

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

Soloman Enterprises, LLC
t/a Climax Restaurant and
Hookah Bar
900 Florida Avenue Northwest
Retailer CR
License No. 88290
Renewal Application
Case No. 13-PRO-00152

Protest
Hearing
(Status)

April 2, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
DONALD BROOKS, Member
HERMAN JONES, Member
MICHAEL SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member
JAMES SHORT, Member

ALSO PRESENT:

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P-R-O-C-E-E-D-I-N-G-S

(2:44 p.m.)

CHAIR MILLER: We are going to hear the Protest Case number 13-PRO-00152 Climax Restaurant and Hookah Bar located at 900 Florida Avenue Northwest, License number 88290. And it is in ANC 1B. So the parties in this case can come forward.

MR. KLINE: Good afternoon. Andrew Kline here on behalf of the licensee.

MR. YEGZAW: I'm Soloman Yegzaw, the owner of Climax Restaurant and Hookah Bar.

MR. SIGMON: And Jeremy Sigmon on behalf of the residents of the 2000 block of Vermont and also sort of coordinating from the Floridian testimony.

MEMBER SILVERSTEIN: I'm sorry, what was your name again, sir? It was Jeremy --

MR. SIGMON: Jeremy Sigmon, S-I-G-M-O-N.

CHAIR MILLER: Okay. You're the

1 representative of, according to my notes, a
2 group of five or more, right? Okay. And you
3 are, sir?

4 MR. BANERJEE: My name is Rajat
5 Banerjee. I'm the representative for
6 Floridian Condominium. We have, like, 14
7 protestors.

8 CHAIR MILLER: Right.

9 MR. BANERJEE: 919 to 929 Florida
10 Avenue.

11 CHAIR MILLER: Okay. I think our
12 general counsel may have just told you. But
13 we were just informed that the investigator is
14 out sick today.

15 And we are planning to go forward
16 and hear the rest of the case today and the
17 investigator, I guess when we can schedule
18 that in. So are you, are the protestants
19 familiar with our hearing schedule, how it
20 goes? Have you done a protest here before?

21 MR. SIGMON: It would be useful
22 for a refresher, I think.

1 CHAIR MILLER: Okay. So usually,
2 the applicant will make an opening statement.
3 And then you all can make an opening
4 statement. And then usually there's one lead
5 representative because -- you're going to be
6 the lead.

7 Okay, because usually you don't
8 need two different opening statements. Okay,
9 so that's five minutes at most. And then the
10 Board witness usually goes first, the
11 investigator.

12 And what he or she normally does
13 is testifies on the basis of the report.
14 Basically, goes through the report that you
15 all should have anyway.

16 And then all the parties can cross
17 examine. So she's not here, so then the next
18 in the order is the applicant. So the
19 applicant will put on his case.

20 His witnesses, you'll get a chance
21 to cross examine, Board has a chance to do
22 questions. And then you'll put on your case.

1 So that's all that's going to happen today.

2 Obviously closing goes at the very
3 end after the investigators. You know, we
4 have to hear all the witnesses before there's
5 a closing. So it will be just your cases.

6 The time that's been allotted is
7 usually the five minutes for opening and
8 closings, and then an hour and a half for your
9 case. So that's a really long time. We don't
10 expect you to use it all but you have that
11 amount of time.

12 And that is timed by when your
13 witnesses are testifying and when you are
14 crossing witnesses. So when your witness is
15 being cross examined, that doesn't go against
16 your time, it goes against the person who's
17 crossing. Okay?

18 (Off microphone comment)

19 CHAIR MILLER: What?

20 MR. SIGMON: Could you repeat that
21 last --

22 CHAIR MILLER: Okay. So cross

1 examination, when you're cross examining the
2 Applicant's witness, it's your time.

3 MR. SIGMON: Got it.

4 CHAIR MILLER: Okay, and when they
5 are cross examining your witnesses, it's their
6 time. And Mr. Jones keeps track of the time.
7 But an hour and a half is a long period of
8 time. So you hopefully shouldn't reach that.

9 And I guess I just want to review.
10 I know you submitted PIFs, so we have a basic
11 understanding of the issues in the case. But
12 I just wanted to double check on witnesses.

13 You know, sometimes people put
14 down more witnesses than they actually
15 produce. So I just want to get a feel for how
16 many witnesses. Yes?

17 MR. KLINE: At most, three.
18 Likely less than that.

19 CHAIR MILLER: Okay. And how
20 about the protestants?

21 MR. SIGMON: I think we have four.

22 CHAIR MILLER: Okay. And the only

1 thing I will say also, and you could see how
2 it goes. We don't want redundancy. But if
3 somebody could even come up and testify and
4 say okay look, I think the same way as the
5 previous witness, and they don't have to go
6 through the whole thing or whatever. Okay.

7 MEMBER SILVERSTEIN: Madam Chair?

8 CHAIR MILLER: Yes?

9 MEMBER SILVERSTEIN: If we're not,
10 the 90 minutes includes cross examining the
11 ABRA Investigator, correct?

12 CHAIR MILLER: Yes.

13 MEMBER SILVERSTEIN: So you might
14 want to shepard your time, husband your time
15 so that you'll have time when the investigator
16 comes. Using 90 minutes today might not be
17 good because you wouldn't be able to cross the
18 Investigator.

19 CHAIR MILLER: You can check
20 periodically on how much time you've used.
21 It's a lot of time, and I would be surprised
22 if you used it all up. But you know, that's

1 a word of caution. Okay, so any questions?

2 MR. KLINE: No.

3 CHAIR MILLER: Okay. Ready for
4 opening statement, then.

5 MR. KLINE: Yes.

6 CHAIR MILLER: Okay.

7 MR. KLINE: Thank you. Good
8 afternoon, Madam Chair, members of the Board.
9 We are here for a renewal license application
10 for Climax. This is a small, relatively small
11 sports bar on Vermont Avenue.

12 It is in the Arts Overlay
13 District. I know many of you Board members
14 have heard many cases in the Arts Overlay
15 District. But if I just may refresh, the Arts
16 Overlay District is a zoning district that was
17 specifically created for the center part of
18 the city.

19 And the purpose of the Arts
20 Overlay is to encourage the scale of
21 development and the mixture of building uses,
22 and to require uses that encourage pedestrian

1 activity, especially retail, entertainment,
2 and residential uses.

3 And to foster 18 hour activity,
4 and increase public safety. Now our evidence
5 will show that this establishment, as I
6 indicated, operates as a sports bar, that
7 there have been some issues and some
8 complaints about noise.

9 The Board will hear testimony as
10 to how this operator has taken steps to
11 mitigate the concerns about noise and take
12 measures to prevent noise from being heard in
13 the residences.

14 A number of the protestors live
15 directly behind the establishment on Vermont
16 Avenue. And this establishment, I may have
17 misspoke before, is actually on Florida
18 Avenue. And it does back up to residences.

19 However, it's important to note
20 that those residents are in an area zoned C2,
21 and it is within the Arts Overlay. And from
22 a planning perspective, we believe, and of

1 course the Board will come to their own
2 conclusion and make their own decision, that
3 one of the concepts here as stated in the
4 zoning regulations is to promote 18 hour
5 activity.

6 And those that live in this area
7 should be on notice that there's some things
8 that just need to be dealt with and tolerated.

9 But notwithstanding that, the
10 Board will hear substantial evidence that this
11 applicant has taken steps and will continue to
12 take steps to address the concerns that have
13 been raised with respect to noise. Thank you.

14 CHAIR MILLER: Thank you. Okay.

15 MR. SIGMON: Thank you very much
16 Madam Chair and the Board. Our two sets of
17 neighbor petitions actually came together
18 without any collusion. We didn't realize that
19 we all had the same, or similar concerns about
20 a neighboring business.

21 But as we've grown to work
22 together, we've noticed that there's a lot of

1 commonality in particularly one segment of the
2 Vermont Avenue's protest, which is related to
3 noise and the ability for residents who work
4 and residents who are retired to actually get
5 any sleep at night.

6 And there is substantial evidence
7 on our side that we intend to display to you
8 that despite efforts on our end and despite
9 measures on the end of Climax bar, they're not
10 sufficiently useful to actually help residents
11 sleep.

12 And there are many, many other
13 businesses in the neighborhood. We are well
14 aware of that. Those businesses have some of
15 their own externalities that we're well aware
16 of.

17 But through many different
18 measures, and over a course of time, we've
19 been able to pinpoint this bar over and over
20 again as a continual and largest source of any
21 problem.

22 And particularly from the Vermont

1 Avenue side, there's a handful of other
2 concerns that we have had related to health
3 and safety, that is related to rodent control,
4 and also safety management, altercations in
5 the alley and in the neighborhood generally.

6 And also, the continued use of the
7 patio that, whether or not it may be
8 appropriately permitted after the fact, was
9 not constructed with any neighbor input and
10 not with any DC authority, and continues to
11 exacerbate the existing problems that we have
12 with the bar.

13 (Off microphone comment)

14 MR. SIGMON: And I'll just add,
15 since I haven't used my full five minutes --

16 CHAIR MILLER: Don't feel like you
17 have to fill.

18 MR. SIGMON: I understand. That
19 any business that's in this neighborhood,
20 despite the fact that there's a certain zoning
21 classification, necessarily understands by its
22 proximity to its neighbors, that there's some

1 sort of responsibility to be reasonable and
2 respectful of residences, and it's not just
3 surrounded by uses that are analogous to its
4 own operation.

5 So while the law may not
6 necessarily require that the bar owner do
7 everything in its power to completely abate
8 everything, we have a certain expectation for
9 neighborly conduct.

10 CHAIR MILLER: Okay, thank you.
11 Okay, Mr. Kline?

12 MR. KLINE: I call to the stand
13 Solomon Yegzaw. Madam Chair, if I may, I have
14 copies of the exhibits --

15 CHAIR MILLER: Oh good. Okay,
16 thank you.

17 MR. KLINE: -- available. Thank
18 you. And I've given a set to the protestants
19 as well. Madam chair --

20 CHAIR MILLER: Yes. I need to
21 swear you in. Do you swear to tell the truth,
22 the whole truth and nothing but the truth?

1 MR. YEGZAW: Yes I do.

2 CHAIR MILLER: Thank you.

3 MR. KLINE: Would you state your
4 name for the record, please?

5 MR. YEGZAW: My name is Solomon
6 Yegzaw, owner of Climax Sports --

7 MR. KLINE: All right. And how
8 long have you owned the establishment?

9 MR. YEGZAW: Two years.

10 MR. KLINE: And is that since the
11 establishment opened?

12 MR. YEGZAW: Yes.

13 MR. KLINE: Describe for the
14 Board, if you will, what kind of place this
15 is.

16 MR. YEGZAW: Well, it is a kind of
17 smaller sports bar. And it has two floors,
18 which is first floor and second floor. And we
19 serve Ethiopian food and American food.

20 CHAIR MILLER: You serve what?

21 MR. YEGZAW: We serve foods,
22 Ethiopian and American food.

1 MR. KLINE: And what are your
2 hours?

3 MR. YEGZAW: Our hours are Sunday
4 through Thursdays 11:00 to 2:00. Friday and
5 Saturdays, 11:00 to 3:00.

6 MR. KLINE: And you indicated that
7 you serve Ethiopian and American food,
8 correct?

9 MR. YEGZAW: Yes.

10 MR. KLINE: Do you also have, you
11 said you're a sports bar. Are there TV's and
12 things?

13 MR. YEGZAW: Yes, yes.

14 MR. KLINE: Okay.

15 MR. YEGZAW: We have package
16 sports channels and we have six TVs on first
17 floor and three TVs in the second floor.

18 MR. KLINE: Is there any other
19 activity or entertainment that takes place in
20 the establishment besides consuming food,
21 watching sports, and eating American or
22 Ethiopian food, as the case may be?

1 MR. YEGZAW: Entertainments, so
2 far I have a DJ, I haven't tried the band yet
3 so far. But I do DJs.

4 MR. KLINE: Okay. And the DJ is
5 in what area?

6 MR. YEGZAW: In the second floor.

7 MR. KLINE: On the second floor?

8 MR. YEGZAW: Yes.

9 MR. KLINE: All right. And you
10 also have an outdoor seating area?

11 MR. YEGZAW: Yes.

12 MR. KLINE: And where is that?

13 MR. YEGZAW: It's on the second
14 floor, in the back.

15 MR. KLINE: So it's behind the
16 establishment?

17 MR. YEGZAW: Behind the
18 establishment.

19 MR. KLINE: And that backs up onto
20 an alley?

21 MR. YEGZAW: Yes.

22 MR. KLINE: And there are

1 residents behind you, correct?

2 MR. YEGZAW: Yes.

3 MR. KLINE: Are there other
4 establishments that border that alley, other
5 businesses?

6 MR. YEGZAW: Yes.

7 MR. KLINE: What are those
8 businesses, if you know offhand?

9 MR. YEGZAW: The closest is
10 Velvet Lounge, Dodge City, and Brixton.
11 Nellie's also is close.

12 MR. KLINE: What's that? Nellie's
13 is also close?

14 MR. YEGZAW: Nellie's, yes.

15 MR. KLINE: Okay. And those
16 establishments, do any of those establishments
17 have any outside seating at all?

18 MR. YEGZAW: Yes.

19 MR. KLINE: All right. Which of
20 those have outside seating?

21 MR. YEGZAW: Velvet has one --

22 MR. KLINE: Well let's stop there.

1 Velvet borders the same alley, is that
2 correct?

3 MR. YEGZAW: Yes, same alley.

4 MR. KLINE: And where is their
5 outside seating?

6 MR. YEGZAW: Oh, it's close to the
7 alley.

8 MR. KLINE: So is it behind?

9 MR. YEGZAW: Behind the building.

10 MR. KLINE: Are they on U Street?

11 MR. YEGZAW: They're on U Street,
12 but their back's on our alley.

13 MR. KLINE: Okay. So the back of
14 the establishment is on the same alley --

15 MR. YEGZAW: Same alley.

16 MR. KLINE: -- that your outside
17 seating is on?

18 MR. YEGZAW: Yes.

19 MR. KLINE: All right.

20 MR. YEGZAW: Where each front each
21 other.

22 MR. KLINE: All right. And do you

1 know how late they operate?

2 MR. YEGZAW: Yes, same hours I
3 think I do.

4 MR. KLINE: And that would be
5 what?

6 MR. YEGZAW: That would be Sunday
7 through Thursdays until 2:00 a.m. in the
8 morning, Friday, Saturdays until 3:00 a.m. in
9 the morning. That's when I see people around
10 out there.

11 MR. KLINE: All right. Now you
12 also mentioned I think the Brixton?

13 MR. YEGZAW: Brixton.

14 MR. KLINE: How far is that from
15 your establishment?

16 MR. YEGZAW: Brixton, same block.

17 MR. KLINE: Same block?

18 MR. YEGZAW: Same block. About
19 five, maybe five doors away.

20 MR. KLINE: Five doors away?

21 MR. YEGZAW: Yes.

22 MR. KLINE: And they have outside

1 seating as well?

2 MR. YEGZAW: Yes.

3 MR. KLINE: And where is their
4 outside seating?

5 MR. YEGZAW: It's a rooftop in
6 face to the 9th Street.

7 MR. KLINE: It faces 9th Street?

8 MR. YEGZAW: Yes.

9 MR. KLINE: All right. But its
10 elevation is higher than the elevation of your
11 outdoor seating area?

12 MR. YEGZAW: Yes.

13 MR. KLINE: It's above it, in
14 other words?

15 MR. YEGZAW: Yes. It's above it.

16 MR. KLINE: Okay. And then I
17 think you also mentioned Dodge City?

18 MR. YEGZAW: Dodge City.

19 MR. KLINE: And do they have
20 outside seating?

21 MR. YEGZAW: I don't think so,
22 they have outside seating, no.

1 MR. KLINE: Okay. And what about
2 is there anything else in close proximity that
3 has outside seating?

4 MR. YEGZAW: Yes, Nellie's.

5 MR. KLINE: Nellie's?

6 MR. YEGZAW: Yes.

7 MR. KLINE: Okay, and where is
8 Nellie's located in relation to these other
9 establishments?

10 MR. YEGZAW: Nellie's is right by
11 9 and U. But their rooftop is face to our
12 side.

13 MR. KLINE: So it faces --

14 MR. YEGZAW: Face to the 9th
15 Street. I mean, U Street. So we are very
16 close to, our alley's very close to the U
17 Street.

18 MR. KLINE: Okay, all right. So
19 Nellie's has outside seating that's open --

20 MR. YEGZAW: Open.

21 MR. KLINE: -- to what would be
22 the north side of U Street?

1 MR. YEGZAW: Yes.

2 MR. KLINE: Okay. And do you know
3 how late they operate that outside seating
4 area?

5 MR. YEGZAW: Yes. Like I said,
6 Sunday through Thursdays until 2:00, Friday
7 and Saturdays until 3:00.

8 MR. KLINE: All right. And that
9 establishment, along with the Brixton and
10 Velvet Lounge and Dodge City are within half
11 a block of you?

12 MR. YEGZAW: Well, I'll say some
13 of them is less than half block.

14 MR. KLINE: Less than half a
15 block?

16 MR. YEGZAW: Less than half a
17 block.

18 MR. KLINE: Okay. I'm going to
19 hand you a package of photographs, and we're
20 going to mark the package as Applicant's 1.
21 If you look at the first photograph, will you
22 tell the Board what's depicted in that

1 photograph, what's shown in that photograph?

2 MR. YEGZAW: First --

3 MR. KLINE: The first photograph.

4 MR. YEGZAW: Okay. That's the
5 Climax building.

6 MR. KLINE: Okay.

7 MR. YEGZAW: And I can see Climax.
8 And also I can see the gas station.

9 MR. KLINE: Okay. Let's talk
10 about that for a minute. The gas station, is
11 that immediately adjacent to your
12 establishment? Right next door?

13 MR. YEGZAW: Yes.

14 MR. KLINE: Okay. And that's a
15 gas station. Do they have any other services
16 there?

17 MR. YEGZAW: Yes. They have a
18 store in there.

19 MR. KLINE: Okay, a convenience
20 store?

21 MR. YEGZAW: Yes.

22 MR. KLINE: And do you know, and

1 when do they operate?

2 MR. YEGZAW: They're open 24
3 hours.

4 MR. KLINE: Twenty four hours a
5 day?

6 MR. YEGZAW: Yes.

7 MR. KLINE: All right, so is there
8 another gas station within proximity that
9 operates 24 hours a day?

10 MR. YEGZAW: No, this is the only
11 one in our neighborhood. This is the only
12 one, the nearest.

13 MR. KLINE: Is this a pretty busy
14 place?

15 MR. YEGZAW: Yes. Busy place, 24
16 hours.

17 MR. KLINE: Twenty four hours?

18 MR. YEGZAW: Yes.

19 MR. KLINE: People getting gas?

20 MR. YEGZAW: People getting gas,
21 go inside, and get some snacks, gifts.

22 MR. KLINE: Okay. All right.

1 Show you the next photograph. Do you know
2 what that, the second photograph in the group
3 that I've showed you?

4 MR. YEGZAW: The second
5 photograph, I see the red thing in top is 900
6 Florida Avenue, which is my address.

7 MR. KLINE: Okay. So do you
8 recognize this as sort of an aerial view of
9 your neighborhood?

10 MR. YEGZAW: Yes. I see the map.
11 Right.

12 MR. KLINE: All right. And does
13 the red dot accurately reflect where your
14 business is located?

15 MR. YEGZAW: Yes.

16 MR. KLINE: You can tell that from
17 the way the streets are laid out?

18 MR. YEGZAW: Yes, yes.

19 MR. KLINE: All right. Turning to
20 the next photograph, can you tell the board
21 what that is, what that shows in that picture?
22 First of all, do you know where this picture

1 was taken from, the third photo?

2 MR. YEGZAW: Well yes, this look
3 like the second floor from Climax patio.

4 MR. KLINE: From the patio?

5 MR. YEGZAW: Yes.

6 MR. KLINE: From the back deck?

7 MR. YEGZAW: From the back deck.

8 MR. KLINE: All right.

9 MR. YEGZAW: And looking through
10 19, 21 Florida Avenue. Florida Ave buildings.
11 Florida Avenue buildings.

12 MR. KLINE: Okay.

13 MR. YEGZAW: And I can see the
14 Crown, the gas station sign.

15 MR. KLINE: All right. Now the
16 tall building in the middle, is that where
17 some of the Protestants that are here today
18 live?

19 MR. YEGZAW: Yes.

20 MR. KLINE: And is the Crown gas
21 sation, that's between you and where these
22 Protestants live?

1 MR. YEGZAW: Yes.

2 MR. KLINE: All right. And that's
3 a 24 hour gas station we're talking about?

4 MR. YEGZAW: Twenty four hour gas
5 station. And it's probably, maybe 700, 100
6 5ths away from the patio to the buildings.

7 MR. KLINE: Okay. Turn the next
8 page. If you could tell the ABC Board what's
9 shown on that photograph. Is that also taken
10 from the back deck?

11 MR. YEGZAW: Yes.

12 MR. KLINE: Okay.

13 MR. YEGZAW: Yes. And I'm seeing
14 the Howard Building, 9:30 Club parking, and
15 the building.

16 MR. KLINE: Okay. Now when you
17 say that you see Howard, is there something in
18 the photograph which makes one know, which
19 makes you know that that's Howard that we're
20 looking at? What do you see in the building
21 that --

22 MR. YEGZAW: Yes. That's the

1 Howard building, that's the students live in
2 there.

3 MR. KLINE: Okay. You're talking
4 about the tower, is that where Howard is?

5 MR. YEGZAW: No, the red building.

6 MR. KLINE: The red building?

7 MR. YEGZAW: Yes.

8 MR. KLINE: Okay, great. Now you
9 said that you also see parking for the 9:30
10 Club?

11 MR. YEGZAW: Yes.

12 MR. KLINE: Your establishment is
13 directly across from the 9:30 Club, is that
14 right?

15 MR. YEGZAW: Across from 9:30.

16 MR. KLINE: I beg your pardon?

17 MR. YEGZAW: Yes.

18 MR. KLINE: Yes.

19 MR. YEGZAW: Across from 9:30.

20 MR. KLINE: All right. Now the
21 9:30 Club, is that a busy place?

22 MR. YEGZAW: Yes.

1 MR. KLINE: A lot of people coming
2 in and out of there.

3 MR. YEGZAW: A lot of people. A
4 lot of people.

5 MR. KLINE: Turning to the next
6 photograph, can you tell the Board what's
7 shown on that photograph?

8 MR. YEGZAW: Okay. This is the
9 front of Climax Sports Bar. And I see my
10 security camera.

11 MR. KLINE: Okay.

12 MR. YEGZAW: And I see the Crown
13 gas station sign. I see the ***3:06:25, the
14 restaurant. And I see the other building, the
15 red building.

16 MR. KLINE: All right. Now, let's
17 talk for a minute about the security camera.
18 So you have a security camera in your
19 establishment, or a security system?

20 MR. YEGZAW: Yes.

21 MR. KLINE: Tell the Board about
22 that system. What is it?

1 MR. YEGZAW: I have eight
2 surveillance security cameras. And I have one
3 in the front. I have two in the back, which
4 is when I say two, one of them in the first
5 floor, one of them in the second floor facing
6 to the neighborhood in the alley.

7 And I have five inside. First
8 floor and second floor.

9 MR. KLINE: And why did you
10 install that system?

11 MR. YEGZAW: For neighborhood
12 security system, and also anything happens in
13 there, I can cooperate with the police, with
14 anybody who want it. I have to have a record
15 for that.

16 MR. KLINE: And does that system
17 keep the recordings for a certain period of
18 time?

19 MR. YEGZAW: Yes, it keeps for two
20 weeks.

21 MR. KLINE: For two weeks?

22 MR. YEGZAW: Yes.

1 MR. KLINE: Have you had occasion
2 when either ABRA Investigators or the police
3 have come to you and said they needed to see
4 security footage?

5 MR. YEGZAW: Yes, yes. About
6 five, six months ago, police came in looking
7 for somebody else. And so I remembered that
8 the guy was there, and they're looking for
9 him. And they told me to take the record.
10 And I gave them the record, and they took it.

11 MR. KLINE: So you were able to
12 pull the recording off your system and give it
13 to the police?

14 MR. YEGZAW: Yes, yes. And they
15 appreciate that.

16 MR. KLINE: All right. Now
17 looking at the next photo in the group, can
18 you tell the Board what that photo shows?

19 MR. YEGZAW: Okay. That photo's
20 look like taken from the patio to the neighbor
21 side, which is I can see the Velvet deck out
22 there. And I can see some of the neighborhood

1 houses.

2 MR. KLINE: Okay. So is there
3 anything that identifies the, what's the
4 establishment called? Blue Velvet?

5 MR. YEGZAW: Velvet.

6 MR. KLINE: Okay. Is there
7 something there that identifies that, where
8 you can tell that that's what you're looking
9 at?

10 MR. YEGZAW: Yes. Velvet is
11 exactly, they have the same deck like I do.
12 And they are very close to the neighborhoods.
13 And they operate the same hours.

14 MR. KLINE: All right. And this
15 photo, you said, is taken from your back deck?

16 MR. YEGZAW: Yes.

17 MR. KLINE: And is the area with
18 the lights that are strung up --

19 MR. YEGZAW: The lights.

20 MR. KLINE: -- is that where
21 Velvet Lounge is?

22 MR. YEGZAW: Yes, yes.

1 MR. KLINE: All right, looking at
2 the next photo, can you tell the Board what
3 that shows?

4 MR. YEGZAW: Yes. This is the
5 Climax first floor.

6 MR. KLINE: Okay. And you see the
7 bar and --

8 MR. YEGZAW: And yes, and I see
9 the bar, and the TVs.

10 MR. KLINE: Okay. And then the
11 last photo in the group, can you tell the
12 Board what's depicted there?

13 MR. YEGZAW: Yes. Just the Climax
14 and the security camera.

15 MR. KLINE: That's one of your
16 cameras inside?

17 MR. YEGZAW: Yes.

18 MR. KLINE: Is that near the front
19 door?

20 MR. YEGZAW: Yes.

21 MR. KLINE: Okay. Madam Chair, I
22 would move this group of photographs as

1 Applicant's Exhibit 1.

2 CHAIR MILLER: Okay. Any
3 objections, Mr. Sigmon?

4 MR. SIGMON: No objection.

5 CHAIR MILLER: Okay. Then they're
6 admitted into evidence as Applicant's Exhibit
7 number 1.

8 MR. KLINE: Great. Mr. Yegzaw,
9 you have heard over the last few months
10 concerns or complaints about noise coming from
11 your establishment. Is that correct?

12 MR. YEGZAW: Yes.

13 MR. KLINE: What have you done
14 with respect to that, if anything?

15 MR. YEGZAW: Well --

16 MR. KLINE: First of all, you had
17 meetings with the neighborhood?

18 MR. YEGZAW: Yes, yes.

19 MR. KLINE: Okay. About how many?

20 MR. YEGZAW: We had a meeting
21 after we left. The first meeting was here,
22 and then after we left here, we had

1 appointments in Climax. We did our first
2 meeting in Climax with neighborhood. And --

3 MR. KLINE: So how many times have
4 you met? That's my question.

5 MR. YEGZAW: Okay, probably, I met
6 them three times.

7 MR. KLINE: All right. Have you
8 also had meetings with individuals who have
9 come over --

10 MR. YEGZAW: Yes.

11 MR. KLINE: -- to express concerns
12 about noise?

13 MR. YEGZAW: Yes. Yes I do.

14 MR. KLINE: All right. As the
15 result of that, have you taken any steps, any
16 measures to try to solve the problem with
17 respect to noise?

18 MR. YEGZAW: Yes, I did.

19 MR. KLINE: What have you done?

20 MR. YEGZAW: Okay, what I have
21 done is first, after we left the meeting is
22 that we went to our first floor and second

1 floor and I give them the chance to advise me
2 to suggest me what to do and then reduce the
3 noise.

4 And say okay, if we covered those
5 two windows, I have two windows in the back.
6 So we guess this is the noise going outside
7 and then hearing from the neighborhood. And
8 then cover this with wood, and seal the doors,
9 that's any spaces I can see.

10 MEMBER SILVERSTEIN: You filled
11 them with wood and --

12 MR. YEGZAW: The door.

13 MEMBER SILVERSTEIN: The door?

14 CHAIR MILLER: You covered the
15 doors with wood, is that what you said?

16 MR. YEGZAW: With wood is the
17 window. Those two windows, I don't use them
18 at all. But it was glass door, I mean glass
19 window.

20 CHAIR MILLER: Window.

21 MR. YEGZAW: Right. So I don't
22 open them. It's always closed. So it was

1 very thin. So if we put a very thick window,
2 I mean thick door, then block it, it's going
3 to be like the wall.

4 So they told me to do that. And
5 seal all the doors that doesn't let the sound
6 go outside. And I said okay. And then after
7 a week, I did finish that. And I called the
8 neighborhood to see if they're satisfied.

9 MR. KLINE: Oh, well let's talk
10 about the measures that you took. Let's talk
11 about, I asked you what steps you've taken.

12 MR. YEGZAW: Okay.

13 MR. KLINE: You described blocking
14 the windows, correct?

15 MR. YEGZAW: Okay, right.

16 MR. KLINE: What else?

17 MR. YEGZAW: And then what else
18 was I used to use the high volume of bass. It
19 was very high bass. And I took that out. And
20 right now what I'm using is very less powerful
21 bass. So that's the major thing that keeps
22 down the noise.

1 MR. KLINE: All right. Did you
2 also take some steps from the front of the
3 establishment with respect to noise that might
4 be leaking from your building?

5 MR. YEGZAW: Yes, I --

6 MR. KLINE: What did you do in the
7 front?

8 MR. YEGZAW: In the front, I seal
9 it with the white thing that has a plastic and
10 a ***3:13:33 stuff that doesn't let the sounds
11 go outside.

12 MEMBER SILVERSTEIN: Would you say
13 that again, or help me out with that again.
14 In the front you --

15 MR. YEGZAW: In the front door, I
16 have two doors in the front. So my sound guy
17 brought me and installed the white thing. I
18 don't really know it was the name, I didn't
19 catch it. But I have the picture I can show
20 you in my phone.

21 But it's a white thing, and seal
22 it white in the corner of the door. So air

1 doesn't go and come out. So which means
2 sometime, sounds doesn't go in and out.

3 MR. KLINE: All right. Did you
4 also, did you do anything with the doors in
5 the front of the establishment and/or the rear
6 of the establishment?

7 MR. YEGZAW: Yes. What I did is
8 in the first door, I had one more door, which
9 means when it's a one more door, when you open
10 the first door, there still is the second
11 door's closed.

12 And then you close the first door
13 and then you open the second door, which means
14 in this time, noise or sound doesn't get the
15 chance to go outside.

16 So I already did a first floor,
17 which is the main ones. And the second floor,
18 I just order and then talk to the contractor,
19 and then he started day before yesterday.
20 He's almost finished today. He's almost
21 finished the second door of the back of the
22 second floor.

1 MR. KLINE: Now you talked about
2 the first floor. The doors that you've
3 described that you've built, they were built
4 inside the premisis?

5 MR. YEGZAW: Yes, inside.

6 MR. KLINE: Did that take away
7 space from your --

8 MR. YEGZAW: Oh yes.

9 MR. KLINE: Yes? All right, let
10 me show you what we've marked as Applicant's
11 Exhibit 2. I'm going to hand you another
12 packet. And if you could, look at the first
13 one. And can you tell the Board what's shown
14 on that photograph?

15 MR. YEGZAW: This is the first
16 floor. And we made the second door. That's
17 all with reduced sound complaint or to reduce
18 the sounds going outside.

19 So of course, it took up place, I
20 took some chairs out from there, and then we
21 made that.

22 MR. KLINE: All right. So this

1 photograph is from the side of that little
2 enclosure, is that where this is taken from?

3 MR. YEGZAW: It's the first floor
4 in Climax.

5 MR. KLINE: Right. But if you
6 could hold it up and show the Board where the
7 door is that leads out from the premises, can
8 you just hold it up and show the Board so that
9 everybody's clear as to what they're looking
10 at?

11 MR. YEGZAW: Right. See, this is
12 the door. Then you --

13 MR. KLINE: Hold it up high so
14 they can all see it.

15 MR. YEGZAW: Oh, okay.

16 MR. KLINE: They have a copy, but
17 you can show them.

18 MR. YEGZAW: Right.

19 MR. KLINE: Okay. So is there a
20 handle there where, can you show the Board
21 where the handle door --

22 MR. YEGZAW: Yes. There's the

1 handle in here. And there's another door
2 here. So between this gap is maybe can hold
3 maybe four or five peoples in there.

4 And you open this door, and it
5 close automatically. All right, so and then
6 you open this one, and this one will close.

7 MR. KLINE: And those doors have
8 automatic door closers on them?

9 MR. YEGZAW: Yes.

10 MR. KLINE: All right. Turning to
11 the second photograph, can you tell the Board
12 what's depicted, what's shown in that
13 photograph?

14 MR. YEGZAW: Okay. This is the
15 back of second floor. And this is the wood
16 that I made. This is the wood.

17 MR. KLINE: All right.

18 MR. YEGZAW: It used to be just a
19 window covered by glass.

20 MR. KLINE: And let's look at the
21 third photograph for a minute, and then we're
22 going to come back to the second one. What's

1 shown on the third photograph?

2 MR. YEGZAW: Okay. The third
3 photograph, I mean, is mostly similar with the
4 other one. But this is what I'm talking
5 about, two windows I had.

6 And I covered them with a very
7 thick wood. And suddenly, it was too heavy,
8 and we put them in there.

9 MR. KLINE: All right, turning
10 back to the second photograph, there's some
11 yellow stuff --

12 MR. YEGZAW: Yes.

13 MR. KLINE: -- that seems to be
14 around the border. That's a technical term.
15 Can you tell the Board what that yellow stuff
16 is?

17 MR. YEGZAW: Okay. This is the
18 yellow stuff right here I'm talking about.
19 Why I did this, after I done everything and I
20 call my neighbors and to see how did I improve
21 and how did I did my homeworks.

22 And they came. We went upstairs

1 and they saw the bass is taken off and windows
2 covered. But they said it's a little gap,
3 it's a little gap in here.

4 And can you cover this? I said
5 okay, and then I called the guy who did this,
6 please did this. And the next day, we covered
7 them up. So there is no leak there.

8 MR. KLINE: Okay. Now this was,
9 the windows were done relatively recently,
10 correct?

11 MR. YEGZAW: Yes, after they told
12 me.

13 MR. KLINE: And the vestibule, or
14 the door configuration that you see on the
15 first page, when was that done?

16 MR. YEGZAW: The first page?

17 MR. KLINE: Yes. In other words,
18 where you constructed the door enclosure on
19 the first floor. When did you do that? Was
20 that done relatively recently, too?

21 MR. YEGZAW: The first door?

22 MR. KLINE: Yes.

1 MR. YEGZAW: Yes.

2 MR. KLINE: When did you do it?

3 MR. YEGZAW: About three months.

4 MR. KLINE: About three months
5 ago, okay.

6 MR. YEGZAW: Three months.

7 MR. KLINE: All right, now turning
8 if you will to the fourth photograph in the
9 stack, can you tell the Board what's shown in
10 that photograph?

11 MR. YEGZAW: Okay, the fourth one,
12 which is yes. This is what I'm doing right
13 now. It's got to be done by today, maybe
14 maximum tomorrow. This is the second door,
15 what I'm doing, the second door on the second
16 floor, which is that's very close to the
17 neighbors.

18 So like you see, we already build
19 that door. We're not covered with the glass
20 yet. But we're already put all the frames in
21 there and the metals.

22 And what we're just waiting is we

1 get the glass. When we get the glass, we'll
2 put them in there and it's going to be
3 covered.

4 MR. KLINE: And there will be a
5 top, a roof on that area, as well?

6 MR. YEGZAW: Yes. It's going to
7 cover all the sides.

8 MR. KLINE: So this will be a
9 compartment, an area similar to what you have
10 on the first floor in the front?

11 MR. YEGZAW: Yes. It's going to
12 be exactly like what I have in the first
13 floor.

14 MR. KLINE: Will it have automatic
15 door closers on it?

16 MR. YEGZAW: Yes, we will.

17 MR. KLINE: And you plan to keep
18 those doors closed?

19 MR. YEGZAW: Closed.

20 MR. KLINE: All right. Turning to
21 the next photograph, if you could tell the
22 Board what's shown on that photograph.

1 MR. YEGZAW: Okay. This existing
2 the door.

3 MR. KLINE: That's the door?

4 MR. YEGZAW: The door.

5 MR. KLINE: And does that show the
6 stripping that you put around it?

7 MR. YEGZAW: The red stripping?

8 MR. KLINE: Are you looking at
9 this one?

10 MR. YEGZAW: Yes, I'm looking at
11 that one.

12 MR. KLINE: Okay, all right.

13 MR. YEGZAW: Yes. Yes, this is
14 what we're doing, the frame.

15 MR. KLINE: Okay. So what did you
16 do around the frame, just so the Board is
17 clear.

18 MR. YEGZAW: Okay, to be the clear
19 is it was a little open gap space when we
20 closing the door in the back. And kind of
21 forgot the name. That's we're putting the
22 white thing and seal it around the door and

1 keep the sounds inside.

2 MR. KLINE: So the purpose of that
3 was to create a seal with the door?

4 MR. YEGZAW: Yes.

5 MR. KLINE: And is this the door
6 on the second floor that leads to the patio to
7 the deck?

8 MR. YEGZAW: Yes.

9 MR. KLINE: Okay. Turning the
10 page, can you tell the Board what that
11 photograph shows?

12 MR. YEGZAW: Oh yes. This is the
13 thing I keep talking about. The white thing
14 is cover all the door. This is where it is.
15 This is the front of Climax.

16 MR. KLINE: Okay. And then the
17 photograph after that, what's that of?

18 MR. YEGZAW: Okay, this is the
19 bass, I used to use it for almost two years.
20 This very high volume of ***3:23:20 and now
21 it's B255 they call it, is very high and big.
22 So right now, I just took it off and store it

1 in the corner of my office.

2 MR. KLINE: Okay. So is this
3 being used now?

4 MR. YEGZAW: No, no.

5 MR. KLINE: Okay. So you've
6 disconnected this?

7 MR. YEGZAW: Yes, disconnected.

8 MR. KLINE: Turn the page and tell
9 the Board what's on the next photo.

10 MR. YEGZAW: Okay. What I'm
11 seeing is the DJ staff in the bass and the
12 candles on top of the bass. So basically,
13 this bass is right now what I'm using.

14 It's very less power, but I have
15 to have the bass to control the speakers
16 because ***3:24:20. So this is the bass I
17 just use it. This bass very, very less
18 volume. It's way different that I used
19 before.

20 MR. KLINE: All right. Now all of
21 the things that you've just described and
22 talked about, with the exception of the

1 compartment on the second floor surrounding
2 the door, the rest of it's all been completed,
3 is that correct?

4 MR. YEGZAW: All completed.

5 MR. KLINE: All right. Now when
6 it was completed, did you go check and turn
7 the music on and see if you could hear any
8 music?

9 MR. YEGZAW: Yes, I always do.

10 MR. KLINE: You always do?

11 MR. YEGZAW: Yes.

12 MR. KLINE: Okay. And what did
13 that reveal when you did that?

14 MR. YEGZAW: Yes, it's just very
15 helpful. And I used to use, like, the volume
16 of 35. And then I heard a lot when I was
17 outside. And then right now, it's very 85
18 percent's reduced.

19 MR. KLINE: Okay, so the --

20 MR. YEGZAW: So I keep that way.

21 MR. KLINE: All right, now over
22 the course of the last, I don't know, year or

1 so you've heard some complaints from neighbors
2 about noise, correct?

3 MR. YEGZAW: Yes.

4 MR. KLINE: When you get those
5 complaints, do you investigate? Do you go
6 find out what it is that they're talking
7 about?

8 MR. YEGZAW: Yes, yes.

9 MR. KLINE: What have you found
10 when you've done that?

11 MR. YEGZAW: Let me start for last
12 year, and I keep having a police call every
13 day, almost every day. And I had a hard time,
14 and I had to go to V Street.

15 And I want to know and my attorney
16 also tell me I want to know who's calling, I
17 want to know why they come every day. If
18 there's noise and any things, just bring the
19 case.

20 And then they put me on
21 investigation, the ABRA, the DCRA and the
22 police, they came together last year. They

1 came together, I still have ***3:25:58, they
2 came together.

3 They investigate me three days and
4 they say no complaint. Say no complaint. But
5 sometimes my neighborhoods call me. Sometimes
6 the business peoples call me, too because of
7 all the license, the hookah license, liquor
8 license, food license.

9 Most of the ***3:26:19, they don't
10 have no hookah license. So almost they calls.
11 So they called because of I'm doing well, some
12 of them. I heard that from the neighbors.
13 But some neighborhoods, they have a noise
14 problem, they call.

15 MR. KLINE: All right, now turning
16 back to my question which was when you
17 investigate, did you go back in the alley and
18 see if you can hear your noise?

19 MR. YEGZAW: Yes. I heard noise
20 from Velvet.

21 MR. KLINE: Okay.

22 MR. YEGZAW: I heard noise from

1 Brixton.

2 MR. KLINE: Okay.

3 MR. YEGZAW: I heard noise from
4 Nellie's. Stand right in my patio. If you
5 standing right on my patio, you don't hear my
6 noise. You might heard some noise, but you
7 don't hear it clearly.

8 But you can hear clearly from
9 Velvet and Nellie.

10 MR. KLINE: So let's turn our
11 attention to a couple of other issues that
12 have been raised.

13 MR. YEGZAW: Okay.

14 MR. KLINE: In terms of on a
15 Friday and Saturday night, is that when you're
16 busiest?

17 MR. YEGZAW: Yes.

18 MR. KLINE: Do you take any
19 measures to make sure that your patrons do
20 what they're supposed to do? Do you have any
21 sort of security staff or anything?

22 MR. YEGZAW: Yes.

1 MR. KLINE: What do you have?

2 Tell the Board how you handle that.

3 MR. YEGZAW: On Friday and
4 Saturdays, I have a position which is I manage
5 the floor, my other managers, they do other
6 things too.

7 So I go outside on the patio when
8 I see, maybe like five, six peoples smoking
9 cigarette or they're talking. And I go out
10 and say keep the volume low, please. There's
11 some neighbors and just keep the volume.

12 MR. KLINE: Okay, but what I'm
13 asking you about now is you have a security
14 staff or bouncers or whatever you want to call
15 them?

16 MR. YEGZAW: Yes, I do, three.

17 MR. KLINE: All right. So how
18 many do you have?

19 MR. YEGZAW: I have three.

20 MR. KLINE: Okay. And what are
21 their different jobs? What do they do?

22 MR. YEGZAW: One of the jobs was

1 check ID first, 21 pass. And search, and no
2 weapons, no drinks, no anythings come from
3 outside. And that's their first job.

4 And whoever is in the door.
5 Whoever's in upstairs, first floor, they
6 watching customers if they acting different
7 after they drink, we take them out and then we
8 tell them you have enough drink and we don't
9 serve. And just keep the venue nice and --

10 MR. KLINE: Is your clientele
11 pretty well behaved?

12 MR. YEGZAW: Oh, yes. Yes.

13 MR. KLINE: Who are your
14 clientele? Who comes to your place?

15 MR. YEGZAW: Most of them, 85
16 percent Ethiopian people.

17 MR. KLINE: Okay.

18 MR. YEGZAW: Eighty five percent.

19 CHAIR MILLER: What was the --

20 MEMBER SILVERSTEIN: Eighty five
21 percent of what?

22 MR. KLINE: Ethiopian.

1 MR. YEGZAW: Ethiopians.

2 CHAIR MILLER: Oh.

3 MR. YEGZAW: Eighty five percent
4 my customer. And 15 percent I have a
5 different. So most of them, I'll say ten
6 percent customers from 9:30.

7 MR. KLINE: 9:30 Club?

8 MR. YEGZAW: 9:30 Club.

9 MR. KLINE: Okay.

10 MR. YEGZAW: So they have happy
11 hour, they drink, and they go to --

12 MR. KLINE: So they come before,
13 after the show? Or both?

14 MR. YEGZAW: No, we have happy
15 hour --

16 MR. KLINE: You have happy hour.

17 MR. YEGZAW: -- and they come
18 before the show. They don't want to stand
19 that long line, they come.

20 MR. KLINE: Okay. Now what about,
21 we talked about a number of things that you've
22 done with respect to noise control. Did you

1 also make some changes to your trash and
2 garbage management --

3 MR. YEGZAW: Yes.

4 MR. KLINE: -- to deal with noise.

5 MR. YEGZAW: Yes.

6 MR. KLINE: What were those?

7 MR. YEGZAW: That was, they were
8 right. We dump the trash when it was 2
9 o'clock and 3 o'clock. We didn't know that it
10 bothers the neighborhood.

11 But they told us it bothers and
12 they can hear when we dump the bottles and
13 crock and stuff like that. So I told my
14 managers and the employees that there is no
15 trash to dump after 12 o'clock.

16 So we keep the trash in the side.
17 And we might throw before too, or we might not
18 throw, we throw in the next day in the morning
19 when we come. So that's the improvement, no
20 trash taken after 12 o'clock.

21 MR. KLINE: Okay, great. I don't
22 have any further questions of the witness at

1 this time. Thank you.

2 CHAIR MILLER: Cross exam?

3 MR. SIGMON: Thank you. And just
4 for a point of order, am I allowed to ask
5 questions related to exhibits that are from
6 the Protestants exhibits?

7 CHAIR MILLER: Yes, but just show
8 it to them.

9 MR. SIGMON: Sorry?

10 CHAIR MILLER: You'll have to show
11 it to him.

12 MR. SIGMON: Yes, yes. Of course.

13 CHAIR MILLER: Okay.

14 MR. SIGMON: I just wanted to
15 also, for the record, make sure that the Board
16 had copies of the --

17 (Off microphone comment)

18 MR. SIGMON: And these are the
19 ones that --

20 MR. KLINE: Yes, if I may, there
21 are a number of exhibits there that we will
22 have objections to. So I prefer that they be

1 held until we get each one.

2 CHAIR MILLER: Except I need a
3 copy so it's quicker to rule on them. But
4 yes, did you give them all to her?

5 (Off microphone comments)

6 MR. SIGMON: In the meantime, I'll
7 continue with the exhibits that are in front
8 of us already.

9 MR. KLINE: Madam Chair, before we
10 do that, just a technical matter. I don't
11 know if I moved, I just can't remember, A2,
12 the set of exhibits. If I have not, I would
13 like to do that at this point.

14 CHAIR MILLER: Okay, no. You had
15 moved and I admitted Exhibit 1 of the
16 Applicant. Any objections to Exhibit 2 of
17 Applicant? Okay, then Exhibit 2 is admitted.

18 MR. KLINE: Great, thank you.

19 CHAIR MILLER: Okay, good.

20 MR. SIGMON: Thank you, okay. So
21 I would like to take a look at Exhibit number
22 1, which we have here as your establishment on

1 the front. Okay.

2 CHAIR MILLER: Applicant's Exhibit
3 1?

4 MR. SIGMON: Applicant Exhibit 1.

5 CHAIR MILLER: Okay. Okay.

6 MR. SIGMON: And if you go to the
7 second page, there should be a map.
8 Previously you answered that your
9 establishment is the one that's under the red
10 pin, is that correct?

11 MR. YEGZAW: Yes.

12 MR. SIGMON: You also answered
13 that your bar is on the same alley as the
14 other bars that we were discussing, is that
15 right?

16 MR. YEGZAW: Yes, the Velvet.

17 MR. SIGMON: Right.

18 (Crosstalk)

19 MR. SIGMON: On this map, can you
20 point to Velvet Lounge for the Board?

21 MR. YEGZAW: Okay. Velvet Lounge
22 will be around in here.

1 MR. SIGMON: Would it be correct
2 to say that it's this one here?

3 MR. YEGZAW: Which one?

4 MR. SIGMON: Do you see where my
5 finger is?

6 MR. KLINE: I don't.

7 MR. YEGZAW: It's the Velvet
8 Lounge right here.

9 MR. SIGMON: It's the grey roof to
10 the left of the white, here. Or would you say
11 that it's within these three? We don't have
12 to be that specific.

13 MR. YEGZAW: Right. I mean, to
14 tell you that it's not clear. I can see it,
15 but this is Florida Avenue. It's 900 Florida
16 Avenue right in there. But it's somewhere in
17 the back, or on the other side around here.

18 MR. SIGMON: Right. Okay, so
19 okay.

20 MR. YEGZAW: Somewhere around
21 here.

22 MR. SIGMON: So we're talking

1 about --

2 MR. YEGZAW: Velvet.

3 MR. SIGMON: -- the bars and
4 restaurants down here on U Street? Is that
5 right?

6 MR. YEGZAW: Okay, yes.

7 MR. SIGMON: Okay. Now --

8 CHAIR MILLER: Down here on which
9 street?

10 MR. SIGMON: So U Street is on the
11 bottom of this map. So Solomon, when you
12 point to the Velvet Lounge down here, would it
13 be correct to say that the Velvet Lounge faces
14 the back of this building just to the north?

15 MR. YEGZAW: No.

16 MR. SIGMON: Does it face onto --

17 MR. YEGZAW: There back here or
18 their deck is right in front of -- it's close
19 to Climax, too.

20 CHAIR MILLER: Could you be sure
21 to talk into the mic.

22 MR. YEGZAW: Okay.

1 CHAIR MILLER: Your voice is --

2 MR. YEGZAW: Okay. All right.

3 MR. SIGMON: Would you say that
4 it's correct if we're talking about these bars
5 on this bottom part of the alley here, that
6 these alleys actually, these bars open up onto
7 a branch of the alley, but not the main alley?
8 Is that correct to say?

9 MR. YEGZAW: I'm kind of confused
10 for your question. I don't know really what's
11 the question is.

12 MR. SIGMON: So the main alley
13 runs north to south here, is that correct?

14 MR. YEGZAW: Yes, right here.

15 MR. SIGMON: It goes from the gas
16 station and your bar to U Street, is that
17 correct?

18 MR. YEGZAW: Right.

19 MR. SIGMON: There is a branch to
20 the alley that moves then to the west, is that
21 right?

22 MR. YEGZAW: Yes. Okay, yes.

1 Yes.

2 MR. SIGMON: And it is the Velvet
3 Lounge that we were discussing that opens up
4 onto this branch of the alley. Is that right?

5 MR. YEGZAW: Right, right.

6 MR. SIGMON: Okay. Now
7 immediately opposite this establishment, can
8 you tell me the name or the occupancy in this
9 building --

10 MR. YEGZAW: Which building?

11 MR. SIGMON: -- that is adjacent
12 on the alley.

13 MR. YEGZAW: The occupancy?

14 MR. SIGMON: Directly behind the
15 Velvet Lounge.

16 MR. YEGZAW: I don't know what's
17 their occupancy.

18 MR. SIGMON: Okay. If I told you
19 that it's the Urban Brokers that is a
20 commercial entity, would you tell me that I'm
21 inaccurate? Is that correct, that it's Urban
22 Brokers?

1 MR. YEGZAW: Right, yes.

2 MR. SIGMON: Okay. So it's a
3 commercial occupancy that does not have
4 residents at night that is directly behind the
5 Velvet Lounge, is that correct?

6 MR. YEGZAW: No. They have. On
7 Velvet, on the back, at the first one here,
8 your house. Right? The Velvet? Okay, who's
9 living --

10 CHAIR MILLER: Okay, you can't ask
11 them questions right now.

12 MR. YEGZAW: Oh, sorry. I don't
13 know, I thought that was his house. That's
14 what I always thought.

15 CHAIR MILLER: Okay.

16 MR. SIGMON: So for the Board,
17 what I'm trying to understand is what property
18 and what use is the structure, or are the
19 structures immediately behind the Velvet
20 Lounge, I mean immediately behind the Velvet
21 Lounge I believe that we're agreeing that
22 there's a structure here, and that structure

1 is the Urban Broker's Realty that is a
2 commercial business. Is that right?

3 MR. KLINE: Objection. We're
4 agreeing, he can ask the question. That's not
5 clear to me that the witness knows. I suspect
6 it probably is more easily cleaned up on
7 direct on the part of the Protestant when they
8 put their witnesses on. But in terms of this
9 question, I would object to the form of it.

10 CHAIR MILLER: Well he asked him
11 if he was agreeing with his conclusion --

12 MR. YEGZAW: No, it's not the
13 corner shop. It's residential. The white
14 doors, the next door.

15 CHAIR MILLER: But I agree you
16 might want to have your own witness --

17 MR. YEGZAW: That's what it is,
18 residential.

19 MR. SIGMON: Okay, thank you.

20 CHAIR MILLER: Okay.

21 MR. SIGMON: We'll move on. Can
22 you tell me that when we looked at, if you go

1 forward two, three, four pages, I'm looking at
2 the image that you described as the back of
3 the Velvet Lounge.

4 MR. YEGZAW: Yes. Okay, where is
5 that?

6 MR. SIGMON: Okay. Can you tell
7 me anything that is different about the back
8 of the Velvet Lounge from the back of your
9 establishment?

10 MR. YEGZAW: Okay, yes I can tell
11 that. It's exactly the same. They have alley
12 and I have alley. Same space, they're
13 probably more than closer to the neighborhood.
14 But there is one big wall, bricks wall in the
15 side. That's only the difference I can tell.

16 MR. SIGMON: Okay. Your patrons
17 are invited to the back deck of yours, right?
18 Is that right? Your back deck is the level at
19 which patrons are welcomed in the back of your
20 property, is that right?

21 MR. YEGZAW: In the alley?

22 MR. SIGMON: Yes.

1 MR. YEGZAW: No.

2 MR. SIGMON: So it's the --

3 MR. YEGZAW: Only me when I do
4 deliver.

5 MR. SIGMON: Okay, so but your
6 patrons, when you're conducting business on
7 the patio, are they welcomed on the top level
8 or the bottom level?

9 MR. YEGZAW: No, top level.

10 MR. SIGMON: Top level only?

11 MR. YEGZAW: Yes.

12 MR. SIGMON: Okay, so at the
13 Velvet Lounge, are patrons invited to the top
14 level only?

15 MR. YEGZAW: They have top and
16 down, too.

17 MR. SIGMON: Okay, so they have a
18 down, as well.

19 MR. YEGZAW: And top, too.

20 MR. SIGMON: Okay. At the Velvet
21 Lounge, do they have similar walls like you do
22 that protect their space from the alley?

1 MR. YEGZAW: Okay. Down they do.
2 They do first floor, and they covered with
3 wood. But I don't have a first floor, which
4 means I don't have a back end on first floor.
5 But I cover the wood still, but I don't serve
6 anythings on first floor. I do second floor.

7 MR. SIGMON: Okay. So you would
8 agree that the Velvet Lounge has at least half
9 of its space protected with a wall for sound.
10 But you have no space that's protected by a
11 wall with sound for your patio?

12 MR. YEGZAW: I don't think so. We
13 have exactly the same thing that we do. I
14 don't think so.

15 MR. SIGMON: I think I'll ask the
16 question again. So if the Velvet Lounge
17 invites its patrons to the top and the bottom
18 --

19 MR. YEGZAW: The top, okay.

20 MR. SIGMON: -- and it also has a
21 wall between it and the alley, then you would
22 agree with me that they have a wall right next

1 to where half, at least, of their business is
2 taking place.

3 MR. YEGZAW: Half, right half of
4 them. But half of them still they can hear
5 the window.

6 MR. SIGMON: Okay. But you invite
7 your patrons to your top level that has no
8 wall, is that correct?

9 MR. YEGZAW: Yes, I don't have no
10 wall.

11 MR. SIGMON: Okay.

12 MR. YEGZAW: Right.

13 MR. SIGMON: Thank you.

14 MR. YEGZAW: You're welcome.

15 MR. SIGMON: We also --

16 MR. YEGZAW: When I say I don't
17 have no wall it's like ***3:39:56 a wall, but
18 it's still they have a wall, which is --

19 MR. SIGMON: Yes. But for half of
20 their patrons, which you -- so half of the
21 sound may be mitigated from that
22 establishment, as I understand it. We also

1 talked about --

2 CHAIR MILLER: Okay, so I just
3 want to caution you that you're not supposed
4 to be testifying.

5 MR. SIGMON: I apologize.

6 CHAIR MILLER: That's okay. Just
7 know you're new to this, so I just wanted to
8 --

9 MR. SIGMON: I am.

10 CHAIR MILLER: Okay.

11 MR. SIGMON: We heard from you a
12 moment ago that you had mentioned that you
13 could hear from your back patio sounds from
14 Nellie's, is that right?

15 MR. YEGZAW: Yes.

16 MR. SIGMON: Okay. Can you tell
17 us anything about the height of the buildings
18 in between Nellie's and your establishment?

19 MR. YEGZAW: They're highest than
20 me.

21 MR. SIGMON: Okay, so they're
22 higher than you?

1 MR. YEGZAW: Yes.

2 MR. SIGMON: So on the map, if we
3 go back to the map, if we orient it the same
4 way we've been orienting it, would you say
5 that the buildings like the Brixton at the
6 southeast corner and these other buildings
7 here, these are the ones that are taller than
8 you?

9 MR. YEGZAW: Yes. Both the
10 Brixton and the Nellie's, they are more than.

11 MR. SIGMON: Okay. So would you
12 agree that sound from the Nellie's Bar, would
13 it come over the building? And can you see
14 the Nellie's Bar from your patio?

15 MR. YEGZAW: No, I can't see it --

16 MR. SIGMON: Okay, because --

17 MR. YEGZAW: -- but I can hear it.

18 MR. SIGMON: Okay, all right.

19 Thank you. I wanted to also ask about in the
20 next exhibit, we're talking about Applicant
21 Exhibit 2 which has the photos of the
22 establishment itself, if you go to the second

1 page, I think neighbors would agree, thank you
2 for making some improvements. Could you talk
3 about the box that you see here in the middle
4 of this window frame?

5 MR. YEGZAW: Yes.

6 MR. SIGMON: What is that?

7 MR. YEGZAW: That's the air
8 conditioner.

9 MR. SIGMON: Okay. So the air
10 conditioner, does the air conditioner allow
11 air to pass through it?

12 MR. YEGZAW: No.

13 MR. SIGMON: No?

14 MR. YEGZAW: I mean, the air
15 conditioner pass through the sound?

16 MR. SIGMON: Does air pass through
17 the air conditioner?

18 MR. YEGZAW: I don't know. I have
19 no idea about that.

20 MR. SIGMON: Okay. Does sound
21 pass through the air conditioner?

22 MR. YEGZAW: I have no idea about

1 that.

2 MR. SIGMON: Okay. And you also,
3 in your testimony you said that addition of a
4 piece of plywood for the window is like adding
5 a wall. Is that what you said?

6 MR. YEGZAW: Yes. It's, I mean,
7 when they make wall, they use this one. This
8 is the very thicker one.

9 MR. SIGMON: Okay. So it's like
10 making a wall, is that right? That's what you
11 said? To add the piece of plywood is like
12 making a wall?

13 MR. YEGZAW: Yes.

14 MR. SIGMON: How many pieces of
15 plywood like this are typically in a wall when
16 it's built?

17 MR. YEGZAW: Well when I say
18 that's in the wall, when they use the wall,
19 this is the one they make for this heavy wood.
20 That's what I use.

21 That's what you guys suggest me to
22 do, cover with the heavy wood, or thicker

1 wood. That's what we discussed and that's
2 what I did.

