



# PLANNING BOARD TOWN OF PORTER

3265 Creek Road • Youngstown, New York 14174 • (716) 745-3730 • Fax (716) 745-9022

*Approved at the Planning Board Special Meeting on June 20, 2016.*

**Thursday, June 2, 2016.**

The regular meeting of the Town of Porter Planning Board was called to order at 7:05 p.m. with the Pledge to the Flag.

Present: Chairperson Jeffery, Vice Chairperson Anthony Collard, Member John Bis, Member Mark Fox, Member Robert Tower, Code Enforcer Roy Rogers, Assessor Susan Driscoll, Attorney Michael Dowd, Special Council Kyle Andrews

## **Approval of minutes from the Planning Board Special Meeting, May 16, 2016**

Chairperson Jeffery read the highlights of the minutes from the Special Meeting on May 16, 2016; which included all agenda items from that meeting.

Motion to approve the Special Meeting minutes was made by Member Collard and seconded by Member Bis. All in favor, motion carried.

Chairperson Jeffery pointed out that public comment rules were created for the public hearing portion of the meeting.

## **Preliminary Review of Minor Subdivision for David DeCarle, Lake Road**

Mr. DeCarle stated that he would like to subdivide his property into four (4) lots with an average of 200ft frontage for each lot. Each property would range in 1.2-1.8 acres once divided.

Attorney Dowd stated that because the plan met subdivision code, he felt there would be no issues moving forward.

Chairperson Jeffery provided Mr. DeCarle with a checklist for subdivision procedure and also referred Mr. DeCarle to page 4 of the zoning book for further instruction.

A motion was made to approve the sketch plan as presented by Member Bis and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

**Assessor Merge for applicant John and Genine Golba, Tax map numbers: 59.00-2-81; 59.00-2-76 on Creek Road, Youngstown.**

Assessor Driscoll presented two (2) parcels that are both deeded to the same name that the owner would like to merge. She stated that the taxes were up to date on each parcel. Code Enforcer Rogers stated that the owner would like to build a pole barn on the empty lot but needs to merge the two lots in order to do so.

A motion was made to approve the assessor merge by Member Collard and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Secretary Freiermuth stated to Assessor Driscoll that she would provide a completed Planning Board Recommendation for the records.

**Site Plan Review for Paul Lozzi, garage off Tower Road, tax map number 46.00-1-11, Youngstown.**

Chairperson Jeffery asked if Mr. Lozzi was present. He was not.

Attorney Dowd stated that Tower Road is currently a right-of-way for the Town as an unimproved, seasonal dirt road, with some areas blacktopped. He stated that the Town could abandon the road, but would only do so on the condition of having other access (as suggested by moving the road).

Member Tower stated that if the road was abandoned, the land would be locked. And questioned why the road would be moved when the garage location could be moved instead.

Chairperson Jeffery stated that because Mr. Lozzi was not presented, the Planning Board would table the decision.

Liasion Fleckenstein stated that the Planning Board could deny the application because of the right-of-way.

A motion was made to deny the application due to the use of the right-of-way by Member Collard and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

**Sketch Plan Review for Christopher Guard, Major Subdivision, 3881 River Road, Youngstown.**

Mr. Guard and Attorney Sean Hopkins presented the concept of the major subdivision to the audience. Presented to the Planning Board were initial Home Owners Association (HOA) regulations.

Attorney Dowd stated that conceptually this project would allow the HOA to control the docks and that only home owners would have access to riverfront. He stated he had concerns about the road access for fire/emergency, but also stated that "more meat" would be added to the plan as it moves forward.

Chairperson Jeffery stated that phase 1 of the project includes 20 lots in a Medium Density Residential (MDR) zone. Mr. Guard stated that the smallest lots (as the cul-de-sac) are 80ft wide (code minimum), but most lots are 150ft wide. Chairperson Jeffery stated that these measurements satisfy the code. He also stated that the fire access would be addressed with the Engineer Plans in the future.

Mr. Guard stated that he is proposing that 12 house lots be tied to the boat slips and that the riverfront would be private use only. He stated there would be no commercial business and no fuel. The other homes within the development would have access to the gravel beach, boathouse, dock and common area. He stated that a variance would be needed to either have three (3) lots with 100ft of front each to include four (4) slips or to have one (1) HOA parcel with one (1) dock with twelve (12) slips. Either way would include twelve (12) slips. Chairperson Jeffery confirmed that these slips would be tied to homes. Mr. Guard confirmed. He stated that if a home were sold, the slip would also be sold with the home, or sold to another member of the HOA.

Attorney Dowd stated that more detail on the HOA regulations would be included in what is submitted to the Attorney General for approval. It was also stated that the Army Corps of Engineers would need to approve an anchor pier with floating docks if that was the final plan.

Chairperson Jeffery stated that there could be no docks built without houses and feels that it is a reasonable condition. Mr. Guard stated that the docks would be sold as the houses are sold and it would not be affordable to build the docks prior to the houses being built.

Member Collard stated that the sketch plan explains itself. A motion was made to approve the sketch plan by Member Fox and seconded by Member Collard.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Mr. Guard asked that a favorable recommendation be made to the Zoning Board for the variances on the docks. Attorney Dowd stated that at some point, the Planning and Zoning board would need to parallel track the process to move forward.

A motion was made by Chairperson Jeffery and seconded by Member Bis to recommend to the Zoning Board of Appeals:

1. The approval of twelve (12) slips to be owned by a New York State Approved Home

Owners Association (HOA) created in conjunction with the sub-division being proposed for v/l located on the Niagara River and upon the following additional requirements being met:

- a.) The construction on a minimum of three (3) homes must be started prior to any slips being built.
- b.) The creation of the HOA which will title to the parcel adjoining the Niagara River and the Town's approval of the rules and regulations of the HOA relative to the installation and maintenance of boat slips.
- c.) Compliance with all other rules and regulations of the Town of Porter Zoning Law.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

**Public Hearing for Site Plan for Judith Fleckenstein Trust — 22 Acre Aquaculture and Aquaponics Facility, 1953 Balmer Road, Ransomville.**

See attached transcript as provided by AP Stenographic Services.

**Public Hearing for Site Plan Review for Michael McCabe — Service of Garden/Farm Equipment, 2384 Lake Road.**

See attached transcript as provided by AP Stenographic Services.

**New / Miscellaneous Business**

None discussed.

**Code Enforcer Rogers report**

Code Enforcer Rogers submitted his May report. He included the complaint log for any new complaint opened within the month of May. He stated that Mr. McCabe's pond is now deemed a farm pond and is no longer a recreational pond due to his farm status. Code Enforcer Rogers stated that Mr. McCabe claims that the pond will be used to water and irrigate the cows on his farm. Code Enforcer Rogers also stated that the pole barn permit that was pending has been approved (building #6 on the site plan).

A list of inspections was also included with the report.

Member Collard stated that there is concern regarding a pond on Ransomville Road that was dug while doing site work and thought that it may be a violation as there was not a home built on the property. Code Enforcer Rogers stated that he would look into this.

**Attorney Dowd report**

Attorney Dowd was dismissed prior to the McCabe public hearing therefore no report was presented.

A motion to adjourn the meeting was made by Member Bis and seconded by Member Tower at 10:31 p.m.

1 STATE OF NEW YORK

COUNTY OF NIAGARA

2 - - - - -

3 In the Matter of

4 Site Plan for Judith Fleckenstein Living Trust-22

5 acre Aquaculture and Aquaponics Facility, 1953

6 Balmer Road, Ransomville, New York

7

8 Public Hearing

9 Held on

10 June 2nd, 2016

11 7:00 p.m.

12 At the Town of Porter Planning Board

13 3265 Creek Road

14 Youngstown, New York

15 - - - - -

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19 **ADRIENNE SEEKINS KUZMA**

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1 CHAIRPERSON JEFFREY: Our next agenda is going  
2 to be the start of our two public hearings tonight.  
3 We do have a court stenographer for the public  
4 hearings tonight. Let's take a five minute recess  
5 before we start our public hearings.

6  
7 (Whereupon a short recess was taken)

8  
9 AFTER RECESS:

10  
11 CHAIRPERSON JEFFREY: Okay. Item number six  
12 is a public hearing for site planning review,  
13 Judith Fleckenstein Living Trust. Notice is hereby  
14 given that pursuant to Section 35 of the Town of  
15 Porter Zoning Law, a public hearing will be held by  
16 the Planning Board of the Town of Porter, 3265  
17 Creek Road, Youngstown, New York on Thursday, June  
18 2nd, 2016 at seven P.M. for the purposes of hearing  
19 all interested persons concerning the following;  
20 application of Judith A. Fleckenstein Living Trust,  
21 1953 Balmer Road, Ransomville, New York, Tax Map ID  
22 61.00-1-24, for the Site Plan Review for a  
23 twenty-two acre aquaculture and aquaponics

1 facility.

2 Attorney Malcomb or Mr. Fleckenstein, if you  
3 would like to step to the podium and just outline  
4 for the hearing your intentions of the scope of  
5 work and what you're proposing to do, please.

6 CHARLES MALCOMB, ESQ: Okay. Just briefly  
7 I'll begin and then I'll turn it over to Tom to  
8 kind of go over the details of what's being  
9 proposed. But basically this was an application  
10 for a site plan review. And just to kind of give a  
11 little bit of a background. This is a twenty-two  
12 acre aquaponics facility, which is a recognized  
13 farm operation under the New York State Department  
14 of Agriculture and Markets Law. It has -- we  
15 received a determination to that effect by the  
16 Board. Under the Town Zoning Code there is a  
17 provision in Section seven, which is the use  
18 restrictions, that provides that only a building  
19 permit is required typically when you have a  
20 farming operation. However, there's a provision  
21 that if there's a significant type of activity,  
22 that the Planning Board has a right to do a site  
23 plan review following Agri-Market guidelines, which



1 provides for a sketch plan and related materials,  
2 which we have provided. And we have worked with  
3 the Board over the last couple of meetings. I  
4 think this is our third meeting to discuss the  
5 issue. We have also responded to questions from  
6 Mr. Brittain, the Town Engineer. We provided that  
7 material to the Board. There have been, I think,  
8 some questions about, you know, is this a  
9 legitimate farm operation. We have provided  
10 business plans stating how that is going to  
11 proceed. And also the Board recommended to the  
12 Zoning Board of Appeals that there obviously be a  
13 condition placed on the application that would  
14 require production and revenue on an expedited  
15 timeframe, which has kind of resulted in the  
16 phasing and the beginning of needing to do that  
17 within eighteen months. And the Zoning Board  
18 granted variances at the last meeting with that  
19 condition. And I just want to point out in the  
20 discussions with the engineer, one of the questions  
21 was; how is the pond going to be built. We had  
22 discussed that at a previous meeting. And the  
23 reason he asked is because there's a berm around

1 the pond and it's not typical you would expect that  
2 storm water would aide in the filling of the pond.  
3 And the reason is because this is a farm operation.  
4 This is an agriculture facility and is certified  
5 organic. You can't have the storm water flowing  
6 into the pond which may cause contamination issues.  
7 So we had received information that Mr. Brittain  
8 was satisfied with our responses to his concerns.  
9 And right now I'll just turn it over to Tom to give  
10 you kind of a brief overview of the discussion and  
11 ask any procedural or technical questions you have  
12 about the actual facility itself.

13 THE STENOGRAPHER: Can you state your name for  
14 the record, please?

15 CHARLES MALCOMB, ESQ: I'm sorry. My name is  
16 Charles Malcomb. Attorney with Hodgson Russ  
17 representing the applicant, Thomas Fleckenstein.

18 CHAIRPERSON JEFFREY: Go ahead, Tom. State  
19 your name for the record.

20 THOMAS FLECKENSTEIN: Thomas Fleckenstein,  
21 1953 Balmer Road, Ransomville. I guess from our  
22 last meeting, and we went to the ZBA, are there any  
23 further questions from the Board regarding the

1 facility? I guess it would be what my questions  
2 would be to you.

3 CHAIRPERSON JEFFREY: I think we have received  
4 your documentation, your updated documentation as  
5 far as a sketch plan. I do have the hand-out from  
6 you regarding Mr. Brittain's request for  
7 information, and everybody got a copy of that. To  
8 be honest with you, I haven't had a chance to go  
9 through that. Attorney Dowd could speak to --

10 THOMAS FLECKENSTEIN: Some of those we have  
11 already discussed. They've reasked them and I put  
12 them in writing and that response to them.

13 MICHAEL DOWD, ESQ: As you know, a brief  
14 history, back in January Mr. Fleckenstein came to  
15 see the Board to talk -- came to see the Building  
16 Inspector, myself, and the Town Supervisor to  
17 discuss this project. And one of the reasons he  
18 came was, we needed to address this issue of  
19 whether or not it's a farm operation, was to bring  
20 us evidence, in fact, how this property is going to  
21 go, it had been actively farmed. It wasn't being  
22 farmed for maybe a year. There was some deer  
23 farming operation going on there and he had to show

1 us proof that he had to terminate that activity  
2 because of, I guess, the ZB thing where the deer  
3 had to be destroyed, and as far as the active  
4 farming operations you had going there.

5 CHAIRPERSON JEFFREY: With the deer?

6 THOMAS FLECKENSTEIN: Yeah. And the  
7 Agri-Market has changed the inspection criteria.  
8 And basically we don't want to upgrade those  
9 facilities to meet the new criteria that the State  
10 has required on the deer. So that's why we --

11 MICHAEL DOWD, ESQ: But the point of it is, is  
12 that it was an active farm operation. That's the  
13 conclusion that Mr. Rogers and myself and the  
14 Supervisor came to, that it had been actively  
15 farmed. So now because of the problems he's having  
16 with the deer farming, it's still cropped property,  
17 as I understand it, he wants to change it to this  
18 aquaponics facility. Normally under Ag and Markets  
19 Law you're not supposed to put farm operations  
20 through site plan review processes. However, our  
21 Town Law says if it's a new and substantial  
22 project, although agriculture, we can put them  
23 through this streamline site plan approval process

1       that Ag and Markets has in their guidelines. So  
2       that's why we're here. But I want to make it clear  
3       to the Board that we did address the fact that this  
4       is an existing farm operation. And part of the  
5       site plan approval process, as you know, with a  
6       large operation like this, when you're talking  
7       about removing a lot of soil, we had to address a  
8       couple of things; one of which is the fees to be  
9       paid. Again we reduced the fees that are being put  
10      into escrow, because it's a farm operation.  
11      Anything that's considered cost prohibitive can be  
12      challenged by the applicant and end up at Ag and  
13      Markets. So the Engineer and I talked about it and  
14      came up with what we thought were appropriate fees.  
15      And after that, the Engineer got ahold of this  
16      sketch plan that was submitted. He's reviewed it.  
17      He had questions. I spoke to him about it. He  
18      couldn't be here tonight. Concerns were relayed to  
19      Mr. Fleckenstein, Mr. Malcomb. I will confirm that  
20      I did hear from the Engineer today that his  
21      concerns have been addressed. So I guess we're at  
22      the point now where, unless the Board has more  
23      questions, you should consider taking action.

1           One thing I want to point out is, the big  
2           issue is truck traffic, et cetera. There are truck  
3           restrictions set forth in the DEC Mine and Permit.  
4           We have put, as conditions, or recommended  
5           conditions, that if there's any spills of soil or  
6           other materials on the road that pose a problem to  
7           health and safety, this permit is subject to Mr.  
8           Fleckenstein paying for those things in the future.  
9           If there are unforeseen engineering expenses in the  
10          future, he pays for those in the future. And I  
11          think most importantly, any resolution to consider  
12          would require that this be a phased project,  
13          because twenty acres is a pretty big size pond.  
14          It's very big. And we want to make sure that the  
15          farming activity that he's proposing goes forward,  
16          that it is viable. So he's agreed, under the  
17          condition of any approval that you would do, that  
18          within eighteen months of construction he finishes  
19          the first five acres of the pond, there's twenty  
20          acres total, that he build the aquaponics facility  
21          that he's shown in his site plan, that he build the  
22          greenhouse that he's shown in his site plan, that  
23          he generated revenue within eighteen months, and

1       that he stock the pond with the type of fish that  
2       he says he's going to. And if those conditions  
3       aren't met at the end of the year, the permit will  
4       be revoked and the mining operation would cease,  
5       this aquaponics facility. And I say mining  
6       activity, because the DEC considers it a mine.  
7       They issued a mine permit. And they also have  
8       further conditions as far as land reclamations.  
9       He's had to post a bond to make sure any land is  
10      reclaimed after the work is done. So I think they  
11      have done their due diligence under the streamline  
12      process of the Ag and Markets. You know, after  
13      questions from the public, you may want to consider  
14      taking action.

15           CHAIRPERSON JEFFREY: Okay. Thank you. I  
16      think we will open the meeting to our public  
17      comments at this time. So if there's anyone in the  
18      public that would like to speak in regard to this  
19      agenda item, I guess, we'll start by raising your  
20      hand and I'll recognize you. We would like you to  
21      come to the podium, state your name and address,  
22      and then state your position or make your comments.  
23      We are going to stick to the rules. Hopefully

1 everyone has them. If not, there's still some at  
2 the door. We're going to do a two minute time  
3 limit. If there's -- if I feel like there's room  
4 in the time slot at the end to have a second round  
5 for people to speak, we can probably do that.

6 So is there anyone that would like to speak on  
7 this? In the back, why don't you go first.

8 JIM CARROLL: Jim Carroll, 2191 Lake Road,  
9 Ransomville. This is a public meeting?

10 CHAIRPERSON JEFFREY: Yes.

11 JIM CARROLL: You can't hear a word in the  
12 back. If people would speak up so we can hear back  
13 there or the Town maybe buy some microphones. You  
14 cannot hear a word that is being said. That's all  
15 I would like to say.

16 CHAIRPERSON JEFFREY: Thank you. Would anyone  
17 else like to speak? Yes, sir?

18 JON TANTILLO: Good evening, everyone. My  
19 name is Jon Tantillo. I'm an attorney with Knauf  
20 Shaw, a law firm over in Rochester. My firm  
21 represents Tom Freck in his opposition to this  
22 project.

23 CHAIRPERSON JEFFREY: Who do you represent?



1 JON TANTILLO: Mr. Freck back there.

2 CHAIRPERSON JEFFREY: Thomas Freck?

3 JON TANTILLO: Yes.

4 CHAIRPERSON JEFFREY: What is his address,  
5 please?

6 JON TANTILLO: 1820 Balmer Road. Obviously  
7 from that address, he's very close to the project.  
8 He's concerned moving forward about the tremendous  
9 truck traffic and activity on the road that will  
10 result from the extreme excavation for these two  
11 ponds would significantly injure my client and his  
12 property. Frankly, this really isn't an  
13 agriculture use. It's clearly an excavation with  
14 kind of an agriculture use just in the back end.  
15 It's roughly, I guess, I had a chance to look at  
16 the applicant's business plan, he said his estimate  
17 was thirty thousand total sales per year. I think  
18 that would be probably one to two percent of the  
19 income that you would expect to recoup from selling  
20 the clay in the twenty-two acres of pond land that  
21 will be part of the excavation. Amy Witryol is  
22 going to speak. I had a chance to look at her  
23 comments and I hope that the Board will give her an

1 opportunity to make her comments in their entirety.  
2 And I hope that the Board will accept her comments  
3 in a written form and delay any action on this  
4 application until Mrs. Witryol has been heard and  
5 you have an opportunity to review the comments. I  
6 believe, as Mr. Jeffrey said, he hasn't had a  
7 chance to review.

8 CHAIRPERSON JEFFREY: That is the two minute  
9 time, so thank you, sir. Yes, sir?

10 REEVE TOWER: Reeve Tower, 1495 Lake Road.  
11 Just a couple of quick questions for the Town on  
12 how we're building all these ponds, especially with  
13 the Zika virus coming in. What is the DEC's  
14 positions on open ponds? I mean it's standing  
15 water. Mosquitoes breed in standing water. I know  
16 he's going -- you know, can't use pesticides,  
17 because it's going to be, you know -- same thing  
18 with having worked with the FDA, when you're doing  
19 fish samples, isn't an open pond going to draw  
20 interest for all the geese in the area too? I  
21 don't see how we're going to be able to control it,  
22 you know. Just a couple of questions just off the  
23 wall. Thank you.

1 CHAIRPERSON JEFFREY: Yes, sir?

2 THOMAS FRECK: I'm Thomas Freck, 1820 Balmer  
3 Road, Ransomville. Forty year resident. Mr.  
4 Chairman, the Board, I would like to mention that  
5 I've been flatly refused by this Town three times  
6 for an agricultural pond for irrigation. Approved  
7 through all the Conservation Services, all the  
8 requirements, and flatly refused. I find it  
9 inconsistent with the Town for the past forty years  
10 to allow a clay mine, bigger than my whole  
11 property. And I am doubtful about the credible  
12 agricultural use of anybody in the State in the  
13 area that seems to have any experience with doing  
14 this. That's all.

15 CHAIRPERSON JEFFREY: Thank you, sir. Yes,  
16 ma'am?

17 AMY WITRYOL: Mr. Chairman, I am unaware of  
18 the new two minute limitation rule. And I prepared  
19 testimony regarding liability to the Town and the  
20 Board related to action on this proposal.

21 CHAIRPERSON JEFFREY: Ma'am, did you give your  
22 name?

23 AMY WITRYOL: Oh, I'm sorry. Amy Witryol,

1 4726 Lower River Road, Lewiston. It's on the  
2 sign-in sheet.

3 CHAIRPERSON JEFFREY: Thank you.

4 AMY WITRYOL: So again in addition to the  
5 liability issues, my testimony covers laws in the  
6 Town Code on mining. Inconsistency of the mining  
7 application, the site plan application, and the  
8 lack of feasibility for the proposed fish farming  
9 part of the project, as described by the site plan  
10 application material, and apparently have not been  
11 available to the public, given your comments about  
12 what you received from the Town Engineer. I would  
13 certainly encourage the Board to keep the hearing  
14 open for that reason, among the liability issues I  
15 have in my testimony here. Also correspondence  
16 from Niagara County Soil and Water Conservation and  
17 its consulting pond biologists, specifically for  
18 this project. Their comments that were provided to  
19 you were with respect to a recreational pond, not a  
20 commercial fish farming adventure, which would be  
21 consulted and considered to be not feasible. The  
22 U.S. Department of Agriculture recommendation for  
23 rearing walleyes, which rendered its proposal and

1        comments from the DEC permitted fish farming  
2        operations and State hazardous -- State hatcheries  
3        regarding the difficulty and lack of feasibility.  
4        So my questions at this point, Mr. Chairman, is  
5        whether or not you would like to read my testimony  
6        or if you would like me to hand that in and have  
7        the Board members review it? And it explains, even  
8        before I knew about the exchanges with the Town  
9        Engineer, and still awaiting the Zoning Board  
10       approval, which was rather extensive, I have in my  
11       testimony other reasons that I would ask that the  
12       hearing be held open and, you know, convened at  
13       another time so that the public could more fully  
14       participate. I know that Mr. Freck would very much  
15       like me to read all of my comments, but I know you  
16       have another hearing, and we would certainly be  
17       happy to come back at another hearing.

18                CHAIRPERSON JEFFREY: How extensive are your  
19       comments?

20                AMY WITRYOL: I'm going to say a good ten  
21       minutes.

22                CHAIRPERSON JEFFREY: I don't think that's  
23       going to work tonight. I think we're going to have

1       you submit those and we'll have to make a decision.

2           AMY WITRYOL:   Okay.

3           CHAIRPERSON JEFFREY:   Ms. Witryol, do you have  
4       more than one copy?

5           AMY WITRYOL:   Had I known there was a two  
6       minute limitation, I would have made copies for all  
7       of the Board members. But that wasn't published in  
8       the public notice. And as you mentioned, the  
9       procedure is brand new. But I would like the  
10      opportunity to amend the comments, based on the  
11      information from the engineers, and any information  
12      that the Board has that was not provided in the  
13      Freedom of Information Act request that I filed  
14      with the Clerk the day after your last meeting, in  
15      which I believe she requested the secretary of the  
16      Planning Board to respond to.

17          CHAIRPERSON JEFFREY:   I think it was responded  
18      to; was it not?

19          AMY WITRYOL:   Yes, it was. But it did not  
20      include --

21          CHAIRPERSON JEFFREY:   Well, it didn't include  
22      anything we didn't have to date.

23          AMY WITRYOL:   Exactly. And therefore, if the

1 Board is going to take any action in reliance on  
2 any additional information, that information needs  
3 to be made available to the public, I believe,  
4 under the State --

5 CHAIRPERSON JEFFREY: It will be available.  
6 It doesn't preclude us from making a decision. But  
7 your time is up, ma'am. I think at this point, is  
8 there anyone else that would like to speak on this  
9 issue?

10 AMY WITRYOL: Mr. Chair, would you like to  
11 take my written comments, please?

12 CHAIRPERSON JEFFREY: Yes, please. You may  
13 have a second chance to speak, depending on how the  
14 time goes. Did I see someone else raise their  
15 hand? Yes, ma'am?

16 SHEILA MOONEY: My name is Sheila Mooney. I  
17 live at 2407 Lake Road, Ransomville, New York. The  
18 question begs to be answered. Should this venture  
19 not pan out, what are we left with? Enormous holes  
20 in the ground. And what do you do with these  
21 enormous holes? Fill them with something? A  
22 landfill perhaps? And the fact that all this soil  
23 that is permitted to be sold, will guarantee the

1 owners millions, millions of dollars. The whole  
2 thing is ludicrous, truly ludicrous. That's it.

3 CHAIRPERSON JEFFREY: Is there anyone else  
4 that would like to speak tonight on this topic? Is  
5 there anyone that has spoken that would like to  
6 speak again for two minutes?

7 AMY WITRYOL: Oh, if it's just for two  
8 minutes, I won't get through the facts. If you  
9 would like to hold the hearing open and reconvene  
10 after the McCabe hearing, I would be pleased to  
11 stay, if that would be helpful to the Board.

12 CHARLES MALCOMB, ESQ: Mr. Chairman, I would  
13 say and request that we do not hold the hearing  
14 open. We haven't heard anything new here or  
15 anything relevant, other than the fact that they're  
16 calling my client a liar, and he's not going to do  
17 business. And this is all subject to reviews that  
18 they're going to make some sort of a landfill here,  
19 and this is a scheme to make millions of dollars.  
20 It's absolutely ridiculous. Mr. Fleckenstein, at  
21 the last meeting, has set forth in detail his  
22 history in agriculture. And this is what he's  
23 going to do. He's going to do a business plan.



1 And I appreciate that Mr. Tantillo is an expert on  
2 this type of a business and he doesn't think that  
3 it can make money. But when do we go to someone's  
4 operation and say; well, we don't think that your  
5 business plan is going to succeed, so we're going  
6 to deny (sic) your zoning approvals. I don't think  
7 so. So I think we haven't heard anything new. I  
8 would request that the hearing be closed and the  
9 Board decides. Thank you.

10 AMY WITRYOL: Mr. Chair, the applicant has had  
11 ten minutes, and that's more than the entire crowd  
12 that all of us put together has had on this matter.  
13 In your package is in fact new information that the  
14 Planning Board has not seen.

15 CHAIRPERSON JEFFREY: Ma'am, the applicant did  
16 not have ten minutes. I introduced him before we  
17 opened the public comment period. Two minutes was  
18 the public comments. We had the applicants  
19 introduce the plan. So they haven't had ten  
20 minutes to speak in the public meeting section as  
21 it was.

22 AMY WITRYOL: Mr. Chairman, if I could --

23 CHAIRPERSON JEFFREY: Just a second. Mr.

1 Dowd, do you have any input for the Board at this  
2 point as far as the procedure?

3 MICHAEL DOWD, ESQ: Procedurally, you don't  
4 have to take action tonight. There's a time limit  
5 you have to comply with under the code.  
6 Alternatively, if you feel that you want to not run  
7 afoul of criticism from Ag and Markets, because  
8 this is a farm operation, proposed farm operation,  
9 if you want to consider the additional comments and  
10 allow people to see what the engineers might or  
11 might not have said, et cetera, you could consider  
12 reconvening in a week, calling a special meeting,  
13 if you think you need time to consider it.  
14 Procedurally that's where you are at. I would like  
15 to point out though that, at the meeting we had  
16 last month, this Board came out specifically and  
17 identified, I think the phrase I used was; an  
18 elephant in the room, as a possibility that this  
19 was going to be a claim (sic) on the operation, and  
20 not an aquaculture facility. But we, as a Board, I  
21 don't think can jump to that conclusion without  
22 some reasonable basis to believe it's a fact, not  
23 just some assumption. What we can do is try to

1 protect the Town and say; we're going to put your  
2 feet to the fire and make sure that this is an  
3 aquaponics facility by making you put up the money  
4 necessary for buildings, et cetera. And if you're  
5 not going to uphold it, we will revoke the permit  
6 and the applicants need to do it. So I don't want  
7 the public to think that we're not doing our due  
8 diligence to make sure that this is a legitimate  
9 farm operation. Because if it's not, in eighteen  
10 months, we put the brakes on. So --

11 CHAIRPERSON JEFFREY: So is there anything  
12 else this Town could do to make sure that this is a  
13 legal -- to ensure that this is a farm operation  
14 and not strictly a clay mining operation, in your  
15 opinion?

16 MICHAEL DOWD, ESQ: I don't think there's more  
17 we can do than to require them to show us proof of  
18 revenue, proof of investment, proof that the fish  
19 and the other activities, growing the vegetables in  
20 a greenhouse, the proof will be in the pudding. If  
21 this gentleman goes to spend the money and starts  
22 raising fish and starts selling it, I can suggest  
23 to you that it's a legitimate farm operation and we

1 have done the right thing. If, on the other hand,  
2 he doesn't do what he says, we stop it. I don't  
3 know if there's anything more we can do, frankly.

4 SHEILA MOONEY: Mr. Chairman, can I say  
5 something?

6 CHAIRPERSON JEFFREY: Possibly in a moment.  
7 Is there any need or comments or any appealing from  
8 the Board at this direction, as far as the public  
9 hearing, leaving it open? We have some  
10 documentation here, it seems to be extensive. We  
11 have heard from the people that gave a summary of  
12 what the material is going to be needed.

13 JOHN BIS: Well, I do have a question about,  
14 Ms. Witryol raised a couple of issues about some of  
15 the documentation that was provided. And it was  
16 based on a recreational pond rather than a --

17 ANTHONY COLLARD: John, I'm sorry, can you  
18 speak up?

19 JOHN BIS: I'm sorry. There are some issues  
20 that were raised by one of the speakers that I  
21 really would like to see that, that information,  
22 before I even consider making a decision.

23 CHAIRPERSON JEFFREY: Okay. So would you then

1 be suggesting that we have a special meeting before  
2 we make a decision so that we have time to read and  
3 digest this information?

4 ROBERT TOWER: Where did the recreational pond  
5 come from? I might have misunderstood what you  
6 were saying.

7 AMY WITRYOL: Sir, the testimony, piecemeal, I  
8 don't think is going to satisfy the Board. And  
9 certainly I don't want to preclude review of all my  
10 material. But it does include explanation as to  
11 why the conditions that Mr. Dowd proposes may not  
12 be protective of the Town. So I prefer that you  
13 have the opportunity to read the entire testimony.  
14 I have the opportunity too, very quickly, I have no  
15 reason to delay this, to review the written memo  
16 and very briefly supplement this so that you can  
17 give me seven days --

18 ROBERT TOWER: Can I ask what your interest in  
19 this pond is, this aquaculture project? You live  
20 in the Town of Lewiston. It's not going to affect  
21 you; correct?

22 AMY WITRYOL: Yes. The sixty thousand trucks,  
23 among others things, that would be needed if, if

1 the trucks were large enough to be certified for  
2 seventeen cubic yards. That's how much nine  
3 hundred ninety thousand cubic yards, as Mr.  
4 Fleckenstein identified in his application --

5 ROBERT TOWER: So you don't have a problem  
6 with the fish?

7 AMY WITRYOL: Well, again I don't want to  
8 preclude your review of my comments, but I do have  
9 a concern that --

10 CHAIRPERSON JEFFREY: Well, we're going to  
11 decide if we're going to dig into your comments.

12 CHARLES MALCOMB, ESQ: Here's the Soil and  
13 Water Act. It talks about aquaponics --

14 CHAIRPERSON JEFFREY: Stop, please. I would  
15 like you to answer his question or else we're going  
16 to move on.

17 AMY WITRYOL: Yes. There is documentation in  
18 the package that in fact it explains and has a copy  
19 of an e-mail from a pond biologist regarding the  
20 Soil and Water Conservation --

21 CHAIRPERSON JEFFREY: I think the question  
22 was; do you have a problem with the fish?

23 AMY WITRYOL: Do I have a problem with the

1 fish? I don't understand that question.

2 ROBERT TOWER: Well, that's what we're here  
3 for.

4 CHAIRPERSON JEFFREY: Your objection is there  
5 being an aquaponics operation that grows fish?

6 AMY WITRYOL: Well, I don't see any evidence  
7 that it is sustainable, which is a much bigger  
8 question than whether or not there's revenue for  
9 eighteen months. Because in Lewiston there was a  
10 fish farming operation --

11 CHAIRPERSON JEFFREY: This is not Lewiston.  
12 That's enough.

13 AMY WITRYOL: Well, okay. We have never had a  
14 fish farming operation in Porter. Everywhere else  
15 in the State the model is --

16 CHAIRPERSON JEFFREY: Ma'am, please, stop.  
17 That's enough. We have heard it.

18 AMY WITRYOL: Did I answer your question?

19 ROBERT TOWER: I asked about the recreational  
20 pond. I have never read anything in this whole  
21 project about a recreational pond. It's  
22 strictly -- it's a farm aquaculture.

