29:13; 50:13; 51:4; 54:10; 71:18, 20,25; 72:1; 74:24; 75:1
changed 32:21; 34:12,19; 39:6; 51:23
changes 4:17; 7:10; 10:17; 12:4,17; 15:6; 19:18; 39:10,13; 45:8; 71:12, 13,21; 75:3, 6,10
changing 27:4; 47:20; 74:25
Chapman 4:8
character 51:16
charge 70:3
CHARLES 2:9
Cheyenne 49:3
Christ 1:14

Church 1:14
circulation 13:5; 18:19; 19:1
citizens 11:3
city 55:7; 74:21
Clair 48:20, 23; 59:2
clarification 31:17; 32:9, 20,24
clarified 75:9
clarify 19:16; 27:24
class 11:10
classificatio-ns 31:25
classify 26:9; 71:25
clause 11:7,19
clear 64:25
clearance 26:12
cleared 72:14
clock 27:18
close 56:17; 67:16,23; 75:22
clubs 28:3
cluster 52:9; 54:20; 57:2, 24
clustered 52:16
clusters 57:8
CM 34:20; 35:20,21
code 1:11; 5:25; 7:20; 8:25; 9:4,6; 10:16; 12:20, 23; 13:12; 14:5; 15:9; 16:2,13; 28:16; 65:9
combined 48:13
come 17:12,20; 19:6; 30:25; 31:3; 41:19; 55:21; 59:24; 65:13; 66:18; 69:25; 74:4
comes 18:13; 26:13; 62:18
comfortable 23:18
coming 46:7; 52:24
commended 5:23
comment 5:19; 17:8; 19:18; 24:4; 30:10; 33:25; 39:16, 17; 46:20; 56:19; 63:1; 67:5,18; 68:1; 70:18; 73:7,9,11,12
comments 4:2, 23; 5:6,10, 14,21; 6:1, 12,16; 7:5,7, 24; 8:4; 14:9; 15:17; 16:17; 17:19, 22; 20:14,18; 30:11,12; 33:11; 36:8; 52:6; 60:17; 66:25; 67:24; 68:16,18; 69:5,15; 70:10,12,15; 71:3,7,10; 73:18,20; 74:17,24; 75:16
commercial 23:7; 28:1,6, 12,21; 32:6; 43:8,9,12,17; 47:20; 48:10; 52:22,25
commission 5:4,14; 6:15; 7:6,25; 13:14,16; 14:7; 15:8, 15; 16:3,4, 15; 17:16,25; 19:13; 30:8, 9; 42:9; 43:20; 52:11; 53:12; 58:5; 67:6,22,25; 69:21; 72:25; 73:22; 74:19
committee 4:5, 13; 37:11,21; 38:5,8,21; 40:13,15,18; 44:13; 45:25; 62:24
common 8:20; 24:6; 65:24
Commonwealth 1:12; 77:1,4
communication 5:1
communications 4:24
community 23:20; 30:21; 44:8; 51:17; 57:10; 63:18
compare 31:22
complaining 71:6
completed 4:14,20; 7:6; 15:16
completely 12:3
compliance 11:17
comprehensive 1:3,7; 5:8; 8:22; 10:5; 11:20,23; 12:3; 13:23; 14:3,16; 15:6,12; 16:7,11,24; 45:11,22,23
compromised 55:17
computer 70:24
concern 22:17; 23:5; 24:2; 27:1; 31:18; 32:15; 35:12; 36:9,13; 50:4; 51:5; 55:15; 56:25; 64:21
concerned 23:13; 54:4, 15
concerns 4:3; 20:4,10,13; 23:19,24; 41:4,9; 42:18; 52:11; 60:17; 75:17
concluded 35:17; 76:4
conclusion 37:18,22; 39:19
condition 52:14; 63:18
conditional 73:16
conditions 66:18
conducted 41:9
conflict 72:16
conforming 25:5,8,11; 26:1; 54:25; 61:10
congratulate 31:13
consequently 12:7
consider 32:21; 49:21
considered 26:6
consistent 42:25; 50:22; 75:9
conspicuously 10:25; 21:5
constitute 10:5; 19:17; 26:9,17
constitutes 11:20; 26:6; 27:5; 77:12
contact 14:23; 15:18,20
contention 32:12
context 8:9
continue 36:19; 56:18; 69:5
contrary 57:12
control 38:19; 39:14; 40:5,7
convert 28:6
copied 14:23
copy 9:16; 13:13,18; 14:11; 16:19; 73:23
correct 13:9; 32:8; 40:25; 50:17; 61:18; 64:4; 71:12; 72:15,23
corrected 39:5
corrections 60:14
correctly 57:4; 60:22
cost 29:19,25; 39:3
costly 39:2; 49:10

costs 23:22
cottages 23:4
couldn't 44:6; 69:25
council 2:3; 4:2,5,8,15; 5:3,12; 6:14; 9:11; 11:22; 14:2,24; 16:10; 18:1, 2,14; 20:4, 14,22,23; 27:22; 30:16; 37:22; 40:19, 22; 41:4; 43:21; 45:17; 46:16; 48:20; 49:6; 52:7; 53:13; 56:8, 16; 60:4,8, 11,16; 66:22, 25; 67:13,20; 68:1,3,8,9, 11,18,20; 71:14,17,19; 73:22; 74:3, 21; 75:17
council's 43:1; 67:10
counter 62:18
counties 9:18
county 5:4; 9:17,20; 13:2,14,16; 14:7; 15:7, 15; 18:21; 30:20; 65:9, 12; 72:17,21, 24; 73:6; 74:19; 77:2
County's 72:25
couple 68:6
course 6:23; 21:14; 22:3; 35:10; 42:20; 49:19; 50:4; 62:17
courses 21:13; 48:13; 50:2, 18; 51:6; 52:2
cove 35:25; 49:14
coverage 59:14
CR 21:12; 24:14,15,20; 32:3; 34:16; 48:14; 49:24; 51:4
crazy 23:11
create 27:7, 23; 34:6; 54:4,11,16; 55:21; 63:22; 71:18
created 38:17; 48:15; 49:2; 55:4
creates 25:13
creating 47:9; 53:20; 62:11
CRG 21:12; 51:24
CRH 24:13,16, 20,21; 40:5; 42:16,17; 48:9,12; 50:20; 51:4; 52:20; 57:19
current 4:9; 24:23
currently 25:15; 54:15; 55:1
cute 23:4

D

Daily 13:5
dam 49:9
Dan 8:4; 17:13; 18:6; 19:11; 20:2; 61:20; 63:4
danger 32:17; 63:17
DANIEL 2:12
dare 75:24
database 67:3
date 9:24; 11:5,10,15; 13:22; 14:1; 16:8
dated 15:1; 41:4
dates 68:12
day 16:6; 46:13; 56:8; 70:9
days 7:22; 9:14,16,24; 11:10; 14:7; 16:16; 17:17; 18:8,25; 42:9; 67:22; 68:6,7,8,10
DCED 30:21; 31:2
deal 61:14,15
dealing 44:18
dealt 61:3
Dean 4:9; 21:2,4,25; 61:7; 65:11
Dear 15:4
debate 20:9; 59:9
debris 63:21
December 1:15; 5:11; 6:6; 20:7
decide 56:17; 60:11; 68:3; 73:15
decided 28:2; 50:17; 68:4
decides 18:14
decision 8:14, 16; 18:3; 46:16,19; 64:8; 74:22
declaring 63:5
decretive 63:7
deemed 11:1; 27:11; 61:6
deep 36:10
deficient 73:10
define 25:8
defined 21:22; 55:1
definition 27:5; 31:21; 45:2; 66:7
definitions 64:25
definitive 47:24
degree 48:16
delivered 13:17; 16:3
delivering 13:22; 16:6
denied 25:1
dense 52:14
densities 57:13,18; 58:21; 59:13, 16
density 25:14, 24; 26:2,3; 27:2,11,15; 29:23; 50:5, 18; 51:10,15; 53:20,23; 54:7,8,11,16; 56:2,12,13; 57:14,15,16, 22; 58:21,23; 59:6,13,17,19
department 30:21,23
depend 75:5
depending 19:5; 32:4; 72:3
deposition 77:8,10
depth 5:20; 35:15
designated 52:12,18
designation 50:20
designed 50:23
desired 33:7
desist 63:11
despite 7:3
destroy 51:15
detail 19:3
detailed 39:16
determination 63:13,16; 64:4; 65:13, 15
determinations 60:25; 61:9
determine 64:7
determined 65:8
develop 7:2; 20:8
developer 53:22; 54:18; 55:21
developing 57:9
development 25:17; 27:3, 4,15; 30:22; 48:21; 49:1, 13,16,19,21, 23; 51:11,15; 54:17; 57:1, 23; 73:1,3
developments 50:19; 56:2
device 62:25
DEWAR 2:10; 61:24; 72:19
Dick 44:10
difference