3 MR. SIGMON: Are most walls made
4 with one piece of plywood or two on either
5 side of the assembly, of the stud?

6 MR. YEGZAW: I mean, I don't have
7 no idea for that. But when they make, I
8 think, I believe they make it with the both
9 sides.

10 But when they use the both sides,
11 they use the thicker one. But this one is I
12 think to cover that, I think that's enough.
13 And then I did it according to your guys.

14 MR. SIGMON: Yes. Thank you.

15 MR. YEGZAW: Okay, thank you.

16 MR. SIGMON: And can you describe,
17 is there anything that is, so when you put up
18 this plywood, is there anything else in this
19 between the glass and the plywood? Can you
20 describe?

21 MR. YEGZAW: There's still the
22 glass in there.

1 MR. SIGMON: There's still the
2 glass?

3 MR. YEGZAW: I didn't take it off.
4 There's still the glass in there. I mean, it
5 help us. It protects some sound.

6 MR. SIGMON: Okay.

7 MR. YEGZAW: And I didn't take it
8 off. It's still in there, and I just put in
9 the --

10 MR. SIGMON: Thank you.

11 MR. YEGZAW: You're welcome.

12 MR. SIGMON: If we go to the
13 previous image of the doorway.

14 MR. YEGZAW: The first, yes.

15 MR. SIGMON: We notice the
16 addition of the double door. Where did you
17 say that most of the noise in your
18 establishment comes from? Is it the
19 downstairs or the upstairs?

20 MR. YEGZAW: I believe, I believe
21 it's upstairs. But that's what I believe.
22 But I'm hearing or I'm having a call or I'm

1 receiving a police notice peoples complaining
2 from across the street, which is living across
3 street.

4 MR. SIGMON: Okay.

5 MR. YEGZAW: That's why might be
6 when it's the door open. And the second door,
7 that's what I did.

8 MR. SIGMON: If we look at the, I
9 guess it's the same picture here, can you
10 describe how thick the glass? So we have the
11 double doors that you described.

12 MR. YEGZAW: The double doors,
13 right.

14 MR. SIGMON: How thick is this
15 glass that runs along the wall here?

16 MR. YEGZAW: How thick?

17 MR. SIGMON: Yes. Is it one pane
18 or two panes of glass?

19 MR. YEGZAW: I believe it's maybe
20 quarter inch, maybe half inch. I haven't
21 measured yet. I mean, I give the constructor,
22 the contractor gave me the draft --

1 (Crosstalk)

2 MR. SIGMON: Okay.

3 MR. YEGZAW: Probably about
4 quarter inch or half inch maybe.

5 MR. SIGMON: Okay, thank you.

6 MR. YEGZAW: I'm not really sure.

7 MR. SIGMON: And I don't see any
8 pictures and I don't have any of the upstairs.
9 But can you tell us about any windows or
10 anything that you have in the wall --

11 MR. YEGZAW: Upstair?

12 MR. SIGMON: -- on this same side
13 of the building?

14 MR. YEGZAW: Yes. I have it in my
15 phone if you want to see.

16 MR. SIGMON: Okay, so you have
17 windows?

18 MR. YEGZAW: Yes.

19 MR. SIGMON: Okay.

20 MR. YEGZAW: I mean, we haven't
21 put the glass yet. But we did all the frame.
22 We did all the frame. I mean, he just text

1 me. They still working on it. He just text
2 me and then I have it in my phone. I can show
3 you how he put it.

4 MR. SIGMON: Okay.

5 MR. YEGZAW: You want to see?

6 MR. SIGMON: I don't, I mean, if
7 the Board wants to see.

8 CHAIR MILLER: What?

9 MR. YEGZAW: I mean, he ask me
10 about the second floor and the second door.
11 That's what I'm doing right now. He like to
12 see where we at now. So but I have it in my
13 phone.

14 MR. SIGMON: The question is are
15 there also windows on the second floor, and
16 the answer --

17 CHAIR MILLER: Can you just answer
18 the question whether --

19 MR. SIGMON: Okay, so yes there
20 are windows on the second floor.

21 CHAIR MILLER: -- is that
22 something on the second --

1 MR. SIGMON: Do those windows face
2 Florida Avenue also?

3 MR. YEGZAW: Yes.

4 MR. SIGMON: Okay. And do you
5 have any measures like what you showed us for
6 the other side of the building with plywood
7 that you're implementing on the other side of
8 the building, Florida Avenue? Are you
9 implementing any measures on that side?

10 MR. YEGZAW: I mean, I've never
11 measured it. But it's been there since the
12 owner got it. It's been there since I got in
13 there.

14 MR. SIGMON: Okay. When would you
15 say that you started making some of these
16 improvements?

17 MR. YEGZAW: Some of them after we
18 had a meeting, the first meeting in here. And
19 then after that, the next meeting that we meet
20 in Climax.

21 MR. SIGMON: So is that within the
22 last two months?

1 MR. YEGZAW: Yes.

2 MR. SIGMON: Or three months?

3 MR. YEGZAW: Not three months. I
4 believe that's a month and a half. Even after
5 we meet in Climax, we went to Climax --

6 MR. SIGMON: So since January?
7 The last two or three months?

8 MR. YEGZAW: Yes, that must be it,
9 two months.

10 MR. SIGMON: Okay. And when did
11 you start receiving complaints from neighbors
12 about noise?

13 MR. YEGZAW: Well, about this two,
14 three months I receive a lot.

15 MR. SIGMON: And before that?

16 MR. YEGZAW: Before that, too.

17 MR. SIGMON: Before that, too?

18 MR. YEGZAW: Yes.

19 MR. SIGMON: For how many months
20 or years?

21 MR. YEGZAW: For the first five,
22 six months I receive a lot, which means like,

1 once in the two months, once in the three
2 months. But for a year, for a year I haven't
3 received no police for one year, I haven't
4 seen.

5 But about this two, three months,
6 I don't know why I'm doing all that but I'm
7 still receiving calls.

8 MR. SIGMON: Thank you. All
9 right. When you received the complaints a
10 year ago, or whenever, a long time ago, what
11 steps did you take at that time to try to
12 resolve the problems?

13 MR. YEGZAW: Well I did the double
14 door, I mean, the outside door automatic
15 closer. It doesn't have that. So right now
16 it's when the people open and forget to close,
17 it just close by itself. And I take steps, I
18 let the volume down on the DJ side, I leave
19 the volume down.

20 MR. SIGMON: Okay, when did you
21 reduce the volume?

22 MR. YEGZAW: Yes, I mean, when I

1 receive the notice, when I receive the call.

2 MR. SIGMON: And so you turned
3 down the volume when you received the
4 complaint?

5 MR. YEGZAW: Yes. And then if
6 they are fine with that volume, and then I
7 keep that volume.

8 MR. SIGMON: You keep that volume
9 for future dates?

10 MR. YEGZAW: Yes, the future
11 dates.

12 MR. SIGMON: Okay. Even when more
13 phone calls come in?

14 MR. YEGZAW: And then I keep it
15 low.

16 MR. SIGMON: Okay. So you would
17 say that if phone calls continue to come in,
18 you would continue to keep turning your volume
19 down day after day?

20 MR. YEGZAW: Yes. And at the same
21 time, the same time I'm not like low, low, low
22 enough to shut it down. But sometime until

1 everybody's hearing.

2 MR. SIGMON: Okay.

3 MR. YEGZAW: And not to bother the
4 neighborhood. And you know, compare
5 everything.

6 CHAIR MILLER: Can you speak up a
7 little more? Sorry.

8 MR. YEGZAW: Oh, okay.

9 CHAIR MILLER: Your words are
10 dropping at the end.

11 MR. YEGZAW: Okay.

12 CHAIR MILLER: Or more into the
13 mic?

14 MR. YEGZAW: Okay.

15 MR. SIGMON: So what would you say
16 is different about making investments now in
17 the last two months as opposed to making
18 changes previously when you were receiving
19 comments. What's different now?

20 MR. YEGZAW: Well the different
21 that I did, I'll say the main thing that I did
22 is the bass. The bass matter a lot. That is

1 makes a big noise. I'll say that's the 50, 60
2 percent reduced by itself just the bass.

3 MR. SIGMON: What I'm trying to
4 ask is what is different, what is your
5 motivation to make changes now and how is that
6 different than a year ago when you received
7 complaints?

8 CHAIR MILLER: Can I interrupt you
9 for a minute? Okay.

10 MR. SIGMON: Sure.

11 CHAIR MILLER: I mean, your
12 questions are fine. But I just want to tell
13 you the Board's focus for these kind of
14 hearings is, you know, is there a problem now
15 so that the Board needs to order conditions or
16 not renew the license. So I just want to let
17 you know that that's the focus. If you can,
18 yes.

19 MR. SIGMON: Thank you, Madam
20 Chair. How would you describe, Solomon, your
21 current rodent management plan, or operation.
22 How do you manage rodents at the Climax bar?

1 MR. YEGZAW: Well I have two
2 managers, and I'm a manager also in there. I
3 have a schedule in there, too.

4 MR. SIGMON: So do you have three
5 people managing the rats and the mice, is that
6 right?

7 MR. YEGZAW: The rats and mice?

8 MR. SIGMON: If you could describe
9 how your establishment is currently addressing
10 rats and mice?

11 MR. YEGZAW: Well, I have a
12 company taking care of that.

13 MR. SIGMON: You do?

14 MR. YEGZAW: Yes.

15 MR. SIGMON: Okay. And you're in
16 contract with that company to continue
17 service?

18 MR. YEGZAW: Yes.

19 MR. SIGMON: Okay.

20 (Off microphone comments)

21 MR. SIGMON: In the Exhibit 1A of
22 the Protestant's, which you should have a copy

1 of --

2 MEMBER ALBERTI: This is a --

3 CHAIR MILLER: I don't know if we
4 have a copy of that, do we?

5 MEMBER ALBERTI: We have 1A. I
6 thought they gave you a copy.

7 CHAIR MILLER: What?

8 MEMBER ALBERTI: I thought they
9 gave you a set.

10 CHAIR MILLER: I think this was
11 Mr. Kline's package, right?

12 MR. YEGZAW: I don't think that's
13 --

14 MR. KLINE: I don't know what
15 we're looking at.

16 MR. YEGZAW: Which page?

17 MR. SIGMON: 1A.

18 CHAIR MILLER: Exhibit?

19 MR. SIGMON: It should look like
20 this.

21 CHAIR MILLER: Did you give them
22 to Ms. Jenkins?

1 MR. SIGMON: I just passed them
2 around.

3 CHAIR MILLER: Oh, Ms. Walker?

4 MR. KLINE: Now we're talking
5 about Protestant's Exhibits?

6 CHAIR MILLER: Yes.

7 MR. SIGMON: Yes.

8 (Crosstalk)

9 CHAIR MILLER: No, no.

10 MEMBER ALBERTI: Ms. Miller, I
11 believe these are the ones that Mr. Kline was
12 objecting to earlier.

13 MEMBER SILVERSTEIN: Is that
14 correct, Mr. Kline?

15 MR. SIGMON: Yes.

16 MEMBER ALBERTI: And you didn't
17 object, but you said that you wanted to go
18 through them one by one?

19 MR. SIGMON: I may make
20 objections, yes.

21 MEMBER ALBERTI: And Ms. Miller
22 asked for copies so that she could review

1 them, but we weren't giving them to the rest
2 of the Board. Am I remembering that
3 correctly?

4 MR. SIGMON: You are.

5 MEMBER SILVERSTEIN: Yes.

6 MEMBER ALBERTI: Okay, so I think
7 that that's where we're at.

8 CHAIR MILLER: Is that Index of
9 Exhibits for Protest From 2000 Block of
10 Vermont?

11 MR. SIGMON: Yes.

12 CHAIR MILLER: Okay, good. All
13 right.

14 MR. KLINE: I'm sorry, I didn't
15 hear that question.

16 CHAIR MILLER: If the title is
17 Index of Exhibits for Protest From 2000 Block
18 of Vermont.

19 MR. KLINE: Okay.

20 CHAIR MILLER: It's kind of a
21 thickly stapled.

22 MR. SIGMON: And A1 should look

1 like this, is that right?

2 CHAIR MILLER: Okay, let's see.

3 MR. SIGMON: Okay.

4 CHAIR MILLER: Okay, I've got it.

5 MEMBER SILVERSTEIN: You don't
6 accept it yet?

7 CHAIR MILLER: No, I have to look
8 at it.

9 MALE PARTICIPANT: He hasn't moved
10 it.

11 CHAIR MILLER: Right.

12 MR. SIGMON: I'm sorry, sir?

13 MEMBER SILVERSTEIN: Okay, first I
14 want you to know Mr. Kline has used 35 of his
15 90 minutes. You already used over 20. If
16 you're going to put on a case, you're going to
17 have to find time for it.

18 We have not yet accepted these
19 exhibits. I think we should stop the time and
20 determine whether we accept the exhibits.

21 CHAIR MILLER: Well I don't know
22 if he's going to -- Mike, he may not do them

1 all at once. He may do one at a time.

2 MR. SIGMON: I'm talking about A1.

3 MALE PARTICIPANT: He has to move.

4 MR. KLINE: If I may, first if we
5 could have A1, we need the foundation. We
6 need it identified. So I mean, we have no
7 foundation, we're having questions asked about
8 it. But no one's been asked to identify it,
9 it hasn't been identified. There's no
10 foundation for it.

11 MR. SIGMON: I was about to ask
12 the question of the witness, if that's okay.

13 CHAIR MILLER: Exactly. I think
14 everybody's jumping on him, and he just
15 brought our attention to it. And --

16 MR. SIGMON: I appreciate you --

17 CHAIR MILLER: Go ahead, okay.

18 MR. SIGMON: So A1, if everyone
19 sees the same document that I see in front of
20 me, and Mr. Solomon, can you show that you
21 have a copy as well?

22 MR. YEGZAW: Yes.

1 MR. SIGMON: A color copy.

2 CHAIR MILLER: No, that's not the
3 same document.

4 MR. SIGMON: Well, it's the color
5 copy.

6 CHAIR MILLER: Oh it is, it is.
7 Oh, in color. It's definitely in color.

8 (Crosstalk)

9 CHAIR MILLER: Sorry.

10 MR. KLINE: Oh, may I see that one
11 then? I would like to see the clear one.

12 MEMBER ALBERTI: I think it's
13 important that Mr. Kline see that one.

14 MALE PARTICIPANT: That one would
15 be good.

16 MEMBER ALBERTI: I assume that
17 that's the one that would go into evidence, I
18 would hope.

19 MR. SIGMON: Well we couldn't scan
20 it in color, I don't know.

21 CHAIR MILLER: Okay.

22 MEMBER ALBERTI: Yes, but I mean,

1 that one should go into evidence.

2 CHAIR MILLER: Okay.

3 MR. JONES: Let him submit
4 whatever he wants to submit.

5 (Crosstalk)

6 MR. SIGMON: It was originally
7 submitted Friday.

8 FEMALE PARTICIPANT: You submitted
9 that originally.

10 CHAIR MILLER: Mr. Kline, did you
11 get a copy of these exhibits ahead of time?

12 MR. KLINE: I have this in lieu of
13 that.

14 CHAIR MILLER: You don't have the
15 whole packet?

16 MR. KLINE: I have, what we're
17 talking about now is this exhibit which is
18 three photos.

19 CHAIR MILLER: Okay.

20 MR. KLINE: There were three color
21 photos. I have three smaller black and white
22 photos.

1 CHAIR MILLER: Okay.

2 MEMBER ALBERTI: I think her
3 question is did you get the whole package?

4 MR. KLINE: Yes, yes.

5 MEMBER ALBERTI: All right.

6 CHAIR MILLER: All right, good.
7 Okay, thank you. You all exchanged exhibits
8 ahead of time. Okay. All right. We're back
9 to you. Exhibit A1.

10 MR. SIGMON: Thank you.

11 CHAIR MILLER: Yes.

12 MR. KLINE: For the record, can we
13 be clear. Could we call this P1 so mine would
14 be A1 and --

15 CHAIR MILLER: Protestant's
16 Exhibit 1, okay.

17 MR. KLINE: -- this would be P1.
18 Thank you.

19 CHAIR MILLER: All right.

20 CHAIR MILLER: Protestant's
21 Exhibit 1.

22 MR. SIGMON: Could you describe

1 the picture that is at the top of the page,
2 please.

3 MR. YEGZAW: Yes.

4 MR. SIGMON: When do you think
5 that picture was taken?

6 MR. KLINE: Objection, calls for
7 speculation.

8 CHAIR MILLER: Yes, but we don't
9 know what it is.

10 MR. KLINE: How would he know when
11 it was taken?

12 CHAIR MILLER: Okay, so you're not
13 a lawyer, right?

14 MR. SIGMON: No.

15 CHAIR MILLER: Okay. So that's
16 what Mr. Kline's saying. Are you asking him
17 to identify what this is? I mean, you're
18 asking when does he think the picture was
19 taken. Why would we think that he would know
20 when it was taken? Who took the picture?

21 MS. CLARK: I did.

22 MR. SIGMON: Okay.

1 CHAIR MILLER: Does he recognize
2 what this is, do you want to ask?

3 MR. SIGMON: Okay, so do you
4 recognize the picture?

5 MR. YEGZAW: I recognize the
6 picture, but I don't know when you guys took
7 it.

8 MR. SIGMON: Okay, understood. So
9 for the record, Mrs. Clark took these
10 pictures. Is that --

11 CHAIR MILLER: Okay, you can --

12 MR. SIGMON: -- not something I
13 can say? Okay.

14 CHAIR MILLER: I mean, at some
15 point, we would like to know when you're
16 moving them into evidence. But maybe, we may
17 need you have your witness identify the
18 pictures and then you know?

19 MR. SIGMON: Okay. Thank you.

20 CHAIR MILLER: Okay. But if you
21 need to ask him a question about it --

22 MR. SIGMON: I just, can you tell

1 me if the picture above is before or after the
2 deck that you added?

3 MR. YEGZAW: Yes.

4 MR. SIGMON: Is it before the deck
5 that you added?

6 MR. YEGZAW: I have before and
7 after. I have the picture before and after.

8 MR. SIGMON: Okay.

9 MR. YEGZAW: Okay.

10 MR. SIGMON: And did you, I don't
11 want to go down this road. So do you
12 currently have an operating permit for the
13 deck that is pictured here?

14 MR. YEGZAW: Yes.

15 MR. SIGMON: You do?

16 MR. YEGZAW: Yes.

17 MR. SIGMON: Okay. Issued by DCRA
18 at what time? When?

19 MR. YEGZAW: Issued by DCRA and
20 issued by ABRA at the same time that I'm
21 operating.

22 MR. SIGMON: Thank you. And you

1 said, I think in previous testimony, that the
2 residences are about 30, 40 feet from your
3 establishment, is that right?

4 MR. YEGZAW: Say 40 feet away.

5 MR. SIGMON: Okay. How would you
6 respond if there were a deck, if it was 30 or
7 40 feet from your bedroom?

8 MR. KLINE: Objection, relevance
9 and speculation.

10 MR. SIGMON: Okay.

11 CHAIR MILLER: And vagueness, yes
12 okay.

13 MR. SIGMON: I'm not sure how to
14 ask the question, so I think we'll just move
15 on.

16 CHAIR MILLER: It's probably not
17 really relevant.

18 MR. SIGMON: Thank you.

19 CHAIR MILLER: Okay.

20 MR. SIGMON: I think we'll move
21 on.

22 CHAIR MILLER: Okay.

1 MR. SIGMON: Thank you.

2 MALE PARTICIPANT: You're welcome.

3 CHAIR MILLER: Okay.

4 MEMBER SILVERSTEIN: Are you done?

5 CHAIR MILLER: Are you done with
6 your cross examination, right? Okay. Board
7 questions, Mr. Jones?

8 MR. JONES: I just want
9 clarification. Sir?

10 MR. SIGMON: Yes.

11 MR. JONES: Just for the record,
12 you have not moved any of your exhibits at
13 this point in time, correct?

14 MR. SIGMON: That is true.

15 MR. JONES: Thank you.

16 MR. SIGMON: Can I move to --

17 CHAIR MILLER: Can I advice you
18 that you might want to move your exhibits with
19 your own witnesses who can attest to them.

20 MR. SIGMON: Let's do that later,
21 is that okay.

22 CHAIR MILLER: Okay.

1 MR. SIGMON: Thank you for that
2 clarification.

3 CHAIR MILLER: Okay. Who has a
4 question? Mr. Silverstein?

5 MEMBER SILVERSTEIN: Mr. Yegzaw,
6 what is the source of the noise from your
7 summer garden, from your deck. Do you have
8 entertainment out there, or is it people
9 talking or music or bands or anything?

10 MR. YEGZAW: No. I'm not going to
11 do. First of all, I haven't used them. I
12 haven't used them because it's --

13 MEMBER SILVERSTEIN: You haven't
14 used the deck?

15 MR. YEGZAW: No, I haven't used
16 them. I got license, but it's wintertime now.
17 So nobody want to go outside and sit. But I'm
18 going to use them in summer.

19 But when I'm using in summer, I'm
20 not going to put no speaker out there, no
21 entertainment, no bands, no anythings out
22 there.

1 Just people who want to enjoy the
2 neighborhood and who want to enjoy the fresh
3 air, and they sit there and they can have a
4 drink. But I told the neighbors too, I'm not
5 going to throw a speaker out there.

6 MEMBER SILVERSTEIN: Okay. And
7 I've read in the protest report and in some of
8 the materials handed to us, complaints that
9 this deck was never approved and permitted.
10 And you know, there seemed to be conflicting
11 -- is it?

12 MR. YEGZAW: I showed them the
13 permits the last time. And I have a DCRA C of
14 O I can show you. I have a copy right now,
15 too. And it's approved by ABC, ABRA too. So
16 I have a summer garden license. And they
17 approved it.

18 MEMBER SILVERSTEIN: Okay.

19 MR. YEGZAW: So I don't know which
20 kind of permit I have to have. I'm not sure.

21 MEMBER SILVERSTEIN: Very well.

22 MR. YEGZAW: But DCRA gave me a

1 permit.

2 MEMBER SILVERSTEIN: No further
3 questions. I want to move this on.

4 CHAIR MILLER: Mr. Short?

5 MEMBER SHORT: Yes. How you doing
6 today, sir?

7 MR. YEGZAW: Yes, how you doing?

8 MEMBER SHORT: Okay. You showed
9 some pictures of some window frames inside of
10 the interior of your building. Frames and the
11 glass inside.

12 MR. YEGZAW: Yes.

13 MEMBER SHORT: Did you get permits
14 from DCRA to do that?

15 MR. YEGZAW: Oh, the second door?

16 MEMBER SHORT: Any doors inside of
17 your place. Right in front of your exit door,
18 correct?

19 MR. YEGZAW: Yes, the exit door in
20 the back.

21 MEMBER SHORT: Correct. And so
22 now you put a frame around the exit door.

1 MR. YEGZAW: Yes.

2 MEMBER SHORT: You need permits
3 for that. Do you have permits for that?

4 MR. YEGZAW: I don't know. I just
5 called the contractor who's doing that always.
6 And doing the neighborhood. I just call him
7 and he give me the contract, I let him go. I
8 don't know what he did.

9 MEMBER SHORT: I understand. I'll
10 check myself. I'll get the Board's permission
11 to check.

12 MR. YEGZAW: Okay.

13 MEMBER SHORT: Madam Chair, I
14 would like to also ask, he said recently in
15 his comments that there was a permit. Do you
16 have it here with you today showing your deck
17 was --

18 MR. YEGZAW: I did?

19 MEMBER SHORT: -- by DCRA? Yes.

20 MR. YEGZAW: Yes.

21 MEMBER SHORT: Can that be seen?
22 Can we see that?

1 CHAIR MILLER: It can, but it
2 should -- it's not necessarily --

3 MR. KLINE: I'll give it you to
4 now or ask him on redirect, whatever would --

5 (Crosstalk)

6 CHAIR MILLER: Okay, okay. I
7 don't want to spend too much time on this.

8 MR. KLINE: -- ask him on
9 redirect, it's up to you.

10 CHAIR MILLER: Okay. I just want
11 to remind everybody --

12 MALE PARTICIPANT: Madam Chair, I
13 would like to go on the record, I would like
14 to go on the record. If the Board doesn't
15 think that my questions are fair, I would like
16 to go on the record that anytime you do
17 anything with where you have public assembly
18 buildings, if someone gets injured, I want to
19 go on the record that this Board did ask,
20 somebody on this Board did ask questions about
21 it. Thanks.

22 CHAIR MILLER: Okay. I just want

1 to remind everybody again though to stay
2 focused on the protest which is on peace,
3 order, and quiet. You know, is your
4 establishment making noises that are bothering
5 the neighborhood, and what have you done about
6 it to alleviate it.

7 And you know, is that enough or
8 are there still problems. That's really what
9 I think the focus is. There are some other,
10 I don't know, maybe, I don't really know if
11 there are some trash complaints or not that's
12 bothering.

13 But it's just that we need to look
14 at that because that's what the Board's going
15 to making a decision on.

16 MR. YEGZAW: Okay.

17 CHAIR MILLER: Not that you can be
18 operating illegally without a permit. I mean,
19 that's something we can check into. But we
20 don't need to spend time on it too much. I
21 mean, it's either there or it isn't there.
22 You know?

1 MR. BANERJEE: Madam Chair, we
2 have a question.

3 CHAIR MILLER: Okay.

4 MR. BANERJEE: Are we permitted to
5 ask Solomon one more question about when the
6 deck was permitted?

7 CHAIR MILLER: No, not right now.
8 You'll get to ask questions on Board
9 questions. So right now this is the Board's
10 time to ask questions. Okay, who has a
11 question?

12 MEMBER ALBERTI: I do.

13 CHAIR MILLER: Mr. Alberti?

14 MEMBER ALBERTI: Okay Mr. Solomon,
15 do you remember when you applied for the
16 summer garden permit?

17 MR. YEGZAW: Yes.

18 MEMBER ALBERTI: Okay. I remember
19 that the Board approved it, all right?

20 MR. YEGZAW: Yes.

21 MEMBER ALBERTI: All right. But I
22 don't remember when. But the reason I ask is

1 do you remember if the board put placards up
2 to notify the neighborhood when you applied
3 for this summer garden permit?

4 MR. YEGZAW: No. They --

5 MEMBER ALBERTI: Okay, let's step
6 out.

7 MR. YEGZAW: They didn't.

8 MEMBER ALBERTI: You know how we
9 put those orange, pink signs in the windows
10 for --

11 MR. YEGZAW: Yes, I did it --

12 MEMBER ALBERTI: Wait, wait. Let
13 me finish. Let me finish my questions.

14 MR. YEGZAW: Okay. All right.

15 MEMBER ALBERTI: For your renewal,
16 did the Board, did ABRA do anything like that
17 when you applied for your summer garden?

18 MR. YEGZAW: Oh yes, I remember.
19 I remember we post that and they protest. The
20 ABC protest me and they failed. And ABRA
21 approved it.

22 MEMBER ALBERTI: Okay.

1 MR. YEGZAW: Yes, I did it. Yes,
2 I remember. Remember?

3 MEMBER ALBERTI: I'll check that.
4 I just don't remember.

5 MR. YEGZAW: Yes.

6 MEMBER ALBERTI: It's all right.

7 MR. YEGZAW: Oh, I'm sorry. But
8 yes, I did. I did.

9 MEMBER ALBERTI: I'm asking
10 because I don't remember that we had --

11 MR. YEGZAW: But yes, I remember
12 now.

13 MEMBER ALBERTI: -- summer garden.

14 MR. YEGZAW: Yes, I did.

15 MEMBER ALBERTI: All right, just
16 trying to refresh my recollection, that's all.

17 MR. YEGZAW: All right, thank you.

18 MEMBER ALBERTI: So all right,
19 let's continue. Do you know how thick this
20 wood is you put in the windows on the back of
21 your building?

22 MR. YEGZAW: Yes. It's like this

1 big. It's maybe one inch.

2 MEMBER ALBERTI: But you don't
3 know.

4 MR. YEGZAW: I don't know, but
5 yes.

6 MEMBER ALBERTI: Okay. All right,
7 fine. Fine, you don't know, you don't know.
8 Okay. Okay. Can we give the licensee the
9 Investigator's Report? Do you have any
10 objections to showing him the Investigator's
11 Report or the Protest report?

12 MR. KLINE: I don't have any
13 objection.

14 MEMBER ALBERTI: Okay. Can we, do
15 we have a copy that we can give to the
16 licensee, Mr. Solomon?

17 MR. SIGMON: I have one.

18 MEMBER ALBERTI: Okay.

19 CHAIR MILLER: Thank you.

20 MEMBER ALBERTI: Mr. Solomon,
21 would you turn halfway through this thing
22 there's Exhibit 2A. It's a picture of your

1 back deck. It looks like you were in the
2 process of putting the wood in. There's a
3 slab of wood.

4 And the one before that it's just
5 a slab of wood. And then this picture is the
6 whole deck with a slab of wood and a saw in
7 the middle of it. Have you found that
8 picture?

9 MR. YEGZAW: This picture?

10 MEMBER ALBERTI: No, this one
11 here. It says 2A

12 MR. YEGZAW: Oh, 2A.

13 MEMBER ALBERTI: It's actually the
14 second picture down. If you get to the
15 colored pictures, it's the second picture in.
16 First picture's just a piece of plywood.
17 First picture's this, a piece of plywood.

18 MR. YEGZAW: Okay, yes. Yes.

19 MEMBER ALBERTI: Okay, the picture
20 after that.

21 MR. YEGZAW: Okay, let me see.
22 I'm finding.

1 MR. KLINE: I apologize. Mr.
2 Alberti, I found myself at the same
3 disadvantage that I had with the protestant's
4 exhibits --

5 MEMBER ALBERTI: It's labeled
6 Exhibit 2A.

7 MR. KLINE: Let me finish. In
8 that the Investigator has definitely sent us
9 black and white photos. We usually print off
10 a report with a color printer so I'm looking
11 at what you're looking at. This is what I'm
12 looking at, and I can't make much heads or
13 tails out of it.

14 MEMBER ALBERTI: Okay, can I
15 borrow yours and we'll give Mr. Kline a copy
16 of this?

17 MR. KLINE: Thank you so much.

18 MEMBER ALBERTI: All right, good.

19 MR. KLINE: So I'm looking at what
20 you're looking at.

21 MEMBER ALBERTI: All right, all
22 right. So --

1 CHAIR MILLER: Okay, yes we can
2 share.

3 (Off microphone comment)

4 MR. SIGMON: Yes, we'll share.
5 Thank you.

6 MEMBER ALBERTI: All right. Not
7 sure it's going to matter, but we'll see. All
8 right so Mr. Solomon, I'm looking at your deck
9 out here, right?

10 CHAIR MILLER: Yes.

11 MR. YEGZAW: I'm sorry. I
12 couldn't find the picture. I don't know which
13 picture.

14 MEMBER ALBERTI: All right, thank
15 you Mr. Kline. I very much appreciate it Mr.
16 Kline. I think you'll be able to follow along
17 from your picture.

18 MR. YEGZAW: Yes. No, no. I know
19 this picture.

20 MEMBER ALBERTI: Hopefully. All
21 right, so you go the picture that's the
22 picture of your porch, right?

1 MR. YEGZAW: Yes.

2 MEMBER ALBERTI: All right. So as
3 I'm looking at the picture, your building is
4 to the left or to the right? Which direction
5 is it? You're looking at the picture.

6 MR. YEGZAW: Right. It's --

7 MEMBER ALBERTI: Is it to the
8 left, or is it to the right?

9 CHAIR MILLER: Which picture?
10 Exhibit 2A?

11 MEMBER ALBERTI: Exhibit 2A.
12 Exhibit 2A of the Protest Report. The top of
13 the picture has some buildings and the bottom
14 of the picture has the legs of the table. So
15 where is the building?

16 MR. YEGZAW: On the left.

17 MEMBER ALBERTI: To the left?

18 MR. YEGZAW: Yes.

19 MEMBER ALBERTI: Okay, that's all.
20 I just need to know.

21 MR. YEGZAW: Right, right.

22 MEMBER ALBERTI: Simple question.

1 All right.

2 MR. YEGZAW: Yes.

3 MEMBER ALBERTI: All right. If
4 I'm standing facing that table that's in the
5 middle, all right?

6 MR. YEGZAW: That table.

7 MEMBER ALBERTI: I'm facing the
8 table, what's behind me?

9 MR. YEGZAW: Facing behind you is
10 the Climax second floor door.

11 MEMBER ALBERTI: Second floor
12 door?

13 MR. YEGZAW: Yes, if you facing,
14 if you facing --

15 MEMBER ALBERTI: No, no, no.
16 Okay. I'm looking at the picture like this,
17 all right? Down this way.

18 MR. YEGZAW: Like this.

19 MEMBER ALBERTI: What's behind me
20 there?

21 MR. YEGZAW: The neighbors.

22 MEMBER ALBERTI: Is there a wall?

1 There's no wall.

2 MR. YEGZAW: No wall.

3 MEMBER ALBERTI: It's open, okay.

4 Okay, great. Okay now I'm looking out. I'm
5 standing there and I'm looking out. I'm
6 looking at all these buildings that are in
7 this picture, okay?

8 Along Florida Avenue, what are
9 those buildings that I see there? Do you
10 recognize what those buildings are, what they
11 would be, what they would belong to?

12 MR. YEGZAW: Yes this, the one you
13 can see the air conditioner thing, that's the
14 restaurant Hirestone.

15 MEMBER ALBERTI: Okay.

16 MR. YEGZAW: This is right here.

17 CHAIR MILLER: What restaurant?

18 MR. YEGZAW: Hirestones. It's
19 next, the next door mine.

20 MEMBER ALBERTI: Okay, it's a
21 restaurant?

22 CHAIR MILLER: Okay.

1 MR. YEGZAW: Hirestones. And the
2 next also is ***4:10:40. They do catering,
3 stuff like that. And I believe this one is
4 still closed. I don't know who is living now
5 --

6 MEMBER ALBERTI: Sir, the building
7 that kind of with the white thing?

8 MR. YEGZAW: Yes, the white thing.

9 MEMBER ALBERTI: Yes, okay, that
10 juts out. Okay.

11 MR. YEGZAW: And they do some
12 construction stuff in there.

13 MEMBER ALBERTI: Okay.

14 MR. YEGZAW: And that's ***4:11:03
15 Restaurant.

16 MEMBER ALBERTI: Okay.

17 MR. YEGZAW: And after that would
18 be Brixton.

19 MEMBER ALBERTI: Wait, wait. What
20 are you pointing to now? Can you describe it?

21 MR. YEGZAW: This right here, it's
22 ***4:11:14 Restaurant.

1 MEMBER ALBERTI: The one with the,
2 like, metal things coming out of the top of
3 it?

4 MR. YEGZAW: Coming out from,
5 right.

6 MEMBER ALBERTI: Yes.

7 CHAIR MILLER: That's a
8 restaurant, too.

9 MR. YEGZAW: And after that, you
10 see it's Brixton.

11 MEMBER ALBERTI: Okay, and that's
12 sort of to the left there, right there?

13 MR. YEGZAW: Yes.

14 MEMBER ALBERTI: Yes, right there.
15 Okay. What's that building right in the
16 center of this photo that I'm looking straight
17 at?

18 CHAIR MILLER: Can you describe it
19 for the record?

20 MEMBER ALBERTI: It's got, I see
21 one, two, three, four windows on it. Long --

22 MR. YEGZAW: Oh, that's the red

1 bricks? The red brick?

2 MEMBER ALBERTI: The what?

3 CHAIR MILLER: The red brick
4 building with the four windows.

5 MEMBER ALBERTI: Yes, what is that
6 building?

7 MR. YEGZAW: That's a corner shop.
8 But I don't think they have a name on it
9 there. But I see it's a corner shop with
10 ***4:11:57 and stuff like that.

11 MEMBER ALBERTI: And that sits on
12 what street?

13 MR. YEGZAW: This is on U Street.

14 MEMBER ALBERTI: It's on U Street,
15 okay.

16 MR. YEGZAW: Yes, it faces on U
17 Street.

18 MEMBER ALBERTI: Okay, and to the
19 right of that, what's there?

20 MR. YEGZAW: Right of that is the
21 white houses, is residential.

22 MEMBER ALBERTI: Is that

1 residential?

2 MR. YEGZAW: Yes.

3 MEMBER ALBERTI: Single family or
4 apartments?

5 MR. YEGZAW: I believe that's
6 single family.

7 MEMBER ALBERTI: Okay. That looks
8 like it faces on the alley. It doesn't look
9 like it faces on U Street. Do you know if --

10 MR. YEGZAW: I mean, it has a door
11 on U Street, too. And it has one faces on the
12 back.

13 MEMBER ALBERTI: Okay. So that's
14 residential. Okay, thank you.

15 MR. YEGZAW: Okay.

16 MEMBER ALBERTI: Oh, I know what I
17 need to talk to you about. Your bass.

18 MR. SIGMON: May I object, Madam
19 Chair?

20 MEMBER ALBERTI: To what?

21 CHAIR MILLER: Well, you can make
22 it but usually we don't overrule one of the

1 Board members.

2 MEMBER ALBERTI: You probably have
3 a correction to what was just testified to.

4 MR. SIGMON: I do. I just, I
5 don't know when I'm supposed to correct.

6 MEMBER ALBERTI: Well you'll get a
7 chance when you testify. You can go back to
8 that picture and you can correct all you want.
9 Go ahead.

10 MR. JONES: And also on redirect.

11 MEMBER ALBERTI: On redirect you
12 can do it. But you may want to do it with
13 your own witnesses. It may be easier.

14 CHAIR MILLER: I was getting
15 confused.

16 MEMBER ALBERTI: I'm just giving
17 advice. It may be quicker with your own
18 witnesses.

19 (Crosstalk)

20 CHAIR MILLER: -- corrections on
21 the photograph? Okay, yes. You can use your
22 own witnesses to fill in. Yes, okay.

1 MEMBER ALBERTI: So okay. You
2 showed us, I forgot, was that the second set
3 or the first set of the space, Mr. Kline. Can
4 you help me out?

5 MR. KLINE: What are we looking
6 for, the bass?

7 MEMBER ALBERTI: The bass.

8 MR. KLINE: It would have been the
9 second set.

10 MEMBER ALBERTI: The second set,
11 okay great. All right, so the equipment you
12 no longer use, you have equipment that you no
13 longer use. It's in one of your photos here,
14 right?

15 MR. YEGZAW: Yes.

16 MEMBER ALBERTI: And then you have
17 a photo after that, it shows another bass,
18 subwoofers, is that what they are? Are they
19 subwoofers or something? How would you
20 describe them?

21 MR. YEGZAW: The bass?

22 MEMBER ALBERTI: Yes.

1 MR. YEGZAW: The bass basically it
2 helps the speakers.

3 MEMBER ALBERTI: Okay. All right.
4 So I'll just refer to it as a bass unit. Is
5 that okay? Do you understand what I'm talking
6 about when I say it's a bass unit?

7 MR. YEGZAW: The bass unit?

8 MEMBER ALBERTI: Yes.

9 MR. YEGZAW: Yes.

10 MEMBER ALBERTI: Okay. So what's
11 the difference between the two of them?

12 MR. YEGZAW: Okay, that's the
13 difference, okay.

14 MEMBER ALBERTI: Well, let me go
15 back. Do you know what the specifications of
16 the one you're not using, how much power it
17 has?

18 MR. YEGZAW: Yes.

19 MEMBER ALBERTI: Okay. How much
20 power is that?

21 MR. YEGZAW: Well we call it B552.
22 So that's the high volume. And even though if

1 you could see physically to B.

2 MEMBER ALBERTI: B552?

3 MR. YEGZAW: Yes, B --

4 MEMBER ALBERTI: Is that a model
5 number or what is that?

6 MR. YEGZAW: It's a brand. Brand,
7 a model number which means that's the, I might
8 mess up the number but it starts with B225 or
9 B552.

10 MEMBER ALBERTI: Okay, do you know
11 how many, like, watts it is?

12 MR. YEGZAW: Well yes.

13 MEMBER ALBERTI: Is there any
14 specification on the power or the power of the
15 sound that it uses? Do you know any of those
16 numbers?

17 MR. YEGZAW: I don't exactly
18 number how it cares, but when we buy it they
19 kind of explain us that's very huge. And
20 after you use it for three years, that's very,
21 very --

22 MEMBER ALBERTI: Do you still have

1 the information on that?

2 MR. YEGZAW: I can bring the
3 information how many watts and all that.

4 MEMBER ALBERTI: On that piece of
5 equipment? All right.

6 MR. YEGZAW: Sure. I can bring
7 that.

8 MEMBER ALBERTI: Do you have
9 similar information --

10 MR. YEGZAW: I have what?

11 MEMBER ALBERTI: Do you have in
12 your records similar information on the new
13 unit that you're using?

14 MR. YEGZAW: Yes. Yes, I can get
15 them. It's in the back of --

16 MEMBER ALBERTI: Okay.

17 MR. YEGZAW: It's in the back of
18 the speakers how many watts.

19 MEMBER ALBERTI: All right, all
20 right. I mean, I just want to establish that
21 that information's available.

22 MR. YEGZAW: Yes.

1 MEMBER ALBERTI: You don't have it
2 today.

3 MR. YEGZAW: Yes.

4 MEMBER ALBERTI: I just want to
5 establish that it's available. I have no
6 further questions.

7 MR. YEGZAW: Okay, thank you.

8 CHAIR MILLER: Others? Mr. Jones?

9 MR. JONES: Thank you, Madam
10 Chair. Really quickly, so you've done some
11 things to address or to try to mitigate the
12 sound emanating from your establishment?

13 MR. YEGZAW: Yes.

14 MR. JONES: The motivation for you
15 doing those things was related to the
16 complaints you received from the community at
17 large?

18 MR. YEGZAW: Yes.

19 MR. JONES: From around your
20 establishment, correct?

21 MR. YEGZAW: Right.

22 MR. JONES: Okay. Are you still

1 receiving complaints even after you've taken
2 the measures that you've taken?

3 MR. YEGZAW: Yes. I received
4 yesterday.

5 MR. JONES: What more could you do
6 in order to mitigate or to mitigate the sound
7 that is impacting your neighbors?

8 MR. YEGZAW: Okay. All right.

9 MR. JONES: Make sure I'm clear.
10 What more can you do beyond what you've
11 already done because what you've already done
12 hasn't mitigated all the complaints related to
13 noise coming from your establishment.

14 MR. YEGZAW: Right.

15 MR. JONES: So I just want to
16 understand if you have any idea of what more
17 you could possibly do to mitigate the sound
18 any more.

19 MR. YEGZAW: Okay. I mean, I can
20 do some further after I did the second door.
21 And I received the neighbor complaints. We
22 can work with the neighbor, I can work with

1 the neighborhood and we can make some decision
2 and I can do.

3 MR. JONES: Okay, understood. But
4 once you finish the second door that you're
5 doing on the, I guess the second floor patio
6 or summer garden area?

7 MR. YEGZAW: Yes.

8 MR. JONES: Once that's completed,
9 you'll check with the community, right?

10 MR. YEGZAW: Yes.

11 MR. JONES: If the community says
12 they have a complaint, they have a concern
13 regarding the sound emanating from the
14 establishment, is there anything else that you
15 could possibly do to mitigate sound coming
16 from your establishment any more than you
17 already have or --

18 MR. YEGZAW: I can do that.

19 MR. JONES: Okay, what are those
20 things?

21 MR. YEGZAW: Okay. I might go
22 with the lower bass than what I have.

1 MR. JONES: Okay.

2 MR. YEGZAW: So far right now, I'm
3 using four speakers. I might take off one of
4 the speakers or go with the low volume
5 speakers. So we can do some of those changes.

6 MR. JONES: Okay. So if I heard
7 you correctly, one of the things you can do is
8 lower the volume.

9 MR. YEGZAW: Yes.

10 MR. JONES: Another thing you can
11 do is remove one of the sound elements, i.e.
12 one of the four bass speakers, take it down
13 from four to three?

14 MR. YEGZAW: Yes.

15 MR. JONES: Okay. So those are
16 two measures that you can take, in addition --

17 MR. YEGZAW: Two measures. Yes,
18 that's the major thing that can make the sound
19 down.

20 MR. JONES: Okay. Is that
21 something, conceptually, as it stands today,
22 is that something that you would be amenable

1 or something that you would be willing to
2 agree to do, that you would be comfortable
3 with doing in the process of operating your
4 establishment, or do you feel as though that
5 change would cause you to run a non-profitable
6 business?

7 MR. YEGZAW: Yes. I hope it's
8 not, after I'm done this, I hope it's not
9 going to have a problem with the neighborhood.
10 But if it is, yes I will do all of the
11 changes. All I will.

12 MR. JONES: Okay, of the two
13 changes that you mentioned, you believe you
14 can make those changes and it not compromise
15 your business to the extent that you would
16 have to shutter your door, or close your
17 doors, shut down your business. Is that what
18 I'm getting from you?

19 MR. YEGZAW: Yes. If I'm doing
20 that, it's not going to be shutting down.

21 MR. JONES: Okay.

22 MR. YEGZAW: I mean, first of all,

1 I don't exactly understand the last word that
2 you say. But it seems like to me it's not
3 going to affect my business. That's what you
4 mean?

5 MR. JONES: Okay. Yes.

6 Basically, if you turn down the volume or
7 remove one of your bass elements --

8 MR. YEGZAW: Of course --

9 MR. JONES: -- would that force
10 you to go out of business?

11 MR. YEGZAW: If affecting my
12 business. But I have never tried that. But
13 of course it affects the business. People
14 want to hear it the sound because it's, my
15 ***4:19:26 peoples.

16 MR. JONES: I understand.

17 MR. YEGZAW: So I supposed to have
18 six speakers on the sound designers. Supposed
19 to have six speakers, but I have four
20 speakers. But some people still complain no,
21 I can't hear it. Put the volume up. But it
22 does affect the business.

1 MR. JONES: Okay. Will that
2 affect, as you understand it, would that cause
3 you to close your business?

4 Do you believe, do you anticipate
5 those changes, if you had to make them, I'm
6 not saying that you do, but if you had to make
7 them, do you feel as though they would
8 potentially cause you to go out of business?

9 MR. YEGZAW: I don't think so, but
10 I haven't tried. I don't know.

11 MR. JONES: Okay, fair enough.
12 Thank you.

13 MR. YEGZAW: Okay, thank you.

14 MEMBER RODRIGUEZ: Madam Chair?

15 CHAIR MILLER: Okay. Yes, Mr.
16 Rodriguez?

17 MEMBER RODRIGUEZ: Hey Mr. Yegzaw,
18 I have a few questions for you.

19 MR. YEGZAW: Okay, okay.

20 MEMBER RODRIGUEZ: It appears that
21 you've taken it very seriously that you want
22 to mitigate the sound and keep your

1 relationships with your neighbors.

2 MR. YEGZAW: Yes.

3 MEMBER RODRIGUEZ: As a good
4 business neighbor.

5 MR. YEGZAW: Yes.

6 MEMBER RODRIGUEZ: Let me ask you
7 about the plywood. Now it looks like about
8 three inch wide plywood? Let me ask you
9 because I might learn something here, why the
10 plywood? Why did you choose plywood over any
11 other material or technique?

12 MR. YEGZAW: I think we agree with
13 that cover with the wood.

14 MEMBER RODRIGUEZ: Right. But you
15 agreed. But I'm talking about the material.
16 Is that known to be a sound mitigator?

17 MR. YEGZAW: What --

18 MEMBER RODRIGUEZ: I'm just
19 curious.

20 MR. YEGZAW: Right. We decided
21 with the neighborhood.

22 MEMBER RODRIGUEZ: Right.

1 MR. YEGZAW: We decided to cover
2 with the thick wood.

3 MEMBER RODRIGUEZ: Thick wood?

4 MR. YEGZAW: Yes. That's what we
5 decided to do. And we agreed together and
6 then covered those two glass, all covered
7 that.

8 MEMBER RODRIGUEZ: Okay. So you
9 chose plywood.

10 MR. YEGZAW: Yes.

11 MEMBER RODRIGUEZ: And maybe
12 that's the best sound mitigator, you know, I
13 don't know. I'm curious. Number two then, so
14 after you did this, and that's what you agreed
15 with your neighbors, right? The group that's
16 protesting here, right?

17 MR. YEGZAW: Yes.

18 MEMBER RODRIGUEZ: What was their
19 response?

20 MR. YEGZAW: Okay, that's a good
21 question. The response was I call mister, oh
22 I think he left, two of them and we tour all

1 that. I showed them the bass that I took off,
2 I show them that I use. I took them in the
3 back.

4 I showed them all the change I
5 have. They say it's very, very good job. And
6 it's reduce than before. And they say even
7 though they heard us noise, it's not bad.
8 That's what they said. And she's here.

9 And she told me that if you saw
10 the picture, the white thing, I mean the
11 yellow thing.

12 MEMBER RODRIGUEZ: Yes.

13 MR. YEGZAW: I think that's A2.
14 A2, the second picture.

15 MEMBER RODRIGUEZ: Yes, the
16 sealant.

17 MR. YEGZAW: Yes, I did the wood
18 but I didn't build the yellow thing.

19 MEMBER RODRIGUEZ: Right.

20 MR. YEGZAW: And they came back.
21 She said okay, seal this thing with glue, with
22 whatever it is. And put it this thing. I

1 said, and I call the guy who did this.

2 I told him my neighbors told me
3 cover this up because it was a little gap. So
4 cover them up, and he covered them up.

5 MEMBER RODRIGUEZ: So have they
6 gotten satisfaction, you think?

7 MR. YEGZAW: Yes, it seems like
8 they ask ***4:23:19 over there. She said yes
9 I did a good job and it's reduced. And she
10 told me it's improvement and says I don't hear
11 them like I used to. That's what she said
12 right here.

13 MEMBER RODRIGUEZ: Okay. We'll be
14 hearing from them soon.

15 MR. YEGZAW: Okay.

16 MEMBER RODRIGUEZ: But I just
17 wanted to make sure --

18 (Crosstalk)

19 MR. YEGZAW: -- yes.

20 MEMBER RODRIGUEZ: -- there's some
21 positive communications going on between you
22 all.

1 MR. YEGZAW: Yes.

2 MEMBER RODRIGUEZ: Okay, thank you
3 very much.

4 MR. YEGZAW: Your welcome. Thank
5 you.

6 CHAIR MILLER: Others? I just had
7 a few. Was your outdoor patio, whatever it's
8 called, operating last year? Did you use the
9 outdoor patio last year, summer garden?

10 MR. YEGZAW: Last year?

11 CHAIR MILLER: Yes.

12 MR. YEGZAW: Yes. I build it last
13 year. But I didn't know I was supposed to
14 have summer garden license.

15 CHAIR MILLER: Okay, we don't need
16 to go into that. I want to know if you used
17 it and it got complaints from the noise from
18 the summer garden last summer because you said
19 --

20 MR. YEGZAW: No.

21 CHAIR MILLER: -- you know, this
22 winter it wasn't operating.

1 MR. YEGZAW: No, no.

2 CHAIR MILLER: You didn't get any
3 complaints?

4 MR. YEGZAW: No.

5 CHAIR MILLER: Okay.

6 MALE PARTICIPANT: Did you use it?

7 CHAIR MILLER: How many weeks did
8 you use it?

9 MR. YEGZAW: No, I didn't use it.
10 I didn't use it.

11 CHAIR MILLER: You didn't use it?

12 MR. YEGZAW: That's why one day, I
13 got ticket, I stopped. I didn't use them
14 after that.

15 CHAIR MILLER: Say that again.

16 MR. YEGZAW: I didn't use them.
17 Last summer --

18 CHAIR MILLER: Is it before you
19 were told you shouldn't be using it? Is that
20 what you're saying? Did you use it for a
21 while last summer?

22 MR. YEGZAW: No.

1 CHAIR MILLER: Not at all?

2 MR. YEGZAW: Not at all.

3 CHAIR MILLER: Oh.

4 MR. YEGZAW: Like I said, I was
5 trying to explain. I tried a couple days and
6 I got ticket.

7 CHAIR MILLER: Okay, you said a
8 couple of days --

9 MR. YEGZAW: Right, and I got
10 ticket.

11 CHAIR MILLER: Right, I remember.

12 MR. YEGZAW: And they told me
13 stop, I stop because I didn't know.

14 CHAIR MILLER: Okay. So you don't
15 know whether the dining on the patio is going
16 to be bothering residents?

17 MR. YEGZAW: I don't know.

18 CHAIR MILLER: You don't know?

19 MR. YEGZAW: I don't know. I
20 don't know.

21 CHAIR MILLER: You do have some
22 residents that are near the sidewalk café?

1 MR. YEGZAW: Yes.

2 CHAIR MILLER: Oh, not sidewalk
3 café, summer garden?

4 MR. YEGZAW: Summer garden?

5 CHAIR MILLER: Yes. You do?

6 MR. YEGZAW: Yes.

7 CHAIR MILLER: Okay. Do you have
8 any, well I guess we'll hear the complaints
9 later but you won't be on the stand. So
10 that's why I want to ask you now. Have
11 people, have residents expressed concerns
12 about noise from the summer garden?

13 MR. YEGZAW: Well yes, still
14 peoples going outside, smoking cigarette and
15 taking fresh air, five, six, ten peoples. But
16 yes, they just talk.

17 CHAIR MILLER: They talk. Do they
18 talk late, until the 2 o'clock?

19 MR. YEGZAW: 2 o'clock, yes.

20 CHAIR MILLER: Okay.

21 MR. YEGZAW: And if it is high and
22 I went out or my security guys out or one of

1 my managers out, tell them keep it low. But

2 --

3 CHAIR MILLER: Okay. So the noise
4 that you've been addressing has been related
5 to the noise of the music, the bass, is that
6 what it is?

7 MR. YEGZAW: Yes, that's the main,
8 the bass. But not the patio. The bass and
9 the speaker.

10 CHAIR MILLER: And the speakers,
11 okay.

12 MR. YEGZAW: Yes.

13 CHAIR MILLER: And those are the
14 complaints that you've had.

15 MR. YEGZAW: Yes.

16 CHAIR MILLER: Okay. And you're
17 not finished making all the changes. But with
18 the changes you've made, have you gotten a
19 response from residents?

20 MR. YEGZAW: Oh yes. The changes
21 are, I forgot to say that. After we see this,
22 if it's still coming up, the noise, and we

1 agree with them, put some wood, cover some
2 wood on their side. And I agree with that to
3 do if it's keep going.

4 CHAIR MILLER: Okay.

5 MR. YEGZAW: I agree with that
6 change. All the way from bottom to the top,
7 I'll cover them up with wood.

8 CHAIR MILLER: Okay. And do you
9 get a lot of complaints this year? Did you
10 get a lot of complaints?

11 MR. YEGZAW: When I start. Not
12 this year, no. When I start. But about the
13 last few weeks, I got a lot of complaint. I
14 don't know why.

15 CHAIR MILLER: Okay. And you
16 think what you've done is responsive to those
17 concerns? What you've done with the wood on
18 the windows and evrything, do you think that
19 responds to their concerns?

20 MR. YEGZAW: Oh yes. I mean, it
21 makes a lot of change, I believe.

22 CHAIR MILLER: Okay. All right,

1 any other questions? Okay. Now any questions
2 on Board questions? Okay, Mr. Kline?

3 MR. KLINE: Mr. Yegzaw, after you
4 made all these changes, did you turn on the
5 music and go into the alley to see whether the
6 music could be heard?

7 MR. YEGZAW: Yes. I did.

8 MR. KLINE: Okay. And could it be
9 heard?

10 MR. YEGZAW: No.

11 MR. KLINE: Could not be heard?

12 MR. YEGZAW: Could not be heard.

13 MR. KLINE: All right. Now you've
14 testified that, and I think Mr. Jones was
15 asking you about well, you've gotten a lot of
16 complaints.

17 MR. YEGZAW: Yes.

18 MR. KLINE: You've particularly
19 gotten a lot of complaints recently, correct?

20 MR. YEGZAW: Yes, yes.

21 MR. KLINE: And has anyone
22 responded to those complaints, police, ABRA

1 Investigators?

2 MR. YEGZAW: ABRA Investigators
3 came.

4 MR. KLINE: Okay.

5 MR. YEGZAW: And police came.

6 MR. KLINE: Okay. Did they find
7 any noise coming out of the back of your
8 establishment?

9 MR. YEGZAW: No, no. We went in
10 the alley, we went in the back and they say
11 it's fine. To be cooperative, just could you
12 turn it a little down? I said okay, a little
13 down.

14 MR. KLINE: Do you have any
15 thoughts as to why it is that recently you've
16 been getting all these complaints?

17 MR. YEGZAW: I don't know. Maybe
18 making the case stronger or I don't know.

19 MR. KLINE: Got it. Okay.

20 CHAIR MILLER: Okay.

21 MR. YEGZAW: I don't know.

22 MR. KLINE: Now Mr. Alberti asked

1 you about the bass speaker and we were talking
2 about specifications and so on and so forth.
3 Since you swapped out the bass speaker, did
4 you go to the rear of your establishment to
5 see whether the bass could be heard when the
6 music was on?

7 MR. YEGZAW: Yes, I checked that.

8 MR. KLINE: Okay.

9 MR. YEGZAW: I checked that, but -
10 -

11 MR. KLINE: So was there a
12 difference between what could be heard back in
13 the alley with the old bass and what you could
14 hear with the new bass?

15 MR. YEGZAW: Oh yes, a lot.

16 MR. KLINE: A big difference?

17 MR. YEGZAW: It's big difference.

18 MR. KLINE: Okay. Do you need any
19 specifications to be able to tell you that
20 there's a big difference between the old big
21 speaker and the new smaller speaker, or could
22 you figure that out on your own by listening?

1 MR. YEGZAW: Well, I mean the size
2 also, it's written, it's a high volume or high
3 powerful --

4 MR. KLINE: No, no. My question
5 to you is do you need the specs to be able to
6 tell? Do you need the specifications or can
7 you just hear for yourself that with the big
8 speaker, you heard it and with the little
9 speaker, you don't.

10 MR. YEGZAW: Yes, you can hear it.
11 You can tell the difference.

12 MR. KLINE: All right. Now there
13 was a lot of questions to you about where
14 Velvet Lounge is located, whether it's on the
15 alley. Is there a direct line of sight
16 between your back deck and Velvet Lounge's
17 rear seating area?

18 MR. YEGZAW: Yes.

19 MR. KLINE: Okay. In fact, the
20 picture that was introduced earlier of the
21 back of Velvet Lounge was taken from your rear
22 deck, wasn't it?

1 MR. YEGZAW: Yes.

2 MR. KLINE: Okay. So that
3 demonstrates --

4 (Crosstalk)

5 MR. YEGZAW: -- can tell where is
6 the Velvet Lounge exactly are.

7 CHAIR MILLER: Okay.

8 MR. YEGZAW: Right.

9 MR. KLINE: Have any of your
10 neighbors ever complained to you about rodent
11 control or how you keep your trash or other
12 than the noise issue with respect to dumping
13 late?

14 MR. YEGZAW: Yes. They complain
15 about the trash.

16 MR. KLINE: Okay, what kind of
17 complaints have you heard?

18 MR. YEGZAW: They say when you
19 dump the trash in the dumpster, and they can
20 hear the glass.

21 MR. KLINE: So you're talking
22 about noise?

1 MR. YEGZAW: Right, the noise.

2 MR. KLINE: Okay. But what about
3 have they complained to you that you're not
4 doing a good enough job with respect to rat
5 control and things like that? Have they told
6 you that?

7 MR. YEGZAW: Yes. And they told
8 me that door, when the door opens, close, and
9 opens or closes it makes sounds. I had old
10 fans.

