

1 CITY OF CHESTERFIELD
2 BOARD OF ADJUSTMENT
3 CITY HALL BOARD CHAMBERS
4 690 CHESTERFIELD PARKWAY WEST
5 CHESTERFIELD, MISSOURI 63017
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10 TRANSCRIPT OF PROCEEDINGS

11 PUBLIC HEARINGS
12
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14 DECEMBER 5, 2017
15 (Commencing at 6:00 p.m.)
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22

23 Reported by:
24 Patsy A. Hertweck, C. R.
25 Alaris Litigation Services

1		
2	I N D E X	
3	PROCEEDINGS	PAGE
4	Call to Order and Roll Call	5
5	Approval of July 6, 2017 Meeting Minutes	6
6	P U B L I C H E A R I N G S	
7	B.A. 03-2017 - 500 Chesterfield Center/Midwest	
8	BankCentre:	
9	Presentation by City Staff:	
10	Witness Jessica Henry:	
11	Questions by Mr. Grayville	12
12	Questions by Board Members	27
13	Presentation by Petitioner:	
14	By Mr. Asmus	30
15	By Mr. Behrens	33
16	Discussion	36
17	Deliberation	81
18	Vote	86
19		
20	Adjournment	88
21	Certificate of Reporter	89
22		
23		
24		
25		

1	E X H I B I T S		
2	IDENTIFICATION	DESCRIPTION	PAGE
3	CITY:		
4	EXHIBIT 1	CITY ZONING ORDINANCES	9
5	EXHIBIT 2	NOTICE OF PUBLICATION	9
6	EXHIBIT 3	AFFIDAVIT OF NOTICE OF PUBLICATION	10
7	EXHIBIT 4	STAFF REPORT	10
8	EXHIBIT 5	APPLICATION FOR VARIANCE	10
9	EXHIBIT 6	DRAFT FINDINGS OF FACTS AND	10
10		CONCLUSIONS OF LAW FOR DENIAL	
11	EXHIBIT 7	FINAL FINDINGS OF FACTS AND	10
12		CONCLUSIONS OF LAW FOR APPROVAL	
13	PETITIONER:		
14	EXHIBIT A	MATERIALS LISTING	32
15			
16	(All exhibits, if any, were retained by the City, and		
17	will not be attached hereto.)		
18			
19			
20			
21			
22			
23			
24			
25			

1 A P P E A R A N C E S

2 BOARD OF ADJUSTMENT MEMBERS:

3 Katherine Hipp, Chairwoman

4 Melissa Heberle, Vice-Chairwoman

5 Gerald Schwalbe, Member

6 Jeannie Rader, Member

7 Leon Kravetz, Member

8 LEGAL COUNSEL AND STAFF:

9 Chris Grayville, City Attorney

10 Ms. Kathy Reiter, Administrative Secretary

11 Ms. Jessica Henry, Senior Planner

12 Mr. Mike Knight

13 ALSO PRESENT:

14 Dan Hurt, City Council Member

15 ALARIS LITIGATION SERVICES:

16 By: Patsy A. Hertweck, C. R.

17 711 North Eleventh Street

18 St. Louis, Missouri 63101

19 (314) 644-2191

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

2 (DECEMBER 5, 2017)

3 CHAIRWOMAN HIPPI: Okay. If all
4 parties are here, the Board of Adjustment is prepared
5 to proceed at this time.

6 I hereby call the meeting of the Board of
7 Adjustment of the City of Chesterfield, at this time,
8 to order on December 5, 2017.

9 I am Katherine Hipp, and I am Chair of the
10 Board of Adjustment. Allow me to take a moment to
11 introduce our members of the Board.

12 To my left is Jeannie Rader, and to my
13 right is...

14 VICE-CHAIR HEBERLE: Melissa Heberle.

15 MEMBER KRAVETZ: Leon Kravetz.

16 MEMBER SCHWALBE: Gerald Schwalbe.

17 CHAIRWOMAN HIPPI: Also in attendance
18 are -- do we have the members of the Board that we want
19 -- members of the City that we want to introduce?

20 CITY ATTORNEY GRAYVILLE: One of the
21 Council members, Dan Hurt is here.

22 CHAIRWOMAN HIPPI: Council member,
23 will you please stand up and identify yourself.

24 COUNCILMAN HURT: Councilman Dan
25 Hurt.

1 CHAIRWOMAN HIPPI: Okay. Thank you,
2 sir.

3 Mr. Wyse is not here?

4 (INAUDIBLE)

5 Okay. And we have Justin Wyse. Are there
6 any other City members who want to be identified.

7 Sir? Ma'am?

8 MS. HENRY: Jessica Henry.

9 CHAIRWOMAN HIPPI: Jessica Henry.
10 And?

11 MR. KNIGHT: Mike Knight.

12 CHAIRWOMAN HIPPI: Okay. Mike, what
13 was your last name?

14 MR. KNIGHT: Knight, K-N-I-G-H-T.

15 CHAIRWOMAN HIPPI: Okay. Thank you.
16 All right.

17 And our executive assistant, Kathy Reiter,
18 is also present.

19 And our court reporter from Midwest
20 Litigation is present as well.

21 The first order of business is approval of
22 the July 6, 2017 meeting minutes. The Chair will
23 entertain a motion.

24 MEMBER KRAVETZ: I move that we
25 approve the minutes.

1 VICE-CHAIR HEBERLE: I second.

2 CHAIRWOMAN HIPPI: Okay. Ms. Reiter,
3 will you please call the vote.

4 MS. REITER: Katherine Hipp?

5 CHAIRWOMAN HIPPI: Yes.

6 MS. REITER: Melissa Heberle?

7 VICE-CHAIR HEBERLE: Yes.

8 MS. REITER: Leon Kravetz?

9 MEMBER KRAVETZ: Yes.

10 MS. REITER: Jeannie Rader?

11 MEMBER RADER: Yes.

12 MS. REITER: Gerald Schwalbe?

13 MEMBER SCHWALBE: Yes.

14 CHAIRWOMAN HIPPI: Okay.

15 The motion to approve the minutes has been
16 approved.

17 We'll now continue on to our new business.

18 The Board will hear one petition this evening, B.A.
19 03-2017, 500 Chesterfield Center, Midwest Centre Bank
20 (sic).

21 An appeal of a Planning Commission decision of
22 partial approval of the package for Midwest Centre
23 Bank -- BankCentre, pardon me, located at 500
24 Chesterfield Center.

25 The Chair notes that the affidavit of

1 publication and exhibits for the petition have been
2 placed on the dais.

3 As your name is called, you and your
4 representative will be asked to come forward, state
5 your name, explain the variance requested and the
6 hardship or practical difficulty which necessitates
7 this request.

8 Petitioners are reminded that the Board
9 sits in a quasi-judicial manner. By that we mean that
10 we act on what is presented to us this evening.

11 It is the petitioner's responsibility
12 to show particular hardships or practical difficulty
13 that they -- that they feel will entitle them to a
14 variance. Please be advised that finances are not
15 considered a hardship.

16 After the petitioners have presented
17 their request, there will be an opportunity of anyone
18 in favor or opposition to speak relative to the
19 variance request.

20 The Board will generally make a decision
21 on the request this evening.

22 I will vote that it will -- I will note
23 that it takes at least four votes in favor to approve a
24 variance request.

25 If the decision of the Board is

1 unfavorable, you have the right to appeal to the St.
2 Louis County Circuit Court. This action must be taken
3 within 30 days of the Board's decision.

4 The first and only item on the agenda is
5 B.A. 03-2017, 500 Chesterfield Center. We -- will
6 staff please present their information and exhibits and
7 witnesses to -- regarding this B.A. 03-2017.

8 CITY ATTORNEY GRAYVILLE: I apologize
9 for interrupting. I did talk to opposing counsel prior
10 to starting the meeting, and there are seven exhibits
11 that I believe we're going to stipulate to their
12 admission into the record. And if I could just go
13 through those quickly with you guys.

14 The first is the Exhibit 1, which is the
15 City of Chesterfield Zoning Ordinance, and I also have
16 the Municipal Code of the City of Chesterfield that I'm
17 going to place on the dais, hopefully not break it
18 because of the weight. It's pretty heavy -- hefty.

19 The second exhibit, Exhibit 2, is the
20 Notice of Publication for this Board of Adjustment
21 hearing, for the public hearing here today.

22 Exhibit 3 is the Affidavit of Publication
23 that is relevant to the Notice of Publication. The
24 affidavit claiming -- there should -- there probable is
25 only one copy of the Affidavit for Publication that was

1 placed on the dais. And that was not in the packet.
2 That was online, but it is relevant to the Public
3 Hearing Notification required by Chapter 8 of the
4 United States statutes.

5 Number 4 is the staff report which was
6 previously provided.

7 The petitioner's application is number 5.
8 That's what we're here for today.

9 And then there is a draft Findings of
10 Facts and Conclusions of Law denying the variance, as
11 Exhibit 6 if you so choose. It's for your
12 consideration. If you want to make changes to it,
13 that's fine. Staff will make whatever changes you
14 want.

15 And Exhibit 7 is the Findings of Facts and
16 Conclusions of Law approving the variance, and I would
17 just note opposing counsel did point out a mistake in
18 paragraph 7. That was corrected prior to. So Chair is
19 the only one that has the corrected version. It was
20 just basically one word that needed to be corrected.

21 So I'd offer all those up into the record,
22 and ask the Board of Adjustment to make that part of
23 the record. And I'd ask you, Chair, to make that part
24 of the record.

25 CHAIRWOMAN HIPPE: Thank you.

1 Are there any objections to the exhibits
2 being offered into the record from the Board?

3 (NONE)

4 No? Having heard no objections, the
5 exhibits are admitted into evidence.

6 (Thereupon, the evidence was
7 marked for identification and
8 admitted into the record as City
9 Exhibit Nos. 1 through 7.)

10 Thank you, sir. Would you like to
11 proceed.

12 CITY ATTORNEY GRAYVILLE: Yeah. So
13 we're going to do this a little bit differently as a
14 contested hearing. I'm going to basically ask that
15 Jessica be sworn in, approach the podium, and I will be
16 asking her questions relevant to this.

17 Obviously, Chair, as we discussed, you can
18 interrupt or the Board of Adjustment can interrupt at
19 any time to ask any questions.

20 And then I will sit down, and then she
21 will be subject to cross-examination by opposing
22 counsel relevant to anything related to this request
23 for Board of Adjustment appeal.

24 Okay. So the City's first witness will be
25 Jessica Henry.

1 (Thereupon, the witness was
2 sworn.)

3 *****

4 JESSICA HENRY,
5 of lawful age, produced, sworn, and examined on behalf
6 of the City, testifies as follows:

7 D I R E C T E X A M I N A T I O N

8 QUESTIONS BY MR. GRAYVILLE:

9 Q Thank you, Ms. Henry. Will you please
10 state your full name for the record.

11 A Jessica Henry.

12 Q And how are you employed?

13 A I am employed as a senior planner for the
14 City of Chesterfield.

15 Q And how long have you been in that roll
16 for the City of Chesterfield?

17 A Since June of 2013.

18 Q Approximately four and a half years.

19 A Four and a half years.

20 Q And what positions have you held with the
21 City of Chesterfield I relevant to the Planning
22 Department?

23 A I have held the position of project
24 planner and now senior planner.

25 Q Okay. And what is your education --

1 **educational background?**

2 A I have had Bachelor of Arts in political
3 science and a Masters in you are urban and regional
4 planning.

5 Q I want to bring you to B.A. 03-2017, 500
6 Chesterfield Center, Midwest BankCentre, which is the
7 appeal that we're here on to the Board of Adjustment
8 here tonight.

9 Can you give us some background with
10 regards to the project history and maybe reference some
11 of the dates as this project has gone through review by
12 the City.

13 A Sure. So starting with the subject site,
14 it is zoned CA, Planned Commercial District. This
15 zoning designation was granted by St. Louis County in
16 1973, prior to the incorporation of the City of
17 Chesterfield in 1988.

18 Currently there is one monument sign located on
19 this site's Outer 40 Road frontage. That sign was
20 constructed prior to the City of Chesterfield's
21 incorporation, and the sign, to describe it, it's a V-shaped
22 monument sign, which includes a backlit component.

23 In June of 2017, Midwest BankCentre
24 submitted a request for a sign package for their
25 parcel, which is roughly 2.25 acres in size. The sign

1 package process would serve as site-specific signage
2 regulations for the property if granted approval.

3 And as part of that sign package request,
4 Midwest BankCentre requested to convert an existing
5 monument sign into an electronic message center.

6 On October 9, 2017 the Planning Commission
7 passed a motion to approve the sign package with a
8 monument sign of the size and shape as requested with
9 signage panels to comply with regulations of the City's
10 Unified Development Code.

11 In passing this motion, the Planning
12 Commission did not grant the petitioner's request to
13 convert the existing monument sign into an electronics
14 message center.

15 **Q And let me stop you right there, Jessica.**

16 **Now, with regards to what the Planning**
17 **Commission granted, was the size -- this was a sign**
18 **package that allows variations from the UDC.**

19 **Was the size that was approved the sign**
20 **greater than the size allowed by the UDC?**

21 **A Yes.**

22 **Q Is that consistent with the sign that was**
23 **already there prior to the City's approval?**

24 **A It was, but the existing sign is taller**
25 **than what is permitted by Code without a sign package.**

1 **Q So through the sign package, they already**
2 **got one variance to what the UDC says, right?**

3 A Correct.

4 **Q Okay. And so what happened next -- what**
5 **happened with regards to the condition that was put on**
6 **that approval?**

7 A The condition of approval would allow them
8 to replace the sign to -- in accordance with the
9 Unified Development Code's requirements regarding the
10 construction. They were allowed to maintain the size
11 and dimensions that they had requested, and following
12 that October 9, 2017 Planning Commission meeting,
13 however, it was not called by either Council member in
14 Ward 2 or by the Mayor, and power of review --

15 **Q Explain what power of review is --**

16 A Just as an explanation, power of review
17 provides a process for the City Council review of
18 Planning Commission decisions, and it allows for the
19 City Council to affirm, reverse, or modify in whole or
20 part any determination of the Planning Commission.

21 **Q So how would you characterize, if you can,**
22 **the request at Planning Commission for the material to**
23 **construct the sign? Can you give a characterization of**
24 **that at all?**

25 A It was -- the sign was thought to be

1 constructed of materials that are approved by Code.
2 The Code excludes electronic components that constitute
3 a message center. So in -- and since the large LED
4 type panels are not approved construction for signage
5 in the city.

6 **Q Under the UDC?**

7 A Under the UDC.

8 **Q And was that specifically called out in**
9 **UDC?**

10 A It is. Electronic message centers are
11 classified as a permitted sign.

12 **Q Okay. Provided the material to**
13 **construction a sign with?**

14 A (Nodding.)

15 **Q And what section of Code calls that?**

16 A It's Article 4 I believe of the Unified
17 Land Code.

18 **Q Okay. So can you go further with the**
19 **history with regards to what we're here for tonight?**

20 A Sure. So after power of review was not
21 called by the Board, City Council members or Mayor, the
22 Planning Commission decision effectively stood. The
23 applicant was notified via a letter of the Planning
24 Commission's decision. And then in accordance with
25 Chapter 23 of the Municipal Code, the petitioner filed

1 an appeal of Planning Commission's decision of partial
2 approval of the sign request, and they did so on
3 October 20, 2017 when think submitted an application to
4 the Board of Adjustment. That's the application that's
5 included as an exhibit.

6 **Q So with regards to the Board of**
7 **Adjustment's review of the Code, can you go through the**
8 **criteria set forth in Code and by state statute with**
9 **regards --**

10 A Sure.

11 **Q -- to their consideration of this request**
12 **for variance.**

13 A Sure. So Chapter 23 of the Municipal Code
14 states appeal may be taken from any decision o4 rulings
15 of the Commission to the Board of Adjustment as
16 provided for in this Code, which Board shall hear and
17 pass on such appeal.

18 **Q And what is the criteria the Board of**
19 **Adjustment takes into consideration under Municipal**
20 **Code with regards to viewing a request for -- on appeal**
21 **for variance?**

22 A In accordance with Chapter 89 of the
23 Missouri Revised Statutes, the City Code requires a
24 practical difficulty or unnecessary hardship in the way
25 of carrying out the strict letter of the ordinance.

1 **Q And the staff, did you guys review this**
2 **with regards to previous standards of review in**
3 **considering an appeal to the Board of Adjustment?**

4 A We did.

5 **Q And what -- what are those criteria that**
6 **you laid out in your report? Can you verbalize them**
7 **for the Board of Adjustment?**

8 A Sure. So typically it would be something
9 that is unique to the lot or peculiar to the particular
10 lot, something like the configuration, topography,
11 existence of natural water features. We would look for
12 that. We would review to see if it was self-created
13 hardship or how the purported hardship came about. We
14 would review if there are -- if it's -- would it have a
15 larger impact on the neighborhood, or if it would be
16 essentially in the character of the existing
17 neighborhood. Whether or not the difficulty could be
18 obviated by some feasible method other than reversing a
19 stated mission or granting a variance, and the effect
20 of the reversal of the Planning Commission's decision
21 or granting of variance on available governmental
22 facilities.

23 **Q Okay. Now, do you have a recommendation**
24 **to the Board of Adjustment with regards to**
25 **consideration of this variance at the staff level and**

1 **City level?**

2 A Based on the application that was
3 submitted and the information provided, staff is of the
4 opinion that the burden of proof for establishing an
5 unnecessary hardship or practical difficulty has not
6 been met.

7 **Q And what did we base that opinion on?**

8 A There is nothing specific to this lot that
9 substantiates the request for a variance. It's a very
10 typical lot for commercial development. It's -- it
11 is -- it would change the character of the
12 neighborhood. It's a very brightly lit sign. It would
13 be highly visible from off site. There are currently
14 no other similar sign for in this area of the city.

15 **Q Do you have any concern that granting this**
16 **variance would create -- would bestow on this property**
17 **owner a land use right that other property owners**
18 **within the city limits do not currently have?**

19 A Yes, I think it would.

20 **Q Do you think it would then create a**
21 **situation where more variances would be requested under**
22 **this criteria of, you know, difficult to change the**
23 **sign as an undue hardship?**

24 A Yes, I do.

25 **Q All right. Were there any other standards**

1 **you guys reviewed in your decision to make a**
2 **recommendation here tonight to deny the variance?**

3 A Well, in looking if there were some other
4 feasible method other than reversing the decision of
5 the Planning Commission, the partial sign package
6 approval does allow for a monument sign to be on the
7 site. They are not deprived of all signage. They're
8 allowed signage that exceeds Code and is comparable to
9 surrounding property owners. So that was another item
10 that we looked at --

11 **Q Now --**

12 A -- in formulating the decision.

13 CHAIRWOMAN HIPPI: May I ask you
14 a question?

15 MR. GRAYVILLE: Yes.

16 CHAIRWOMAN HIPPI: You said it
17 exceeds Code. Do you mean by the
18 dimensions of the sign?

19 WITNESS HENRY: It does. It's
20 taller than what would be permitted
21 outright by Code outside --

22 CHAIRWOMAN HIPPI: That's the --

23 WITNESS HENRY: -- the sign
24 package.

25 CHAIRWOMAN HIPPI: That's the

1 only way it exceeds Code is the dimension
2 of the sign?

3 WITNESS HENRY: There -- I'm not
4 exactly sure. There may be two other --
5 two or three other minor things particular
6 to the angle of the V and very minor
7 criteria. In this case, I'm not sure if
8 this was affixed.