23 AMY WITRYOL: It is a farm pond. And Soil and

1       Agriculture's letter from Mr. Peril (sic), is no  
2       longer Soil and Conservation, was written based on  
3       the consultation from a pond biologist. I don't  
4       know where the translation, the pond biologist's  
5       view --

6               ROBERT TOWER: That was my only question.

7               AMY WITRYOL: -- of a recreational rearing of  
8       walleye was translated somehow into a Soil and  
9       Conservation, that first made a reference to fish  
10      farming as being agriculture. And then a separate  
11      question of, what would you want for walleye,  
12      separate from the question of rearing walleye for  
13      the purpose of farming. I think that's the issue.  
14      And it will be clear, I hope, when you read the  
15      application material.

16              CHAIRPERSON JEFFREY: Thank you.

17              ANTHONY COLLARD: Amy, I'm having a little  
18      trouble here. You seem not to be upset about the  
19      actual raising of the fish; right? I mean that's a  
20      business; right? That's viable. Do you have a  
21      problem with that? If somebody wanted to start a  
22      business raising fish and selling them in the free  
23      market, do you have a problem with that?



1           AMY WITRYOL: If under Town Code it is a  
2 legitimate business, I would not offer an  
3 objection, and because it would not be illegal  
4 under Town Code. So --

5           CHAIRPERSON JEFFREY: Okay. That's what you  
6 need.

7           ANTHONY COLLARD: My only question was; are  
8 you saying if, from your research, your personal  
9 opinion, that Mr. Fleckenstein is setting himself  
10 up for failure? And is there a bigger issue  
11 realistically about the removal of the clay or  
12 dirt? Which should I think that you're trying to  
13 talk to us about?

14          AMY WITRYOL: There are -- I don't know how  
15 you can separate the issues. If you could have a  
16 sustainable fish farming operation, then it really  
17 doesn't matter whether of not you're removing the  
18 clay, if you've got a property that you know can be  
19 used in perpetuity, like the majority of farming  
20 property.

21          ANTHONY COLLARD: So you're saying, you are  
22 saying to me, that if this business failed -- you  
23 have told us that you're a banker, obviously you

1 have dealt with --

2 AMY WITRYOL: No, I haven't told you that.

3 ANTHONY COLLARD: You said that at the ZBA  
4 meeting, okay? I was there.

5 AMY WITRYOL: Yes.

6 ANTHONY COLLARD: Okay. So you're saying we  
7 need a business plan, that he's set up for failure?

8 AMY WITRYOL: No. I'm saying, reading the  
9 business plan, if you see my testimony, in  
10 combination with speaking with four fish farmers,  
11 contacting the University and two State hatcheries,  
12 that no one believes that this project is feasible.  
13 And it's not done anywhere commercially for the  
14 purpose that Mr. Fleckenstein proposes anywhere in  
15 the State of New York. One would think it's  
16 obvious from the business plan that the fifty  
17 percent gross profit -- I'm sorry, fifty percent  
18 operating profit, that is, profit before interest  
19 and tax, would be a remarkable feat for any  
20 business and it would be attracting enormous  
21 interest from the investment community. But again  
22 the business plan, as I said at the Zoning Board  
23 meeting, is unique in that it really doesn't have

1 any assumptions. So we don't even have an  
2 opportunity to argue reasonableness assumptions.  
3 At the Zoning Board meeting I suggested that with  
4 little work that perhaps the application could be  
5 revised in order to conform to the law and give the  
6 Town assurance that this could be a sustainable  
7 operation. I am very supportive of our Farm Bureau  
8 and have been for many years. I support  
9 agriculture. But my review of the application and  
10 conversations with fish farmers in describing the  
11 business plan and getting comments that range from;  
12 this is as feasible as growing pineapple in Upstate  
13 New York, to this is a sham, gives me pause. Being  
14 a retired banker does not give me the knowledge to  
15 answer your questions, Mr. Collard, but to simply  
16 ask the questions of those who would be expected to  
17 be qualified and experienced and your Counsel. And  
18 you'll see in my comments, I suggested that the  
19 Planning Board perhaps speak to one fish farmer  
20 who's been successful. Most of these people have  
21 been at it for thirty years, not raising wild-kill  
22 deer or in other businesses, you know, foreign or  
23 domestic. And I think that would be appropriate

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1       due diligence or --

2               CHAIRPERSON JEFFREY:   Okay.   Thank you.

3               ROBERT TOWER:   Can I make a motion to close  
4       the public hearing?

5               CHAIRPERSON JEFFREY:   You certainly can.

6               ROBERT TOWER:   I make a motion to close the  
7       public hearing.

8               CHAIRPERSON JEFFREY:   We have a motion to  
9       close the public portion of this hearing.   Do we  
10      have a second?

11              ANTHONY COLLARD:   Second.

12              CHAIRPERSON JEFFREY:   Motion made and  
13      seconded.   All those in favor signify by saying I.

14              ROBERT TOWER:   I.

15              ANTHONY COLLARD:   I.

16              MARK FOX:   I.

17              CHAIRPERSON:   Any opposed?

18              JOHN BIS:   I do.

19              CHAIRPERSON JEFFREY:   Motion is carried.  
20      John, do you think we need to do some more research  
21      here?

22              JOHN BIS:   Yeah, I believe that there are a  
23      couple of issues that we should deal with before we

1 close the public hearing. Whether or not they're  
2 relevant or not, I think that one of the issues  
3 raised was, there was some information we received  
4 that was not posted prior to the meeting. And if  
5 that's the case then --

6 CHAIRPERSON JEFFREY: Are you talking about  
7 the engineering documents?

8 JOHN BIS: Yes. And if that's the case, I  
9 think we may be faulted for closing the public  
10 hearing until people have had a chance to review  
11 that. That's my issue. It's a procedural issue.  
12 It has nothing to do with whether it's a business  
13 or not a business, or whether it's going to fail or  
14 not fail. It's the procedure of the public  
15 hearing. And the other issue that was raised was  
16 the two minutes. I thought it was a good idea.  
17 But that was not part of the -- I don't know  
18 whether or not procedurally that should have been  
19 mentioned or not in the public hearing or not.

20 CHARLES MALCOMB, ESQ: Standard procedure.

21 MICHAEL DOWD, ESQ: Whatever the Board  
22 determines is a method is appropriate.

23 CHARLES MALCOMB, ESQ: It doesn't need to be

1 in a public notice either.

2 JOHN BIS: Those are my issues.

3 CHAIRPERSON JEFFREY: I think we have closed  
4 the public part. It doesn't preclude us from still  
5 taking public comments if we choose to. Typically  
6 if we choose to do a special meeting later in the  
7 month, so that we have a chance to review the  
8 additional documents, and if we want to take  
9 comments from the public at that point in time, we  
10 can still do that. That would be at our  
11 discretion.

12 JOHN BIS: I'm a firm believer in --

13 CHAIRPERSON JEFFREY: Am I right?

14 MICHAEL DOWD, ESQ: No, you can do that. And  
15 if you want, again, I frankly expected that Mr.  
16 Brittain would have been here, but something came  
17 up. You might want to have the engineer come in  
18 here and address some of your questions and  
19 certainly there can be a public hearing and --

20 CHAIRPERSON JEFFREY: Didn't you say that Mr.  
21 Brittain, the Town Engineer, has agreed with the  
22 applicants as far as the concerns raised --

23 MICHAEL DOWD, ESQ: And our Board --

1           CHAIRPERSON JEFFREY: -- for a matter that our  
2 Board hasn't had a chance to review it?

3           MICHAEL DOWD, ESQ: Right. I don't know, I'm  
4 going to guess our Board has looked at the guidance  
5 that's been given by Ag and Market as far as  
6 streamline site plan review. And, you know, the  
7 level of detail and the amount of information and  
8 the expense you put an applicant through, if it's  
9 considered a farm operation, then I believe this  
10 Board has come to that conclusion. It can't be  
11 underly burdensome(sic). So our engineer was asked  
12 to review the sketch plan, the limited site plan.  
13 But if you have questions for him, bring him in and  
14 have him answer them. But I think you're doing due  
15 diligence to the level you're supposed to,  
16 considering this is a farm operation. If this was  
17 not a farm operation, we shouldn't second guess Mr.  
18 Fleckenstein's intentions without somebody coming  
19 forward and saying; hey, that guy is completely  
20 lying. I think he's got the history. You have to  
21 look at it from that perspective, or you're going  
22 to run afoul of a challenge with Ag and Markets.  
23 And I don't know if you want to do that either. So

1 maybe if you need time to reflect on some of the  
2 information that's been submitted, have another  
3 meeting, ask the engineer to come. But again, we  
4 have to be careful not to be too overly burdensome  
5 on the applicant in considering it's a farm  
6 operation.

7 CHAIRPERSON JEFFREY: How do the rest of the  
8 Board members feel?

9 ANTHONY COLLARD: Well, if there is going to  
10 be time, then I want this -- I think a week to  
11 review this submittal is enough time for this  
12 Board. We've been working from January. Then I  
13 would like a special meeting, however it falls,  
14 within a week's time. Because Mr. Fleckenstein has  
15 been doing this since January. And at the last  
16 minute, the ZBA meeting last month, and now this  
17 meeting we have some information that obviously we  
18 need to review for the public good. And I'm all  
19 for that. But I'm not going to extend it out on  
20 Mr. Fleckenstein for another month. It's  
21 ridiculous.

22 THOMAS FLECKENSTEIN: Actually we've been on  
23 it for two years. We had a public comment period



1 on the mining permit that nobody in this room  
2 participated in, nobody.

3 CHAIRPERSON JEFFREY: It hasn't been in front  
4 of this Board for two years. I understand, but to  
5 this Board.

6 THOMAS FLECKENSTEIN: A public comment was  
7 done in conjunction with the Town, because you're  
8 part of the whole process. The Town was put on  
9 notification. The public comment period was open  
10 specifically for the mining permit. That was over  
11 a year ago. The speakers in the back of the room  
12 did not participate. And you can't tell me for one  
13 second that they weren't aware that the permit was  
14 out and the public comment was out.

15 MICHAEL DOWD, ESQ: Well, do you want a short  
16 period of time? I think it's appropriate for the  
17 Board if you want to wait a week, then that should  
18 do it, and digest things, and ask Mr. Brittain to  
19 answer any questions that you have. But I think  
20 Mr. Collard is correct in saying we shouldn't delay  
21 this thing --

22 JOHN BIS: Yeah.

23 CHARLES MALCOMB, ESQ: If I could just ask; I

1 would ask that the Board make a determination  
2 tonight. We have heard nothing, other than Mr.  
3 Fleckenstein is not going to succeed at his  
4 business. And that's not an appropriate  
5 consideration on the Zoning Approval. They're  
6 calling him a liar. Ms. Witryol spoke for several,  
7 several minutes, was asked questions. She couldn't  
8 articulate what she had an issue with this  
9 operation. I don't know if there's another motive  
10 that she's got or what her problem is with this.  
11 But there was no articulation as to what the issue  
12 was with this operation. It's just not going to  
13 make it, this is all a lie. Nothing new has been  
14 presented.

15 CHAIRPERSON JEFFREY: Okay. Well, if we're  
16 going to make a decision, we need a motion to  
17 either extend this meeting or else we need to  
18 deliberate and --

19 JOHN BIS: I would like to read the comments,  
20 even if it takes -- you know, let me read it while  
21 you're going on to the next public hearing. I need  
22 to.

23 ANTHONY COLLARD: It's our duty to make it,

1 but I want a time limit on it.

2 CHAIRPERSON JEFFREY: I don't think it's  
3 appropriate for --

4 JOHN BIS: Go ahead and vote.

5 CHAIRPERSON JEFFREY: I think we need more  
6 time to read the comments, myself.

7 ANTHONY COLLARD: Make a motion to that  
8 effect.

9 MARK FOX: Because she's dropped off a page  
10 that she thinks we need to read, we have to hold  
11 him up for more time? I'm not sure I agree with  
12 that.

13 JOHN BIS: Then hold the vote. This is a  
14 democratic process. I'm a firm believer in  
15 democracy.

16 THOMAS FLECKENSTEIN: The only comment I would  
17 like to make is; Ms. Witryol was at the ZBA  
18 meeting. She made comments there. It's been how  
19 many weeks? Why wasn't she in on the pending  
20 notice to provide this information to this Board so  
21 you had a chance to study it prior to this meeting  
22 tonight? This is just a delaying tactic on her  
23 part by forcing you to push this off for another

1 meeting. She should have provided this  
2 documentation at the end of that ZBA meeting.

3 AMY WITRYOL: Mr. Chairman, may I respond to  
4 Mr. Fleckenstein's question, since it regards me  
5 and my intentions?

6 CHAIRPERSON JEFFREY: No, not at this time.

7 AMY WITRYOL: Okay.

8 CHAIRPERSON JEFFREY: Motion to extend the  
9 meeting, or are we going to, are we going to have  
10 any further discussion? I have handed the  
11 documents, the documentation that the speakers have  
12 provided to John. At the moment he is doing some  
13 reading.

14 ANTHONY COLLARD: Then if we hold this public  
15 hearing open for an appropriate -- this hearing  
16 we're at, okay, let John review that and let's move  
17 on to the next agenda and keep this open. Give  
18 John time to look at that.

19 CHAIRPERSON JEFFREY: No. The next agenda  
20 item will need our full attention.

21 ROBERT TOWER: I make a motion we approve Mr.  
22 Fleckenstein's site plan, fish operation.

23 ANTHONY COLLARD: Second.

1           CHAIRPERSON JEFFREY: Okay. Is there any  
2 further discussion?

3           MICHAEL DOWD, ESQ: Well, that's a proposed  
4 resolution that addressed some of the matters and  
5 events that you're going to approve the contract --  
6 or approve the site plan, that addresses again, the  
7 phasing in, the requirements that the Town be  
8 indemnified for injury or damages from soil being  
9 put on the road and that sort of thing. So that's  
10 just --

11          CHAIRPERSON JEFFREY: So normally, because we  
12 have a motion made and seconded, does that motion  
13 need to be amended?

14          MICHAEL DOWD, ESQ: Well, I think it's --

15          ROBERT TOWER: Those conditions were all in  
16 last months, or the last meeting.

17          MICHAEL DOWD, ESQ: This would simply be a  
18 resolution, if you want to approve it with these  
19 conditions, the proposed resolution that you would  
20 use to vote on. That would be what Mr. Tower  
21 was --

22          ROBERT TOWER: All the things we said at the  
23 eighteen month, the --

1           MICHAEL DOWD, ESQ: You can read that  
2 resolution into the record and ask Mr. Tower if  
3 that's what he wants to move in, and if it's  
4 seconded you'll take action, and if it's not, we're  
5 back on the table.

6           CHAIRPERSON JEFFREY: Okay. I'm going to make  
7 a motion for approval.

8           ANTHONY COLLARD: And I second.

9           CHAIRPERSON JEFFREY: I will read the  
10 resolution: Resolution Approving a Site Plan For  
11 Construction and Operation of a Aquaculture  
12 Facility:

13  
14           (Whereupon the attached resolution was read  
15 verbatim)

16  
17           ROBERT TOWER: That's pretty much what I was  
18 trying to say, just condensed it a little.

19           CHAIRPERSON JEFFREY: And you second it?

20           ANTHONY COLLARD: Yes.

21           CHAIRPERSON JEFFREY: John, did you have any  
22 further comments?

23           JOHN BIS: No. My comments, now that I have

1 read through this, and there's nothing in here that  
2 I see as relevant to the vote on this.

3 CHAIRPERSON JEFFREY: Any further discussion?

4 ANTHONY COLLARD: Call for a vote.

5 CHAIRPERSON JEFFREY: Call for a rollcall  
6 vote.

7 AMY FREIERMUTH: Chairperson Jeffrey?

8 CHAIRPERSON JEFFREY: Yes.

9 AMY FREIERMUTH: Member Collard?

10 ANTHONY COLLARD: Yes.

11 AMY FREIERMUTH: Member Fox?

12 MARK FOX: Yes.

13 AMY FREIERMUTH: Member Bis?

14 JOHN BIS: Yes.

15 AMY FREIERMUTH: Member Tower?

16 ROBERT TOWER: Yes.

17 CHAIRPERSON JEFFREY: This resolution is  
18 effective immediately, adapted and adopted June  
19 2nd, 2016 by the Planning Board, Town of Porter.

20 I don't want to extend the meeting any longer  
21 than I have to, but I think a five minute recess  
22 again would be appropriate here.

23

CERTIFICATION

I, ADRIENNE S. KUZMA Court Stenographer,  
CERTIFY that public hearing held before Chairperson  
Jeffrey, at the Town of Porter Planning Board, is a  
true and accurate record of the proceedings.

I further HEREBY CERTIFY that I am not related  
to any party of this action by blood or marriage  
and that I am in no way interested in the outcome.

In witness thereof I have hereunto set my hand  
this 16th day of June, 2016.

-----  
ADRIENNE S. KUZMA  
Notary Public  
State of New York  
County of Niagara  
Expires 2/4/2017



<b>1</b>	<b>actual</b> [2] - 5:12, 27:19 <b>adapted</b> [1] - 42:18 <b>addition</b> [1] - 15:4 <b>additional</b> [3] - 18:2, 21:9, 33:8 <b>address</b> [7] - 6:18, 8:3, 8:7, 10:21, 12:4, 12:7, 33:18 <b>addressed</b> [2] - 8:21, 40:4 <b>addresses</b> [1] - 40:6 <b>adopted</b> [1] - 42:18 <b>ADRIENNE</b> [3] - 1:19, 43:6, 43:19 <b>adventure</b> [1] - 15:20 <b>affect</b> [1] - 24:20 <b>afoul</b> [2] - 21:7, 34:22 <b>AFTER</b> [1] - 2:9 <b>Ag</b> [7] - 7:18, 8:1, 8:12, 10:12, 21:7, 34:5, 34:22 <b>agenda</b> [4] - 2:1, 10:19, 39:17, 39:19 <b>ago</b> [1] - 36:11 <b>agree</b> [1] - 38:11 <b>agreed</b> [2] - 9:16, 33:21 <b>Agri</b> [2] - 3:23, 7:7 <b>Agri-Market</b> [2] - 3:23, 7:7 <b>agricultural</b> [2] - 14:6, 14:12 <b>agriculture</b> [7] - 5:4, 7:22, 12:13, 12:14, 19:22, 27:10, 30:9 <b>Agriculture</b> [2] - 3:14, 15:22 <b>Agriculture's</b> [1] - 27:1 <b>ahead</b> [2] - 5:18, 38:4 <b>ahold</b> [1] - 8:15 <b>alde</b> [1] - 5:2 <b>allow</b> [2] - 14:10, 21:10 <b>alternatively</b> [1] - 21:6 <b>amend</b> [1] - 17:10 <b>amended</b> [1] - 40:13 <b>amount</b> [1] - 34:7 <b>Amy</b> [3] - 12:21, 14:23, 27:17 <b>AMY</b> [34] - 14:17, 14:23, 15:4, 16:20, 17:2, 17:5, 17:19, 17:23, 18:10, 19:7, 20:10, 20:22, 24:7, 24:22, 25:7, 25:17, 25:23, 26:6, 26:13, 26:18, 26:23, 27:7, 28:1, 28:14, 29:2, 29:5, 29:8, 39:3, 39:7, 42:7, 42:9, 42:11, 42:13, 42:15 <b>answer</b> [5] - 25:15, 26:18, 30:15, 34:14, 36:19 <b>answered</b> [1] - 18:18 <b>ANTHONY</b> [17] - 23:17, 27:17, 28:7, 28:21, 29:3, 29:6, 31:11, 31:15, 35:9, 37:23, 38:7, 39:14, 39:23, 41:8, 41:20, 42:4, 42:10 <b>appealing</b> [1] - 23:7 <b>Appeals</b> [1] - 4:12 <b>applicant</b> [6] - 5:17, 8:12, 20:10, 20:15, 34:8, 35:5 <b>applicant's</b> [1] - 12:16 <b>applicants</b> [3] - 20:18, 22:6, 33:22 <b>application</b> [11] - 2:20, 3:9, 4:13, 13:4, 15:7, 15:10, 25:4, 27:15, 30:4, 30:9 <b>appreciate</b> [1] - 20:1 <b>appropriate</b> [8] - 8:14, 30:23, 32:22, 36:16, 37:4, 38:3, 39:15, 42:22 <b>Approval</b> [1] - 37:5 <b>approval</b> [5] - 7:23, 8:5, 9:17, 16:10, 41:7 <b>approvals</b> [1] - 20:6 <b>approve</b> [4] - 39:21, 40:5, 40:6, 40:18 <b>approved</b> [1] - 14:6 <b>Approving</b> [1] - 41:10 <b>aquaculture</b> [4] - 2:23, 21:20, 24:19, 26:22 <b>Aquaculture</b> [2] - 1:5, 41:11 <b>aquaponics</b> [8] - 2:23, 3:12, 7:18, 9:20, 10:5, 22:3, 25:13, 26:5 <b>Aquaponics</b> [1] - 1:5 <b>area</b> [2] - 13:20, 14:13 <b>argue</b> [1] - 30:2 <b>articulate</b> [1] - 37:8 <b>articulation</b> [1] - 37:11 <b>assumption</b> [1] - 21:23 <b>assumptions</b> [2] - 30:1, 30:2 <b>assurance</b> [1] - 30:6 <b>attached</b> [1] - 41:14 <b>attention</b> [1] - 39:20 <b>Attorney</b> [1] - 6:9	<b>attorney</b> [3] - 3:2, 5:16, 11:19 <b>attracting</b> [1] - 29:20 <b>available</b> [3] - 15:11, 18:3, 18:5 <b>awaiting</b> [1] - 16:9 <b>aware</b> [1] - 36:13	<b>B</b>	<b>background</b> [1] - 3:11 <b>Balmer</b> [5] - 1:6, 2:21, 5:21, 12:6, 14:2 <b>banker</b> [2] - 28:23, 30:14 <b>based</b> [3] - 17:10, 23:16, 27:2 <b>basis</b> [1] - 21:22 <b>begin</b> [1] - 3:7 <b>beginning</b> [1] - 4:16 <b>begs</b> [1] - 18:18 <b>believer</b> [2] - 33:12, 38:14 <b>believes</b> [1] - 29:12 <b>berm</b> [1] - 4:23 <b>big</b> [3] - 9:1, 9:13, 9:14 <b>bigger</b> [3] - 14:10, 26:7, 28:10 <b>biologist</b> [2] - 25:19, 27:3 <b>biologist's</b> [1] - 27:4 <b>biologists</b> [1] - 15:17 <b>Bis</b> [1] - 42:13 <b>BIS</b> [13] - 23:13, 23:19, 31:18, 31:22, 32:8, 33:2, 33:12, 36:22, 37:19, 38:4, 38:13, 41:23, 42:14 <b>bit</b> [1] - 3:11 <b>blood</b> [1] - 43:12 <b>Board</b> [49] - 1:12, 2:16, 3:16, 3:22, 4:3, 4:7, 4:11, 4:12, 4:17, 5:23, 6:15, 8:3, 8:22, 12:23, 13:2, 14:4, 14:20, 15:13, 16:7, 16:9, 17:7, 17:12, 17:16, 18:1, 19:11, 20:9, 20:14, 21:1, 21:16, 21:20, 23:8, 24:8, 29:22, 30:3, 30:19, 32:21, 33:23, 34:2, 34:4, 34:10, 35:8, 35:12, 36:4, 36:5, 36:17, 37:1, 38:20, 42:19, 43:8 <b>bond</b> [1] - 10:9 <b>Box</b> [1] - 1:20 <b>brakes</b> [1] - 22:10 <b>brand</b> [1] - 17:9	<b>breed</b> [1] - 13:15 <b>brief</b> [2] - 5:10, 6:13 <b>briefly</b> [2] - 3:6, 24:16 <b>bring</b> [2] - 6:19, 34:13 <b>Brittain</b> [5] - 4:6, 5:7, 33:16, 33:21, 36:18 <b>Brittain's</b> [1] - 6:6 <b>build</b> [2] - 9:20, 9:21 <b>Building</b> [1] - 6:15 <b>building</b> [2] - 3:18, 13:12 <b>buildings</b> [1] - 22:4 <b>built</b> [1] - 4:21 <b>burdensome</b> [1] - 35:4 <b>burdensome(sic)</b> [1] - 34:11 <b>Bureau</b> [1] - 30:7 <b>business</b> [19] - 4:10, 12:16, 19:17, 19:23, 20:2, 20:5, 27:20, 27:22, 28:2, 28:22, 29:7, 29:9, 29:16, 29:20, 29:22, 30:11, 32:12, 32:13, 37:4 <b>businesses</b> [1] - 30:22 <b>buy</b> [1] - 11:13	<b>C</b>	<b>cannot</b> [1] - 11:14 <b>careful</b> [1] - 35:4 <b>carried</b> [1] - 31:19 <b>CARROLL</b> [2] - 11:8, 11:11 <b>Carroll</b> [1] - 11:8 <b>case</b> [2] - 32:5, 32:8 <b>cease</b> [1] - 10:4 <b>certainly</b> [5] - 15:13, 16:16, 24:9, 31:5, 33:19 <b>CERTIFICATION</b> [1] - 43:4 <b>certified</b> [2] - 5:4, 25:1 <b>CERTIFY</b> [2] - 43:7, 43:11 <b>cetera</b> [3] - 9:2, 21:11, 22:4 <b>chair</b> [2] - 18:10, 20:10 <b>Chairman</b> [5] - 14:4, 14:17, 16:4, 20:22, 39:3 <b>chairman</b> [2] - 19:12, 23:4 <b>CHAIRPERSON</b> [66] - 2:1, 2:11, 5:18, 6:3, 7:5, 10:15, 11:10, 11:16, 11:23, 12:2,
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12:4, 13:8, 14:1,  
14:15, 14:21, 15:3,  
16:18, 16:22, 17:3,  
17:17, 17:21, 18:5,  
18:12, 19:3, 20:15,  
20:23, 22:11, 23:6,  
23:23, 25:10, 25:14,  
25:21, 26:4, 26:11,  
26:16, 27:16, 28:5,  
31:2, 31:5, 31:8,  
31:12, 31:17, 31:19,  
32:6, 33:3, 33:13,  
33:20, 34:1, 35:7,  
36:3, 37:15, 38:2,  
38:5, 39:6, 39:8,  
39:19, 40:1, 40:11,  
41:6, 41:9, 41:19,  
41:21, 42:3, 42:5,  
42:8, 42:17  
**Chairperson** [2] -  
42:7, 43:7  
**challenge** [1] - 34:22  
**challenged** [1] - 8:12  
**chance** [9] - 6:8,  
12:15, 12:22, 13:7,  
18:13, 32:10, 33:7,  
34:2, 38:21  
**change** [1] - 7:17  
**changed** [1] - 7:7  
**CHARLES** [7] - 3:6,  
5:15, 19:12, 25:12,  
32:20, 32:23, 36:23  
**Charles** [1] - 5:16  
**choose** [2] - 33:5,  
33:6  
**claim** [1] - 21:19  
**clay** [5] - 12:20, 14:10,  
22:14, 28:11, 28:18  
**clear** [2] - 8:2, 27:14  
**clearly** [1] - 12:13  
**Clerk** [1] - 17:14  
**client** [2] - 12:11,  
19:16  
**close** [5] - 12:7, 31:3,  
31:6, 31:9, 32:1  
**closed** [2] - 20:8, 33:3  
**closing** [1] - 32:9  
**Code** [4] - 3:16, 15:6,  
28:1, 28:4  
**code** [1] - 21:5  
**COLLARD** [17] -  
23:17, 27:17, 28:7,  
28:21, 29:3, 29:6,  
31:11, 31:15, 35:9,  
37:23, 38:7, 39:14,  
39:23, 41:8, 41:20,  
42:4, 42:10  
**Collard** [3] - 30:15,  
36:20, 42:9  
**combination** [1] -

29:10  
**coming** [2] - 13:13,  
34:18  
**comment** [6] - 20:17,  
35:23, 36:6, 36:9,  
36:14, 38:16  
**comments** [27] -  
10:17, 10:22, 12:23,  
13:1, 13:2, 13:5,  
15:11, 15:18, 16:1,  
16:15, 16:19, 17:10,  
18:11, 20:18, 21:9,  
23:7, 25:8, 25:11,  
30:11, 30:18, 33:5,  
33:9, 37:19, 38:6,  
38:18, 41:22, 41:23  
**commercial** [1] -  
15:20  
**commercially** [1] -  
29:13  
**community** [1] - 29:21  
**completely** [1] - 34:19  
**comply** [1] - 21:5  
**concern** [1] - 25:9  
**concerned** [1] - 12:8  
**concerning** [1] - 2:19  
**concerns** [4] - 5:8,  
8:18, 8:21, 33:22  
**conclusion** [3] - 7:13,  
21:21, 34:10  
**condensed** [1] - 41:18  
**condition** [3] - 4:13,  
4:19, 9:17  
**conditions** [7] - 9:4,  
9:5, 10:2, 10:8,  
24:11, 40:15, 40:19  
**confirm** [1] - 8:19  
**conform** [1] - 30:5  
**conjunction** [1] - 36:7  
**Conservation** [5] -  
14:7, 15:16, 25:20,  
27:2, 27:9  
**consider** [7] - 8:23,  
9:11, 10:13, 21:9,  
21:11, 21:13, 23:22  
**consideration** [1] -  
37:5  
**considered** [3] - 8:11,  
15:21, 34:9  
**considering** [2] -  
34:16, 35:5  
**considers** [1] - 10:6  
**construction** [1] -  
9:18  
**Construction** [1] -  
41:11  
**consultation** [1] - 27:3  
**consulted** [1] - 15:21  
**consulting** [1] - 15:17  
**contacting** [1] - 29:11

**contamination** [1] -  
5:6  
**contract** [1] - 40:5  
**control** [1] - 13:21  
**convened** [1] - 16:12  
**conversations** [1] -  
30:10  
**copies** [1] - 17:6  
**copy** [3] - 6:7, 17:4,  
25:18  
**correct** [2] - 24:21,  
36:20  
**correspondence** [1] -  
15:15  
**cost** [1] - 8:11  
**Counsel** [1] - 30:17  
**COUNTY** [1] - 1:1  
**County** [2] - 15:16,  
43:20  
**couple** [6] - 4:3, 8:8,  
13:11, 13:22, 23:14,  
31:23  
**Court** [2] - 1:20, 43:6  
**court** [1] - 2:3  
**covers** [1] - 15:5  
**credible** [1] - 14:11  
**Creek** [2] - 1:13, 2:17  
**criteria** [2] - 7:7, 7:9  
**criticism** [1] - 21:7  
**cropped** [1] - 7:16  
**crowd** [1] - 20:11  
**cubic** [2] - 25:2, 25:3

## D

**damages** [1] - 40:8  
**date** [1] - 17:22  
**days** [1] - 24:17  
**deal** [1] - 31:23  
**dealt** [1] - 29:1  
**DEC** [3] - 9:3, 10:6,  
16:1  
**DEC's** [1] - 13:13  
**decide** [1] - 25:11  
**decides** [1] - 20:9  
**decision** [5] - 17:1,  
18:6, 23:22, 24:2,  
37:16  
**deer** [6] - 6:22, 7:2,  
7:5, 7:10, 7:16,  
30:22  
**delay** [3] - 13:3, 24:15,  
36:20  
**delaying** [1] - 38:22  
**deliberate** [1] - 37:18  
**democracy** [1] - 38:15  
**democratic** [1] - 38:14  
**deny** [1] - 20:6  
**Department** [2] - 3:13,  
15:22

**described** [1] - 15:9  
**describing** [1] - 30:10  
**destroyed** [1] - 7:3  
**detail** [2] - 19:21, 34:7  
**details** [1] - 3:8  
**determination** [2] -  
3:15, 37:1  
**determines** [1] - 32:22  
**difficulty** [1] - 16:3  
**dig** [1] - 25:11  
**digest** [2] - 24:3,  
36:18  
**diligence** [4] - 10:11,  
22:8, 31:1, 34:15  
**direction** [1] - 23:8  
**dirt** [1] - 28:12  
**discretion** [1] - 33:11  
**discuss** [2] - 4:4, 6:17  
**discussed** [2] - 4:22,  
6:11  
**discussion** [4] - 5:10,  
39:10, 40:2, 42:3  
**discussions** [1] - 4:20  
**documentation** [7] -  
6:4, 23:10, 23:15,  
25:17, 39:2, 39:11  
**documents** [3] - 32:7,  
33:8, 39:11  
**dollars** [2] - 19:1,  
19:19  
**domestic** [1] - 30:23  
**done** [5] - 10:10,  
10:11, 23:1, 29:13,  
36:7  
**door** [1] - 11:2  
**doubtful** [1] - 14:11  
**DOWD** [13] - 6:13,  
7:11, 21:3, 22:16,  
32:21, 33:14, 33:23,  
34:3, 36:15, 40:3,  
40:14, 40:17, 41:1  
**Dowd** [3] - 6:9, 21:1,  
24:11  
**draw** [1] - 13:19  
**dropped** [1] - 38:9  
**due** [4] - 10:11, 22:7,  
31:1, 34:14  
**duty** [1] - 37:23