11 MR. KLINE: No, no. We're talking
12 about rat control now. We're not talking
13 about noise.

14 MR. YEGZAW: The rat control?

15 MR. KLINE: We're talking about
16 rat control. Did they complain to you about
17 rat control. You have an extermination
18 company, correct?

19 MR. YEGZAW: Yes. I have that.

20 MR. KLINE: How often do they
21 come?

22 MR. YEGZAW: I think they come

1 once in a month.

2 MR. KLINE: Okay.

3 MR. YEGZAW: And they change all
4 the stuff. Maybe once in a month or two times
5 in a month. One of the manager, they should
6 know this.

7 MR. KLINE: Okay. Well maybe I'll
8 ask him about that. But to your knowledge, I
9 know noise. I know you've heard complaints
10 about noise with respect to trash dumping.
11 Has anyone, any neighbor complained to you
12 that you don't keep your trash area clean?

13 MR. YEGZAW: No, no.

14 MR. KLINE: Okay. That's what I'm
15 asking you.

16 MR. YEGZAW: Okay, no.

17 MR. KLINE: Or that you don't get
18 exterminated often enough. Has anyone ever
19 told you that?

20 MR. YEGZAW: No. No.

21 MR. KLINE: Okay.

22 MR. YEGZAW: No.

1 MR. KLINE: Board can take
2 administrative notice, let's close the loop.
3 Show you what we'll mark as Applicant's 3. Do
4 you know what that is?

5 MR. YEGZAW: This is permit C of
6 O.

7 MR. KLINE: That's a copy of the
8 Certificate of Occupancy?

9 MR. YEGZAW: Yes.

10 MR. KLINE: And does that have
11 summer garden listed on it?

12 MR. YEGZAW: Yes.

13 MR. KLINE: And it has your
14 occupancy on it?

15 MR. YEGZAW: Yes.

16 MR. KLINE: I move Applicant's 3.

17 CHAIR MILLER: Okay.

18 MR. KLINE: I don't know if you
19 have a copy. I think you have a copy in your
20 pile.

21 CHAIR MILLER: Okay. Any
22 objection? Protestants, I assume you don't

1 have an objection. It's a Certificate of
2 Occupancy showing the summer garden permitted.

3 MS. CLARK: We would like to see
4 that.

5 MR. SIGMON: I mean, it's the
6 first I'm ever seeing it.

7 CHAIR MILLER: Okay.

8 MR. SIGMON: But, sure.

9 MR. BANERJEE: Was it presented
10 with the packet that came a few days ago? I
11 don't recall seeing it was.

12 CHAIR MILLER: No, it's in our
13 records, though. It's something we can take
14 judicial notice of. This issue came up today
15 about whether or not there was a permit.
16 Correct? Right, Mr. Kline? That's what
17 you're --

18 MR. KLINE: That's correct, yes.

19 CHAIR MILLER: -- offering it,
20 okay.

21 MR. BANERJEE: It wasn't permitted
22 when it was built.

1 CHAIR MILLER: Okay, that --

2 MS. CLARK: It wasn't.

3 CHAIR MILLER: We're not hearing
4 testimony right now. Okay? You guys will get
5 to --

6 MS. CLARK: That's for what you
7 all are permitted for?

8 CHAIR MILLER: No, this document
9 shows that it was permitted.

10 MALE PARTICIPANT: At some point.

11 CHAIR MILLER: At some point.

12 MS. CLARK: At some point.

13 CHAIR MILLER: Right. But they
14 have a permit, yes. Okay --

15 MR. KLINE: May I see the Exhibits
16 for the Investigator's Report, the color
17 photo? Okay, showing you -- can you hear me
18 from here?

19 (Off microphone comment)

20 MEMBER SILVERSTEIN: You can talk
21 into that mic.

22 MR. KLINE: Okay, thank you.

1 Showing you the Investigator's Exhibit 2A.
2 You were asked about this by one of the Board
3 members. If you're standing where you're
4 sitting facing this table, to the left is the
5 building, correct?

6 MR. YEGZAW: Yes, to the left is
7 the building.

8 MR. KLINE: What's behind you?

9 MR. YEGZAW: The gas station.

10 MR. KLINE: The gas station is
11 behind you.

12 MR. YEGZAW: Yes.

13 MR. KLINE: Okay.

14 CHAIR MILLER: Excuse me, I'm
15 sorry. Are you referring --

16 MR. KLINE: Referring to the
17 Investigator's --

18 CHAIR MILLER: That's what I
19 thought. The table picture, okay.

20 MR. KLINE: And the gas station is
21 behind it.

22 MR. YEGZAW: Yes.

1 MR. KLINE: And then you were
2 asked about all these buildings over here.
3 And then there are residents at the right,
4 correct?

5 MR. YEGZAW: Right.

6 MR. KLINE: And the gas station
7 that's behind you is the 24 hour gas station
8 that you testified about before?

9 MR. YEGZAW: Yes.

10 MR. KLINE: Beg the Board's
11 indulgence.

12 CHAIR MILLER: Okay. So were you
13 asking to have this admitted as an exhibit?

14 MR. KLINE: Yes.

15 CHAIR MILLER: Okay.

16 MR. KLINE: And move or ask the
17 Board to take administrative notice of it,
18 whichever the Board --

19 CHAIR MILLER: Either one, really.

20 MR. SIGMON: Madam Chair?

21 CHAIR MILLER: Yes.

22 MR. SIGMON: For the record, I

1 don't think this is accurate given the date on
2 the top right.

3 MR. KLINE: The witness has
4 identified it as the Certificate of Occupancy.
5 I don't know accurate/inaccurate. I believe
6 there is a copy in the Board's files. If he
7 want's to voir dire or ask the witness
8 questions about it, that's fine.

9 CHAIR MILLER: Where did this come
10 from?

11 MR. KLINE: It was photocopied
12 from what's hanging on his wall in his
13 establishment.

14 CHAIR MILLER: Okay. Okay. All
15 right, so we'll admit it as Applicant's
16 Exhibit number 3. Okay.

17 MR. KLINE: And I have no further
18 questions.

19 CHAIR MILLER: You can address any
20 issues in your direct. Okay. That's it?

21 MR. KLINE: That's all I have over
22 here.

1 CHAIR MILLER: Okay. Do you have
2 any final question based on Board questions?

3 MR. SIGMON: I guess I just have
4 one related to this topic.

5 CHAIR MILLER: Oh yes, he just
6 introduced that, so you can ask him that.

7 MR. SIGMON: And this piece of
8 evidence that he just, whatever the number is,
9 number 3.

10 CHAIR MILLER: Yes, okay.

11 MR. SIGMON: I see the date at the
12 top right says January the 16th of 2014. Is
13 that when you received your occupancy permit?
14 This is for the summer garden patio, is that
15 right?

16 MR. YEGZAW: No.

17 MR. SIGMON: Yes, it is for the
18 summer garden. So is that when you received
19 the occupancy?

20 MR. YEGZAW: When I applied for
21 extra capacity. But not the summer garden
22 permits.

1 MR. SIGMON: Okay. So you just
2 applied for extra capacity in January of 2014?

3 MR. YEGZAW: Yes, yes.

4 MR. SIGMON: Okay. And that's
5 extra capacity of the summer garden, right?

6 MR. YEGZAW: Yes.

7 MR. SIGMON: Okay. And when did
8 you apply for the original occupancy for the
9 summer garden?

10 MR. YEGZAW: The capacity?

11 MR. SIGMON: Just for occupancy.

12 MR. YEGZAW: For occupancy? I
13 don't remember. But before I build it, they
14 took ***4:36:37 and someone in DCRA give us a
15 permit and we build it. And then after that,
16 we apply for C of O.

17 MR. SIGMON: Okay. So for the
18 record, you requested a permit for
19 construction of the deck?

20 MR. YEGZAW: Yes, a few guys, I
21 can show you the pictures, I mean the designs,
22 architect.

1 MR. SIGMON: Okay.

2 MR. YEGZAW: I --

3 (Crosstalk)

4 MR. BANERJEE: Can I ask one?
5 Weren't you cited once for an unpermitted
6 summer garden by ABRA last summer?

7 MR. YEGZAW: Unpermitted summer
8 garden?

9 MR. BANERJEE: Yes.

10 MR. YEGZAW: Yes.

11 MR. BANERJEE: You were cited for
12 an unpermitted summer garden? So you were
13 using the garden but it wasn't permitted?

14 MR. YEGZAW: It wasn't permitted
15 by alcohol ABC.

16 MR. BANERJEE: And you were
17 serving alcohol?

18 MR. YEGZAW: I was serving alcohol
19 because I didn't know that I should have a
20 license. I thought that's included in my
21 license. And they had me, I had a ticket.

22 CHAIR MILLER: Okay. So --

1 MR. YEGZAW: That's it.

2 CHAIR MILLER: -- the Board's
3 aware of that. ***4:37:51 okay. That's not
4 part of the protest. But yes, we're aware of
5 that.

6 MR. KLINE: I think I get to go
7 last since he's my witness and I just have one
8 question.

9 CHAIR MILLER: Yes.

10 MR. KLINE: What did you do when
11 you were cited by the Board for using the
12 summer garden without permission?

13 MR. YEGZAW: Yes, I came here.

14 MR. KLINE: Okay. Did you
15 continue to use it?

16 MR. YEGZAW: No. I stopped it.
17 After that I stopped it.

18 MR. KLINE: Okay. That's all.

19 CHAIR MILLER: Okay. Mr. Short,
20 do you have another question?

21 MEMBER SHORT: Yes. Again, I
22 would just ask, I see you have a Certificate

1 of Occupancy, when you found out you didn't
2 have a permit for the summer garden.

3 MR. YEGZAW: Yes.

4 MEMBER SHORT: I ask again, did
5 you get permits to alter your exits on the
6 anterior of your building?

7 MR. YEGZAW: Yes. I have one.

8 MEMBER SHORT: You got permits for
9 that?

10 MR. YEGZAW: Yes. But I don't
11 have it right now. But I have the, what do
12 you call, I have a structure added to the
13 building in DCRA.

14 MEMBER SHORT: No, no, no.
15 Interior. Where you did the exits inside,
16 when you put the framing up, did you get
17 permits from DCRA to do that?

18 MR. YEGZAW: I'm sorry, I missed
19 your question. We're talking about the summer
20 garden?

21 MEMBER SHORT: No. You showed
22 pictures of a frame ***4:38:58 at your doors,

1 on the interior.

2 MR. YEGZAW: Oh, to do this? To
3 do this do we need a permit?

4 MEMBER SHORT: You need a permit,
5 yes sir.

6 CHAIR MILLER: Okay --

7 MR. YEGZAW: I don't understand
8 his question. But let me see the picture.

9 CHAIR MILLER: We can look into
10 that. And again, I think it's a legitimate
11 concern but it's not -- today's focus is on
12 the Protestant's protest regarding noise and
13 impact on their quality of life.

14 MR. YEGZAW: Yes.

15 CHAIR MILLER: So I just want to
16 try and see if we can stay focused on that for
17 the most part. I understand that that's a
18 concern that Mr. Short has flagged.

19 Okay. And you don't have an
20 answer today because you weren't prepared for
21 that subject, correct? Is that it? You don't
22 have an answer to his question today

1 necessarily because you weren't expecting that
2 question.

3 MR. YEGZAW: Which question?

4 CHAIR MILLER: Related to permits
5 for inside.

6 MR. YEGZAW: I did have the whole
7 permit, if you ask me, I can bring in that.

8 CHAIR MILLER: Okay, okay.

9 MR. YEGZAW: I don't have it --

10 MR. KLINE: Madam Chair, just so
11 the record's clear, I think what he testified
12 when he was asked about it earlier was that he
13 hired his contractor and whatever his
14 contractor did. So we'll obviously look into
15 that.

16 CHAIR MILLER: Okay.

17 MR. KLINE: But that was, you
18 know, he didn't build it. It was his
19 contractor.

20 MEMBER SHORT: Thank you very
21 much. I understand. Don't make a difference
22 who built it. If someone dies in there, the

1 question will come up.

2 MR. KLINE: I understand, Mr.
3 Short. I'm not discounting your concern.

4 MEMBER SHORT: Okay, all right.
5 That's why it's a question.

6 MR. KLINE: But in terms of his
7 answer, I just want to make sure the record's
8 clear in terms of what he said. And we will
9 obviously look into it after this hearing.

10 MEMBER SHORT: Thank you.

11 MR. KLINE: Thank you.

12 CHAIR MILLER: Okay. I think, oh
13 you have another question.

14 MR. KLINE: No.

15 CHAIR MILLER: No, you finished.
16 Okay, so I think that you're finished, you can
17 be excused.

18 MR. KLINE: And return to your
19 seat --

20 MR. YEGZAW: Okay, thank you.

21 CHAIR MILLER: Thank you very
22 much. You can be excused to that table.

1 MR. KLINE: ***4:40:57 to the
2 stand please.

3 CHAIR MILLER: Come over here,
4 sir.

5 MR. KLINE: Come over here, please
6 and you'll be sworn in.

7 CHAIR MILLER: Do you swear to
8 tell the truth, the whole truth, and nothing
9 but the truth? You have to say yes or --

10 MR. SOLONU: Yes.

11 CHAIR MILLER: Okay, thank you.
12 Have a seat.

13 MR. KLINE: Sit down.

14 MR. SOLONU: Thank you.

15 MR. KLINE: Mr. Solonu (phonetic)
16 ***4:41:20, you're the general manager of
17 Climax, is that correct?

18 MR. SOLONU: Yes.

19 MR. KLINE: How long have you been
20 general manager?

21 MR. SOLONU: Almost close to two
22 years.

1 MR. KLINE: Two years?

2 MR. SOLONU: Yes.

3 MR. KLINE: You've been here
4 present for all the testimony? You've been in
5 the room today to hear everything that's been
6 said?

7 MR. SOLONU: I was managing, he
8 was here. Solomon, he was here. I was in
9 working for --

10 MR. KLINE: Okay today, during
11 this hearing, you were in the room?

12 MR. SOLONU: Yes.

13 MR. KLINE: You've been here for
14 the last two hours?

15 MR. SOLONU: Yes, sir.

16 MR. KLINE: Okay. Just to be
17 clear. All right, so you're aware of these
18 issues concerning noise that the neighbors
19 have, is that right?

20 MR. SOLONU: Yes.

21 MR. KLINE: And have you been
22 there when there have been complaints about

1 noise?

2 MR. SOLONU: Yes.

3 MR. KLINE: And have you been
4 involved in investigating those complaints?

5 MR. SOLONU: I did.

6 MR. KLINE: What did you do?

7 MR. SOLONU: When I hear when I
8 had a complaint, when I had a complaint, I was
9 asking them the complaints coming in front or
10 in the back? Just one time they told me on
11 the back, and then I go with investigator on
12 the back on the alley.

13 When I was with investigator, and
14 was alley, we heard about for the noise
15 outside patio on Velvet. We had about, when
16 I was standing outside, we hear about and the
17 noise was the Velvet.

18 It's not the Climax. A little
19 bit, a little bit it's not clear. It's not
20 clear voice all the time.

21 MR. KLINE: Okay. Now were there
22 other occasions that you went to the back

1 alley to investigate noise? Were there other
2 times that you went back there to investigate
3 noise because there were complaints?

4 MR. SOLONU: Yes.

5 MR. KLINE: Okay. And what did
6 you find when you went back there? Was there
7 noise coming from Climax?

8 MR. SOLONU: I hear it just a
9 little bit.

10 MR. KLINE: Okay.

11 MR. SOLONU: It's not a bother.
12 It just a little bit. When I was in the back
13 side, I hear more on the Velvet. And I hear
14 with the Brixton. I hear for the Nellie's.

15 MR. KLINE: Okay. And can you
16 hear noise from Nellie's in that alley?

17 MR. SOLONU: Yes, sir.

18 MR. KLINE: Okay. And can you
19 hear noise from Brixton in that alley?

20 MR. SOLONU: Yes, sir.

21 MR. KLINE: Now are you involved
22 in the pest control and the extermination of

1 the business? Is that part of your
2 responsibilities or no?

3 MR. SOLONU: Can you explain --

4 MR. KLINE: The rat control, you
5 know, the guy comes out to exterminate to make
6 sure you don't have any rats, is that part of
7 your job? Or is that somebody else?

8 MR. SOLONU: We try to be nice
9 with the neighborhood. Anything we have to do
10 with the neighborhood, we are ready to do for
11 anything.

12 MR. KLINE: Okay. My question to
13 you is your restaurant has a contract with a
14 company that takes care of the rats, right?

15 MR. SOLONU: Yes, sir. Yes, sir.

16 MR. KLINE: Is that part of your
17 job to deal with that company?

18 MR. SOLONU: I did sign with them.

19 MR. KLINE: Okay.

20 MR. SOLONU: They just come every
21 month and they change everything, and then
22 they go.

1 MR. KLINE: All right. Are you
2 aware of any problems, has anyone told you
3 that there were any issues with rats related
4 to your establishment, around your
5 establishment?

6 MR. SOLONU: I hear about, I was
7 not at work. That's the manager, he told me
8 he was on that time. The neighborhood, they
9 come and then they tell we try to take out for
10 the back out our outside, outside our alley.
11 And then we say we are ready to do anything,
12 we do in the outside alley where we are having
13 two and ***4:45:02 more.

14 MR. KLINE: Okay. So did you call
15 the exterminator at that point, call the
16 company that does the work to get rid of the
17 rats, did you call them?

18 MR. SOLONU: Yes. I tell for
19 ***4:45:11 company and then he did outside
20 alley, too. He just change it and then right
21 now we have, like, three, four outside. He
22 came every month and then take it out.

1 MR. KLINE: Okay, great. I don't
2 have any further questions of the witness.
3 Thank you.

4 CHAIR MILLER: Okay, cross?

5 MR. BANERJEE: When you do get a
6 complaint from the neighbors, what do you do
7 about the sound system?

8 MR. SOLONU: Okay, when I hear a
9 complaint, the first thing I hear inside for
10 the noise, and then I tell for the DJ --

11 CHAIR MILLER: I'm having trouble
12 hearing you, sorry.

13 MR. SOLONU: Okay.

14 CHAIR MILLER: Could you start
15 again?

16 MR. SOLONU: Yes. When I hear
17 complaint, I heard inside it's high or low.
18 It was not high, but I say just a little bit
19 down, it makes them happy. If his ***4:46:03
20 is very high. I told for the DJ a little bit
21 down and I told for my employee you have to
22 keep closed for the door. I just did like

1 that.

2 MR. BANERJEE: On the following
3 night when you open up the bar again, do you
4 turn the volume back to the original, or do
5 you turn it back to the lower volume level?

6 MR. SOLONU: On this point, thank
7 you for asking me. On this point, for like
8 these two weeks, I wasn't managing. And on
9 this two weeks we did lower because we have
10 hearing and we have to be nice with the
11 neighborhood.

12 We are lower. We are lower
13 volume. But still the complaint coming for,
14 like, two, three times. And they say they
15 call us, we are to be here. But we didn't
16 hear any high volume. They call us, that's
17 why we here. They say that.

18 MR. BANERJEE: When the complaints
19 come, how do you differentiate your noise from
20 ***4:47:01 bar versus from other bars like
21 Velvet Lounge? Is there something distinctive
22 about the sound that comes out of your bar?

1 MR. SOLONU: I didn't hear any
2 sound from the Velvet inside from my bar.
3 Outside on the outside the lobby, or outside
4 for the Climax, I hear about from Velvet,
5 Dixon and Nellie's. When I was in front of
6 Climax and in the back of Climax. I hear
7 about two, three business noise.

8 MR. BANERJEE: Do you hear music,
9 do you hear voices, do you hear fights? What
10 do you hear from these businesses?

11 MR. SOLONU: I hear, like, every
12 Friday, Saturday, they did outside patio party
13 on Velvet. Full people. I hear the people
14 talking very high, loud, and I hear music,
15 too.

16 And then I hear for Nellie's,
17 Friday, Saturday, full people on the patio,
18 full people. I hear about for the people
19 noise and the music. I hear about for
20 Brixton, full people.

21 MR. BANERJEE: What kind of
22 people?

1 MR. SOLONU: On the patio.

2 MR. BANERJEE: Yes.

3 MR. SOLONU: The patio, a patio
4 party. The outside patio party. The full
5 people and full --

6 MR. BANERJEE: What people?

7 MR. SOLONU: It's a lot of people.
8 It's a lot of people on the patio. I hear
9 about the people talking, and then I hear
10 about also the music.

11 CHAIR MILLER: Okay.

12 MR. BANERJEE: If you can't see
13 any of these bars, none of them are line of
14 sight, and they also all have tall walls, how
15 do you know it's coming from that bar?

16 MR. SOLONU: I see the Velvet
17 people very clearly.

18 MR. BANERJEE: You can't see
19 Nellie's, you cannot see Brixton.

20 MR. SOLONU: I can see Nellie's.
21 I can't see Brixton, but I hear noise.

22 MR. BANERJEE: Do you know if any

1 of them have speakers outdoors?

2 MR. SOLONU: Yes, Nellie's they
3 have big speaker outside.

4 MR. BANERJEE: Which day do they
5 play those speakers on? It's only one day per
6 week.

7 MR. KLINE: Objection, he's
8 testifying.

9 CHAIR MILLER: Yes, no. Yes, you
10 cannot testify. You can only ask him
11 questions.

12 MR. BANERJEE: I'll just --

13 CHAIR MILLER: Is that it?

14 MR. BANERJEE: Yes. That's it.

15 CHAIR MILLER: Okay, Board
16 questions? I just have one. When you turn
17 the volume down like you said, do you know
18 what level you turn it down to?

19 MR. SOLONU: What's that?

20 CHAIR MILLER: What level?

21 MR. SOLONU: Like, first when I
22 hear noise, I just go for close to for the

1 digit, and I told just put a little down. I
2 see him in front of my eyes, he put it down.
3 If it is, like, maybe 30, he did for 25.

4 CHAIR MILLER: He did what?

5 MR. SOLONU: If he did, like, you
6 know the mixer volume number, if he goes 30,
7 he put down 25.

8 CHAIR MILLER: Okay, but you got a
9 question from one of the protestants that you
10 said the next night you put it at that level.

11 MR. SOLONU: When next night, we
12 did lower.

13 CHAIR MILLER: Okay. So do you
14 know what a low level is if we were to say,
15 you know, it should be at that level?

16 MR. SOLONU: When I check, I just
17 we did lower and then I go back for on the
18 alley and I didn't hear any noise. That means
19 it's lower, it doesn't bother any neighbors.

20 CHAIR MILLER: I understand you
21 went lower. I didn't know whether you paid
22 attention to what level you went to.

1 MR. SOLONU: Oh, I'm sorry.

2 CHAIR MILLER: What number?

3 MR. SOLONU: When I explain.

4 CHAIR MILLER: You didn't go to a
5 certain number?

6 MR. SOLONU: Just the number I
7 just see for the mixer for the digit.

8 CHAIR MILLER: Just lower?

9 MR. SOLONU: Yes, lower.

10 CHAIR MILLER: Okay. Mr. Short?

11 MEMBER SHORT: Yes, I would like
12 to ask one question. Can you hear the fire
13 alarm system, or could your patrons hear the
14 fire alarm system if you have your volume up
15 to 30 or 25?

16 If someone reported a fire alarm
17 system inside of the building, if there was an
18 emergency, could anyone hear it with the
19 noise?

20 MR. SOLONU: They can hear for the
21 alarm.

22 MEMBER SHORT: They can hear the

1 alarm?

2 MR. SOLONU: They can hear.

3 MEMBER SHORT: That's all, thank
4 you. That's all I want to hear.

5 CHAIR MILLER: Okay, any other
6 Board questions? Any questions on Board
7 questions?

8 MR. KLINE: No, I don't have any
9 questions. Thank you.

10 CHAIR MILLER: Okay. Thank you
11 very much.

12 MR. SOLONU: Thank you.

13 MR. KLINE: And with that, the
14 Applicant rests.

15 CHAIR MILLER: Okay. Do you want
16 a five minute break before you start your
17 case?

18 MR. SIGMON: Would you like a five
19 minute break?

20 MR. KLINE: No.

21 CHAIR MILLER: No? I would.
22 Anybody else?

1 MEMBER ALBERTI: Well if you want
2 one, take one.

3 CHAIR MILLER: All right. Let's
4 take a five minute break.

5 MEMBER ALBERTI: You don't have to
6 ask my permission. You're in charge.

7 CHAIR MILLER: Okay, five minute
8 break.

9 (Whereupon, the foregoing matter
10 went off the record at 4:51 p.m. and went back
11 on the record at 5:03 p.m.)

12 CHAIR MILLER: All right, we're
13 back on the record. And --

14 MEMBER SILVERSTEIN: Time check?

15 CHAIR MILLER: Time check, okay.

16 (Off record comments)

17 CHAIR MILLER: Did you want to
18 give them their time?

19 MR. JONES: We are back on the
20 record, correct?

21 CHAIR MILLER: Correct.

22 MR. JONES: All right. Just as a

1 quick status update, the Protestants have 59
2 minutes remaining, Licensee has 51 minutes
3 remaining.

4 MR. SIGMON: Thank you. So we
5 would like to call our first witness to the
6 stand, but I have a point of order first --

7 CHAIR MILLER: Okay.

8 MR. SIGMON: -- which is how to
9 submit our exhibits for the record.

10 CHAIR MILLER: Okay, so I haven't
11 looked at them all. Mr. Kline may have
12 objections, I don't know. I don't know how
13 many you have. I have to pull it.

14 We're looking at the photos, you
15 would need to have somebody authenticate them,
16 you know, what are they, who took them. But
17 other than that, are you going to be using
18 these exhibits with witnesses? If you are,
19 you can, you know, have your witness identify
20 them and then ask that they be moved into
21 evidence then.

22 MR. SIGMON: One by one. Okay.

1 CHAIR MILLER: I think, are they
2 related to your witnesses, or are some of them
3 independent?

4 MR. SIGMON: Many.

5 CHAIR MILLER: What?

6 MR. SIGMON: Several of them are
7 related to what the witnesses --

8 CHAIR MILLER: Okay, so I guess I
9 have to suggest that you go, let's take it one
10 at a time but if there's a group that we hit,
11 like it's a group, you can ask us to look at
12 all of them, that group all at once.

13 MR. SIGMON: Okay, thank you.

14 CHAIR MILLER: I just know your
15 first one deals, is related to a witness
16 identifying it.

17 MR. SIGMON: Okay. Well, I would
18 like to call Mrs. Eartha Clark to the stand.

19 CHAIR MILLER: Okay.

20 MR. SIGMON: And I would like to
21 first, actually, the Exhibit number --

22 CHAIR MILLER: Let me swear her

1 in. Do you swear to tell the truth, the whole
2 truth, and nothing but the truth?

3 MS. CLARK: I do.

4 CHAIR MILLER: Okay, thank you.
5 Have a seat.

6 MR. SIGMON: The Applicant Exhibit
7 1, I'd to start there before we start talking
8 about ours. And do you have this over here?

9 (Off microphone discussion)

10 MR. SIGMON: Do you mind if I
11 stand here with you, because I don't have
12 another copy of this ***5:05:32?

13 MR. KLINE: Okay.

14 MR. SIGMON: Okay, so with
15 Applicant Exhibit 1, if we could start with
16 the first picture, can you describe what you
17 see, Mrs. Clark?

18 MS. CLARK: In this first picture
19 here --

20 MEMBER SILVERSTEIN: Did you
21 identify yourself?

22 MS. CLARK: Pardon?

1 MEMBER SILVERSTEIN: Did you, for
2 the record, could you identify yourself?

3 MS. CLARK: Oh. My name is Eartha
4 Clark. My address is 2021 Vermont Avenue,
5 Northwest.

6 CHAIR MILLER: Thank you.

7 MS. CLARK: And I live directly
8 behind Climax.

9 CHAIR MILLER: Okay, great.

10 MS. CLARK: In this picture here
11 is the gasoline station of Crown. And next
12 door, here, is Climax on this corner. Right
13 here, the gasoline station runs beside Climax.

14 MR. SIGMON: Okay.

15 MS. CLARK: And behind this right
16 here, that's the alley that runs right behind
17 that. It's a 10 foot alley, that separates
18 Climax from the residents on Vermont Avenue.

19 MR. SIGMON: Can we then look at
20 the next page, for orientation purposes. Can
21 you identify your home, ma'am? Please.

22 MS. CLARK: On this map, Florida

1 Avenue, Vermont Avenue is the front. This
2 would be the back of Climax. This is Florida,
3 this is the front of Climax, here.

4 Back here is the rear of Climax
5 and the houses on Vermont Avenue, in the back
6 of that. That red dot, that's the alley that
7 runs behind that and separates the houses from
8 900 Florida Avenue and the residents on
9 Vermont Avenue. That alley serves both.

10 MR. SIGMON: And your house Mrs.
11 Clark, would you say that it corresponds with
12 the bright white rooftop that's on the top of
13 the block?

14 I think it's ***5:07:35 house, but
15 it's, looks like it's the bright white, do you
16 remember that?

17 MS. CLARK: Yes, my roof is kind
18 of glacier white. It maybe shows up that way.

19 MR. SIGMON: Okay.

20 MS. CLARK: That's my roof. The
21 first, my roof on the house, and next one is
22 the next house.

1 MR. SIGMON: Thank you. From your
2 property can you see the Velvet Lounge?

3 MS. CLARK: No I can not.

4 MR. SIGMON: Can you see the
5 Brixton?

6 MS. CLARK: If I come out in the
7 back alley I can, but I can't see it
8 otherwise.

9 MR. SIGMON: Okay. Does the
10 Brixton have any opaque surfaces, does it have
11 any protection for noise between its
12 establishment and the alley?

13 MS. CLARK: It is a brick
14 establish, except when you go to the second or
15 third floor. I don't know whether it's three
16 floors there or what, but they do have a
17 summer garden and a patio.

18 So I'm not sure whether they're
19 combined up there, because like I said,
20 they're a little higher than the average on
21 that corner, because they're on the corner of
22 901 U Street. On the corner of that alley.

1 MR. SIGMON: And is their garden
2 roof deck, or third floor, or whatever, is it
3 open to the alley?

4 MS. CLARK: No, because there is
5 another, two, three other buildings on that
6 corner. The alley is not directly behind the
7 British, Brixton, and it's not connected at
8 all to Velvet Lounge, Dodge City, or anything.
9 That alley runs parallel the other way.

10 MR. SIGMON: Okay, and when you
11 step into your backyard can you see the Velvet
12 Lounge?

13 MS. CLARK: I can't see anything
14 on that side from my backyard.

15 MR. SIGMON: Okay. When we look
16 at the Velvet Lounge on this map, previously
17 from the previous witness, we saw that the
18 Velvet Lounge is down here on U Street. Would
19 you agree?

20 MS. CLARK: It's on U Street.

21 MR. SIGMON: And is it sort of
22 around the corner?

1 MS. CLARK: It's around the
2 corner, because the alley that I'm speaking of
3 runs from the back of Climax, which is the end
4 of that alley, and that, if you saw the first
5 picture where the gasoline station, well
6 actually that alley back here.

7 That alley runs all the way down
8 to U Street. And there is two buildings on
9 the corner. So it's about four buildings to
10 that alley from the Brixton.

11 MR. SIGMON: And to get to the
12 Velvet Lounge in the back, you would go down
13 the alley. Would you have to turn?

14 MS. CLARK: You would have to go
15 to the end of the alley and make a right turn
16 to go down to the alley, and that alley comes
17 back out at Vermont Avenue.

18 MR. SIGMON: Okay. So would you
19 say that the Velvet Lounge projects its noise
20 directly into the alley --

21 MS. CLARK: No.

22 MR. SIGMON: -- that you live on?

1 MS. CLARK: No.

2 MR. SIGMON: Okay.

3 MS. CLARK: They're in the middle
4 of the alley. Back to that alley that runs
5 from the 10 foot alley to back out at Vermont
6 Avenue.

7 Dodge City and the Velvet Lounge,
8 there is one, two, three, there is four houses
9 or office spaces on that corner before you get
10 to those two buildings.

11 They're in, like, the middle of
12 the block, and their front is off the 900
13 block of U Street.

14 MR. SIGMON: And so we can take a
15 look at some similar kind of question that was
16 asked earlier. What is the property that is
17 directly opposite from the Velvet Lounge? You
18 said that you're directly opposite Climax. Is
19 that right?

20 MS. CLARK: Yes I am.

21 MR. SIGMON: And what is the
22 property that is directly opposite Velvet

1 Lounge, since we've been talking about --

2 MS. CLARK: There is an Urban
3 Broker's Real Estate Company at that corner.
4 That used to be the African American Museum
5 there at one time.

6 MR. SIGMON: Okay, so for at least
7 a number of years it's been a commercial
8 property? Is that right?

9 MS. CLARK: No, it was a museum,
10 and within the last three years or so, it
11 became a commercial property at that corner.

12 MR. SIGMON: Thank you. Can you
13 describe the noise, Mrs. Clark, that you hear,
14 because certainly we live in a loud
15 neighborhood, can you hear noise from the
16 Velvet Lounge?

17 MS. CLARK: No I can't hear the
18 noise from the Velvet Lounge. And like I
19 said, unless I come out in my backyard. I
20 can't see it, and I can't hear anything from
21 that side.

22 MR. SIGMON: Can you distinguish

1 any, can you see the Nellie's Bar from your
2 yard or your window?

3 MS. CLARK: Not from my window.
4 And like I said, I have to come in the alley
5 to look down, because Nellie's is opposite the
6 Brixton's, which is, the Brixton, like I said
7 is on the corner.

8 One is 900, 901, U Street. That's
9 the Brixton, and Nellie's is on the opposite
10 corner. And that would be 19 something. Or
11 they have, I mean on 9th Street on that side.

12 MR. SIGMON: So if Climax were not
13 operating one night, and there were no noise
14 coming from Climax, what might you hear from
15 your back windows?

16 MS. CLARK: I basically don't hear
17 anything like music, but there is another
18 house, there is two next door to Climax, which
19 they are working on. The other five houses
20 between that is not operated as a, it's a
21 restaurant, but they don't have any activities
22 in there, in their backyard.

1 And as you go down to the end of
2 the alley there is the back of, the Brixton's
3 back entrance is back there. But then there
4 is three other places, so unless people are
5 talking, and it's warm, they may come out.

6 We don't hear noise from any of
7 those places in Howard because it was winter
8 like, so nobody's been really outside. A few
9 warm days you might hear some talking, but
10 nothing else.

11 But the music at Climax is
12 Ethiopian music, so nobody else there plays
13 that music but Climax.

14 MR. SIGMON: So on a typical night
15 when the Climax is operating, what kind of
16 noise are you hearing?

17 MS. CLARK: We're hearing loud
18 music. And people are coming out on the
19 summer garden, or the deck, we call it, but
20 that's basically what it is.

21 And if the door is open, the music
22 comes outside. You hear it. And the noise

1 before, there used to be some fighting in the
2 alley as well, and people come out and get in
3 arguments from Climax before. And we're
4 talking about now, what? The plywood, or what
5 he is doing, or what?

6 MR. SIGMON: Just on a typical
7 night. But yes, let's --

8 MS. CLARK: A typical night.
9 That's basically, when it's warm, you have it.
10 When it's not warm nobody's outside. When
11 it's cold nobody's outside on the deck or
12 anything like that.

13 MR. BANERJEE: Isn't security
14 personnel trying to keep the people quiet or
15 trying to evade some of the arguments?

16 MR. KLINE: Objection.

17 CHAIR MILLER: Objection this --

18 MR. KLINE: Am I getting double
19 teamed here?

20 CHAIR MILLER: Yes you are, okay.

21 So --

22 MR. SIGMON: You can whisper it to

1 me. I guess that, wouldn't that be
2 acceptable?

3 CHAIR MILLER: This is --

4 MR. SIGMON: If he whispered me a
5 question?

6 CHAIR MILLER: This is his witness
7 is it not? It's your witness?

8 MR. SIGMON: Yes.

9 CHAIR MILLER: Okay.

10 MR. SIGMON: So in the last two or
11 three weeks, I think we heard from a previous
12 witness, there have been some modifications
13 that I believe you've seen. Is that correct?

14 MS. CLARK: There has been some
15 modifications. And I can explain. I did go
16 over to see it with one of my neighbors, but
17 he had to leave so, I also had to leave, but
18 I decided to stay here today because I have
19 some other things planned as well.

20 But yes, Mr. Solomon called me
21 over to see what he has done in improvements.
22 And before he did any of the improvements we

1 did have a meeting after we had an initial
2 meeting down here.

3 So we went and had a discussion
4 over there, and he showed us the upstairs and
5 the downstairs. We saw the windows, and we
6 saw all the doors.

7 And my suggestion to him was, to
8 cut the noise down, you have to cut the noise
9 out inside. And that meant installation of
10 acoustic ceilings. If you do any kind of
11 improvement inside with your windows, you have
12 to make sure that it doesn't matter what you
13 put on the outside cosmetic.

14 You have to have a sound proof
15 stuff inside of what you putting in, because
16 it cuts the noise. Anything else, it doesn't
17 work. If the noise is coming out the side
18 between the seals and you don't cover those
19 up, yes you have to sound proof it.

20 You have to either glue it, or put
21 some insulation in it and cover it up, because
22 it seeps out through the seams.

1 MR. SIGMON: So Mrs. --

2 MS. CLARK: And that's been a
3 problem of some of that. He has done
4 improvements, and he has suggested some other
5 things to do, and I saw the front door.

6 That was the first floor. He did
7 add that, but if the glass is not tempered
8 with that RH rating, which can be high or low,
9 and it doesn't address the noise, you can put
10 all the glass up there you want, it doesn't
11 address the noise.

12 You need the rating glass. Okay,
13 so then we went from that, we went upstairs,
14 we saw the windows. I don't know whether it's
15 painted black or what he put up there, but he
16 said those windows were in there.

17 I think he testified, when he took
18 the place over, okay? So I suggested to him,
19 actually we went up there, the window was up
20 that day because it was kind of a nice day, so
21 they were getting fresh air in the place.

22 And he said he hadn't done

1 anything to those windows except, I don't know
2 what was it, paint? You know, put something
3 up there. I knew it was black, okay?

4 I told him that in order to
5 address that, those windows had to have
6 ratings as well, that RH factored window,
7 because if they're old windows and you didn't
8 address those things and do the siding where
9 the noise come out, you can put anything up
10 there you want, you didn't have insulation
11 inside, it does not work.

12 MR. SIGMON: So within the last
13 few days Mrs. Clark, which seems like it's
14 within the window of what we heard already,
15 has, at least has been installed to date. How
16 would you describe the noise over the last few
17 days?

18 MS. CLARK: Well, the last few
19 days it was cold a couple of days, so then
20 nobody was out. So inside, it has improved,
21 like I said.

22 And the windows he's had on the

1 back were he showed that plywood back there or
2 whatever, those were the windows we addressed
3 about that.

4 There was a gap between the
5 windows, the top and the bottom and the side,
6 and I told him he had to tighten those up.
7 And that was the white or yellow stuff that he
8 was showing you.

9 And if he left any gaps in it, I
10 don't know what he put in between the plywood
11 and the window, but if there's nothing there
12 and it doesn't have that insulation, it
13 doesn't address the problem.

14 And the plywood has to be thick.
15 You either have to use half inch, three
16 fourths, or whatever it is. But if you don't
17 have insulation in, within the walls, like I
18 said, inside the drywall or whatever, you can
19 double up, triple it, or whatever, but you got
20 to build something in it to absorb the noise.

21 MR. SIGMON: Does that --

22 MS. CLARK: And what he did, I

1 don't know. I just know I saw the stuff
2 outside.

3 MR. SIGMON: Yes.

4 MS. CLARK: And he has more. He
5 did say he was going to do something with that
6 back door similar to what he did inside to the
7 front.

8 And that's when it came up, what I
9 told him about if he used a wooden door then
10 there is the metal, sheet metal also can be
11 used, if you use it, but you have to insulate
12 it and use it because it also was a fire
13 hazard that it also protect that wood as well,
14 and you do use that sometimes.

15 But he had to figure out how he
16 was going to do it or whatever. I made those
17 suggestions and I still said insulation was
18 the key. He has made a lot of improvements,
19 but he has a long way yet to go. And as it's
20 warmer, that's when you know what is going to
21 happen.

22 CHAIR MILLER: Okay, let me just

1 caution you, okay? Your minutes are limited,
2 so if she has really long --

3 MS. CLARK: Oh I have five
4 minutes?

5 CHAIR MILLER: -- answers you may
6 want to stop at some point. But you've been
7 very helpful. But I'm saying your answers are
8 kind of long, like you do a lot of explaining,
9 and it cuts into, they have a limited amount
10 of time.

11 MS. CLARK: But he didn't, I
12 didn't know that. I'm sorry.

13 MR. SIGMON: I appreciate that,
14 thank you.

15 CHAIR MILLER: Okay.

16 MR. SIGMON: So let's talk then
17 Mrs. Clark about the patio in the back. Has
18 the patio in the back been used before, so if
19 you could tell the Board how it has or hasn't
20 impacted you.

21 (Off microphone discussion)

22 MS. CLARK: Yes, the patio has

1 changed my life completely because I didn't
2 sleep last summer, and my family and nobody
3 else did, because of all the noise.

4 When people come out on that patio
5 there is nothing, and I had a picture of that
6 I wanted to show. I don't know, you said
7 correction, that we couldn't do that.

8 MR. SIGMON: I'd like to submit
9 A1.

10 MS. CLARK: That's concerning --

11 CHAIR MILLER: And that's --

12 MS. CLARK: -- that's the --

13 CHAIR MILLER: -- oh yes, yes
14 the, work with your --

15 MR. SIGMON: I'd like to submit
16 A1.

17 CHAIR MILLER: -- your advocate,
18 whatever. Okay, A1. A1, you would like to
19 offer A1?

20 MR. SIGMON: Or PA1. Is that what
21 you'd like?

22 CHAIR MILLER: It's P1.

1 MR. KLINE: Oh P1, so it's
2 Participant's 1.

3 MR. SIGMON: Well we have a P, so,
4 you know.

5 CHAIR MILLER: Can your witness
6 say what P1 is?

7 MR. SIGMON: I'm sorry?

8 CHAIR MILLER: Can she say what P1
9 is? That's what we're --

10 MR. SIGMON: Oh yes, can you
11 please explain what this exhibit is? What you
12 have in front of you?

13 MS. CLARK: I have it on
14 ***5:22:07.

15 MR. SIGMON: Oh sorry.

16 (Off microphone comment)

17 MS. CLARK: When you said we
18 couldn't do the correction, this is the black
19 and white one. This is the color one of the
20 same thing.

21 CHAIR MILLER: Okay.

22 MS. CLARK: And I wanted to, so

1 you could see it plainly. This is the deck.
2 This is the houses on the other side of
3 Climax, right behind here. See on the black
4 and white right here?

5 CHAIR MILLER: Okay.

6 MS. CLARK: That's Climax right
7 there.

8 CHAIR MILLER: Okay.

9 MS. CLARK: This is the door we
10 were talking about, to come out on the deck of
11 the summer garden. This is the picture where
12 they come out here. That is it.

13 So when you come out here there is
14 nothing here. This is the second floor. So
15 when everybody comes out and there are noise
16 or whatever, we get that.

17 The only thing separates this is
18 that ten foot alley that I was talking about
19 from the houses right in the back, and that
20 deck hangs over that. My bedroom window is 30
21 foot inside of the back of my yard.

22 MR. SIGMON: Did you take those

1 pictures?

2 MS. CLARK: I took these pictures.

3 MR. SIGMON: When did you take
4 those pictures?

5 MS. CLARK: I took these pictures
6 before Mr. Solomon built the deck back there.
7 That was no deck at all back there. That's
8 before he opened this, the hookah bar, because
9 it was Bella there before that.

10 MR. SIGMON: What has been the
11 difference in noise with the deck versus
12 without the deck?

13 MS. CLARK: There was no noise
14 back there except what was in the alley or
15 people come in, because nobody had any, ever
16 had any type of activities, or music, or
17 anything back there.

18 So we didn't have that per se. Or
19 loud music or anything back there. And it's
20 a big difference because, like I said, I
21 haven't slept last summer because of it, all
22 the noise or whatever. And I go to work every

1 day.

2 MR. SIGMON: A question was asked
3 earlier I believe by the Board. Was the
4 construction of the deck placarded? Were you
5 notified of the deck being constructed?

6 CHAIR MILLER: Okay, why are we
7 going there, because that's what I'm saying.
8 We did adjudicate the whole permit issue here
9 at the Board.

10 And this case is, what we really
11 want to know is what's bothering the
12 residents. You know, is there something the
13 Board needs to --

14 MR. SIGMON: Let me ask that
15 question.

16 CHAIR MILLER: -- do so that we
17 can get it addressed? So I don't think the
18 placarding is the issue. I mean, it sounds
19 like noise is the issue, or whatever, so that
20 is what you should focus on.

21 MR. SIGMON: But with all due
22 respect, I believe it, there's connections --

1 CHAIR MILLER: There's some
2 relevance? You want to get that question in,
3 you can, but I'm telling you --

4 MR. SIGMON: I'm happy to move on.

5 CHAIR MILLER: -- I doubt the
6 Board's going to pay any --

7 MR. SIGMON: I understand.

8 CHAIR MILLER: -- attention to it.

9 MR. SIGMON: But I believe that it
10 has a lot to do with the neighborly respect --

11 CHAIR MILLER: Okay.

12 MR. SIGMON: -- which is part of -
13 -

14 CHAIR MILLER: All right.

15 MR. SIGMON: -- what Mrs. Clark
16 was talking about.

17 MR. SIGMON: Okay.

18 MR. SIGMON: So you said last
19 summer you did not sleep?

20 MS. CLARK: No we did not, because
21 of the music and the people that comes out on
22 the deck. And they're out there until two and

1 three o'clock in the morning.

2 MR. SIGMON: Now in the winter,
3 what is the difference having a deck versus
4 not having a deck?

5 MS. CLARK: Well most people don't
6 come out on the deck in the winter time, or
7 when it's very cold. So in the summer time
8 they come out then, and that's where all the
9 noise and everything else is out there.

10 In the winter, unless it's a very
11 nice day, nobody really comes out. So you
12 don't have that noise. And we didn't have any
13 before that deck was there.

14 MR. SIGMON: Given your proximity
15 to the deck Mrs. Clark, what do you believe a
16 reasonable hour is for noise to stop coming in
17 your direction?

18 MS. CLARK: I have to say, like,
19 the District of Columbia has a noise ordinance
20 of noise outside, and it's like 12 o'clock at
21 night.

22 And if you having noise to disturb

1 other people outside and whatever, you doing
2 any work or have noise, you're supposed to
3 cease at 12 o'clock.

4 However, this is different from
5 that. And if that's not being considered then
6 I don't know what else.

7 MR. SIGMON: Thank you. We also,
8 still talking about noise, we heard from you
9 about some altercations or fights or something
10 in the back, is that right?

11 MS. CLARK: Yes. They came from,
12 like I said, that came from Climax. But there
13 are also other people that use that alley as
14 well, and used to go in.

15 They didn't have the gate lock at
16 one time back there. So now that they have
17 shut that gate up, where people didn't come in
18 from the public and use the space. So he has
19 done that recently.

20 Before that, it created a big
21 problem. So like I said, that has improved
22 that part of it. But where the people use it,

1 the club is where the problem is, because
2 there is nothing that covers anything for that
3 noise on that deck at all.

4 MR. SIGMON: Mrs. Clark could you
5 explain your interactions with the Climax bar
6 and problem resolution over the recent weeks
7 or months?

8 MS. CLARK: We've been talking to
9 him. Like I said, since we had the first
10 meeting he, then that was when the dialogue
11 basically start.

12 So from then to now, and like I
13 said it has improved, we got a long way yet to
14 go, and until the summer hadn't really
15 started, but we won't know everything until
16 they start using that patio again, and coming
17 outside with that noise.

18 MR. SIGMON: I have no further
19 questions.

20 CHAIR MILLER: Cross.

21 MR. KLINE: Yes, thank you.

22 MR. SIGMON: May I get a time

1 check?

2 CHAIR MILLER: Time check?

3 MR. JONES: The Protestants have
4 35 minutes remaining. The Licensee has 51
5 minutes remaining.

6 MR. SIGMON: Thank you.

7 MR. KLINE: Yes, good afternoon
8 Mrs. Clark.

9 MS. CLARK: Yes.

10 MR. KLINE: Mrs. Clark, you have
11 the pictures in front of you that the
12 Applicant's exhibits, that are the Applicant's
13 exhibits starting with the picture of the gas
14 station and Climax?

15 MS. CLARK: This one?

16 MR. KLINE: Do you have that set
17 with you?

18 MR. SIGMON: Yes.

19 MR. KLINE: Yes.

20 MS. CLARK: Okay.

21 MR. KLINE: Will you turn to the
22 sixth picture in that stack please?

1 MS. CLARK: The sixth one?

2 MR. KLINE: The sixth one, yes.

3 MS. CLARK: Is it this one?

4 MR. KLINE: It's that one, yes.

5 Now, do you dispute that that's a picture of
6 Velvet Lounge taken from the Climax deck?

7 MS. CLARK: I can't say that he
8 took it from his deck because I don't know
9 whether he was out there, or how he did it.

10 MR. KLINE: Ok, so --

11 MS. CLARK: He's far at the end
12 behind me, and his deck is higher. So he's on
13 this side of the alley. I'm on the other side
14 of the alley.

15 MR. KLINE: All right. But my
16 question to you is, do you dispute that that's
17 what this is? A picture taken from Climax's
18 deck of Velvet Lounge's back patio?

19 MS. CLARK: This, the light is at
20 Velvet. That's Velvet, yes. That's Velvet
21 Lounge, but that's the upper part of it.

22 MR. KLINE: Okay. Now you seem to

1 know quite a bit about sound mitigation.
2 You've talked about it quite a bit during your
3 testimony.

4 MS. CLARK: Yes.

5 MR. KLINE: Isn't it true that a
6 hole in the wall of the building would tend to
7 create more transmission of sound?

8 MS. CLARK: What do you mean the
9 hole?

10 MR. KLINE: In other words if
11 there was a hole in the building. If there
12 was --

13 MS. CLARK: I spoke about the
14 cracks between walls and what else --

15 MR. KLINE: Okay.

16 MS. CLARK: -- and under doors.

17 MR. KLINE: Right.

18 MS. CLARK: And I spoke about
19 that.

20 MR. KLINE: So if there was a hole
21 in the wall that would even be worse than
22 cracks between doors and windows, correct?

1 MS. CLARK: It could be. Depends
2 on where it's coming from.

3 MR. KLINE: Okay. If it were
4 directly from the noise source, then wouldn't
5 a hole in the wall of the building tend to
6 create more noise transmission than leaks
7 around windows?

8 MS. CLARK: But which building are
9 you talking about?

10 MR. KLINE: I'm, that's just a
11 question. We're not talking about any
12 specific building.

13 MS. CLARK: As I said, it would
14 depend on where the hole is.

15 MR. KLINE: Okay, now if a window
16 were broken, would that tend to create more
17 noise transmission? Wouldn't that have the
18 effect of not mitigating the noise?

19 MS. CLARK: If a window's broken?

20 MR. KLINE: Yes.

21 MS. CLARK: If you were having any
22 noise inside, it would come outside.

1 MR. KLINE: Okay, and what about
2 if you were inside another structure and a
3 window were broken?

4 MS. CLARK: If you were having
5 music?

6 MR. KLINE: If there --

7 MS. CLARK: Or any noise?

8 MR. KLINE: Yes, if your neighbor
9 was playing music and you were in another
10 structure and a window were broken, wouldn't
11 that tend to amplify the noise transmission?

12 MS. CLARK: It depends on where
13 you are in the house. To hear it from --

14 MR. KLINE: On the other side of
15 the window that's broken.

16 MS. CLARK: It would be, depends
17 on where the hole where that noise is.

18 MR. KLINE: All right. Now if you
19 hear noise in your house, from Climax, then
20 one would hear that noise in the alley,
21 correct?

22 MS. CLARK: No, not necessarily.

1 It depends on where you are in the alley. We
2 are on the end of the alley. Climax is on the
3 dead end of the alley. You can't go out, like
4 right here.

5 We're at the end of this alley,
6 like right here. Like I'm sitting here? This
7 is the end of the alley.

8 MR. KLINE: All right, so let me
9 refine my question. If you heard noise in
10 your house from Climax, then you would hear
11 noise in the alley between you and Climax
12 wouldn't you?

13 MS. CLARK: Because Climax is
14 right directly behind me.

15 MR. KLINE: Right, so is the
16 answer to the question yes?

17 MS. CLARK: If it's coming from
18 Climax right behind me I would know the noise
19 is coming from Climax.

20 MR. KLINE: Right, so if you heard
21 it in your house, you'd hear it in the alley,
22 right?

1 MS. CLARK: I wouldn't be in the
2 alley, I'd be in my house.

3 MR. KLINE: I'll move on. You
4 also testified that your understanding is if
5 you have a window, and then you put plywood on
6 the other side of the window, and there's
7 nothing in between those two surfaces, that
8 that has no effect of mitigating noise. Is
9 that your testimony?

10 MS. CLARK: I said if you have a
11 window, and I'm speaking to what Mr. Solomon
12 did. He put the plywood up on his window. I
13 was not there to see what he put in that
14 window, or anything between that plywood and
15 that window.

16 I saw the plywood. My answer to
17 him was, he had some gaps around what he had
18 already done. So I, oh sorry, I told him,
19 that he asked me, was it all finished, and was
20 it okay.

21 So I said to him, no. You see
22 that gap right there? And he saw it. I

1 showed it to him, he saw it and took a
2 picture. And he said, yes I see it.

3 At the bottom it was tight, up it
4 had the space. So he went back, he said I
5 will take care of that, and he did two windows
6 because there was two windows back there on
7 that patio, and he --

8 MR. KLINE: Mrs. Clark I want to
9 direct your attention to my question, which
10 was --

11 MS. CLARK: That's what I'm
12 answering you.

13 MR. KLINE: -- you testified that
14 if you had a window and you put up plywood, I
15 think this is your testimony. If it's not,
16 you tell us.

17 If you have a window and you put
18 up plywood, and there's a gap in between, and
19 you don't use some insulation or filler, then
20 that will not mitigate noise, or will not
21 mitigate noise as effectively. Is that --

22 MS. CLARK: I said --

1 MR. KLINE: -- is that your
2 testimony?

3 MS. CLARK: No, not quite that
4 way.

5 MR. KLINE: Okay.

6 MS. CLARK: I said if you put it
7 up and there is nothing in between, if there
8 is a gap between that, I don't know what he
9 put in there. I didn't see what he put in
10 that window.

11 So I saw what I saw when I went
12 there. And I'm speaking only around what he
13 saw and he showed it to me. And I told him
14 there was gaps, and he saw that. He said I
15 will cover that up. That was the yellow stuff
16 or the white stuff that he testified to.

17 MR. KLINE: All right. Are you
18 familiar with the technique of having two
19 walls with an air pocket in between to
20 mitigate noise?

21 MS. CLARK: I'm very well aware of
22 that --

1 MR. KLINE: Oh.

2 MS. CLARK: -- because Mr. Duffy
3 did that.

4 MR. KLINE: Okay, great. Thank
5 you. That's helpful. All right, now you
6 talked about RH factors in windows and you
7 talked a lot about how it was dependent upon
8 what types of windows you had in terms of
9 whether they mitigated noise.

10 MS. CLARK: Yes.

11 MR. KLINE: Right. So you seem to
12 have some knowledge about that.

13 MS. CLARK: Yes.

14 MR. KLINE: What kind of windows
15 do you have on the back of your house?

16 MS. CLARK: What kind of windows I
17 have?

18 MR. KLINE: Yes.

19 MS. CLARK: I have regular windows
20 that seal, on the back of my house. They're
21 regular windows ***5:35:03.

22 MR. KLINE: And they seal?

1 MS. CLARK: The windows that I
2 have seal. I have one broken window back
3 there.

4 MR. KLINE: You have one broken
5 window back there?

6 MS. CLARK: Yes, but I have a
7 window up, but it's broken. I'm not getting
8 air in it.

9 MR. KLINE: I'm going to show you
10 what we're marking as Applicant's Exhibit A4,
11 you can identify that?

12 MS. CLARK: Yes, that's the back
13 of my house.

14 MR. KLINE: Okay.

15 MS. CLARK: With that broken
16 window and my shingles.

17 MR. KLINE: All right, and the
18 shingles, where the shingles are torn away
19 there is dry rot in the wood as well, correct?

20 MS. CLARK: Yes, it is.

21 MR. KLINE: All right. And that
22 wouldn't tend to mitigate noise very well

1 would it?

2 MS. CLARK: Noise doesn't come in,
3 because I have it sealed off inside.

4 MR. KLINE: So noise doesn't come
5 in?

6 MS. CLARK: No, not from there.

7 MR. KLINE: All right, so you
8 don't hear any noise from Climax. Is that
9 your testimony?

10 MS. CLARK: Not upstairs, on that
11 floor, where that window is.

12 MR. KLINE: Okay.

13 MS. CLARK: I have more than one
14 window back there.

15 MR. KLINE: All right, I want you
16 to look at the second photo and tell me if you
17 recognize that as a close up of the window
18 that we're talking about on your second floor?

19 MS. CLARK: That's the same
20 window.

21 MR. KLINE: All right. I would
22 move Applicant's Exhibit 4.

1 CHAIR MILLER: Do we have it?

2 MR. KLINE: We didn't have it
3 because it was for ***5:36:36 purposes, so
4 I'll just give it to you.

5 CHAIR MILLER: Okay. Do the
6 Protestants have it?

7 MR. SIGMON: Yes, they do.

8 CHAIR MILLER: And is there
9 objection to the exhibit?

10 MR. SIGMON: No objection.

11 CHAIR MILLER: Okay. This is the
12 same. Okay, then this is --

13 MR. KLINE: Thank you.

14 CHAIR MILLER: -- admitted as
15 Applicant's Exhibit A4.

16 MR. KLINE: And I don't have any
17 further questions for the witness as it
18 ***5:37:07.

19 (Off microphone discussion)

20 CHAIR MILLER: Okay, Board
21 questions.

22 MEMBER SILVERSTEIN: I do.

1 CHAIR MILLER: Yes, Mr.
2 Silverstein.

3 MEMBER SILVERSTEIN: Thank you for
4 coming Ms. Clark. Last summer, how long was
5 the summer garden, the patio used? For how
6 many weeks, days, months?

7 MS. CLARK: It begin in, basically
8 the summer. When summer begins and gets warm,
9 people start coming out and you start doing
10 things. So it was pretty much all summer when
11 it got nice.

12 MEMBER SILVERSTEIN: Was there
13 music played out there, or --

14 MS. CLARK: There was music
15 sometimes, yes.

16 MEMBER SILVERSTEIN: There was
17 music played outside?

18 MS. CLARK: Sometimes there was
19 some music out there.

20 MEMBER SILVERSTEIN: Or was it a
21 case also where the door from inside might
22 have been opened and --

1 MS. CLARK: There were both.

2 MEMBER SILVERSTEIN: Until what
3 time?

4 MS. CLARK: They'll start about,
5 sometimes it looked like about 8:00, 8:30 in
6 the evening maybe, sometimes. People get out
7 there early, and they come out because there
8 were barbecuing going on outside.

9 MEMBER SILVERSTEIN: Until what
10 time though?

11 MS. CLARK: Until about 1:00,
12 2:00, or 3:00 in the morning.

13 MEMBER SILVERSTEIN: Okay, I don't
14 want you to think that we prejudged this case,
15 but we often ask this. Assuming, for the sake
16 of argument, that we were to renew the
17 license, what do you need?