9 CHAIRWOMAN HIPPE: Okay. Sorry
10 to interrupt.

11 **Q (By Mr. Grayville:) At the Planning**
12 **Commission level, there was a presentation that**
13 **referenced other signs within the city that are**
14 **electronic message center signs. Correct?**

15 A Correct.

16 **Q And I believe one of them was the -- I'm**
17 **drawing a blank now.**

18 **What -- what signs are those that were**
19 **referenced in the report?**

20 A There are few in the city. Others one for
21 -- in Ward 1 for a business called the Decor Unlimited

22 **Q Let's talk about the Decor Unlimited sign.**
23 **Is that an electronic message --**

24 MEMBER KRAVETZ: Say whose sign
25 that was again.

1 WITNESS HENRY: Decor Unlimited.

2 CITY ATTORNEY GRAYVILLE: Decor

3 Interiors.

4 WITNESS HENRY: Decor Interiors.

5 Sorry.

6 **Q (By Mr. Grayville:) Yeah. Okay. So**
7 **Decor Interiors, what is the history of that sign?**
8 **When was that sign approved, and was the current code**
9 **in effect prohibiting these types of signs at that**
10 **time?**

11 A The current variance was -- or the current
12 code was not in effect at that time. That sign was
13 approved by variance by this Board of Adjustment in
14 2005.

15 **Q So subsequent to that, the UDC was adopted**
16 **that prohibited electronic message center signs,**
17 **correct?**

18 A The Unified Development Code maintained
19 and expanded on signage prohibitions.

20 **Q Including electronic --**

21 A Including electronic center.

22 **Q Okay. All right. Is there other signs**
23 **within the city that have the electronic message**
24 **centers?**

25 A Yes, there is a gas station which has an

1 electronic message center sign for gas grades, Monarch
2 Center.

3 **Q And can you describe how that sign**
4 **approval was tailored for that property.**

5 A Sure. That was approved as part of a sign
6 package by the Planning Commission. It's a very
7 narrow, narrowly approval to allow essentially for
8 small dimensional signs that would allow for gas
9 grades, essentially numerical information that changes
10 frequently.

11 **Q And you said small literally --**

12 A They very -- I think they're one foot
13 by -- they're 9.13 inches tall by 25.13 inches wide.
14 Each number is eight inches high.

15 **Q And the specific variance requested here**
16 **tonight for the construction of these message board or**
17 **video board signs is 70 square feet; is that correct, a**
18 **total of 70 square feet?**

19 A Yes, I believe so.

20 **Q Okay. And the then other sign is Parkway**
21 **Central; is that correct?**

22 A Yes, Parkway Middle, maybe.

23 **Q Parkway -- one of the middle schools?**

24 A One of the Parkway schools.

25 **Q Can you explain the procedural history**

1 **with regards to that sign?**

2 A My understanding of the history is that
3 when that sign was presented to the City, a
4 determination was made that the Parkway School District
5 had its own jurisdictional authority and that the City
6 could not could not regulate that sign.

7 Q Now, in your four and a half years working
8 for the City of Chesterfield, one of the other things
9 that was brought up at the Planning Commission meeting
10 was this concept of safety issues or vandalism with
11 regards to these manually changing signs.

12 Your department handles, you know,
13 prosecution of sign complaints and whatnot through the
14 City of Chesterfield, correct?

15 A Yes.

16 Q In that time, have you ever receive any
17 complaint or any report of any type of vandalism to a
18 manually changed sign in the City of Chesterfield?

19 A To my knowledge, our department has never
20 received such a complaint.

21 Q Have you ever received any complaints for
22 a request for a sign variance or to install electronic
23 message board sign because someone was injured with
24 regards to changing one of these manual signs?

25 A No, not that I'm aware of.

1 **Q** Now, this is a new business going into
2 this building that has been a part of Chesterfield for
3 a very long time, prior to the incorporation of the
4 City, correct?

5 A Yes, there is a building.

6 **Q** And Midwest BankCentre came in. Did they
7 come in and talk to you guys about this sign before
8 they purchased the property?

9 A I am not aware if they came in before the
10 property was purchased or not.

11 **Q** Okay.

12 A I believe they met with the City, but I
13 don't know at what part in their process that was.

14 **Q** But essentially it's been what, six months
15 that they essentially have been there, correct?

16 A I couldn't say that --

17 **Q** What was the original application; when
18 did that come in?

19 A Their original application came in in
20 June.

21 **Q** And that monument sign as it exists right
22 now has been out there since then, correct?

23 A As it exists, yes, the monument sign has
24 been there for a number of years.

25 CITY ATTORNEY GRAYVILLE: I have

1 nothing further.

2 MEMBER KRAVETZ: May I ask a
3 question?

4 CHAIRWOMAN HIPPIE: Do we have
5 anybody from the bank's, petitioner's,
6 sir, that you wish to ask, any questions
7 of the witness?

8 MR. ASMUS: Madam Chair, at this
9 time, I have no questions.

10 CHAIRWOMAN HIPPIE: Okay.

11 MR. ASMUS: There may be a
12 subsequent followup.

13 We did not purchase the building.
14 We leased the space, and we came and met
15 Justin and other planner in April of this
16 year, and filed our application in June.

17 But for that clarification at this
18 time, I have no other questions.

19 CHAIRWOMAN HIPPIE: Thank you.

20 MS. REPORTER: Excuse me.

21 MR. ASMUS: Yes.

22 MS. REPORTER: I need to know
23 your name.

24 MR. ASMUS: My name is David
25 Asmus. I'm a partner with the law firm of

1 Smith-Amundsen. My address is 120 South
2 Central, Suite 700, Clayton, Missouri,
3 63105. I am the attorney counsel of the
4 applicant, Midwest BankCentre.

5 MS. REPORTER: Thank you.

6 CHAIRWOMAN HIPPE: Members of
7 Board?

8 MEMBER KRAVETZ: Okay.

9 C R O S S - E X A M I N A T I O N

10 QUESTIONS BY BOARD MEMBERS:

11 Q (Member Kravetz:) Jessica, regarding the
12 Decor going from memory, I was on the Board at that
13 time, we put a few stipulations. They do have a
14 message center, but we did put a few stipulations on
15 that. I'm going strictly from memory.

16 One was a frequency at which the message
17 could be changed. Secondly, the use of multicolored
18 lighting. I can't remember what the restriction was,
19 but we didn't want it to be a distraction for traffic
20 going up and down Olive.

21 The location of this particular sign, I
22 think you have the off ramp from 40 going by that sign,
23 which to me is similar to the traffic going at least
24 east on Olive Street Road.

25 But going from memory, I believe those

1 **were the restrictions we put on the Decor sign.**

2 A I will rely on your memory. I don't -- I
3 don't know --

4 **Q Please don't.**

5 A I see the sign has been as it is now since
6 I've worked here.

7 **Q Right.**

8 A There have been no changes.

9 **Q Right, and they have lived up to that.**

10 CITY ATTORNEY GRAYVILLE: And I
11 would just point out, since that time,
12 City Council has adopted a total ban on
13 those signs.

14 So where that was allowed before, now
15 it isn't allowed under the Code.

16 MEMBER KRAVETZ: That's correct.

17 CITY ATTORNEY GRAYVILLE: But it
18 could still be considered under a sign
19 package, but essentially that construction
20 material is not allowed as a material that
21 can be used to construct a sign under the
22 UDC, which is the restriction that was put
23 in the ordinance by Planning Commission.

24 MEMBER KRAVETZ: When you say
25 material, you mean the functionality of

1 the sign?

2 CITY ATTORNEY GRAYVILLE: Well,
3 you know, as simple as it is, I can
4 understand this request for is they want
5 to the sign out of basically video
6 screens. Those video screens are not
7 allowed to be used as construction under
8 the Code.

9 MEMBER KRAVETZ: Correct.

10 CITY ATTORNEY GRAYVILLE: So I
11 know it seems a little primitive to refer
12 to it as construction material, but that's
13 really what it is for Board of Adjustment
14 consideration.

15 MEMBER KRAVETZ: Okay.

16 CHAIRWOMAN HIPPE: Any questions?
17 Okay.

18 City you want to bring your next
19 witness?

20 CITY ATTORNEY GRAYVILLE: I have
21 no further witnesses. I have submitted my
22 exhibits, and they've been accept by the
23 City. I would just reserve the right to
24 call Ms. Henry, if necessary, after the
25 testimony of the petitioner's witnesses.

1 CHAIRWOMAN HIPPP: Okay, very
2 good.

3 Thank you, Ms. Henry.

4 (Thereupon, the witness was
5 excused.)

6 Sir, if you'd like to go forward.

7 MR. ASMUS: Thank you.

8 Good evening, Madam Chair and members
9 of the Board. My name is David Asmus. My
10 law firm address is 120 South Central
11 Avenue, Suite 700 in Clayton, Missouri,
12 63105.

13 P E T I T I O N E R P R E S E N T A T I O N
14 PRESENTATION BY MR. ASMUS:

15 It is always good to be back here in this
16 chamber and among some former colleagues where I spent
17 many Monday evenings some years ago as a commissioner
18 for this great city.

19 As previously noted for the record, I am
20 legal counsel for the applicant Midwest BankCentre
21 regarding the variance application which is before you
22 tonight for your consideration.

23 Other members of the applicant's team who
24 are with us this evening are Mr. David Warning,
25 Regional President of the bank, who offices at the

1 subject property, 500 Chesterfield Center, where the
2 monument sign is located.

3 Also a part of the other team who will be
4 presenting here in a minute or two is Mr. Bill Behrens
5 of Warren Sign Company. Mr. Behrens has a PowerPoint
6 presentation he'll be presenting here shortly.

7 I would like to note just a few key points
8 of our application before you tonight and highlight a
9 few of the those points to clarify any questions or
10 concerns.

11 Back when I started on the Commission, I
12 didn't need these. If you'll allow me to use my \$10
13 Walgreen cheaters.

14 We are requesting a variance to allow us
15 to use the existing monument sign to display time and
16 temperature message in a static mode. The reuse of the
17 current sign will only display a static time and
18 temporary message and will not flash, blink, or travel
19 in any way.

20 We are asking this variance to perform the
21 function of that time and temperature static message
22 with technology that has been utilized here in the city
23 in the very recent past.

24 As the City has previously permitted
25 certain electronic message center signs at various

1 other locations in the community, we believe the
2 proposed reuse of this current monument sign simply
3 utilizes updated technology that would be consistent
4 but not allow for more than that which the City has
5 previously approved.

6 Further, in Exhibit A to our application,
7 we have listed the restrictions we are self-imposing as
8 part of our application and intended use of this
9 monument sign that would further restrict any -- we
10 believe, any concerns or issues with distractions,
11 flashings, blinking, et cetera.

12 Those are as I said Exhibit A listed in
13 the materials of our application.

14 We simply request this variance to be
15 consistent with previous approvals of electronic
16 message center signs within the City of Chesterfield
17 and to better reflect the compliance with more current
18 standards regarding these matters.

19 I now would like to introduce Mr. Bill
20 Behrens of Warren Sign Company for his PowerPoint
21 presentation.

22 Thank you all very much.

23 MR. BILL BEHRENS: Thank you,
24 Dave.

25 CHAIRWOMAN HIPPE: Would you

1 please state your name for the record, and you will be
2 sworn.

3 MR. BEHRENS: Certainly. My
4 name is Bill Behrens. I'm with Warren Sign Company.
5 Offices on Arnold - Pembroke Road in Arnold, Missouri.

6 CHAIRWOMAN HIPPE: Now if you'll
7 please raise your right hand and the court reporter
8 will swear you in.

9 (Thereupon, the witness was
10 sworn.)

11 Thank you, sir. You may proceed.

12 MR. BEHRENS: Okay. I thought
13 the gentleman wanted to say something.

14 PRESENTATION BY MR. BEHRENS:

15 Thank you for the opportunity to visit
16 with you tonight. This might come as a shock, but we
17 see some things a little differently than the way the
18 City staff sees it. So I'm just doing jump in. We'll
19 get to the meat of this thing.

20 You're all familiar with the existing
21 sign, I believe. Warren Sign installed that sign a
22 number of years ago. It includes a Dow Jones display,
23 but also shows time and temperature.

24 In essences what we're asking to do is
25 refurbish the existing sign and move the electronic

1 display to the top, and where you currently see that
2 Dow Jones display, that would be future tenant name.
3 In fact, this is what the sign would look like in this
4 drawing. Since it's a V-shaped sign, we have big one
5 sign like that, it's illustrated this way. I'm just
6 going to put on the screen.

7 The top portion there would be the
8 electronic message center sign. It would display
9 static messages. It's illustrated here just showing
10 the bank name. And again, that traded places with
11 where the Dow Jones time and temp was, that would be
12 the future tenant.

13 So existing sign had electronics. The new
14 sign has electronics. It's consistent with what's been
15 there.

16 Now, why are we in here, why do we need a
17 variance? It's because if we follow the City ordinance
18 and want to show messages, which we do, this is what we
19 have to have. We can come in and ask for this sign
20 right now, we wouldn't be in front of you. We wouldn't
21 need a variance. I'm going to change that screen and
22 just look at one side of the sign. That is a manual
23 changeable reader board. That's what's allowed in
24 Chesterfield. We're here because that is a very
25 antiquated technology.

1 They say there is no hardship, but if
2 you're the guy that has to go out there in a hundred
3 day or on a 20 below day with your bucket of letters
4 and change it, you probably think there is a bit of a
5 hardship involved. And really in this day and age with
6 the technologies available, it's kind of silly. Why
7 have to go through that when with the push of a button,
8 you can put up a nice clean message. And that's why
9 we're here. That's what we're asking for.

10 CHAIRWOMAN HIPPE: One question,
11 please.

12 Are you saying that that is the only
13 difference, is the type of the reader board, because
14 I'm kind of getting the idea that you have a in-house
15 IT department that -- with what's currently there,
16 that's got a reader board they have go out and manually
17 change the time and temperature, isn't it?

18 MR. BEHRENS: No. I think the
19 City ordinance, and I'm sure they'll correct me if I'm
20 wrong. The ordinance allows you to show with
21 electronics, you can show in numeric display. You
22 can't show alphabetic display or graphics.

23 If you want to show an alphabet display
24 like just words, then you're not allowed to use the
25 electronics. You have to go with this route.

1 We're not aware of another way to do it.
2 So our position is, why make us go out and do this when
3 we can do it just like the numeric displays now. We'll
4 be able to push a button and set it up.

5 I also believe if we wanted to just show
6 time and temperature, we could do this and probably not
7 need a variance. Just go for the permit and show, hey,
8 let's show time and temp. We'll limit it to that.
9 Here's a display where we can show -- I was going to
10 say that technology is already there. You've got the
11 numeric numbers like time and temperature like you got
12 at the gas station here. Or Reliance Bank has a
13 numeric time and temperature display. We could show
14 time and temperature at one time on this board like
15 that. Here again, if we're limited to numeric, we
16 can't do this because it includes a graphic. We would
17 have to go with that kind of this way under the current
18 ordinance.

19 We're saying, hey, why not be able to put
20 a nice background around it. It's not -- it's not that
21 complicated.

22 CHAIRWOMAN HIPPE: The ordinance
23 doesn't permit that.

24 MR. BEHRENS: That is correct.
25 That's why we're asking for a variance, so that we can

1 do alpha -- I don't know what the right word is, but so
2 we can do letters instead of instead of just numbers.

3 CHAIRWOMAN HIPPI: So you're
4 asking us to go beyond the parameters of the ordinance
5 in order to find hardship for you?

6 Are you asking us to consider that your
7 request goes beyond the parameters of the ordinance; is
8 that correct? Am I understanding that correct?

9 MR. BEHRENS: Yeah, the
10 ordinance allows numeric displays electronically.

11 We're asking you to give us a variance so
12 that we aren't limited to just numbers, that we can
13 also put up a message.

14 CHAIRWOMAN HIPPI: But that would
15 be beyond the scope of the ordinance; is that correct?

16 MR. BEHRENS: Yeah, that's why
17 we need a variance if the ordinance doesn't allow us.
18 So we're here for a variance.

19 CHAIRWOMAN HIPPI: Okay.

20 MEMBER KRAVETZ: May I ask him a
21 question on this.

22 CHAIRWOMAN HIPPI: Yes.

23 MEMBER KRAVETZ: Maybe I'm
24 missing something.

25 Will you go back to the Stifel sign.

1 Okay. That basically has one, let's say, changeable
2 message area. Am I correct?

3 MR. BEHRENS: That is correct.

4 MEMBER KRAVETZ: You are wanting
5 to have that changed where you have time and temp
6 that's similar to what you have up there, correct?

7 MR. BEHRENS: What we're asking
8 to do is --

9 MEMBER KRAVETZ: Well, different
10 new technology, but basically you want to be able to
11 have time and tem there --

12 MR. BEHRENS: And words.

13 MEMBER KRAVETZ: And you want
14 another area on top or bottom, I'm not quite sure
15 where, where you can change that sign -- that message
16 as well? Let's call both of these panels messages --

17 MR. BEHRENS: Okay.

18 MEMBER KRAVETZ: -- as opposed
19 to the merits, just for simplicity.

20 MR. BEHRENS: All right. Let's
21 go here. I think it'll make it a little easier.

22 MEMBER KRAVETZ: Okay. Where it
23 says future tenant.

24 MR. BEHRENS: Right.

25 MEMBER KRAVETZ: Is that --

1 let's pretend when you say future tenant, that's where
2 your time and temp is going to be.

3 MR. BEHRENS: No.

4 MEMBER KRAVETZ: Just for
5 explanation.

6 MR. BEHRENS: All right.

7 MEMBER KRAVETZ: Where you have
8 Midwest BankCentre, that's going to rotate with
9 different messages?

10 MR. BEHRENS: Where it says
11 Welcome to Midwest BankCentre, we would like to have a
12 message center where we can display a message.

13 MEMBER KRAVETZ: One single
14 message, one single -- which will not change? This is
15 where I'm getting confused.

16 MR. BEHRENS: Not change more
17 than every seven seconds or whatever timeframe you want
18 to hold it to.

19 MEMBER KRAVETZ: Because you
20 originally said, at least my understanding from your
21 original presentation, would be time and temp only. Is
22 that what you originally said?

23 MR. BEHRENS: Um --

24 MEMBER KRAVETZ: That was the
25 understanding I had.

1 CHAIRWOMAN HIPPP: Kind of made
2 an evolution of where you started from time and temp,
3 and now we've got pictures and now every seven seconds
4 something is going to change; is that correct?

5 MR. ASMUS: If I may. I am the
6 one who indicated that is what we are hoping to
7 accomplish here this evening with our variance request
8 is to, number one, working with the upper panel only,
9 install modern technology of LED lighting. It's
10 sometimes called, whether fairly or unfairly,
11 accurately or otherwise, a television screen, a video
12 board. We've heard a lot of those phases.

13 I'm not trying to, I guess, increase the
14 words in word games. The fact is I'm calling it what
15 it is, LED technology, which the City has approved in a
16 number of these very recent business places with
17 monument signs.

18 And the applicant, my client, is prepared
19 to deal with restrictions as set forth on our
20 application's Exhibit A, that deals with display,
21 frequency, lighting, how it handle if there is a
22 malfunction, how to hit the kill switch, if you will,
23 if it needs to be repaired. So every step that we're
24 imposing -- by the way, these restrictions are what we
25 wanted to do as a corporate citizen in this city, but

1 it's also right down the line with neighboring
2 municipalities who have sign ordinances that do allow
3 the electronic message center using this new 21st
4 cen- -- newer 21st century technology. But if can be
5 back to the inquiry, and so I appreciate that we have
6 been a bit confusing up here, and that was not our
7 intent whatsoever.

8 If we can at least have the technology
9 approved that the applicant is prepared to stick with a
10 time and temporary limit, plus all of the other
11 restrictions. At some point in the future, maybe the
12 not too distant future as I have read minutes of City
13 Council meetings where there have been comments from
14 Council members to some extent that we need to look at
15 this and have our Planning Department consider
16 potential updating revision of the sign ordinance.

17 Which by the way, this is no bragging.
18 The fact is I was a rather integral part of the sign
19 ordinance that we're working with now back when I was
20 on the Planning Commission and this massive -- was a
21 member of the Planning Department. So I am familiar
22 with how the process works, how much time and effort it
23 takes to study an analysis.

