

FOR THE CASE OF  
Prevailing Wage Commission Meeting

TRANSCRIPT OF  
Prevailing Wage Commission Meeting

December 1, 2016

*Stone & George*

COURT REPORTING

2020 Fieldstone Pkwy

Suite 900 - PMB 234

Franklin, TN 37069

(615) 268-1244

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or send an email to [nangeorge@stoneandgeorge.com](mailto:nangeorge@stoneandgeorge.com)

Page 1

1. STATE OF TENNESSEE  
 DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
 2. WORKER'S COMPENSATION DIVISION  
 3.  
 4.  
 5.  
 6.  
 7.  
 8. Transcript of Proceedings  
 of  
 9. The Prevailing Wage Commission Meeting  
 10. December 1, 2016  
 11.  
 12.  
 13.  
 14.  
 15.  
 16.  
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 20.  
 21.  
 22. -----  
 23. DOMINIQUE A. DUBOIS, LCR# 686  
 STONE & GEORGE COURT REPORTING  
 24. 2020 Fieldstone Parkway  
 Suite 900 - PMB 234  
 Franklin, Tennessee 37069  
 25. (615) 221-1089

Page 2

1. APPEARANCES  
 2.  
 3. Commissioner Burns Phillips, Chairman  
 4.  
 5. Commissioner Wayburn Crabtree, TDOT Designee  
 6.  
 7. Commissioner Stephen Wright  
 Wright Brothers Construction Company, Inc.  
 8. Commissioner Peter L. Heimbach, State Architect  
 9. Dan Bailey, Esq., Legal Counsel  
 10. Christina Tugman, Inspector  
 11. Jan Caudill, Assistant  
 12. Kent Starwalt, TRBA  
 13. Carolyn Shirrod, Department of Labor and Workforce  
 Development  
 14.  
 15.  
 16.  
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Page 3

1. AGENDA  
 2. I. Call to Order and Roll Call  
 3. II. Announcements  
 4. III. Conflict of Interest Declaration  
 5. IV. Old Business  
 6. \* Review and Approve November 17, 2016  
 7. Prevailing Wage Commission Meeting Minutes  
 8. V. New Business  
 9. \* Review and Discuss the Revised  
 10. Preliminary 2017 Prevailing Wage Rates for State  
 11. Highway Construction Projects  
 12. \* Set Rates for 2017 Prevailing Wage for  
 13. State Highway Construction Projects  
 14. \* Discuss future Prevailing Wage Meeting  
 15. dates for 2017  
 16. VI. Adjournment  
 17.  
 18.  
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Page 4

1.  
 2.  
 3. PROCEEDINGS  
 4. CHAIRMAN PHILLIPS: Okay. We have  
 5. the roll call. Right? Call to order and roll call.  
 6. All right?  
 7. MS. CAUDILL: Uh-huh.  
 8. CHAIRMAN PHILLIPS: Me do that?  
 9. MS. CAUDILL: Sure.  
 10. CHAIRMAN PHILLIPS: Or you do that?  
 11. Wayburn Crabtree.  
 12. MR. CRABTREE: Present.  
 13. CHAIRMAN PHILLIPS: Peter.  
 14. MR. HEIMBACH: Here.  
 15. CHAIRMAN PHILLIPS: He's not --  
 16. Stephen.  
 17. MR. WRIGHT: Here.  
 18. CHAIRMAN PHILLIPS: R.T.'s not here.  
 19. Okay. Do I need to read that announcement again  
 20. about the -- I have to read that, right? Okay. In  
 21. the event of an emergency or natural disaster,  
 22. security and/or staff will take meeting attendees to  
 23. a safe place in the building or direct them to exit  
 24. the building on the Rosa Parks side. Okay?  
 25. MR. BAILEY: I would recommend the

Page 5

1. words "or natural disaster" be eliminated from it.  
 2. CHAIRMAN PHILLIPS: Okay.  
 3. MR. BAILEY: Because an emergency is  
 4. an emergency, right?  
 5. CHAIRMAN PHILLIPS: Well, that's  
 6. right.  
 7. MR. HEIMBACH: Yeah.  
 8. MS. TUGMAN: Okay.  
 9. CHAIRMAN PHILLIPS: Natural or not,  
 10. right?  
 11. MR. BAILEY: That's right.  
 12. CHAIRMAN PHILLIPS: Okay.  
 13. MR. BAILEY: It doesn't matter.  
 14. CHAIRMAN PHILLIPS: We'll make that  
 15. change next time.  
 16. MR. HEIMBACH: Yeah, I don't think we  
 17. need to vote on that.  
 18. MR. WRIGHT: We don't need to vote on  
 19. that one.  
 20. MR. BAILEY: No, no, no.  
 21. CHAIRMAN PHILLIPS: We'll just do  
 22. that under the table. No. Anybody have anything  
 23. else to declare since, what, two weeks ago?  
 24. Conflict of interest. Okay.  
 25. MR. WRIGHT: No, sir.

Page 6

1. CHAIRMAN PHILLIPS: Old business.  
 2. Motion to approve the minutes from the last meeting?  
 3. MR. WRIGHT: So moved.  
 4. CHAIRMAN PHILLIPS: Second?  
 5. MR. CRABTREE: Second.  
 6. CHAIRMAN PHILLIPS: Okay. Motion  
 7. carries. New business. Any discussion on the  
 8. revised rates? Wayburn, I think you have a  
 9. question.  
 10. MR. CRABTREE: Yes, sir. When we  
 11. went through these last time, Mr. Summers read out  
 12. his recommendation and, I guess, voted on and  
 13. approved all of them. There's a couple of them  
 14. that, in my simple mind, didn't really follow our  
 15. logic. And a couple of those there are Craft 15 and  
 16. 16 where, if I understand this, now, we're proposing  
 17. to leave those two at the 2016 rate. However, note  
 18. three here says, inspection survey responses. Okay?  
 19. That the '17 rate would be this plus or minus the  
 20. State average, which in this case is 4.06 percent,  
 21. which is what we did on all the rest of them.  
 22. So I'm a little -- I didn't really  
 23. understand and still don't understand why we  
 24. should consider these differently than all the  
 25. rest of them. That's a question.