18 MS. CLARK: What do we need?

19 MEMBER SILVERSTEIN: What do you
20 need to make this livable on your part?

21 MS. CLARK: We need the noise to
22 be, to stop, or at least have a reasonable

1 hour to stop the noise, because you cannot
2 sleep at night and get up in the morning, and
3 go out, and be functional.

4 MEMBER SILVERSTEIN: Okay, so tell
5 me what do you need?

6 MS. CLARK: We want the noise to
7 stop, quiet down, or be a reasonable hour not
8 to have any noise on that patio, or the deck.
9 Whatever you want to call it --

10 MEMBER SILVERSTEIN: At what time?

11 MS. CLARK: -- summer garden,
12 whatever, outside.

13 MEMBER SILVERSTEIN: At what time?

14 MS. CLARK: Like I said, the
15 District has a noise ordinance of 12:00. I
16 said that it can stop at 1:00, especially
17 weekends, because people, a lot of people
18 don't go to work on weekends.

19 Some people do, but I mean
20 reasonable. You can take the noise inside is
21 what I'm saying, from the outside if you going
22 to have noise. Just take it inside.

1 MEMBER SILVERSTEIN: Have they,
2 are you satisfied that they've tried to
3 mitigate things indoors?

4 MS. CLARK: He's working on it,
5 like I said. He's working on it. And I told
6 him, like we discussed it, because I was there
7 and we discussed it that certain things he had
8 to do, and I just think that he have a long
9 way yet to go with it.

10 MEMBER SILVERSTEIN: So it sounds
11 like what you're saying is that this is a
12 solvable matter. But it's just one of those
13 things where we live next to each other in
14 these mixed use neighborhoods, and we try to
15 keep it both lively and livable.

16 MS. CLARK: Yes, but I want, can I
17 want to say one question about that? See
18 where we live now, that area is mixed use in
19 that part. Where we live it wasn't mixed use
20 all the time.

21 It was just residential all on
22 that side. They extended that in the overlay

1 area. So when they brought in all the
2 buildings around U Street now, and all of the
3 other areas, that's when they made it mixed
4 use in our block.

5 MEMBER SILVERSTEIN: But what
6 you're saying to me is that if you were to
7 work on the outside with time limits, and
8 maybe fine tune things on the inside, it would
9 be workable.

10 MS. CLARK: It can be as long as
11 he'll --

12 MEMBER SILVERSTEIN: Could be.

13 MS. CLARK: -- agree to it, and he
14 can agree to that and put it down in writing,
15 and it can be enforceable, we can work that
16 out, is what I'm saying.

17 MEMBER SILVERSTEIN: ***5:40:59.

18 MS. CLARK: But it has to be done.
19 So far it hasn't been done that way.

20 MEMBER SILVERSTEIN: Thank you.
21 No further questions.

22 CHAIR MILLER: All right. Yes,

1 Mr. Alberti.

2 MEMBER ALBERTI: Good evening Ms.
3 Clark.

4 MS. CLARK: Yes.

5 MEMBER ALBERTI: I hate to say
6 good evening, but.

7 MS. CLARK: Yes, I know.

8 MEMBER ALBERTI: We managed to
9 make it that far. Okay first of all, I'm
10 trying to get the lay of the land here. So
11 you are, you're not directly behind this, the
12 property --

13 MS. CLARK: I am.

14 MEMBER ALBERTI: You are directly
15 behind it?

16 MS. CLARK: Yes.

17 MEMBER ALBERTI: Okay, all right.
18 What's the next closest residence that you
19 know of, to you?

20 MS. CLARK: It's nine houses in
21 that block, so I am, if you coming from Climax
22 and the end of the alley going up, I am the

1 second one behind him, third, fourth, the
2 numbers --

3 MEMBER ALBERTI: Oh so, so you're
4 right next to a row of nine residences?

5 MS. CLARK: Yes, a row of nine
6 houses in that block.

7 MEMBER ALBERTI: Okay. You're on
8 which street?

9 MS. CLARK: Vermont Avenue.

10 MEMBER ALBERTI: Vermont Avenue,
11 okay.

12 MS. CLARK: And the alley serves
13 the back of Vermont and Florida Avenue --

14 MEMBER ALBERTI: Okay, great, so -
15 -

16 MS. CLARK: -- in the 900 block.

17 MEMBER ALBERTI: -- I'm just
18 trying to get the lay of the land, okay. How
19 deep is your yard? Do you know approximately
20 how deep your yard is?

21 MS. CLARK: The yards there, we
22 have the rear yard, it's, like, about 16 to 18

1 feet wide --

2 MEMBER ALBERTI: How deep?

3 MS. CLARK: -- in the rear yards.

4 MEMBER ALBERTI: How deep? From
5 the house to the back fence, to the alley?

6 MS. CLARK: To the alley?

7 MEMBER ALBERTI: Yes, from the
8 house to the alley. How deep is the yard?

9 MS. CLARK: My house to the alley
10 is ten foot, the alley's ten feet wide, so my
11 gate is abut that alley.

12 MEMBER ALBERTI: I know --

13 MS. CLARK: So it abut that alley.

14 MEMBER ALBERTI: -- but from the
15 gate to your house, how far is that?

16 MS. CLARK: To my house, from the
17 alley?

18 MEMBER ALBERTI: Yes. From the
19 back of your house to the alley, how far is
20 that?

21 MS. CLARK: I can say that it is,
22 I would guess in that, for the feet. It's 16

1 to 18 feet wide --

2 MEMBER ALBERTI: Wide.

3 MS. CLARK: -- in the rear. That
4 was just --

5 MEMBER ALBERTI: So just, is this
6 --

7 MS. CLARK: -- from my back step
8 to the alley, two, three, pretty much, maybe,
9 it is 15 feet to that alley.

10 MEMBER ALBERTI: About 15 feet.
11 So the --

12 MS. CLARK: Maybe to the alley, or
13 something like that.

14 MEMBER ALBERTI: To the what? So
15 the yard is about as long as it is wide? Is
16 that what you're telling me?

17 MS. CLARK: Parts of it, because
18 we have a, I have a side yard in ours.

19 MEMBER ALBERTI: Yes, I know, but
20 let's say the --

21 MS. CLARK: That point.

22 MEMBER ALBERTI: -- the farthest

1 part.

2 MS. CLARK: So yes, it would
3 longer than that if you did it that way.

4 MEMBER ALBERTI: Yes, let's not
5 not think about the dog leg. I'm talking
6 about the very back of the house, the main
7 part --

8 MS. CLARK: That is part of that.
9 That's why --

10 MEMBER ALBERTI: I know but the
11 main part, the --

12 MS. CLARK: All of it --

13 MEMBER ALBERTI: From your back
14 door, from your back door to the yard.

15 MS. CLARK: You mean by the back
16 door? That's what I'm saying. It's about
17 maybe 15 or 16 feet to my gate.

18 MEMBER ALBERTI: Okay great,
19 great. Thank you. Are the other yards
20 similar to that?

21 MS. CLARK: All of them about the
22 same.

1 MEMBER ALBERTI: About the same,
2 okay. And then there's a ten foot alley, and
3 then there's the property of Climax. Is that
4 correct?

5 MS. CLARK: The ten foot alley
6 separates the properties.

7 MEMBER ALBERTI: Yes, right,
8 right. It looks like the Climax deck comes
9 all the way out to the alley. Is that true?

10 MS. CLARK: It does. It sits
11 right on top of the alley.

12 MEMBER ALBERTI: Okay. All right.
13 So I'm trying to figure out, we talked, you
14 talked about noise inside, you talked about
15 noise outside, coming from Climax. Okay.

16 Before they did this work how bad
17 was that? When the doors were closed, was the
18 noise from Climax disturbing you? The music
19 from Climax disturbing you in the evening?

20 MS. CLARK: This being solely
21 about Climax?

22 MEMBER ALBERTI: From Climax, yes.

1 MS. CLARK: Okay. I mean, Climax
2 been there about what, two years?

3 MEMBER ALBERTI: Right, right.

4 MS. CLARK: Two years.

5 MEMBER ALBERTI: That's what we're
6 talking about, they're here. So that's who
7 we're talking about. So --

8 MS. CLARK: Okay, but --

9 MEMBER ALBERTI: So if you --

10 MS. CLARK: -- that's what I'm
11 saying. If you talking about Climax, the
12 noise is worse since they've been there.

13 MEMBER ALBERTI: I don't, no, no.
14 Is the noise, okay. You talked about you
15 couldn't sleep at night.

16 MS. CLARK: No.

17 MEMBER ALBERTI: But, but wait.
18 You said that. You said I couldn't sleep at
19 night.

20 MS. CLARK: I did, I did.

21 MEMBER ALBERTI: Right, right?
22 So, but when you were talking about that, you

1 were talking about the noise on the back
2 patio.

3 MS. CLARK: But the back patio is
4 where my back gate come out.

5 MEMBER ALBERTI: I know, I know,
6 but I want to talk to, I just want to talk
7 about the noise coming from the inside now.
8 I'll get to the outside noise later, I promise
9 you.

10 MS. CLARK: Okay.

11 MEMBER ALBERTI: But I want to
12 talk about the inside noise now, all right?
13 How bad is that, for you?

14 MS. CLARK: It's bad.

15 MEMBER ALBERTI: I mean, does it
16 keep you up at night?

17 MS. CLARK: It does.

18 MEMBER ALBERTI: Okay. Why? How,
19 I mean --

20 MS. CLARK: Because the music is
21 loud. That's, the music is loud.

22 MEMBER ALBERTI: All right.

1 MS. CLARK: And then in addition,
2 you talking about the inside. The music is
3 just loud, and it comes out. If they open the
4 door, it comes out worse.

5 MEMBER ALBERTI: Okay, but when
6 the door is closed --

7 MS. CLARK: If the door is closed
8 you don't hear it as much because before the
9 plywood went up there was nothing in the back
10 to cover anything.

11 MEMBER ALBERTI: So has the
12 plywood helped some?

13 MS. CLARK: The music is a little
14 lower. I don't know, he said he took a
15 speaker out, because he told me that.

16 MEMBER ALBERTI: Okay.

17 MS. CLARK: Mr. Solomon told me
18 and showed me that.

19 MEMBER ALBERTI: He took a speaker
20 out?

21 MS. CLARK: It has improved.

22 MEMBER ALBERTI: Okay.

1 MS. CLARK: And he said, he had
2 two speakers in there. He took one out. So
3 he's been turning it down, I understand,
4 that's what he said.

5 I know it's better, and I don't
6 know what else, but he said, this, I'm going
7 by what he told me, and I do know it has
8 improved a little bit.

9 MEMBER ALBERTI: Okay. So why
10 don't, let's turn our attention to the back
11 porch, the summer garden.

12 MS. CLARK: Yes.

13 MEMBER ALBERTI: The deck. All
14 right? When you hear noise do you know how
15 many people are out there? Have you looked to
16 see how many people are out there?

17 MS. CLARK: Oh yes, I've looked
18 out there a number of times when you have
19 noise out there.

20 MEMBER ALBERTI: Since when?
21 When's the most recent?

22 MS. CLARK: Since last summer.

1 Last summer it started.

2 MEMBER ALBERTI: Well, I know, but
3 since then?

4 MS. CLARK: Nobody's hardly out on
5 the deck.

6 (Crosstalk)

7 MEMBER ALBERTI: Okay, okay. So
8 last summer, there were people out there, all
9 right. Was, how bad was that noise?

10 MS. CLARK: It's terrible, because
11 if they out there they either be smoking,
12 talking, and they get loud.

13 MEMBER ALBERTI: Okay. Can you,
14 how does that compare to the music, the noise
15 coming from inside?

16 MS. CLARK: It's a combination of
17 both, because the music is blaring too.

18 MEMBER ALBERTI: Okay.

19 MS. CLARK: People come out to get
20 a smoke or whatever, and they have a
21 conversation out there. And they get a little
22 loud. They be drinking, and whatever happens.

1 MEMBER ALBERTI: So how would you
2 describe the improvement now that it's winter
3 and there's no, there are no people out there?

4 MS. CLARK: Well you don't hear
5 the noise outside, or from the people on the
6 patio. Where we were hearing the noise from
7 the inside.

8 MEMBER ALBERTI: Okay. All right.

9 MS. CLARK: But he's been keeping
10 the door closed more because you don't want to
11 let your heat out, and whatever. So he's been
12 keeping the door closed in the winter time
13 pretty much.

14 MEMBER ALBERTI: Okay. So I think
15 you're saying to me that it's better when the
16 door is closed?

17 MS. CLARK: Oh it is better when
18 the door is closed. You can't hear anything
19 when the door is closed.

20 MEMBER ALBERTI: Significantly
21 better when the doors are closed?

22 MS. CLARK: Oh yes.

1 MEMBER ALBERTI: Okay. All right.

2 I have no further questions. Thank you.

3 CHAIR MILLER: Okay, Mr. Jones.

4 MR. JONES: Thank you, Madam
5 Chair. I just wanted to follow up on the
6 stated ***5:48:28. So you're saying that when
7 the door is closed you don't hear anything?

8 MS. CLARK: You don't hear the
9 noise, the music is loud, is what I'm saying.
10 You hear music, but when the door is open it
11 just blares, because everything comes outside
12 when the door is open.

13 MR. JONES: Understood, but I want
14 to get clarification on what I thought I heard
15 you say previously to make sure I'm clear.
16 When the door is closed, so I'm only talking
17 about when the door is closed.

18 MS. CLARK: Okay.

19 MR. JONES: Are you not disturbed
20 by sounds emanating, music emanating from --

21 MS. CLARK: You hear music. Yes
22 we do.

1 MR. JONES: So are you disturbed -

2 -

3 (Crosstalk)

4 MS. CLARK: -- how loud it is, but
5 we hear music.

6 MR. JONES: Are you disturbed by
7 it?

8 MS. CLARK: Yes.

9 MR. JONES: Okay. How are you
10 disturbed by it when the door is closed?

11 MS. CLARK: Because you still hear
12 it. That's before he put up anything is what
13 I'm saying, on the back. I get it from the
14 back.

15 MR. JONES: Understood.

16 MS. CLARK: So --

17 MR. JONES: But when the door's
18 closed you're saying, is it --

19 MS. CLARK: It's not as much, but
20 it is much louder when the door is open.
21 Everything comes out.

22 MR. JONES: Yes, but when the

1 door's closed --

2 MS. CLARK: You don't hear that
3 much of it.

4 MR. JONES: Okay.

5 MS. CLARK: That's what I'm saying.

6 MR. JONES: Okay, so do they keep
7 you from sleeping at night when the door is
8 closed?

9 MS. CLARK: It does at some times,
10 because if he turns it up, the sound loud, he
11 has a conditioner in that window. A portable
12 air conditioner in the window, and that's
13 where the noise was coming out partly, from
14 those windows back there.

15 He's closed them up since then,
16 somewhat, so it has improved. When I said
17 that, because I told him about the gaps
18 between that, which he just did within, what,
19 the last couple weeks, last two weeks?

20 MALE PARTICIPANT: Yes.

21 MS. CLARK: Last two weeks, and he
22 said he went back and the contractor came, or

1 whatever, and --

2 MR. JONES: That's fine. I'm just
3 trying to focus in on the door --

4 MS. CLARK: Yes.

5 MR. JONES: - right now, because
6 you made a very interesting comment earlier,
7 just a few seconds in response to Board Member
8 Alberti's question, in that when the door is
9 closed you don't hear anything.

10 MS. CLARK: Not from the door.

11 MR. JONES: And now you corrected
12 that to some degree by saying you hear
13 something, but it's not as bad when the door
14 is closed.

15 MS. CLARK: No it's not as bad when
16 the door is closed.

17 MR. JONES: Okay. Can you talk to
18 me about the layout of your house? On the top
19 floor, so you have a, how many floors are
20 there at your house?

21 MS. CLARK: The houses? We only
22 have two floors. We don't have basements, so

1 --

2 MR. JONES: Got it. So you have a
3 top floor and a bottom floor.

4 MS. CLARK: And a lower floor.

5 MR. JONES: Okay, I'm a call that
6 first floor and second --

7 MS. CLARK: And second floor.

8 MR. JONES: Okay. On your first
9 floor you have, in the back of your house --

10 MS. CLARK: Yes.

11 MR. JONES: - what is at the
12 doorway that I'm looking at in this picture,
13 I guess Applicant Exhibit 4 I think it was?
14 It's a picture that the --

15 (Crosstalk)

16 MR. JONES: -- Applicant gave to
17 you. This picture, Applicant Exhibit 4, first
18 page.

19 MS. CLARK: Yes, this right here?

20 MR. JONES: Yes ma'am. What is
21 behind that door?

22 MS. CLARK: That's my back door.

1 MR. JONES: What's directly behind
2 that door in your house?

3 MS. CLARK: I have a solid wooden
4 door.

5 MR. JONES: No, no. I don't care
6 about the structure. I want to know what room
7 is it? What room do you have --

8 MS. CLARK: That's my kitchen.

9 MR. JONES: That's your kitchen,
10 okay.

11 MS. CLARK: Yes.

12 MR. JONES: What's behind that
13 window?

14 MS. CLARK: This window here?

15 MR. JONES: Yes, on the first
16 floor.

17 MS. CLARK: Oh, I have a furnace
18 right there.

19 MR. JONES: A furnace?

20 MS. CLARK: Yes.

21 MR. JONES: A furnace?

22 MS. CLARK: Yes. My furnace is in

1 my kitchen.

2 MR. JONES: Okay so --

3 MS. CLARK: Another one on the
4 side, you can't see.

5 MR. JONES: Got it. So behind the
6 door, on the first floor you're not sleeping
7 in either of these two rooms that are directly
8 behind either the door or the window?

9 Correct?

10 MS. CLARK: Not on that floor.

11 MR. JONES: Not on the first floor.

12 MS. CLARK: No.

13 MR. JONES: Okay, great. So that
14 covers the first floor. Let's jump into the
15 second floor.

16 MS. CLARK: Okay.

17 MR. JONES: On the second floor
18 there is one window that I can see in that
19 picture. Is that --

20 MS. CLARK: The one on the back,
21 right there?

22 MR. JONES: Correct. The one on

1 the back, right.

2 MS. CLARK: Yes.

3 MR. JONES: Is that the one that's
4 directly facing --

5 MS. CLARK: That one is.

6 MR. JONES: -- Climax? Okay.

7 MS. CLARK: That one is.

8 MR. JONES: That window, you're
9 saying, in response to the Applicant's
10 question --

11 MS. CLARK: Right.

12 MR. JONES: You indicated that you
13 didn't hear any noise coming through that
14 window --

15 MS. CLARK: Right, but I have two
16 more --

17 MR. JONES: -- because you have it
18 covered or something.

19 MS. CLARK: I have two more windows
20 up on that floor.

21 MR. JONES: Understood. This
22 window right here, you're saying your not

1 hearing any noise coming through this window?

2 MS. CLARK: Not that window.

3 MR. JONES: Okay. Why aren't you
4 hearing any noise, and how do you know you're
5 not hearing any noise through this window?

6 MS. CLARK: Because I have a window
7 also on the side up there, on the side of the
8 room --

9 MR. JONES: No, no, no. I just
10 trying to understand how do you know you're
11 not hearing any noise through this window?

12 MS. CLARK: This window is
13 soundproof right here.

14 MR. JONES: Okay. So you sound
15 proofed this window? Why did you sound proof
16 that window?

17 MS. CLARK: Because I never --

18 MR. JONES: This window on the
19 second floor?

20 MS. CLARK: -- we never use this
21 window to be open. This window never was
22 open.

1 MR. JONES: And the window never
2 opened?

3 MS. CLARK: No.

4 MR. JONES: So you, why did you
5 sound proof it though?

6 MS. CLARK: I didn't sound proof
7 the window. It was always that way.

8 MR. JONES: Okay, so this window
9 has always been sound proofed?

10 MS. CLARK: Yes.

11 MR. JONES: What's the difference
12 between this window that's on the back of the
13 house, and the windows that are on the side of
14 your house?

15 MS. CLARK: Because the windows on
16 the side of my house, like this one, we open
17 these windows. See the one at the bottom?

18 MR. JONES: Yes. So on the one at
19 the bottom, you're saying the windows on the
20 side of your house are basically the same --

21 MS. CLARK: So on the second floor
22 is like that window right there.

1 MR. JONES: So it's a six pane
2 window, roughly, on the side of the house?

3 MS. CLARK: No, it's a twelve, it's
4 three, six, nine, it's a twelve foot one.
5 It's twelve pane window.

6 MR. JONES: Twelve panes, so six
7 each section? Got it. Okay. And that's
8 what's similar to there. Are you saying that
9 you open that window?

10 MS. CLARK: I open it and I don't
11 have to open it either, but I keep my windows
12 cracked in my house anyway.

13 MR. JONES: Got it. Okay, so --

14 MS. CLARK: That's what I'm saying.

15 MR. JONES: -- you open the
16 windows, and because you open the windows that
17 are on the side of your house, you hear sound
18 from Climax more so when the windows on the
19 side house, because those windows are cracked?

20 MS. CLARK: Yes. That's when I get
21 --

22 MR. JONES: Got it. Okay so

1 they're not closed windows on the side, so you
2 actually have an open window on the side of
3 your house. Correct?

4 MS. CLARK: I can open the window.

5 MR. JONES: And you do open them?

6 MS. CLARK: Yes.

7 MR. JONES: And when you open them
8 you hear the sound --

9 MS. CLARK: Oh, I mean, yes.

10 MR. JONES: -- more prominently?

11 MS. CLARK: Yes.

12 MR. JONES: Got it. That room that
13 has those windows that we're talking about
14 right now, is that your bedroom?

15 MS. CLARK: That is a bedroom.

16 MR. JONES: And that's that bedroom
17 where, if you're trying to sleep, you're not
18 able to sleep, because --

19 MS. CLARK: I can't sleep.

20 MR. JONES: -- of the noise coming
21 from Climax, correct?

22 MS. CLARK: Yes.

1 MR. JONES: Okay, thank you. Thank
2 you Madam Chair.

3 CHAIR MILLER: Yes Mr. Rodriguez.

4 MEMBER RODRIGUEZ: Hi Ms. Clark.
5 Thank you for your testimony today. I learned
6 a few things from your testimony, I appreciate
7 it, on materials. And you indicated that a
8 simple piece of plywood doesn't do it. That
9 you have to have some insulation attached to
10 that plywood.

11 MS. CLARK: Yes.

12 MEMBER RODRIGUEZ: And you
13 indicated that you advised Mr. Yegzaw that he
14 should consider that.

15 MS. CLARK: I did. And I also told
16 him about the inside too. That if you use
17 drywall, or whatever, one piece does not do
18 that.

19 MEMBER RODRIGUEZ: Right. So my
20 question then is, okay, was he positive about
21 your recommendations? Did he agree to do it?

22 MS. CLARK: I don't know whether he

1 did the inside. That's what I'm saying with
2 the upstairs and the downstairs.

3 MEMBER RODRIGUEZ: So when you gave
4 him those recommendations, then he went on
5 ahead and put the plywood on, right?

6 MS. CLARK: Yes.

7 MEMBER RODRIGUEZ: But you never
8 saw if your recommendations were implemented?

9 MS. CLARK: Yes. Inside, like I
10 told him about the acoustics ceiling --

11 MEMBER RODRIGUEZ: Yes.

12 MS. CLARK: -- we talked about
13 that. And then I told him about, if he wanted
14 to do a buffer wall, I didn't say it that way
15 then, but I'm saying, like if he wanted to do
16 drywall or something, you have to put
17 something in it to absorb the noise.

18 MEMBER RODRIGUEZ: Okay.

19 MS. CLARK: You can do more than
20 one, but you have to do it.

21 MEMBER RODRIGUEZ: Right, Ms.
22 Clark, then when you suggested the ceiling,

1 right? The tiles. The ceiling tiles?

2 MS. CLARK: Well, acoustic ceiling,
3 whatever. It's similar to this.

4 MEMBER RODRIGUEZ: All right.

5 MS. CLARK: But it has to be
6 acoustic.

7 MEMBER RODRIGUEZ: Did you witness
8 that he did this?

9 MS. CLARK: I didn't see him do
10 that. Like I said, he's making improvement.
11 He didn't say when he was going to do
12 something.

13 MEMBER RODRIGUEZ: Okay. Have you
14 been inside the place --

15 MS. CLARK: I was in there Friday
16 of last --

17 MEMBER RODRIGUEZ: Did you see the
18 acoustical tiles?

19 MS. CLARK: He didn't do that at
20 that time. That's what I'm saying. That he
21 didn't touch up. That part he didn't do.

22 MEMBER RODRIGUEZ: Okay. Thank you

1 so much madam. I appreciate it.

2 CHAIR MILLER: Others? I just have
3 a few. I was wondering Mr. Sigmon if you
4 could show her this picture from
5 Investigator's Exhibits. It's a, the
6 Investigators Exhibit 2A. It a picture of the
7 deck.

8 (Off microphone comment)

9 MS. CLARK: It's not in there, is
10 it?

11 MR. KLINE: Here it is.

12 CHAIR MILLER: Oh thank you.

13 MR. KLINE: We walked off with it.

14 CHAIR MILLER: They've got it.

15 MR. SIGMON: Oh that's the
16 Investigator's?

17 MR. KLINE: Yes.

18 (Off microphone discussion)

19 CHAIR MILLER: I just want to ask
20 you, looking at this picture, where your house
21 would be in relation to this picture?

22 (Off microphone discussion)

1 MR. SIGMON: Did you hear the
2 question?

3 MS. CLARK: I didn't hear the
4 question.

5 CHAIR MILLER: Oh, this is a
6 picture of, from the investigative report.

7 (Off microphone comment)

8 CHAIR MILLER: What?

9 MR. SIGMON: Her house wouldn't be
10 in here.

11 CHAIR MILLER: No it's not in here.
12 I know, I just want to know where is it? If
13 you were looking at this picture, would it be
14 looking at it face on, would it be to the
15 right of the picture? Or where would it be,
16 because you said you're across from the deck,
17 is that right?

18 MS. CLARK: I don't know how she
19 took this picture, because she could've taken
20 it on his deck, or I don't know whether she
21 was in the alley. I don't know how she took
22 it.

1 CHAIR MILLER: Okay.

2 MS. CLARK: From right here --

3 CHAIR MILLER: We can wait till she
4 comes back.

5 MS. CLARK: -- this is the second
6 floor. This is up.

7 CHAIR MILLER: Right.

8 MS. CLARK: So I don't know, and I
9 know this is his patio, the deck, where a
10 piece of plywood is on a table that's on his
11 deck. So if she took this, she would have to
12 be standing, must be at the back door, I'm
13 assuming. I don't know.

14 CHAIR MILLER: Okay. I'll ask the
15 investigator.

16 MS. CLARK: I don't know.

17 (Crosstalk)

18 MEMBER ALBERTI: The Licensee said
19 that to the left of that photo is his back
20 wall. Does that help?

21 MR. KLINE: We'll stipulate her
22 house is to the right of that wall.

1 MEMBER ALBERTI: Right, right. I
2 believe your house, if to the left of this
3 picture is --

4 CHAIR MILLER: Okay. That part is
5 the alley, okay.

6 MEMBER ALBERTI: Right, right, so
7 her house is to the right.

8 CHAIR MILLER: Thank you.

9 MEMBER ALBERTI: I got you. Right.

10 CHAIR MILLER: Okay. This has
11 helped me visualize better. Okay, so Ms.
12 Clark, I just want to focus you for a minute
13 on the outside patio.

14 MS. CLARK: Yes.

15 CHAIR MILLER: Which sounds like
16 that's the area that, from which noise might
17 disturb you the most. What you said you
18 wanted, that they have reasonable hours.

19 And I just wanted to double check,
20 I thought I heard you say 1 o'clock on
21 weekends? Did you say that was reasonable for
22 you?

1 MS. CLARK: Yes I said according to
2 the district noise ordinance, because they
3 have a 12 o'clock noise ordinance. When
4 you're doing anything outside or having any
5 noise, 12 o'clock it's supposed to cease.

6 CHAIR MILLER: Okay, so I'm asking
7 you, you know, if you could say to us, so that
8 you can sleep at night, what hours would you
9 want them to go inside?

10 MS. CLARK: I said 1 o'clock is
11 reasonable.

12 CHAIR MILLER: Okay, and on a
13 weeknight would that be different?

14 MS. CLARK: The weekend I said.

15 CHAIR MILLER: I know. And I'm
16 asking you wouldn't it be different on a
17 weeknight?

18 MS. CLARK: The weeknight, people
19 are not out a lot. They party mostly on the
20 weekends.

21 CHAIR MILLER: Right.

22 MS. CLARK: Unless it's a special

1 occasion, you have a party or something like
2 that. So the average, most people are not out
3 there at that time in the morning, in the
4 week.

5 CHAIR MILLER: Okay.

6 MS. CLARK: Usually your parties
7 are from Friday through Sunday.

8 CHAIR MILLER: Is there a certain
9 hour you think they shouldn't be out there so
10 you can sleep? Or no?

11 MS. CLARK: As long as they go, I
12 think, that's why I said 1:00 p.m. or 1:00
13 a.m. in the morning, I think is reasonable
14 enough for anybody to go in.

15 CHAIR MILLER: Okay. For the whole
16 week?

17 MS. CLARK: No. Yes. Well, like
18 I said, you give people a little more time on
19 weekends.

20 CHAIR MILLER: Okay.

21 MS. CLARK: And that's why I say 1
22 o'clock on weekends. Most times in the week

1 --

2 CHAIR MILLER: How do you say --

3 MS. CLARK: -- they're not really
4 out there --

5 CHAIR MILLER: Do you say anything
6 on weeknight? Do you have an opinion as to
7 what hour it should end?

8 MS. CLARK: Well the weeknight
9 should, could be, say 12:00?

10 CHAIR MILLER: Okay.

11 MS. CLARK: I think would be kind
12 of reasonable.

13 CHAIR MILLER: Okay. Just a couple
14 more questions. You said your house is one of
15 nine built in a row house? Row houses?

16 MS. CLARK: Yes, its nine row
17 houses along there.

18 CHAIR MILLER: Are other neighbors
19 disturbed by the noise?

20 MS. CLARK: Well two of them are.
21 Okay, let me clarify one thing. Two of them
22 are commercial. The other seven are

1 residential.

2 CHAIR MILLER: Okay.

3 MS. CLARK: The Urban --

4 CHAIR MILLER: Have you heard from
5 other neighbors that they're bothered by the
6 noise?

7 MS. CLARK: They complain too.
8 They can hear the noise. Like I said, the
9 music is distinct from Climax. Nobody plays
10 --

11 CHAIR MILLER: Okay.

12 MS. CLARK: -- music like that,
13 that type music. And I'm saying that it's
14 Ethiopian music. And nobody plays that music
15 but them.

16 CHAIR MILLER: Okay. Have you been
17 disturbed by the inside noise, recently?

18 MS. CLARK: Have I been back, from
19 Climax?

20 CHAIR MILLER: Yes.

21 MS. CLARK: Some.

22 CHAIR MILLER: This week have you

1 been disturbed by --

2 MS. CLARK: Some, when they open
3 the door a lot.

4 CHAIR MILLER: When they open the
5 door a lot.

6 MS. CLARK: A lot.

7 CHAIR MILLER: A lot.

8 MS. CLARK: But otherwise, you hear
9 it, but not as much. You do hear it.

10 CHAIR MILLER: And so, all right.
11 Your bedroom's on the second floor? Is that
12 right?

13 MS. CLARK: Yes, the rear.

14 CHAIR MILLER: In the rear. Okay.
15 I thought I heard you say to Mr. Kline that
16 the noise doesn't come in upstairs.

17 MS. CLARK: It doesn't come in that
18 room, that window that he showed on that
19 picture, because that window never was opened.
20 It was always sealed, because you didn't open
21 that window at all.

22 CHAIR MILLER: Do you think that

1 noise would be mitigated if you repaired your
2 windows?

3 MS. CLARK: Well I have to repair
4 my whole back house. That's another issue
5 which I had from some un-stuff that I didn't
6 create.

7 CHAIR MILLER: Yes.

8 MS. CLARK: And that's why my rear
9 is like it is. It was unsolicited, unlicensed
10 work that was on the back, by someone else.

11 CHAIR MILLER: Okay, okay. All
12 right, I don't have any other questions.

13 MEMBER RODRIGUEZ: I've got one.
14 It's a short one.

15 CHAIR MILLER: Yes, Mr. Rodriguez.

16 MEMBER RODRIGUEZ: Ms. Clark, you
17 mentioned that there were some brawls out
18 there once in a while, or you know --

19 MS. CLARK: Yes.

20 MEMBER RODRIGUEZ: -- some light
21 stuff, and arguing, and all that. Was the
22 police out there, in on those --

1 MS. CLARK: They've been out a
2 number of times, yes.

3 MEMBER RODRIGUEZ: A number of
4 times?

5 MS. CLARK: Yes.

6 MEMBER RODRIQUEZ: Okay. Thank
7 you.

8 CHAIR MILLER: I just want to
9 follow up --

10 MS. CLARK: But fairly I said,
11 there were other people that come back there
12 as well.

13 MEMBER RODRIGUEZ: Right, right.

14 MS. CLARK: Some of it was from
15 Climax. He didn't get all of that.

16 CHAIR MILLER: Did you say he
17 solved that problem though, by locking the
18 gate?

19 MS. CLARK: Well he did, because
20 the people didn't get in and used to go in the
21 back, back there.

22 CHAIR MILLER: Oh.

1 MS. CLARK: He did start locking
2 the gate.

3 CHAIR MILLER: Okay.

4 MEMBER RODRIGUEZ: Okay. Thank
5 you.

6 CHAIR MILLER: All right. Any
7 questions on Board questions?

8 MR. KLINE: Yes.

9 MR. SIGMON: Yes.

10 CHAIR MILLER: Okay.

11 MR. KLINE: Just a couple.

12 CHAIR MILLER: Oh.

13 MR. KLINE: Ms. Clark, it seems
14 that from the sum of your testimony the
15 biggest problem with the interior noise seems
16 to be the door opening and closing. Is that
17 a fair assessment?

18 MS. CLARK: That comes outside.
19 But my thing was that if he did something with
20 the noise inside --

21 MR. KLINE: Right.

22 MS. CLARK: -- and insulate his

1 place, and make it sound proof, a lot of the
2 noise would be absorbed in there, and it
3 wouldn't come outside.

4 MR. KLINE: Got it.

5 MS. CLARK: That's what I'm talking
6 about.

7 MR. KLINE: And you're aware of the
8 vestibule or the double door system that we
9 showed a photograph of earlier today that he's
10 planning on installing on the rear deck,
11 correct?

12 MS. CLARK: We discussed that. He
13 said he was --

14 MR. KLINE: Okay.

15 MS. CLARK: -- going to do some
16 things back there.

17 MR. KLINE: And assuming that is
18 done, with appropriate permits as required of
19 course, that will address the problem because
20 there won't be a straight shot with the door
21 open, straight to the back of your house.
22 Correct?

1 MS. CLARK: It would address that,
2 I'm assuming, pretty much if it's installed
3 right.

4 MR. KLINE: Great. Thank you,
5 that's all I have.

6 MS. CLARK: Because he have two
7 doors like that. The first one when you come
8 out, like the one you saw in the picture, at
9 that door up top. Then the second door,
10 outside, would be closed.

11 And that one when it comes open,
12 the other, it would keep the noise inside.
13 But he has to put that second door up.

14 (Off microphone discussion)

15 MR. KLINE: Thank you. That's all
16 I have. ***6:04:27.

17 MR. SIGMON: That's all you have?
18 So I have two questions.

19 CHAIR MILLER: Okay.

20 MR. SIGMON: So first Mrs. Clark,
21 when you were speaking of the modifications
22 that you were recommending to Climax for noise

1 abatement, did you specifically recommend
2 plywood for the windows?

3 MS. CLARK: Well, I mentioned to
4 him that it has been used, because I used to
5 work, and manage, a apartment house. So I
6 know some of the repairs that they did, and
7 what was done, and it was for safety reasons
8 too.

9 And I told him about that wooden
10 door and the sheet metal that went on the back
11 because it was a safety issue for fire things.
12 So yes I told him that, and he said oh, that
13 would be a good idea.

14 And that's what he's at. And he
15 said he was going to try it. So, it's just
16 where that came from.

17 MR. SIGMON: With respect to, at
18 least as we currently understand it with the
19 plywood on the windows, are you satisfied with
20 that piece of the work?

21 MS. CLARK: As far as I can tell,
22 and I haven't been since he closed up the side

1 that we had talked about, he said he did. So
2 if he closed up all of that and no noise is
3 coming out, that would take care of the
4 problem, I think. As long as no leaks is in
5 it. That was the issue.

6 MR. SIGMON: And is that the best
7 material, based on your experience, and other
8 better materials that would optimize that?

9 MS. CLARK: I don't know about
10 better. I just know that if the sides is
11 sealed and you don't get anything coming out,
12 it wouldn't matter as long it took care of
13 that noise problem.

14 MR. SIGMON: And you mentioned that
15 sometimes you have your window cracked at
16 night. Can you describe the noise when the
17 window is closed?

18 MS. CLARK: When my windows are
19 closed?

20 MR. SIGMON: Yes.

21 MS. CLARK: You hear noise, but you
22 don't hear a lot of noise, noise, is what I'm

1 saying. It makes a difference. And since
2 he's done some of what he's done, like I said,
3 it's not as bad. It's not as bad. It has
4 improved. Like I said, he's working on it.
5 I'll give him that much.

6 MR. SIGMON: No further questions.

7 CHAIR MILLER: No further
8 questions? Okay. Thank you.

9 MEMBER RODRIGUEZ: Thank you.

10 CHAIR MILLER: You can be excused.

11 MS. CLARK: I'm done?

12 CHAIR MILLER: Yes.

13 (Off microphone discussion)

14 MR. SIGMON: If I may, I'd like to
15 call Rajat Banerjee.

16 CHAIR MILLER: Okay.

17 (Off microphone discussion)

18 CHAIR MILLER: Do you swear to tell
19 the truth, the whole truth, and nothing but
20 the truth.

21 MR. BANERJEE: I do.

22 CHAIR MILLER: All right, thank

1 you.

2 MR. SIGMON: May I proceed?

3 CHAIR MILLER: Yes.

4 MR. SIGMON: Thank you. So Mr.
5 Banerjee, you represent the group of the
6 Floridian Protestants, is that right?

7 MR. BANERJEE: Yes, I represent 14
8 on my neighbors. We live across the street
9 from Climax in different apartments, different
10 floors, two different towers. There's 14 of
11 us.

12 MR. SIGMON: And how would you
13 describe the noise from your vantage point?

14 MR. BANERJEE: It's music. The
15 music can be clearly heard many nights across
16 the street, which is at least 700 or 800 feet
17 away from Climax, from the front of the
18 building.

19 It's usually, the worst offenses
20 are usually on Sundays, Mondays and Tuesday
21 nights when everybody has to go to work the
22 next day. That's why we're here.

1 That's why we're most bothered.
2 We're pretty understanding people and we never
3 complained on Fridays and Saturdays, because
4 we like to go out, and we're generally
5 reasonable people in the building.

6 MR. SIGMON: And how can you be
7 sure that the noise is Climax noise?

8 MR. BANERJEE: Two reasons. More
9 specifically, I actually go out there
10 sometimes, and I've called the police numerous
11 times myself.

12 And sometimes I'll go outside and
13 wait to see when the police arrive, and see
14 where it comes out. This past Sunday night,
15 I actually walked up to the front door of
16 Climax and I could clearly hear that the music
17 was coming from Climax.

18 I didn't feel comfortable going in.
19 It was also past 1:00 a.m. on Sunday morning,
20 Monday morning, so I didn't go in. The music
21 is also clearly Ethiopian.

22 For, like, six or seven minutes

1 you'll hear one steady beat, boom, boom, boom.
2 And then, like, six or seven minutes later
3 it'll change to another beat.

4 And it'll be a little faster or a
5 little slower, and it's really distinctive.
6 I've never heard anything else like it, and we
7 have lots of other neighbors playing all
8 different kinds of music, and I can, pretty
9 sure this is all definitely from Climax.

10 MR. SIGMON: How have you and your
11 Floridian neighbors tried to get the bar to
12 reduce its volume?

13 MR. BANERJEE: Okay. I'm sorry.
14 I'm going to try to do this calmly because I
15 get, it's hard not to be angry about this
16 after it's been going on for so long.

17 So we've called, we've spent a long
18 time calling 311, and 911. Lots of times the
19 police have come and the bar has turned down
20 the volume.

21 For that night it's been fine. A
22 couple nights later they'll turn it right back

1 up to the same level it was at before.

2 They're very inconsiderate neighbors.

3 It always goes back to the same
4 level. We repeat this pattern over, and over,
5 and over again. In the past month or two
6 we've become aware of the ABRA phone number
7 that we can call, and some of our neighbors,
8 as well as our anonymous neighbor, has called
9 ABRA many times.

10 And she's corresponded with Keith
11 Gethers and Felicia Danzler, I believe, who
12 wrote up the report. They actually came to
13 her house.

14 I have been on the email thread in
15 which I've seen all these calls to the ABRA
16 hotline. So I haven't felt the need to call
17 myself. We get much faster results out of
18 calling 911 or 311.

19 The police come, defendant turns
20 down his music. I was disappointed to see
21 that it didn't make it to the report, all of
22 the 911 calls that have been made over time,

1 because as the defendant said, as we said,
2 we've called so many times.

3 I must have called myself 20 or 30
4 times. My neighbors have reported to me that
5 they've called many times as well. It's just
6 really unneighborly to have to call so many
7 times, to the same bar, for the same problem.

8 After the February 2nd hearing,
9 Solomon gave us his personal cell phone
10 number, and on two separate occasions I tried
11 to call him.

12 The most recent was on February
13 20th. I called him three times in one night,
14 and left him a voice mail. And the music was
15 not turned down.

16 About an hour later, about 2:00
17 a.m., I called the police and they went over
18 there. That's my direct line to Solomon, his
19 cell phone number.

20 If he doesn't pick it up, he
21 doesn't return my voice mails, I really don't
22 know what else to do besides ask ABRA for

1 help.

2 Those are the three mechanisms
3 we've tried to use to contact, to get this
4 problem to stop.

5 MR. SIGMON: Thank you. We spent
6 a lot of time already talking about the
7 condition of the back of the property that
8 faces the alley on Vermont Avenue. Ostensibly
9 you're on the opposite side, is that right?

10 MR. BANERJEE: Yes.

11 MR. SIGMON: So, and you've been in
12 the establishment, is that right? Inside
13 Climax?

14 MR. BANERJEE: Yes.

15 MR. SIGMON: Do you have any
16 comment on how you think the noise is getting
17 to you?

18 MR. BANERJEE: Okay, sure. They
19 have a huge sound system upstairs. Solomon
20 invited us to the establishment on February
21 5th, I believe, and we toured around the
22 place.

1 On the second floor, where the
2 biggest sound system is, there are some really
3 flimsy one ply windows with an aluminum frame.
4 I'm no expert on sound, but it's a very thin
5 window. Windows seem to rattle.

6 It seems very plausible that all
7 the sound is coming directly out of these
8 windows. All of the plywood, and all of the
9 insulation that we saw, were put onto the back
10 windows.

11 Even this Sunday, as I stated a few
12 minutes ago, I could still hear the music. I
13 don't know exactly when the plywood went up,
14 but it's, he hasn't done anything for the
15 front windows, and the windows are very thin,
16 very cheap looking, and I would love it if he
17 would replace them with something more
18 substantial.

19 They're already blacked out anyway.
20 He could just stick something onto it, do
21 whatever he wants to make it better insulated,
22 and that would help.

1 It looks like also on the first
2 floor, I don't know if the noise is coming out
3 of the first floor or not. I'm on the fifth
4 floor of my building so, it seems like all the
5 noise is coming from the second floor where it
6 seems like he has the big sound system.

7 They're also very thin windows on
8 the first floor, and some of them have
9 actually been cut out, and an ATM machine has
10 been jammed in there. So there could be a
11 chance there is noise coming out of there too.

12 MR. SIGMON: Thank you. Have you
13 proposed any written agreements, or anything
14 like that, that might be able to be a
15 compromise of some sort with Climax?

16 MR. BANERJEE: Yes.

17 MR. KLINE: Objection.

18 CHAIR MILLER: Okay.

19 MR. KLINE: We're going to get into
20 the substance of settlement discussion.

21 CHAIR MILLER: Okay so we don't
22 allow discussion about settlement agreements

1 here in order to let you all be comfortable in
2 negotiating.

3 If you know that it's going to be
4 used against you in this forum, then you
5 wouldn't negotiate as freely. So discussions
6 about the substance of any negotiations isn't
7 admissible.

8 MR. SIGMON: Okay, so then, as a
9 point of order, then for Protestant Exhibit L,
10 is it, are you telling me that the draft
11 settlement agreement is not in order?

12 CHAIR MILLER: Yes. It's not
13 admissible. Right.

14 MR. SIGMON: Okay. Thank you. Can
15 you, Mr. Banerjee, turn to Protestant Exhibit
16 T please?

17 (Off microphone discussion)

18 MR. SIGMON: To the last one.

19 MR. BANERJEE: Yes.

20 MR. SIGMON: Okay.

21 MR. KLINE: What is T? I don't
22 have letters so you'll --

1 CHAIR MILLER: I'm sorry?

2 MR. KLINE: -- have to help me out
3 here.

4 CHAIR MILLER: Oh, what are you
5 referring to now? ***6:14:30.

6 (Off microphone discussion)

7 MR. SIGMON: Does the Board see the
8 exhibit?

9 CHAIR MILLER: No, I'm sorry. I
10 was distracted for the moment. So what are
11 you looking at?

12 MR. KLINE: What's that.

13 MR. SIGMON: It's T in the --

14 (Off microphone discussion)

15 MR. KLINE: I do not have letters.

16 MR. SIGMON: It's an ABRA Order.

17 Can I give it to you?

18 CHAIR MILLER: An ABRA Order?

19 Sure, I mean that's in the public record,
20 that's in our records.

21 MR. KLINE: Public record.

22 CHAIR MILLER: Yes.

1 MR. KLINE: I don't think it's
2 terribly relevant. ***6:15:08

3 CHAIR MILLER: Is it in your
4 exhibits?

5 MR. SIGMON: It's T.

6 CHAIR MILLER: T? No. That's a
7 settlement agreement.

8 MR. SIGMON: But it's an existing
9 order.

10 CHAIR MILLER: Oh, It's in an order
11 approving a settlement agreement? Okay. Let
12 me see. I'll look.

13 (Off microphone discussion)

14 CHAIR MILLER: No he hasn't, but --

15 MR. KLINE: We're not sure what
16 we're looking at.

17 MR. SIGMON: I don't think I have
18 another copy. I printed out a lot of copies.
19 Here, this is --

20 CHAIR MILLER: Do you want to look
21 at it? I have to look at it to rule on it.

22 MEMBER ALBERTI: Okay.

1 MR. JONES: It shouldn't be
2 admitted if, you can see it, but we shouldn't.

3 MEMBER ALBERTI: Well if it's an
4 existing Board Order we can just take
5 Administrative note of it.

6 CHAIR MILLER: Right, exactly.

7 MR. KLINE: Not for this
8 establishment, though.

9 MR. SIGMON: Okay, well I'd like to
10 ask the witness about that.

11 CHAIR MILLER: Wait, I just want to
12 --

13 (Off microphone discussion)

14 CHAIR MILLER: -- find it. If this
15 is, oh Exhibit T, which is Order on Voluntary
16 Agreement and Withdrawal of Protest. Okay.

17 MR. KLINE: For a different
18 establishment. Not for this establishment.

19 CHAIR MILLER: For a different --

20 MR. SIGMON: I would like to ask
21 the --

22 CHAIR MILLER: Well, go ahead.

1 It's an order.

2 MR. SIGMON: -- witness about that.

3 CHAIR MILLER: It's a Board order
4 so we can take judicial notice of it.

5 MR. SIGMON: Okay.

6 CHAIR MILLER: So --

7 MR. KLINE: So if it's relevant, of
8 course. But the question is, what's the
9 relevance?

10 CHAIR MILLER: Okay, well let's
11 hear.

12 MR. SIGMON: I'm about to get to
13 that.

14 CHAIR MILLER: Let's, yes.

15 MR. SIGMON: So Mr. Banerjee, can
16 you comment on how you learned of this exhibit
17 and its relevance to this case please?

18 MR. KLINE: Objection. Assumes
19 facts not in evidence. How is it relevant to
20 this case?

21 CHAIR MILLER: That's the question.

22 MR. SIGMON: That's the question.

1 MR. KLINE: Oh I thought he, how he
2 learned of it's relevance to this case was the
3 question.

4 MR. SIGMON: How he learned of it,
5 and how --

6 MR. KLINE: Oh, and it's relevance?
7 What's the relevance?

8 CHAIR MILLER: What's the relevance
9 and how did he learn it?

10 MR. SIGMON: That's the question.

11 MR. KLINE: We can not have a have
12 a compound question, because I object to the
13 compound question.

14 MR. SIGMON: How did you learn --

15 CHAIR MILLER: You want him to
16 separate it?

17 MR. KLINE: Yes.

18 CHAIR MILLER: Okay, separate it.

19 MR. KLINE: Yes, because I may
20 have an objection to --

21 CHAIR MILLER: Yes, okay. Yes.

22 MR. BANERJEE: That ABRA order was

1 forwarded to our group of protesters earlier
2 this week. I believe by an ANC
3 representative, but I would have to check my
4 email box. One of the ANC representatives.

5 MR. SIGMON: And can you explain
6 any of the content of the message?

7 MR. BANERJEE: Yes, it's an ABRA
8 order for settlement. The protesters --

9 MR. SIGMON: Specifically the
10 message that explained anything about what it
11 was, or how it connected to the current bar
12 owner.

13 MR. BANERJEE: It's the same
14 problem they faced with a past bar as they are
15 facing currently with noise at late hours.
16 And the order is to try and restrict them.

17 It sets up hours at which the bar
18 can play loud music and hours at which the bar
19 can not play loud music. And the past owner
20 agreed to it.

21 MR. SIGMON: I can ask further
22 questions of a different witness, but I'm

1 done. Thank you.

2 CHAIR MILLER: This is for the same
3 location. Is that right? Okay. I don't see
4 how you can object. I mean, it's in our
5 record --

6 MR. KLINE: How's it relevant to
7 this case? This is a contested case
8 proceeding. That was a contested case
9 proceeding that was resolved by a settlement
10 agreement.

11 God bless the previous person that
12 agreed to it, but how is that relevant to the
13 determinations that this Board will make about
14 this establishment in this case?

15 I mean, they could have agreed to
16 close at 10 o'clock. It's just not relevant
17 to what we're here to talk about today.

18 MR. SIGMON: If the Chair would
19 agree, I can ask a different witness, and I
20 think it will be much clearer.

21 CHAIR MILLER: Okay, so we can hold
22 an abeyance of the admission of this. Not the

1 admission, it's judicial notice, because he
2 wants to get something from another witness.

3 MR. KLINE: It's a settlement
4 agreement --

5 CHAIR MILLER: But I don't --

6 MR. KLINE: -- involving different
7 --

8 CHAIR MILLER: -- it's in our
9 records. I mean, it's just --

10 MR. KLINE: I know, but it's a --

11 CHAIR MILLER: Yes.

12 MR. KLINE: It's a settlement
13 agreement involving different parties.

14 CHAIR MILLER: Okay, do you believe
15 that another witness would be able to address
16 that issue?

17 MR. SIGMON: Absolutely.

18 CHAIR MILLER: Okay, so let's hold
19 this in abeyance. Go ahead. Anything else?

20 MR. SIGMON: Done. I yield to the
21 --

22 CHAIR MILLER: Okay. Did you

1 cross? I can't.

2 MR. KLINE: No, I didn't cross.

3 CHAIR MILLER: I didn't think so.

4 MR. KLINE: Are you done? Mr.

5 Benerjay how long have you, Benerjay?

6 Banerjay?

7 MR. BANERJEE: Banerjee.

8 MR. KLINE: Banerjee. Mr.

9 Banerjee, my apologies. Mr. Banerjee how long
10 have you lived there?

11 MR. BANERJEE: Three years.

12 MR. KLINE: All right. When you
13 moved into your residence did you buy or do
14 you rent?

15 MR. BANERJEE: I own.

16 MR. KLINE: You own. Okay. When
17 you bought your unit, were you aware that you
18 were moving into a residence that was on the
19 edge of the Arts Overlay District?

20 MR. BANERJEE: I was aware that I
21 moved into a residential neighborhood.

22 MR. KLINE: So you weren't aware

1 that your unit is on the edge of the Arts
2 Overlay District?

3 MR. BANERJEE: No.

4 MR. KLINE: You weren't aware of
5 that. Okay.

6 MR. BANERJEE: No, if I might, the
7 rules say that --

8 MR. KLINE: I get to ask the
9 questions, so please answer my questions,
10 okay?

11 CHAIR MILLER: That's too funny.
12 All right.

13 MR. KLINE: So you weren't aware
14 that you were moving into a unit that's on the
15 edge of a district that the purpose of which
16 is to promote 18 hour activity. Is that
17 correct?

18 MR. BANERJEE: I was aware that
19 there's many bars there, and they are to do,
20 they are allowed to make noise at reasonable
21 hours.

22 MR. KLINE: Okay, all right.

1 MR. BANERJEE: I was aware of that.

2 MR. KLINE: Okay. Are you now
3 aware that you're on the edge of an Arts
4 Overlay District, and what that means under
5 the zoning regulations of the District of
6 Columbia?

7 MR. BANERJEE: Yes, and I'm aware
8 that there is rules saying how much noise they
9 can project into a residential area.

10 MR. KLINE: All right, but, in fact
11 your building is not on property zoned
12 residential, is it?

13 MR. BANERJEE: I was under the
14 impression it is.

15 MR. KLINE: Okay. So if I told you
16 that it was zoned CR, that would be a surprise
17 to you?

18 MR. BANERJEE: Yes.

19 MR. KLINE: Okay. I don't have any
20 further questions for the witness. Thank you.

21 CHAIR MILLER: Okay. Board
22 questions?

1 MEMBER RODRIGUEZ: I've got one.

2 CHAIR MILLER: All right. Okay,
3 just go ahead.

4 MEMBER RODRIGUEZ: No, I hold.

5 CHAIR MILLER: Okay. Let me just
6 ask a couple. Did you ever ask, did you say
7 it took longer for ABRA to come out than to
8 call 911 or 311?

9 MR. BANERJEE: Yes.

10 CHAIR MILLER: Okay.

11 MR. BANERJEE: And I actually
12 wasn't aware of the ABRA hotline until about
13 three weeks ago when the big ABRA notification
14 came out.

15 CHAIR MILLER: Okay. Are you aware
16 that there's a noise task force that goes out
17 and measures sounds emanating from bars, et
18 cetera?

19 MR. BANERJEE: Yes. I am.

20 CHAIR MILLER: Did --

21 MR. BANERJEE: I'm also, it seems
22 like, I'm aware that they enforce, usually

1 Tuesdays through Saturday nights, and this
2 bar's particularly noisy on Sunday and Monday
3 nights.

4 I'm not sure if there's any
5 conjunction, those hours of enforcement are
6 really well publicized. So if I was going to
7 make a ton of noise on one night, I would do
8 it on Sunday and Monday nights when ABRA's not
9 going to come out.

10 CHAIR MILLER: Okay. Did --

11 MR. BANERJEE: And this is a
12 pattern.

13 CHAIR MILLER: Did you ever ask for
14 DCRA or ABRA to come out to measure noise?

15 MR. BANERJEE: No.

16 CHAIR MILLER: It's actually DCRA
17 that does it, but there is this task force.
18 No?

19 MR. BANERJEE: Personally I have
20 not, because I know my neighbor has been
21 calling regularly on the same nights that I've
22 been having problems.

1 CHAIR MILLER: Okay.

2 MR. BANERJEE: We have an email
3 thread about this.

4 CHAIR MILLER: So let me ask you
5 what would solve your problems, maybe? If the
6 hours were limited on the week nights to quote
7 "a reasonable hour", would that solve?

8 MR. BANERJEE: I think if, yes,
9 that would help, as well as some very good
10 insulation, and change to the structure of the
11 building on the front side to block out some
12 of the music.

13 And perhaps, like, a probation, I'm
14 not sure if this is possible, but some kind of
15 probationary period. I don't want anybody's
16 business to be shut down because of this, but
17 they haven't been good neighbors. And if they
18 aren't complying with these hours, then I want
19 to make sure --

20 CHAIR MILLER: Okay, let's see --

21 MR. BANERJEE: -- that there's some
22 tools available to get some compliance.

1 CHAIR MILLER: Okay, compliance is
2 an enforcement issue, so if there's a Board
3 order that says they have to do something and
4 they don't, then they're subject to penalties
5 and suspension, et cetera.

6 So I have to ask you what is your
7 idea then of a reasonable hour if you want the
8 Board to consider a limitation on the hours?

9 MR. BANERJEE: Okay, on Fridays and
10 Saturdays, Thursdays, Fridays and Saturdays
11 perhaps 1:00 a.m. for noise. And on all the
12 other week nights I'd say 11:00 p.m. would be
13 reasonable for people going to work the next
14 day.

15 CHAIR MILLER: So, and is your
16 building affected by the patio or is that just
17 affect, that's on a different side of the
18 building?

19 MR. BANERJEE: It's on a different
20 side of the building.

21 CHAIR MILLER: Okay. And if they
22 turn the volume down would that solve it as

1 opposed to the whole insulation?

2 MR. BANERJEE: In theory it would,
3 but it seems like the volume level is very
4 subjective. From what we've heard from the
5 managers here, they don't know what number,
6 they don't know what level it goes to one
7 night versus the level the next day. I don't
8 --

9 CHAIR MILLER: Okay.

10 MR. BANERJEE: -- I think it's very
11 hard to trust a claim about the volume level.

12 CHAIR MILLER: And you have a
13 specific idea as to what insulation you would
14 suggest?

15 MR. BANERJEE: Yes. I've sound
16 proofed a room before, and you have to use,
17 you can't just take a glass window and put a
18 piece of plywood behind it. That acts as,
19 like, it propagates the noise much further.

20 So actually with something so thin
21 as glass, you have to put in a layer of some
22 kind of foam in between, something soft, an

1 insulating material that would absorb the
2 sound.

3 So if he wants to put up plywood
4 that's fine, but there has to be some kind of
5 foam or some soft material in between the
6 glass and the plywood, because if it is just
7 sitting on the glass it'll just amplify that
8 and project it out further.

9 CHAIR MILLER: Okay. So you said
10 you've sound proofed a room? Do you know how
11 much that costs?

12 MR. BANERJEE: I know you can buy
13 this foam from Home Depot to do those windows.
14 I can't imagine it would cost more than \$200
15 for the foam.

16 CHAIR MILLER: It's just around
17 windows? That you're talking about?

18 MR. BANERJEE: That'd be a great
19 place to start. The windows are very, very
20 thin, and very flimsy.

21 CHAIR MILLER: Okay, now Mr. Jones
22 did you want to jump in here?

1 MR. JONES: Just real quick Madam
2 Chair. So, you indicated earlier during
3 testimony that you're not a sound expert,
4 right?

5 Would you be opposed to the
6 Applicant contracting for or soliciting a
7 sound analysis done by a real sound expert,
8 and providing that report, if they were
9 amenable to doing so, not saying that they
10 already are, but I'm just trying to get a feel
11 for what you're looking at.

12 What would see as something that
13 would be a turning point in your perception in
14 how they're approaching the problem because
15 you can throw a lot of things at the symptoms,
16 but we're really trying to identify what the
17 root cause of this problem is, and then take
18 the appropriate measures to fix the root
19 cause.