53:16; 58:20; 59:18
differences 31:23
different 31:24; 47:17; 53:13; 55:14; 71:19; 73:4
dig 73:13
dilapidated 63:20
direction 53:11; 77:11
director 13:15
disagree 18:7; 52:13
discuss 4:2; 6:7
Discussion 19:9; 22:20; 66:10
distance 34:25
district 21:9, 23; 24:13,22; 25:7,23; 28:4,10; 34:13,14,17, 21; 35:21; 38:11,15; 40:5; 42:22; 43:2,4; 48:9, 13,14; 49:24; 52:20; 54:5; 56:24
districts 24:8; 33:10; 71:18
diverse 44:12; 46:9
diversity 46:6
doable 29:19
dock 32:1,4, 13; 35:8
docker's 35:16
docking 33:9; 34:8
docks 31:21; 35:1,3,16; 36:14,18,20; 39:14,15; 47:11; 64:19; 65:6
Doctor 31:6; 60:18
documentation 74:14
documents 17:9
doing 33:3; 47:21; 49:13, 15; 56:5
done 7:15; 14:19; 17:2; 23:15; 26:11; 27:19; 37:15, 19,20,23; 38:8,10,21; 42:5; 45:11, 18; 47:9; 52:2,20; 54:19; 57:4, 24; 68:10
door 26:1; 27:15; 29:23; 38:18
dormer 26:15; 29:15
dormers 25:9
doubt 41:18
down 22:2; 46:5,14; 62:19
draft 5:22
drafted 7:4
drilled 29:8
driveways 54:13
due 33:11
duly 77:6
duplex 53:6
during 33:11, 12
dwell 53:8
dwelling 51:1; 59:17; 64:12, 18; 65:5
dwellings 7:2; 24:19; 42:20; 50:2; 51:7; 59:13

E

---

e-mail 5:1,11; 7:23; 20:7; 66:23; 67:1, 3; 69:7; 71:10; 73:24
each 21:9; 42:15; 58:25; 59:5; 70:18
earlier 17:15
early 32:15
ease 26:7
easement 35:22,23
easements 28:20
easier 29:15; 45:7,14
easily 59:21; 70:22
Economic 30:21
Ed 6:22
effect 33:20
effort 11:16; 49:9,19
eight 23:21; 32:2; 55:1; 58:7,12
Eight-and-a-half 58:10
either 10:7; 24:20; 29:23; 40:8; 60:10; 74:18
elected 12:13; 34:4
element 56:23
elements 52:9; 53:10
eliminate 44:4; 52:23; 53:3; 64:22
eliminating 44:2
elsewhere 27:3; 28:9
empathize 42:9
enacted 8:11; 14:4; 16:12; 60:10
enactment 1:7; 9:9,13,16,25; 10:19; 18:25; 19:25
encouraged 4:22; 17:21
encroachment 32:18
end 34:25; 37:19; 42:19; 46:13; 56:7; 70:8,16
ends 33:18
enforced 61:22
enforcement 60:25; 61:5, 6; 63:4,9,10, 16; 64:1,9
enjoyment 43:25; 47:7
enough 22:15; 28:8,17; 33:4; 36:10; 44:11; 65:21
entire 14:16; 15:12; 16:24; 26:19
equally 43:6, 12,18
err 11:25
especially 44:14; 51:8
essentially 6:15; 52:9; 57:8,17
establish 68:11
estate 11:11
estimation 32:17
et 32:19
evaluate 53:20
even 11:22; 12:14,15; 18:9; 21:25; 22:7,14; 33:7,24; 37:22; 39:10; 47:5; 53:1; 57:7; 68:8; 71:7
event 18:22; 22:1
eventual 62:17; 65:18
everybody 4:22; 12:15; 22:4,9; 23:9; 42:11; 51:18; 66:2; 67:5; 69:14; 70:5,6
everybody's 69:14
everyone 12:13
everything 40:9; 47:19; 74:3
evidenced 11:13
exact 21:6
exactly 23:6; 58:15
example 39:14; 72:5; 73:8; 74:23
excellent 5:23; 19:14; 56:6
exception 26:23; 27:7; 28:20; 29:11

exemplars 21:8
exercising 21:25
exist 24:9; 25:8; 43:11; 50:15
existed 50:21
existing 9:19; 26:7; 50:25
exists 26:21; 65:11
expansion 35:8
expected 33:7
expedite 6:6
expenses 39:11
expensive 18:9; 56:23
explain 31:3
explicit 34:11
expressed 36:13
expressly 24:19; 53:23
extending 32:7,13
extends 64:14
extent 26:16; 28:5; 35:19; 36:19; 42:24; 43:16; 45:6; 58:22; 60:3; 71:7; 75:8
extra 18:15; 73:13
extraction 6:16
F
face 43:22
faces 41:21
facilities 6:19
fact 17:22; 29:16; 64:7, 16
factor 38:19; 54:11; 58:23
factors 32:13; 57:14,15,16, 22
fairly 47:4
faith 11:16
familiar 24:3
fantastic 47:6
far 24:12; 40:13,20
fast 65:4
favor 49:12
fax 6:4,9
feasible 28:19
February 68:15
fee 26:25
feed 69:5
feel 15:18; 39:18; 66:25
feet 32:1,2,4, 6,16; 35:1,9, 21,24,25; 36:7,14,21, 22; 56:23; 59:4
fell 62:10
felt 22:9; 73:10
few 5:20; 17:22; 41:21; 73:13
fight 65:21,22
figure 45:17
filling 43:5
final 67:22; 74:22
financial 49:20
find 25:22; 46:4
finding 64:7
first 9:3; 10:10; 11:10; 18:2; 38:7; 42:6; 48:24; 63:16; 77:6
five 4:5; 18:10; 37:13, 14; 62:14
fix 26:8; 29:22
floating 35:8
foiled 32:25
folks 8:3; 17:21; 71:6
follow 39:20
follow-up 6:3; 7:21
followed 10:8
following 10:11,18
foot 23:23; 34:20; 35:19; 36:23; 38:14, 15
footprint 58:25
forced 51:19
forcing 38:9, 23
foregoing 14:22; 77:8
forestry 6:16
forget 49:3
Forgive 69:2
forgot 70:16
formed 5:21
forth 6:12; 10:13; 19:2; 62:13
fortuitous 8:3
forward 7:16, 25; 18:4,13; 20:24; 47:7; 49:17
forwarded 6:14; 7:5; 9:17; 41:6; 73:21
found 62:6
four 37:11,17; 58:6,8,17,18, 24
fourth 68:13
frame 23:4,23; 28:12; 29:2; 52:18; 57:8
frames 23:3; 24:6; 26:18; 52:9; 54:5, 23; 55:7,22; 56:22
frankly 12:12; 45:9
free 15:18; 66:25
front 31:12, 25; 34:18
frustrated 46:10
full 12:21; 13:13
further 15:19; 36:1,6,18; 53:11; 73:14
future 6:11; 55:21
G
garages 65:6
Gay 67:2; 69:19
gazillion 51:6
general 13:5; 18:19; 19:1; 53:24
generate 57:3
genesis 61:25; 62:3
gentleman 30:20; 31:2; 38:13
getting 6:6; 26:11; 45:8; 65:2
giant 42:12; 69:22
give 12:13; 54:2; 56:19
given 4:16; 16:2; 38:23; 77:12
gives 60:24; 61:2
giving 11:25
gizmo 34:25
golf 6:23; 21:13,14; 28:2; 42:20; 48:13; 49:18; 50:2,4,18; 51:6,24; 52:2
golfers 51:8
got 5:1; 22:5; 25:20; 29:17; 35:1,12,13; 44:9
gotten 20:6; 22:4; 74:4
governed 9:3
governing 9:6, 10,13,19; 10:17,20; 18:24
government 30:24
grading 43:5
grammatical 72:7; 75:3
granted 28:21; 35:22
granting 33:22
grasp 5:24
great 66:2,21
greater 59:7
group 44:12
guess 31:5; 37:10,18; 38:7,17; 47:13; 63:6; 69:13,16; 72:12,13,14
guidelines 61:5,8