24 We're not trying to bully our way into
25 something that's unprecedented, that will be miniature

1 Vegas sign on the exit ramp of Interstate I-64. We're
2 not. The fact is we've appreciated what the staff and
3 the City has already approved in our signage high up on
4 the Sacs' property building, as well as this monument
5 sign to the extent the Commission did allow us some
6 panel signage.

7 We would simply like this Board's
8 favorable consideration of the variance beyond what
9 current sign law specifies or allows, and our only
10 limitations which we fully expect will be built into
11 the resolution, and we intend to abide by them right
12 down the line, without fail.

13 Time and temporary for now, and as and
14 when the City would approve an updated sign ordinance
15 that reflects the possibility of message centers, then
16 it's only us down the line to reprogram and perhaps put
17 maybe the bank name up there and time and temporary.
18 But again, with clear restrictions that we're not
19 distracting, we're not displaying that which was never
20 intended.

21 I hope that's responsive. I'm sorry for
22 the confusion.

23 MEMBER KRAVETZ: One of the
24 reasons the Stifel's sign was approved, both time and
25 temp, but they felt and the Board felt that having the

1 name it was beneficial to the City to have the name of
2 a major brokerage or any major business visible as
3 people drive up down Highway 40/64, which I can -- I
4 feel we can live with. And we appreciate your name on
5 the building as well. It looks -- you can see it a lot
6 easier than it previously was.

7 MR. ASMUS: Yes, you can see it
8 much easier as the trees are now bare. There's a few.
9 We need some tree trimming around there, but that's a
10 Saks and tenant issue.

11 But seriously, what we're hoping to be
12 able to is for now is if only numbers, which are
13 allowed, time, temperature, under the UDC and the sign
14 law. If we had the ability to at least just bring in
15 the updated LED technology and limit it for now to the
16 time and temp, then it is one expense for the tenant to
17 install that upper panel's LED technology restrict it
18 with our Exhibit A, self-imposed limitations, and keep
19 the numerals, time and temperature.

20 At some point in the future when sign
21 ordinance update would permit message centers, then we
22 would consider with of course City approvals could we
23 then bring up the electronic message center to
24 something beyond time and temperature. That's really
25 where we cut right to the chase where we're at.

1 MEMBER KRAVETZ: Can I ask a
2 question of Jessica?

3 CHAIRWOMAN HIPPE: Go ahead.

4 MEMBER KRAVETZ: With regard
5 with what you just said, is Parkway West, that's in
6 Chesterfield, correct?

7 MS. HENRY: Correct. Correct.

8 MEMBER KRAVETZ: Now their sign
9 does multiple things, but as you said before regarding
10 Parkway Central, we really have no jurisdiction over
11 school district property. Is that correct?

12 CITY ATTORNEY GRAYVILLE: That's
13 correct. You know, a school district is a political
14 subdivision in the state --

15 MEMBER KRAVETZ: Right.

16 CITY ATTORNEY GRAYVILLE: --
17 just like a municipality, and so, you know, the reality
18 of this is we have very limited regulatory ability
19 over a district.

20 MEMBER KRAVETZ: Well, I just
21 wanted to throw that on the table --

22 CITY ATTORNEY GRAYVILLE: Yeah.

23 MEMBER KRAVETZ: -- so that not
24 using that as a comparison. Yeah, and at one point I
25 made the response to what their attorney said is, I get

1 it. I understand. It makes sense to embrace
2 technology, but there are considerations with regards
3 to this type of technology that have to be studied by
4 the City. You know, I this is a dark-sky community.
5 We've adhered to that. I mean, Dan Hurt has, you
6 know, made that one of his mantras, to make sure that
7 You go in the valley, it's not lit up by cross space.

8 I understand they're going to address some
9 of that stuff, but this is what Board of Adjustment to
10 consider a variance. What they're asking you to do is
11 just legislate a little bit. Just to open it up a
12 little bit, just do a little bit of legislation, just
13 let them do this.

14 The problem is ultimately -- and I think
15 what their presentation is missing the point is, these
16 are video boards. Every single picture they show are
17 not video boards, and you can have full display of
18 videos boards. And the reality of this our Code does
19 not permit a monument sign to be constructed out of a
20 video board. If they want to do time and temp, they
21 can submit an application for time and temp on their
22 sign. It has to be less than 24 square feet, which
23 this is larger than 24 square feet. I don't think they
24 submitted a variance for 70 square feet for time and
25 temp. But ultimately it's the material it's

1 constructed of where it's not about time and temp.

2 And yes, we are looking at the Code and
3 we're reviewing the materials and we're reviewing this
4 technology, but there are commitments the City has made
5 with the aesthetics of the community that have to go
6 through the legislative process.

7 And I just wanted to make that comment in
8 response.

9 CHAIRWOMAN HIPPE: May you have a
10 question?

11 MEMBER SCHWALBE: I have a
12 question.

13 MR. ASMUS: Yes, sir.

14 MEMBER SCHWALBE: I understand
15 that Chesterfield's ordinance prohibits this.

16 This Unified Building Code, does that
17 prohibit it? I thought I read it here.

18 CITY ATTORNEY GRAYVILLE: The
19 UDC, Unified Development Code, which is --

20 MEMBER SCHWALBE: Development,
21 UDC.

22 CITY ATTORNEY GRAYVILLE: UDC,
23 which is essentially everything we got that goes to the
24 development in the City of Chesterfield. It prohibits
25 it. So basically what happens --

1 MEMBER SCHWALBE: It is ours or
2 that St. Louis County?

3 CITY ATTORNEY GRAYVILLE: It's
4 ours.

5 MEMBER SCHWALBE: Okay.

6 CITY ATTORNEY GRAYVILLE:
7 Chesterfield owns it. Chesterfield wrote it.
8 Chesterfield developed it.

9 MEMBER SCHWALBE: Okay. You
10 answered my question. And I guess I ought to check
11 this for my own clarity.

12 That summary you currently -- and some
13 decision the Board is going to add or --

14 CITY ATTORNEY GRAYVILLE: You
15 know, I --

16 MEMBER SCHWALBE: -- in two
17 years or so it's going to fit it in here?

18 CITY ATTORNEY GRAYVILLE: You
19 know, I think it's one of these things that I don't
20 want to speak for the City Council, but the reality of
21 it is, is --

22 MEMBER SCHWALBE: Okay.

23 CITY ATTORNEY GRAYVILLE: -- you
24 know, there's a balancing act that has to take place
25 with this type of technology.

1 MEMBER SCHWALBE: Sure.

2 CITY ATTORNEY GRAYVILLE: This
3 technology needs LEDs that illuminate 180-degree, you
4 know, circumferences with regards to the light. And it
5 is going to have a light polluting effect. But you
6 also have to look at the aggregative effect. Yeah,
7 when you look at the Midwest BankCentre, it really
8 looks in isolation. Well, this is just now, but you
9 have a lot of businesses in a very competitive valley,
10 you know. The -- all of the material used to construct
11 these other ones, most of the ones was done before the
12 ordinance that's currently in place was put in place.
13 Two of them we didn't have the ability to regulate.
14 And the other one are not the parts. They don't have
15 the ability to play small videos on the gas station
16 thing. These truly are video boards. And I just would
17 make one point.

18 The initial presentation was time and temp
19 and we're just want to do time and temp. Now it's
20 tenants. Ultimately the issue that the City has with
21 this technology where we stand right now, and one of
22 the apprehensions we have about any type of variance is
23 the fact that they're a tenant in the building.

24 What happens when the new tenant comes in?
25 They have self-imposed restrictions. That's -- that's

1 putting a lot of trust into the person there because
2 they may be the best corporate citizens in the world,
3 but the next guy coming in may not be, or a bank buys
4 out their bank and they may not be.

5 So it all sounds good, and I think they
6 have the best interest, and I really believe that they
7 will adhere to those items, but there are bigger issues
8 with regards to citywide imposition of this type of
9 variance.

10 MEMBER KRAVETZ: Let me throw
11 one more thing out.

12 I agree with you on using new technology.
13 I like the, I think, time and temp is very important.
14 Would you agree that -- have us allow you to install
15 the new technology at the time this sign is being
16 revised or changed with the stipulation that the,
17 whether it be the upper panel or the lower panel,
18 whichever is going to be message board, be limited to
19 the name of the tenant, Midwest Bank, and so stipulated
20 in that permission to make -- install this sign, future
21 tenants would be limited to put their name on there,
22 period.

23 Now, if the Code changes, naturally you
24 would change with the Code, but I think it's more
25 economical and to your advantage if you put both panels

1 on, because I consider that two panels up there.
2 You're going to have to have your name on this sign,
3 just not time and temp. The reason of having the kind
4 of sign that Stifel has, have your electronic sign, but
5 limit it to Midwest BankCentre or welcome to Midwest
6 BankCentre, but period. That's a static message, and
7 that's all there will be out there until such time as,
8 I suppose, changes come before the City Council or the
9 Planning Commission or whatever.

10 MR. ASMUS: Sir, if you would
11 just consult with counsel on that.

12 MR. GRAYVILLE: And I would like
13 to respond to that. The problem is this is a variance
14 that requires a hardship on the benefit of the
15 applicant. The only thing they've said about a
16 hardship, which is criteria or they got one for you
17 guys to do that because you guys are not a legislative
18 body. You're quasi-judicial. You're looking at this
19 to say do they have a hardship here that based on the
20 land and the -- and the way the land is situated that
21 requires us to give them some relief.

22 And it makes a lot of sense, and those are
23 the things we're talking about right now. But
24 ultimately, that's a legislative decision, to make that
25 bargain or make that -- is a legislative decision

1 because City Council has said you can not construct
2 this with video boards. You cannot use these video
3 boards that have all these capabilities, and until that
4 is allowed, where they allow these video boards with
5 capabilities, which we may have a revision shortly,
6 this is not a hardship. There is no hardship
7 whatsoever that has been displayed, except for well, we
8 don't want to walk out there and change the sign
9 because it's too cold or too hot.

10 Well, guess what? That's a convenience.
11 That's not a hardship, and so my comment in response is
12 you're -- as much as they would like to do this and it
13 makes sense, we still have the legal burden of a
14 hardship, and there's -- there is nothing situated
15 about the land, there's nothing about the particulars
16 of the way the property is situated to say we need to
17 have video boards in lieu of the other signs.

18 It's just well, it's better technology.
19 It's the way it's going, and Chesterfield needs to come
20 along with the tides. It needs to update it and needs
21 to allow these video boards. But the reality of it is,
22 it's a convenience. It's not a hardship.

23 MEMBER KRAVETZ: I could tell you
24 a hardship would be financial when they have to have
25 their contractor come back out and revise the board

1 again.

2 CITY ATTORNEY GRAYVILLE: But
3 remember --

4 MEMBER KRAVETZ: What did you
5 say was a hardship>

6 CITY ATTORNEY GRAYVILLE:
7 Remember one of the things in the introduction was
8 financial consideration is not a hardship. They're
9 additional expenses, and I absolutely understand.

10 MEMBER KRAVETZ: I think as a
11 city we need to be business friendly.

12 CITY ATTORNEY GRAYVILLE: I
13 understand that. We need to be business friendly, and
14 that's part of the reason why we're addressing the
15 Code, but being business friendly and changing an
16 ordinance to allow something is a legislative decision.

17 MEMBER KRAVETZ: You're not
18 saying and our Board does not set precedent.

19 CITY ATTORNEY GRAYVILLE: This
20 would set a precedent.

21 MEMBER KRAVETZ: I don't think
22 our Board -- if I remember correctly, we do not set a
23 precedent.

24 CITY ATTORNEY GRAYVILLE: When a
25 variance is granted based on the uniqueness of a piece

1 of property, the way a property lies, it has a big hill
2 or something like that, that doesn't set a precedent.

3 When you grant something, this is an
4 appeal of a sign package ordinance. This will create a
5 precedent. There will be other applicants that come in
6 that will want to do these message boards without the
7 benefit of the legislative process to review this.

8 And honestly, we have been very up front
9 with them with regards our review of this ordinance,
10 and really trying to digest the LED message board signs
11 because other communities are struggling with this
12 because when they become -- when they proliferate it
13 creates a lighting issue and it creates somewhat of an
14 issue there. And so the first question I have is, is
15 there even a hardship that's here?

16 This -- this is not a video board.

17 MR. ASMUS: At some point in
18 time, Madam Chair, I would appreciate just if you would
19 recognize me to respond to the Board member's question.

20 CHAIRWOMAN HIPPE: Let's do that
21 right now.

22 MR. ASMUS: But not to
23 interrupt.

24 CHAIRWOMAN HIPPE: Counsel for
25 the City will sit down.

1 Mr. Asmus, if you would please proceed in
2 response.

3 MR. ASMUS: Thank you.

4 Yes, the bank would agree to its name in
5 just LED technology until such time as the sign
6 ordinance would be revised to allow use of the
7 electronic message center for a different or additional
8 messages, time, temporary perhaps.

9 As to the comments that it's a video
10 board, it's the technology that's in place here in the
11 city already. It is the same technology at the Edison
12 Gas Station, the Reliance Bank, and whether the Parkway
13 West sign is within that on include the subdivision, I
14 still submit that we're not here to argue or be
15 adversarial.

16 But that message center is one big
17 distraction, and remember it's in front of a high
18 school with teenagers driving in and out on that
19 five-lane Clayton Road.

20 We are trying to submit that this
21 applicant, this corporate citizen here in Chesterfield,
22 happens to have brought scores of jobs to the building.
23 And it is across the street from a distressed property
24 that I believe I have read in media is in foreclosure.

25 I know we're not here to debate economic

1 impact in terms of a hardship. That's not in our
2 application one bit. It's a little difficult though to
3 keep hearing those comments and not at least offer up
4 some, if not recitation, at least some day response.

5 But I hope I addressed it. Yes, we would.
6 If we have that technology approved via this variance
7 with the restrictions, the limitations, we'd be happy
8 to have the bank name out there until such time as we
9 go -- I'm sorry if it looks like we're now dropping
10 away from time and temp and going to the name. I'm
11 just trying to respond to your --

12 MEMBER KRAVETZ: Thank you.

13 CHAIRWOMAN HIPPE: How would you
14 define your hardship if not financial?

15 MR. BEHRENS: I would define it
16 the same way I successfully defined the sign in front
17 of you a number of years ago. I presented this
18 variance request to the City, and at that time, they
19 did not allow message centers. And the hardship was
20 presented that it was unnecessary to go out there in
21 the wintertime, the summertime, and do this all
22 manually like they did 50 years ago, that the
23 technology exists to be able to change those messages
24 from inside the building.

25 This Board gave us the variance to do

1 that, and they put some stipulations on it that
2 messages had to be static, they're not moving, they're
3 not flashing, they're not blinking. And I think there
4 was a seven-second time away on it. Maybe you can go
5 back and verify, and with those stipulations, this
6 Board at that time proved that electronic message
7 center.

8 CHAIRWOMAN HIPPI: Wasn't that
9 2005 before the Code came into effect?

10 MR. BEHRENS: The Code might
11 have changed, but message centers were not allowed then
12 either.

13 CITY ATTORNEY GRAYVILLE: And if
14 I may make a comment to your question about setting
15 precedent. That's my example of precedent right there.
16 Every argument is going to come in and give you the
17 exact same fact pattern to say we have a hardship
18 because we don't want to have to be changing the sign.

19 CHAIRWOMAN HIPPI: So but for the
20 manual change of the sign, which is the hardship
21 argument, are there any other hardships? I don't -- I
22 don't know that I'm getting the full grasp of the
23 hardship.

24 I don't see any here, except for the
25 manual changing of the sign. Even the Stifel Nicolaus

1 it's my understanding that time and temporary is not a
2 manual. It's something keyed from the inside.

3 MR. BEHRENS: Right. Exactly.
4 That's what we want. It's electronically controlled
5 from inside. They set the message that goes out there.

6 CHAIRWOMAN HIPPI: So if we were
7 to distill this down, make sure I understand, the basic
8 component is you would prefer to put in the message
9 board, the electronic message center which is
10 prohibited by the ordinance, because you anticipate for
11 future legislation which is going to allow you to do
12 more with this sign that you've got, this 70-square
13 foot sign, than what you can -- than what you're
14 agreeing to today, if the ordinance should change, and
15 anticipate it will, and we appreciate all of your
16 expertise that you bring to the table, we are -- the
17 hardship, as I see it, is that you don't want to have
18 -- you're trying to mitigate the expense of putting
19 this in later or in the future when the ordinance does
20 change versus having it conform to the ordinance as it
21 stands now. Is that --

22 MR. BEHRENS: That's
23 essentially. We don't want to have to have to do it
24 twice.

25 CHAIRWOMAN HIPPI: Okay. So that

1 is an economic hardship that I'm hearing you say is
2 this. But I'm looking for more than that, besides the
3 manual changing of the letters and numbers.

4 Is there more than that?

5 MR. BEHRENS: Okay. If I
6 understand you correctly, what we have an issue now
7 because we're changing horses from being able to put a
8 static message with --

9 CHAIRWOMAN HIPPIE: With the
10 capability --

11 MR. BEHRENS: With changing
12 static messages to just one permanent message.

13 CHAIRWOMAN HIPPIE: Okay.

14 MR. BEHRENS: I guess my answer
15 to that is we want to put up static message with
16 nothing but the bank's name. We don't want to do it
17 with a light box the way it's been done previously. We
18 want to do it with static delays. We put the name up
19 and static all these. People driving by it, they won't
20 know the difference. I don't think the City's hurt.
21 We're not adding anything. If you want to put a light
22 as well, do it.

23 Now, we know that in the future, should
24 you decide to approve message centers, that we'll have
25 one sitting there that we can put to use. But until

1 that time, we've got the static sign just like the guy
2 next door, and nobody knows the difference.

3 MEMBER KRAVETZ: Is the time and
4 temp and the message center one integrated unit?

5 MR. BEHRENS: Yes. It's one set
6 of lights.

7 MEMBER KRAVETZ: Since it's one
8 integrated unit, do we allow them to install that, but
9 put a -- what you call a lighted thing, just a plain
10 sign to cover it until such time as they're allowed to
11 use that type of technology?

12 CITY ATTORNEY GRAYVILLE: That
13 would be something staff had to consider. So you're
14 basically talking about installing -- constructing the
15 video board signs and then putting some type of almost
16 facade over it?

17 MEMBER KRAVETZ: Yes.

18 CITY ATTORNEY GRAYVILLE: Yeah,
19 I mean, that would be something -- if that's something
20 to be considered, staff would have to look at it and
21 consider it. I think it's a great question, but it
22 would be something that staff would have to look at it.

23 I do want to say this about the
24 anticipated legislation. Nothing guarantees that the
25 City Council is going to change anything.

1 MEMBER KRAVETZ: Right. But
2 they're willing to gamble and --

3 CITY ATTORNEY GRAYVILLE: That's
4 right.

5 MEMBER KRAVETZ: -- and willing
6 to construct something like that.

7 CITY ATTORNEY GRAYVILLE: That
8 -- that may be something, but we -- we would have to
9 consider that and, you know, consider that with staff
10 and you know, and look at that.

11 But I don't know that that would
12 necessitate a variance in order to do it. I think that
13 will be something we would consider as a separate
14 issue.

15 MR. ASMUS: If we -- okay.

16 I would agree that without taking any more
17 of the time of the Board, again, I can't thank you
18 enough for coming out on Tuesday for one item on the
19 agenda.

20 MEMBER KRAVETZ: This is the
21 longest sign meeting I've ever had.

22 MR. ASMUS: Beside Chris and I
23 are attorneys.

24 CITY ATTORNEY GRAYVILLE: Yeah.

25 MR. ASMUS: If we would have the

1 ability to install the LED technology now with some
2 approved via the permit process of panels up there for
3 the bank, and if that is something that we could work
4 through here with the staff and the Board would so
5 support, I think that would be a workable compromise,
6 if you will.

7 CITY ATTORNEY GRAYVILLE: The
8 only question I would have procedurally is how would we
9 go about doing that. You know, because I would ask
10 that because there is a blanket in the -- do you want
11 to apply for another variance, or how -- I don't know.