20 That's what you'd want to have to
21 help keep you, give you peace at night.
22 Right?

1 MR. BANERJEE: Yes sir.

2 MR. JONES: If that was something
3 that was on the table, and they were willing
4 to pay for a sound analysis to be done, and
5 then recommendations be provided in that sound
6 analysis report.

7 Not saying that they would
8 necessarily have to act on those immediately,
9 but at least so that we have a good bound of
10 what the problem would be. Would that be a
11 step in the right direction as far as you were
12 concerned?

13 MR. BANERJEE: Yes, I believe that
14 would be a step in the right direction.

15 MR. JONES: Okay.

16 MR. BANERJEE: If the sound
17 engineer would look at their sound system,
18 have someone standing inside, and turn up the
19 volume steadily until it's to an unacceptable
20 level outside.

21 And then say like, please Climax
22 you can't turn your volume up beyond this

1 level because what happens now is, I have a
2 feeling that the bar owners know when they're
3 being monitored.

4 They know when they're being asked
5 to be on good behavior, and they behave well
6 at that time.

7 MR. JONES: Understood.

8 MR. BANERJEE: And that's, I'm
9 sorry, when that monitoring is gone, who knows
10 what's going to happen? Who knows what the
11 summer is going to be like?

12 MR. JONES: Understood. However,
13 if a sound analysis was done by an impartial,
14 unbiased sound expert providing
15 recommendations and that established what
16 certain thresholds were desirable, i.e. for
17 everyone's collegial experience in the
18 neighborhood, that would be something that you
19 would be amenable to, at least giving an
20 opportunity for this Licensee to continue
21 operating if they were helped with the
22 guidelines associated with a sound analysis

1 report.

2 And I'm asking this question
3 because, and I hate pontificating from the
4 dias because I'm not that smart, but I just
5 want to try and get a feel, none of us are
6 sound experts, and we're drawing on what we
7 seem to be throwing a lot of things at a
8 problem, but we don't know what the net effect
9 of those things are.

10 And I'm trying to figure out if
11 you, as a Protestant, would be amenable to
12 trying to get a better handle on the bounds of
13 the problem so that we can really come up with
14 a real solution, as opposed to patchwork at
15 efforts to address the symptoms.

16 And it sounds like, based on your
17 response, you would be, yes, as a individual
18 Protestant speaking here today, you would be
19 amenable to that course of action.

20 MR. BANERJEE: Yes sir, I would be
21 amenable to that, in conjunction with some
22 limited hours.

1 MR. JONES: Yes, understood. Okay.
2 Thank you. And I have other follow up
3 questions, but I want to turn it back over to
4 the Chair. Thank you. Madam Chair.

5 CHAIR MILLER: Okay, thank you. I
6 have one more question. Do you hear noise
7 from other ABC establishments such as 9:30
8 Club, or --

9 MR. BANERJEE: I do. We're right
10 at that junction where we hear noise from a
11 lot of different places.

12 CHAIR MILLER: Yes.

13 MR. BANERJEE: 9:30 does not make
14 noise. They're really well sound proofed.
15 Duffy's recently opened a sidewalk café, and
16 we do hear noise from them, but Duffy is, Andy
17 Duffy is very good about always closing that
18 sidewalk café by midnight.

19 CHAIR MILLER: Yes.

20 MR. BANERJEE: And all of my
21 neighbors are fine with it. And we patronize
22 Duffy's and appreciate what he does.

1 CHAIR MILLER: Okay, so your answer
2 is you're not disturbed by other ABC
3 establishments near you?

4 MR. BANERJEE: No.

5 CHAIR MILLER: Okay. All right.
6 Others? Mr. Jones.

7 MR. JONES: Thank you Madam Chair.
8 Just a quick follow up, and I apologize. I
9 think you answered this all ready, but just
10 quickly, the hours that you would be willing
11 to live with for the outside activities, did
12 you speak on the outside activities
13 specifically as it relates to the operation of
14 this licensed establishment?

15 MR. BANERJEE: I didn't separate
16 the inside and the outside activities.

17 MR. JONES: Okay. Would you be
18 able to speak to what hours you would be
19 willing to live with for the outdoor
20 activities only, or is it all just one
21 amorphous blob as far as you're concerned?

22 MR. BANERJEE: It's one amorphous

1 blob. I would much rather defer to Ms. Clark
2 about the outside --

3 MR. JONES: Fair enough. Okay,
4 thank you.

5 MR. BANERJEE: -- because she's
6 more affected than I am.

7 MR. JONES: Thank you very much for
8 that. Appreciate, Thank you Madam Chair.

9 CHAIR MILLER: Okay. All right.
10 No other Board questions. Questions on Board
11 questions?

12 MR. KLINE: Mr. Banerjee, is it
13 your testimony that it's reasonable for a bar
14 to be forced to close at 11:00 p.m., and 1:00
15 a.m. on weekends?

16 MR. BANERJEE: Can't he just turn
17 his music down?

18 MR. KLINE: I'm getting from your
19 testimony, when you were asked about what time
20 he should close, your suggestion was there
21 should be a limit on hours, and I believe you
22 said 11:00 p.m. and 1:00 a.m. Was that your

1 testimony?

2 MR. BANERJEE: Yes.

3 MR. KLINE: And you testified that
4 you moved into this area so you could take
5 advantage of nightlife and you like to go out
6 on weekends, I think is what you said?

7 MR. BANERJEE: I do.

8 MR. KLINE: Are you done at 1
9 o'clock on weekends when you go out?

10 MR. BANERJEE: No, but I expect the
11 bar owner to be more responsible, and to sound
12 proof his building properly so the noise
13 doesn't escape --

14 MR. KLINE: Okay --

15 MR. BANERJEE: -- and disturb his
16 neighbors.

17 MR. KLINE: -- but as for the
18 limitation on this establishment you think
19 it's reasonable that they close at 1 o'clock
20 on weekends. Is that your testimony?

21 MR. BANERJEE: Unless it's really
22 punitive, because I've lived with this

1 nonsense for a long time now, and I'm really
2 unhappy with the situation. But I don't think
3 the Defendant should be given any kind of
4 leeway to go until 3:00 a.m. in light of all
5 this that's happened.

6 MR. KLINE: You refer to him as the
7 Defendant. Do you think we're in a criminal
8 proceeding?

9 MR. BANERJEE: I've watched too
10 much Law and Order I guess.

11 MR. KLINE: Well perhaps --

12 MR. BANERJEE: The Applicant.

13 MR. KLINE: And the point is, you
14 are feeling punitive, aren't you?

15 MR. BANERJEE: A bit, but why I am,
16 isn't that reasonable?

17 MR. KLINE: Are you feeling
18 punitive, and is that coloring your testimony
19 here today?

20 MR. BANERJEE: I'm upset. This has
21 been going on for a very long time, and I've
22 exhausted all my means to try and get some

1 peace and quiet in my own home.

2 MR. KLINE: So, the Board should
3 take your testimony in light of the fact that
4 you are feeling punitive towards this
5 defendant, correct?

6 MR. BANERJEE: If the Board thinks
7 1:00 a.m. is reasonable then they should go
8 with 1:00 a.m.

9 MR. KLINE: That wasn't my
10 question. My question is about your testimony
11 and the way you feel about this person that
12 you've referred to as the Defendant, and
13 whether it's coloring your testimony here
14 today in this proceeding.

15 MR. BANERJEE: He has demonstrated
16 bad behavior with the music, so he should have
17 tighter hours on a probationary period.

18 MR. KLINE: So he should be
19 punished?

20 MR. BANERJEE: He should have
21 shorter hours as not to disturb the
22 neighborhood.

1 MR. KLINE: All right.

2 MR. BANERJEE: As he's been doing
3 for a long time.

4 MR. KLINE: And Duffy's operates
5 until midnight during the week on their café.
6 Correct?

7 MR. BANERJEE: I assume.

8 MR. KLINE: And people in your
9 building, yes they're disturbed, but they
10 tolerate it. Correct?

11 MR. BANERJEE: Yes.

12 MR. KLINE: But --

13 MR. BANERJEE: Duffy's doesn't play
14 amplified music outdoors.

15 MR. KLINE: That's not my, respond
16 to my questions please. That's what we're
17 here to do at this point.

18 MR. BANERJEE: It was on the same
19 topic.

20 MR. KLINE: My question to you is
21 your building tolerates Duffy's until midnight
22 even though they're disturbed by the café

1 somewhat, correct?

2 Yet you want this Licensee to stop
3 whatever disturbance it might be, and we can
4 debate about what that might be, at 11
5 o'clock. Is that your position?

6 MR. BANERJEE: This Applicant has
7 a problem with loud music. Duffy's does not.
8 It's a different case.

9 MR. KLINE: Thank you, I have no
10 further questions.

11 CHAIR MILLER: Okay. Miguel?

12 MALE PARTICIPANT: No questions.

13 CHAIR MILLER: Okay. Thank you
14 very much.

15 MR. BANERJEE: Thank you.

16 MR. SIGMON: May I have a time
17 check sir?

18 MR. JONES: The Protestants have 22
19 minutes remaining. The Licensee has 35
20 minutes remaining.

21 MR. SIGMON: Thank you. I would
22 like to call a neighbor who would prefer not

1 to be named in the record, but is present,
2 going by the initials F.L. to the stand.

3 MR. KLINE: Objection.

4 FEMALE PARTICIPANT: You can put my
5 name in your records, just not on the
6 internet. You can write my full name,
7 address, into the record --

8 CHAIR MILLER: Okay.

9 FEMALE PARTICIPANT: -- but not on
10 the internet.

11 CHAIR MILLER: Our transcript, we
12 do a transcript of this proceeding.

13 FEMALE PARTICIPANT: That's fine if
14 it can be redacted for, like, personal safety
15 reasons.

16 CHAIR MILLER: Personal safety?

17 MR. SIGMON: We had a long
18 conversation about this with your attorney.

19 FEMALE PARTICIPANT: I'm a DCPS
20 employee and I've been told many times by my
21 principal to make sure that my contact
22 information is completely private.

1 MALE PARTICIPANT: She can't
2 testify.

3 FEMALE PARTICIPANT: Like, my full
4 name and my address are to remain private.

5 MR. KLINE: Madam Chair, this is a
6 public hearing. Someone wants to come testify
7 in a public hearing, it's in the public
8 record.

9 CHAIR MILLER: It is. We don't do
10 --

11 FEMALE PARTICIPANT: I don't mind
12 the public paper record, but I --

13 CHAIR MILLER: We don't have to do
14 your address.

15 FEMALE PARTICIPANT: -- the, in the
16 internet record.

17 CHAIR MILLER: No, we can't control
18 that. There is a transcript that's done.

19 MR. KLINE: And it's posted.

20 CHAIR MILLER: And it's posted on
21 the ABRA website so that the public has access
22 to --

1 FEMALE PARTICIPANT: I understand,
2 but, like, my name's not Sally Smith, or like,
3 its completely anonymous.

4 MR. SIGMON: Madam, Madam Chair?
5 Does it help that we have a notarized copy of
6 a letter that proves her identity, but without
7 her name attached to it? Does that help or
8 no?

9 FEMALE PARTICIPANT: Yes I have a
10 notarized letter.

11 MR. SIGMON: We tried to do our
12 best with this.

13 MEMBER SILVERSTEIN: No.

14 FEMALE PARTICIPANT: I mean, I have
15 a lot of --

16 MR. SIGMON: I'm guessing this is
17 unique.

18 FEMALE PARTICIPANT: -- I don't
19 have to say it ***6:35:54 paper. But I just
20 don't feel comfortable --

21 CHAIR MILLER: What I don't
22 understand is, if there's a special safety

1 issue, is that --

2 FEMALE PARTICIPANT: Yes.

3 CHAIR MILLER: -- what you're
4 saying? Can you elaborate then, because --

5 FEMALE PARTICIPANT: Well we've had
6 issues with teacher's personal information
7 being looked up --

8 CHAIR MILLER: What?

9 FEMALE PARTICIPANT: We've had
10 issues with, like, teacher's personal
11 information being looked up, and people being,
12 you know, people coming to teacher's houses --

13 CHAIR MILLER: Okay, so I would say
14 --

15 FEMALE PARTICIPANT: -- crass, I
16 guess.

17 CHAIR MILLER: -- and you could let
18 me know if there's an objection, but I think
19 that we need your name. In fact I don't know
20 that we need your address.

21 MR. KLINE: Madam Chair, if she's
22 going to testify about the effects of this

1 establishment on her and her residence, then
2 it would seem to me her address is a very
3 pertinent part of the record.

4 CHAIR MILLER: Are you part of a
5 bigger building? Right. Are you part of --

6 FEMALE PARTICIPANT: I am reasoning
7 the internet can be, like, a dangerous --

8 MEMBER SILVERSTEIN: Can't do it.

9 CHAIR MILLER: I don't think we can
10 --

11 MEMBER SILVERSTEIN: What did she
12 say?

13 CHAIR MILLER: The internet can be
14 dangerous.

15 FEMALE PARTICIPANT: If I had a
16 very common name, I would be totally fine with
17 it.

18 MR. SIGMON: Can we say that she
19 lives in the block of apartments as Eartha?
20 As Mrs. Clark?

21 FEMALE PARTICIPANT: We do.

22 CHAIR MILLER: Are you in a

1 building with lots of apartments?

2 FEMALE PARTICIPANT: I'm in the
3 house next door to Ms. Clark's.

4 MEMBER ALBERTI: So I now know what
5 the address is.

6 MEMBER ALBERTI: I'm sorry for
7 that.

8 CHAIR MILLER: ***6:37:14 could do
9 that.

10 MR. KLINE: But you just revealed
11 your address.

12 CHAIR MILLER: Could you not, yes
13 but that's not that obvious to somebody
14 reading the transcript.

15 FEMALE PARTICIPANT: Yes, I don't
16 want it to be --

17 (Off microphone discussion)

18 FEMALE PARTICIPANT: -- I want it
19 to be --

20 (Off microphone discussion)

21 FEMALE PARTICIPANT: I don't want
22 it to search engine optimize.

1 CHAIR MILLER: I think --

2 (Off microphone discussion)

3 MEMBER ALBERTI: I don't know if
4 this would help you ma'am --

5 CHAIR MILLER: -- your name.

6 MEMBER ALBERTI: -- but for someone
7 to get your information they'd actually have
8 to know that there's a transcript out there.

9 FEMALE PARTICIPANT: No, all they
10 would need to know is Google my full name,
11 because --

12 MEMBER ALBERTI: Right, but they'd
13 have to know that the transcript was out there
14 to get your full name.

15 MR. JONES: Either we, at this
16 point --

17 MEMBER SILVERSTEIN: You are not.

18 FEMALE PARTICIPANT: Clearly --

19 MR. JONES: -- either she is
20 comfortable revealing that information with
21 her understanding of the consequences, or we
22 can't accept it. It's just one or the other.

1 CHAIR MILLER: I think that's, I
2 don't know any authority really, for --

3 MEMBER SILVERSTEIN: You can't

4 CHAIR MILLER: -- allowing you not
5 to provide your name at least. And then if
6 you've all ready at least provided where the
7 --

8 FEMALE PARTICIPANT: I said I was
9 fine with providing my name, but I want it
10 redacted in the actual, on the --

11 CHAIR MILLER: You can't do that.

12 MEMBER SILVERSTEIN: Can not, the
13 Open Meetings Act under which we operate would
14 not --

15 MR. JONES: Wouldn't allow it.

16 FEMALE PARTICIPANT: I was told in
17 a communication from ABRA --

18 CHAIR MILLER: Okay, what?

19 FEMALE PARTICIPANT: -- I was
20 allowed to, per Mr. Hager (phonetic) --

21 (Off microphone discussion)

22 CHAIR MILLER: Do you have a letter

1 you want to show --

2 FEMALE PARTICIPANT: Yes.

3 CHAIR MILLER: -- the Board?

4 MEMBER ALBERTI: The point is that
5 this is a public hearing. Someone sitting in
6 the audience would be able to hear your
7 testimony, hear your name, take down all of
8 that information, so the protections you're
9 asking for are nonsensical.

10 (Off microphone discussion)

11 MEMBER ALBERTI: Let's just move
12 on.

13 CHAIR MILLER: No I want to read
14 the letter. See what she's talking about some
15 letter from ABRA about this.

16 FEMALE PARTICIPANT: Yes.

17 MEMBER ALBERTI: I don't care. If
18 they gave her bad advice it's on them. It's
19 not on me.

20 MR. KLINE: Excuse me, at the risk
21 of merely being a potted plant, may I see the
22 letter that's being presented to the Board?

1 CHAIR MILLER: Do you have another
2 copy for the opposing counsel?

3 MEMBER SILVERSTEIN: In your dreams
4 you're a potted plant Mr. Klein.

5 FEMALE PARTICIPANT: It says ABRA
6 is able to receive complaints anonymously and
7 can protect the identity of the complainant
8 through redactions made on the investigative
9 report, and omit any identifying information
10 in subsequent enforcement proceedings to
11 include not calling the complainant as a
12 witness in the matter.

13 However, if you call this witness,
14 you'll be asked to provide your name and
15 possibly your home address. It should be
16 noted that the hearing transcript, in addition
17 to the ABC Board's order, would be posted to
18 the ABRA's website, and would be a text
19 searchable document. And then my concern is
20 that it's a text searchable --

21 CHAIR MILLER: Can I see what you
22 just read, please? Oh, it's on the computer?

1 MR. KLINE: That relates to a
2 complaint. We're not at a complaint stage,
3 we're in a hearing.

4 CHAIR MILLER: Oh, is that a
5 complaint? Okay.

6 FEMALE PARTICIPANT: Well, I mean
7 I don't know. I assume that it's means --

8 (Off microphone discussion)

9 CHAIR MILLER: You have to talk on
10 the microphone actually. Sorry.

11 MR. KLINE: With all due respect,
12 this is not 60 Minutes.

13 CHAIR MILLER: Okay.

14 MEMBER ALBERTI: I wish it was.
15 We'd be out of here by now.

16 CHAIR MILLER: Wait a second.

17 MEMBER ALBERTI: I'm sorry. I
18 couldn't help it.

19 MR. KLINE: I just put him up
20 there. He just couldn't help it.

21 MR. JONES: Madam Chair.

22 CHAIR MILLER: You didn't give me

1 anything that would suggest --

2 MEMBER ALBERTI: I think Mr. Jones
3 has a suggestion.

4 CHAIR MILLER: Yes Mr. Jones.

5 MR. JONES: I would like to suggest
6 that we allow the witness to testify under the
7 stipulations that she noted, with the
8 understanding that the Board has the ability
9 to give it the weight that it deserves, giving
10 her inability to locate or identify her exact
11 living residence and therefore we would not be
12 able to confirm that she is really in the
13 vicinity of the noted establishment.

14 CHAIR MILLER: I know.

15 FEMALE PARTICIPANT: It was
16 notarized.

17 MEMBER SILVERSTEIN: First of --

18 MEMBER ALBERTI: Actually I think
19 --

20 MEMBER SILVERSTEIN: First of all.
21 Mr. --

22 FEMALE PARTICIPANT: Just five

1 minutes.

2 MEMBER SILVERSTEIN: Mr. Hagar's
3 response to you was not on point to what you
4 were asking. He said that we are, and in fact
5 we are, willing to accept anonymous complaints
6 on our noise line, on other things. But not
7 in a disciplinary, or a licensing, hearing.
8 He did not state that in there.

9 FEMALE PARTICIPANT: Yes, I
10 understand, but I also --

11 MEMBER SILVERSTEIN: These folks
12 have the right to confront their accuser, and
13 to know who the accuser is. And the Open
14 Meetings Act does not give us the authority to
15 shield from the public who is saying what.

16 It's sunlight. There are parts of
17 that law that are a royal pain in the neck to
18 us.

19 FEMALE PARTICIPANT: I understand.
20 That is fine, and I am okay with it being in
21 like, paper documents that are FOIA-able, but
22 I don't --

1 CHAIR MILLER: Okay, that's not the
2 way it works.

3 FEMALE PARTICIPANT: -- for my
4 personal safety though --

5 CHAIR MILLER: I don't understand
6 your personal safety, because you're a
7 teacher?

8 FEMALE PARTICIPANT: Yes.

9 CHAIR MILLER: Okay. Anybody can
10 come in here then and say they want to be
11 anonymous because of their personal safety and
12 --

13 FEMALE PARTICIPANT: Well we would
14 like to actually --

15 MALE PARTICIPANT: We just can't
16 legally do it.

17 CHAIR MILLER: I'm, I've, but --

18 MEMBER ALBERTI: Yes, okay go
19 ahead. ***6:42:20.

20 CHAIR MILLER: I would go so far as
21 your not having to give your exact address,
22 because as long as the parties here know you

1 live next door to what's her name, then we
2 know what you're talking about.

3 But if you're not going to give
4 your name, I don't think that, you're
5 testifying against this establishment and
6 that's a different position than being a
7 complainant.

8 And I don't see that we should make
9 that exception for you. We can not control,
10 we can not redact the transcript. So you have
11 to make a choice, you know. Oh, I know, I
12 mean, I wasn't --

13 (Crosstalk)

14 MALE PARTICIPANT: Oh no, I agree
15 entirely.

16 MEMBER ALBERTI: Absolutely.

17 CHAIR MILLER: You have to make a
18 choice.

19 MEMBER SILVERSTEIN: No choice.

20 CHAIR MILLER: Do you want to put
21 your name out on, for the record, or just, you
22 know, they have other witnesses and, you know,

1 that's your choice.

2 MR. SIGMON: Name with no address?

3 MR. KLINE: But we object to that.

4 MR. BANERJEE: Object to what?

5 MR. KLINE: He proffered name with
6 no address and I said that we would object to
7 that.

8 CHAIR MILLER: We need name, and
9 location. But is the Board members
10 comfortable with that?

11 MEMBER ALBERTI: Just location.

12 CHAIR MILLER: Location? Next to

13 --

14 MEMBER ALBERTI: I mean, which is

15 --

16 FEMALE PARTICIPANT: Can I give you
17 just --

18 MEMBER ALBERTI: -- clearly
19 identifiable to you --

20 FEMALE PARTICIPANT: -- an
21 location?

22 CHAIR MILLER: What?

1 FEMALE PARTICIPANT: Can I give you
2 just my location?

3 CHAIR MILLER: No you have to give
4 your name or else you can't testify. So,
5 that's what the Board is saying.

6 MEMBER SHORT: This a public
7 hearing and could cause this Board some
8 problems if this precedence is set with you.
9 It can't be.

10 FEMALE PARTICIPANT: Okay, well
11 would the letter be admitted, or the, like,
12 landlord letter? His name's on it. That's
13 associated with my letter?

14 MR. KLINE: I haven't seen it. I
15 don't even know what we're talking about.

16 CHAIR MILLER: I don't know what
17 letter you're referring to, so if it's in
18 Protestant's exhibits we'll get to that, and
19 look at it.

20 I don't know what letter you're
21 talking about. You have to work with your
22 representative.

1 (Off microphone discussion)

2 MR. JONES: She doesn't want to
3 give her name right?

4 MEMBER SILVERSTEIN: You've got 30
5 seconds.

6 CHAIR MILLER: I don't know. You
7 know what --

8 (Crosstalk)

9 MR. SIGMON: I'm nervous about --

10 MEMBER SILVERSTEIN: Get her name
11 down.

12 MR. SIGMON: We don't have much
13 time.

14 (Crosstalk)

15 MALE PARTICIPANT: Civic duty.

16 FEMALE PARTICIPANT: Yes, I guess

17 --

18 (Off microphone discussion)

19 MR. SIGMON: I will --

20 MEMBER ALBERTI: Two choices --

21 FEMALE PARTICIPANT: -- the letter

22 --

1 (Crosstalk)

2 MR. SIGMON: I have to dismiss you
3 as, off the stand. So Madam Chair, we'll move
4 on and I'd like to call myself to the stand.

5 CHAIR MILLER: Okay.

6 MR. SIGMON: Does that happen? Is
7 this strange?

8 CHAIR MILLER: Yes it happens.

9 MR. SIGMON: Okay.

10 MEMBER ALBERTI: Sure.

11 MR. SIGMON: Okay.

12 CHAIR MILLER: Are going to have
13 your colleague ask you questions or are you --

14 MR. SIGMON: Yes, thank you.

15 CHAIR MILLER: Okay.

16 (Off microphone discussion)

17 CHAIR MILLER: Okay. Do you swear
18 to tell the truth, the whole truth, and
19 nothing but the truth?

20 MR. SIGMON: I do.

21 CHAIR MILLER: Okay.

22 MR. BANERJEE: Okay. Mr. Sigmon

1 I'd like to ask you about a couple of exhibits
2 and have them put into evidence please? The
3 first one is Item S. Is it okay if I read a
4 letter in support and review of ongoing issues
5 from concerned neighbors at 2119 Vermont Ave.?

6 (Off microphone comments)

7 MR. BANERJEE: Does the Board have
8 the exhibit?

9 MEMBER ALBERTI: I just want to
10 give them piece of advice. You could read it.
11 You can take up your own time, but if you want
12 to point to things in the letter and ask
13 questions about, maybe that might be
14 worthwhile.

15 But if you want to read that
16 letter, you're only taking up your time.

17 ***6:45:45 --

18 CHAIR MILLER: It must be admitted.

19 MEMBER ALBERTI: If we admit it.
20 If we admit it I can read it for myself.

21 MR. BANERJEE: Okay.

22 CHAIR MILLER: That's what he wants

1 to do. He wants to move it into evidence.

2 MEMBER ALBERTI: All right. But he
3 wanted to read it.

4 CHAIR MILLER: You want to --

5 MR. BANERJEE: I'm not going to
6 read it.

7 MEMBER ALBERTI: Okay, okay.

8 MR. BANERJEE: You can read it
9 later. I don't want to waste anybody's time.

10 CHAIR MILLER: Hey I'm having
11 trouble finding it. It's S?

12 MR. KLINE: I'm having trouble
13 finding it.

14 CHAIR MILLER: Oh I've got it,
15 okay. It, what?

16 MR. KLINE: I don't know that I
17 have it. I mean, I don't have the letters
18 that we're referring to on any of the exhibits
19 that I have.

20 CHAIR MILLER: It's a --

21 MEMBER ALBERTI: It's Exhibit S?

22 CHAIR MILLER: Yes.

1 MR. BANERJEE: Exhibit S, yes.

2 MR. SIGMON: Yes.

3 MEMBER ALBERTI: Are they not
4 labeled Exhibit S?

5 MR. KLINE: I don't have anything
6 with labels. I don't think I was given those
7 labels. So I have no idea.

8 MR. SIGMON: Everything you were
9 given in emails this morning was labeled, but
10 I understand if you weren't able to get to
11 your printer.

12 MR. KLINE: I was here, I think,
13 when I got that email.

14 MEMBER ALBERTI: But do you have an
15 extra packet to give him?

16 MR. SIGMON: I gave a lot out. I
17 have this. I'd rather not start with S
18 because it's, it'll get --

19 MEMBER ALBERTI: Give that to Mr.
20 Kline.

21 CHAIR MILLER: It's a complaint.

22 MR. SIGMON: Exhibit P is the ANC

1 1B Letter of Continued Support for Neighbor
2 Protest.

3 CHAIR MILLER: Why are you going
4 there now?

5 MR. SIGMON: I thought we were done
6 with this one.

7 CHAIR MILLER: Did you want it
8 admitted?

9 MR. SIGMON: Yes, I would like it
10 admitted please.

11 CHAIR MILLER: No, I didn't admit
12 it yet.

13 MR. KLINE: Objection. The person
14 --

15 CHAIR MILLER: Why do you object?

16 MR. KLINE: -- who signed the
17 letter is not identified. Did you just give
18 me a stack?

19 MR. SIGMON: That was us. Madam
20 Chair, if you'd mind?

21 CHAIR MILLER: No, go ahead.

22 MR. SIGMON: We're just trying to

1 figure out how to get our evidence --

2 CHAIR MILLER: I know.

3 MR. SIGMON: -- submitted, so --

4 CHAIR MILLER: But --

5 MR. SIGMON: -- if you could help
6 us that's all we're --

7 CHAIR MILLER: Okay, you don't have
8 to, you can just do it if you want. You could
9 just say why you want to admit it into
10 evidence. You can say what it is and why you
11 want to admit it.

12 MR. SIGMON: Okay. Can I do it
13 from here --

14 CHAIR MILLER: No.

15 MR. SIGMON: -- or from there, or
16 does it matter?

17 CHAIR MILLER: Yes. You have it in
18 front of you?

19 MR. SIGMON: Yes.

20 CHAIR MILLER: Okay. You can do it
21 right from there.

22 MR. SIGMON: So if we start with S,

1 which I don't think we need to, but S is the
2 one that has already been objected to because
3 it was the letter from the unnamed neighbor.

4 But it is notarized, and I would
5 like to at least acknowledge that it is part
6 of our record.

7 CHAIR MILLER: Okay, S has a
8 signature on it. It's just not all that
9 legible. Correct? My copy does, so --

10 MR. SIGMON: It's the same one.

11 CHAIR MILLER: Okay. It's a letter
12 to me as Chairman of the ABRA about a
13 complaint. So it's in our public record, so
14 I think we can take judicial notice of this.

15 MR. SIGMON: And you can choose
16 whatever weight you want to give it, right?

17 CHAIR MILLER: Right.

18 MR. KLINE: Madam Chair --

19 CHAIR MILLER: I don't see the
20 problem with that. What?

21 MR. KLINE: Madam Chair, two
22 points. One is, if it's a complaint letter,

1 my understanding is that those are kept
2 anonymous, so it's not in your public record.
3 I think it's in your private record. Second
4 is --

5 CHAIR MILLER: Okay. I'll back up
6 some.

7 MR. KLINE: -- is the address is
8 not given, and the person who signed it is
9 identified as F.L. It's hearsay, the
10 exception to hearsay which, you know, which
11 the Board can use, is if you can identify who
12 it is.

13 I mean that's basic. You have to
14 know who it's from so the Board can judge its
15 credibility. And F.L. with a thousand block
16 street address is not properly identified.

17 CHAIR MILLER: Okay. It's a
18 document that's in our records. I'm not sure
19 of the distinction about public or private.

20 MR. KLINE: My understanding is
21 that complaints are kept confidential. So it
22 would be in your private record, not your

1 public record. But I would defer to the
2 Board's --

3 CHAIR MILLER: I don't, are you
4 saying that the Board can't accept it as an
5 exhibit?

6 MR. KLINE: I would say that if the
7 person who authored the letter is not
8 identified, then I could submit letters from
9 anybody, with just initials. And say here,
10 accept this as testimony.

11 MEMBER ALBERTI: Madam Chair.

12 CHAIR MILLER: That's not proper.

13 MEMBER ALBERTI: Madam Chair, Mr.
14 Kline's, I know Mr. Kline's objections. I
15 understand them. But with the caveat that he
16 has objected, and he has a very, very relevant
17 point in his objection, I think that, but I've
18 heard it, and so I think we should take this
19 and give it the weight it is worth with the
20 caveat that we have this objection.

21 CHAIR MILLER: Okay. I agree. I
22 think that we should accept it. It's in our

1 records, and the signature, et cetera. It's
2 a different requirement here. Okay, let's
3 move on.

4 MR. BANERJEE: Thank you. I'd like
5 to --

6 CHAIR MILLER: It's accepted, and
7 we're going to take a judicial notice of this.
8 Okay.

9 MEMBER ALBERTI: Not judicial
10 notice. We're going to accept it --

11 CHAIR MILLER: No? You want to
12 accept it as an exhibit?

13 MEMBER ALBERTI: --it's exhibit.
14 I don't think it's in a public record. It
15 wasn't on our Board agenda, so I don't think
16 it's in our public record. So I think --

17 CHAIR MILLER: Okay. So we'll
18 accept it as an exhibit, and give it the
19 weight that it deserves, given the concerns
20 we've heard. Okay, so that's Protestant's
21 Exhibit S, is admitted. Okay.

22 MR. SIGMON: I'd like to move

1 submission of Exhibit R which is, if you'll
2 allow me to explain?

3 CHAIR MILLER: Yes.

4 MR. SIGMON: Okay, which is a very
5 short letter that was signed by neighbors on
6 the 2000 block of Vermont last night, the
7 neighbors who are not present here today, to
8 express their continued support of this
9 protest, and their acknowledgment that despite
10 efforts, many problems continue.

11 CHAIR MILLER: Did you personally
12 witness these signatures?

13 MR. SIGMON: Yes.

14 CHAIR MILLER: Okay. Do you have
15 any objection?

16 MR. KLINE: I'd object on the
17 grounds of relevance. This isn't a popularity
18 contest. There isn't anything substantive
19 here.

20 MR. SIGMON: I think the question,
21 if you don't mind Madam Chair, is about
22 whether or not these modifications that we've

1 been talking about have had an impact.

2 And based on last night's
3 signatures, we've heard that people still have
4 concerns with the neighborliness of this
5 neighbor.

6 CHAIR MILLER: Okay. I --

7 MR. KLINE: I think that's the
8 standard on the ABC Statute. The standard
9 under the ABC Statute is the appropriateness
10 given concerns related to peace, order, and
11 quiet.

12 The fact that people signed a
13 petition saying they support the protest is
14 just simply not relevant.

15 CHAIR MILLER: Okay. There's some
16 information in there that goes to noise, which
17 is the subject of the protest. So I think
18 it's relevant, and like, and again think it's
19 just a question of the weight we give it, as
20 it is just a petition.

21 MR. KLINE: I will also note that
22 this was not listed on the PIF. Apparently I

1 was given this this morning. In fact, I was
2 given it after I had all ready left for the
3 hearing.

4 So I'm seeing this for the first
5 time ten minutes ago. Not that I need to see
6 it, but it was supposed to be listed on the
7 PIF.

8 CHAIR MILLER: That's true. Are
9 you prejudiced by it?

10 MR. SIGMON: It was listed on the
11 updated PIF sent this morning.

12 CHAIR MILLER: It was?

13 MR. SIGMON: Which is the best I
14 can do.

15 CHAIR MILLER: Oh no, okay so --

16 MR. KLINE: But I'm here.

17 CHAIR MILLER: Okay, but the --

18 MR. SIGMON: The best we can do
19 with something from last night, if you don't
20 mind.

21 CHAIR MILLER: Is there a reason
22 this couldn't have been done before?

1 MR. SIGMON: Because it was last
2 night. It was just --

3 CHAIR MILLER: Are you really
4 prejudiced by it?

5 MR. SIGMON: We didn't know who was
6 going to show up today. We had to --

7 MALE PARTICIPANT: Can we just move
8 on?

9 MR. SIGMON: We had to do the best
10 with what we could.

11 (Off microphone discussion)

12 MEMBER ALBERTI: She's got
13 employees waiting. You're right. He has
14 employees waiting. I think we should break.
15 She's, because they need to know whether they
16 need to go home or not.

17 CHAIR MILLER: Oh.

18 MEMBER ALBERTI: She's got
19 employees waiting.

20 CHAIR MILLER: Okay. Oh yes. It's
21 ten of seven. We have, okay.

22 MEMBER SILVERSTEIN: Yes.

1 CHAIR MILLER: We need to take a
2 quick break to discuss some internal issues.
3 So --

4 MR. JONES: Let's do that.

5 CHAIR MILLER: Do you want
6 ***6:53:15 in ten minutes?

7 MEMBER ALBERTI: Hopefully less
8 than that.

9 CHAIR MILLER: Five, five, yes
10 five. Okay? So we'll come back --

11 MR. JONES: Just to be clear, was
12 there a outstanding issue --

13 CHAIR MILLER: Yes.

14 MR. JONES: -- that, can we just
15 finish? Close out that outstanding issue so
16 I don't have to pick this up again when we
17 come back?

18 CHAIR MILLER: Okay, the issue is
19 that this petition was submitted late, and the
20 standard that we've articulated is, you know,
21 whether they could've submitted it earlier,
22 and whether there's prejudice to the opposing

1 party by accepting it.

2 So, and then we'll, I was about to
3 admit it and Mr. Kline said oh I just received
4 it. So is there some big prejudice, some
5 prejudice?

6 MR. KLINE: Not other than I don't
7 even have printed names, so then I can't even
8 identify two thirds --

9 CHAIR MILLER: Okay.

10 MR. KLINE: -- of what these
11 people's names are.

12 CHAIR MILLER: Okay. So I don't
13 see the difference of whether, if this had
14 been submitted earlier. Either way you can't,
15 you don't have an opportunity to cross
16 examine.

17 I think that there's no change in
18 prejudice, so I would suggest that we, I would
19 admit it, and again it would be with the
20 caveat of what weight we give it given that we
21 can't read the names, and they are not here to
22 be cross examined.

1 Okay. So that is R, admitted.

2 Okay, so we're going to take a five minute
3 break and deal with our internal matters, and
4 then come back and finish up here. Okay?

5 (Whereupon, the foregoing matter
6 went off the record at 6:54 p.m. and went back
7 on the record at 7:01 p.m.)

8 CHAIR MILLER: Okay, we are ready
9 to -- you can go to your table if you want.
10 Yes.

11 MR. SIGMON: Wherever I'm more
12 comfortable?

13 CHAIR MILLER: Because you're
14 acting, actually, as the attorney now to move
15 the motions in. And you are under oath no
16 matter where you are.

17 MR. SIGMON: Okay.

18 CHAIR MILLER: So I just want to
19 say this in general, that the rules of
20 evidence are a little bit more relaxed in an
21 administrative proceeding than they are in a
22 court.

1 You know, we look to them for
2 guidance, but basically we'll reject evidence
3 if it's not relevant or if it's redundant or
4 prejudicial because of the lateness or
5 whatever to the other side.

6 So that's pretty general. So do
7 you have any objections to any of these
8 exhibits? Are you moving all the exhibits in?

9 MR. SIGMON: I'm not sure --

10 CHAIR MILLER: I mean, you've
11 already done L, R, and S but I --

12 MR. SIGMON: I'm not sure that it's
13 worth our time on anything up from L because
14 they were about building context for this
15 protest.

16 CHAIR MILLER: Okay, so --

17 MR. SIGMON: So you have them
18 already in your files from last week, and I
19 hope that's useful enough. But I think our
20 time is better spent focused on the bottom
21 half.

22 CHAIR MILLER: Well, okay.

1 MR. SIGMON: Starting at M.

2 CHAIR MILLER: It's up to you what
3 exhibits you want to move in.

4 MR. SIGMON: I understand.

5 CHAIR MILLER: Okay. And I don't
6 know that, Mr. Kline, are you going to argue
7 about all of these, or what?

8 MR. KLINE: I'm okay with H.

9 CHAIR MILLER: H.

10 MEMBER ALBERTI: Okay with H.

11 CHAIR MILLER: H is --

12 MR. KLINE: The rest of it is just,
13 it's --

14 CHAIR MILLER: Okay he said, I
15 thought you were going the other way down,
16 that you were not moving --

17 MR. SIGMON: I don't mind accepting
18 H if we're okay with it.

19 CHAIR MILLER: Okay. H is in our
20 records, the investigative --

21 MALE PARTICIPANT: Yes, H is in the
22 investigative history.

1 CHAIR MILLER: Right, we can take
2 judicial notice of that. But T was out. We
3 said that that --

4 MR. SIGMON: Well, it was
5 previously tabled, right?

6 CHAIR MILLER: Yes, that that was
7 not admissible.

8 MR. SIGMON: Could I re-move it and
9 explain it from my position? Before we were
10 trying to talk about it from a different
11 position.

12 CHAIR MILLER: We said that
13 negotiations to settlement agreements are not
14 admissible.

15 MR. SIGMON: That's not what T is.

16 CHAIR MILLER: Oh.

17 MR. SIGMON: That was L that we
18 talked about. L is out.

19 CHAIR MILLER: Oh, okay. Thank
20 you. T okay, yes.

21 MR. SIGMON: So T --

22 CHAIR MILLER: We didn't finish T,

1 right.

2 MR. SIGMON: If we can start there,
3 Madam Chair?

4 CHAIR MILLER: Okay.

5 MR. SIGMON: T is a settlement
6 agreement that has been decided, has been
7 decided that we learned about just yesterday.
8 So I apologize if no one's seen it before.

9 But in an email from ABRA that I
10 have, also in Exhibit M1, which I would rather
11 just, I don't know which way it makes no sense
12 to go, but I want to move the content of the
13 email so you understand why it's germane to
14 the issue.

15 CHAIR MILLER: M1 is related to T?

16 MR. SIGMON: Yes.

17 MEMBER ALBERTI: Well can you just
18 explain to us why it's germane? It would be
19 easier.

20 MR. SIGMON: Well, it's one
21 sentence.

22 MEMBER ALBERTI: All right.

1 MR. SIGMON: So the email from Mr.
2 Hager, Public Information Officer with ABRA
3 says please find attached, this is yesterday,
4 the settlement agreement that is currently
5 incorporated into the terms of the ABC License
6 that is operating, that's in the present
7 tense, at 900 Florida Avenue Northwest, which
8 means to me that despite the fact that Exhibit
9 T does say that it was originally made with a
10 previous bar owner, it sounds like it's
11 attached to this license, which is why we
12 believe it's relevant.

13 CHAIR MILLER: Okay.

14 MEMBER ALBERTI: Madam Chair, I
15 will tell you that I had a question as to
16 whether, and I didn't know when to ask this
17 question of staff because, you know, it's
18 late. But if this license was transferred,
19 was it transferred from Bella to the current
20 Licensee, then this voluntary is still in
21 effect. I don't know.

22 And I was waiting to find out. If

1 it's not in effect, if it's not in effect, do
2 you want it in evidence?

3 MR. SIGMON: I mean, I think it's
4 useful in terms of history of similar problems
5 on the block, but it's not as strong
6 obviously.

7 MEMBER ALBERTI: Okay, because if
8 it is in effect, it doesn't matter because
9 we'll take administrative note of it. I'll
10 learn whether it's still in effect, and then
11 I can take administrative notice. But if it
12 isn't, then I'm not sure what the relevance
13 is.

14 MR. SIGMON: Well, I understand
15 your --

16 CHAIR MILLER: Does this --

17 MR. KLINE: We'll stipulate that
18 it's in effect and it's part of the record.

19 MEMBER ALBERTI: Okay, great --

20 CHAIR MILLER: Okay.

21 MEMBER ALBERTI: -- let's move on,
22 thank you.

1 CHAIR MILLER: Then it's admitted.

2 MR. SIGMON: That was T.

3 CHAIR MILLER: That is what?

4 MR. SIGMON: That was T.

5 CHAIR MILLER: T, so okay. I'm
6 going to admit it because it's easier to just
7 say that T is in. Okay.

8 MR. SIGMON: We can work upwards
9 from where we started before. I would like to
10 go to Q.

11 CHAIR MILLER: Okay.

12 MR. SIGMON: Having a hard time
13 finding Q, but Q is a letter --

14 CHAIR MILLER: Oh Q?

15 MR. SIGMON: If it's stapled,
16 you're in better luck than I.

17 CHAIR MILLER: I have it here.

18 MR. SIGMON: It's a statement from
19 the property owner at 2019 Vermont in
20 solidarity with myself, my voice and the
21 neighbor's voices.

22 CHAIR MILLER: Okay.

1 MR. KLINE: Madam Chair, this does
2 not add anything to the record in terms of
3 prohibitive value. This is a cheerleading
4 letter that says yeay we're with you, which is
5 completely irrelevant to what we're deciding
6 here today.

7 It doesn't add one single fact to
8 the case. Having said that, if the Board
9 really wants it, you know, I don't have any
10 great objection. I don't think it means
11 anything one way or the other.

12 CHAIR MILLER: Okay. I think we
13 should admit it and give it the weight it's
14 due.

15 MR. SIGMON: Thank you, Madam
16 Chair.

17 CHAIR MILLER: Okay.

18 (Off record comments)

19 MR. SIGMON: P I think I heard an
20 objection to. But if we can turn back to P to
21 make sure that we're done with that item. P
22 is a letter that should already be on your

1 records, so maybe it doesn't matter.

2 CHAIR MILLER: Okay.

3 MR. SIGMON: But it's a letter from
4 1B. And the challenge from our vantage point
5 is that we hoped that they would help us and
6 they dropped the ball several times, as you
7 know. So their solidarity with us is
8 meaningful.

9 MR. KLINE: Madam Chair, this
10 letter is untimely. It's an effort to
11 bootstrap the position of the ANC into this
12 proceeding. If they were going to protest,
13 they could have done so. I think they may
14 have been dismissed.

15 If they wanted to comment, they
16 could have done so seven days before the
17 hearing, which was their right. They did not.
18 I would ask that it be stricken.

19 CHAIR MILLER: I think we should
20 let it in.

21 MR. SIGMON: For the record, Madam
22 Chair, this was sent to you seven days in

1 advance.

2 MR. JONES: Give it the weight.

3 MR. SIGMON: I just didn't receive
4 it until a few days ago.

5 MEMBER ALBERTI: That's not the
6 point Mr. Kline's making.

7 CHAIR MILLER: They sent the letter
8 to, they did send the letter to us. It's
9 dated March 26th, 2014.

10 MEMBER ALBERTI: But it wasn't in
11 time to do a protest.

12 CHAIR MILLER: I know.

13 MEMBER ALBERTI: And Mr. Kline's
14 arguing that it's, like, their way of getting
15 their voice into the protest even though they
16 didn't file a timely protest. Having said
17 that, it's in our record. I don't see why we
18 shouldn't accept it.

19 CHAIR MILLER: Okay. I think we
20 should accept it as a letter from the ANC.
21 It's not a protest, but --

22 MEMBER ALBERTI: It's in our

1 record.

2 CHAIR MILLER: Yes. They sent it.
3 It just wasn't attached to the PIF. Okay, all
4 right. It's --

5 MALE PARTICIPANT: It's not. It's
6 not part of the --

7 (Crosstalk)

8 CHAIR MILLER: I don't think it's
9 prejudicial in that it's relevant. So okay,
10 it's in. Next?

11 MR. KLINE: It's only prejudicial
12 to the Applicant if the Board decides it's
13 going to give any weight to it.

14 CHAIR MILLER: Okay.

15 MR. KLINE: If the Board's not
16 giving any weight to it, it's not prejudicial.

17 MEMBER ALBERTI: And you can wait
18 to see whether you're going to appeal this.

19 CHAIR MILLER: When I say
20 prejudicial, I want to clarify again. I mean
21 --

22 MR. KLINE: Well, because the --

1 CHAIR MILLER: -- that it was a
2 week that it wasn't in the PIF when the PIF
3 was filed, that that makes it prejudicial, not
4 that the substance of it, per se, is
5 prejudicial. I mean, if it's opposing you,
6 you would say it's prejudicial, but that's not
7 what I mean.

8 MR. KLINE: Well --

9 CHAIR MILLER: The fact that you
10 had a week --

11 MEMBER SILVERSTEIN: How much more
12 stuff do we have, gentlemen?

13 MR. SIGMON: There's only two.

14 CHAIR MILLER: Good, good, good.

15 MR. KLINE: The Board's ruled,
16 let's move on.

17 CHAIR MILLER: Okay, let's move on,
18 right. It's 7:10.

19 MR. SIGMON: I would like to note
20 that we've omitted O because that's your own
21 report. So we didn't feel like we needed to
22 submit it.

1 CHAIR MILLER: Okay.

2 MR. SIGMON: Okay, very good.

3 We'll go to N1. The reason why it has a 1 is
4 because we submitted an N last week, and N1 is
5 a slightly modified version because there was
6 some new activity. So that's why it has a
7 different number than what you saw last week.

8 CHAIR MILLER: What do you mean?
9 When you submitted the PIF last week?

10 MR. SIGMON: Yes.

11 CHAIR MILLER: Okay.

12 MR. SIGMON: There was an N.

13 CHAIR MILLER: And this is an
14 updated?

15 MR. SIGMON: This is an updated N,
16 which is why it has a different number.

17 MR. KLINE: Wait, excuse me. What
18 was the one before this? It was indicated
19 that it didn't need to be submitted?

20 MEMBER ALBERTI: It was our own
21 report.

22 (Crosstalk)

1 MR. KLINE: The investigative
2 report?

3 MR. SIGMON: The one that came up
4 last week.

5 MR. KLINE: Oh, okay fine. I just
6 want to make sure I'm tracking.

7 MR. SIGMON: So N1 is a log of
8 complaints that you should already probably
9 have on file. So maybe it's not relevant, but
10 this is from the 2000 block of Vermont that --
11 a continuous log from January straight on
12 until last night of noise.

13 MR. KLINE: Objection. There isn't
14 any indication of who this is from, where they
15 live, or anything else.

16 MEMBER ALBERTI: Yes, I mean, I
17 have to agree with Mr. Kline on this one.

18 MR. KLINE: And if the Board
19 accepts this, it's a precedent for people to
20 call and complain to your hotline as often as
21 they can because they just come before you and
22 then introduce it, whether there's any

1 legitimacy to the claim or not.

2 MEMBER ALBERTI: Madam Chair, I
3 will say that look, all these calls to the
4 ABRA hotline are a part of our record. So we
5 can take judicial notice of any calls to ABRA
6 hotline with respect to Climax. We can always
7 look at our record, all right?

8 MR. SIGMON: That would work for
9 us, sir.

10 MEMBER ALBERTI: So I don't think
11 there's any prejudice in not accepting this.
12 I would reject this.

13 MR. KLINE: Mr. Alberti, it's late
14 and I don't want to belabor it, but I think
15 it's an important point. Your records, in
16 terms of application records and what have
17 you, are your records.

18 This is a record of this
19 proceeding. So if we go to the court of
20 appeals, which --

21 MEMBER ALBERTI: Oh, I understand
22 what you're saying. I get what you're saying,

1 Mr. Kline.

2 MR. KLINE: We're talking about
3 something completely different.

4 CHAIR MILLER: My question is yes,
5 I can't tell who prepared this or anything.
6 Whose is this?

7 MEMBER ALBERTI: Yes, I wouldn't --

8 MR. SIGMON: It's your call whether

9 --

10 MEMBER ALBERTI: I'll be
11 recommending not accepting this one.

12 CHAIR MILLER: Who did prepare
13 this?

14 MEMBER ALBERTI: Excel.

15 CHAIR MILLER: Yes, okay. So you
16 all think it's unreliable?

17 MEMBER SILVERSTEIN: Yes.

18 CHAIR MILLER: Okay, let's --

19 MR. JONES: Unidentifiable.

20 CHAIR MILLER: Yes, yes. Okay, so
21 we'll say no to that one.

22 MR. SIGMON: And the previous, or

1 the one above it is M1, which includes some
2 emails that have FL redacted, but lots of
3 other emails with Protestants that are named,
4 with email addresses and everything else, and
5 communications specifically with ABRA about
6 this issue and ongoing challenges including
7 that introduction yesterday of what we
8 understood as a settlement agreement that's
9 still attached to this business, which is the
10 last email that's at the end of the chain.

11 MR. KLINE: Well we've already
12 stipulated that the settlement agreement was
13 part of this license. So I think we're done
14 with that issue.

15 So we don't need it for that
16 purpose. The rest of it, and we have emails
17 to Matt LeGrant, we have emails with someone's
18 name redacted, the reliability of which is
19 necessarily suspect.

20 I mean certainly, the rules on
21 hearsay are relaxed, but we at least have to
22 know who the people are.

1 CHAIR MILLER: Do we, in this case?
2 You know, I know when somebody's testifying,
3 we certainly have to know who they are. But
4 in these emails where it's redacted, they may
5 be relevant anyway.

6 MEMBER ALBERTI: Madam Chair, I
7 have to side with Mr. Kline on this because
8 the only email addresses we have are city
9 officials. And so we have no, I mean, I have
10 no idea who's making this complaint. I have
11 absolutely none. I mean, I can't even treat
12 it as hearsay because no one's even testifying
13 that person lives in the area.

14 CHAIR MILLER: Then we won't be
15 giving it very much weight. If we look at
16 these --

17 MEMBER ALBERTI: It's up to you.

18 CHAIR MILLER: -- okay, that's what
19 I would say on a quick look. If it's a
20 problem, then --

21 MR. KLINE: The author of the email
22 is redacted in every instance. If the Board

1 accepts this, boy do we have some emails for
2 you in the next case.

3 MEMBER ALBERTI: Thank you.

4 (Crosstalk)

5 MR. KLINE: They're all going to be
6 redacted.

7 MR. SIGMON: Madam Chair, if you
8 will.

9 CHAIR MILLER: Do you want to
10 address that?

11 MR. SIGMON: If you have all of
12 the, I mean, if any of these emails hit ABRA
13 email addresses, would it be correct to say
14 that it's already part of your record somehow?

15 CHAIR MILLER: They are in our
16 record, right, without the redactions.

17 MR. SIGMON: Right. So then can we
18 just acknowledge --

19 MEMBER ALBERTI: Well Mr. Kline
20 pointed out they're not part of the public
21 record.

22 MR. SIGMON: Okay. So is --

1 MR. KLINE: Of this case.

2 MEMBER ALBERTI: Yes, he just
3 corrected me earlier on they're not part of a
4 public record of this case. So we can't take
5 judicial notice because I'm not sure he would
6 have them. I'm not clear. I would have to
7 ask for legal advice, but I think Mr. Kline is
8 correct on his point.

9 CHAIR MILLER: Well I would say,
10 you know, it is late but when in doubt, I
11 usually like to admit it rather than exclude
12 it and then --

13 MEMBER ALBERTI: Fine. Let's just
14 admit it and move on.

15 CHAIR MILLER: Okay. And then --

16 MEMBER ALBERTI: Give it the weight
17 that it deserves.

18 CHAIR MILLER: -- give it the
19 weight that it deserves.

20 MEMBER ALBERTI: Our discussion's
21 on the record. Mr. Kline can use that.

22 MR. KLINE: Thank you.

1 CHAIR MILLER: Just yes, I don't
2 know that we'll rely on it, you know, when we
3 have the time to more closely look at it.
4 Okay. Is that it?

5 MR. SIGMON: Well, I have one last
6 one for the record, which I just really didn't
7 understand the process here. But I prepared
8 a three page statement that I was going to
9 read, but apparently I don't have time for it,
10 I don't want to do it. But I would like to
11 submit it as me. Can I do that now?

12 CHAIR MILLER: As your testimony?

13 MR. SIGMON: Yes. I thought that
14 --

15 CHAIR MILLER: Okay, let me ask
16 you, in this argument, okay, we're going back
17 and we're going to have the investigator. And
18 then at the end, you have closing argument.
19 Would that be your closing?

20 MR. SIGMON: Is that a better time
21 to do it?

22 CHAIR MILLER: If it's argument, it

1 is.

2 MEMBER ALBERTI: Is it testimony,
3 is it fact?

4 CHAIR MILLER: Yes, is it testimony
5 or argument? Yes, Mr. Jones?

6 MEMBER JONES: Yes, I'm just
7 trying, it's your testimony, yes?

8 MR. SIGMON: Yes.

9 MEMBER JONES: And you have an
10 opportunity to speak to your testimony here
11 live today, which would probably be a lot
12 more, will probably impact us a little bit
13 more than a written statement from you that
14 you're submitting.

15 So I'm not quite understanding why
16 you're driving, are you concerned about your
17 time, having the ability to speak to --

18 MR. SIGMON: Yes.

19 MEMBER JONES: Okay.

20 MR. SIGMON: Absolutely.

21 CHAIR MILLER: Okay, is this, let
22 me see this. If it's testimony evidence, Mr.

1 Kline then has an opportunity to cross examine
2 you.

3 MR. SIGMON: Of course.

4 CHAIR MILLER: Okay, so if that's
5 what it is, it's testimony. If you're going
6 to argue the facts that are already in
7 evidence at the end of the case, that's what
8 closing argument is and you can just wait and
9 do that. You don't get cross examined on
10 that. So we don't know what that is.

11 MEMBER JONES: And part of the
12 issue with a written statement that you're
13 submitting when you're here to testify, he
14 can't, he being the applicant's attorney,
15 can't cross examine a written statement that
16 you're submitting, which is why it would be
17 better served for you to actually testify
18 since you're here to do so.

19 MEMBER ALBERTI: Well I would --

20 MR. JONES: In my opinion.

21 MEMBER ALBERTI: I would say that
22 the gentleman is still under oath and still

1 available to be cross examined. If he wants
2 to give that to Mr. Kline --

3 MR. JONES: To me, I think that's,
4 well all right. It's fairly inefficient.

5 MEMBER ALBERTI: Yes, it is.

6 MR. SIGMON: Can I get a time
7 check? I mean, everybody wants to go home.

8 MR. JONES: Protestants have 11
9 minutes remaining. The Licensee has 35.

10 MR. SIGMON: I'll just submit this
11 later. Is that reasonable? Does that make
12 sense?

13 CHAIR MILLER: No, because he has
14 to cross examine you. Do you know what I was
15 saying about evidence? You know, is it new
16 other evidence than what's already been
17 testified to? Or is it just an argument about
18 why you should get whatever result you're
19 arguing for?

20 MR. SIGMON: It's my two year story
21 --

22 CHAIR MILLER: So it sounds like --

1 MR. SIGMON: -- on this project.

2 CHAIR MILLER: -- testimony.

3 MR. SIGMON: Yes.

4 CHAIR MILLER: Your two year story.

5 Okay.

6 MR. SIGMON: I defer to your better
7 judgement on what I should do.

8 CHAIR MILLER: Well I guess, no, if
9 you're --

10 MR. JONES: We can't provide you
11 legal counsel on what you should or shouldn't
12 do. We're just telling you what your options
13 are, just to make sure it's clear on the
14 record.

15 CHAIR MILLER: I mean, if it's
16 testimony, sounds like you need to testify.
17 Your two year story, if that's facts that the
18 Board is going to use to make a decision.

19 MR. SIGMON: So I will just --

20 CHAIR MILLER: On the noise.

21 (Crosstalk)

22 MEMBER SILVERSTEIN: Madam Chair?

1 My understanding was if you were going to take
2 in things and everything else would be moved
3 so that we would not abuse our staff by making
4 them stay here longer than they were to stay.

5 CHAIR MILLER: Okay. I thought
6 that all we were doing was motions. I mean,
7 the other thing is we can pick up with you
8 when we come back.

9 CHAIR MILLER: Why don't we just
10 let him do his statement. That's where we
11 were, let's move.

12 MR. SIGMON: Okay. I will make it
13 a brief statement, and the rest will be for
14 the record.

15 MR. JONES: Sounds good.

16 CHAIR MILLER: And the rest will
17 what?

18 MR. SIGMON: Will be for the record
19 in the written statement.

20 CHAIR MILLER: No it can't.

21 MR. JONES: No.

22 CHAIR MILLER: He's got a chance,

1 has to cross examine you on testimony.

2 MR. SIGMON: So I can't --

3 MEMBER ALBERTI: We cannot use
4 anything in there that Mr. Kline hasn't had
5 the chance to cross examine.

6 MR. SIGMON: Okay. Well then I
7 prefer to just closing statement next time.

8 MEMBER ALBERTI: Okay.

9 CHAIR MILLER: Okay, so --

10 MR. SIGMON: Simpler.

11 CHAIR MILLER: Okay, so it's not
12 evidence, it's argument. You got that? The
13 Board relies on evidence to make --

14 MR. SIGMON: The exhibits were the
15 evidence. So --

16 CHAIR MILLER: Okay, and the
17 testimony.

18 MR. SIGMON: Yes.

19 CHAIR MILLER: Okay. Okay, so yes.
20 So that's fine. All right, so I don't think
21 we have --

22 MEMBER ALBERTI: So, okay. Did Mr.

1 Kline have a chance to cross examine him?

2 MR. SIGMON: I don't even know if
3 I testified.

4 MEMBER ALBERTI: Did you testify?
5 You testified.

6 MEMBER SILVERSTEIN: He didn't
7 really testify.

8 CHAIR MILLER: He just moved his
9 exhibits.

10 (Crosstalk)

11 MEMBER ALBERTI: Okay, he just
12 moved in exhibits, he didn't really testify.

13 (Crosstalk)

14 MEMBER ALBERTI: I just want to
15 make sure where we're at.

16 MR. SIGMON: Fine, thank you. I
17 appreciate that.

18 MEMBER ALBERTI: All right. Let's
19 move on. Okay, all right.

20 CHAIR MILLER: Okay, so I think
21 that, that completes your case. Okay. So
22 we'll get back to you then about the date for

1 continuing this. You haven't been given a
2 date yet, have you?

