

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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CITY OF NEW ROCHELLE,

Index No. 54190/2016

Plaintiff,

-against-

**NOTICE OF MOTION
FOR SUMMARY
JUDGMENT**

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a F. LARocca & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.
-----X

PLEASE TAKE NOTICE that upon the annexed Statement of Material Facts dated May 27, 2022 with exhibits annexed thereto, the Affidavit of Flavio La Rocca sworn to May 27, 2022, and the accompanying Memorandum of Law, and upon all of the papers and proceedings had herein, Defendants will move this Court before the Honorable William J. Giacomo, J.S.C., at the Westchester County Supreme Courthouse, 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY on the 12th day of July, 2022 at 9:30 in the forenoon of that day, or as soon thereafter as counsel can be heard for an Order, pursuant to CPLR § 3212, granting summary judgment dismissal of the Complaint in its entirety and severing Defendants' two counterclaims set forth in its Answer for trial (which may be resolved or withdrawn in whole or in part by the Court's decision on this motion) together with such other and further relief as this Court may deem just and proper under the circumstances.


PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's Trial Readiness Order dated March 11, 2022 (NYSCEF Doc. No. 42), Plaintiff's opposition papers, Affirmations and Memorandum of Law if any, shall be served upon the undersigned within 30 days of the filing

of this motion and Defendants' reply papers shall be served on Plaintiff within 10 days of service of Plaintiff's opposition papers.

Dated: Tarrytown, New York
May 27, 2022

Respectfully submitted,

SILVERBERG ZALANTIS LLC

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SUPREME COURT OF THE STATE OF NEW YORK
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CITY OF NEW ROCHELLE,

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Plaintiff,

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**STATEMENT OF
MATERIAL FACTS**

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

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KATHERINE ZALANTIS an attorney duly licensed to practice law in the State of New York affirms under penalty of perjury as follows:

1. I am a member of the firm of Silverberg Zalantis LLC, attorneys for the Defendants Flavio La Rocca (“Flavio”), Maria La Rocca (“Maria”), Flavio La Rocca & Sons, Inc. a.k.a F. Larocca & Sons, Inc. (“F. LaRocca & Sons”) and FMLR Realty Management LLC (“FMLR LLC”; Maria, Flavio, F. Larocca & Sons and FMLR LLC shall collectively be known as “Defendants”) and I make this Statement of Material Facts upon information and belief, based upon a review of the files maintained in our office relating to this action, including the Verified Complaint with Exhibits dated and filed April 1, 2016 (“Complaint,” **Exhibit “Ex.” “1”** filed by Plaintiff City of New Rochelle (“City” or “Plaintiff”), Defendants’ Verified Answer with Affirmative Defenses and Counterclaims (“Answer, **Ex. “2”**) and Plaintiff’s Verified Reply (**Ex. “3”**).

2. In accordance with New York Court Rules § 202.8-g, I respectfully submit this Statement of Material Facts in support of the Defendants’ motion under CPLR § 3212 for an order granting Defendants summary judgment dismissal of Plaintiff’s Complaint in its entirety. As there are numerous exhibits supporting this motion, an **Exhibit List** is attached.

The Property:

3. On September 18, 2002, Maria and Flavio purchased the property known as 436 Fifth Avenue in the City of New Rochelle and designated on the City's tax map as 3-931-0029 (the "Property"; see also, Bargain and Sale deed conveying the property from John and Rose Maffei to Flavio and Maria dated September 18, 2002 and recorded on November 12, 2002 attached as Ex. "4").

4. The Property is a corner lot located on Fifth Avenue and an unnamed street (per the City's tax map) known as East Street (attached as Ex. "5" is the relevant portion of the City's tax map with the Property highlighted in yellow).

5. The entrance into the Property is from East Street. Attached as Ex. "6" are recent Google images of the Property with the first image showing the Property's frontage along Fifth Avenue, the second image showing the Property's location on both streets and the third image showing the entrance into the Property from East Street.

6. On January 30, 2008, Maria and Flavio conveyed the property to FMLR Management LLC (see Ex. "7"). Maria and Flavio are both members of FMLR (see Deposition Transcript of Flavio LaRocca taken March 5, 2020 ("Flavio Depo") attached as Ex. "8", p. 13).

Legal Nonconforming Contractor's Yard:

7. When Maria and Flavio purchased the Property in 2002, the Property was being used as a contractor's yard by the former owners (see Affidavit of Flavio LaRocca ("Flavio Aff.") ¶ 12).

8. The City's Department of Building has established that the Property is a "non-conforming, pre-existing contractor's yard" for the "storage of construction materials and equipment" (see City's Bureau of Building property cards attached as **Ex. "9"**).