## E

**e-mail** [1] - 25:19  
**E-mail:adrienne@**  
**apstenographicsservices**  
**.com** [1] - 1:22  
**effect** [2] - 3:15, 38:8  
**effective** [1] - 42:18  
**eighteen** [6] - 4:17,  
9:18, 9:23, 22:9,  
26:9, 40:23  
**either** [3] - 33:1,  
34:23, 37:17  
**elephant** [1] - 21:18  
**encourage** [1] - 15:13  
**end** [5] - 8:12, 10:3,  
11:4, 12:14, 39:2  
**End** [1] - 43:1  
**engineer** [4] - 4:20,  
33:17, 34:11, 35:3  
**Engineer** [7] - 4:6,  
8:13, 8:15, 8:20,  
15:12, 16:9, 33:21  
**engineering** [2] - 9:9,  
32:7  
**engineers** [2] - 17:11,  
21:10  
**enormous** [3] - 18:19,  
18:21, 29:20  
**ensure** [1] - 22:13  
**entire** [2] - 20:11,  
24:13  
**entirety** [1] - 13:1  
**escrow** [1] - 8:10  
**especially** [1] - 13:12  
**ESQ** [20] - 3:6, 5:15,  
6:13, 7:11, 19:12,  
21:3, 22:16, 25:12,  
32:20, 32:21, 32:23,  
33:14, 33:23, 34:3,  
36:15, 36:23, 40:3,  
40:14, 40:17, 41:1  
**estimate** [1] - 12:16  
**et** [3] - 9:2, 21:11, 22:4  
**evening** [1] - 11:18  
**events** [1] - 40:5  
**everywhere** [1] -  
26:14  
**evidence** [2] - 6:20,  
26:6  
**exactly** [1] - 17:23  
**excavation** [3] - 12:10,  
12:13, 12:21  
**exchanges** [1] - 16:8  
**existing** [1] - 8:4  
**expect** [2] - 5:1, 12:19  
**expected** [2] - 30:16,  
33:15  
**expedited** [1] - 4:14  
**expense** [1] - 34:8  
**expenses** [1] - 9:9  
**experience** [1] - 14:13  
**experienced** [1] -  
30:17  
**expert** [1] - 20:1  
**Expires** [1] - 43:21  
**explains** [2] - 16:7,  
25:18  
**explanation** [1] -  
24:10  
**extend** [4] - 35:19,

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PO Box 171

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37:17, 39:8, 42:20 <b>extensive</b> [3] - 16:10, 16:18, 23:10 <b>extreme</b> [1] - 12:10	<b>first</b> [3] - 9:19, 11:7, 27:9 <b>fish</b> [21] - 10:1, 13:19, 15:8, 15:20, 16:1, 22:18, 22:22, 25:6, 25:22, 26:1, 26:5, 26:10, 26:14, 27:9, 27:19, 27:22, 28:16, 29:10, 30:10, 30:19, 39:22 <b>five</b> [3] - 2:4, 9:19, 42:21 <b>flatly</b> [2] - 14:5, 14:8 <b>FLECKENSTEIN</b> [6] - 5:20, 6:10, 7:6, 35:22, 36:6, 38:16 <b>Fleckenstein</b> [17] - 1:4, 2:13, 2:20, 3:2, 5:17, 5:20, 6:14, 8:19, 9:8, 19:20, 25:4, 28:9, 29:14, 35:14, 35:20, 37:3, 43:2 <b>Fleckenstein's</b> [3] - 34:18, 39:4, 39:22 <b>flowing</b> [1] - 5:5 <b>following</b> [2] - 2:19, 3:23 <b>forcing</b> [1] - 38:23 <b>foreign</b> [1] - 30:22 <b>form</b> [1] - 13:3 <b>forth</b> [2] - 9:3, 19:21 <b>forty</b> [2] - 14:3, 14:9 <b>forward</b> [3] - 9:15, 12:8, 34:19 <b>four</b> [1] - 29:10 <b>Fox</b> [1] - 42:11 <b>FOX</b> [3] - 31:16, 38:9, 42:12 <b>frankly</b> [3] - 12:12, 23:3, 33:15 <b>Freck</b> [5] - 11:21, 12:1, 12:2, 14:2, 16:14 <b>FRECK</b> [1] - 14:2 <b>free</b> [1] - 27:22 <b>Freedom</b> [1] - 17:13 <b>FREIERMUTH</b> [5] - 42:7, 42:9, 42:11, 42:13, 42:15 <b>front</b> [1] - 36:3 <b>full</b> [1] - 39:20 <b>fully</b> [1] - 16:13 <b>future</b> [3] - 9:8, 9:10	<b>glven</b> [4] - 2:14, 15:11, 34:5, 43:9 <b>granted</b> [1] - 4:18 <b>greenhouse</b> [2] - 9:22, 22:20 <b>gross</b> [1] - 29:17 <b>ground</b> [1] - 18:20 <b>growing</b> [2] - 22:19, 30:12 <b>grows</b> [1] - 26:5 <b>guarantee</b> [1] - 18:23 <b>guess</b> [8] - 5:21, 6:1, 7:2, 8:21, 10:19, 12:15, 34:4, 34:17 <b>guidance</b> [1] - 34:4 <b>guidelines</b> [2] - 3:23, 8:1 <b>guy</b> [1] - 34:19	38:10, 38:13, 39:14 <b>holes</b> [2] - 18:19, 18:21 <b>honest</b> [1] - 6:8 <b>hope</b> [3] - 12:23, 13:2, 27:14 <b>hopefully</b> [1] - 10:23 <b>hundred</b> [1] - 25:3	<b>Itself</b> [1] - 5:12
<b>F</b>		<b>H</b>	<b>I</b>	<b>J</b>
<b>facilities</b> [1] - 7:9 <b>Facility</b> [2] - 1:5, 41:12 <b>facility</b> [10] - 3:1, 3:12, 5:4, 5:12, 6:1, 7:18, 9:20, 10:5, 21:20, 22:3 <b>fact</b> [7] - 6:20, 8:3, 18:22, 19:15, 20:13, 21:22, 25:18 <b>facts</b> [1] - 19:8 <b>fall</b> [2] - 32:13, 32:14 <b>failed</b> [1] - 28:22 <b>failure</b> [2] - 28:10, 29:7 <b>falls</b> [1] - 35:13 <b>far</b> [7] - 6:5, 7:3, 10:8, 21:2, 23:8, 33:22, 34:5 <b>farm</b> [19] - 3:13, 4:9, 5:3, 6:19, 7:12, 7:19, 8:4, 8:10, 21:8, 22:9, 22:13, 22:23, 26:22, 26:23, 34:9, 34:16, 34:17, 35:5 <b>Farm</b> [1] - 30:7 <b>farmed</b> [3] - 6:21, 6:22, 7:15 <b>farmer</b> [1] - 30:19 <b>farmers</b> [2] - 29:10, 30:10 <b>farming</b> [14] - 3:20, 6:23, 7:4, 7:16, 9:15, 15:8, 15:20, 16:1, 26:10, 26:14, 27:10, 27:13, 28:16, 28:19 <b>faulted</b> [1] - 32:9 <b>favor</b> [1] - 31:13 <b>FDA</b> [1] - 13:18 <b>feasibility</b> [2] - 15:8, 16:3 <b>feasible</b> [3] - 15:21, 29:12, 30:12 <b>feat</b> [1] - 29:19 <b>fees</b> [3] - 8:8, 8:9, 8:14 <b>feet</b> [1] - 22:2 <b>fifty</b> [2] - 29:16, 29:17 <b>filed</b> [1] - 17:13 <b>fill</b> [1] - 18:21 <b>filling</b> [1] - 5:2 <b>finishes</b> [1] - 9:18 <b>fire</b> [1] - 22:2 <b>firm</b> [4] - 11:20, 33:12, 38:14	<b>five</b> [3] - 2:4, 9:19, 42:21 <b>flatly</b> [2] - 14:5, 14:8 <b>FLECKENSTEIN</b> [6] - 5:20, 6:10, 7:6, 35:22, 36:6, 38:16 <b>Fleckenstein</b> [17] - 1:4, 2:13, 2:20, 3:2, 5:17, 5:20, 6:14, 8:19, 9:8, 19:20, 25:4, 28:9, 29:14, 35:14, 35:20, 37:3, 43:2 <b>Fleckenstein's</b> [3] - 34:18, 39:4, 39:22 <b>flowing</b> [1] - 5:5 <b>following</b> [2] - 2:19, 3:23 <b>forcing</b> [1] - 38:23 <b>foreign</b> [1] - 30:22 <b>form</b> [1] - 13:3 <b>forth</b> [2] - 9:3, 19:21 <b>forty</b> [2] - 14:3, 14:9 <b>forward</b> [3] - 9:15, 12:8, 34:19 <b>four</b> [1] - 29:10 <b>Fox</b> [1] - 42:11 <b>FOX</b> [3] - 31:16, 38:9, 42:12 <b>frankly</b> [3] - 12:12, 23:3, 33:15 <b>Freck</b> [5] - 11:21, 12:1, 12:2, 14:2, 16:14 <b>FRECK</b> [1] - 14:2 <b>free</b> [1] - 27:22 <b>Freedom</b> [1] - 17:13 <b>FREIERMUTH</b> [5] - 42:7, 42:9, 42:11, 42:13, 42:15 <b>front</b> [1] - 36:3 <b>full</b> [1] - 39:20 <b>fully</b> [1] - 16:13 <b>future</b> [3] - 9:8, 9:10	<b>hand</b> [6] - 6:5, 10:20, 16:6, 18:15, 23:1, 43:14 <b>hand-out</b> [1] - 6:5 <b>handed</b> [1] - 39:10 <b>happy</b> [1] - 16:17 <b>hatcheries</b> [2] - 16:2, 29:11 <b>hazardous</b> [1] - 16:2 <b>health</b> [1] - 9:7 <b>hear</b> [4] - 8:20, 11:11, 11:12, 11:14 <b>heard</b> [6] - 13:4, 19:14, 20:7, 23:11, 26:17, 37:2 <b>Hearing</b> [2] - 1:8, 43:1 <b>hearing</b> [25] - 2:12, 2:15, 2:18, 3:4, 15:13, 16:12, 16:16, 16:17, 19:9, 19:10, 19:13, 20:8, 23:9, 31:4, 31:7, 31:9, 32:1, 32:10, 32:15, 32:19, 33:19, 37:21, 39:15, 43:7 <b>hearings</b> [3] - 2:2, 2:4, 2:5 <b>held</b> [3] - 2:15, 16:12, 43:7 <b>Held</b> [1] - 1:9 <b>helpful</b> [1] - 19:11 <b>HEREBY</b> [1] - 43:11 <b>hereby</b> [1] - 2:13 <b>hereunto</b> [1] - 43:14 <b>himself</b> [1] - 28:9 <b>history</b> [3] - 6:14, 19:22, 34:20 <b>Hodgson</b> [1] - 5:16 <b>hold</b> [5] - 19:9, 19:13,	<b>38:10, 38:13, 39:14</b> <b>holes</b> [2] - 18:19, 18:21 <b>honest</b> [1] - 6:8 <b>hope</b> [3] - 12:23, 13:2, 27:14 <b>hopefully</b> [1] - 10:23 <b>hundred</b> [1] - 25:3	<b>January</b> [3] - 6:14, 35:12, 35:15 <b>Jeffrey</b> [3] - 13:6, 42:7, 43:8 <b>JEFFREY</b> [65] - 2:1, 2:11, 5:18, 6:3, 7:5, 10:15, 11:10, 11:16, 11:23, 12:2, 12:4, 13:8, 14:1, 14:15, 14:21, 15:3, 16:18, 16:22, 17:3, 17:17, 17:21, 18:5, 18:12, 19:3, 20:15, 20:23, 22:11, 23:6, 23:23, 25:10, 25:14, 25:21, 26:4, 26:11, 26:16, 27:16, 28:5, 31:2, 31:5, 31:8, 31:12, 31:19, 32:6, 33:3, 33:13, 33:20, 34:1, 35:7, 36:3, 37:15, 38:2, 38:5, 39:6, 39:8, 39:19, 40:1, 40:11, 41:6, 41:9, 41:19, 41:21, 42:3, 42:5, 42:8, 42:17 <b>JIM</b> [2] - 11:8, 11:11 <b>Jim</b> [1] - 11:8 <b>JOHN</b> [13] - 23:13, 23:19, 31:18, 31:22, 32:8, 33:2, 33:12, 36:22, 37:19, 38:4, 38:13, 41:23, 42:14 <b>John</b> [6] - 23:17, 31:20, 39:12, 39:16, 39:18, 41:21 <b>JON</b> [4] - 11:18, 12:1, 12:3, 12:6 <b>Jon</b> [1] - 11:19 <b>Judith</b> [4] - 1:4, 2:13, 2:20, 43:2 <b>Jump</b> [1] - 21:21 <b>June</b> [4] - 1:10, 2:17, 42:18, 43:15
	<b>G</b>			<b>K</b>
	<b>geese</b> [1] - 13:20 <b>generated</b> [1] - 9:23 <b>gentleman</b> [1] - 22:21		<b>income</b> [1] - 12:19 <b>inconsistency</b> [1] - 15:6 <b>Inconsistent</b> [1] - 14:9 <b>indemnified</b> [1] - 40:8 <b>Information</b> [14] - 5:7, 6:7, 17:11, 18:2, 20:13, 23:21, 24:3, 32:3, 34:7, 35:2, 35:17, 38:20 <b>Information</b> [1] - 17:13 <b>injure</b> [1] - 12:11 <b>injury</b> [1] - 40:8 <b>Input</b> [1] - 21:1 <b>inspection</b> [1] - 7:7 <b>Inspector</b> [1] - 6:16 <b>Intentions</b> [3] - 3:4, 34:18, 39:5 <b>interest</b> [4] - 13:20, 24:18, 29:18, 29:21 <b>Interested</b> [2] - 2:19, 43:13 <b>Introduce</b> [1] - 20:19 <b>introduced</b> [1] - 20:16 <b>Investment</b> [2] - 22:18, 29:21 <b>Irrigation</b> [1] - 14:6 <b>Issue</b> [11] - 4:5, 6:18, 9:2, 18:9, 27:13, 28:10, 32:11, 32:15, 37:8, 37:11 <b>Issued</b> [1] - 10:7 <b>Issues</b> [9] - 5:6, 15:5, 15:14, 23:14, 23:19, 28:15, 31:23, 32:2, 33:2 <b>Item</b> [3] - 2:11, 10:19, 39:20	<b>keep</b> [2] - 15:13, 39:17 <b>kill</b> [1] - 30:21 <b>kind</b> [5] - 3:8, 3:10, 4:15, 5:10, 12:14 <b>Knauf</b> [1] - 11:19 <b>knowledge</b> [1] - 30:14 <b>known</b> [1] - 17:5 <b>KUZMA</b> [3] - 1:19, 43:6, 43:19

AP Stenographic Services

PO Box 171

Lockport, New York 14095 (716) 425-8735

<p><b>L</b></p> <p><b>lack</b> [2] - 15:8, 16:3  <b>Lake</b> [3] - 11:8, 13:10, 18:17  <b>land</b> [3] - 10:8, 10:9, 12:20  <b>landfill</b> [2] - 18:22, 19:18  <b>large</b> [2] - 8:6, 25:1  <b>last</b> [10] - 4:3, 4:18, 5:22, 17:14, 19:21, 21:16, 35:15, 35:16, 40:16  <b>Law</b> [4] - 2:15, 3:14, 7:19, 7:21  <b>law</b> [2] - 11:20, 30:5  <b>laws</b> [1] - 15:5  <b>leaving</b> [1] - 23:9  <b>left</b> [1] - 18:19  <b>legal</b> [1] - 22:13  <b>legitimate</b> [4] - 4:9, 22:8, 22:23, 28:2  <b>letter</b> [1] - 27:1  <b>level</b> [2] - 34:7, 34:15  <b>Lewiston</b> [4] - 15:1, 24:20, 26:9, 26:11  <b>liability</b> [3] - 14:19, 15:5, 15:14  <b>liar</b> [2] - 19:16, 37:6  <b>lie</b> [1] - 37:13  <b>limit</b> [3] - 11:3, 21:4, 38:1  <b>limitation</b> [2] - 14:18, 17:6  <b>limited</b> [1] - 34:12  <b>live</b> [2] - 18:17, 24:19  <b>Living</b> [4] - 1:4, 2:13, 2:20, 43:2  <b>Lockport</b> [1] - 1:21  <b>look</b> [4] - 12:15, 12:22, 34:21, 39:18  <b>looked</b> [1] - 34:4  <b>Lower</b> [1] - 15:1  <b>ludicrous</b> [2] - 19:2  <b>lying</b> [1] - 34:20</p>	<p>5:15, 19:12, 25:12, 32:20, 32:23, 36:23  <b>Map</b> [1] - 2:21  <b>MARK</b> [3] - 31:16, 38:9, 42:12  <b>Market</b> [3] - 3:23, 7:7, 34:5  <b>market</b> [1] - 27:23  <b>Markets</b> [7] - 3:14, 7:18, 8:1, 8:13, 10:12, 21:7, 34:22  <b>marriage</b> [1] - 43:12  <b>material</b> [5] - 4:7, 15:10, 23:12, 24:10, 27:15  <b>materials</b> [2] - 4:1, 9:6  <b>matter</b> [3] - 20:12, 28:17, 34:1  <b>Matter</b> [1] - 1:3  <b>matters</b> [1] - 40:4  <b>McCabe</b> [1] - 19:10  <b>mean</b> [2] - 13:14, 27:19  <b>meet</b> [1] - 7:9  <b>meeting</b> [29] - 4:4, 4:18, 4:22, 5:22, 10:16, 11:9, 17:14, 19:21, 20:20, 21:12, 21:15, 24:1, 29:4, 29:23, 30:3, 32:4, 33:6, 35:3, 35:13, 35:16, 35:17, 37:17, 38:18, 38:21, 39:1, 39:2, 39:9, 40:16, 42:20  <b>meetings</b> [1] - 4:3  <b>Member</b> [4] - 42:9, 42:11, 42:13, 42:15  <b>members</b> [3] - 16:7, 17:7, 35:8  <b>memo</b> [1] - 24:15  <b>mention</b> [1] - 14:4  <b>mentioned</b> [2] - 17:8, 32:19  <b>met</b> [1] - 10:3  <b>method</b> [1] - 32:22  <b>MICHAEL</b> [13] - 6:13, 7:11, 21:3, 22:16, 32:21, 33:14, 33:23, 34:3, 36:15, 40:3, 40:14, 40:17, 41:1  <b>microphones</b> [1] - 11:13  <b>might</b> [4] - 21:10, 21:11, 24:5, 33:17  <b>millions</b> [3] - 19:1, 19:19  <b>mine</b> [3] - 10:6, 10:7, 14:10  <b>Mine</b> [1] - 9:3</p>	<p><b>mining</b> [7] - 10:4, 10:5, 15:6, 22:14, 36:1, 36:10  <b>minute</b> [7] - 2:4, 11:2, 13:8, 14:18, 17:6, 35:16, 42:21  <b>minutes</b> [9] - 16:21, 19:6, 19:8, 20:11, 20:16, 20:17, 20:20, 32:16, 37:7  <b>misunderstood</b> [1] - 24:5  <b>model</b> [1] - 26:15  <b>moment</b> [2] - 23:6, 39:12  <b>money</b> [3] - 20:3, 22:3, 22:21  <b>month</b> [5] - 21:16, 33:7, 35:16, 35:20, 40:23  <b>months</b> [6] - 4:17, 9:18, 9:23, 22:10, 26:9, 40:16  <b>MOONEY</b> [2] - 18:16, 23:4  <b>Mooney</b> [1] - 18:16  <b>mosquitoes</b> [1] - 13:15  <b>most</b> [2] - 9:11, 30:20  <b>motion</b> [12] - 31:3, 31:6, 31:8, 31:12, 31:19, 37:16, 38:7, 39:8, 39:21, 40:12, 41:7  <b>motive</b> [1] - 37:9  <b>move</b> [3] - 25:16, 39:16, 41:3  <b>moving</b> [1] - 12:8</p>	<p>20:7, 20:13, 37:13  <b>New</b> [10] - 1:6, 1:14, 1:21, 2:17, 2:21, 3:13, 18:17, 29:15, 30:13, 43:20  <b>next</b> [4] - 2:1, 37:21, 39:17, 39:19  <b>Niagara</b> [2] - 15:16, 43:20  <b>NIAGARA</b> [1] - 1:1  <b>nine</b> [1] - 25:2  <b>ninety</b> [1] - 25:3  <b>nobody</b> [2] - 36:1, 36:2  <b>normally</b> [2] - 7:18, 40:11  <b>Notary</b> [1] - 43:19  <b>nothing</b> [4] - 32:12, 37:2, 37:13, 42:1  <b>notice</b> [4] - 2:13, 17:8, 33:1, 38:20  <b>notification</b> [1] - 36:9  <b>number</b> [1] - 2:11</p>	<p>13:5, 17:10, 24:13, 24:14, 30:2  <b>opposed</b> [1] - 31:17  <b>opposition</b> [1] - 11:21  <b>order</b> [1] - 30:5  <b>organic</b> [1] - 5:5  <b>outcome</b> [1] - 43:13  <b>outline</b> [1] - 3:3  <b>overly</b> [1] - 35:4  <b>overview</b> [1] - 5:10  <b>owners</b> [1] - 19:1</p>
<p><b>M</b></p> <p><b>ma'am</b> [6] - 14:16, 14:21, 18:7, 18:15, 20:15, 26:16  <b>mail</b> [1] - 25:19  <b>mail:adrienne@apstenographicsservices.com</b> [1] - 1:22  <b>majority</b> [1] - 28:19  <b>Malcomb</b> [3] - 3:2, 5:16, 8:19  <b>MALCOMB</b> [7] - 3:6,</p>		<p><b>N</b></p> <p><b>name</b> [7] - 5:13, 5:15, 5:19, 10:21, 11:19, 14:22, 18:16  <b>necessary</b> [1] - 22:4  <b>need</b> [16] - 21:13, 22:6, 23:7, 28:6, 29:7, 31:20, 32:23, 35:1, 35:18, 37:16, 37:17, 37:21, 38:5, 38:10, 39:20, 40:13  <b>needed</b> [3] - 6:18, 23:12, 24:23  <b>needing</b> [1] - 4:16  <b>needs</b> [1] - 18:2  <b>never</b> [2] - 26:13, 26:20  <b>NEW</b> [1] - 1:1  <b>new</b> [8] - 7:9, 7:21, 14:18, 17:9, 19:14,</p>	<p><b>O</b></p> <p><b>objection</b> [2] - 26:4, 28:3  <b>obvious</b> [1] - 29:16  <b>obviously</b> [4] - 4:12, 12:6, 28:23, 35:17  <b>OF</b> [2] - 1:1  <b>offer</b> [1] - 28:2  <b>one</b> [12] - 4:20, 6:17, 8:8, 9:1, 12:18, 17:4, 23:20, 29:12, 29:15, 30:19, 32:2, 36:12  <b>open</b> [11] - 10:16, 13:14, 13:19, 15:14, 16:12, 19:9, 19:14, 23:9, 36:9, 39:15, 39:17  <b>opened</b> [1] - 20:17  <b>operating</b> [1] - 29:18  <b>operation</b> [31] - 3:13, 3:20, 4:9, 5:3, 6:19, 6:23, 7:12, 8:4, 8:6, 8:10, 10:4, 20:4, 21:8, 21:19, 22:9, 22:13, 22:14, 22:23, 26:5, 26:10, 26:14, 28:16, 30:7, 34:9, 34:16, 34:17, 35:6, 37:9, 37:12, 39:22  <b>Operation</b> [1] - 41:11  <b>operations</b> [3] - 7:4, 7:19, 16:2  <b>opinion</b> [2] - 22:15, 28:9  <b>opportunity</b> [6] - 13:1,</p>	<p><b>P</b></p> <p><b>p.m</b> [1] - 1:11  <b>P.M</b> [1] - 2:18  <b>package</b> [2] - 20:13, 25:18  <b>page</b> [1] - 38:9  <b>paid</b> [1] - 8:9  <b>pan</b> [1] - 18:19  <b>part</b> [7] - 8:4, 12:21, 15:9, 32:17, 33:4, 36:8, 38:23  <b>participate</b> [2] - 16:14, 36:12  <b>participated</b> [1] - 36:2  <b>party</b> [1] - 43:12  <b>past</b> [1] - 14:9  <b>pause</b> [1] - 30:13  <b>paying</b> [1] - 9:8  <b>pays</b> [1] - 9:10  <b>pending</b> [1] - 38:19  <b>people</b> [6] - 11:5, 11:12, 21:10, 23:11, 30:20, 32:10  <b>per</b> [1] - 12:17  <b>percent</b> [3] - 12:18, 29:17  <b>perhaps</b> [3] - 18:22, 30:4, 30:19  <b>Peril</b> [1] - 27:1  <b>period</b> [4] - 20:17, 35:23, 36:9, 36:16  <b>Permit</b> [1] - 9:3  <b>permit</b> [8] - 3:19, 9:7, 10:3, 10:7, 22:5, 36:1, 36:10, 36:13  <b>permitted</b> [2] - 16:1, 18:23  <b>perpetuity</b> [1] - 28:19  <b>personal</b> [1] - 28:8  <b>persons</b> [1] - 2:19  <b>perspective</b> [1] - 34:21  <b>pesticides</b> [1] - 13:16  <b>phased</b> [1] - 9:12  <b>phasing</b> [2] - 4:16, 40:7  <b>Phone</b> [1] - 1:21</p>

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<p><b>phrase</b> [1] - 21:17</p> <p><b>piecemeal</b> [1] - 24:7</p> <p><b>pineapple</b> [1] - 30:12</p> <p><b>placed</b> [1] - 4:13</p> <p><b>Plan</b> [4] - 1:4, 2:22, 41:10, 43:1</p> <p><b>plan</b> [26] - 3:10, 3:23, 4:1, 6:5, 7:20, 7:23, 8:5, 8:16, 9:21, 9:22, 12:16, 15:7, 15:9, 19:23, 20:5, 20:19, 29:7, 29:9, 29:16, 29:22, 30:11, 34:6, 34:12, 39:22, 40:6</p> <p><b>Planning</b> [8] - 1:12, 2:16, 3:22, 17:16, 20:14, 30:19, 42:19, 43:8</p> <p><b>planning</b> [1] - 2:12</p> <p><b>plans</b> [1] - 4:10</p> <p><b>pleased</b> [1] - 19:10</p> <p><b>PO</b> [1] - 1:20</p> <p><b>podium</b> [2] - 3:3, 10:21</p> <p><b>point</b> [9] - 4:19, 7:11, 8:22, 9:1, 16:4, 18:7, 21:2, 21:15, 33:9</p> <p><b>pond</b> [21] - 4:21, 5:1, 5:2, 5:6, 9:13, 9:19, 10:1, 12:20, 13:19, 14:6, 15:17, 15:19, 23:16, 24:4, 24:19, 25:19, 26:20, 26:21, 26:23, 27:3, 27:4</p> <p><b>ponds</b> [3] - 12:11, 13:12, 13:14</p> <p><b>Porter</b> [8] - 1:12, 2:15, 2:16, 26:14, 42:19, 43:8</p> <p><b>portion</b> [1] - 31:9</p> <p><b>pose</b> [1] - 9:6</p> <p><b>position</b> [1] - 10:22</p> <p><b>positions</b> [1] - 13:14</p> <p><b>possibility</b> [1] - 21:18</p> <p><b>possibly</b> [1] - 23:6</p> <p><b>post</b> [1] - 10:9</p> <p><b>posted</b> [1] - 32:4</p> <p><b>preclude</b> [4] - 18:6, 24:9, 25:8, 33:4</p> <p><b>prefer</b> [1] - 24:12</p> <p><b>prepared</b> [1] - 14:18</p> <p><b>presented</b> [1] - 37:14</p> <p><b>pretty</b> [2] - 9:13, 41:17</p> <p><b>previous</b> [1] - 4:22</p> <p><b>problem</b> [7] - 9:6, 25:5, 25:22, 25:23, 27:21, 27:23, 37:10</p> <p><b>problems</b> [1] - 7:15</p> <p><b>procedural</b> [2] - 5:11, 32:11</p>	<p><b>procedurally</b> [3] - 21:3, 21:14, 32:18</p> <p><b>procedure</b> [4] - 17:9, 21:2, 32:14, 32:20</p> <p><b>proceed</b> [1] - 4:11</p> <p><b>proceedings</b> [1] - 43:9</p> <p><b>process</b> [5] - 7:23, 8:5, 10:12, 36:8, 38:14</p> <p><b>processes</b> [1] - 7:20</p> <p><b>production</b> [1] - 4:14</p> <p><b>profit</b> [3] - 29:17, 29:18</p> <p><b>prohibitive</b> [1] - 8:11</p> <p><b>project</b> [10] - 6:17, 7:22, 9:12, 11:22, 12:7, 15:9, 15:18, 24:19, 26:21, 29:12</p> <p><b>proof</b> [5] - 7:1, 22:17, 22:18, 22:20</p> <p><b>property</b> [6] - 6:20, 7:16, 12:12, 14:11, 28:18, 28:20</p> <p><b>proposal</b> [2] - 14:20, 15:23</p> <p><b>proposed</b> [5] - 3:9, 15:8, 21:8, 40:3, 40:19</p> <p><b>proposes</b> [2] - 24:11, 29:14</p> <p><b>proposing</b> [2] - 3:5, 9:15</p> <p><b>protect</b> [1] - 22:1</p> <p><b>protective</b> [1] - 24:12</p> <p><b>provide</b> [1] - 38:20</p> <p><b>provided</b> [8] - 4:2, 4:6, 4:9, 15:18, 17:12, 23:15, 39:1, 39:12</p> <p><b>provides</b> [2] - 3:18, 4:1</p> <p><b>provision</b> [2] - 3:17, 3:20</p> <p><b>Public</b> [3] - 1:8, 43:1, 43:19</p> <p><b>public</b> [38] - 2:2, 2:3, 2:5, 2:12, 2:15, 10:13, 10:16, 10:18, 11:9, 15:11, 16:13, 17:8, 18:3, 20:17, 20:18, 20:20, 22:7, 23:8, 31:4, 31:7, 31:9, 32:1, 32:9, 32:14, 32:19, 33:1, 33:4, 33:5, 33:9, 33:19, 35:18, 35:23, 36:6, 36:9, 36:14, 37:21, 39:14, 43:7</p> <p><b>published</b> [1] - 17:7</p> <p><b>pudding</b> [1] - 22:20</p> <p><b>purpose</b> [2] - 27:13, 29:14</p>	<p><b>purposes</b> [1] - 2:18</p> <p><b>pursuant</b> [1] - 2:14</p> <p><b>push</b> [1] - 38:23</p> <p><b>put</b> [12] - 6:11, 7:19, 7:22, 8:9, 9:4, 20:12, 22:1, 22:3, 22:10, 34:8, 36:8, 40:9</p>	<p><b>Q</b></p> <p><b>qualified</b> [1] - 30:17</p> <p><b>questions</b> [18] - 4:5, 4:8, 4:20, 5:11, 5:23, 6:1, 8:17, 8:23, 10:13, 13:11, 13:22, 16:4, 30:15, 30:16, 33:18, 34:13, 36:19, 37:7</p> <p><b>quick</b> [1] - 13:11</p> <p><b>quickly</b> [1] - 24:14</p>	<p><b>R</b></p> <p><b>raise</b> [1] - 18:14</p> <p><b>raised</b> [5] - 23:14, 23:20, 32:3, 32:15, 33:22</p> <p><b>raising</b> [5] - 10:19, 22:22, 27:19, 27:22, 30:21</p> <p><b>range</b> [1] - 30:11</p> <p><b>Ransomville</b> [8] - 1:6, 2:21, 5:21, 11:9, 14:3, 18:17</p> <p><b>rather</b> [2] - 16:10, 23:16</p> <p><b>read</b> [14] - 16:5, 16:15, 24:2, 24:13, 26:20, 27:14, 37:19, 37:20, 38:6, 38:10, 41:1, 41:9, 41:14, 42:1</p> <p><b>reading</b> [2] - 29:8, 39:13</p> <p><b>realistically</b> [1] - 28:11</p> <p><b>really</b> [4] - 12:12, 23:21, 28:16, 29:23</p> <p><b>rearing</b> [3] - 15:23, 27:7, 27:12</p> <p><b>reasked</b> [1] - 6:11</p> <p><b>reason</b> [4] - 4:23, 5:3, 15:14, 24:15</p> <p><b>reasonable</b> [1] - 21:22</p> <p><b>reasonableness</b> [1] - 30:2</p> <p><b>reasons</b> [2] - 6:17, 16:11</p> <p><b>received</b> [5] - 3:15, 5:7, 6:3, 15:12, 32:3</p> <p><b>recess</b> [3] - 2:4, 2:7, 42:21</p>	<p><b>RECESS</b> [1] - 2:9</p> <p><b>reclaimed</b> [1] - 10:10</p> <p><b>reclamations</b> [1] - 10:8</p> <p><b>recognize</b> [1] - 10:20</p> <p><b>recognized</b> [1] - 3:12</p> <p><b>recommendation</b> [1] - 15:22</p> <p><b>recommended</b> [2] - 4:11, 9:4</p> <p><b>reconvene</b> [1] - 19:9</p> <p><b>reconvening</b> [1] - 21:12</p> <p><b>record</b> [4] - 5:14, 5:19, 41:2, 43:9</p> <p><b>recoup</b> [1] - 12:19</p> <p><b>recreational</b> [6] - 15:19, 23:16, 24:4, 26:19, 26:21, 27:7</p> <p><b>reduced</b> [1] - 8:9</p> <p><b>REEVE</b> [1] - 13:10</p> <p><b>Reeve</b> [1] - 13:10</p> <p><b>reference</b> [1] - 27:9</p> <p><b>reflect</b> [1] - 35:1</p> <p><b>refused</b> [2] - 14:5, 14:8</p> <p><b>regard</b> [1] - 10:18</p> <p><b>regarding</b> [5] - 5:23, 6:6, 14:19, 16:3, 25:19</p> <p><b>regards</b> [1] - 39:4</p> <p><b>related</b> [3] - 4:1, 14:20, 43:11</p> <p><b>relayed</b> [1] - 8:18</p> <p><b>relevant</b> [3] - 19:15, 32:2, 42:2</p> <p><b>reliance</b> [1] - 18:1</p> <p><b>remarkable</b> [1] - 29:19</p> <p><b>removal</b> [1] - 28:11</p> <p><b>removing</b> [2] - 8:7, 28:17</p> <p><b>rendered</b> [1] - 15:23</p> <p><b>represent</b> [1] - 11:23</p> <p><b>representing</b> [1] - 5:17</p> <p><b>represents</b> [1] - 11:21</p> <p><b>request</b> [4] - 6:6, 17:13, 19:13, 20:8</p> <p><b>requested</b> [1] - 17:15</p> <p><b>require</b> [3] - 4:14, 9:12, 22:17</p> <p><b>required</b> [2] - 3:19, 7:10</p> <p><b>requirements</b> [2] - 14:8, 40:7</p> <p><b>research</b> [2] - 28:8, 31:20</p> <p><b>resident</b> [1] - 14:3</p> <p><b>Resolution</b> [1] - 41:10</p>	<p><b>resolution</b> [8] - 9:11, 40:4, 40:18, 40:19, 41:2, 41:10, 41:14, 42:17</p> <p><b>respect</b> [1] - 15:19</p> <p><b>respond</b> [2] - 17:16, 39:3</p> <p><b>responded</b> [2] - 4:5, 17:17</p> <p><b>response</b> [1] - 6:12</p> <p><b>responses</b> [1] - 5:8</p> <p><b>rest</b> [1] - 35:7</p> <p><b>restrictions</b> [2] - 3:18, 9:3</p> <p><b>result</b> [1] - 12:10</p> <p><b>resulted</b> [1] - 4:15</p> <p><b>retired</b> [1] - 30:14</p> <p><b>revenue</b> [4] - 4:14, 9:23, 22:18, 26:8</p> <p><b>review</b> [19] - 2:12, 3:10, 3:23, 7:20, 13:5, 13:7, 16:7, 24:9, 24:15, 25:8, 30:9, 32:10, 33:7, 34:2, 34:6, 34:12, 35:11, 35:18, 39:16</p> <p><b>Review</b> [1] - 2:22</p> <p><b>reviewed</b> [1] - 8:16</p> <p><b>reviews</b> [1] - 19:17</p> <p><b>revised</b> [1] - 30:5</p> <p><b>revoke</b> [1] - 22:5</p> <p><b>revoked</b> [1] - 10:4</p> <p><b>ridiculous</b> [2] - 19:20, 35:21</p> <p><b>River</b> [1] - 15:1</p> <p><b>Road</b> [11] - 1:6, 1:13, 2:17, 2:21, 5:21, 11:8, 12:6, 13:10, 14:3, 15:1, 18:17</p> <p><b>road</b> [3] - 9:6, 12:9, 40:9</p> <p><b>ROBERT</b> [14] - 24:4, 24:18, 25:5, 26:2, 26:19, 27:6, 31:3, 31:6, 31:14, 39:21, 40:15, 40:22, 41:17, 42:16</p> <p><b>Rochester</b> [1] - 11:20</p> <p><b>Rogers</b> [1] - 7:13</p> <p><b>rollicall</b> [1] - 42:5</p> <p><b>room</b> [4] - 11:3, 21:18, 36:1, 36:11</p> <p><b>roughly</b> [1] - 12:15</p> <p><b>round</b> [1] - 11:4</p> <p><b>rule</b> [1] - 14:18</p> <p><b>rules</b> [1] - 10:23</p> <p><b>run</b> [2] - 21:6, 34:22</p> <p><b>Russ</b> [1] - 5:16</p>
---	---	--	--	---	---	--