guru 70:24
guy's 44:15

H

H-A-N-S-O-N 30:8
haggling 64:22; 65:18
half 47:5
half-acre 58:8
hammered 39:19
Hampton 49:14
hand 13:17; 16:4; 77:15
handled 61:24
HANSON 3:9; 30:7; 56:4; 58:4,12,15, 24; 59:3,12, 22; 70:18,22, 25
happen 42:24; 48:2; 50:15, 16
happened 47:19
happening 48:1
happens 45:9
hardest 44:22
hazard 35:18; 63:22
health 31:14; 63:17,22
hear 44:6; 57:6
heard 8:1; 36:13; 74:24
hearing 1:1, 10; 4:1; 6:5; 7:22; 8:12, 13; 9:8,11, 15; 10:21,25; 11:5,9,10,16; 14:3,8,12; 16:11,16,20; 17:16; 19:22; 26:12,24; 27:9; 33:12; 62:20; 63:14; 64:5,6,7; 66:20; 67:23; 71:12; 75:2, 21,22; 76:4
hearings 4:10; 9:22,25
heart 41:24
heavy 6:17
heck 53:25; 54:14
height 75:7,8
help 6:11; 26:16; 48:21
helpful 20:14; 44:14
hereby 77:5
herein 77:9
hereunto 77:14
hesitate 14:23
high 25:14; 26:2,3; 27:2, 15; 29:23; 50:18; 51:10, 14; 53:20,23; 54:8,16; 56:2,12,13
higher 12:5; 54:14
Highway 1:15
hire 60:9
historically 48:4
history 4:4; 47:18
hold 9:11; 10:20; 60:13
holdover 7:20
holes 29:9
Holy 33:5
home 28:8; 53:8
homes 25:18, 20; 40:8
hope 36:24; 45:3; 49:17; 53:12; 66:6
hopefully 30:19; 31:3; 41:21
hoping 23:11
hotel 50:24
hours 38:1
house 34:9; 37:9; 62:4; 63:19
houses 64:15, 19; 65:6
However 42:24
Huckleberry 1:14
hundred 12:22; 32:16; 36:6, 14
hundreds 38:1
hurt 38:19

I
---
idea 51:8; 56:11,12; 70:6; 71:5
identical 58:8,18
identified 19:15
identify 20:12
identifying 10:10
imagine 55:5; 62:1; 68:5
impact 20:16; 44:22; 53:20, 21; 54:15; 55:20; 75:25
impacts 42:15; 44:3
implementation 8:19
important 8:8; 9:1
Inc 6:23
incidental 64:18; 65:4
inclement 7:18
include 11:15
including 64:17; 65:4
increase 43:3
increases 51:13
INDEX 3:1
INDIAN 1:2; 2:3; 5:18; 13:23; 15:2, 6; 16:7,15; 38:25; 47:4, 18; 50:23; 51:16; 72:10; 74:20
indicate 22:16
indicated 5:7; 15:20; 16:6
indicating 7:4
individual 44:20
individuals 4:6
industrial 6:17
industry 28:13,15
inevitable 64:23; 65:22
informal 67:2
information 15:16; 22:15
informed 21:4
inherited 25:16
initiates 10:17
ink 31:15
input 26:5; 44:11,20; 53:19; 66:19; 68:19
insane 50:6
Inspector 65:10
Inspectors 65:12
installed 35:6
instance 28:2
instead 12:20; 34:13
intended 11:24
intensity 25:24
intent 14:14; 16:22; 42:21; 43:1; 50:8
interest 75:24
interested 11:3; 67:9
interesting 19:12
internalize 42:13
interpret 62:22
introduce 25:14
introduction 27:2
investment 38:3,24
invited 41:16, 19
involved 28:15; 32:14; 46:6
involves 10:24; 11:8
Irwin 1:24
island 35:22, 24
isn't 33:16; 53:23
issue 35:14, 16; 44:17; 46:5; 54:22;

56:11; 59:9; 60:8,16; 61:13,15; 63:10; 64:2; 67:7; 68:9
issued 63:12
issues 22:12; 28:7,18; 31:17; 32:12; 39:1; 43:19; 44:19; 45:15; 46:14; 53:15, 24; 72:8
itself 12:8

J

January 30:19; 31:1; 67:7,11
JIM 3:13; 35:7; 37:4,8; 43:19; 46:20; 49:14; 68:21; 75:24
Jim's 45:18
job 5:23; 19:14; 45:14, 23; 70:13
joke 51:9
judge 8:17; 33:24
judgment 27:21; 43:23; 45:15; 46:14; 56:8,16
judgments 20:24
juggling 44:9
June 42:5
justify 55:15

K

Karl 4:8; 44:13
keep 25:3; 42:11; 47:25; 74:16
kind 23:14,20, 21; 35:4; 44:11; 47:15
Klementik 8:17
knowing 47:18
knows 70:5
KURT 3:7; 23:1

