

MINUTES OF DECEMBER 19, 2012
MEETING OF THE LINCOLNWOOD
ZONING BOARD OF APPEALS (ZBA)

The regular meeting of the Zoning Board of Appeals was called to order on December 19, 2012 at 7:00 p.m. In attendance were Mary Couzin, Christopher Nickell, Kathy O'Brien, Herbert Theisen and S.J. Malkin.

Also present: Community Development Manager/Zoning Officer Aaron Cook, Community Development Director Timothy Clarke, and Village Attorneys Hart Passman and Peter Friedman

Chairman Malkin then called for any comments or corrections regarding the minutes of the ZBA meeting on November 21, 2012 and, there being none, on motion duly made and seconded, the minutes were unanimously approved (Chairman Malkin and Member Herbert Theisen abstaining since they were not present at that meeting).

A public hearing was then held on the petition of Georgia Plevritis for variation from Article VII, Section 7.10, Table 7.10.01 of the Zoning Code with regard to off-street parking for a proposed salon/spa in connection with the property at 4352 W. Touhy Avenue (David's Square Shopping Plaza). After discussion, by a vote of 5 to 0, ZBA recommended that the requested variation be granted so as to permit the proposed salon/spa to have three off-street parking spaces in lieu of four such spaces, thereby leaving the total off-street parking spaces in the business center to remain at 35.

(For details, see report filed by Chairman Malkin)

A public hearing was then held on the appeal by Platform I-Shore, LLC regarding a determination made by the Zoning Officer denying a permit for a proposed firearms shooting range in a B-2 Zoning District in connection with the property at 3318 W. Devon Avenue. At the conclusion of the hearing, by a vote of 4 to 1 (Member Kathy O'Brien dissenting), ZBA directed the Village attorney to prepare an order affirming the determination of the Zoning Officer. Said order is to be presented to ZBA for consideration at its January 16, 2013 meeting.

(For details, see Transcript prepared by Marina Mogilevsky, C.S.R. Merrill Corporation)

Chairman Malkin then announced that the next meeting of ZBA will be held on January 16, 2013.

There being no further business, on motion duly made and seconded, by unanimous consent the meeting was adjourned.

Sherwin J. Malkin, Chairman

Lincolnwood Zoning Board of Appeals Meeting

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Village of Lincolnwood
 Zoning Board of Appeals
 Meeting
 Wednesday, December 19, 2012
 7:00 P.M.
 in the
 Council Chambers Room
 Lincolnwood Village Hall - 6900 Lincoln Avenue

* * * * *

Roll Call

On roll call by Chairman Malkin, the following were present for the Zoning Board of Appeals:

Herbert Theisen, Mary Couzin, S.J. Malkin, Kathy O'Brien, and Christopher Nickell

Also Present:

Peter Friedman, Attorney for Zoning Board of Appeals; Timothy Clarke, Director of Community Development; Hart Passman, Attorney for Village Zoning Officer; Aaron Cook, Community Development Manager; and Mr. Stewart T. Kusper and Mr. Paul C. Mallon, Jr., Attorneys for Appellant Platform I-Shore, LLC.

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1 CHAIRMAN MALKIN: The next item on the agenda is
2 something which this particular Board has never handled
3 before, but it involves an appeal.

4 The matter that's coming up before this Board
5 is an appeal by Platform I-Shore, LLC -- And can I refer
6 to you as the Shore Group at this point in time, just
7 for purposes of identification?

8 MR. KUSPER: That would be fine, Mr. Chairman.

9 CHAIRMAN MALKIN: -- regarding the determination
10 made concerning firearm and shooting ranges in the B2
11 Zoning District.

12 Because of the unique nature of this particular
13 matter before this Board, I'm going to ask the -- Tim
14 Clarke, why don't you explain to the people here in the
15 room what is going on here, and what role of the ZBA is
16 in this case.

17 MR. CLARKE: Before we begin, I just want to make a
18 quick comment.

19 We have a court reporter. So everybody needs
20 to not talk over each other, try to talk slowly and into
21 the microphone, and for anybody who does not have a name
22 plate in front of them, please identify yourself.

23 CHAIRMAN MALKIN: Okay. And because of the unique
24 nature of this, normally I'd just take note of the fact

1 that a quorum was present. But since we're really
2 starting this particular proceeding, I think I'll just
3 call role and let the court reporter take it down.

4 Herb Theisen.

5 MR. THEISEN: Here.

6 CHAIRMAN MALKIN: Mary Couzin.

7 MS. COUZIN: Here.

8 CHAIRMAN MALKIN: Sherman Malkin is here.

9 Kathy O'Brien.

10 MS. O'BRIEN: Here.

11 CHAIRMAN MALKIN: Christopher Nickell.

12 MR. NICKELL: Here.

13 CHAIRMAN MALKIN: Okay. Please continue.

14 MR. CLARKE: Good evening, Chairman Malkin, and
15 Distinguished Members of the Zoning Board of Appeals.

16 Tonight you will be considering an appeal made
17 to you concerning the determination made by the
18 Village's zoning officer.

19 What I'll do over the next few minutes is
20 provide you with background on the appeal process, on
21 the factors that are used in making zoning
22 interpretations, as well as the nature of the appeal
23 that is now before you.

24 Anyone can file an appeal of a determination

1 made by the zoning officer. This appeal, however, must
2 be made in writing. And this has been done in this
3 case, and that has been forwarded to you in your packet
4 for tonight's meeting.

5 The Zoning Board of Appeals is the designated
6 Village appeal body, and the ZBA hears any and all
7 appeals concerning determinations that are made by the
8 zoning officer.

9 The ZBA must render its decision on the appeal
10 within 90 days, unless the appellant agrees to an
11 extension.

12 The ZBA decision on the appeal must be in
13 writing. The action of the ZBA may reverse, affirm, or
14 modify, in whole or in part, the zoning officer's
15 determination.

16 Typically, the ZBA provides the Village Board
17 with its recommendation on a given matter. This is not
18 the case for appeals of this nature. The appeal
19 concerning the determination by the zoning officer is a
20 final decision by the ZBA. There is no other Village
21 body that will hear this. It is considered the final
22 matter, and it's only subject to judicial review in
23 accordance with state law.

24 So your decision is the final decision of the

1 Village. It does not get forwarded to the Village
2 Board.

3 Regarding history of appeals in the Village,
4 the ZBA, which, as you know, was formed in 2009, has
5 never considered an appeal of the zoning officer's
6 determination. And, to the staff's knowledge, there has
7 never been an appeal to a predecessor body.

8 So this is somewhat, as you've indicated, very
9 different than what has occurred before in the Village.

10 Now, relative to interpretations, what is
11 before you tonight is an appeal of an interpretation of
12 the Zoning Code by the zoning officer. And the
13 interpretation of the Zoning Code is one of the chief
14 duties of the zoning officer. You often refer to him as
15 the development manager here on the card.

16 And, at some level, interpretation by that
17 position in the Village is often done almost every day.
18 It's one of the things that he does as part of his
19 duties.

20 I would note that the Zoning Code is over 240
21 pages long, and contains over 76,000 words. It's a
22 pretty hefty document. On the whole, it's a complex
23 document as well with many different sections and
24 provisions. And interpretation of this document always

1 involves not only reading the printed words, but also
2 ascertaining the legislative intent of the provisions of
3 the code.

4 For land use determinations, the following is
5 typically involved in interpreting the code and making a
6 determination:

7 First, the Land Use Table in the Zoning Code is
8 consulted to ascertain if the use is a listed use in the
9 table. And then if it is, how it is treated on the
10 table.

11 Other pertinent sections of the code are also
12 reviewed and analyzed, such as the section on
13 definitions.

14 Where there is a lack of clarity in a
15 particular Zoning Code section, then other pertinent
16 Village documents are reviewed and consulted. These
17 would include relevant board and commission minutes,
18 other Village documents or codes, and any prior
19 pertinent Village actions.

20 Making a zoning determination is really
21 bringing together all the pertinent information
22 available to understand the meaning and legislative
23 intent of the words and provisions of the Zoning Code.

24 Now, the nature of the appeal before you

1 tonight is rather narrow. It is whether firearms
2 shooting ranges are a permitted use in the B2 General
3 Business Zoning District. The question before this
4 Board is not whether shooting ranges should or should
5 not be allowed in the zoning district, whether shooting
6 ranges are good or bad, but rather whether the Zoning
7 Code, as it stands today, is intended to allow firearms
8 shooting ranges as a permitted use in the B2 Zoning
9 District.

10 On this question, the zoning officer has
11 determined that a firearms shooting range is not a
12 permitted use in the Village's B2 Zoning District.

13 Chairman Malkin, Members of the Village's
14 Zoning Board, this completes my introductory background
15 on this matter.

16 CHAIRMAN MALKIN: Thank you.

17 Okay. Let me just suggest to the Board as to
18 how we proceed in this matter.

19 This is the first, and probably the last time
20 this will ever happen, where the ZBA is going to be
21 acting as a quasi judicial body here. So, in effect,
22 we're an administrative board now trying to make a
23 judicial decision. So I suggest the following
24 procedure. And I'll ask if it's agreeable to everybody

1 here.

2 The first thing I'll do is to swear in all the
3 witnesses, including the witnesses that will appear on
4 behalf of the Village. Because they are no longer our
5 advisers in this matter, but they will be witnesses in
6 the case. So they'll be sworn in.

7 Then my suggestion is to have the Village make
8 their first opening presentation and state the reasons
9 why the zoning officer rejected the request that was
10 made.

11 Then we'll have the representatives of the
12 Shore Group respond, and take as much time as they want
13 to do that.

14 Then when they have finished, we'll have the
15 Village have an opportunity to rebut any points that
16 were raised that they want to address.

17 And then, finally, we'll have the Shore Group
18 have a surrebuttal. So that way everybody will have an
19 opportunity to have the same opportunities to speak.

20 When that is all completed, then I will open up
21 the questioning to the members of the Board here, if
22 they have any questions. I know I have some.

23 And when that is completed, then I will --
24 because of the fact that this is a public hearing, I've

1 been advised by counsel that I should ask if there's any
2 public comments. So I'll invite anybody who's here, a
3 member of the public who wants to speak for or against
4 the appeal, they'll be welcome to do that.

5 The only thing I would say is that there should
6 be an understanding that we're not talking about policy
7 here. That was already decided by the Board of Trustees
8 sometime ago, when they voted down the firearms shooting
9 range in the industrial park.

10 So we're not talking about policy here. We're
11 talking about a very technical point. And that is,
12 whether or not the particular activity that the
13 appellant, the Shore Group, seeks to have, which is a
14 firearms shooting range, whether that is permitted, as a
15 matter of right, under the B2 classification of the
16 Zoning Code. And that really is what we're here to hear
17 about.

18 So if anybody wants to address the Board,
19 please do so, if you can help us arrive at our analysis
20 of this thing. But please do not talk about policy or
21 whether you're for or against firearms. That is really
22 not an issue before us tonight.

23 And then, finally, after the questioning of the
24 Board, then we will deliberate. And I was advised by

1 counsel we could go into executive session, but I would
2 suggest that we deliberate in public. So that the
3 public knows and the parties involved know exactly what
4 our rationale is and how we arrive at whatever decision
5 we arrive at.

6 So that's the procedure that I suggest. Is
7 that agreeable to everybody?

8 MR. NICKELL: Yeah.

9 CHAIRMAN MALKIN: Okay. Then on that basis, let's
10 move ahead. I'll let the Village speak.

11 Whoever is going to be testifying, please raise
12 your hand.

13 (WITNESSES SWORN.)

14 CHAIRMAN MALKIN: Okay. Counsel has asked that I
15 mention the fact that whatever is being presented
16 tonight, whether it be PowerPoint or documents that are
17 referred to or whatever, they are going to be part of
18 the record in this case. And it will be available for
19 inspection by anybody who wants to look at them.

20 MR. COOK: Are you ready, Mr. Chairman?

21 CHAIRMAN MALKIN: Go ahead.

22 MR. COOK: Thank you.

23 By way of introduction, my name is Aaron Cook.
24 I'm the development manager. As Community Development

1 Director Clarke mentioned, I serve as the Village's
2 zoning officer.

3 While Mr. Clarke identified the general process
4 by which interpretations are made, I'd be happy to
5 outline the specific process and the information
6 available to the staff in which we arrived at the
7 determination that health club and private recreation is
8 not inclusive of shooting ranges; and, therefore, not
9 permitted in B2 District.

10 Fire and shooting ranges are not specifically
11 listed in the Land Use Table. As Mr. Clarke identified,
12 we look at Land Use Table, we look at definitions, we
13 look at prior legislative history, all in determining
14 the intent and the interpretation of the zoning
15 ordinance.

16 Because firearms shooting ranges are not listed
17 as a use, whether permitted or a special use in the Land
18 Use Table, by policy, that use is therefore prohibited.

19 But that's not where it ends. We also look at
20 other uses included within the Land Use Table to
21 determine if while perhaps shooting ranges are not
22 specifically listed, if there are other similar or
23 compatible uses. More specifically, are there similar
24 or compatible uses categorized as permitted uses.

1 The use of a shooting range, as my
2 determination as zoning officer, does not fall within
3 the definition of health club or private recreation.
4 And as a result is not permitted in the B2 District.

5 The legislative intent -- and we'll go through
6 prior actions, the staff is happy to touch on those --
7 was not the legislative intent of the Village. The
8 staff's determination is not to allow firearms shooting
9 ranges as permitted uses in the B2 District.

10 On the overhead is the definition of health
11 club and private recreation. This is the definition
12 that perhaps is at the core of the appeal. And in
13 reading this, staff did not conclude that firearms
14 shooting ranges are included or anticipated to fall
15 within this health club or private recreation
16 definition.

17 Again, to reiterate, myself as zoning officer
18 did not find that the definition was intended to include
19 firearms shooting ranges, and did not find that
20 shooting -- shooting range use was a customary or usual
21 recreation activity in Lincolnwood or in the Lincolnwood
22 area. Customary or usual recreation is embedded within
23 the definition of health club and private recreation.
24 And I did not find that the firearms shooting range is

1 primarily intended for the conduct of sports.

2 Recent testimony on this goes, just from
3 historical perspective, during the deliberations of
4 I-Shore's previous consideration on Central Park, staff
5 does not recall at any time the testimony included the
6 potential use for sport, but rather for training
7 purposes.

8 As I mentioned previously, staff did consider
9 the legislative intent. A prior request in 1989 was to
10 install a shooting range on the second floor at the
11 existing location at 3318 Devon Avenue. And that
12 special use was denied by the Village Board.

13 In 1993 special use was sought for a shooting
14 range on the second floor again. However, that
15 application was withdrawn prior to any formal vote.

16 In 1997 special use and variations were sought
17 to relocate the firearms dealer to 3310 Devon. It is --
18 That request did not include a shooting range component.
19 Ultimately, that special use was denied by the Village
20 Board.

21 The '89 and '93 applications were for special
22 use approval for shooting ranges. They were not at that
23 time considered permitted uses. They were not
24 considered at that time under any other definition of

1 the Zoning Code. They sought this special use. And in
2 '89 they were formally denied, and in '93 that
3 application was withdrawn.

4 I raise and highlight the prior consideration
5 of such a use as a special use because since that time
6 the Village has comprehensively updated the Zoning Code
7 in 2008. As part of that deliberation, staff found no
8 discussion, no minutes, no documents indicating any
9 reversal of the Village's position relative to a
10 firearms shooting range. And that position -- And what
11 I mean by position is, those uses are categorized as
12 special uses.

13 So, to summarize, the following items were
14 considered:

15 Was and is shooting range included in the Land
16 Use Table?

17 Is or are shooting ranges similar or compatible
18 to other permitted uses?

19 Does the definition of health club or private
20 recreation encompass or include shooting ranges?

21 And what is the legislative intent, i.e. the
22 history within this community, relative to such uses.

23 As a result of all these considerations and all
24 these factors, staff, the zoning officer, myself, Aaron

1 Cook determined that shooting ranges are not a permitted
2 use in the B2 District.

3 At this time, Mr. Chairman, that concludes my
4 presentation.

5 I'd like to ask Trustee Heidtke to testify
6 before the Zoning Board of Appeals as to the Village
7 Board's position in 2008, when the Zoning Code was
8 comprehensively updated. And I will be available
9 throughout to answer any questions.

10 CHAIRMAN MALKIN: Thank you.

11 Trustee Heidtke, thank you.

12 MR. HEIDTKE: Hi. I am Tom Heidtke. I've been a
13 member of the Village Board of Trustees since 2005. I
14 was involved in deliberations in 2008 concerning
15 rewriting portions of the Village Zoning Code. At that
16 time it was never suggested that the Board should adopt
17 a Zoning Code that fundamentally changed the Village's
18 treatment of shooting ranges.

19 It was not the intent of the Village Board to
20 allow shooting ranges as a permitted use on Devon
21 Avenue. There was no discussion about it, and we had no
22 intention to change the Village's policy. Thank you.

23 CHAIRMAN MALKIN: Thank you.

24 All right. Is there anything more that you

1 want to present at this time on behalf of the Village?

2 MR. COOK: Not at this time, Mr. Chairman.

3 CHAIRMAN MALKIN: All right. Then we'll have the
4 Shore Group would you come up and identify yourself.

5 MR. KUSPER: Thank you, Mr. Chairman. My name is
6 Stewart Kusper. I'm the attorney for the Appellant
7 Platform.

8 CHAIRMAN MALKIN: Stewart you said?

9 MR. KUSPER: Stewart, S-T-E-W-A-R-T, and Kusper is
10 K-U-S-P as in Peter-E-R.

11 CHAIRMAN MALKIN: Very good. Thank you.

12 MR. KUSPER: Thank you, Mr. Chairman.

13 We have a submission that we'd like to make of
14 some documents that we have put together that we'd like
15 the Board to be able to review as we go through our
16 presentation in response to what the Village has now put
17 together with regard to its zoning officer's
18 determination.

19 So we'll pass them out to each of the Board
20 Members, and we also have copies for the Village.

21 Mr. Chairman and Board Members, my presentation
22 will pretty much follow through the documents that you
23 have there.

24 So if you follow along with me, I'll explain as

1 I go along how they fit into this appeal.

2 I'm going to say, first and foremost, I
3 understand that this is a unique process. And the
4 appellant comes here with a somewhat heavy heart,
5 because this matter seems to have caused conflict that
6 was never intended and never desired.

7 What the appellant has done is it made an
8 application. It's an application that is separate and
9 distinct from anything else that had happened with
10 regard to what, Mr. Chairman, you identified as an
11 attempt to do something in the MB Zoning District. It's
12 an application that follows strictly provisions of the
13 zoning ordinance to make an application to have a
14 shooting range on the second floor of a property at 3318
15 West Devon.

16 And, Mr. Chairman, the first document in Tab A
17 is in fact our appeal.

18 Our position is really very simple. The zoning
19 officer and Mr. Clarke both said this is a somewhat
20 narrow issue. I think, Mr. Chairman, you said the same
21 thing. And it really is. And it's really a
22 fundamentally, we believe, easy issue.

23 Because notwithstanding what Trustee Heidtke
24 just said in his testimony, I heard him say nothing

1 about any discussion regarding what would or would not
2 happen with regard to shooting galleries when the Zoning
3 Code was changed.

4 And that's the key. Everything that occurred
5 about attempts to put a shooting range in this location
6 prior to 2008 are honestly irrelevant. It was a
7 different code. It treated the firearms shooting ranges
8 differently. Special uses, different procedures,
9 different requirements, different deliberations.

10 There were two requests to put a shooting range
11 in on the second floor, and they're over 10 years ago.
12 I mean, there's no evidence, there's nothing before the
13 Board here to describe what happened in those processes
14 and even what the standards were that were applied.

15 What we have is what Mr. Heidtke testified to,
16 which is in 2008 the code was changed. It was
17 fundamentally changed. There was no testimony that
18 there was an intent to do anything with regard to
19 shooting ranges. Instead, the code was changed to state
20 what it states. And what it states is very clear.

21 It states that permitted use in the B2 District
22 includes the definition that is also in the Zoning Code,
23 which is the definition for health club or private
24 recreation. That is a permitted use as a matter of

1 right in the B2 District. And what does that definition
2 say?

3 It states: A building or portion of a building
4 designed and equipped for the conduct of sports,
5 exercise, leisure-time activities, or other customary or
6 usual recreational activities operated for profit or
7 not-for-profit and which can be open only to members and
8 guests of the organization or open to the public for a
9 fee.

10 By definition, sport or leisure-time activities
11 or recreational activities. In our appeal, in what we
12 submitted to the Village before the determination was
13 made on November 1st to deny the application based on
14 the interpretation of the zoning ordinance, we submitted
15 evidence -- it's overwhelming, it's not really a close
16 call here -- we submitted evidence from the U.S. Olympic
17 Team. On their website they proclaim that shooting --
18 target shooting is a sport. It's not recognized just
19 locally. It's national and it's international.

20 We just had the Olympics not too long ago.
21 What were we watching. I know I was watching when the
22 Event Olympic Team was trying to compete for a gold
23 medal in target shooting. I had my eight-year-old with
24 me. All my kids were with me watching it as a sport.

1 So it's internationally recognized.

2 We also submitted evidence from the NCAA.
3 Colleges recognized it. The official organization of
4 colleges also recognizes target shooting as a sport. We
5 put in evidence before the Village.