<p><b>S</b></p> <p><b>safety</b> [1] - 9:7</p> <p><b>sales</b> [1] - 12:17</p> <p><b>samples</b> [1] - 13:19</p> <p><b>satisfied</b> [1] - 5:8</p> <p><b>satisfy</b> [1] - 24:8</p> <p><b>scheme</b> [1] - 19:19</p> <p><b>scope</b> [1] - 3:4</p> <p><b>second</b> [10] - 11:4, 18:13, 20:23, 31:10, 31:11, 34:17, 36:13, 39:23, 41:8, 41:19</p> <p><b>seconded</b> [3] - 31:13, 40:12, 41:4</p> <p><b>secretary</b> [1] - 17:15</p> <p><b>Section</b> [2] - 2:14, 3:17</p> <p><b>section</b> [1] - 20:20</p> <p><b>see</b> [10] - 6:15, 13:21, 18:14, 21:10, 23:21, 26:6, 29:9, 30:18, 42:2</p> <p><b>SEEKINS</b> [1] - 1:19</p> <p><b>seem</b> [1] - 27:18</p> <p><b>selling</b> [3] - 12:19, 22:22, 27:22</p> <p><b>separate</b> [3] - 27:10, 27:12, 28:15</p> <p><b>Services</b> [1] - 14:7</p> <p><b>set</b> [4] - 9:3, 19:21, 29:7, 43:14</p> <p><b>setting</b> [1] - 28:9</p> <p><b>seven</b> [3] - 2:18, 3:17, 24:17</p> <p><b>seventeen</b> [1] - 25:2</p> <p><b>several</b> [2] - 37:6, 37:7</p> <p><b>sham</b> [1] - 30:13</p> <p><b>Shaw</b> [1] - 11:20</p> <p><b>sheet</b> [1] - 15:2</p> <p><b>SHEILA</b> [2] - 18:16, 23:4</p> <p><b>Sheila</b> [1] - 18:16</p> <p><b>short</b> [2] - 2:7, 36:15</p> <p><b>show</b> [2] - 6:23, 22:17</p> <p><b>shown</b> [2] - 9:21, 9:22</p> <p><b>sic</b> [3] - 20:6, 21:19, 27:1</p> <p><b>sign</b> [1] - 15:2</p> <p><b>sign-in</b> [1] - 15:2</p> <p><b>significant</b> [1] - 3:21</p> <p><b>significantly</b> [1] - 12:11</p> <p><b>signify</b> [1] - 31:13</p> <p><b>simply</b> [2] - 30:15, 40:17</p> <p><b>Site</b> [4] - 1:4, 2:22, 41:10, 43:1</p> <p><b>site</b> [14] - 2:12, 3:10,</p>	<p>3:22, 7:20, 7:23, 8:5, 9:21, 9:22, 15:7, 15:9, 34:6, 34:12, 39:22, 40:6</p> <p><b>six</b> [1] - 2:11</p> <p><b>sixty</b> [1] - 24:22</p> <p><b>size</b> [1] - 9:13</p> <p><b>sketch</b> [4] - 4:1, 6:5, 8:16, 34:12</p> <p><b>slot</b> [1] - 11:4</p> <p><b>Soil</b> [6] - 15:16, 25:12, 25:20, 26:23, 27:2, 27:8</p> <p><b>soil</b> [4] - 8:7, 9:5, 18:22, 40:8</p> <p><b>sold</b> [1] - 18:23</p> <p><b>someone</b> [1] - 18:14</p> <p><b>sorry</b> [5] - 5:15, 14:23, 23:17, 23:19, 29:17</p> <p><b>sort</b> [2] - 19:18, 40:9</p> <p><b>speakers</b> [3] - 23:20, 36:11, 39:11</p> <p><b>speaking</b> [1] - 29:10</p> <p><b>special</b> [4] - 21:12, 24:1, 33:6, 35:13</p> <p><b>specifically</b> [3] - 15:17, 21:16, 36:10</p> <p><b>spend</b> [1] - 22:21</p> <p><b>spills</b> [1] - 9:5</p> <p><b>spoken</b> [1] - 19:5</p> <p><b>standard</b> [1] - 32:20</p> <p><b>standing</b> [2] - 13:14, 13:15</p> <p><b>start</b> [4] - 2:2, 2:5, 10:19, 27:21</p> <p><b>starts</b> [2] - 22:21, 22:22</p> <p><b>State</b> [10] - 3:13, 7:9, 14:12, 16:2, 18:4, 26:15, 29:11, 29:15, 43:20</p> <p><b>state</b> [4] - 5:13, 5:18, 10:21, 10:22</p> <p><b>STATE</b> [1] - 1:1</p> <p><b>stating</b> [1] - 4:10</p> <p><b>stay</b> [1] - 19:11</p> <p><b>STENOGRAPHER</b> [1] - 5:13</p> <p><b>Stenographer</b> [2] - 1:20, 43:6</p> <p><b>stenographer</b> [1] - 2:3</p> <p><b>step</b> [1] - 3:3</p> <p><b>stick</b> [1] - 10:23</p> <p><b>still</b> [5] - 7:16, 11:1, 16:9, 33:4, 33:10</p> <p><b>stock</b> [1] - 10:1</p> <p><b>stop</b> [3] - 23:2, 25:14, 26:16</p> <p><b>storm</b> [2] - 5:2, 5:5</p> <p><b>streamline</b> [3] - 7:23,</p>	<p>10:11, 34:6</p> <p><b>strictly</b> [2] - 22:14, 26:22</p> <p><b>study</b> [1] - 38:21</p> <p><b>subject</b> [2] - 9:7, 19:17</p> <p><b>submit</b> [1] - 17:1</p> <p><b>submittal</b> [1] - 35:11</p> <p><b>submitted</b> [2] - 8:16, 35:2</p> <p><b>substantial</b> [1] - 7:21</p> <p><b>succeed</b> [2] - 20:5, 37:3</p> <p><b>successful</b> [1] - 30:20</p> <p><b>suggest</b> [1] - 22:22</p> <p><b>suggested</b> [2] - 30:3, 30:18</p> <p><b>suggesting</b> [1] - 24:1</p> <p><b>summary</b> [1] - 23:11</p> <p><b>Supervisor</b> [2] - 6:16, 7:14</p> <p><b>supplement</b> [1] - 24:16</p> <p><b>support</b> [1] - 30:8</p> <p><b>supportive</b> [1] - 30:7</p> <p><b>supposed</b> [2] - 7:19, 34:15</p> <p><b>sustainable</b> [3] - 26:7, 28:16, 30:6</p> <p><b>T</b></p> <p><b>table</b> [1] - 41:5</p> <p><b>tactic</b> [1] - 38:22</p> <p><b>talks</b> [1] - 25:13</p> <p><b>TANTILLO</b> [4] - 11:18, 12:1, 12:3, 12:6</p> <p><b>Tantillo</b> [2] - 11:19, 20:1</p> <p><b>Tax</b> [1] - 2:21</p> <p><b>tax</b> [1] - 29:19</p> <p><b>technical</b> [1] - 5:11</p> <p><b>ten</b> [4] - 16:20, 20:11, 20:16, 20:19</p> <p><b>terminate</b> [1] - 7:1</p> <p><b>testimony</b> [8] - 14:19, 15:5, 15:15, 16:5, 16:11, 24:7, 24:13, 29:9</p> <p><b>THE</b> [1] - 5:13</p> <p><b>therefore</b> [1] - 17:23</p> <p><b>thereof</b> [1] - 43:14</p> <p><b>they've</b> [1] - 6:11</p> <p><b>thinks</b> [1] - 38:10</p> <p><b>third</b> [1] - 4:4</p> <p><b>thirty</b> [2] - 12:17, 30:21</p> <p><b>Thomas</b> [4] - 5:17, 5:20, 12:2, 14:2</p> <p><b>THOMAS</b> [7] - 5:20,</p>	<p>6:10, 7:6, 14:2, 35:22, 36:6, 38:16</p> <p><b>thousand</b> [3] - 12:17, 24:22, 25:3</p> <p><b>three</b> [1] - 14:5</p> <p><b>Thursday</b> [1] - 2:17</p> <p><b>timeframe</b> [1] - 4:15</p> <p><b>today</b> [1] - 8:20</p> <p><b>together</b> [1] - 20:12</p> <p><b>Tom</b> [4] - 3:7, 5:9, 5:18, 11:21</p> <p><b>tonight</b> [8] - 2:2, 2:4, 8:18, 16:23, 19:4, 21:4, 37:2, 38:22</p> <p><b>topic</b> [1] - 19:4</p> <p><b>total</b> [2] - 9:20, 12:17</p> <p><b>TOWER</b> [15] - 13:10, 24:4, 24:18, 25:5, 26:2, 26:19, 27:6, 31:3, 31:6, 31:14, 39:21, 40:15, 40:22, 41:17, 42:16</p> <p><b>Tower</b> [4] - 13:10, 40:20, 41:2, 42:15</p> <p><b>Town</b> [28] - 1:12, 2:14, 2:16, 3:16, 4:6, 6:16, 7:21, 11:13, 13:11, 14:5, 14:9, 14:19, 15:6, 15:12, 16:8, 22:1, 22:12, 24:12, 24:20, 28:1, 28:4, 30:6, 33:21, 36:7, 36:8, 40:7, 42:19, 43:8</p> <p><b>traffic</b> [2] - 9:2, 12:9</p> <p><b>translated</b> [1] - 27:8</p> <p><b>translation</b> [1] - 27:4</p> <p><b>tremendous</b> [1] - 12:8</p> <p><b>trouble</b> [1] - 27:18</p> <p><b>truck</b> [3] - 9:2, 12:9</p> <p><b>trucks</b> [2] - 24:22, 25:1</p> <p><b>true</b> [1] - 43:9</p> <p><b>truly</b> [1] - 19:2</p> <p><b>Trust</b> [2] - 2:13, 2:20</p> <p><b>Trust</b> [1] - 43:2</p> <p><b>Trust-22</b> [1] - 1:4</p> <p><b>try</b> [1] - 21:23</p> <p><b>trying</b> [2] - 28:12, 41:18</p> <p><b>turn</b> [2] - 3:7, 5:9</p> <p><b>twenty</b> [5] - 2:23, 3:11, 9:13, 9:19, 12:20</p> <p><b>twenty-two</b> [3] - 2:23, 3:11, 12:20</p> <p><b>two</b> [17] - 2:2, 2:23, 3:11, 11:2, 12:10, 12:18, 12:20, 13:8, 14:18, 17:5, 19:6, 19:7, 20:17, 29:11,</p>	<p>32:16, 35:23, 36:4</p> <p><b>type</b> [3] - 3:21, 10:1, 20:2</p> <p><b>typical</b> [1] - 5:1</p> <p><b>typically</b> [2] - 3:19, 33:5</p> <p><b>U</b></p> <p><b>U.S.</b> [1] - 15:22</p> <p><b>unaware</b> [1] - 14:17</p> <p><b>under</b> [9] - 3:13, 3:16, 7:18, 9:16, 10:11, 18:4, 21:5, 28:1, 28:4</p> <p><b>underly</b> [1] - 34:11</p> <p><b>unforeseen</b> [1] - 9:9</p> <p><b>unique</b> [1] - 29:23</p> <p><b>University</b> [1] - 29:11</p> <p><b>unless</b> [1] - 8:22</p> <p><b>up</b> [10] - 8:12, 8:14, 11:12, 18:7, 22:3, 23:18, 28:10, 29:7, 33:17, 38:11</p> <p><b>updated</b> [1] - 6:4</p> <p><b>upgrade</b> [1] - 7:8</p> <p><b>uphold</b> [1] - 22:5</p> <p><b>upset</b> [1] - 27:18</p> <p><b>Upstate</b> [1] - 30:12</p> <p><b>V</b></p> <p><b>variances</b> [1] - 4:18</p> <p><b>vegetables</b> [1] - 22:19</p> <p><b>venture</b> [1] - 18:18</p> <p><b>verbatim</b> [1] - 41:15</p> <p><b>viable</b> [2] - 9:16, 27:20</p> <p><b>view</b> [1] - 27:5</p> <p><b>virus</b> [1] - 13:13</p> <p><b>vote</b> [6] - 38:4, 38:13, 40:20, 42:2, 42:4, 42:6</p> <p><b>W</b></p> <p><b>wait</b> [1] - 36:17</p> <p><b>wall</b> [1] - 13:23</p> <p><b>walleye</b> [3] - 27:8, 27:11, 27:12</p> <p><b>walleyes</b> [1] - 15:23</p> <p><b>wants</b> [2] - 7:17, 41:3</p> <p><b>water</b> [4] - 5:2, 5:5, 13:15</p> <p><b>Water</b> [3] - 15:16, 25:13, 25:20</p> <p><b>week</b> [3] - 21:12, 35:10, 36:17</p> <p><b>week's</b> [1] - 35:14</p> <p><b>weeks</b> [1] - 38:19</p> <p><b>whole</b> [4] - 14:10,</p>
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19:1, 26:20, 36:8  
**wild** [1] - 30:21  
**wild-kill** [1] - 30:21  
**witness** [1] - 43:14  
**witnesses** [1] - 43:10  
**WITRYOL** [29] - 14:17,  
 14:23, 15:4, 16:20,  
 17:2, 17:5, 17:19,  
 17:23, 18:10, 19:7,  
 20:10, 20:22, 24:7,  
 24:22, 25:7, 25:17,  
 25:23, 26:6, 26:13,  
 26:18, 26:23, 27:7,  
 28:1, 28:14, 29:2,  
 29:5, 29:8, 39:3,  
 39:7  
**Witryol** [7] - 12:21,  
 13:4, 14:23, 17:3,  
 23:14, 37:6, 38:17  
**word** [2] - 11:11,  
 11:14  
**writing** [1] - 6:12  
**written** [4] - 13:3,  
 18:11, 24:15, 27:2

## Y

**yards** [2] - 25:2, 25:3  
**year** [5] - 6:22, 10:3,  
 12:17, 14:3, 36:11  
**years** [5] - 14:9, 30:8,  
 30:21, 35:23, 36:4  
**YORK** [1] - 1:1  
**York** [10] - 1:6, 1:14,  
 1:21, 2:17, 2:21,  
 3:13, 18:17, 29:15,  
 30:13, 43:20  
**Youngstown** [2] -  
 1:14, 2:17

## Z

**ZB** [1] - 7:2  
**ZBA** [5] - 5:22, 29:3,  
 35:16, 38:17, 39:2  
**Zika** [1] - 13:13  
**Zoning** [8] - 2:15,  
 3:16, 4:12, 4:17,  
 16:9, 29:22, 30:3,  
 37:5  
**zoning** [1] - 20:6

1 STATE OF NEW YORK

COUNTY OF NIAGARA

2 - - - - -

3  
4 In the Matter of

5 Site Plan Review for Michael McCabe-Service of  
6 Garden/Farm Equipment, 2384 Lake Road, Ransomville,  
7 New York

8  
9 Public Hearing

10 Held on

11 June 2nd, 2016

12 7:00 p.m.

13 At the Town of Porter Planning Board

14 3265 Creek Road

15 Youngstown, New York

16 - - - - -

17  
18  
19  
20 **ADRIENNE SEEKINS KUZMA**

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1 CHAIRPERSON JEFFREY: Agenda seven is a public  
2 hearing for a site plan review of Michael McCabe's  
3 property. Notice is hereby given pursuant to  
4 Section thirty-five of the Town of Porter Zoning  
5 Law. A public hearing will be held by the Planning  
6 Board of the Town of Porter, 3265 Creek Road,  
7 Youngstown, New York on Thursday, June 2nd, 2016,  
8 at seven P.M. for the purposes of hearing all  
9 interested persons concerning the following;  
10 application of Michael McCabe, 2384 Lake Road,  
11 Ransomville, New York, tax ID map 34.00-1-5.22 for  
12 a site plan review with service of farm slash  
13 garden equipment.

14 Attorney Malcomb or Mr. McCabe, would you  
15 please step to the podium and give us an overview  
16 of your intentions. Obviously we have been through  
17 it, but --

18 CHARLES MALCOMB, ESQ: So again, this is  
19 Charles Malcomb from Hodgson Russ. I figured you  
20 guys knew me from a few minutes ago. So Mr. McCabe  
21 submitted an application for the service of farm  
22 and garden equipment at his existing property on  
23 Lake Road. The application does not consist of new

1 construction. We submitted the application under  
2 Local Law number two of 2014, which allows this use  
3 in that zoning district pursuant to site plan  
4 approval. We have had meetings. We have submitted  
5 materials. We had a discussion at the last meeting  
6 as to whether certain provisions to the code apply,  
7 what would be appropriate screening with respect to  
8 neighboring properties. We submitted a revised  
9 site plan that's been provided to the Board last  
10 week. That material answered questions that the  
11 Board had with respect to the septic connection,  
12 with respect to building use in compliance of the  
13 revised screening requirements. So all that has  
14 been submitted. And Mr. Battaglia is here to  
15 answer any questions you have about the revised  
16 submittal. I would just like to briefly discuss  
17 the submission that was presented to the Board from  
18 the Dean's attorney, Mr. Jones. I found this  
19 submission quite bizarre, to be quite honest with  
20 you, because it seems to be saying the Planning  
21 Board somehow has authority to sit in judgment over  
22 the legality of validity of the existing zoning  
23 laws. The principal argument that he puts forth is

1       that the law is invalid that allows this use in  
2       that zoning district, because the Town Board didn't  
3       follow proper procedure when it adopted it.  
4       However, nobody has challenged that law. No Court  
5       has ever declared it to be invalid. And the  
6       Planning Board is an administrative body that  
7       reviews zoning determinations and is bound by law  
8       as the Town Board makes it, until such time that  
9       someone challenges it and the Court would throw it  
10      out. That's a different issue. And I put forth in  
11      my paper why this argument lacks merit, in any  
12      event. But the idea that the Planning Board has  
13      the ability to sit in judgment of the Town Board's  
14      laws because some neighbor's lawyer says that the  
15      law is invalid, they don't have to apply it, is  
16      totally improper, in my opinion.

17           I would also point out that the fact that this  
18      use is allowed, whether it be with a site plan  
19      approval or with a special-use permit, that's the  
20      Town Board making a legislative determination that  
21      this use is appropriate in that zoning district and  
22      the neighborhood. We got a lot of complaints in  
23      the letter about, well, there might be noise, there

1 might be, you know, sandblasting, fumes, or  
2 whatever random thoughts and complaints. But I  
3 would submit that the case law that I referenced in  
4 my submission to the Board demonstrates that  
5 there's a difference between having a real gripe  
6 about the project and having a gripe about the use.  
7 And these are real complaints about the use. They  
8 don't like the fact that the use is allowed and  
9 that's a decision that the Town Board made. And  
10 there's cases where Planning Boards have denied  
11 site plan approval or a special-use permit and they  
12 did it on the basis of the uses has certain  
13 characteristics. And the Courts said, you can't do  
14 that. Those are characteristics inherent in the  
15 use. One of the cases I cited was with the bar.  
16 And the bar was open late, had traffic, had  
17 garbage, had whatever the bar might have. The  
18 neighbors complained and said, we don't like it,  
19 it's going to have all these impacts. And the  
20 Planning Board denied it. And the applicant, in  
21 that case, brought a suit against the Planning  
22 Board and the Court overturned the denial and said,  
23 these types of complaints are objections to the use

1       itself, which is not an appropriate determination  
2       to deny an application. And I would submit that to  
3       the Board for review. I'm not going to take too  
4       much time from the public. I know there's a lot of  
5       people that want to speak on this application. But  
6       the rest of my comments are summarized in my  
7       submission to the Board. With that, I'm going to  
8       turn it over to Mr. Battaglia to answer any  
9       questions that the Board may have on the submittal.  
10      And then I would request that you move to the  
11      public hearing after that. Thank you.

12               CHAIRPERSON JEFFREY: Thank you.

13              JOHN BATTAGLIA: Good Evening. My name is  
14      John Battaglia. I'm a consultant for Mike McCabe  
15      working with Anson (sic) Incorporated. I was at  
16      the last Board meeting on May 5th where we  
17      discussed a lot of the features of the project,  
18      specifically in regard to some of the building,  
19      proposed building uses, some of the requirements  
20      that the Board thought that this project should  
21      comply with, and also the preparation of the  
22      renderings of the project. I just want to go  
23      through those items. We took those to heart. We

1 revised the plan. We added some additional  
2 education and screening. We then further created  
3 renderings for the Board to take a look at. And we  
4 have included a package of that. I also have a  
5 larger site plan, if you want to look at it, in  
6 more detail on the actual physical conditions of  
7 the site for the Board.

8 CHAIRPERSON JEFFREY: Yeah. I just was  
9 saying, yes. I think what I would like to do  
10 tonight, if the Board is in agreement is, we  
11 haven't had a chance to review these. I would like  
12 to get into the public comments, get the public  
13 comments, and then after the comment period is  
14 done, this Board can make a decision on how far we  
15 want to go tonight with, you know, deliberating on,  
16 you know, the actual physical elements of the site  
17 plan, or the screening, or the paving, in fact that  
18 was an issue, if that's okay with the Board?

19 ANTHONY COLLARD: It is for me.

20 CHAIRPERSON JEFFREY: I guess before we start  
21 into public comments, Mr. Malcomb, would you and  
22 your client stipulate to the fact that we extended  
23 the time schedule to date for this site plan was by

1 mutual agreement between the Town of Porter and Mr.  
2 McCabe?

3 CHARLES MALCOMB, ESQ: Yes, we will.

4 CHAIRPERSON JEFFREY: Okay. Thank you. Mr.  
5 Malcomb has presented his brief rebuttal to some of  
6 the other documents the lawyers have filed. What's  
7 your input and insights for us in that regard,  
8 before we get into the public comments?

9 KYLE ANDREWS, ESQ: Thank you, Chairman. As  
10 you know, we've been at this now for, well, I have  
11 been here for eleven months. I recall being here  
12 last summer before this Planning Board where I  
13 think the site plan was probably very much in its  
14 infancy. It's evolved. Mr. McCabe has obtained  
15 Counsel in addition to his licensed engineering  
16 firm. They have worked with your Board to present,  
17 what appears to be, a complete site plan for review  
18 at this point. And that's why I recommend the  
19 public hearing proceed on. Mr. Malcomb did make  
20 reference to some correspondence which was received  
21 from an attorney for a neighbor of Mr. McCabe, and  
22 then a correspondence in which he produced.  
23 Lawyers are good at arguing and we could probably

1 kick this thing down the road and let it keep going  
2 back and forth. But procedurally, and that's why  
3 I'm here to protect the Town and follow the  
4 procedure. Procedurally, I think we're in a place  
5 where we could hold this public hearing. And then,  
6 as you mentioned, thereafter, your Board will  
7 decided whether or not they want to make the  
8 determination on this matter tonight. But  
9 procedurally, I think were provided, at least the  
10 criteria which you have asked for as a Board has  
11 been provided. I think you're in solid standing  
12 and I think it would be appropriate to hold a  
13 public hearing and appropriate to vote, if you so  
14 desire it.

15 THE STENOGRAPHER: Excuse me, can I just have  
16 your name for the record, please?

17 CHAIRPERSON JEFFREY: That's special Counsel,  
18 Attorney Kyle Andrews.

19 THE STENOGRAPHER: Thank you.

20 CHAIRPERSON JEFFREY: Sorry.

21 THE STENOGRAPHER: That's okay.

22 CHAIRPERSON JEFFREY: I think at this point  
23 we're going to open the public comment section of



1 the meeting. Again, I know you were all pretty  
2 much here for our last one. We're going to ask you  
3 to be recognized, step to the podium, state your  
4 name and address. And we'll try to adhere to the  
5 two minutes per speaker. If we need to go a second  
6 round, we will do that. So is there anyone that  
7 would like to speak on this issue? Yes, sir?

8 MORGAN JONES, ESQ: Morgan Jones with Jones,  
9 Hogan, Brooks of Lockport, 76 West Avenue in  
10 Lockport. I represent William and Fredericka Dean  
11 at 2359 Lake Road. The Board has already received,  
12 and Mr. Malcomb pointed out that the Board has  
13 already received, a position statement and a  
14 memorandum from our office. I'd appreciate it if  
15 we make that a part of the official record. I  
16 actually have it here to give to the Board.

17  
18 (Whereupon Mr. Jones, ESQ., handed a packet to  
19 Chairperson Jeffrey to be included with this  
20 transcript)

21  
22 CHAIRPERSON JEFFREY: We can do that. Can you  
23 speak up just a little bit, sir, please?

1 MORGAN JONES, ESQ: Sure. I'm trying to speak  
2 fast to use up my two minutes here. I certainly  
3 agree that this Board isn't going to say there  
4 wasn't due diligence and throw it out. But this  
5 background information will proceed as accordingly  
6 with respect to that. I did want to speak with  
7 respect to the absence of any SEQR information  
8 whatsoever. We had two FOIL requests and there was  
9 supposed to be an EAF submitted, that's labeled as  
10 one of the documents in the initial submission, but  
11 it wasn't provided, and I don't know if there's a  
12 SEQR document out there.

13 CHAIRPERSON JEFFREY: There is. There was one  
14 that was provided. I had a copy. I think it was  
15 provided on January 16th, I think it was dated.  
16 I'm not sure why it wasn't in the file in  
17 documentation that you received, but we do have a  
18 part one.

19 MORGAN JONES, ESQ: In any event, I want to  
20 make some comments. What the Board can do  
21 procedurally is, one; look into some of the matters  
22 and the issues that were raised in our letters in  
23 the past and impose conditions if you did grant a

1 permit. In other words, you can either approve or  
2 deny the application or you can approve it with  
3 conditions. And there are a lot of issues on these  
4 conditions opposed on it if you approve it. But  
5 more importantly, a lot of these are serious SEQR  
6 issues. When you sandblast something like a  
7 concrete truck, like they've done in the past, you  
8 get all kinds of grease, oil, road residue. As to  
9 the farming equipment, you get pesticides,  
10 herbicides that wash off. And at the moment they  
11 are just going into the ground water, down the  
12 drain into the soil, or into the Town ditch into  
13 abutting properties and out into Lake Ontario. We  
14 raise that in our issues. There are a number of  
15 other issues.

16 CHAIRPERSON JEFFREY: There is. And I'll give  
17 you a chance to speak again. I would like to get  
18 some other issues. And certainly your input is  
19 valid, so we will give you another opportunity.

20 Is there other people tonight that would like  
21 to speak? I would like to get through a round,  
22 give everybody an opportunity. Yes, ma'am?

23 FREDERICKA DEAN: Excuse me for reading. My

1 name is Fredericka Dean, 2359 Lake Road. I will  
2 try to be loud enough and excuse me for reading. I  
3 wouldn't be able to think fast on my feet in that  
4 amount of time. Okay. It seems to me, from the  
5 evidence presented, I know you probably have had a  
6 chance to read it, by Mr. Jones, that you are being  
7 asked to entertain a site plan under an illegal  
8 law. It was passed illegally on many different  
9 areas. It's a difficult position for you to be in,  
10 since you are charged with making decisions to  
11 uphold the Town Zoning Laws and the proper  
12 procedures within this Town. In my opinion, this  
13 law issue should be returned to the Town Board so  
14 that they can fix their errors before any site plan  
15 consideration is continued. They actually already  
16 started that process in November of '15. Under  
17 pressure to do so, they resolved to rescind the  
18 sales and service of farm and garden equipment law  
19 based on the fact that it's not in harmony with the  
20 Town's comprehensive plan. The plan attempts to  
21 reserve areas of Porter for agriculture uses and  
22 drive commercial activity to the zones of the Town  
23 that are zoned for that, that are commercial zones.

1           Unlike when the law was passed illegally in  
2           2014, this time they did follow all of the proper  
3           procedures for rescinding. They got the  
4           recommendations from your Board and the Zoning  
5           Board. They made the referral to Niagara County,  
6           that they did not do before, and they held a public  
7           hearing in December of '15. All this was completed  
8           before Mr. McCabe -- or I'm sorry, before Roy  
9           accepted and certified Mr. McCabe's site plan.  
10          Since then, however, the Town Board has delayed  
11          voting on that resolution to rescind. I'm  
12          wondering if that could be because Mike McCabe has  
13          threatened legal action against the Town if they  
14          don't approve his site plan. I did not make that  
15          up. That is information recorded in the work  
16          session minutes from February of '16. As you know,  
17          in April a new twist came into this saga -- I'll  
18          be back.

19               CHAIRPERSON JEFFREY: We have a room full of  
20               people. We're going to get through everybody, one  
21               round. If you want to speak a second time, we will  
22               let you.

23               WILLIAM DEAN: My name is William Dean. I

1       reside at 2359 Lake Road and I have been at that  
2       residence since 1977. And my comments are as  
3       follows; during the May 5, 2016, Planning Board  
4       meeting, Chairman Jeffrey indicated that no  
5       sandblasting and painting would be allowed as part  
6       of this site plan agreement. Mike McCabe said that  
7       he has not done any sandblasting in the past ten  
8       months. However, an invoice from the Village of  
9       Youngstown DPW, shows that a trailer was  
10      sandblasted and painted as recently as 11/16/15,  
11      six months earlier. The site plan indicates that  
12      building number three will be used for painting.  
13      Charles Malcomb explained that some sandblasting  
14      would need to be done in order to restore certain  
15      types of farm equipment. The question was asked  
16      about how the Town could be sure that Mike McCabe  
17      was adhering to the guidelines established in the  
18      site plan agreement. Charles Malcomb indicated  
19      that Roy Rogers, by virtue of his authority as the  
20      Zoning Enforcement Officer, would police the  
21      operation moving forward. I would like to point  
22      out that after working with Roy for the last  
23      eighteen months, and filing at least sixteen

1 complaints pertaining to the nonconforming use of  
2 the property, that Roy has cited Mike McCabe only  
3 twice. It appears that Roy has little interest in  
4 the Zoning Law Enforcement process. It also  
5 appears that Mike McCabe is creating the illusion  
6 that the sole purpose of this site plan is to  
7 service garden and farm equipment, but rather  
8 intends to run a large scale sandblasting and  
9 painting operation. I think I probably got about  
10 thirty seconds left. What I would like to do, if  
11 you don't mind, is give you guys some pictures of  
12 what I have witnessed. Dates are on the back. And  
13 you can see for yourself. Peter, if you don't  
14 mind, I would like those back. If you could give  
15 those to Amy, I'll get those from Amy sometime  
16 later. All right. Thank you.