12 I don't know what -- We'd be happy to
13 perhaps off line to see how we might be able to do
14 that, bring the bank's input in and Mr. Behrens' as
15 well so that we're ultimately installing technology one
16 time if that is the direction of the Board here.

17 And then what is put over that that's
18 possible for the signage now to be able to satisfy one
19 of our key requests, and that's update the technology
20 on those upper two panels, and as we can have some --

21 CITY ATTORNEY GRAYVILLE: Yeah.
22 With talking to Planning Commission very quickly, you
23 would have to go back to Planning Commission for an
24 amendment to the sign package ordinance. But there was
25 a good discussion at Planning Commission. I think they

1 would be open to this concept with regards to doing
2 this. But I think for purposes of a variance, does
3 that mean you guys would withdraw this specific
4 variance, or how --

5 MR. ASMUS: We would want this
6 ultimately resolved here tonight.

7 MEMBER KRAVETZ: Do we have to
8 amend the motion and put all that into the motion?

9 CITY ATTORNEY GRAYVILLE: Well,
10 I don't think that's really a variance because that's
11 that would -- that's basically a new constructed sign.
12 It would be an amendment to the sign package, which is
13 a relatively quick process. Right?

14 But I think that would an amended sign
15 package and go back to Planning Commission because
16 that's not really the scope of the variance here
17 tonight.

18 So I don't want to table that again for
19 tonight's purposes.

20 MR. ASMUS: I'm only hesitant to
21 withdraw that which it's 60 days to get to this point.
22 I also know that if in fact the Board is not inclined
23 to agree with the request we put forth in our
24 application, I would prefer to solemn type way find a
25 middle ground so that we are here, we have some action

1 item tonight that's not a big no. But also may have
2 some condition that if in fact we need to direct back
3 to the Planning Department itself, that which we put
4 out there over the new technology panels. We need to
5 be able to deal with that as a compromise.

6 CHAIRWOMAN HIPPE: Can I add one
7 point on this dialogue. With respect to all the
8 positions. I mean, new business for Chesterfield is
9 always excellent, and we certainly don't want to
10 discourage them moving into that location, which is a
11 very fine location.

12 I'm finding myself in a more conservative
13 role saying that if the UDC says no electronic message
14 boards, even your limited use of the electronic message
15 board to conform to what all the other businesses
16 currently have in place without the more high tech
17 presentation, that you would present something similar
18 to other businesses, what they have enjoyed, using your
19 more high tech screen, then I think that's wonderful.

20 But the fact that the ordinance reads no
21 electronic center message board type activities, and
22 what we're doing is proposing precisely that and using
23 it in the traditional sense of keeping it low tech as
24 it appears cosmetically, but having the capability of
25 advancing the use should the ordinance be changed. Am

1 I kind of tracking the right path? I mean --

2 MR. ASMUS: Yes, you are.

3 CHAIRWOMAN HIPPI: -- I think if
4 you're using it according to the current methods that
5 are place with other businesses, that what they have is
6 a low-tech operation. And you want to make this
7 investment more, if that makes sense. You want to use
8 it and be efficient with your financial needs.

9 However, I don't understand, and this goes
10 back to the basic premise of your hardship. It seems
11 to me that you want to invest only once, and I
12 appreciate that, and you to make a good investment
13 initially. However, is that the only hardship? I
14 don't want to repeat myself, but I don't think I --
15 that you're asking us to be legislators here, to change
16 it for you in this purpose because you want to have
17 this real state work well for you. And we applaud
18 that, but you are still asking us to go beyond the
19 measures in place that prohibit that message board.

20 MR. ASMUS: And I hear -- I
21 understand you completely, and I'm sure --

22 CHAIRWOMAN HIPPI: And I don't
23 see the hardship in doing that. Again, that's the rest
24 of my sentence. I don't see the hardship except for
25 financial investment you make initially, and you don't

1 want to have to repeat your investment.

2 MR. ASMUS: This is part of the
3 process that we are required to follow, the sign
4 package, Planning Commission, and because we didn't get
5 everything we wanted, let us be very blunt here, then
6 we have gone to the next step with a variance request.

7 And to extent that to the point of we're
8 asking for your Board's approval outside of the sign
9 law, what is allowed, that's why I keep emphasizing
10 back to you the technology has been permitted in the
11 city as not 10, 12 years ago or not in alleged
12 different political subdivision, the school district,
13 and still thinking about that flashing message center
14 sign in front of the high school student drivers.

15 But this is something that is the same
16 technology that's been approved at a gas station,
17 Reliance Bank, and albeit numbers only and not trades
18 or whatever. That's why we could deal with if we were
19 allowed this installation of the technology one time.
20 It's a but outside what is allowed. There is some
21 precedent that has occurred most recently, and we're
22 imposing our own restrictions consistent with what --
23 what else can we look at that what others not in Ohio
24 or not in Florida, but right here in neighboring
25 municipalities are putting in the way of restrictions

1 that it will go even further. If we can get that in
2 now, then we would still be willing to, if approved
3 here this evening, with the technology installed
4 working, we hope within just a few short weeks, not a
5 few more months.

6 The panels, if you will, they go on
7 wording -- the wording, the numbers, whatever we could
8 agree to. We just hope that we can make that happen
9 here this evening somehow.

10 CHAIRWOMAN HIPPE: Further
11 questions?

12 VICE-CHAIR HEBERLE: I just want
13 to verify when the Board of Adjustment is considering
14 applications for variance, are we supposed to consider
15 other variances or other applications that have been
16 set?

17 CITY ATTORNEY GRAYVILLE: Well,
18 one the criteria is whether or not this variance will
19 bestow on them an advantage or a land use right that
20 other people don't have. It's not supposed to create a
21 precedent. But that presentation is essentially why I
22 said this will create a precedent because it is a mini
23 legislation.

24 And I understand the frustration. I get
25 the technology. It makes sense. These guys have been

1 great. They've been great to work with, and you know,
2 it's compelling because it makes sense. But the legal
3 standards for the Board of Adjustment is whether or not
4 there is a hardship here, not whether or not somebody
5 else has it. And my fear is it's coming to the Board
6 of Adjustment, and suddenly you guys are going to be
7 meeting five times a month because it's the same
8 argument every time. Well, this is the argument I made
9 for Decor Interiors. Well, this is the argument I made
10 for Midwest BankCentre.

11 The message I carry back from you if you
12 denied it. We better get to work to update this
13 technology because you as citizens sitting on a Board,
14 you want to make sure we have the greatest technology
15 and we're business friendly. I get that message.
16 That's very clear. We all get it sitting here. But we
17 got to get our -- and get that taken care of. But for
18 this purpose tonight, there is a process that has to be
19 followed. There's a process to legislate. There's a
20 process to vary it. They don't meet the standard for
21 the process vary it.

22 CHAIRWOMAN HIPPE: Do you have
23 you any response?

24 MR. ASMUS: Hardship is indeed
25 one of the standards, but not only. It's the one that

1 the City has certainly uses as its cornerstone. We
2 have not disagreed that that is one of the standards.
3 But some of the practical options for use of the
4 subject property that were not otherwise created by us.
5 This monument sign has stood for some years, and we're
6 using 50 percent of its available space.

7 I get it that it is a bigger sign than the
8 Edison Road LED technology grade and price monument
9 sign for the time and temperature display of Reliance
10 Bank's sign on Wild Horse Creek Road, each of which
11 were more recently passed than Decor. To my best
12 knowledge, that was passed this very year.

13 So we've had the use of that technology
14 approved. So for practical options within the property
15 at issue is another standard. And that's really what
16 we've found perhaps onto the Board basis for our
17 presentation.

18 Again, not to argue. It is never Midwest
19 BankCentre's plan or intent, goal or objective to be
20 adversarial with this City. That's why we come here as
21 part of the process, and yes, are we a little
22 impatient? We'd rather not wait for the time that we
23 understand it would take for staff to draft with
24 counsel, get through Planning Commission and ultimately
25 City Council. We'd like to have the technology because

1 it has been utilized here in the city most -- more
2 recently than ten years ago.

3 CHAIRWOMAN HIPPIE: Mr. Grayville,
4 would you please respond to the two enumerated spots
5 where it has been an allowance for these smaller
6 boards? I didn't quite catch that. I got the -- I got
7 the Decor and --

8 CITY ATTORNEY GRAYVILLE: Well,
9 I'm only aware -- I'm only aware of the one, which is
10 Monarch Center gas station, which practically speaking,
11 that came for a sign package, and they were granted the
12 variance for single color, very small size for the gas
13 station numbers. That's it. So single color specific
14 to you can have red, you can have green, you can have
15 whatever the third color is. If you can pull up the --
16 can you pull it up for me since you've got that up.

17 MR. BEHRENS: Yeah,
18 unfortunately, I can't get the --

19 CHAIRWOMAN HIPPIE: I love your
20 slide presentation.

21 MR. BEHRENS: What's that?

22 CHAIRWOMAN HIPPIE: Did we not go
23 through your slides. I guess there was more.

24 MR. ASMUS: We lawyers cut him
25 out off with this.

1 CHAIRWOMAN HIPPI: Would you
2 please proceed with your presentation, sir, or is there
3 something -- I mean, maybe you've got --

4 MEMBER KRAVETZ: Did you say --

5 MR. ASMUS: Oh, I'm sorry, what?

6 MEMBER KRAVETZ: Did you say at
7 one point you were going to withdraw your petition?

8 MR. ASMUS: No.

9 MEMBER KRAVETZ: I -- I heard
10 word withdraw.

11 MR. ASMUS: I misspoke.

12 MEMBER KRAVETZ: Okay.

13 CITY ATTORNEY GRAYVILLE: So
14 Reliance Bank is a number. This is not a video board.

15 CHAIRWOMAN HIPPI: Okay.

16 CITY ATTORNEY GRAYVILLE: I don't
17 think you would say that this is a video board here.

18 MR. BEHRENS: You have to decide
19 what you're going to call it.

20 CITY ATTORNEY GRAYVILLE: Can
21 you display a video on it?

22 MR. BEHRENS: It's an LED. Now,
23 if you wanted to go hook it up to a computer, you'd
24 probably have the ability to play video on it. But
25 they just got it hooked up to the price changer. So

1 there is an issue here. What color was --

2 CITY ATTORNEY GRAYVILLE: Well,
3 I understand that, and that's the technology you're
4 selling. But this not a video board. It's singular
5 color, and if you go the gas station sign, if you can
6 pull that up. These are -- all of these were given
7 very specific to the color and the size. They're very,
8 very, very small signs. And there was a lot of the
9 discussion at Planning Commission to say -- and
10 understand the process. This is a sign package, so the
11 sign package goes to Planning Commission, and you can
12 ask for an LED video board, message board sign,
13 whatever it's called. You know, I'm not sure what
14 exactly it is because it's on the site. But you can
15 ask for this technology and to vary from the sign code.
16 So when the Planning Commission granted this for this
17 car wash, they said, well, we will allow you to have it
18 because it makes sense here because we want this very
19 small, you know, piece to go here.

20 Understand the sign package has progressed
21 for the application for Midwest BankCentre. At first
22 it was a tenant, then it was just time and temp and
23 whatnot. And that's I think ultimately what the
24 concern is. This is 70-square feet of video board
25 that you can play full videos on. Okay. And the idea

1 of being it's not really constrained or directed at
2 anything specifically and these other ones are much,
3 much smaller in size. And the issue is if we grant
4 this for just a general business purpose use, are we
5 then going to allow future businesses that are going to
6 come in and say, well, you gave it to Midwest
7 BankCentre. We want this as well. We get inquiries
8 about these type of signs all the time, and I get it.
9 The manually changed signs meet or should or you guys
10 as citizens want us to look at it and change it.

11 But the Code doesn't allow it. It doesn't
12 allow it. We're not here to legislate. We're not here
13 to change the ordinance. To say well, somebody else
14 got it, you know, is the whole reason why I'm saying
15 this is going to create a precedent, because the first
16 pitcher, he's going to come in and say for his next
17 client that wants to put a video board sign up that he
18 sells is he's going to put a picture of the Stifel sign
19 or the Midwest BankCentre sign and say, well, this is
20 the reason we want it. And that's a concern.

21 There is no hardship here.

22 CHAIRWOMAN HIPPE: Thank you.

23 Sir, did you wish to respond to
24 Mr. Grayville?

25 MR. BEHRENS: I would. I would

1 say that with he said I totally disagree with. I don't
2 think that's what's happening at all. This is a case
3 where they chose an electronic display that was
4 appropriate for this size and this application. They
5 made a three 24-square foot price changers here. I see
6 a sign that was approved using two different colors of
7 LEDs. Here's a display appropriately sized for that
8 location, that street. They got red LEDs.

9 In my mind, red LEDs, white LEDs, green
10 LEDs Chesterfield has no problem with. Our situation
11 is different. We're not on a little side street.
12 We're not just trying to show three small gas prices.
13 The size of our sign is appropriate for the location
14 and the use that it's proposed for.

15 So you know, it seems like semantics. Is
16 that a video board, or is that an electronic message
17 center? Is that a price changer? They're all the same
18 thing. Let's just call them electronic changeable
19 signs.

20 And they are allowed. They're
21 multicolored, and they're in use.

22 CHAIRWOMAN HIPPE: Okay, thank
23 you.

24 MR. ASMUS: We would ask the
25 Board if there is any other questions, we'd be happy to

1 address, but we would still prefer to continue the
2 consideration, if you're so inclined, of our
3 application as submitted with the record that we've
4 created here this evening.

5 Our willingness to deal with the
6 restrictions, both as we've listed in our Exhibit A, as
7 well as further restrictions that you may wish to
8 impose regarding just the name itself or the time and
9 temperature as we await the City's effort at
10 considering updating the sign law.

11 VICE-CHAIR HEBERLE: I just have
12 one more question.

13 So you're wanting this information. What
14 information needs to be on the video board, whether
15 it's limited or what's it going to change, how are
16 things are going to change? I mean, why do you need
17 that?

18 MR. ASMUS: What information we
19 would propose would have been the bank's name, and
20 changing as we've submitted in our application with
21 time and temporary because the previous -- the
22 ordinance talks of the name on this monument sign and
23 stock ticker, which we're not into, and time and
24 temperature.

25 So if we further look at self-imposing

1 other restrictions, it seems that the time and
2 temperature would be allowed. It's under that current
3 ordinance. And so, therefore, our request is the
4 technology update, LED technology, as part of the
5 variance, and we'll deal with the restriction of time
6 and temperature only, or conversely, if it is the
7 bank's name sign logo and not the time and temperature.

8 That's the one message that's out there
9 with this updated technology.

10 CHAIRWOMAN HIPPE: Okay.

11 Any further questions from the Board?

12 (NONE)

13 Does the City wish to make a response to
14 that?

15 CITY ATTORNEY GRAYVILLE: The
16 only response I would have is that, you know, I don't
17 know who owns this sign. The way I understand it is
18 their lease, Saks has reservation for future tenants
19 for that bottom portion of the sign.

20 I don't know how you could make that
21 commitment to do that when Saks obviously, in your
22 presentation here and your documents has some
23 reservations for future tenants there.

24 And I would just point out to you guys,
25 you know, self-imposed restrictions sound great, and I

1 believe they may have the best interest there, but
2 you're going to put it on the staff to enforce
3 self-imposed restrictions.

4 That makes it very difficult for us to do
5 because you're talking about timing the changes, the
6 illumination and all those other issues that are there.
7 So -- so those are just the two comments I have there.

8 It sounds great and I understand that they
9 have the best interest in considering this, and I
10 understand we got to get on the stick to get this
11 ordinance looked at to look at and embrace this
12 technology, to see how it deals with our dark skies
13 prerogative in the city for the aesthetics for the
14 city. But you know, there's a lot of things being said
15 that sound good, that quite honestly I think is
16 somewhat thinly veiled because their self-imposed
17 restrictions are not restrictions that we can impose.

18 CHAIRWOMAN HIPPE: Thank you.

19 I'd like now, having heard from the
20 petitioners and the City, to ask if there is anyone in
21 the audience who wishes to present any opposition.

22 Sir, out there, one of our Ward members,
23 would you like to -- do you have anything you wish to
24 say at this time?

25 You may come up to the podium and state

1 your name for the record and be sworn in, please.

2 Thank you, Mr. Asmus. Thank you.

3 MR. ASMUS: Thank you all.

4 COUNCILMAN DAN HURT: Thank you
5 for asking. My name is Dan Hurt, Chesterfield City
6 Council.

7 CHAIRWOMAN HIPPE: Yes, sir,
8 before you speak, will you please raise your right hand
9 and be sworn in.

10 COUNCILMAN HURT: I wasn't going
11 to speak, but if it's helpful, I will.

12 (Thereupon, the witness was
13 sworn.)

14 CHAIRWOMAN HIPPE: Thank you,
15 sir. Please go ahead.

16 COUNCILMAN HURT: The things
17 that were mentioned tonight, and by the way, I sat
18 where you are on the very first appointed council on
19 our first real Board of Adjustment. So I understand
20 what you're dealing with, and that's how I wound up on
21 the Council.

22 Based on what was being discussed, I think
23 our staff does a really good job. I think they
24 presented what we feel about the situation.

25 The only thing I think I'd like to add in

1 addition to what Mr. Grayville said was, we are aware
2 of things going on in the urban corridor. Even though
3 he's alluded to the distressed situation, that distress
4 situation we were faced in '93 we had to redo the
5 valley.

6 And as you can tell, when we redid the
7 valley, Mr. Steinburg (ph.) worked with us, and those
8 monument signs went up along the highway are not
9 lighted, and they were available at the time. But not
10 to the technology it is today, but at least some of
11 them were available.

12 And because of what our constituents felt
13 we wanted to do, we headed in the direction that you
14 currently see. We do have to keep updated. I agree
15 with what they said, and that's why Council is taking a
16 look at it. But I think you are faced with a similar
17 situation that's upcoming in which you may see a
18 distressed situation with malls now, but that's about
19 to go through a change, just like we did in the valley.

20 And it's in progress as we speak, and over
21 the next few years, that will be changed rapidly. And
22 what you'll see is these type of arguments that you're
23 dealing with right now will go throughout that urban
24 corridor.

25 So what you are making decision on based

1 on what you're hearing, we'd like to address as an
2 ordinance. That's what we're trying to do. What
3 you're seeing will go a whole middle within all areas
4 will be a total renovation over the next few years.
5 And whatever occurs around it will dictate other things
6 that we'll have to address as we go forward.

7 So that adds onto what Mr. Grayville said.
8 You know, he addressed the valley. I'm actually more
9 concerned about the urban corridor, which at this time
10 is about to come forward.

11 And also I'd like to also point out since
12 the sign gentleman pointed this out, and he talked
13 about putting a facade over that. The suggest about
14 the facade was a good suggestion, by the way, is that
15 would be a better ordinance probably, and they've got
16 their technology already lined up with the changes.

17 I believe that is a very good thing, and
18 as Mr. Grayville pointed out, that can be done probably
19 without any change.

20 I would like to go back to the picture of
21 the Reliance Bank.

22 MR. BEHRENS: It's the next one.

23 COUNCILMAN HURT: As you can
24 tell, that's a static sign above time and temperature.
25 In this case, time, same concept. So it's a static

1 above the time.

2 So that's what they want to do, obviously
3 we didn't have a problem with it before. So I just
4 want to point that out too.

5 I think -- I think that's probably all I
6 have to say. I mean, we appreciate the time that you
7 guys put into the stuff and all that. So thank you for
8 you consideration.

9 If you have any questions, I'll be happy
10 to answer.

11 CHAIRWOMAN HIPPIE: Any of the
12 Board who have further questions for the witness?

13 (NONE)

14 Thank you.

15 Mr. Grayville, do you have any comments
16 based on or questions of the witness?

17 CITY ATTORNEY GRAYVILLE: He is
18 under oath, correct? No questions relevant to this
19 hearing to ask him.

20 CHAIRWOMAN HIPPIE: Okay. Thank
21 you.

22 And, Mr. Asmus, do you have anything
23 further you wanted to comment or question him about?

24 MR. ASMUS: Without the
25 tongue-in-cheek comment, no. Thank you, sir.

1 CHAIRWOMAN HIPPI: Thank you.

2 COUNCILMAN HURT: Thank you all
3 for your time.

4 CHAIRWOMAN HIPPI: Thank you,
5 sir. We appreciate that.

6 This Board, having exhausted all the
7 commentary from those present today to present, we are
8 going to begin our deliberation process unless there's
9 further questions for any of the Board members.