6 There are also other organizations that
7 recognize shooting as a sport. The National Shooting
8 Sports Foundation. Another organization that has no
9 intent to try and promote the use of firearms as opposed
10 to other values and other skills, one of which includes
11 target shooting as a sport.

12 There's no evidence that the Village has come
13 forth with to rebut any of this. And the reason is,
14 it's because they can't.

15 This is not a fight between us and the Village,
16 and it's not something where we take any pride or any --
17 We don't take anything from trying to prove that the
18 Village zoning officer made a wrong decision.

19 Where is the response to this? I submit
20 there's none. Instead, what the zoning officer does is
21 talk past it and talk about other things. Despite the
22 fact that, as you'll see in some other documents we'll
23 show you, we had to force the Village to make a decision
24 here.

1 If you look at Exhibit D, it's an e-mail from
2 Aaron Cook dated October 26th to a number of people,
3 including Mr. Clarke, Mr. Hansen and others, and he
4 writes, very candidly, quote, an update on this business
5 license. The situation is the same as the last e-mail.
6 Meaning do not take any action on this application at
7 this time. If you have any questions, please let me
8 know.

9 Why? Why was there a stall here? Why were we
10 being delayed? Why was a Village body not responding to
11 a proper, willful application made pursuant to the
12 Village ordinances?

13 I submit the answer that will become clear is
14 because they knew that we were correct and that our
15 interpretation was right, and they later looked for a
16 reason to explain why to deny this. Because of a fear.

17 You said policy is not part of this,
18 Mr. Chairman. And I agree with you. The decisions were
19 made when the code was passed. But the current -- the
20 people currently on the Village staff determined that
21 they didn't want this for policy reasons. And so they
22 ignored the code, and they came up with reasons that
23 they've just put forward to you. Reasons that were
24 nowhere explained to us when the November determination

1 came out. All we got was, you're denied because we
2 don't believe the Zoning Code supports what you want.
3 No explanation no reason, nothing.

4 The next exhibit we have is Exhibit E. Again,
5 it shows it's from Mr. Clarke to Mr. Wiberg with a copy
6 to Aaron Cook. Again, recognizing communications are
7 being made by us. We just want an answer. Instead the
8 answer is, still say nothing.

9 It's not the conduct of the Village who's
10 confident in what they're doing and knows that they're
11 following the law.

12 So, again, the next exhibit, Exhibit F, is a
13 letter from me to Mr. Elrod demanding an answer, because
14 we're already past the Village's self-imposed 11
15 business day rule. They're not saying anything.
16 They're not telling us when they're going to give us a
17 response. It was a stall.

18 So we gave them an ultimatum. And it wasn't
19 done lightly. It was done because we deserved an
20 answer. And it looked like something was wrong when the
21 Village would not talk with us. So we gave them an
22 ultimatum.

23 That's what led to the determination. And
24 that's attached as Exhibit G. And I think it's

1 interesting that there's again no reasoning. Instead
2 what they just say is, they say that we disagree with
3 you, and we have made a determination in the past, in
4 May of 2011, that we explained to you, saying that a
5 shooting range was not a permitted use.

6 I'd like to call at this time Mr. Krone. Scott
7 Krone is a member of Platform. He was involved in the
8 discussions with the Village from the outset with regard
9 to the other application, that is not at issue here,
10 from the beginning. And I would just like to ask
11 Mr. Krone if you could address the body and tell them,
12 was there ever a discussion with Aaron Cook or --

13 CHAIRMAN MALKIN: Pardon me. C-O-H-E-N, is that
14 your name?

15 MR. KRONE: No. My name is Scott Krone, K-R-O-N-E.
16 My company is Coda. We're the architects for the
17 project.

18 CHAIRMAN MALKIN: Very good. Thank you.

19 MR. KUSPER: Mr. Krone, can you please tell the
20 Board, were you involved in discussions with the Village
21 in the beginning of the process for an application made
22 to potentially have a shooting range at a different
23 location than the MB Zoning District?

24 MR. KRONE: I was. The conversation consisted of

1 myself and Aaron Cook.

2 MR. KUSPER: Did you ever have any conversations
3 where Mr. Cook expressed some kind of a determination
4 that a shooting range would not be a permitted use in
5 the B2 Zoning District?

6 MR. KRONE: We never discussed the B2 Zoning
7 District. The property was located in the MB District.
8 As such, we focused all of our intention on the MB, and
9 what was the most appropriate way to accomplish our goal
10 within the MB District.

11 MR. KUSPER: With regard to the process that
12 ultimately was followed, including text amendments and
13 special uses and things, was that something that you or
14 anybody at Platform came up with?

15 MR. KRONE: No. In fact we recommended a much
16 easier process that didn't require three different
17 steps. We recommended just a simple text amendment, but
18 we were told that what the Village wanted to do was the
19 three steps. And, therefore, we followed the advice of
20 the Village.

21 MR. KUSPER: So the process ultimately followed
22 regarding a potential shooting range in the MB District
23 was recommended by the village?

24 MR. KRONE: Correct.

1 MR. KUSPER: So, I mean, why would there have been
2 some kind of a, quote, unquote, determination made in
3 May about the 3318 West Devon location, which was not
4 even part of the application under consideration then.

5 The application under consideration was for a
6 potential location of a shooting range and retail
7 firearms sales in the MB Zoning District. There would
8 have been no discussion about the Devon Avenue location.
9 It's neither logical nor respectfully true, because it
10 didn't happen.

11 And the process that we followed was a process
12 that ultimately the Village recommended. We went along
13 with it. The Village seemed supportive, and the Village
14 wanted it done a particular way. So we followed it. It
15 wasn't because we agreed with some kind of determination
16 about an interpretation of the Village code.

17 In fact, if there would have been discussions
18 about it, this issue would have come to a head back
19 then. But there was no reason for it. Because,
20 respectfully, it never happened.

21 So you have this determination. And the only
22 mention is about this supposed May determination. And,
23 respectfully, it didn't happen. None of this ever
24 reasonably appeared anywhere. We never heard about any

1 of it until this appeal.

2 Now, our next exhibit is just a notice giving
3 us this hearing date. But then if you turn to Exhibit
4 I, I do want to point this out because I'm going to make
5 a request.

6 There was another letter issued on
7 November 19th concerning the determination of the zoning
8 officer. And it was directed to Platform I-Shore, and
9 it talks about the denial and a zoning certificate. And
10 what we have done is, we have in the next exhibit, filed
11 today, a second appeal.

12 We don't know why there was a second letter
13 issued, but what we didn't want to do, is we didn't want
14 to get ourselves cross wise, having to appeal one
15 determination, and then having a second one come out and
16 the Village saying, well, that's what you should have
17 appealed.

18 So in the next exhibit, Exhibit J, is our
19 appeal we filed today for that second November 19th
20 determination.

21 The issues are the same. It all comes down to
22 the interpretation of the code that's before you and the
23 appeal that you have.

24 We're not doing it to complicate things. We're

1 actually trying to simplify and make sure that we don't
2 get caught in an unintended trap.

3 So we would ask that the decision on that
4 appeal be -- that that appeal be consolidated with this
5 one and you consider them together.

6 So what do we have. We now have the
7 explanation from the Village as to why the decision was
8 made as it was. I thought it was interesting that the
9 memorandum that was submitted to this committee came
10 from Mr. Clarke and not from Mr. Cook. And that's in
11 Exhibit K, because we wanted to have everything,
12 including the opposition, clearly before you.

13 What we have is essentially three contentions
14 that's made by the Village.

15 The first contention -- And I wish I had the
16 PowerPoint up, because it would be a lot easier, but the
17 first contention, essentially, is that the zoning
18 officer determined that a shooting range in the B2
19 District was not a normal and customary use in that
20 district in Lincolnwood.

21 And therein lies the problem. The zoning
22 officer put something into his consideration that really
23 wasn't in the code. He was looking at, well, what was
24 going on in Lincolnwood. That's not what the code says.

1 The Zoning Code does not allow the subjective
2 interpretation of the zoning officer to say we just look
3 at what's in Lincolnwood to decide what could or could
4 not be permitted under the code.

5 So if you take that out, what you have is the
6 definition of what is allowed as a permitted use.
7 Something that is for sports.

8 We submitted evidence that was not
9 contradicted, nor can it be, that a shooting range for
10 target shooting is a sport. And we also submitted
11 evidence that it fits within the other portions of that
12 definition, leisure-time activities, normal recreational
13 activities.

14 Because what do we have, what did the Village
15 not talk about. They really didn't talk about the code.
16 And what they also didn't talk about is that in the
17 business licensing section of the Village's ordinances,
18 it's part of our appeal, there is a definition. It's
19 Tab 8 in the front under Exhibit A of our appeal. It's
20 Business Licenses and Commercial Regulations, Chapter 9.
21 Article 1, Business License Administration and General
22 Requirements.

23 Definitions. You go down, and what do you see.
24 You see Amusement. Any amusement park, arcade, golf

1 driving range, golf course, miniature or otherwise,
2 public skating rink (ice or roller), go-cart tracks,
3 public dance hall, pool or billiards hall, bowling alley
4 or shooting gallery. It's right there.

5 They said it. The Village said, if there's any
6 questions, what do you do, you look elsewhere; in the
7 Village ordinances, in minutes, and everything else.
8 They found nothing. We've got this. And they can't
9 rebut it. Because the Village passed it, and it was
10 standing in place at the time we submitted our
11 application. The Village had to consider shooting
12 galleries, and they considered it amusement.

13 So what would have happened? I mean, you have
14 another place in the code where this is recognized as
15 something for amusement. And we have a definition in
16 one of our tabs.

17 I'm sorry, I lost my place here in terms of the
18 definition. But amusement, recreational activities,
19 leisure-time activities, sports, they're all saying the
20 same thing. They recognize shooting galleries as part
21 of the amusement.

22 It's Tab L. We have a definition from the
23 Merriam-Webster Dictionary of recreation. And what do
24 you see when you go down to definitions.

1 When you talk about synonyms, you see sport,
2 under No. 1.

3 Definition. Someone or something that provides
4 amusement or enjoyment.

5 It's not for training people, per se. Yes,
6 officers may go there, but they're not going there
7 because we are training them. They're going there to do
8 what they want to do. It may help them in their jobs,
9 and we certainly hope it does, but other people who are
10 going are not going because they have to. They're going
11 for a reason. And it's because they enjoy the sport of
12 target shooting. They enjoy the recreational activity,
13 the amusement activity, and that's what a shooting range
14 really is.

15 It's not all about guns. It's not about the
16 stuff that happens in the world that we all find
17 abhorrent. It's not all policy. It's about what the
18 code allows, what the code in 2008 stated. And that's
19 what it's about.

20 Intent, we heard about intent. You always
21 start with intent based upon the words before you. You
22 don't go elsewhere, you don't look at history, you don't
23 look at anything. You don't, respectfully, listen to
24 the testimony from Trustee Heidtke about what was or was

1 not intended. You look to the words as used.

2 And if the words as used fit what we are asking
3 for, respectfully, we must be granted it. No matter
4 what else may have happened in the past under a
5 different code, no matter what the fear may be that has
6 arisen in the Village and has led to this opposition and
7 unfortunate need for this appeal.

8 We heard from Mr. Cook and somewhat from
9 Mr. Clarke, there's this longstanding interpretation
10 that they always believed that there was never going to
11 be a shooting range as permitted use in the B2 District.

12 We submitted their e-mails. And we don't have
13 them all, because in the FOIA response they kept a lot
14 of stuff or they didn't give it to us for various
15 reasons. You'll see in some e-mails they redacted or
16 blacked out sometimes sentences, sometimes large
17 sections. So we only have the pieces they gave us.

18 But if you turn to Exhibit M, you have an
19 e-mail. Ultimately, trustee -- I'm sorry, it's from Tim
20 Wiberg. It's talking about the materials they found
21 about the store under the old code. And what's it
22 talking about?

23 It was only after they withdrew their
24 application that Shore focused on their Devon store and

1 the attention that has now been placed on Devon.

2 Now, once focus shifted to Devon, we should
3 have done that thorough search sooner, i.e. as soon as
4 they submitted their application for a range on their
5 second floor.

6 In regards to the Central Park location -- that
7 was the other petition for a location in the MB Zoning
8 District -- since we all knew a range was present below
9 the bowling alley for years, the perception by staff was
10 the community had a tolerance for ranges and, to be
11 honest, was a bit surprised when the uproar started.

12 Is that a statement from somebody in the
13 Village staff that suggests they always intended and
14 believed that there was no tolerance for shooting ranges
15 in the Village?

16 Ladies and gentlemen, there was one at Gabby
17 Hartnett for years. That's what the reference is here
18 to. There was a shooting range for years that was
19 permitted and operating; and there was no uproar, there
20 was no problem. Somehow, some way the problem only
21 happened with us.

22 They believed that the Village had a tolerance
23 for this. How does that not impact upon what the
24 Village is saying, what the zoning officer says about

1 his supposed interpretation that a shooting range is not
2 an accepted sport or recreational activity in
3 Lincolnwood?

4 Again, the in Lincolnwood shouldn't be there.
5 But even if it is, it was accepted, it was granted, and
6 the Village staff believed it was okay when we were
7 making our application.

8 That is not a statement from somebody who
9 believed that the current Village ordinances somehow did
10 not permit a shooting range as permitted use under the
11 current language of the code.

12 So I'll try and speed this up, because I know
13 I'm taking a long time, but it's such an important
14 issue, that we really wanted to make sure you understood
15 what we have here.

16 Exhibit N, an e-mail from Tim Clarke to Aaron
17 Cook dated Tuesday, October 2nd. It's Exhibit N in our
18 book. That's the day after our application was
19 submitted for permitted use of a shooting range on the
20 second floor at the 3318 Devon location.

21 Aaron, I would appreciate your take on whether
22 you think the proposed Shore renovation work slash new
23 business license would qualify under the health club or
24 recreation facility, private classification of the

1 Zoning Code. There is actually a definition of this
2 term, quote, health club or recreation facility,
3 private, close quote, period. Of course our attorneys
4 need to weigh in as well. My thought is it might hinge
5 on whether firearms dealer license is required to
6 operate a shooting range.

7 He's asking a question. He's not making a
8 statement. That should have been what happened
9 definitively if what the Village is now saying was
10 really their position.

11 They were thinking. They were considering.
12 And, as you'll see, in considering what might happen if
13 they granted our application, it would seem that that's
14 what led to the denial, based upon, respectfully,
15 manufactured reasons. An attempt to justify something
16 after the fact, when they couldn't justify it during the
17 time that we were asking for a decision.

18 They're considering it. They are not saying
19 anything about this is the intent and this is what we
20 know.

21 The next page, Exhibit O. They're asking the
22 police chief for input on this issue of maybe it hinges
23 on whether a firearms dealer license was required.

24 Well, I'll tell you right now, but everybody

1 knows, because Shore Galleries has been operating in
2 this Village for over 50 years. They have every firearm
3 or other license -- federal, state or local -- that is
4 required. And they always have.

5 So now they're asking the police chief, and he
6 doesn't know.

7 The next page, P, Exhibit P, from Tim Clarke to
8 Aaron Cook dated October 16th, 2012.

9 Aaron, would you concur that if it is
10 determined that a shooting range is a permitted use in
11 the B2 under the category of private recreation, but
12 that the specific building proposal before us is
13 rejected for lack of parking at the existing location,
14 would you concur that it would be rather easy for a
15 shooting range to open on the next block west, which is
16 vacant, zoned B2 and has a relatively large off-street
17 parking count?

18 They're now thinking about what would happen if
19 they apply the code as written.

20 Yes, they were concerned. Unfortunately,
21 concern is not a reason that the rule of law should not
22 prevail.

23 The next exhibit, Exhibit Q, Aaron Cook is
24 responding, dated October 16th, 2012 in the afternoon to

1 Tim.

2 Quote, there is an eye doctor now in that
3 building, but your assertion is 100 percent correct.
4 There is plenty of parking there, and presumably some
5 space/room to create a linear use, such as a shooting
6 range.

7 They're going through a thought process of what
8 will happen if they apply the code as written. They're
9 not talking to each other saying this was never
10 intended, this is absolutely wrong. They didn't come
11 back with a decision in a day. Two weeks later they're
12 talking about it, saying what will happen. Fear is not
13 a reason that the rule of law doesn't prevail.

14 The next e-mail, R, Aaron Cook is now getting
15 upset. We have a whole section in this e-mail that's
16 been redacted and blocked out. So we can only guess
17 what it might say. And Mr. Cook is stating to Tim
18 Clarke:

19 Quote, this is exactly what I'm talking about.
20 Now, instead of hearing what I had actually said, paren,
21 the conversation as I recall was around the time of them
22 applying, so April or May, now I'm completely wrong in
23 saying May because of an end of March e-mail. This
24 aligns with my foggy memory of my conversation, but

1 because end of March isn't May, which was my best guess
2 as to when the conversation took place, I'm wrong, close
3 paren. I'm just so frustrated with this.

4 Now he's getting angry. I guess in some ways I
5 can't blame him, because he was under a lot of pressure.
6 He was under a pressure to look at the code as written
7 and make a recommendation, and he was under the pressure
8 of the fears that were being generated inside the
9 Village about what would happen if the code was applied
10 as it was written and the rule of law prevailed.

11 The next exhibit is a part of a submission that
12 came through the Village. It's a resolution that was
13 passed by the Village at a special meeting called on
14 November 8th, I believe.

15 What did they do? I think this is highly
16 relevant here.

17 Seeing our application, seeing us push for an
18 answer, seeing the reasoning that was crystal clear and
19 the evidence that they couldn't rebut, they acted to
20 change the Zoning Code.

21 Why do you change the Zoning Code if what
22 they're saying about its interpretation to us is
23 correct? You would just apply it.

24 You change something because you know it needs

1 to be fixed. So that it says what you want and doesn't
2 allow what happens when the fuel is generated to occur.
3 So they acted immediately.

4 Remedial measures. You only take them when you
5 know that your original position is wrong. So that's
6 what they did.

7 And I was at this meeting. It says I spoke.
8 It says I spoke in favor of the proposal. I didn't
9 speak in favor of the proposal. I was sworn, and I'll
10 tell you what I did. I got up to the microphone and I
11 said, I want to talk about two of the whereas clauses
12 that later on in the resolution you say you're adopting
13 as true and correct fact. And I asked with regard to --
14 It's the fifth one down. It states, quote, whereas, the
15 Village staff has historically and consistently
16 interpreted the term, quote, health club or private
17 recreation, close quote, to exclude firearms shooting
18 ranges.

19 I got up and I said, I would like to see and
20 hear the support for that statement, because I believe
21 it to be not true.

22 Trustee Patel, sitting over there, took up my
23 question and asked for the support. And this is all
24 testimony now, because I was personally present.

1 Mr. Clarke and Mr. Cook were both present. And
2 their response to the support, the evidence, the fact
3 for the historically and consistently interpreted term
4 was one instance. The supposed instance in, they say,
5 May of 2011 when Mr. Cook supposedly made a
6 determination as to what the Zoning Code provided at a
7 time when no discussion was even being had about the
8 Devon location, because everything was about the MB
9 Zoning District. You heard Mr. Krone, it never
10 happened. And of course it only makes sense, why would
11 it happen. They weren't talking about Devon. They were
12 talking about the MB District. One instance.

13 I submit to you that that whereas clause is not
14 supported by fact. And the trustees knew it at the time
15 they voted, but they nonetheless adopted it as fact.
16 It's their prerogative. But I'm not going to sit here
17 and cast aspersions. That's not my intent. My point,
18 however, is actions were being taken to create a record
19 to somehow use against us for having filed an
20 application to be a permitted use in the B2 Zoning
21 District based on undisputed evidence. Evidence that
22 never gets talked about.

23 The zoning officer said he made a determination
24 that we weren't a sport. But where is the evidence? A

1 determination made without evidence is nothing in the
2 face of incontrovertible evidence to the contrary.

3 I can't just makeup my mind that I don't like
4 something because I don't like it even though the
5 evidence says that I should.

6 Exhibit T is the minutes, and it shows that I
7 spoke. I didn't speak in favor of anything, I spoke as
8 I told you. I spoke for the support, and I forced the
9 trustees to confront the truth.

10 Now, we heard a lot about -- from Mr. Cook
11 about firearms shooting ranges somehow are not
12 appropriate in Lincolnwood, that it's not recognized as
13 appropriate in Lincolnwood, and things like that.

14 I submit to you the last several exhibits that
15 we have, they're the findings of the Planning
16 Commission. A body who voted not once but twice, 5 to
17 1, to approve the application for a shooting range to be
18 in the MB District.

19 Now, of course that's a different situation.
20 But the core fact is, they said it was okay. They said
21 it was consistent with Lincolnwood.

22 And then there was a vote. There was a vote in
23 the September 4th meeting of the Board of Trustees. And
24 they voted that the proposal to go forward -- that there

1 should be a vote that the proposal to put the shooting
2 range in the MB District should go forward as an
3 accepted use in Lincolnwood.

4 Now, the thing is, is that that vote took place
5 when Trustee Elster was absent. And a number of the
6 trustees did acknowledge that.

7 The vote pushed it to the next stage, and they
8 realized that there needed to be a discussion about what
9 would be in the ordinance regulations and things of that
10 nature. A special meeting was set up two weeks later.
11 That's when politics took over. That's all I can say.