17 CHAIRPERSON JEFFREY: Yes, ma'am?

18 VICKI WATERSON: My name is Vicki Waterson. I  
19 live at 2395 Lake Road. And I have lived in there  
20 since 1981. I will speak about the environmental  
21 phenomenons that relates to the industrial activity  
22 that is coming from 2384 Lake Road. The negative  
23 consequences of industrial behavior in a

1 residential area on the quality of life of the  
2 residents. Air, water, soil, noise and light. We  
3 have already witnessed our soil, water and air  
4 polluted by the unlawful release of paint over  
5 spray and sandblasting mediums, tinging the snow  
6 black and yellow. The air we breathe further  
7 degregated (sic) by the tainted dust. Last Friday  
8 there was a southwest wind blowing. Every time a  
9 vehicle went in and out or 2384 a willowing (sic)  
10 dust-ball came rolling through my yard. Our soil  
11 and water shed has been fouled by the  
12 indiscriminate power washing of commercial  
13 equipment leaching contaminants into our  
14 environment. All of these elements, power-washing,  
15 paint spray and sandblasting and commercial truck  
16 traffic increase noise. What is noise? Noise is  
17 unwanted sound. Noise is annoying and the source  
18 of stress. The trucks are loud and annoying. The  
19 back-up beepers are loud and annoying. The  
20 pounding of metal, the wind of grinders and sanders  
21 is loud and annoying. All are just a dirge to my  
22 peaceful lifestyle.

23 Like pollution is a mending (sic) irritant

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1 issue also. Several very large, very bright peak  
2 mounted lights illuminate this ugly eyesore of a  
3 piece of property. So bright that they light up  
4 the neighboring yards and even some of the homes  
5 interior rooms. Our quality of life has been  
6 reduced. And I would also argue that our property  
7 values are being reduced. It will be -- it is  
8 documented in many realtor's documents that  
9 industrial businesses reduce residential home  
10 values. As an example, 2347 Lake Road was listed  
11 out at two hundred and fourteen thousand dollars  
12 and sold for a hundred and fifty-eight. I  
13 encourage you to reconsider this site plan.

14 CHAIRPERSON JEFFREY: Thank you. Anybody  
15 else? Yes, ma'am?

16 SHEILA MOONEY: My name is Sheila Mooney. I  
17 live at 2407 Lake Road. And though Mike McCabe's  
18 operation is not across the street from me, as it  
19 is from the Deans, it disturbs me greatly to think  
20 this beautiful area that we live in is being  
21 compromised by a business, which is commercial, and  
22 should not be in an agricultural residential area.  
23 Now, we have people here, um, both lawyer and

1 building inspector, who take on oath. And they  
2 should guide these people as to where it is  
3 appropriate for them to open a commercial business.  
4 Because it started out that this was a little --  
5 enormous building to store Mr. McCabe's tractors.  
6 Now, it has evolved into this monstrous four, five,  
7 six buildings, is ludicrous. If anyone else were  
8 to do this, people would be up in arms. And I pray  
9 to God, that you people, who are entrusted to hold  
10 up the law, will not allow this man, who has a  
11 history of illegal commercial work on the property  
12 since 2013. This is 2016. I feel that the  
13 approval of a site plan will only give him a legal  
14 loophole to hide behind while he basically  
15 continues to do whatever he wants. And I say this  
16 because there has been no enforcement by Town  
17 Officials to stop him up until now. It's wrong.  
18 It's out and out wrong and illegal.

19 CHAIRPERSON JEFFREY: Yes, ma'am?

20 CAROL McCABE: Hi, I'm Carol McCabe. I'm the  
21 spouse of Michael McCabe, and I reside at 2371 Lake  
22 Road. And we also own the property at 2347 Lake  
23 Road, two doors west of the Deans on the lake side.

1 We have tried to be good citizens in the Town of  
2 Porter. And we own Ransomville Agway here. And  
3 we've frequently donated to causes and participate  
4 in Christmas walks. We both volunteer our services  
5 in Town for the Garden Club. And we're now on the  
6 Library Board. I sincerely hope we can reach an  
7 amicable decision tonight. This is probably not  
8 going to become a blooming business. This is more  
9 like my husband's hobby. He's a self-starter,  
10 always been self-employed, and needs something to  
11 do. Let's face it, if you see the business mile  
12 and you do the five-mile radius, we're on Lake  
13 Ontario, this probably isn't going to evolve into  
14 something major. I hope you won't allow Bill and  
15 Christine's (sic) disdain for us to cloud your  
16 decision. This all started six, seven years ago  
17 when there was a drainage issue on our property. A  
18 pipe broke, that we thought the Town or the DOT  
19 were responsible for. They said no. We had a  
20 concrete patio that was decaying (sic). So we  
21 plugged it. Drainage issues resulted. Deans were  
22 upset with us. I know Chris made the comment to me  
23 that her toilet wouldn't flush when it rained too

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1 hard. Finally the DOT purchased a right-a-way on  
2 the west side of our property next to the Deans and  
3 resolved this issue. Since then they have really  
4 been upset with us. Bill has called everybody from  
5 the Town, the DEC, the Niagara County Sheriff's  
6 Department, the State Troopers on us. Anything he  
7 can think of, even complaining about how high the  
8 snow was a year ago, 2006, when no one knew where  
9 to put their snow.

10 CHAIRPERSON JEFFREY: Was there a time limit?

11 SUSAN DRISCOLL: Fifteen seconds.

12 CHAIRPERSON JEFFREY: I'm sorry. Go ahead.

13 CAROL McCABE: We even heard from our Canadian  
14 neighbor that she has had yellow paint on her  
15 bushes. That building, he told her, we dug our  
16 pond to put toxic waste in it from TWM (sic), and  
17 that's not true. There's no sandblaster at our  
18 site. I would also like to submit letters from the  
19 neighbors directly across the street and neighbors  
20 on our east and west side that couldn't be here  
21 tonight. Zillon's (sic) were at a funeral. One  
22 isn't here from Florida. And Victor is working.  
23 Victor made the point that there are several

1 businesses along Lake Road, from trucking companies  
2 to restaurants to furniture stores, all within that  
3 two point two mile radius on the south side of the  
4 road. So obviously other businesses have been  
5 allowed on the opposite side of the road. And I  
6 should submit these and not take up a lot of time.

7 CHAIRPERSON JEFFREY: Okay. Thank you. Yes,  
8 ma'am?

9 VICKI BERMEN: Vicki Bermen, 2375 Lake Road.  
10 I would like to address this Board tonight as a  
11 very distressed property owner and taxpayer. The  
12 distress, because what was once a beautiful quiet  
13 and peaceful neighborhood, has now become a  
14 shameful, commercial endeavor with the blessing of  
15 the Porter Building Inspector and Town of Porter  
16 Board. We neighbors of this legally (sic) attained  
17 monstrosity have been appearing before all three  
18 Boards for over a year asking them to recognize the  
19 wrong that has been done and repeal this law, which  
20 allows for the sale and service of farm and garden  
21 equipment. Farm and garden equipment? What a  
22 joke. The only thing farm-ish are two rickety  
23 tractors that have been painted and displayed in

1 front of the first building, which, by the way, is  
2 almost on the edge of the highway. One has said it  
3 is not a commercial sandblasting and spray painting  
4 business? That these huge road vehicles going in  
5 broken and rusted and emerging several days later  
6 looking brand new. How do I know? Because I saw  
7 it. Things have settled down somewhat lately. The  
8 noise level in the past was intolerable. The power  
9 washer sounded like Niagara Falls, and the smell of  
10 fresh paint permeated the air. Air-born paint  
11 fumes, toxic environment. Don't you agree? There  
12 also has never been any restrictions on parking.  
13 It is a dream of most people to own lake-front  
14 property and enjoy the beauty and tranquility of  
15 same. But this strain has turned into a nightmare  
16 for us. You have made a mockery of us by  
17 promulgating this illegal adventure.

18 All of you have enabled this to happen and now  
19 you have compounded the issue (sic) by giving Mr.  
20 McCabe a license to rapidly operate a soil removal  
21 business. Soil from his recreational pond dug out  
22 of compliance with existing laws. I've seen huge  
23 trucks always leaving full of soil. Do you know

1        what the road will look like by the fall? The  
2        condition of the Robert Moses Parkway will take a  
3        backseat to Lake Road. And ultimately who will fit  
4        the bill -- foot the bill for the repairs? Not you  
5        guys. Only the taxpayers in our neighborhood.  
6        Also the dust level is unbelievable. More  
7        pollution in the air. Don't you agree? We have  
8        repeatedly asked for the law to be rescinded to no  
9        avail. We are pleading with you to not approve  
10       this site plan. Six huge buildings were erected  
11       like Legos, and we know they will remain. They are  
12       a blight on the neighborhood, on the Town of  
13       Porter, and on what once was our pride and joy, the  
14       magnificent seaway trail.

15                So in closing, I implore you to not approve  
16       this site plan, because if you do, it is evident  
17       you would allow this blithe to metastasize. I hope  
18       I have made some impact on your decision. I thank  
19       you for this opportunity.

20                CHAIRPERSON JEFFREY: Anybody else that hasn't  
21       spoken yet?

22                KEVIN OLIPHANT: Kevin --

23                THE STENOGRAPHER: Can you repeat that?

1 KEVIN OLIPHANT: 14 Rainbow Park.

2 THE STENOGRAPHER: Last name?

3 KEVIN OLIPHANT: Oliphant.

4 CHAIRPERSON JEFFREY: Speak up, please.

5 KEVIN OLIPHANT: I have known Mr. McCabe for  
6 my whole life and I have been, you know, giving him  
7 a hand for the last ten months. And I have not  
8 seen anything, ever, I have never even seen a  
9 sandblaster there. I mean, we're out of there by  
10 four-thirty, five o'clock. We're there probably  
11 about eight. And I mean I haven't seen -- I don't  
12 know, I just wanted to say that I really haven't  
13 seen anything. I don't know what the problem is.  
14 I keep asking Mike and he's like; don't worry about  
15 it. I'm just confused with what's going on for the  
16 last six or seven years. I know I have been only  
17 working for Mr. McCabe for about ten months. And I  
18 have not seen -- I have never even seen a  
19 sandblaster there. And all I have seen going on is  
20 Mike's personal vehicles, you know, if that. If  
21 you want to say that his tractors, that's about it  
22 then. I have seen small equipment in and out of  
23 there. It's his own personal stuff. I, I guess



1       that's it. I'm not good at talking in front of  
2       people, so --

3               CHAIRPERSON JEFFREY: Thank you. Ma'am, if  
4       you want to speak, step up to the podium, please.

5               Is there anybody else that wants to speak?  
6       Yes, sir?

7               WILLIAM SUITOR: William Sutor, 3321 Creek  
8       Road. There's a phrase; to sin through silence  
9       makes cowards out of men. So we'll see where we're  
10      going here. From Washington to Albany to every  
11      State Capital. The House, the Senate, the  
12      Assembly. In the Senate, why do we have Warren  
13      Commissions? Why do we have all these  
14      investigations? Why have the American people lost  
15      faith in their government? Here in the Town of  
16      Porter, there's a little teeny-tiny example of  
17      that. This is nothing but political corruption,  
18      how a Town Board is bought and sold through the  
19      good ol' boy club. This isn't, to me, it isn't all  
20      about the Zoning laws. It's the corruption, on a  
21      very small scale, but it's a big thing to these  
22      guys. No. Just a second. Don't try to protect  
23      any of them.

1           CHAIRPERSON JEFFREY: I'm not trying to  
2 protect anybody.

3           WILLIAM SUITOR: I've got the floor.

4           CHAIRPERSON JEFFREY: No, sir. I am the  
5 Chairman. This is my room. You will listen to me  
6 and speak when I tell you to speak.

7           WILLIAM SUITOR: Speak up. Go ahead. Be  
8 rude.

9           CHAIRPERSON JEFFREY: I will let you speak,  
10 but I will not let you make accusations. This  
11 Board is here about Zoning and laws. We are an  
12 administrative body, not a Legislative body. We  
13 did not make the laws. We are here to decide about  
14 a site plan. If you would like to speak about the  
15 site plan, you may continue. If you're going to  
16 make accusations about anybody, it's not going to  
17 happen.

18          WILLIAM SUITOR: All right. The site plan  
19 should be put on hold. You guys should all get  
20 together and be honest. Not, oh, he's a good guy,  
21 he's my friend, I've got to do this. You know,  
22 every one of you know, buildings were built before  
23 permits were ever written. Holes were dug before

1 permits, that should have never been written.  
2 Every law just about to do with Zoning has been  
3 broken. Why? I can't say corruption, because you  
4 won't let me. So I want to go -- I know you need  
5 more time for the lawyer to speak, but this is all  
6 about dishonesty and corruption in government, all  
7 of it. Don't be a part of it.

8 CHAIRPERSON JEFFREY: This Board has not been.  
9 I will speak to that. And this Board--

10 WILLIAM SUITOR: You sin through silence.

11 CHAIRPERSON JEFFREY: Sir, it's my turn to  
12 speak. There's nothing that this Board has done  
13 that has been corrupt or illegal, nor am I.

14 WILLIAM SUITOR: I didn't say you.

15 CHAIRPERSON JEFFREY: So I don't appreciate  
16 the accusations.

17 WILLIAM SUITOR: I said the Town Board.

18 CHAIRPERSON JEFFREY: You're not speaking to  
19 the Town Board. You're speaking to the Planning  
20 Board.

21 WILLIAM SUITOR: Go back to sleep.

22 CHAIRPERSON JEFFREY: Sir, you can leave if  
23 you continue with those kinds of accusations. I

1 will not tolerate personal attacks on anyone.

2 WILLIAM SUITOR: Okay. I'll leave. It's your  
3 party.

4 CHAIRPERSON JEFFREY: If you have something  
5 constructive to say --

6 WILLIAM SUITOR: I said what I wanted to say.

7 TOM BIA: I don't even think he lives in the  
8 Town of Porter. But that's beside the point. Tom  
9 Bia, Youngstown, New York. I'm glad I came,  
10 because I wasn't planning on coming. I'm glad I  
11 came to listen to all of this. I know Mike McCabe  
12 very well, I know his wife. I know some of his  
13 family. And it's not a personal thing. I know  
14 most of the people here in the audience. And I  
15 know it's a tough decision. But what I ask you to  
16 do is, do your best, what's right for the Town of  
17 Porter. I have lived here for forty-eight years.  
18 I love this Town. I can't even begin to tell you  
19 how much I enjoy living in the Town of Porter. I  
20 live in Collingwood. I'm far away from where Mike  
21 lives and these people live. Where I live, it's as  
22 peaceful as can be. After eight o'clock at night  
23 you can hear a pin drop on my street. And I would

1 like to see everybody enjoy. We are so lucky to  
2 live in this Town. I would like to see everybody  
3 be happy in this great Town of Porter, that I think  
4 is the best kept secret in all of New York State.  
5 Thank you very much for listening to me.

6 CHAIRPERSON JEFFREY: Thank you. Yes, sir?

7 REEVE TOWER: Reeve Tower. Life-long  
8 resident, 1495 Lake Road, Youngstown, New York.  
9 The only time I haven't been at this resident is  
10 when I went into the service. Just to point out  
11 here, I have been through this before, not this  
12 Board before. I got an illegal barn behind my  
13 house, thanks to the Town of Porter. You got this  
14 guy saying here, you know, it's the perfect place.  
15 Oh, yeah, right. Let me tell you about obnoxious  
16 neighbors. They take you to Court. I have had  
17 Sheriff's, State Police, everything in my backyard,  
18 based on my neighbor. We're looking at a case  
19 here. I can go down and reference. It's just like  
20 past history to me. The Town, it's knowledge, you  
21 know, hung me out to dry. I lost twenty thousand  
22 dollars in my retirement over Court cases, based on  
23 this man's incompetence.

1 CHAIRPERSON JEFFREY: I don't want a personal  
2 accusation.

3 REEVE TOWER: It's an attack. This man has  
4 lied to me personally. I'm sorry.

5 CHAIRPERSON JEFFREY: That's not what this  
6 case is about. You can represent it without  
7 pointing fingers.

8 REEVE TOWERS: Let's see what Mr. McCabe said.  
9 Who is their lawyer that went to the State? Your  
10 Town Lawyer, who got paid; right? Did you -- let's  
11 ask you questions; were you the building inspector  
12 when he built that house on Lake Road?

13 CHAIRPERSON JEFFREY: Rusty (sic) I'm not sure  
14 where this is going. I think we need to stick to  
15 what --

16 REEVE TOWERS: Well, let's get it on record  
17 that they went to Court over that Culvert (sic),  
18 Russ Culvert (sic); right?

19 CHAIRPERSON JEFFREY: Yes.

20 REEVE TOWER: Okay. Who was the lawyer on  
21 that deal?

22 CHAIRPERSON JEFFREY: I don't know.

23 REEVE TOWER: Mike McCabe -- not Mike McCabe.

1 Our Town lawyer.

2 CHAIRPERSON JEFFREY: Mike Dowd?

3 REEVE TOWER: Mike Dowd.

4 CHAIRPERSON JEFFREY: I don't know. And  
5 that's not really relevant.

6 REEVE TOWERS: It is too, because it cost you  
7 taxpayers here in the Town of Porter money for the  
8 State. They lost that case. So we're showing  
9 discrepancies here all the time, you know, where  
10 you fail, not you guys specifically, but the Town  
11 has failed. That's it.

12 CHAIRPERSON JEFFREY: Okay. Thank you. Is  
13 there anybody else that hasn't spoken that would  
14 like to speak?

15 DERRICK KENT: My name is Derrick Kent, at  
16 2388 Lake Road. I live in that little sliver of  
17 land to the left. I just have something real short  
18 to say. I don't know why, but it hasn't bothered  
19 me. I live right next to it. I just felt  
20 included. And then I go over there and I talk to  
21 Mike, and it's just been fine for me. So that's  
22 all I wanted to say.

23 CHAIRPERSON JEFFREY: Thank you. Would you

1       like to speak again, sir?

2               MORGAN JONES, ESQ:  Morgan Jones once again.  
3       Getting back to the integrity of the questions that  
4       you have to answer for yourselves.  As I mentioned,  
5       if there's going to be a site plan approval, you  
6       have the ability to put conditions on that to deal  
7       with some of these environmental issues and so  
8       forth.  But more importantly, if Mr. McCabe hasn't  
9       demonstrated to your satisfaction that his plan  
10      adequately goes with the SEQR issues, then you have  
11      the right to have your engineer review it and see  
12      if he has adequate measures in place.  And you also  
13      have the ability to deny the permit, if he can't  
14      prove to you that he's going to abate the noise,  
15      the pollution, contamination, the visual, et  
16      cetera, and the lights shining in everybody's home.  
17      For example, I looked at the site plan again the  
18      other day, briefly.  For visual effects, the Zoning  
19      Ordinance requires that the entire area be  
20      screened, and no part of the repair operation and  
21      none of the unrepaired vehicles can be visible from  
22      any abutting property that's residential in nature.  
23      His plan shows three berms, two feet tall and eight



1 feet wide. So that's their mitigation effort. I  
2 mean, you can't even call them berms. They're  
3 bermettes. They're two feet tall. It wouldn't  
4 screen a woodchuck. You know, and the people  
5 across the street have to look at this and have  
6 their lights shine on their things. And their real  
7 property values are being depreciated because  
8 people drive by and say; what is that? An  
9 industrial complex? His mitigation measure is to  
10 put two foot three -- two foot high berms out by  
11 the road. He says there's no sandblasting  
12 operation. And Mr. Derrick Kent says he hasn't  
13 noticed any problems. In the record are the  
14 advertisements that he had online for sandblasting  
15 operation that he was running in the building next  
16 door. Of course he doesn't have any complaints  
17 about the operation. All of these other things we  
18 have talked about. There's a lot more detail in my  
19 submission about the SEQR permits that should be  
20 required for ground water. Storm water runoff,  
21 there's over fourteen thousand feet of impervious  
22 structure there, that storm water has got to run  
23 someplace. And there's no plan to deal with it or

1       there's no comments in the record as to how it's  
2       going to be dealt with or what's going to happen  
3       with that runoff. There's also the DEC complaints  
4       about the particulates. As one lady mentioned, the  
5       yellow paint spray that drifts over onto her  
6       property. If you're cited once for not retaining  
7       the particulates within the building, and also for  
8       having, the DEC complained about having all the  
9       water from the power washers going into the ground.  
10      I see now there's apparently a proposal for a tank  
11      to go on the property. But, you know, if you look  
12      at the overall submission, there's nothing there  
13      that's allegedly cited that complies with the SEQ  
14      requirement and nothing there that shows how he's  
15      going to mitigate all these concerns that the  
16      neighbors have. On that basis, if you were to make  
17      the decision now, I think you would have to deny  
18      the permit application because of those reasons.

19           CHAIRPERSON JEFFREY: Okay. Thank you, sir.  
20      Yes, sir?

21           JIM CARROLL: Jim Carroll --

22           THE STENOGRAPHER: I'm sorry, can you repeat  
23      the address? You spoke too fast.

1           JIM CARROLL: 2191 Lake Road. It's a damn  
2 shame the neighbors can't get along. I have known  
3 Mike for a long time. I think he's a good guy.  
4 You complain about lights. Well, your kids are  
5 breaking into everybody's houses around here, you  
6 know. I put lights out too. I have cameras on my  
7 house. They complain about dust. Look at the  
8 farms. These guys are plowing. There's more dust  
9 in the air from these farms. They're dumping cow  
10 manure on the ground and it smells. That's in the  
11 air too. You know, come on. It just goes on and  
12 on. I think it's just nuts.

13  
14           (Whereupon the stenographer placed hands in  
15 the air due to too many people speaking at once)  
16

17           (Off the record discussion)  
18

19           CHAIRPERSON JEFFREY: Wait a second. One  
20 person at a time. You are not recognized. Let the  
21 man speak. We let you speak. It's his turn.

22           JIM CARROLL: The other thing is, you  
23 complained about lights. You complain about noise,

1 the beeping. That's not his problem. That's the  
2 law that says you have to have back-up alarms on  
3 trucks. Right down the road is a farmer going down  
4 the road with his tractor with these wheels. You  
5 can't even pass him they're so big. You've got  
6 commercial trucks that come in and out from time to  
7 time. They're within the law. You know, I see no  
8 problem. I'm in favor of what he's doing. And  
9 like I said, I'm a neighbor of his and so be it.

10 CHAIRPERSON JEFFREY: Okay. Thank you, sir.  
11 Ma'am, did you want to take the podium again?

12 VICKI BERMEN: These people are so ridiculous.  
13 --

14 CHAIRPERSON JEFFREY: Your name again for the  
15 record?

16 VICKI BERMEN: Vicki Bermen, 2375 Lake Road.  
17 They are so ridiculous, the comments they're  
18 making. I'm directly across the road from this  
19 building. I had no problem with Mike McCabe. We  
20 were friends. We didn't, you know, hang out or  
21 anything, but we were friends and we were good  
22 neighbors and they were good neighbors. This is  
23 deplorable what he's done. As far as the lights,

1 someone alluded to the fact of the big floodlight.  
2 Yes, right in my bedroom. I cannot even pick up  
3 the shade. By bedroom is lit up almost like this  
4 room all night long. And the noise level today?  
5 There's nothing going on now. They've quieted  
6 down. But there was a bucket on one of those  
7 machines slamming and slamming like a steel  
8 resounding right across, right to the lake, right  
9 across, like echoing all afternoon. And it goes on  
10 and on. Everyday there's something else. But now  
11 I have to say it again, somebody must have told him  
12 to quiet it down. The cars have ceased. It's like  
13 a city parking lot out there sometimes. There's no  
14 restrictions on the parking. There's trucks,  
15 there's cars in and out, zooming in and out, across  
16 the highway, back and forth, back and forth. I  
17 want to set up a camera just to show you guys.

18 CHAIRPERSON JEFFREY: Yes. Go ahead, Mrs.  
19 Dean.

20 FREDERICKA DEAN: Fredericka Dean, 2359 Lake  
21 Road. Okay. I'm going pick up where I left off.  
22 As this Board knows, because you have been  
23 commissioned to make recommendations toward this.

1 And there is a new twist in the ongoing saga. This  
2 happened in April. With November's resolution  
3 still in limbo, a new motion was granted to rescind  
4 the law. This time to reinvent the amendment so  
5 that it was more in line with the home modification  
6 (sic), requiring both site plans and a special-use  
7 permit. This apparently would allow for more  
8 restrictions to be put on business activities and  
9 how they are operating. Why in the world, when all  
10 of this is still going on, is Mike McCabe being  
11 allowed to plunge forward with his site plan and  
12 the Town Board is in the process of making all  
13 these changes that he had applied under. He's  
14 still being allowed to go on under that law when  
15 they are making all sorts of revisions in it. The  
16 entire fiasco has been mishandled since the first  
17 day a shovel hit the ground over there on that  
18 property years ago. Repeated illegal construction  
19 activity and repeated illegal business activity.  
20 They're all out of compliance with the Zoning codes  
21 and regulations, have been the norm over there. In  
22 my opinion, the site plan for Lake Road should be  
23 denied and Mr. McCabe should be told to pursue his

1 business endeavors where they belong in a  
2 commercially known part of Town. Approving them  
3 will only serve to exacerbate this situation and  
4 make it worse for those of us who are law-abiding,  
5 tax-paying citizens. And we moved here to enjoy  
6 the beauty, peace and tranquility of our homes on  
7 the lake. That is being taken away from us by this  
8 current illegally adapted law that was made in June  
9 of 2014.

10 Oh, by the way, just because I have another  
11 second. Mr. Rogers was over one day. We were  
12 discussing one of the things that was going on  
13 across the street. And from my living room he  
14 said; you know, you have a really nice place here.  
15 Why don't you just look out your lake-side windows  
16 and don't look across the street. Solution.

17 BILL DEAN: My name is Bill Dean and I live at  
18 2359 Lake Road. I have one quick comment about  
19 what Jim Carroll said pertaining to the fact that  
20 he didn't have a problem with what Mike McCabe was  
21 doing. Jim Carroll lives like down by the Chanty  
22 (sic). You know, he doesn't live across the street  
23 from what Mike McCabe is doing. So really I don't

1 understand why or what qualifies him to even make a  
2 statement like that, frankly. I know he's entitled  
3 to make comments here. That's the purpose of this  
4 hearing. But I have to tell you this, he's like  
5 about as far removed from this experience as  
6 anybody could be. And it certainly doesn't affect  
7 him. And the focus of this meeting, the focus of  
8 this meeting should be on the fact that Mike McCabe  
9 is using this Farm and Garden Equipment provision  
10 of the law as a ruse to do something bigger than  
11 that. And it's a commercial operation. That's  
12 what's been going on here. I've talked to the Town  
13 Board about this countless times. I've been doing  
14 this for eighteen months. Eighteen months this  
15 month. Communicating with the Town Board.  
16 Communicating with the Planning Board. We filed an  
17 appeal with the Zoning Board of Appeals, because  
18 Mike McCabe put up a building without a permit.  
19 Roy said it was a temporary building. The building  
20 never came down. They revoked the permit. Mike  
21 bought cows. Now the building is protected by the  
22 Ag and Markets Laws. The whole thing is just -- I  
23 tell you, it's absolutely mind-boggling. I just



1 wanted to say, you know, it's nice to hear Jim  
2 Carroll doesn't have a problem with what Mike  
3 McCabe is doing. But I'm telling you right now, he  
4 doesn't even live there.

5 CHAIRPERSON JEFFREY: Yes, sir?

6 JIM CARROLL: The only thing I would say is, I  
7 was addressing complaining about the lights and I  
8 was saying, you live in a Town where these farmers  
9 are plowing their fields. It's springtime.  
10 There's dust, there's dirt all over the place.  
11 They're putting manure down. They're putting  
12 chemical downs. There's more chemicals and there's  
13 more stuff in the air from the farmers than there  
14 is from Mike.

15 CHAIRPERSON JEFFREY: Hold on. One person at  
16 a time.

17 JIM CARROLL: I go by his place all the time.  
18 I don't see any problem there. And the other thing  
19 is, there's spot zoning all around his place. You  
20 look behind him on Youngstown-Wilson Road --

21 CHAIRPERSON JEFFREY: There's no spot  
22 zoning --

23 JIM CARROLL: Well, that's what I call it.

1           CHAIRPERSON JEFFREY: You might call it that,  
2 but that's not a legal definition, and there's no  
3 spot zoning --

4           JIM CARROLL: There's other commercial  
5 businesses around, here and there. And they are  
6 not all in one little spot, is what I'm saying, in  
7 that block. On the back there was an agricultural  
8 business that did bird licenses, huge place, bigger  
9 than Mike's. Down the road there's a greenhouse.  
10 Around the corner there's a greenhouse. So there's  
11 somebody on Youngstown -- or Ransomville Road  
12 that's got an Herb garden, you know, consignment  
13 out there.

14          CHAIRPERSON JEFFREY: Stop talking. I'm going  
15 to ask you to leave the next time you speak out of  
16 turn and everybody else. We're here to hear  
17 everybody. You had your opportunity. I have given  
18 everybody equal opportunity. If you would like to  
19 speak at the podium, you can, but not everybody at  
20 once. We can't take notes that way. We can't put  
21 it into the record. So all of those comments you  
22 are making back there are not getting in the  
23 record. If you want to be heard, you have to speak

1 at the podium. Is there anybody that wants to  
2 speak at the podium? One more time?

3 SHEILA MOONEY: My name is Sheila Mooney. I  
4 live at 2407 Lake Road. There's a huge difference  
5 between a farm and a commercial enterprise. You  
6 have the pictures before you. I have seen, myself,  
7 trucks, all kinds of vehicles that have absolutely  
8 nothing to do with farming. This is so ludicrous  
9 that it boggles the mind. It absolutely boggles  
10 the mind that everyone that's involved, from the  
11 attorney, to Roy Rogers, to the Town Board, that  
12 you would allow something like this to happen.  
13 Because if anyone else did something like this,  
14 he's setting a precedent. I don't want some big  
15 huge commercial thing across the street from me.  
16 And if you don't stop this man now, you are opening  
17 Pandora's Box, and there will be more and more and  
18 more. A Chinese couple stopped me as I was walking  
19 my dog down Lake Road, an elderly couple. They  
20 said; do you live here? I said; yes, I do. They  
21 said; what a beautiful area. And it is a beautiful  
22 area. There are areas designated for commercial.  
23 This is where this man's business should be. He

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1 wants to raise cows and do something legitimate,  
2 fine, no one has a problem with that. But we do  
3 have a problem with a man who's being deceitful.  
4 There's proof he is so arrogant that he would go on  
5 the Internet and advertise his business as  
6 Blast-it. My God, are you kidding me?

7 CHAIRPERSON JEFFREY: Okay. Thank you.

8 REEVE TOWERS: I would like, not only to  
9 apologize for attacking, but I would like to give  
10 your Board credit. You really have shown you've  
11 stepped up in the process here, the Planning Board.  
12 I have seen a lot of improvements. I can tell you  
13 I've been to almost every meeting I can, since  
14 what's happened to me. And I can tell you, it's  
15 definitely a noticeable improvement. I give credit  
16 to the Board for what they've done. You're put in  
17 a tough spot here by previous Boards. And I would  
18 just like to thank you for your time.

19 CHAIRPERSON JEFFREY: Are you ready to close  
20 the public hearing?

21 ANTHONY COLLARD: So moved.

22 CHAIRPERSON JEFFREY: Second?

23 JOHN BIS: I'll second.

1 CHAIRPERSON JEFFREY: Vote has been made and  
2 seconded. Roll call vote, please.

3 AMY FREIERMUTH: Chairperson Jeffrey?

4 CHAIRPERSON JEFFREY: Yes.

5 AMY FREIERMUTH: Member Collard?

6 ANTHONY COLLARD: Yes.

7 AMY FREIERMUTH: Member Fox?

8 MARK FOX: Yes.

9 AMY FREIERMUTH: Member Bis?

10 JOHN BIS: Yes.

11 AMY FREIERMUTH: Member Tower?

12 ROBERT TOWER: Yes.

13 CHAIRPERSON JEFFREY: I feel like we have been  
14 given a lot of information to digest still in this  
15 application. We have had numerous submittals from  
16 various lawyers involved. And we have a SEQR  
17 process to go through that needs sincere and  
18 relevant, you know, setting and research and  
19 evaluation. I think I would like to, given the  
20 late hour and the intensity of our evening, I would  
21 like to propose that we, at next month's meeting,  
22 review the SEQR, go through our part two form. We  
23 do have the submittal of part one from the

1 applicant. Review the SEQR at our next meeting and  
2 do our deliberations after we have digested the  
3 public comments. Deliberate at next month's  
4 meeting.