10 Could we turn the lights back on so I can
11 see my script.

12 Are we ready for deliberation?

13 The Chair would entertain a motion at this
14 time.

15 MEMBER RADER: (Inaudible)

16 MS. REPORTER: Excuse me. Do
17 you want this on the record, because I cannot hear her?

18 CHAIRWOMAN HIPPI: You know, I
19 don't believe we want that on the record.

20 MS. REPORTER: Okay. So am I
21 finished then?

22 CHAIRWOMAN HIPPI: Mr. Grayville,
23 should the deliberation be on the record? I think not.

24 CITY ATTORNEY GRAYVILLE: It
25 probably should be on the record.

1 CHAIRWOMAN HIPPI: Okay.

2 CITY ATTORNEY GRAYVILLE: Yeah.

3 CHAIRWOMAN HIPPI: All right.

4 Then --

5 CITY ATTORNEY GRAYVILLE: Sorry.

6 CHAIRWOMAN HIPPI: That's okay.

7 We want to clarify that, and we'll have you ask that
8 again and with your microphone closer so the court
9 reporter can hear.

10 MEMBER RADER: I was just saying
11 that I have pass the Decor sign everyday, and they have
12 gone beyond their self-limitations in color, in
13 movement, and --

14 CHAIRWOMAN HIPPI: And I think
15 they flash.

16 MEMBER RADER: They flash, and
17 it constantly is -- it is definitely a distraction.

18 CHAIRWOMAN HIPPI: I think it was
19 pointed out the Parkway Central High School there is a
20 that big sign --

21 (INAUDIBLE)

22 It certainly flashes and moves and
23 everything, and I realize it's not the same situation
24 and I realize it's a different jurisdiction, but to add
25 to the distraction, we see it when we go by it.

1 MEMBER RADER: Well, I guess my
2 concern is the self-imposed restrictions. You said
3 that Decor agreed to those, and unless somebody is
4 sitting there watching it everyday, I don't think that
5 we can depend on it.

6 CHAIRWOMAN HIPPE: Any further,
7 Mr. Schwalbe?

8 MEMBER SCHWALBE: Yeah. I've
9 kind of got to go along with the lawyer here. I can
10 remember some sign things. Before the Planning Board
11 took over, it was assigned to this Board, and we were
12 pretty stretched. We carried out the City of
13 Chesterfield's ordinance. That's the reason for my
14 questions. I didn't know if this was a City of
15 Chesterfield ordinance or something else.

16 I'm going to tell you I'm going to vote no
17 for the variance, and I really hate to do that, but I
18 guess I got to respect the ordinance of the City of
19 Chesterfield at this point, and say no.

20 Now, I think there's some good ideas that
21 came forward here, and I do encourage Dan and all the
22 rest of the Council members to address this in the
23 future. But I think it is truly a responsibility not
24 of this Board any longer since it took the sign away
25 from us many years ago and the signage problem they had

1 at that time and gave it to the Planning Board.

2 And so I think they acted responsibly, you
3 know, just sitting here and listening to some meetings.
4 And so I think we should vote negative is my view, and
5 allow them to work this out over the next year or two.

6 I know this doesn't help their six --
7 their two or three weeks sign, but we do need to have a
8 motion made here, --

9 CHAIRWOMAN HIPPI: Yes, we do.

10 MEMBER SCHWALBE: -- to approve
11 it or not approve it or approve it with -- and we've
12 done this many times before -- with restrictions that
13 this Board sets. And we have not set a precedent.

14 We've been told -- I've been told I don't
15 know how many times, that you're not setting a
16 precedent, because I was fearful I was on this Board
17 not since day one.

18 So I --

19 CHAIRWOMAN HIPPI: Yeah, I ask
20 the members of the Board, just the deliberation
21 process.

22 What hardship do you find that they have
23 met the burden of proving, the financial --

24 MEMBER SCHWALBE: Yeah.

25 CHAIRWOMAN HIPPI: -- or the

1 ability of using this technology?

2 MEMBER SCHWALBE: I think there
3 is -- there is a slight hardship in the fact that they
4 would have to spend a little extra money or to come
5 back and to redo that sign out there. It's a slight
6 hardship in that.

7 CHAIRWOMAN HIPPI: Other than the
8 financial hardship of redoing the sign, what other
9 hardship has been demonstrated in this process -- in
10 this petition?

11 MEMBER SCHWALBE: Well, even
12 though I don't think it's a good idea personally to
13 have any type of sign like that at that exit from
14 Highway 40, because I think it's -- personally I think
15 that that's a dangerous and hazardous situation at that
16 particular location.

17 That aside, and I really think that way,
18 that -- I think that they wanted to get their name out
19 there in public. And so the way to do it is to be
20 flashy, and so I think they got the stance as far as
21 hardship. But you know, I think it's beyond this
22 Board's purview to say that to give them the permission
23 to go put that in at this point in time as members of
24 the -- as a citizen of the City of Chesterfield.

25 CHAIRWOMAN HIPPI: Yes, sir.

1 MEMBER KRAVETZ: I agree with Mr.
2 Schwalbe, and I will not use the word flashy. I think
3 if they put their name up there, it will be done
4 tastefully. Is what we hope, and I think they need --
5 I allow them to keep up with their competitors, whether
6 they be in the City of Chesterfield or any of the
7 surrounding areas we will allow this type of signage.

8 Respectfully, I have to vote no because of
9 the Code. I mean, we really have to choice.

10 CHAIRWOMAN HIPPI: Okay.

11 At this point, I would ask for a member of
12 the Chair to put a motion before us members of the
13 Board here regarding the -- so a motion to consider or
14 vote.

15 MEMBER SCHWALBE: You want to --
16 I make a motion that we do not approve the request for
17 variance for this sign located at 500 Chesterfield
18 Center, Midwest BankCentre.

19 CHAIRWOMAN HIPPI: Is there a
20 second to the motion?

21 MEMBER KRAVETZ: Second.

22 CHAIRWOMAN HIPPI: Okay.

23 At this point, I would like to call the
24 voted.

25 Kathy, would you call the -- Ms. Reiter?

1 MS. REITER: Yes.

2 Katherine Hipp?

3 CHAIRWOMAN HIPPI: I vote yes to
4 deny the application for the variance.

5 MS. REITER: Melissa Heberle?

6 VICE-CHAIR HEBERLE: Yes to
7 deny.

8 MS. REITER: Leon Kravetz?

9 MEMBER KRAVETZ: I vote yes.

10 MS. REITER: Jeannie Rader?

11 MEMBER RADER: I vote yes to
12 deny.

13 MS. REITER: And, Gerald
14 Schwalbe?

15 MEMBER SCHWALBE: I vote yes to
16 deny the request.

17 CHAIRWOMAN HIPPI: I would note
18 the presentation was quite excellent. I think you were
19 very well prepared, and you did a very excellent job.

20 You have a tough, probably insurmountable,
21 situation, and I think you've done a very excellent
22 job, and we appreciate your work with the City on a
23 very positive basis for any future changes you may
24 make.

25 But at this point, the petition is

1 denied.

2 MR. ASMUS: Thank you.

3 MEMBER KRAVETZ: Move to

4 adjourn.

5 CHAIRWOMAN HIPPE: The record is
6 closed, and we are adjourned.

7 (Thereupon, the proceedings
8 concluded at 7:39 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, PATSY A. HERTWECK, Professional Court
3 Reporter and Notary Public within and for the State of
4 Missouri, before whom the foregoing proceeding was
5 taken, do hereby swear that: the aforementioned was
6 held at the time and in the place previously described;
7 the proceedings were taken down in stenographic notes
8 by me and transcribed by me, or under my supervision,
9 to best of my ability; and that the aforementioned
10 represents a true and accurate transcript of said
11 proceedings.

12 IN WITNESS WHEREOF, I have hereunto set
13 my hand.

14

15

16

17 Patsy A. Hertweck, Court Reporter

18 Notary Public, State of Missouri

19

20 My Commission Expires:

21 August 26, 2018

22

23

24

25

CITY OF CHESTERFIELD BOA 12/5/2017

A				
abide 42:11	11:18,23 13:7	Alaris 1:25 4:15	anybody 26:5	17:2 20:6 23:4
ability 43:14	17:4,15,19 18:3	albeit 65:17	apologize 9:8	23:7 65:8
44:18 48:13,15	18:7,24 22:13	alleged 65:11	appeal 7:21 9:1	approvals 32:15
61:1 70:24	29:13 45:9	allow 5:10 15:7	11:23 13:7 17:1	43:22
85:1 89:9	66:13 67:3,6	20:6 23:7,8	17:14,17,20	approve 6:25
able 36:4,19	77:19	31:12,14 32:4	18:3 53:4	7:15 8:23 14:7
38:10 43:12	Adjustment's	37:17 41:2	appears 63:24	42:14 58:24
55:23 58:7	17:7	42:5 49:14	applaud 64:17	84:10,11,11
61:13,18 63:5	Administrative	51:4,21 52:16	applicant 16:23	86:16
absolutely 52:9	4:10	54:6 55:19	27:4 30:20	approved 7:16
accept 29:22	admission 9:12	57:11 59:8	40:18 41:9	14:19 16:1,4
accomplish	admitted 11:5,8	71:17 72:5,11	50:15 54:21	22:8,13 23:5
40:7	adopted 22:15	72:12 84:5	applicant's	32:5 40:15
accurate 89:10	28:12	86:5,7	30:23	41:9 42:3,24
accurately 40:11	advancing	allowance 69:5	applicants 53:5	55:6 61:2
acres 13:25	63:25	allowed 14:20	application 3:8	65:16 66:2
act 8:10 47:24	advantage	15:10 20:8	10:7 17:3,4	68:14 73:6
acted 84:2	49:25 66:19	28:14,15,20	19:2 25:17,19	approving 10:16
action 9:2	adversarial	29:7 34:23	26:16 30:21	Approximately
62:25	54:15 68:20	35:24 43:13	31:8 32:6,8,13	12:18
activities 63:21	advised 8:14	51:4 56:11	45:21 55:2	April 26:15
add 47:13 63:6	aesthetics 46:5	59:10 65:9,19	62:24 71:21	area 19:14 38:2
77:25 82:24	76:13	65:20 73:20	73:4 74:3,20	38:14
adding 58:21	affidavit 3:6	75:2	87:4	areas 79:3 86:7
addition 78:1	7:25 9:22,24	allows 14:18	application's	argue 54:14
additional 52:9	9:25	15:18 35:20	40:20	68:18
54:7	affirm 15:19	37:10 42:9	applications	argument 56:16
address 27:1	affixed 21:8	alluded 78:3	66:14,15	56:21 67:8,8,9
30:10 45:8	aforemention ...	alpha 37:1	apply 61:11	arguments
74:1 79:1,6	89:5,9	alphabet 35:23	appointed 77:18	78:22
83:22	age 12:5 35:5	alphabetic	appreciate 41:5	Arnold 33:5,5
addressed	agenda 9:4	35:22	43:4 53:18	Article 16:16
55:5 79:8	60:19	amend 62:8	57:15 64:12	Arts 13:2
addressing	aggregative	amended 62:14	80:6 81:5	aside 85:17
52:14	48:6	amendment	87:22	asked 8:4
adds 79:7	ago 30:17	61:24 62:12	appreciated	asking 11:16
adhere 49:7	33:22 55:17	analysis 41:23	42:2	31:20 33:24
adhered 45:5	55:22 65:11	angle 21:6	apprehensions	35:9 36:25
adjourn 88:4	69:2 83:25	answer 58:14	48:22	37:4,6,11 38:7
adjourned 88:6	agree 49:12,14	80:10	approach 11:15	45:10 64:15,18
Adjournment	54:4 60:16	answered 47:10	appropriate	65:8 77:5
2:20	62:23 66:8	anticipate 57:10	73:4,13	Asmus 2:14
Adjustment 1:2	78:14 86:1	57:15	appropriately	26:8,11,21,24
4:2 5:4,7,10	agreed 83:3	anticipated	73:7	26:25 30:7,9
9:20 10:22	agreeing 57:14	59:24	approval 2:5	30:14 40:5
	ahead 44:3	antiquated	3:12 6:21 7:22	43:7 46:13
	77:15	34:25	14:2,23 15:6,7	50:10 53:17

CITY OF CHESTERFIELD BOA 12/5/2017

53:22 54:1,3 60:15,22,25 62:5,20 64:2 64:20 65:2 67:24 69:24 70:5,8,11 73:24 74:18 77:2,3 80:22 80:24 88:2 assigned 83:11 assistant 6:17 attached 3:17 attendance 5:17 attorney 4:9 5:20 9:8 11:12 22:2 25:25 27:3 28:10,17 29:2,10,20 44:12,16,22 44:25 46:18 46:22 47:3,6 47:14,18,23 48:2 52:2,6 52:12,19,24 56:13 59:12,18 60:3,7,24 61:7 61:21 62:9 66:17 69:8 70:13,16,20 71:2 75:15 80:17 81:24 82:2,5 attorneys 60:23 audience 76:21 August 89:21 authority 24:5 available 18:21 35:6 68:6 78:9,11 Avenue 30:11 await 74:9 aware 24:25 25:9 36:1 69:9,9 78:1	B 2:6 3:1 B.A 2:7 7:18 9:5 9:7 13:5 Bachelor 13:2 back 30:15 31:11 37:25 41:5,19 51:25 56:5 61:23 62:15 63:2 64:10 65:10 67:11 79:20 81:10 85:5 background 13:1,9 36:20 backlit 13:22 balancing 47:24 ban 28:12 bank 7:19,23 30:25 34:10 36:12 42:17 49:3,4,19 54:4 54:12 55:8 61:3 65:17 70:14 79:21 bank's 26:5 58:16 61:14 68:10 74:19 75:7 BankCentre 2:8 7:23 13:6,23 14:4 25:6 27:4 30:20 39:8,11 48:7 50:5,6 67:10 71:21 72:7,19 86:18 BankCentre's 68:19 bare 43:8 bargain 50:25 base 19:7 based 19:2 50:19 52:25 77:22 78:25 80:16 basic 57:7 64:10	basically 10:20 11:14 29:5 38:1 38:10 46:25 59:14 62:11 basis 68:16 87:23 behalf 12:5 Behrens 2:15 31:4,5 32:20 32:23 33:3,4 33:12,14 35:18 36:24 37:9,16 38:3,7,12,17 38:20,24 39:3 39:6,10,16,23 55:15 56:10 57:3,22 58:5 58:11,14 59:5 69:17,21 70:18 70:22 72:25 79:22 Behrens' 61:14 believe 9:11 16:16 21:16 23:19 25:12 27:25 32:1,10 33:21 36:5 49:6 54:24 76:1 79:17 81:19 beneficial 43:1 benefit 50:14 53:7 best 49:2,6 68:11 76:1,9 89:9 bestow 19:16 66:19 better 32:17 51:18 67:12 79:15 beyond 37:4,7 37:15 42:8 43:24 64:18 82:12 85:21 big 34:4 53:1 54:16 63:1	82:20 bigger 49:7 68:7 Bill 31:4 32:19 32:23 33:4 bit 11:13 35:4 41:6 45:11,12 45:12 55:2 blank 21:17 blanket 61:10 blink 31:18 blinking 32:11 56:3 blunt 65:5 board 1:2,3 2:12 4:2 5:4,6,10,11 5:18 7:18 8:8 8:20,25 9:20 10:22 11:2,18 11:23 13:7 16:21 17:4,6,15 17:16,18 18:3,7 18:24 22:13 23:16,17 24:23 27:7,10 27:12 29:13 30:9 34:23 35:13,16 36:14 40:12 42:25 45:9,20 47:13 49:18 51:25 52:18,22 53:10,16,19 54:10 55:25 56:6 57:9 59:15 60:17 61:4,16 62:22 63:15,21 64:19 66:13 67:3,5 67:13 68:16 70:14,17 71:4 71:12,12,24 72:17 73:16,25 74:14 75:11 77:19 80:12 81:6,9 83:10,11 83:24 84:1,13	84:16,20 86:13 Board's 9:3 42:7 65:8 85:22 boards 45:16,17 45:18 48:16 51:2,3,4,17,21 53:6 63:14 69:6 body 50:18 bottom 38:14 75:19 box 58:17 bragging 41:17 break 9:17 brightly 19:12 bring 13:5 29:18 43:14,23 57:16 61:14 brokerage 43:2 brought 24:9 54:22 bucket 35:3 building 25:2,5 26:13 42:4 43:5 46:16 48:23 54:22 55:24 built 42:10 bully 41:24 burden 19:4 51:13 84:23 business 6:21 7:17 21:21 25:1 40:16 43:2 52:11,13,15 63:8 67:15 72:4 businesses 48:9 63:15,18 64:5 72:5 button 35:7 36:4 buys 49:3
B				C

CITY OF CHESTERFIELD BOA 12/5/2017

C1:24 2:6 4:1,16 5:1 12:7 27:9 CA 13:14 call 2:4,4 5:6 7:3 29:24 38:16 59:9 70:19 73:18 86:23,25 called 8:3 15:13 16:8,21 21:21 40:10 71:13 calling 40:14 calls 16:15 capabilities 51:3,5 capability 58:10 63:24 car 71:17 care 67:17 carried 83:12 carry 67:11 carrying 17:25 case 21:7 73:2 79:25 catch 69:6 cen- 41:4 center 7:19,24 9:5 13:6 14:5 14:14 16:3 21:14 22:16,21 23:1,2 27:14 31:1,25 32:16 34:8 39:12 41:3 43:23 54:7,16 56:7 57:9 59:4 63:21 65:13 69:10 73:17 86:18 Center/Midw... 2:7 centers 16:10 22:24 42:15 43:21 55:19 56:11 58:24 Central 23:21 27:2 30:10	44:10 82:19 Centre 7:19,22 century 41:4 certain 31:25 certainly 33:3 63:9 68:1 82:22 Certificate 2:21 89:1 cetera 32:11 Chair 5:9 6:22 7:25 10:18,23 11:17 26:8 30:8 53:18 81:13 86:12 Chairwoman 4:3 5:3,17,22 6:1,9,12,15 7:2 7:5,14 10:25 20:13,16,22 20:25 21:9 26:4,10,19 27:6 29:16 30:1 32:25 33:6 35:10 36:22 37:3,14 37:19,22 40:1 44:3 46:9 53:20,24 55:13 56:8,19 57:6,25 58:9 58:13 63:6 64:3,22 66:10 67:22 69:3,19 69:22 70:1,15 72:22 73:22 75:10 76:18 77:7,14 80:11 80:20 81:1,4 81:18,22 82:1 82:3,6,14,18 83:6 84:9,19 84:25 85:7,25 86:10,19,22 87:3,17 88:5 chamber 30:16 CHAMBERS 1:3	change 19:11,22 34:21 35:4,17 38:15 39:14,16 40:4 49:24 51:8 55:23 56:20 57:14 57:20 59:25 64:15 72:10,13 74:15,16 78:19 79:19 changeable 34:23 38:1 73:18 changed 24:18 27:17 38:5 49:16 56:11 63:25 72:9 78:21 changer 70:25 73:17 changers 73:5 changes 10:12 10:13 23:9 28:8 49:23 50:8 76:5 79:16 87:23 changing 24:11 24:24 52:15 56:18,25 58:3 58:7,11 74:20 Chapter 10:3 16:25 17:13,22 character 18:16 19:11 characterizati ... 15:23 characterize 15:21 chase 43:25 cheaters 31:13 check 47:10 Chesterfield 1:1 1:4,5 2:7 5:7 7:19,24 9:5,15 9:16 12:14,16 12:21 13:6,17 24:8,14,18	25:2 31:1 32:16 34:24 44:6 46:24 47:7,7,8 51:19 54:21 63:8 73:10 77:5 83:15,19 85:24 86:6,17 Chesterfield's 13:20 46:15 83:13 choice 86:9 choose 10:11 chose 73:3 Chris 4:9 60:22 Circuit 9:2 circumferences 48:4 citizen 40:25 54:21 85:24 citizens 49:2 67:13 72:10 city 1:1,3 2:9 3:3 3:4,16 4:9,14 5:7,19,20 6:6 9:8,15,16 11:8 11:12 12:6,14,16 12:21 13:12,16 13:20 15:17,19 16:5,21 17:23 19:1,14,18 21:13 21:20 22:2,23 24:3,5,8,14,18 25:4,12,25 28:10,12,17 29:2,10,18,20 29:23 30:18 31:22,24 32:4 32:16 33:18 34:17 35:19 40:15,25 41:12 42:3,14 43:1 43:22 44:12 44:16,22 45:4 46:4,18,22,24 47:3,6,14,18 47:20,23 48:2	48:20 50:8 51:1 52:2,6,11 52:12,19,24 53:25 54:11 55:18 56:13 59:12,18,25 60:3,7,24 61:7 61:21 62:9 65:11 66:17 68:1,20,25 69:1,8 70:13 70:16,20 71:2 75:13,15 76:13 76:14,20 77:5 80:17 81:24 82:2,5 83:12 83:14,18 85:24 86:6 87:22 City's 11:24 14:9 14:23 58:20 74:9 citywide 49:8 claiming 9:24 clarification 26:17 clarify 31:9 82:7 clarity 47:11 classified 16:11 Clayton 27:2 30:11 54:19 clean 35:8 clear 42:18 67:16 client 40:18 72:17 closed 88:6 closer 82:8 code 9:16 14:10 14:25 16:1,2,15 16:17,25 17:7,8 17:13,16,20,23 20:8,17,21 21:1 22:8,12,18 28:15 29:8 45:18 46:2,16 46:19 49:23
--	---	--	--	---