3 MR. KLINE: No.

4 CHAIR MILLER: Okay.

5 MR. KLINE: The only thing I would
6 like to do is to go on the record, hopefully
7 it won't be necessary. But depending on what
8 the investigator testifies to, I may have
9 rebuttal, and I do have some time left.

10 CHAIR MILLER: Okay. So yes, so
11 the Applicant is entitled to rebuttal.

12 MR. KLINE: I'm not threatening
13 you. I just want --

14 CHAIR MILLER: But you're done with
15 your witnesses, even though we're continuing.
16 It's not let's bring in new evidence, okay?

17 All right. But the investigator's
18 going to testify. You can ask questions on
19 the investigator.

20 MR. KLINE: Right. It probably
21 won't be necessary. I just, you know.

22 CHAIR MILLER: Okay.

1 MR. KLINE: If it does happen and
2 I have to do it, I want to make sure it's
3 within my rights, that's all.

4 CHAIR MILLER: Okay. So that
5 concludes our session for today. Next time
6 should be much shorter. Thank you.

7 MR. KLINE: So Board's counsel will
8 be in touch with us about a date?

9 CHAIR MILLER: Absolutely.

10 MR. KLINE: Okay, great. Thank
11 you.

12 CHAIR MILLER: Absolutely. Okay.

13 MEMBER SILVERSTEIN: Thank you.

14 CHAIR MILLER: Thank you.

15 MR. KLINE: Thank you. Thanks for
16 staying so late and getting --

17 MR. JONES: We always stay late.

18 MR. KLINE: I know you do. I know.
19 It doesn't mean we're not going to thank you.

20 (Whereupon, the hearing in the
21 above-entitled matter was concluded at 7:21.)

22

A				
\$200 294:14	316:18	acts 293:18	323:11 326:18	329:21
a.m 19:7,8 257:13	absolutely 285:17	actual 314:10	329:8,10 334:21	air 38:22 73:7,9,10
270:19 273:17	321:16 359:11	add 12:14 74:11	341:1 348:1	73:11,14,16,17,21
292:11 301:15,22	363:20 371:9,12	193:7 349:2,7	advance 351:1	101:3 115:13
303:4 304:7,8	absorb 195:20	added 97:2,5	advantage 302:5	139:15 193:21
A1 89:22 91:2,5,18	250:17 294:1	159:12	advice 99:17	215:19 217:8
94:9,14 198:9,16	absorbed 264:2	adding 74:4	120:17 315:18	239:12
198:18,18,19	abuse 367:3	addition 74:3 76:16	326:10 361:7	alarm 175:13,14,16
A2 59:11 134:13,14	abut 227:11,13	128:16 233:1	advise 36:1	175:21 176:1
A4 217:10 219:15	accept 90:6,20	316:16	advised 249:13	Alberti 1:16 87:2,5
abate 13:7	313:22 319:5	address 10:12 25:6	advocate 198:17	87:8 88:10,16,21
abatement 266:1	333:4,10,22	125:11 154:19	aerial 25:8	89:6 92:12,16,22
ABC 27:8 101:15	334:10,12,18	181:4 193:9,11	affect 130:3,22	94:2,5 106:12,13
107:20 157:15	351:18,20	194:5,8 195:13	131:2 292:17	106:14,18,21
299:7 300:2	acceptable 191:2	264:19 265:1	African 187:4	107:5,8,12,15,22
316:17 336:8,9	accepted 90:18	285:15 298:15	afternoon 2:9 8:8	108:3,6,9,13,15
346:5	334:6	307:7 308:4,14	207:7	108:18 109:2,6,14
abeyance 284:22	accepting 340:1	310:20 311:2	agenda 334:15	109:18,20 110:10
285:19	343:17 356:11	312:5,11 316:15	ago 31:6 45:5 71:12	110:13,19 111:2,5
ability 11:3 318:8	357:11	320:21 322:2,6	82:10,10 85:6	111:14,18,21
363:17	accepts 355:19	332:7,16 360:10	150:10 275:12	112:6,14,20 113:2
able 7:17 11:19	360:1	addressed 195:2	289:13 337:5	113:7,11,17,19,22
31:11 112:16	access 308:21	202:17	351:4	114:3,7,11,15,19
144:19 145:5	accurate 154:1	addresses 358:4	agree 66:15 69:8,22	114:22 115:3,15
248:18 276:14	accurate/inaccur...	359:8 360:13	72:12 73:1 129:2	115:20 116:6,9,13
285:15 300:18	154:5	addressing 86:9	132:12 141:1,2,5	116:16,19 117:1,6
315:6 316:6	accurately 25:13	140:4	184:19 224:13,14	117:11,14,20
318:12 328:10	accuser 319:12,13	adjacent 23:11	249:21 284:19	118:2,5,11,14,18
above-entitled	acknowledge 331:5	64:11	321:14 333:21	118:22 119:3,7,13
371:21	360:18	adjudicate 202:8	355:17	119:16,20 120:2,6
ABRA 7:11 31:2	acknowledgment	administrative	agreed 132:15	120:11,16 121:1,7
51:21 97:20	335:9	149:2 153:17	133:5,14 283:20	121:10,16,22
101:15 107:16,20	acoustic 192:10	280:5 341:21	284:12,15	122:3,8,10,14,19
142:22 143:2	251:2,6	347:9,11	agreeing 65:21	123:2,4,10,13,22
157:6 272:6,9,15	acoustical 251:18	admissible 277:7	66:4,11	124:4,8,11,16,19
273:22 278:16,18	acoustics 250:10	277:13 344:7,14	agreement 277:11	125:1,4 143:22
282:22 283:7	act 296:8 314:13	admission 284:22	279:7,11 280:16	177:1,5 225:1,2,5
289:7,12,13	319:14	285:1	284:10 285:4,13	225:8,14,17 226:3
290:14 308:21	acting 55:6 341:14	admit 154:15	345:6 346:4 358:8	226:7,10,14,17
314:17 315:15	action 298:19	326:19,20 329:11	358:12	227:2,4,7,12,14
316:5 331:12	activities 188:21	330:9,11 340:3,19	agreements 276:13	227:18 228:2,5,10
345:9 346:2 356:4	201:16 300:11,12	348:6 349:13	276:22 344:13	228:14,19,22
356:5 358:5	300:16,20	361:11,14	ahead 91:17 93:11	229:4,10,13,18
360:12	activity 9:1,3 10:5	admitted 34:6	94:8 120:9 250:5	230:1,7,12,22
ABRA's 290:8	15:19 287:16	59:15,17 153:13	280:22 285:19	231:3,5,9,13,17
	354:6	219:14 280:2	289:3 320:19	231:21 232:5,11

232:15,18,22	168:12,20 174:18	ANC 2:7 283:2,4	10:11 59:16,17	288:9 302:4
233:5,11,16,19,22	181:16,17 182:6,9	328:22 350:11	60:4 72:20 176:14	359:13
234:9,13,20 235:2	183:7,12,22 184:3	351:20	180:6,15 241:13	areas 224:3
235:7,13,18 236:1	184:6,9 185:2,4,6	and/or 39:5	241:16,17 295:6	argue 343:6 364:6
236:8,14,20 237:1	185:7,10,13,15,16	Andrew 2:10	303:12 306:6	arguing 261:21
254:18 255:1,6,9	185:16,20 186:4,4	Andy 299:16	352:12 370:11	351:14 365:19
279:22 280:3	186:5 188:4 189:2	angry 271:15	applicant's 6:2	argument 221:16
312:4,6 313:3,6	190:2 200:18	anonymous 272:8	22:20 34:1,6	362:16,18,22
313:12 315:4,11	201:14 205:13	309:3 319:5	40:10 60:2 149:3	363:5 364:8
315:17 317:14,17	208:13,14 211:20	320:11 332:2	149:16 154:15	365:17 368:12
318:2,18 320:18	212:1,2,3,5,7,11	anonymously	207:12,12 217:10	arguments 190:3
321:16 322:11,14	212:21 213:2	316:6	218:22 219:15	190:15
322:18 324:20	225:22 226:12	answer 79:16,17	244:9 364:14	arrive 270:13
325:10 326:9,19	227:5,6,8,9,11,13	160:20,22 162:7	application 1:9 8:9	articulated 339:20
327:2,7,21 328:3	227:17,19 228:8,9	212:16 213:16	356:16	Arts 8:12,14,15,19
328:14,19 333:11	228:12 230:2,5,9	287:9 300:1	applied 106:15	9:21 286:19 287:1
333:13 334:9,13	230:11 253:21	answered 60:8,12	107:2,17 155:20	288:3
338:12,18 339:7	255:5 274:8	300:9	156:2	asked 37:11 66:10
343:10 345:17,22	alley's 21:16	answering 214:12	apply 156:8,16	88:22 91:7,8
346:14 347:7,19	227:10	answers 197:5,7	appointments 35:1	143:22 152:2
347:21 351:5,10	alleys 63:6	anterior 159:6	appreciate 31:15	153:2 161:12
351:13,22 352:17	allotted 5:6	anticipate 131:4	91:16 112:15	186:16 202:2
354:20 355:16	allow 73:10 276:22	anybody 30:14	197:13 249:6	213:19 297:4
356:2,10,13,21	314:15 318:6	176:22 257:14	252:1 299:22	301:19 316:14
357:7,10,14 359:6	335:2	320:9 333:9	301:8 369:17	asking 54:13 95:16
359:17 360:3,19	allowed 58:4	anybody's 291:15	approaching	95:18 108:9
361:2,13,16,20	287:20 314:20	327:9	295:14	142:15 148:15
363:2 364:19,21	allowing 314:4	anythings 55:2	appropriate 264:18	153:13 165:9
365:5 368:3,8,22	alter 159:5	69:6 100:21	295:18	170:7 256:6,16
369:4,11,14,18	altercations 12:4	anytime 104:16	appropriately 12:8	298:2 315:9 319:4
Alberti's 240:8	205:9	anyway 4:15	appropriateness	assembly 75:5
alcohol 157:15,17	aluminum 275:3	247:12 275:19	336:9	104:17
157:18	amenable 128:22	359:5	approved 101:9,15	assessment 263:17
Alcoholic 1:2,12,12	295:9 297:19	apartment 266:5	101:17 106:19	associated 297:22
alleviate 105:6	298:11,19,21	apartments 119:4	107:21	323:13
alley 12:5 16:20	American 14:19,22	269:9 311:19	approving 279:11	assume 92:16
17:4 18:1,3,7,12	15:7,21 187:4	312:1	approximately	149:22 305:7
18:14,15 30:6	amorphous 300:21	apologies 286:9	226:19	317:7
52:17 60:13 63:5	300:22	apologize 71:5	April 1:11	Assumes 281:18
63:7,7,12,20 64:4	amount 5:11 197:9	111:1 300:8 345:8	architect 156:22	assuming 221:15
64:12 67:11,12,21	298:11,19,21	apparently 336:22	area 9:20 10:6 16:5	254:13 264:17
68:22 69:21 119:8	amplified 305:14	362:9	16:10 20:11 22:4	265:2
142:5 143:10	amplify 211:11	appeal 352:18	32:17 46:5,9	ATM 276:9
144:13 145:15	294:7	appeals 356:20	127:6 145:17	attached 249:9
165:12,14 166:1	analogous 13:3	appears 131:20	148:12 223:18	309:7 346:3,11
166:16,19 168:10	analysis 295:7	applicant 4:2,18,19	224:1 255:16	352:3 358:9
	296:4,6 297:13,22			

attention 53:11 91:15 174:22 203:8 214:9 234:10	B255 48:21 B552 122:21 123:2 123:9	274:7 275:9 299:3 332:5 339:10,17 341:4,6 349:20 362:16 367:8 369:22	303:12,15,20 304:6,15,20 305:2 305:7,11,13,18 306:6,15 322:4 325:22 326:7,21 327:5,8 328:1 334:4	beat 271:1,3 bedroom 98:7 200:20 248:14,15 248:16 bedroom's 260:11 beg 28:16 153:10 begins 220:8 behalf 2:10,14 behave 297:5 behaved 55:11 behavior 297:5 304:16 belabor 356:14 believe 9:22 65:21 75:8 76:20,20,21 77:19 81:4 88:11 116:3 119:5 129:13 131:4 141:21 154:5 191:13 202:3,22 203:9 204:15 255:2 272:11 274:21 283:2 285:14 296:13 301:21 346:12
attest 99:19 attorney 51:15 307:18 341:14 364:14 audience 315:6 authenticate 178:15 author 359:21 authored 333:7 authority 12:10 314:2 319:14 automatic 42:8 46:14 82:14 automatically 42:5 available 13:17 124:21 125:5 291:22 365:1 Ave 26:10 326:5 Avenue 1:7 2:6 3:10 8:11 9:16,18 12:1 25:6 26:10 26:11 61:15,16 80:2,8 115:8 181:4,18 182:1,1 182:5,8,9 185:17 186:6 226:9,10,13 274:8 346:7 Avenue's 11:2 average 183:20 257:2 aware 11:14,15 158:3,4 164:17 168:2 215:21 264:7 272:6 286:17,20,22 287:4,13,18 288:1 288:3,7 289:12,15 289:22	back 9:18 16:14 18:13 26:6,7 27:10 30:3 32:15 36:5 39:21 42:15 42:22 43:10 47:20 52:16,17 61:17 62:14,17 65:7 67:2,7,8,17,18,19 69:4 71:13 72:3 94:8 102:20 108:20 110:1 119:12 120:7 122:15 124:15,17 134:3,20 143:7,10 144:12 145:16,21 165:10,11,12,22 166:2,6,12 168:10 170:4,5 171:6 174:17 177:10,13 177:19 182:2,4,5 183:7 185:3,6,12 185:17 186:4,5 188:15 189:2,3,3 195:1,1 196:6 197:17,18 200:19 200:21 201:6,7,14 201:17,19 205:10 205:16 208:18 214:4,6 216:15,20 217:2,5,12 218:14 226:13 227:5,19 228:7 229:6,13,14 229:15 232:1,3,4 233:9 234:10 238:13,14 239:14 239:22 241:9,22 243:20 244:1 246:12 254:4,12 254:19 259:18 261:4,10 262:11 262:21,21 264:16 264:21 266:10 271:22 272:3	back's 18:12 backs 16:19 backyard 184:11 184:14 187:19 188:22 bad 134:7 230:16 232:13,14 235:9 240:13,15 268:3,3 304:16 315:18 ball 350:6 band 16:2 bands 100:9,21 Banerjay 286:6 Banerjee 3:4,5,9 106:1,4 150:9,21 157:4,9,11,16 169:5 170:2,18 171:8,21 172:2,6 172:12,18,22 173:4,12,14 190:13 268:15,21 269:5,7,14 270:8 271:13 274:10,14 274:18 276:16 277:15,19 281:15 282:22 283:7,13 286:7,7,8,9,9,11 286:15,20 287:3,6 287:18 288:1,7,13 288:18 289:9,11 289:19,21 290:11 290:15,19 291:2,8 291:21 292:9,19 293:2,10,15 294:12,18 296:1 296:13,16 297:8 298:20 299:9,13 299:20 300:4,15 300:22 301:5,12 301:16 302:2,7,10 302:15,21 303:9	bar 1:7 2:5,12 8:11 9:6 11:9,19 12:12 13:6 14:17 15:11 29:9 33:7,9 60:13 63:16 72:12,14 85:22 170:3,20,22 171:2 172:15 188:1 201:8 206:5 271:11,19 273:7 283:11,14,17,18 297:2 301:13 302:11 346:10 bar's 290:2 barbecuing 221:8 bars 60:14 62:3 63:4,6 170:20 172:13 287:19 289:17 based 155:2 267:7 298:16 336:2 basements 240:22 basic 6:10 332:13 basically 4:14 49:12 122:1 130:6 188:16 189:20 190:9 206:11 220:7 246:20 342:2 basis 4:13 bass 37:18,19,21 44:1 48:19 49:11 49:12,13,15,16,17 84:22,22 85:2 119:17 121:6,7,17 121:21 122:1,4,6 122:7 127:22 128:12 130:7 134:1 140:5,8,8 144:1,3,5,13,14	belong 115:11 Benerjay 286:5,5 best 133:12 267:6 309:12 337:13,18 338:9 better 234:5 236:15 236:17,21 255:11 267:8,10 275:21 298:12 342:20 348:16 362:20 364:17 366:6 Beverage 1:2,12,12 beyond 126:10 296:22 big 48:21 67:14 85:1 109:1 144:16 144:17,20,20 145:7 173:3 201:20 205:20 276:6 289:13
B				
B 123:1,3 B225 123:8				

340:4	197:19 202:3,9,13	brand 123:6,6	159:6,13 175:17	103:6 122:21
bigger 311:5	219:20 240:7	brawls 261:17	209:6,11 210:5,8	133:21 135:1
biggest 263:15	263:7 278:7 280:4	break 176:16,19	210:12 269:18	159:12 168:14,15
275:2	281:3 284:13	177:4,8 338:14	270:5 276:4	168:17 170:15,16
bit 165:19,19 166:9	288:21 292:2,8	339:2 341:3	288:11 291:11	178:5 179:18
166:12 169:18,20	301:10,10 304:2,6	brick 118:1,3	292:16,18,20	189:19 222:9
209:1,2 234:8	315:3,22 318:8	183:13	302:12 305:9,21	241:5 268:15
303:15 341:20	322:9 323:5,7	bricks 67:14 118:1	311:5 312:1	272:7,16 273:6,11
363:12	326:7 332:11,14	brief 367:13	342:14	289:8 306:22
black 93:21 111:9	333:4 334:15	bright 182:12,15	buildings 26:10,11	316:13 325:4
193:15 194:3	349:8 352:12	bring 51:18 124:2,6	27:6 71:17 72:5,6	355:20 357:8
199:18 200:3	355:18 359:22	161:7 370:16	104:18 113:13	called 32:4 37:7
blacked 275:19	366:18 368:13	British 184:7	115:6,9,10 153:2	44:5 52:11 103:5
blares 237:11	Board's 85:13	Brixton 17:10	184:5 185:8,9	136:8 191:20
blaring 235:17	103:10 105:14	19:12,13,16 22:9	186:10 224:2	270:10 271:17
bless 284:11	106:9 153:10	53:1 72:5,10	built 40:3,3 74:16	272:8 273:2,3,5
blob 300:21 301:1	154:6 158:2 203:6	116:18 117:10	150:22 161:22	273:13,17
block 2:14 19:16,17	316:17 333:2	166:14,19 171:20	201:6 258:15	calling 51:16
19:18 22:11,13,15	352:15 353:15	172:19,21 183:5	buisness 130:12	271:18 272:18
22:17 37:2 89:9	371:7	183:10 184:7	busiast 53:16	290:21 316:11
89:17 182:13	boom 271:1,1,1	185:10 188:6,9	business 10:20	calls 52:10 82:7
186:12,13 224:4	bootstrap 350:11	Brixton's 188:6	12:19 25:14 52:6	83:13,17 95:6
225:21 226:6,16	border 17:4 43:14	189:2	66:2 68:6 70:1	272:15,22 356:3,5
291:11 311:19	borders 18:1	broken 210:16,19	129:6,15,17 130:3	calmly 271:14
332:15 335:6	borrow 111:15	211:3,10,15 217:2	130:10,13,22	camera 29:10,17,18
347:5 355:10	bother 84:3 166:11	217:4,7,15	131:3,8 132:4	33:14
blocking 37:13	174:19	Broker's 66:1	167:1 171:7	cameras 30:2 33:16
Blue 32:4	bothered 259:5	187:3	291:16 358:9	candles 49:12
board 1:2,12 4:10	270:1	Brokers 64:19,22	businesses 11:13,14	capacity 155:21
4:21 8:8,13 9:9	bothering 105:4,12	BROOKS 1:16	17:5,8 171:10	156:2,5,10
10:1,10,16 14:14	138:16 202:11	brought 38:17	busy 24:13,15	care 86:12 167:14
22:22 25:20 27:8	bothers 57:10,11	91:15 224:1	28:21	214:5 242:5 267:3
29:6,21 31:18	bottles 57:12	buffer 250:14	buy 123:18 286:13	267:12 315:17
33:2,12 40:13	bottom 62:11 63:5	build 45:18 134:18	294:12	cares 123:18
41:6,8,20 42:11	68:8 69:17 113:13	136:12 156:13,15		case 1:9 2:4,8 3:16
43:15 45:9 46:22	141:6 195:5 214:3	161:18 195:20	C	4:19,22 5:9 6:11
47:16 48:10 49:9	241:3 246:17,19	building 1:13 8:21	C 101:13 149:5	15:22 51:19 90:16
54:2 58:15 60:20	342:20	18:9 23:5 26:16	156:16	143:18 176:17
65:16 79:7 85:15	bought 286:17	27:14,15,20 28:1	C2 9:20	202:10 220:21
89:2 99:6 104:14	bouncers 54:14	28:5,6 29:14,15	café 138:22 139:3	221:14 281:17,20
104:19,20 106:8	bound 296:9	38:4 62:14 64:9	299:15,18 305:5	282:2 284:7,7,8
106:19 107:1,16	bounds 298:12	64:10 72:13 78:13	305:22	284:14 306:8
120:1 142:2 149:1	box 73:3 283:4	80:6,8 102:10	call 13:12 43:20	349:8 359:1 360:2
152:2 153:17,18	boy 360:1	108:21 113:3,15	48:21 51:12 52:5	361:1,4 364:7
155:2 158:11	branch 63:7,19	116:6 117:15	52:6,14 54:14	369:21
173:15 176:6,6	64:4	118:4,6 152:5,7	76:22 83:1 94:13	cases 5:5 8:14

catch 38:19	94:6,11,15,19,20	197:5,15 198:11	310:13,17,21	361:15,18 362:1
catering 116:2	95:8,12,15 96:1	198:13,17,22	311:4,9,13,22	362:12,15,22
cause 129:5 131:2,8 295:17,19 323:7	96:11,14,20 98:11	199:5,8,21 200:5	312:8,12 313:1,5	363:4,21 364:4
caution 8:1 71:3 197:1	98:16,19,22 99:3	200:8 202:6,16	314:1,4,11,18,22	365:13,22 366:2,4
caveat 333:15,20 340:20	99:5,17,22 100:3	203:1,5,8,11,14	315:3,13 316:1,21	366:8,15,20,22
cease 205:3 256:5	102:4 103:13	206:20 207:2	317:4,9,13,16,21	367:5,9,16,20,22
ceiling 250:10,22 251:1,2	104:1,6,10,12,22	219:1,5,8,11,14	317:22 318:4,14	368:9,11,16,19
ceilings 192:10	105:17 106:1,3,7	219:20 220:1	320:1,5,9,17,20	369:8,20 370:4,10
cell 273:9,19	106:13 109:19	224:22 237:3,5	321:17,20 322:8	370:14,22 371:4,9 371:12,14
center 8:17 117:16	112:1,10 113:9	249:2,3 252:2,12	322:12,22 323:3	Chairman 331:12
certain 12:20 13:8 30:17 175:5 223:7 257:8 297:16	115:17,22 117:7	252:14,19 253:5,8	323:16 324:6	Chairperson 1:13 1:15
certainly 187:14 358:20 359:3	117:18 118:3	253:11 254:1,3,7	325:3,5,8,12,15	chairs 40:20
Certificate 149:8 150:1 154:4 158:22	119:19,21 120:14	254:14 255:4,8,10	325:17,21 326:18	challenge 350:4
cetera 289:18 292:5 334:1	120:20 125:8,10	255:15 256:6,12	326:22 327:4,10	challenges 358:6
chain 358:10	131:14,15 136:6	256:15,21 257:5,8	327:14,20,22	chance 4:20,21 36:1 39:15 120:7 276:11 367:22 368:5 369:1
chair 2:3,22 3:8,11 4:1 5:19,22 6:4,19 6:22 7:7,8,12,19 8:3,6,8 10:14,16 12:16 13:10,13,15 13:19,20 14:2,20 33:21 34:2,5 36:14,20 55:19 56:2 58:2,7,10,13 59:2,9,14,19 60:2 60:5 62:8,20 63:1 65:10,15 66:10,15 66:20 71:2,6,10 79:8,17,21 84:6,9 84:12 85:8,11,20 87:3,7,10,18,21 88:3,6,9 89:8,12 89:16,20 90:2,4,7 90:11,21 91:13,17 92:2,6,9,21 93:2 93:10,14,19 94:1	136:11,15,21	257:15,20 258:2,5 258:10,13,18 259:2,4,11,16,20 259:22 260:4,7,10 260:14,22 261:7 261:11,15 262:8 262:16,22 263:3,6 263:10,12 265:19 268:7,10,12,16,18 268:22 269:3 276:18,21 277:12 278:1,4,9,18,22 279:3,6,10,14,20 280:6,11,14,19,22 281:3,6,10,14,21 282:8,15,18,21 284:2,18,21 285:5 285:8,11,14,18,22 286:3 287:11 288:21 289:2,5,10 289:15,20 290:10 290:13,16 291:1,4 291:20 292:1,15 292:21 293:9,12 294:9,16,21 295:2 299:4,4,5,12,19 300:1,5,7 301:8,9 306:11,13 307:8 307:11,16 308:5,9 308:13,17,20 309:4,21 310:3,8	328:21 329:3,7,11 329:15,20,21 330:2,4,7,14,17 330:20 331:7,11 331:17,18,19,21 332:5,17 333:3,11 333:12,13,21 334:6,11,17 335:3 335:11,14,21 336:6,15 337:8,12 337:15,17,21 338:3,17,20 339:1 339:5,9,13,18 340:9,12 341:8,13 341:18 342:10,16 342:22 343:2,5,9 343:11,14,19 344:1,6,12,16,19 344:22 345:3,4,15 346:13,14 347:16 347:20 348:1,3,5 348:11,14,17,22 349:1,12,16,17 350:2,9,19,22 351:7,12,19 352:2 352:8,14,19 353:1 353:9,14,17 354:1 354:8,11,13 356:2 357:4,12,15,18,20 359:1,6,14,18 360:7,9,15 361:9	change 129:5 134:4 141:6,21 148:3 167:21 168:20 271:3 291:10 340:17 changed 198:1 changes 57:1 84:18 85:5 128:5 129:11 129:13,14 131:5 140:17,18,20 142:4 channels 15:16 charge 177:6 cheap 275:16 check 6:12 7:19 50:6 55:1 103:10 103:11 105:19 108:3 127:9 174:16 177:14,15 207:1,2 255:19 283:3 306:17 365:7 checked 144:7,9 cheerleading 349:3 choice 321:11,18 321:19 322:1

choices 324:20	216:2,10,13,16,19	260:2,6,8,13,17	230:18,19,21,22	collegial 297:17
choose 132:10	217:1,6,12,15,20	261:3,8,16,19	231:1,11 244:6	collusion 10:18
331:15	218:2,6,10,13,19	262:1,5,10,14,19	247:18 248:21	color 92:1,4,7,7,20
chose 133:9	220:4,7,14,18	263:1,13,18,22	259:9,19 262:15	93:20 111:10
cigarette 54:9	221:1,4,11,18,21	264:5,12,15 265:1	265:22 269:9,17	151:16 199:19
139:14	222:6,11,14 223:4	265:6,20 266:3,21	270:7,16,17 271:9	colored 110:15
cited 157:5,11	223:16 224:10,13	267:9,18,21	274:13 276:15	coloring 303:18
158:11	224:18 225:3,4,7	268:11 301:1	296:21 356:6	304:13
city 8:18 17:10	225:13,16,20	311:20	Climax's 208:17	Columbia 1:1
20:17,18 22:10	226:5,9,12,16,21	Clark's 312:3	close 17:11,13 18:6	204:19 288:6
184:8 186:7 359:8	227:3,6,9,13,16	classification 12:21	21:2,16,16 32:12	combination
Civic 324:15	227:21 228:3,7,12	clean 148:12	39:12 42:5,6	235:16
claim 293:11 356:1	228:17,21 229:2,8	cleaned 66:6	45:16 62:18 82:16	combined 183:19
clarification 99:9	229:12,15,21	clear 41:9 47:17,18	82:17 129:16	come 2:8 7:3 10:1
100:2 237:14	230:5,10,20 231:1	61:14 66:5 92:11	131:3 147:8 149:2	31:3 35:9 39:1
clarify 258:21	231:4,8,10,16,20	94:13 126:9	163:21 173:22	42:22 51:17 55:2
352:20	232:3,10,14,17,20	161:11 162:8	218:17 284:16	56:12,17,19 57:19
Clark 95:21 96:9	233:1,7,13,17,21	164:17 165:19,20	301:14,20 302:19	72:13 83:13,17
150:3 151:2,6,12	234:1,12,17,22	237:15 339:11	339:15	147:21,22 154:9
179:18 180:3,17	235:4,10,16,19	361:6 366:13	closed 36:22 39:11	162:1 163:3,5
180:18,22 181:3,4	236:4,9,17,22	clearer 284:20	46:18,19 116:4	167:20 168:9
181:7,10,15,22	237:8,18,21 238:4	clearly 53:7,8	169:22 230:17	170:19 183:6
182:11,17,20	238:8,11,16,19	172:17 269:15	233:6,7 236:10,12	187:19 188:4
183:3,6,13 184:4	239:2,5,9,21	270:16,21 313:18	236:16,18,19,21	189:5 190:2 194:9
184:13,20 185:1	240:4,10,15,21	322:18	237:7,16,17	198:4 200:10,12
185:14,21 186:1,3	241:4,7,10,19,22	cliente 55:10,14	238:10,18 239:1,8	200:13 201:15
186:20 187:2,9,13	242:3,8,11,14,17	Climax 1:6 2:5,12	239:15 240:9,14	204:6,8 205:17
187:17 188:3,16	242:20,22 243:3	8:10 11:9 14:6	240:16 248:1	210:22 218:2,4
189:17 190:8	243:10,12,16,20	23:5,7 26:3 29:9	265:10 266:22	221:7 232:4
191:14 193:2	244:2,5,7,11,15	33:5,13 35:1,2	267:2,17,19	235:19 260:16,17
194:13,18 195:22	244:19 245:2,6,12	41:4 48:15 62:19	closely 362:3	262:11 264:3
196:4 197:3,11,17	245:17,20 246:3,6	80:20 81:5,5	closer 67:13 82:15	265:7 271:19
197:22 198:10,12	246:10,15,21	85:22 114:10	closers 42:8 46:15	272:19 289:7
199:13,17,22	247:3,10,14,20	163:17 165:18	closes 147:9	290:9,14 298:13
200:6,9 201:2,5	248:4,6,9,11,15	166:7 171:4,6,6	closest 17:9 225:18	308:6 320:10
201:13 203:15,20	248:19,22 249:4	181:8,12,13,18	closing 5:2,5 47:20	339:10,17 341:4
204:5,15,18	249:11,15,22	182:2,3,4 185:3	263:16 299:17	355:21 367:8
205:11 206:4,8	250:6,9,12,19,22	186:18 188:12,14	362:18,19 364:8	comes 7:16 55:14
207:8,9,10,15,20	251:2,5,9,15,19	188:18 189:11,13	368:7	76:18 167:5
208:1,3,7,11,19	252:9 253:3,18	189:15 190:3	closings 5:8	170:22 185:16
209:4,8,13,16,18	254:2,5,8,16	200:3,6 205:12	club 27:14 28:10,13	189:22 200:15
210:1,8,13,19,21	255:12,14 256:1	206:5 207:14	28:21 56:7,8	203:21 204:11
211:4,7,12,16,22	256:10,14,18,22	208:6 211:19	206:1 299:8	230:8 233:3,4
212:13,17 213:1	257:6,11,17,21	212:2,10,11,13,18	cold 190:11 194:19	237:11 238:21
213:10 214:8,11	258:3,8,11,16,20	212:19 218:8	204:7	254:4 263:18
214:22 215:3,6,21	259:3,7,12,18,21	225:21 230:3,8,15	colleague 325:13	265:11 270:14

comfortable 129:2 270:18 277:1 309:20 313:20 322:10 341:12	compartment 46:9 50:1	computer 316:22	considered 205:5	copies 13:14 58:16 88:22 279:18
coming 29:1 34:10 117:2,4 126:13 127:15 140:22 143:7 165:9 166:7 170:13 172:15 188:14 189:18 192:17 204:16 206:16 210:2 212:17,19 220:4,9 225:21 230:15 232:7 235:15 239:13 244:13 245:1 248:20 267:3,11 270:17 275:7 276:2,5,11 310:12	complain 130:20 146:14 147:16 259:7 355:20	concepts 10:3	constructed 12:9 44:18 202:5	copy 41:16 59:3 86:22 87:4,6 91:21 92:1,5 93:11 101:14 109:15 111:15 149:7,19,19 154:6 180:12 279:18 309:5 316:2 331:9
comment 5:18 12:13 58:17 112:3 151:19 199:16 240:6 252:8 253:7 274:16 281:16 350:15	complainant 316:7 316:11 321:7	concern 127:12 160:11,18 162:3 316:19	construction 116:12 156:19 202:4	corner 38:22 49:1 66:13 72:6 118:7 118:9 181:12 183:21,21,22 184:6,22 185:2,9 186:9 187:3,11 188:7,10
comments 59:5 84:19 86:20 103:15 177:16 326:6 349:18	complained 146:10 147:3 148:11 270:3	concerned 296:12 300:21 326:5 363:16	contact 274:3 307:21	correct 7:11 15:8 17:1 18:2 34:11 37:14 44:10 50:3 51:2 60:10 61:1 62:13 63:4,8,13 63:17 64:21 65:5 70:8 88:14 99:13 102:18,21 120:5,8 125:20 142:19 147:18 150:16,18 152:5 153:4 160:21 163:17 177:20,21 191:13 209:22 211:21 217:19 230:4 243:9,22 248:3,21 264:11,22 287:17 304:5 305:6,10 306:1 331:9 360:13 361:8
commercial 64:20 65:3 66:2 187:7 187:11 258:22	complaining 77:1	concerning 164:18 198:10	content 283:6 345:12	corrected 240:11 361:3
common 311:16	complaint 40:17 52:4,4 83:4 127:12 141:13 165:8,8 169:6,9 169:17 170:13 317:2,2,5 328:21 331:13,22 359:10	concerns 9:11 10:12,19 12:2 34:10 35:11 139:11 141:17,19 334:19 336:4,10	contest 335:18	correction 120:3 198:7 199:18
commonality 11:1	complaints 9:8 34:10 51:1,5 81:11 82:9 85:7 101:8 105:11 125:16 126:1,12 126:21 136:17 137:3 139:8 140:14 141:9,10 142:16,19,22 143:16 146:17 148:9 164:22 165:4,9 166:3 170:18 316:6 319:5 332:21 355:8	concludes 371:5	contested 284:7,8	corrections 120:20
communication 314:17	completing 291:18	conclusion 10:2 66:11	context 342:14	correctly 89:3 128:7
communications 135:21 358:5	completed 50:2,4,6 127:8	condition 274:7	continual 11:20	corresponded 272:10
community 125:16 127:9,11	completely 13:7 198:1 307:22 309:3 349:5 357:3	conditioner 73:8,10 73:10,15,17,21 115:13 239:11,12	continue 10:11 59:7 83:17,18 86:16 108:19 158:15 297:20 335:10	
company 86:12,16 147:18 167:14,17 168:16,19 187:3	completes 369:21	conditions 85:15	continued 12:6 329:1 335:8	
compare 84:4 235:14	compliance 291:22 292:1	Condominium 3:6	continues 12:10	
	complying 291:18	conduct 13:9	continuing 370:1 370:15	
	compound 282:12 282:13	conducting 68:6	continuous 355:11	
	compromise 129:14 276:15	confidential 332:21	contract 86:16 103:7 167:13	
		configuration 44:14	contracting 295:6	
		confirm 318:12	contractor 39:18 77:22 103:5 161:13,14,19 239:22	
		conflicting 101:10	control 1:2,12,12 12:3 49:15 56:22 146:11 147:5,12 147:14,16,17 166:22 167:4 308:17 321:9	
		confront 319:12	conversational 235:21 307:18	
		confused 63:9 120:15	cooperate 30:13	
		conjunction 290:5 298:21	cooperative 143:11	
		connected 184:7 283:11	coordinating 2:15	
		connections 202:22		
		consequences 313:21		
		consider 249:14 292:8		

<p>corresponds 182:11</p> <p>cosmetic 192:13</p> <p>cost 294:14</p> <p>costs 294:11</p> <p>could've 253:19 339:21</p> <p>counsel 3:12 316:2 366:11 371:7</p> <p>couple 53:11 138:5 138:8 194:19 239:19 258:13 263:11 271:22 289:6 326:1</p> <p>course 10:1 11:18 40:19 50:22 58:12 130:8,13 264:19 281:8 298:19 364:3</p> <p>court 341:22 356:19</p> <p>cover 36:8 44:4 46:7 48:14 69:5 74:22 75:12 132:13 133:1 135:3,4 141:1,7 192:18,21 215:15 233:10</p> <p>covered 36:4,14 42:19 43:6 44:2,6 45:19 46:3 69:2 133:6,6 135:4 244:18</p> <p>covers 206:2 243:14</p> <p>CR 1:8 288:16</p> <p>cracked 247:12,19 267:15</p> <p>cracks 209:14,22</p> <p>crass 310:15</p> <p>create 48:3 209:7 210:6,16 261:6</p> <p>created 8:17 205:20</p> <p>credibility 332:15</p> <p>criminal 303:7</p>	<p>crock 57:13</p> <p>cross 4:16,21 5:15 5:22 6:1,5 7:10,17 58:2 99:6 169:4 206:20 286:1,2 340:15,22 364:1,9 364:15 365:1,14 368:1,5 369:1</p> <p>crossing 5:14,17</p> <p>Crosstalk 60:18 78:1 88:8 92:8 93:5 104:5 120:19 135:18 146:4 157:3 235:6 238:3 241:15 254:17 321:13 324:8,14 325:1 352:7 354:22 360:4 366:21 369:10,13</p> <p>Crown 26:14,20 29:12 181:11</p> <p>curious 132:19 133:13</p> <p>current 85:21 283:11 346:19</p> <p>currently 86:9 97:12 266:18 283:15 346:4</p> <p>customer 56:4</p> <p>customers 55:6 56:6</p> <p>cut 192:8,8 276:9</p> <p>cuts 192:16 197:9</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C 1:13</p> <p>dangerous 311:7 311:14</p> <p>Danzler 272:11</p> <p>date 154:1 155:11 194:15 369:22 370:2 371:8</p> <p>dated 351:9</p> <p>dates 83:9,11</p> <p>day 24:5,9 39:19 44:6 51:13,13,17</p>	<p>57:18 83:19,19 137:12 173:4,5 193:20,20 202:1 204:11 269:22 292:14 293:7</p> <p>days 52:3 138:5,8 150:10 189:9 194:13,17,19,19 220:6 350:16,22 351:4</p> <p>DC 12:10</p> <p>DCPS 307:19</p> <p>DCRA 51:21 97:17 97:19 101:13,22 102:14 103:19 156:14 159:13,17 290:14,16</p> <p>dead 212:3</p> <p>deal 57:4 167:17 341:3</p> <p>deals 179:15</p> <p>dealt 10:8</p> <p>debate 306:4</p> <p>decided 132:20 133:1,5 191:18 345:6,7</p> <p>decides 352:12</p> <p>deciding 349:5</p> <p>decision 10:2 105:15 127:1 366:18</p> <p>deck 26:6,7 27:10 31:21 32:11,15 48:7 62:18 67:17 67:18 97:2,4,13 98:6 100:7,14 101:9 103:16 106:6 110:1,6 112:8 145:16,22 156:19 184:2 189:19 190:11 200:1,10,20 201:6 201:7,11,12 202:4 202:5 203:22 204:3,4,6,13,15 206:3 208:6,8,12</p>	<p>208:18 222:8 230:8 234:13 235:5 252:7 253:16,20 254:9 254:11 264:10</p> <p>deep 226:19,20 227:2,4,8</p> <p>defendant 272:19 273:1 303:3,7 304:5,12</p> <p>defer 301:1 333:1 366:6</p> <p>definitely 92:7 111:8 271:9</p> <p>degree 240:12</p> <p>deliver 68:4</p> <p>demonstrated 304:15</p> <p>demonstrates 146:3</p> <p>depend 210:14</p> <p>dependent 216:7</p> <p>depending 370:7</p> <p>depends 210:1 211:12,16 212:1</p> <p>depicted 22:22 33:12 42:12</p> <p>Depot 294:13</p> <p>describe 14:13 75:16,20 77:10 85:20 86:8 94:22 116:20 117:18 121:20 180:16 187:13 194:16 236:2 267:16 269:13</p> <p>described 37:13 40:3 49:21 67:2 77:11</p> <p>deserves 318:9 334:19 361:17,19</p> <p>designers 130:18</p> <p>designs 156:21</p> <p>desirable 297:16</p> <p>despite 11:8,8 12:20 335:9 346:8</p>	<p>determinations 284:13</p> <p>determine 90:20</p> <p>development 8:21</p> <p>dialogue 206:10</p> <p>dias 298:4</p> <p>dies 161:22</p> <p>difference 67:15 122:11,13 144:12 144:16,17,20 145:11 161:21 201:11,20 204:3 246:11 268:1 340:13</p> <p>different 4:8 11:17 49:18 54:21 55:6 56:5 67:7 84:16 84:19,20 85:4,6 205:4 256:13,16 269:9,9,10 271:8 280:17,19 283:22 284:19 285:6,13 292:17,19 299:11 306:8 321:6 334:2 344:10 354:7,16 357:3</p> <p>differentiate 170:19</p> <p>digit 174:1 175:7</p> <p>dining 138:15</p> <p>dire 154:7</p> <p>direct 66:7 145:15 154:20 214:9 273:18</p> <p>direction 113:4 204:17 296:11,14</p> <p>directly 9:15 28:13 64:14 65:4 181:7 184:6 185:20 186:17,18,22 210:4 212:14 225:11,14 242:1 243:7 244:4 275:7</p> <p>disadvantage 111:3</p> <p>disappointed 272:20</p>
---	---	--	--	---

disciplinary 319:7	230:19	237:12,16,17	Duffy 216:2 299:16	130:7
disconnected 49:6 49:7	Dixon 171:5	238:10,20 239:7	299:17	elevation 20:10,10
discounting 162:3	DJ 16:2,4 49:11	240:3,8,10,13,16	Duffy's 299:15,22	email 272:14 283:4
discuss 339:2	82:18 169:10,20	241:21,22 242:2,4	305:4,13,21 306:7	291:2 328:13
discussed 75:1	DJs 16:3	243:6,8 254:12	dump 57:8,12,15	345:9,13 346:1
223:6,7 264:12	document 91:19	260:3,5 263:16	146:19	358:4,10 359:8,21
discussing 60:14	92:3 151:8 316:19	264:8,20 265:9,9	dumping 146:12	360:13
64:3	332:18	265:13 266:10	148:10	emails 328:9 358:2
discussion 180:9	documents 319:21	270:15 312:3	dumpster 146:19	358:3,16,17 359:4
192:3 197:21	Dodge 17:10 20:17	321:1	duty 324:15	360:1,12
219:19 252:18,22	20:18 22:10 184:8	door's 39:11		emanating 125:12
265:14 268:13,17	186:7	238:17 239:1	<hr/> E <hr/>	127:13 237:20,20
276:20,22 277:17	dog 229:5	doors 19:19,20	earlier 88:12	289:17
278:6,14 279:13	doing 45:12,15	36:8,15 37:5	145:20 161:12	emergency 175:18
280:13 312:17,20	47:14 52:11 79:11	38:16 39:4 40:2	186:16 202:3	employee 169:21
313:2 314:21	82:6 102:5,7	42:7 46:18 66:14	240:6 264:9 283:1	307:20
315:10 317:8	103:5,6 125:15	77:11,12 102:16	295:2 339:21	employees 57:14
324:1,18 325:16	127:5 129:3,19	129:17 159:22	340:14 361:3	338:13,14,19
338:11	147:4 190:5 205:1	192:6 209:16,22	early 221:7	enclosure 41:2
discussion's 361:20	220:9 256:4 295:9	230:17 236:21	Eartha 179:18	44:18
discussions 277:5	305:2 367:6	265:7	181:3 311:19	encourage 8:20,22
dismiss 325:2	DONALD 1:16	doorway 76:13	easier 120:13	enforce 289:22
dismissed 350:14	door 23:12 33:19	241:12	345:19 348:6	enforceable 224:15
display 11:7	36:12,13,18 37:2	dot 25:13 182:6	easily 66:6	enforcement 290:5
dispute 208:5,16	38:15,22 39:8,8,9	double 6:12 76:16	eating 15:21	292:2 316:10
distinct 259:9	39:10,12,13,21	77:11,12 82:13	edge 286:19 287:1	engine 312:22
distinction 332:19	40:16 41:7,12,21	190:18 195:19	287:15 288:3	engineer 296:17
distinctive 170:21	42:1,4,8 44:14,18	255:19 264:8	effect 210:18 213:8	enjoy 101:1,2
271:5	44:21 45:14,15,19	doubt 203:5 361:10	298:8 346:21	Enterprises 1:6
distinguish 187:22	46:15 47:2,3,4,20	downstairs 76:19	347:1,1,8,10,18	entertainment 9:1
distracted 278:10	47:22 48:3,5,14	192:5 250:2	effectively 214:21	15:19 100:8,21
district 1:1 8:13,15	50:2 55:4 66:14	draft 77:22 277:10	effects 310:22	Entertainments
8:16,16 204:19	76:16 77:6,6	drawing 298:6	effort 350:10	16:1
222:15 256:2	79:10 82:14,14	dreams 316:3	efforts 11:8 298:15	entirely 321:15
286:19 287:2,15	102:15,17,19,22	drink 55:7,8 56:11	335:10	entitled 370:11
288:4,5	114:10,12 115:19	101:4	eight 30:1	entity 64:20
disturb 204:22	119:10 126:20	drinking 235:22	Eighty 55:18,20	entrance 189:3
255:17 302:15	127:4 129:16	drinks 55:2	56:3	equipment 121:11
304:21	147:8,8 169:22	driving 363:16	either 31:2 75:4	121:12 124:5
disturbance 306:3	181:12 188:18	dropped 350:6	105:21 153:19	escape 302:13
disturbed 237:19	189:21 193:5	dropping 84:10	192:20 195:15	especially 9:1
238:1,6,10 258:19	196:6,9 200:9	dry 217:19	235:11 243:7,8	222:16
259:17 260:1	220:21 229:14,14	drywall 195:18	247:11 313:15,19	establish 124:20
300:2 305:9,22	229:16 233:4,6,7	249:17 250:16	340:14	125:5 183:14
disturbing 230:18	236:10,12,16,18	due 202:21 317:11	elaborate 310:4	established 297:15
	236:19 237:7,10	349:14	elements 128:11	establishment 9:5

9:15,16 14:8,11 15:20 16:16,18 18:14 19:15 22:9 23:12 28:12 29:19 32:4 34:11 38:3 39:5,6 59:22 60:9 64:7 67:9 70:22 71:18 72:22 76:18 86:9 98:3 105:4 125:12,20 126:13 127:14,16 129:4 143:8 144:4 154:13 168:4,5 183:12 274:12,20 280:8,18,18 284:14 300:14 302:18 311:1 318:13 321:5	365:15,16 368:12 368:13,15 370:16 evrything 141:18 exacerbate 12:11 exact 318:10 320:21 exactly 32:11 46:12 67:11 69:13 91:13 123:17 130:1 146:6 275:13 280:6 exam 58:2 examination 6:1 99:6 examine 4:17,21 340:16 364:1,15 365:14 368:1,5 369:1 examined 5:15 340:22 364:9 365:1 examining 6:1,5 7:10 Excel 357:14 exception 49:22 321:9 332:10 exchanged 94:7 exclude 361:11 excuse 152:14 315:20 354:17 excused 162:17,22 268:10 exhausted 303:22 exhibit 34:1,6 40:11 59:15,16,17 59:21 60:2,4 72:20,21 86:21 87:18 93:17 94:9 94:16,21 109:22 111:6 113:10,11 113:12 152:1 153:13 154:16 179:21 180:6,15 199:11 217:10 218:22 219:9,15 241:13,17 252:6	277:9,15 278:8 280:15 281:16 326:8 327:21 328:1,4,22 333:5 334:12,13,18,21 335:1 345:10 346:8 exhibits 13:14 58:5 58:6,21 59:7,12 88:5 89:9,17 90:19,20 93:11 94:7 99:12,18 111:4 151:15 178:9,18 207:12 207:13 252:5 279:4 323:18 326:1 327:18 342:8,8 343:3 368:14 369:9,12 existing 12:11 47:1 279:8 280:4 exit 102:17,19,22 exits 159:5,15 expect 5:10 302:10 expectation 13:8 expecting 161:1 experience 267:7 297:17 expert 275:4 295:3 295:7 297:14 experts 298:6 explain 123:19 138:5 167:3 175:3 191:15 199:11 206:5 283:5 335:2 344:9 345:18 explained 283:10 explaining 197:8 express 35:11 335:8 expressed 139:11 extended 223:22 extent 129:15 exterminate 167:5 exterminated 148:18	extermination 147:17 166:22 exterminator 168:15 externalities 11:15 extra 155:21 156:2 156:5 328:15 eyes 174:2 <hr/> F <hr/> F.L 307:2 332:9,15 face 20:6 21:11,14 62:16 80:1 253:14 faced 283:14 faces 20:7 21:13 62:13 118:16 119:8,9,11 274:8 facing 30:5 114:4,7 114:9,13,14 152:4 244:4 283:15 fact 12:8,20 145:19 288:10 304:3 310:19 319:4 336:12 337:1 346:8 349:7 353:9 363:3 factored 194:6 factors 216:6 facts 281:19 364:6 366:17 failed 107:20 fair 104:15 131:11 263:17 301:3 fairly 262:10 365:4 familiar 3:19 215:18 family 119:3,6 198:2 fans 147:10 far 16:2,3 19:14 128:2 208:11 224:19 225:9 227:15,19 266:21 296:11 300:21 320:20 farthest 228:22	faster 271:4 272:17 February 273:8,12 274:20 feel 6:15 12:16 129:4 131:7 270:18 295:10 298:5 304:11 309:20 353:21 feeling 297:2 303:14,17 304:4 feet 98:2,4,7 227:1 227:10,22 228:1,9 228:10 229:17 269:16 Felicia 272:11 felt 272:16 FEMALE 93:8 307:4,9,13,19 308:3,11,15 309:1 309:9,14,18 310:2 310:5,9,15 311:6 311:15,21 312:2 312:15,18,21 313:9,18 314:8,16 314:19 315:2,16 316:5 317:6 318:15,22 319:9 319:19 320:3,8,13 322:16,20 323:1 323:10 324:16,21 fence 227:5 fifth 276:3 fighting 190:1 fight 171:9 205:9 figure 144:22 196:15 230:13 298:10 330:1 file 351:16 355:9 filed 353:3 files 154:6 342:18 fill 12:17 120:22 filled 36:10 filler 214:19 final 155:2 find 51:6 90:17 112:12 143:6
---	--	---	--	---

166:6 280:14 346:3,22 finding 110:22 327:11,13 348:13 fine 83:6 85:12 109:7,7 143:11 154:8 224:8 240:2 271:21 294:4 299:21 307:13 311:16 314:9 319:20 355:5 361:13 368:20 369:16 finger 61:5 finish 37:7 107:13 107:13 111:7 127:4 339:15 341:4 344:22 finished 39:20,21 140:17 162:15,16 213:19 fire 175:12,14,16 196:12 266:11 first 4:10 14:18 15:16 22:21 23:2 23:3 25:22 30:4,7 33:5 34:16,21 35:1,21,22 39:8 39:10,12,16 40:2 40:12,15 41:3 44:15,16,19,21 46:10,12 55:1,3,5 65:7 69:2,3,4,6 76:14 80:18 81:21 90:13 91:4 100:11 110:16,17 121:3 129:22 150:6 169:9 173:21 178:5,6 179:15,21 180:16,18 182:21 185:4 193:6 206:9 225:9 241:6,8,17 242:15 243:6,11 243:14 265:7,20 276:1,3,8 318:17 318:20 326:3	337:4 five 3:2 4:9 5:7 12:15 19:19,19,20 30:7 31:6 42:3 54:8 55:18,20 56:3 81:21 139:15 176:16,18 177:4,7 188:19 197:3 318:22 339:9,9,10 341:2 fix 295:18 FL 358:2 flagged 160:18 flimsy 275:3 294:20 floor 14:18,18 15:17,17 16:6,7 16:14 26:3 30:5,5 30:8,8 33:5 35:22 36:1 39:16,17,22 40:2,16 41:3 42:15 44:19 45:16 46:10,13 48:6 50:1 54:5 55:5 69:2,3,4,6,6 79:10 79:15,20 114:10 114:11 127:5 183:15 184:2 193:6 200:14 218:11,18 240:19 241:3,3,4,6,7,9 242:16 243:6,10 243:11,14,15,17 244:20 245:19 246:21 254:6 260:11 275:1 276:2,3,4,5,8 floors 14:17 183:16 240:19,22 269:10 Florida 1:7 2:6 3:9 9:17 25:6 26:10 26:10,11 61:15,15 80:2,8 115:8 181:22 182:2,8 226:13 346:7 Floridian 2:16 3:6 269:6 271:11	foam 293:22 294:5 294:13,15 focus 85:13,17 105:9 160:11 202:20 240:3 255:12 focused 105:2 160:16 342:20 FOIA-able 319:21 folks 319:11 follow 112:16 237:5 262:9 299:2 300:8 following 170:2 food 14:19,19,22 15:7,20,22 52:8 foods 14:21 foot 181:17 186:5 200:18,21 227:10 230:2,5 247:4 footage 31:4 force 130:9 289:16 290:17 forced 301:14 foregoing 177:9 341:5 forget 82:16 forgot 47:21 121:2 140:21 form 66:9 forth 144:2 forum 277:4 forward 2:8 3:15 67:1 forwarded 283:1 foster 9:3 found 51:9 110:7 111:2 159:1 foundation 91:5,7 91:10 four 6:21 24:4,17 27:4 42:3 67:1 117:21 118:4 128:3,12,13 130:19 168:21 185:9 186:8	fourth 45:8,11 226:1 fourths 195:16 frame 47:14,16 73:4 78:21,22 102:22 159:22 275:3 frames 45:20 102:9 102:10 framing 159:16 freely 277:5 fresh 101:2 139:15 193:21 Friday 15:4 19:8 22:6 53:15 54:3 93:7 171:12,17 251:15 257:7 Fridays 270:3 292:9,10 front 18:20 29:9 30:3 33:18 38:2,7 38:8,14,15,16 39:5 46:10 48:15 59:7 60:1 62:18 91:19 102:17 165:9 171:5 174:2 182:1,3 186:12 193:5 196:7 199:12 207:11 269:17 270:15 275:15 291:11 330:18 full 12:15 171:13 171:17,18,20 172:4,5 307:6 308:3 313:10,14 functional 222:3 funny 287:11 furnace 242:17,19 242:21,22 further 57:22 102:2 125:6 126:20 154:17 169:2 206:18 219:17 224:21 237:2 268:6,7 283:21	288:20 293:19 294:8 306:10 future 83:9,10 <hr/> G <hr/> gap 42:2 44:2,3 47:19 135:3 195:4 213:22 214:18 215:8 gaps 195:9 213:17 215:14 239:17 garbage 57:2 garden 100:7 101:16 106:16 107:3,17 108:13 127:6 136:9,14,18 139:3,4,12 149:11 150:2 155:14,18 155:21 156:5,9 157:6,8,12,13 158:12 159:2,20 183:17 184:1 189:19 200:11 220:5 222:11 234:11 gas 23:8,10,15 24:8 24:19,20 26:14,20 27:3,4 29:13 63:15 152:9,10,20 153:6,7 207:13 gasoline 181:11,13 185:5 gate 205:15,17 227:11,15 229:17 232:4 262:18 263:2 general 3:12 163:16,20 341:19 342:6 generally 12:5 270:4 gentleman 364:22 gentlemen 353:12 germane 345:13,18 Gethers 272:11 getting 24:19,20
--	--	---	--	---

