In The Matter Of:

The City of Doraville

State of Georgia

City Council Meeting

July 20, 2009

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

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Transcript of the proceedings held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at 7:00 p.m. on Monday, July 20, 2009.

* * *

APPEARANCES:

Doraville City Council:

Hon. Ray Jenkins, Mayor

Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming

Murray J. Weed, City Attorney

Ms. Rhonda Blackmon, City Clerk

P R O C E E D I N G S

MAYOR JENKINS: Meeting come to order. Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes, here.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Thank you.

Want to approve the minutes of 6/29/09. Do I have a motion?

COUNCILMEMBER ALEXANDER: So moved.

MAYOR JENKINS: Second?

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember

Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: No. I'm just receiving 6/29 this evening and I cannot locate 7/6.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: And the minutes of 7/6/09.

COUNCILMEMBER ALEXANDER: In number 8 of the motions, you refer to Mayor Jenkins as "Major Jenkins."

MAYOR JENKINS: That's what the Chinese call me, anyway.

Do I get a motion on 7/6/09, the minutes?

COUNCILMEMBER BATES: So moved.

Page 5

MAYOR JENKINS: Second?
COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you.
Looks like we've got a long meeting tonight. I'm going to remind everybody that if you're on the agenda to speak, you have five minutes. If citizens' comments, you have three minutes. And I want everybody to respect that tonight because we've got a real long agenda.
We need to talk about the dumpsters.

Page 6

There's been some -- Well, let me --
Scott, come on up to the microphone.
And I think between Scott and Murray, they can explain why we put this on here.
MR. HAEBERLIN: Recently, we've been getting about 10 or more customers a day now for over two weeks who have received warnings or possible citations on dumpsters in the city. I did provide you guys a copy of the prior ordinance, which is 05-33, which then repealed a certain section of it, which was 15-62, which is in 06-11.
Basically this says that industrial, commercial, and multi-family sites have to screen their dumpster somehow, and that certainly seems reasonable. However, there are some things in this dumpster ordinance that make it very difficult if not impossible to enforce.
One of the items in there is the requiring of a grease trap. The information that I've received from Mr. Ronald Buice is that even Dekalb County does not want grease traps installed in our dumpsters. So that is one item present in there.
Now, when you get down to the very last

Page 7

part of that paragraph under 15-62, it says the dumpster shall be screened by three things: planting materials, which of course, as you're aware, there's no way the City can write a permit for planting materials; number two, a fence or wall of a height not less than six feet, which again seems reasonable; number three, the building or buildings which are serviced by the dumpster or a combination of these.
So it is very broad and very open. And if the intent of the City Council is that we have dumpster enclosures throughout the city, we've not expressed that very well in this ordinance that was written, like I said, back in 2006.
So tonight because of the number of folks coming forward that want an answer on the warnings that have been issued to them, I think that it's incumbent on the Council to give us a little direction as staff as to whether this ordinance is acceptable to you -- because I'll be honest with you, I don't know how I would enforce this ordinance -- or should we make some changes to this ordinance in light of the

Page 8

current problems we're already having.
The way this is written, I would reasonably argue that if you just shove the dumpster behind the building, that it meets the intent of this ordinance; however, I'm not sure that's how the Council interprets that.
Some of the things that you need to think about is that plant materials next to dumpsters are generally unsuitable. It's very difficult to maintain. They're damaged by mechanical operations of lifting the dumpster in and out. There's just not a lot of plant material that is good to be next to a dumpster because things get too large, there is grease spilled on the area. It's just a very difficult planting area.
The fence or walls that you see throughout the city -- and I'm not for certain that all these are permitted -- are typically wooden fences. And as you see or have experienced with your own home, wooden fences only have a certain longevity. They certainly are not very durable. So up and down Buford Highway, you may see dumpster enclosures in the front setbacks. Again, I don't know how those

Page 9

1 got there. To me, that would be a code
2 violation.
3 However, we need to make a decision on
4 are we going to pursue something greater than a
5 fence. In my experience in working in many
6 jurisdictions, typically dumpster enclosures are
7 concrete block and they are faced with either
8 brick or stone on the outside, and that's
9 reasonable in a commercial zone. In an
10 industrial zone, you might actually have painted
11 concrete block or some sort of textured CMU or
12 some other product but typically not fences.
13 They just don't hold up.
14 So the reason we bring this to you is
15 to poll the Council if you would like us to
16 review this ordinance. Right now, like I said,
17 I see this very difficult if not impossible to
18 enforce.
19 COUNCILMEMBER BATES: Mr. Haeberlin, as
20 it sits right now, would a chain link fence
21 qualify as fencing?
22 MR. HAEBERLIN: Yes, sir. And it
23 wouldn't even specify -- Well, quite frankly,
24 you could put plantings in front of the chain
25 link, and that would meet the intent of

Page 10

1 screening, again.
2 MAYOR JENKINS: Would it require the
3 slats in the chain link to hide the dumpster?
4 MR. HAEBERLIN: As a stand-alone, if
5 it's not visible from the public right-of-way,
6 that's questionable, because basically the way
7 this is written --
8 And I'll tell you how this is
9 instigated: The Mayor and I visited a site on
10 New Peachtree where we had to go down a hill
11 about 25 feet to a dumpster. The person had
12 been written a warning. This dumpster was not
13 at all visible from a public right-of-way, and I
14 don't think it ever was. It had probably been
15 there 30 years.
16 So as you see, this is very ambiguous.
17 And I'm just trying to find out what the intent
18 of the Council is. Do you find this acceptable
19 or should we change this or for us to just have
20 an ordinance on the books that's really of no
21 value?
22 COUNCILMEMBER ROCHE: So we're saying
23 that our Qualify of Life people went out and
24 wrote warnings --
25 MR. HAEBERLIN: Yes, sir.

Page 11

1 COUNCILMEMBER ROCHE: -- that are not
2 enforceable.
3 And I guess my first question would be
4 if we don't have an ordinance, then why is
5 Quality of Life writing warnings?
6 MR. HAEBERLIN: Well, you do have an
7 ordinance, but this ordinance provides you lots
8 of different opportunities to meet that intent.
9 So if they come in and they say, "I have to have
10 a dumpster enclosure," well, no, not really.
11 You could do one of three things under the Code.
12 I think the way this code is written is
13 very ambiguous. It gives a lot of subjective
14 power to the staff, which, in this situation, I
15 don't think we need. I think we need to
16 determine what the City Council would like to
17 see out there and then enforce it.
18 COUNCILMEMBER ROCHE: So all these
19 warnings are basically null and void, then, is
20 what you're telling us.
21 MR. HAEBERLIN: You know, right now, as
22 I'm telling the people, you have options under
23 the Code that's in existence today. The fence
24 is not a requirement because, as you read in
25 here, one, two and three give you other options.

Page 12

1 But even these are not clear.
2 COUNCILMEMBER ROCHE: I understand
3 that, and we need to get to that.
4 I guess my question now is what happens
5 to all those warnings that were written. Do
6 they just get thrown out of court or --
7 MR. HAEBERLIN: I don't know.
8 The approach that I'm trying to take
9 with the Council is I think that we need
10 direction on what you would like us to do, and
11 then, number two, if these do need to be
12 dismissed, then certainly they can be dismissed.
13 However, I think a better policy
14 decision would be to clarify this ordinance and
15 to make it more workable. It's just way too
16 broad right now, and it would be simpler to
17 clarify it.
18 COUNCILMEMBER PITTMAN: There's an
19 ordinance here. It's just very vague on what --
20 MR. HAEBERLIN: It's very vague.
21 COUNCILMEMBER PITTMAN: -- they can
22 actually do or not do.
23 MR. HAEBERLIN: Correct.
24 COUNCILMEMBER PITTMAN: I mean they are
25 obviously in violation of some of this, but --

Page 13

MR. HAEBERLIN: Possibly.
COUNCILMEMBER PITTMAN: -- what they need to do to fix it is very vague.
MR. HAEBERLIN: Correct, correct.
And remember, this is not a zoning code. But as I guess generally the people coming in to see me about a building permit, as a commercial property, you know, they cannot install this themselves. They have to hire a commercial contractor, and so that makes it an item that the average business owner cannot complete on his own. It's something that they hire a contractor for, and so that does involve cost, particularly the pad.
COUNCILMEMBER FLEMING: I'm concerned about the concrete block enclosure and the accessibility to it by a sanitation company. And the cost to repair a concrete block enclosure versus a wooden-slatted enclosure would be very time consuming as well as very costly.
So I am in favor of the wooden-slatted type enclosure, personally, as well as, I mean, the concrete block, but I would not be inclined to insist a commercial property to only have a

Page 14

concrete block-enclosed dumpster area.
But I do believe that we need to move forward on redrafting this particular ordinance and updating it to our specifications at the present time.
MR. HAEBERLIN: I will tell you that under the accessory structure rewrite which the Council has and Mr. Weed has as well, one of the things I specifically wrote in there was the regulation of the site, not the look of it, because if we're going to regulate the number of accessory structures or uses, obviously large commercial shopping centers will need more than one or two dumpsters. That's the reason I put that in there.
Also, too, I think you need a little fudge factor on determining the location, because I will tell you the shallow depth of many of our commercial lots on Buford Highway are going to be a serious problem. I don't know where we're going to put these things. A lot of them are out there, and some of them are within like maybe five or ten feet of the public right-of-way and they are wooden enclosures. And from an architectural standpoint of having an

Page 15

architectural ordinance, I really want you to give thought to these highly visible locations.
And I will tell you this: In my years of seeing these, the wooden fences damage just as easily as the concrete block, but if the concrete block with some sort of stone or brick face is properly designed, they'll last a very long time. And we've got some examples in the city of that. We have some very old enclosures that people willingly put in that have been there for several years.
COUNCILMEMBER BATES: I noted that there it doesn't require a gate --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- on this. So there are instances where even with a three-sided enclosure, the layout of the property, you're still going to see the dumpster from one of two right-of-ways.
MR. HAEBERLIN: Absolutely.
COUNCILMEMBER BATES: So in some cases, there's not a way for anybody to be in compliance with this.
MR. HAEBERLIN: One of the things I would -- You know, even if it was an existing

Page 16

site or a new development site, one of the things I would encourage people to look at is not making the dumpster enclosure an accessory; in other words, attaching it to the building. Use that wall of the building as a support side, a screening side, okay, and then come out with a wing wall and then have obviously two gates. There are a lot of different ways you can do the enclosure. That would resolve the placement situation. They can use a support of the building itself as a side, one or more sides. Okay. That's one of the ways to resolve the placement situation and also to resolve the conflicts of it being an accessory structure.
But I certainly agree with you. Without the gates, again meaningless because you're looking at a dumpster. And a gate really needs to be a strong metal gate.
Go out if you have a chance and go to Clover Plaza or go to the new H Mart location and look at those enclosures which are concrete block with masonry on the outside of them, a finished brick product. They also have very strong and durable metal gates. That is the type standard that my recommendation would be to

Page 17

1 you because of its longevity. Once it's there,
2 it should be there for a very long time.
3 However, of course there are costs involved in
4 that.
5 So since this is not a zoning code, as
6 we understand this, this should have been being
7 done after April 1st, 2006. So throughout the
8 city, this should have already been achieved.
9 However, the Mayor and I did an extensive drive
10 about the city and we saw very few enclosures at
11 all.
12 COUNCILMEMBER ROCHE: But it says that
13 the dumpster shall be screened from the public
14 view of any public right-of-way, I mean. So if
15 we had an enclosure that faced the right-of-way,
16 I would think that would mean you'd have to have
17 a fence, I mean a gate to close it.
18 MR. HAEBERLIN: That seems reasonable,
19 certainly.
20 COUNCILMEMBER BATES: I agree with you,
21 but it probably needs to be spelled out a little
22 bit more clearly.
23 COUNCILMEMBER ROCHE: I don't know that
24 we can rewrite this tonight while we're sitting
25 here.

Page 18

1 MR. HAEBERLIN: Certainly.
2 COUNCILMEMBER ROCHE: I'm just
3 concerned that you said there's how many
4 warnings or whatever?
5 MR. HAEBERLIN: Well, we've had at
6 least 10 people a day. It's been several weeks.
7 There's a lot out there.
8 COUNCILMEMBER ROCHE: I don't see how
9 we can write people warnings and then after the
10 fact decide what they're guilty of.
11 MR. HAEBERLIN: Well, like I said --
12 COUNCILMEMBER ROCHE: It seems like
13 that's what we're doing.
14 MR. HAEBERLIN: Well, I mean I wouldn't
15 necessarily disagree with that.
16 It has become such a problem, and
17 there's been so many calls, there's been so many
18 visits. The Mayor has fielded a number of these
19 visits from folks as well. I bring it to your
20 attention. I think we can -- I think we can
21 correct it. I think we can make it better.
22 The gate situation. I'll let you know,
23 those things take a lot of abuse, so those gates
24 really have to be strong material because
25 they're opened on garbage day. The truck comes

Page 19

1 in, picks the load up, drops it back down and
2 then returns the gates closed. So these are
3 really going to have to be durable items if this
4 is something the Council wants to do.
5 COUNCILMEMBER FLEMING: I think
6 redrafting the ordinance needs to have a date
7 certain in there that these things would be
8 accomplished by for our existing businesses. We
9 just can't --
10 MR. HAEBERLIN: Correct.
11 COUNCILMEMBER FLEMING: -- all of a
12 sudden start enforcing this particular thing.
13 We need to have a date certain I think in the
14 present, or in reconstructing this ordinance we
15 need to have a date certain.
16 COUNCILMEMBER ROCHE: I agree. I think
17 maybe the right thing to do would be to go ahead
18 and postpone until the next meeting and maybe
19 put together --
20 MR. HAEBERLIN: Sure.
21 COUNCILMEMBER ROCHE: -- a draft
22 ordinance.
23 MR. HAEBERLIN: Sure. And I did not
24 mean that you guys were going to rewrite it
25 tonight. I just wanted to bring it to your

Page 20

1 attention. It is a serious problem with that
2 many people coming to see me. It's not a
3 single, isolated incident. You may have already
4 heard about it from some of your constituents.
5 The Mayor and I certainly have heard an earful
6 on it.
7 COUNCILMEMBER BATES: And I'm okay with
8 leaving item three, putting the dumpster behind
9 a building if it can be put behind the building.
10 There's no sense in putting an enclosure.
11 MAYOR JENKINS: Or a wall that will
12 hide it from the street, yes.
13 COUNCILMEMBER ALEXANDER: Well, I was
14 thinking about Pinetree Plaza, on the back side
15 of that. That's not in public view. That's not
16 viewable from the right-of-way. So I don't
17 necessarily think I would want to completely
18 delete item three.
19 MR. HAEBERLIN: And you guys might want
20 to consider a pure standard of brand new con-
21 struction, one standard for them and then a
22 standard that works with existing construction
23 because you are going to have different
24 situations. I'll tell you, in some of the areas
25 of Pinetree, for example, there are areas that

Page 21

it be impossible to install an enclosure in, and I know that from simply having driven behind the service lane of the building. So I mean there will need to be a little more wiggle room with existing construction. But I think across the board on new construction, you should consider a fairly strict standard. I think that would be very common.

COUNCILMEMBER BATES: And I'm very comfortable with that.

MR. HAEBERLIN: And then get, of course, a date. And since we don't provide garbage service to commercial entities, I guess -- I'm trying to think. I guess we would route this through the business association and let them know the City's intentions of doing this and that the public would become aware of it.

MAYOR JENKINS: How will we deal with these folks, the people who have already gotten a warning or a ticket?

MR. HAEBERLIN: That's really a question for your attorney.

ATTORNEY WEED: Well, you have a solicitor, and I'm sure he'll use his best judgment, you know, whether there's any

Page 22

prosecution underneath the existing ordinance in dealing with that.

Now, I will say this: I haven't reviewed any of the warning citations. If the warning citations are, you know, within 30 to 60 days, you will build a concrete structure, then my opinion would be they couldn't do that because there would be other mechanisms where they could comply with the current ordinance.

If the warning citation says, within 30 days you would plant the greenery, build the structure or put the thing behind the building where it couldn't be seen from the public right-of-way, that's a perfectly decent warning, and that's in my opinion. The court can uphold that. So it really depends upon how the warnings are written.

COUNCILMEMBER FLEMING: Could we make a request that the Quality of Life Department not write any more warnings until we have this ordinance in place?

ATTORNEY WEED: Well, I think the management of Quality of Life is here in the chambers tonight and I have a feeling that they will be instructed appropriately with regard to

Page 23

that issue.

COUNCILMEMBER ROCHE: I mean we opened -- I mean the presentation opened by saying that it's probably impossible to enforce this ordinance in the first place.

ATTORNEY WEED: I don't necessarily agree with Mr. Haeberlin on that, and I hate to disagree with him publicly.

COUNCILMEMBER ROCHE: And I don't mean to put words in your mouth.

MR. HAEBERLIN: That's okay.

ATTORNEY WEED: The ordinance, in my opinion, as written, is enforceable. Is it the best ordinance that it can be? My opinion is no, it is not. Just because it's poorly crafted doesn't mean it's not enforceable. They are different things.

Are there better ways of doing it? Mr. Haeberlin and I definitely agree on that.

MR. HAEBERLIN: Better rephrased, Murray. I appreciate that.

I do agree with what he's saying. It's just that I went about saying it -- it's just -- it's so vague right now, we need a real solution to it and a solution that the Council is happy

Page 24

with.

ATTORNEY WEED: And please bear in mind that the warnings may still be bad warnings, meaning that the warnings could say, within X-amount of days, you have to build a structure, and people don't have to. So that warning still could be completely unenforceable. I don't know. That's possible.

COUNCILMEMBER ROCHE: Yeah, but those people, they have to take it to court or pay a fine and they have to go through all that. And it seems like we ought to straighten out what our ordinances are going to be first and then send out, you know, people to write people tickets for it.

ATTORNEY WEED: And I don't disagree with that. Neither Mr. Haeberlin nor I have anything to do with that part.

COUNCILMEMBER FLEMING: Mr. Haeberlin, I would agree that we need to move forward on this dumpster ordinance and go ahead with the existing structures as well as the new businesses as well.

MR. HAEBERLIN: Well, Mr. Weed and I will seek assistance from not only the Building

Page 25

Official but also Stormwater in crafting an ordinance to bring back to you guys.

COUNCILMEMBER FLEMING: Thank you.

MR. HAEBERLIN: Hopefully, it'll be something that you can approve.

Is that it?

MAYOR JENKINS: Okay. I'm going to change this around a little. I'm going to put the Police Department awards up now so that they can get theirs in.

CHIEF ATKINSON: Mayor and Council, I just wanted to come before you and just let you know that last week we received notice that we were approved for the grant of $44,466 under the Recovery Act, the Edward Byrne Memorial Justice Assistance Grant Program. We've been approved. We haven't received the funds. We still have some additional paperwork that we have to do to get those funds, but we have been approved for that, those moneys.

Also last week I attended the Georgia Association of Chiefs of Police Chiefs' Conference at which time the City of Doraville, the Police Department was recognized as a certified agency. We received our recertifi-

Page 26

cation award at the Chiefs' Conference. We're recognized as one of several other agencies that had to go through a recertification process.

And what that is is several years back, we went through the certification process. To be a certified law enforcement agency, you have to meet certain standards in your policies. There's approximately 119 standards, I believe it is, that you have to have in your policy. But not only do you have to have them but you have to show compliance.

We were first certified back in 2006, and you have to go through recertification every three years. From what I understand, it's a little bit easier to get certified but it's difficult to get recertified, and I was happy to know that we did extremely well on our assessment.

When we first got certified, I believe -- and I had my numbers wrong before when I notified you -- the first time, we had over 40-something standards that were returned to us that we needed more documentation on when we first got certified. And this past time, we only had seven, and approximately five of those

Page 27

were clerical issues.

So we did extremely well on the recertification. The assessors met with myself, Captain Brown, Captain Sellers, Captain Brinkley and Sergeant Rodgers and praised us for the job that we had done.

Sergeant Rodgers was extremely -- she's the person who got us through it. She is our certification manager, and she stays on top of us and makes sure that we are in compliance with all the standards that we have to show compliance for. So she did an excellent job.

The next thing I want to do is notify the citizens and the Council that we are having a Citizens' Police Academy. We're going to start that back up. Our next one is going to start September the 1st. So if you would please spread the word if you know of anybody that would like to attend. We will have some brochures. We have some at the Police Department. Hopefully we'll have some at City Hall and possibly even the Library coming up. So that'll be September the 1st.

And last, our Special Investigation Section signed a search warrant, and it was

Page 28

executed by our SWAT team last week. We got a large amount of crack cocaine as well as a handgun out of the warrant, and we look forward to having other cases branch off that case. So I will keep you updated if anything comes of that.

MAYOR JENKINS: Is that a residence or apartment?

CHIEF ATKINSON: It was an apartment.

COUNCILMEMBER FLEMING: Congratulations on getting the grant.

Are there specifics involved as to how the Police Department will be utilizing these funds?

CHIEF ATKINSON: Yes, ma'am, there are, and I don't have it. I just have the paperwork that they sent me, and I have not had a chance to read over it yet. But I have to read over this and look through it, and then I can come back before you.

COUNCILMEMBER FLEMING: Well, keep up the good work. You're doing an outstanding job as well as the whole department.

CHIEF ATKINSON: Thank you.

COUNCILMEMBER FLEMING: Appreciate it.