9. Paul Vacca, the then Deputy Commissioner of Development/Building Official and Jeffrey C. Coleman, PE, Commissioner of Public Works stated in a jointly signed letter dated June 22, 2009 that the contractor's yard at the location of 436 Fifth Avenue is a "legal non-conforming contractor's yard" (see **Ex. "10"**).

10. As a "legal" or "preexisting" nonconforming use, the contractor's yard use has existed before the current zoning regulations and is entitled to remain and continue to operate.

11. Defendants continue to use the Property as a contractor's yard for storage of material and equipment in connection with F. LaRocca & Sons' operations, which performs regrading work and stone work, installing retaining walls, steps and patios, and performing drainage work (Flavio Depo. (Ex. 9), p. 21; 42).

Other Properties on East Street:

12. The other properties along East Street are also all contractor yards (see deposition transcript of Patrick Bongo taken May 17, 2021 ("Bongo Depo.") attached as **Ex. "11"**, p. 49; *see infra*). Also attached is Google Earth image depicting the various contractor yard properties along East Street (**Ex. "12"**).

13. Directly abutting the Property on East Street is the property designated on the City's tax map as 3-931-0035 (see tax map at **Ex. "5"**) which PAB Landscaping, Inc. rents out (Bongo Depo. (Ex. 11), p. 55) for storage of materials and construction vehicles (see pictures of this property rented by PAB Landscaping, Inc. at **Ex. "13"**).

14. Since the early 1980s, PAB Landscaping, Inc. has also owned two other tax lots further down East Street from the Property (designated as 3-931-0041 and 3-931-0043 (see tax map at Ex. 5; *see also* Survey of Property prepared for the City of New Rochelle dated December 8, 2014 (“2014 Survey”) attached as Ex. “14”) from which PAB Contracting Corp. operates a contractor’s yard in connection with its contracting business performing roadway restoration for utility companies (Bongo depo (Ex. “11”) p. 5-6; 7-9). Attached as Ex. “15” are pictures of PAB Contracting Corp’s contractor yard with pictures of cars parked in front of the yard.

15. The lot on East Street designated on the City’s tax map as 3-931-0039 (see tax map at Ex. “5”) is owned by Ben Riv Realty LLC on which there is a contractor’s yard that Benny’s Tree Service (that does tree service and planting work) has operated from since 2006 (see deposition transcript of Benardo F. Rivera taken on July 8, 2021 (“Rivera Depo.”) Ex. “16”, p 6; 8).

16. The lot on East Street designated on the City’s tax map as 3-931-0037 (see tax map at Ex. “5”) is owned by J&C DiPietro LLC, which also uses the lot as a contractor’s yard (see also 2014 Survey at Ex. “14”; Google Earth image as Ex. “12” and Flavio Aff. ¶ 11. The lot at the corner of East Street and East Place designated on the City’s tax map as 3-931-0001 (see tax map at Ex. “5”) is owned by Guglielmo Group LLC, which uses the lot as a contractor’s yard in connection with its landscaping business (Flavio Depo (Ex. “8”), p. 19-20; 81).

17. The two lots at the end of East Street (fronting on East Place) and designated on the City’s tax map as 3-932-0005 and 3-932-0001 (see tax map at Ex. “5”) are both owned by R&B Arbito LLC, which uses the lot in connection with its business operations (see also 2014 Survey at Ex. “14” and Flavio Aff ¶ 11).

East Street:

18. East Street was created by subdivision, which subdivision map was filed as map number 1728 on June 7, 1907 entitled "Fifth Avenue Heights, in the City of New Rochelle ("1907 Subdivision Map") at Ex. "17".

19. The 1907 Subdivision Map depicts 247-lots as well as seven newly-formed streets: Weeks Place, Pine Brook Road, Crest View Street, Chatsworth Place, Ashland Street, East Place and East Street (see Ex."17").

20. The 1907 Subdivision Map show five of the streets (Weeks Place, Pine Brook Road, Crest View Street, Chatsworth Place and Ashland Street) as 50 feet wide, while East Place and East Street are 30 feet wide (see Ex. "17").

21. On April 30, 1914, Hadert Realty Company issued a quit-claim deed to the City deeding "all the right, title, interest and easement" of Hadert Realty Company to Weeks Place, Pine Brook Road, Crest View Street, Chatsworth Place, Ashland Street, East Place and East Street as shown on the 1907 Subdivision Plat ("1914 Deed") at Ex. "18".

22. The 1914 Deed provides that the seven streets "shall forever be public streets or highways, and may be used and enjoyed as such, together with the right to the party of the second part [the City], its successors or assigns, to repair said streets and avenues as there shall be on occasion."(see Ex. "18").