12 My name is Kusper, and my father was county
13 clerk for many years. And I understand politics. But
14 something changed, and a vote was taken to deny the
15 application.

16 It's in that context that the zoning officer
17 made his determination. All of what he tells you was
18 his support was never divulged until now. It's
19 unsupported. And, honestly, when you look at it, it
20 really begins and ends with the language that's in the
21 code and the evidence that's never been controverted.

22 We fit squarely within the definition of health
23 club and private recreation. The evidence shows it.
24 They can't controvert it's a sport. The finding that it

1 wasn't a sport is not supported, because there's no
2 evidence to support it. There's no discussion of how
3 this evidence of international and national shooting
4 ranges are a sport somehow can be ignored.

5 They say they found nothing. Trustee Heidtke
6 didn't tell you really anything about shooting ranges.
7 He just came up here and said, I was part of the
8 discussions.

9 The language is what it is. You must apply it
10 as written. We submit, again, this is not about policy,
11 but this is regulation.

12 I have nothing further.

13 CHAIRMAN MALKIN: Thank you, Mr. Kusper.

14 MR. KUSPER: Again, I'm happy to answer any
15 questions.

16 MR. COOK: Mr. Chairman, if we may have one moment,
17 please.

18 CHAIRMAN MALKIN: Oh, of course.

19 MR. COOK: Mr. Chairman, we are ready to proceed.

20 CHAIRMAN MALKIN: You may proceed.

21 MR. COOK: Just a couple of items to address
22 Mr. Kusper's items.

23 In regards to the 11-day rule for response,
24 it's not mandated. However, for the building permit

1 application, we did advise the applicant that we
2 anticipated that it would take longer than the 11 days.

3 In making zoning interpretations, my job is not
4 to look and act in a vacuum. It's unfortunately not
5 quite as simple as the attorney suggested. Staff does
6 need to look at all available information, and the
7 information that we provided to you this evening led us
8 to the conclusion that the definition health club and
9 private recreation was not intended to include shooting
10 ranges.

11 Mr. Kusper mentioned that shooting galleries
12 are listed elsewhere in the municipal code. However, by
13 reference in the municipal code, that does not mean that
14 it is therefore included in the Zoning Code. And in
15 fact in the municipal code shooting galleries are listed
16 under amusements, which amusements are not included in
17 the Land Use Table.

18 Staff has not said that shooting ranges are
19 prohibited. Our task was to look along Devon Avenue.
20 The application was on Devon Avenue. We thought it most
21 appropriate to review action along Devon Avenue. And we
22 concluded that based upon the prior action that we have
23 outlined, in unison with the definition, that shooting
24 ranges have not been intended to be allowed on Devon

1 Avenue.

2 MR. PASSMAN: If I may, Mr. Chairman. For the
3 record, Hart Passman. I'm the attorney for the zoning
4 officer. We wanted to address a few more points from a
5 legal perspective raised by Mr. Kusper.

6 Mr. Kusper makes a great big deal out of a
7 perceived stall or delay. He makes reference to the
8 timeline with a series of e-mails and events and is
9 suggesting, I think, I don't want to misquote him, but
10 that the Village was scrambling and the staff was
11 scrambling for a reason to deny Shore's request.

12 And although I would submit that's inaccurate,
13 but what's really relevant here is not the timeline.
14 The staff did not violate any rule or law or ordinance
15 as to when they would respond. This is just simply how
16 we read and interpret the Zoning Code.

17 That interpretation, that reading, is not
18 affected by how much time it takes to understand it. So
19 I would submit that the timeline is not relevant in this
20 case.

21 Insofar as some of the e-mails that you've
22 seen, Mr. Kusper made a great stink about some of the
23 e-mails from Tim Wiberg and Tim Clarke, and he said
24 that, well, it shows that either they thought that there

1 was some tolerance for shooting galleries or Tim Clarke
2 asked a question, he wasn't making a statement.

3 Frankly, their opinions are irrelevant for purposes of
4 this appeal, because Aaron Cook is the zoning officer.

5 I would submit that what these e-mails show is
6 Mr. Cook undertaking his duties as zoning officer to
7 engage in a deliberative and investigative process. He
8 was clearly in communication with other members of the
9 staff to try to understand what he should be looking at,
10 to understand what's relevant, to try to understand,
11 ultimately, what the code means.

12 He considered various documents. He considered
13 history. He considered the code itself. He looked at
14 legislative intent. And he obtained the input of staff
15 members, many of whom have been here for a lot longer
16 than Mr. Cook has been. And based on all those
17 decisions, Mr. Cook made his judgment about the Devon
18 Avenue location.

19 I think Trustee Heidtke confirmed that
20 Mr. Cook's determination was consistent with the Village
21 Board's intent. So I think these e-mails -- I don't
22 think they shed any light into the actual reading and
23 interpretation, which is the job that Mr. Cook had to
24 undertake, and your job now tonight. I think they

1 indicate that he did his job.

2 A couple other points along the same line, but
3 my last point about this whole timeline and this stall
4 idea.

5 Mr. Kusper asserts that the adoption by the
6 Village Board on November 9th of his resolution was
7 inconsistent, was part of an acknowledgment of some
8 kind, or admission that the Village was somehow caught
9 here by Shore and they needed to correct it. Hardly.

10 I think if you look at the language itself of
11 that resolution, the Board stated it wanted to formally
12 codify what the Village Board believed to be a
13 historically consistent interpretation. It happens all
14 the time.

15 Codes are written that they can't possibly
16 anticipate every single possible application. And as
17 everyone goes through the process of trying to apply a
18 law or a code to a situation, they realize that maybe
19 things could be written better, maybe things weren't
20 written as clearly as were intended. That resolution, I
21 submit, was the Village Board's recognition that there
22 wasn't the explicit statement that they intended. And
23 so they wanted to correct that.

24 And the resolution also identifies that there

1 were other reasons, other things they wanted to
2 determine. They wanted to state and establish clearly
3 where firearms shooting ranges might be permitted
4 special use. All of that is in there, in the exhibits
5 that the appellant has submitted. That's their intent.

6 I don't think you can read anything more into
7 that other than their acknowledgment, doing their job as
8 the legislative body for the Village, that the Village's
9 laws could be made clearer for everyone's benefit.

10 Finally, to the idea that Mr. Cook mentioned
11 that really we're debating how much anyone should look
12 at to make an interpretation. The appellant is arguing
13 that you just look at the words of the definition of
14 health club and private recreation, and it says sport.
15 Shooting is a sport, end of discussion.

16 It's not to be looked at in a vacuum, for
17 reasons I just stated. We can't anticipate, no one, I
18 don't think, can anticipate every possible application.
19 And what Mr. Cook did, is to try to figure out what
20 really was meant by that.

21 We don't have time to discuss all the possible
22 uses of the word sport or leisure recreation. But he
23 did his homework. And what he found was, as he stated,
24 that just wasn't the intent. And he looked at the

1 history on Devon Avenue specifically.

2 I imagine he probably identified some of the
3 documents related to the Gabby Hartnett Shooting Range,
4 but that's on Lincoln Avenue. Lincoln Avenue is not the
5 same location. It's a different street. He found
6 evidence at this location, and down the street from this
7 location on the same street, that shows a lack of
8 tolerance for this use in the past. And he based his
9 decision on that.

10 The last thing I want to state is, if we're
11 going to focus on a definition, it's referenced at some
12 point the definition of health club and private
13 recreation, if that's allowed as a special use in the MB
14 District, which is the district in which the Central
15 Park location is provided, it seems to me that the
16 appellant's position is inconsistent.

17 They conceded here tonight that they gave no
18 objection to the process the village staff outlined for
19 that application on Central Park. That application
20 never considered a special use for a health club or
21 private recreation at that Central Park location.

22 And so my question is, why not? Or better put,
23 does that not suggest that the appellant acquiesced to
24 the Village's determination?

1 I suppose Mr. Cook didn't have to go into the
2 details of why, because he wasn't asked. He made his
3 determination. And as Mr. Krone said, they accepted
4 that. In fact what he said is, what they thought would
5 be better was just a text amendment. But they went
6 along with it.

7 Well, that would have been a good opportunity,
8 if they truly believed that this definition covered a
9 shooting range, that would have been opportunity to
10 bring it up.

11 I don't know what would have happened, I don't
12 believe any of us can guess that, but I don't think that
13 it is consistent to have let that slide, conveniently
14 then, and to make this case of it now.

15 The staff's position has been consistent on
16 this matter. And on that basis, I think that the
17 appellant recognized then that the Zoning Code doesn't
18 allow this use -- or I should say the Zoning Code does
19 not allow firearms shooting ranges under the definition
20 of health club or private recreation.

21 And that's all I have.

22 CHAIRMAN MALKIN: Thank you.

23 Do you want to add anything?

24 MR. KUSPER: Thank you, Mr. Chairman. A couple of

1 simple points.

2 The definition of amusement under business
3 licenses, you just heard them say it doesn't matter
4 because it's not part of the Zoning Code. But if you
5 look at the business license application that we
6 submitted on a form provided by the Village, it's
7 Exhibit A(2) in the front of our book, what do you have
8 right in the middle of the box where it says nature of
9 business? We checked amusement.

10 It is pertinent consideration, because when you
11 submit these business license applications, you're
12 basically asking for several actions to be taken. One
13 of which is consideration of zoning issues, one of which
14 is consideration of the nature of the business and
15 whether it's proper in that area.

16 So the Zoning Code does come into play when
17 looking to the other aspects of the code. And this
18 application that's really before you that's not on this
19 application incorporates the definition of amusement
20 that goes from the business license section to the code.

21 I don't even need to talk about the 11-day rule
22 and everything else, but what you do need to hear is
23 that you didn't hear anything about the e-mails.

24 Okay, so Mr. Clarke didn't write some of the

1 e-mails. But he did write one when Mr. Wiberg, I
2 believe, was expressing concern or fear that this
3 interpretation, the correct interpretation that a
4 shooting range was permitted use in the B2 District,
5 that it could allow another -- because of a potential
6 parking issue that they might try and use to deny our
7 application. They figured it didn't matter because all
8 that would happen is we'd go down the street and there
9 was plenty of room. And that they scared them.

10 Aaron Cook wrote the e-mail, your analysis is
11 100 percent correct. He agreed that the correct
12 interpretation, the interpretation that they were
13 talking about and that they were concerned about, what
14 it might do if they agreed. He agreed with that
15 interpretation. And that interpretation was what we are
16 asking for.

17 But fear drove them into that direction. And I
18 don't cast aspersions for that, but that's really what
19 this came down to. Fear drove them to a different
20 conclusion, and that's why they denied this application.

21 The reason that you didn't have any explanation
22 in the denial letter and suddenly we have explanation
23 now, candidly, it's bag filled. If all of this was
24 true, if all of this had been determined, discussed,

1 evaluated, and informed the decision, why wasn't it in
2 the denial letter on November 1st.

3 I wrote our position. I was asked one day, and
4 I sent it the next. I put it out clearly and easily for
5 them to consider. They did nothing. Because,
6 respectfully, they've come up with reasons now. But the
7 reasons don't hold water. Because, ultimately, when you
8 talk about intent, you don't talk about history. It's a
9 new code, 2008. It's a new code. What happened in the
10 past doesn't matter. You apply the words to it. They
11 have no evidence we're not a sport. We have all the
12 evidence that we are. They have no evidence that we're
13 not a leisure time or a recreational activity. We have
14 all the evidence that we are.

15 I understand fear. I understand how fear could
16 drive decisions. But it's not right, because the rule
17 of law says we apply the law as written.

18 If we organize and we find something, like, you
19 know, spending is going up and trustees or board members
20 are going on spending sprees with public money, we
21 organize, we fight, we find out the answers, and we
22 fight against it because it's wrong.

23 It's the same thing here. This decision is
24 wrong. It was not right, and it was not fair.

1 Finally, this whole notion that we acted
2 inconsistent. What would you do? You go to the Village
3 and -- You know, Mr. Krone said, I suggested a much
4 easier approach. That's because we knew that a special
5 use could be the way to go.

6 They wanted to do it differently. They wanted
7 to clarify things and what have you. Fine.

8 So going along isn't inconsistent. It's saying
9 we have a 15-plus year business, it wants to move to a
10 new location and expand to a shooting range that's going
11 to get taxed. They were talking about taxing us and
12 making sure it was done the right way. So we said,
13 okay.

14 That's not inconsistent. That's what you do
15 when you see the path that's going to give you what it
16 is that you want. You don't create fights when you
17 don't have to. There's nothing wrong with that, there's
18 nothing inconsistent. We went along with what they
19 wanted. And it took us a long time. And then suddenly,
20 after saying yes, they said no.

21 So we made our application here. And as much
22 as people say this isn't about policy or anything else,
23 there's something in everybody's stomach saying, this is
24 the right thing to do. But that's what you have to do,

1 you have to apply the law as written. You can't let the
2 fear that motivated the Village staff to come up with
3 these reasons now to try and deny our application. They
4 don't hold water.

5 So we would ask you to reverse this
6 determination and allow this project go forward.

7 It obviously will be the only project now on
8 Devon Avenue, because the Board has acted to change the
9 law. They have now acted -- The current Board's intent
10 really means nothing about interpreting this code.
11 Their intent is to now do something to correct what they
12 saw when we made our application.

13 So there won't be anything else on Devon Avenue
14 like this, because they've now made it clear that nobody
15 can make that application. We, however, have that
16 right. It's not fear that should make your decision
17 here, it's not concern, it's not everything else that's
18 happening outside society. It's about a responsible
19 business that has had an impeccable record in this
20 community trying to do something that ultimately will
21 better this community. There will be more revenue. And
22 so we'd ask that you reverse the determination of the
23 zoning officer. Thank you.

24 CHAIRMAN MALKIN: Why don't you stay there,

1 Mr. Kusper. I'm going to use my -- prerogative as
2 chairman to initiate the questions.

3 THE REPORTER: I'm sorry, Mr. Chairman, but I can
4 barely hear you.

5 CHAIRMAN MALKIN: I'm sorry.

6 I'm going to use my prerogative as chairman to
7 initiate the questions.

8 As you know, our function here tonight is to
9 try to interpret what the Zoning Board and Zoning Code
10 provision means. The essence -- And, by the way, when
11 I'm speaking now, these questions are my questions.
12 Whatever the Board Members ask, that's theirs. And
13 whatever summation we come up with will be our own
14 individual. And we'll take a vote, of course.

15 But the essence to me of this whole matter is
16 whether or not a firearms shooting range comes within
17 the definition of health club or private recreation. I
18 think that could be a good beginning point.

19 Now, there is a definition for that in the code
20 of health and private recreation. And it seems to me
21 that you are hanging your argument on the proposition
22 that a firearms shooting range is either, one, a sport,
23 which is within that definition; or a recreational
24 activity. I think that's correct, isn't it?

1 MR. KUSPER: Yes, sir.

2 CHAIRMAN MALKIN: I think that's the essence of what
3 we're dealing with here.

4 Now, in the course of the testimony that Aaron
5 Cook indicated to us this evening, he mentioned the fact
6 that during all the previous hearings that the Shore
7 Group was involved in, I know that it was a different
8 aspect of it in the Lincolnwood Industrial Park, there
9 was a great deal of testimony going back and forth, I
10 heard a portion of it myself, and I'm not testifying,
11 but Aaron Cook testified that he attended the hearings
12 before the Planning Commission and the hearings before
13 the Village Board, and at no time when the Shore Group
14 was testifying or had witnesses testify on their behalf
15 did they ever use the word sport or recreation facility
16 in conjunction with the firearm shooting range. And the
17 testimony that I heard was that all that was discussed
18 in terms of what the purpose was was for training of
19 policemen and/or citizens who owned firearms who wanted
20 to hone their skills with respect to shooting.

21 Now, the testimony that Mr. Cook gave, is that
22 a correct summation of what occurred during those
23 hearings?

24 MR. KUSPER: I don't think it's a fair summation,

1 Mr. Chairman. I mean, certainly there was testimony
2 about how at the current location Shore Galleries has a
3 really disproportionately large customer base that are
4 police officers. And it was believed that that volume
5 of police officers would continue to be customers of the
6 new location and then believed to also be using the
7 range. It didn't mean that this was somehow going to be
8 a police training assembly.

9 I mean, that's actually directly contrary to
10 what it is that we discussed with the Village. And it's
11 contrary to our business plan.

12 But, see, what you have to remember is, the
13 Village proposed to us, okay, we're okay with this. You
14 read the e-mail. They believed because there had been a
15 shooting range for years at Gabby Hartnett that the
16 village people had a tolerance for this. So they said,
17 this is the way that we want to do it, because they
18 wanted to ultimately have it clarified. So that if
19 somebody else came in, they had a specific process in
20 place and knew what would happen. We went along with
21 it.

22 It didn't hinge on us telling anybody or
23 proposing that we were a sport. It hinged on you saying
24 that we were a firearms dealer, because that's what they

1 were going to make a goal to say. So there didn't have
2 to be a discussion about this.

3 CHAIRMAN MALKIN: All right. Well, let me ask you
4 this question then. Is it your position or the position
5 of your client that if any activity can be characterized
6 as sport or recreation, that it would automatically be
7 permitted under the B2 classification without Village
8 Board approval? I'm talking about any sport or any
9 recreation.

10 MR. KUSPER: That's not the issue before you, and I
11 am not taking that position. I don't need to take that
12 position, I really don't, because the evidence before
13 you supports that we fit within those categories. Even
14 if you use the new definition of what recreation means
15 in Lincolnwood, we fit within that. There were shooting
16 ranges here. We're hearing about Devon Avenue, how
17 somehow that's different. I'm sorry, the code is the
18 law. The code did not say permitted use everywhere
19 except on Devon Avenue where it's something else. The
20 code in 2008 reads what it reads. The prior
21 determinations were under a different code that nobody
22 here has even seen. I haven't seen it. Special use
23 applications and there were other issues that had arisen
24 back then.

1 your argument?

2 MR. KUSPER: Yes. Because that's what permitted use
3 is.

4 CHAIRMAN MALKIN: All right. Fair enough.

5 But let me ask you this. Prize fighting is a
6 sport, and gambling is often regarded as recreation.
7 Now, would it be your position that you could have a
8 prize fighting ring or a gambling casino upstairs on
9 your client's property without Village Board approval?

10 MR. KUSPER: As to gambling, absolutely not.

11 CHAIRMAN MALKIN: That's recreation, isn't it?

12 MR. KUSPER: But there are other laws that come into
13 play about gambling in Illinois that supercede what even
14 the Village would allow. You have to talk about state
15 law, licensing, and everything else that goes along with
16 that.

17 CHAIRMAN MALKIN: But you're not suggesting that if
18 your client came before us and instead of a shooting
19 range, he decided that he wanted to put a gambling
20 casino up there. And say we can get a state license.
21 But it's a recreation, so we've got to permit it. Is
22 that your argument?

23 MR. KUSPER: No, that's not the issue. It's
24 different. And it's different because we have the

1 evidence that we are a sport. I don't know any evidence
2 that says gambling is a sport.

3 CHAIRMAN MALKIN: I said recreation.

4 But how about a prize fighting ring. I mean,
5 could you just go ahead and say, look, give me a permit
6 because that's a sport? Under B2 it said that sport is
7 a qualified activity; therefore, give us a permit and
8 forget the Village Board and what they want.

9 MR. KUSPER: It's not the issue.

10 CHAIRMAN MALKIN: But isn't that a possibility?

11 MR. KUSPER: It's a possibility that somebody might
12 try and do that, yes. But the difference is, we've
13 got -- We can do these hypotheticals all night. I
14 actually enjoy it. But the point, however, is, we're
15 not going there. And we don't have to.

16 I mean, you talk about prize fighting. And, I
17 mean, if you want to go down this path and you want to
18 talk about hypotheticals, I mean, we can start talking
19 about martial arts and we can talk about -- you know, we
20 can talk about these things as sports, yes, we certainly
21 can. Is it something that would be able to go in? I
22 honestly haven't investigated it. But in terms of
23 recognition, they're sports. Some of the these things
24 could also be considered recreational activities, yes.

1 I mean, I can give you the answers. I'm
2 speculating somewhat, but is it possible? Yeah, I guess
3 it would be possible. The law is what prevails.

4 CHAIRMAN MALKIN: So are you saying that if you
5 wanted to put a prize fighting ring in there, that you
6 can get a permit without getting Village approval?

7 MR. KUSPER: I'm not arguing about that,
8 Mr. Chairman, because I haven't investigated that. I
9 have no facts to bring before you on that. I don't want
10 to. Because, you know what, we don't have to worry
11 about the slippery slope interpretation issues. And
12 there's a really good reason. The Village Board has
13 acted. Nobody can file an application now under the old
14 law except for us, because our application was pending
15 or on appeal. Nobody else can do it and say they have
16 some kind of vested right. That's why they did what
17 they did. They're trying to make sure the record is
18 clear that nobody can use the old law as a basis of
19 trying to do what we're doing.

20 So the slippery slope doesn't matter.
21 Honestly, talking about it is somewhat useless. But it
22 doesn't matter. Because at the end of the day, the
23 evidence and the facts we have before you support that
24 we are a sport and a recreational activity.

1 CHAIRMAN MALKIN: All right. Let me just pursue one
2 more line of inquiry.

3 Doesn't the Village Board -- You've been taking
4 the word sport and recreation as they are in the
5 definition. Doesn't the Village Board have the right to
6 exclude from that definition certain activities that
7 they deem to be detrimental to the village?