Page 29

- - -
(Applause)
- - -
MAYOR JENKINS: Okay. Bob, somebody said they forgot to put you on the agenda on Open Records request.
COUNCILMEMBER ROCHE: Yes. I had requested to be on the agenda, and for whatever reason, it didn't happen.
Anyway, I'm getting more and more complaints about the Open Records requests not being fulfilled on time, not being responded to on time. In fact, I submitted one back on June 24th. And according to State law, the city officials have to respond within the first three days to tell you basically, you know, what it's going to take, how long it'll take, et cetera, et cetera, and that just didn't happen the last time.
It's getting very difficult to do our jobs as city council people when first of all we have very little access to information. As I mentioned at the last meeting, you know, just for us to find out what's going on in the city, we have to file an Open Records request and then

Page 30

we have to turn around and pay copy charges for it. And then when we file the Open Records request, we don't get a response or we get a three-day response and then we don't get the rest of the response. I filed one Open Records request that was not completely -- I didn't get all the information for almost two months afterwards.
Something's got to happen, something's got to give here, and I'm bringing this up to the Council. I mean I think that -- you know, some time ago, I do know we passed I guess a policy saying that if any city council person submitted Open Records requests, we'd all be notified. That's not been happening either.
It's just one thing after another. I get e-mails from citizens and other people complaining that their Open Record requests are not being responded to.
COUNCILMEMBER BATES: Mr. Roche, did you want to add this to the agenda?
COUNCILMEMBER ROCHE: Well, I thought the Mayor --
COUNCILMEMBER SPANGLER: I thought that's what --

Page 31

COUNCILMEMBER ROCHE: -- added it to --
COUNCILMEMBER SPANGLER: -- the Mayor just said.
COUNCILMEMBER ROCHE: -- the agenda under citizens' comments.
CLERK BLACKMON: Under his.
COUNCILMEMBER BATES: Under your comments, sir?
MAYOR JENKINS: Yes.
COUNCILMEMBER BATES: Okay. Sorry.
COUNCILMEMBER ROCHE: So, you know, here we are. You know, here we're trying to do the best job that we were elected to do up here, and we don't have a good source of information on anything.
We shouldn't have to pay for anything. If we need information to do our jobs, we should be able to simply ask for that information and receive it.
But there's been pretty much a clamp-down on all information. So we're in violation of State law when this happens. The City is in violation of State law when we don't respond to Open Record requests.
And you know, I did -- I sent an e-mail

Page 32

to Attorney Weed, saying, is there any way we can pass a local ordinance on this?
And I'll let you go ahead and respond to that.
ATTORNEY WEED: With regard to whether or not we could adopt a local ordinance that would somehow, you know, increase the time frame for response or increase the penalty, my opinion is no, we can't do that underneath the preemption doctrine.
The preemption doctrine is found in Article III, Section VI, Paragraph IV (a) of the Georgia Constitution, and we've talked about it before. Essentially, the preemption doctrine of the Constitution says that if there is a law on general application in the State, then the local government is generally prohibited from having an equivalent law. For example, that is no local crime against murder because there is a State law against murder, and that State law defines murder and the penalty for murder and therefore would make any local law preempted.
The Open Records Act is very, in my opinion, succinct with regard to what's required in a response, the time frame for compliance,

Page 33

1 the civil and criminal penalties if one does not
2 comply within the time frames. So therefore,
3 it's my opinion that we couldn't do something
4 locally that would otherwise preempt the State
5 law.
6 COUNCILMEMBER SPANGLER: And what is
7 the State law right now? Do you have a copy of
8 that?
9 ATTORNEY WEED: I know it pretty much
10 verbatim.
11 COUNCILMEMBER SPANGLER: And can you
12 send us a copy of it?
13 ATTORNEY WEED: Sure. Yes, sir. Yes,
14 sir. It's 50-18-70, and there are a number of
15 other sections that follow that but find it in
16 50-18-70.
17 COUNCILMEMBER SPANGLER: And what does
18 it say?
19 ATTORNEY WEED: Well, it says a lot.
20 It's about 20 pages worth of statute.
21 But the shortest version of it with
22 regard to what I think you want to know is that
23 after the government does receive an Open
24 Records request -- the request can be in
25 writing, it can be verbal -- the government has

Page 34

1 essentially three business days to file a
2 response. If the documents that are requested
3 are readily available, then they should be given
4 over in three days.
5 If, however, the documents are not
6 readily available, then whoever's responding to
7 the request needs to send the following: They
8 need to send a time table for when the documents
9 will be sent; they need to send a good-faith
10 estimate of costs, because you are allowed to
11 charge 25 cents per page and also the lowest
12 hourly rate of the lowest-paid employee
13 competent to do the work except for the first 15
14 minutes of gathering the information. And
15 that's what has to be in a three-day response,
16 essentially.
17 And there's a laundry list of
18 exemptions that make certain documents exempt
19 for different time frames. Some documents are
20 just exempt, you know, completely. For example,
21 blueprints that might lead to the use by a
22 terrorist to attack a governmental building,
23 those are exempt underneath the Open Records
24 law. That's just one of many exemptions that
25 are found in the law.

Page 35

1 COUNCILMEMBER SPANGLER: Okay. Could
2 you add to that, a list of the exemptions?
3 ATTORNEY WEED: In my opinion, no, sir.
4 I think the legislature meant what it said when
5 it wrote the statute.
6 But the general idea behind the statute
7 is to promote compliance, to actually make sure
8 the documents are given over. In fact, built
9 into the legislation itself, there's a
10 legislative philosophy that if you give over the
11 documents, then you the government or you the
12 clerk or whoever's responding is actually immune
13 from any kind of liability for giving over the
14 information, which is why I oftentimes in
15 dealing with opposing legal counsel -- they'll
16 send in a subpoena or a discovery request
17 underneath some litigation, and I'll call them
18 up and say, "Look, can you withdraw that and
19 send an Open Records request, and the reason is
20 my clients get the benefit of the good-faith
21 immunity, you get the benefit of the three-day
22 rule, and you know, it's a win-win situation."
23 So I do that often.
24 But no, sir. I think if we preempted
25 -- I don't think we can take things off the

Page 36

1 exempt list.
2 COUNCILMEMBER SPANGLER: I didn't ask
3 that. I asked if you could give us a list of
4 the items that were.
5 ATTORNEY WEED: Oh, I'm sorry. I
6 couldn't hear you.
7 Yes, I can. I'm happy to do that.
8 I've prepared an outline, a very
9 detailed outline. In fact, oddly enough, my law
10 firm, we do in-house training. This past
11 Monday, I trained my law firm on the Open
12 Records statute. I have an outline that I've
13 prepared, and I've already given it to the
14 Clerk, that, you know, pretty much sets all this
15 out. It's a 10-page outline.
16 COUNCILMEMBER SPANGLER: Okay. Another
17 thing you said a few meetings ago, that Council
18 people shouldn't have to pay for requests for
19 information.
20 ATTORNEY WEED: That's my opinion.
21 COUNCILMEMBER SPANGLER: Okay. And why
22 are we having to pay all of a sudden within the
23 last, you know, four or five months?
24 ATTORNEY WEED: Well, now, that's -- I
25 have no comment on the management of the City.

Page 37

1 That's not my role.
2 COUNCILMEMBER SPANGLER: Well, is it
3 legal for them --
4 ATTORNEY WEED: Is it legal? Yes.
5 If someone files an Open Records
6 request, then, in my opinion, there's equal
7 burden. The burden is on the person who gets
8 the request to respond in a timely manner under
9 the statute but there's an equal burden on the
10 person who's filed the request. In other words,
11 if a council person or anybody, any citizen
12 wants certain documents and they file a request,
13 then they better expect to pay 25 percents per
14 page and the lowest hourly rate of the lowest-
15 paid employee competent to do the work.
16 Now, with regard to your role as the
17 management and the vision-setting body of the
18 City, do I think that you should file Open
19 Records requests or have to do that to get
20 information generally? My answer to that is no.
21 I think managerially you should be able to ask
22 for reasonable documents and get them in a
23 reasonable, timely manner. That isn't based
24 upon law. That's based upon my master's in
25 public administration and what I think good

Page 38

1 business is.
2 And that doesn't mean to say that the
3 Clerk isn't overwhelmed or doesn't have too much
4 to do. I'm not here every day and I don't know.
5 COUNCILMEMBER SPANGLER: I think you
6 made that same comment a few meetings ago.
7 ATTORNEY WEED: I did.
8 COUNCILMEMBER SPANGLER: And so from
9 here on out, if we ask for any information, we
10 don't have to do it in the form of an Open
11 Records request; therefore, we shouldn't have to
12 pay a fee for the information if it is some
13 information that is required for us to do our
14 job or helpful in us doing our job as a --
15 ATTORNEY WEED: And there's one caveat
16 to that, which is the way your government is
17 structured, you have a full-time mayor who is
18 the equivalent of your daily manager. He is
19 essentially the chief executive officer of your
20 corporation. Please bear in mind, just as a
21 caveat, that no one of you acting in your
22 individual capacity as a council person has any
23 authority to tell any individual employee to do
24 anything. They do not have to comply. Any four
25 of you at any given moment are fully vested with

Page 39

1 the authority to issue a directive to the
2 employees of the City.
3 So if one of you said, Luke, go do
4 something, and he didn't want to do it,
5 technically, he wouldn't have to. Now, in
6 common sense to Luke, I would advise him
7 privately that "You probably ought to, and your
8 life would be a lot more simple if you would."
9 However, legally, he wouldn't necessarily have
10 to. But any four of you as a group could
11 certainly tell him, "Luke" -- you know, as long
12 as the order was legal, you could certainly make
13 him do it.
14 The best way of handling, in my
15 opinion, your relationship with the individual
16 employees, you've got a full-time mayor.
17 Officially, according to your charter, that's
18 his job. Have him do his job; direct your
19 requests to him, and hopefully he'll see that it
20 gets done.
21 COUNCILMEMBER SPANGLER: And what if he
22 doesn't?
23 ATTORNEY WEED: He's not a permanent
24 fixture. As an elected official, you could
25 always -- you could always be voted out. The

Page 40

1 Mayor could be voted out. That's the oldest
2 cure in the book.
3 COUNCILMEMBER SPANGLER: So what you're
4 saying is if we ask for information from City
5 Hall, we probably should go through the Mayor --
6 ATTORNEY WEED: That's my opinion.
7 COUNCILMEMBER SPANGLER: -- in order to
8 assure that we're going to get the information.
9 ATTORNEY WEED: Yes, sir.
10 COUNCILMEMBER SPANGLER: And then if we
11 don't get the information from the Mayor, that
12 we requested, then there's nothing we can do
13 about it.
14 COUNCILMEMBER BATES: Sure. You can
15 file an Open Records request then.
16 COUNCILMEMBER ROCHE: Well, that's my
17 whole point, though.
18 ATTORNEY WEED: That would be your
19 solution, and then the statute and the criminal
20 and civil penalties that are there could come
21 into play.
22 COUNCILMEMBER ROCHE: And then maybe
23 two months later you get the information, which
24 is probably too late to do anything about it.
25 MAYOR JENKINS: Murray --

Page 41

1 COUNCILMEMBER ROCHE: I've got it on
2 the record and I know that --
3 MAYOR JENKINS: Is it not true, Murray,
4 that the Open Records request goes to the City
5 Clerk? Is that not true?
6 ATTORNEY WEED: In most governments in
7 Georgia, the city clerk is the official
8 custodian of the records. Now --
9 MAYOR JENKINS: I have never received
10 one myself. I'll be glad to. And most of the
11 time --
12 I don't understand why you say clamp
13 down on information. We never done that. We
14 have other things to do other than Open Records,
15 to start with.
16 Any time you come up here -- You have
17 the option to come to City Hall, which you do
18 not for some reason or another come up here. And
19 a lot of this information, we'll give you right
20 over the counter there. You don't have to . . .
21 Now, why do you act that way? Am I
22 telling the truth?
23 COUNCILMEMBER ROCHE: No, you're not.
24 MAYOR JENKINS: Yes, I am.
25 COUNCILMEMBER BATES: Ms. Blackmon, how

Page 42

1 many Open Records requests a day would you say
2 that you receive?
3 CLERK BLACKMON: Well, I actually did
4 my numbers since January. And in January, I had
5 eight; February, three; March, nine; April,
6 sixteen; May, four; June, twelve; and so far
7 this month, I've had thirteen.
8 MAYOR JENKINS: Okay. You can see why
9 Ms. Blackmon is you might say behind on this,
10 because we got other City business to do other
11 than Open Records, and we do the best we can up
12 here.
13 And if you want to send them to me, you
14 can. I had no idea you're supposed to send them
15 to me.
16 CLERK BLACKMON: No. That's not what
17 they said.
18 MAYOR JENKINS: I know.
19 CLERK BLACKMON: Just regular requests
20 for information would go to you.
21 MAYOR JENKINS: Yes. Okay.
22 CLERK BLACKMON: The ORRs still have to
23 come to the Clerk's office.
24 COUNCILMEMBER SPANGLER: Well, we never
25 had a problem before with getting information or

Page 43

1 Open Records requests. Council did not have to
2 pay for Open Records requests, and we got them
3 in a timely manner. Usually you got them within
4 three days.
5 ATTORNEY WEED: Yeah. And if there's
6 been a change, I don't know, and I don't know
7 the origin of the change.
8 I will say this, though: If the
9 Council or anybody else is going to be using the
10 Open Records Act to make sure that the civil/
11 criminal penalties and the time frames that you
12 get the advantage of, you know, are going to be
13 enforced, then my opinion is what's good for the
14 goose is good for the gander. If the public
15 pays, the Council should pay as well -- that's
16 my opinion -- because these things are
17 incredibly time consuming.
18 COUNCILMEMBER SPANGLER: I understand.
19 But be sure you send us the information you said
20 you would, so send it to full Council.
21 ATTORNEY WEED: The statute itself, you
22 can get anywhere.
23 How about I send you the outline, which
24 I think would be more usable to everybody and
25 it's in a much more friendly, readable format.

Page 44

1 COUNCILMEMBER ROCHE: Let's put that on
2 the web, too, the web site, because I get
3 questions from citizens all the time.
4 See, the reason that we're getting
5 increasing numbers of Open Records requests is
6 because there seems to be this -- the impression
7 is given that people are hiding stuff. And so
8 when you get that impression, people are going
9 to get more interested in what's going on and
10 file more and more Open Records requests.
11 I got it on the record. I know it's
12 pointless to try to do anything about it but at
13 least it's on the record.
14 I'm done. Thank you.
15 MAYOR JENKINS: Okay. We got some
16 alcohol problems, Murray?
17 ATTORNEY WEED: Well, I don't know if
18 we have alcohol problems yet, but the night is
19 young.
20 In your existing ordinances, in 2005,
21 in your alcohol beverage ordinance, you have a
22 penalty provision which is 3-272, and that
23 provision set out the minimum fine for the first
24 violation shall be not less than $500, the fine
25 for a subsequent violation will be not less than

Page 45

1 $1,000. Those fines comply with Section 1-12 of
2 your Code and they also comply with State law.
3 And then in 2005 [sic], an ordinance
4 was adopted that changed the penalty provision
5 to essentially read that the penalties would be
6 -- for any violation of the ordinance, the
7 violation fine would be $2,500.
8 That current fine violates State law.
9 The maximum is $1,000. I want to rectify that.
10 At some point also -- you've already fixed this
11 problem. 1-12 was too high and you have fixed
12 that to make it $1,000 now.
13 So in effect, this ordinance would make
14 the alcohol beverage ordinance compliant with
15 1-12 and with State law. It's a very short
16 ordinance, it only serves that one purpose, and
17 there may be other occasions that will come up
18 in the future where some penalty provision is
19 out of whack and I'll ask you to adjust it.
20 The reason why I care about this at
21 this particular time is that the Police
22 Department did do an operation and we're going
23 to be having a number of administrative
24 hearings. Before we get into that process, I
25 want to make sure that the penalty provision is

Page 46

1 corrected. So I would ask you to formally add
2 this item to the agenda, to waive first reading,
3 and adopt the ordinance.
4 COUNCILMEMBER BATES: Move to add it to
5 the agenda.
6 COUNCILMEMBER PITTMAN: Second.
7 MAYOR JENKINS: Okay. Anymore
8 discussion?
9 - - -
10 (No response)
11 - - -
12 MAYOR JENKINS: Call the roll, please.
13 CLERK BLACKMON: Councilmember
14 Alexander?
15 COUNCILMEMBER ALEXANDER: Yes.
16 CLERK BLACKMON: Councilmember Bates?
17 COUNCILMEMBER BATES: Yes.
18 CLERK BLACKMON: Councilmember Fleming?
19 COUNCILMEMBER FLEMING: Yes.
20 CLERK BLACKMON: Councilmember Pittman?
21 COUNCILMEMBER PITTMAN: Yes.
22 CLERK BLACKMON: Councilmember Roche?
23 COUNCILMEMBER ROCHE: Yes.
24 CLERK BLACKMON: Councilmember
25 Spangler?

Page 47

1 COUNCILMEMBER SPANGLER: Yes.
2 MAYOR JENKINS: Okay. Do I have a
3 motion we pass the ordinance?
4 COUNCILMEMBER BATES: Move to waive
5 first reading.
6 COUNCILMEMBER PITTMAN: Second.
7 MAYOR JENKINS: I thought that's what
8 we just did.
9 COUNCILMEMBER BATES: No. We added it
10 to the agenda, sir.
11 MAYOR JENKINS: Oh, okay. Now, okay,
12 we waive the first reading.
13 Do I get a second?
14 COUNCILMEMBER PITTMAN: Second.
15 MAYOR JENKINS: Call the roll.
16 CLERK BLACKMON: Councilmember
17 Alexander?
18 COUNCILMEMBER ALEXANDER: Yes.
19 CLERK BLACKMON: Councilmember Bates?
20 COUNCILMEMBER BATES: Yes.
21 CLERK BLACKMON: Councilmember Fleming?
22 COUNCILMEMBER FLEMING: Yes.
23 CLERK BLACKMON: Councilmember Pittman?
24 COUNCILMEMBER PITTMAN: Yes.
25 CLERK BLACKMON: Councilmember Roche?

Page 48

1 COUNCILMEMBER ROCHE: Yes.
2 CLERK BLACKMON: Councilmember
3 Spangler?
4 COUNCILMEMBER SPANGLER: Yes.
5 MAYOR JENKINS: Okay. Now we need a
6 motion for the motion.
7 COUNCILMEMBER BATES: Motion to pass.
8 COUNCILMEMBER PITTMAN: Second.
9 MAYOR JENKINS: Ordinance number?
10 COUNCILMEMBER BATES: Section 3-272,
11 Penalties regarding Chapter 3 Alcoholic
12 Beverages.
13 MAYOR JENKINS: You seconded?
14 COUNCILMEMBER PITTMAN: Yes, sir.
15 MAYOR JENKINS: Anymore discussion?
16 COUNCILMEMBER FLEMING: Yes, sir.
17 This does not address the severability
18 regarding first and second offenders?
19 ATTORNEY WEED: It does not. And the
20 reason why I didn't do that was because I didn't
21 want to -- I assumed that in 2005, the intent of
22 the Council was to take a firmer, harder stance
23 than what had occurred prior to that.
24 Prior to that, there was a first
25 violation, second violation. After the

Page 49

1 ordinance was changed underneath 2008-05 -- I
2 keep saying 05. That was the number. It was in
3 2008, early, that the law changed. That new
4 ordinance is very, very strict.
5 If you want to -- I'd assumed that
6 you'd want to keep along the same strict format.
7 If you don't, we certainly can rework the
8 ordinance to have a penalty for first violation
9 and second violations. That's up to the
10 Council. I didn't want to make the assumption
11 that you wanted me to completely, you know, go
12 back to the way it was prior to 2008.
13 COUNCILMEMBER FLEMING: Well, you were
14 changing the dollar figure of that ordinance
15 that we passed in 2008, and that was the reason
16 why I was asking. The severability was not in
17 this particular document, and I was just
18 questioning whether that still stood.
19 ATTORNEY WEED: It would, meaning that
20 all we're really doing with regard to this, if
21 you choose to adopt it, would be to make the
22 number correct. It wouldn't go back to first
23 violation and second violation. You could
24 certainly do that. But I didn't want to make
25 the assumption you want to do that. I just

Page 50

1 wanted to make the number right for you.
2 COUNCILMEMBER FLEMING: Thank you.
3 MAYOR JENKINS: Anymore comments?
4 - - -
5 (No response)
6 - - -
7 MAYOR JENKINS: Call the roll, please.
8 CLERK BLACKMON: Councilmember
9 Alexander?
10 COUNCILMEMBER ALEXANDER: Yes.
11 CLERK BLACKMON: Councilmember Bates?
12 COUNCILMEMBER BATES: Yes.
13 CLERK BLACKMON: Councilmember Fleming?
14 COUNCILMEMBER FLEMING: Yes.
15 CLERK BLACKMON: Councilmember Pittman?
16 COUNCILMEMBER PITTMAN: Yes.
17 CLERK BLACKMON: Councilmember Roche?
18 COUNCILMEMBER ROCHE: Yes.
19 CLERK BLACKMON: Councilmember
20 Spangler?
21 COUNCILMEMBER SPANGLER: Yes.
22 MAYOR JENKINS: Thank you.
23 Rhonda, was that all on the --
24 CLERK BLACKMON: Yes, sir.
25 MAYOR JENKINS: -- additions? Okay.

Page 51

1 We'll go into old business, which is number 4 --
2 COUNCILMEMBER FLEMING: Yes, sir,
3 Mayor.
4 MAYOR JENKINS: -- Conditional --
5 Excuse me?
6 COUNCILMEMBER FLEMING: I said yes,
7 sir.
8 MAYOR JENKINS: Yeah. Go ahead.
9 COUNCILMEMBER FLEMING: May I go ahead?
10 MAYOR JENKINS: Explain what it is.
11 COUNCILMEMBER FLEMING: Okay. Item
12 number 4 is Conditional Use Permits.
13 Prior to our City Planner, our Zoning
14 Code book listed very few conditional uses in
15 any and all of our zones, and we are becoming a
16 city that's requiring conditional uses in many
17 of our zones. And I will let Mr. Weed read
18 what's presently on the books, but I feel that
19 those need to be corrected. There's not a lot
20 of meat, as far as I'm concerned, to them.
21 I supplied Council with a conditional
22 use permits four-page, I believe, affidavit that
23 -- not affidavit -- five pages explaining what a
24 conditional use permit is and possible criteria
25 for conditional use permits.

Page 52

1 Mr. Weed, I believe you responded on
2 two items, and I did want to discuss that. In
3 my research for criteria for the instructions
4 for notifying residents possibly, residents as
5 well as businesses, that we were supposed to
6 notify them within 200 feet of the proposed
7 conditional use, you felt that that is something
8 that we shouldn't do. But in the majority of
9 all the cities that I researched, it was one of
10 theirs.
11 And so I would like you to go over that
12 again and give me your explanation as to why,
13 because if I were a resident and someone next to
14 me was planning on having some type of
15 conditional use at their home, I'd definitely
16 want to know about it in advance other than just
17 a sign that says come to the meeting and hear
18 what it is.
19 ATTORNEY WEED: My legal theory on this
20 is simple. I hate to create a trap which the
21 government is the person or the entity that's
22 inevitably going to fall into it.
23 And I would open with this: The
24 majority of jurisdictions that do this are
25 frankly wrong, and I say that with all humility.