Page 7

1. MR. WRIGHT: I have no answer, sir.  
 2. CHAIRMAN PHILLIPS: I have no answer,  
 3. either.  
 4. MR. CRABTREE: Well, unless someone  
 5. has an objection, I would move to make those two,  
 6. and maybe the survey instrument operator, too --  
 7. although I understand that's --  
 8. MR. WRIGHT: Yeah.  
 9. MR. CRABTREE: -- the issues with  
 10. that one -- the same -- to apply the same philosophy  
 11. as we did with the others and increase those by  
 12. 4.06, also.  
 13. CHAIRMAN PHILLIPS: Okay. Second on  
 14. that motion?  
 15. MR. WRIGHT: I would second that --  
 16. MR. HEIMBACH: Well, I have a  
 17. question on that. The others -- the deviation I see  
 18. from what was in there -- and I noticed that as well  
 19. and kind of scratched my head on it a little bit.  
 20. The percent change from the survey for the previous  
 21. year is negative on those two categories, whereas  
 22. all the other ones where it was raised by the  
 23. average was what showed an increase. I would almost  
 24. think that on 15, if we followed the logic last  
 25. time, you'd have to show a decrease of 4.06 to the

Page 8

1. painter, sandblaster craft.  
 2. MR. CRABTREE: But there's an  
 3. insufficient number of responses. Therefore --  
 4. CHAIRMAN PHILLIPS: That's the --  
 5. MR. CRABTREE: -- those are not  
 6. considered. The surveys themselves --  
 7. MR. HEIMBACH: Right. But the --  
 8. MR. CRABTREE: -- are not considered.  
 9. MR. HEIMBACH: The note number three  
 10. says, the rate is set at the prevailing wage 2016  
 11. rate plus or minus the State average. And if I'm  
 12. not mistaken, what we've done in the past is if the  
 13. survey, even though there were insignificant  
 14. responses, if the responses were negative, it was  
 15. set minus 4.06. If the responses were positive, it  
 16. was set plus 4.06. I didn't -- is that --  
 17. MR. CRABTREE: Well, I would take  
 18. issue --  
 19. MR. HEIMBACH: Is that accurate to  
 20. what we've done in years past?  
 21. MS. TUGMAN: It is. I mean, you --  
 22. MR. CRABTREE: I would take issue  
 23. with that, though, because there's an insufficient  
 24. number of responses and if there's an --  
 25. MR. HEIMBACH: Right.

Page 9

1. MR. CRABTREE: -- insufficient number  
2. of responses, then we don't consider the survey  
3. rates at all.  
4. MR. HEIMBACH: Except in the positive  
5. or negative sects. We don't consider the actual  
6. percentage but we do consider whether they've gone  
7. up or down.  
8. MR. CRABTREE: I'm going to have to  
9. read the rule. I don't --  
10. MR. HEIMBACH: And that's --  
11. CHAIRMAN PHILLIPS: Yeah.  
12. MR. HEIMBACH: That's my recollection  
13. from what we did in years past. And I would think  
14. that if we did that, you know, 16, I would say since  
15. the change was only negative .46 that it'd be best  
16. left alone or raised and I don't know that we can  
17. raise it other than just from a -- I mean, we can  
18. from a vote, I assume.  
19. MR. BAILEY: Yes, sir.  
20. MR. HEIMBACH: But because Craft 15  
21. diminished by 18 percent, even though there was only  
22. one response, it still was negative. And I'm not  
23. saying what my preference is one way or the other,  
24. because I hear what you're saying about it seems  
25. odd, especially in this economy right now, to reduce

Page 10

1. any prevailing wage. I'm just trying to compare it  
2. back to what we've done so we don't -- if we're  
3. going to break a precedent, we do it consciously  
4. rather than --  
5. MR. CRABTREE: Well, we broke a  
6. precedent when we decided to raise all of these by  
7. State average.  
8. MR. HEIMBACH: Okay.  
9. MR. CRABTREE: You know, the  
10. precedent's already broken.  
11. CHAIRMAN PHILLIPS: And you have --  
12. don't you have to make a decision based on just one?  
13. MR. HEIMBACH: Yeah. I definitely  
14. agree with that.  
15. CHAIRMAN PHILLIPS: Yeah.  
16. MR. HEIMBACH: That's why I said this  
17. isn't -- I'm not expressing my opinion of what we  
18. should do. I'm trying to compare what we're  
19. proposing to do with what we've done in the past.  
20. MS. CAUDILL: Well, and that's why I  
21. left them at the current rate, because I looked at  
22. last year's numbers and when there was a negative  
23. number, that is what you did. You left it at the  
24. current rate.  
25. MR. HEIMBACH: Right.

Page 11

1. MS. CAUDILL: Which is why there's a  
2. zero percentage. And as far as classification  
3. number 15, you've got it at number three, but then  
4. you also have asterisk, you know, number one, which  
5. says if it's larger than 15 percent, it doesn't fall  
6. under any of the above categories. So it's kind of  
7. your choice to make it what you want.  
8. MR. HEIMBACH: Right.  
9. MS. CAUDILL: So that's why I looked  
10. at the past years' records to see what you did do  
11. when it fell that far, that high of a percentage and  
12. they were left at the current rate.  
13. MR. CRABTREE: I would still argue  
14. that since it was an inadequate number of responses  
15. that that should not be considered at all. Now, on  
16. the positive and negative, I don't know, I'd have to  
17. read the rule to see if it specifically says that.  
18. I think it just says or responses, I think.  
19. MR. HEIMBACH: For the -- yes, for  
20. the -- to my recollection, for the number of  
21. responses that we have to have in order to consider  
22. an adequate survey, there has to be at least five, I  
23. think, to consider it an adequate survey. And when  
24. it's below that number, I don't think there's a rule  
25. that pertains to whether we do it. It's purely

Page 12

1. precedent to what we've done in the past, I believe.  
2. MR. BAILEY: I believe you're right.  
3. I can look at the rule real quick, but I don't think  
4. the rule spells it out.  
5. MR. HEIMBACH: Which is why -- make  
6. it very clear, it's not my opinion, it's -- I'm just  
7. trying to --  
8. MR. BAILEY: That may be. But --  
9. CHAIRMAN PHILLIPS: Let Dan look at  
10. it and see what -- I think there's positives and  
11. negatives to each side. Really, I think what it is  
12. is we can do open -- pretty well on both. So --  
13. and, you know, he's got a valid argument; you've got  
14. a valid argument, unless the rules, you know,  
15. dictate otherwise.  
16. MR. CRABTREE: Well, if someone asked  
17. me to defend what we've done here, it would be  
18. easier for me to defend increasing those than it  
19. would for me to explain why we've made an exception  
20. there.  
21. MS. CAUDILL: Well, while he's doing  
22. that, are there any questions on Classification  
23. Number 13? Because it was over the six percent, I  
24. brought it back down to the 4.06.  
25. CHAIRMAN PHILLIPS: Well, that's

Page 13

1. consistent with what we did on the others. So I  
2. don't know what's your vision. So anybody have any  
3. questions on that while we're --  
4. MR. HEIMBACH: Number --  
5. CHAIRMAN PHILLIPS: 13.  
6. MR. HEIMBACH: -- 13?  
7. MS. CAUDILL: 13.  
8. MR. HEIMBACH: Okay.  
9. MR. WRIGHT: Is it not changing to  
10. nine percent?  
11. MR. HEIMBACH: It's --  
12. MR. CRABTREE: Survey rate minus six  
13. percent.  
14. MR. HEIMBACH: It's six percent.  
15. Yeah. It's the survey --  
16. MR. CRABTREE: So that would be --  
17. MR. HEIMBACH: It's the increase  
18. minus the six percent of the current prevailing wage  
19. rate, not an increase of six percent.  
20. MR. WRIGHT: All I could add about  
21. that particular class is industry standard for a  
22. company like ours to hire a heavy-duty real  
23. mechanic, \$22 an hour, or 23, for that matter, is  
24. not even -- it's closer to 30 plus -- the guys you  
25. see in the Caterpillar trucks, they've all got a