8 MR. KUSPER: If they take action, sure. Nothing has
9 stopped the Village Board from looking at this and
10 saying, we want to change it. But they didn't. And it
11 was -- It was written as it was written, and we applied
12 under it as it was written.

13 That's now no longer possible for anybody else.
14 So they don't have to worry about Devon Avenue. In
15 fact, for 53 years or so they haven't had to worry about
16 Devon Avenue while Shore Galleries had its retail gun
17 sales there.

18 Never an issue. Impeccable record. Everybody
19 thinks the best of the Shore family. So why is there
20 somebody that's concerned --

21 CHAIRMAN MALKIN: Hasn't the Village Board clearly
22 shown its legislative intent when there have been
23 implicit things that I've heard in the testimony, when
24 first they rejected Shore's request in 1989 for a

1 firearms shooting range at the current location? And
2 then subsequently, when they enacted the new code, the
3 2008 code, as was testified by Trustee Heidtke, they
4 never changed their position.

5 MR. KUSPER: They never discussed it is what he
6 said. He said they never discussed it. And all he did
7 was speak about what his beliefs were and his intent.
8 He can't speak for the rest of the Board. He testified
9 they never talked about it.

10 CHAIRMAN MALKIN: But don't you presume that -- I
11 mean, under the law there's a legal presumption that the
12 legislature knows what it did in the past.

13 MR. KUSPER: It knows what laws it enacted in the
14 past.

15 CHAIRMAN MALKIN: Now, the previous action was to
16 deny the firearms shooting range application when it was
17 applied for in 1989.

18 MR. KUSPER: Under a different code as a special use
19 with different facts in evidence that is not before you.
20 We're now speculating what the intent was and trying to
21 end graft it onto something that happened 15 years
22 later. Can't do it.

23 CHAIRMAN MALKIN: When you try to interpret what a
24 statute means, you try to go back to the intent of the

1 legislature, if you possibly can.

2 Now, unfortunately, we don't have the original
3 documents or whatever when the 2008 Zoning Code was
4 adopted. But, and I'll go on to this next point here,
5 isn't it a fact that on November 19th of this year, that
6 the Village Board unanimously adopted a resolution,
7 which you had as an exhibit here, in which they
8 specifically stated its desire that the Zoning Code be
9 amended to, and I'm quoting now, formally codify, not to
10 originate, to begin with, but to formally codify the
11 Village's determination that health club or private
12 recreation exclude firearms shooting ranges? Haven't
13 they expressed their intent right there, or their
14 understanding of what the law has always been?

15 MR. KUSPER: They didn't write the code.

16 CHAIRMAN MALKIN: Pardon?

17 MR. KUSPER: They didn't write the code. They can't
18 express intent of the drafters of the code by anything
19 that they do.

20 And, quite frankly, as you will remember, they
21 passed the resolution unanimously, yes, but we included
22 it because it was submitted to you already by the
23 Village staff. The resolution was based on a key
24 finding of fact that there was a consistent and

1 longstanding interpretation of Village code that the
2 definition of health club and private recreation did not
3 include firearms shooting ranges.

4 And I was there, I testified before you, and
5 the only thing when Trustee Patel said he wanted the
6 answer, the only evidence of this longstanding and
7 consistent interpretation that the Village Board would
8 say we were relying on was this supposed one instance in
9 May of 2011 when somehow, for some reason, the Village
10 zoning officer says he made a determination to the Shore
11 people about what could be done at Devon.

12 What? We weren't even talking about Devon. We
13 were talking about an MB District.

14 So to answer your question, if they were acting
15 as to what they understood the code to be, they were
16 doing it based on an untrue statement of fact that was
17 material to that interpretation.

18 Longstanding and consistent is not one
19 informal. No documents, by the way. There's not a
20 piece of paper that says, we made this determination.
21 It just happened somehow to talk about Devon when we
22 were applying for the MB District.

23 Therefore, what they were doing does not give
24 any insight into the interpretation of the code except

1 to note that they realized we were right and that we
2 should win, that we should get our application granted.
3 And they wanted to make sure that nobody else could do
4 it.

5 And by taking that action and having meetings
6 subsequent to that, they made sure that nobody could
7 file an application now and claim a vested right in the
8 code as it was written except for us.

9 CHAIRMAN MALKIN: Well, but the problem, as I see it
10 from your standpoint, is that you do have two
11 expressions of legislative intent.

12 Now, do you have any, any indication of a
13 contrary intent, where they were going -- you know, the
14 Village Board, whether the current board or the previous
15 board in 2008 or any board before that had ever wanted
16 to include firearms shooting ranges within the category
17 of sports and recreation activity? Do you have anything
18 to show that type of intent?

19 MR. KUSPER: The language of the code as written.

20 Mr. Chairman, you're talking about expressions
21 of legislative intent that are not relevant to a
22 determination of what was allowed under the code as
23 written in 2008. What the trustees did last month or
24 two months ago or yesterday is irrelevant. And,

1 respectfully, you know it as a fellow attorney.

2 Intent begins with the language of the code as
3 written. And if that language answers the question, you
4 go no further. That's it. That's the law. I mean, I'm
5 not boasting that I know it, I just know it. That's the
6 law. And you go nowhere else. You don't try and look
7 at what happened in the past unless there's evidence
8 that that was part of the consideration. And they have
9 none, because it wasn't. So you start then with the
10 code as written. And the evidence specifically shows
11 that we fit within that definition.

12 It also shows that it was tolerated in
13 Lincolnwood. We submitted to you the evidence that the
14 Village staff thought so, because of Gabby Hartnett
15 having been doing it for years without complaint or
16 without an uproar.

17 We were not doing something that was so unheard
18 of. We were actually doing what the code said we could
19 do.

20 And that's where you stop. You don't look at
21 the Village Board now, you don't look at what happened
22 under a different code with special uses in the past,
23 you look at how it was written. And how it was written
24 gives us the right, respectfully.

1 Given the evidence that we've submitted that
2 cannot be contradicted, that we are a sport and
3 recreational activity, we have that right. And there's
4 no need to be concerned about what else is going to
5 happen on Devon Avenue, because the Village Board has
6 made sure that nobody else can do it.

7 CHAIRMAN MALKIN: Well, the final point I'm going to
8 make in my questioning is this:

9 As you know, the Zoning Board is not a
10 legislative body. We can't enact laws and we can't
11 amend laws. Our role here is to try our best to
12 interpret what the Village Board intended when they
13 passed that portion of the Zoning Code, the B2
14 classification.

15 MS. O'BRIEN: No, I'm going to disagree with you.
16 Our job as the Zoning Board is to interpret the zoning
17 law. Not the intent of the Village Board, but the
18 zoning law.

19 CHAIRMAN MALKIN: Well, I understand, but one of the
20 tools that you use is to try to figure out what the
21 intent of the Village Board was when they enacted it. I
22 mean, you can't act in a vacuum.

23 In other words, we can't make our own
24 interpretation of what's sport and what's recreation.

1 We have to look at what the legislature intended.
2 Because, otherwise, we're creating laws. That's the
3 only point I was making.

4 But, again, just to complete my point, I think
5 you agreed earlier that the Village Board does have the
6 power, if they wanted, to specifically exclude certain
7 activities from the category sports or recreation.

8 So the question in my mind is, haven't they
9 really done that by means of their legislative
10 expressions that I've referred to?

11 MR. KUSPER: No.

12 What happens now is meaningless. What happens
13 after the Zoning Code was passed is irrelevant. It's
14 immaterial. It has nothing to do with anything.

15 Once the code was passed, that is it. We have
16 the code. If you want to talk about intent, you look at
17 what went into the passage to the code, maybe, if you
18 need to. But we don't have that, okay. So you can't
19 look to what the Village Board does now in reaction to
20 realizing that we are a permanent use and they don't
21 want anybody else to do it.

22 If anything, that says we're right. And they
23 knew it. So they wanted to change the law to make sure
24 Devon Avenue couldn't have all these other places.

1 You saw the e-mails. They weren't talking
2 about of course this is not going to be allowed, this is
3 not permitted use, this is denied. They were debating
4 what can happen on Devon Avenue if they agreed with us,
5 because they knew we were right. The fear took over,
6 and led to what happened here.

7 What happened 15, 20 years ago on special use
8 applications at the 3318 West Devon location are
9 irrelevant. Different code, different requirements,
10 different evidence.

11 Mr. Heidtke did not say that any of that was
12 considered or talked about. What he said was, they
13 didn't talk about shooting ranges. But at the time when
14 they were passing it, they didn't know that Gabby
15 Hartnett had a shooting range for years.

16 Shooting ranges are amusement under the
17 definition of amusement under the business licensing
18 portion of the code. On the application we marked what
19 the nature of the business was. We said amusement. It
20 all fits together.

21 I know it's a tough decision to make, because
22 there's a fear and there's a desire for this not to
23 happen. But the law prevails. And you all told me you
24 were going to decide that issue. But the law has to

1 prevail. No matter what personal issues there are, no
2 matter what feelings there are, intent begins and ends
3 with the words of the statute.

4 And, Mr. Chairman, I think you'll agree with
5 me, the intent -- the decision of what the intent is
6 begins and ends with the words of the statute. And if
7 the statute answers a question, you go no further. You
8 don't have to think about 20 years ago or 15 years ago
9 under a different code. You don't think about what the
10 Village Board did last month or this month to now make
11 sure that the code doesn't allow other people to do what
12 we did. Their action does nothing but prove that we
13 were right.

14 I have nothing else. I'm happy to answer any
15 other questions.

16 MR. PASSMAN: Mr. Chairman, if I may just respond to
17 one small part of that on behalf of the zoning officer.

18 On the question of how to evaluate Gabby
19 Hartnett's shooting range that previously existed. I
20 would note for the record Gabby Hartnett was located on
21 Lincoln Avenue. Lincoln Avenue -- Mr. Kusper said,
22 well, don't make a big deal about different streets.
23 Under the Zoning Code, we do make a big deal about
24 different streets.

1 Lincoln Avenue is zoned in the B1 District.
2 This section of Devon, and I think all commercial areas
3 of Devon, with the exception of right at the
4 intersection of Lincoln, is the B2 District. Indeed the
5 health club and private recreation definition in the use
6 table identifies health club and private recreation as a
7 permitted use on Devon and a special use on Lincoln. It
8 would seem to me incongruous to have had a shooting
9 range in an area where it had a heightened -- a
10 heightened standard for approval, but to allow it as
11 permitted on Devon.

12 I just wanted to offer that for the record.

13 MR. KUSPER: Then the code could have been written
14 differently, and it wasn't.

15 Look, this is not about us saying what decision
16 can or should we reach to effectuate what we think might
17 have been the intent back at the time the Zoning Code
18 was passed or what's convenient for us today because of
19 what we feel or the pressures from Village staff or
20 whatever. It's about the law. It's about a very simple
21 analysis that's set forth in our appeal, in our letters.
22 It's incontrovertible evidence. There's no distinction
23 between Lincoln and Devon.

24 CHAIRMAN MALKIN: Mary, you wanted to ask a

1 question?

2 MS. COUZIN: I do.

3 You've cited the Olympics several times.

4 MR. KUSPER: Yes, ma'am.

5 MS. COUZIN: But, actually, shooting is very
6 controversial at the Olympics, and it's been contested
7 since 1896, except for 1904 and 1928. So it's a very
8 controversial thing. And you're citing it as though
9 it's really a sport because they say it's a sport. And
10 I have a problem with that definition.

11 MR. KUSPER: Well, we submitted the evidence from
12 the U.S. Olympic website acknowledging it as a sport.
13 Not just nationally, but internationally.

14 I accept what you're saying. Yes, guns can be
15 controversial, shooting can be controversial. We
16 honestly understand that. I mean, it's unfortunate, but
17 we live in a world where things happen, and they have an
18 impact on us. On me, on all of us, but they have
19 nothing to do with this decision. And we started out by
20 saying this is not about policy, this is not about
21 feelings. The feelings -- And I submit it's feelings
22 that are being used as the basis for the objections.
23 But the objections haven't overruled the conclusion
24 that's really relevant here, which is that target

1 shooting is a sport.

2 And regardless of just the U.S. Olympics, we
3 cited other evidence. It goes all the way down. It
4 goes to the NCAA, to the college level, target shooting
5 is a sport. It goes to other organizations even lower
6 on the chain across the country. This really is not a
7 disputable point.

8 I understand some people may not like it. And
9 I accept and respect their opinions. But it doesn't
10 change the conclusion, respectfully.

11 CHAIRMAN MALKIN: Any more questions?

12 All right. So the next step would be, is there
13 anybody in the public that wants to comment? And,
14 again, please limit it to the issues that we're dealing
15 with here. We're not talking about a general attitude
16 towards firearms or whatever.

17 MR. LEVY: My name is Charles Levy. I live at 4220
18 Pratt in Lincolnwood.

19 Number one, I'm not a lawyer. I have no
20 interest in anybody here, in any of the appellants or
21 any of the zoning board people or anything like that.
22 Let me just tell you the sense of what the people are
23 saying, people who are, like me, just plain citizens.

24 A lot of them, they think that when you talk

1 about a shooting range, they think you're talking about
2 an outdoor shooting range. This is not the case.
3 That's point number one.

4 Number two, the times of use. When do people
5 go shooting. Well, the average person who is not a
6 police officer engaged in his duties, the average person
7 can only go when they come home from work and eat
8 dinner. So you talk about after 6:00 o'clock and
9 Saturday and Sunday. Therefore, there is no problem
10 with inconveniencing neighbors or anybody like that.

11 Next. The question has been raised about this
12 being an Olympic sport. The reason it's an Olympic
13 sport is because all of these countries that form the
14 Olympics say that it is a sport. So it's not just a
15 body that is controlled by somebody like Avery Brundage
16 in the past or anything like that. It's all of these
17 nations. And all of these nations agree that it is a
18 sport.

19 Next. I fear that eventually Lincolnwood is
20 going to be dragged into the court system. And, for the
21 record, the courts have not been very kind to people or
22 organizations or states or cities or municipalities that
23 try and put impediments in front of the right of people
24 to shoot. And that's all there is to it.

1 Next. Usual and customary is a term that has
2 been loosely bandied about. And I say loosely because
3 of the following. It's an evolving concept, usual and
4 customary is an evolving concept. 20 years ago
5 Starbucks was unheard of outside of Seattle.

6 Rollerblading 30 years ago, unheard of. So usual and
7 customary is something that you must decide upon in a
8 different light.

9 And, lastly, I'm a taxpayer. I'm just a
10 taxpayer. And I think that this will bring in revenue,
11 and I think that it's going to lighten my burden as a
12 taxpayer.

13 I thank you very much for this opportunity.

14 CHAIRMAN MALKIN: Thank you.

15 Anybody else want to make a statement?

16 MS. ABLESON: I'm Judy Ableson, 6537 Keating. If
17 you can just explain to me why Devon would be less safe
18 than Lincoln Avenue? To me, it doesn't make sense.
19 Lincoln Avenue is closer to the school. If we're
20 speaking about that, if you could tell me why Devon
21 should be a bad place for this. Who do I ask?

22 MR. COOK: With all due respect, I haven't heard any
23 discussion over safe or unsafe this evening.

24 MS. ABLESON: I thought you said as the zoning

1 officer that you felt a shooting range was not
2 appropriate on Devon, and Lincoln Avenue was different.

3 MR. COOK: Mr. Chairman, would you like me to
4 respond?

5 CHAIRMAN MALKIN: Yes, if you'd like to.

6 MR. COOK: The issue of safety is not before you
7 this evening and is not fundamental in the
8 interpretation. However, to get to, I believe, the root
9 or underlying question of how and why are streets
10 treated differently, Devon Avenue is in the B2 District.
11 Lincoln Avenue is in a separate zoning district, the B1
12 District. While they are both retail districts, they do
13 have different uses that are allowed in the B1 that may
14 not be allowed in the B2 and vice versa.

15 So there is, from a zoning perspective, a
16 difference between Devon and Lincoln Avenue, as they are
17 in different zoning districts.

18 Similarly there is different residential zoning
19 districts. They all have a residential character, but
20 they each have different rules and regulations.

21 So, again, from a zoning perspective, there is
22 a difference between Devon and Lincoln Avenue.

23 CHAIRMAN MALKIN: Anybody else?

24 MS. NOONAN: Good evening. My name is Mary Noonan.

1 I'm at 6601 North Leroy Avenue. And I had no intention
2 to speak tonight, but I really am having a hard time
3 holding my tongue.

4 I respect that Shore Gallery is a profitable
5 and lucrative business in our community and I hear
6 nothing but good things about their business practices.
7 The only thing I can bring up is the word amusement
8 being used for a shooting gallery. I have been at the
9 other hearings about the Shore Gallery, and at one point
10 Shore Gallery was saying how great it is that our
11 policemen can go there and practice. And I know that
12 the policemen in Lincolnwood are not going there for
13 amusement. And I know that the targets that they shoot
14 at are not necessarily the targets with the bulls-eye.
15 From what I watch, and I know it's TV, they are people.
16 They are trained to shoot people. And they are there to
17 practice shooting people to protect us. That's not
18 amusement.

19 I feel strongly about this, and I praise our
20 Village Board for making the vote that they did against
21 this, because I do believe what Mr. Theisen said, that
22 they have a right to protect us. And I think they were
23 doing that, and they would not promote an amusement of
24 this kind. Thank you.

1 CHAIRMAN MALKIN: Thank you.

2 MR. KUSPER: Can I respond to one thing?

3 CHAIRMAN MALKIN: Sure.

4 MR. KUSPER: There was a distinction made by the
5 zoning officer about the difference between Lincoln and
6 Devon because they're in a different district. I submit
7 to you that if you look at the Zoning Code, Section
8 4.01, Establishment of Districts, B1, Lincoln Avenue,
9 traditional business district. This district is
10 intended to create neighborhood commercial districts
11 which include retail, service, and office uses, and lot
12 configurations that characteristic of the Lincoln Avenue
13 quarter plan. The development standards of a variety of
14 permitted and special uses are designed by the safe,
15 convenient, and attractive environment. This district
16 generally corresponds to areas planned primarily for
17 commercial uses in the Lincoln Avenue quarter plan and
18 is intended --

19 THE REPORTER: Counsel, I'm sorry. Can you please
20 speak into the microphone.

21 MR. KUSPER: I'm sorry. That's my bad.

22 This district generally corresponds to areas
23 planned primarily for commercial uses in the Lincoln
24 Avenue quarter plan and is intended to promote

1 pedestrian travel and access to shopping and services.

2 B2, General Business District. The B2 District
3 is established to provide appearance for a wide variety
4 of retail services and commercial uses and allows for
5 the highest intensity of such uses, unlike the B1
6 traditional business district where pedestrian travel to
7 and from the commercial activity is encouraged.

8 Yeah, they're different. B2 is supposed to be
9 a higher intensity use. It's not intended to promote
10 pedestrian travel to and from a place that has a
11 shooting range in it. People will arrive by car. Much
12 safer, much different. The distinction as to why the
13 fire range was permitted on Lincoln Avenue for Gabby
14 Hartnett versus what we'd have here on Devon would
15 permit use that's clearly meant by the code. There's no
16 distinction at all. I mean, if anywhere, it should be
17 in the B2 District, where people are driving and not
18 walking by the shooting range as opposed to where it's
19 supposed to be more neighborhood like and having people
20 walking to and from where they're going.

21 So I submit that distinction is not a
22 distinction that explains a difference between Lincoln
23 and Devon.

24 MR. SHORE: I'm the owner of Shore Galleries. I

1 just wanted to make a couple of quick comments.

2 Number one, as far as an Olympic shooting
3 sport, there's a young lady named Kim Rhode, she's the
4 first U.S. Olympian to have ever won a medal in five
5 separate Olympics as a trap shooter. That's point
6 number one.

7 Number two, with regards to amusement as far as
8 shooting, you may or may not know I'm also a police
9 officer. I'm a state certified firearms instructor.
10 Law enforcement training and shooting as a sport or
11 amusement are two separate things. The targets we use
12 in our law enforcement training are entirely different
13 than what police officers might come and shoot on their
14 own or a civilian might shoot. There's bowling pin
15 shoots, there's turkey shoots, there's all different
16 kinds of things we do with different targets.

17 So to sit there and say that shooting is not,
18 again, using the word amusement or a sport because we
19 shoot different things as a police officer, I think
20 that's very misleading and very wrong.

21 UNIDENTIFIED MEMBER OF PUBLIC: May I approach?

22 I left and I was watching on television and I
23 decided to come back. I live at 6639 Spokane. I'm a
24 member of the planning commission. I am not speaking on

1 behalf of my commission, I am speaking on behalf of
2 myself individually.

3 One thing I heard was that whether or not
4 shooting was a sport in the Olympic context was a matter
5 in dispute because it's been controversial since 1896,
6 which means it's only been accepted for 116 years.

7 The next thing is I heard counsel say that the
8 use on Lincoln Avenue was in a B1 District and requires
9 a special use permit. I would like, if I may be
10 permitted, to pose a question to the zoning
11 administrator. And that question I already know the
12 answer to.

13 Does the zoning administrator have any records
14 of Gabby Hartnett's making a special permit application
15 to put in a shooting range?