Page 53

1 What they fail to consider is the fact that we
2 do have a Zoning Procedures Act.
3 The Zoning Procedures Act has been
4 litigated a thousand times. It plainly states
5 that in order to effectuate a zoning change, you
6 have to run an ad; how many times the ad's got
7 to be run, it's got to be run in the official
8 legal organ; and if it's an individual who is
9 trying to make the change, signage has got to be
10 posted, but if it's the government, then signage
11 is not necessarily required.
12 My biggest issue with this is that
13 there's no way to ever give perfect notice. If
14 you have an ordinance that creates a burden
15 which will be on the government to meet that
16 burden -- if it says, for example, you must
17 notify the owner of property within 200 feet of
18 the change, the owners will regularly,
19 constantly change -- what basis will there be to
20 prove that the owner actually got the notice,
21 that the owner was really the owner at the time
22 that the notice went out?
23 You're going to have to rely upon the
24 work of other people. You're going to have to
25 rely upon the Dekalb County, you know, property

Page 54

1 records. And without doing an actual 50-year
2 title search on every individual lot, you're
3 never really going to know who the real owner is
4 because it can always change on you at the point
5 of notice.
6 And therefore, you're building in a
7 system, in my opinion, which will constantly run
8 into problems. If I want to delay, if I want
9 to, you know, just be a thorn in the side of an
10 applicant or the government trying to do a
11 conditional use permit, the first thing I will
12 always say is, "I didn't know. I didn't get the
13 letter. You didn't perfect notice on me.
14 You're violating my 14th Amendment procedural
15 due-process rights."
16 However, if you follow the ZPA and
17 always follow the ZPA, then you've run the ads
18 and you've perfected the notice, not by having
19 individual notice which will always be
20 problematic but by having a notice to the world
21 at large, and that's legally acceptable. In my
22 opinion, that's still the way to go.
23 COUNCILMEMBER FLEMING: Okay. The
24 other item that you questioned was the
25 expiration criteria -- or I shouldn't use

Page 55

1 "criteria," but the expiration, and . . .
2 I'm sorry. It's on the criteria.
3 ATTORNEY WEED: One thing I was worried
4 about was that there was a suggestion that we
5 have a legal limit on the number of --
6 COUNCILMEMBER FLEMING: Yes, sir. It's
7 on the criteria portion.
8 ATTORNEY WEED: Right.
9 COUNCILMEMBER FLEMING: I had the
10 maximum number of the requested or -- and
11 specified conditional use shall be no greater
12 than five such uses in a given zoning district.
13 ATTORNEY WEED: Personally, I don't
14 like creating a situation where it's like trying
15 to get concert tickets to the Beatles: if you
16 are the first people in line, you get them, but
17 after that, you're out of luck. I just don't
18 think that's the way to run a zoning ordinance
19 and I feel uncomfortable with capping something
20 like that at five.
21 COUNCILMEMBER FLEMING: Okay. Is there
22 a magic number? I mean we have a magic number
23 for labor pools, and it's the residence rate or
24 the number of residents we have in the city,
25 X-number of labor pools, et cetera, and I don't

Page 56

1 understand why we can't do that.
2 I would hate to see for instance Plaza
3 One -- Let's just take a conditional use and say
4 that whole Plaza One is this one particular
5 conditional use. I don't think that would
6 benefit the city. I don't think it would
7 benefit the individual lessee of the business if
8 all of them for instance were sandwich shops in
9 that particular place.
10 But if we limited it to that particular
11 area of only five of those suites being a
12 specific conditional use, I think that would be
13 much better.
14 ATTORNEY WEED: Well, I admire your
15 logic and I appreciate the analogy that you've
16 given, and here's why I think there's a
17 distinction: With regard to labor pools, for
18 example, that is based on some relatively
19 concrete numbers, meaning most of those
20 ordinances that create those kind of thresholds
21 or caps are based upon population. And logic
22 would dictate that in a town of let's say 10,000
23 people, which is, you know, about the average of
24 the population of Doraville, that the logical
25 question to ask would be, how many labor pools

Page 57

1 can a town of that population truly support, and
2 how many labor pools in a town of that
3 population are actually good for the economy and
4 good for the town?
5 Now, I see how you can use that and try
6 to reach an analogy between that circumstance
7 and a number of conditional use permits. But I
8 think the difference -- the fundamental
9 difference between the two things is the effect,
10 meaning there's a much broader practical effect
11 on the economy based upon the number of liquor
12 stores, the number of foot massage parlors or
13 the number of labor pools than there would be in
14 the micro sense of a shopping center and
15 individual addresses in it and how a conditional
16 use might be applied for, you know, five, but
17 the next building over or the next suite which
18 is number six in the same shopping plaza can't
19 get a conditional use permit.
20 So I think it comes down to a practical
21 distinction of macroeconomic impact and harm of
22 the community and the micro effect, because
23 there would be so many more intense
24 considerations of what a conditional use can
25 allow in a particular, you know, address as

Page 58

1 compared to, you know, a larger figure for, you
2 know, pawn shops and labor pools.
3 I think it goes down to a difference
4 between the level of what's called pernicious
5 secondary impact, that what you're trying to do
6 is prevent something bad from happening. And
7 something bad happening, in some businesses,
8 likely that effect is much greater frankly than
9 with regard to conditional use permits. So I
10 think that's the difference.
11 I know that's a long explanation, but I
12 think what you're really trying to do with this,
13 you're trying to prevent bad things from
14 happening, and I think some bad things are more
15 likely underneath some circumstances than
16 others.
17 COUNCILMEMBER FLEMING: You don't have
18 a short answer? I'm just kidding. I'm just
19 kidding.
20 I really feel there is a need to limit
21 the number of a specific conditional use.
22 That's just my feeling. We did it for
23 automobile lots, we've done it for labor pools
24 due to population.
25 Like I said, you know, I'm using the

Page 59

1 analogy of a sandwich shop, but I just feel that
2 we should be able to limit it somehow, in some
3 way, some form.
4 So this is my presentation in regards
5 to the criteria. I know that we have four.
6 If you'd like to read the four that we
7 presently have, Mr. Weed?
8 ATTORNEY WEED: Well, sure, and I'll
9 paraphrase. They're found in 1501.
10 The first criteria is that there has
11 been an application and a site plan that's been
12 turned in by the applicant; two, that there are
13 conditions of the ordinance that are relative to
14 the conditional use and all of those conditions
15 have been met -- which seems very circular to
16 me, but that's what's in there right now, anyway
17 -- three, the applicant has some sort of binding
18 agreement for any specific limitations or
19 conditions that are deemed necessary to protect
20 the public interest and to assure the continued
21 beneficial use of the property; and that four,
22 that the conditional with puts specific
23 limitations and design features that might be
24 required will further the aims of the land use
25 plan.

Page 60

1 That's what's in the book.
2 COUNCILMEMBER FLEMING: I think with
3 those four particular uses or criteria presently
4 in our zoning code --
5 Zoning Code 1501; is that correct, sir?
6 ATTORNEY WEED: Yes, ma'am.
7 COUNCILMEMBER FLEMING: -- that like I
8 said, it doesn't have enough teeth to it.
9 We've got numerous applications coming
10 up, conditional uses, and I would like to at
11 least ask Mr. Haeberlin and Mr. Weed to put
12 together more detailed conditional use permits
13 criteria as well as expiration. I think
14 expiration needs to be included. I'm much in
15 favor of having an expiration in our conditional
16 use.
17 Mr. Weed, did you have any problem with
18 that?
19 ATTORNEY WEED: No, ma'am. I think
20 that's certainly legal.
21 I will just share as a point of
22 information, Hapeville had one for years. They
23 determined that keeping up with it was a
24 problem. But as long as you have staff to keep
25 up with the expiration dates, I'm all about

Page 61

1 having them expire. There's no legal
2 impediment. It comes down to a keeping-up-with-
3 it-on-the-books problem.
4 COUNCILMEMBER ROCHE: The problem now
5 is we need a good set of criteria by which to
6 evaluate these things. I agree with
7 Councilwoman Fleming that we need to greatly
8 improve on the criteria so that when we're
9 making our decisions we're basing it on a better
10 set of criteria than what we have.
11 COUNCILMEMBER BATES: Well, and to
12 piggyback on that, the criteria needs to be
13 somewhat subjective --
14 Or objective? Which one has --
15 Objective? Objective.
16 ATTORNEY WEED: Well, let me put it
17 like this. If I'm defending it in court, it's
18 going to be the most objective criteria it ever
19 was.
20 COUNCILMEMBER BATES: Because as it
21 sits right now, it's very subjective, and we
22 could have two different -- we could have the
23 same conditional use for two different
24 properties, and if there's no objective criteria
25 to weigh them, we could approve one an deny one

Page 62

1 just because we . . .
2 COUNCILMEMBER FLEMING: Feel like it.
3 ATTORNEY WEED: This may be another
4 thing that Scott and I disagree upon philoso-
5 phically. I don't know. We haven't really
6 talked about it in great detail. But I don't
7 like conditional uses at all. I really -- I
8 think a zone should be black or white. It
9 should allow -- either it allows it or it
10 doesn't allow it. And I don't like conditional
11 uses as a lawyer because I don't like anything
12 that's not black or white. That's just my
13 nature that way or I wouldn't have gone to law
14 school.
15 Obviously that pulls back some of the
16 flexibility that Council has. But I do think if
17 you're going to do conditional uses, then you
18 obviously need to have some clearly-
19 ascertainable objective criteria -- those are
20 the quote/unquote magic words -- that a court
21 will look at, and you need to have those.
22 COUNCILMEMBER BATES: And thank you,
23 Ms. Fleming, for moving this forward, but --
24 COUNCILMEMBER FLEMING: We have a
25 couple coming up in August.

Page 63

1 Have we already advertised for this,
2 conditional use permits?
3 MR. HAEBERLIN: The Code changes, not
4 yet; but of course the two petitions for this
5 month are advertised.
6 COUNCILMEMBER FLEMING: We have two
7 conditional use permits requested, that we put
8 off, actually, until August in hopes of getting
9 our criteria already set, so I'd really like --
10 MR. HAEBERLIN: One thing. Just one
11 was put off. It's the one that you put off in
12 Plaza One. You delayed it to August.
13 COUNCILMEMBER ALEXANDER: There's two.
14 MR. HAEBERLIN: The other one was a
15 variance.
16 COUNCILMEMBER ALEXANDER: Oh, the other
17 one's a variance.
18 COUNCILMEMBER FLEMING: Okay. All
19 right.
20 COUNCILMEMBER BATES: That was the
21 accessory structure.
22 COUNCILMEMBER FLEMING: I apologize.
23 Yes, that's correct.
24 So I would like to request that
25 Mr. Haeberlin and Mr. Weed get together and

Page 64

1 draft conditional use permits for Section 1501
2 of our Zoning Code, please.
3 MR. HAEBERLIN: Yes, ma'am.
4 COUNCILMEMBER FLEMING: Is that
5 acceptable to Council?
6 COUNCILMEMBER BATES: Yes, ma'am.
7 COUNCILMEMBER FLEMING: Thank you.
8 I'll move on, Mayor, if I can.
9 I have item number 5.
10 MR. ANDERSON: I'm signed up for this.
11 COUNCILMEMBER FLEMING: Oh, I'm sorry.
12 I apologize.
13 MR. ANDERSON: Sorry to interrupt.
14 The first thing I'll say is when we're
15 putting things on the agenda -- We had two or
16 three things on the agenda that were not on the
17 agenda and weren't on the sign-up sheet. And I
18 think that if you're going to put things on the
19 agenda, you should allow people to participate
20 in those as well as if they would have signed up
21 on the sign-up sheet.
22 Thank you. There was a couple things
23 earlier that I wanted to comment on.
24 I'm in agreement a hundred percent with
25 Mr. Weed. When Scott started to do the zoning

Page 65

1 changes and included conditional uses, I'm very
2 aware that there are pre-existing variances,
3 basically. There's a bunch of terminology you
4 can use for them.
5 1501 didn't matter to me before because
6 we didn't have very many conditional uses so we
7 weren't in any trouble with them. But now that
8 we're putting a bunch of conditional uses on,
9 I'm very aware and was at the time of C1 and C2,
10 M1 and M2, that there was potential problems
11 because we didn't have any teeth. Our first two
12 criteria that Mr. Weed read off say nothing at
13 all, the third one is very ambiguous and the
14 fourth one just says that we're going to comply
15 with the Comp Plan is all it says.
16 So if you're going to have condit- --
17 I'd just as soon you had variances and zoning
18 changes and allowed uses and uses that aren't
19 allowed in your zoning book.
20 Having conditional uses is a way for
21 sophisticated cities to tailor their zoning. If
22 you've got 60 planners, you might want to use
23 conditional uses. In a million-person city,
24 that's all fine and dandy.
25 But right now, we've got variances,

Page 66

1 we've got zoning changes or a zoning book. All
2 we need to have is allowed uses and uses that
3 are not allowed. So I'm concerned that either
4 we need to have a much better set of criteria
5 for conditional uses -- more sophisticated and,
6 you know, more paperwork, more paperwork -- but
7 I'm definitely for just setting aside
8 conditional uses for the city. It'll make a lot
9 less conflict with citizens coming forward,
10 knowing and not knowing, et cetera, et cetera.
11 It's another layer of activity that we don't
12 really need to be dealing with.
13 Thank you.
14 COUNCILMEMBER FLEMING: Thank you.
15 Okay. I have also agenda item number
16 5. This was postponed from April, and then we
17 got into May and we postponed it then as well.
18 It's regarding City Ordinance 5-40 Driveway
19 Limitations and the maintenance of, and this was
20 an additional item that was presented in '05
21 where the existing driveways constructed of
22 gravel would have to be replaced with asphalt or
23 concrete by 2011.
24 And I know that it seems like I'm
25 pushing this, but I'm in a follow-up mode so I

Page 67

1 just want to follow up. And I would like to on
2 Section (a), after the first sentence -- and
3 I've provided Council as well as Mr. Weed and
4 Rhonda and also Ms. Terri, and also there were
5 some out on the desk for review -- after the
6 first line, I'd like to put "primary." I would
7 like to differentiate between primary and
8 secondary driveways. I think all primary drive-
9 ways should be asphalt or concrete, paver bricks
10 or possibly porous driveways but I don't believe
11 that secondary driveways should have to be
12 concrete at all. So after the very first line,
13 I'd like to put "primary" there.
14 And then I've noted where we should
15 delete "Visible grass or weeds shall not be
16 allowed to grow through any such driveway."
17 Well, it's already made, the comment in this
18 item number (a), that pavers or brick. Well,
19 when you've got pavers in there, you tend to
20 have grass sometimes growing through it, so I
21 think that sentence needs to be deleted because
22 grass may be growing through it.
23 And then basically delete (b), (c) and
24 (d) which requires you to replace the gravel and
25 go to asphalt.

Page 68

1 I would also like to insert, "Secondary
2 driveways used for additional parking or storage
3 of recreational equipment can be constructed of
4 porous materials."
5 And that's what my additions are for
6 Section 5-40.
7 MAYOR JENKINS: Secondary driveways,
8 you're talking about for recreational vehicles?
9 COUNCILMEMBER FLEMING: Or extra
10 parking, sir.
11 MAYOR JENKINS: Yeah. Well, that's --
12 you know, is there not a limit of 12-foot
13 driveways no matter whether they're secondary or
14 ordinary?
15 COUNCILMEMBER FLEMING: I'm not sure,
16 sir.
17 COUNCILMEMBER ALEXANDER: It says 24
18 feet.
19 MAYOR JENKINS: Is it 24?
20 COUNCILMEMBER ALEXANDER: That's what's
21 in the ordinance.
22 MAYOR JENKINS: Well, then, what are
23 you saying? You could have a 12-foot driveway
24 with gravel and a 12 with concrete -- I mean
25 with -- yeah, with concrete?

Page 69

COUNCILMEMBER FLEMING: No. That's why I inserted "primary." Primary driveway needs to meet that code.

But if you've got a pull-off -- Mayor, for instance, on your driveway, okay, you've got the asphalt. But if you pulled up on the right-hand side of your driveway, you don't have 24 feet on the right-hand side of your driveway.

MAYOR JENKINS: No. I don't have any room on mine, no.

COUNCILMEMBER FLEMING: Right. So what I'm saying, because you see --

MAYOR JENKINS: You're saying my --

COUNCILMEMBER FLEMING: -- a lot of neighborhoods have a pull-off but it's not -- it's not under any type of mandated footage. There's several on Oakcliff Road as a matter of fact.

MAYOR JENKINS: Well, mine is concrete. Like you're saying that my little cut-off on my driveway can be -- you want it to be gravel.

COUNCILMEMBER FLEMING: It can be.

MAYOR JENKINS: Well, a lot of them --

COUNCILMEMBER FLEMING: If you've got gravel there right now, you would have to

Page 70

replace it to asphalt. So that's what I'm trying to get away from.

COUNCILMEMBER PITTMAN: Within six years.

COUNCILMEMBER FLEMING: By 2011, it has to be done, based on this ordinance.

Right now, for instance, like the Roberts driveway, they've got a little secondary driveway. That's what I'm sort of calling it. They've got an asphalt driveway as the primary and then they've got a pull-off driveway that has gravel on it.

Does it not, Mr. and Mrs. Roberts?

MR. ROBERTS: Yes.

COUNCILMEMBER FLEMING: And based on that, that's fine as a secondary driveway, but based on this particular ordinance, they would have to have asphalt or concrete.

MAYOR JENKINS: By 2011.

COUNCILMEMBER FLEMING: Correct.

COUNCILMEMBER ROCHE: So by adopting these changes, you could still continue to keep your --

COUNCILMEMBER FLEMING: Yes.

COUNCILMEMBER ROCHE: -- little

Page 71

secondary driveway for storage and stuff like that.

COUNCILMEMBER FLEMING: Correct.

COUNCILMEMBER BATES: But if we deleted (b), (c) and (d), does that not then eliminate the requirement for the primary driveway if it's currently gravel to be upgraded?

COUNCILMEMBER FLEMING: If the primary driveway right now is gravel, I don't think we should force them to go to asphalt or concrete, pavers or brick, because porous material is better for the ecology than is asphalt and concrete. We've got way too much heat in the city right now and it causes more runoff for storm damage and stormwater control.

COUNCILMEMBER ALEXANDER: Well, one of the problems that we have experienced in Oakcliff is without curb-cut allowance, people have just thrown gravel in their yard and started parking there, And that's an issue that we -- one particular house on Pin Oak, we are still dealing with. So --

COUNCILMEMBER FLEMING: Is it considered a secondary drive or that's --

COUNCILMEMBER ALEXANDER: Well, they --

Page 72

COUNCILMEMBER FLEMING: -- their primary?

COUNCILMEMBER ALEXANDER: -- park there every day even though they don't have a curb cut.

I believe when previous Council, which Mr. Spangler and Ms. Pittman may be able to enlighten more, that was one of the concerns they had was that we had people that just decided one day they were going to make a driveway and had a truckload of gravel delivered.

COUNCILMEMBER SPANGLER: Well, since we went green, you know, I agree with Ms. Fleming on a secondary parking pad or driveway and I do agree you don't need to go more than 30 percent of your total area of your property in paved or concrete, but I agree with a gravel secondary display or parking pad or whatever.

I think the problems that exist or existed before, Ms. Alexander, was people were not getting permits to do the driveways. I think they need to continue to get a permit. I think Mr. Haeberlin had even mentioned something about the gravel driveways.

Page 73

If I remember correctly, I think you were sort of for those?

MR. HAEBERLIN: I mean I'll address my comments to the Council if you'd like.

COUNCILMEMBER SPANGLER: But I don't disagree the primary driveway should be concrete or pavers or asphalt, but a secondary can be gravel I would think.

COUNCILMEMBER ROCHE: Well, if the primary driveway required a curb cut, wouldn't that resolve this issue?

COUNCILMEMBER SPANGLER: Well, the secondary driveway should require a curb cut if it's going to be a new driveway or parking pad.

COUNCILMEMBER ROCHE: And that was the next thing to get to was if, you know, there was existing driveways that may be gravel. And I've heard complaints from people over in Northwoods that they're going to have to tear it all up and build a driveway.

But on the other hand, I agree that you shouldn't be able to just -- I can't just throw gravel in my front yard and say that's another, you know, driveway, either.

COUNCILMEMBER PITTMAN: And that was

Page 74

part of why we did what we did: because that was occurring. People were just pouring gravel in the middle of the yard and saying, "Hey, I'm going to park my car here," and they were legal. So that's what we were trying to prevent.

COUNCILMEMBER ROCHE: Because it would seem like if we used something like curb cuts to define that for a primary. I mean I can see having -- You know, if you've already got a gravel pad somewhere where you're parking your RV, you know, and you hop the curb once, you know, three times a year when you take your boat out or something, that may be different, but --

MAYOR JENKINS: Most of those secondary driveways are not full length and don't always have a curb cut. The curb cut is the main driveway.

COUNCILMEMBER ROCHE: That's what I'm saying.

MAYOR JENKINS: Yeah.

COUNCILMEMBER ROCHE: The main driveway, the primary driveway --

MAYOR JENKINS: I agree with that.

COUNCILMEMBER ROCHE: -- should have a curb cut and obviously would need a permit.

Page 75

COUNCILMEMBER PITTMAN: A secondary driveway, I don't feel that they should have it gravel. I think if they're going to have something new, they need to meet the criteria and not have gravel just poured.

COUNCILMEMBER ROCHE: Well, that would be the other thing is to grandfather in --

COUNCILMEMBER PITTMAN: Right, exactly.

COUNCILMEMBER ROCHE: -- some people who already have it.

COUNCILMEMBER PITTMAN: I would like to hear what Mr. Haeberlin says, Mayor, please.

MAYOR JENKINS: Yes. Come on up.

MR. HAEBERLIN: You've got a couple mechanisms here.

First I want to inform you the Dekalb County Department of Transportation does not enforce city codes. So if we send somebody over to Dekalb County -- I think that was the prior practice, and Rhonda could attest to that -- they're not going to enforce the City Code. They're going to follow the County engineering guidelines for curb cuts. So as far as management within the city, that provides little if no value to us because it's discretionary on

Page 76

their part.

COUNCILMEMBER ALEXANDER: So you're saying that I could get a truckload of gravel and dump it in my yard and I don't need a curb cut and I have another driveway.

MR. HAEBERLIN: Well, I'm not discounting the need for curb cuts, but what I'm saying is the primary mechanism used in the past -- and Rhonda could attest to this -- is that they went to Dekalb County. The engineering treats -- engineering for this curb-cut permit. Okay? That's the only way they could possibly get one in the city because there's no provision in our City Code to grant those.

So you have to look at who is going to manage this tool. Dekalb County will not enforce city codes. I will tell you this: Dekalb County could care less whether there are sidewalks in the city, all sorts of things. And this is from my dealings with them. I know this factually because I live with this day to day. So who is going to manage this process, number one?

But number two, when we talk about grandfathering, in most communities, large-lot

Page 77

1 agricultural, five-acres-or-more homes that are
2 constructed perhaps prior to 1910 or 1900 --
3 there's some sort of benchmark -- for some of
4 those homes, gravel driveways are seen as
5 appropriate. These are homes with carriage
6 turnarounds and all sorts of things that modern
7 homes don't have.
8 But generally, most communities in
9 metropolitan Atlanta do require a paved drive-
10 way, and they tell you how wide it's going to
11 be, how long it's going to be, where it's to be
12 placed, what percentage of the front yard it is,
13 et cetera. That goes back to managing
14 impervious. Right now, until we rewrite R-1,
15 we're not managing impervious at all.
16 Now, on the discussion of pavers,
17 porous concrete and gravel, I will tell you
18 this: The engineers do not consider those
19 impervious and they do not pass engineering
20 review for soil erosion as pervious. They
21 consider those impervious. So we've got some
22 semantic problems.
23 While I would not disagree that these
24 more pervious items certainly help in some
25 aspects -- water; they help plants, too,

Page 78

1 particularly if you're constructing under a
2 large tree -- but they don't really qualify as
3 pervious, and an engineer will tell you that.
4 So if we send something for an engineering
5 review, they'll deny it. They'll consider it to
6 be impervious.
7 So there's some things you have to look
8 at. It all comes down to community standard.
9 You are inside of I-285. We are not in Bartow
10 County. We are not in north Georgia.
11 Do I feel that gravel is appropriate in
12 the city? No. But again, that's my standard
13 that I've set. You may disagree with me.
14 The management of these areas is going
15 to be a problem. It has been a problem thus far
16 and it'll continue to be a problem. At some
17 point, uniformity would be a desire. I can
18 think of just a couple homes in the city,
19 because of their age, that the situation of
20 gravel would be more appropriate for. But do
21 you really want to encourage new construction to
22 have these type items? That's what, again, I
23 think you have to really be concerned about.
24 You don't allow gravel and you don't
25 allow these alternative methods in commercial or

Page 79

1 industrial or office/institutional, et cetera,
2 for a reason: because they're problems. The
3 gravel always ends up in the road. It's a mess.
4 It's in the public right-of-way which requires
5 basically, well, our nonexistent streets
6 department -- Public Works, we'll call it -- to
7 go out and maintain these areas.
8 So you have a whole host of management
9 problems you have to deal with, and that's what
10 I want you to give thought to.
11 It's an exceptional idea in certain
12 areas of the country: south Florida, places
13 where they won't support pavement surfaces;
14 where there are huge, huge water issues, water-
15 control issues. But realize most of your
16 communities here were built without the benefit
17 of detention ponds and most of them have large
18 green spaces in them that actually function as a
19 detention facility such as public parks.
20 So I am going to err on the side -- my
21 recommendation to you would not be to allow
22 gravel in the city. Again, I think once you
23 open that window, it's going to be all over the
24 place, and that's something I think you need to
25 consider in your decision making.