Page 14

1. three in front of their first --  
2. MR. HEIMBACH: And then --  
3. MR. WRIGHT: So everything we can do  
4. to increase that prevailing wage will get it closer  
5. to that number being relevant.  
6. MR. HEIMBACH: And I would expect  
7. that to be the case in most of these --  
8. MR. WRIGHT: That's --  
9. MR. HEIMBACH: -- categories because  
10. these set --  
11. MR. WRIGHT: That's just a fact to  
12. the --  
13. MR. HEIMBACH: -- minimums. Yeah.  
14. Well, these set minimums. So --  
15. MR. WRIGHT: Understand.  
16. MR. BAILEY: The rule does address  
17. it. It's 0800-3-2-.08, paragraph seven. It says,  
18. in any classification of a craft of workers listed  
19. on the prevailing wage survey form where four or  
20. fewer separate survey responses are received, these  
21. responses may be excluded from establishing the  
22. rates.  
23. MR. HEIMBACH: Okay.  
24. MR. BAILEY: So it's not mandatory.  
25. MR. HEIMBACH: Right.

Page 15

1. MR. CRABTREE: Okay.  
2. MR. HEIMBACH: But does it give any  
3. guidance as to how we make an adjustment in those  
4. cases or is it purely up to our discretion?  
5. MR. BAILEY: It says, where the data  
6. is excluded, the Commission may continue the rate in  
7. existence at the time of the survey or adjust it  
8. pursuant to T.C.A. Section 12-4-405, paragraph four,  
9. which is the plus or minus six.  
10. MR. HEIMBACH: Okay. So we do  
11. have --  
12. MR. CRABTREE: So that would be my  
13. motion to --  
14. CHAIRMAN PHILLIPS: Right. That's  
15. the motion to --  
16. MR. HEIMBACH: So we do have broad  
17. discretion.  
18. MR. CRABTREE: Honestly, it's about a  
19. State average as we did all the others.  
20. MR. HEIMBACH: Okay.  
21. MR. WRIGHT: Did we call for  
22. questions?  
23. CHAIRMAN PHILLIPS: So we have a  
24. motion and we have a second.  
25. MR. HEIMBACH: Okay.

Page 16

1. CHAIRMAN PHILLIPS: Everybody in  
2. favor?  
3. MR. WRIGHT: Aye.  
4. MR. CRABTREE: Aye.  
5. CHAIRMAN PHILLIPS: Aye.  
6. MR. HEIMBACH: Aye.  
7. CHAIRMAN PHILLIPS: It carries.  
8. MR. HEIMBACH: So we're -- the motion  
9. was to increase 15 to 16 by the 4.06, the State  
10. average percentage, correct?  
11. MR. CRABTREE: Yes, sir.  
12. MS. CAUDILL: So that would be 27.43  
13. and 20.58.  
14. CHAIRMAN PHILLIPS: Yeah. So it's --  
15. yeah. So it's consistent on what we did on the  
16. others.  
17. MR. WRIGHT: Did your motion include  
18. the rate to Craft 18, Wayburn?  
19. MR. CRABTREE: No, sir.  
20. MR. WRIGHT: Okay.  
21. MR. CRABTREE: So if you want to --  
22. MR. WRIGHT: No. I just -- no. I  
23. just --  
24. MR. CRABTREE: Because I really --  
25. MR. HEIMBACH: And that rate actually

1. is already done that way. I think the 4.04 is  
 2. because we're rounding error.  
 3. MR. WRIGHT: Yeah.  
 4. MR. HEIMBACH: If you do --  
 5. MR. WRIGHT: No. Number 18 -- I'm  
 6. sorry, what --  
 7. MR. HEIMBACH: Oh, I -- I'm sorry.  
 8. CHAIRMAN PHILLIPS: You're talking  
 9. about the survey instrument operator.  
 10. MR. WRIGHT: Yeah. That's fine.  
 11. MR. CRABTREE: Do we need to consider  
 12. sometime rewriting the description for that one to  
 13. bring it up to --  
 14. MR. WRIGHT: It's my personal  
 15. opinion, yes, but I don't know exactly what to call  
 16. it.  
 17. CHAIRMAN PHILLIPS: Y'all want to --  
 18. MR. WRIGHT: Well, maybe you need to  
 19. read the description because most of --  
 20. MR. CRABTREE: It says "survey  
 21. instrument." That's kind of generic.  
 22. MR. WRIGHT: Yeah. Yeah.  
 23. MR. CRABTREE: It doesn't really say  
 24. "transit." It says "survey instrument," so that  
 25. could be a total station.

1. MR. WRIGHT: They're -- most of the  
 2. deal there seems to be, you know, your survey crew  
 3. of the 80s and 90s had three to five people in it.  
 4. And now it's one.  
 5. MR. HEIMBACH: Yeah.  
 6. MR. WRIGHT: To walk around with a  
 7. little magic stick and --  
 8. MR. HEIMBACH: Yeah. You set the  
 9. computer out in the middle of the field and --  
 10. MR. WRIGHT: So he's the --  
 11. MR. HEIMBACH: -- it does everything.  
 12. MR. WRIGHT: He's the crew leader,  
 13. party chief, the foreman, the superintendent. I  
 14. don't know exactly if there's -- I'm sure he's  
 15. classified as something other than a survey operator  
 16. to the -- which I don't know. I'll ask some other  
 17. folks I know and see what they think and get back to  
 18. you on that.  
 19. MR. CRABTREE: That'd be good.  
 20. MR. HEIMBACH: That is a good point,  
 21. though. Technology changes a lot when you start  
 22. looking at who's doing what.  
 23. CHAIRMAN PHILLIPS: That might  
 24. actually apply to several of these, really, in terms  
 25. of accurate description. They just don't get logged

1. on that. Okay. So motion carried on -- so now, we  
 2. need a motion to approve these rates.  
 3. MR. WRIGHT: So moved, sir.  
 4. CHAIRMAN PHILLIPS: Second?  
 5. MR. CRABTREE: Yeah. Motion carries.  
 6. MS. CAUDILL: What did you decide to  
 7. do on 13? Are we leaving it at the --  
 8. CHAIRMAN PHILLIPS: We're leaving it.  
 9. MS. CAUDILL: We're leaving it at the  
 10. survey rate or at the 22.34?  
 11. MR. HEIMBACH: I think it was to  
 12. leave it as you --  
 13. MR. WRIGHT: As published with  
 14. your --  
 15. CHAIRMAN PHILLIPS: Leave it as --  
 16. MR. HEIMBACH: -- as you have it  
 17. published.  
 18. MR. WRIGHT: Like the fun work you  
 19. did.  
 20. MS. CAUDILL: Thank you. Okay.  
 21. 22.34.  
 22. CHAIRMAN PHILLIPS: Okay. Discuss  
 23. future Prevailing Wage Meeting rates. Did we come  
 24. up with 2017? Meetings, not the rates.  
 25. MR. HEIMBACH: Dates.