L

labeling 68:25
labor 28:13,14
laid 29:21; 45:11
lake 1:2; 2:3; 5:18; 6:23; 12:8,9,12,14; 13:23; 15:2, 6; 16:7,15; 21:16,19; 31:11,25; 32:7,13,16, 18; 33:16,17; 34:5,6,18; 35:20; 36:2, 17; 38:25; 44:21; 47:4, 9,10,19; 50:23; 51:16; 61:15,16; 62:4,11; 72:10; 74:20
land 33:20; 34:1; 52:17; 54:6,21; 73:1,3
language 14:18; 15:14; 17:1
larger 57:1
laser 34:24
last 9:14; 15:25; 65:23; 67:20
later 39:1
law 13:2; 18:21
lawyer 62:14; 65:21
lawyers 62:21; 64:22; 65:25
leader 38:4
learning 22:11
least 11:5,9; 18:25; 21:14; 32:16; 48:18; 49:22; 59:3,4
leave 21:8; 29:24
left 45:24
legal 7:14; 17:11; 55:19, 25; 62:17; 65:18
legally 12:3; 61:12
lend 44:11
length 18:10; 31:21; 32:12
lengthy 7:11
less 12:1
letter 5:5,19; 6:3,22,25; 7:4; 13:15; 15:22; 21:15; 41:4,5
level 12:5
library 13:2; 18:21
LICHTY 2:11
life 28:17
limited 51:2; 52:15; 64:15; 68:22
limits 25:8
line 32:5; 33:17,18,20; 34:25; 36:15; 72:6
link 74:12
list 40:11
listen 62:21
literally 40:4
litigation 62:12
little 7:18; 23:3,4,17,20; 29:25; 39:8, 22; 46:2; 48:9; 51:17; 56:22; 57:12
live 33:17; 37:8,9
lives 38:2; 39:13
living 51:20
located 9:20; 11:12
location 11:15; 27:10; 57:9
locations 21:5,6
lodge 35:11, 17; 40:6; 48:8,13,25; 49:18; 50:21, 24; 51:23
long 33:3; 36:22; 67:16
longer 8:16; 36:20; 49:7
look 31:22; 43:21; 53:6; 56:21; 59:10, 22; 72:4
looked 35:5; 47:13
looking 30:18; 47:7; 48:7; 49:19; 58:21; 59:16; 75:5
looks 31:13
loose 39:25
lose 39:12
losing 7:2
lot 4:12; 23:22; 24:7, 8; 25:21; 27:19; 34:17; 37:25; 38:2, 3,4,11,15,24; 39:4,5; 41:23,24; 43:22; 44:5, 16,20; 45:10, 24; 47:8,17; 54:14; 57:18; 58:19,25; 60:6; 69:24
lots 12:16; 44:8,20; 54:9
lower 27:8
lowering 29:11
ludicrous 35:4
LYONS 3:13; 37:8,14; 40:3; 68:21, 25; 69:6,13, 18,24; 70:14, 24; 71:11,24; 72:5,9,11,23; 73:2

M

M-O-R-G-E-S-E 23:2
mackerel 33:5
made 7:12; 18:23; 19:5, 21; 21:9; 24:6; 30:15; 33:25; 34:11; 37:22; 61:9; 63:1; 64:8; 73:9,20
mail 11:11; 71:10
mailed 11:9; 12:16

main 36:11; 56:25
maintained 61:23; 65:1
major 65:7
majority 75:11
managed 73:13
manager 13:11; 14:24; 16:4; 17:6
manner 66:22
many 35:23; 46:9; 47:7; 53:6; 72:7
map 6:17; 10:5,24; 11:8; 12:4, 17; 21:22; 71:25
marina 34:21, 24; 35:3,8
Marine 32:10
mark 7:7
Maryland 70:1
match 20:9
math 68:10
matter 1:10
maximizing 55:9
maximum 75:7
Mayor 2:11
McCAULEY 2:9; 64:21,24
mean 28:22; 29:7; 38:15; 61:11,13; 65:20; 69:8, 22
means 49:10; 61:12
meant 25:17, 18; 38:1
measure 36:5
measuring 34:25
mechanism 26:21; 29:15; 61:3,22; 63:15; 70:21; 71:9
meet 24:7; 28:8,25
meeting 17:15, 18; 20:2; 31:1; 37:22; 40:16; 41:16; 62:21; 67:6, 10,11,20; 68:2,12
meetings 41:16; 42:3; 44:10
member 2:6,7, 8,9,10; 40:15
members 4:8, 12; 6:14; 20:3; 45:25; 52:7; 56:8; 67:12; 68:19, 20; 73:22; 75:17
memorize 33:1
mention 21:1
mentioned 34:1; 42:16; 58:5
mentor 50:14
Merit 1:13; 77:3,18
messy 66:3
met 4:11; 28:18
MICHAEL 2:5; 52:13
MICKEY 3:11; 31:10
might 20:17; 22:9; 42:24; 50:15,16
Mike 30:17; 41:13; 64:11
mind 49:22
minerals 6:16
minimal 45:8
minimizing 55:9
minimum 45:4; 68:7,8; 75:7
mining 6:18; 73:17
minor 5:21; 26:10; 27:6
MISCOE 2:5; 3:3; 4:1; 12:18; 13:7, 9; 15:20,24; 17:13; 19:11; 21:3,8; 22:18,22; 24:1; 26:20; 28:4,22; 29:5,19; 30:3; 31:6; 32:10,23; 33:3,6; 37:4, 13; 39:24; 40:12,23; 41:2,5,8; 42:1; 47:1; 48:4,24; 52:6; 53:15; 54:24; 55:11; 56:7,20; 57:11,21; 58:1,10,14, 20; 59:11,15; 60:3; 61:7, 18,20,25; 62:3; 64:14, 23; 65:2; 66:12,17; 67:19; 68:24; 69:2,11,17, 20; 70:8,15, 20; 71:2,13; 72:2,18,21, 24; 73:3; 74:7; 75:6,21
missile 66:8
missiles 65:25
mitigate 49:10
mixture 48:10
mobile 53:8
modifications 14:13; 16:21; 25:10
Mohawk 37:9
Monday 6:4; 13:2
money 23:22; 27:7; 49:8; 54:18; 64:5; 65:21
month 4:11; 68:13
months 4:11
MOORE 2:6; 4:7; 26:18; 28:14; 52:8; 54:19; 55:8, 24; 56:19,21; 57:14,24; 58:2; 59:19
Moore's 6:1
MORGESE 3:7; 23:1; 27:24; 29:1,18; 30:2
MOSES 3:11; 31:6,10,15; 32:11; 60:18, 22; 61:8,19, 21; 62:1
most 17:9; 31:18; 35:7; 52:19; 56:22
motivation 49:22
move 18:4; 75:22
MPC 18:20; 26:24; 29:13; 63:6; 73:4,5
MS. 61:24; 72:19
much 22:14,15; 33:18; 36:1; 42:5; 46:5,6; 49:12; 51:23; 64:22
multi 53:5
multi-family 7:2; 42:19; 49:6,23; 50:1,19; 51:6; 53:6; 57:20
multiple 9:21
municipal 12:9; 34:6; 47:9,10
municipalities 1:11; 5:24; 7:19; 9:3,5; 10:16; 12:20, 23; 14:5; 15:9; 16:2, 13; 30:25
municipality 9:20; 11:1,2, 9,14; 19:2
myself 4:7

N

---

name 22:17; 23:1; 30:7; 37:8
nature 26:9, 15; 29:21
near 32:4
necessarily 71:4
need 6:7,9; 19:21; 23:14; 29:10; 30:13; 32:8; 35:4; 46:17; 49:21; 53:10; 54:7; 55:25; 56:1; 59:10,22,24; 60:6,24; 61:14; 65:7;

73:17; 74:6; 75:9
needed 12:6; 50:17
needs 12:10; 37:23; 39:9
neighbor 44:2, 6; 51:20
neighbors 44:9; 53:1
neither 50:8
nervous 26:4
never 33:6; 42:21; 44:25; 45:1; 46:4
new 8:21; 31:20; 47:4; 51:12; 53:12; 67:12; 71:18
newsletter 20:7
newspaper 13:4; 18:19; 19:1
next 18:2; 35:25; 38:18; 45:17; 46:16; 67:6,10
nice 40:8; 51:17
nine 4:11
No. 1:4,9
nobody 39:11, 12
non 63:6
non-conforming 24:22; 25:2; 26:7,22; 36:17; 48:16
non-conforms 48:17
non-substanti-ve 75:10
none 39:21; 75:21
normal 25:11, 22
North 31:11
Northland's 6:23
Notary 77:17
note 19:11; 51:22; 64:14
notes 6:3
nothing 29:13; 60:7; 77:7
notice 9:12; 10:3,23,24; 11:6,8,15; 12:1,5,10,13; 14:12; 16:1, 20; 22:6; 63:11,12
noticeable 21:17
notices 16:1; 21:5,10,24
notification 14:6; 16:14; 61:3; 67:2
notify 11:2; 22:7,9
noting 41:4
November 13:2, 7,8,16; 14:1; 15:1; 16:5,9
nuclear 65:25; 66:8
nuisance 62:9, 11; 63:8,24
number 4:24; 6:9; 8:21; 14:20; 19:15; 28:16; 30:17; 36:16; 42:8; 50:6; 51:2; 72:22; 73:9
numbers 59:23