5 CHARLES MALCOMB, ESQ: Chairman, I don't think  
6 we have a strenuous objection to the Board taking a  
7 little bit of time. But we would just ask that you  
8 consider a special meeting earlier than the next.  
9 This has been going on for a very long time. I  
10 know there's a lot of public comments. So we're  
11 not going to push tonight with you. We would ask  
12 you consider maybe a special meeting in a couple of  
13 weeks.

14 MIKE McCABE: Mike McCabe. You know, like  
15 having this stuff that was mentioned, is not true.

16 CHAIRPERSON JEFFREY: Well, that's what our  
17 Board needs to evaluate and decide. We have given  
18 both sides of the issue equal opportunity to speak.  
19 And we are, I think this Board is well informed as  
20 well as circumstances of situations from both  
21 sides. And what I'm saying is, I think we need  
22 some time to evaluate and digest and interpret  
23 everything that's been presented tonight before we

1 deliberate and make a decision.

2 MIKE McCABE: Can we do that prior to your  
3 next meeting? Realizing the time and how long it's  
4 taken and were, you know, did give the thirty day  
5 period.

6 CHAIRPERSON JEFFREY: I will put it to the  
7 Board. It's demanding on this Board, a special  
8 meeting as well.

9 CHARLES MALCOMB, ESQ: We totally understand  
10 that.

11 CHAIRPERSON JEFFREY: And we have had a bunch  
12 of them lately. We have very full agendas. I'm  
13 not saying we won't. I think the Board needs to  
14 talk about that and make a decision as a Board.

15 Kyle, do you have any input at this point  
16 where we are and where we should go?

17 KYLE ANDREWS, ESQ: Two things, Chairman.  
18 One; a public speaker referenced the job you're  
19 doing tonight. You're in a tough spot and you're  
20 doing a good job. I guess I'm saying that as  
21 somebody who's been at a lot of meetings over a lot  
22 of years.

23 But getting back to your specific question; I

1 think to follow our procedure, and I know I keep  
2 saying that word, but that's where people get  
3 tripped up and wind up in suits, I think you would  
4 want to schedule a special meeting within thirty  
5 days.

6 CHAIRPERSON JEFFREY: Fair enough. Because  
7 our next meeting --

8 UNIDENTIFIED AUDIENCE MEMBER: We can't hear.

9 CHAIRPERSON JEFFREY: Okay. Kyle Andrews  
10 recommended that we do it at the -- make a decision  
11 at a special hearing (sic), because I believe the  
12 law requires we make a decision in thirty days?

13 KYLE ANDREWS, ESQ: Our code says, I'll speak  
14 up; following the meeting, the Planning Board shall  
15 make a determination on the application within  
16 thirty days to approve, disapprove, or approve with  
17 modifications, speaking of the site plan which was  
18 presented and a public hearing was held.

19 CHAIRPERSON JEFFREY: Right. And our next  
20 public hearing isn't until July 7th. That's the  
21 first Thursday of the month, which is greater than  
22 thirty days. Therefor, by law, we need to make  
23 that determination within the thirty day period.



1 KYLE ANDREWS, ESQ: That would be my  
2 recommendation.

3 CHAIRPERSON JEFFREY: So that being said, I'm  
4 looking at the calendar. The toughest part of  
5 planning -- and I don't know if anybody in the room  
6 can help as to what nights the Town Hall is going  
7 to be available that we can even meet.

8 CHARLES MALCOMB, ESQ: Mr. Chairman, if I can  
9 make a suggestion? You don't have to set the  
10 actual meeting today. You can resolve to do this  
11 special meeting, and then once you confer and call  
12 for one, you would notice, in accordance with  
13 Opening Meetings Law. You don't have to have an  
14 exact date tonight.

15 CHAIRPERSON JEFFREY: Okay. Thank you.

16 KYLE ANDREWS, ESQ: I was just making a  
17 procedural point, that you can resolve to do a  
18 special meeting. You don't necessarily have to  
19 pick a date. What you need to do, according to the  
20 Open Meeting Law, once it calls for you to arrange  
21 the date, you alert the media and provide it to the  
22 public. I'm just telling you, you don't have to  
23 worry about finding a date.

1           CHAIRPERSON JEFFREY: I think I would like to  
2       set at least a tentative date that we can check  
3       with the Town Hall, so that everybody in the room,  
4       including Board members, have an idea what we're  
5       targeting for, confirm it with the availability of  
6       the Hall and then, you know, notice it  
7       appropriately from there. Does that sound  
8       reasonable with the Board?

9           JOHN BIS: Mr. Chairman, that's fine. I would  
10      like to ask the attorney a question before. What  
11      we have here are basically duelling jurisdictions  
12      in terms of Mr. McCabe's attorney and Mr. Dean's  
13      attorney providing us with information. I would  
14      like -- I know you said it's going to go like  
15      lawyers back and forth. But I would like, before  
16      our special meeting, some comments from you about  
17      the validity of the points made by either of the  
18      attorneys. And secondly; I would like to have you  
19      make a comment on the procedures thing, where it  
20      says no application for site plan review shall be  
21      done if there's an existing violation. Just to  
22      have some comments from you in terms of whether or  
23      not that applies in this situation. And that would

1 help me in my decision making.

2 KYLE ANDREWS, ESQ: Should I answer that one  
3 right now?

4 JOHN BIS: Sure.

5 KYLE ANDREWS, ESQ: As far as the back and  
6 forth between the two attorneys, I can delve into  
7 that a little more and get something to the Board.

8 CHAIRPERSON JEFFREY: Present us something in  
9 writing?

10 KYLE ANDREWS, ESQ: Yes, I could do that. As  
11 to some of the questions on existing violations,  
12 there is that language, but there's also language  
13 which further speaks to curative measures. So  
14 that's where, again, there's the strong statement  
15 which says, can not be reviewed if there's existing  
16 violations. However, if the application is cured  
17 of the nature, then it can be.

18 JOHN BIS: And once before you said it could  
19 go either way. But I would like your comment in  
20 terms of recommendation for the Board.

21 KYLE ANDREWS, ESQ: Okay.

22 MERT WIEPERT: As the Supervisor, we have  
23 never had this issue. We have never had an issue

1 where nobody could hear in the back. We haven't  
2 had a big meeting like this in years. We'll study  
3 that. I'll have somebody come in and work on that.  
4 We are going to talk about that. And I'm sorry  
5 about that. I know that air conditioner in the  
6 back is making noise, but we're going to study  
7 that.

8 CHAIRPERSON JEFFREY: Thank you. Supervisor,  
9 do you have what nights of the week might this Hall  
10 be available?

11 MERT WIEPERT: I don't know what day Courts  
12 are.

13 CHAIRPERSON JEFFREY: Tuesday and Wednesday.

14 MERT WIEPERT: Our Board meets the second  
15 Monday of the month. So we can do it on a Monday.

16 ROBERT TOWER: Mondays are great for me.

17 CHAIRPERSON JEFFREY: Would Monday, the 20th,  
18 or Monday the 27th, be better for the Board and --

19 CHARLES MALCOMB, ESQ: 20th.

20 CHAIRPERSON JEFFREY: How does the 20th sound  
21 to everybody?

22 JOHN BIS: I have a conflict, but I think I  
23 can get around it. Mr. Jones, the 20th?

1 CHAIRPERSON JEFFREY: The public hearing is  
2 still closed, but it's still a public meeting, and  
3 it will adhere, and it will be at the discretion of  
4 the Board as far as comments.

5 KYLE ANDREWS, ESQ: Yes, it's my birthday, but  
6 I'll do it.

7 CHAIRPERSON JEFFREY: Well, let's tentatively  
8 set this for the 20th. We will confirm the  
9 availability of the Hall and appropriately  
10 advertise for the meeting being on Monday the 20th.

11 I'll make a motion to set a public hearing --  
12 special meeting, excuse me, June 20th at seven P.M.  
13 for the McCabe site plan SEQR review and  
14 determination (sic).

15 MARK FOX: Second.

16 CHAIRPERSON JEFFREY: I have a motion made and  
17 seconded. All those in favor signify by saying I.

18 ROBERT TOWER: I.

19 ANTHONY COLLARD: I.

20 MARK FOX: I.

21 JOHN BIS: I.

22 CHAIRPERSON JEFFREY: So moved.  
23

CERTIFICATION

ADRIENNE S. KUZMA, Court Stenographer,  
CERTIFY that the public hearing held before  
Chairperson Jeffrey, at the Town of Porter Planning  
Board, is a true and accurate record of the  
proceedings.

I further HEREBY CERTIFY that I am not related  
to any party of this action by blood or marriage  
and that I am in no way interested in the outcome.

In witness thereof I have hereunto set my hand  
this 16th day of June, 2016.

-----  
ADRIENNE S. KUZMA  
Notary Public  
State of New York  
County of Niagara  
Expires 2/4/2017

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'15 [2] - 13:16, 14:7 '16 [1] - 14:16	<b>abate</b> [1] - 33:14 <b>abiding</b> [1] - 40:4 <b>ability</b> [3] - 4:13, 33:6, 33:13 <b>able</b> [1] - 13:3 <b>absence</b> [1] - 11:7 <b>absolutely</b> [3] - 41:23, 44:7, 44:9 <b>abutting</b> [2] - 12:13, 33:22 <b>accepted</b> [1] - 14:9 <b>accordance</b> [1] - 50:12 <b>according</b> [1] - 50:19 <b>accordingly</b> [1] - 11:5 <b>accurate</b> [1] - 55:6 <b>accusation</b> [1] - 31:2 <b>accusations</b> [4] - 27:10, 27:16, 28:16, 28:23 <b>action</b> [2] - 14:13, 55:9 <b>activities</b> [1] - 39:8 <b>activity</b> [4] - 13:22, 16:21, 39:19 <b>actual</b> [3] - 7:6, 7:16, 50:10 <b>adapted</b> [1] - 40:8 <b>added</b> [1] - 7:1 <b>addition</b> [1] - 8:15 <b>additional</b> [1] - 7:1 <b>address</b> [3] - 10:4, 22:10, 35:23 <b>addressing</b> [1] - 42:7 <b>adequate</b> [1] - 33:12 <b>adequately</b> [1] - 33:10 <b>adhere</b> [2] - 10:4, 54:3 <b>adhering</b> [1] - 15:17 <b>administrative</b> [2] - 4:6, 27:12 <b>adopted</b> [1] - 4:3 <b>ADRIENNE</b> [3] - 1:20, 55:3, 55:16 <b>adventure</b> [1] - 23:17 <b>advertise</b> [2] - 45:5, 54:10 <b>advertisements</b> [1] - 34:14 <b>affect</b> [1] - 41:6 <b>afternoon</b> [1] - 38:9 <b>Ag</b> [1] - 41:22 <b>agenda</b> [1] - 2:1 <b>agendas</b> [1] - 48:12 <b>ago</b> [4] - 2:20, 20:16, 21:8, 39:18 <b>agree</b> [3] - 11:3, 23:11, 24:7	<b>agreement</b> [4] - 7:10, 8:1, 15:6, 15:18 <b>agricultural</b> [2] - 18:22, 43:7 <b>agriculture</b> [1] - 13:21 <b>Agway</b> [1] - 20:2 <b>ahead</b> [3] - 21:12, 27:7, 38:18 <b>air</b> [11] - 17:2, 17:3, 17:6, 23:10, 24:7, 36:9, 36:11, 36:15, 42:13, 53:5 <b>air-born</b> [1] - 23:10 <b>alarms</b> [1] - 37:2 <b>Albany</b> [1] - 26:10 <b>alert</b> [1] - 50:21 <b>allegedly</b> [1] - 35:13 <b>allow</b> [5] - 19:10, 20:14, 24:17, 39:7, 44:12 <b>allowed</b> [6] - 4:18, 5:8, 15:5, 22:5, 39:11, 39:14 <b>allows</b> [3] - 3:2, 4:1, 22:20 <b>alluded</b> [1] - 38:1 <b>almost</b> [3] - 23:2, 38:3, 45:13 <b>amendment</b> [1] - 39:4 <b>American</b> [1] - 26:14 <b>amicable</b> [1] - 20:7 <b>amount</b> [1] - 13:4 <b>Amy</b> [2] - 16:15 <b>AMY</b> [5] - 46:3, 46:5, 46:7, 46:9, 46:11 <b>ANDREWS</b> [10] - 8:9, 48:17, 49:13, 50:1, 50:16, 52:2, 52:5, 52:10, 52:21, 54:5 <b>Andrews</b> [2] - 9:18, 49:9 <b>annoying</b> [4] - 17:17, 17:18, 17:19, 17:21 <b>Anson</b> [1] - 6:15 <b>answer</b> [4] - 3:15, 6:8, 33:4, 52:2 <b>answered</b> [1] - 3:10 <b>ANTHONY</b> [4] - 7:19, 45:21, 46:6, 54:19 <b>apologize</b> [1] - 45:9 <b>appeal</b> [1] - 41:17 <b>Appeals</b> [1] - 41:17 <b>appearing</b> [1] - 22:17 <b>applicant</b> [2] - 5:20, 47:1 <b>application</b> [12] - 2:10, 2:21, 2:23, 3:1, 6:2, 6:5, 12:2, 35:18, 46:15, 49:15, 51:20, 52:16	<b>applied</b> [1] - 39:13 <b>apples</b> [1] - 51:23 <b>apply</b> [2] - 3:6, 4:15 <b>appreciate</b> [2] - 10:14, 28:15 <b>appropriate</b> [6] - 3:7, 4:21, 6:1, 9:12, 9:13, 19:3 <b>appropriately</b> [2] - 51:7, 54:9 <b>approval</b> [5] - 3:4, 4:19, 5:11, 19:13, 33:5 <b>approve</b> [8] - 12:1, 12:2, 12:4, 14:14, 24:9, 24:15, 49:16 <b>approving</b> [1] - 40:2 <b>April</b> [2] - 14:17, 39:2 <b>area</b> [6] - 17:1, 18:20, 18:22, 33:19, 44:21, 44:22 <b>areas</b> [3] - 13:9, 13:21, 44:22 <b>argue</b> [1] - 18:6 <b>arguing</b> [1] - 8:23 <b>argument</b> [2] - 3:23, 4:11 <b>arms</b> [1] - 19:8 <b>arrange</b> [1] - 50:20 <b>arrogant</b> [1] - 45:4 <b>Assembly</b> [1] - 26:12 <b>attack</b> [1] - 31:3 <b>attacking</b> [1] - 45:9 <b>attacks</b> [1] - 29:1 <b>attained</b> [1] - 22:16 <b>attempts</b> [1] - 13:20 <b>Attorney</b> [1] - 9:18 <b>attorney</b> [7] - 2:14, 3:18, 8:21, 44:11, 51:10, 51:12, 51:13 <b>attorneys</b> [2] - 51:18, 52:6 <b>AUDIENCE</b> [1] - 49:8 <b>audience</b> [1] - 29:14 <b>authority</b> [2] - 3:21, 15:19 <b>avall</b> [1] - 24:9 <b>availability</b> [2] - 51:5, 54:9 <b>available</b> [2] - 50:7, 53:10 <b>Avenue</b> [1] - 10:9	<b>ball</b> [1] - 17:10 <b>bar</b> [3] - 5:15, 5:16, 5:17 <b>barn</b> [1] - 30:12 <b>based</b> [3] - 13:19, 30:18, 30:22 <b>basis</b> [2] - 5:12, 35:16 <b>BATTAGLIA</b> [1] - 6:13 <b>Battaglia</b> [3] - 3:14, 6:8, 6:14 <b>beautiful</b> [4] - 18:20, 22:12, 44:21 <b>beauty</b> [2] - 23:14, 40:6 <b>become</b> [2] - 20:8, 22:13 <b>bedroom</b> [2] - 38:2, 38:3 <b>beepers</b> [1] - 17:19 <b>beeping</b> [1] - 37:1 <b>begin</b> [1] - 29:18 <b>behavior</b> [1] - 16:23 <b>behind</b> [3] - 19:14, 30:12, 42:20 <b>belong</b> [1] - 40:1 <b>BERMEN</b> [3] - 22:9, 37:12, 37:16 <b>Bermen</b> [2] - 22:9, 37:16 <b>bermettes</b> [1] - 34:3 <b>berms</b> [3] - 33:23, 34:2, 34:10 <b>beside</b> [1] - 29:8 <b>best</b> [2] - 29:16, 30:4 <b>better</b> [1] - 53:18 <b>between</b> [4] - 5:5, 8:1, 44:5, 52:6 <b>BIA</b> [1] - 29:7 <b>Bia</b> [1] - 29:9 <b>big</b> [5] - 26:21, 37:5, 38:1, 44:14, 53:2 <b>bigger</b> [2] - 41:10, 43:8 <b>Bill</b> [2] - 20:14, 40:17 <b>BILL</b> [1] - 40:17 <b>bill</b> [3] - 21:4, 24:4 <b>bird</b> [1] - 43:8 <b>birthday</b> [1] - 54:5 <b>BIS</b> [7] - 45:23, 46:10, 51:9, 52:4, 52:18, 53:22, 54:21 <b>Bis</b> [1] - 46:9 <b>bit</b> [2] - 10:23, 47:7 <b>bizarre</b> [1] - 3:19 <b>black</b> [1] - 17:6 <b>Blast</b> [1] - 45:6 <b>Blast-it</b> [1] - 45:6 <b>blissing</b> [1] - 22:14 <b>blight</b> [1] - 24:12
<b>1</b>				
11/16/15 [1] - 15:10 14 [1] - 25:1 14095 [1] - 1:21 1495 [1] - 30:8 16th [2] - 11:15, 55:12 171 [1] - 1:21 1977 [1] - 15:2 1981 [1] - 16:20				
<b>2</b>				
2/4/2017 [1] - 55:18 2006 [1] - 21:8 2013 [1] - 19:12 2014 [3] - 3:2, 14:2, 40:9 2016 [5] - 1:11, 2:7, 15:3, 19:12, 55:12 20th [7] - 53:17, 53:19, 53:20, 53:23, 54:8, 54:10, 54:12 2191 [1] - 36:1 2347 [2] - 18:10, 19:22 2359 [5] - 10:11, 13:1, 15:1, 38:20, 40:18 2371 [1] - 19:21 2375 [2] - 22:9, 37:16 2384 [4] - 1:6, 2:10, 16:22, 17:9 2388 [1] - 32:16 2395 [1] - 16:19 2407 [2] - 18:17, 44:4 27th [1] - 53:18 2nd [2] - 1:11, 2:7				
<b>3</b>				
3265 [2] - 1:14, 2:6 3321 [1] - 26:7 34.00-1-5.22 [1] - 2:11				
<b>5</b>				
5 [1] - 15:3 5th [1] - 6:16				
<b>7</b>				
716-425-8735 [1] - 1:22 76 [1] - 10:9 7:00 [1] - 1:12 7th [1] - 49:20				
		<b>B</b>		
		back-up [2] - 17:19, 37:2 background [1] - 11:5 backseat [1] - 24:3 backyard [1] - 30:17		

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**blithe** [1] - 24:17  
**block** [1] - 43:7  
**blood** [1] - 55:9  
**blooming** [1] - 20:8  
**blowing** [1] - 17:8  
**Board** [77] - 1:13, 2:6, 3:9, 3:11, 3:17, 3:21, 4:2, 4:6, 4:8, 4:12, 4:20, 5:4, 5:9, 5:20, 5:22, 6:3, 6:7, 6:9, 6:16, 6:20, 7:3, 7:7, 7:10, 7:14, 7:18, 8:12, 8:16, 9:6, 9:10, 10:11, 10:12, 10:16, 11:3, 11:20, 13:13, 14:4, 14:5, 14:10, 15:3, 20:6, 22:10, 22:16, 26:18, 27:11, 28:8, 28:9, 28:12, 28:17, 28:19, 28:20, 30:12, 38:22, 39:12, 41:13, 41:15, 41:16, 41:17, 44:11, 45:10, 45:11, 45:16, 47:6, 47:17, 47:19, 48:7, 48:13, 48:14, 49:14, 51:4, 51:8, 52:7, 52:20, 53:14, 53:18, 54:4, 55:6  
**Board's** [1] - 4:13  
**Boards** [3] - 5:10, 22:18, 45:17  
**body** [3] - 4:6, 27:12  
**boggles** [2] - 44:9  
**boggling** [1] - 41:23  
**born** [1] - 23:10  
**bothered** [1] - 32:18  
**bought** [2] - 26:18, 41:21  
**bound** [1] - 4:7  
**Box** [2] - 1:21, 44:17  
**boy** [1] - 26:19  
**brand** [1] - 23:6  
**breaking** [1] - 36:5  
**breathe** [1] - 17:6  
**brief** [1] - 8:5  
**briefly** [2] - 3:16, 33:18  
**bright** [2] - 18:1, 18:3  
**broke** [1] - 20:18  
**broken** [2] - 23:5, 28:3  
**Brooks** [1] - 10:9  
**brought** [1] - 5:21  
**bucket** [1] - 38:6  
**Building** [1] - 22:15  
**building** [16] - 3:12, 6:18, 6:19, 15:12, 19:1, 19:5, 21:15, 23:1, 31:11, 34:15, 35:7, 37:19, 41:18,

41:19, 41:21  
**buildings** [3] - 19:7, 24:10, 27:22  
**built** [2] - 27:22, 31:12  
**bunch** [1] - 48:11  
**bushes** [1] - 21:15  
**business** [12] - 18:21, 19:3, 20:8, 20:11, 23:4, 23:21, 39:8, 39:19, 40:1, 43:8, 44:23, 45:5  
**businesses** [4] - 18:9, 22:1, 22:4, 43:5

## C

**calendar** [1] - 50:4  
**camera** [1] - 38:17  
**cameras** [1] - 36:6  
**Canadian** [1] - 21:13  
**cannot** [1] - 38:2  
**Capital** [1] - 26:11  
**CAROL** [2] - 19:20, 21:13  
**Carol** [1] - 19:20  
**CARROLL** [7] - 35:21, 36:1, 36:22, 42:6, 42:17, 42:23, 43:4  
**Carroll** [4] - 35:21, 40:19, 40:21, 42:2  
**cars** [2] - 38:12, 38:15  
**case** [5] - 5:3, 5:21, 30:18, 31:6, 32:8  
**cases** [3] - 5:10, 5:15, 30:22  
**causes** [1] - 20:3  
**ceased** [1] - 38:12  
**certain** [3] - 3:6, 5:12, 15:14  
**certainly** [3] - 11:2, 12:18, 41:6  
**CERTIFICATION** [1] - 55:1  
**certified** [1] - 14:9  
**CERTIFY** [2] - 55:4, 55:8  
**cetera** [1] - 33:16  
**Chairman** [7] - 8:9, 15:4, 27:5, 47:5, 48:17, 50:8, 51:9  
**Chairperson** [3] - 10:19, 46:3, 55:5  
**CHAIRPERSON** [74] - 2:1, 6:12, 7:8, 7:20, 8:4, 9:17, 9:20, 9:22, 10:22, 11:13, 12:16, 14:19, 16:17, 18:14, 19:19, 21:10, 21:12, 22:7, 24:20, 25:4, 26:3, 27:1, 27:4,

27:9, 28:8, 28:11, 28:15, 28:18, 28:22, 29:4, 30:6, 31:1, 31:5, 31:13, 31:19, 31:22, 32:2, 32:4, 32:12, 32:23, 35:19, 36:19, 37:10, 37:14, 38:18, 42:5, 42:15, 42:21, 43:1, 43:14, 45:7, 45:19, 45:22, 46:1, 46:4, 46:13, 47:16, 48:6, 48:11, 49:6, 49:9, 49:19, 50:3, 50:15, 51:1, 52:8, 53:8, 53:13, 53:17, 53:20, 54:1, 54:7, 54:16, 54:22  
**challenged** [1] - 4:4  
**challenges** [1] - 4:9  
**chance** [3] - 7:11, 12:17, 13:6  
**changes** [1] - 39:13  
**Chanty** [1] - 40:21  
**characteristics** [2] - 5:13, 5:14  
**charged** [1] - 13:10  
**CHARLES** [6] - 2:18, 8:3, 47:5, 48:9, 50:8, 53:19  
**Charles** [3] - 2:19, 15:13, 15:18  
**check** [1] - 51:2  
**chemical** [1] - 42:12  
**chemicals** [1] - 42:12  
**Chinese** [1] - 44:18  
**Chris** [1] - 20:22  
**Christine's** [1] - 20:15  
**Christmas** [1] - 20:4  
**circumstances** [1] - 47:20  
**cited** [4] - 5:15, 16:2, 35:6, 35:13  
**citizens** [2] - 20:1, 40:5  
**city** [1] - 38:13  
**client** [1] - 7:22  
**close** [1] - 45:19  
**closed** [1] - 54:2  
**closing** [1] - 24:15  
**cloud** [1] - 20:15  
**club** [1] - 26:19  
**Club** [1] - 20:5  
**code** [2] - 3:6, 49:13  
**codes** [1] - 39:20  
**COLLARD** [4] - 7:19, 45:21, 46:6, 54:19  
**Collard** [1] - 46:5  
**Collingwood** [1] - 29:20  
**coming** [2] - 16:22,

29:10  
**comment** [6] - 7:13, 9:23, 20:22, 40:18, 51:19, 52:19  
**comments** [16] - 6:6, 7:12, 7:13, 7:21, 8:8, 11:20, 15:2, 35:1, 37:17, 41:3, 43:21, 47:3, 47:10, 51:16, 51:22, 54:4  
**commercial** [15] - 13:22, 13:23, 17:12, 17:15, 18:21, 19:3, 19:11, 22:14, 23:3, 37:6, 41:11, 43:4, 44:5, 44:15, 44:22  
**commercially** [1] - 40:2  
**commissioned** [1] - 38:23  
**Commissions** [1] - 26:13  
**communicating** [2] - 41:15, 41:16  
**companies** [1] - 22:1  
**complain** [3] - 36:4, 36:7, 36:23  
**complained** [3] - 5:18, 35:8, 36:23  
**complaining** [2] - 21:7, 42:7  
**complaints** [7] - 4:22, 5:2, 5:7, 5:23, 16:1, 34:16, 35:3  
**complete** [1] - 8:17  
**completed** [1] - 14:7  
**complex** [1] - 34:9  
**compliance** [3] - 3:12, 23:22, 39:20  
**compiles** [1] - 35:13  
**comply** [1] - 6:21  
**compounded** [1] - 23:19  
**comprehensive** [1] - 13:20  
**compromised** [1] - 18:21  
**concerning** [1] - 2:9  
**concerns** [1] - 35:15  
**concrete** [2] - 12:7, 20:20  
**condition** [1] - 24:2  
**conditioner** [1] - 53:5  
**conditions** [5] - 7:6, 11:23, 12:3, 12:4, 33:6  
**confer** [1] - 50:11  
**confirm** [2] - 51:5, 54:8  
**conflict** [1] - 53:22

**confused** [1] - 25:15  
**connection** [1] - 3:11  
**consequences** [1] - 16:23  
**consider** [2] - 47:8, 47:12  
**consideration** [1] - 13:15  
**consignment** [1] - 43:12  
**consist** [1] - 2:23  
**construction** [2] - 3:1, 39:18  
**constructive** [1] - 29:5  
**consultant** [1] - 6:14  
**contaminants** [1] - 17:13  
**contamination** [1] - 33:15  
**continue** [2] - 27:15, 28:23  
**continued** [1] - 13:15  
**continues** [1] - 19:15  
**copy** [1] - 11:14  
**corner** [1] - 43:10  
**correspondence** [2] - 8:20, 8:22  
**corrupt** [1] - 28:13  
**corruption** [4] - 26:17, 26:20, 28:3, 28:6  
**cost** [1] - 32:6  
**Counsel** [2] - 8:15, 9:17  
**countless** [1] - 41:13  
**County** [3] - 14:5, 21:5, 55:17  
**COUNTY** [1] - 1:1  
**couple** [3] - 44:18, 44:19, 47:12  
**course** [1] - 34:16  
**Court** [8] - 1:20, 4:4, 4:9, 5:22, 30:16, 30:22, 31:17, 55:3  
**Courts** [2] - 5:13, 53:11  
**cow** [1] - 36:9  
**cowards** [1] - 26:9  
**cows** [2] - 41:21, 45:1  
**created** [1] - 7:2  
**creating** [1] - 16:5  
**credit** [2] - 45:10, 45:15  
**Creek** [3] - 1:14, 2:6, 26:7  
**criteria** [1] - 9:10  
**Culvert** [2] - 31:17, 31:18  
**curative** [1] - 52:13  
**cured** [1] - 52:16



current [1] - 40:8	depreciated [1] - 34:7 DERRICK [1] - 32:15	DOT [2] - 20:18, 21:1 Dowd [2] - 32:2, 32:3	Enforcement [2] - 15:20, 16:4	Expires [1] - 55:18 explained [1] - 15:13
<b>D</b>				
damn [1] - 36:1 date [5] - 7:23, 50:14, 50:19, 50:21, 50:23, 51:2 dated [1] - 11:15 dates [1] - 16:12 days [5] - 23:5, 49:5, 49:12, 49:16, 49:22 deal [3] - 31:21, 33:6, 34:23 dealt [1] - 35:2 Dean [6] - 10:10, 13:1, 14:23, 38:19, 38:20, 40:17 DEAN [4] - 12:23, 14:23, 38:20, 40:17 Dean's [2] - 3:18, 51:12 Deans [4] - 18:19, 19:23, 20:21, 21:2 DEC [3] - 21:5, 35:3, 35:8 decaying [1] - 20:20 deceitful [1] - 45:3 December [1] - 14:7 decide [2] - 27:13, 47:17 decided [1] - 9:7 decision [12] - 5:9, 7:14, 20:7, 20:16, 24:18, 29:15, 35:17, 48:1, 48:14, 49:10, 49:12, 52:1 decisions [1] - 13:10 declared [1] - 4:5 definitely [1] - 45:15 definition [1] - 43:2 degraded [1] - 17:7 delayed [1] - 14:10 deliberate [2] - 47:3, 48:1 deliberating [1] - 7:15 deliberations [1] - 47:2 delve [1] - 52:6 demanding [1] - 48:7 demonstrated [1] - 33:9 demonstrates [1] - 5:4 denial [1] - 5:22 denied [3] - 5:10, 5:20, 39:23 deny [4] - 6:2, 12:2, 33:13, 35:17 Department [1] - 21:6 deplorable [1] - 37:23	designated [1] - 44:22 desire [1] - 9:14 detail [2] - 7:6, 34:18 determination [6] - 4:20, 6:1, 9:8, 49:15, 49:23, 54:14 determinations [1] - 4:7 difference [2] - 5:5, 44:4 different [2] - 4:10, 13:8 difficult [1] - 13:9 digest [2] - 46:14, 47:22 digested [1] - 47:2 diligence [1] - 11:4 directly [2] - 21:19, 37:18 dirge [1] - 17:21 dirt [1] - 42:10 disapprove [1] - 49:16 discrepancies [1] - 32:9 discretion [1] - 54:3 discuss [1] - 3:16 discussed [1] - 6:17 discussing [1] - 40:12 discussion [2] - 3:5, 36:17 disdain [1] - 20:15 dishonesty [1] - 28:6 displayed [1] - 22:23 distress [1] - 22:12 distressed [1] - 22:11 district [3] - 3:3, 4:2, 4:21 disturbs [1] - 18:19 ditch [1] - 12:12 document [1] - 11:12 documentation [1] - 11:17 documented [1] - 18:8 documents [3] - 8:6, 11:10, 18:8 dog [1] - 44:19 dollars [2] - 18:11, 30:22 donated [1] - 20:3 done [9] - 7:14, 12:7, 15:7, 15:14, 22:19, 28:12, 37:23, 45:16, 51:21 door [1] - 34:16 doors [1] - 19:23	down [13] - 9:1, 12:11, 23:7, 30:19, 37:3, 38:6, 38:12, 40:21, 41:20, 42:11, 43:9, 44:19 downs [1] - 42:12 DPW [1] - 15:9 drain [1] - 12:12 drainage [2] - 20:17, 20:21 dream [1] - 23:13 drifts [1] - 35:5 DRISCOLL [1] - 21:11 drive [2] - 13:22, 34:8 drop [1] - 29:23 dry [1] - 30:21 due [2] - 11:4, 36:15 duelling [1] - 51:11 dug [3] - 21:15, 23:21, 27:23 dumping [1] - 36:9 during [1] - 15:3 dust [6] - 17:7, 17:10, 24:6, 36:7, 36:8, 42:10 dust-ball [1] - 17:10	engineer [1] - 33:11 engineering [1] - 8:15 enjoy [4] - 23:14, 29:19, 30:1, 40:5 enormous [1] - 19:5 enterprise [1] - 44:5 entertain [1] - 13:7 entire [2] - 33:19, 39:16 entitled [1] - 41:2 entrusted [1] - 19:9 environment [2] - 17:14, 23:11 environmental [2] - 16:20, 33:7 equal [2] - 43:18, 47:18 equipment [10] - 2:13, 2:22, 12:9, 13:18, 15:15, 16:7, 17:13, 22:21, 25:22 Equipment [2] - 1:6, 41:9 erected [1] - 24:10 errors [1] - 13:14 ESQ [21] - 2:18, 8:3, 8:9, 10:8, 10:18, 11:1, 11:19, 33:2, 47:5, 48:9, 48:17, 49:13, 50:1, 50:8, 50:16, 52:2, 52:5, 52:10, 52:21, 53:19, 54:5 established [1] - 15:17 et [1] - 33:15 evaluate [2] - 47:17, 47:22 evaluation [1] - 48:19 Evening [1] - 6:13 evening [1] - 48:20 event [2] - 4:12, 11:19 everyday [1] - 38:10 evidence [1] - 13:5 evident [1] - 24:16 evolve [1] - 20:13 evolved [2] - 8:14, 19:6 exacerbate [1] - 40:3 exact [1] - 50:14 example [3] - 18:10, 26:16, 33:17 excuse [4] - 9:15, 12:23, 13:2, 54:12 existing [6] - 2:22, 3:22, 23:22, 51:21, 52:11, 52:15 experience [1] - 41:5	extended [1] - 7:22 eyesore [1] - 18:2
<b>E</b>				
E-mail: adrienne@apstenographic.com [1] - 1:22 EAF [1] - 11:9 east [1] - 21:20 echoing [1] - 38:9 edge [1] - 23:2 education [1] - 7:2 effects [1] - 33:18 effort [1] - 34:1 eight [5] - 18:12, 25:11, 29:17, 29:22, 33:23 eighteen [3] - 15:23, 41:14 either [3] - 12:1, 51:17, 52:19 elderly [1] - 44:19 elements [2] - 7:16, 17:14 eleven [1] - 8:11 emerging [1] - 23:5 employed [1] - 20:10 enabled [1] - 23:18 encourage [1] - 18:13 endeavor [1] - 22:14 endeavors [1] - 40:1 enforcement [1] - 19:16				
<b>F</b>				
face [1] - 20:11 fact [8] - 4:17, 5:8, 7:17, 7:22, 13:19, 38:1, 40:19, 41:8 fall [1] - 32:10 failed [1] - 32:11 fair [1] - 49:6 faith [1] - 26:15 fall [1] - 24:1 Falls [1] - 23:9 family [1] - 29:13 far [6] - 7:14, 29:20, 37:23, 41:5, 52:5, 54:4 farm [9] - 2:12, 2:21, 13:18, 15:15, 16:7, 22:20, 22:21, 22:22, 44:5 Farm [1] - 41:9 farm-ish [1] - 22:22 farmer [1] - 37:3 farmers [2] - 42:8, 42:13 farming [2] - 12:9, 44:8 farms [2] - 36:8, 36:9 fast [3] - 11:2, 13:3, 35:23 favor [2] - 37:8, 54:17 features [1] - 6:17 February [1] - 14:16 feet [5] - 13:3, 33:23, 34:1, 34:3, 34:21 felt [1] - 32:19 few [1] - 2:20 fiasco [1] - 39:16 fields [1] - 42:9 fifteen [1] - 21:11 fifty [1] - 18:12 fifty-eight [1] - 18:12 figured [1] - 2:19 file [1] - 11:16 filed [2] - 8:6, 41:16 filling [1] - 15:23 finally [1] - 21:1 fine [3] - 32:21, 45:2, 51:9 fingers [1] - 31:7 firm [1] - 8:16 first [3] - 23:1, 39:16, 49:21 fit [1] - 24:3				