1. MS. CAUDILL: Oh. Well, the ones  
 2. that I had sent out, everybody was fine with those  
 3. with the exception, I think, Mr. Heimbach needs --  
 4. if we do it -- we've got August meetings set for the  
 5. 30th and then we had the second meeting set for the  
 6. 15th of November and the third meeting set for the  
 7. 30th. The only conflict that -- or really, not even  
 8. a conflict -- Mr. Heimbach would need the meeting on  
 9. the 30th to be in the afternoon. Now, if you would  
 10. all prefer a.m. meetings, we could bring it back to  
 11. the 29th or --  
 12. MR. HEIMBACH: Right. And I just --  
 13. that happens to fall on a Thursday. So I have a  
 14. standing Thursday morning meeting relative to the  
 15. building commission that I can't move off of.  
 16. CHAIRMAN PHILLIPS: Anybody have a  
 17. problem --  
 18. MR. HEIMBACH: So as long as we can  
 19. meet in the afternoon, that's --  
 20. CHAIRMAN PHILLIPS: I'm with whatever  
 21. y'all want to do.  
 22. MS. CAUDILL: Leave it in the  
 23. afternoon on that date? So do we want to go 9:30 on  
 24. August 30th and then 9:30 on November 15th and then  
 25. 1:30 on the 30th?

- 1. CHAIRMAN PHILLIPS: Okay, I think, by
- 2. everybody, right?
- 3. MR. HEIMBACH: That's fine with me.
- 4. MS. CAUDILL: Okay.
- 5. CHAIRMAN PHILLIPS: Okay.
- 6. MR. WRIGHT: I assume you go publish
- 7. that at some point.
- 8. MS. CAUDILL: Yes, sir.
- 9. MR. WRIGHT: I booked the whole day.
- 10. CHAIRMAN PHILLIPS: Okay. Motion to
- 11. adjourn?
- 12. MR. WRIGHT: So moved.
- 13. MR. HEIMBACH: So moved.
- 14. MR. CRABTREE: Second.
- 15. MR. HEIMBACH: Third.
- 16. CHAIRMAN PHILLIPS: We're adjourned.
- 17. END OF PROCEEDINGS.
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- 1. C E R T I F I C A T E
- 2.
- 3. STATE OF TENNESSEE )
- 4.
- 5. COUNTY OF WILLIAMSON )
- 6.
- 7. I, Dominique A. Dubois LCR# 686,
- 8. a Notary Public in the State of Tennessee, do
- 9. hereby certify:
- 10.
- 11. That the within is a true and accurate
- 12. transcript of the Prevailing Wage Commission
- 13. Meeting taken on the 1st day of December, 2016.
- 14.
- 15. I further certify that I am not related to
- 16. any of the parties to this action, by blood or
- 17. marriage, and that I am in no way interested in the
- 18. outcome of this matter.
- 19.
- 20. IN WITNESS WHEREOF, I have hereunto set my
- 21. hand this 8th day of December, 2016.
- 22.
- 23. \_\_\_\_\_
- 24. Dominique A. Dubois, LCR# 686
- 25. Notary Public State at Large
- My commission expires: 8/9/2018