Page 80

1 COUNCILMEMBER FLEMING: Not even as a
2 secondary driveway.
3 MR. HAEBERLIN: Not even as a secondary
4 driveway.
5 I'll be honest with you, all these
6 parking areas are indicative of a lack of
7 storage for vehicles, and it's also, too,
8 indicative of occupancy. If you're over-
9 occupying houses, you have too many people
10 there, where are you storing the cars? And you
11 don't have garages, so there's no place to store
12 in the garages. See, it's a cumulative effect.
13 COUNCILMEMBER FLEMING: Well, thank you
14 very much for your comments. Did you have any
15 others?
16 MR. HAEBERLIN: No, ma'am.
17 COUNCILMEMBER FLEMING: Okay. I'm
18 going to stand my ground on the primary
19 driveways should be constructed of asphalt or
20 concrete but secondary driveways as is in the
21 city right now.
22 Now, when you do R-1, for new
23 construction, can we do the new-construction
24 values versus up to and including this code date
25 for R-1?

Page 81

MR. HAEBERLIN: Well, I'm not even discussing the situation on the R-1 rewrite because this is a subset of another code. It's not really a zoning code in my opinion. This is really a development code.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: The answer to your question is yes. I mean you can differentiate between classes of people as long as you treat everybody in the class the same way.

So essentially if you wanted that after a certain date all new construction had to be built to these standards, you can do that. You can make that differentiation.

COUNCILMEMBER PITTMAN: Now, can we, the ones that are already there, just leave them alone but nothing new, nothing new with gravel? Anything and everything including secondary driveways to be of something else other than gravel?

ATTORNEY WEED: Can you do it legally? Yes.

COUNCILMEMBER PITTMAN: You sound like there's a "but" to that. But?

ATTORNEY WEED: That's not my decision.

Page 82

COUNCILMEMBER ROCHE: We're just stunned --

ATTORNEY WEED: Can you do --

COUNCILMEMBER ROCHE: -- that we got --

ATTORNEY WEED: -- it legally? Yes.

COUNCILMEMBER ROCHE: -- a short answer.

COUNCILMEMBER PITTMAN: Yeah. I was waiting for something else.

I don't really have a problem with the ones that are already here.

COUNCILMEMBER ALEXANDER: I guess on that, who's going to keep up with if they had a gravel driveway before?

ATTORNEY WEED: The only practical way of doing this would be -- and frankly, it's my opinion you probably need to do this, anyway -- you'd have to have City employees, you would need to take a photograph of every existing lot in the city on every street -- that's the only way to do it -- to record at a certain time what was on the lot at a certain time.

COUNCILMEMBER BATES: But there's no way to know if it's expanded. You'd have to measure.

Page 83

COUNCILMEMBER FLEMING: Keep in mind right now, ladies and gentlemen, I'm going to be sitting here. Ms. Alexander, you're still going to be sitting here and Mr. Roche, you're still going to be sitting here. Mayor, you are, too. The number of residents that are going to come to us and say, "The gravel that's in my driveway as a secondary driveway, you're going to tell me that I've got to remove it?" I don't want to be sitting here. I mean I want it corrected now rather than . . . 2011 is not too far away.

MAYOR JENKINS: According to the ordinance, they'll have to pave it. It's been in the ordinance for how long?

COUNCILMEMBER ALEXANDER: Since 2005.

COUNCILMEMBER FLEMING: They have to remove all of the gravel and then pave it.

MAYOR JENKINS: All they do is pave over it.

COUNCILMEMBER FLEMING: Pardon me?

MAYOR JENKINS: Pave it. That's all.

COUNCILMEMBER FLEMING: Oh, sure. Okay.

COUNCILMEMBER SPANGLER: We can't change it to allowing the people that already

Page 84

have existing driveways -- secondary driveways or parking pads of gravel, can we keep them?

ATTORNEY WEED: You can legally do anything you want to with regard to, you know, if you're going to require gravel or let, you know, the gravel stay. It's wide open.

COUNCILMEMBER ALEXANDER: Again --

COUNCILMEMBER SPANGLER: So Quality of Life could actually go out and they could make a list of all the residents like you said, and say, "Okay. This residence has a gravel driveway," or whatever or take a picture or whatever. Or it doesn't have to be Quality of Life. It could be Scott.

COUNCILMEMBER ALEXANDER: Again, so you could have an instance where because I am an existing owner and I have a gravel driveway and the neighbor besides me decides to put one in, you're going to tell them no.

ATTORNEY WEED: That's exactly what will happen.

COUNCILMEMBER ALEXANDER: Exactly.

MR. WEED: And I'm not saying it's good or bad or indifferent but that's exactly what will happen.

Page 85

1 COUNCILMEMBER SPANGLER: But why would
2 it not be fair for these people that have had
3 gravel driveways for 15 or 20 years or even 30
4 years to all of a sudden now have to pave them?
5 Yeah, I can see from this point forward or from
6 the point that we did this ordinance forward,
7 but for those existing, it's not fair to them to
8 have to go in and pave a secondary pad or
9 driveway.
10 COUNCILMEMBER ALEXANDER: So how are we
11 going to prevent the construction of the drive-
12 ways with a gravel truck coming in on a weekend
13 and dumping a load and they got a new driveway
14 if the curb cuts don't matter at the county
15 level?
16 ATTORNEY WEED: My opinion about
17 enforcement would be you literally --
18 COUNCILMEMBER FLEMING: A building
19 permit is required for driveways.
20 ATTORNEY WEED: You'd have to go, you
21 know, literally photograph everything that's out
22 there right now, preferably measure it, if
23 you're going to maintain any kind of distance
24 requirement or width or length requirement for a
25 driveway. Each lot would have that recorded,

Page 86

1 and that would be your base standard to go from,
2 you know. And if you went beyond it or built
3 beyond it after you rewrote the ordinance, you'd
4 be cited, and otherwise you'd be fine. That's
5 how I would do it if I were here every day.
6 MAYOR JENKINS: Stuart?
7 MR. ANDERSON: Stuart Anderson.
8 There seems to be some debate of this.
9 Scott is of two minds on this. He's for
10 permeable green spaces in new construction,
11 shopping centers, et cetera, et cetera, but he's
12 expressed some concerns about how R-1 people --
13 how residential people act with their gravel, I
14 guess.
15 In the current legislation, we have --
16 in the old legislation and in the current
17 legislation, we have surrounding our gravel with
18 timbers and construction materials, timbers
19 containing the gravel. That's already in the
20 old zoning. It's what we've had. Three houses
21 down from me has a full gravel driveway and they
22 have landscaping timbers on each side of it;
23 looks nice.
24 I certainly agree with Ms. Fleming that
25 the parking pads and secondary pull-offs and

Page 87

1 things could be controlled or the gravel could
2 be controlled and we'd have permeable surface
3 even though they're not legally permeable
4 surface.
5 I show you a picture of Tiger Woods
6 walking up adjusting his suit (indicating).
7 This is not a low-rent district. There's not
8 pavement there. Those are pavers. There's
9 green grass growing up that we don't allow
10 between those pavers. This is not a low-rent
11 district.
12 I think we could use a little green
13 here, a little common sense. I think we can
14 park the cars and the extra vehicles on
15 permeable surfaces without degrading our R-1
16 districts.
17 If, like Murray says, we have to do a
18 survey of all the properties, perhaps that be
19 the case, perhaps we could put in the
20 newsletter: For the next six months and next
21 year, if you have a gravel situation, let the
22 planner know that you have a gravel situation.
23 Be proactive, and you don't have to spend five
24 to eleven thousand dollars and pave the world.
25 This is not good -- paving, paving,

Page 88

1 paving. We have a stormwater problem in this
2 city that won't quit. And the more pavement
3 we've got, the more stormwater problem we've
4 got. One of Bill Brackbill's houses just up the
5 street from me is brand new. Beautiful site.
6 Driveway paved. The water flows off this thing
7 like crazy; it's -- you know.
8 So I agree that we should have at least
9 the secondary situations in something permeable.
10 I think gravel looks okay after it's aged a
11 while. I know that Scott knows about entrance
12 concrete situations where you can keep the
13 gravel from going in the street to a large
14 extent -- it's an extended curb kind of thing
15 with a cut-down, contains the gravel -- if you
16 have wooden retention on the sides. Common
17 sense in architectural standards.
18 Thank you.
19 MAYOR JENKINS: Thank you. Tom?
20 MR. HART: I was on the City Council
21 when we passed this, and it was a big problem
22 particularly with Jason Anavitarte and Marlene,
23 having gravel parking lots in front of people's
24 houses.
25 And we've got several on Chestnut where

Page 89

you've got 10 cars parked diagonally in front of it because the driveway's not 24 feet wide. It's about 40 feet wide. Okay? And people would back up --

And there's a couple ambulances parked in your neighborhood, Stuart, that they just basically backed up and put a truckload of gravel down and parked a couple ambulances in the back yard.

MR. ANDERSON: With no curb cut.

MR. HART: And no curb cut.

So it was there for a reason. And the driveways -- standard practice is to have driveways that are 12 and 24 feet wide, carports that are 12 or 24 feet side, and they're there for a reason: because in Doraville, they built driveways that are eight feet wide, and you got out of the car and you were on the grass and there was this muddy path on each side of your driveway because it didn't meet any code. And so people are always putting something on the side of their driveway to expand it so it would be a normal-width driveway. So I agree totally with the restrictions of 12 or 24 feet.

And then additional secondary driveways

Page 90

is because they've got some tractor-trailer parked up on their grass. Okay? That's why they made these temporary storage facilities that neighbors of mine have got their motor homes parked over here on Chestnut and they paid for a parking pad over there to put this tractor-trailer on.

And so the previous Council passed this for a purpose. I agree totally, like Tommy Galloway's house where you have pea gravel driveways on these older homes. You build a house, and they're going to be 1.2 million and you're going to end up with pea gravel ornamental driveways in there, and so you have to have some provision for that.

But as far as dumping 57 stone on the side of your yard so you can park this 50-foot motor home over there, you know, it just causes blight in the neighborhood.

And if you've got too many cars for the facility, I agree with Scott that you end up with just a parking deck there out in the front because there's too many people living at the house.

So one way all these other cities

Page 91

restrict these housing problems, devote a lot of time on their ordinances for driveways.

And I don't agree -- I agree with Stuart about the pervious surfaces. I've got a brick driveway, and grass does grow between the bricks because it's -- water goes -- doesn't run off my driveway like it used to. I used to have a flood.

Then if you go over to Ravinia over at Perimeter Mall, you'll notice that all the driveways are pavers, are all pavers. So the more expensive homes are going to have alternative surfaces. They're more green than these houses that were built 50 years ago in Doraville.

So I would allow for green development. I would be real restrictive on 57 stone and that sort of thing. I would try to pursue, you know, brick pavers and alternate paving surfaces, but the widths need to be maintained at 24 feet maximum. You don't need to pave the whole front yard of your house, and secondary driveways are almost -- they're almost not necessary.

Thank you.

COUNCILMEMBER FLEMING: Thank you.

Page 92

MAYOR JENKINS: Joe, you signed up for the next item.

MR. O'CONNOR: Yes.

I'm not going to repeat what Scott had said, and actually I agree with Tom. And one of my big concerns is -- and you can see it in the neighborhood. Chestnut's a perfect example. You have a driveway going up and you have about 30 feet or so of continuous gravel that's put in, taken out, put in taken out. Or I've even seen in other parts of the city where somebody comes in and builds a one-lane driveway without a curb cut and they start parking cars there.

I mean we have the biggest problem in this city with boarding houses, and this just adds to it. And I don't think these gravel parking lots and gravel side-by-sides add any attraction to the city, and that's all I wanted to say.

MAYOR JENKINS: All right. Thank you.

COUNCILMEMBER FLEMING: Thank you.

MAYOR JENKINS: Anybody that comes in late and wants to speak, let me know which item and I'll put it down.

MR. CRAWFORD: I didn't sign one out

Page 93

there.
MAYOR JENKINS: Is there another one out there?
MR. O'CONNOR: There might be another one out there.
MAYOR JENKINS: You're on the next item.
MR. O'CONNOR: I know. I signed the wrong one.
MR. CRAWFORD: Mayor, did you say sign up now or --
MAYOR JENKINS: You want to be on which? What do you want to be on?
MR. CRAWFORD: On the gravel.
MAYOR JENKINS: Okay. Come on up.
COUNCILMEMBER ROCHE: You can't be on the gravel. You have to be on pavement.
MR. CRAWFORD: Okay. I'm on the pavement.
I'd like to ask Scott a question. Wasn't there something that there was a six-year time limit on gravel driveways anyway that was in our previous ordinance?
MR. HAEBERLIN: Correct.
MR. CRAWFORD: And when was that put in

Page 94

place?
MR. HAEBERLIN: 2005.
MR. CRAWFORD: 2005. So everybody already had six years to come within compliance, and now everybody's starting to say, "Whoa, it's a problem."
I don't know. I mean I feel this way a lot about some of the things that have been going on in the city. And one thing I feel about is that we're having the City Planner go through our zoning and our ordinances and try to guide us in the right direction.
I think if we want to live out in, you know, some county like Pickens County or somewhere like that outside the city where I want to have a gravel driveway, fine. But if I'm living within the city of Atlanta and we're trying to attract new businesses and bring new people into our area -- I've seen a few younger couples and stuff moving into our neighborhood.
I'd like to attract new people to our area. We've got a good location. And I think if we continue moving in the right direction, I don't think gravel is the answer for the drive-ways. I think people have time to address that.

Page 95

I mean there's times when I thought maybe I'd like to add a little gravel. I haven't done it but I see people do it all the time. If you drive around Oakcliff, you see a lot of -- and I won't use the word, but a lot of kind of terrible-looking, uneven, hilly, just -- they're just a mess. I mean they're not being addressed. I mean there's nothing being taken care of.
And this is a chance for the city to move in the right direction by following some kind of thoughtful process in the design of the city. And I agree with Scott, that this is something that he should address, and the City Council should listen to his advice.
Thank you.
MAYOR JENKINS: Thank you.
Pam?
COUNCILMEMBER FLEMING: I am still of the mind that the existing driveways that we presently have of gravel should be repealed, items (b), (c) and (d).
I will take out the insertion of "Secondary driveways used for additional parking or storage or recreational equipment can be

Page 96

constructed of porous materials." I'll take that out.
But the primary driveways, I inserted that word "primary" due to the fact that it gave the limitations or the 24-feet width. Also indicated pavers, bricks, concrete or asphalt; didn't have anything to do with primary being gravel.
But the existing driveways that we presently have, do not feel that our residents should be required to remove the gravel on existing homes in the city, and I still stand on that.
MAYOR JENKINS: What do you mean by remove the gravel? Actually go in and take the gravel out or pave it? Not require them to pave it or not require them to take the gravel off?
COUNCILMEMBER FLEMING: It must be replaced with either concrete, asphalt, pavers or brick is what this ordinance reads.
MAYOR JENKINS: Yeah, but you said remove the gravel.
COUNCILMEMBER FLEMING: Okay. Replaced. Okay. The gravel must be replaced with either concrete, asphalt, pavers or brick

Page 97

is what the ordinance presently reads.
And I would like to make a motion to delete (b), (c) and (d) of Ordinance 5-40.
MAYOR JENKINS: Before we -- you've got a motion on the table.
Ms. Crawford, do you want to come up?
COUNCILMEMBER FLEMING: My apologies, Ms. Crawford. I didn't know that you were . . .
MS. CRAWFORD: I was.
MAYOR JENKINS: I didn't either.
MS. CRAWFORD: Susan Crawford, Oakcliff.
I agree with the people who think that this is not a good idea.
And Stuart, I'm sure it's wonderful to live in a neighborhood where the gravel is neatly contained and timbered, but in our area, it isn't in many cases.
And I don't now how, Pam, you could -- how would you know if it was new gravel or old gravel? It's not dated or anything. I don't know how you would know if somebody's putting down new gravel, in order to have just the people who already had it there, take it up.
COUNCILMEMBER FLEMING: Can I answer

Page 98

that for you real quick?
MS. CRAWFORD: Sure.
COUNCILMEMBER FLEMING: If it's a driveway to be constructed, it's supposed to get a building permit.
MS. CRAWFORD: Okay. But I would point out that I've seen many cases where there probably was no permission granted and there's just a lot of gravel thrown down, and soon we're going to have -- I mean there's nothing really green about having no yard at all and there's nothing particularly green about accommodating 75 vehicles in a yard, and I think in some areas that's what you're going to get or already have, and I know we have now.
I don't see the point in having two driveways. I mean you have one driveway where you can park your vehicles, you have a garage or don't, and then you have the whole area in front of the house. Why would you want to make the rest of your yard into a gravel driveway or any kind of driveway?
COUNCILMEMBER FLEMING: Just to answer that one comment about in the front of the house, you're not allowed to park your

Page 99

recreational vehicle in front. For instance, you can't park a boat in front of your house or you can't park a recreational vehicle in front of your house.
MS. CRAWFORD: So --
COUNCILMEMBER FLEMING: I'm just making that as a comment for you.
MS. CRAWFORD: And I guess my response would be maybe things are not legal but -- I mean you're not supposed to do a lot of things, But it's hard to enforce this sort of thing now. Why would we want to compound it?
COUNCILMEMBER FLEMING: Thank you.
MAYOR JENKINS: Thank you, Susan.
COUNCILMEMBER ROCHE: I just want to say this. I mean this is a complicated issue. I'm just thinking that there is one house on Chestnut where they have like the little side -- like a little parking pad that is contained, with gravel.
I guess my question is this: If we did nothing today, when 2011 rolls around, if I was one of those people that had to really -- you know, if I had the Galloway house where it's the pea gravel or whatever, could I apply for a

Page 100

variance to keep my gravel driveway?
ATTORNEY WEED: Not under 5-40, you couldn't.
COUNCILMEMBER ROCHE: Okay.
ATTORNEY WEED: It's a building code.
MR. O'CONNOR: It's historical, though.
COUNCILMEMBER PITTMAN: That's what I was going to say. Would that be exempt?
COUNCILMEMBER ROCHE: I meant the question in general. I understand. Okay. Historical, I see. But I got the answer.
ATTORNEY WEED: To my knowledge, there aren't any actual properties in Doraville that are on the National Historical Register. I don't know if it's officially on it or not. I mean I don't know. My understanding is that there aren't any, so unless there's --
COUNCILMEMBER ROCHE: I think there's one.
ATTORNEY WEED: You don't have a local historical --
UNIDENTIFIED SPEAKER: That's state.
ATTORNEY WEED: -- ordinance. I know that.
COUNCILMEMBER ROCHE: Okay. That was

Page 101

my question.
ATTORNEY WEED: So probably not.
COUNCILMEMBER ROCHE: Okay.
COUNCILMEMBER PITTMAN: The previous Council, we did a lot of talking about this, and it was to prevent the driveways, the gravel driveways in the front yard. And we wanted to set goals, I think, goals for the future, and by 2011 have everybody in compliance with that and certainly not have anyone go back and do a new drive whether it be secondary or whatever with gravel.
Although I appreciate what you're trying to say, I just think I'm going to have to support what the previous Council has set forth on that one.
Although I don't have a problem with the grass, considering the grass in some of the driveways and the new pavers would be growing up in between that. So I don't have a problem with that.
COUNCILMEMBER ROCHE: I really hate forcing people to have to spend money on their front lawn -- or their driveway.
COUNCILMEMBER PITTMAN: And I would

Page 102

really like to check on the Galloways to see if they would be exempt from that, because I believe that is state as far as historic.
ATTORNEY WEED: Usually how these -- you know, my recollection of how the historic register is that if you have a local ordinance and you create an historic district, then you can have certain parameters with what can be done within that district.
Merely having a purely historic home, though, neither gives you anything nor does it take anything away. It's simply an historic home without some other additional, you know, regulation that would dictate within this area, it is a district, and you will not -- you know, you will not paint it pink when the colors historically accurate for the time were mustard yellow and forest green. If you don't have that, and you can do whatever you want to with it even if it's an historic property.
COUNCILMEMBER ALEXANDER: I think the Galloway home is exempt because it's over 65 years old, and that's covered in (b), but if you delete (b), that goes away.
COUNCILMEMBER FLEMING: But why should

Page 103

we just exempt the Galloway?
COUNCILMEMBER ALEXANDER: Because it's a recognized historic home. I mean, again, I feel like we're -- why did we require someone with a handicap to get a survey but not somebody to enclose a carport?
COUNCILMEMBER FLEMING: Ms. Alexander, if you'd brought that up prior to that meeting that night, I would have been more than happy to address it at that time.
MAYOR JENKINS: Maria, go ahead.
COUNCILMEMBER ALEXANDER: I'm finished. Nothing further.
MAYOR JENKINS: Repeat your motion and we'll see what they say.
COUNCILMEMBER FLEMING: My motion is the first line, make sure that it is listed as primary driveways, and then delete (b), (c) and (d) of the current section 5-40, Driveway Limitations.
MAYOR JENKINS: And what you did on primary, how did you change that?
COUNCILMEMBER FLEMING: Add "primary" to the end of the first line.
MAYOR JENKINS: Okay. Do I get a

Page 104

second?
- - -
(No response)
- - -
MAYOR JENKINS: Do I get a second?
- - -
(No response)
- - -
MAYOR JENKINS: Motion denied for the lack of a second.
Go to item number 6.
COUNCILMEMBER FLEMING: I'd like to remove item number 6.
MAYOR JENKINS: Okay.
COUNCILMEMBER FLEMING: Thank you.
COUNCILMEMBER BATES: Can we take a break, Mayor?
MAYOR JENKINS: Yes.
CLERK BLACKMON: And it's 10 till 9:00.
ATTORNEY WEED: Yeah. I assume, Councilman Fleming, you want to remove 6 because it was directly related to 5; is that right?
COUNCILMEMBER FLEMING: That is correct.
ATTORNEY WEED: Thank you.

Page 105

MAYOR JENKINS: Okay. We want to take a break?
COUNCILMEMBER BATES: Well, we're 10 minutes away from stopping. Oh. Yes. We're going to take a break.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Somebody says we need to postpone the meeting, so I need some suggestions on that.
COUNCILMEMBER SPANGLER: I'm all for it. The odor is up here now. I couldn't smell it before, but I certainly don't want anybody to get sick.
MAYOR JENKINS: Do I have a motion?
COUNCILMEMBER SPANGLER: I make the motion.
MAYOR JENKINS: Second?
COUNCILMEMBER ROCHE: I'm sorry. I'm not smelling anything here, but then again --
MR. NOONAN: Take a walk back to the City Inspector's room.
UNIDENTIFIED SPEAKER: There's an odor in here.