16 MR. COOK: No, no such record exists.

17 UNIDENTIFIED MEMBER OF PUBLIC: Now, I moved into
18 this village on March 29th, 1957. And this is my
19 recollection, and it's only my recollection. At that
20 time Gabby Hartnett was a bowling alley only with no
21 sporting goods component and no shooting gallery. I
22 believe that that gallery was built -- or, excuse me,
23 that section of the building was built after March 29th,
24 1957, when we had a zoning code in place.

1 then. And I suppose at this point we can begin our
2 deliberations.

3 MR. FRIEDMAN: Officially, the hearing is continued.

4 CHAIRMAN MALKIN: I've been corrected.

5 The hearing continues, but we're at the
6 deliberation stage. So I'll begin, if I may. Again,
7 everybody is going to be expressing their own opinion.
8 I'm going to make a statement which explains my
9 rationale, which the other members may or may not agree
10 with. And the other members may or may not want to give
11 their own explanation. That's up to you. Or you can
12 just take a vote, and that would be perfectly
13 satisfactory.

14 Here is my rationale. The Shore Group seeks to
15 overrule the zoning officer on the ground that the
16 proposed firearms shooting range is a, quote, private
17 recreational facility, end quote, within the meaning of
18 Classification B2 of the Zoning Code.

19 In this regard, they argue that the activity,
20 that is, the shooting range, comes within the definition
21 set forth in the Zoning Code in that it is both a sport
22 and a customary or usual recreational activity.

23 However, it has been testified that at no time
24 during their testimony before the Planning Commission

1 and the Village Board in connection with their request
2 for approval of a firearms shooting range in the
3 Lincolnwood Industrial Park did they ever describe the
4 proposed activity as either a sport or for recreation.

5 They consistently described the purpose of the
6 proposed facility as for training police officers and
7 members of the public who wanted to hone their shooting
8 skills. So their argument now, trying to characterize
9 this activity as a sport or recreation, is an
10 afterthought after having been turned down in their
11 previous effort.

12 Even if the activity can be characterized as a
13 sport or recreation, this does not mean that the Village
14 Board cannot exclude that activity from those
15 classifications, and I think Mr. Kusper agreed with me
16 on that.

17 In fact, the Village Board did just that when
18 it turned down the Shore request in 1989 and did not
19 change its determination when it enacted the current
20 Zoning Code in 2008.

21 Again, as recently as November 19th of this
22 year, the Village Board specifically directed the
23 Planning Commission to consider an amendment to the
24 Zoning Code which would specifically exclude firearms

1 shooting ranges from the B2 classification of health
2 club or private recreation activities.

3 As I said before, the ZBA, the Zoning Board, is
4 not a legislative body which can enact or amend
5 ordinances, and we are bound by the legislative
6 interpretation given to the Zoning Code by the Village
7 board. And we must respect that interpretation.

8 Accordingly, it is my intention to vote to
9 affirm the determination of the zoning officer in this
10 matter.

11 Does anybody else want to comment?

12 MS. O'BRIEN: I guess I'll go next.

13 I disagree with you.

14 CHAIRMAN MALKIN: Okay. Fine.

15 MS. O'BRIEN: I disagree with you for a number of
16 reasons.

17 First, when you look at the definition of
18 health club and private recreation, I think it's an
19 allowable use. I don't think there's enough there to
20 say that it's excluded. It is, unfortunately, a sport
21 and leisure-time activity. Is it one that I would ever
22 participate in? Absolutely not. But it doesn't change
23 the fact that there are individuals that do.

24 In regards to intent in history, I think you're

1 cherry picking as to whether or not you're going to take
2 the examples where we said no or if you're going to take
3 the examples where we said yes. So you can't cherry
4 pick. I think they cancel each other out. So I don't
5 see how we can go back to intent or history.

6 We have had a shooting range in the Village.
7 We can't say we haven't. We've had motions that were
8 not passed by the Board of Trustees, but some boards did
9 say yes. So I think that legislative ruling is not a
10 strong leg to stand on.

11 When we go to -- If I go down to a shooting
12 range as not being listed on the Land Use Table, again,
13 there's a lot of things that aren't listed on there. So
14 I can't use that as a reason to exclude.

15 Not similar or compatible. Again, we've had a
16 shooting range. So it's been allowed in a different
17 district. I personally, very personally, do not believe
18 it should be permitted in that location. But that's not
19 what I'm being asked. What I'm being asked is, does our
20 current zoning law, with the way it's written, does it
21 allow the use. And I think the answer is yes.

22 I also don't think there is a reason to say
23 that we can disregard it for life safety or welfare and
24 that that section is a prevailing statement. Because I

1 don't think you can prove that by having it there,
2 someone is going to get hurt. I don't see how you can
3 prove that by allowing them there, you're automatically
4 going to do harm to the village.

5 CHAIRMAN MALKIN: Okay. Any other comment?

6 MR. NICKELL: My only comment is, I concur with a
7 lot of your statements. I simply look at the intent.
8 And I look at the intent of the zoning officer, and I
9 look at the intent of when the code was written in 2008.
10 And we have testimony to that effect. But I don't
11 suspect that they could have covered the entire universe
12 of uses in that Zoning Code in 2008.

13 We keep going back to Gabby Hartnett. Yeah, we
14 can't go back to past decisions by this Board which
15 required special use.

16 But with that said, I would concur to uphold
17 what the determination is by the zoning officer.

18 CHAIRMAN MALKIN: Herb, do you want to make any
19 comments?

20 MR. THEISEN: I agree with your statement and
21 Chris's statement. And unless Mary has something to
22 add, I would make a motion to deny the appeal and to
23 confirm the zoning officer's determination.

24 CHAIRMAN MALKIN: Mary, do you make any comments?

1 MS. COUZIN: I'll second that.

2 MR. FRIEDMAN: On the motion, the zoning ordinance
3 requires a written decision. So I would suggest that
4 rather than approving tonight, the appropriate motion is
5 to direct counsel to prepare an order affirming the
6 zoning administrator's decision, and then you would
7 approve. If that's the motion that is approved, then
8 the order would be prepared, and you would review it and
9 approve it at your next meeting.

10 MR. THEISEN: All right. I amend my motion
11 accordingly.

12 MS. COUZIN: I second that.

13 CHAIRMAN MALKIN: All right. Then we have a motion
14 for and seconded.

15 MR. NICKELL: Aye.

16 MS. O'BRIEN: Nay.

17 CHAIRMAN MALKIN: I vote Aye.

18 MS. COUZIN: Aye.

19 MR. THEISEN: Aye.

20 CHAIRMAN MALKIN: The motion carries by a vote of 4
21 to 1.

22 Okay. Thank you everybody for all your time
23 and effort.

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1 STATE OF ILLINOIS)
) ss:
 2 COUNTY OF C O O K)

3

4 MARINA MOGILEVSKY, being first duly
 5 sworn, deposes and says that she is a Certified
 6 Shorthand Reporter in Cook County, Illinois, and
 7 reporting proceedings in the Courts in said County;

8 That she reported in shorthand and
 9 thereafter transcribed the foregoing proceedings;

10 That the within and foregoing transcript
 11 is true, accurate and complete and contains all
 12 proceedings had upon the within cause.

13

14

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15

16

17

18

19

20 SUBSCRIBED AND SWORN to
 before me this _____ day
 21 of _____, A.D., _____.

22

23

 24 Notary Public

A			
Aaron 1:12 10:23 14:24 22:2 23:6 24:12 25:1 34:16,21 36:8,9,23 37:14 46:4 52:10 57:4,11	administrative 7:22 administrator 84:11 84:13 administrator's 91:6 admission 47:8 adopt 15:16 adopted 21:21 40:15 66:4,6 adopting 39:12 adoption 47:5 advice 25:19 advise 44:1 advised 9:1,24 advisers 8:5 affirm 4:13 88:9 affirming 91:5 afternoon 36:24 afterthought 87:10 agenda 2:1 ago 9:8 18:11 19:20 60:1 68:24 72:7 73:8 73:8 78:4,6 agree 22:18 73:4 77:17 86:9 90:20 agreeable 7:24 10:7 agreed 26:15 52:11,14 52:14 71:5 72:4 87:15 agrees 4:10 ahead 10:10,21 62:5 aligns 37:24 alleged 60:5 alley 30:3 33:9 84:20 85:5 allow 7:7 12:8 15:20 29:1 39:2 50:18,19 52:5 55:6 61:14 73:11 74:10 89:21 allowable 88:19 allowed 7:5 29:6 44:24 49:13 68:22 72:2 79:13,14 89:16 allowing 90:3 allows 31:18 82:4 amend 70:11 88:4 91:10	amended 66:9 amendment 25:17 50:5 87:23 amendments 25:12 amusement 29:24,24 30:12,15,18,21 31:4 31:13 51:2,9,19 72:16,17,19 80:7,13 80:18,23 83:7,11,18 amusements 44:16,16 analysis 9:19 52:10 74:21 analyzed 6:12 and/or 57:19 angry 38:4 answer 15:9 22:13 23:7,8,13,20 38:18 43:14 60:11 67:6,14 73:14 84:12 89:21 answers 53:21 63:1 69:3 73:7 anticipate 47:16 48:17 48:18 anticipated 12:14 44:2 anybody 2:21 9:2,18 10:19 25:14 58:22 64:13 71:21 76:13,20 77:10 78:15 79:23 85:22 88:11 appeal 2:3,5 3:16,20 3:22,24 4:1,6,9,12,18 5:5,7,11 6:24 9:4 12:12 17:1,17 19:11 27:1,11,14,19,23 28:4,4 29:18,19 32:7 46:4 63:15 74:21 90:22 appealed 27:17 appeals 1:1,8,11 3:15 4:5,7,18 5:3 15:6 appear 8:3 appearance 82:3 appeared 26:24 appellant 1:14 4:10 9:13 16:6 17:4,7 48:5,12 49:23 50:17	appellants 76:20 appellant's 49:16 applicant 44:1 application 13:15 14:3 17:8,8,12,13 19:13 21:1,17 22:6,11 24:9 24:21 26:4,5 30:11 32:24 33:4 34:7,18 35:13 38:17 40:20 41:17 42:15 44:1,20 47:16 48:18 49:19,19 51:5,18,19 52:7,20 54:21 55:3,12,15 63:13,14 65:16 68:2 68:7 72:18 84:14 applications 13:21 21:5 51:11 59:23 72:8 applied 18:14 38:9 64:11 65:17 apply 36:19 37:8 38:23 43:9 47:17 53:10,17 55:1 applying 37:22 67:22 appreciate 34:21 approach 54:4 83:21 appropriate 25:9 41:12,13 44:21 79:2 91:4 approval 13:22 59:8 61:9 63:6 74:10 87:2 approve 41:17 91:7,9 approved 91:7 approving 91:4 April 37:22 arcade 29:24 architects 24:16 area 12:22 51:15 74:9 areas 74:2 81:16,22 argue 85:10 86:19 arguing 48:12 60:17 60:20 63:7 argument 56:21 61:1 61:22 87:8 arisen 32:6 59:23 arrive 9:19 10:4,5

82:11	A(2) 51:7	block 36:15	34:23 51:2,5,9,11,14
arrived 11:6	A.D 93:21	blocked 37:16	51:20 54:9 55:19
Article 29:21		board 1:1,8,11 2:2,4	58:11 72:17,19 80:5
arts 62:19	B	2:13 3:15 4:5,16 5:2	80:6 81:9 82:2,6
ascertain 6:8	B 21:3	6:17 7:4,14,17,22	B1 74:1 79:11,13 81:8
ascertaining 6:2	back 26:18 37:11 57:9	8:21 9:7,18,24 13:12	82:5 84:8 85:17
asked 10:14 39:13,23	59:24 65:24 74:17	13:20 15:6,13,16,19	B2 2:10 7:2,8,12 9:15
46:2 50:2 53:3 89:19	83:23 85:14 89:5	16:15,19,21 18:13	11:9 12:4,9 15:2
89:19	90:13,14	24:20 41:23 47:6,11	18:21 19:1 25:5,6
asking 32:2 35:7,17,21	background 3:20 7:14	47:12 53:19 55:8	28:18 32:11 36:11,16
36:5 51:12 52:16	bad 7:6 78:21 81:21	56:9,12 57:13 59:8	40:20 52:4 59:7
60:10	bag 52:23	60:24 61:9 62:8	60:23 62:6 70:13
aspect 57:8	bandied 78:2	63:12 64:3,5,9,21	74:4 79:10,14 82:2,2
aspects 51:17	barely 56:4	65:8 66:6 67:7 68:14	82:8,17 86:18 88:1
aspersions 40:17	base 58:3	68:14,15,15 69:21	
52:18	based 19:13 21:19	70:5,9,12,16,17,21	C
assembly 58:8	31:21 35:14 40:21	71:5,19 73:10 76:21	C 1:13 21:3,12 93:2
assertion 37:3	44:22 46:16 49:8	80:20 85:9 87:1,14	call 1:7,7 3:3 19:16
asserts 47:5	60:14,14 66:23 67:16	87:17,22 88:3,7 89:8	24:6
attached 23:24	basically 21:16 51:12	90:14	called 38:13
attempt 17:11 35:15	basis 10:9 50:16 63:18	boards 89:8	calls 21:6,14
attempts 18:5	75:22	Board's 15:7 46:21	cancel 89:4
attended 57:11	beginning 24:10,21	47:21 55:9	candidly 22:4 52:23
attention 33:1	56:18	boasting 69:5	car 82:11
attitude 76:15	begins 42:20 69:2 73:2	body 4:6,21 5:7 7:21	card 5:15
attorney 1:11,12 16:6	73:6	22:10 24:11 41:16	carries 91:20
44:5 45:3 69:1	behalf 8:4 16:1 57:14	48:8 70:10 77:15	case 2:16 4:3,18 8:6
attorneys 1:13 35:3	73:17 84:1,1	88:4	10:18 45:20 50:14
attractive 81:15	belied 85:18	book 34:18 51:7	77:2
automatically 59:6	beliefs 65:7	bound 88:5	casino 61:8,20
60:22 90:3	believe 17:22 23:2	bowling 30:3 33:9	cast 40:17 52:18
available 6:22 10:18	38:14 39:20 50:12	83:14 84:20 85:5	categories 59:13
11:6 15:8 44:6	52:2 60:14 79:8	box 51:8	categorized 11:24
Avenue 1:4 13:11	80:21 84:22 89:17	bring 50:10 63:9	14:11
15:21 26:8 44:19,20	believed 32:10 33:14	78:10 80:7	category 36:11 60:19
44:21 45:1 46:18	33:22 34:6,9 47:12	bringing 6:21	68:16 71:7
49:1,4,4 55:8,13	50:8 58:4,6,14	brought 60:3	caught 28:2 47:8
59:16,19 64:14,16	benefit 48:9	Brundage 77:15	cause 93:12
70:5 71:24 72:4	best 38:1 64:19 70:11	building 19:3,3 36:12	caused 17:5
73:21,21 74:1 78:18	better 47:19 49:22	37:3 43:24 84:23	Central 13:4 33:6
78:19 79:2,10,11,16	50:5 55:21	85:4,6	49:14,19,21
79:22 80:1 81:8,12	big 45:6 73:22,23	built 84:22,23 85:20	certain 64:6 71:6
81:17,24 82:13 84:8	billiards 30:3	bulls-eye 80:14	certainly 31:9 58:1
average 77:5,6	bit 33:11	burden 78:11	62:20
Avery 77:15	blacked 32:16	business 7:3 21:3 22:4	certificate 27:9
Aye 91:15,17,18,19	blame 38:5	23:15 29:17,20,21	certified 83:9 93:5

<p>chain 76:6</p> <p>chairman 1:7 2:1,8,9 2:23 3:6,8,11,13,14 7:13,16 10:9,14,20 10:21 15:3,10,23 16:2,3,5,8,11,12,21 17:10,16,20 22:18 24:13,18 43:13,16,18 43:19,20 45:2 50:22 50:24 55:24 56:2,3,5 56:6 57:2 58:1 59:3 60:11,16 61:4,11,17 62:3,10 63:4,8 64:1 64:21 65:10,15,23 66:16 68:9,20 70:7 70:19 73:4,16 74:24 76:11 78:14 79:3,5 79:23 81:1,3 85:22 86:4 88:14 90:5,18 90:24 91:13,17,20</p> <p>Chambers 1:4</p> <p>change 15:22 38:20,21 38:24 55:8 64:10 71:23 76:10 87:19 88:22</p> <p>changed 15:17 18:3,16 18:17,19 42:14 65:4</p> <p>Chapter 29:20</p> <p>character 79:19</p> <p>characteristic 81:12</p> <p>characterize 87:8</p> <p>characterized 59:5 87:12</p> <p>Charles 76:17</p> <p>checked 51:9</p> <p>cherry 89:1,3</p> <p>Chicago 93:16</p> <p>chief 5:13 35:22 36:5</p> <p>Christopher 1:9 3:11</p> <p>Chris's 90:21</p> <p>cited 75:3 76:3</p> <p>cities 77:22</p> <p>citing 75:8</p> <p>citizens 57:19 76:23</p> <p>civilian 83:14</p> <p>claim 68:7</p>	<p>clarified 58:18</p> <p>clarify 54:7</p> <p>clarity 6:14</p> <p>Clarke 1:12 2:14,17 3:14 11:1,3,11 17:19 22:3 23:5 28:10 32:9 34:16 36:7 37:18 40:1 45:23 46:1 51:24</p> <p>class 85:12</p> <p>classification 9:15 34:24 59:7 60:23 70:14 86:18 88:1</p> <p>classifications 87:15</p> <p>classify 60:18</p> <p>clause 40:13</p> <p>clauses 39:11</p> <p>clear 18:20 22:13 38:18 55:14 63:18</p> <p>clearer 48:9</p> <p>clearly 28:12 46:8 47:20 48:2 53:4 64:21 82:15</p> <p>clerk 42:13</p> <p>client 59:5 61:18</p> <p>client's 61:9</p> <p>close 19:15 35:3 38:2 39:17</p> <p>closer 78:19</p> <p>club 11:7 12:3,11,15 12:23 14:19 18:23 34:23 35:2 39:16 42:23 44:8 48:14 49:12,20 50:20 56:17 66:11 67:2 74:5,6 88:2,18</p> <p>Coda 24:16</p> <p>code 5:12,13,20 6:3,5 6:7,11,15,23 7:7 9:16 14:1,6 15:7,15,17 18:3,7,16,19,22 21:20 22:19,22 23:2 26:16 27:22 28:23,24 29:1,4,15 30:14 31:18,18 32:5,21 34:11 35:1 36:19</p>	<p>37:8 38:6,9,20,21 40:6 42:21 44:12,13 44:14,15 45:16 46:11 46:13 47:18 50:17,18 51:4,16,17,20 53:9,9 55:10 56:9,19 59:17 59:18,20,21 60:21 65:2,3,18 66:3,8,15 66:17,18 67:1,15,24 68:8,19,22 69:2,10 69:18,22 70:13 71:13 71:15,16,17 72:9,18 73:9,11,23 74:13,17 81:7 82:15 84:24 85:20 86:18,21 87:20 87:24 88:6 90:9,12</p> <p>codes 6:18 47:15</p> <p>codify 47:12 66:9,10</p> <p>college 76:4</p> <p>colleges 20:3,4</p> <p>come 16:4 20:12 26:18 27:15 37:10 51:16 53:6 55:2 56:13 61:12 77:7 83:13,23</p> <p>comes 17:4 27:21 56:16 86:20</p> <p>coming 2:4</p> <p>commence 85:3</p> <p>comment 2:18 76:13 88:11 90:5,6</p> <p>comments 9:2 83:1 90:19,24</p> <p>commercial 29:20 74:2 81:10,17 82:4,7</p> <p>commercial 81:23</p> <p>commission 6:17 41:16 57:12 83:24 84:1 85:10 86:24 87:23</p> <p>committee 28:9</p> <p>communication 46:8</p> <p>communications 21:8 23:6</p> <p>community 1:12,13 10:24 14:22 33:10 55:20,21 80:5</p>	<p>company 24:16</p> <p>compatible 11:23,24 14:17 89:15</p> <p>compete 19:22</p> <p>complaint 69:15</p> <p>complete 71:4 93:11</p> <p>completed 8:20,23</p> <p>completely 37:22</p> <p>completes 7:14</p> <p>complex 5:22</p> <p>complicate 27:24</p> <p>component 13:18 84:21</p> <p>comprehensively 14:6 15:8</p> <p>conceded 49:17</p> <p>concept 78:3,4</p> <p>concern 36:21 52:2 55:17</p> <p>concerned 36:20 52:13 64:20 70:4</p> <p>concerning 2:10 3:17 4:7,19 15:14 27:7</p> <p>conclude 12:13</p> <p>concluded 44:22</p> <p>concludes 15:3 85:24</p> <p>conclusion 44:8 52:20 75:23 76:10</p> <p>concur 36:9,14 90:6 90:16</p> <p>conduct 13:1 19:4 23:9</p> <p>confident 23:10</p> <p>configurations 81:12</p> <p>confirm 90:23</p> <p>confirmed 46:19</p> <p>conflict 17:5</p> <p>confront 41:9</p> <p>conjunction 57:16</p> <p>connection 87:1</p> <p>consider 13:8 28:5 30:11 53:5 87:23</p> <p>consideration 13:4 14:4 26:4,5 28:22 51:10,13,14 69:8</p> <p>considerations 14:23</p>
---	---	---	---