CITY OF CHESTERFIELD BOA 12/5/2017

49:24 52:15 56:9,10 71:15 72:11 86:9 Code's 15:9 cold 51:9 colleagues 30:16 color 69:12,13 69:15 71:1,5,7 82:12 colors 73:6 come 8:4 25:7 25:18 33:16 34:19 50:8 51:19,25 53:5 56:16 68:20 72:6,16 76:25 79:10 85:4 comes 48:24 coming 49:3 60:18 67:5 Commencing 1:14 comment 46:7 51:11 56:14 80:23,25 commentary 81:7 comments 41:13 54:9 55:3 76:7 80:15 commercial 13:14 19:10 Commission 7:21 14:6,12,17 15:12,18,20,22 16:22 17:15 20:5 21:12 23:6 24:9 28:23 31:11 41:20 42:5 50:9 61:22,23 61:25 62:15 65:4 68:24 71:9,11,16 89:20 Commission's	16:24 17:1 18:20 commissioner 30:17 commitment 75:21 commitments 46:4 communities 53:11 community 32:1 45:4 46:5 Company 31:5 32:20 33:4 comparable 20:8 comparison 44:24 compelling 67:2 competitive 48:9 competitors 86:5 complaint 24:17 24:20 complaints 24:13,21 completely 64:21 compliance 32:17 complicated 36:21 comply 14:9 component 13:22 57:8 components 16:2 compromise 61:5 63:5 computer 70:23 concept 24:10 62:1 79:25 concern 19:15 71:24 72:20	83:2 concerned 79:9 concerns 31:10 32:10 concluded 88:8 Conclusions 3:10,12 10:10 10:16 condition 15:5,7 63:2 configuration 18:10 conform 57:20 63:15 confused 39:15 confusing 41:6 confusion 42:22 conservative 63:12 consider 37:6 41:15 43:22 45:10 50:1 59:13,21 60:9 60:9,13 66:14 86:13 consideration 10:12 17:11,19 18:25 29:14 30:22 42:8 52:8 74:2 80:8 considerations 45:2 considered 8:15 28:18 59:20 considering 18:3 66:13 74:10 76:9 consistent 14:22 32:3,15 34:14 65:22 constantly 82:17 constituents 78:12	constitute 16:2 constrained 72:1 construct 15:23 28:21 48:10 51:1 60:6 constructed 13:20 16:1 45:19 46:1 62:11 constructing 59:14 construction 15:10 16:4,13 23:16 28:19 29:7,12 consult 50:11 contested 11:14 continue 7:17 74:1 contractor 51:25 controlled 57:4 convenience 51:10,22 conversely 75:6 convert 14:4,13 copy 9:25 cornerstone 68:1 corporate 40:25 49:2 54:21 correct 15:3 21:14,15 22:17 23:17,21 24:14 25:4,15,22 28:16 29:9 35:19 36:24 37:8,8,15 38:2 38:3,6 40:4 44:6,7,7,11,13 80:18 corrected 10:18 10:19,20 correctly 52:22	58:6 corridor 78:2 78:24 79:9 cosmetically 63:24 council 4:14 5:21,22 15:13 15:17,19 16:21 28:12 41:13,14 47:20 50:8 51:1 59:25 68:25 77:6,18 77:21 78:15 83:22 Councilman 5:24,24 77:4 77:10,16 79:23 81:2 counsel 4:8 9:9 10:17 11:22 27:3 30:20 50:11 53:24 68:24 County 9:2 13:15 47:2 course 43:22 court 6:19 9:2 33:7 82:8 89:2,17 cover 59:10 create 19:16,20 53:4 66:20 66:22 72:15 created 68:4 74:4 creates 53:13,13 Creek 68:10 criteria 17:8,18 18:5 19:22 21:7 50:16 66:18 cross 45:7 cross-examin ... 11:21 current 22:8,11 22:11 31:17 32:2,17 36:17
---	--	--	---	--

42:9 64:4 75:2 currently 13:18 19:13,18 34:1 35:15 47:12 48:12 63:16 78:14 cut 43:25 69:24	decisions 15:18 Decor 21:21,22 22:1,2,4,7 27:12 28:1 67:9 68:11 69:7 82:11 83:3 define 55:14,15 defined 55:16 definitely 82:17 delays 58:18 deliberation 2:17 81:8,12 81:23 84:20 demonstrated 85:9 DENIAL 3:10 denied 67:12 88:1 deny 20:2 87:4 87:7,12,16 denying 10:10 department 12:22 24:12,19 35:15 41:15,21 63:3 depend 83:5 deprived 20:7 describe 13:21 23:3 described 89:6 DESCRIPTION 3:2 designation 13:15 determination 15:20 24:4 developed 47:8 development 14:10 15:9 19:10 22:18 46:19,20,24 dialogue 63:7 dictate 79:5 difference 35:13 58:20 59:2	different 38:9 39:9 54:7 65:12 73:6,11 82:24 differently 11:13 33:17 difficult 19:22 55:2 76:4 difficulty 8:6,12 17:24 18:17 19:5 digest 53:10 dimension 21:1 dimensional 23:8 dimensions 15:11 20:18 direct 63:2 directed 72:1 direction 61:16 78:13 disagree 73:1 disagreed 68:2 discourage 63:10 discussed 11:17 77:22 discussion 2:16 61:25 71:9 display 31:15,17 33:22 34:1,2,8 35:21,22,23 36:9,13 39:12 40:20 45:17 68:9 70:21 73:3,7 displayed 51:7 displaying 42:19 displays 36:3 37:10 distant 41:12 distill 57:7 distracting 42:19 distraction 27:19 54:17	82:17,25 distractions 32:10 distress 78:3 distressed 54:23 78:3,18 district 13:14 24:4 44:11,13 44:19 65:12 documents 75:22 doing 33:18 61:9 62:1 63:22 64:23 door 59:2 Dow 33:22 34:2,11 draft 3:9 10:9 68:23 drawing 21:17 34:4 drive 43:3 drivers 65:14 driving 54:18 58:19 dropping 55:9	effectively 16:22 efficient 64:8 effort 41:22 74:9 eight 23:14 either 15:13 56:12 electronic 14:5 16:2,10 21:14 21:23 22:16 22:20,21,23 23:1 24:22 31:25 32:15 33:25 34:8 41:3 43:23 50:4 54:7 56:6 57:9 63:13,14,21 73:3,16,18 electronically 37:10 57:4 electronics 14:13 34:13,14 35:21,25 Eleventh 4:17 embrace 45:1 76:11 emphasizing 65:9 employed 12:12 12:13 encourage 83:21 enforce 76:2 enjoyed 63:18 entertain 6:23 81:13 entitle 8:13 enumerated 69:4 essences 33:24 essentially 18:16 23:7,9 25:14,15 28:19 46:23 57:23 66:21
D D 2:2 5:1 12:7 dais 8:2 9:17 10:1 Dan 4:14 5:21 5:24 45:5 77:4,5 83:21 dangerous 85:15 dark 76:12 dark-sky 45:4 dates 13:11 Dave 32:24 David 26:24 30:9,24 day 35:3,3,5 55:4 84:17 days 9:3 62:21 deal 40:19 63:5 65:18 74:5 75:5 dealing 77:20 78:23 deals 40:20 76:12 debate 54:25 December 1:13 5:2,8 decide 58:24 70:18 decision 7:21 8:20,25 9:3 16:22,24 17:1 17:14 18:20 20:1,4,12 47:13 50:24 50:25 52:16 78:25			E E 2:2,6 3:1 4:1,1 5:1,1 12:7,7 27:9 30:13,13 30:13,13 easier 38:21 43:6,8 east 27:24 economic 54:25 58:1 economical 49:25 Edison 54:11 68:8 education 12:25 educational 13:1 effect 18:19 22:9,12 48:5 48:6 56:9	

CITY OF CHESTERFIELD BOA 12/5/2017

establishing 19:4 et 32:11 evening 7:18 8:10,21 30:8 30:24 40:7 66:3,9 74:4 evenings 30:17 everyday 82:11 83:4 evidence 11:5,6 evolution 40:2 exact 56:17 exactly 21:4 57:3 71:14 examined 12:5 example 56:15 exceeds 20:8 20:17 21:1 excellent 63:9 87:18,19,21 excludes 16:2 Excuse 26:20 81:16 excused 30:5 executive 6:17 exhausted 81:6 exhibit 3:4,5,6 3:7,8,9,11,14 9:14,19,19,22 10:11,15 11:9 17:5 32:6,12 40:20 43:18 74:6 exhibits 3:16 8:1 9:6,10 11:1,5 29:22 existence 18:11 existing 14:4,13 14:24 18:16 31:15 33:20 33:25 34:13 exists 25:21,23 55:23 exit 42:1 85:13 expanded 22:19	expect 42:10 expense 43:16 57:18 expenses 52:9 expertise 57:16 Expires 89:20 explain 8:5 15:15 23:25 explanation 15:16 39:5 extent 41:14 42:5 65:7 extra 85:4 F facade 59:16 79:13,14 faced 78:4,16 facilities 18:22 fact 34:3 40:14 41:18 42:2 48:23 56:17 62:22 63:2 63:20 85:3 Facts 3:9,11 10:10,15 fail 42:12 fairly 40:10 familiar 33:20 41:21 far 85:20 favor 8:18,23 favorable 42:8 fear 67:5 fearful 84:16 feasible 18:18 20:4 features 18:11 feel 8:13 43:4 77:24 feet 23:17,18 45:22,23,24 71:24 felt 42:25,25 78:12 filed 16:25 26:16	FINAL 3:11 finances 8:14 financial 51:24 52:8 55:14 64:8,25 84:23 85:8 find 37:5 62:24 84:22 finding 63:12 Findings 3:9,11 10:9,15 fine 10:13 63:11 finished 81:21 firm 26:25 30:10 first 6:21 9:4,14 11:24 53:14 71:21 72:15 77:18,19 fit 47:17 five 67:7 five-lane 54:19 flash 31:18 82:15,16 flashes 82:22 flashing 56:3 65:13 flashings 32:11 flashy 85:20 86:2 Florida 65:24 follow 34:17 65:3 followed 67:19 following 15:11 follows 12:6 followup 26:12 foot 23:12 57:13 73:5 foreclosure 54:24 foregoing 89:4 former 30:16 formulating 20:12 forth 17:8 40:19 62:23	forward 8:4 30:6 79:6,10 83:21 found 68:16 four 8:23 12:18 12:19 24:7 frequency 27:16 40:21 frequently 23:10 friendly 52:11,13 52:15 67:15 front 34:20 53:8 54:17 55:16 65:14 frontage 13:19 frustration 66:24 full 12:10 45:17 56:22 71:25 fully 42:10 function 31:21 functionality 28:25 further 16:18 26:1 29:21 32:6,9 66:1,10 74:7,25 75:11 80:12,23 81:9 83:6 future 34:2,12 38:23 39:1 41:11,12 43:20 49:20 57:11,19 58:23 72:5 75:18,23 83:23 87:23 G G 2:6 5:1 gamble 60:2 games 40:14 gas 22:25 23:1 23:8 36:12 48:15 54:12 65:16 69:10,12 71:5 73:12	general 72:4 generally 8:20 gentleman 33:13 79:12 Gerald 4:5 5:16 7:12 87:13 getting 35:14 39:15 56:22 give 13:9 15:23 37:11 50:21 56:16 85:22 given 71:6 go 9:12 16:18 17:7 30:6 35:2 35:7,16,25 36:2,7,17 37:4 37:25 38:21 44:3 45:7 46:5 55:9,20 56:4 61:9,23 62:15 64:18 66:1,6 69:22 70:23 71:5,19 77:15 78:19,23 79:3,6,20 82:25 83:9 85:23 goal 68:19 goes 37:7 46:23 57:5 64:9 71:11 going 9:11,17 11:13,14 25:1 27:12,15,20 27:22,23,25 34:6,21 36:9 39:2,8 40:4 45:8 47:13,17 48:5 49:18 50:2 51:19 55:10 56:16 57:11 59:25 67:6 70:7,19 72:5,5,15,16 72:18 74:15,16 76:2 77:10 78:2 81:8
---	---	---	--	--

CITY OF CHESTERFIELD BOA 12/5/2017

83:16,16 good 30:2,8,15 49:5 61:25 64:12 76:15 77:23 79:14,17 83:20 85:12 governmental 18:21 grade 68:8 grades 23:1,9 grant 14:12 53:3 72:3 granted 13:15 14:2,17 52:25 69:11 71:16 granting 18:19 18:21 19:15 graphic 36:16 graphics 35:22 grasp 56:22 Grayville 2:11 4:9 5:20 9:8 11:12 12:8 20:15 21:11 22:2,6 25:25 28:10,17 29:2 29:10,20 44:12,16,22 46:18,22 47:3 47:6,14,18,23 48:2 50:12 52:2,6,12,19 52:24 56:13 59:12,18 60:3 60:7,24 61:7 61:21 62:9 66:17 69:3,8 70:13,16,20 71:2 72:24 75:15 78:1 79:7,18 80:15 80:17 81:22 81:24 82:2,5 great 30:18 59:21 67:1,1 75:25 76:8 greater 14:20	greatest 67:14 green 69:14 73:9 ground 62:25 guarantees 59:24 guess 40:13 47:10 51:10 58:14 69:23 83:1,18 guy 35:2 49:3 59:1 guys 9:13 18:1 20:1 25:7 50:17,17 62:3 66:25 67:6 72:9 75:24 80:7 H H 2:6 3:1 half 12:18,19 24:7 HALL 1:3 hand 33:7 77:8 89:13 handle 40:21 handles 24:12 happen 66:8 happened 15:4 15:5 happening 73:2 happens 46:25 48:24 54:22 happy 55:7 61:12 73:25 80:9 hardship 8:6,15 17:24 18:13,13 19:5,23 35:1,5 37:5 50:14,16 50:19 51:6,6,11 51:14,22,24 52:5,8 53:15 55:1,14,19 56:17,20,23 57:17 58:1	64:10,13,23 64:24 67:4,24 72:21 84:22 85:3,6,8,9,21 hardships 8:12 56:21 hate 83:17 hazardous 85:15 he'll 31:6 headed 78:13 hear 7:18 17:16 64:20 81:17 82:9 heard 11:4 40:12 70:9 76:19 hearing 9:21,21 10:3 11:14 55:3 58:1 79:1 80:19 HEARINGS 1:11 heavy 9:18 Heberle 4:4 5:14,14 7:1,6,7 66:12 74:11 87:5,6 hefty 9:18 held 12:20,23 89:6 help 84:6 helpful 77:11 Henry 2:10 4:11 6:8,8,9 11:25 12:4,9,11 20:19 20:23 21:3 22:1,4 29:24 30:3 44:7 hereto 3:17 hereunto 89:12 Hertweck 1:24 4:16 89:2,17 hesitant 62:20 hey 36:7,19 high 23:14 42:3 54:17 63:16,19 65:14 82:19 highlight 31:8	highly 19:13 highway 43:3 78:8 85:14 hill 53:1 Hipp 4:3 5:3,9 5:17,22 6:1,9 6:12,15 7:2,4,5 7:14 10:25 20:13,16,22 20:25 21:9 26:4,10,19 27:6 29:16 30:1 32:25 33:6 35:10 36:22 37:3,14 37:19,22 40:1 44:3 46:9 53:20,24 55:13 56:8,19 57:6,25 58:9 58:13 63:6 64:3,22 66:10 67:22 69:3,19 69:22 70:1,15 72:22 73:22 75:10 76:18 77:7,14 80:11 80:20 81:1,4 81:18,22 82:1 82:3,6,14,18 83:6 84:9,19 84:25 85:7,25 86:10,19,22 87:2,3,17 88:5 history 13:10 16:19 22:7 23:25 24:2 hit 40:22 hold 39:18 honestly 53:8 76:15 hook 70:23 hooked 70:25 hope 42:21 55:5 66:4,8 86:4 hopefully 9:17	hoping 40:6 43:11 Horse 68:10 horses 58:7 hot 51:9 hundred 35:2 hurt 4:14 5:21 5:24,25 45:5 58:20 77:4,5 77:10,16 79:23 81:2 I I-64 42:1 idea 35:14 71:25 85:12 ideas 83:20 identification 3:2 11:7 identified 6:6 identify 5:23 illuminate 48:3 illumination 76:6 illustrated 34:5 34:9 impact 18:15 55:1 impatient 68:22 important 49:13 impose 74:8 76:17 imposing 40:24 65:22 imposition 49:8 in-house 35:14 Inaudible 6:4 81:15 82:21 inches 23:13,13 23:14 inclined 62:22 74:2 include 54:13 included 17:5 includes 13:22 33:22 36:16 Including 22:20
---	--	--	--	--