O

object 66:7
objecting 6:24
objection 74:3
objective 47:16,20,25; 48:1
objectively 45:4
obviously 7:11; 39:4
occasions 13:6
occupations 28:9
occur 42:15; 50:9; 68:14
October 4:14
offer 15:17
office 77:15
officer 4:9; 44:18; 45:3; 60:25; 61:6; 63:10,16; 64:1,9
officer's 63:5
offices 13:11
official 28:16; 65:9
of_____-____ 77:16
okay 32:23; 44:15; 58:14; 61:8,19; 68:25; 70:20; 72:11; 73:1,2
once 18:13; 71:16
one 4:18; 11:5; 18:15; 19:1; 21:1, 12; 22:4; 23:3,6,22; 24:4; 27:24; 28:16; 30:11, 12; 31:17; 32:5; 37:10; 38:12,20,21; 39:3; 41:13; 44:8; 48:14; 49:18; 50:10; 53:15; 54:14; 55:6; 57:18; 59:5; 61:24; 62:23; 66:1, 3; 69:9
one-and-a-half 58:12,15
ones 57:17
only 12:10; 22:7; 26:21; 29:22; 30:11, 12; 34:21; 39:3; 40:15; 42:14; 57:7, 19; 59:8; 60:5; 67:4; 70:21; 74:20
open 26:1; 29:23; 38:15; 41:20; 67:17
opening 27:15
opinion 46:6; 53:16; 55:20
opportunity 4:16; 8:1; 14:9; 16:17; 20:3; 67:5
opposed 10:17
opted 27:4
option 10:14
options 25:7; 30:17; 31:4
orange 21:18
ordinance 1:4, 9; 4:3,17; 5:18,20,22; 7:8,21; 8:10, 17,18,21,22; 9:10,17; 10:13,14; 12:21; 13:13, 24; 14:3,4, 14,20; 15:2, 7,10; 16:8, 11,12,22; 17:3; 18:18, 23; 21:23; 23:14; 24:10, 12,13,14,15, 16,17,23; 27:10; 32:24; 33:9; 34:12, 16; 35:2; 39:9; 40:22; 42:13; 43:18; 45:3; 46:1,2, 4; 47:12; 48:6,8,12,18; 49:25; 60:6, 23,24; 62:7, 9,22; 63:9, 24,25; 64:12; 67:21; 72:13, 22; 73:1,6,8, 11,12; 74:11, 13
ordinances 1:6; 11:24; 14:15,18; 15:11,14; 16:23; 17:1; 39:20; 40:21; 41:23; 50:15
organization 56:3
organized 57:17
oriented 62:11
original 25:17; 50:23
originally 35:10; 36:24; 42:4
other 9:25; 20:10; 21:1; 27:25; 34:10; 36:4; 40:15; 41:13; 48:17; 49:3; 52:6; 55:6; 65:20; 66:12; 70:10; 75:16

otherwise 12:6
out 7:23; 8:2; 17:14,15; 18:5; 21:24; 25:7,25; 26:16; 29:21; 31:15; 33:24; 34:24,25; 35:2,8,24; 36:6,10,14, 18; 42:2; 43:14; 44:17; 45:12,17; 48:21,25; 49:8; 53:25; 57:7; 60:1,5; 62:6; 66:23; 67:25; 70:13; 73:13
over 7:13; 12:21; 18:10; 26:3; 31:16; 36:4; 44:16, 17; 46:10; 50:13
overlooked 20:16
own 16:3; 20:23; 22:8; 23:3,20; 24:11; 34:4, 10; 48:9; 52:12,18; 57:8
owned 12:12; 33:17,22
owner 22:5; 31:25; 48:25
owners 12:10; 34:7; 54:23

P

PA 1:15,24
PAGE 3:3,5,7, 9,11,13,15
pages 12:22; 18:10; 42:13
paid 70:17
parcel 58:8
parking 6:24; 7:1; 43:4
part 6:21; 7:12; 8:15; 24:12,13; 25:16; 48:3; 69:22; 73:20
particular 12:8; 39:17; 44:16; 54:2
passed 70:7
PATRICIA 2:10
Pause 8:6; 22:24; 30:5; 31:8; 37:2,6; 46:24; 52:4; 60:20
pay 27:6; 64:4; 65:21
PDF 73:24
Peninsula 31:11
Pennsylvania 1:12; 5:24; 15:9; 77:1,5
people 17:19; 20:10; 22:8; 36:9; 37:12, 14; 38:2,18, 24; 39:20; 44:19,22; 51:12; 52:24; 56:1; 57:8; 63:12; 66:24; 67:17; 68:15, 22; 69:6,24; 70:10,21; 71:6
per 56:23; 57:18; 58:6; 59:13,14
perceived 42:21,23; 43:1
perception 7:1; 60:15
perfect 45:1; 46:4; 60:15
perform 5:7
period 17:17, 24; 46:11; 68:5,16; 70:16
permissible 55:4
permission 74:6
permissive 34:6,11; 35:3
permit 23:9; 24:24,25; 25:12; 26:8; 55:12,16; 56:9,10
permits 12:24
permitted 24:19; 25:1, 12; 28:9; 45:7; 48:19; 53:19,23
permitting 43:10
person 64:3; 65:20
person's 43:24; 44:23
personally 32:15; 49:12
perspective 49:20; 50:5
pertained 33:9
Petrina 4:9; 40:16,20,25; 41:3,7,11,13, 14
phases 19:25
pick 6:9
pictures 22:1
piece 15:25; 60:9
pieces 62:10
pile 69:22
Pine 49:14
pins 33:18
Pittsburgh 30:20
place 61:22; 63:15; 77:9
places 33:14; 36:16
placing 33:21
plan 25:17; 50:23; 51:3
planner 5:16; 60:9
planning 1:11; 4:16; 5:4,14, 24; 6:15; 7:5,6,20,21, 25; 9:4,5,18, 19; 10:16; 12:20,23; 13:14,16; 14:5,7,8; 15:8,9,15; 16:2,3,4,13, 15,16; 17:16, 25; 18:13; 19:13; 20:20; 30:8,9,24; 38:6; 42:9; 43:20; 45:11; 52:10; 53:9, 12,18; 54:2; 56:1; 58:5; 67:1,6,22,25; 68:16; 69:5, 21; 71:2,10, 14; 72:7,9, 12,15,24; 73:6,15,22; 74:18,19,21
planning's 68:17; 70:13
plans 7:3
play 26:13; 44:17
Pleas 8:20
please 14:23; 15:18; 18:6; 22:16; 56:20; 66:25
plural 50:2
plus 68:6
point 17:14; 18:5; 19:12; 20:25; 32:23; 35:2; 36:13; 42:2; 48:25; 55:3,12; 59:8; 60:1,5; 63:25; 65:2; 67:15; 71:9
pointed 17:15; 67:25
points 11:1
pontoon 36:22
portion 10:15
position 11:22
positive 71:8
possession 11:14
possibility 20:16; 49:23
possible 22:13; 28:22; 42:23; 44:2, 4; 64:22
possibly 44:23; 53:18; 74:17
post 70:22,25; 73:25; 74:3
postcard 12:16; 22:3
posted 4:17, 20; 10:25; 11:4,7; 12:25; 13:2; 21:5,9,10,13, 16,20,24; 70:19