considered 4:21 5:5 13:23,24 14:14 30:12 46:12,12,13 49:20 62:24 72:12	48:10,19 50:1 52:10 57:5,11,21 78:22 79:3,6 84:16 93:6	C-O-H-E-N 24:13 C.S.R 93:14	86:20 88:17
considering 3:16 35:11,12,18	Cook's 46:20	<hr/> D <hr/>	definitions 6:13 11:12 29:23 30:24
consisted 24:24	copies 16:20	D 22:1	definitively 35:9
consistent 41:21 46:20 47:13 50:13,15 66:24 67:7,18	copy 23:5	dance 30:3	delay 45:7
consistently 39:15 40:3 87:5	core 12:12 41:20	date 27:3	delayed 22:10
consolidated 28:4	correct 22:14 25:24 37:3 38:23 39:13 47:9,23 52:3,11,11 55:11 56:24 57:22	dated 22:2 34:17 36:8 36:24	deliberate 9:24 10:2
construction 85:4	corrected 86:4	day 5:17 21:3 23:15 34:18 37:11 53:3 63:22 93:20	deliberation 14:7 86:6
consulted 6:8,16	corresponds 81:16,22	days 4:10 21:5 44:2	deliberations 13:3 15:14 18:9 86:2
contains 5:21 93:11	Council 1:4	deal 45:6 57:9 73:22 73:23	deliberative 46:7
contention 28:15,17	counsel 9:1 10:1,14 21:13 81:19 84:7 91:5	dealer 13:17 35:5,23 58:24	demanding 23:13
contentions 28:13	count 36:17	dealing 57:3 76:14	denial 27:9 35:14 52:22 53:2 60:7
contested 75:6	countries 77:13	debating 48:11 72:3	denied 13:12,19 14:2 23:1 52:20 72:3
context 42:16 84:4	country 76:6	December 1:2	deny 19:13 21:16 22:16 42:14 45:11 52:6 55:3 65:16 90:22
continue 3:13 21:23 58:5	county 42:12 93:2,6,7	decide 29:3 72:24 78:7	deposes 93:5
continued 86:3	couple 43:21 47:2 50:24 83:1	decided 9:7 21:5,16 61:19 83:23	describe 18:13 87:3
continues 86:5	course 30:1 35:3 40:10 41:19 43:18 56:14 57:4 72:2	decision 4:9,12,20,24 4:24 7:23 10:4 20:18 20:23 21:24 28:3,7 35:17 37:11 49:9 53:1,23 55:16 72:21 73:5 74:15 75:19 91:3,6	described 87:5
contradicted 29:9 70:2	court 2:19 3:3 77:20	decisions 22:18 46:17 53:16 90:14	deserved 23:19
contrary 41:2 58:9,11 68:13	courts 77:21 93:7	deem 64:7	designated 4:5
controlled 77:15	Couzin 1:9 3:6,7 75:2 75:5 91:1,12,18	define 60:12	designed 19:4 81:14
controversial 75:6,8 75:15,15 84:5	covered 50:8 90:11	defining 60:13	desire 66:8 72:22
controvert 42:24	create 37:5 40:18 54:16 81:10	definition 12:3,10,11 12:16,18,23 13:24 14:19 18:22,23 19:1 19:10 29:6,12,18 30:15,18,22 31:3 35:1 42:22 44:8,23 48:13 49:11,12 50:8 50:19 51:2,19 56:17 56:19,23 59:14 60:21 64:5,6 67:2 69:11 72:17 74:5 75:10	desired 17:6
controverted 42:21	creating 71:2		despite 20:21 21:1
convenient 74:18 81:15	cross 27:14		details 50:2
conveniently 50:13	crystal 38:18		determination 2:9 3:17,24 4:15,19 5:6 6:6,20 11:7 12:2,8 16:18 19:12 22:24 23:23 24:3 25:3 26:2 26:15,21,22 27:7,15 27:20 40:6,23 41:1 42:17 46:20 49:24 50:3 55:6,22 66:11 67:10,20 68:22 87:19 88:9 90:17,23
conversation 24:24 37:21,24 38:2	CSR 93:15		determinations 4:7 6:4 59:21
conversations 25:2	current 22:19 34:9,11 55:9 58:2 65:1 68:14 87:19 89:20		determine 11:21 48:2
Cook 1:13 10:20,22,23 15:1 16:2 22:2 23:6 24:12 25:1,3 28:10 32:8 34:17 36:8,23 37:14,17 40:1,5 41:10 43:16,19,21 46:4,6,16,17,23	currently 22:20		determined 7:11 15:1 22:20 28:18 36:10
	customary 12:20,22 19:5 28:19 78:1,4,7 86:22		
	customer 58:3		
	customers 58:5		

52:24	26:17 43:8	earlier 71:5	everybody's 54:23
determining 11:13	disproportionately	easier 25:16 28:16	everyone's 48:9
detrimental 64:7	58:3	54:4	evidence 18:12 19:15
development 1:12,13	disputable 76:7	easily 53:4	19:16 20:2,5,12 29:8
5:15 10:24,24 81:13	dispute 84:5	easy 17:22 36:14	29:11 38:19 40:2,21
Devon 13:11,17 15:20	disregard 89:23	eat 77:7	40:21,24 41:1,2,5
17:15 26:3,8 32:24	distinct 17:9	effect 7:21 90:10	42:21,23 43:2,3 49:6
33:1,2 34:20 40:8,11	distinction 74:22 81:4	effectuate 74:16	53:11,12,12,14 59:12
44:19,20,21,24 46:17	82:12,16,21,22	effort 87:11 91:23	60:14 62:1,1 63:23
49:1 55:8,13 59:16	Distinguished 3:15	eight-year-old 19:23	65:19 67:6 69:7,10
59:19 64:14,16 67:11	district 2:11 7:3,5,9,12	either 21:3 45:24	69:13 70:1 72:10
67:12,21 70:5 71:24	11:9 12:4,9 15:2	56:22 87:4	74:22 75:11 76:3
72:4,8 74:2,3,7,11,23	17:11 18:21 19:1	Elrod 21:13 23:13	evidenced 85:5
78:17,20 79:2,10,16	24:23 25:5,7,7,10,22	Elster 42:5	evolving 78:3,4
79:22 81:6 82:14,23	26:7 28:19,20 32:11	embedded 12:22	exactly 10:3 37:19
Dictionary 30:23	33:8 40:9,12,21	enact 70:10 88:4	examples 89:2,3
difference 62:12 79:16	41:18 42:2 49:14,14	enacted 65:2,13 70:21	exception 74:3
79:22 81:5 82:22	52:4 67:13,22 74:1,4	87:19	exclude 39:17 64:6
different 5:9,23 18:7,8	79:10,11,12 81:6,9,9	encompass 14:20	66:12 71:6 87:14,24
18:9,9 24:22 25:16	81:15,22 82:2,2,6,17	encouraged 82:7	89:14
32:5 41:19 49:5	84:8 89:17	ends 11:19 42:20 73:2	excluded 88:20
52:19 57:7 59:17,21	districts 79:12,17,19	73:6	excuse 84:22
60:3 61:24,24 65:18	81:8,10	enforcement 83:10,12	executive 10:1
65:19 69:22 72:9,9	divulged 42:18	engage 46:7	exercise 19:5
72:10 73:9,22,24	doctor 37:2	engaged 77:6	exhibit 21:12 22:1
78:8 79:2,13,17,18	document 5:22,23,24	enjoy 31:11,12 62:14	23:4,4,12,12,24 27:2
79:20 81:6 82:8,12	17:16	enjoyment 31:4	27:3,10,18,18 28:11
83:12,15,16,19 89:16	documents 6:16,18	entire 90:11	29:19 32:18 34:16,17
differently 18:8 54:6	10:16 14:8 16:14,22	entirely 83:12	35:21 36:7,23,23
74:14 79:10	20:22 46:12 49:3	environment 81:15	38:11 41:6 51:7 66:7
dinner 77:8	66:3 67:19	equipped 19:4	exhibits 41:14 48:4
direct 91:5	doing 23:10 27:24	essence 56:10,15 57:2	existed 73:19
directed 27:8 87:22	48:7 63:19 67:16,23	essentially 28:13,17	existing 13:11 36:13
direction 52:17	69:15,17,18 80:23	establish 48:2	exists 84:16
directly 58:9	drafters 66:18	established 82:3	expand 54:10
Director 1:12 11:1	dragged 77:20	Establishment 81:8	explain 2:14 16:24
disagree 24:2 70:15	drive 53:16 93:15	evaluate 73:18	22:16 78:17
88:13,15	driving 30:1 82:17	evaluated 53:1	explained 22:24 24:4
discuss 48:21	drove 52:17,19	evening 3:14 44:7 57:5	explains 82:22 86:8
discussed 25:6 52:24	due 78:22	78:23 79:7,24	explanation 23:3 28:7
57:17 58:10 65:5,6	duly 93:4	Event 19:22	52:21,22 86:11
discussion 14:8 15:21	duties 5:14,19 46:6	events 45:8	explicit 47:22
18:1 24:12 26:8 40:7	77:6	eventually 77:19	express 66:18
42:8 43:2 48:15 59:2		everybody 2:19 7:24	expressed 25:3 66:13
78:23	E	8:18 10:7 35:24	expressing 52:2 86:7
discussions 24:8,20	E 23:4	64:18 86:7 91:22	expressions 68:11,20

71:10 extension 4:11 eye 37:2 e-mail 22:1,5 32:19 34:16 37:14,15,23 52:10 58:14 e-mails 32:12,15 45:8 45:21,23 46:5,21 51:23 52:1 72:1	fighting 61:5,8 62:4,16 63:5 fight 54:16 figure 48:19 70:20 85:15 figured 52:7 file 3:24 63:13 68:7 filed 27:10,19 40:19 filled 52:23 final 4:20,21,24 70:7 finally 8:17 9:23 48:10 54:1 find 12:18,19,24 31:16 53:18,21 finding 42:24 66:24 findings 41:15 fine 2:8 54:7 88:14 finished 8:14 fire 11:10 82:13 firearm 2:10 36:2 57:16 firearms 7:1,7,11 9:8 9:14,21 11:16 12:8 12:13,19,24 13:17 14:10 18:7 20:9 26:7 35:5,23 39:17 41:11 48:3 50:19 56:16,22 57:19 58:24 65:1,16 66:12 67:3 68:16 76:16 83:9 86:16 87:2,24 first 6:7 7:19 8:2,8 17:2,16 28:15,17 64:24 83:4 88:17 93:4 fit 17:1 32:2 42:22 59:13,15 69:11 fits 29:11 72:20 five 83:4 fixed 39:1 floor 13:10,14 17:14 18:11 33:5 34:20 focus 33:2 49:11 focused 25:8 32:24 foggy 37:24 FOIA 21:8 32:13	follow 16:22,24 followed 25:12,19,21 26:11,14 following 1:7 6:4 7:23 14:13 23:11 78:3 follows 17:12 force 20:23 forced 21:10,23 41:8 foregoing 93:9,10 foremost 17:2 forget 62:8 form 51:6 77:13 formal 13:15 formally 14:2 47:11 66:9,10 formed 5:4 forth 20:13 21:14,18 57:9 74:21 86:21 forward 22:23 41:24 42:2 55:6 forwarded 4:3 5:1 found 14:7 30:8 32:20 43:5 48:23 49:5 Foundation 20:8 frankly 46:3 66:20 Friedman 1:11 86:3 91:2 front 2:22 29:19 51:7 77:23 frustrated 38:3 fuel 39:2 function 56:8 fundamental 79:7 fundamentally 15:17 17:22 18:17 further 43:12 69:4 73:7	36:1 44:11,15 46:1 58:2 64:16 82:24 gallery 30:4 80:4,8,9 80:10 84:21,22 85:6 gambling 61:6,8,10,13 61:19 62:2 general 7:2 11:3 29:21 76:15 82:2 generally 81:16,22 generated 38:8 39:2 gentlemen 33:16 getting 37:14 38:4 60:16 63:6 give 21:24 23:16 32:14 54:15 62:5,7 63:1 67:23 86:10 given 4:17 70:1 88:6 gives 69:24 giving 27:2 go 10:1,21 12:5 16:15 17:1 29:23 30:24 31:6,22 41:24 42:2 50:1 52:8 54:2,5 55:6 62:5,17,21 65:24 66:4 69:4,6 73:7 77:5,7 80:11 88:12 89:5,11,11 90:14 goal 25:9 59:1 goes 13:2 47:17 51:20 61:15 76:3,4,5 going 2:13,15 7:20 10:11,17 17:2 23:16 27:4 28:24 31:6,7,10 31:10,10 32:10 37:7 40:16 49:11 53:19,20 54:8,10,15 56:1,6 57:9 58:7 59:1 62:15 68:13 70:4,7,15 72:2 72:24 77:20 78:11 80:12 82:20 86:7,8 89:1,2 90:2,4,13 gold 19:22 golf 29:24 30:1 good 3:14 7:6 16:11 24:18 50:7 56:18
F			
F 23:12 face 41:2 facility 34:24 35:2 57:15 86:17 87:6 fact 2:24 8:24 10:15 17:17 20:22 21:2 25:15 26:17 35:16 39:13 40:2,14,15 41:20 44:15 50:4 57:5 64:15 66:5,24 67:16 85:4,5,18 87:17 88:23 factors 3:21 14:24 facts 63:9,23 65:19 fair 53:24 57:24 60:24 61:4 fall 12:2,14 family 64:19 far 83:2,7 father 42:12 favor 39:8,9 41:7 fear 22:16 32:5 37:12 52:2,17,19 53:15,15 55:2,16 72:5,22 77:19 fears 38:8 federal 36:3 fee 19:9 feel 74:19 80:19 feelings 73:2 75:21,21 75:21 fellow 69:1 felt 79:1 fifth 39:14 fight 20:15 53:21,22			
	G		
	G 23:24 Gabby 33:16 49:3 58:15 69:14 72:14 73:18,20 82:13 84:14 84:20 85:1 90:13 Gabby's 85:16 galleries 18:2 30:12,20		

63:12 79:24 80:6 goods 84:21 85:7 go-cart 30:2 graduating 85:12 graft 65:21 granted 32:3 34:5 35:13 68:2 great 45:6,22 57:9 80:10 ground 86:15 Group 2:6 8:12,17 9:13 16:4 57:7,13 86:14 guess 37:16 38:1,4 50:12 63:2 88:12 guests 19:8 gun 64:16 guns 31:15 75:14	85:1 90:13 Hartnett's 73:19 84:14 head 26:18 health 11:7 12:3,10,15 12:23 14:19 18:23 34:23 35:2 39:16 42:22 44:8 48:14 49:12,20 50:20 56:17 56:20 66:11 67:2 74:5,6 88:1,18 hear 4:21 9:16 39:20 51:22,23 56:4 80:5 heard 17:24 26:24 31:20 32:8 40:9 41:10 51:3 57:10,17 64:23 78:22 84:3,7 hearing 8:24 27:3 37:20 59:16 85:24 86:3,5 hearings 57:6,11,12 57:23 80:9 hears 4:6 heart 17:4 heavy 17:4 hefty 5:22 Heidtke 15:5,11,12,12 17:23 18:15 31:24 43:5 46:19 65:3 72:11 heightened 74:9,10 help 9:19 31:8 Herb 3:4 90:18 Herbert 1:9 Hi 15:12 higher 82:9 highest 82:5 highlight 14:4 highly 38:15 hinge 35:4 58:22 hinged 58:23 hinges 35:22 historical 13:3 historically 39:15 40:3 47:13 history 5:3 11:13	14:22 31:22 46:13 49:1 53:8 88:24 89:5 hold 53:7 55:4 holding 80:3 home 77:7 homework 48:23 hone 57:20 87:7 honest 33:11 honestly 18:6 42:19 62:22 63:21 75:16 hope 31:9 housed 85:6 hurt 90:2 hypotheticals 62:13 62:18	25:12 28:12 inclusive 11:8 incongruous 74:8 inconsistent 47:7 49:16 54:2,8,14,18 incontrovertible 41:2 74:22 inconveniencing 77:10 incorporates 51:19 indicate 47:1 indicated 5:8 57:5 indicating 14:8 indication 68:12 individual 56:14 individually 84:2 individuals 88:23 industrial 9:9 57:8 87:3 informal 67:19 information 6:21 11:5 44:6,7 informed 53:1 initiate 56:2,7 input 35:22 46:14 inquiry 64:2 inside 38:8 insight 67:24 Insofar 45:21 inspection 10:19 install 13:10 instance 40:4,4,12 67:8 instructor 83:9 intended 7:7 12:18 13:1 17:6 32:1 33:13 37:10 44:9,24 47:20 47:22 70:12 71:1 81:10,18,24 82:9 intensity 82:5,9 intent 6:2,23 11:14 12:5,7 13:9 14:21 15:19 18:18 20:9 31:20,20,21 35:19 40:17 46:14,21 48:5 48:24 53:8 55:9,11
H		I	
hall 1:4 30:3,3 85:12 hand 10:12 handled 2:2 hanging 56:21 Hansen 22:3 happen 7:20 18:2 26:10,23 35:12 36:18 37:8,12 38:9 40:11 52:8 58:20 70:5 72:4 72:23 75:17 happened 17:9 18:13 26:20 30:13 32:4 33:21 35:8 40:10 50:11 53:9 65:21 67:21 69:7,21 72:6,7 happening 55:18 happens 31:16 39:2 47:13 71:12,12 happy 11:4 12:6 43:14 73:14 hard 80:2 harm 90:4 Hart 1:12 45:3 Hartnett 33:17 49:3 58:15 69:14 72:15 73:20 82:14 84:20		ice 30:2 idea 47:4 48:10 85:17 identification 2:7 identified 11:3,11 17:10 49:2 identifies 47:24 74:6 identify 2:22 16:4 ignored 21:10 22:22 43:4 Illinois 61:13 93:1,6 93:16 imagine 49:2 immaterial 71:14 immediately 39:3 impact 33:23 75:18 impeccable 55:19 64:18 impediments 77:23 implicit 64:23 important 34:13 inaccurate 45:12 include 6:17 12:18 13:18 14:20 44:9 67:3 68:16 81:11 included 11:20 12:14 13:5 14:15 44:14,16 66:21 includes 18:22 20:10 including 8:3 22:3	

64:22 65:7,20,24 66:13,18 68:11,13,18 68:21 69:2 70:17,21 71:16 73:2,5,5 74:17 88:24 89:5 90:7,8,9 intention 15:22 25:8 80:1 88:8 interest 76:20 interesting 24:1 28:8 internal 21:7 international 19:19 43:3 internationally 20:1 75:13 interpret 45:16 56:9 65:23 70:12,16 interpretation 5:11,13 5:16,24 11:14 19:14 22:15 26:16 27:22 29:2 32:9 34:1 38:22 45:17 46:23 47:13 48:12 52:3,3,12,12 52:15,15 63:11 67:1 67:7,17,24 70:24 79:8 88:6,7 interpretations 3:22 5:10 11:4 44:3 interpreted 39:16 40:3 interpreting 6:5 55:10 intersection 74:4 introduction 10:23 introductory 7:14 investigated 62:22 63:8 investigative 46:7 invite 9:2 involved 6:5 10:3 15:14 24:7,20 57:7 involves 2:3 6:1 irrelevant 18:6 46:3 68:24 71:13 72:9 issue 9:22 17:20,22 24:9 26:18 34:14 35:22 52:6 59:10 61:23 62:9 64:18 72:24 79:6	issued 27:6,13 issues 27:21 51:13 59:23 60:2,4 63:11 73:1 76:14 item 2:1 items 14:13 43:21,22 I-Shore 1:14 2:5 27:8 I-Shore's 13:4 i.e 14:21 33:3 <hr/> J J 27:18 job 44:3 46:23,24 47:1 48:7 70:16 jobs 31:8 Jr 1:13 judgment 46:17 judicial 4:22 7:21,23 Judy 78:16 justify 35:15,16 <hr/> K K 28:11 93:2 Kathy 1:9 3:9 Keating 78:16 keep 90:13 kept 32:13 key 18:4 66:23 kids 19:24 Kim 83:3 kind 25:3 26:2,15 47:8 63:16 77:21 80:24 kinds 83:16 knew 22:14 33:8 40:14 54:4 58:20 71:23 72:5 know 5:4 8:22 10:3 19:21 22:8 27:12 34:12 35:20 36:6 38:24 39:5 50:11 53:19 54:3 56:8 57:7 60:5,13 62:1,19 63:10 68:13 69:1,5,5 70:9 72:14,21 80:11 80:13,15 83:8 84:11 85:19	knowledge 5:6 knows 10:3 23:10 36:1 65:12,13 Krone 24:6,7,11,15,15 24:19,24 25:6,15,24 40:9 50:3 54:3 Kusper 1:13 2:8 16:5 16:6,9,9,12 24:19 25:2,11,21 26:1 42:12 43:13,14 44:11 45:5,6,22 47:5 50:24 56:1 57:1,24 59:10 61:2,10,12,23 62:9 62:11 63:7 64:8 65:5 65:13,18 66:15,17 68:19 71:11 73:21 74:13 75:4,11 81:2,4 81:21 87:15 Kusper's 43:22 K-R-O-N-E 24:15 K-U-S-P 16:10 <hr/> L L 30:22 lack 6:14 36:13 49:7 Ladies 33:16 lady 83:3 land 6:4,7 11:11,12,17 11:20 14:15 44:17 89:12 language 21:20 34:11 42:20 43:9 47:10 68:19 69:2,3 large 32:16 36:16 58:3 lastly 78:9 law 4:23 23:11 36:21 37:13 38:10 45:14 47:18 53:17,17 55:1 55:9 59:18 61:15 63:3,14,18 65:11 66:14 69:4,6 70:17 70:18 71:23 72:23,24 74:20 83:10,12 89:20 laws 48:9 61:12 65:13 70:10,11 71:2 lawyer 76:19	led 23:23 35:14 44:7 60:7 72:6 left 83:22 leg 89:10 legal 45:5 65:11 legislative 6:2,22 11:13 12:5,7 13:9 14:21 46:14 48:8 64:22 68:11,21 70:10 71:9 88:4,5 89:9 legislature 65:12 66:1 71:1 leisure 48:22 53:13 leisure-time 19:5,10 29:12 30:19 88:21 Leroy 80:1 letter 21:12,18 23:13 27:6,12 52:22 53:2 letters 21:11 74:21 let's 10:9 level 5:16 76:4 Levy 76:17,17 license 22:5 29:21 34:23 35:5,23 36:3 51:5,11,20 61:20 licenses 29:20 51:3 licensing 29:17 61:15 72:17 lies 28:21 life 89:23 light 46:22 78:8 lighten 78:11 lightly 23:19 limit 76:14 Lincoln 1:4 49:4,4 73:21,21 74:1,4,7,23 78:18,19 79:2,11,16 79:22 81:5,8,12,17 81:23 82:13,22 84:8 85:12 Lincolnwood 1:1,4 12:21,21 28:20,24 29:3 34:3,4 41:12,13 41:21 42:3 57:8 59:15 60:15 69:13 76:18 77:19 80:12
---	---	--	--