Page 106

COUNCILMEMBER PITTMAN: Could we continue tomorrow night?
MR. NOONAN: Just go back to the door right there.
COUNCILMEMBER ROCHE: Well, people have been telling me things, that things smell in City Hall. l thought it --
MAYOR JENKINS: Well, could we handle it long enough for citizens' comments?
COUNCILMEMBER ROCHE: I'll second it literally.
MAYOR JENKINS: Okay. What about citizens' comments?
COUNCILMEMBER SPANGLER: Citizens' comments, they can comment next time. If they want to stay and comment, I mean we don't need to have --
MAYOR JENKINS: I got a second. Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?

Page 107

COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Everybody have a good evening, and I'm sorry.
- - -
(Meeting adjourned at 9:05 p.m.)
-o0o-

Page 108

C E R T I F I C A T E
E OF GEORGIA]
TY OF DEKALB]
I hereby certify that the foregoing transcript taken down, as stated in the caption.
I further certify that the transcript is a true complete transcription of my stenographic notes n at the hereinabove set out time and place and reduced to typewriting under my direction and rol.
I further certify that I am neither a relative mployee or attorney or counsel to any of the ies, nor financially or otherwise interested in matter.
This the 27th day of July, 2009.

_____
Theresa Bretch, CCR
Permit No. B-755

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$1,000 (3)
45:1,9,12
$2,500 (1)
45:7
$44,466 (1)
25:14
$500 (1)
44:24

[

[sic] (1)
45:3

0

05 (2)
49:2;66:20
05-33 (1)
6:10
06-11 (1)
6:12

1

1.2 (1)
90:12
10 (5)
6:6;18:6;89:1;
104:19;105:3
10,000 (1)
56:22
10-page (1)
36:15
1-12 (3)
45:1,11,15
119 (1)
26:8
12 (4)
68:24;89:14,15,24
12-foot (2)
68:12,23
14th (1)
54:14
15 (2)
34:13;85:3
1501 (4)
59:9;60:5;64:1;
65:5
15-62 (2)
6:11;7:1
1900 (1)
77:2
1910 (1)
77:2
1st (3)
17:7;27:17,23

2

20 (2)
33:20;85:3
200 (2)
52:6;53:17
2005 (6)
44:20;45:3;48:21;
83:15;94:2,3
2006 (3)
7:16;17:7;26:12
2008 (3)
49:3,12,15
2008-05 (1)
49:1
2011 (6)
66:23;70:5,19;
83:11;99:22;101:9
24 (8)
68:17,19;69:7;
89:2,14,15,24;91:20
24-feet (1)
96:5
24th (1)
29:14
25 (3)
10:11;34:11;37:13

3

3 (1)
48:11
30 (6)
10:15;22:5,10;
72:16;85:3;92:9
3-272 (2)
44:22;48:10

4

4 (2)
51:1,12
40 (1)
89:3
40- (1)
26:21

5

5 (3)
64:9;66:16;104:22
50 (1)
91:14
50-18-70 (2)
33:14,16
50-foot (1)
90:17
50-year (1)
54:1
5-40 (5)
66:18;68:6;97:3;
100:2;103:19
57 (2)
90:16;91:17

6

6 (3)
104:11,13,21
6/29 (1)
4:7
6/29/09 (1)
3:19
60 (2)
22:5;65:22
65 (1)
102:22

7

7/6 (1)
4:8
7/6/09 (2)
4:17,23
75 (1)
98:13

8

8 (1)
4:18

9

9:00 (1)
104:19
9:05 (1)
107:12

A

able (5)
31:18;37:21;59:2;
72:7;73:22
Absolutely (1)
15:20
abuse (1)
18:23
Academy (1)
27:15
acceptable (4)
7:22;10:18;54:21;
64:5
access (1)
29:22
accessibility (1)
13:17
accessory (5)
14:7,12;16:3,14;
63:21
accommodating (1)
98:12
accomplished (1)
19:8
according (3)
29:14;39:17;83:12
accurate (1)
102:17
achieved (1)
17:8
across (1)
21:5
Act (7)
25:15;32:23;
41:21;43:10;53:2,3;
86:13
acting (1)
38:21
activity (1)
66:11
actual (2)
54:1;100:13
actually (12)
9:10;12:22;35:7,
12;42:3;53:20;57:3;
63:8;79:18;84:9;
92:5;96:15
ad (1)
53:6
add (7)
30:21;35:2;46:1,4;
92:17;95:2;103:23
added (2)
31:1;47:9
additional (6)
25:18;66:20;68:2;
89:25;95:24;102:13
additions (2)
50:25;68:5
address (6)
48:17;57:25;73:3;
94:25;95:14;103:10
addressed (1)
95:8
addresses (1)
57:15
adds (1)
92:16
adjourned (1)
107:12
adjust (1)
45:19
adjusting (1)
87:6
administration (1)
37:25
administrative (1)
45:23
admire (1)
56:14
adopt (3)
32:6;46:3;49:21
adopted (1)
45:4
adopting (1)
70:21
ads (1)
54:17
ad's (1)
53:6
advance (1)
52:16
advantage (1)
43:12
advertised (2)
63:1,5
advice (1)
95:15
advise (1)
39:6
affidavit (2)
51:22,23
after- (1)
30:7
again (12)
7:7;8:25;10:1;
16:16;52:12;78:12,
22;79:22;84:7,15;
103:3;105:21
against (2)
32:19,20
age (1)
78:19
aged (1)
88:10
agencies (1)
26:2
agency (2)
25:25;26:6
agenda (14)
5:21,24;29:5,8;
30:21;31:4;46:2,5;
47:10;64:15,16,17,
19;66:15
ago (4)
30:12;36:17;38:6;
91:14
agree (23)
16:15;17:20;
19:16;23:7,19,22;
24:20;61:6;72:14,16,
18;73:21;74:23;
86:24;88:8;89:23;
90:9,21;91:3,3;92:5;
95:13;97:13
agreement (2)
59:18;64:24
agricultural (1)
77:1
ahead (6)
19:17;24:21;32:3;
51:8,9;103:11
aims (1)
59:24
alcohol (4)
44:16,18,21;45:14
Alcoholic (1)
48:11
Alexander (38)
3:5,6,21;4:1,2,18;
5:2,5,6;20:13;46:14,
15;47:17,18;50:9,10;
63:13,16;68:17,20;

71:16,25;72:3,21;
76:2;82:12;83:3,15;
84:7,15,22;85:10;
102:21;103:2,7,12;
106:21,22
allow (9)
57:25;62:9,10;
64:19;78:24,25;
79:21;87:9;91:16
allowance (1)
71:18
allowed (7)
34:10;65:18,19;
66:2,3;67:16;98:25
allowing (1)
83:25
allows (1)
62:9
almost (3)
30:7;91:23,23
alone (1)
81:17
along (1)
49:6
alternate (1)
91:19
alternative (2)
78:25;91:13
Although (2)
101:13,17
always (9)
39:25,25;54:4,12,
17,19;74:15;79:3;
89:21
ambiguous (3)
10:16;11:13;65:13
ambulances (2)
89:5,8
Amendment (1)
54:14
amount (2)
24:5;28:2
analogy (3)
56:15;57:6;59:1
Anavitarte (1)
88:22
ANDERSON (5)
64:10,13;86:7,7;
89:10
Anymore (3)
46:7;48:15;50:3
apartment (2)
28:8,9
apologies (1)
97:7
apologize (2)
63:22;64:12
Applause (1)
29:2
applicant (3)
54:10;59:12,17
application (2)
32:16;59:11
applications (1)
60:9
applied (1)
57:16
apply (1)
99:25
appreciate (4)
23:21;28:25;
56:15;101:13
approach (1)
12:8
appropriate (3)
77:5;78:11,20
appropriately (1)
22:25
approve (3)
3:19;25:5;61:25
approved (3)
25:14,16,19
approximately (2)
26:8,25
April (3)
17:7;42:5;66:16
architectural (3)
14:25;15:1;88:17
area (10)
8:15,16;14:1;
56:11;72:17;94:19,
22;97:17;98:19;
102:14
areas (7)
20:24,25;78:14;
79:7,12;80:6;98:13
argue (1)
8:3
around (4)
25:8;30:1;95:4;
99:22
Article (1)
32:12
ascertainable (1)
62:19
aside (1)
66:7
aspects (1)
77:25
asphalt (14)
66:22;67:9,25;
69:6;70:1,10,18;
71:10,12;73:7;80:19;
96:6,19,25
assessment (1)
26:18
assessors (1)
27:3
assistance (2)
24:25;25:16
association (2)
21:15;25:22
assume (1)
104:20
assumed (2)
48:21;49:5
assumption (2)
49:10,25
assure (2)
40:8;59:20
ATKINSON (4)
25:11;28:9,15,24
Atlanta (2)
77:9;94:17
attaching (1)
16:4
attack (1)
34:22
attend (1)
27:19
attended (1)
25:21
attention (2)
18:20;20:1
attest (2)
75:20;76:9
attorney (58)
21:22,23;22:22;
23:6,12;24:2,16;
32:1,5;33:9,13,19;
35:3;36:5,20,24;
37:4;38:7,15;39:23;
40:6,9,18;41:6;43:5,
21;44:17;48:19;
49:19;52:19;55:3,8,
13;56:14;59:8;60:6,
19;61:16;62:3;81:7,
21,25;82:3,5,15;
84:3,20;85:16,20;
100:2,5,12,20,23;
101:2;102:4;104:20,
25
attract (2)
94:18,21
attraction (1)
92:18
August (3)
62:25;63:8,12
authority (2)
38:23;39:1
automobile (1)
58:23
available (2)
34:3,6
average (2)
13:11;56:23
award (1)
26:1
awards (1)
25:9
aware (4)
7:4;21:17;65:2,9
away (5)
70:2;83:11;
102:12,24;105:4

B

back (18)
7:15;19:1;20:14;
25:2;26:4,12;27:16;
28:20;29:13;49:12,
22;62:15;77:13;89:4,
9;101:10;105:22;
106:3
backed (1)
89:7
bad (6)
24:3;58:6,7,13,14;
84:24
Bartow (1)
78:9
base (1)
86:1
based (8)
37:23,24;56:18,21;
57:11;70:6,15,17
Basically (8)
6:13;10:6;11:19;
29:16;65:3;67:23;
79:5;89:7
basing (1)
61:9
basis (1)
53:19
Bates (41)
3:7,8;4:3,4,25;5:7,
8;9:19;15:12,15,21;
17:20;20:7;21:9;
30:20;31:7,10;40:14;
41:25;46:4,16,17;
47:4,9,19,20;48:7,
10;50:11,12;61:11,
20;62:22;63:20;
64:6;71:4;82:23;
104:16;105:3;
106:23,24
bear (2)
24:2;38:20
Beatles (1)
55:15
Beautiful (1)
88:5
become (2)
18:16;21:17
becoming (1)
51:15
behind (7)
8:4;20:8,9;21:2;
22:12;35:6;42:9
benchmark (1)
77:3
beneficial (1)
59:21
benefit (5)
35:20,21;56:6,7;
79:16
besides (1)
84:18
best (5)
21:24;23:14;
31:13;39:14;42:11
better (9)
12:13;18:21;
23:18,20;37:13;
56:13;61:9;66:4;
71:12
beverage (2)
44:21;45:14
Beverages (1)
48:12
beyond (2)
86:2,3
big (2)
88:21;92:6
biggest (2)
53:12;92:14
Bill (1)
88:4
binding (1)
59:17
bit (2)
17:22;26:15
black (2)
62:8,12
BLACKMON (51)
3:4,7,9,11,13,15,
25;4:3,5,9,11,13;5:4,
7,9,11,13,15;31:6;
41:25;42:3,9,16,19,
22;46:13,16,18,20,
22,24;47:16,19,21,
23,25;48:2;50:8,11,
13,15,17,19,24;
104:19;106:20,23,
25;107:2,4,6
blight (1)
90:19
block (8)
9:7,11;13:16,18,
24;15:5,6;16:22
block-enclosed (1)
14:1
blueprints (1)
34:21
board (1)
21:6
boarding (1)
92:15
boat (2)
74:12;99:2
Bob (1)
29:4
body (1)
37:17
book (5)
40:2;51:14;60:1;
65:19;66:1
books (2)
10:20;51:18
Brackbill's (1)
88:4
branch (1)
28:4
brand (2)

20:20;88:5
break (3)
104:17;105:2,5
brick (9)
9:8;15:6;16:23;
67:18;71:11;91:5,19;
96:20,25
bricks (3)
67:9;91:6;96:6
Brief (1)
105:7
bring (5)
9:14;18:19;19:25;
25:2;94:18
bringing (1)
30:10
Brinkley (1)
27:4
broad (2)
7:11;12:16
broader (1)
57:10
brochures (1)
27:20
brought (1)
103:8
Brown (1)
27:4
Buford (2)
8:23;14:19
Buice (1)
6:21
build (5)
22:6,11;24:5;
73:20;90:11
building (17)
7:8;8:4;13:7;16:4,
5,11;20:9,9;21:3;
22:12;24:25;34:22;
54:6;57:17;85:18;
98:5;100:5
buildings (1)
7:8
builds (1)
92:12
built (6)
35:8;79:16;81:13;
86:2;89:16;91:14
bunch (2)
65:3,8
burden (5)
37:7,7,9;53:14,16
business (7)
13:11;21:15;34:1;
38:1;42:10;51:1;
56:7
businesses (5)
19:8;24:23;52:5;
58:7;94:18
Byrne (1)
25:15

C

C1 (1)
65:9
C2 (1)
65:9
Call (10)
3:3,24;4:22;5:3;
35:17;46:12;47:15;
50:7;79:6;106:18
called (1)
58:4
calling (1)
70:9
calls (1)
18:17
can (65)
6:4;7:4;12:12,21;
16:8,10;17:24;18:9,
20,20,21;20:9;22:15;
23:14;25:5,10;28:19;
32:2;33:11,24,25;
35:18,25;36:7;40:12,
14;42:8,11,14;43:22;
49:7;54:4;57:1,5,24;
64:8;65:4;68:3;
69:21,22;73:7;74:8;
78:17;80:23;81:8,13,
14,15,21;82:3;84:2,
3;85:5;87:13;88:12;
90:17;92:6;95:25;
97:25;98:18;102:8,8,
19;104:16;106:15
capacity (1)
38:22
capping (1)
55:19
caps (1)
56:21
Captain (3)
27:4,4,4
car (2)
74:4;89:18
care (3)
45:20;76:18;95:9
carport (1)
103:6
carports (1)
89:14
carriage (1)
77:5
cars (5)
80:10;87:14;89:1;
90:20;92:13
case (2)
28:4;87:19
cases (4)
15:21;28:4;97:18;
98:7
cation (1)
26:1
causes (2)
71:14;90:18
caveat (2)
38:15,21
center (1)
57:14
centers (2)
14:13;86:11
cents (1)
34:11
certain (14)
6:11;8:18,22;19:7,
13,15;26:7;34:18;
37:12;79:11;81:12;
82:21,22;102:8
certainly (16)
6:16;8:22;12:12;
16:15;17:19;18:1;
20:5;39:11,12;49:7,
24;60:20;77:24;
86:24;101:10;105:14
certification (2)
26:5;27:9
certified (6)
25:25;26:6,12,15,
19,24
cetera (9)
29:17,18;55:25;
66:10,10;77:13;79:1;
86:11,11
chain (3)
9:20,24;10:3
chambers (1)
22:24
chance (3)
16:19;28:17;95:10
change (11)
10:19;25:8;43:6,7;
53:5,9,18,19;54:4;
83:25;103:22
changed (3)
45:4;49:1,3
changes (6)
7:25;63:3;65:1,18;
66:1;70:22
changing (1)
49:14
Chapter (1)
48:11
charge (1)
34:11
charges (1)
30:1
charter (1)
39:17
check (1)
102:1
Chestnut (3)
88:25;90:5;99:18
Chestnut's (1)
92:7
CHIEF (5)
25:11;28:9,15,24;
38:19
Chiefs (1)
25:22
Chiefs' (2)
25:22;26:1
Chinese (1)
4:21
choose (1)
49:21
circular (1)
59:15
circumstance (1)
57:6
circumstances (1)
58:15
citation (1)
22:10
citations (3)
6:8;22:4,5
cited (1)
86:4
cities (3)
52:9;65:21;90:25
citizen (1)
37:11
citizens (4)
27:14;30:17;44:3;
66:9
citizens' (6)
5:22;27:15;31:5;
106:9,13,14
city (60)
6:8;7:4,12,13;
8:18;11:16;15:9;
17:8,10;25:23;27:21;
29:14,21,24;30:13;
31:22;36:25;37:18;
39:2;40:4;41:4,7,17;
42:10;51:13,16;
55:24;56:6;65:23;
66:8,18;71:14;75:18,
21,24;76:13,14,17,
19;78:12,18;79:22;
80:21;82:18,20;88:2,
20;92:11,15,18;94:9,
10,15,17;95:10,13,
14;96:12;105:23;
106:7
City's (1)
21:16
civil (2)
33:1;40:20
civil/ (1)
43:10
clamp (1)
41:12
clamp- (1)
31:20
clarify (2)
12:14,17
class (1)
81:10
classes (1)
81:9
clear (1)
12:1
clearly (1)
17:22
clearly- (1)
62:18
clerical (1)
27:1
CLERK (54)
3:4,7,9,11,13,15,
25;4:3,5,9,11,13;5:4,
7,9,11,13,15;31:6;
35:12;36:14;38:3;
41:5,7;42:3,16,19,
22;46:13,16,18,20,
22,24;47:16,19,21,
23,25;48:2;50:8,11,
13,15,17,19,24;
104:19;106:20,23,
25;107:2,4,6
Clerk's (1)
42:23
clients (1)
35:20
close (1)
17:17
closed (1)
19:2
Clover (1)
16:20
CMU (1)
9:11
cocaine (1)
28:2
code (21)
9:1;11:11,12,23;
13:6;17:5;45:2;
51:14;60:4,5;63:3;
64:2;69:3;75:21;
76:14;80:24;81:3,4,
5;89:20;100:5
codes (2)
75:18;76:17
colors (1)
102:16
combination (1)
7:9
comfortable (1)
21:10
coming (8)
7:18;13:7;20:2;
27:22;60:9;62:25;
66:9;85:12
comment (8)
36:25;38:6;64:23;
67:17;98:24;99:7;
106:15,16
comments (9)
5:22;31:5,8;50:3;
73:4;80:14;106:9,13,
15
commercial (9)
6:14;9:9;13:8,10,

25;14:13,19;21:13;
78:25
common (4)
21:8;39:6;87:13;
88:16
communities (3)
76:25;77:8;79:16
community (2)
57:22;78:8
Comp (1)
65:15
company (1)
13:17
compared (1)
58:1
competent (2)
34:13;37:15
complaining (1)
30:18
complaints (2)
29:11;73:18
complete (1)
13:12
completely (5)
20:17;24:7;30:6;
34:20;49:11
compliance (8)
15:23;26:11;
27:10,12;32:25;35:7;
94:4;101:9
compliant (1)
45:14
complicated (1)
99:16
comply (6)
22:9;33:2;38:24;
45:1,2;65:14
compound (1)
99:12
con- (1)
20:20
concerned (5)
13:15;18:3;51:20;
66:3;78:23
concerns (3)
72:8;86:12;92:6
concert (1)
55:15
concrete (28)
9:7,11;13:16,18,
24;14:1;15:5,6;
16:21;22:6;56:19;
66:23;67:9,12;68:24,
25;69:19;70:18;
71:10,13;72:18;73:6;
77:17;80:20;88:12;
96:6,19,25
condit- (1)
65:16
Conditional (39)
51:4,12,14,16,21,
24,25;52:7,15;54:11;
55:11;56:3,5,12;
57:7,15,19,24;58:9,
21;59:14,22;60:10,
12,15;61:23;62:7,10,
17;63:2,7;64:1;65:1,
6,8,20,23;66:5,8
conditions (3)
59:13,14,19
Conference (2)
25:23;26:1
conflict (1)
66:9
conflicts (1)
16:14
Congratulations (1)
28:10
consider (7)
20:20;21:6;53:1;
77:18,21;78:5;79:25
considerations (1)
57:24
considered (1)
71:24
considering (1)
101:18
constantly (2)
53:19;54:7
constituents (1)
20:4
Constitution (2)
32:13,15
constructed (6)
66:21;68:3;77:2;
80:19;96:1;98:4
constructing (1)
78:1
construction (9)
20:22;21:5,6;
78:21;80:23;81:12;
85:11;86:10,18
consuming (2)
13:20;43:17
contained (2)
97:17;99:19
containing (1)
86:19
contains (1)
88:15
continue (5)
70:22;72:23;
78:16;94:23;106:2
continued (1)
59:20
continuous (1)
92:9
contractor (2)
13:10,13
control (2)
71:15;79:15
controlled (2)
87:1,2
copy (4)
6:9;30:1;33:7,12
corporation (1)
38:20
corrected (3)
46:1;51:19;83:10
correctly (1)
73:1
cost (2)
13:14,18
costly (1)
13:21
costs (2)
17:3;34:10
Council (35)
7:12,20;8:6;9:15;
10:18;11:16;12:9;
14:8;19:4;23:25;
25:11;27:14;29:21;
30:11,13;36:17;
37:11;38:22;43:1,9,
15,20;48:22;49:10;
51:21;62:16;64:5;
67:3;72:6;73:4;
88:20;90:8;95:15;
101:5,15
Councilman (1)
104:21
Councilmember (304)
3:4,6,7,8,9,10,11,
12,13,14,15,17,21,
23,25;4:2,3,4,5,6,9,
10,11,12,13,15,18,
25;5:2,4,6,7,8,9,10,
11,12,13,14,15,17;
9:19;10:22;11:1,18;
12:2,18,21,24;13:2,
15;15:12,15,21;
17:12,20,23;18:2,8,
12;19:5,11,16,21;
20:7,13;21:9;22:18;
23:2,9;24:9,19;25:3;
28:10,21,25;29:7;
30:20,22,24;31:1,2,4,
7,10,11;33:6,11,17;
35:1;36:2,16,21;
37:2;38:5,8;39:21;
40:3,7,10,14,16,22;
41:1,23,25;42:24;
43:18;44:1;46:4,6,
13,15,16,17,18,19,
20,21,22,23,24;47:1,
4,6,9,14,16,18,19,20,
21,22,23,24,25;48:1,
2,4,7,8,10,14,16;
49:13;50:2,8,10,11,
12,13,14,15,16,17,
18,19,21;51:2,6,9,11;
54:23;55:6,9,21;
58:17;60:2,7;61:4,
11,20;62:2,22,24;
63:6,13,16,18,20,22;
64:4,6,7,11;66:14;
68:9,15,17,20;69:1,
11,14,22,24;70:3,5,
15,20,21,24,25;71:3,
4,8,16,23,25;72:1,3,
13;73:5,9,12,15,25;
74:6,18,21,24;75:1,6,
8,9,11;76:2;80:1,13,
17;81:6,15,23;82:1,
4,6,8,12,23;83:1,15,
16,20,22,24;84:7,8,
15,22;85:1,10,18;
91:25;92:21;93:16;
95:19;96:18,23;97:7,
25;98:3,23;99:6,13,
15;100:4,7,9,18,25;
101:3,4,22,25;
102:21,25;103:2,7,
12,16,23;104:12,15,
16,23;105:3,12,17,
20;106:1,5,10,14,20,
22,23,24,25;107:1,2,
3,4,5,6,8
Councilwoman (1)
61:7
counsel (1)
35:15
counter (1)
41:20
country (1)
79:12
County (12)
6:22;53:25;75:17,
19,22;76:10,16,18;
78:10;85:14;94:14,
14
couple (6)
62:25;64:22;
75:14;78:18;89:5,8
couples (1)
94:20
course (4)
7:3;17:3;21:12;
63:4
court (5)
12:6;22:15;24:10;
61:17;62:20
covered (1)
102:23
crack (1)
28:2
crafted (1)
23:15
crafting (1)
25:1
CRAWFORD (15)
92:25;93:10,14,18,
25;94:3;97:6,8,9,11,
11;98:2,6;99:5,8
crazy (1)
88:7
create (3)
52:20;56:20;102:7
creates (1)
53:14
creating (1)
55:14
crime (1)
32:19
criminal (3)
33:1;40:19;43:11
criteria (21)
51:24;52:3;54:25;
55:1,2,7;59:5,10;
60:3,13;61:5,8,10,12,
18,24;62:19;63:9;
65:12;66:4;75:4
cumulative (1)
80:12
curb (16)
72:4;73:10,13;
74:7,11,16,16,25;
75:23;76:4,7;85:14;
88:14;89:10,11;
92:13
curb-cut (2)
71:18;76:11
cure (1)
40:2
current (6)
8:1;22:9;45:8;
86:15,16;103:19
currently (1)
71:7
custodian (1)
41:8
customers (1)
6:6
cut (10)
72:5;73:10,13;
74:16,16,25;76:5;
89:10,11;92:13
cut-down (1)
88:15
cut-off (1)
69:20
cuts (4)
74:7;75:23;76:7;
85:14