22:21 incorporation 13:16,21 25:3 increase 40:13 indicated 40:6 information 9:6 19:3 23:9 74:13,14,18 initial 48:18 initially 64:13 64:25 injured 24:23 input 61:14 inquiries 72:7 inquiry 41:5 inside 55:24 57:2,5 install 24:22 40:9 43:17 49:14,20 59:8 61:1 installation 65:19 installed 33:21 66:3 installing 59:14 61:15 insurmountab ... 87:20 integral 41:18 integrated 59:4 59:8 intend 42:11 intended 32:8 42:20 intent 41:7 68:19 interest 49:6 76:1,9 Interiors 22:3,4 22:7 67:9 interrupt 11:18 11:18 21:10 53:23 interrupting 9:9 Interstate 42:1 introduce 5:11	5:19 32:19 introduction 52:7 invest 64:11 investment 64:7,12,25 65:1 involved 35:5 isolation 48:8 issue 43:10 48:20 53:13 53:14 58:6 60:14 68:15 71:1 72:3 issues 24:10 32:10 49:7 76:6 it'll 38:21 item 9:4 20:9 60:18 63:1 items 49:7	K K-N-I-G-H-T 6:14 Katherine 4:3 5:9 7:4 87:2 Kathy 4:10 6:17 86:25 keep 43:18 55:3 65:9 78:14 86:5 keeping 63:23 key 31:7 61:19 keyed 57:2 kill 40:22 kind 35:6,14 36:17 40:1 50:3 64:1 83:9 Knight 4:12 6:11 6:11,14,14 know 19:22 24:12 25:13 26:22 28:3 29:3,11 37:1 44:13,17 45:4 45:6 47:15,19 47:24 48:4,10 54:25 56:22 58:20,23 60:9,10,11 61:9 61:11,12 62:22 67:1 71:13,19 72:14 73:15 75:16,17,20 75:25 76:14 79:8 81:18 83:14 84:3,6 84:15 85:21 knowledge 24:19 68:12 knows 59:2 Kravetz 4:7 5:15 5:15 6:24 7:8 7:9 21:24 26:2 27:8,11 28:16,24 29:9	29:15 37:20 37:23 38:4,9 38:13,18,22 38:25 39:4,7 39:13,19,24 42:23 44:1,4,8 44:15,20,23 49:10 51:23 52:4,10,17,21 55:12 59:3,7 59:17 60:1,5 60:20 62:7 70:4,6,9,12 86:1,21 87:8,9 88:3	67:19 72:12 legislation 45:12 57:11 59:24 66:23 legislative 46:6 50:17,24,25 52:16 53:7 legislators 64:15 Leon 4:7 5:15 7:8 87:8 let's 21:22 36:8 38:1,16,20 39:1 53:20 73:18 letter 16:23 17:25 letters 35:3 37:2 58:3 level 18:25 19:1 21:12 lies 53:1 lieu 51:17 light 48:4,5 58:17,21 lighted 59:9 78:9 lighting 27:18 40:9,21 53:13 lights 59:6 81:10 limit 36:8 41:10 43:15 50:5 limitations 42:10 43:18 55:7 limited 36:15 37:12 44:18 49:18,21 63:14 74:15 limits 19:18 line 41:1 42:12 42:16 61:13 lined 79:16 listed 32:7,12 74:6 listening 84:3
	J Jeannie 4:6 5:12 7:10 87:10 Jessica 2:10 4:11 6:8,9 11:15 11:25 12:4,11 14:15 27:11 44:2 job 77:23 87:19 87:22 jobs 54:22 Jones 33:22 34:2,11 July 2:5 6:22 jump 33:18 June 12:17 13:23 25:20 26:16 jurisdiction 44:10 82:24 jurisdictional 24:5 Justin 6:5 26:15	L L 2:6 laid 18:6 land 16:17 19:17 50:20,20 51:15 66:19 large 16:3 larger 18:15 45:23 law 3:10,12 10:10,16 26:25 30:10 42:9 43:14 65:9 74:10 lawful 12:5 lawyer 83:9 lawyers 69:24 lease 75:18 leased 26:14 LED 16:3 40:9 40:15 43:15,17 53:10 54:5 61:1 68:8 70:22 71:12 75:4 LEDs 48:3 73:7 73:8,9,9,10 left 5:12 legal 4:8 30:20 51:13 67:2 legislate 45:11		

LISTING 3:14	lower 49:17	meet 67:20	memory 27:12	48:7 49:19
lit 19:12 45:7		72:9	27:15,25 28:2	50:5,5 67:10
literally 23:11	M	meeting 2:5 5:6	mentioned	68:18 71:21
Litigation 1:25	M 12:7 27:9	6:22 9:10	77:17	72:6,19 86:18
4:15 6:20	Ma'am 6:7	15:12 24:9	merits 38:19	Mike 4:12 6:11
little 11:13 29:11	Madam 26:8	60:21 67:7	message 14:5	6:12
33:17 38:21	30:8 53:18	meetings 41:13	14:14 16:3,10	mind 73:9
45:11,12,12	maintain 15:10	84:3	21:14,23 22:16	mini 66:22
55:2 68:21	maintained	Melissa 4:4 5:14	22:23 23:1,16	miniature 41:25
73:11 85:4	22:18	7:6 87:5	24:23 27:14	minor 21:5,6
live 43:4	major 43:2,2	member 4:5,6,7	27:16 31:16,18	minute 31:4
lived 28:9	making 78:25	4:14 5:15,16	31:21,25 32:16	minutes 2:5
located 7:23	malfunction	5:22 6:24 7:9	34:8 35:8	6:22,25 7:15
13:18 31:2	40:22	7:11,13 15:13	37:13 38:2,15	41:12
86:17	malls 78:18	21:24 26:2	39:12,12,14	missing 37:24
location 27:21	manner 8:9	27:8,11 28:16	41:3 42:15	45:15
63:10,11 73:8	mantras 45:6	28:24 29:9,15	43:21,23	mission 18:19
73:13 85:16	manual 24:24	37:20,23 38:4	49:18 50:6	Missouri 1:5
locations 32:1	34:22 56:20	38:9,13,18,22	53:6,10 54:7	4:18 17:23
logo 75:7	56:25 57:2	38:25 39:4,7	54:16 55:19	27:2 30:11
long 12:15 25:3	58:3	39:13,19,24	56:6,11 57:5,8	33:5 89:4,18
longer 83:24	manually 24:11	41:21 42:23	57:9 58:8,12	misspoke 70:11
longest 60:21	24:18 35:16	44:1,4,8,15,20	58:15,24 59:4	mistake 10:17
look 18:11 34:3	55:22 72:9	44:23 46:11,14	63:13,14,21	mitigate 57:18
34:22 41:14	marked 11:7	46:20 47:1,5,9	64:19 65:13	mode 31:16
48:6,7 59:20	massive 41:20	47:16,22 48:1	67:11,15 71:12	modern 40:9
59:22 60:10	Masters 13:3	49:10 51:23	73:16 75:8	modify 15:19
65:23 72:10	material 15:22	52:4,10,17,21	messages 34:9	moment 5:10
74:25 76:11	16:12 28:20	55:12 59:3,7	34:18 38:16	Monarch 23:1
78:16	28:20,25	59:17 60:1,5	39:9 54:8	69:10
looked 20:10	29:12 45:25	60:20 62:7	55:23 56:2	Monday 30:17
76:11	48:10	70:4,6,9,12	58:12	money 85:4
looking 20:3	materials 3:14	81:15 82:10,16	met 19:6 25:12	month 67:7
46:2 50:18	16:1 32:13	83:1,8 84:10	26:14 84:23	months 25:14
58:2	46:3	84:24 85:2,11	method 18:18	66:5
looks 43:5 48:8	matters 32:18	86:1,11,15,21	20:4	monument
55:9	Mayor 15:14	87:9,11,15	methods 64:4	13:18,22 14:5
lot 18:9,10 19:8	16:21	88:3	microphone	14:8,13 20:6
19:10 40:12	mean 8:9 20:17	member's 53:19	82:8	25:21,23 31:2
43:5 48:9 49:1	28:25 45:5	members 2:12	middle 23:22	31:15 32:2,9
50:22 71:8	59:19 62:3	4:2 5:11,18,19	23:23 62:25	40:17 42:4
76:14	63:8 64:1 70:3	5:21 6:6 16:21	79:3	45:19 68:5,8
Louis 4:18 9:2	74:16 80:6	27:6,10 30:8	Midwest 6:19	74:22 78:8
13:15 47:2	86:9	30:23 41:14	7:19,22 13:6	motion 6:23
love 69:19	measures 64:19	76:22 81:9	13:23 14:4	7:15 14:7,11
low 63:23	meat 33:19	83:22 84:20	25:6 27:4	62:8,8 81:13
low-tech 64:6	media 54:24	85:23 86:12	30:20 39:8,11	84:8 86:12,13

CITY OF CHESTERFIELD BOA 12/5/2017

86:16,20 move 6:24 33:25 88:3 movement 82:13 moves 82:22 moving 56:2 63:10 multicolored 27:17 73:21 multiple 44:9 Municipal 9:16 16:25 17:13,19 municipalities 41:2 65:25 municipality 44:17	51:16 52:11,13 63:2,4 74:16 84:7 86:4 needed 10:20 needs 40:23 48:3 51:19,20 51:20 64:8 74:14 negative 84:4 neighborhood 18:15,17 19:12 neighboring 41:1 65:24 never 24:19 42:19 68:18 new 7:17 25:1 34:13 38:10 41:3 48:24 49:12,15 62:11 63:4,8 newer 41:4 nice 35:8 36:20 Nicolaus 56:25 Nodding 16:14 North 4:17 Nos 11:9 Notary 89:3,18 note 8:22 10:17 31:7 87:17 noted 30:19 notes 7:25 89:7 Notice 3:5,6 9:20,23 Notification 10:3 notified 16:23 number 10:5,7 23:14 25:24 33:22 40:8,16 55:17 70:14 numbers 36:11 37:2,12 43:12 58:3 65:17 66:7 69:13 numerals 43:19 numeric 35:21 36:3,11,13,15	37:10 numerical 23:9 O O 5:1 12:7 27:9 27:9 30:13,13 o4 17:14 o8o 88:9 oath 80:18 objections 11:1,4 objective 68:19 obviated 18:18 obviously 11:17 75:21 80:2 occurred 65:21 occurs 79:5 October 14:6 15:12 17:3 offer 10:21 55:3 offered 11:2 offices 30:25 33:5 Oh 70:5 Ohio 65:23 okay 5:3 6:1,5 6:12,15 7:2,14 11:24 12:25 15:4 16:12,18 18:23 21:9 22:6,22 23:20 25:11 26:10 27:8 29:15,17 30:1 33:12 37:19 38:1,17,22 47:5,9,22 57:25 58:5,13 60:15 70:12,15 71:25 73:22 75:10 80:20 81:20 82:1,6 86:10,22 Olive 27:20,24 once 64:11 ones 48:11,11 72:2 online 10:2	open 45:11 62:1 operation 64:6 opinion 19:4,7 opportunity 8:17 33:15 opposed 38:18 opposing 9:9 10:17 11:21 opposition 8:18 76:21 options 68:3,14 order 2:4 5:8 6:21 37:5 60:12 ordinance 9:15 17:25 28:23 34:17 35:19 35:20 36:18 36:22 37:4,7 37:10,15,17 41:16,19 42:14 43:21 46:15 48:12 52:16 53:4,9 54:6 57:10,14,19,20 61:24 63:20 63:25 72:13 74:22 75:3 76:11 79:2,15 83:13,15,18 ordinances 3:4 41:2 original 25:17 25:19 39:21 originally 39:20 39:22 ought 47:10 Outer 13:19 outright 20:21 outside 20:21 65:8,20 owner 19:17 owners 19:17 20:9 owns 47:7 75:17 P	P 2:6 4:1,1 5:1 30:13,13 p.m 1:14 88:8 package 7:22 13:24 14:1,3,7 14:18,25 15:1 20:5,24 23:6 28:19 53:4 61:24 62:12,15 65:4 69:11 71:10,11,20 packet 10:1 PAGE 2:3 3:2 panel 40:8 42:6 49:17,17 panel's 43:17 panels 14:9 16:4 38:16 49:25 50:1 61:2,20 63:4 66:6 paragraph 10:18 parameters 37:4,7 parcel 13:25 pardon 7:23 Parkway 1:4 23:20,22,23 23:24 24:4 44:5,10 54:12 82:19 part 10:22,23 14:3 15:20 23:5 25:2,13 31:3 32:8 41:18 52:14 65:2 68:21 75:4 partial 7:22 17:1 20:5 particular 8:12 18:9 21:5 27:21 85:16 particulars 51:15 parties 5:4 partner 26:25 parts 48:14
--	--	--	--	---

CITY OF CHESTERFIELD BOA 12/5/2017

pass 17:17 82:11	place 9:17	80:4 83:19	81:7,7	11:11 33:11 54:1
passed 14:7	47:24 48:12	85:23 86:11	presentation	70:2
68:11,12	48:12 54:10	86:23 87:25	2:9,13 21:12	proceeding
passing 14:11	63:16 64:5,19	pointed 79:12	30:14 31:6	89:4
path 64:1	89:6	79:18 82:19	32:21 33:14	proceedings
Patsy 1:24 4:16	placed 8:2 10:1	points 31:7,9	39:21 45:15	1:9 2:3 88:7
89:2,17	places 34:10	political 13:2	48:18 63:17	89:7,11
pattern 56:17	40:16	44:13 65:12	66:21 68:17	process 14:1
peculiar 18:9	plain 59:9	polluting 48:5	69:20 70:2	15:17 25:13
Pembroke 33:5	plan 68:19	portion 34:7	75:22 87:18	41:22 46:6
people 43:3	Planned 13:14	75:19	presented 8:10	53:7 61:2
58:19 66:20	planner 4:11	position 12:23	8:16 24:3	62:13 65:3
percent 68:6	12:13,24,24	36:2	55:17,20	67:18,19,20,21
perform 31:20	26:15	positions 12:20	77:24	68:21 71:10
period 49:22	planning 7:21	63:8	presenting 31:4	81:8 84:21
50:6	12:21 13:4 14:6	positive 87:23	31:6	85:9
permanent	14:11,16 15:12	possibility	President	produced 12:5
58:12	15:18,20,22	42:15	30:25	Professional
permission	16:22,23 17:1	possible 61:18	pretend 39:1	89:2
49:20 85:22	18:20 20:5	potential 41:16	pretty 9:18	progress 78:20
permit 36:7,23	21:11 23:6	power 15:14,15	83:12	progressed
43:21 45:19	24:9 28:23	15:16 16:20	previous 18:2	71:20
61:2	41:15,20,21	PowerPoint	32:15 74:21	prohibit 46:17
permitted 14:25	50:9 61:22,23	31:5 32:20	previously 10:6	64:19
16:11 20:20	61:25 62:15	practical 8:6,12	30:19 31:24	prohibited
31:24 65:10	63:3 65:4	17:24 19:5	32:5 43:6	22:16 57:10
person 49:1	68:24 71:9,11	68:3,14	58:17 89:6	prohibiting
personally	71:16 83:10	practically	price 68:8	22:9
85:12,14	84:1	69:10	70:25 73:5,17	prohibitions
petition 7:18 8:1	play 48:15	precedent	prices 73:12	22:19
70:7 85:10	70:24 71:25	52:18,20,23	primitive 29:11	prohibits 46:15
87:25	please 5:23 7:3	53:2,5 56:15	prior 9:9 10:18	46:24
petitioner 2:13	8:14 9:6 12:9	56:15 65:21	13:16,20 14:23	project 12:23
3:13 16:25	28:4 33:1,7	66:21,22	25:3	13:10,11
petitioner's 8:11	35:11 54:1	72:15 84:13,16	probable 9:24	proliferate
10:7 14:12	69:4 70:2 77:1	precisely 63:22	probably 35:4	53:12
26:5 29:25	77:8,15	prefer 57:8	36:6 70:24	proof 19:4
petitioners 8:8	plus 41:10	62:24 74:1	79:15,18 80:5	property 14:2
8:16 76:20	podium 11:15	premise 64:10	81:25 87:20	19:16,17 20:9
ph 78:7	76:25	prepared 5:4	problem 45:14	23:4 25:8,10
phases 40:12	point 10:17 28:11	40:18 41:9	50:13 73:10	31:1 42:4 44:11
picture 45:16	41:11 43:20	87:19	80:3 83:25	51:16 53:1,1
72:18 79:20	44:24 45:15	prerogative	procedural	54:23 68:4,14
pictures 40:3	48:17 53:17	76:13	23:25	propose 74:19
piece 52:25	62:21 63:7	present 4:13	procedurally	proposed 32:2
71:19	65:7 70:7	6:18,20 9:6	61:8	73:14
pitcher 72:16	75:24 79:11	63:17 76:21	proceed 5:5	proposing

CITY OF CHESTERFIELD BOA 12/5/2017

63:22 prosecution 24:13 proved 56:6 provided 16:12 17:16 19:3 provider 10:6 provides 15:17 proving 84:23 public 1:11 9:21 10:2 85:19 89:3,18 publication 3:5 3:6 8:1 9:20 9:22,23,25 pull 69:15,16 71:6 purchase 26:13 purchased 25:8 25:10 purported 18:13 purpose 64:16 67:18 72:4 purposes 62:2 62:19 purview 85:22 push 35:7 36:4 put 15:5 27:13 27:14 28:1,22 34:6 35:8 36:19 37:13 42:16 48:12 49:21,25 56:1 57:8 58:7,15 58:18,21,25 59:9 61:17 62:8,23 63:3 72:17,18 76:2 80:7 85:23 86:3,12 putting 49:1 57:18 59:15 65:25 79:13	question 20:14 26:3 35:10 37:21 44:2 46:10,12 47:10 53:14,19 56:14 59:21 61:8 74:12 80:23 questions 2:11 2:12 11:16,19 12:8 26:6,9,18 27:10 29:16 31:9 66:11 73:25 75:11 80:9,12,16,18 81:9 83:14 quick 62:13 quickly 9:13 61:22 quite 38:14 69:6 76:15 87:18	35:5 43:24 44:10 48:7 49:6 53:10 62:10,16 68:15 72:1 77:23 83:17 85:17 86:9 reason 50:3 52:14 72:14 72:20 83:13 reasons 42:24 receive 24:16 received 24:20 24:21 recitation 55:4 recognize 53:19 recommenda... 18:23 20:2 record 9:12 10:21,23,24 11:2,8 12:10 30:19 33:1 74:3 77:1 81:17 81:19,23,25 88:5 red 69:14 73:8 73:9 redid 78:6 redo 78:4 85:5 redoing 85:8 refer 29:11 reference 13:10 referenced 21:13,19 reflect 32:17 reflects 42:15 refurbish 33:25 regard 44:4 regarding 9:7 15:9 27:11 30:21 32:18 44:9 74:8 86:13 regards 13:10 14:16 15:5 16:19 17:6,9	17:20 18:2,24 24:1,11,24 45:2 48:4 49:8 53:9 62:1 regional 13:3 30:25 regulate 24:6 48:13 regulations 14:2 14:9 regulatory 44:18 Reiter 4:10 6:17 7:2,4,6,8,10,12 86:25 87:1,5,8 87:10,13 related 11:22 relative 8:18 relatively 62:13 relevant 9:23 10:2 11:16,22 12:21 80:18 Reliance 36:12 54:12 65:17 68:9 70:14 79:21 relief 50:21 rely 28:2 remember 27:18 52:3,7 52:22 54:17 83:10 reminded 8:8 renovation 79:4 repaired 40:23 repeat 64:14 65:1 replace 15:8 report 3:7 10:5 18:6 21:19 24:17 Reported 1:23 reporter 2:21 6:19 26:20,22 27:5 33:7 81:16,20 82:9	89:1,3,17 representative 8:4 represents 89:10 reprogram 42:16 request 8:7,17 8:19,21,24 11:22 13:24 14:3,12 15:22 17:2,11,20 19:9 24:22 29:4 32:14 37:7 40:7 55:18 62:23 65:6 75:3 86:16 87:16 requested 8:5 14:4,8 15:11 19:21 23:15 requesting 31:14 requests 61:19 required 10:3 65:3 requirements 15:9 requires 17:23 50:14,21 reservation 75:18 reservations 75:23 reserve 29:23 resolution 42:11 resolved 62:6 respect 63:7 83:18 Respectfully 86:8 respond 50:13 53:19 55:11 69:4 72:23 response 44:25 46:8 51:11 54:2 55:4
Q quasi-judicial 8:9 50:18	R R 1:24 2:6 4:1,16 5:1 12:7 27:9 30:13,13 Rader 4:6 5:12 7:10,11 81:15 82:10,16 83:1 87:10,11 raise 33:7 77:8 ramp 27:22 42:1 rapidly 78:21 read 41:12 46:17 54:24 reader 34:23 35:13,16 reads 63:20 ready 81:12 real 64:17 77:19 reality 44:17 45:18 47:20 51:21 realize 82:23 82:24 really 29:13			