<hr/> <b>A</b> <hr/>	<b>august</b> 20:4 20:24	19:6 19:9 19:20	3:11 3:13	<b>differently</b> 6:24
<b>above</b> 11:6	<b>average</b> 6:20 7:23	20:1 20:22 21:4	<b>continue</b> 15:6	<b>diminished</b> 9:21
<b>accurate</b> 8:19 18:25	8:11 10:7 15:19	21:8	<b>correct</b> 16:10	<b>direct</b> 4:23
22:10	16:10	<b>certify</b> 22:8 22:14	<b>counsel</b> 2:7	<b>disaster</b> 4:21 5:1
<b>action</b> 22:15	<b>aye</b> 16:3 16:4 16:5	<b>chairman</b> 2:2 4:4 4:8	<b>county</b> 22:3	<b>discretion</b> 15:4 15:17
<b>actual</b> 9:5	16:6	4:10 4:13 4:15 4:18	<b>couple</b> 6:13 6:15	<b>discuss</b> 3:9 3:14
<b>actually</b> 16:25 18:24	<hr/> <b>B</b> <hr/>	5:2 5:5 5:9 5:12	<b>court</b> 1:23	19:22
<b>add</b> 13:20	<b>back</b> 10:2 12:24	5:14 5:21 6:1 6:4	<b>crabtree</b> 2:3 4:11	<b>discussion</b> 6:7
<b>address</b> 14:16	18:17 20:10	6:6 7:2 7:13 8:4	4:12 6:5 6:10 7:4	<b>division</b> 1:2
<b>adequate</b> 11:22	<b>bailey</b> 2:7 4:25 5:3	9:11 10:11 10:15	7:9 8:2 8:5 8:8 8:17	<b>doesn</b> 5:13 11:5
11:23	5:11 5:13 5:20 9:19	12:9 12:25 13:5	8:22 9:1 9:8 10:5	17:23
<b>adjourn</b> 21:11	12:2 12:8 14:16	15:14 15:23 16:1	10:9 11:13 12:16	<b>doing</b> 12:21 18:22
<b>adjourned</b> 21:16	14:24 15:5	16:5 16:7 16:14	13:12 13:16 15:1	<b>dominique</b> 1:22 22:6
<b>adjournment</b> 3:16	<b>based</b> 10:12	17:8 17:17 18:23	15:12 15:18 16:4	22:22
<b>adjust</b> 15:7	<b>being</b> 14:5	19:4 19:8 19:15	16:11 16:19 16:21	<b>don</b> 5:16 5:18 6:23
<b>adjustment</b> 15:3	<b>believe</b> 12:1 12:2	19:22 20:16 20:20	16:24 17:11 17:20	9:2 9:5 9:9 9:16
<b>afternoon</b> 20:9 20:19	<b>below</b> 11:24	21:1 21:5 21:10	17:23 18:19 19:5	10:2 10:12 11:16
20:23	<b>best</b> 9:15	21:16	21:14	11:24 12:3 13:2
<b>again</b> 4:19	<b>bit</b> 7:19	<b>change</b> 5:15 7:20	<b>craft</b> 6:15 8:1 9:20	17:15 18:14 18:16
<b>agenda</b> 3:1	<b>blood</b> 22:15	9:15	14:18 16:18	18:25
<b>ago</b> 5:23	<b>booked</b> 21:9	<b>changes</b> 18:21	<b>crew</b> 18:2 18:12	<b>done</b> 8:12 8:20 10:2
<b>agree</b> 10:14	<b>both</b> 12:12	<b>changing</b> 13:9	<b>current</b> 10:21 10:24	10:19 12:1 12:17
<b>all</b> 4:6 6:13 6:21 6:24	<b>break</b> 10:3	<b>chief</b> 18:13	11:12 13:18	17:1
7:22 9:3 10:6 11:15	<b>bring</b> 17:13 20:10	<b>choice</b> 11:7	<hr/> <b>D</b> <hr/>	<b>down</b> 9:7 12:24
13:20 13:25 15:19	<b>broad</b> 15:16	<b>christina</b> 2:8	<b>dan</b> 2:7 12:9	<b>dubois</b> 1:22 22:6
17:17 20:10 20:21	<b>broke</b> 10:5	<b>class</b> 13:21	<b>data</b> 15:5	22:22
<b>almost</b> 7:23	<b>broken</b> 10:10	<b>classification</b> 11:2	<b>date</b> 20:23	<b>duty</b> 13:22
<b>alone</b> 9:16	<b>brothers</b> 2:5	12:22 14:18	<b>dates</b> 3:15 19:25	<hr/> <b>E</b> <hr/>
<b>already</b> 10:10 17:1	<b>brought</b> 12:24	<b>classified</b> 18:15	<b>day</b> 21:9 22:12 22:20	<b>each</b> 12:11
<b>announcement</b> 4:19	<b>building</b> 4:23 4:24	<b>clear</b> 12:6	<b>deal</b> 18:2	<b>easier</b> 12:18
<b>announcements</b> 3:3	20:15	<b>closer</b> 13:24 14:4	<b>december</b> 1:10 22:12	<b>economy</b> 9:25
<b>answer</b> 7:1 7:2	<b>burns</b> 2:2	<b>commission</b> 1:9 3:7	22:20	<b>either</b> 7:3
<b>anybody</b> 5:22 13:2	<b>business</b> 3:5 3:8 6:1	15:6 20:15 22:11	<b>decide</b> 19:6	<b>eliminated</b> 5:1
20:16	6:7	22:23	<b>decided</b> 10:6	<b>else</b> 5:23
<b>anything</b> 5:22	<hr/> <b>C</b> <hr/>	<b>commissioner</b> 2:2	<b>decision</b> 10:12	<b>emergency</b> 4:21 5:3
<b>apply</b> 7:10 18:24	<b>call</b> 3:2 3:2 4:5 4:5	2:3 2:4 2:6	<b>declaration</b> 3:4	5:4
<b>approve</b> 3:6 6:2 19:2	4:5 15:21 17:15	<b>company</b> 2:5 13:22	<b>declare</b> 5:23	<b>end</b> 21:17
<b>approved</b> 6:13	<b>carolyn</b> 2:11	<b>compare</b> 10:1 10:18	<b>decrease</b> 7:25	<b>error</b> 17:2
<b>architect</b> 2:6	<b>carried</b> 19:1	<b>compensation</b> 1:2	<b>defend</b> 12:17 12:18	<b>especially</b> 9:25
<b>argue</b> 11:13	<b>carries</b> 6:7 16:7 19:5	<b>computer</b> 18:9	<b>definitely</b> 10:13	<b>esq</b> 2:7
<b>argument</b> 12:13	<b>case</b> 6:20 14:7	<b>conflict</b> 3:4 5:24 20:7	<b>department</b> 1:1 2:11	<b>establishing</b> 14:21
12:14	<b>cases</b> 15:4	20:8	<b>description</b> 17:12	<b>even</b> 8:13 9:21 13:24
<b>around</b> 18:6	<b>categories</b> 7:21 11:6	<b>consciously</b> 10:3	17:19 18:25	20:7
<b>ask</b> 18:16	14:9	<b>consider</b> 6:24 9:2 9:5	<b>designee</b> 2:3	<b>event</b> 4:21
<b>asked</b> 12:16	<b>caterpillar</b> 13:25	9:6 11:21 11:23	<b>development</b> 1:1	<b>everybody</b> 16:1 20:2
<b>assistant</b> 2:9	<b>caudill</b> 2:9 4:7 4:9	17:11	2:11	21:2
<b>assume</b> 9:18 21:6	10:20 11:1 11:9	<b>considered</b> 8:6 8:8	<b>deviation</b> 7:17	<b>everything</b> 14:3
<b>asterisk</b> 11:4	12:21 13:7 16:12	11:15	<b>dictate</b> 12:15	18:11
<b>attendees</b> 4:22		<b>consistent</b> 13:1 16:15	<b>didn</b> 6:14 6:22 8:16	<b>exactly</b> 17:15 18:14
		<b>construction</b> 2:5		