87:3	makeup 41:3	26:1 30:13 44:13	months 68:24
line 47:2 64:2	making 3:21 6:5,20	58:1,7,9 60:2 62:4,16	motion 90:22 91:2,4,7
linear 37:5	34:7 35:7 44:3 46:2	62:17,18 63:1 65:11	91:10,13,20
listed 6:8 11:11,16,22	54:12 71:3 80:20	69:4 70:22 75:16	motions 89:7
44:12,15 89:12,13	84:14	82:16 87:13	motivated 55:2
listen 31:23	Malkin 1:7,9 2:1,9,23	meaning 6:22 22:6	move 10:10 54:9 60:9
live 75:17 76:17 83:23	3:6,8,8,11,13,14 7:13	86:17	moved 84:17
LLC 1:14 2:5	7:16 10:9,14,21	meaningless 71:12	moving 60:9
local 36:3	15:10,23 16:3,8,11	means 46:11 55:10	muddled 60:6
locally 19:19	24:13,18 43:13,18,20	56:10 59:14 65:24	municipal 44:12,13,15
located 25:7 73:20	50:22 55:24 56:5	71:9 84:6	municipalities 77:22
location 13:11 18:5	57:2 59:3 60:16 61:4	meant 48:20 82:15	Myron 60:9
24:23 26:3,6,8 33:6,7	61:11,17 62:3,10	measures 39:4	
34:20 36:13 40:8	63:4 64:1,21 65:10	medal 19:23 83:4	<hr/> N <hr/>
46:18 49:5,6,7,15,21	65:15,23 66:16 68:9	meeting 1:2 4:4 38:13	N 34:16,17
54:10 58:2,6 65:1	70:7,19 74:24 76:11	39:7 41:23 42:10	name 2:21 10:23 16:5
72:8 89:18	78:14 79:5,23 81:1,3	91:9	24:14,15 42:12 76:17
logical 26:9	85:22 86:4 88:14	meetings 68:5	79:24
long 5:21 19:20 34:13	90:5,18,24 91:13,17	member 9:3 15:13	named 83:3
54:19	91:20	24:7 83:21,24 84:17	narrow 7:1 17:20
longer 8:4 44:2 46:15	Mallon 1:13	members 3:15 7:13	national 19:19 20:7
64:13	manager 1:13 5:15	8:21 16:20,21 19:7	43:3
longstanding 32:9	10:24	46:8,15 53:19 56:12	nationally 75:13
67:1,6,18	mandated 43:24	86:9,10 87:7	nations 77:17,17
look 10:19 11:12,12,13	manufactured 35:15	memorandum 28:9	nature 2:12,24 3:22
11:19 22:1 29:2 30:6	March 37:23 38:1	memory 37:24	4:18 6:24 42:10 51:8
31:22,23 32:1 38:6	84:18,23	mention 10:15 26:22	51:14 72:19
42:19 44:4,6,19	MARINA 93:4,14	mentioned 11:1 13:8	Nay 91:16
47:10 48:11,13 51:5	marked 72:18	44:11 48:10 57:5	NCAA 20:2 76:4
62:5 69:6,20,21,23	martial 62:19	Merriam-Webster	necessarily 80:14
71:1,16,19 74:15	Mary 1:9 3:6 74:24	30:23	need 32:7 35:4 44:6
81:7 88:17 90:7,8,9	79:24 90:21,24	microphone 2:21	51:21,22 59:11 70:4
looked 22:15 23:20	material 67:17	39:10 81:20	71:18
46:13 48:16,24	materials 32:20	middle 51:8	needed 21:15 42:8
looking 28:23 46:9	matter 2:4,13 4:17,22	mind 41:3 71:8	47:9 85:17
51:17 64:9	7:15,18 8:5 9:15	miniature 30:1	needs 2:19 38:24
loosely 78:2,2	17:5 18:24 32:3,5	minutes 3:19 6:17	neighborhood 81:10
lost 30:17	50:16 51:3 52:7	14:8 30:7 41:6	82:19
lot 28:16 32:13 38:5	53:10 56:15 63:20,22	misleading 83:20	neighbors 77:10
41:10 46:15 76:24	73:1,2 84:4 88:10	misquote 45:9	neither 26:9
81:11 89:13 90:7	ma'am 75:4	modify 4:14	never 2:2 5:5,7 15:16
lower 76:5	MB 17:11 24:23 25:7	MOGILEVSKY 93:4	17:6,6 25:6 26:20,24
lucrative 80:5	25:8,10,22 26:7 33:7	93:14	32:10 37:9 40:9,22
	40:8,12 41:18 42:2	moment 43:16	42:18,21 49:20 64:18
<hr/> M <hr/>	49:13 67:13,22	money 53:20	65:4,5,6,9
M 32:18	mean 14:11 18:12	month 68:23 73:10,10	new 34:22 53:9,9

54:10 58:6 59:14 65:2 Nickell 1:9 3:11,12 10:8 90:6 91:15 night 62:13 Noonan 79:24,24 normal 28:19 29:12 normally 2:24 North 80:1 Notary 93:24 note 2:24 5:20 68:1 73:20 notice 27:2 notion 54:1 notwithstanding 17:23 not-for-profit 19:7 November 19:13 22:24 27:7,19 38:14 47:6 53:2 66:5 87:21 number 22:2 42:5 76:19 77:3,4 83:2,6,7 88:15	79:1 81:5 83:9,19 86:15 88:9 90:8,17 officers 31:6 58:4,5 83:13 87:6 officer's 4:14 5:5 16:17 90:23 official 20:3 Officially 86:3 off-street 36:16 Oh 43:18 okay 2:23 3:13 7:17 10:9,14 34:6 41:20 51:24 54:13 58:13,13 60:1,10 71:18 85:22 88:14 90:5 91:22 old 32:21 63:13,18 Olympian 83:4 Olympic 19:16,22 75:12 77:12,12 83:2 84:4 Olympics 19:20 75:3,6 76:2 77:14 83:5 once 33:2 41:16 71:15 open 8:20 19:7,8 36:15 opening 8:8 operate 35:6 operated 19:6 operating 33:19 36:1 opinion 86:7 opinions 46:3 76:9 opportunities 8:19 opportunity 8:15,19 50:7,9 78:13 opposed 20:9 82:18 opposition 28:12 32:6 order 91:5,8 ordinance 11:15 17:13 19:14 42:9 45:14 91:2 ordinances 22:12 29:17 30:7 34:9 88:5 organization 19:8 20:3,8 organizations 20:6 76:5 77:22 organize 53:18,21	original 39:5 66:2 originate 66:10 outdoor 77:2 outline 11:5 outlined 44:23 49:18 outset 24:8 outside 55:18 78:5 overcrowding 85:10 overhead 12:10 overrule 86:15 overruled 75:23 overwhelming 19:15 owned 57:19 owner 82:24 O'Brien 1:9 3:9,10 70:15 88:12,15 91:16 o'clock 77:8	Passman 1:12 45:2,3 73:16 Patel 39:22 67:5 path 54:15 62:17 Paul 1:13 pedestrian 82:1,6,10 pending 63:14 people 2:14 22:2,20 31:5,9 54:22 58:16 67:11 73:11 76:8,21 76:22,23 77:4,21,23 80:15,16,17 82:11,17 82:19 85:12 perceived 45:7 percent 37:3 52:11 perception 33:9 perfectly 86:12 period 35:3 permanent 71:20 permit 34:10 43:24 60:22 61:21 62:5,7 63:6 82:15 84:9,14 85:2,18 permitted 7:2,8,12 9:14 11:9,17,24 12:4 12:9 13:23 14:18 15:1,20 18:21,24 24:5 25:4 29:4,6 32:11 33:19 34:10,19 36:10 40:20 48:3 52:4 59:7,18 61:2 72:3 74:7,11 81:14 82:13 84:10 85:3 89:18 person 77:5,6 personal 73:1 personally 39:24 89:17,17 perspective 13:3 45:5 79:15,21 pertinent 6:11,15,19 6:21 51:10 Peter 1:11 Peter-E-R 16:10 petition 21:17 33:7 Phil's 60:9
O		P	
o 1:17,17,17 35:21 92:1,1,1 93:2,2 objection 49:18 objections 75:22,23 obtained 21:8 46:14 obviously 55:7 occur 39:2 occurred 5:9 18:4 57:22 October 21:12 22:2 34:17 36:8,24 offer 74:12 office 81:11 officer 1:12 3:18 4:1,8 4:19 5:12,14 7:10 8:9 11:2 12:2,17 14:24 17:19 20:18,20 27:8 28:18,22 29:2 33:24 40:23 42:16 45:4 46:4,6 55:23 67:10 73:17 77:6		P 36:7,7 packet 4:3 page 35:21 36:7 pages 5:21 paper 67:20 Pardon 24:13 66:16 paren 37:20 38:3 park 9:9 13:4 29:24 33:6 49:15,19,21 57:8 87:3 parking 36:13,17 37:4 52:6 part 4:14 5:18 10:17 14:7 21:9 22:17 26:4 29:18 30:20 38:11 43:7 47:7 51:4 69:8 73:17 participate 88:22 particular 2:2,12 3:2 6:15 9:12 26:14 parties 10:3 pass 16:19 passage 71:17 passed 22:19 30:9 38:13 66:21 70:13 71:13,15 74:18 89:8 passing 72:14	

<p>phone 21:6,14 93:17 pick 89:4 picking 89:1 piece 67:20 pieces 32:17 pin 83:14 place 30:10,14,17 38:2 42:4 58:20 78:21 82:10 84:24 85:20 placed 33:1 places 71:24 plain 21:20 76:23 plan 58:11 81:13,17 81:24 planned 81:16,23 planning 41:15 57:12 83:24 86:24 87:23 plate 2:22 Platform 1:14 2:5 16:7 24:7 25:14 27:8 play 51:16 61:13 please 2:22 3:13 9:19 9:20 10:11 22:7 24:19 43:17 76:14 81:19 plenty 37:4 52:9 point 2:6 9:11 27:4 40:17 47:3 49:12 56:18 62:14 66:4 70:7 71:3,4 76:7 77:3 80:9 83:5 86:1 points 8:15 45:4 47:2 51:1 police 35:22 36:5 58:4 58:5,8 77:6 83:8,13 83:19 87:6 policemen 57:19 80:11 80:12 policy 9:6,10,20 11:18 15:22 22:17,21 31:17 43:10 54:22 75:20 politics 42:11,13 pool 30:3 portion 19:3 57:10 70:13 72:18 portions 15:15 29:11</p>	<p>pose 84:10 position 5:17 14:9,10 14:11 15:7 17:18 21:14,15,19,19 35:10 39:5 49:16 50:15 53:3 59:4,4,11,12 61:7 65:4 possibility 62:10,11 possible 47:16 48:18 48:21 63:2,3 64:13 possibly 47:15 66:1 potential 13:6 25:22 26:6 52:5 potentially 24:22 power 71:6 PowerPoint 10:16 28:16 practice 80:11,17 practices 80:6 praise 80:19 Pratt 76:18 predecessor 5:7 prepare 91:5 prepared 91:8 prerogative 40:16 56:1,6 present 1:8,10 3:1 16:1 33:8 39:24 40:1 presentation 8:8 15:4 16:16,21 presented 10:15 pressure 38:5,6,7 pressures 74:19 presumably 37:4 presume 65:10 presumption 65:11 pretty 5:22 16:22 prevail 36:22 37:13 73:1 prevailed 38:10 prevailing 89:24 prevails 63:3 72:23 previous 13:4 57:6 65:15 68:14 87:11 previously 13:8 73:19 pride 20:16</p>	<p>primarily 13:1 81:16 81:23 printed 6:1 prior 6:18 11:13 12:6 13:9,15 14:4 18:6 44:22 59:20 private 11:7 12:3,11 12:15,23 14:19 18:23 34:24 35:3 36:11 39:16 42:23 44:9 48:14 49:12,21 50:20 56:17,20 66:11 67:2 74:5,6 86:16 88:2,18 prize 61:5,8 62:4,16 63:5 probably 7:19 49:2 problem 28:21 33:20 33:20 68:9 75:10 77:9 procedure 7:24 10:6 procedures 18:8 proceed 7:18 43:19,20 proceeding 3:2 proceedings 93:7,9,12 process 3:20 11:3,5 17:3 24:21 25:11,16 25:21 26:11,11 37:7 46:7 47:17 49:18 58:19 processes 18:13 proclaim 19:17 produce 85:19 profit 19:6 profitable 80:4 prohibited 11:18 44:19 project 24:17 55:6,7 promote 20:9 80:23 81:24 82:9 proper 22:11 51:15 property 17:14 25:7 61:9 proposal 36:12 39:8,9 41:24 42:1 proposed 34:22 58:13 86:16 87:4,6</p>	<p>proposing 58:23 proposition 56:21 protect 80:17,22 prove 20:17 73:12 90:1,3 provide 3:20 82:3 provided 40:6 44:7 49:15 51:6 provides 4:16 31:3 provision 56:10 provisions 5:24 6:2,23 17:12 public 8:24 9:2,3 10:2 10:3 19:8 30:2,3 53:20 76:13 83:21 84:17 87:7 93:24 purpose 57:18 87:5 purposes 2:7 13:7 46:3 pursuant 22:11 pursue 64:1 push 38:17 pushed 42:7 put 16:14,16 18:5,10 20:5 22:23 28:22 42:1 49:22 53:4 61:19 63:5 77:23 84:15 puts 21:4 P.M 1:3</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 62:7 qualify 34:23 quarter 81:13,17,24 quasi 7:21 question 7:3,10 35:7 39:23 46:2 49:22 59:4 67:14 69:3 71:8 73:7,18 75:1 77:11 79:9 84:10,11 questioning 8:21 9:23 70:8 questions 8:22 15:9 22:7 30:6 43:15 56:2 56:7,11,11 60:5</p>
---	--	--	---

73:15 76:11	reads 59:20,20	records 84:13 85:19	75:24
quick 2:18 83:1	ready 10:20 43:19	recreation 11:7 12:3	relocate 13:17
quite 44:5 66:20	realize 47:18	12:11,15,21,22,23	relying 67:8
quorum 3:1	realized 42:8 68:1	14:20 18:24 30:23	Remedial 39:4
quote 22:4 26:2 35:2,3	realizing 71:20	34:24 35:2 36:11	remember 58:12
37:2,19 39:14,16,17	really 3:1 6:20 9:16,21	39:17 42:23 44:9	66:20
86:16,17	17:18,21,21 19:15	48:14,22 49:13,21	render 4:9
quoting 66:9	28:22 29:15 31:14	50:20 56:17,20 57:15	renovation 34:22
	34:14 35:10 42:20	59:6,9,14 60:19,22	reported 93:8
R	43:6 45:13 48:11,20	61:6,11,21 62:3 64:4	reporter 2:19 3:3 56:3
R 37:14	51:18 52:18 55:10	66:12 67:2 68:17	81:19 93:6
raise 10:11 14:4	58:3 59:12 63:12	70:24 71:7 74:5,6	reporting 93:7
raised 8:16 45:5 77:11	71:9 75:9,24 76:6	87:4,9,13 88:2,18	representatives 8:11
range 7:11 9:9,14 12:1	80:2	recreational 19:6,11	request 8:9 13:9,18
12:20,24 13:10,14,18	reason 20:13 22:16	29:12 30:18 31:12	27:5 45:11 64:24
14:10,15 17:14 18:5	23:3 26:19 31:11	34:2 53:13 56:23	87:1,18
18:10 24:5,22 25:4	36:21 37:13 45:11	62:24 63:24 70:3	requests 18:10 21:8
25:22 26:6 28:18	52:21 63:12 67:9	86:17,22	require 21:23 25:16
29:9 30:1 31:13	77:12 89:14,22	redacted 32:15 37:16	required 35:5,23 36:4
32:11 33:4,8,18 34:1	reasonably 26:24	refer 2:5 5:14	90:15
34:10,19 35:6 36:10	reasoning 24:1 38:18	reference 33:17 44:13	requirements 18:9
36:15 37:6 41:17	reasons 8:8 22:21,22	45:7	29:22 72:9
42:2 49:3 50:9 52:4	22:23 32:15 35:15	referenced 49:11	requires 84:8 91:3
54:10 56:16,22 57:16	48:1,17 53:6,7 55:3	referred 10:17 71:10	residential 79:18,19
58:7,15 60:10 61:19	88:16	refers 60:21	resolution 38:12 39:12
65:1,16 72:15 73:19	rebut 8:15 20:13 30:9	refute 85:15	47:6,11,20,24 66:6
74:9 77:1,2 79:1	38:19	regard 16:17 17:10	66:21,23
82:11,13,18 84:15	recall 13:5 37:21	18:2,18 24:8 25:11	respect 57:20 76:9
86:16,20 87:2 89:6	recognition 47:21	39:13 86:19	78:22 80:4 88:7
89:12,16	62:23	regarded 61:6	respectfully 26:9,20
ranges 2:10 7:2,4,6,8	recognize 20:7 30:20	regarding 2:9 5:3 18:1	26:23 31:23 32:3
11:8,10,16,21 12:9	recognized 19:18 20:1	25:22	35:14 53:6 69:1,24
12:14,19 13:22 14:17	20:3 30:14 41:12	regardless 60:23 76:2	76:10
14:20 15:1,18,20	50:17	regards 33:6 43:23	respond 8:12 45:15
18:7,19 33:10,14	recognizes 20:4	83:7 88:24	73:16 79:4 81:2
39:18 41:11 43:4,6	recognizing 23:6	regulation 43:11	responding 22:10
44:10,18,24 48:3	recollection 84:19,19	regulations 29:20 42:9	36:24
50:19 59:16 66:12	85:8,11,16	79:20	response 16:16 20:19
67:3 68:16 72:13,16	recommendation 4:17	reiterate 12:17	21:22 23:17 32:13
88:1	38:7	rejected 8:9 36:13	40:2 43:23
rationale 10:4 86:9,14	recommended 25:15	64:24	responsible 55:18
reach 74:16	25:17,23 26:12	related 49:3	rest 65:8
reaction 71:19	record 10:18 40:18	relative 5:10 14:9,22	result 12:4 14:23
read 45:16 48:6 58:14	45:3 55:19 63:17	relatively 36:16	retail 26:6 64:16 79:12
reading 6:1 12:13	64:18 73:20 74:12	relevant 6:17 38:16	81:11 82:4
45:17 46:22	77:21 84:16 85:1	45:13,19 46:10 68:21	revenue 55:21 78:10