posting 13:1; 18:20; 74:10
postings 74:10
postponed 70:2
potential 27:2; 42:15; 52:23; 53:21; 55:20; 57:9
potentially 11:2
practically 42:23
premises 63:19
preparation 10:12,14
prepare 12:24
present 20:10; 31:23; 35:17; 40:21
presented 48:20
preserve 21:21
President 2:5
presumption 68:12
pretty 12:25; 29:8; 33:18; 44:12; 45:22; 46:8; 47:14; 65:16
prevail 65:24
previous 1:5; 11:24; 14:15, 17,18; 15:11, 13,14; 16:23, 25; 17:1; 19:3
previously 12:9
primary 64:18; 65:5
printed 7:8
printer 31:15
printing 31:20
prior 11:5,10; 14:8; 16:16; 18:8,25; 25:1; 26:7, 22; 36:17; 48:8
private 50:3
probably 13:20; 18:11; 19:16; 28:12; 38:4; 45:14; 54:1; 56:17, 22; 65:17; 68:7; 75:4
problem 24:18; 25:13; 33:16; 36:12; 50:17; 53:3; 62:4; 65:11
problems 24:5; 38:3,5; 39:5
procedure 10:13; 17:12
proceed 18:14; 57:2; 68:3,4
process 7:14; 9:2,8; 10:1, 2,3,8; 19:22, 25; 20:24; 22:13; 26:23; 28:23; 29:7, 9,14,16; 31:19; 33:12; 45:8; 46:18; 56:5; 66:5; 71:24; 76:2
prodding 73:14
productive 51:12
professional 5:16; 60:9; 77:18
prohibit 57:22
project 49:16
promote 49:13
proofs 13:10
properties 6:23; 25:18; 27:11; 39:12
property 11:12; 12:11; 21:11; 22:5, 8; 28:8; 33:15,17,20, 22; 34:4,7, 10; 49:1; 76:1
proposal 48:21; 51:1
proposed 1:8; 4:3; 5:18; 8:21; 10:14, 24; 11:7; 14:4,14,20; 15:2,5,10; 16:12,22; 17:3; 18:23; 24:21; 34:16; 35:10; 52:15
provide 4:2; 13:12; 15:21; 18:22; 30:24; 43:19; 45:7; 66:18; 67:1; 68:19; 74:17
provided 5:13; 13:25; 16:8
providing 14:6,11; 16:14,19; 22:14
provision 7:20; 8:2; 21:21; 33:8; 34:20; 35:20; 42:22; 44:21; 45:2; 60:14; 62:15; 67:20
provisions 7:1; 10:4; 14:17; 15:13; 16:25; 17:7; 19:3,16,19; 34:9; 42:8; 43:4; 46:7,9; 51:22,25; 62:3; 63:9; 73:17
prudent 22:9
public 1:1,10, 13; 4:1,8,10; 7:22; 9:8,11, 12,14,21,25; 10:3,20,23, 25; 11:8,16; 13:19; 14:2, 8,12; 16:10, 16,20; 17:8; 19:18,22; 21:14; 35:12; 36:1,3; 41:15,20; 50:3; 63:23; 67:23; 68:19; 75:1,22; 76:4; 77:4
Public-Registered 77:17
publication 13:10; 18:15
publications 7:15
publicly 21:10; 42:2
published 5:5; 6:13; 7:7; 12:22; 71:22
publishing 12:21; 18:19
pull 22:1
purpose 10:10
pursuant 1:11; 9:12; 10:23; 14:5; 15:8; 16:2,13
push 54:18; 66:3
put 6:3; 25:9, 10; 29:15; 34:14,23; 37:25; 39:9; 40:9,10,17; 41:24; 53:7; 60:14; 62:15; 70:6; 73:15
puts 69:9

Q

---

qualify 27:12
question 5:2, 9; 19:6,20; 34:3; 36:25; 37:10; 41:13; 45:19; 60:13; 66:6
questions 14:22; 17:10, 11; 20:5; 38:6,11,20; 52:7; 60:17; 66:13,21; 75:16
quicker 13:20
quiet 51:17

R

R-1 25:22; 49:4; 57:23
R-2 57:21
R-2s 57:13
R1 36:15
raised 42:18
ramp 34:9; 36:1,3
ran 31:15; 49:8
ratified 32:22
ratio 58:17
rationale 7:9
Re 1:3
read 4:22; 6:1,25; 7:11; 9:7; 13:21; 23:14; 27:10; 40:11; 64:16, 20; 65:3;

69:7,14
reading 47:12
readvertise 19:1,21; 71:23
ready 40:21
real 11:11,12; 23:11; 66:3
reality 36:1
realize 7:17
really 23:21; 39:19; 45:19; 47:6; 48:3; 51:8; 52:8; 53:10; 55:19; 60:6; 62:6; 63:25; 72:17; 73:15
reason 50:10; 51:21; 74:8
reasonable 19:3; 36:21
reasons 20:2; 47:17
recall 41:6; 67:19
recalls 40:18
receive 23:16
received 6:22; 12:16; 14:25; 15:5; 17:22; 36:8; 72:6
recession 34:18
reclassified 42:17; 43:2
recodification 1:8; 14:19; 17:2
recodified 8:25; 14:20; 17:3
recognize 72:12
recognizing 29:9; 50:13
recommendation 30:15; 68:18
recommendations 14:10; 16:18; 18:1, 13; 20:21; 71:15,16; 74:18
recommended 53:4
reconstruct 26:14
record 4:25; 6:21; 7:12; 9:7; 13:18; 19:9; 22:17, 20; 65:3; 66:10; 67:17; 73:20; 77:12
recorded 35:23; 40:23; 77:10
records 11:13; 13:20; 69:23
recreational 23:7; 28:1; 47:21; 48:10
red 72:6
redesignation 51:21,25
reduced 77:11
Reed 67:3; 69:19
reenacting 15:13; 16:25
reenactment 14:17
reevaluate 53:4
referenced 10:21; 15:23; 18:18
refining 45:2; 47:11
reflect 5:19
regarding 15:1
Registered 1:13; 77:3
regular 74:9
regulate 33:13
regulating 33:19
regulations 6:18; 33:14; 64:25
reinsert 63:1, 3
relationship 53:2
relative 4:3; 6:16,18; 9:2; 17:12; 19:19; 34:9; 43:4, 10,20; 48:17; 50:14; 51:22
rely 61:9
remain 67:17
remained 24:15
remains 36:15
remediation 49:9
remember 40:17
removal 61:4
remove 75:14
rendered 8:14, 16
rental 25:18
renter 28:2
reorganization 67:11
reorganize 18:3; 67:14
reorganizing 52:24
repairs 65:7
repeal 1:5; 14:15; 16:23
repetitive 70:5
replicate 55:22
replicating 55:5
Reporter 77:18
Reporter-Notary 1:13; 77:4
REPORTING 1:22
request 5:3, 12; 38:7
require 73:5; 75:1
required 7:19; 13:12; 22:7; 52:17; 53:9; 56:12,13; 71:4,8; 74:11
requirement 11:6; 18:7; 28:24; 35:11
requirements 11:17; 12:5; 28:17; 29:11; 34:14; 43:8, 10,16
resident 47:4
residential 24:8,19; 48:10,15,19; 52:19,21,24; 53:5; 57:4
resolution 53:13
resolvable 58:4; 59:10; 60:2
resolve 53:17; 54:22; 58:6; 59:25
resolved 59:21; 62:6; 66:5
respect 20:10; 31:21; 42:18; 52:8; 57:1; 63:5
respectful 66:22
responded 5:13
response 5:2; 14:25; 66:15; 75:19
responsibility 68:17
responsible 34:4; 35:7
rest 24:9
restored 50:20,22; 52:1
restoring 49:23
restrict 70:21
restriction 33:21; 36:21, 24
restrictions 43:3
retrieve 69:8, 9
returning 24:16
reversal 64:8
review 4:17; 5:5,8,15,17, 20; 7:6,21; 8:10; 15:8, 16; 17:18; 20:21; 41:10; 55:25; 56:1; 67:22,23; 68:17; 73:7
reviewed 15:4, 5; 20:3
reviewing 41:19; 72:13, 17
reviews 72:16
revise 46:18
revised 10:7
revising 41:19
revision 8:22; 19:21
revoke 11:24
rewording 75:4
rezoned 11:13; 12:11; 22:8;