<p>except 9:4  <b>exception</b> 12:19 20:3  <b>excluded</b> 14:21 15:6  <b>existence</b> 15:7  <b>exit</b> 4:23  <b>expect</b> 14:6  <b>expires</b> 22:23  <b>explain</b> 12:19  <b>expressing</b> 10:17</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>fact</b> 14:11  <b>fall</b> 11:5 20:13  <b>far</b> 11:2 11:11  <b>favor</b> 16:2  <b>fell</b> 11:11  <b>fewer</b> 14:20  <b>field</b> 18:9  <b>fieldstone</b> 1:23  <b>fine</b> 17:10 20:2 21:3  <b>first</b> 14:1  <b>five</b> 11:22 18:3  <b>folks</b> 18:17  <b>follow</b> 6:14  <b>followed</b> 7:24  <b>foreman</b> 18:13  <b>form</b> 14:19  <b>four</b> 14:19 15:8  <b>franklin</b> 1:24  <b>front</b> 14:1  <b>fun</b> 19:18  <b>further</b> 22:14  <b>future</b> 3:14 19:23</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>generic</b> 17:21  <b>george</b> 1:23  <b>get</b> 14:4 18:17 18:25  <b>give</b> 15:2  <b>go</b> 20:23 21:6  <b>going</b> 9:8 10:3  <b>gone</b> 9:6  <b>good</b> 18:19 18:20  <b>got</b> 11:3 12:13 12:13  13:25 20:4  <b>guess</b> 6:12  <b>guidance</b> 15:3  <b>guys</b> 13:24</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/>	<p><b>hand</b> 22:20  <b>happens</b> 20:13  <b>head</b> 7:19  <b>hear</b> 9:24  <b>heavy</b> 13:22  <b>heimbach</b> 2:6 4:14  5:7 5:16 7:16 8:7  8:9 8:19 8:25 9:4  9:10 9:12 9:20 10:8  10:13 10:16 10:25  11:8 11:19 12:5  13:4 13:6 13:8  13:11 13:14 13:17  14:2 14:6 14:9  14:13 14:23 14:25  15:2 15:10 15:16  15:20 15:25 16:6  16:8 16:25 17:4  17:7 18:5 18:8  18:11 18:20 19:11  19:16 19:25 20:3  20:8 20:12 20:18  21:3 21:13 21:15</p> <p><b>hereby</b> 22:8  <b>hereunto</b> 22:19  <b>high</b> 11:11  <b>highway</b> 3:11 3:13  <b>hire</b> 13:22  <b>honestly</b> 15:18  <b>hour</b> 13:23  <b>how</b> 15:3  <b>however</b> 6:17</p> <hr/> <p style="text-align: center;"><b>I</b></p> <hr/> <p><b>ii</b> 3:3  <b>iii</b> 3:4  <b>inadequate</b> 11:14  <b>inc</b> 2:5  <b>include</b> 16:17  <b>increase</b> 7:11 7:23  13:17 13:19 14:4  16:9  <b>increasing</b> 12:18  <b>industry</b> 13:21  <b>insignificant</b> 8:13  <b>inspection</b> 6:18  <b>inspector</b> 2:8  <b>instrument</b> 7:6 17:9  17:21 17:24  <b>insufficient</b> 8:3 8:23</p>	<p>9:1  <b>interest</b> 3:4 5:24  <b>interested</b> 22:16  <b>isn</b> 10:17  <b>issue</b> 8:18 8:22  <b>issues</b> 7:9  <b>iv</b> 3:5</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>jan</b> 2:9  <b>just</b> 5:21 9:17 10:1  10:12 11:18 12:6  14:11 16:22 16:23  18:25 20:12</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>kent</b> 2:10  <b>kind</b> 7:19 11:6 17:21  <b>know</b> 9:14 9:16 10:9  11:4 11:16 12:13  12:14 13:2 17:15  18:2 18:14 18:16  18:17</p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p><b>labor</b> 1:1 2:11  <b>large</b> 22:23  <b>larger</b> 11:5  <b>last</b> 6:2 6:11 7:24  10:22  <b>lcr</b> 1:22 22:6 22:22  <b>leader</b> 18:12  <b>least</b> 11:22  <b>leave</b> 6:17 19:12  19:15 20:22  <b>leaving</b> 19:7 19:8  19:9  <b>left</b> 9:16 10:21 10:23  11:12  <b>legal</b> 2:7  <b>let</b> 12:9  <b>like</b> 13:22 19:18  <b>listed</b> 14:18  <b>little</b> 6:22 7:19 18:7  <b>ll</b> 5:14 5:21 18:16  <b>logged</b> 18:25  <b>logic</b> 6:15 7:24  <b>long</b> 20:18  <b>look</b> 12:3 12:9  <b>looked</b> 10:21 11:9</p>	<p><b>looking</b> 18:22  <b>lot</b> 18:21</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> 12:19  <b>magic</b> 18:7  <b>make</b> 5:14 7:5 10:12  11:7 12:5 15:3  <b>mandatory</b> 14:24  <b>marriage</b> 22:16  <b>matter</b> 5:13 13:23  22:17  <b>may</b> 12:8 14:21 15:6  <b>maybe</b> 7:6 17:18  <b>me</b> 4:8 12:17 12:18  12:19 21:3  <b>mean</b> 8:21 9:17  <b>mechanic</b> 13:23  <b>meet</b> 20:19  <b>meeting</b> 1:9 3:7 3:14  4:22 6:2 19:23 20:5  20:6 20:8 20:14  22:12  <b>meetings</b> 19:24 20:4  20:10  <b>middle</b> 18:9  <b>might</b> 18:23  <b>mind</b> 6:14  <b>minimums</b> 14:13  14:14  <b>minus</b> 6:19 8:11 8:15  13:12 13:18 15:9  <b>minutes</b> 3:7 6:2  <b>mistaken</b> 8:12  <b>morning</b> 20:14  <b>most</b> 14:7 17:19 18:1  <b>motion</b> 6:2 6:6 7:14  15:13 15:15 15:24  16:8 16:17 19:1  19:2 19:5 21:10  <b>move</b> 7:5 20:15  <b>moved</b> 6:3 19:3  21:12 21:13  <b>mr</b> 4:12 4:14 4:17  4:25 5:3 5:7 5:11  5:13 5:16 5:18 5:20  5:25 6:3 6:5 6:10  6:11 7:1 7:4 7:8 7:9  7:15 7:16 8:2 8:5  8:7 8:8 8:9 8:17</p>	<p>8:19 8:22 8:25 9:1  9:4 9:8 9:10 9:12  9:19 9:20 10:5 10:8  10:9 10:13 10:16  10:25 11:8 11:13  11:19 12:2 12:5  12:8 12:16 13:4  13:6 13:8 13:9  13:11 13:12 13:14  13:16 13:17 13:20  14:2 14:3 14:6 14:8  14:9 14:11 14:13  14:15 14:16 14:23  14:24 14:25 15:1  15:2 15:5 15:10  15:12 15:16 15:18  15:20 15:21 15:25  16:3 16:4 16:6 16:8  16:11 16:17 16:19  16:20 16:21 16:22  16:24 16:25 17:3  17:4 17:5 17:7  17:10 17:11 17:14  17:18 17:20 17:22  17:23 18:1 18:5  18:6 18:8 18:10  18:11 18:12 18:19  18:20 19:3 19:5  19:11 19:13 19:16  19:18 19:25 20:3  20:8 20:12 20:18  21:3 21:6 21:9  21:12 21:13 21:14  21:15  <b>ms</b> 4:7 4:9 5:8 8:21  10:20 11:1 11:9  12:21 13:7 16:12  19:6 19:9 19:20  20:1 20:22 21:4  21:8  <b>my</b> 6:14 7:19 9:12  9:23 10:17 11:20  12:6 15:12 17:14  22:19 22:23</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>natural</b> 4:21 5:1 5:9  <b>need</b> 4:19 5:17 5:18  17:11 17:18 19:2  20:8  <b>needs</b> 20:3</p>
--	---	---	--	--