120:14 129:18	39:1,2,15 50:6	112:7 129:9,20	grounds 335:17	235:22 297:1
143:16 190:18	51:5,14 52:17	130:3 135:21	group 3:2 25:2	325:8
193:21 217:7	54:7,9 56:11 60:6	138:15 139:14	31:17 33:11,22	happy 56:10,14,16
274:16 301:18	66:22 72:3,22	141:3 178:17	133:15 179:10,11	169:19 203:4
351:14 371:16	76:12 88:17 91:17	196:5,16,20 202:7	179:12 269:5	hard 51:13 271:15
gifts 24:21	92:17 93:1 97:11	203:6 217:9 221:8	283:1	293:11 348:12
give 31:12 36:1	100:17 103:7	222:21 225:22	grown 10:21	hate 225:5 298:3
59:4 77:21 87:21	104:13,14,16,19	234:6 251:11	guess 3:17 6:9 36:6	hazard 196:13
103:7 104:3 109:8	112:21 120:7,9	264:15 266:15	77:9 127:5 139:8	he'll 224:11
109:15 111:15	122:14 127:21	270:18 271:14,16	155:3 179:8 191:1	heads 111:12
156:14 177:18	128:4 130:10	276:19 277:3	227:22 241:13	health 12:2
219:4 257:18	131:8 136:16	290:6,9 292:13	303:10 310:16	hear 2:4 3:16 5:4
268:5 278:17	142:5 144:4 158:6	297:10,11 303:21	324:16 366:8	9:9 10:10 50:7
295:21 317:22	165:11 167:22	307:2 310:22	guessing 309:16	52:18 53:5,7,8
318:9 319:14	173:22 174:17	321:3 325:12	guidance 342:2	57:12 70:4 71:13
320:21 321:3	175:4 179:9	327:5 329:3 334:7	guidelines 297:22	72:17 89:15
322:16 323:1,3	183:14 185:12,14	334:10 338:6	guy 31:8 38:16 44:5	130:14,21 135:10
324:3 326:10	185:16 189:1	341:2 343:6,15	135:1 167:5	139:8 144:14
328:15,19 329:17	191:15 196:19	348:6 350:12	guys 74:21 75:13	145:7,10 146:20
331:16 333:19	201:22 205:14	352:13,18 360:5	96:6 139:22 151:4	151:17 164:5
334:18 336:19	206:14 212:3	362:8,16,17 364:5	156:20	165:7,16 166:8,13
340:20 349:13	222:3,18 223:9	366:18 367:1		166:13,14,16,19
351:2 352:13	256:9 257:11,14	370:18 371:19	H	168:6 169:8,9,16
361:16,18 365:2	262:20 269:21	good 2:9 7:17 8:7	H 343:8,9,10,11,18	170:16 171:1,4,6
given 13:18 154:1	270:4,9,12,20	13:15 59:19 89:12	343:19,21	171:8,9,9,10,11
204:14 303:3	280:22 285:19	92:15 94:6 111:18	Hagar's 319:2	171:13,14,16,18
328:6,9 332:8	289:3 302:5,9	132:3 133:20	Hager 314:20	171:19 172:8,9,21
334:19 336:10	303:4 304:7	134:5 135:9 147:4	346:2	173:22 174:18
337:1,2 340:20	320:18,20 329:21	207:7 225:2,6	half 5:8 6:7 22:10	175:12,13,18,20
370:1	338:16 341:9	266:13 291:9,17	22:13,14,16 69:8	175:22 176:2,4
giving 89:1 120:16	345:12 348:10	296:9 297:5	70:1,3,3,4,19,20	187:13,15,17,20
297:19 318:9	354:3 356:19	299:17 353:14,14	77:20 78:4 81:4	188:14,16 189:6,9
352:16 359:15	365:7 370:6	353:14 354:2	195:15 342:21	189:22 211:13,19
glacier 182:18	God 284:11	367:15	halfway 109:21	211:20 212:10,21
glass 36:18,18	goes 3:20 4:10,14	Google 313:10	hand 22:19 40:11	218:8 233:8
42:19 45:19 46:1	5:2,16 7:2 63:15	gotten 135:6	handed 101:8	234:14 236:4,18
46:1 75:19,22	174:6 272:3	140:18 142:15,19	handful 12:1	237:7,8,10,21
76:2,4 77:10,15	289:16 293:6	great 28:8 34:8	handle 41:20,21	238:5,11 239:2
77:18 78:21	336:16	57:21 59:18 115:4	42:1 54:2 298:12	240:9,12 244:13
102:11 133:6	going 2:3 4:5 5:1	121:11 169:1	hanging 154:12	247:17 248:8
146:20 193:7,10	22:18,20 36:6	181:9 216:4	hangs 200:20	253:1,3 259:8
193:12 293:17,21	37:2 40:11,18	226:14 229:18,19	happen 5:1 196:21	260:8,9 267:21,22
294:6,7	42:22 46:2,6,11	243:13 265:4	297:10 325:6	270:16 271:1
glue 134:21 192:20	90:16,16,22	294:18 347:19	371:1	275:12 281:11
go 3:15 5:15 7:5	100:10,18,20	349:10 371:10	happened 303:5	299:6,10,16 315:6
24:21 37:6 38:11	101:5 105:14	grey 61:9	happens 30:12	315:7

heard 8:14 9:12 34:9 50:16 51:1 52:12,19,22 53:3 53:6 71:11 128:6 134:7 142:6,9,11 142:12 144:5,12 145:8 146:17 148:9 165:14 169:17 191:11 194:14 205:8 212:9,20 237:14 255:20 259:4 260:15 269:15 271:6 293:4 333:18 334:20 336:3 349:19	helpful 50:15 197:7 216:5 helps 122:2 HERMAN 1:17 Hey 131:17 327:10 Hi 249:4 high 37:18,19 41:13 48:20,21 122:22 139:21 145:2,2 169:17,18 169:20 170:16 171:14 193:8 higher 20:10 71:22 183:20 208:12 highest 71:19 hired 161:13 Hirestone 115:14 Hirestones 115:18 116:1 history 343:22 347:4 hit 179:10 360:12 hold 41:6,8,13 42:2 284:21 285:18 289:4 hole 209:6,9,11,20 210:5,14 211:17 home 181:21 294:13 304:1 316:15 338:16 365:7 homeworks 43:21 hookah 1:7 2:5,12 52:7,10 201:8 hope 92:18 129:7,8 342:19 hoped 350:5 hopefully 6:8 112:20 339:7 370:6 hotline 272:16 289:12 355:20 356:4,6 hour 5:8 6:7 9:3 10:4 27:3,4 56:11 56:15,16 153:7	204:16 222:1,7 257:9 258:7 273:16 287:16 291:7 292:7 hours 15:2,3 19:2 24:3,4,9,16,17 32:13 164:14 255:18 256:8 283:15,17,18 287:21 290:5 291:6,18 292:8 298:22 300:10,18 301:21 304:17,21 house 65:8,13 182:10,14,21,22 188:18 211:13,19 212:10,21 213:2 216:15,20 217:13 227:5,8,9,15,16 227:19 229:6 240:18,20 241:9 242:2 246:13,14 246:16,20 247:2 247:12,17,19 248:3 252:20 253:9 254:22 255:2,7 258:14,15 261:4 264:21 266:5 272:13 312:3 houses 32:1 118:21 182:5,7 186:8 188:19 200:2,19 225:20 226:6 240:21 258:15,17 310:12 How's 284:6 Howard 27:14,17 27:19 28:1,4 189:7 huge 123:19 274:19 husband 7:14	idea 73:19,22 75:7 126:16 266:13 292:7 293:13 328:7 359:10 identifiable 322:19 identified 91:6,9 154:4 329:17 332:9,16 333:8 identifies 32:3,7 identify 91:8 95:17 96:17 178:19 180:21 181:2,21 217:11 295:16 318:10 332:11 340:8 identifying 179:16 316:9 identity 309:6 316:7 illegally 105:18 image 67:2 76:13 imagine 294:14 immediately 23:11 64:7 65:19,20 296:8 impact 160:13 336:1 363:12 impacted 197:20 impacting 126:7 impartial 297:13 implemented 250:8 implementing 80:7 80:9 important 9:19 92:13 356:15 impression 288:14 improve 43:20 improved 194:20 205:21 206:13 233:21 234:8 239:16 268:4 improvement 57:19 135:10 192:11 236:2 251:10 improvements 73:2	80:16 191:21,22 193:4 196:18 inability 318:10 inaccurate 64:21 inch 77:20,20 78:4 78:4 109:1 132:8 195:15 include 316:11 included 157:20 includes 7:10 358:1 including 358:6 inconsiderate 272:2 incorporated 346:5 increase 9:4 independent 179:3 Index 89:8,17 indicated 9:6 15:6 244:12 249:7,13 295:2 354:18 indication 355:14 individual 298:17 individuals 35:8 indoors 223:3 indulgence 153:11 inefficient 365:4 information 124:1 124:3,9,12 307:22 310:6,11 313:7,20 315:8 316:9 336:16 346:2 information's 124:21 informed 3:13 initial 192:1 initials 307:2 333:9 injured 104:18 input 12:9 inside 24:21 30:7 33:16 40:4,5 48:1 102:9,11,16 159:15 161:5 169:9,17 171:2 175:17 192:9,11 192:15 194:11,20 195:18 196:6
I				
i.e 128:11 297:16				
ID 55:1				

200:21 210:22 211:2 218:3 220:21 222:20,22 224:8 230:14 232:7,12 233:2 235:15 236:7 249:16 250:1,9 251:14 256:9 259:17 263:20 265:12 274:12 296:18 300:16 install 30:10 installation 192:9 installed 38:17 194:15 265:2 installing 264:10 instance 359:22 insulate 196:11 263:22 insulated 275:21 insulating 294:1 insulation 192:21 194:10 195:12,17 196:17 214:19 249:9 275:9 291:10 293:1,13 intend 11:7 interactions 206:5 interesting 240:6 interior 102:10 159:15 160:1 263:15 internal 339:2 341:3 internet 307:6,10 308:16 311:7,13 interrupt 85:8 introduce 355:22 introduced 145:20 155:6 introduction 358:7 investigate 51:5 52:3,17 166:1,2 investigating 165:4 investigation 51:21 investigative 253:6	316:8 343:20,22 355:1 investigator 3:13 3:17 4:11 7:11,15 7:18 111:8 165:11 165:13 254:15 362:17 370:8,19 investigator's 109:9,10 151:16 152:1,17 252:5,16 370:17 investigators 5:3 31:2 143:1,2 252:6 investments 84:16 invite 70:6 invited 67:17 68:13 274:20 invites 69:17 involved 165:4 166:21 involving 285:6,13 irrelevant 349:5 issue 146:12 150:14 202:8,18,19 261:4 266:11 267:5 285:16 292:2 310:1 339:12,15 339:18 345:14 358:6,14 364:12 issued 97:17,19,20 issues 6:11 9:7 53:11 154:20 164:18 168:3 310:6,10 326:4 339:2 it'll 271:3,4 294:7 328:18 item 326:3 349:21	Jenkins 87:22 Jeremy 2:13,18,20 job 55:3 134:5 135:9 147:4 167:7 167:17 jobs 54:21,22 Jones 1:17 6:6 93:3 99:7,8,11,15 120:10 125:8,9,14 125:19,22 126:5,9 126:15 127:3,8,11 127:19 128:1,6,10 128:15,20 129:12 129:21 130:5,9,16 131:1,11 142:14 177:19,22 207:3 237:3,4,13,19 238:1,6,9,15,17 238:22 239:4,6 240:2,5,11,17 241:2,5,8,11,16 241:20 242:1,5,9 242:12,15,19,21 243:2,5,11,13,17 243:22 244:3,6,8 244:12,17,21 245:3,9,14,18 246:1,4,8,11,18 247:1,6,13,15,22 248:5,7,10,12,16 248:20 249:1 280:1 294:21 295:1 296:2,15 297:7,12 299:1 300:6,7,17 301:3 301:7 306:18 313:15,19 314:15 317:21 318:2,4,5 324:2 339:4,11,14 351:2 357:19 363:5,6,9,19 364:11,20 365:3,8 366:10 367:15,21 371:17 judge 332:14 judgement 366:7	judicial 150:14 281:4 285:1 331:14 334:7,9 344:2 356:5 361:5 jump 243:14 294:22 jumping 91:14 junction 299:10 juts 116:10	14:13 15:1,6,10 15:14,18 16:4,7,9 16:12,15,19,22 17:3,7,12,15,19 17:22 18:4,8,10 18:13,16,19,22 19:4,11,14,17,20 19:22 20:3,7,9,13 20:16,19 21:1,5,7 21:13,18,21 22:2 22:8,14,18 23:3,6 23:9,14,19,22 24:4,7,13,17,19 24:22 25:7,12,16 25:19 26:4,6,8,12 26:15,20 27:2,7 27:12,16 28:3,6,8 28:12,16,18,20 29:1,5,11,16,21 30:9,16,21 31:1 31:11,16 32:2,6 32:14,17,20 33:1 33:6,10,15,18,21 34:8,13,16,19 35:3,7,11,14,19 37:9,13,16 38:1,6 39:3 40:1,6,9,22 41:5,13,16,19 42:7,10,17,20 43:9,13 44:8,13 44:17,22 45:2,4,7 46:4,8,14,17,20 47:3,5,8,12,15 48:2,5,9,16 49:2,5 49:8,20 50:5,10 50:12,19,21 51:4 51:9 52:15,21 53:2,10,14,18 54:1,12,17,20 55:10,13,17,22 56:7,9,12,16,20 57:4,6,21 58:20 59:9,18 61:6 66:3 87:14 88:4,11,14 89:14,19 90:14 91:4 92:10,13
		K		
		keep 30:17 46:17 48:1,13 50:20 51:12 54:10,11 55:9 57:16 83:7,8 83:14,18 131:22 140:1 141:3 146:11 148:12 169:22 190:14 223:15 232:16 239:6 247:11 265:12 295:21 keeping 236:9,12 keeps 6:6 30:19 37:21 Keith 272:10 kept 332:1,21 key 196:18 kind 14:14,16 47:20 63:9 85:13 89:20 101:20 116:7 123:19 146:16 171:21 182:17 186:15 189:15 192:10 193:20 197:8 216:14,16 258:11 291:14 293:22 294:4 303:3 kinds 271:8 kitchen 242:8,9 243:1 Klein 316:4 Kline 2:9,10 6:17 8:2,5,7 13:11,12 13:17 14:3,7,10		
		J		
	JAMES 1:18 jammed 276:10 January 81:6 155:12 156:2 355:11			

93:10,12,16,20	254:21 260:15	know 5:3 6:10,13	242:6 245:4,10	largest 11:20
94:4,12,17 95:6	263:8,11,13,21	7:22 8:13 17:8	249:22 253:12,12	late 19:1 22:3
95:10 98:8 104:3	264:4,7,14,17	19:1 22:2 23:22	253:18,20,21	139:18 146:13
104:8 109:12	265:4,15 276:17	25:1,22 27:18,19	254:8,9,13,16	283:15 339:19
111:1,7,15,17,19	276:19 277:21	38:18 50:22 51:15	256:7,15 261:18	346:18 356:13
112:15,16 121:3,5	278:2,12,15,21	51:16,17 57:9	266:6 267:9,10	361:10 371:16,17
121:8 142:2,3,8	279:1,15 280:7,17	59:11 63:10 64:16	273:22 275:13	lateness 342:4
142:11,13,18,21	281:7,18 282:1,6	65:13 71:7 73:18	276:2 277:3	law 13:5 303:10
143:4,6,14,19,22	282:11,17,19	82:6 84:4 85:14	285:10 290:20	319:17
144:8,11,16,18	284:6 285:3,6,10	85:17 87:3,14	293:5,6 294:10,12	lawyer 95:13
145:4,12,19 146:2	285:12 286:2,4,8	90:14,21 92:20	297:2,4 298:8	lay 225:10 226:18
146:9,16,21 147:2	286:12,16,22	95:9,10,19 96:6	310:12,18,19	layer 293:21
147:11,15,20	287:4,8,13,22	96:15,18 101:10	312:4 313:3,8,10	layout 240:18
148:2,7,14,17,21	288:2,10,15,19	101:19 103:4,8	313:13 314:2	lead 4:4,6
149:1,7,10,13,16	301:12,18 302:3,8	105:3,7,10,10,22	317:7 318:14	leads 41:7 48:6
149:18 150:16,18	302:14,17 303:6	107:8 108:19	319:13 320:22	leak 44:7
151:15,22 152:8	303:11,13,17	109:3,4,7,7	321:2,11,11,22,22	leaking 38:4
152:10,13,16,20	304:2,9,18 305:1	112:12,18 113:20	323:15,16,20	leaks 210:6 267:4
153:1,6,10,14,16	305:4,8,12,15,20	116:4 119:9,16	324:6,7 327:16	learn 132:9 282:9
154:3,11,17,21	306:9 307:3 308:5	120:5 122:15	330:2 332:10,14	282:14 347:10
158:6,10,14,18	308:19 310:21	123:10,15 131:10	333:14 338:5,15	learned 249:5
161:10,17 162:2,6	312:10 315:20	133:12,13 136:13	339:20 342:1	281:16 282:2,4
162:11,14,18	317:1,11,19 322:3	136:16,21 138:13	343:6 345:11	345:7
163:1,5,13,15,19	322:5 323:14	138:15,17,18,19	346:16,17,21	leave 82:18 191:17
164:1,3,10,13,16	327:12,16 328:5	138:20 141:14	349:9 350:7	191:17
164:21 165:3,6,21	328:12,20 329:13	143:17,18,21	351:12 358:22	leeway 303:4
166:5,10,15,18,21	329:16 331:18,21	148:6,9,9 149:4	359:2,2,3 361:10	left 34:21,22 35:21
167:4,12,16,19	332:7,20 333:6	149:18 154:5	362:2,2 364:10	61:10 113:4,8,16
168:1,14 169:1	335:16 336:7,21	157:19 161:18	365:14,15 369:2	113:17 117:12
173:7 176:8,13,20	337:16 340:3,6,10	167:5 172:15,22	370:21 371:18,18	133:22 152:4,6
178:11 180:13	343:6,8,12 347:17	173:17 174:6,14	knowledge 148:8	195:9 254:19
190:16,18 199:1	349:1 350:9	174:15,21 178:12	216:12	255:2 273:14
206:21 207:7,10	352:11,15,22	178:12,16,19	known 132:16	337:2 370:9
207:16,19,21	353:8,15 354:17	179:14 183:15	knows 66:5 297:9	leg 229:5
208:2,4,10,15,22	355:1,5,13,17,18	193:14 194:1,2	297:10	legal 361:7 366:11
209:5,10,15,17,20	356:13 357:1,2	195:10 196:1,1,20	<hr/>	legally 320:16
210:3,10,15,20	358:11 359:7,21	197:12 198:6	L	legible 331:9
211:1,6,8,14,18	360:5,19 361:1,7	199:4 202:11,12	L 277:9 342:11,13	legitimacy 356:1
212:8,15,20 213:3	361:21,22 364:1	205:6 206:15	344:17,18	legitimate 160:10
214:8,13 215:1,5	365:2 368:4 369:1	208:8 209:1	labeled 111:5 328:4	LeGrant 358:17
215:17 216:1,4,11	370:3,5,12,20	212:18 215:8	328:9	legs 113:14
216:14,18,22	371:1,7,10,15,18	225:7,19 226:19	labels 328:6,7	let's 17:22 23:9
217:4,9,14,17,21	Kline's 87:11 95:16	227:12 228:19	laid 25:17	29:16 37:9,10
218:4,7,12,15,21	333:14,14 351:6	229:10 232:5,5	land 225:10 226:18	42:20 53:10 90:2
219:2,13,16	351:13	233:14 234:5,6,7	landlord 323:12	99:20 107:5
252:11,13,17	knew 194:3	234:14 235:2	large 125:17	108:19 149:2

177:3 179:9 190:7 197:16 228:20 229:4 234:10 243:14 281:10,14 285:18 291:20 315:11 334:2 339:4 347:21 353:16,17 357:18 361:13 367:11 369:18 370:16 letter 309:6,10 314:22 315:14,15 315:22 323:11,12 323:13,17,20 324:21 326:4,12 326:16 329:1,17 331:3,11,22 333:7 335:5 348:13 349:4,22 350:3,10 351:7,8,20 letters 277:22 278:15 327:17 333:8 level 67:18 68:7,8,9 68:10,14 70:7 170:5 173:18,20 174:10,14,15,22 272:1,4 293:3,6,7 293:11 296:20 297:1 license 1:8 2:6 8:9 52:7,7,8,8,10 85:16 100:16 101:16 136:14 157:20,21 221:17 346:5,11,18 358:13 licensed 300:14 licensee 2:10 109:8 109:16 178:2 207:4 254:18 297:20 306:2,19 346:20 365:9 licensing 319:7 lieu 93:12 life 160:13 198:1	light 208:19 261:20 303:4 304:3 lights 32:18,19 limit 301:21 limitation 292:8 302:18 limited 197:1,9 291:6 298:22 limits 224:7 line 56:19 145:15 172:13 273:18 319:6 liquor 52:7 listed 149:11 336:22 337:6,10 listening 144:22 little 41:1 44:2,3 47:19 84:7 135:3 143:12,12 145:8 165:18,19 166:9 166:12 169:18,20 174:1 183:20 233:13 234:8 235:21 257:18 271:4,5 341:20 363:12 livable 221:20 223:15 live 9:14 10:6 26:18 26:22 28:1 181:7 185:22 187:14 223:13,18,19 269:8 300:11,19 321:1 355:15 363:11 lived 286:10 302:22 lively 223:15 lives 311:19 359:13 living 65:9 77:2 116:4 318:11 LLC 1:6 lobby 171:3 locate 318:10 located 2:5 21:8 25:14 145:14 location 284:3	322:9,11,12,21 323:2 lock 205:15 locking 262:17 263:1 log 355:7,11 long 5:9 6:7 14:8 56:19 82:10 117:21 163:19 196:19 197:2,8 206:13 220:4 223:8 224:10 228:15 257:11 267:4,12 271:16 271:17 286:5,9 303:1,21 305:3 307:17 320:22 longer 121:12,13 229:3 289:7 367:4 look 7:4 22:21 26:2 31:20 40:12 42:20 59:21 77:8 87:19 89:22 90:7 105:13 119:8 160:9 161:14 162:9 179:11 181:19 184:15 186:15 188:5 218:16 279:12,20,21 296:17 323:19 342:1 356:3,7 359:15,19 362:3 looked 66:22 178:11 221:5 234:15,17 310:7 310:11 looking 26:9 27:20 31:6,8,17 32:8 33:1 41:9 47:8,10 67:1 87:15 111:10 111:11,12,19,20 112:8 113:3,5 114:16 115:4,5,6 117:16 121:5 178:14 241:12 252:20 253:13,14	275:16 278:11 279:16 295:11 looks 110:1 119:7 132:7 182:15 230:8 276:1 loop 149:2 lot 7:21 10:22 29:1 29:3,4 50:16 81:14,22 84:22 141:9,10,13,21 142:15,19 144:15 145:13 172:7,8 196:18 197:8 203:10 216:7 222:17 256:19 260:3,5,6,7 264:1 267:22 274:6 279:18 295:15 298:7 299:11 309:15 328:16 363:11 lots 271:7,18 312:1 358:2 loud 171:14 187:14 189:17 201:19 232:21,21 233:3 235:12,22 237:9 238:4 239:10 283:18,19 306:7 louder 238:20 Lounge 17:10 22:10 32:21 60:20 60:21 61:8 62:12 62:13 64:3,15 65:5,20,21 67:3,8 68:13,21 69:8,16 145:14,21 146:6 170:21 183:2 184:8,12,16,18 185:12,19 186:7 186:17 187:1,16 187:18 208:6,21 Lounge's 145:16 208:18 love 275:16 low 54:10 83:15,21	83:21,21 128:4 140:1 169:17 174:14 193:8 lower 127:22 128:8 170:5,9,12,12 174:12,17,19,21 175:8,9 233:14 241:4 luck 348:16 <hr/> M <hr/> M 343:1 M-O-N 2:21 M1 345:10,15 358:1 ma'am 181:21 241:20 313:4 machine 276:9 madam 7:7 8:8 10:16 13:13,19 33:21 59:9 85:19 103:13 104:12 106:1 119:18 125:9 131:14 153:20 161:10 237:4 249:2 252:1 295:1 299:4 300:7 301:8 308:5 309:4 309:4 310:21 317:21 325:3 329:19 331:18,21 333:11,13 335:21 345:3 346:14 349:1,15 350:9,21 356:2 359:6 360:7 366:22 mail 273:14 mails 273:21 main 39:17 63:7,12 84:21 140:7 229:6 229:11 major 37:21 128:18 making 73:2 74:10 74:12 80:15 84:16 84:17 105:4,15 140:17 143:18
--	---	---	---	--

251:10 351:6	65:20 73:14 74:6	80:18,18,19 192:1	158:21 159:4,8,14	328:14,19 333:11
359:10 367:3	75:6 76:4 77:21	192:2 206:10	159:21 160:4	333:13 334:9,13
MALE 90:9 91:3	78:20,22 79:6,9	meetings 34:17	161:20 162:4,10	338:12,18,22
92:14 99:2 104:12	80:10 82:14,22	35:8 314:13	175:11,22 176:3	339:7 343:10
137:6 151:10	85:11 91:6 92:22	319:14	177:1,5,14 180:20	345:17,22 346:14
239:20 306:12	95:17 96:14	Member 1:16,16,17	181:1 219:22	347:7,19,21 351:5
308:1 320:15	105:18,21 119:10	1:17,18,18 2:17	220:3,12,16,20	351:10,13,22
321:14 324:15	124:20 126:19	7:7,9,13 36:10,13	221:2,9,13,19	352:17 353:11
338:7 343:21	129:22 130:4	38:12 55:20 87:2	222:4,10,13 223:1	354:20 355:16
352:5	134:10 141:20	87:5,8 88:10,13	223:10 224:5,12	356:2,10,21 357:7
manage 54:4 85:22	145:1 150:5	88:16,21 89:5,6	224:17,20 225:2,5	357:10,14,17
266:5	156:21 188:11	90:5,13 92:12,16	225:8,14,17 226:3	359:6,17 360:3,19
managed 225:8	202:18 209:8	92:22 94:2,5 99:4	226:7,10,14,17	361:2,13,16,20
management 12:4	222:19 229:15	100:5,13 101:6,18	227:2,4,7,12,14	363:2,6,9,19
57:2 85:21	231:1 232:15,19	101:21 102:2,5,8	227:18 228:2,5,10	364:11,19,21
manager 86:2	248:9 278:19	102:13,16,21	228:14,19,22	365:5 366:22
148:5 163:16,20	284:4,15 285:9	103:2,9,13,19,21	229:4,10,13,18	368:3,8,22 369:4
168:7	309:14 317:6	106:12,14,18,21	230:1,7,12,22	369:6,11,14,18
managers 54:5	321:12 322:14	107:5,8,12,15,22	231:3,5,9,13,17	371:13
57:14 86:2 140:1	327:17 332:13	108:3,6,9,13,15	231:21 232:5,11	members 8:8,13
293:5	342:10 347:3	108:18 109:2,6,14	232:15,18,22	120:1 152:3 322:9
managing 86:5	352:20 353:5,7	109:18,20 110:10	233:5,11,16,19,22	mentioned 19:12
164:7 170:8	354:8 355:16	110:13,19 111:5	234:9,13,20 235:2	20:17 71:12
map 25:10 60:7,19	358:20 359:9,11	111:14,18,21	235:7,13,18 236:1	129:13 261:17
62:11 72:2,3	360:12 365:7	112:6,14,20 113:2	236:8,14,20 237:1	266:3 267:14
181:22 184:16	366:15 367:6	113:7,11,17,19,22	240:7 249:4,12,19	merely 315:21
March 351:9	371:19	114:3,7,11,15,19	250:3,7,11,18,21	mess 123:8
mark 22:20 149:3	meaningful 350:8	114:22 115:3,15	251:4,7,13,17,22	message 283:6,10
marked 40:10	means 39:1,9,13	115:20 116:6,9,13	254:18 255:1,6,9	met 1:12 35:4,5
marking 217:10	69:4 81:22 123:7	116:16,19 117:1,6	261:13,16,20	metal 117:2 196:10
material 132:11,15	174:18 288:4	117:11,14,20	262:3,6,13 263:4	196:10 266:10
267:7 294:1,5	303:22 317:7	118:2,5,11,14,18	268:9 279:22	metals 45:21
materials 101:8	346:8 349:10	118:22 119:3,7,13	280:3 289:1,4	mic 62:21 84:13
249:7 267:8	meant 192:9	119:16,20 120:2,6	309:13 311:8,11	151:21
Matt 358:17	measure 290:14	120:11,16 121:1,7	312:4,6 313:3,6	mice 86:5,7,10
matter 1:5 59:10	measured 77:21	121:10,16,22	313:12,17 314:3	MICHAEL 1:17
84:22 112:7 177:9	80:11	122:3,8,10,14,19	314:12 315:4,11	microphone 5:18
192:12 223:12	measures 9:12 11:9	123:2,4,10,13,22	315:17 316:3	12:13 58:17 59:5
267:12 316:12	11:18 35:16 37:10	124:4,8,11,16,19	317:14,17 318:2	86:20 112:3
330:16 341:5,16	53:19 80:5,9	125:1,4 131:14,17	318:17,18,20	151:19 180:9
347:8 350:1	126:2 128:16,17	131:20 132:3,6,14	319:2,11 320:18	197:21 199:16
371:21	289:17 295:18	132:18,22 133:3,8	321:16,19 322:11	219:19 252:8,18
matters 341:3	mechanisms 274:2	133:11,18 134:12	322:14,18 323:6	252:22 253:7
maximum 45:14	meet 80:19 81:5	134:15,19 135:5	324:4,10,20	265:14 268:13,17
mean 21:15 36:18	meeting 1:3 34:20	135:13,16,20	325:10 326:9,19	277:17 278:6,14
37:2 43:3 61:13	34:21 35:2,21	136:2 151:20	327:2,7,21 328:3	279:13 280:13

312:17,20 313:2 314:21 315:10 317:8,10 324:1,18 325:16 326:6 338:11 middle 26:16 73:3 110:7 114:5 186:3 186:11 midnight 299:18 305:5,21 Miguel 306:11 Mike 90:22 Miller 1:14,15 2:3 2:22 3:8,11 4:1 5:19,22 6:4,19,22 7:8,12,19 8:3,6 10:14 12:16 13:10 13:15,20 14:2,20 34:2,5 36:14,20 55:19 56:2 58:2,7 58:10,13 59:2,14 59:19 60:2,5 62:8 62:20 63:1 65:10 65:15 66:10,15,20 71:2,6,10 79:8,17 79:21 84:6,9,12 85:8,11 87:3,7,10 87:18,21 88:3,6,9 88:10,21 89:8,12 89:16,20 90:2,4,7 90:11,21 91:13,17 92:2,6,9,21 93:2 93:10,14,19 94:1 94:6,11,15,19,20 95:8,12,15 96:1 96:11,14,20 98:11 98:16,19,22 99:3 99:5,17,22 100:3 102:4 104:1,6,10 104:22 105:17 106:3,7,13 109:19 112:1,10 113:9 115:17,22 117:7 117:18 118:3 119:21 120:14,20 125:8 131:15	136:6,11,15,21 137:2,5,7,11,15 137:18 138:1,3,7 138:11,14,18,21 139:2,5,7,17,20 140:3,10,13,16 141:4,8,15,22 143:20 146:7 149:17,21 150:7 150:12,19 151:1,3 151:8,11,13 152:14,18 153:12 153:15,19,21 154:9,14,19 155:1 155:5,10 157:22 158:2,9,19 160:6 160:9,15 161:4,8 161:16 162:12,15 162:21 163:3,7,11 169:4,11,14 172:11 173:9,13 173:15,20 174:4,8 174:13,20 175:2,4 175:8,10 176:5,10 176:15,21 177:3,7 177:12,15,17,21 178:7,10 179:1,5 179:8,14,19,22 180:4 181:6,9 190:17,20 191:3,6 191:9 196:22 197:5,15 198:11 198:13,17,22 199:5,8,21 200:5 200:8 202:6,16 203:1,5,8,11,14 206:20 207:2 219:1,5,8,11,14 219:20 220:1 224:22 237:3 249:3 252:2,12,14 252:19 253:5,8,11 254:1,3,7,14 255:4,8,10,15 256:6,12,15,21 257:5,8,15,20	258:2,5,10,13,18 259:2,4,11,16,20 259:22 260:4,7,10 260:14,22 261:7 261:11,15 262:8 262:16,22 263:3,6 263:10,12 265:19 268:7,10,12,16,18 268:22 269:3 276:18,21 277:12 278:1,4,9,18,22 279:3,6,10,14,20 280:6,11,14,19,22 281:3,6,10,14,21 282:8,15,18,21 284:2,21 285:5,8 285:11,14,18,22 286:3 287:11 288:21 289:2,5,10 289:15,20 290:10 290:13,16 291:1,4 291:20 292:1,15 292:21 293:9,12 294:9,16,21 299:5 299:12,19 300:1,5 301:9 306:11,13 307:8,11,16 308:9 308:13,17,20 309:21 310:3,8,13 310:17 311:4,9,13 311:22 312:8,12 313:1,5 314:1,4 314:11,18,22 315:3,13 316:1,21 317:4,9,13,16,22 318:4,14 320:1,5 320:9,17,20 321:17,20 322:8 322:12,22 323:3 323:16 324:6 325:5,8,12,15,17 325:21 326:18,22 327:4,10,14,20,22 328:21 329:3,7,11 329:15,21 330:2,4 330:7,14,17,20	331:7,11,17,19 332:5,17 333:3,12 333:21 334:6,11 334:17 335:3,11 335:14 336:6,15 337:8,12,15,17,21 338:3,17,20 339:1 339:5,9,13,18 340:9,12 341:8,13 341:18 342:10,16 342:22 343:2,5,9 343:11,14,19 344:1,6,12,16,19 344:22 345:4,15 346:13 347:16,20 348:1,3,5,11,14 348:17,22 349:12 349:17 350:2,19 351:7,12,19 352:2 352:8,14,19 353:1 353:9,14,17 354:1 354:8,11,13 357:4 357:12,15,18,20 359:1,14,18 360:9 360:15 361:9,15 361:18 362:1,12 362:15,22 363:4 363:21 364:4 365:13,22 366:2,4 366:8,15,20 367:5 367:9,16,20,22 368:9,11,16,19 369:8,20 370:4,10 370:14,22 371:4,9 371:12,14 mind 180:10 308:11 329:20 335:21 337:20 343:17 mine 94:13 115:19 minute 23:10 29:17 42:21 85:9 176:16 176:19 177:4,7 255:12 341:2 minutes 4:9 5:7 7:10,16 12:15	90:15 178:2,2 197:1,4 207:4,5 270:22 271:2 275:12 306:19,20 317:12 319:1 337:5 339:6 365:9 missed 159:18 misspoke 9:17 mister 133:21 mitigate 9:11 125:11 126:6,6,17 127:15 131:22 214:20,21 215:20 217:22 223:3 mitigated 70:21 126:12 216:9 261:1 mitigating 210:18 213:8 mitigation 209:1 mitigator 132:16 133:12 mixed 223:14,18,19 224:3 mixer 174:6 175:7 mixture 8:21 model 123:4,7 modifications 191:12,15 265:21 335:22 modified 354:5 moment 71:12 278:10 Monday 270:20 290:2,8 Mondays 269:20 monitored 297:3 monitoring 297:9 month 81:4 148:1,4 148:5 167:21 168:22 272:5 months 31:6 34:9 45:3,4,6 80:22 81:2,3,7,9,14,19 81:22 82:1,2,5 84:17 206:7 220:6
---	--	---	--	--

morning 19:8,9 57:18 204:1 221:12 222:2 257:3,13 270:19 270:20 328:9 337:1,11	272:20 273:14 275:12 283:18,19 291:12 301:17 304:16 305:14 306:7	338:15,16 339:1 354:19 358:15 366:16 needed 31:3 353:21 needs 85:15 202:13 negotiate 277:5 negotiating 277:2 negotiations 277:6 344:13 neighbor 10:17 12:9 31:20 126:21 126:22 132:4 148:11 211:8 272:8 290:20 306:22 329:1 331:3 336:5 neighbor's 348:21 neighborhood 11:13 12:5,19 24:11 25:9 30:6 30:11 31:22 34:17 35:2 36:7 37:8 57:10 67:13 84:4 101:2 103:6 105:5 107:2 127:1 129:9 132:21 167:9,10 168:8 170:11 187:15 286:21 297:18 304:22 neighborhoods 32:12 52:5,13 223:14 neighboring 10:20 neighborliness 336:4 neighborly 13:9 203:10 neighbors 12:22 43:20 45:17 51:1 52:12 54:11 73:1 81:11 101:4 114:21 126:7 132:1 133:15 135:2 146:10 164:18 169:6 174:19 191:16	258:18 259:5 269:8 271:7,11 272:2,7 273:4 291:17 299:21 302:16 326:5 335:5,7 Nellie 53:9 Nellie's 17:11,12,14 21:4,5,8,10,19 53:4 71:14,18 72:10,12,14 166:14,16 171:5 171:16 172:19,20 173:2 188:1,5,9 nervous 324:9 net 298:8 never 80:10 101:9 130:12 245:17,20 245:21 246:1 250:7 260:19 270:2 271:6 new 71:7 124:12 144:14,21 354:6 365:15 370:16 nice 55:9 167:8 170:10 193:20 204:11 220:11 NICK 1:16 night 11:5 53:15 65:4 170:3 174:10 174:11 188:13 189:14 190:7,8 204:21 222:2 231:15,19 232:16 239:7 256:8 267:16 270:14 271:21 273:13 290:7 293:7 295:21 335:6 337:19 338:2 355:12 night's 336:2 nightlife 302:5 nights 269:15,21 271:22 290:1,3,8 290:21 291:6	292:12 nine 225:20 226:4,5 247:4 258:15,16 nobody's 189:8 190:10,11 235:4 noise 9:8,11,12 10:13 11:3 34:10 35:12,17 36:3,6 37:22 38:3 39:14 51:2,18 52:13,18 52:19,22 53:3,6,6 56:22 57:4 76:17 81:12 85:1 100:6 126:13 134:7 136:17 139:12 140:3,5,22 143:7 146:12,22 147:1 147:13 148:9,10 160:12 164:18 165:1,14,17 166:1 166:3,7,16,19 169:10 170:19 171:7,19 172:21 173:22 174:18 175:19 183:11 185:19 187:13,15 187:18 188:13 189:6,16,22 192:8 192:8,16,17 193:9 193:11 194:9,16 195:20 198:3 200:15 201:11,13 201:22 202:19 204:9,12,16,19,20 204:22 205:2,8 206:3,17 210:4,6 210:17,18,22 211:7,11,17,19,20 212:9,11,18 213:8 214:20,21 215:20 216:9 217:22 218:2,4,8 221:21 222:1,6,8,15,20 222:22 230:14,15 230:18 231:12,14 232:1,7,8,12
motions 341:15 367:6 motivation 85:5 125:14 move 33:22 66:21 91:3 98:14,20 99:16,18 102:3 149:16 153:16 203:4 213:3 218:22 315:11 325:3 327:1 334:3 334:22 338:7 341:14 343:3 345:12 347:21 353:16,17 361:14 367:11 369:19 moved 59:11,15 90:9 99:12 178:20 286:13,21 302:4 367:2 369:8,12 moves 63:20 moving 96:16 286:18 287:14 342:8 343:16 museum 187:4,9 music 50:7,8 100:9 140:5 142:5,6 144:6 171:8,14,19 172:10 188:17 189:11,12,13,18 189:21 201:16,19 203:21 211:5,9 220:13,14,17,19 230:18 232:20,21 233:2,13 235:14 235:17 237:9,10 237:20,21 238:5 259:9,12,13,14,14 269:14,15 270:16 270:20 271:8	N			
N 354:4,12,15 N.W 1:13 N1 354:3,4 355:7 name 2:18 3:4 14:4 14:5 38:18 47:21 64:8 118:8 181:3 307:5,6 308:4 309:7 310:19 311:16 313:5,10 313:14 314:5,9 315:7 316:14 321:1,4,21 322:2 322:5,8 323:4 324:3,10 358:18 name's 309:2 323:12 named 307:1 358:3 names 340:7,11,21 near 33:18 138:22 300:3 nearest 24:12 necessarily 12:21 13:6 104:2 161:1 211:22 296:8 358:19 necessary 370:7,21 neck 319:17 need 4:8 10:8 13:20 59:2 91:5,6 96:17 96:21 103:2 105:13,20 113:20 119:17 136:15 144:18 145:5,6 160:3,4 178:15 193:12 221:17,18 221:20,21 222:5 272:16 310:19,20 313:10 322:8 331:1 337:5				

234:14,19 235:9 235:14 236:5,6 237:9 239:13 244:13 245:1,4,5 245:11 248:20 250:17 255:16 256:2,3,5 258:19 259:6,8,17 260:16 261:1 263:15,20 264:2 265:12,22 267:2,13,16,21,22 267:22 269:13 270:7,7 274:16 276:2,5,11 283:15 287:20 288:8 289:16 290:7,14 292:11 293:19 299:6,10,14,16 302:12 319:6 336:16 355:12 366:20	356:5 361:5 noticed 10:22 notification 289:13 notified 202:5 notify 107:2 notwithstanding 10:9 number 2:4,6 9:14 34:7 56:21 58:21 59:21 123:5,7,8 123:18 133:13 154:16 155:8,9 174:6 175:2,5,6 179:21 187:7 234:18 262:2,3 272:6 273:10,19 293:5 354:7,16 numbers 123:16 226:2 numerous 270:10	335:15 349:10,20 355:13 objections 34:3 58:22 59:16 88:20 109:10 178:12 333:14 342:7 obvious 312:13 obviously 5:2 161:14 162:9 347:6 occasion 31:1 257:1 occasions 165:22 273:10 occupancy 64:8,13 64:17 65:3 149:8 149:14 150:2 154:4 155:13,19 156:8,11,12 159:1 offenses 269:19 offer 198:19 offering 150:19 offhand 17:8 office 49:1 186:9 Officer 346:2 officials 359:9 oh 13:15 18:6 37:9 40:8 41:15 48:12 55:12 56:2 65:12 84:8 88:3 92:6,7 92:10 102:15 107:18 108:7 110:12 117:22 119:16 133:21 138:3 139:2 140:20 141:20 144:15 155:5 160:2 162:12 175:1 181:3 197:3 198:13 199:1,10 199:15 213:18 216:1 226:3 234:17 236:17,22 242:17 248:9 252:12,15 253:5 262:22 263:12 266:12 278:4	279:10 280:15 282:1,6 316:22 317:4 321:11,14 327:14 337:15 338:17,20 340:3 344:16,19 348:14 355:5 356:21 Ok 208:10 okay 2:22 3:2,11 4:1,7,8 5:17,22 6:4,19,22 7:4,6 8:1,3,6 10:14 13:10,11,15 15:14 16:4 17:15 18:13 20:16 21:1,7,18 22:2,18 23:4,6,9 23:14,19 24:22 25:7 26:12 27:7 27:12,16 28:3,8 29:8,11 31:19 32:2,6 33:6,10,21 34:2,5,19 35:5,20 36:4 37:6,12,15 41:15,19 42:14 43:2,17 44:5,8 45:5,11 47:1,12 47:15,18 48:9,16 48:18 49:2,5,10 50:12,19 52:21 53:2,13 54:12,20 55:17 56:9,20 57:21 58:13 59:14 59:17,19,20 60:1 60:5,5,21 61:18 61:19 62:6,7,22 63:2,22 64:6,18 65:2,8,10,15 66:19,20 67:4,6 67:10,16 68:5,12 68:17,20 69:1,7 69:19 70:6,11 71:2,6,10,16,21 72:11,16,18 73:9 73:20 74:2,9 75:15 76:6 77:4 78:2,5,16,19 79:4	79:19 80:4,14 81:10 82:20 83:12 83:16 84:2,8,11 84:14 85:9 86:15 86:19 89:6,12,19 90:2,3,4,13 91:12 91:17 92:21 93:2 93:19 94:1,7,8,16 95:12,15,22 96:3 96:8,11,13,19,20 97:8,9,17 98:5,10 98:12,19,22 99:3 99:6,21,22 100:3 101:6,18 102:8 103:12 104:6,6,10 104:22 105:16 106:3,10,14,18 107:5,14,22 109:6 109:8,8,14,18 110:18,19,21 111:14 112:1 113:19 114:16 115:3,4,4,7,15,20 115:22 116:9,10 116:13,16 117:11 117:15 118:15,18 119:7,13,14,15 120:21,22 121:1 121:11 122:3,5,10 122:12,13,19 123:10 124:16 125:7,22 126:8,19 127:3,19,21 128:1 128:6,15,20 129:12,21 130:5 131:1,11,13,15,19 131:19 133:8,20 134:21 135:13,15 136:2,15 137:5 138:7,14 139:7,20 140:3,11,16 141:4 141:8,15,22 142:1 142:2,8 143:4,6 143:12,19,20 144:8,18 145:19 146:2,7,16 147:2
noises 105:4 noisy 290:2 non-profitable 129:5 nonsense 303:1 nonsensical 315:9 normally 4:12 north 21:22 62:14 63:13 Northwest 1:7 2:6 181:5 346:7 notarized 309:5,10 318:16 331:4 note 9:19 280:5 336:21 347:9 353:19 noted 316:16 318:7 318:13 notes 3:1 notice 10:7 76:15 77:1 83:1 149:2 150:14 153:17 281:4 285:1 331:14 334:7,10 344:2 347:11	O O 101:14 149:6 156:16 353:20 o'clock 57:9,9,15 57:20 139:18,19 204:1,20 205:3 255:20 256:3,5,10 257:22 284:16 302:9,19 306:5 oath 341:15 364:22 object 66:9 88:17 119:18 282:12 284:4 322:3,4,6 329:15 335:16 objected 331:2 333:16 objecting 88:12 objection 34:4 66:3 95:6 98:8 109:13 149:22 150:1 173:7 190:16,17 219:9,10 276:17 281:18 282:20 307:3 310:18 329:13 333:17,20			

148:2,7,14,16,21 149:17,21 150:7 150:20 151:1,4,14 151:17,22 152:13 152:19 153:12,15 154:14,14,16,20 155:1,10 156:1,4 156:7,17 157:1,22 158:3,14,18,19 160:6,19 161:8,8 161:16 162:4,12 162:16,20 163:11 164:10,16 165:21 166:5,10,15,18 167:12,19 168:14 169:1,4,8,13 172:11 173:15 174:8,13 175:10 176:5,10,15 177:7 177:15 178:7,10 178:22 179:8,13 179:17,19 180:4 180:13,14 181:9 181:14 182:19 183:9 184:10,15 185:18 186:2 187:6 190:20 191:9 193:12,18 194:3 196:22 197:1,15 198:18 199:21 200:5,8 202:6 203:11,17 207:20 208:22 209:15 210:3,15 211:1 213:20 215:5 216:4 217:14 218:12 219:5,11,12,20 221:13 222:4 225:9,17 226:7,11 226:14,18 229:18 230:2,12,15 231:1 231:8,14 232:10 232:18 233:5,16 233:22 234:9 235:7,7,13,18	236:8,14 237:1,3 237:18 238:9 239:4,6 240:17 241:5,8 242:10 243:2,13,16 244:6 245:3,14 246:8 247:7,13,22 249:1 249:20 250:18 251:13,22 254:1 254:14 255:4,5,10 255:11 256:6,12 257:5,15,20 258:10,13,21 259:2,11,16 260:14 261:11,11 262:6 263:3,4,10 264:14 265:19 268:8,16 271:13 274:18 276:18,21 277:8,14,20 279:11,22 280:9 280:16 281:5,10 282:18,21 284:3 284:21 285:14,18 285:22 286:16 287:5,10,22 288:2 288:15,19,21 289:2,5,10,15 290:10 291:1,20 292:1,9,21 293:9 294:9,21 296:15 299:1,5 300:1,5 300:17 301:3,9 302:14 306:11,13 307:8 310:13 314:18 317:5,13 319:20 320:1,9,18 323:10 325:5,9,11 325:15,17,21,22 326:3,21 327:7,7 327:15 330:7,12 330:20 331:7,11 332:5,17 333:21 334:2,8,17,20,21 335:4,14 336:6,15 337:15,17 338:20	338:21 339:10,18 340:9,12 341:1,2 341:4,8,17 342:16 342:22 343:5,8,10 343:14,18,19 344:19,20 345:4 346:13 347:7,19 347:20 348:5,7,11 348:22 349:12,17 350:2 351:19 352:3,9,14 353:17 354:1,2,11 355:5 357:15,18,20 359:18 360:22 361:15 362:4,15 362:16 363:19,21 364:4 366:5 367:5 367:12 368:6,8,9 368:11,16,19,19 368:22 369:11,19 369:20,21 370:4 370:10,16,22 371:4,10,12 old 144:13,20 147:9 194:7 omit 316:9 omitted 353:20 once 82:1,1 91:1 127:4,8 148:1,4 157:5 179:12 261:18 one's 91:8 345:8 359:12 ones 39:17 58:19 72:7 88:11 ongoing 326:4 358:6 opaque 183:10 open 21:19,20 24:2 36:22 39:9,13 42:4,6 47:19 63:6 77:6 82:16 115:3 170:3 184:3 189:21 233:3 237:10,12 238:20 245:21,22 246:16	247:9,10,11,15,16 248:2,4,5,7 260:2 260:4,20 264:21 265:11 314:13 319:13 opened 14:11 201:8 220:22 246:2 260:19 299:15 opening 4:2,3,8 5:7 8:4 263:16 opens 64:3 147:8,9 operate 19:1 22:3 24:1 32:13 314:13 operated 188:20 operates 9:6 24:9 305:4 operating 97:12,21 105:18 129:3 136:8,22 188:13 189:15 297:21 346:6 operation 13:4 85:21 300:13 operator 9:10 opinion 258:6 364:20 opportunity 297:20 340:15 363:10 364:1 opposed 84:17 293:1 295:5 298:14 opposing 316:2 339:22 353:5 opposite 64:7 186:17,18,22 188:5,9 274:9 optimize 267:8 312:22 options 366:12 orange 107:9 order 4:18 39:18 58:4 85:15 105:3 126:6 178:6 194:4 277:1,9,11 278:16 278:18 279:9,10	280:4,15 281:1,3 282:22 283:8,16 292:3 303:10 316:17 336:10 ordinance 204:19 222:15 256:2,3 orient 72:3 orientation 181:20 orienting 72:4 original 156:8 170:4 originally 93:6,9 346:9 Ostensibly 274:8 outdoor 16:10 20:11 136:7,9 300:19 outdoors 173:1 305:14 outside 17:17,20 18:5,16 19:22 20:4,20,22 21:3 21:19 22:3 36:6 37:6 38:11 39:15 40:18 50:17 54:7 55:3 82:14 100:17 139:14 165:15,16 168:10,10,12,19 168:21 171:3,3,3 171:12 172:4 173:3 189:8,22 190:10,11 192:13 196:2 204:20 205:1 206:17 210:22 220:17 221:8 222:12,21 224:7 230:15 232:8 236:5 237:11 255:13 256:4 263:18 264:3 265:10 270:12 296:20 300:11,12,16 301:2 outstanding 339:12 339:15
--	--	--	---	--

overlay 8:12,14,16 8:20 9:21 223:22 286:19 287:2 288:4	part 8:17 63:5 66:7 158:4 160:17 167:1,6,16 203:12 205:22 208:21 221:20 223:19 229:1,7,8,11 251:21 255:4 311:3,4,5 331:5 347:18 352:6 356:4 358:13 360:14,20 361:3 364:11	pass 55:1 73:11,15 73:16,21	235:19 236:3,5 256:18 257:2,18 262:11,20 270:2,5 292:13 305:8 310:11,12 336:3 336:12 355:19 358:22	335:11
overrule 119:22	participate 298:14	passed 88:1	people's 340:11	personnel 190:14
owned 14:8	partly 239:13	patchwork 298:14	peoples 42:3 52:6 54:8 77:1 130:15 139:14,15	perspective 9:22
owner 2:12 13:6 14:6 80:12 283:12 283:19 302:11 346:10 348:19	parts 228:17 319:16	patio 12:7 26:3,4 27:6 31:20 48:6 53:4,5 54:7 68:7 69:11 71:13 72:14 127:5 136:7,9 138:15 140:8 155:14 165:15 171:12,17 172:1,3 172:3,4,8 183:17 197:17,18,22 198:4 206:16 208:18 214:7 220:5 222:8 232:2 232:3 236:6 254:9 255:13 292:16	percent 55:16,18 55:21 56:3,4,6 85:2	pertinent 311:3
owners 297:2	party 171:12 172:4 172:4 256:19 257:1 340:1	patronize 299:21	period 6:7 30:17 291:15 304:17	pest 166:22
P		patrons 53:19 67:16,19 68:6,13 69:17 70:7,20 175:13	periodically 7:20	petition 336:13,20 339:19
P 199:3 328:22 349:19,20,21		pattern 272:4 290:12	permission 103:10 158:12 177:6	petitions 10:17
P-R-O-C-E-E-D... 2:1		pay 203:6 296:4	permit 97:12 101:20 102:1 103:15 105:18 106:16 107:3 149:5 150:15 151:14 155:13 156:15,18 159:2 160:3,4 161:7 202:8	phone 38:20 78:15 79:2,13 83:13,17 272:6 273:9,19
p.m 2:2 177:10,11 257:12 292:12 301:14,22 341:6,7		peace 105:2 295:21 304:1 336:10	permits 101:13 102:13 103:2,3 155:22 159:5,8,17 161:4 264:18	phonetic 163:15 314:20
P1 94:13,17 198:22 199:1,6,8		pedestrian 8:22	permitted 12:8 101:9 106:4,6 150:2,21 151:7,9 157:13,14	photo 26:1 31:17 31:18 32:15 33:2 33:11 49:9 117:16 121:17 151:17 218:16 254:19
PA1 198:20		penalties 292:4	person 5:16 284:11 304:11 329:13 332:8 333:7 359:13	photo's 31:19
package 15:15 22:19,20 87:11 94:3		people 6:13 19:9 24:19,20 29:1,3,4 55:16 82:16 86:5 100:8 101:1 130:13,20 139:11 171:13,13,17,18 171:18,20,22 172:5,6,7,8,9,17 189:4,18 190:2,14 198:4 201:15 203:21 204:5 205:1,13,17,22 220:9 221:6 222:17,17,19 234:15,16 235:8	personally 290:19	photocopied 154:11
packet 40:12 93:15 150:10 328:15				photograph 22:21 23:1,1,3 25:1,2,5 25:20 27:9,18 29:6,7 40:14 41:1 42:11,13,21 43:1 43:3,10 45:8,10 46:21,22 48:11,17 120:21 264:9
page 27:8 44:15,16 48:10 49:8 60:7 73:1 87:16 95:1 181:20 241:18 362:8				photographs 22:19 33:22
pages 67:1				photos 72:21 93:18 93:21,22 111:9 121:13 178:14
paid 174:21				physically 123:1
pain 319:17				pick 273:20 339:16 367:7
paint 194:2				picture 25:21,22 38:19 77:9 95:1,5 95:18,20 96:4,6 97:1,7 109:22 110:5,8,9,14,15 110:19 112:12,13 112:17,19,21,22 113:3,5,9,13,14 114:16 115:7
painted 193:15				
pane 77:17 247:1,5				
panes 77:18 247:6				
paper 308:12 309:19 319:21				
parallel 184:9				
pardon 28:16 180:22				
parking 27:14 28:9				

120:8 134:10,14 145:20 152:19 160:8 180:16,18 181:10 185:5 198:5 200:11 207:13,22 208:5 208:17 214:2 241:12,14,17 243:19 252:4,6,20 252:21 253:6,13 253:15,19 255:3 260:19 265:8	planned 191:19 planning 3:15 9:22 264:10 plant 315:21 316:4 plastic 38:9 plausible 275:6 play 173:5 283:18 283:19 305:13 played 220:13,17 playing 211:9 271:7 plays 189:12 259:9 259:14 please 14:4 44:6 54:10 95:2 163:2 163:5 181:21 199:11 207:22 277:16 281:17 287:9 296:21 305:16 316:22 326:2 329:10 346:3 ply 275:3 plywood 74:4,11,15 75:4,18,19 80:6 110:16,17 132:7,8 132:10,10 133:9 190:4 195:1,10,14 213:5,12,14,16 214:14,18 233:9 233:12 249:8,10 250:5 254:10 266:2,19 275:8,13 293:18 294:3,6 pocket 215:19 point 58:4 59:13 60:20 62:12 96:15 99:13 151:10,11 151:12 168:15 170:6,7 178:6 197:6 228:21 269:13 277:9 295:13 303:13 305:17 313:16 315:4 319:3 326:12 333:17	350:4 351:6 356:15 361:8 pointed 360:20 pointing 116:20 points 331:22 police 30:13 31:2,6 31:13 51:12,22 77:1 82:3 142:22 143:5 261:22 270:10,13 271:19 272:19 273:17 pontificating 298:3 popularity 335:17 porch 112:22 234:11 portable 239:11 position 54:4 306:5 321:6 344:9,11 350:11 positive 135:21 249:20 possible 291:14 possibly 126:17 127:15 316:15 post 107:19 posted 308:19,20 316:17 potentially 131:8 potted 315:21 316:4 power 13:7 49:14 122:16,20 123:14 123:14 powerful 37:20 145:3 precedence 323:8 precedent 355:19 prefer 58:22 306:22 368:7 prejudged 221:14 prejudice 339:22 340:4,5,18 356:11 prejudiced 337:9 338:4 prejudicial 342:4 352:9,11,16,20	353:3,5,6 premises 41:7 premis 40:4 prepare 357:12 prepared 160:20 357:5 362:7 present 1:15,19 164:4 307:1 335:7 346:6 presented 150:9 315:22 presiding 1:14 pretty 24:13 55:11 220:10 228:8 236:13 265:2 270:2 271:8 342:6 prevent 9:12 previous 7:5 76:13 98:1 184:17 191:11 284:11 346:10 357:22 previously 60:8 84:18 184:16 237:15 344:5 principal 307:21 print 111:9 printed 279:18 340:7 printer 111:10 328:11 private 307:22 308:4 332:3,19,22 probably 27:5 35:5 66:6 67:13 78:3 98:16 120:2 355:8 363:11,12 370:20 probation 291:13 probationary 291:15 304:17 problem 11:21 35:16 52:14 85:14 129:9 193:3 195:13 205:21 206:1,6 262:17 263:15 264:19 267:4,13 273:7	274:4 283:14 295:14,17 296:10 298:8,13 306:7 331:20 359:20 problems 12:11 82:12 105:8 168:2 290:22 291:5 323:8 335:10 347:4 proceed 269:2 proceeding 284:8,9 303:8 304:14 307:12 341:21 350:12 356:19 proceedings 316:10 process 110:2 129:3 362:7 produce 6:15 proffered 322:5 prohibitive 349:3 project 288:9 294:8 366:1 projects 185:19 prominently 248:10 promise 232:8 promote 10:4 287:16 proof 192:14,19 245:15 246:5,6 264:1 302:12 proofed 245:15 246:9 293:16 294:10 299:14 propagates 293:19 proper 333:12 properly 302:12 332:16 properties 230:6 property 65:17 67:20 183:2 186:16,22 187:8 187:11 225:12 230:3 274:7 288:11 348:19 proposed 276:13
---	--	--	---	---

protect 68:22 196:13 316:7	323:6 331:13 332:2,19 333:1 334:14,16 346:2 360:20 361:4	155:2 158:8,20 159:19 160:8,22 161:2,3 162:1,5 162:13 167:12 174:9 175:12 186:15 191:5 202:2,15 203:2 208:16 210:11 212:9,16 214:9 223:17 240:8 244:10 249:20 253:2,4 281:8,21 281:22 282:3,10 282:12,13 298:2 299:6 304:10,10 305:20 335:20 336:19 346:15,17 357:4	222:7 304:1 336:11 quite 209:1,2 215:3 363:15 quote 291:6	Realty 66:1 rear 39:5 144:4 145:17,21 182:4 226:22 227:3 228:3 260:13,14 261:8 264:10 reason 106:22 337:21 354:3 reasonable 13:1 204:16 221:22 222:7,20 255:18 255:21 256:11 257:13 258:12 270:5 287:20 291:7 292:7,13 301:13 302:19 303:16 304:7 365:11 reasoning 311:6 reasons 266:7 270:8 307:15 rebuttal 370:9,11 recall 150:11 receive 81:14,22 83:1,1 316:6 351:3 received 82:3,9 83:3 85:6 125:16 126:3,21 155:13 155:18 340:3 receiving 77:1 81:11 82:7 84:18 126:1 recognize 25:8 96:1 96:4,5 115:10 218:17 recollection 108:16 recommend 266:1 recommendations 249:21 250:4,8 296:5 297:15 recommending 265:22 357:11 record 14:4 30:14 31:9,10 58:15 94:12 96:9 99:11
protected 69:9,10 protection 183:11 protections 315:8 protects 76:5 protest 1:7 2:4 3:20 11:2 89:9,17 101:7 105:2 107:19,20 109:11 113:12 158:4 160:12 280:16 329:2 335:9 336:13,17 342:15 350:12 351:11,15 351:16,21 Protestant 66:7 277:9,15 298:11 298:18 protestant's 86:22 88:5 94:15,20 111:3 160:12 323:18 334:20 protestants 3:18 6:20 13:18 26:17 26:22 58:6 149:22 174:9 178:1 207:3 219:6 269:6 306:18 358:3 365:8 protesters 283:1,8 protesting 133:16 protestors 3:7 9:14 proves 309:6 provide 314:5 316:14 366:10 provided 296:5 314:6 providing 295:8 297:14 314:9 proximity 12:22 21:2 24:8 204:14 public 9:4 104:17 205:18 278:19,21 308:6,7,7,12,21 315:5 319:15	publicized 290:6 pull 31:12 178:13 punished 304:19 punitive 302:22 303:14,18 304:4 purpose 8:19 48:2 287:15 358:16 purposes 181:20 219:3 put 4:19,22 6:13 37:1 43:8 45:20 46:2 47:6 51:20 66:8 75:17 76:8 78:21 79:3 90:16 100:20 102:22 107:1,9 108:20 130:21 134:22 141:1 159:16 174:1,2,7,10 192:13,20 193:9 193:15 194:2,9 195:10 213:5,12 213:13 214:14,17 215:6,9,9 224:14 238:12 250:5,16 265:13 275:9 293:17,21 294:3 307:4 317:19 321:20 326:2 putting 47:21 110:2 192:15	questions 4:22 8:1 57:22 58:5 65:11 85:12 91:7 99:7 102:3 104:15,20 106:8,9,10 107:13 125:6 131:18 142:1,1,2 145:13 154:8,18 155:2 169:2 173:11,16 176:6,6,7,9 206:19 219:17,21 224:21 237:2 258:14 261:12 263:7,7 265:18 268:6,8 283:22 287:9,9 288:20,22 299:3 301:10,10 301:11 305:16 306:10,12 325:13 326:13 370:18 quick 178:1 295:1 300:8 339:2 359:19 quicker 59:3 120:17 quickly 125:10 300:10 quiet 105:3 190:14	<hr/> R <hr/> R 335:1 341:1 342:11 raised 10:13 53:12 Rajat 3:4 268:15 rat 147:4,12,14,16 147:17 167:4 rating 193:8,12 ratings 194:6 rats 86:5,7,10 167:6,14 168:3,17 rattle 275:5 re-move 344:8 reach 6:8 read 101:7 315:13 316:22 326:3,10 326:15,20 327:3,6 327:8 340:21 362:9 reading 312:14 ready 8:3 167:10 168:11 300:9 314:6 337:2 341:8 real 187:3 295:1,7 298:14 realize 10:18 really 5:9 38:18 63:10 78:6 98:17 105:8,10 125:10 153:19 189:8 197:2 202:10 204:11 206:14 258:3 271:5 273:6 273:21 275:2 290:6 295:16 298:13 299:14 302:21 303:1 314:2 318:12 338:3 349:9 362:6 369:7,12	
quality 160:13 quarter 77:20 78:4 question 35:4 52:16 63:10,11 66:4,9 69:16 79:14,18 89:15 91:12 94:3 96:21 98:14 100:4 106:2,5,11 113:22 133:21 145:4	<hr/> Q <hr/>			