24:14
rezoning 11:20,21,23; 12:3; 14:16; 15:12; 16:24
RICHARD 2:8
ROBERT 2:7
roll 27:18
rolls 22:5
Ron 4:8; 40:16; 41:14; 42:1; 44:18; 46:21
roof 26:8
rule 23:21; 25:3
RULLO 2:12; 3:5; 6:2,4,8; 7:13; 8:8; 12:19; 13:8, 10; 15:4,25; 18:17; 21:1, 4; 63:8; 66:7; 72:3,6, 10,20; 74:9
rushed 39:18

S

safe 65:14
safety 28:18; 32:13; 35:16, 18; 36:9,14; 38:24; 62:11; 63:17,22
same 28:23; 42:10
sat 44:10
satisfy 11:17
saw 63:21
saying 40:4; 57:5,11,12; 69:12; 70:4
says 9:9; 41:11
scaled 35:12, 13
scared 53:25
scary 33:4
scheduled 6:5; 14:2; 16:10
scheme 74:16
SCOTT 2:6; 4:7; 26:16; 40:23; 45:10; 50:14; 52:7; 53:16; 59:12
screws 62:18
scriveners 17:9
seal 77:15
season 60:7
seated 67:13
second 23:13; 68:13
section 4:19; 7:9; 9:5,6; 10:2,13,15, 21; 12:23; 18:7,17,18; 20:12; 27:10; 32:24; 33:8; 40:3; 42:11; 43:9; 64:11, 12,13; 73:4
sections 4:18; 9:1; 10:11; 40:2; 45:21; 75:14
see 12:7; 13:19; 20:8; 32:6; 41:21; 44:1,6; 51:10; 70:19; 71:6; 73:23; 74:8,13
seek 53:19
seem 31:24; 36:12
seems 23:17; 31:23
seen 41:22
Senate 31:14
send 7:23; 66:23; 70:25; 73:23
sense 43:17; 65:24; 74:15
sent 5:2,11; 11:12; 21:15
sentence 70:16
separate 63:8
septic 24:7
seriously 49:21
service 1:22; 6:18
set 8:8; 10:13; 77:14
setback 28:7; 43:8
setbacks 25:21; 28:13, 20; 43:4; 48:18; 50:6
setting 19:2; 47:10
several 39:3
sewage 50:10, 11; 51:2
shall 9:11,14, 17; 10:14,20, 25; 11:4,9, 15,17,19; 13:25; 18:25
share 24:6
sheds 65:6
shore 32:4; 36:15
short 27:15
shot 34:25
shouldn't 30:11
shouting 20:9
show 44:11
showed 64:11
side 11:25; 34:10; 36:4; 40:8; 65:20
signed 17:5
significant 31:18; 32:12, 17
signs 21:18
similar 35:11
simply 5:5,16; 42:17
since 8:19; 24:10; 49:7
single 43:14; 62:23
single-family 24:8,18; 53:5
site 47:10
situation 31:4; 48:16; 53:9; 61:24; 62:1,16; 70:9
size 28:14; 34:17
sizes 24:7,8; 25:21; 44:5
ski 40:6; 49:7,8
skiers 25:19
skiing 32:19
slope 49:7,8
slopes 6:19; 40:6
slowly 64:20
small 28:17, 18; 38:13; 52:9; 54:9
Smith 6:22
Smiths 49:2
Snyder 4:9; 21:2; 61:7
socially 51:19
sold 25:20
solicit 17:19
solicitor 2:12; 12:24; 53:19; 54:3; 62:13
solid 65:16
somebody 6:9; 25:10; 29:16; 38:14; 45:6
somehow 58:23; 64:24
someone 21:17; 22:1; 26:1; 29:4; 41:12; 49:5; 51:5
Somerset 5:4; 13:5,14,16; 14:7; 15:7, 15; 30:20; 65:9,12; 72:9,12,15, 16,21,24,25
something 23:12,15; 38:14; 45:16; 46:12,15; 47:23,25; 48:1,2; 55:13; 56:14; 60:4; 63:24; 69:4
sometime 68:15
sometimes 4:18; 65:24
somewhere 32:4; 54:17; 55:14,22
soon 54:4; 66:2
sorry 15:5; 64:19; 67:21; 72:11
sort 25:16; 35:4; 70:13
space 51:18
SPEAKER 33:1, 5; 40:1
SPEAKERS 3:1
speaking 6:2
special 26:23; 27:7; 29:11; 43:10
specially

43:15
specific 20:12; 39:24; 43:19; 44:20
specifically 20:15; 60:8
speed 42:11
spent 41:23; 62:5
spillway 36:5
sponsored 30:23
square 23:23; 56:23; 59:4
St. 48:20,23; 59:2
standardized 43:7
standards 59:24
standpoint 12:2; 16:1; 32:17
start 10:1; 33:19; 36:2
state 22:17; 59:9; 63:20
stated 5:17; 77:9
states 10:9, 11; 11:19
steep 6:19
stenographically 77:10
STERN 2:8
still 12:25; 24:25
stinks 27:1,17
stipulation 32:3
stop 20:24; 28:11; 54:16
stops 60:7
storage 65:6
structural 26:14,17,19; 58:21; 59:16; 65:7
structure 26:22; 28:6; 48:19; 58:22; 61:17; 62:10; 63:6; 64:15, 17; 65:14,16
structures 49:7; 61:1,2, 16
stuck 27:20; 29:22
studied 35:14
study 35:16
stuff 28:13; 42:10; 45:9, 24; 50:12; 69:22
subdivided 49:2
subdivision 49:3,14; 73:1,3
subjectivity 45:5
submit 4:23; 7:24; 14:9; 16:17; 17:21; 25:11; 66:25; 68:1; 69:3,6; 70:10,12; 71:3; 73:5; 74:15
submitted 4:15; 7:8; 15:7; 20:20; 41:1,3; 69:18,20; 70:11
submitting 40:19
subsection 11:18
subsequent 17:18; 73:19
substance 73:18
substandard 64:12
substantial 11:17; 18:6, 22; 19:7,18, 20; 25:21; 44:3; 46:11; 71:11,25; 74:24; 75:1
substantially 36:18; 46:3
substantive 71:13; 75:12, 15
substitute 71:17,20
successful 49:17
sufficient 11:1
suggest 7:21; 53:18; 54:3
suggested 52:10; 63:21; 75:11
suggestions 5:21
summary 6:24; 12:24,25; 13:13; 14:12; 16:20; 18:10, 18; 19:2,4
supplemental 6:18
supposed 51:9
surface 73:17
sworn 77:6
system 24:7; 26:19; 38:9; 54:20; 57:2, 25; 67:2