<p><b>negative</b> 7:21 8:14 9:5 9:15 9:22 10:22 11:16</p> <p><b>negatives</b> 12:11</p> <p><b>new</b> 3:8 6:7</p> <p><b>next</b> 5:15</p> <p><b>nine</b> 13:10</p> <p><b>notary</b> 22:7 22:23</p> <p><b>note</b> 6:17 8:9</p> <p><b>noticed</b> 7:18</p> <p><b>november</b> 3:6 20:6 20:24</p> <p><b>now</b> 6:16 9:25 11:15 18:4 19:1 20:9</p> <p><b>number</b> 8:3 8:9 8:24 9:1 10:23 11:3 11:3 11:4 11:14 11:20 11:24 12:23 13:4 14:5 17:5</p> <p><b>numbers</b> 10:22</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>objection</b> 7:5</p> <p><b>odd</b> 9:25</p> <p><b>off</b> 20:15</p> <p><b>old</b> 3:5 6:1</p> <p><b>one</b> 5:19 7:10 9:22 9:23 10:12 11:4 17:12 18:4</p> <p><b>ones</b> 7:22 20:1</p> <p><b>open</b> 12:12</p> <p><b>operator</b> 7:6 17:9 18:15</p> <p><b>opinion</b> 10:17 12:6 17:15</p> <p><b>order</b> 3:2 4:5 11:21</p> <p><b>others</b> 7:11 7:17 13:1 15:19 16:16</p> <p><b>otherwise</b> 12:15</p> <p><b>ours</b> 13:22</p> <p><b>out</b> 6:11 12:4 18:9 20:2</p> <p><b>outcome</b> 22:17</p> <p><b>over</b> 12:23</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>painter</b> 8:1</p> <p><b>paragraph</b> 14:17 15:8</p> <p><b>parks</b> 4:24</p>	<p><b>parkway</b> 1:23</p> <p><b>particular</b> 13:21</p> <p><b>parties</b> 22:15</p> <p><b>party</b> 18:13</p> <p><b>past</b> 8:12 8:20 9:13 10:19 11:10 12:1</p> <p><b>people</b> 18:3</p> <p><b>percent</b> 6:20 7:20 9:21 11:5 12:23 13:10 13:13 13:14 13:18 13:19</p> <p><b>percentage</b> 9:6 11:2 11:11 16:10</p> <p><b>personal</b> 17:14</p> <p><b>pertains</b> 11:25</p> <p><b>peter</b> 2:6 4:13</p> <p><b>phillips</b> 2:2 4:4 4:8 4:10 4:13 4:15 4:18 5:2 5:5 5:9 5:12 5:14 5:21 6:1 6:4 6:6 7:2 7:13 8:4 9:11 10:11 10:15 12:9 12:25 13:5 15:14 15:23 16:1 16:5 16:7 16:14 17:8 17:17 18:23 19:4 19:8 19:15 19:22 20:16 20:20 21:1 21:5 21:10 21:16</p> <p><b>philosophy</b> 7:10</p> <p><b>place</b> 4:23</p> <p><b>plus</b> 6:19 8:11 8:16 13:24 15:9</p> <p><b>pmb</b> 1:24</p> <p><b>point</b> 18:20 21:7</p> <p><b>positive</b> 8:15 9:4 11:16</p> <p><b>positives</b> 12:10</p> <p><b>precedent</b> 10:3 10:6 10:10 12:1</p> <p><b>prefer</b> 20:10</p> <p><b>preference</b> 9:23</p> <p><b>preliminary</b> 3:10</p> <p><b>present</b> 4:12</p> <p><b>pretty</b> 12:12</p> <p><b>prevailing</b> 1:9 3:7 3:10 3:12 3:14 8:10 10:1 13:18 14:4 14:19 19:23 22:11</p>	<p><b>previous</b> 7:20</p> <p><b>problem</b> 20:17</p> <p><b>proceedings</b> 1:8 21:17</p> <p><b>projects</b> 3:11 3:13</p> <p><b>proposing</b> 6:16 10:19</p> <p><b>public</b> 22:7 22:23</p> <p><b>publish</b> 21:6</p> <p><b>published</b> 19:13 19:17</p> <p><b>purely</b> 11:25 15:4</p> <p><b>pursuant</b> 15:8</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>question</b> 6:9 6:25 7:17</p> <p><b>questions</b> 12:22 13:3 15:22</p> <p><b>quick</b> 12:3</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>raise</b> 9:17 10:6</p> <p><b>raised</b> 7:22 9:16</p> <p><b>rate</b> 6:17 6:19 8:10 8:11 10:21 10:24 11:12 13:12 13:19 15:6 16:18 16:25 19:10</p> <p><b>rates</b> 3:10 3:12 6:8 9:3 14:22 19:2 19:23 19:24</p> <p><b>rather</b> 10:4</p> <p><b>re</b> 6:16 9:24 10:2 10:18 12:2 13:3 16:8 17:2 17:8 18:1 19:8 19:9 21:16</p> <p><b>read</b> 4:19 4:20 6:11 9:9 11:17 17:19</p> <p><b>real</b> 12:3 13:22</p> <p><b>received</b> 14:20</p> <p><b>recollection</b> 9:12 11:20</p> <p><b>recommend</b> 4:25</p> <p><b>recommendation</b> 6:12</p> <p><b>records</b> 11:10</p> <p><b>reduce</b> 9:25</p> <p><b>related</b> 22:14</p> <p><b>relative</b> 20:14</p> <p><b>relevant</b> 14:5</p>	<p><b>reporting</b> 1:23</p> <p><b>response</b> 9:22</p> <p><b>responses</b> 6:18 8:3 8:14 8:14 8:15 8:24 9:2 11:14 11:18 11:21 14:20 14:21</p> <p><b>rest</b> 6:21 6:25</p> <p><b>review</b> 3:6 3:9</p> <p><b>revised</b> 3:9 6:8</p> <p><b>rewriting</b> 17:12</p> <p><b>right</b> 4:5 4:6 4:20 5:4 5:6 5:10 5:11 8:7 8:25 9:25 10:25 11:8 12:2 14:25 15:14 20:12 21:2</p> <p><b>roll</b> 3:2 4:5 4:5</p> <p><b>rosa</b> 4:24</p> <p><b>rounding</b> 17:2</p> <p><b>rule</b> 9:9 11:17 11:24 12:3 12:4 14:16</p> <p><b>rules</b> 12:14</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>safe</b> 4:23</p> <p><b>said</b> 10:16</p> <p><b>same</b> 7:10 7:10</p> <p><b>sandblaster</b> 8:1</p> <p><b>say</b> 9:14 17:23</p> <p><b>saying</b> 9:23 9:24</p> <p><b>says</b> 6:18 8:10 11:5 11:17 11:18 14:17 15:5 17:20 17:24</p> <p><b>scratched</b> 7:19</p> <p><b>second</b> 6:4 6:5 7:13 7:15 15:24 19:4 20:5 21:14</p> <p><b>section</b> 15:8</p> <p><b>sects</b> 9:5</p> <p><b>security</b> 4:22</p> <p><b>see</b> 7:17 11:10 11:17 12:10 13:25 18:17</p> <p><b>seems</b> 9:24 18:2</p> <p><b>sent</b> 20:2</p> <p><b>separate</b> 14:20</p> <p><b>set</b> 3:12 8:10 8:15 8:16 14:10 14:14 18:8 20:4 20:5 20:6 22:19</p> <p><b>seven</b> 14:17</p> <p><b>several</b> 18:24</p>	<p><b>shirrod</b> 2:11</p> <p><b>show</b> 7:25</p> <p><b>showed</b> 7:23</p> <p><b>side</b> 4:24 12:11</p> <p><b>simple</b> 6:14</p> <p><b>since</b> 5:23 9:14 11:14</p> <p><b>sir</b> 5:25 6:10 7:1 9:19 16:11 16:19 19:3 