D

daily (1)
38:18
damage (2)
15:4;71:15
damaged (1)
8:10
dandy (1)
65:24
date (6)
19:6,13,15;21:12;
80:24;81:12
dated (1)
97:21
dates (1)
60:25
day (10)
6:6;18:6,25;38:4;
42:1;72:4,10;76:21,

21;86:5
days (7)
22:6,11;24:5;
29:16;34:1,4;43:4
deal (2)
21:18;79:9
dealing (4)
22:2;35:15;66:12;
71:22
dealings (1)
76:20
debate (1)
86:8
decent (1)
22:14
decide (1)
18:10
decided (1)
72:10
decides (1)
84:18
decision (4)
9:3;12:14;79:25;
81:25
decisions (1)
61:9
deck (1)
90:22
deemed (1)
59:19
defending (1)
61:17
define (1)
74:8
defines (1)
32:21
definitely (3)
23:19;52:15;66:7
degrading (1)
87:15
Dekalb (7)
6:22;53:25;75:16,
19;76:10,16,18
delay (1)
54:8
delayed (1)
63:12
delete (6)
20:18;67:15,23;
97:3;102:24;103:18
deleted (2)
67:21;71:4
delivered (1)
72:12
denied (1)
104:9
deny (2)
61:25;78:5
Department (9)
22:19;25:9,24;
27:21;28:13,23;
45:22;75:17;79:6
depends (1)
22:16
depth (1)
14:18
design (2)
59:23;95:12
designed (1)
15:7
desire (1)
78:17
desk (1)
67:5
detail (1)
62:6
detailed (2)
36:9;60:12
detention (2)
79:17,19
determine (1)
11:16
determined (1)
60:23
determining (1)
14:17
development (3)
16:1;81:5;91:16
devote (1)
91:1
diagonally (1)
89:1
dictate (2)
56:22;102:14
difference (4)
57:8,9;58:3,10
different (8)
11:8;16:8;20:23;
23:17;34:19;61:22,
23;74:13
differentiate (2)
67:7;81:8
differentiation (1)
81:14
difficult (6)
6:18;8:10,15;9:17;
26:16;29:20
direct (1)
39:18
direction (5)
7:21;12:10;94:12,
23;95:11
directive (1)
39:1
directly (1)
104:22
disagree (7)
18:15;23:8;24:16;
62:4;73:6;77:23;
78:13
discounting (1)
76:7
discovery (1)
35:16
discretionary (1)
75:25
discuss (1)
52:2
discussing (1)
81:2
discussion (3)
46:8;48:15;77:16
dismissed (2)
12:12,12
display (1)
72:19
distance (1)
85:23
distinction (2)
56:17;57:21
district (6)
55:12;87:7,11;
102:7,9,15
districts (1)
87:16
doctrine (3)
32:10,11,14
document (1)
49:17
documentation (1)
26:23
documents (9)
34:2,5,8,18,19;
35:8,11;37:12,22
dollar (1)
49:14
dollars (1)
87:24
done (9)
17:7;27:6;39:20;
41:13;44:14;58:23;
70:6;95:3;102:9
door (1)
106:3
Doraville (5)
25:23;56:24;
89:16;91:15;100:13
down (15)
6:25;8:23;10:10;
19:1;31:21;41:13;
57:20;58:3;61:2;
78:8;86:21;89:8;
92:24;97:23;98:9
draft (2)
19:21;64:1
drive (4)
17:9;71:24;95:4;
101:11
drive- (4)
67:8;77:9;85:11;
94:24
driven (1)
21:2
Driveway (56)
66:18;67:16;
68:23;69:2,5,7,8,21;
70:8,9,10,11,16;71:1,
6,9;72:11,15;73:6,
10,13,14,20,24;
74:17,22,22;75:2;
76:5;80:2,4;82:14;
83:7,8;84:12,17;
85:9,13,25;86:21;
88:6;89:20,22,23;
91:5,7;92:8,12;
94:16;98:4,17,21,22;
100:1;101:24;103:19
driveways (38)
66:21;67:8,10,11;
68:2,7,13;72:22,25;
73:17;74:15;77:4;
80:19,20;81:19;84:1,
1;85:3,19;89:13,14,
17,25;90:11,14;91:2,
11,22;93:22;95:20,
24;96:3,9;98:17;
101:6,7,19;103:18
driveway's (1)
89:2
drops (1)
19:1
due (2)
58:24;96:4
due-process (1)
54:15
dump (1)
76:4
dumping (2)
85:13;90:16
dumpster (21)
6:15,17;7:2,9,13;
8:4,11,13,24;9:6;
10:3,11,12;11:10;
14:1;15:18;16:3,17;
17:13;20:8;24:21
dumpsters (5)
5:25;6:8,23;8:9;
14:14
durable (3)
8:23;16:24;19:3

E

earful (1)
20:5
earlier (1)
64:23
early (1)
49:3
easier (1)
26:15
easily (1)
15:5
ecology (1)
71:12
economy (2)
57:3,11
Edward (1)
25:15
effect (6)
45:13;57:9,10,22;
58:8;80:12
effectuate (1)
53:5
eight (2)
42:5;89:17
either (8)
9:7;30:15;62:9;
66:3;73:24;96:19,25;
97:10
elected (2)
31:13;39:24
eleven (1)
87:24
eliminate (1)
71:5
else (3)
43:9;81:19;82:9
e-mail (1)
31:25
e-mails (1)
30:17
employee (3)
34:12;37:15;38:23
employees (3)
39:2,16;82:18
enclose (1)
103:6
enclosure (11)
11:10;13:16,19,19,
23;15:17;16:3,9;
17:15;20:10;21:1
enclosures (7)
7:13;8:24;9:6;
14:24;15:9;16:21;
17:10
encourage (2)
16:2;78:21
end (3)
90:13,21;103:24
ends (1)
79:3
enforce (9)
6:18;7:24;9:18;
11:17;23:4;75:18,21;
76:17;99:11
enforceable (3)
11:2;23:13,16
enforced (1)
43:13
enforcement (2)
26:6;85:17
enforcing (1)
19:12
engineer (1)
78:3
engineering (5)
75:22;76:10,11;
77:19;78:4
engineers (1)
77:18
enlighten (1)
72:8
enough (3)
36:9;60:8;106:9

entities (1)
21:13
entity (1)
52:21
entrance (1)
88:11
equal (2)
37:6,9
equipment (2)
68:3;95:25
equivalent (2)
32:18;38:18
erosion (1)
77:20
err (1)
79:20
Essentially (6)
32:14;34:1,16;
38:19;45:5;81:11
estimate (1)
34:10
et (9)
29:17,18;55:25;
66:10,10;77:13;79:1;
86:11,11
evaluate (1)
61:6
even (15)
6:22;9:23;12:1;
15:16,25;27:22;72:4,
24;80:1,3;81:1;85:3;
87:3;92:10;102:20
evening (2)
4:7;107:10
everybody (7)
5:20,23;43:24;
81:10;94:3;101:9;
107:9
everybody's (1)
94:5
exactly (4)
75:8;84:20,22,24
example (6)
20:25;32:18;
34:20;53:16;56:18;
92:7
examples (1)
15:8
excellent (1)
27:12
except (1)
34:13
exceptional (1)
79:11
Excuse (1)
51:5
executed (1)
28:1
executive (1)
38:19
exempt (8)
34:18,20,23;36:1;
100:8;102:2,22;
103:1
exemptions (3)
34:18,24;35:2
exist (1)
72:20
existed (1)
72:21
existence (1)
11:23
existing (16)
15:25;19:8;20:22;
21:5;22:1;24:22;
44:20;66:21;73:17;
82:19;84:1,17;85:7;
95:20;96:9,12
expand (1)
89:22
expanded (1)
82:24
expect (1)
37:13
expensive (1)
91:12
experience (1)
9:5
experienced (2)
8:21;71:17
expiration (6)
54:25;55:1;60:13,
14,15,25
expire (1)
61:1
explain (2)
6:4;51:10
explaining (1)
51:23
explanation (2)
52:12;58:11
expressed (2)
7:14;86:12
extended (1)
88:14
extensive (1)
17:9
extent (1)
88:14
extra (2)
68:9;87:14
extremely (3)
26:17;27:2,7

F

face (1)
15:7
faced (2)
9:7;17:15
facilities (1)
90:3
facility (2)
79:19;90:21
fact (7)
18:10;29:13;35:8;
36:9;53:1;69:18;
96:4
factor (1)
14:17
factually (1)
76:21
fail (1)
53:1
fair (2)
85:2,7
fairly (1)
21:7
fall (1)
52:22
far (7)
42:6;51:20;75:23;
78:15;83:11;90:16;
102:3
favor (2)
13:22;60:15
features (1)
59:23
February (1)
42:5
fee (1)
38:12
feel (11)
51:18;55:19;
58:20;59:1;62:2;
75:2;78:11;94:7,9;
96:10;103:4
feeling (2)
22:24;58:22
feet (15)
7:7;10:11;14:23;
52:6;53:17;68:18;
69:8;89:2,3,14,15,17,
24;91:20;92:9
felt (1)
52:7
fence (6)
7:6;8:17;9:5,20;
11:23;17:17
fences (4)
8:20,21;9:12;15:4
fencing (1)
9:21
few (5)
17:10;36:17;38:6;
51:14;94:19
fielded (1)
18:18
figure (2)
49:14;58:1
file (7)
29:25;30:2;34:1;
37:12,18;40:15;
44:10
filed (2)
30:5;37:10
files (1)
37:5
find (4)
10:17,18;29:24;
33:15
fine (9)
24:11;44:23,24;
45:7,8;65:24;70:16;
86:4;94:16
fines (1)
45:1
finished (2)
16:23;103:12
firm (2)
36:10,11
firmer (1)
48:22
first (29)
11:3;23:5;24:13;
26:12,19,21,24;
29:15,21;34:13;
44:23;46:2;47:5,12;
48:18,24;49:8,22;
54:11;55:16;59:10;
64:14;65:11;67:2,6,
12;75:16;103:17,24
five (10)
5:21;14:23;26:25;
36:23;51:23;55:12,
20;56:11;57:16;
87:23
five-acres-or-more (1)
77:1
fix (1)
13:3
fixed (2)
45:10,11
fixture (1)
39:24
Fleming (93)
3:9,10;4:5,6;5:9,
10;13:15;19:5,11;
22:18;24:19;25:3;
28:10,21,25;46:18,
19;47:21,22;48:16;
49:13;50:2,13,14;
51:2,6,9,11;54:23;
55:6,9,21;58:17;
60:2,7;61:7;62:2,23,
24;63:6,18,22;64:4,
7,11;66:14;68:9,15;
69:1,11,14,22,24;
70:5,15,20,24;71:3,8,
23;72:1,14;80:1,13,
17;81:6;83:1,16,20,
22;85:18;86:24;
91:25;92:21;95:19;
96:18,23;97:7,25;
98:3,23;99:6,13;
102:25;103:7,16,23;
104:12,15,21,23;
106:25;107:1
flexibility (1)
62:16
flood (1)
91:8
Florida (1)
79:12
flows (1)
88:6
folks (3)
7:18;18:19;21:19
follow (5)
33:15;54:16,17;
67:1;75:22
following (2)
34:7;95:11
follow-up (1)
66:25
foot (1)
57:12
footage (1)
69:16
force (1)
71:10
forcing (1)
101:23
forest (1)
102:18
forgot (1)
29:5
form (2)
38:10;59:3
formally (1)
46:1
format (2)
43:25;49:6
forth (1)
101:15
forward (8)
7:18;14:3;24:20;
28:3;62:23;66:9;
85:5,6
found (3)
32:11;34:25;59:9
four (8)
36:23;38:24;
39:10;42:6;59:5,6,
21;60:3
four-page (1)
51:22
fourth (1)
65:14
frame (2)
32:7,25
frames (3)
33:2;34:19;43:11
frankly (4)
9:23;52:25;58:8;
82:16
friendly (1)
43:25
front (15)
8:25;9:24;73:23;
77:12;88:23;89:1;
90:22;91:21;98:19,
24;99:1,2,3;101:7,24
fudge (1)
14:17

fulfilled (1)
29:12
full (3)
43:20;74:15;86:21
full-time (2)
38:17;39:16
fully (1)
38:25
function (1)
79:18
fundamental (1)
57:8
funds (3)
25:17,19;28:14
further (2)
59:24;103:13
future (2)
45:18;101:8

G

Galloway (3)
99:24;102:22;
103:1
Galloways (1)
102:1
Galloway's (1)
90:10
gander (1)
43:14
garage (1)
98:18
garages (2)
80:11,12
garbage (2)
18:25;21:13
gate (5)
15:13;16:17,18;
17:17;18:22
gates (5)
16:7,16,24;18:23;
19:2
gathering (1)
34:14
gave (1)
96:4
general (3)
32:16;35:6;100:10
generally (5)
8:9;13:6;32:17;
37:20;77:8
gentlemen (1)
83:2
Georgia (4)
25:21;32:13;41:7;
78:10
gets (2)
37:7;39:20
given (7)
34:3;35:8;36:13;
38:25;44:7;55:12;
56:16
gives (2)
11:13;102:11
giving (1)
35:13
glad (1)
41:10
goals (2)
101:8,8
goes (5)
41:4;58:3;77:13;
91:6;102:24
good (14)
8:13;28:22;31:14;
37:25;43:13,14;57:3,
4;61:5;84:23;87:25;
94:22;97:14;107:9
good-faith (2)
34:9;35:20
goose (1)
43:14
government (9)
32:17;33:23,25;
35:11;38:16;52:21;
53:10,15;54:10
governmental (1)
34:22
governments (1)
41:6
grandfather (1)
75:7
grandfathering (1)
76:25
grant (4)
25:14,16;28:11;
76:14
granted (1)
98:8
grass (9)
67:15,20,22;87:9;
89:18;90:2;91:5;
101:18,18
gravel (81)
66:22;67:24;
68:24;69:21,25;
70:12;71:7,9,19;
72:11,18,25;73:8,17,
23;74:2,10;75:3,5;
76:3;77:4,17;78:11,
20,24;79:3,22;81:17,
20;82:14;83:7,17;
84:2,5,6,11,17;85:3,
12;86:13,17,19,21;
87:1,21,22;88:10,13,
15,23;89:8;90:10,13;
92:9,16,17;93:14,17,
22;94:16,24;95:2,21;
96:8,11,15,16,17,22,
24;97:16,20,21,23;
98:9,21;99:20,25;
100:1;101:6,12
grease (3)
6:20,22;8:14
great (1)
62:6
greater (3)
9:4;55:11;58:8
greatly (1)
61:7
green (10)
72:14;79:18;
86:10;87:9,12;91:13,
16;98:11,12;102:18
greenery (1)
22:11
ground (1)
80:18
group (1)
39:10
grow (2)
67:16;91:5
growing (4)
67:20,22;87:9;
101:19
guess (10)
11:3;12:4;13:6;
21:13,14;30:12;
82:12;86:14;99:8,21
guide (1)
94:12
guidelines (1)
75:23
guilty (1)
18:10
guys (4)
6:9;19:24;20:19;
25:2

H

HAEBERLIN (51)
6:5;9:19,22;10:4,
25;11:6,21;12:7,20,
23;13:1,4;14:6;
15:14,20,24;17:18;
18:1,5,11,14;19:10,
20,23;20:19;21:11,
21;23:7,11,19,20;
24:17,19,24;25:4;
60:11;63:3,10,14,25;
64:3;72:24;73:3;
75:12,14;76:6;80:3,
16;81:1;93:24;94:2
Hall (4)
27:22;40:5;41:17;
106:7
hand (2)
69:7;73:21
handgun (1)
28:3
handicap (1)
103:5
handle (1)
106:8
handling (1)
39:14
Hapeville (1)
60:22
happen (5)
29:9,18;30:9;
84:21,25
happening (4)
30:15;58:6,7,14
happens (2)
12:4;31:22
happy (4)
23:25;26:16;36:7;
103:9
hard (1)
99:11
harder (1)
48:22
harm (1)
57:21
HART (2)
88:20;89:11
hate (4)
23:7;52:20;56:2;
101:22
hear (3)
36:6;52:17;75:12
heard (3)
20:4,5;73:18
hearings (1)
45:24
heat (1)
71:13
height (1)
7:6
help (2)
77:24,25
helpful (1)
38:14
here's (1)
56:16
Hey (1)
74:3
hide (2)
10:3;20:12
hiding (1)
44:7
high (1)
45:11
highly (1)
15:2
Highway (2)
8:24;14:19
hill (1)
10:10
hilly (1)
95:6
hire (2)
13:9,13
historic (7)
102:3,5,7,10,12,
20;103:3
historical (4)
100:6,11,14,21
historically (1)
102:17
hold (1)
9:13
home (7)
8:21;52:15;90:18;
102:10,13,22;103:3
homes (9)
77:1,4,5,7;78:18;
90:5,11;91:12;96:12
honest (2)
7:23;80:5
hop (1)
74:11
Hopefully (3)
25:4;27:21;39:19
hopes (1)
63:8
host (1)
79:8
hourly (2)
34:12;37:14
house (11)
71:21;90:10,12,24;
91:22;98:20,25;99:2,
4,17,24
houses (6)
80:9;86:20;88:4,
24;91:14;92:15
housing (1)
91:1
huge (2)
79:14,14
humility (1)
52:25
hundred (1)
64:24

I

I-285 (1)
78:9
idea (4)
35:6;42:14;79:11;
97:14
III (1)
32:12
immune (1)
35:12
immunity (1)
35:21
impact (2)
57:21;58:5
impediment (1)
61:2
impervious (5)
77:14,15,19,21;
78:6
impossible (4)
6:18;9:17;21:1;
23:4
impression (2)
44:6,8
improve (1)
61:8
incident (1)

20:3
inclined (1)
13:24
included (2)
60:14;65:1
including (2)
80:24;81:18
increase (2)
32:7,8
increasing (1)
44:5
incredibly (1)
43:17
incumbent (1)
7:20
indicated (1)
96:6
indicating (1)
87:6
indicative (2)
80:6,8
indifferent (1)
84:24
individual (8)
38:22,23;39:15;
53:8;54:2,19;56:7;
57:15
industrial (3)
6:13;9:10;79:1
inevitably (1)
52:22
inform (1)
75:16
information (24)
6:20;29:22;30:7;
31:14,17,18,21;
34:14;35:14;36:19;
37:20;38:9,12,13;
40:4,8,11,23;41:13,
19;42:20,25;43:19;
60:22
in-house (1)
36:10
insert (1)
68:1
inserted (2)
69:2;96:3
insertion (1)
95:23
inside (1)
78:9
insist (1)
13:25
Inspector's (1)
105:23
install (2)
13:9;21:1
installed (1)
6:23
instance (6)
56:2,8;69:5;70:7;
84:16;99:1
instances (1)
15:16
instigated (1)
10:9
instructed (1)
22:25
instructions (1)
52:3
intense (1)
57:23
intent (6)
7:12;8:5;9:25;
10:17;11:8;48:21
intentions (1)
21:16
interest (1)
59:20
interested (1)
44:9
interprets (1)
8:6
interrupt (1)
64:13
into (10)
35:9;40:21;45:24;
51:1;52:22;54:8;
66:17;94:19,20;
98:21
Investigation (1)
27:24
involve (1)
13:13
involved (2)
17:3;28:12
isolated (1)
20:3
issue (6)
23:1;39:1;53:12;
71:20;73:11;99:16
issued (1)
7:19
issues (3)
27:1;79:14,15
item (16)
6:23;13:11;20:8,
18;46:2;51:11;
54:24;64:9;66:15,20;
67:18;92:2,23;93:7;
104:11,13
items (7)
6:19;19:3;36:4;
52:2;77:24;78:22;
95:22
it-on-the-books (1)
61:3
IV (1)
32:12

J

January (2)
42:4,4
Jason (1)
88:22
JENKINS (90)
3:2,18,22,24;4:16,
19,20,21;5:1,3,18;
10:2;20:11;21:18;
25:7;28:7;29:4;31:9;
40:25;41:3,9,24;
42:8,18,21;44:15;
46:7,12;47:2,7,11,
15;48:5,9,13,15;
50:3,7,22,25;51:4,8,
10;68:7,11,19,22;
69:9,13,19,23;70:19;
74:14,20,23;75:13;
83:12,18,21;86:6;
88:19;92:1,20,22;
93:2,6,12,15;95:17;
96:14,21;97:4,10;
99:14;103:11,14,21,
25;104:5,9,14,18;
105:1,9,16,19;106:8,
12,18;107:9
job (8)
27:5,12;28:22;
31:13;38:14,14;
39:18,18
jobs (2)
29:21;31:17
Joe (1)
92:1
judgment (1)
21:25
June (2)
29:13;42:6
jurisdictions (2)
9:6;52:24
Justice (1)
25:15

K

keep (11)
28:5,21;49:2,6;
60:24;70:22;82:13;
83:1;84:2;88:12;
100:1
keeping (1)
60:23
keeping-up-with- (1)
61:2
kidding (2)
58:18,19
kind (7)
35:13;56:20;
85:23;88:14;95:6,12;
98:22
knowing (2)
66:10,10
knowledge (1)
100:12
knows (1)
88:11