104:13,14,16,19 117:19 153:22 156:18 177:10,11 177:13,16,20 178:9 181:2 278:19,21 284:5 307:1,7 308:8,12 308:16 311:3 321:21 331:6,13 332:2,3,22 333:1 334:14,16 341:6,7 347:18 349:2,18 350:21 351:17 352:1 356:4,7,18 360:14,16,21 361:4,21 362:6 366:14 367:14,18 370:6	redundant 342:3 Reeves 1:13 refer 122:4 303:6 referred 304:12 referring 152:15,16 278:5 323:17 327:18 refine 212:9 reflect 25:13 refresh 8:15 108:16 refresher 3:22 regarding 127:13 160:12 regular 216:19,21 regularly 290:21 regulations 10:4 288:5 reject 342:2 356:12 related 11:2 12:2,3 58:5 125:15 126:12 140:4 155:4 161:4 168:3 179:2,7,15 336:10 345:15 relates 300:13 317:1 relation 21:8 252:21 relationships 132:1 relatively 8:10 44:9 44:20 relaxed 341:20 358:21 relevance 98:8 203:2 281:9,17 282:2,6,7,8 335:17 347:12 relevant 98:17 279:2 281:7,19 284:6,12,16 333:16 336:14,18 342:3 346:12 352:9 355:9 359:5 reliability 358:18 relies 368:13 rely 362:2	remain 308:4 remaining 178:2,3 207:4,5 306:19,20 365:9 remember 59:11 106:15,18,22 107:1,18,19 108:2 108:2,4,10,11 138:11 156:13 182:16 remembered 31:7 remembering 89:2 remind 104:11 105:1 remove 128:11 130:7 renew 85:16 221:16 renewal 1:9 8:9 107:15 rent 286:14 repair 261:3 repaired 261:1 repairs 266:6 repeat 5:20 272:4 replace 275:17 report 4:13,14 101:7 109:9,11,11 111:10 113:12 151:16 253:6 272:12,21 295:8 296:6 298:1 316:9 353:21 354:21 355:2 reported 175:16 273:4 represent 269:5,7 representative 3:1 3:5 4:5 283:3 323:22 representatives 283:4 requested 156:18 require 8:22 13:6 required 264:18 requirement 334:2 residence 225:18	286:13,18 311:1 318:11 residences 9:13,18 13:2 98:2 226:4 residential 9:2 66:13,18 118:21 119:1,14 223:21 259:1 286:21 288:9,12 residents 2:14 9:20 11:3,4,10 17:1 65:4 138:16,22 139:11 140:19 153:3 181:18 182:8 202:12 resolution 206:6 resolve 82:12 resolved 284:9 respect 10:13 34:14 35:17 38:3 56:22 146:12 147:4 148:10 202:22 203:10 266:17 317:11 356:6 respectful 13:2 respond 98:6 305:15 responded 142:22 responds 141:19 response 133:19,21 140:19 240:7 244:9 298:17 319:3 responsibilities 167:2 responsibility 13:1 responsible 302:11 responsive 141:16 rest 3:16 50:2 89:1 343:12 358:16 367:13,16 restaurant 1:6 2:5 2:12 29:14 115:14 115:17,21 116:15 116:22 117:8 167:13 188:21	restaurants 62:4 restrict 283:16 rests 176:14 result 35:15 365:18 results 272:17 retail 9:1 Retailer 1:8 retired 11:4 return 162:18 273:21 reveal 50:13 revealed 312:10 revealing 313:20 review 6:9 88:22 326:4 RH 193:8 194:6 216:6 rid 168:16 right 3:2,8 14:7 16:9 17:19 18:19 18:22 19:11 20:9 21:10,18 22:8 23:12 24:7,22 25:11,12,19 26:8 26:15 27:2 28:14 28:20 29:16 31:16 32:14 33:1 35:7 35:14 36:21 37:15 37:20 38:1 39:3 40:9,22 41:5,11 41:18 42:5,10,17 43:9,18 45:7,12 46:20 47:12 48:22 49:13,20 50:5,17 50:21 52:15 53:4 53:5 54:17 57:8 60:15,17 61:8,13 61:16,18 62:5,18 63:2,14,18,21 64:4,5,5 65:1,8,11 66:2 67:17,18,20 69:22 70:3,12 71:14 72:18 74:10 77:13 79:11 82:9 82:15 86:6 87:11 89:13 90:1,11
---	--	---	--	--

94:5,6,8,19 95:13	240:5 241:19	261:13,15,16,20	satisfied 37:8 223:2	267:11
98:3 99:6 101:14	242:18 243:21	262:3,13 263:4	266:19	seals 192:18
102:17 106:7,9,19	244:1,11,15,22	268:9 289:1,4	Saturday 53:15	seams 192:22
106:21 107:14	245:13 246:22	RODRIQUEZ	171:12,17 290:1	search 55:1 312:22
108:6,15,17,18	248:14 249:19	262:6	Saturdays 15:5	searchable 316:19
109:6 111:18,21	250:5,21 251:1,4	roof 46:5 61:9	19:8 22:7 54:4	316:20
111:22 112:6,8,9	253:15,17 254:2,7	182:17,20,21	270:3 292:10,10	seat 162:19 163:12
112:14,21,22	254:22 255:1,1,6	184:2	saw 44:1 110:6	180:5
113:2,4,6,8,21,21	255:6,7,9 256:21	rooftop 20:5 21:11	134:9 184:17	seating 16:10 17:17
114:1,3,5,17	260:10,12 261:12	182:12	185:4 192:5,6	17:20 18:5,17
115:16 116:21	262:13,13 263:6	room 1:13 164:5,11	193:5,14 196:1	20:1,4,11,20,22
117:5,12,14,15	263:21 265:3	242:6,7 245:8	213:16,22 214:1	21:3,19 22:3
118:19,20 121:11	268:22 269:6	248:12 260:18	215:11,11,13,14	145:17
121:14 122:3	271:22 274:9,12	293:16 294:10	250:8 265:8 275:9	second 14:18 15:17
124:5,19,20	277:13 280:6	rooms 243:7	354:7	16:6,7,13 25:2,4
125:21 126:8,14	284:3 286:12	root 295:17,18	saying 95:16 131:6	26:3 30:5,8 35:22
127:9 128:2	287:12,22 288:10	rot 217:19	137:20 197:7	39:10,13,17,21,22
132:14,20,22	289:2 295:4,22	roughly 247:2	202:7 222:21	40:16 42:11,15,22
133:15,16 134:19	296:11,14 299:9	row 226:4,5 258:15	223:11 224:6,16	43:10 45:14,15,15
135:12 138:9,11	300:5 301:9 305:1	258:15,16	229:16 231:11	48:6 50:1 60:7
141:22 142:13	311:5 313:12	royal 319:17	236:15 237:6,9	69:6 72:22 77:6
145:12 146:8	319:12 324:3	rule 59:3 279:21	238:13,18 239:5	79:10,10,15,20,22
147:1 150:16	327:2 330:21	ruled 353:15	240:12 244:9,22	102:15 110:14,15
151:4,13 153:3,5	331:16,17 338:13	rules 287:7 288:8	246:19 247:8,14	114:10,11 121:2,9
154:2,15 155:12	344:1,5 345:1,22	341:19 358:20	250:1,15 251:20	121:10 126:20
155:15 156:5	350:17 352:4	run 129:5	259:13 268:1	127:4,5 134:14
159:11 162:4	353:18 356:7	runs 63:13 77:15	288:8 295:9 296:7	183:14 200:14
164:17,19 167:14	360:16,17 365:4	181:13,16 182:7	310:4 319:15	218:16,18 226:1
168:1,20 177:3,12	368:20 369:18,19	184:9 185:3,7	323:5 333:4	241:6,7 243:15,17
177:22 181:12,15	370:17,20	186:4	336:13 356:22,22	245:19 246:21
181:16 185:15	rights 371:3	Ruthanne 1:14,15	365:15	254:5 260:11
186:19 187:8	risk 315:20	<hr/> S <hr/>	says 110:11 127:11	265:9,13 275:1
200:3,4,6,19	road 97:11	S 326:3 327:11,21	135:10 155:12	276:5 317:16
203:14 205:10	rodent 12:3 85:21	328:1,4,17 330:22	292:3 316:5 346:3	332:3
208:15 209:17	146:10	331:1,7 334:21	349:4	seconds 240:7
211:18 212:4,6,8	rodents 85:22	342:11	scale 8:20	324:5
212:14,15,18,20	Rodriguez 1:18	S-I-G 2:20	scan 92:19	section 247:7
212:22 213:22	131:14,16,17,20	safety 9:4 12:3,4	schedule 3:17,19	security 29:10,17
215:17 216:5,11	132:3,6,14,18,22	266:7,11 307:14	86:3	29:18,19 30:2,12
217:17,21 218:7	133:3,8,11,18	307:16 309:22	se 201:18 353:4	31:4 33:14 53:21
218:15,21 224:22	134:12,15,19	320:4,6,11	seal 36:8 37:5 38:8	54:13 139:22
225:17 226:4	135:5,13,16,20	sake 221:15	38:21 47:22 48:3	190:13
230:7,8,11,12	136:2 249:3,4,12	Sally 309:2	134:21 216:20,22	see 7:1 19:9 23:7,8
231:3,3,21,21	249:19 250:3,7,11	sation 26:21	217:2	25:5,10 26:13
232:12,22 234:14	250:18,21 251:4,7	satisfaction 135:6	sealant 134:16	27:17,20 28:9
235:9 236:8 237:1	251:13,17,22		sealed 218:3 260:20	29:9,12,13,14

31:3,21,22 33:6,8	365:12	162:3,4,10 175:10	195:5 200:2	86:13,15,19,21
36:9 37:8 41:11	sent 111:8 337:11	175:11,22 176:3	208:13,13 211:14	87:17,19 88:1,7
41:14 43:20 44:14	350:22 351:7	261:14 323:6	213:6 223:22	88:15,19 89:4,11
45:18 50:7 52:18	352:2	335:5	228:18 243:4	89:22 90:3,12
54:8 61:4,14	sentence 345:21	shorter 304:21	245:7,7 246:13,16	91:2,11,16,18
72:13,15 73:3	separate 273:10	371:6	246:20 247:2,17	92:1,4,19 93:6
78:7,15 79:5,7,12	282:16,18 300:15	shot 264:20	247:19 248:1,2	94:10,22 95:4,14
90:2 91:19 92:10	separates 181:17	show 9:5 25:1	266:22 274:9	95:22 96:3,8,12
92:11,13 103:22	182:7 200:17	38:19 40:10 41:6	291:11 292:17,20	96:19,22 97:4,8
110:21 112:7	230:6	41:8,17,20 47:5	342:5 359:7	97:10,15,17,22
115:9,13 117:10	seriously 131:21	56:13,18 58:7,10	sides 46:7 75:9,10	98:5,10,13,18,20
117:20 118:9	serve 14:19,20,21	79:2 91:20 101:14	267:10	99:1,10,14,16,20
123:1 140:21	15:7 55:9 69:5	134:2 149:3	sidewalk 138:22	100:1 109:17
142:5 144:5 150:3	served 364:17	156:21 198:6	139:2 299:15,18	112:4 119:18
151:15 155:11	serves 182:9 226:12	217:9 252:4 315:1	siding 194:8	120:4 150:5,8
158:22 160:8,16	service 86:17	338:6	sight 145:15 172:14	153:20,22 155:3,7
172:12,16,18,19	services 23:15	showed 25:3 80:5	Sigmon 2:13,13,20	155:11,17 156:1,4
172:20,21 174:2	serving 157:17,18	101:12 102:8	2:20 3:21 5:20	156:7,11,17 157:1
175:7 180:17	session 371:5	121:2 134:1,4	6:3,21 10:15	176:18 178:4,8,22
183:2,4,7 184:11	set 13:18 59:12	159:21 192:4	12:14,18 34:3,4	179:4,6,13,17,20
184:13 187:20	87:9 121:2,3,9,10	195:1 214:1	58:3,9,12,14,18	180:6,10,14
188:1 191:16,21	207:16 323:8	215:13 233:18	59:6,20 60:4,6,12	181:14,19 182:10
200:1,3 213:13,21	sets 10:16 283:17	260:18 264:9	60:17,19 61:1,4,9	182:19 183:1,4,9
214:2 215:9	settlement 276:20	showing 103:16	61:18,22 62:3,7	184:1,10,15,21
223:17 234:16	276:22 277:11	109:10 150:2	62:10,16 63:3,12	185:11,18,22
243:4,18 246:17	279:7,11 283:8	151:17 152:1	63:15,19 64:2,6	186:2,14,21 187:6
251:9,17 270:13	284:9 285:3,12	195:8	64:11,14,18 65:2	187:12,22 188:12
270:13 272:20	344:13 345:5	shown 23:1 27:9	65:16 66:19,21	189:14 190:6,22
278:7 279:12	346:4 358:8,12	29:7 40:13 42:12	67:6,16,22 68:2,5	191:4,8,10 193:1
280:2 284:3	seven 258:22	43:1 45:9 46:22	68:10,12,17,20	194:12 195:21
291:20 295:12	270:22 271:2	shows 25:21 31:18	69:7,15,20 70:6	196:3 197:13,16
315:14,21 316:21	338:21 350:16,22	33:3 48:11 121:17	70:11,13,15,19	198:8,15,20 199:3
321:8 331:19	share 112:2,4	151:9 182:18	71:5,9,11,16,21	199:7,10,15
337:5 340:13	sheet 196:10	shut 83:22 129:17	72:2,11,16,18	200:22 201:3,10
351:17 352:18	266:10	205:17 291:16	73:6,9,13,16,20	202:2,14,21 203:4
363:22	shepard 7:14	shutter 129:16	74:2,9,14 75:3,14	203:7,9,12,15,17
seeing 27:13 49:11	shield 319:15	shutting 129:20	75:16 76:1,6,10	203:18 204:2,14
150:6,11 337:4	shingles 217:16,18	sick 3:14	76:12,15 77:4,8	205:7 206:4,18,22
seen 82:4 103:21	217:18	side 11:7 12:1	77:14,17 78:2,5,7	207:6,18 219:7,10
191:13 272:15	shop 66:13 118:7,9	21:12,22 31:21	78:12,16,19 79:4	252:3,15 253:1,9
323:14 345:8	short 1:18 102:4,5	41:1 57:16 61:17	79:6,14,19 80:1,4	263:9 265:17,20
seeps 192:22	102:8,13,16,21	67:15 75:5 78:12	80:14,21 81:2,6	266:17 267:6,14
sees 91:19	103:2,9,13,19,21	80:6,7,9 82:18	81:10,15,17,19	267:20 268:6,14
segment 11:1	158:19,21 159:4,8	141:2 166:13	82:8,20 83:2,8,12	269:2,4,12 270:6
send 351:8	159:14,21 160:4	184:14 187:21	83:16 84:2,15	271:10 274:5,11
sense 345:11	160:18 161:20	188:11 192:17	85:3,10,19 86:4,8	274:15 276:12

277:8,14,18,20	signed 329:16	356:9	201:6 213:11	73:15,20 76:5
278:7,13,16 279:5	332:8 335:5	sit 100:17 101:3	233:17 273:9,18	123:15 125:12
279:8,17 280:9,20	336:12	163:13	274:19	126:6,17 127:13
281:2,5,12,15,22	Significantly	sits 118:11 230:10	Solonu 163:10,14	127:15 128:11,18
282:4,10,14 283:5	236:20	sitting 152:4 212:6	163:15,18,21	130:14,18 131:22
283:9,21 284:18	signs 107:9	294:7 315:5	164:2,7,12,15,20	132:16 133:12
285:17,20 306:16	Silverstein 1:17	situation 303:2	165:2,5,7 166:4,8	169:7 170:22
306:21 307:17	2:17 7:7,9,13	six 15:16 31:6 54:8	166:11,17,20	171:2 192:14,19
309:4,11,16	36:10,13 38:12	81:22 130:18,19	167:3,8,15,18,20	209:1,7 239:10
311:18 322:2	55:20 88:13 89:5	139:15 247:1,4,6	168:6,18 169:8,13	245:14,15 246:5,6
324:9,12,19 325:2	90:5,13 99:4	270:22 271:2	169:16 170:6	246:9 247:17
325:6,9,11,14,20	100:4,5,13 101:6	sixth 207:22 208:1	171:1,11 172:1,3	248:8 264:1
325:22 328:2,8,16	101:18,21 102:2	208:2	172:7,16,20 173:2	274:19 275:2,4,7
328:22 329:5,9,19	151:20 177:14	size 145:1	173:19,21 174:5	276:6 293:15
329:22 330:3,5,12	180:20 181:1	slab 110:3,5,6	174:11,16 175:1,3	294:2,10 295:3,7
330:15,19,22	219:22 220:2,3,12	sleep 11:5,11 198:2	175:6,9,20 176:2	295:7 296:4,5,16
331:10,15 334:22	220:16,20 221:2,9	203:19 222:2	176:12	296:17 297:13,14
335:4,13,20	221:13,19 222:4	231:15,18 248:17	solution 298:14	297:22 298:6
337:10,13,18	222:10,13 223:1	248:18,19 256:8	solvable 223:12	299:14 302:11
338:1,5,9 341:11	223:10 224:5,12	257:10	solve 35:16 291:5,7	soundproof 245:13
341:17 342:9,12	224:17,20 309:13	sleeping 239:7	292:22	sounds 38:10 39:2
342:17 343:1,4,17	311:8,11 313:17	243:6	solved 262:17	40:18 48:1 71:13
344:4,8,15,17,21	314:3,12 316:3	slept 201:21	somebody 7:3 31:7	147:9 202:18
345:2,5,16,20	318:17,20 319:2	slightly 354:5	104:20 167:7	223:10 237:20
346:1 347:3,14	319:11 321:19	slower 271:5	178:15 312:13	255:15 289:17
348:2,4,8,12,15	324:4,10 338:22	small 8:10,10	somebody's 359:2	298:16 346:10
348:18 349:15,19	353:11 357:17	smaller 14:17	someone's 358:17	365:22 366:16
350:3,21 351:3	366:22 369:6	93:21 144:21	somewhat 239:16	367:15
353:13,19 354:2	371:13	smart 298:4	306:1	source 11:20 100:6
354:10,12,15	similar 10:19 43:3	Smith 309:2	soon 135:14	210:4
355:3,7 356:8	46:9 68:21 124:9	smoke 235:20	sorry 2:17 58:9	south 63:13
357:8,22 360:7,11	124:12 186:15	smoking 54:8	65:12 84:7 89:14	southeast 72:6
360:17,22 362:5	196:6 229:20	139:14 235:11	90:12 92:9 108:7	space 40:7 47:19
362:13,20 363:8	247:8 251:3 347:4	snacks 24:21	112:11 152:15	67:12 68:22 69:9
363:18,20 364:3	simple 113:22	soft 293:22 294:5	159:18 169:12	69:10 121:3
365:6,10,20 366:1	249:8	solely 230:20	175:1 197:12	205:18 214:4
366:3,6,19 367:12	Simpler 368:10	soliciting 295:6	199:7,15 213:18	spaces 36:9 186:9
367:18 368:2,6,10	simply 336:14	solid 242:3	271:13 278:1,9	speak 84:6 300:12
368:14,18 369:2	single 119:3,6	solidarity 348:20	297:9 312:6	300:18 363:10,17
369:16	349:7	350:7	317:10,17	speaker 100:20
sign 26:14 29:13	sir 2:18 3:3 90:12	Soloman 1:6 2:11	sort 2:15 13:1 25:8	101:5 140:9 144:1
167:18	99:9 102:6 116:6	Solomon 13:13	53:21 117:12	144:3,21,21 145:8
signature 331:8	160:5 163:4	14:5 62:11 85:20	184:21 276:15	145:9 173:3
334:1	164:15 166:17,20	91:20 106:5,14	sound 37:5 38:16	233:15,19
signatures 335:12	167:15,15 296:1	109:16,20 112:8	39:14 40:17 69:9	speakers 49:15
336:3	298:20 306:17	164:8 191:20	69:11 70:21 72:12	122:2 124:18

128:3,4,5,12 130:18,19,20 140:10 173:1,5 234:2 speaking 185:2 213:11 215:12 265:21 298:18 special 256:22 309:22 specific 61:12 210:12 293:13 specifically 8:17 266:1 270:9 283:9 300:13 358:5 specification 123:14 specifications 122:15 144:2,19 145:6 specs 145:5 speculation 95:7 98:9 spend 104:7 105:20 spent 271:17 274:5 342:20 spoke 209:13,18 sports 8:11 9:6 14:6,17 15:11,16 15:21 29:9 stack 45:9 207:22 329:18 staff 49:11 53:21 54:14 346:17 367:3 stage 317:2 stand 13:12 53:4 56:18 139:9 163:2 178:6 179:18 180:11 307:2 325:3,4 standard 336:8,8 339:20 standing 53:5 114:4 115:5 152:3 165:16 254:12 296:18	stands 128:21 stapled 89:21 348:15 start 51:11 81:11 141:11,12 169:14 176:16 180:7,7,15 206:11,16 220:9,9 221:4 263:1 294:19 328:17 330:22 345:2 started 39:19 80:15 206:15 235:1 348:9 starting 207:13 343:1 starts 123:8 state 14:3 319:8 stated 10:3 237:6 275:11 statement 4:2,4 8:4 348:18 362:8 363:13 364:12,15 367:10,13,19 368:7 statements 4:8 station 23:8,10,15 24:8 26:14 27:3,5 29:13 63:16 152:9 152:10,20 153:6,7 181:11,13 185:5 207:14 status 1:8 178:1 Statute 336:8,9 stay 105:1 160:16 191:18 367:4,4 371:17 staying 371:16 steadily 296:19 steady 271:1 step 107:5 184:11 228:7 296:11,14 steps 9:10 10:11,12 35:15 37:11 38:2 82:11,17 stick 275:20 stipulate 254:21	347:17 stipulated 358:12 stipulations 318:7 stop 17:22 90:19 138:13,13 197:6 204:16 221:22 222:1,7,16 274:4 306:2 stopped 137:13 158:16,17 store 23:18,20 48:22 story 365:20 366:4 366:17 straight 117:16 264:20,21 355:11 strange 325:7 street 1:13 18:10,11 20:6,7 21:15,15 21:17,22 51:14 62:4,9,10 63:16 77:2,3 118:12,13 118:14,17 119:9 119:11 183:22 184:18,20 185:8 186:13 188:8,11 224:2 226:8 269:8 269:16 332:16 streets 25:17 stricken 350:18 stripping 47:6,7 strong 347:5 stronger 143:18 structure 65:18,22 65:22 159:12 211:2,10 242:6 291:10 structures 65:19 strung 32:18 stud 75:5 students 28:1 stuff 38:10 43:11 43:15,18 57:13 116:3,12 118:10 148:4 192:15 195:7 196:1	215:15,16 261:21 353:12 subject 160:21 292:4 336:17 subjective 293:4 submission 335:1 submit 93:3,4 178:9 198:8,15 333:8 353:22 362:11 365:10 submitted 6:10 93:7,8 330:3 339:19,21 340:14 354:4,9,19 submitting 363:14 364:13,16 subsequent 316:10 substance 276:20 277:6 353:4 substantial 10:10 11:6 275:18 substantive 335:18 subwoofers 121:18 121:19 suddenly 43:7 sufficiently 11:10 suggest 36:2 74:21 179:9 293:14 318:1,5 340:18 suggested 193:4,18 250:22 suggestion 192:7 301:20 318:3 suggestions 196:17 sum 263:14 summer 100:7,18 100:19 101:16 106:16 107:3,17 108:13 127:6 136:9,14,18,18 137:17,21 139:3,4 139:12 149:11 150:2 155:14,18 155:21 156:5,9 157:6,6,7,12 158:12 159:2,19	183:17 189:19 198:2 200:11 201:21 203:19 204:7 206:14 220:4,5,8,8,10 222:11 234:11,22 235:1,8 297:11 Sunday 15:3 19:6 22:6 257:7 270:14 270:19 275:11 290:2,8 Sundays 269:20 sunlight 319:16 support 326:4 329:1 335:8 336:13 supposed 53:20 71:3 120:5 130:17 130:18 136:13 205:2 256:5 337:6 sure 53:19 58:15 62:20 78:6 85:10 98:13 101:20 112:7 124:6 126:9 135:17 150:8 162:7 167:6 183:18 192:12 237:15 270:7 271:9 274:18 278:19 279:15 290:4 291:14,19 307:21 325:10 332:18 342:9,12 347:12 349:21 355:6 361:5 366:13 369:15 371:2 surfaces 183:10 213:7 surprise 288:16 surprised 7:21 surrounded 13:3 surrounding 50:1 surveillance 30:2 suspect 66:5 358:19 suspension 292:5
---	---	--	--	--

swapped 144:3	taken 9:10 10:11 26:1 27:9 31:20 32:15 35:15 37:11 41:2 44:1 57:20 95:5,11,19,20 126:1,2 131:21 145:21 208:6,17 253:19	taller 72:7	356:16	119:14 125:7,9 131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
swear 13:21,21 163:7 179:22 180:1 268:18 325:17	takes 15:19 167:14	task 289:16 290:17	terrible 235:10	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
sworn 163:6	talk 23:9 29:17 37:9,10 39:18 62:21 73:2 119:17 139:16,17,18 151:20 197:16 232:6,6,12 240:17 284:17 317:9 344:10	teacher 320:7	terribly 279:2	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
symptoms 295:15 298:15	talked 40:1 49:22 56:21 71:1 209:2 216:6,7 230:13,14 230:14 231:14 250:12 267:1 344:18	teacher's 310:6,10 310:12	testified 120:3 142:14 153:8 161:11 193:17 213:4 214:13 215:16 302:3 365:17 369:3,5	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
system 29:19,22 30:10,12,16 31:12 169:7 175:13,14 175:17 264:8 274:19 275:2 276:6 296:17	talking 27:3 28:3 43:4,18 48:13 51:6 54:9 61:22 63:4 72:20 88:4 91:2 93:17 100:9 122:5 132:15 144:1 146:21 147:11,12,15 159:19 171:14 172:9 180:7 187:1 189:5,9 190:4 200:10,18 203:16 205:8 206:8 210:9 210:11 218:18 229:5 231:6,7,11 231:22 232:1 233:2 235:12 237:16 248:13 264:5 274:6 294:17 315:14 321:2 323:15,21 336:1 357:2	technical 43:14 59:10	testifies 4:13 370:8	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
T	tall 26:16 172:14	technique 132:11 215:18	testify 7:3 120:7 173:10 308:2,6 310:22 318:6 323:4 364:13,17 366:16 369:4,7,12 370:18	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
T 277:16,21 278:13 279:5,6 280:15 344:2,15,20,21,22 345:5,15 346:9 348:2,4,5,7		telling 203:3 228:16 277:10 366:12	testifying 5:13 71:4 173:8 321:5 359:2 359:12	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
t/a 1:6		tempered 193:7	testimony 2:16 9:9 74:3 98:1 151:4 164:4 209:3 213:9 214:15 215:2 218:9 249:5,6 263:14 295:3 301:13,19 302:1 302:20 303:18 304:3,10,13 315:7 333:10 362:12 363:2,4,7,10,22 364:5 366:2,16 368:1,17	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
table 113:14 114:4 114:6,8 152:4,19 162:22 254:10 296:3 341:9		tend 209:6 210:5 210:16 211:11 217:22	text 78:22 79:1 316:18,20	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
tabled 344:5		tense 346:7	thank 8:7 10:13,14 10:15 13:10,16,17 14:2 58:1,3 59:18 59:20 66:19 70:13 72:19 73:1 75:14 75:15 76:10 78:5 82:8 85:19 94:7 94:10,18 96:19 97:22 98:18 99:1 99:15 100:1 108:17 109:19 111:17 112:5,14	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
tails 111:13		term 43:14	that's 294:18	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
take 9:11 10:12 31:9 38:2 40:6 53:18 55:7 59:21 76:3,7 82:11,17 128:3,12,16 149:1 150:13 153:17 168:9,22 177:2,4 179:9 186:14 200:22 201:3 214:5 222:20,22 267:3 280:4 281:4 293:17 295:17 302:4 304:3 315:7 326:11 331:14 333:18 334:7 339:1 341:2 344:1 347:9,11 356:5 361:4 367:1		terms 53:14 66:8 162:6,8 216:8 346:5 347:4 349:2	theory 293:2	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			they'd 313:7,12	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			thick 37:1,2 43:7 77:10,14,16 108:19 133:2,3 195:14	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			thicker 74:8,22 75:11	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			thickly 89:21	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			thin 37:1 275:4,15 276:7 293:20 294:20	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19
			thing 7:1,6 25:5	131:12,13 136:2,4 151:22 161:20 162:10,11,20,21 163:11,14 169:3 170:6 176:3,9,10 176:12 178:4 179:13 180:4 181:6 183:1 187:12 197:14 205:7 206:21 207:6 216:4 219:13 220:3 224:20 229:19 237:2,4 249:1,1,5 251:22 252:12 255:8 262:6 263:4 265:4,15 268:8,9 268:22 269:4 274:5 276:12 277:14 284:1 288:20 299:2,4,5 300:7 301:4,7,8 306:9,13,15,21 325:14 334:4 344:19 347:22 349:15 360:3 361:22 369:16 371:6,10,13,14,15 371:19

37:21 38:9,17,21	267:4 274:16	170:14 171:7	327:9 337:5	tolerates 305:21
47:22 48:13,13	279:1,17 284:20	183:15 184:5	342:13,20 348:12	tomorrow 45:14
69:13 84:21	286:3 291:8	186:8 187:10	351:11 362:3,9,20	ton 290:7
109:21 115:13	293:10 300:9	189:4 191:11	363:17 365:6	tools 291:22
116:7,8 128:10,18	302:6,18 303:2,7	195:15 204:1	368:7 370:9 371:5	top 25:5 46:5 49:12
134:10,11,18,21	310:18 311:9	228:8 247:4	timed 5:12	68:7,9,10,13,15
134:22 169:9	313:1 314:1 318:2	273:13 274:2	timely 351:16	68:19 69:17,19
199:20 200:17	318:18 321:4	286:11 289:13	times 35:3,6 148:4	70:7 95:1 113:12
258:21 263:19	328:6,12 331:1,14	362:8	166:2 170:14	117:2 141:6 154:2
367:7 370:5	332:3 333:17,18	thresholds 297:16	234:18 239:9	155:12 182:12
things 10:7 15:12	333:22 334:14,15	throw 57:17,18,18	257:22 262:2,4	195:5 230:11
49:21 51:18 54:6	334:16 335:20	101:5 295:15	270:11 271:18	240:18 241:3
56:21 117:2	336:7,17,18	throwing 298:7	272:9 273:2,4,5,7	265:9
125:11,15 127:20	338:14 340:17	Thursdays 15:4	273:13 307:20	topic 155:4 305:19
128:7 147:5	342:19 347:3	19:7 22:6 292:10	350:6	torn 217:18
191:19 193:5	349:10,12,19	ticket 137:13 138:6	title 89:16	totally 311:16
194:8 220:10	350:13,19 351:19	138:10 157:21	today 3:14,16 5:1	touch 251:21 371:8
223:3,7,13 224:8	352:8 356:10,14	tight 214:3	7:16 26:17 39:20	tour 133:22
249:6 264:16	357:16 358:13	tighten 195:6	45:13 102:6	toured 274:21
266:11 295:15	361:7 365:3	tighter 304:17	103:16 125:2	tower 28:4
298:7,9 319:6	368:20 369:20	tiles 251:1,1,18	128:21 150:14	towers 269:10
326:12 367:2	thinks 304:6	till 254:3	160:20,22 164:5	track 6:6
think 3:11,22 6:21	third 26:1 42:21	time 5:6,9,11,16 6:2	164:10 191:18	tracking 355:6
7:4 19:3,12 20:17	43:1,2 183:15	6:6,6,8 7:14,14,15	249:5 264:9	transcript 307:11
20:21 69:12,14,15	184:2 226:1	7:20,21 11:18	284:17 298:18	307:12 308:18
73:1 75:8,12,12	thirds 340:8	30:18 39:14 51:13	303:19 304:14	312:14 313:8,13
87:10,12 89:6	thought 65:13,14	58:1 82:10,11	335:7 338:6 349:6	316:16 321:10
90:19 91:13 92:12	87:6,8 129:4	83:21,21 90:17,19	363:11 371:5	transferred 346:18
94:2 95:4,18,19	152:19 157:20	91:1 93:11 94:8	today's 160:11	346:19
98:1,14,20 104:15	237:14 255:20	97:18,20 99:13	told 3:12 31:9 37:4	transmission 209:7
105:9 112:16	260:15 282:1	101:13 104:7	44:11 57:11,13	210:6,17 211:11
118:8 131:9	329:5 343:15	105:20 106:10	64:18 101:4 134:9	trash 57:1,8,15,16
132:12 133:22	362:13 367:5	165:10,20 168:8	135:2,2,10 137:19	57:20 105:11
134:13 135:6	thoughts 143:15	177:14,15,18	138:12 147:5,7	146:11,15,19
141:16,18 142:14	thousand 332:15	179:10 187:5	148:19 165:10	148:10,12
147:22 149:19	thread 272:14	197:10 204:6,7	168:2,7 169:20,21	treat 359:11
154:1 158:6	291:3	205:16 206:22	174:1 194:4 195:6	tried 16:2 130:12
160:10 161:11	threatening 370:12	207:2 221:3,10	196:9 213:18	131:10 138:5
162:12,16 179:1	three 6:17 15:17	222:10,13 223:20	215:13 223:5	223:2 271:11
182:14 191:11	35:6 45:3,4,6 52:3	224:7 236:12	233:15,17 234:7	273:10 274:3
193:17 202:17	54:16,19 61:11	251:20 257:3,18	239:17 249:15	309:11
214:15 221:14	67:1 81:2,3,7,14	271:18 272:22	250:10,13 266:9	triple 195:19
223:8 229:5	82:1,5 86:4 93:18	274:6 297:6	266:12 288:15	trouble 169:11
236:14 241:13	93:20,21 117:21	301:19 303:1,21	307:20 314:16	327:11,12
257:9,12,13	123:20 128:13	305:3 306:16	tolerate 305:10	true 99:14 209:5
258:11 260:22	132:8 168:21	324:13 326:11,16	tolerated 10:8	230:9 337:8

trust 293:11	27:4	unacceptable	354:14,15	18:1 22:10 31:21
truth 13:21,22,22	two 4:8 10:16 14:9	296:19	upper 208:21	32:4,5,10,21
163:8,8,9 180:1,2	14:17 30:3,4,19	unbiased 297:14	upset 303:20	52:20 53:9 60:16
180:2 268:19,19	30:21 36:5,5,17	understand 12:18	upstair 43:22 78:11	60:20,21 61:7
268:20 325:18,18	38:16 43:5 48:19	65:17 70:22 103:9	upstairs 55:5 76:19	62:2,12,13 64:2
325:19	67:1 75:4 77:18	122:5 126:16	76:21 78:8 192:4	64:15 65:5,7,8,19
try 35:16 82:11	80:22 81:7,9,13	130:1,16 131:2	193:13 218:10	65:20 67:3,8
125:11 160:16	82:1,5 84:17 86:1	160:7,17 161:21	250:2 260:16	68:13,20 69:8,16
167:8 168:9	117:21 122:11	162:2 174:20	274:19	145:14,16,21
223:14 266:15	128:16,17 129:12	203:7 234:3	upwards 348:8	146:6 165:15,17
271:14 283:16	133:6,13,22 148:4	245:10 266:18	Urban 64:19,21	166:13 170:21
298:5 303:22	163:21 164:1,14	309:1,22 319:10	66:1 187:2 259:3	171:2,4,13 172:16
trying 65:17 85:3	168:13 170:8,9,14	319:19 320:5	use 5:10 12:6 36:17	183:2 184:8,11,16
108:16 138:5	171:7 184:5 185:8	328:10 333:15	37:18 48:19 49:17	184:18 185:12,19
190:14,15 225:10	186:8,10 188:18	343:4 345:13	50:15 65:18 74:7	186:7,17,22
226:18 230:13	191:10 203:22	347:14 356:21	74:18,20 75:10,11	187:16,18 208:6
240:3 245:10	213:7 214:5,6	362:7	100:18 120:21	208:18,20,20,20
248:17 295:10,16	215:18 228:8	understanding	121:12,13 123:20	venue 55:9
298:10,12 329:22	231:2,4 234:2	6:11 213:4 270:2	134:2 136:8 137:6	Vermont 2:15 8:11
344:10 363:7	239:19,21 240:22	313:21 318:8	137:8,9,10,11,13	9:15 11:2,22
Tuesday 269:20	243:7 244:15,19	332:1,20 363:15	137:16,20 158:15	89:10,18 181:4,18
Tuesdays 290:1	258:20,21 265:6	367:1	195:15 196:11,12	182:1,5,9 185:17
tune 224:8	265:18 269:10	understands 12:21	196:14 205:13,18	186:5 226:9,10,13
turn 27:7 49:8 50:6	270:8 272:5	understood 96:8	205:22 214:19	274:8 326:5 335:6
53:10 109:21	273:10 324:20	127:3 237:13	223:14,18,19	348:19 355:10
130:6 142:4	331:21 340:8	238:15 244:21	224:4 245:20	version 354:5
143:12 170:4,5	353:13 365:20	297:7,12 299:1	249:16 274:3	versus 170:20
173:16,18 185:13	366:4,17	358:8	293:16 332:11	201:11 204:3
185:15 207:21	type 201:16 259:13	unhappy 303:2	361:21 366:18	293:7
234:10 271:22	types 216:8	Unidentifiable	368:3	vestibule 44:13
277:15 292:22	typical 189:14	357:19	useful 3:21 11:10	264:8
296:18,22 299:3	190:6,8	unique 309:17	342:19 347:4	vicinity 318:13
301:16 349:20	typically 74:15	unit 122:4,6,7	uses 8:21,22 9:2	view 25:8
turned 83:2 271:19		124:13 286:17	13:3 123:15	visualize 255:11
273:15	U	287:1,14	usually 4:1,4,7,10	voice 63:1 165:20
turning 25:19 29:5	U 18:10,11 21:11	unlicensed 261:9	5:7 111:9 119:22	273:14,21 348:20
42:10 43:9 45:7	21:15,16,22 62:4	unnamed 331:3	257:6 269:19,20	351:15
46:20 48:9 52:15	62:10 63:16	unneighborly	289:22 361:11	voices 171:9 348:21
83:18 234:3	118:13,14,16	273:6		voir 154:7
295:13	119:9,11 183:22	unpermitted 157:5	V	volume 37:18 48:20
turns 239:10	184:18,20 185:8	157:12	V 51:14	49:18 50:15 54:10
272:19	186:13 188:8	unreliable 357:16	vagueness 98:11	54:11 82:18,19,21
TV's 15:11	224:2	unsolicited 261:9	value 349:3	83:3,6,7,8,18
TVs 15:16,17 33:9	Unpermitted	untimely 350:10	vantage 269:13	122:22 128:4,8
twelve 247:3,4,5,6	157:7	update 178:1	350:4	130:6,21 145:2
Twenty 24:4,17	un-stuff 261:5	updated 337:11	Velvet 17:10,21	170:4,5,13,16

173:17 174:6 175:14 271:12,20 292:22 293:3,11 296:19,22 voluntary 280:15 346:20	176:4,15 177:1,17 193:10 194:10 197:6 202:11 203:2 214:8 218:15 221:14 222:6,9 223:16,17 232:6,6,11 236:10 237:13 242:6 252:19 253:12 255:12 256:9 262:8 279:20 280:11 282:15 291:15,18 292:7 294:22 295:20 298:5 299:3 306:2 312:16,18,21 314:9 315:1,13 320:10 321:20 324:2 326:9,11,15 327:4,9 329:7 330:8,9,11 331:16 334:11 339:5 341:9,18 343:3 345:12 347:2 352:20 355:6 356:14 360:9 362:10 369:14 370:13 371:2	145:22 150:21 151:2 157:13,14 170:8 223:19 289:12 304:9 321:12 334:15 351:10 352:3 353:2 waste 327:9 watched 303:9 watching 15:21 55:6 watts 123:11 124:3 124:18 way 7:4 25:17 49:18 50:20 72:4 114:17 141:6 182:18 184:9 185:7 196:19 206:13 215:4 223:9 224:19 229:3 230:9 246:7 250:14 304:11 320:2 340:14 343:15 345:11 349:11 351:14 we'll 46:1 66:21 98:14,20 111:15 112:4,7 135:13 139:8 149:3 154:15 161:14 254:21 323:18 325:3 334:17 339:10 340:2 342:2 347:9,17 354:3 357:21 362:2 369:22	178:14 189:17 190:3 199:9 210:11 212:5 217:10 218:18 231:5,7 248:13 269:22 270:1,2,4 276:19 279:15,16 284:17 295:16 298:6 299:9 303:7 305:16 317:2,3 323:15 327:18 329:22 330:6 334:7,10 341:2 343:18 349:4,5,21 357:2 358:13 362:16,17 366:12 369:15 370:15 371:19 we've 10:21,22 11:18 40:10 72:4 187:1 206:8 271:17,17 272:6 273:2 274:3 293:4 310:5,9 334:20 335:22 336:3 339:20 353:20 358:11 weapons 55:2 website 308:21 316:18 week 37:7 173:6 257:4,16,22 259:22 283:2 291:6 292:12 305:5 342:18 353:2,10 354:4,7 354:9 355:4 weekend 256:14 weekends 222:17 222:18 255:21 256:20 257:19,22 301:15 302:6,9,20 weeknight 256:13 256:17,18 258:6,8 weeks 30:20,21 137:7 141:13	170:8,9 191:11 206:6 220:6 239:19,19,21 289:13 weight 318:9 331:16 333:19 334:19 336:19 340:20 349:13 351:2 352:13,16 359:15 361:16,19 welcome 70:14 76:11 99:2 136:4 welcomed 67:19 68:7 went 35:22 43:22 81:5 139:22 143:9 143:10 165:22 166:2,6 174:21,22 177:10,10 192:3 193:13,13,19 214:4 215:11 233:9 239:22 250:4 266:10 273:17 275:13 341:6,6 weren't 89:1 157:5 160:20 161:1 286:22 287:4,13 328:10 west 63:20 When's 234:21 whichever 153:18 whisper 190:22 whispered 191:4 white 38:9,17,21,22 47:22 48:13 61:10 66:13 93:21 111:9 116:7,8 118:21 134:10 182:12,15 182:18 195:7 199:19 200:4 215:16 Whoever's 55:5 wide 132:8 227:1 227:10 228:1,2,15 willing 129:1 296:3
W				
wait 107:12,12 116:19,19 231:17 254:3 270:13 280:11 317:16 352:17 354:17 364:8 waiting 45:22 338:13,14,19 346:22 walked 252:13 270:15 Walker 88:3 wall 37:3 67:14,14 69:9,11,21,22 70:8,10,17,17,18 74:5,7,10,12,15 74:18,18 77:15 78:10 114:22 115:1,2 154:12 209:6,21 210:5 250:14 254:20,22 walls 68:21 75:3 172:14 195:17 209:14 215:19 want 6:9,15 7:2,14 30:14 51:15,16,17 54:14 56:18 66:16 71:3 78:15 79:5 85:12,16 90:14 96:2 97:11 99:8 99:18 100:17 101:1,2 102:3 104:7,10,18,22 120:8,12 124:20 125:4 126:15 130:14 131:21 136:16 139:10 160:15 162:7	237:13 242:6 252:19 253:12 255:12 256:9 262:8 279:20 280:11 282:15 291:15,18 292:7 294:22 295:20 298:5 299:3 306:2 312:16,18,21 314:9 315:1,13 320:10 321:20 324:2 326:9,11,15 327:4,9 329:7 330:8,9,11 331:16 334:11 339:5 341:9,18 343:3 345:12 347:2 352:20 355:6 356:14 360:9 362:10 369:14 370:13 371:2 want's 154:7 wanted 6:12 58:14 71:7 72:19 88:17 135:17 198:6 199:22 237:5 250:13,15 255:18 255:19 327:3 350:15 wants 79:7 93:4 275:21 285:2 294:3 308:6 326:22 327:1 349:9 365:1,7 warm 189:5,9 190:9,10 220:8 warmer 196:20 Washington 1:13 wasn't 136:22	414:22 450:21 415:2 417:13,14 417:8 423:19 428:12 430:9 432:12 434:15 435:10 435:3 435:2 waste 327:9 watched 303:9 watching 15:21 55:6 watts 123:11 124:3 124:18 way 7:4 25:17 49:18 50:20 72:4 114:17 141:6 182:18 184:9 185:7 196:19 206:13 215:4 223:9 224:19 229:3 230:9 246:7 250:14 304:11 320:2 340:14 343:15 345:11 349:11 351:14 we'll 46:1 66:21 98:14,20 111:15 112:4,7 135:13 139:8 149:3 154:15 161:14 254:21 323:18 325:3 334:17 339:10 340:2 342:2 347:9,17 354:3 357:21 362:2 369:22	178:14 189:17 190:3 199:9 210:11 212:5 217:10 218:18 231:5,7 248:13 269:22 270:1,2,4 276:19 279:15,16 284:17 295:16 298:6 299:9 303:7 305:16 317:2,3 323:15 327:18 329:22 330:6 334:7,10 341:2 343:18 349:4,5,21 357:2 358:13 362:16,17 366:12 369:15 370:15 371:19 we've 10:21,22 11:18 40:10 72:4 187:1 206:8 271:17,17 272:6 273:2 274:3 293:4 310:5,9 334:20 335:22 336:3 339:20 353:20 358:11 weapons 55:2 website 308:21 316:18 week 37:7 173:6 257:4,16,22 259:22 283:2 291:6 292:12 305:5 342:18 353:2,10 354:4,7 354:9 355:4 weekend 256:14 weekends 222:17 222:18 255:21 256:20 257:19,22 301:15 302:6,9,20 weeknight 256:13 256:17,18 258:6,8 weeks 30:20,21 137:7 141:13	170:8,9 191:11 206:6 220:6 239:19,19,21 289:13 weight 318:9 331:16 333:19 334:19 336:19 340:20 349:13 351:2 352:13,16 359:15 361:16,19 welcome 70:14 76:11 99:2 136:4 welcomed 67:19 68:7 went 35:22 43:22 81:5 139:22 143:9 143:10 165:22 166:2,6 174:21,22 177:10,10 192:3 193:13,13,19 214:4 215:11 233:9 239:22 250:4 266:10 273:17 275:13 341:6,6 weren't 89:1 157:5 160:20 161:1 286:22 287:4,13 328:10 west 63:20 When's 234:21 whichever 153:18 whisper 190:22 whispered 191:4 white 38:9,17,21,22 47:22 48:13 61:10 66:13 93:21 111:9 116:7,8 118:21 134:10 182:12,15 182:18 195:7 199:19 200:4 215:16 Whoever's 55:5 wide 132:8 227:1 227:10 228:1,2,15 willing 129:1 296:3

300:10,19 319:5	winter 136:22	230:16 261:10	187:7,10 231:2,4	55:12,15,18 56:1
window 36:17,19	189:7 204:2,6,10	266:5,20 269:21	286:11	56:3,8,10,14,17
36:20 37:1 42:19	236:2,12	292:13 323:21	yeay 349:4	57:3,5,7 60:11,16
70:5 73:4 74:4	wintertime 100:16	348:8 356:8	Yegzaw 2:11,11	60:21 61:3,7,13
102:9 188:2,3	wish 317:14	workable 224:9	13:13 14:1,5,6,9	61:20 62:2,6,15
193:19 194:6,14	Withdrawal	working 79:1 164:9	14:12,16,21 15:3	62:17,22 63:2,9
195:11 200:20	280:16	188:19 223:4,5	15:9,13,15 16:1,6	63:14,18,22 64:5
210:15 211:3,10	witness 4:10 5:14	268:4	16:8,11,13,17,21	64:10,13,16 65:1
211:15 213:5,6,11	6:2 7:5 57:22	works 320:2	17:2,6,9,14,18,21	65:6,12 66:12,17
213:12,14,15	66:5,16 91:12	worse 209:21	18:3,6,9,11,15,18	67:4,10,21 68:1,3
214:14,17 215:10	96:17 154:3,7	231:12 233:4	18:20 19:2,6,13	68:9,11,15,19
217:2,5,7,16	158:7 169:2 178:5	worst 269:19	19:16,18,21 20:2	69:1,12,19 70:3,9
218:11,14,17,20	178:19 179:15	worth 333:19	20:5,8,12,15,18	70:12,14,16 71:15
239:11,12 242:13	184:17 191:6,7,12	342:13	20:21 21:4,6,10	71:19 72:1,9,15
242:14 243:8,18	199:5 219:17	worthwhile 326:14	21:14,20 22:1,5	72:17 73:5,7,12
244:8,14,22 245:1	251:7 280:10	wouldn't 7:17	22:12,16 23:2,4,7	73:14,18,22 74:6
245:2,5,6,11,12	281:2 283:22	191:1 210:4,17	23:13,17,21 24:2	74:13,17 75:6,15
245:15,16,18,21	284:19 285:2,15	211:10 212:12	24:6,10,15,18,20	75:21 76:3,7,11
245:21 246:1,7,8	288:20 316:12,13	213:1 217:22	25:4,10,15,18	76:14,20 77:5,12
246:12,22 247:2,5	318:6 335:12	253:9 256:16	26:2,5,7,9,13,19	77:16,19 78:3,6
247:9 248:2,4	witnesses 4:20 5:4	264:3 267:12	27:1,4,11,13,22	78:11,14,18,20
260:18,19,21	5:13,14 6:5,12,14	277:5 314:15	28:5,7,11,15,17	79:5,9 80:3,10,17
267:15,17 275:5	6:16 66:8 99:19	357:7	28:19,22 29:3,8	81:1,3,8,13,16,18
293:17	120:13,18,22	write 307:6	29:12,20 30:1,11	81:21 82:13,22
window's 210:19	178:18 179:2,7	writing 224:14	30:19,22 31:5,14	83:5,10,14,20
windows 36:5,5,17	321:22 370:15	written 145:2	31:19 32:5,10,16	84:3,8,11,14,20
37:14 43:5 44:1,9	wondering 252:3	276:13 363:13	32:19,22 33:4,8	86:1,7,11,14,18
78:9,17 79:15,20	wood 36:8,11,15,16	364:12,15 367:19	33:13,17,20 34:8	87:12,16 91:22
80:1 107:9 108:20	42:15,16 43:7	wrote 272:12	34:12,15,18,20	95:3 96:5 97:3,6,9
117:21 118:4	69:3,5 74:19,22		35:5,10,13,18,20	97:14,16,19 98:4
141:18 188:15	75:1 108:20 110:2	X	36:12,16,21 37:12	100:5,10,15
192:5,11 193:14	110:3,5,6 132:13	Y	37:15,17 38:5,8	101:12,19,22
193:16 194:1,5,7	133:2,3 134:17	yard 188:2 200:21	38:15 39:7 40:5,8	102:7,12,15,19
194:22 195:2,5	141:1,2,7,17	226:19,20,22	40:15 41:3,11,15	103:1,4,12,18,20
209:22 210:7	196:13 217:19	227:8 228:15,18	41:18,22 42:9,14	105:16 106:17,20
214:5,6 216:6,8	wooden 196:9	229:14	42:18 43:2,12,17	107:4,7,11,14,18
216:14,16,19,21	242:3 266:9	yards 226:21 227:3	44:11,16,21 45:1	108:1,5,7,11,14
217:1 239:14	word 8:1 130:1	229:19	45:3,6,11 46:6,11	108:17,22 109:4
244:19 246:13,15	words 20:14 44:17	year 50:22 51:12	46:16,19 47:1,4,7	110:9,12,18,21
246:17,19 247:11	84:9 209:10	51:22 82:2,2,3,10	47:10,13,18 48:4	112:11,18 113:1,6
247:16,16,18,19	work 10:21 11:3	85:6 136:8,9,10	48:8,12,18 49:4,7	113:16,18,21
248:1,13 261:2	126:22,22 168:7	136:13 141:9,12	49:10 50:4,9,11	114:2,6,9,13,18
266:2,19 267:18	168:16 192:17	365:20 366:4,17	50:14,20 51:3,8	114:21 115:2,12
275:3,5,8,10,15	194:11 198:14	years 14:9 48:19	51:11 52:19,22	115:16,18 116:1,8
275:15 276:7	201:22 205:2	81:20 123:20	53:3,13,17,22	116:11,14,17,21
294:13,17,19	222:18 224:7,15	163:22 164:1	54:3,16,19,22	117:4,9,13,22

118:7,13,16,20 119:2,5,10,15 121:15,21 122:1,7 122:9,12,18,21 123:3,6,12,17 124:2,6,10,14,17 124:22 125:3,7,13 125:18,21 126:3,8 126:14,19 127:7 127:10,18,21 128:2,9,14,17 129:7,19,22 130:8 130:11,17 131:9 131:13,17,19 132:2,5,12,17,20 133:1,4,10,17,20 134:13,17,20 135:7,15,19 136:1 136:4,10,12,20 137:1,4,9,12,16 137:22 138:2,4,9 138:12,17,19 139:1,4,6,13,19 139:21 140:7,12 140:15,20 141:5 141:11,20 142:3,7 142:10,12,17,20 143:2,5,9,17,21 144:7,9,15,17 145:1,10,18 146:1 146:5,8,14,18 147:1,7,14,19,22 148:3,13,16,20,22 149:5,9,12,15 152:6,9,12,22 153:5,9 155:16,20 156:3,6,10,12,20 157:2,7,10,14,18 158:1,13,16 159:3 159:7,10,18 160:2 160:7,14 161:3,6 161:9 162:20 249:13 yellow 43:11,15,18 134:11,18 195:7 215:15	yesterday 39:19 126:4 345:7 346:3 358:7 yield 285:20 <hr/> Z <hr/> zoned 9:20 288:11 288:16 zoning 8:16 10:4 12:20 288:5 <hr/> 0 <hr/> <hr/> 1 <hr/> 1 22:20 34:1,7 59:15,22 60:3,4 94:16,21 180:7,15 199:2 255:20 256:10 257:21 302:8,19 354:3 1:00 221:11 222:16 257:12,12 270:19 292:11 301:14,22 304:7,8 10 181:17 186:5 284:16 100 27:5 11 306:4 365:8 11:00 15:4,5 292:12 301:14,22 12 57:15,20 204:20 205:3 256:3,5 12:00 222:15 258:9 13-PRO-00152 1:9 2:4 14 3:6 269:7,10 14th 1:13 15 56:4 228:9,10 229:17 16 226:22 227:22 229:17 16th 155:12 18 9:3 10:4 226:22 228:1 287:16 19 26:10 188:10 1A 86:21 87:5,17 1B 2:7 329:1 350:4	<hr/> 2 <hr/> 2 1:11 40:11 57:8 59:16,17 72:21 139:18,19 2:00 15:4 19:7 22:6 221:12 273:16 2:44 2:2 20 90:15 273:3 2000 1:13 2:14 89:9 89:17 335:6 355:10 2014 1:11 155:12 156:2 351:9 2019 348:19 2021 181:4 20th 273:13 21 26:10 55:1 2119 326:5 22 306:18 24 24:2,9,15 27:3 153:7 25 174:3,7 175:15 26th 351:9 2A 109:22 110:11 110:12 111:6 113:10,11,12 152:1 252:6 2nd 273:8 <hr/> 3 <hr/> 3 57:9 149:3,16 154:16 155:9 3:00 15:5 19:8 22:7 221:12 303:4 3:06:25 29:13 3:13:33 38:10 3:23:20 48:20 3:24:20 49:16 3:25:58 52:1 3:26:19 52:9 3:39:56 70:17 30 98:2,6 174:3,6 175:15 200:20 273:3 324:4 311 271:18 272:18 289:8	35 50:16 90:14 207:4 306:19 365:9 <hr/> 4 <hr/> 4 218:22 241:13,17 4:10:40 116:2 4:11:03 116:14 4:11:14 116:22 4:11:57 118:10 4:19:26 130:15 4:23:19 135:8 4:36:37 156:14 4:37:51 158:3 4:38:58 159:22 4:40:57 163:1 4:41:20 163:16 4:45:02 168:13 4:45:11 168:19 4:46:03 169:19 4:47:01 170:20 4:51 177:10 40 98:2,4,7 <hr/> 5 <hr/> 5:03 177:11 5:05:32 180:12 5:07:35 182:14 5:22:07 199:14 5:35:03 216:21 5:36:36 219:3 5:37:07 219:18 5:40:59 224:17 5:48:28 237:6 50 85:1 51 178:2 207:4 59 178:1 5th 274:21 5ths 27:6 <hr/> 6 <hr/> 6:04:27 265:16 6:14:30 278:5 6:15:08 279:2 6:35:54 309:19 6:37:14 312:8 6:42:20 320:19	6:45:45 326:17 6:53:15 339:6 6:54 341:6 60 85:1 317:12 <hr/> 7 <hr/> 7:01 341:7 7:10 353:18 7:21 371:21 700 27:5 269:16 <hr/> 8 <hr/> 8:00 221:5 8:30 221:5 800 269:16 85 50:17 55:15 88290 1:8 2:7 <hr/> 9 <hr/> 9 21:11 9:30 27:14 28:9,13 28:15,19,21 56:6 56:7,8 299:7,13 90 7:10,16 90:15 900 1:7 2:6 25:5 61:15 182:8 186:12 188:8 226:16 346:7 901 183:22 188:8 911 271:18 272:18 272:22 289:8 919 3:9 929 3:9 9th 20:6,7 21:14 188:11
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