21:8</p> <p><b>six</b> 12:23 13:12 13:14 13:18 13:19 15:9</p> <p><b>someone</b> 7:4 12:16</p> <p><b>something</b> 18:15</p> <p><b>sometime</b> 17:12</p> <p><b>sorry</b> 17:6 17:7</p> <p><b>specifically</b> 11:17</p> <p><b>spells</b> 12:4</p> <p><b>staff</b> 4:22</p> <p><b>standard</b> 13:21</p> <p><b>standing</b> 20:14</p> <p><b>start</b> 18:21</p> <p><b>starwalt</b> 2:10</p> <p><b>state</b> 1:1 2:6 3:10 3:13 6:20 8:11 10:7 15:19 16:9 22:2 22:7 22:23</p> <p><b>station</b> 17:25</p> <p><b>stephen</b> 2:4 4:16</p> <p><b>stick</b> 18:7</p> <p><b>still</b> 6:23 9:22 11:13</p> <p><b>stone</b> 1:23</p> <p><b>suite</b> 1:24</p> <p><b>summers</b> 6:11</p> <p><b>superintendent</b> 18:13</p> <p><b>sure</b> 4:9 18:14</p> <p><b>survey</b> 6:18 7:6 7:20 8:13 9:2 11:22 11:23 13:12 13:15 14:19 14:20 15:7 17:9 17:20 17:24 18:2 18:15 19:10</p> <p><b>surveys</b> 8:6</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>table</b> 5:22</p> <p><b>take</b> 4:22 8:17 8:22</p> <p><b>taken</b> 22:12</p> <p><b>talking</b> 17:8</p> <p><b>tdot</b> 2:3</p>
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<p><b>technology</b> 18:21  <b>tennessee</b> 1:1 1:24  22:2 22:7  <b>terms</b> 18:24  <b>thank</b> 19:20  <b>their</b> 14:1  <b>them</b> 4:23 6:13 6:13  6:21 6:25 10:21  <b>themselves</b> 8:6  <b>therefore</b> 8:3  <b>they</b> 9:6 11:12 13:25  18:1 18:17 18:25  <b>think</b> 5:16 6:8 7:24  9:13 11:18 11:18  11:23 11:24 12:3  12:10 12:11 17:1  18:17 19:11 20:3  21:1  <b>third</b> 20:6 21:15  <b>three</b> 6:18 8:9 11:3  14:1 18:3  <b>through</b> 6:11  <b>thursday</b> 20:13  20:14  <b>time</b> 5:15 6:11 7:25  15:7  <b>total</b> 17:25  <b>transcript</b> 1:8 22:11  <b>transit</b> 17:24  <b>trba</b> 2:10  <b>trucks</b> 13:25  <b>true</b> 22:10  <b>trying</b> 10:1 10:18  12:7  <b>tugman</b> 2:8 5:8 8:21  <b>two</b> 5:23 6:17 7:5  7:21</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>under</b> 5:22 11:6  <b>understand</b> 6:16  6:23 6:23 7:7 14:15  <b>unless</b> 7:4 12:14  <b>up</b> 9:7 15:4 17:13  19:24</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>valid</b> 12:13 12:14  <b>ve</b> 8:12 8:20 9:6 10:2  10:19 11:3 12:1</p>	<p>12:13 12:17 12:19  13:25 20:4  <b>vi</b> 3:16  <b>vision</b> 13:2  <b>vote</b> 5:17 5:18 9:18  <b>voted</b> 6:12</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>wage</b> 1:9 3:7 3:10  3:12 3:14 8:10 10:1  13:18 14:4 14:19  19:23 22:11  <b>walk</b> 18:6  <b>want</b> 11:7 16:21  17:17 20:21 20:23  <b>way</b> 9:23 17:1 22:16  <b>wayburn</b> 2:3 4:11  6:8 16:18  <b>weeks</b> 5:23  <b>went</b> 6:11  <b>whatever</b> 20:20  <b>when</b> 6:10 10:6  10:22 11:11 11:23  18:21  <b>where</b> 6:16 7:22  14:19 15:5  <b>whereas</b> 7:21  <b>whereof</b> 22:19  <b>whether</b> 9:6 11:25  <b>who</b> 18:22  <b>whole</b> 21:9  <b>why</b> 6:23 10:16  10:20 11:1 11:9  12:5 12:19  <b>will</b> 4:22 14:4  <b>williamson</b> 22:3  <b>within</b> 22:10  <b>witness</b> 22:19  <b>words</b> 5:1  <b>work</b> 19:18  <b>worker</b> 1:2  <b>workers</b> 14:18  <b>workforce</b> 1:1 2:11  <b>wright</b> 2:4 2:5 4:17  5:18 5:25 6:3 7:1  7:8 7:15 13:9 13:20  14:3 14:8 14:11  14:15 15:21 16:3  16:17 16:20 16:22  17:3 17:5 17:10</p>	<p>17:14 17:18 17:22  18:1 18:6 18:10  18:12 19:3 19:13  19:18 21:6 21:9  21:12</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yeah</b> 5:7 5:16 7:8  9:11 10:13 10:15  13:15 14:13 16:14  16:15 17:3 17:10  17:22 17:22 18:5  18:8 19:5  <b>year</b> 7:21 10:22  <b>years</b> 8:20 9:13  11:10</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zero</b> 11:2</p> <hr/> <p style="text-align: center;"><b>0</b></p> <hr/> <p><b>04</b> 17:1  <b>06</b> 6:20 7:12 7:25  8:15 8:16 12:24  16:9  <b>08</b> 14:17  <b>0800</b> 14:17</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1089</b> 1:25  <b>12</b> 15:8  <b>13</b> 12:23 13:5 13:6  13:7 19:7  <b>15</b> 6:15 7:24 9:20  11:3 11:5 16:9  <b>15th</b> 20:6 20:24  <b>16</b> 6:16 9:14 16:9  <b>17</b> 3:6 6:19  <b>18</b> 9:21 16:18 17:5  <b>1st</b> 22:12</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>20</b> 16:13  <b>2016</b> 1:10 3:6 6:17  8:10 22:12 22:20  <b>2017</b> 3:10 3:12 3:15  19:24  <b>2018</b> 22:23  <b>2020</b> 1:23  <b>22</b> 13:23 19:10 19:21</p>	<p><b>221</b> 1:25  <b>23</b> 13:23  <b>234</b> 1:24  <b>27</b> 16:12  <b>29th</b> 20:11</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>30</b> 13:24 20:23 20:24  20:25  <b>30th</b> 20:5 20:7 20:9  20:24 20:25  <b>34</b> 19:10 19:21  <b>37069</b> 1:24</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>405</b> 15:8  <b>43</b> 16:12  <b>46</b> 9:15</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>58</b> 16:13</p> <hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>615</b> 1:25  <b>686</b> 1:22 22:6 22:22</p> <hr/> <p style="text-align: center;"><b>8</b></p> <hr/> <p><b>80s</b> 18:3  <b>8th</b> 22:20</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>900</b> 1:24  <b>90s</b> 18:3</p>
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