AP Stenographic Services

PO Box 171

Lockport, New York 14095 (716) 425-8735

<p><b>five</b> [4] - 2:4, 19:6, 20:12, 25:10</p> <p><b>five-mile</b> [1] - 20:12</p> <p><b>fix</b> [1] - 13:14</p> <p><b>floodlight</b> [1] - 38:1</p> <p><b>floor</b> [1] - 27:3</p> <p><b>Florida</b> [1] - 21:22</p> <p><b>flush</b> [1] - 20:23</p> <p><b>focus</b> [2] - 41:7</p> <p><b>FOIL</b> [1] - 11:8</p> <p><b>follow</b> [4] - 4:3, 9:3, 14:2, 49:1</p> <p><b>following</b> [2] - 2:9, 49:14</p> <p><b>follows</b> [1] - 15:3</p> <p><b>foot</b> [3] - 24:4, 34:10</p> <p><b>form</b> [1] - 46:22</p> <p><b>forth</b> [8] - 3:23, 4:10, 9:2, 33:8, 38:16, 51:15, 52:6</p> <p><b>forty</b> [1] - 29:17</p> <p><b>forty-eight</b> [1] - 29:17</p> <p><b>forward</b> [2] - 15:21, 39:11</p> <p><b>fouled</b> [1] - 17:11</p> <p><b>four</b> [2] - 19:6, 25:10</p> <p><b>four-thirty</b> [1] - 25:10</p> <p><b>fourteen</b> [2] - 18:11, 34:21</p> <p><b>Fox</b> [1] - 46:7</p> <p><b>FOX</b> [3] - 46:8, 54:15, 54:20</p> <p><b>frankly</b> [1] - 41:2</p> <p><b>Fredericka</b> [3] - 10:10, 13:1, 38:20</p> <p><b>FREDERICKA</b> [2] - 12:23, 38:20</p> <p><b>FREIERMUTH</b> [5] - 46:3, 46:5, 46:7, 46:9, 46:11</p> <p><b>frequently</b> [1] - 20:3</p> <p><b>fresh</b> [1] - 23:10</p> <p><b>Friday</b> [1] - 17:7</p> <p><b>friend</b> [1] - 27:21</p> <p><b>friends</b> [2] - 37:20, 37:21</p> <p><b>front</b> [3] - 23:1, 23:13, 26:1</p> <p><b>full</b> [3] - 14:19, 23:23, 48:12</p> <p><b>fumes</b> [2] - 5:1, 23:11</p> <p><b>funeral</b> [1] - 21:21</p> <p><b>furniture</b> [1] - 22:2</p>	<p><b>Garden</b> [2] - 20:5, 41:9</p> <p><b>Garden/Farm</b> [1] - 1:6</p> <p><b>given</b> [5] - 2:3, 43:17, 46:14, 46:19, 47:17</p> <p><b>glad</b> [2] - 29:9, 29:10</p> <p><b>God</b> [2] - 19:9, 45:6</p> <p><b>government</b> [2] - 26:15, 28:6</p> <p><b>grant</b> [1] - 11:23</p> <p><b>granted</b> [1] - 39:3</p> <p><b>grease</b> [1] - 12:8</p> <p><b>great</b> [2] - 30:3, 53:16</p> <p><b>greater</b> [1] - 49:21</p> <p><b>greatly</b> [1] - 18:19</p> <p><b>greenhouse</b> [2] - 43:9, 43:10</p> <p><b>grinders</b> [1] - 17:20</p> <p><b>gripe</b> [2] - 5:5, 5:6</p> <p><b>ground</b> [5] - 12:11, 34:20, 35:9, 36:10, 39:17</p> <p><b>guess</b> [3] - 7:20, 25:23, 48:20</p> <p><b>guide</b> [1] - 19:2</p> <p><b>guidelines</b> [1] - 15:17</p> <p><b>guy</b> [3] - 27:20, 30:14, 36:3</p> <p><b>guys</b> [8] - 2:20, 16:11, 24:5, 26:22, 27:19, 32:10, 36:8, 38:17</p>	<p><b>herbicides</b> [1] - 12:10</p> <p><b>HEREBY</b> [1] - 55:8</p> <p><b>hereby</b> [1] - 2:3</p> <p><b>hereunto</b> [1] - 55:11</p> <p><b>hi</b> [1] - 19:20</p> <p><b>hide</b> [1] - 19:14</p> <p><b>high</b> [2] - 21:7, 34:10</p> <p><b>highway</b> [2] - 23:2, 38:16</p> <p><b>history</b> [2] - 19:11, 30:20</p> <p><b>hit</b> [1] - 39:17</p> <p><b>hobby</b> [1] - 20:9</p> <p><b>Hodgson</b> [1] - 2:19</p> <p><b>Hogan</b> [1] - 10:9</p> <p><b>hold</b> [5] - 9:5, 9:12, 19:9, 27:19, 42:15</p> <p><b>holes</b> [1] - 27:23</p> <p><b>home</b> [3] - 18:9, 33:16, 39:5</p> <p><b>homes</b> [2] - 18:4, 40:6</p> <p><b>honest</b> [2] - 3:19, 27:20</p> <p><b>hope</b> [3] - 20:6, 20:14, 24:17</p> <p><b>hour</b> [1] - 46:20</p> <p><b>house</b> [3] - 30:13, 31:12, 36:7</p> <p><b>House</b> [1] - 26:11</p> <p><b>houses</b> [1] - 36:5</p> <p><b>huge</b> [6] - 23:4, 23:22, 24:10, 43:8, 44:4, 44:15</p> <p><b>hundred</b> [2] - 18:11, 18:12</p> <p><b>hung</b> [1] - 30:21</p> <p><b>husband's</b> [1] - 20:9</p>	<p><b>Improvements</b> [1] - 45:12</p> <p><b>included</b> [3] - 7:4, 10:19, 32:20</p> <p><b>including</b> [1] - 51:4</p> <p><b>Incompetence</b> [1] - 30:23</p> <p><b>Incorporated</b> [1] - 6:15</p> <p><b>Increase</b> [1] - 17:16</p> <p><b>indicated</b> [2] - 15:4, 15:18</p> <p><b>Indicates</b> [1] - 15:11</p> <p><b>Indiscriminate</b> [1] - 17:12</p> <p><b>Industrial</b> [4] - 16:21, 16:23, 18:9, 34:9</p> <p><b>infancy</b> [1] - 8:14</p> <p><b>information</b> [5] - 11:5, 11:7, 14:15, 46:14, 51:13</p> <p><b>Informed</b> [1] - 47:19</p> <p><b>Inherent</b> [1] - 5:14</p> <p><b>Initial</b> [1] - 11:10</p> <p><b>input</b> [3] - 8:7, 12:18, 48:15</p> <p><b>insights</b> [1] - 8:7</p> <p><b>Inspector</b> [1] - 22:15</p> <p><b>Inspector</b> [2] - 19:1, 31:11</p> <p><b>Integrity</b> [1] - 33:3</p> <p><b>intends</b> [1] - 16:8</p> <p><b>intensity</b> [1] - 46:20</p> <p><b>intentions</b> [1] - 2:16</p> <p><b>Interest</b> [1] - 16:3</p> <p><b>Interested</b> [2] - 2:9, 55:10</p> <p><b>Interior</b> [1] - 18:5</p> <p><b>Internet</b> [1] - 45:5</p> <p><b>Interpret</b> [1] - 47:22</p> <p><b>Intolerable</b> [1] - 23:8</p> <p><b>invalid</b> [3] - 4:1, 4:5, 4:15</p> <p><b>investigations</b> [1] - 26:14</p> <p><b>invoice</b> [1] - 15:8</p> <p><b>Involved</b> [2] - 44:10, 46:16</p> <p><b>Irritant</b> [1] - 17:23</p> <p><b>ish</b> [1] - 22:22</p> <p><b>Issue</b> [11] - 4:10, 7:18, 10:7, 13:13, 18:1, 20:17, 21:3, 23:19, 47:18, 52:23</p> <p><b>issues</b> [9] - 11:22, 12:3, 12:6, 12:14, 12:15, 12:18, 20:21, 33:7, 33:10</p> <p><b>Items</b> [1] - 6:23</p> <p><b>Itself</b> [1] - 6:1</p>	<p><b>J</b></p> <p><b>January</b> [1] - 11:15</p> <p><b>JEFFREY</b> [74] - 2:1, 6:12, 7:8, 7:20, 8:4, 9:17, 9:20, 9:22, 10:22, 11:13, 12:16, 14:19, 16:17, 18:14, 19:19, 21:10, 21:12, 22:7, 24:20, 25:4, 26:3, 27:1, 27:4, 27:9, 28:8, 28:11, 28:15, 28:18, 28:22, 29:4, 30:6, 31:1, 31:5, 31:13, 31:19, 31:22, 32:2, 32:4, 32:12, 32:23, 35:19, 36:19, 37:10, 37:14, 38:18, 42:5, 42:15, 42:21, 43:1, 43:14, 45:7, 45:19, 45:22, 46:1, 46:4, 46:13, 47:16, 48:6, 48:11, 49:6, 49:9, 49:19, 50:3, 50:15, 51:1, 52:8, 53:8, 53:13, 53:17, 53:20, 54:1, 54:7, 54:16, 54:22</p> <p><b>Jeffrey</b> [4] - 10:19, 15:4, 46:3, 55:5</p> <p><b>JIM</b> [7] - 35:21, 36:1, 36:22, 42:6, 42:17, 42:23, 43:4</p> <p><b>Jim</b> [4] - 35:21, 40:19, 40:21, 42:1</p> <p><b>Job</b> [2] - 48:18, 48:20</p> <p><b>JOHN</b> [8] - 6:13, 45:23, 46:10, 51:9, 52:4, 52:18, 53:22, 54:21</p> <p><b>John</b> [1] - 6:14</p> <p><b>Joke</b> [1] - 22:22</p> <p><b>Jones</b> [7] - 3:18, 10:8, 10:18, 13:6, 33:2, 53:23</p> <p><b>JONES</b> [4] - 10:8, 11:1, 11:19, 33:2</p> <p><b>Joy</b> [1] - 24:13</p> <p><b>Judgment</b> [2] - 3:21, 4:13</p> <p><b>July</b> [1] - 49:20</p> <p><b>June</b> [5] - 1:11, 2:7, 40:8, 54:12, 55:12</p> <p><b>jurisdictions</b> [1] - 51:11</p>
<p><b>G</b></p> <p><b>garbage</b> [1] - 5:17</p> <p><b>garden</b> [7] - 2:13, 2:22, 13:18, 16:7, 22:20, 22:21, 43:12</p>	<p><b>H</b></p> <p><b>Hall</b> [5] - 50:6, 51:3, 51:6, 53:9, 54:9</p> <p><b>hand</b> [2] - 25:7, 55:11</p> <p><b>handed</b> [1] - 10:18</p> <p><b>hands</b> [1] - 36:14</p> <p><b>hang</b> [1] - 37:20</p> <p><b>happy</b> [1] - 30:3</p> <p><b>hard</b> [1] - 21:1</p> <p><b>harmony</b> [1] - 13:19</p> <p><b>hear</b> [5] - 29:23, 42:1, 43:16, 49:8, 53:1</p> <p><b>heard</b> [2] - 21:13, 43:23</p> <p><b>Hearing</b> [1] - 1:9</p> <p><b>hearing</b> [16] - 2:2, 2:5, 2:8, 6:11, 8:19, 9:5, 9:13, 14:7, 41:4, 45:20, 49:11, 49:18, 49:20, 54:1, 54:11, 55:4</p> <p><b>heart</b> [1] - 6:23</p> <p><b>held</b> [4] - 2:5, 14:6, 49:18, 55:4</p> <p><b>Held</b> [1] - 1:10</p> <p><b>help</b> [2] - 50:6, 52:1</p> <p><b>Herb</b> [1] - 43:12</p>	<p><b>I</b></p> <p><b>ID</b> [1] - 2:11</p> <p><b>idea</b> [2] - 4:12, 51:4</p> <p><b>illegal</b> [8] - 13:7, 19:11, 19:18, 23:17, 28:13, 30:12, 39:18, 39:19</p> <p><b>Illegally</b> [3] - 13:8, 14:1, 40:8</p> <p><b>illuminate</b> [1] - 18:2</p> <p><b>illusion</b> [1] - 16:5</p> <p><b>impact</b> [1] - 24:18</p> <p><b>Impacts</b> [1] - 5:19</p> <p><b>impervious</b> [1] - 34:21</p> <p><b>Implore</b> [1] - 24:15</p> <p><b>importantly</b> [2] - 12:5, 33:8</p> <p><b>impose</b> [1] - 11:23</p> <p><b>improper</b> [1] - 4:16</p> <p><b>improvement</b> [1] - 45:15</p>	<p><b>K</b></p> <p><b>keep</b> [3] - 9:1, 25:14, 49:1</p>	

AP Stenographic Services

PO Box 171

Lockport, New York 14095 (716) 425-8735

**KENT** [1] - 32:15  
**Kent** [2] - 32:15, 34:12  
**kept** [1] - 30:4  
**KEVIN** [4] - 24:22,  
 25:1, 25:3, 25:5  
**Kevin** [1] - 24:22  
**kick** [1] - 9:1  
**kidding** [1] - 45:6  
**kids** [1] - 36:4  
**kinds** [3] - 12:8, 28:23,  
 44:7  
**knowledge** [1] - 30:20  
**known** [3] - 25:5, 36:2,  
 40:2  
**knows** [1] - 38:22  
**KUZMA** [3] - 1:20,  
 55:3, 55:16  
**KYLE** [10] - 8:9, 48:17,  
 49:13, 50:1, 50:16,  
 52:2, 52:5, 52:10,  
 52:21, 54:5  
**Kyle** [3] - 9:18, 48:15,  
 49:9

## L

**labeled** [1] - 11:9  
**lacks** [1] - 4:11  
**lady** [1] - 35:4  
**lake** [5] - 19:23, 23:13,  
 38:8, 40:7, 40:15  
**Lake** [27] - 1:6, 2:10,  
 2:23, 10:11, 12:13,  
 13:1, 15:1, 16:19,  
 16:22, 18:10, 18:17,  
 19:21, 19:22, 20:12,  
 22:1, 22:9, 24:3,  
 30:8, 31:12, 32:16,  
 36:1, 37:16, 38:20,  
 39:22, 40:18, 44:4,  
 44:19  
**lake-front** [1] - 23:13  
**lake-side** [1] - 40:15  
**land** [1] - 32:17  
**language** [2] - 52:12  
**large** [2] - 16:8, 18:1  
**larger** [1] - 7:5  
**last** [10] - 3:5, 3:9,  
 6:16, 8:12, 10:2,  
 15:22, 17:7, 25:2,  
 25:7, 25:16  
**late** [2] - 5:16, 46:20  
**lately** [2] - 23:7, 48:12  
**law** [22] - 4:1, 4:4, 4:7,  
 4:15, 5:3, 13:8,  
 13:13, 13:18, 14:1,  
 19:10, 22:19, 24:8,  
 28:2, 37:2, 37:7,  
 39:4, 39:14, 40:4,  
 40:8, 41:10, 49:12,

49:22  
**Law** [5] - 2:5, 3:2,  
 16:4, 50:13, 50:20  
**law-abiding** [1] - 40:4  
**Laws** [2] - 13:11,  
 41:22  
**laws** [6] - 3:23, 4:14,  
 23:22, 26:20, 27:11,  
 27:13  
**lawyer** [6] - 4:14,  
 18:23, 28:5, 31:9,  
 31:20, 32:1  
**Lawyer** [1] - 31:10  
**lawyers** [3] - 8:6,  
 46:16, 51:15  
**Lawyers** [1] - 8:23  
**leaching** [1] - 17:13  
**least** [3] - 9:9, 15:23,  
 51:2  
**leave** [3] - 28:22, 29:2,  
 43:15  
**leaving** [1] - 23:23  
**left** [3] - 16:10, 32:17,  
 38:21  
**legal** [3] - 14:13,  
 19:13, 43:2  
**legality** [1] - 3:22  
**legally** [1] - 22:16  
**Legislative** [1] - 27:12  
**legislative** [1] - 4:20  
**legitimate** [1] - 45:1  
**Legos** [1] - 24:11  
**letter** [1] - 4:23  
**letters** [2] - 11:22,  
 21:18  
**level** [3] - 23:8, 24:6,  
 38:4  
**Library** [1] - 20:6  
**license** [1] - 23:20  
**licensed** [1] - 8:15  
**licenses** [1] - 43:8  
**lled** [1] - 31:4  
**life** [4] - 17:1, 18:5,  
 25:6, 30:7  
**life-long** [1] - 30:7  
**lifestyle** [1] - 17:22  
**light** [2] - 17:2, 18:3  
**lights** [8] - 18:2,  
 33:16, 34:6, 36:4,  
 36:6, 36:23, 37:23,  
 42:7  
**limbo** [1] - 39:3  
**limit** [1] - 21:10  
**line** [1] - 39:5  
**listed** [1] - 18:10  
**listen** [2] - 27:5, 29:11  
**listening** [1] - 30:5  
**lit** [1] - 38:3  
**live** [15] - 16:19, 18:17,

18:20, 29:20, 29:21,  
 30:2, 32:16, 32:19,  
 40:17, 40:22, 42:4,  
 42:8, 44:4, 44:20  
**lived** [2] - 16:19, 29:17  
**lives** [3] - 29:7, 29:21,  
 40:21  
**living** [2] - 29:19,  
 40:13  
**Local** [1] - 3:2  
**Lockport** [3] - 1:21,  
 10:9, 10:10  
**look** [10] - 7:3, 7:5,  
 11:21, 24:1, 34:5,  
 35:11, 36:7, 40:15,  
 40:16, 42:20  
**looked** [1] - 33:17  
**looking** [3] - 23:6,  
 30:18, 50:4  
**loophole** [1] - 19:14  
**lost** [3] - 26:14, 30:21,  
 32:8  
**loud** [4] - 13:2, 17:18,  
 17:19, 17:21  
**love** [1] - 29:18  
**lucky** [1] - 30:1  
**ludicrous** [2] - 19:7,  
 44:8

## M

**ma'am** [7] - 12:22,  
 16:17, 18:15, 19:19,  
 22:8, 26:3, 37:11  
**machines** [1] - 38:7  
**magnificent** [1] -  
 24:14  
**mail:adrienne@**  
**apstenographicsservices**  
**.com** [1] - 1:22  
**major** [1] - 20:14  
**Malcomb** [7] - 2:14,  
 2:19, 8:5, 8:19,  
 10:12, 15:13, 15:18  
**malcomb** [1] - 7:21  
**MALCOMB** [6] - 2:18,  
 8:3, 47:5, 48:9, 50:8,  
 53:19  
**man** [5] - 19:10, 31:3,  
 36:21, 44:16, 45:3  
**man's** [2] - 30:23,  
 44:23  
**manure** [2] - 36:10,  
 42:11  
**map** [1] - 2:11  
**MARK** [3] - 46:8,  
 54:15, 54:20  
**Markets** [1] - 41:22  
**marriage** [1] - 55:9  
**material** [1] - 3:10

**materials** [1] - 3:5  
**matter** [1] - 9:8  
**Matter** [1] - 1:4  
**matters** [1] - 11:21  
**McCabe** [39] - 1:5,  
 2:10, 2:14, 2:20,  
 6:14, 8:2, 8:14, 8:21,  
 14:8, 14:12, 15:6,  
 15:16, 16:2, 16:5,  
 19:20, 19:21, 21:13,  
 23:20, 25:5, 25:17,  
 29:11, 31:8, 31:23,  
 33:8, 37:19, 39:10,  
 39:23, 40:20, 40:23,  
 41:8, 41:18, 42:3,  
 47:14, 48:2, 54:13  
**McCabe's** [5] - 2:2,  
 14:9, 18:17, 19:5,  
 51:12  
**McCabe-Service** [1] -  
 1:5  
**mean** [3] - 25:9, 25:11,  
 34:2  
**measure** [1] - 34:9  
**measures** [2] - 33:12,  
 52:13  
**media** [1] - 50:21  
**mediums** [1] - 17:5  
**meet** [1] - 50:7  
**Meeting** [1] - 50:20  
**meeting** [25] - 3:5,  
 6:16, 10:1, 15:4,  
 41:7, 41:8, 45:13,  
 46:21, 47:1, 47:4,  
 47:8, 47:12, 48:3,  
 48:8, 49:4, 49:7,  
 49:14, 50:10, 50:11,  
 50:18, 51:16, 53:2,  
 54:2, 54:10, 54:12  
**Meetings** [1] - 50:13  
**meetings** [2] - 3:4,  
 48:21  
**meets** [1] - 53:14  
**Member** [4] - 46:5,  
 46:7, 46:9, 46:11  
**MEMBER** [1] - 49:8  
**members** [1] - 51:4  
**memorandum** [1] -  
 10:14  
**men** [1] - 26:9  
**mending** [1] - 17:23  
**mentioned** [4] - 9:6,  
 33:4, 35:4, 47:15  
**merit** [1] - 4:11  
**MERT** [3] - 52:22,  
 53:11, 53:14  
**metal** [1] - 17:20  
**metastasize** [1] -  
 24:17  
**Michael** [4] - 1:5, 2:2,

2:10, 19:21  
**might** [5] - 4:23, 5:1,  
 5:17, 43:1, 53:9  
**MIKE** [2] - 47:14, 48:2  
**Mike** [26] - 6:14, 14:12,  
 15:6, 15:16, 16:2,  
 16:5, 18:17, 25:14,  
 29:11, 29:20, 31:23,  
 32:2, 32:3, 32:21,  
 36:3, 37:19, 39:10,  
 40:20, 40:23, 41:8,  
 41:18, 41:20, 42:2,  
 42:14, 47:14  
**Mike's** [2] - 25:20,  
 43:9  
**mile** [3] - 20:11, 20:12,  
 22:3  
**mind** [5] - 16:11,  
 16:14, 41:23, 44:9,  
 44:10  
**mind-boggling** [1] -  
 41:23  
**minutes** [4] - 2:20,  
 10:5, 11:2, 14:16  
**mishandled** [1] -  
 39:16  
**mitigate** [1] - 35:15  
**mitigation** [2] - 34:1,  
 34:9  
**mockery** [1] - 23:16  
**modification** [1] - 39:5  
**modifications** [1] -  
 49:17  
**moment** [1] - 12:10  
**Monday** [5] - 53:15,  
 53:17, 53:18, 54:10  
**Mondays** [1] - 53:16  
**money** [1] - 32:7  
**monstrosity** [1] -  
 22:17  
**monstrous** [1] - 19:6  
**month** [3] - 41:15,  
 49:21, 53:15  
**month's** [2] - 46:21,  
 47:3  
**months** [8] - 8:11,  
 15:8, 15:11, 15:23,  
 25:7, 25:17, 41:14  
**MOONEY** [2] - 18:16,  
 44:3  
**Mooney** [2] - 18:16,  
 44:3  
**MORGAN** [4] - 10:8,  
 11:1, 11:19, 33:2  
**Morgan** [2] - 10:8,  
 33:2  
**Moses** [1] - 24:2  
**most** [2] - 23:13,  
 29:14  
**motion** [3] - 39:3,

AP Stenographic Services

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<p>54:11, 54:16  <b>mounted</b> [1] - 18:2  <b>move</b> [1] - 6:10  <b>moved</b> [3] - 40:5,  45:21, 54:22  <b>moving</b> [1] - 15:21  <b>must</b> [1] - 38:11  <b>mutual</b> [1] - 8:1</p>	<p>53:6  <b>nonconforming</b> [1] -  16:1  <b>none</b> [1] - 33:21  <b>norm</b> [1] - 39:21  <b>Notary</b> [1] - 55:16  <b>notes</b> [1] - 43:20  <b>nothing</b> [6] - 26:17,  28:12, 35:12, 35:14,  38:5, 44:8  <b>notice</b> [3] - 2:3, 50:12,  51:6  <b>noticeable</b> [1] - 45:15  <b>noticed</b> [1] - 34:13  <b>November</b> [1] - 13:16  <b>November's</b> [1] - 39:2  <b>number</b> [3] - 3:2,  12:14, 15:12  <b>numerous</b> [1] - 46:15  <b>nuts</b> [1] - 36:12</p>	<p>19:3  <b>Open</b> [1] - 50:20  <b>opening</b> [1] - 44:16  <b>Opening</b> [1] - 50:13  <b>operate</b> [1] - 23:20  <b>operating</b> [1] - 39:9  <b>operation</b> [8] - 15:21,  16:9, 18:18, 33:20,  34:12, 34:15, 34:17,  41:11  <b>opinion</b> [3] - 4:16,  13:12, 39:22  <b>opportunity</b> [6] -  12:19, 12:22, 24:19,  43:17, 43:18, 47:18  <b>opposed</b> [1] - 12:4  <b>opposite</b> [1] - 22:5  <b>order</b> [1] - 15:14  <b>Ordinance</b> [1] - 33:19  <b>outcome</b> [1] - 55:10  <b>overall</b> [1] - 35:12  <b>overturned</b> [1] - 5:22  <b>overview</b> [1] - 2:15  <b>own</b> [4] - 19:22, 20:2,  23:13, 25:23  <b>owner</b> [1] - 22:11</p>	<p><b>paying</b> [1] - 40:5  <b>peace</b> [1] - 40:6  <b>peaceful</b> [3] - 17:22,  22:13, 29:22  <b>peak</b> [1] - 18:1  <b>people</b> [17] - 6:5,  12:20, 14:20, 18:23,  19:2, 19:8, 19:9,  23:13, 26:2, 26:14,  29:14, 29:21, 34:4,  34:8, 36:15, 37:12,  49:2  <b>per</b> [1] - 10:5  <b>perfect</b> [1] - 30:14  <b>period</b> [3] - 7:13, 48:5,  49:23  <b>permeated</b> [1] - 23:10  <b>permit</b> [8] - 4:19, 5:11,  12:1, 33:13, 35:18,  39:7, 41:18, 41:20  <b>permits</b> [3] - 27:23,  28:1, 34:19  <b>person</b> [2] - 36:20,  42:15  <b>personal</b> [5] - 25:20,  25:23, 29:1, 29:13,  31:1  <b>personally</b> [1] - 31:4  <b>persons</b> [1] - 2:9  <b>pertaining</b> [2] - 16:1,  40:19  <b>pesticides</b> [1] - 12:9  <b>Peter</b> [1] - 16:13  <b>phenomenons</b> [1] -  16:21  <b>Phone</b> [1] - 1:22  <b>phrase</b> [1] - 2:68  <b>physical</b> [2] - 7:6, 7:16  <b>pick</b> [3] - 38:2, 38:21,  50:19  <b>pictures</b> [2] - 16:11,  44:6  <b>piece</b> [1] - 18:3  <b>pin</b> [1] - 29:23  <b>pipe</b> [1] - 20:18  <b>place</b> [8] - 9:4, 30:14,  33:12, 40:14, 42:10,  42:17, 42:19, 43:8  <b>placed</b> [1] - 36:14  <b>Plan</b> [1] - 1:5  <b>plan</b> [39] - 2:2, 2:12,  3:3, 3:9, 4:18, 5:11,  7:1, 7:5, 7:17, 7:23,  8:13, 8:17, 13:7,  13:14, 13:20, 14:9,  14:14, 15:6, 15:11,  15:18, 16:6, 18:13,  19:13, 24:10, 24:16,  27:14, 27:15, 27:18,  33:5, 33:9, 33:17,</p>	<p>33:23, 34:23, 39:11,  39:22, 49:17, 51:20,  54:13  <b>planning</b> [2] - 29:10,  50:5  <b>Planning</b> [15] - 1:13,  2:5, 3:20, 4:6, 4:12,  5:10, 5:20, 5:21,  8:12, 15:3, 28:19,  41:16, 45:11, 49:14,  55:5  <b>plans</b> [1] - 39:6  <b>pleading</b> [1] - 24:9  <b>plowing</b> [2] - 36:8,  42:9  <b>plugged</b> [1] - 20:21  <b>plunge</b> [1] - 39:11  <b>PO</b> [1] - 1:21  <b>podium</b> [7] - 2:15,  10:3, 26:4, 37:11,  43:19, 44:1, 44:2  <b>point</b> [10] - 4:17, 8:18,  9:22, 15:21, 21:23,  22:3, 29:8, 30:10,  48:15, 50:17  <b>pointed</b> [1] - 10:12  <b>pointing</b> [1] - 31:7  <b>points</b> [1] - 51:17  <b>Police</b> [1] - 30:17  <b>police</b> [1] - 15:20  <b>political</b> [1] - 26:17  <b>polluted</b> [1] - 17:4  <b>pollution</b> [3] - 17:23,  24:7, 33:15  <b>pond</b> [2] - 21:16,  23:21  <b>Porter</b> [17] - 1:13, 2:4,  2:6, 8:1, 13:21, 20:2,  22:15, 24:13, 26:16,  29:8, 29:17, 29:19,  30:3, 30:13, 32:7,  55:5  <b>position</b> [2] - 10:13,  13:9  <b>pounding</b> [1] - 17:20  <b>power</b> [4] - 17:12,  17:14, 23:8, 35:9  <b>power-washing</b> [1] -  17:14  <b>pray</b> [1] - 19:8  <b>precedent</b> [1] - 44:14  <b>preparation</b> [1] - 6:21  <b>present</b> [2] - 8:16,  52:8  <b>presented</b> [5] - 3:17,  8:5, 13:5, 47:23,  49:18  <b>pressure</b> [1] - 13:17  <b>pretty</b> [1] - 10:1  <b>previous</b> [1] - 45:17</p>
<p><b>N</b></p> <p><b>name</b> [12] - 6:13, 9:16,  10:4, 13:1, 14:23,  16:18, 18:16, 25:2,  32:15, 37:14, 40:17,  44:3  <b>nature</b> [2] - 33:22,  52:17  <b>necessarily</b> [1] - 50:18  <b>need</b> [7] - 10:5, 15:14,  28:4, 31:14, 47:21,  49:22, 50:19  <b>needs</b> [4] - 20:10,  46:17, 47:17, 48:13  <b>negative</b> [1] - 16:22  <b>neighbor</b> [4] - 8:21,  21:14, 30:18, 37:9  <b>neighbor's</b> [1] - 4:14  <b>neighborhood</b> [4] -  4:22, 22:13, 24:5,  24:12  <b>neighboring</b> [2] - 3:8,  18:4  <b>neighbors</b> [9] - 5:18,  21:19, 22:16, 30:16,  35:16, 36:2, 37:22  <b>never</b> [7] - 23:12, 25:8,  25:18, 28:1, 41:20,  52:23  <b>NEW</b> [1] - 1:1  <b>new</b> [5] - 2:23, 14:17,  23:6, 39:1, 39:3  <b>New</b> [9] - 1:7, 1:15,  1:21, 2:7, 2:11, 29:9,  30:4, 30:8, 55:17  <b>next</b> [11] - 21:2, 32:19,  34:15, 43:15, 46:21,  47:1, 47:3, 47:8,  48:3, 49:7, 49:19  <b>Niagara</b> [4] - 14:5,  21:5, 23:9, 55:17  <b>NIAGARA</b> [1] - 1:1  <b>nice</b> [2] - 40:14, 42:1  <b>night</b> [2] - 29:22, 38:4  <b>nightmare</b> [1] - 23:15  <b>nights</b> [2] - 50:6, 53:9  <b>nobody</b> [2] - 4:4, 53:1  <b>noise</b> [11] - 4:23, 17:2,  17:16, 17:17, 23:8,  33:14, 36:23, 38:4,</p>	<p><b>O</b></p> <p><b>o'clock</b> [2] - 25:10,  29:22  <b>oath</b> [1] - 19:1  <b>objection</b> [1] - 47:6  <b>objections</b> [1] - 5:23  <b>obnoxious</b> [1] - 30:15  <b>obtained</b> [1] - 8:14  <b>obviously</b> [2] - 2:16,  22:4  <b>OF</b> [2] - 1:1  <b>office</b> [1] - 10:14  <b>Officer</b> [1] - 15:20  <b>official</b> [1] - 10:15  <b>Officials</b> [1] - 19:17  <b>oil</b> [1] - 12:8  <b>ol'</b> [1] - 26:19  <b>OLIPHANT</b> [4] - 24:22,  25:1, 25:3, 25:5  <b>Oliphant</b> [1] - 25:3  <b>once</b> [9] - 22:12,  24:13, 33:2, 35:6,  36:15, 43:20, 50:11,  50:20, 52:18  <b>one</b> [25] - 5:15, 10:2,  11:10, 11:13, 11:18,  11:21, 14:20, 21:8,  21:21, 23:2, 27:22,  35:4, 36:19, 38:6,  40:11, 40:12, 40:18,  42:15, 43:6, 44:2,  45:2, 46:23, 48:18,  50:12, 52:2  <b>ongoing</b> [1] - 39:1  <b>online</b> [1] - 34:14  <b>Ontario</b> [2] - 12:13,  20:13  <b>open</b> [3] - 5:16, 9:23,</p>	<p><b>P</b></p> <p><b>P.M</b> [2] - 2:8, 54:12  <b>p.m</b> [1] - 1:12  <b>package</b> [1] - 7:4  <b>packet</b> [1] - 10:18  <b>paid</b> [1] - 31:10  <b>paint</b> [6] - 17:4, 17:15,  21:14, 23:10, 35:5  <b>painting</b> [2] - 15:10,  22:23  <b>painting</b> [4] - 15:5,  15:12, 16:9, 23:3  <b>Pandora's</b> [1] - 44:17  <b>paper</b> [1] - 4:11  <b>Park</b> [1] - 25:1  <b>parking</b> [3] - 23:12,  38:13, 38:14  <b>Parkway</b> [1] - 24:2  <b>part</b> [9] - 10:15, 11:18,  15:5, 28:7, 33:20,  40:2, 46:22, 46:23,  50:4  <b>participate</b> [1] - 20:3  <b>particulates</b> [2] - 35:4,  35:7  <b>party</b> [2] - 29:3, 55:9  <b>pass</b> [1] - 37:5  <b>passed</b> [2] - 13:8, 14:1  <b>past</b> [5] - 11:23, 12:7,  15:7, 23:8, 30:20  <b>patio</b> [1] - 20:20  <b>paving</b> [1] - 7:17</p>	<p><b>paying</b> [1] - 40:5  <b>peace</b> [1] - 40:6  <b>peaceful</b> [3] - 17:22,  22:13, 29:22  <b>peak</b> [1] - 18:1  <b>people</b> [17] - 6:5,  12:20, 14:20, 18:23,  19:2, 19:8, 19:9,  23:13, 26:2, 26:14,  29:14, 29:21, 34:4,  34:8, 36:15, 37:12,  49:2  <b>per</b> [1] - 10:5  <b>perfect</b> [1] - 30:14  <b>period</b> [3] - 7:13, 48:5,  49:23  <b>permeated</b> [1] - 23:10  <b>permit</b> [8] - 4:19, 5:11,  12:1, 33:13, 35:18,  39:7, 41:18, 41:20  <b>permits</b> [3] - 27:23,  28:1, 34:19  <b>person</b> [2] - 36:20,  42:15  <b>personal</b> [5] - 25:20,  25:23, 29:1, 29:13,  31:1  <b>personally</b> [1] - 31:4  <b>persons</b> [1] - 2:9  <b>pertaining</b> [2] - 16:1,  40:19  <b>pesticides</b> [1] - 12:9  <b>Peter</b> [1] - 16:13  <b>phenomenons</b> [1] -  16:21  <b>Phone</b> [1] - 1:22  <b>phrase</b> [1] - 2:68  <b>physical</b> [2] - 7:6, 7:16  <b>pick</b> [3] - 38:2, 38:21,  50:19  <b>pictures</b> [2] - 16:11,  44:6  <b>piece</b> [1] - 18:3  <b>pin</b> [1] - 29:23  <b>pipe</b> [1] - 20:18  <b>place</b> [8] - 9:4, 30:14,  33:12, 40:14, 42:10,  42:17, 42:19, 43:8  <b>placed</b> [1] - 36:14  <b>Plan</b> [1] - 1:5  <b>plan</b> [39] - 2:2, 2:12,  3:3, 3:9, 4:18, 5:11,  7:1, 7:5, 7:17, 7:23,  8:13, 8:17, 13:7,  13:14, 13:20, 14:9,  14:14, 15:6, 15:11,  15:18, 16:6, 18:13,  19:13, 24:10, 24:16,  27:14, 27:15, 27:18,  33:5, 33:9, 33:17,</p>	<p>33:23, 34:23, 39:11,  39:22, 49:17, 51:20,  54:13  <b>planning</b> [2] - 29:10,  50:5  <b>Planning</b> [15] - 1:13,  2:5, 3:20, 4:6, 4:12,  5:10, 5:20, 5:21,  8:12, 15:3, 28:19,  41:16, 45:11, 49:14,  55:5  <b>plans</b> [1] - 39:6  <b>pleading</b> [1] - 24:9  <b>plowing</b> [2] - 36:8,  42:9  <b>plugged</b> [1] - 20:21  <b>plunge</b> [1] - 39:11  <b>PO</b> [1] - 1:21  <b>podium</b> [7] - 2:15,  10:3, 26:4, 37:11,  43:19, 44:1, 44:2  <b>point</b> [10] - 4:17, 8:18,  9:22, 15:21, 21:23,  22:3, 29:8, 30:10,  48:15, 50:17  <b>pointed</b> [1] - 10:12  <b>pointing</b> [1] - 31:7  <b>points</b> [1] - 51:17  <b>Police</b> [1] - 30:17  <b>police</b> [1] - 15:20  <b>political</b> [1] - 26:17  <b>polluted</b> [1] - 17:4  <b>pollution</b> [3] - 17:23,  24:7, 33:15  <b>pond</b> [2] - 21:16,  23:21  <b>Porter</b> [17] - 1:13, 2:4,  2:6, 8:1, 13:21, 20:2,  22:15, 24:13, 26:16,  29:8, 29:17, 29:19,  30:3, 30:13, 32:7,  55:5  <b>position</b> [2] - 10:13,  13:9  <b>pounding</b> [1] - 17:20  <b>power</b> [4] - 17:12,  17:14, 23:8, 35:9  <b>power-washing</b> [1] -  17:14  <b>pray</b> [1] - 19:8  <b>precedent</b> [1] - 44:14  <b>preparation</b> [1] - 6:21  <b>present</b> [2] - 8:16,  52:8  <b>presented</b> [5] - 3:17,  8:5, 13:5, 47:23,  49:18  <b>pressure</b> [1] - 13:17  <b>pretty</b> [1] - 10:1  <b>previous</b> [1] - 45:17</p>