L

labor (8)
55:23,25;56:17,25;
57:2,13;58:2,23
lack (2)
80:6;104:10
ladies (1)
83:2
land (1)
59:24
landscaping (1)
86:22
lane (1)
21:3
large (7)
8:14;14:12;28:2;
54:21;78:2;79:17;
88:13
large-lot (1)
76:25
larger (1)
58:1
last (9)
6:25;15:7;25:13,
21;27:24;28:1;29:18,
23;36:23
late (2)
40:24;92:23
later (1)
40:23
laundry (1)
34:17
law (21)
26:6;29:14;31:22,
23;32:15,18,20,20,
22;33:5,7;34:24,25;
36:9,11;37:24;45:2,
8,15;49:3;62:13
lawn (1)
101:24
lawyer (1)
62:11
layer (1)
66:11
layout (1)
15:17
lead (1)
34:21
least (4)
18:6;44:13;60:11;
88:8
leave (1)
81:16
leaving (1)
20:8
legal (11)
35:15;37:3,4;
39:12;52:19;53:8;
55:5;60:20;61:1;
74:4;99:9
legally (6)
39:9;54:21;81:21;
82:5;84:3;87:3
legislation (4)
35:9;86:15,16,17
legislative (1)
35:10
legislature (1)
35:4
length (2)
74:15;85:24
less (5)
7:6;44:24,25;66:9;
76:18
lessee (1)
56:7
letter (1)
54:13
level (2)
58:4;85:15
liability (1)
35:13
Library (1)
27:22
Life (7)
10:23;11:5;22:19,
23;39:8;84:9,14
lifting (1)
8:11
light (1)
7:25
likely (2)
58:8,15
limit (5)
55:5;58:20;59:2;
68:12;93:22
limitations (5)
59:18,23;66:19;
96:5;103:20
limited (1)
56:10
line (5)
55:16;67:6,12;
103:17,24
link (3)
9:20,25;10:3
liquor (1)
57:11
list (5)
34:17;35:2;36:1,3;
84:10
listed (2)
51:14;103:17
listen (1)
95:15
literally (3)
85:17,21;106:11
litigated (1)
53:4
litigation (1)
35:17
little (16)
7:21;14:16;17:21;
21:4;25:8;26:15;

29:22;69:20;70:8,25;
75:24;87:12,13;95:2;
99:18,19
live (3)
76:21;94:13;97:16
living (2)
90:23;94:17
load (2)
19:1;85:13
local (7)
32:2,6,16,19,22;
100:20;102:6
locally (1)
33:4
locate (1)
4:7
location (3)
14:17;16:20;94:22
locations (1)
15:2
logic (2)
56:15,21
logical (1)
56:24
long (12)
5:19,24;15:8;17:2;
29:17;39:11;58:11;
60:24;77:11;81:9;
83:14;106:9
longevity (2)
8:22;17:1
look (9)
14:10;16:2,21;
28:3,19;35:18;62:21;
76:15;78:7
looking (1)
16:17
Looks (3)
5:19;86:23;88:10
lot (24)
8:12;11:13;14:21;
16:8;18:7,23;33:19;
39:8;41:19;51:19;
54:2;66:8;69:14,23;
82:19,22;85:25;91:1;
94:8;95:5,5;98:9;
99:10;101:5
lots (5)
11:7;14:19;58:23;
88:23;92:17
lowest (2)
34:11;37:14
lowest- (1)
37:14
lowest-paid (1)
34:12
low-rent (2)
87:7,10
luck (1)
55:17
Luke (3)
39:3,6,11

M

M1 (1)
65:10
M2 (1)
65:10
ma'am (6)
28:15;60:6,19;
64:3,6;80:16
macroeconomic (1)
57:21
magic (3)
55:22,22;62:20
main (2)
74:16,21
maintain (3)
8:10;79:7;85:23
maintained (1)
91:20
maintenance (1)
66:19
Major (1)
4:20
majority (2)
52:8,24
makes (2)
13:10;27:10
making (4)
16:3;61:9;79:25;
99:6
Mall (1)
91:10
manage (2)
76:16,22
management (6)
22:23;36:25;
37:17;75:24;78:14;
79:8
manager (2)
27:9;38:18
managerially (1)
37:21
managing (2)
77:13,15
mandated (1)
69:16
manner (3)
37:8,23;43:3
many (19)
9:5;14:19;18:3,17,
17;20:2;34:24;42:1;
51:16;53:6;56:25;
57:2,23;65:6;80:9;
90:20,23;97:18;98:7
March (1)
42:5
Maria (1)
103:11
Marlene (1)
88:22
Mart (1)
16:20
masonry (1)
16:22
massage (1)
57:12
master's (1)
37:24
material (3)
8:13;18:24;71:11
materials (6)
7:3,5;8:8;68:4;
86:18;96:1
matter (4)
65:5;68:13;69:17;
85:14
maximum (3)
45:9;55:10;91:21
may (13)
8:24;20:3;24:3;
42:6;45:17;51:9;
62:3;66:17;67:22;
72:7;73:17;74:13;
78:13
maybe (6)
14:23;19:17,18;
40:22;95:2;99:9
MAYOR (108)
3:2,18,22,24;4:16,
19,21;5:1,3,18;10:2,
9;17:9;18:18;20:5,
11;21:18;25:7,11;
28:7;29:4;30:23;
31:2,9;38:17;39:16;
40:1,5,11,25;41:3,9,
24;42:8,18,21;44:15;
46:7,12;47:2,7,11,
15;48:5,9,13,15;
50:3,7,22,25;51:3,4,
8,10;64:8;68:7,11,
19,22;69:4,9,13,19,
23;70:19;74:14,20,
23;75:12,13;83:5,12,
18,21;86:6;88:19;
92:1,20,22;93:2,6,10,
12,15;95:17;96:14,
21;97:4,10;99:14;
103:11,14,21,25;
104:5,9,14,17,18;
105:1,9,16,19;106:8,
12,18;107:9
mean (33)
12:24;13:23;
17:14,16,17;18:14;
19:24;21:3;23:2,3,9,
16;30:11;38:2;
55:22;68:24;73:3;
74:8;81:8;83:10;
92:14;94:7;95:1,7,8;
96:14;98:10,17;
99:10,16;100:16;
103:3;106:16
meaning (4)
24:4;49:19;56:19;
57:10
meaningless (1)
16:16
meant (2)
35:4;100:9
measure (2)
82:25;85:22
meat (1)
51:20
mechanical (1)
8:11
mechanism (1)
76:8
mechanisms (2)
22:8;75:15
meet (7)
9:25;11:8;26:7;
53:15;69:3;75:4;
89:20
Meeting (8)
3:2;5:19;19:18;
29:23;52:17;103:8;
105:10;107:12
meetings (2)
36:17;38:6
meets (1)
8:4
Memorial (1)
25:15
mentioned (2)
29:23;72:24
Merely (1)
102:10
mess (2)
79:3;95:7
met (2)
27:3;59:15
metal (2)
16:18,24
methods (1)
78:25
metropolitan (1)
77:9
micro (2)
57:14,22
microphone (1)
6:2
middle (1)
74:3
might (8)
9:10;20:19;34:21;
42:9;57:16;59:23;
65:22;93:4
million (1)
90:12
million-person (1)
65:23
mind (4)
24:2;38:20;83:1;
95:20
minds (1)
86:9
mine (3)
69:10,19;90:4
minimum (1)
44:23
minutes (7)
3:19;4:16,24;5:22,
23;34:14;105:4
mode (1)
66:25
modern (1)
77:6
moment (1)
38:25
Monday (1)
36:11
money (1)
101:23
moneys (1)
25:20
month (2)
42:7;63:5
months (4)
30:7;36:23;40:23;
87:20
more (32)
6:6;12:15;14:13;
16:11;17:22;21:4;
22:20;26:23;29:10,
10;39:8;43:24,25;
44:9,10,10;57:23;
58:14;60:12;66:5,6,
6;71:14;72:8,16;
77:24;78:20;88:2,3;
91:12,13;103:9
most (9)
41:6,10;56:19;
61:18;74:14;76:25;
77:8;79:15,17
motion (13)
3:20;4:23;47:3;
48:6,6,7;97:2,5;
103:14,16;104:9;
105:16,18
motions (1)
4:19
motor (2)
90:4,18
mouth (1)
23:10
move (6)
14:2;24:20;46:4;
47:4;64:8;95:11
moved (2)
3:21;4:25
moving (3)
62:23;94:20,23
Mrs (1)
70:13
much (12)
31:20;33:9;36:14;
38:3;43:25;56:13;
57:10;58:8;60:14;
66:4;71:13;80:14
muddy (1)
89:19

multi-family (1)
6:14
murder (4)
32:19,20,21,21
Murray (6)
6:3;23:21;40:25;
41:3;44:16;87:17
must (3)
53:16;96:18,24
mustard (1)
102:17
myself (2)
27:3;41:10

N

National (1)
100:14
nature (1)
62:13
neatly (1)
97:17
necessarily (5)
18:15;20:17;23:6;
39:9;53:11
necessary (2)
59:19;91:23
need (44)
5:25;8:7;9:3;
11:15,15;12:3,9,11;
13:3;14:2,13,16;
19:13,15;21:4;23:24;
24:20;31:17;34:8,9;
48:5;51:19;58:20;
61:5,7;62:18,21;
66:2,4,12;72:16,23;
74:25;75:4;76:4,7;
79:24;82:17,19;
91:20,21;105:9,10;
106:16
needed (1)
26:23
needs (8)
16:18;17:21;19:6;
34:7;60:14;61:12;
67:21;69:2
neighbor (1)
84:18
neighborhood (5)
89:6;90:19;92:7;
94:20;97:16
neighborhoods (1)
69:15
neighbors (1)
90:4
Neither (2)
24:17;102:11
New (24)
10:10;16:1,20;
20:20;21:6;24:22;
49:3;73:14;75:4;
78:21;80:22;81:12,
17,17;85:13;86:10;
88:5;94:18,18,21;
97:20,23;101:10,19
new-construction (1)
80:23
newsletter (1)
87:20
next (14)
8:8,13;19:18;
27:13,16;52:13;
57:17,17;73:16;
87:20,20;92:2;93:6;
106:15
nice (1)
86:23
night (3)
44:18;103:9;106:2
nine (1)
42:5
nonexistent (1)
79:5
NOONAN (2)
105:22;106:3
nor (2)
24:17;102:11
normal-width (1)
89:23
north (1)
78:10
Northwoods (1)
73:18
noted (2)
15:12;67:14
notice (10)
25:13;53:13,20,22;
54:5,13,18,19,20;
91:10
notified (2)
26:21;30:15
notify (3)
27:13;52:6;53:17
notifying (1)
52:4
null (1)
11:19
number (34)
4:18;7:5,7,17;
12:11;14:11;18:18;
33:14;45:23;48:9;
49:2,22;50:1;51:1,
12;55:5,10,22,22,24;
57:7,11,12,13,18;
58:21;64:9;66:15;
67:18;76:22,24;83:6;
104:11,13
numbers (4)
26:20;42:4;44:5;
56:19
numerous (1)
60:9

O

o0o- (1)
107:13
Oak (1)
71:21
Oakcliff (4)
69:17;71:18;95:4;
97:12
objective (6)
61:14,15,15,18,24;
62:19
obviously (6)
12:25;14:12;16:7;
62:15,18;74:25
occasions (1)
45:17
occupancy (1)
80:8
occupying (1)
80:9
occurred (1)
48:23
occurring (1)
74:2
O'CONNOR (4)
92:3;93:4,8;100:6
oddly (1)
36:9
odor (2)
105:13,24
off (9)
28:4;35:25;63:8,
11,11;65:12;88:6;
91:7;96:17
offenders (1)
48:18
office (1)
42:23
office/institutional (1)
79:1
officer (1)
38:19
Official (4)
25:1;39:24;41:7;
53:7
Officially (2)
39:17;100:15
officials (1)
29:15
often (1)
35:23
oftentimes (1)
35:14
of-way (2)
14:24;22:14
old (6)
15:9;51:1;86:16,
20;97:20;102:23
older (1)
90:11
oldest (1)
40:1
Once (3)
17:1;74:11;79:22
One (61)
6:19,23;11:11,25;
14:8,14;15:18,24;
16:1,11,12;20:21;
26:2;27:16;29:13;
30:5,16;33:1;34:24;
38:15,21;39:3;41:10;
45:16;52:9;55:3;
56:3,4,4;60:22;
61:14,25,25;63:10,
10,11,12,14;65:13,
14;71:16,21;72:8,10;
76:13,23;84:18;88:4;
90:25;92:5,25;93:2,
5,9;94:9;98:17,24;
99:17,23;100:19;
101:16
one-lane (1)
92:12
ones (2)
81:16;82:11
one's (1)
63:17
only (10)
8:22;13:25;24:25;
26:10,25;45:16;
56:11;76:12;82:15,
20
open (30)
7:11;29:6,11,25;
30:2,5,14,18;31:24;
32:23;33:23;34:23;
35:19;36:11;37:5,18;
38:10;40:15;41:4,14;
42:1,11;43:1,2,10;
44:5,10;52:23;79:23;
84:6
opened (3)
18:25;23:2,3
operation (1)
45:22
operations (1)
8:11
opinion (19)
22:7,15;23:13,14;
32:8,24;33:3;35:3;
36:20;37:6;39:15;
40:6;43:13,16;54:7,
22;81:4;82:17;85:16
opportunities (1)
11:8
opposing (1)
35:15
option (1)
41:17
options (2)
11:22,25
order (5)
3:2;39:12;40:7;
53:5;97:23
ordinance (59)
6:10,17;7:15,22,
24,25;8:5;9:16;
10:20;11:4,7,7;
12:14,19;14:3;15:1;
19:6,14,22;22:1,9,
21;23:5,12,14;24:21;
25:2;32:2,6;44:21;
45:3,6,13,14,16;
46:3;47:3;48:9;49:1,
4,8,14;53:14;55:18;
59:13;66:18;68:21;
70:6,17;83:13,14;
85:6;86:3;93:23;
96:20;97:1,3;100:23;
102:6
ordinances (5)
24:13;44:20;
56:20;91:2;94:11
ordinary (1)
68:14
organ (1)
53:8
origin (1)
43:7
ornamental (1)
90:14
ORRs (1)
42:22
others (2)
58:16;80:15
otherwise (2)
33:4;86:4
ought (2)
24:12;39:7
out (39)
8:12;10:17,23;
11:17;12:6;14:22;
16:6,19;17:21;18:7;
24:12,14;28:3;29:24;
36:15;38:9;39:25;
40:1;44:23;45:19;
53:22;55:17;67:5;
74:13;79:7;84:9;
85:21;89:18;90:22;
92:10,10,25;93:3,5;
94:13;95:23;96:2,16;
98:7
outline (5)
36:8,9,12,15;43:23
outside (3)
9:8;16:22;94:15
outstanding (1)
28:22
over (21)
6:7;26:21;28:18,
18;34:4;35:8,10,13;
41:20;52:11;57:17;
73:18;75:18;79:23;
83:19;90:5,6,18;
91:9,9;102:22
over- (1)
80:8
overwhelmed (1)
38:3
own (2)
8:21;13:12

owner (7)
13:11;53:17,20,21,
21;54:3;84:17
owners (1)
53:18

P

pad (8)
13:14;72:15,19;
73:14;74:10;85:8;
90:6;99:19
pads (2)
84:2;86:25
page (2)
34:11;37:14
pages (2)
33:20;51:23
paid (2)
37:15;90:5
paint (1)
102:16
painted (1)
9:10
Pam (2)
95:18;97:19
paperwork (4)
25:18;28:16;66:6,
6
paragraph (2)
7:1;32:12
parameters (1)
102:8
paraphrase (1)
59:9
Pardon (1)
83:20
park (8)
72:3;74:4;87:14;
90:17;98:18,25;99:2,
3
parked (5)
89:1,5,8;90:2,5
parking (17)
68:2,10;71:20;
72:15,19;73:14;
74:10;80:6;84:2;
86:25;88:23;90:6,22;
92:13,17;95:24;
99:19
parks (1)
79:19
parlors (1)
57:12
part (4)
7:1;24:18;74:1;
76:1
participate (1)
64:19
particular (11)
14:3;19:12;45:21;
49:17;56:4,9,10;
57:25;60:3;70:17;
71:21
particularly (4)
13:14;78:1;88:22;
98:12
parts (1)
92:11
pass (4)
32:2;47:3;48:7;
77:19
passed (4)
30:12;49:15;
88:21;90:8
past (3)
26:24;36:10;76:8
path (1)
89:19
pave (10)
83:13,17,18,21;
85:4,8;87:24;91:21;
96:16,16
paved (3)
72:17;77:9;88:6
pavement (5)
79:13;87:8;88:2;
93:17,19
paver (1)
67:9
pavers (14)
67:18,19;71:11;
73:7;77:16;87:8,10;
91:11,11,19;96:6,19,
25;101:19
paving (4)
87:25,25;88:1;
91:19
pawn (1)
58:2
pay (9)
24:10;30:1;31:16;
36:18,22;37:13;
38:12;43:2,15
pays (1)
43:15
pea (3)
90:10,13;99:25
Peachtree (1)
10:10
penalties (5)
33:1;40:20;43:11;
45:5;48:11
penalty (7)
32:8,21;44:22;
45:4,18,25;49:8
people (46)
10:23;11:22;13:6;
15:10;16:2;18:6,9;
20:2;21:19;24:6,10,
14,14;29:21;30:17;
36:18;44:7,8;53:24;
55:16;56:23;64:19;
71:18;72:9,21;73:18;
74:2;75:9;80:9;81:9;
83:25;85:2;86:12,13;
89:3,21;90:23;94:19,
21,25;95:3;97:13,24;
99:23;101:23;106:5
people's (1)
88:23
per (2)
34:11;37:13
percent (2)
64:24;72:16
percentage (1)
77:12
percents (1)
37:13
perfect (3)
53:13;54:13;92:7
perfected (1)
54:18
perfectly (1)
22:14
perhaps (3)
77:2;87:18,19
Perimeter (1)
91:10
permanent (1)
39:23
permeable (5)
86:10;87:2,3,15;
88:9
permission (1)
98:8
permit (10)
7:5;13:7;51:24;
54:11;57:19;72:23;
74:25;76:11;85:19;
98:5
Permits (10)
51:12,22,25;57:7;
58:9;60:12;63:2,7;
64:1;72:22
permitted (1)
8:19
pernicious (1)
58:4
person (8)
10:11;27:8;30:13;
37:7,10,11;38:22;
52:21
personally (2)
13:23;55:13
pervious (4)
77:20,24;78:3;
91:4
petitions (1)
63:4
phically (1)
62:5
philoso- (1)
62:4
philosophy (1)
35:10
photograph (2)
82:19;85:21
Pickens (1)
94:14
picks (1)
19:1
picture (2)
84:12;87:5
piggyback (1)
61:12
Pin (1)
71:21
Pinetree (2)
20:14,25
pink (1)
102:16
Pittman (37)
3:11,12,23;4:9,10;
5:11,12;12:18,21,24;
13:2;46:6,20,21;
47:6,14,23,24;48:8,
14;50:15,16;70:3;
72:7;73:25;75:1,8,
11;81:15,23;82:8;
100:7;101:4,25;
106:1;107:2,3
place (6)
22:21;23:5;56:9;
79:24;80:11;94:1
placed (1)
77:12
placement (2)
16:9,13
places (1)
79:12
plainly (1)
53:4
plan (3)
59:11,25;65:15
Planner (3)
51:13;87:22;94:10
planners (1)
65:22
planning (1)
52:14
plant (3)
8:8,12;22:11
planting (3)
7:3,5;8:16
plantings (1)
9:24
plants (1)
77:25
play (1)
40:21
Plaza (6)
16:20;20:14;56:2,
4;57:18;63:12
please (10)
3:3,24;24:2;27:17;
38:20;46:12;50:7;
64:2;75:12;106:19
pm (1)
107:12
point (9)
40:17;45:10;54:4;
60:21;78:17;85:5,6;
98:6,16
pointless (1)
44:12
Police (7)
25:9,22,24;27:15,
20;28:13;45:21
policies (1)
26:7
policy (3)
12:13;26:9;30:13
poll (1)
9:15
ponds (1)
79:17
pools (8)
55:23,25;56:17,25;
57:2,13;58:2,23
poorly (1)
23:15
population (5)
56:21,24;57:1,3;
58:24
porous (5)
67:10;68:4;71:11;
77:17;96:1
portion (1)
55:7
possible (3)
6:8;24:8;51:24
Possibly (5)
13:1;27:22;52:4;
67:10;76:12
posted (1)
53:10
postpone (2)
19:18;105:10
postponed (2)
66:16,17
potential (1)
65:10
poured (1)
75:5
pouring (1)
74:2
power (1)
11:14
practical (3)
57:10,20;82:15
practice (2)
75:20;89:13
praised (1)
27:5
preempt (1)
33:4
preempted (2)
32:22;35:24
preemption (3)
32:10,11,14
pre-existing (1)
65:2
preferably (1)
85:22

prepared (2)
36:8,13
present (3)
6:24;14:5;19:14
presentation (2)
23:3;59:4
presented (1)
66:20
presently (6)
51:18;59:7;60:3;
95:21;96:10;97:1
pretty (3)
31:20;33:9;36:14
prevent (5)
58:6,13;74:5;
85:11;101:6
previous (5)
72:6;90:8;93:23;
101:4,15
primary (22)
67:6,7,8,13;69:2,2;
70:10;71:6,8;72:2;
73:6,10;74:8,22;
76:8;80:18;96:3,4,7;
103:18,22,23
prior (8)
6:9;48:23,24;
49:12;51:13;75:19;
77:2;103:8
privately (1)
39:7
proactive (1)
87:23
probably (9)
10:14;17:21;23:4;
39:7;40:5,24;82:17;
98:8;101:2
problem (20)
14:20;18:16;20:1;
42:25;45:11;60:17,
24;61:3,4;78:15,15,
16;82:10;88:1,3,21;
92:14;94:6;101:17,
20
problematic (1)
54:20
problems (11)
8:1;44:16,18;54:8;
65:10;71:17;72:20;
77:22;79:2,9;91:1
procedural (1)
54:14
Procedures (2)
53:2,3
process (5)
26:3,5;45:24;
76:22;95:12
product (2)
9:12;16:23
Program (1)
25:16
prohibited (1)
32:17
promote (1)
35:7
properly (1)
15:7
properties (3)
61:24;87:18;
100:13
property (8)
13:8,25;15:17;
53:17,25;59:21;
72:17;102:20
proposed (1)
52:6
prosecution (1)
22:1
protect (1)
59:19
prove (1)
53:20
provide (2)
6:9;21:12
provided (1)
67:3
provides (2)
11:7;75:24
provision (7)
44:22,23;45:4,18,
25;76:13;90:15
public (14)
10:5,13;14:23;
17:13,14;20:15;
21:17;22:13;37:25;
43:14;59:20;79:4,6,
19
publicly (1)
23:8
pulled (1)
69:6
pull-off (3)
69:4,15;70:11
pull-offs (1)
86:25
pulls (1)
62:15
pure (1)
20:20
purely (1)
102:10
purpose (2)
45:16;90:9
pursue (2)
9:4;91:18
pushing (1)
66:25
put (28)
6:4;9:24;14:14,21;
15:10;19:19;20:9;
22:12;23:10;25:8;
29:5;44:1;60:11;
61:16;63:7,11,11;
64:18;67:6,13;84:18;
87:19;89:7;90:6;
92:9,10,24;93:25
puts (1)
59:22
putting (6)
20:8,10;64:15;
65:8;89:21;97:22

Q

qualify (3)
9:21;10:23;78:2
Quality (5)
11:5;22:19,23;
84:8,13
questionable (1)
10:6
quick (1)
98:1
quit (1)
88:2
quite (1)
9:23
quote/unquote (1)
62:20