reversal 14:9	80:10	shed 46:22	shorthand 93:6,8
reverse 4:13 55:5,22	says 28:24 33:24 39:1	Sherman 3:8	show 20:23 46:5 68:18
review 4:22 16:15	39:7,8 41:5 48:14	shifted 33:2	shown 64:22
44:21 91:8	51:8 53:17 62:2	shocked 85:13	shows 23:5 41:6 42:23
reviewed 6:12,16	67:10,20 71:22 93:5	shoot 77:24 80:13,16	45:24 49:7 69:10,12
rewriting 15:15	scared 52:9	83:13,14,19	similar 11:22,23 14:17
Rhode 83:3	school 78:19 85:9,10	shooter 83:5	89:15
right 9:15 15:24 16:3	Scott 24:6,15	shooting 2:10 7:2,4,5	Similarly 79:18
19:1 22:15 30:4	scrambling 45:10,11	7:8,11 9:8,14 11:8,10	simple 17:18 21:19,20
35:24 51:8 53:16,24	se 31:5	11:16,21 12:1,8,14	25:17 44:5 51:1
54:12,24 55:16 59:3	search 33:3	12:19,20,20,24 13:10	74:20
61:4 63:16 64:1,5	Seattle 78:5	13:13,18,22 14:10,15	simplify 28:1
66:13 68:1,7 69:24	second 13:10,14 17:14	14:17,20 15:1,18,20	simply 45:15 90:7
70:3 71:22 72:5	18:11 21:2 27:11,12	17:14 18:2,5,7,10,19	single 47:16
73:13 74:3 76:12	27:15,19 33:5 34:20	19:17,18,23 20:4,7,7	sir 57:1
77:23 80:22 85:15,16	91:1,12	20:11 24:5,22 25:4	sit 40:16 83:17
85:24 91:10,13	seconded 91:14	25:22 26:6 28:18	sitting 39:22
ring 61:8 62:4 63:5	section 6:12,15 29:17	29:9,10 30:4,11,20	situation 22:5 41:19
rink 30:2	37:15 51:20 74:2	31:12,13 32:11 33:14	47:18
role 2:15 3:3 70:11	81:7 84:23 89:24	33:18 34:1,10,19	skating 30:2
roll 1:7,7	sections 5:23 6:11	35:6 36:10,15 37:5	skills 20:10 57:20 87:8
roller 30:2	32:17	39:17 41:11,17 42:1	slash 34:22
Rollerblading 78:6	see 20:22 29:23,24	43:3,6 44:9,11,15,18	slide 50:13
room 1:4 2:15 52:9	30:24 31:1 32:15	44:23 46:1 48:3,15	slippery 63:11,20
root 79:8	35:12 39:19 54:15	49:3 50:9,19 52:4	slope 63:11,20
rule 21:3,10 23:15	58:12 68:9 89:5 90:2	54:10 56:16,22 57:16	slowly 2:20
36:21 37:13 38:10	seeing 38:17,17,18	57:20 58:15 59:15	small 73:17
43:23 45:14 51:21	seek 85:2	60:10,18 61:18 65:1	society 55:18
53:16	seeks 9:13 86:14	65:16 66:12 67:3	somebody 33:12 34:8
rules 79:20	seen 45:22 59:22,22	68:16 72:13,15,16	58:19 62:11 64:20
ruling 89:9	self-imposed 23:14	73:19 74:8 75:5,15	77:15
	sense 40:10 76:22	76:1,4 77:1,2,5 79:1	somewhat 5:8 17:4,19
S	78:18	80:8,17 82:11,18	32:8 63:2,21
safe 78:17,23 81:14	sent 53:4	83:2,8,10,17 84:4,15	soon 33:3
safer 82:12	sentences 32:16	84:21 85:6 86:16,20	sooner 33:3
safety 79:6 89:23	separate 17:8 79:11	87:2,7 88:1 89:6,11	sorry 30:17 32:19 56:3
sales 26:7 64:17	83:5,11 85:4	89:16	56:5 59:17 81:19,21
satisfactory 86:13	September 41:23	shoots 83:15,15	sought 13:13,16 14:1
Saturday 77:9	series 45:8	shopping 82:1	South 93:15
saw 55:12 72:1	serve 11:1	Shore 2:6 8:12,17 9:13	space/room 37:5
saying 23:15 24:4	service 81:11	16:4 32:24 34:22	speak 8:19 9:3 10:10
27:16 30:19 33:24	services 82:1,4	36:1 47:9 57:6,13	39:9 41:7 65:7,8
35:9,18 37:9,12,23	session 10:1	58:2 64:16,19 67:10	80:2 81:20 85:23
38:22 54:8,20,23	set 21:18 42:10 74:21	80:4,9,10 82:24,24	speaking 56:11 78:20
58:23 63:4 64:10	86:21	86:14 87:18	83:24 84:1
74:15 75:14,20 76:23	setting 21:13	Shore's 45:11 64:24	special 11:17 13:12,13

13:16,19,21 14:1,5 14:12 18:8 25:13 38:13 42:10 48:4 49:13,20 54:4 59:22 65:18 69:22 72:7 74:7 81:14 84:9,14 85:2,18 90:15 specific 11:5 36:12 58:19 60:17 specifically 11:10,22 11:23 49:1 66:8 69:10 71:6 87:22,24 speculating 63:2 65:20 speed 34:12 spending 53:19,20 Spokane 83:23 spoke 39:7,8 41:7,7,8 sport 13:6 19:10,18,24 20:4,7,11 29:10 31:1 31:11 34:2 40:24 42:24 43:1,4 48:14 48:15,22 53:11 56:22 57:15 58:23 59:6,8 60:18,21 61:6 62:1,2 62:6,6 63:24 64:4 70:2,24 75:9,9,12 76:1,5 77:12,13,14 77:18 83:3,10,18 84:4 86:21 87:4,9,13 88:20 sporting 84:21 85:7 sports 13:1 19:4 20:8 29:7 30:19 62:20,23 68:17 71:7 sprees 53:20 squarely 42:22 ss 93:1 staff 11:6 12:6,13 13:4 13:8 14:7,24 22:20 33:9,13 34:6 39:15 44:5,18 45:10,14 46:9,14 49:18 55:2 66:23 69:14 74:19 staff's 5:6 12:8 50:15 stage 42:7 86:6 stall 22:9 23:17 45:7	47:3 stand 89:10 standard 74:10 standards 18:14 81:13 standing 30:10 standpoint 68:10 stands 7:7 Starbucks 78:5 start 31:21 62:18 69:9 started 33:11 75:19 starting 3:2 state 4:23 8:8 18:19 36:3 48:2 49:10 61:14,20 83:9 93:1 stated 31:18 47:11 48:17,23 66:8 statement 33:12 34:8 35:8 39:20 46:2 47:22 67:16 78:15 86:8 89:24 90:20,21 statements 90:7 states 18:20,20,21 19:3 21:4 39:14 77:22 stating 37:17 statute 65:24 73:3,6,7 stay 55:24 step 76:12 steps 25:17,19 Stewart 1:13 16:6,8,9 stink 45:22 stomach 54:23 stop 69:20 stopped 64:9 store 32:21,24 85:7 street 49:5,6,7 52:8 streets 73:22,24 79:9 strictly 17:12 strong 89:10 strongly 80:19 stuff 31:16 32:14 subject 4:22 subjective 29:1 submission 16:13 21:9 38:11 submit 20:19 22:13	40:13 41:14 43:10 45:12,19 46:5 47:21 51:11 75:21 81:6 82:21 submitted 19:12,14,16 20:2 21:1 28:9 29:8 29:10 30:10 32:12 33:4 34:19 48:5 51:6 66:22 69:13 70:1 75:11 SUBSCRIBED 93:20 subsequent 68:6 subsequently 65:2 suddenly 52:22 54:19 suggest 7:17,23 10:2,6 49:23 91:3 suggested 15:16 44:5 54:3 suggesting 45:9 61:17 suggestion 8:7 suggests 33:13 Suite 93:16 summarize 14:13 summary 60:24 summation 56:13 57:22,24 Sunday 77:9 supercede 61:13 support 39:20,23 40:2 41:8 42:18 43:2 63:23 supported 40:14 43:1 supportive 26:13 supports 23:2 59:13 suppose 50:1 86:1 supposed 21:24 26:22 34:1 40:4 67:8 82:8 82:19 supposedly 40:5 sure 28:1 34:14 54:12 63:17 64:8 68:3,6 70:6 71:23 73:11 81:3 surprised 33:11 surrebuttal 8:18 suspect 90:11	swear 8:2 sworn 8:6 10:13 39:9 93:5,20 synonyms 31:1 system 77:20 S-T-E-W-A-R-T 16:9 S.J 1:9 <hr/> T <hr/> T 1:13 41:6 Tab 17:16 29:19 30:22 table 6:7,9,10 11:11 11:12,18,20 14:16 44:17 74:6 89:12 tabs 30:16 take 2:24 3:3 8:12 20:16,17 22:6 29:5 34:21 39:4 44:2 56:14 59:11 64:8 86:12 89:1,2 taken 40:18 42:14 51:12 takes 45:18 talk 2:20,20 9:20 20:21,21 23:21 29:15 29:15,16 31:1 39:11 51:21 53:8,8 61:14 62:16,18,19,20 67:21 71:16 72:13 76:24 77:8 talked 40:22 65:9 72:12 talking 9:6,10,11 32:20,22 37:9,12,19 40:11,12 52:13 54:11 59:8 60:1,12 62:18 63:21 67:12,13 68:20 72:1 76:15 77:1 talks 27:9 target 19:18,23 20:4 20:11 29:10 31:12 75:24 76:4 targets 80:13,14 83:11 83:16 task 44:19 taxed 54:11
---	---	---	--

taxing 54:11	34:22 38:15 45:9	tonight's 4:4	type 68:18
taxpayer 78:9,10,12	46:19,21,22,24 47:10	tools 70:20	typically 4:16 6:5
Team 19:17,22	48:6,18 50:12,16	torn 85:5	
technical 9:11	56:18,24 57:2,24	touch 12:6	U
television 83:22	71:4 73:4,8,9 74:2,16	tough 72:21	ultimately 13:19 25:12
tell 24:11,19 35:24	76:24 77:1 78:10,11	tracks 30:2	25:21 26:12 32:19
39:10 43:6 60:2	80:22 83:19 85:16	traditional 81:9 82:6	46:11 53:7 55:20
76:22 78:20	87:15 88:18,19,24	trained 80:16	58:18 60:7
telling 23:16 58:22	89:4,9,21,22 90:1	training 13:6 31:5,7	ultimatum 23:18,22
tells 42:17	thinking 35:11 36:18	57:18 58:8 83:10,12	unanimously 66:6,21
term 35:2 39:16 40:3	thinks 64:19	87:6	underlying 79:9
78:1	third 21:2	transcribed 93:9	understand 6:22 17:3
terms 30:17 57:18	thorough 33:3	transcript 93:10	42:13 45:18 46:9,10
62:22	thought 28:8 35:4	trap 28:2 83:5	46:10 53:15,15 60:3
testified 18:15 57:11	37:7 44:20 45:24	travel 82:1,6,10	70:19 75:16 76:8
65:3,8 67:4 86:23	50:4 69:14 78:24	treated 6:9 18:7 79:10	understanding 9:6
testify 15:5 57:14	three 25:16,19 28:13	treatment 15:18	66:14
testifying 10:11 57:10	Tim 2:13 32:19 34:16	true 26:9 39:13,21	understood 34:14
57:14	36:7 37:1,17 45:23	52:24 60:14 93:11	67:15
testimony 13:2,5	45:23 46:1	truly 50:8	undertake 46:24
17:24 18:17 31:24	time 2:6 7:19 8:12	trustee 15:5,11 17:23	undertaking 46:6
39:24 57:4,9,17,21	13:5,23,24 14:5 15:3	31:24 32:19 39:22	undisputed 40:21
58:1 64:23 86:24	15:16 16:1,2 22:7	42:5 43:5 46:19 65:3	unfortunate 32:7
90:10	24:6 30:10 34:13	67:5	75:16
text 25:12,17 50:5	35:17 37:21 40:7,14	trustees 9:7 15:13	unfortunately 36:20
thank 7:16 10:22	45:18 47:14 48:21	40:14 41:9,23 42:6	44:4 66:2 88:20
15:10,11,22,23 16:5	53:13 54:19 57:13	53:19 68:23 89:8	unheard 69:17 78:5,6
16:11,12 24:18 43:13	60:7,8,8 72:13 74:17	truth 41:9	UNIDENTIFIED
50:22,24 55:23 78:13	80:2 84:20 85:14	try 2:20 20:9 34:12	83:21 84:17
78:14 80:24 81:1	86:23 91:22	46:9,10 48:19 52:6	unintended 28:2
85:21 91:22	timeline 45:8,13,19	55:3 56:9 62:12	unique 2:12,23 17:3
theirs 56:12	47:3	65:23,24 69:6 70:11	unison 44:23
Theisen 1:9 3:4,5	times 75:3 77:4 85:13	70:20 77:23	universe 90:11
80:21 90:20 91:10,19	Timothy 1:12	trying 7:22 19:22	unquote 26:2
thing 8:2 9:5,20 17:21	today 7:7 27:11,19	20:17 28:1 47:17	unsafe 78:23
30:20 42:4 49:10	74:18	55:20 60:12,18 63:17	unsupported 42:19
53:23 54:24 67:5	told 21:15 25:18 41:8	63:19 65:20 87:8	untrue 67:16
75:8 80:7 81:2 84:3	72:23 85:11	Tuesday 34:17	update 22:4
84:7	tolerance 33:10,14,22	turkey 83:15	updated 14:6 15:8
things 5:18 20:21	46:1 49:8 58:16	turn 21:7 27:3 32:18	uphold 90:16
25:13 27:24 41:13	tolerated 69:12	turned 87:10,18	uproar 33:11,19 69:16
42:9 47:19,19 48:1	Tom 15:12	TV 80:15	upset 37:15
54:7 62:20,23 64:23	tongue 80:3	twice 41:16	upstairs 61:8
75:17 80:6 83:11,16	tonight 3:16 5:11 7:1	two 18:10 37:11 39:11	use 6:4,7,8,8 7:2,8,12
83:19 89:13	9:22 10:16 46:24	42:10 68:10,24 77:4	11:11,12,17,17,18,18
think 3:2 17:20 23:24	49:17 56:8 80:2 91:4	83:7,11 85:13	11:20 12:1,20 13:6

13:12,13,16,19,22 14:1,5,5,16 15:2,20 18:21,24 20:9 24:5 25:4 28:19 29:6 32:11 34:10,19 36:10 37:5 40:19,20 42:3 44:17 48:4 49:8,13 49:20 50:18 52:4,6 54:5 56:1,6 57:15 59:14,18,22 61:2 63:18 65:18 70:20 71:20 72:3,7 74:5,7,7 77:4 82:9,15 83:11 84:8,9 85:2,3,18 88:19 89:12,14,21 90:15 useless 63:21 uses 11:20,23,24,24 12:9 13:23 14:11,12 14:18,22 18:8 25:13 48:22 69:22 79:13 81:11,14,17,23 82:4 82:5 90:12 usual 12:20,22 19:6 78:1,3,6 86:22 U.S 19:16 75:12 76:2 83:4	20:5,12,15,18,23 21:4,13,23 22:10,12 22:20 23:9,21 24:8 24:20 25:18,20,23 26:12,13,13,16 27:16 28:7,14 29:14 30:5,7 30:9,11 32:6 33:13 33:15,22,24 34:6,9 35:9 36:2 38:9,12,13 39:15 45:10 46:20 47:6,8,12,21 48:8 49:18 51:6 54:2 55:2 57:13 58:10,13,16 59:7 60:24 61:9,14 62:8 63:6,12 64:3,5,7 64:9,21 66:6,23 67:1 67:7,9 68:14 69:14 69:21 70:5,12,17,21 71:5,19 73:10 74:19 80:20 84:18 85:19 87:1,13,17,22 88:6 89:6 90:4 Village's 3:18 7:12,13 11:1 14:9 15:17,22 23:14 29:17 48:8 49:24 66:11 violate 45:14 violations 60:6 virtue 60:19,20 volume 58:4 vote 13:15 41:22,22 42:1,4,7,14 56:14 80:20 86:12 88:8 91:17,20 voted 9:8 40:15 41:16 41:24	64:10 71:16,21 78:15 86:10 88:11 90:18 wanted 25:18 26:14 28:11 34:14 45:4 47:11,23 48:1,2 54:6 54:6,19 57:19 58:18 60:9,24 61:19 63:5 67:5 68:3,15 71:6,23 74:12,24 83:1 87:7 wants 9:3,18 10:19 54:9 76:13 wasn't 23:18 26:15 28:23 43:1 46:2 47:22 48:24 50:2 53:1 69:9 74:14 watch 80:15 watching 19:21,21,24 83:22 water 53:7 55:4 waters 60:7 way 8:18 10:23 25:9 26:14 33:20 54:5,12 56:10 58:17 60:12,13 67:19 76:3 89:20 ways 38:4 website 19:17 21:4 75:12 Wednesday 1:2 weeks 37:11 42:10 weigh 35:4 welcome 9:4 welfare 89:23 went 26:12 50:5 54:18 58:20 71:17 weren't 40:11,24 47:19 67:12 72:1 west 17:15 26:3 36:15 72:8 we'll 8:11,14,17 12:5 16:3,19 20:22 56:14 we're 3:1 7:22 9:6,10 9:10,16 23:14 24:16 27:24,24 48:11 49:10 53:11,12 57:3 58:13 59:16 60:1 62:14 63:19 65:20 71:2,22	76:14,15 78:19 86:5 we've 30:8 61:21 62:12 70:1 89:7,15 Wiberg 23:5 32:20 45:23 52:1 wide 82:3 willful 22:11 win 68:2 wise 27:14 wish 28:15 85:22 withdrawal 60:8 withdrawn 13:15 14:3 withdrew 32:23 witnesses 8:3,3,5 10:13 57:14 won 83:4 word 48:22 57:15 60:12 64:4 80:7 83:18 words 5:21 6:1,23 31:21 32:1,2 48:13 53:10 70:23 73:3,6 work 34:22 77:7 world 31:16 75:17 worry 63:10 64:14,15 write 21:11 51:24 52:1 66:15,17 writes 22:4 writing 4:2,13 written 36:19 37:8 38:6,10 43:10 47:15 47:19,20 53:17 55:1 64:11,11,12 68:8,19 68:23 69:3,10,23,23 74:13 89:20 90:9 91:3 wrong 20:18 23:20 37:10,22 38:2 39:5 53:22,24 54:17 83:20 wrote 21:18 52:10 53:3
<hr/> V <hr/> vacant 36:16 vacuum 44:4 48:16 70:22 values 20:10 variations 13:16 variety 81:13 82:3 various 32:14 46:12 versa 79:14 versus 82:14 vested 63:16 68:7 vice 79:14 village 1:1,4,12 4:6,16 4:20 5:1,1,3,9,17 6:16,18,19 8:4,7,15 10:10 12:7 13:12,19 14:6 15:6,13,15,19 16:1,16,20 19:12	<hr/> W <hr/> Wacker 93:15 walking 82:18,20 want 2:17 8:12,16 16:1 22:21 23:2,7 27:4,13,13 31:8 39:1 39:11 45:9 49:10 50:23 54:16 58:17 62:8,17,17 63:9	<hr/> Y <hr/> Yeah 10:8 63:2 82:8 90:13 year 54:9 66:5 87:22	

<p>years 18:11 33:9,17,18 36:2 42:13 58:15 60:1 64:15 65:21 69:15 72:7,15 73:8,8 78:4,6 84:6 yesterday 68:24 young 83:3</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>ZBA 2:15 4:6,9,12,13 4:16,20 5:4 7:20 88:3 zoned 36:16 74:1 zoning 1:1,8,11,12 2:11 3:15,18,21 4:1,5 4:8,14,19 5:5,12,12 5:13,14,20 6:7,15,20 6:23 7:3,5,6,8,10,12 7:14 8:9 9:16 11:2 11:14 12:2,17 14:1,6 14:24 15:6,7,15,17 16:17 17:11,13,18 18:2,22 19:14 20:18 20:20 21:17 23:2 24:23 25:5,6 26:7 27:7,9 28:17,21 29:1 29:2 33:7,24 35:1 38:20,21 40:6,9,20 40:23 42:16 44:3,14 45:3,16 46:4,6 50:17 50:18 51:4,13,16 55:23 56:9,9 60:21 66:3,8 67:10 70:9,13 70:16,16,18 71:13 73:17,23 74:17 76:21 78:24 79:11,15,17,18 79:21 81:5,7 84:10 84:13,24 85:20 86:15 86:18,21 87:20,24 88:3,6,9 89:20 90:8 90:12,17,23 91:2,6</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>084-004103 93:15</p> <hr/> <p style="text-align: center;">1</p>	<p>1 29:21 31:2 41:17 60:19 91:21 1st 19:13 53:2 10 18:11 100 37:3 52:11 11 21:3,5 23:14 44:2 11-day 43:23 51:21 116 84:6 15 65:21 72:7 73:8 15-plus 54:9 60:1 16th 36:8,24 1896 75:7 84:5 19 1:2 19th 27:7,19 66:5 87:21 1904 75:7 1928 75:7 1957 84:18,24 1963 85:12 1989 13:9 64:24 65:17 87:18 1993 13:13 1997 13:16</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2nd 34:17 20 72:7 73:8 78:4 2005 15:13 2008 14:7 15:7,14 18:6 18:16 21:21 31:18 53:9 59:20 65:3 66:3 68:15,23 87:20 90:9 90:12 2009 5:4 2011 24:4 40:5 67:9 2012 1:2 36:8,24 235 85:12 24th 21:12 240 5:20 26th 22:2 29th 84:18,23</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>30 78:6 300 93:16 311 93:15</p>	<p>312 93:17 3310 13:17 3318 13:11 17:14 26:3 34:20 72:8 386-2000 93:17</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 91:20 4th 41:23 4.01 81:8 4220 76:17</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 41:16 50 36:2 53 64:15</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6:00 77:8 60606 93:16 6537 78:16 6601 80:1 6639 83:23 6900 1:4</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7:00 1:3 76,000 5:21</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 29:19 8th 38:14 89 13:21 14:2</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 29:20 9th 47:6 90 4:10 93 13:21 14:2</p>
---	---	--