responsibility 8:11 83:23	39:6 41:1 42:11	science 13:3	separate 60:13	28:5,18,21
responsibly 84:2	43:25 44:15	scope 37:15	seriously 43:11	29:1,5 31:2,5
responsive 42:21	48:21 50:23	62:16	serve 14:1	31:15,17 32:2
rest 64:23	53:21 56:15	scores 54:22	Services 1:25	32:9,20 33:4
83:22	57:3 60:1,4	screen 34:6,21	4:15	33:21,21,21,25
restrict 32:9	62:13 64:1	40:11 63:19	set 17:8 36:4	34:3,4,5,8,13
43:17	65:24 66:19	screens 29:6,6	40:19 52:18	34:14,19,22
restriction 27:18	77:8 78:23	script 81:11	52:20,22	37:25 38:15
28:22 75:5	82:3	second 7:1 9:19	53:2 57:5	41:2,16,18 42:1
restrictions 28:1	Road 13:19	86:20,21	59:5 66:16	42:5,9,14,24
32:7 40:19,24	27:24 33:5	Secondly 27:17	84:13 89:12	43:13,20 44:8
41:11 42:18	54:19 68:8,10	seconds 39:17	sets 84:13	45:19,22
48:25 55:7	role 63:13	40:3	setting 56:14	49:15,20 50:2
65:22,25 74:6	roll 2:4 12:15	Secretary 4:10	84:15	50:4,4 51:8
74:7 75:1,25	rotate 39:8	section 16:15	seven 9:10	53:4 54:5,13
76:3,17,17	roughly 13:25	see 18:12 28:5	39:17 40:3	55:16 56:18
83:2 84:12	route 35:25	33:17 34:1	seven-second	56:20,25
retained 3:16	rulings 17:14	43:5,7 56:24	56:4	57:12,13 59:1
reuse 31:16	S	57:17 61:13	shape 14:8	59:10 60:21
32:2	S 2:6 3:1 4:1 5:1	64:23,24 73:5	shock 33:16	61:24 62:11,12
reversal 18:20	27:9,9 30:13	76:12 78:14,17	short 66:4	62:14 65:3,8
reverse 15:19	Sacs' 42:4	78:22 81:11	shortly 31:6 51:5	65:14 68:5,7,9
reversing 18:18	safety 24:10	82:25	show 8:12 34:18	68:10 69:11
20:4	Saks 43:10	seeing 79:3	35:20,21,22	71:5,10,11,12,15
review 13:11	75:18,21	sees 33:18	35:23 36:5,7	71:20 72:17,18
15:14,15,16,17	sat 77:17	self-created	36:8,9,13	72:19 73:6,13
16:20 17:7 18:1	satisfy 61:18	18:12	45:16 73:12	74:10,22 75:7
18:2,12,14	saying 35:12	self-imposed	showing 34:9	75:17,19 79:12
53:7,9	36:19 52:18	43:18 48:25	shows 33:23	79:24 82:11
reviewed 20:1	63:13 72:14	75:25 76:3,16	sic 7:20	82:20 83:10
reviewing 46:3	82:10	83:2	side 34:22 73:11	83:24 84:7
46:3	says 15:2 38:23	self-imposing	sign 13:18,19,21	85:5,8,13
revise 51:25	39:10 63:13	32:7 74:25	13:22,24,25	86:17
revised 17:23	school 24:4	self-limitations	14:3,5,7,8,13	signage 14:1,9
49:16 54:6	44:11,13 54:18	82:12	14:17,19,22,24	16:4 20:7,8
revision 41:16	65:12,14 82:19	selling 71:4	14:25 15:1,8	22:19 42:3,6
51:5	schools 23:23	sells 72:18	15:23,25 16:11	61:18 83:25
right 5:13 6:16	23:24	semantics	16:13 17:2	86:7
9:1 14:15 15:2	Schwalbe 4:5	73:15	19:12,14,23	signs 21:13,14,18
19:17,25	5:16,16 7:12,13	senior 4:11 12:13	20:5,6,18,23	22:9,16,22
22:22 25:21	46:11,14,20	12:24	21:2,22,24	23:8,17 24:11
28:7,9 29:23	47:1,5,9,16,22	sense 45:1	22:7,8,12 23:1	24:24 28:13
33:7 34:20	48:1 83:7,8	50:22 51:13	23:3,5,20	31:25 32:16
37:1 38:20,24	84:10,24 85:2	63:23 64:7	24:1,3,6,13,18	40:17 51:17
	85:11 86:2,15	66:25 67:2	24:22,23 25:7	53:10 59:15
	87:14,15	71:18	25:21,23	71:8 72:8,9
		sentence 64:24	27:21,22 28:1	73:19 78:8

CITY OF CHESTERFIELD BOA 12/5/2017

silly 35:6	small 23:8,11	77:23	27:13,14 56:1	66:20
similar 19:14	48:15 69:12	stance 85:20	56:5	sure 13:13 16:20
38:6 63:17	71:8,19 73:12	stand 5:23	stock 74:23	17:10,13 18:8
78:16	smaller 69:5	48:21	stood 16:22	21:4,7 23:5
simple 29:3	72:3	standard 67:20	68:5	35:19 38:14
simplicity 38:19	Smith-Amund...	68:15	stop 14:15	45:6 48:1 57:7
simply 32:2,14	27:1	standards 18:2	street 4:17	64:21 67:14
42:7	solemn 62:24	19:25 32:18	27:24 54:23	71:13
simular 27:23	somebody 67:4	67:3,25 68:2	73:8,11	surrounding
single 39:13,14	72:13 83:3	stands 57:21	stretched 83:12	20:9 86:7
45:16 69:12,13	somewhat	started 31:11	strict 17:25	swear 33:8
singular 71:4	53:13 76:16	40:2	strictly 27:15	89:5
sir 6:2,7 11:10	sorry 21:9 22:5	starting 9:10	struggling 53:11	switch 40:22
26:6 30:6	42:21 55:9	13:13	student 65:14	sworn 11:15 12:2
33:11 46:13	70:5 82:5	state 8:4 12:10	studied 45:3	12:5 33:2,10
50:10 70:2	sound 75:25	17:8 33:1 44:14	study 41:23	77:1,9,13
72:23 76:22	76:15	64:17 76:25	stuff 45:9 80:7	
77:7,15 80:25	sounds 49:5	89:3,18	subdivision	T
81:5 85:25	76:8	stated 18:19	44:14 54:13	T 3:1 12:7,7 27:9
sit 11:20 53:25	South 27:1	states 10:4 17:14	65:12	30:13,13,13,13
site 13:13 19:13	30:10	static 31:16,17,21	subject 11:21	table 44:21
20:7 71:14	space 26:14	34:9 50:6	13:13 31:1 68:4	57:16 62:18
site's 13:19	45:7 68:6	56:2 58:8,12	submit 45:21	tailored 23:4
site-specific	speak 8:18	58:15,18,19	54:14,20	take 5:10 47:24
14:1	47:20 77:8,11	59:1 79:24,25	submitted 13:24	68:23
sits 8:9	78:20	station 22:25	17:3 19:3	taken 9:2 17:14
sitting 58:25	speaking 69:10	36:12 48:15	29:21 45:24	67:17 89:5,7
67:13,16 83:4	specific 19:8	54:12 65:16	74:3,20	takes 8:23 17:19
84:3	23:15 62:3	69:10,13 71:5	subsequent	41:23
situated 50:20	69:13 71:7	statute 17:8	22:15 26:12	talk 9:9 21:22
51:14,16	specifically 16:8	statutes 10:4	substantiates	25:7
situation 19:21	72:2	17:23	19:9	talked 79:12
73:10 77:24	specifies 42:9	Steinburg 78:7	successfully	talking 50:23
78:3,4,17,18	spend 85:4	stenographic	55:16	59:14 61:22
82:23 85:15	spent 30:16	89:7	suddenly 67:6	76:5
87:21	spots 69:4	step 40:23	suggest 79:13	talks 74:22
six 25:14 84:6	square 23:17,18	65:6	suggestion	tall 23:13
size 13:25 14:8	45:22,23,24	stick 41:9 76:10	79:14	taller 14:24
14:17,19,20	St 4:18 9:1 13:15	Stifel 37:25	Suite 27:2 30:11	20:20
15:10 69:12	47:2	50:4 56:25	summary 47:12	tastefully 86:4
71:7 72:3 73:4	staff 2:9 3:7 4:8	72:18	summertime	team 30:23 31:3
73:13	9:6 10:5,13	Stifel's 42:24	55:21	tech 63:16,19
sized 73:7	18:1,25 19:3	stipulate 9:11	supervision	63:23
skies 76:12	33:18 42:2	stipulated 49:19	89:8	technologies
slide 69:20	59:13,20,22	stipulation	support 61:5	35:6
slides 69:23	60:9 61:4	49:16	suppose 50:8	technology
slight 85:3,5	68:23 76:2	stipulations	supposed 66:14	31:22 32:3

34:25 36:10	tenants 48:20	83:4,20,23	times 67:7	turn 81:10
38:10 40:9,15	49:21 75:18	84:2,4 85:2,12	84:12,15	twice 57:24
41:4,8 43:15,17	75:23	85:14,14,17,18	timing 76:5	two 21:4,5 31:4
45:2,3 46:4	terms 55:1	85:20,21 86:2	today 9:21 10:8	47:16 48:13
47:25 48:3,21	testifies 12:6	86:4 87:18,21	57:14 78:10	50:1 61:20
49:12,15 51:18	testimony	thinking 65:13	81:7	69:4 73:6
54:5,10,11	29:25	thinly 76:16	told 84:14,14	76:7 84:5,7
55:6,23 59:11	thank 6:1,15	third 69:15	tongue-in-ch...	type 16:4 24:17
61:1,15,19 63:4	10:25 11:10	thought 15:25	80:25	35:13 45:3
65:10,16,19	12:9 26:19	33:12 46:17	tonight 13:8	47:25 48:22
66:3,25 67:13	27:5 30:3,7	three 21:5 73:5	16:19 20:2	49:8 59:11,15
67:14 68:8,13	32:22,23	73:12 84:7	23:16 30:22	62:24 63:21
68:25 71:3,15	33:11,15 54:3	throw 44:21	31:8 33:16	72:8 78:22
75:4,4,9 76:12	55:12 60:17	49:10	62:6,17 63:1	85:13 86:7
78:10 79:16	72:22 73:22	ticker 74:23	67:18 77:17	types 22:9
85:1	76:18 77:2,2,3	tides 51:20	tonight's 62:19	typical 19:10
teenagers	77:4,14 80:7	time 5:5,7 11:19	top 34:1,7 38:14	typically 18:8
54:18	80:14,20,25	22:10,12 24:16	topography	
television 40:11	81:1,2,4 88:2	25:3 26:9,18	18:10	U
tell 51:23 78:6	thing 33:19	27:13 28:11	total 23:18	U 2:6
79:24 83:16	48:16 49:11	31:15,17,21	28:12 79:4	UDC 14:18,20
tem 38:11	50:15 59:9	33:23 34:11	totally 73:1	15:2 16:6,7,9
temp 34:11 36:8	73:18 77:25	35:17 36:6,8	tough 87:20	22:15 28:22
38:5 39:2,21	79:17	36:11,13,14,14	tracking 64:1	43:13 46:19,21
40:2 42:25	things 21:5 24:8	38:5,11 39:2	traded 34:10	46:22 63:13
43:16 45:20	33:17 44:9	39:21 40:2	trades 65:17	ultimately 45:14
45:21,25 46:1	47:19 50:23	41:10,22 42:13	traditional	45:25 48:20
48:18,19 49:13	52:7 74:16	42:17,24 43:13	63:23	50:24 61:15
50:3 55:10	76:14 77:16	43:16,19,24	traffic 27:19,23	62:6 68:24
59:4 71:22	78:2 79:5	45:20,21,24	transcribed	71:23
temperature	83:10	46:1 48:18,19	89:8	Um 39:23
31:16,21 33:23	think 17:3 19:19	49:13,15 50:3	transcript 1:9	understand
35:17 36:6,11	19:20 23:12	50:7 53:18	89:10	29:4 45:1,8
36:13,14 43:13	27:22 35:4,18	54:5,8 55:8	travel 31:18	46:14 52:9,13
43:19,24 68:9	38:21 45:14	55:10,18 56:4	tree 43:9	57:7 58:6
74:9,24 75:2	45:23 47:19	56:6 57:1 59:1	trees 43:8	64:9,21 66:24
75:6,7 79:24	49:5,13,24	59:3,10 60:17	trimming 43:9	68:23 71:3,10
temporary 31:18	52:10,21 56:3	61:16 65:19	true 89:10	71:20 75:17
41:10 42:13,17	58:20 59:21	67:8 68:9,22	truly 48:16	76:8,10 77:19
54:8 57:1	60:12 61:5,25	71:22 72:8	83:23	understanding
74:21	62:2,10,14	74:8,21,23	trust 49:1	24:2 37:8
ten 69:2	63:19 64:3,14	75:1,5,7 76:24	trying 40:13	39:20,25 57:1
tenant 34:2,12	70:17 71:23	78:9 79:9,24	41:24 53:10	undue 19:23
38:23 39:1	73:2 76:15	79:25 80:1,6	54:20 55:11	unfairly 40:10
43:10,16	77:22,23,25	81:3,14 84:1	57:18 73:12	unfavorable 9:1
48:23,24	78:16 80:5,5	85:23 89:6	79:2	unfortunately
49:19 71:22	81:23 82:14,18	timeframe 39:17	Tuesday 60:18	69:18

CITY OF CHESTERFIELD BOA 12/5/2017

Unified 14:10 15:9 16:16 22:18 46:16,19 unique 18:9 uniqueness 52:25 unit 59:4,8 United 10:4 Unlimited 21:21 21:22 22:1 unnecessary 17:24 19:5 55:20 unprecedented 41:25 upcoming 78:17 update 43:21 51:20 61:19 67:12 75:4 updated 32:3 42:14 43:15 75:9 78:14 updating 41:16 74:10 upper 40:8 43:17 49:17 61:20 urban 13:3 78:2 78:23 79:9 use 19:17 27:17 31:12,15 32:8 35:24 51:2 54:6 58:25 59:11 63:14,25 64:7 66:19 68:3,13 72:4 73:14,21 86:2 uses 68:1 utilized 31:22 69:1 utilizes 32:3	78:5,7,19 79:8 vandalism 24:10,17 variance 3:8 8:5,14,19,24 10:10,16 15:2 17:12,21 18:19 18:21,25 19:9 19:16 20:2 22:11,13 23:15 24:22 30:21 31:14,20 32:14 34:17,21 36:7 36:25 37:11,17 37:18 40:7 42:8 45:10,24 48:22 49:9 50:13 52:25 55:6,18,25 60:12 61:11 62:2,4,10,16 65:6 66:14,18 69:12 75:5 83:17 86:17 87:4 variances 19:21 66:15 variations 14:18 various 31:25 vary 67:20,21 71:15 Vegas 42:1 veiled 76:16 verbalize 18:6 verify 56:5 66:13 version 10:19 versus 57:20 VICE-CHAIR 5:14 7:1,7 66:12 74:11 87:6 Vice-Chairwo ... 4:4 video 23:17 29:5,6 40:11 45:16,17,20	48:16 51:2,2,4 51:17,21 53:16 54:9 59:15 70:14,17,21,24 71:4,12,24 72:17 73:16 74:14 videos 45:18 48:15 71:25 view 84:4 viewing 17:20 visible 19:13 43:2 visit 33:15 vote 2:18 7:3 8:22 83:16 84:4 86:8,14 87:3,9,11,15 voted 86:24 votes 8:23 W wait 68:22 Walgreen 31:13 walk 51:8 want 5:18,19 6:6 10:12,14 13:5 27:19 29:4,18 34:18 35:23 38:10,13 39:17 45:20 47:20 48:19 51:8 53:6 56:18 57:4,17,23 58:15,16,18,21 59:23 61:10 62:5,18 63:9 64:6,7,11,14,16 65:1 66:12 67:14 71:18 72:7,10,20 80:2,4 81:17 81:19 82:7 86:15 wanted 33:13 36:5 40:25 44:21 46:7	65:5 70:23 78:13 80:23 85:18 wanting 38:4 74:13 wants 72:17 Ward 15:14 21:21 76:22 Warning 30:24 Warren 31:5 32:20 33:4,21 wash 71:17 wasn't 56:8 77:10 watching 83:4 water 18:11 way 17:24 21:1 31:19 33:17 34:5 36:1,17 40:24 41:17 41:24 50:20 51:16,19 53:1 55:16 58:17 62:24 65:25 75:17 77:17 79:14 85:17,19 we'll 7:17 33:18 36:3,8 58:24 75:5 79:6 82:7 we're 9:11 10:8 11:13 13:7 16:19 33:24 34:24 35:9,9 36:1,15 36:19,25 37:11 37:18 38:7 40:23 41:19 41:24 42:1,18 42:19 43:11,25 46:3,3 48:19 50:23 52:14 54:14,25 55:9 58:7,21 61:15 63:22 65:7,21 67:15 68:5 72:12,12 73:11 73:12 74:23	79:2 we've 40:3,12 42:2 45:5 59:1 68:13,16 74:3,6,20 84:11,14 weeks 66:4 84:7 weight 9:18 welcome 39:11 50:5 went 78:8 West 1:4 44:5 54:13 whatnot 24:13 71:23 whatsoever 41:7 51:7 WHEREOF 89:12 whichever 49:18 white 73:9 wide 23:13 Wild 68:10 willing 60:2,5 66:2 willingness 74:5 wintertime 55:21 wish 26:6 72:23 74:7 75:13 76:23 wishes 76:21 withdraw 62:3 62:21 70:7,10 witness 2:10 11:24 12:1 20:19,23 21:3 22:1,4 26:7 29:19 30:4 33:9 77:12 80:12,16 89:12 witnesses 9:7 29:21,25 wonderful
---	--	---	---	--

63:19	Z	36 2:16	15:12
word 10:20 37:1	zoned 13:14	4	9.13 23:13
40:14 70:10	zoning 3:4 9:15	4 3:7 10:5 16:16	93 78:4
86:2	13:15	40 13:19 27:22	
wording 66:7,7	0	85:14	
words 35:24	03-2017 2:7	40/64 43:3	
38:12 40:14	7:19 9:5,7 13:5	5	
work 61:3 64:17	1	5 1:13 2:4 3:8	
67:1,12 84:5	13:4 9:14 11:9	5:2,8 10:7	
87:22	21:21	50 55:22 68:6	
workable 61:5	10 3:6,7,8,9,11	500 2:7 7:19,23	
worked 28:6	31:12 65:11	9:5 13:5 31:1	
78:7	12 2:11 65:11	86:17	
working 24:7	120 27:1 30:10	6	
40:8 41:19	180-degree	6 2:5,5 3:9 6:22	
66:4	48:3	10:11	
works 41:22	1973 13:16	6:00 1:14	
world 49:2	1988 13:17	60 62:21	
wouldn't 34:20	2	63017 1:5	
34:20	2 3:5 9:19 15:14	63101 4:18	
wound 77:20	2.25 13:25	63105 27:3	
wrong 35:20	20 17:3 35:3	30:12	
wrote 47:7	2005 22:14	644-2191 4:19	
Wyse 6:3,5	56:9	690 1:4	
X	2013 12:17	7	
X 2:2 3:1 12:7	2017 1:13 2:5	7 3:11 10:15,18	
27:9	5:2,8 6:22	11:9	
Y	13:23 14:6	7:39 88:8	
Yeah 11:12 22:6	15:12 17:3	70 23:17,18	
37:9,16 44:22	2018 89:21	45:24	
44:24 48:6	21st 41:3,4	70-square	
59:18 60:24	23 16:25 17:13	57:12 71:24	
61:21 69:17	24 45:22,23	700 27:2 30:11	
82:2 83:8	24-square 73:5	711 4:17	
84:19,24	25.13 23:13	8	
year 26:16	26 89:21	8 10:3	
68:12 84:5	27 2:12	81 2:17	
years 12:18,19	3	86 2:18	
24:7 25:24	3 3:6 9:22	88 2:20	
30:17 33:22	30 2:14 9:3	89 2:21 17:22	
47:17 55:17,22	314 4:19	9	
65:11 68:5	32 3:14	9 3:4,5 14:6	
69:2 78:21	33 2:15		
79:4 83:25			