T

---

talked 63:19
taught 65:23
tax 11:11,13; 22:5; 49:10; 51:13; 57:1,3
technically 27:9
teeth 62:7
telecommunication 6:19
ten 18:8,25
termination 64:2
terms 29:14; 47:11; 59:12, 14
territories 10:6
Terry 48:21; 49:2
testify 77:6
testimony 8:13; 77:12
text 12:21; 13:13
Theodore 1:12; 77:3,17
theoretically 42:25
there's 26:25; 28:8; 32:3; 33:18; 34:17; 36:4,9; 40:7; 46:12; 47:8, 12,17; 50:24; 58:7; 68:7; 72:16
therefore 57:5
thereon 9:11; 10:21
Theresa 17:5
they've 24:11; 73:21
thing 21:1; 23:13; 27:25; 39:2,3; 44:22; 75:14
things 19:15; 26:9,14; 27:6,19; 33:2; 43:20, 22; 45:13,20; 47:8,11,18; 50:13,14,16; 66:3,5; 71:19; 73:9, 13; 75:4,8,11
thinks 51:7
though 7:17; 11:23; 18:9; 22:7; 39:10; 53:1
thoughts 6:7
thousand 59:4
three 31:24; 37:16
three-quarter 58:7,19,24
three-quarters 58:17
threshold 27:8; 29:12
throughout 22:13; 24:9; 36:17; 43:5, 18
tight 39:20,25
tighten 62:24
tightened 62:18
today 6:2; 17:7; 67:18; 69:25
today's 9:24
together 19:3; 51:19; 53:7
took 34:8,24; 42:5; 48:14
top 51:20
topography 32:5
totally 57:11; 59:20
towards 36:5

towers 6:19
townhomes 42:19; 50:25; 58:9,18,24; 59:1,6
townhouse 38:13
townhouses 74:25
tract 11:2,4
trade 27:21
traditionally 35:6; 50:21; 52:1; 68:14
traffic 36:11
transcribed 20:19
transcript 17:15
transparent 22:13; 74:16
treat 43:14
treated 12:3
treating 8:24; 12:4
tried 22:12; 42:11; 62:9
tripped 53:24
true 77:12
Trust 33:6
truth 77:7,8
try 17:11; 31:4,16; 42:10,13; 55:21
trying 43:13, 14; 49:10; 62:5; 69:13; 74:16
tubing 32:19
tuning 50:18
turn 7:13; 22:16
turning 28:11
turns 8:2
tweak 46:13
twice 4:11; 42:5
two 4:18; 13:6; 23:5, 24; 38:20; 50:2; 53:6; 65:23
type 6:3; 57:2
types 20:14; 25:10; 66:5
typewriting 77:11

U

UAI 55:5
UCC 65:15
ultimately 46:15
unanimous 30:13,14
under 8:10,15, 25; 9:22; 10:2,4,9; 11:7; 12:19; 13:12; 16:6; 18:7; 24:23; 35:2; 52:21; 63:6,24; 64:12; 65:15; 67:20; 68:12; 77:11
underneath 34:15
understand 9:2; 12:15; 15:22; 24:1; 29:18; 37:16, 25; 39:25; 47:8; 48:3; 54:24; 59:15; 60:22; 69:11; 70:14; 71:24; 72:19
understandable 27:12
understanding 15:10; 44:21
unfortunate 66:4
unfortunately 25:5; 26:19, 20,25; 29:20; 34:12; 54:9; 65:24
UNIDENTIFIED 33:1,5; 40:1
unit 57:18
United 1:14
units 51:1; 52:16; 53:6, 7; 54:20; 55:1,9
Unity 1:14
unless 25:4
unmaintained 61:2
unsafe 61:1; 65:8,16
unsightly 61:1
until 63:21
untouched 45:25
unzoned 10:7
up 6:3,10; 7:7; 17:12; 22:12; 29:23; 36:13; 39:1, 4; 40:14; 42:11,19; 44:11; 46:7; 50:1; 55:5; 56:16; 59:24; 60:11,13; 62:18,25; 71:3; 72:2, 14; 73:14,25; 74:4
upheld 65:1
useful 71:5
utilization 32:19
utilizing 8:19

V

vague 23:17
valid 8:17
value 76:1
values 39:12
variance 26:23; 27:9, 13; 28:21; 53:2
various 21:5; 33:9
version 13:25; 16:8; 72:6
via 71:10
VIDEO 1:22
view 11:23
virtue 29:20; 51:20
VOGEL 2:7; 67:16; 74:2
voice 23:25
voluminous 12:25
vote 9:13; 18:8,14; 37:15; 40:13, 14,23; 68:9; 74:7
voting 9:9; 10:19; 18:24

W

wall 26:19
wanted 5:17; 23:24; 49:6; 60:1
wants 39:11, 12; 51:14; 60:4; 71:2
wasted 42:7
water 33:18; 63:21
Wawrzyniak 1:13,22; 77:3,17
way 9:23; 25:6; 29:22, 24; 31:19; 45:16; 46:15; 47:21; 50:11; 55:19; 57:16
ways 36:11; 54:22
weather 7:18; 8:3
website 4:21; 66:24; 70:19; 71:3; 74:1,5, 11
Wednesday 68:13
week 5:18; 11:5
weird 45:9
welfare 63:18, 23
Westmoreland 77:2
Weyant 17:5
whatever 38:18; 54:13; 63:7
whatnot 25:22; 57:13
whatsoever 40:5,7
WHEREOF 77:14
whether 5:9, 10; 12:2; 18:4,14; 19:6; 26:17; 27:22; 34:3; 43:23; 56:9, 11; 60:11; 63:17; 65:13; 68:3; 71:2; 73:15,17

whole 6:25; 39:9; 45:10; 54:14; 60:5; 73:4; 75:14; 77:7
wider 32:2
wildlife 21:20
will 4:24; 5:14; 6:3,4, 21; 7:11,13, 14,23,25; 8:25; 14:9; 15:11; 16:17; 17:3,11,16, 17,19,23,25; 18:3,12; 20:18,20,21, 23,24; 24:25; 27:22; 36:20; 38:18; 42:6; 43:21; 44:25; 45:16; 46:18; 53:13; 60:16; 61:9,11,20; 62:20; 63:4; 64:16; 66:23; 67:1,7,8,10, 11,13; 68:1, 2,3; 70:25; 71:16; 72:2; 73:14,20
windmills 73:16
wintry 66:18
wish 34:22; 74:17
wishes 13:19
within 9:14, 16; 11:12,14; 24:20,22; 34:1; 53:21; 54:17,20; 55:4; 56:15, 24; 61:12,17; 68:16
without 26:11; 27:6; 29:3
witness 77:5, 13,14
wondering 47:15
word 47:13; 63:2,3,7
words 38:1; 62:25; 66:8
work 4:12,14, 20; 26:11; 37:24; 41:24
worked 4:10; 56:2
works 29:14
worse 39:6
wrestle 42:10
wrestled 24:5; 30:9; 42:8
wrestling 58:3
writing 7:24
written 43:17

Y

---

year 8:16; 18:2; 37:19; 47:5
years 27:18; 35:23; 44:14; 45:12; 47:7; 62:5,14; 65:23

Z

Zerfoss 5:2; 13:15; 14:25; 30:19
zone 24:11,21; 25:14,24,25; 27:23; 28:25; 34:4,5; 39:17; 42:15, 16; 51:4; 53:21; 74:25
zoned 12:9; 23:7; 28:1; 32:25; 33:25; 34:2
zones 43:9,10, 12
zoning 1:4,6, 9; 4:3,5,9; 5:18; 6:17; 8:12,13; 9:10,17; 10:12,24; 11:8,24; 13:23; 14:15, 20; 15:2,6, 11; 16:7,23; 21:22,23; 26:12,23; 27:8; 28:20; 30:24; 33:8, 13; 37:10; 38:17,21; 40:5; 44:1, 12,18,19; 45:3; 47:10, 21; 50:15; 53:2,24; 62:7,20,24; 63:4,10,13, 25; 64:1,5,6, 8; 67:21; 71:18; 72:13, 17,22; 73:4,6

_

---

day 77:15
- 77:16