R

R-1 (6)
77:14;80:22,25;
81:2;86:12;87:15
rate (3)
34:12;37:14;55:23
rather (1)
83:11
Ravinia (1)
91:9
reach (1)
57:6
read (7)
11:24;28:18,18;
45:5;51:17;59:6;
65:12
readable (1)
43:25
readily (2)
34:3,6
reading (3)
46:2;47:5,12
reads (2)
96:20;97:1
real (5)
5:24;23:24;54:3;
91:17;98:1
realize (1)
79:15
really (27)
10:20;11:10;15:1;
16:17;18:24;19:3;
21:21;22:16;49:20;
53:21;54:3;58:12,20;
62:5,7;63:9;66:12;
78:2,21,23;81:4,5;
82:10;98:10;99:23;
101:22;102:1
reason (12)
9:14;14:14;29:9;
35:19;41:18;44:4;
45:20;48:20;49:15;
79:2;89:12,16
reasonable (6)
6:16;7:7;9:9;
17:18;37:22,23
reasonably (1)
8:3
receive (3)
31:19;33:23;42:2
received (6)
6:7,21;25:13,17,
25;41:9
receiving (1)
4:7
Recently (1)
6:5
recertifi- (1)
25:25
recertification (3)
26:3,13;27:3
recertified (1)
26:16
recess (1)
105:7
recognized (3)
25:24;26:2;103:3
recollection (1)
102:5
recommendation (2)
16:25;79:21
reconstructing (1)
19:14
Record (6)
30:18;31:24;41:2;
44:11,13;82:21
recorded (1)
85:25
Records (26)
29:6,11,25;30:2,5,
14;32:23;33:24;
34:23;35:19;36:12;
37:5,19;38:11;40:15;
41:4,8,14;42:1,11;
43:1,2,10;44:5,10;
54:1
Recovery (1)
25:15
recreational (5)
68:3,8;95:25;99:1,
3
rectify (1)
45:9
redrafting (2)
14:3;19:6
refer (1)
4:19
regard (9)
22:25;32:5,24;
33:22;37:16;49:20;
56:17;58:9;84:4
regarding (3)
48:11,18;66:18
regards (1)
59:4
Register (2)
100:14;102:6
regular (1)
42:19
regularly (1)
53:18
regulate (1)
14:11
regulation (2)
14:10;102:14
related (1)
104:22
relationship (1)
39:15
relative (1)
59:13
relatively (1)
56:18
rely (2)
53:23,25
remember (2)
13:5;73:1
remind (1)
5:20
remove (7)
83:9,17;96:11,15,
22;104:13,21
repair (1)
13:18
repealed (2)
6:10;95:21
repeat (2)
92:4;103:14
rephrased (1)
23:20
replace (2)
67:24;70:1
replaced (4)
66:22;96:19,24,24
request (18)
22:19;29:6,25;
30:3,6;33:24,24;
34:7;35:16,19;37:6,
8,10,12;38:11;40:15;
41:4;63:24
requested (5)
29:8;34:2;40:12;
55:10;63:7
requests (13)
29:11;30:14,18;
31:24;36:18;37:19;
39:19;42:1,19;43:1,
2;44:5,10
require (8)
10:2;15:13;73:13;
77:9;84:5;96:16,17;
103:4
required (7)
32:24;38:13;

53:11;59:24;73:10;
85:19;96:11
requirement (4)
11:24;71:6;85:24,
24
requires (2)
67:24;79:4
requiring (2)
6:20;51:16
research (1)
52:3
researched (1)
52:9
residence (3)
28:7;55:23;84:11
resident (1)
52:13
residential (1)
86:13
residents (6)
52:4,4;55:24;83:6;
84:10;96:10
resolve (4)
16:9,12,13;73:11
respect (1)
5:23
respond (4)
29:15;31:23;32:3;
37:8
responded (3)
29:12;30:19;52:1
responding (2)
34:6;35:12
response (12)
30:3,4,5;32:8,25;
34:2,15;46:10;50:5;
99:8;104:3,7
rest (2)
30:5;98:21
restrict (1)
91:1
restrictions (1)
89:24
restrictive (1)
91:17
retention (1)
88:16
returned (1)
26:22
returns (1)
19:2
review (4)
9:16;67:5;77:20;
78:5
reviewed (1)
22:4
rework (1)
49:7
rewrite (5)
14:7;17:24;19:24;
77:14;81:2
rewrote (1)
86:3
Rhonda (4)
50:23;67:4;75:20;
76:9
Right (30)
9:16,20;11:21;
12:16;19:17;23:24;
33:7;41:19;50:1;
55:8;59:16;61:21;
63:19;65:25;69:11,
25;70:7;71:9,14;
75:8;77:14;80:21;
83:2;85:22;92:20;
94:12,23;95:11;
104:22;106:4
right- (3)
14:23;22:13;69:6
right-hand (1)
69:8
right-of-way (6)
10:5,13;17:14,15;
20:16;79:4
right-of-ways (1)
15:19
rights (1)
54:15
Road (2)
69:17;79:3
Roberts (3)
70:8,13,14
Roche (65)
3:13,14;4:11,12;
5:13,14;10:22;11:1,
18;12:2;17:12,23;
18:2,8,12;19:16,21;
23:2,9;24:9;29:7;
30:20,22;31:1,4,11;
40:16,22;41:1,23;
44:1;46:22,23;47:25;
48:1;50:17,18;61:4;
70:21,25;73:9,15;
74:6,18,21,24;75:6,
9;82:1,4,6;83:4;
93:16;99:15;100:4,9,
18,25;101:3,22;
105:20;106:5,10;
107:4,5
Rodgers (2)
27:5,7
role (2)
37:1,16
roll (7)
3:3,24;5:3;46:12;
47:15;50:7;106:19
rolls (1)
99:22
Ronald (1)
6:21
room (3)
21:4;69:10;105:23
route (1)
21:14
rule (1)
35:22
run (7)
53:6,7,7;54:7,17;
55:18;91:6
runoff (1)
71:14
RV (1)
74:11

S

same (5)
38:6;49:6;57:18;
61:23;81:10
sandwich (2)
56:8;59:1
sanitation (1)
13:17
saw (1)
17:10
saying (17)
10:22;23:3,22,23;
30:13;32:1;40:4;
49:2;68:23;69:12,13,
20;74:3,19;76:3,8;
84:23
school (1)
62:14
Scott (11)
6:2,3;62:4;64:25;
84:14;86:9;88:11;
90:21;92:4;93:20;
95:13
screen (1)
6:15
screened (2)
7:2;17:13
screening (2)
10:1;16:6
search (2)
27:25;54:2
Second (19)
3:22,23;5:1,2;
46:6;47:6,13,14;
48:8,18,25;49:9,23;
104:1,5,10;105:19;
106:10,18
secondary (29)
58:5;67:8,11;68:1,
7,13;70:8,16;71:1,
24;72:15,18;73:7,13;
74:14;75:1;80:2,3,
20;81:18;83:8;84:1;
85:8;86:25;88:9;
89:25;91:22;95:24;
101:11
seconded (1)
48:13
section (9)
6:11;27:25;32:12;
45:1;48:10;64:1;
67:2;68:6;103:19
sections (1)
33:15
seeing (1)
15:4
seek (1)
24:25
seem (1)
74:7
seems (9)
6:16;7:7;17:18;
18:12;24:12;44:6;
59:15;66:24;86:8
Sellers (1)
27:4
semantic (1)
77:22
send (14)
24:14;33:12;34:7,
8,9;35:16,19;42:13,
14;43:19,20,23;
75:18;78:4
sense (5)
20:10;39:6;57:14;
87:13;88:17
sent (3)
28:17;31:25;34:9
sentence (2)
67:2,21
September (2)
27:17,23
Sergeant (2)
27:5,7
serious (2)
14:20;20:1
serves (1)
45:16
service (2)
21:3,13
serviced (1)
7:9
set (8)
44:23;61:5,10;
63:9;66:4;78:13;
101:8,15
setbacks (1)
8:25
sets (1)
36:14
setting (1)
66:7
seven (1)
26:25
severability (2)
48:17;49:16
several (6)
15:11;18:6;26:2,4;
69:17;88:25
shall (5)
7:2;17:13;44:24;
55:11;67:15
shallow (1)
14:18
share (1)
60:21
sheet (2)
64:17,21
shop (1)
59:1
shopping (4)
14:13;57:14,18;
86:11
shops (2)
56:8;58:2
short (3)
45:15;58:18;82:6
shortest (1)
33:21
shove (1)
8:3
show (3)
26:11;27:11;87:5
sick (1)
105:15
side (14)
16:5,6,11;20:14;
54:9;69:7,8;79:20;
86:22;89:15,19,22;
90:17;99:18
side-by-sides (1)
92:17
sided (1)
15:17
sides (2)
16:11;88:16
sidewalks (1)
76:19
sign (3)
52:17;92:25;93:10
signage (2)
53:9,10
signed (5)
27:25;64:10,20;
92:1;93:8
sign-up (2)
64:17,21
simple (2)
39:8;52:20
simpler (1)
12:16
simply (3)
21:2;31:18;102:12
single (1)
20:3
site (7)
10:9;14:10;16:1,1;
44:2;59:11;88:5
sites (1)
6:14
sits (2)
9:20;61:21
sitting (5)
17:24;83:3,4,5,10
situation (10)
11:14;16:10,13;
18:22;35:22;55:14;
78:19;81:2;87:21,22
situations (3)
20:24;88:9,12

six (5)
7:6;57:18;70:3;
87:20;94:4
sixteen (1)
42:6
six-year (1)
93:21
slats (1)
10:3
smell (2)
105:13;106:6
smelling (1)
105:21
soil (1)
77:20
solicitor (1)
21:24
solution (3)
23:24,25;40:19
somebody (5)
29:4;75:18;92:11;
103:5;105:9
somebody's (1)
97:22
somehow (3)
6:15;32:7;59:2
someone (3)
37:5;52:13;103:4
something's (2)
30:9,9
sometimes (1)
67:20
somewhat (1)
61:13
somewhere (2)
74:10;94:15
soon (2)
65:17;98:9
sophisticated (2)
65:21;66:5
Sorry (7)
31:10;36:5;55:2;
64:11,13;105:20;
107:10
sort (8)
9:11;15:6;59:17;
70:9;73:2;77:3;
91:18;99:11
sorts (2)
76:19;77:6
sound (1)
81:23
source (1)
31:14
south (1)
79:12
spaces (2)
79:18;86:10
Spangler (42)
3:16,17;4:14,15;
5:16,17;30:24;31:2;
33:6,11,17;35:1;
36:2,16,21;37:2;
38:5,8;39:21;40:3,7,
10;42:24;43:18;
46:25;47:1;48:3,4;
50:20,21;72:7,13;
73:5,12;83:24;84:8;
85:1;105:12,17;
106:14;107:7,8
speak (2)
5:21;92:23
SPEAKER (2)
100:22;105:24
Special (1)
27:24
specific (4)
56:12;58:21;
59:18,22
specifically (1)
14:9
specifications (1)
14:4
specifics (1)
28:12
specified (1)
55:11
specify (1)
9:23
spelled (1)
17:21
spend (2)
87:23;101:23
spilled (1)
8:15
spread (1)
27:18
staff (3)
7:21;11:14;60:24
stance (1)
48:22
stand (2)
80:18;96:12
stand-alone (1)
10:4
standard (9)
16:25;20:20,21,22;
21:7;78:8,12;86:1;
89:13
standards (6)
26:7,8,22;27:11;
81:13;88:17
standpoint (1)
14:25
start (5)
19:12;27:16,17;
41:15;92:13
started (2)
64:25;71:20
starting (1)
94:5
State (13)
29:14;31:22,23;
32:16,20,20;33:4,7;
45:2,8,15;100:22;
102:3
states (1)
53:4
statute (7)
33:20;35:5,6;
36:12;37:9;40:19;
43:21
stay (2)
84:6;106:16
stays (1)
27:9
still (13)
15:18;24:3,6;
25:17;42:22;49:18;
54:22;70:22;71:22;
83:3,4;95:19;96:12
stone (4)
9:8;15:6;90:16;
91:17
stood (1)
49:18
stopping (1)
105:4
storage (5)
68:2;71:1;80:7;
90:3;95:25
store (1)
80:11
stores (1)
57:12
storing (1)
80:10
storm (1)
71:15
Stormwater (4)
25:1;71:15;88:1,3
straighten (1)
24:12
street (4)
20:12;82:20;88:5,
13
streets (1)
79:5
strict (3)
21:7;49:4,6
strong (3)
16:18,24;18:24
struction (1)
20:21
structure (6)
14:7;16:14;22:6,
12;24:5;63:21
structured (1)
38:17
structures (2)
14:12;24:22
Stuart (5)
86:6,7;89:6;91:4;
97:15
stuff (3)
44:7;71:1;94:20
stunned (1)
82:2
subjective (3)
11:13;61:13,21
submitted (2)
29:13;30:14
subpoena (1)
35:16
subsequent (1)
44:25
subset (1)
81:3
succinct (1)
32:24
sudden (3)
19:12;36:22;85:4
suggestion (1)
55:4
suggestions (1)
105:11
suit (1)
87:6
suite (1)
57:17
suites (1)
56:11
supplied (1)
51:21
support (5)
16:5,10;57:1;
79:13;101:15
supposed (4)
42:14;52:5;98:4;
99:10
sure (17)
8:5;19:20,23;
21:24;27:10;33:13;
35:7;40:14;43:10,19;
45:25;59:8;68:15;
83:22;97:15;98:2;
103:17
surface (2)
87:2,4
surfaces (5)
79:13;87:15;91:4,
13,19
surrounding (1)
86:17
survey (2)
87:18;103:5
Susan (2)
97:11;99:14
SWAT (1)
28:1
system (1)
54:7

T

table (2)
34:8;97:5
tailor (1)
65:21
talk (2)
5:25;76:24
talked (2)
32:13;62:6
talking (2)
68:8;101:5
team (1)
28:1
tear (1)
73:19
technically (1)
39:5
teeth (2)
60:8;65:11
telling (4)
11:20,22;41:22;
106:6
temporary (1)
90:3
ten (1)
14:23
tend (1)
67:19
terminology (1)
65:3
Terri (1)
67:4
terrible-looking (1)
95:6
terrorist (1)
34:22
textured (1)
9:11
that'll (1)
27:23
theirs (2)
25:10;52:10
theory (1)
52:19
therefore (4)
32:22;33:2;38:11;
54:6
thinking (2)
20:14;99:17
third (1)
65:13
thirteen (1)
42:7
thorn (1)
54:9
though (6)
40:17;43:8;72:4;
87:3;100:6;102:11
thought (7)
15:2;30:22,24;
47:7;79:10;95:1;
106:7
thoughtful (1)
95:12
thousand (2)
53:4;87:24
three (17)
5:22;7:2,8;11:11,
25;20:8,18;26:14;
29:15;34:1,4;42:5;
43:4;59:17;64:16;

74:12;86:20
three- (1)
15:16
three-day (3)
30:4;34:15;35:21
thresholds (1)
56:20
throughout (3)
7:13;8:18;17:7
throw (1)
73:22
thrown (3)
12:6;71:19;98:9
thus (1)
78:15
ticket (1)
21:20
tickets (2)
24:15;55:15
Tiger (1)
87:5
till (1)
104:19
timbered (1)
97:17
timbers (3)
86:18,18,22
timely (3)
37:8,23;43:3
times (4)
53:4,6;74:12;95:1
title (1)
54:2
today (2)
11:23;99:22
together (3)
19:19;60:12;63:25
Tom (2)
88:19;92:5
Tommy (1)
90:9
tomorrow (1)
106:2
tonight (6)
5:20,24;7:17;
17:24;19:25;22:24
tool (1)
76:16
top (1)
27:9
total (1)
72:17
totally (2)
89:23;90:9
town (4)
56:22;57:1,2,4
tractor-trailer (2)
90:1,7
trained (1)
36:11
training (1)
36:10
Transportation (1)
75:17
trap (2)
6:20;52:20
traps (1)
6:22
treat (1)
81:9
treats (1)
76:11
tree (1)
78:2
trouble (1)
65:7
truck (2)
18:25;85:12
truckload (3)
72:11;76:3;89:7
true (2)
41:3,5
truly (1)
57:1
truth (1)
41:22
try (4)
44:12;57:5;91:18;
94:11
trying (14)
10:17;12:8;21:14;
31:12;53:9;54:10;
55:14;58:5,12,13;
70:2;74:5;94:18;
101:14
turn (1)
30:1
turnarounds (1)
77:6
turned (1)
59:12
twelve (1)
42:6
two (22)
6:7;7:5;11:25;
12:11;14:14;15:19;
16:7;30:7;40:23;
52:2;57:9;59:12;
61:22,23;63:4,6,13;
64:15;65:11;76:24;
86:9;98:16
type (5)
13:23;16:25;
52:14;69:16;78:22
typically (3)
8:19;9:6,12

U

uncomfortable (1)
55:19
under (12)
7:1;11:11,22;14:7;
25:14;31:5,6,7;37:8;
69:16;78:1;100:2
underneath (6)
22:1;32:9;34:23;
35:17;49:1;58:15
unenforceable (1)
24:7
uneven (1)
95:6
UNIDENTIFIED (2)
100:22;105:24
uniformity (1)
78:17
unless (1)
100:17
unsuitable (1)
8:9
up (46)
6:2;8:23;9:13;
19:1;25:9;27:16,22;
28:21;30:10;31:13;
35:18;41:16,18;
42:11;45:17;49:9;
60:10,23,25;62:25;
64:10,20;67:1;69:6;
73:19;75:13;79:3;
80:24;82:13;87:6,9;
88:4;89:4,7;90:2,13,
21;92:1,8;93:11,15;
97:6,24;101:19;
103:8;105:13
updated (1)
28:5
updating (1)
14:4
upgraded (1)
71:7
uphold (1)
22:15
upon (8)
22:16;37:24,24;
53:23,25;56:21;
57:11;62:4
usable (1)
43:24
Use (36)
16:5,10;21:24;
34:21;51:12,22,24,
25;52:7,15;54:11,25;
55:11;56:3,5,12;
57:5,7,16,19,24;58:9,
21;59:14,21,24;
60:12,16;61:23;63:2,
7;64:1;65:4,22;
87:12;95:5
used (6)
68:2;74:7;76:8;
91:7,7;95:24
uses (20)
14:12;51:14,16;
55:12;60:3,10;62:7,
11,17;65:1,6,8,18,18,
20,23;66:2,2,5,8
using (2)
43:9;58:25
Usually (2)
43:3;102:4
utilizing (1)
28:13

V

vague (4)
12:19,20;13:3;
23:24
value (2)
10:21;75:25
values (1)
80:24
variance (3)
63:15,17;100:1
variances (3)
65:2,17,25
vehicle (2)
99:1,3
vehicles (5)
68:8;80:7;87:14;
98:13,18
verbal (1)
33:25
verbatim (1)
33:10
version (1)
33:21
versus (2)
13:19;80:24
vested (1)
38:25
VI (1)
32:12
view (2)
17:14;20:15
viewable (1)
20:16
violates (1)
45:8
violating (1)
54:14
violation (13)
9:2;12:25;31:21,
23;44:24,25;45:6,7;
48:25,25;49:8,23,23
violations (1)
49:9
visible (4)
10:5,13;15:2;
67:15
vision-setting (1)
37:17
visited (1)
10:9
visits (2)
18:18,19
void (1)
11:19
voted (2)
39:25;40:1

W

waiting (1)
82:9
waive (3)
46:2;47:4,12
walk (1)
105:22
walking (1)
87:6
wall (4)
7:6;16:5,7;20:11
walls (1)
8:17
wants (3)
19:4;37:12;92:23
wards (1)
30:8
warning (7)
10:12;21:20;22:4,
5,10,14;24:6
warnings (13)
6:7;7:19;10:24;
11:5,19;12:5;18:4,9;
22:17,20;24:3,3,4
warrant (2)
27:25;28:3
water (4)
77:25;79:14;88:6;
91:6
water- (1)
79:14
way (26)
7:4;8:2;10:6;
11:12;12:15;15:22;
32:1;38:16;39:14;
41:21;49:12;53:13;
54:22;55:18;59:3;
62:13;65:20;71:13;
76:12;77:10;81:10;
82:15,21,24;90:25;
94:7
ways (6)
16:8,12;23:18;
67:9;85:12;94:25
web (2)
44:2,2
Weed (69)
14:8;21:23;22:22;
23:6,12;24:2,16,24;
32:1,5;33:9,13,19;
35:3;36:5,20,24;
37:4;38:7,15;39:23;
40:6,9,18;41:6;43:5,
21;44:17;48:19;
49:19;51:17;52:1,19;
55:3,8,13;56:14;
59:7,8;60:6,11,17,
19;61:16;62:3;
63:25;64:25;65:12;
67:3;81:7,21,25;
82:3,5,15;84:3,20,

23;85:16,20;100:2,5,12,20,23;101:2;102:4;104:20,25
weeds (1)
67:15
week (3)
25:13,21;28:1
weekend (1)
85:12
weeks (2)
6:7;18:6
weigh (1)
61:25
weren't (2)
64:17;65:7
whack (1)
45:19
what's (9)
29:24;32:24;43:13;44:9;51:18;58:4;59:16;60:1;68:20
white (2)
62:8,12
Whoa (1)
94:5
whoever's (2)
34:6;35:12
whole (6)
28:23;40:17;56:4;79:8;91:21;98:19
who's (2)
37:10;82:13
wide (6)
77:10;84:6;89:2,3,14,17
width (2)
85:24;96:5
widths (1)
91:20
wiggle (1)
21:4
willingly (1)
15:10
window (1)
79:23
wing (1)
16:7
win-win (1)
35:22
withdraw (1)
35:18
within (16)
14:22;22:5,10;24:4;29:15;33:2;36:22;43:3;52:6;53:17;70:3;75:24;94:4,17;102:9,14
Without (7)
16:16;54:1;71:18;79:16;87:15;92:12;102:13
wonderful (1)
97:15
wooden (5)
8:20,21;14:24;15:4;88:16
wooden-slatted (2)
13:19,22
Woods (1)
87:5
word (3)
27:18;95:5;96:4
words (4)
16:4;23:10;37:10;62:20
work (4)
28:22;34:13;37:15;53:24
workable (1)
12:15
working (1)
9:5
works (2)
20:22;79:6
world (2)
54:20;87:24
worried (1)
55:3
worth (1)
33:20
write (4)
7:4;18:9;22:20;24:14
writing (2)
11:5;33:25
written (8)
7:15;8:2;10:7,12;11:12;12:5;22:17;23:13
wrong (3)
26:20;52:25;93:9
wrote (3)
10:24;14:9;35:5

X

X- (1)
24:4
X-number (1)
55:25

Y

yard (12)
71:19;73:23;74:3;76:4;77:12;89:9;90:17;91:22;98:11,13,21;101:7
year (2)
74:12;87:21
years (12)
10:15;15:3,11;26:4,14;60:22;70:4;85:3,4;91:14;94:4;102:23
yellow (1)
102:18
young (1)
44:19
younger (1)
94:19

Z

zone (3)
9:9,10;62:8
zones (2)
51:15,17
zoning (20)
13:5;17:5;51:13;53:2,3,5;55:12,18;60:4,5;64:2,25;65:17,19,21;66:1,1;81:4;86:20;94:11
ZPA (2)
54:16,17