AP Stenographic Services

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Lockport, New York 14095 (716) 425-8735

**pride** [1] - 24:13  
**principal** [1] - 3:23  
**problem** [9] - 25:13, 37:1, 37:8, 37:19, 40:20, 42:2, 42:18, 45:2, 45:3  
**problems** [1] - 34:13  
**procedural** [1] - 50:17  
**procedurally** [3] - 9:2, 9:9, 11:21  
**Procedurally** [1] - 9:4  
**procedure** [3] - 4:3, 9:4, 49:1  
**procedures** [3] - 13:12, 14:3, 51:19  
**proceed** [2] - 8:19, 11:5  
**proceedings** [1] - 55:7  
**process** [5] - 13:16, 16:4, 39:12, 45:11, 46:17  
**produced** [1] - 8:22  
**project** [4] - 5:6, 6:17, 6:20, 6:22  
**promulgating** [1] - 23:17  
**proof** [1] - 45:4  
**proper** [3] - 4:3, 13:11, 14:2  
**properties** [2] - 3:8, 12:13  
**property** [16] - 2:3, 2:22, 16:2, 18:3, 18:6, 19:11, 19:22, 20:17, 21:2, 22:11, 23:14, 33:22, 34:7, 35:6, 35:11, 39:18  
**proposal** [1] - 35:10  
**propose** [1] - 46:21  
**proposed** [1] - 6:19  
**protect** [3] - 9:3, 26:22, 27:2  
**protected** [1] - 41:21  
**prove** [1] - 33:14  
**provide** [1] - 50:21  
**provided** [6] - 3:9, 9:9, 9:11, 11:11, 11:14, 11:15  
**providing** [1] - 51:13  
**provision** [1] - 41:9  
**provisions** [1] - 3:6  
**Public** [2] - 1:9, 55:16  
**public** [24] - 2:1, 2:5, 6:4, 6:11, 7:12, 7:21, 8:8, 8:19, 9:5, 9:13, 9:23, 14:6, 45:20, 47:3, 47:10, 48:18, 49:18, 49:20, 50:22, 54:1, 54:2, 54:11, 55:4

**purchased** [1] - 21:1  
**purpose** [2] - 16:6, 41:3  
**purposes** [1] - 2:8  
**pursuant** [2] - 2:3, 3:3  
**pursue** [1] - 39:23  
**push** [1] - 47:11  
**put** [12] - 4:10, 21:9, 21:16, 27:19, 33:6, 34:10, 36:6, 39:8, 41:18, 43:20, 45:16, 48:6  
**puts** [1] - 3:23  
**putting** [2] - 42:11

## Q

**qualifies** [1] - 41:1  
**quality** [2] - 17:1, 18:5  
**questions** [6] - 3:10, 3:15, 6:9, 31:11, 33:3, 52:11  
**quick** [1] - 40:18  
**quiet** [2] - 22:12, 38:12  
**quieted** [1] - 38:5  
**quite** [2] - 3:19

## R

**radius** [2] - 20:12, 22:3  
**Rainbow** [1] - 25:1  
**rained** [1] - 20:23  
**raise** [2] - 12:14, 45:1  
**raised** [1] - 11:22  
**random** [1] - 5:2  
**Ransomville** [4] - 1:6, 2:11, 20:2, 43:11  
**rapidly** [1] - 23:20  
**rather** [1] - 16:7  
**reach** [1] - 20:6  
**read** [1] - 13:6  
**reading** [2] - 12:23, 13:2  
**ready** [1] - 45:19  
**real** [4] - 5:5, 5:7, 32:17, 34:6  
**realizing** [1] - 48:3  
**really** [6] - 21:3, 25:12, 32:5, 40:14, 40:23, 45:10  
**realtor's** [1] - 18:8  
**reasonable** [1] - 51:8  
**reasons** [1] - 35:18  
**rebuttal** [1] - 8:5  
**received** [4] - 8:20, 10:11, 10:13, 11:17  
**recently** [1] - 15:10  
**recognize** [1] - 22:18

**recognized** [2] - 10:3, 36:20  
**recommend** [1] - 8:18  
**recommendation** [2] - 50:2, 52:20  
**recommendations** [2] - 14:4, 38:23  
**recommended** [1] - 49:10  
**reconsider** [1] - 18:13  
**record** [10] - 9:16, 10:15, 31:16, 34:13, 35:1, 36:17, 37:15, 43:21, 43:23, 55:6  
**recorded** [1] - 14:15  
**recreational** [1] - 23:21  
**reduce** [1] - 18:9  
**reduced** [2] - 18:6, 18:7  
**REEVE** [9] - 30:7, 31:3, 31:8, 31:16, 31:20, 31:23, 32:3, 32:6, 45:8  
**Reeve** [1] - 30:7  
**reference** [2] - 8:20, 30:19  
**referenced** [2] - 5:3, 48:18  
**referral** [1] - 14:5  
**regard** [2] - 6:18, 8:7  
**regulations** [1] - 39:21  
**reinvent** [1] - 39:4  
**related** [1] - 55:8  
**relates** [1] - 16:21  
**release** [1] - 17:4  
**relevant** [2] - 32:5, 46:18  
**remain** [1] - 24:11  
**removal** [1] - 23:20  
**removed** [1] - 41:5  
**renderings** [2] - 6:22, 7:3  
**repair** [1] - 33:20  
**repairs** [1] - 24:4  
**repeal** [1] - 22:19  
**repeat** [2] - 24:23, 35:22  
**repeated** [2] - 39:18, 39:19  
**repeatedly** [1] - 24:8  
**represent** [2] - 10:10, 31:6  
**request** [1] - 6:10  
**requests** [1] - 11:8  
**required** [1] - 34:20  
**requirement** [1] - 35:14  
**requirements** [2] - 3:13, 6:19

**requires** [2] - 33:19, 49:12  
**requiring** [1] - 39:6  
**rescind** [3] - 13:17, 14:11, 39:3  
**rescinded** [1] - 24:8  
**rescinding** [1] - 14:3  
**research** [1] - 46:18  
**reserve** [1] - 13:21  
**reside** [2] - 15:1, 19:21  
**residence** [1] - 15:2  
**resident** [2] - 30:8, 30:9  
**residential** [4] - 17:1, 18:9, 18:22, 33:22  
**residents** [1] - 17:2  
**residue** [1] - 12:8  
**resolution** [2] - 14:11, 39:2  
**resolve** [2] - 50:10, 50:17  
**resolved** [2] - 13:17, 21:3  
**resounding** [1] - 38:8  
**respect** [5] - 3:7, 3:11, 3:12, 11:6, 11:7  
**responsible** [1] - 20:19  
**rest** [1] - 6:6  
**restaurants** [1] - 22:2  
**restore** [1] - 15:14  
**restrictions** [3] - 23:12, 38:14, 39:8  
**resulted** [1] - 20:21  
**retaining** [1] - 35:6  
**retirement** [1] - 30:22  
**returned** [1] - 13:13  
**Review** [1] - 1:5  
**review** [10] - 2:2, 2:12, 6:3, 7:11, 8:17, 33:11, 46:22, 47:1, 51:20, 54:13  
**reviewed** [1] - 52:15  
**reviews** [1] - 4:7  
**revised** [4] - 3:8, 3:13, 3:15, 7:1  
**revisions** [1] - 39:15  
**revoked** [1] - 41:20  
**rickety** [1] - 22:22  
**ridiculous** [2] - 37:12, 37:17  
**right-a-way** [1] - 21:1  
**road** [11] - 9:1, 12:8, 22:4, 22:5, 23:4, 24:1, 34:11, 37:3, 37:4, 37:18, 43:9  
**Road** [30] - 1:6, 1:14, 2:6, 2:10, 2:23, 10:11, 13:1, 15:1,

16:19, 16:22, 18:10, 18:17, 19:22, 19:23, 22:1, 22:9, 24:3, 26:8, 30:8, 31:12, 32:16, 36:1, 37:16, 38:21, 39:22, 40:18, 42:20, 43:11, 44:4, 44:19  
**ROBERT** [3] - 46:12, 53:16, 54:18  
**Robert** [1] - 24:2  
**Rogers** [3] - 15:19, 40:11, 44:11  
**roll** [1] - 46:2  
**rolling** [1] - 17:10  
**room** [6] - 14:19, 27:5, 38:4, 40:13, 50:5, 51:3  
**rooms** [1] - 18:5  
**round** [3] - 10:6, 12:21, 14:21  
**Roy** [7] - 14:8, 15:19, 15:22, 16:2, 16:3, 41:19, 44:11  
**rude** [1] - 27:8  
**run** [2] - 16:8, 34:22  
**running** [1] - 34:15  
**runoff** [2] - 34:20, 35:3  
**ruse** [1] - 41:10  
**Russ** [2] - 2:19, 31:18  
**rusted** [1] - 23:5  
**Rusty** [1] - 31:13

## S

**saga** [2] - 14:17, 39:1  
**sale** [1] - 22:20  
**sales** [1] - 13:18  
**sandblast** [1] - 12:6  
**sandblasted** [1] - 15:10  
**sandblaster** [3] - 21:17, 25:9, 25:19  
**sandblasting** [10] - 5:1, 15:5, 15:7, 15:13, 16:8, 17:5, 17:15, 23:3, 34:11, 34:14  
**sanders** [1] - 17:20  
**satisfaction** [1] - 33:9  
**saw** [1] - 23:6  
**scale** [2] - 16:8, 26:21  
**schedule** [2] - 7:23, 49:4  
**screen** [1] - 34:4  
**screened** [1] - 33:20  
**screening** [4] - 3:7, 3:13, 7:2, 7:17  
**seaway** [1] - 24:14  
**second** [9] - 10:5,

14:21, 26:22, 36:19,  
40:11, 45:22, 45:23,  
53:14, 54:15  
**seconded** [2] - 46:2,  
54:17  
**secondly** [1] - 51:18  
**seconds** [2] - 16:10,  
21:11  
**secret** [1] - 30:4  
**Section** [1] - 2:4  
**section** [1] - 9:23  
**see** [10] - 16:13, 20:11,  
26:9, 30:1, 30:2,  
31:8, 33:11, 35:10,  
37:7, 42:18  
**SEEKINS** [1] - 1:20  
**self** [2] - 20:9, 20:10  
**self-employed** [1] -  
20:10  
**self-starter** [1] - 20:9  
**Senate** [2] - 26:11,  
26:12  
**septic** [1] - 3:11  
**SEQR** [10] - 11:7,  
11:12, 12:5, 33:10,  
34:19, 35:13, 46:16,  
46:22, 47:1, 54:13  
**serious** [1] - 12:5  
**serve** [1] - 40:3  
**Service** [1] - 1:5  
**service** [6] - 2:12,  
2:21, 13:18, 16:7,  
22:20, 30:10  
**services** [1] - 20:4  
**session** [1] - 14:16  
**set** [6] - 38:17, 50:9,  
51:2, 54:8, 54:11,  
55:11  
**setting** [2] - 44:14,  
46:18  
**settled** [1] - 23:7  
**seven** [5] - 2:1, 2:8,  
20:16, 25:16, 54:12  
**several** [3] - 18:1,  
21:23, 23:5  
**shade** [1] - 38:3  
**shall** [2] - 49:14, 51:20  
**shame** [1] - 36:2  
**shameful** [1] - 22:14  
**shed** [1] - 17:11  
**SHEILA** [2] - 18:16,  
44:3  
**Sheila** [2] - 18:16,  
44:3  
**Sheriff's** [2] - 21:5,  
30:17  
**shine** [1] - 34:6  
**shining** [1] - 33:16  
**short** [1] - 32:17  
**shovel** [1] - 39:17

**show** [1] - 38:17  
**showing** [1] - 32:8  
**shown** [1] - 45:10  
**shows** [3] - 15:9,  
33:23, 35:14  
**sic** [14] - 6:15, 17:7,  
17:9, 17:23, 20:15,  
21:16, 21:21, 22:16,  
23:19, 31:13, 31:17,  
31:18, 39:6, 49:11  
**sic** [3] - 20:20, 40:22,  
54:14  
**side** [6] - 19:23, 21:2,  
21:20, 22:3, 22:5,  
40:15  
**sides** [2] - 47:18,  
47:21  
**signify** [1] - 54:17  
**silence** [2] - 26:8,  
28:10  
**sin** [2] - 26:8, 28:10  
**sincere** [1] - 46:17  
**sincerely** [1] - 20:6  
**sit** [2] - 3:21, 4:13  
**Site** [1] - 1:5  
**site** [36] - 2:2, 2:12,  
3:3, 3:9, 4:18, 5:11,  
7:5, 7:7, 7:16, 7:23,  
8:13, 8:17, 13:7,  
13:14, 14:9, 14:14,  
15:6, 15:11, 15:18,  
16:6, 18:13, 19:13,  
21:18, 24:10, 24:16,  
27:14, 27:15, 27:18,  
33:5, 33:17, 39:6,  
39:11, 39:22, 49:17,  
51:20, 54:13  
**situation** [2] - 40:3,  
51:23  
**situations** [1] - 47:20  
**six** [5] - 15:11, 19:7,  
20:16, 24:10, 25:16  
**sixteen** [1] - 15:23  
**slamming** [2] - 38:7  
**slash** [1] - 2:12  
**sleep** [1] - 28:21  
**silver** [1] - 32:16  
**small** [2] - 25:22,  
26:21  
**smell** [1] - 23:9  
**smells** [1] - 36:10  
**snow** [3] - 17:5, 21:8,  
21:9  
**soil** [7] - 12:12, 17:2,  
17:3, 17:10, 23:20,  
23:21, 23:23  
**sold** [2] - 18:12, 26:18  
**sole** [1] - 16:6  
**solid** [1] - 9:11  
**solution** [1] - 40:16

**someone** [2] - 4:9,  
38:1  
**someplace** [1] - 34:23  
**sometime** [1] - 16:15  
**sometimes** [1] - 38:13  
**somewhat** [1] - 23:7  
**sorry** [6] - 9:20, 14:8,  
21:12, 31:4, 35:22,  
53:4  
**sorts** [1] - 39:15  
**sound** [3] - 17:17,  
51:7, 53:20  
**sounded** [1] - 23:9  
**source** [1] - 17:17  
**south** [1] - 22:3  
**southwest** [1] - 17:8  
**speaker** [2] - 10:5,  
48:18  
**speaking** [4] - 28:18,  
28:19, 36:15, 49:17  
**speaks** [1] - 52:13  
**special** [13] - 4:19,  
5:11, 9:17, 39:6,  
47:8, 47:12, 48:7,  
49:4, 49:11, 50:11,  
50:18, 51:16, 54:12  
**special-use** [3] - 4:19,  
5:11, 39:6  
**specific** [1] - 48:23  
**specifically** [2] - 6:18,  
32:10  
**spoken** [2] - 24:21,  
32:13  
**spot** [6] - 42:19,  
42:21, 43:3, 43:6,  
45:17, 48:19  
**spouse** [1] - 19:21  
**spray** [4] - 17:5, 17:15,  
23:3, 35:5  
**springtime** [1] - 42:9  
**standing** [1] - 9:11  
**start** [1] - 7:20  
**started** [3] - 13:16,  
19:4, 20:16  
**starter** [1] - 20:9  
**STATE** [1] - 1:1  
**State** [7] - 21:6, 26:11,  
30:4, 30:17, 31:9,  
32:8, 55:17  
**state** [1] - 10:3  
**statement** [3] - 10:13,  
41:2, 52:14  
**steel** [1] - 38:7  
**Stenographer** [2] -  
1:20, 55:3  
**STENOGRAPHER** [6]  
- 9:15, 9:19, 9:21,  
24:23, 25:2, 35:22  
**stenographer** [1] -  
36:14

**step** [3] - 2:15, 10:3,  
26:4  
**stepped** [1] - 45:11  
**stick** [1] - 31:14  
**still** [6] - 39:3, 39:10,  
39:14, 46:14, 54:2  
**stipulate** [1] - 7:22  
**stop** [3] - 19:17,  
43:14, 44:16  
**stopped** [1] - 44:18  
**store** [1] - 19:5  
**stores** [1] - 22:2  
**storm** [2] - 34:20,  
34:22  
**strain** [1] - 23:15  
**street** [8] - 18:18,  
21:19, 29:23, 34:5,  
40:13, 40:16, 40:22,  
44:15  
**strenuous** [1] - 47:6  
**stress** [1] - 17:18  
**strong** [1] - 52:14  
**structure** [1] - 34:22  
**study** [2] - 53:2, 53:6  
**stuff** [3] - 25:23,  
42:13, 47:15  
**submission** [7] - 3:17,  
3:19, 5:4, 6:7, 11:10,  
34:19, 35:12  
**submit** [4] - 5:3, 6:2,  
21:18, 22:6  
**submittal** [3] - 3:16,  
6:9, 46:23  
**submittals** [1] - 46:15  
**submitted** [6] - 2:21,  
3:1, 3:4, 3:8, 3:14,  
11:9  
**suggestion** [1] - 50:9  
**sult** [1] - 5:21  
**SUITOR** [10] - 26:7,  
27:3, 27:7, 27:18,  
28:10, 28:14, 28:17,  
28:21, 29:2, 29:6  
**Sultor** [1] - 26:7  
**sults** [1] - 49:3  
**summarized** [1] - 6:6  
**summer** [1] - 8:12  
**Supervisor** [2] -  
52:22, 53:8  
**supposed** [1] - 11:9  
**SUSAN** [1] - 21:11

## T

**tainted** [1] - 17:7  
**tall** [2] - 33:23, 34:3  
**tank** [1] - 35:10  
**targeting** [1] - 51:5  
**tax** [2] - 2:11, 40:5  
**tax-paying** [1] - 40:5

**taxpayer** [1] - 22:11  
**taxpayers** [2] - 24:5,  
32:7  
**teeny** [1] - 26:16  
**teeny-tiny** [1] - 26:16  
**temporary** [1] - 41:19  
**ten** [3] - 15:7, 25:7,  
25:17  
**tentative** [1] - 51:2  
**tentatively** [1] - 54:7  
**terms** [3] - 51:12,  
51:22, 52:20  
**THE** [6] - 9:15, 9:19,  
9:21, 24:23, 25:2,  
35:22  
**thereafter** [1] - 9:6  
**therefor** [1] - 49:22  
**thereof** [1] - 55:11  
**they've** [3] - 12:7,  
38:5, 45:16  
**thirty** [9] - 2:4, 16:10,  
25:10, 48:4, 49:4,  
49:12, 49:16, 49:22,  
49:23  
**thirty-five** [1] - 2:4  
**thoughts** [1] - 5:2  
**thousand** [3] - 18:11,  
30:21, 34:21  
**threatened** [1] - 14:13  
**three** [4] - 15:12,  
22:17, 33:23, 34:10  
**throw** [2] - 4:9, 11:4  
**Thursday** [2] - 2:7,  
49:21  
**tingling** [1] - 17:5  
**tiny** [1] - 26:16  
**today** [2] - 38:4, 50:10  
**together** [1] - 27:20  
**toilet** [1] - 20:23  
**tolerate** [1] - 29:1  
**TOM** [1] - 29:7  
**Tom** [1] - 29:8  
**tonight** [11] - 7:10,  
7:15, 9:8, 12:20,  
20:7, 21:21, 22:10,  
47:11, 47:23, 48:19,  
50:14  
**took** [1] - 6:23  
**totally** [2] - 4:16, 48:9  
**tough** [3] - 29:15,  
45:17, 48:19  
**toughest** [1] - 50:4  
**toward** [1] - 38:23  
**TOWER** [8] - 30:7,  
31:3, 31:20, 31:23,  
32:3, 46:12, 53:16,  
54:18  
**Tower** [2] - 30:7,  
46:11  
**TOWERS** [4] - 31:8,

31:16, 32:6, 45:8 <b>Town</b> [50] - 1:13, 2:4, 2:6, 4:2, 4:8, 4:13, 4:20, 5:9, 8:1, 9:3, 12:12, 13:11, 13:12, 13:13, 13:22, 14:10, 14:13, 15:16, 19:16, 20:1, 20:5, 20:18, 21:5, 22:15, 24:12, 26:15, 26:18, 28:17, 28:19, 29:8, 29:16, 29:18, 29:19, 30:2, 30:3, 30:13, 30:20, 31:10, 32:1, 32:7, 32:10, 39:12, 40:2, 41:12, 41:15, 42:8, 44:11, 50:6, 51:3, 55:5 <b>Town's</b> [1] - 13:20 <b>toxic</b> [2] - 21:16, 23:11 <b>tractor</b> [1] - 37:4 <b>tractors</b> [3] - 19:5, 22:23, 25:21 <b>traffic</b> [2] - 5:16, 17:16 <b>trail</b> [1] - 24:14 <b>trailer</b> [1] - 15:9 <b>tranquility</b> [2] - 23:14, 40:6 <b>transcript</b> [1] - 10:20 <b>tried</b> [1] - 20:1 <b>tripped</b> [1] - 49:3 <b>Troopers</b> [1] - 21:6 <b>truck</b> [2] - 12:7, 17:15 <b>trucking</b> [1] - 22:1 <b>trucks</b> [6] - 17:18, 23:23, 37:3, 37:6, 38:14, 44:7 <b>true</b> [3] - 21:17, 47:15, 55:6 <b>try</b> [3] - 10:4, 13:2, 26:22 <b>trying</b> [2] - 11:1, 27:1 <b>Tuesday</b> [1] - 53:13 <b>turn</b> [4] - 6:8, 28:11, 36:21, 43:16 <b>turned</b> [1] - 23:15 <b>twenty</b> [1] - 30:21 <b>twice</b> [1] - 16:3 <b>twist</b> [2] - 14:17, 39:1 <b>TWM</b> [1] - 21:16 <b>two</b> [16] - 3:2, 10:5, 11:2, 11:8, 18:11, 19:23, 22:3, 22:22, 33:23, 34:3, 34:10, 46:22, 48:17, 52:6 <b>types</b> [2] - 5:23, 15:15	<b>ultimately</b> [1] - 24:3 <b>unbelievable</b> [1] - 24:6 <b>under</b> [5] - 3:1, 13:7, 13:16, 39:13, 39:14 <b>UNIDENTIFIED</b> [1] - 49:8 <b>unlawful</b> [1] - 17:4 <b>unlike</b> [1] - 14:1 <b>unrepaired</b> [1] - 33:21 <b>unwanted</b> [1] - 17:17 <b>up</b> [22] - 10:23, 11:2, 14:15, 17:19, 18:3, 19:8, 19:10, 19:17, 22:6, 25:4, 26:4, 27:7, 37:2, 38:2, 38:3, 38:17, 38:21, 41:18, 45:11, 49:3, 49:14 <b>uphold</b> [1] - 13:11 <b>upset</b> [2] - 20:22, 21:4 <b>uses</b> [3] - 5:12, 6:19, 13:21	26:5, 44:1, 45:1 <b>Warren</b> [1] - 26:12 <b>wash</b> [1] - 12:10 <b>washer</b> [1] - 23:9 <b>washers</b> [1] - 35:9 <b>washing</b> [2] - 17:12, 17:14 <b>Washington</b> [1] - 26:10 <b>waste</b> [1] - 21:16 <b>water</b> [8] - 12:11, 17:2, 17:3, 17:11, 34:20, 34:22, 35:9 <b>WATERSON</b> [1] - 16:18 <b>Waterson</b> [1] - 16:18 <b>Wednesday</b> [1] - 53:13 <b>week</b> [2] - 3:10, 53:9 <b>weeks</b> [1] - 47:13 <b>West</b> [1] - 10:9 <b>west</b> [3] - 19:23, 21:2, 21:20 <b>whatsoever</b> [1] - 11:8 <b>wheels</b> [1] - 37:4 <b>whole</b> [2] - 25:6, 41:22 <b>wide</b> [1] - 34:1 <b>WIEPERT</b> [3] - 52:22, 53:11, 53:14 <b>wife</b> [1] - 29:12 <b>William</b> [3] - 10:10, 14:23, 26:7 <b>WILLIAM</b> [11] - 14:23, 26:7, 27:3, 27:7, 27:18, 28:10, 28:14, 28:17, 28:21, 29:2, 29:6 <b>willowing</b> [1] - 17:9 <b>Wilson</b> [1] - 42:20 <b>wind</b> [3] - 17:8, 17:20, 49:3 <b>windows</b> [1] - 40:15 <b>witness</b> [1] - 55:11 <b>witnessed</b> [2] - 16:12, 17:3 <b>wondering</b> [1] - 14:12 <b>woodchuck</b> [1] - 34:4 <b>word</b> [1] - 49:2 <b>words</b> [1] - 12:1 <b>world</b> [1] - 39:9 <b>worry</b> [2] - 25:14, 50:23 <b>worse</b> [1] - 40:4 <b>writing</b> [1] - 52:9 <b>written</b> [2] - 27:23, 28:1	<b>yards</b> [1] - 18:4 <b>year</b> [2] - 21:8, 22:18 <b>years</b> [6] - 20:16, 25:16, 29:17, 39:18, 48:22, 53:2 <b>yellow</b> [3] - 17:6, 21:14, 35:5 <b>YORK</b> [1] - 1:1 <b>York</b> [9] - 1:7, 1:15, 1:21, 2:7, 2:11, 29:9, 30:4, 30:8, 55:17 <b>Youngstown</b> [7] - 1:15, 2:7, 15:9, 29:9, 30:8, 42:20, 43:11 <b>Youngstown-Wilson</b> [1] - 42:20 <b>yourself</b> [1] - 16:13 <b>yourselves</b> [1] - 33:4
<b>Z</b>			
<b>Zillion's</b> [1] - 21:21 <b>zoned</b> [1] - 13:23 <b>zones</b> [2] - 13:22, 13:23 <b>Zoning</b> [11] - 2:4, 13:11, 14:4, 15:20, 16:4, 26:20, 27:11, 28:2, 33:18, 39:20, 41:17 <b>zoning</b> [8] - 3:3, 3:22, 4:2, 4:7, 4:21, 42:19, 42:22, 43:3 <b>zooming</b> [1] - 38:15			

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