23. The City Council's June 2, 1914 meeting minutes (see Ex. "19" at p. 179) reflect that a June 2, 1914 correspondence from the City's Assistant Corporation Counsel regarding the 1914 Deed and East Street specifically, was read at the City Council's June 2, 1914 meeting as follows:

The Clerk read the following communication from the Assistant Corporation Counsel, which was on motion ordered received and filed:

June 2, 1914

Gentlemen:

Pursuant to resolution of the Council, I have examined the deed of the Hadert Realty Company to the City conveying as public streets, certain private streets in Fifth Avenue Heights and find the said deed to be in proper form and duly executed.

My attention has been called to the fact that East Street, one of the streets named in deed, is but thirty feet wide. This street borders on City Park and in view of this fact, it might be well for the City to accept it as is.

Yours very truly,
FRANK X. FALLON,
Assistant Corporation Counsel

24. The City Council, however, did not follow the Assistant Corporation Counsel's recommendation to accept East Street (*see infra*).

25. At that same June 2, 1914 meeting, the City Council adopted a resolution ("1914 Resolution" at Ex. "19" pp. 186-187) accepting only five of the seven streets as follows:

On motion of Councilman Valentine, seconded by Councilman Inbglis the following resolution was adopted. The roll call following the vote:

Ayes: President Valentine, Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella

Nays: None

WHEREAS, the Department of Law, by communication dated June 2, 1914, has advised this Council that Weeks Place, Pinebrook Road, Crest View Street, Chatsworth Place and Ashland Street (Fifth Avenue Heights) are public streets and that the City may accept them as public streets if it so desires; and

WHEREAS, the Department of Public Works has, by communication dated May 19, 1914, advised this Council that the said streets have been properly monumented and are fifty feet in width now, therefore,

BE IT RESOLVED, that Weeks Place, Pinebrook Road, Crest View Street, Chatsworth Place and Ashland Street (Fifth Avenue Heights) be and the same are hereby accepted as public streets (Approved June 3, 1914).

26. The City never issued a resolution accepting East Street.

27. The City never accepted East Street.

28. The City's then Deputy Commissioner and current Commissioner of Development and Building Official Paul Vacca testified:

Q. You don't have knowledge of what the Department of Public Works does in connection with public streets?

MR. MENDELSON: Objection to form.

A. Typically the Department of Public Works will go out and maintain public roads. I don't, to the best of my knowledge, I don't believe that the street -- this is a paper street and it was never accepted by the City.

BY MS. ZALANTIS:

Q. Okay. When you say this is a paper street, are you referring to East Street?

A. Yes.

Q. It's your understanding East Street was never accepted by the City; is that correct?

A. Correct.

(see deposition of Paul Vacca taken on February 25, 2020 ("Vacca Depo.") at Ex. "20", p. 37).

29. Over five years after the City in the 1914 Resolution accepted only five of the seven streets of the 1907 Subdivision Map, the 1914 Deed was recorded on June 27, 1919 (in Liber 2201, page 231) (see recording information for 1914 Deed at Ex. "21").

30. On the City's 1929 Official Map, the location for East Street is depicted but is not named as a street on the official map (see City' 1929 Official Map with highlighting of East Street for ease of reference attached as Ex. "22").

31. Although East Street appears on the City's current zoning map as a named street (see Ex. "23"), East Street does not appear as a named street on the City's tax map (see tax map as Ex. "5").

32. The five streets created by the 1907 Subdivision Map that were accepted by the City in the 1914 Resolution all appear as named streets on the City's tax map -- namely, Weeks Place, Pinebrook Road, Crestview Place, Chatsworth Place and Ashland Avenue (relevant portion of City's tax map depicting the surrounding streets at Ex. "24").

Maintenance of the Five Accepted Streets Compared to East Street:

33. The City's Department of Public Works "provides and maintains the City's physical facilities through its various operations bureaus and services," including "cleaning of streets and highways," "maintenance, repair, construction, reconstruction and resurfacing of streets" and "removal of ice and snow from public thoroughfares" (see City's Public Work Department overview at Ex. "25").

34. The "functions" of the City's Bureau of Streets Highways include "mechanical sweeping of streets, maintenance and repair of roads, . . . blacktop and pothole repairs, street sweeping, roadside maintenance, on-street trash removal" (see City's Bureau of Streets and Highways overview as Ex. "26").

35. The City maintains, repairs and plows the five streets that were part of the 1907 Subdivision that were accepted by City in the 1914 Resolution -- namely, Weeks Place, Pinebrook Road, Crestview Place, Chatsworth Place and Ashland Avenue. (Flavio Aff. at ¶ 13).

36. The City does not maintain East Street (see Plaintiff's Response and Objections to Defendants' First Set of Interrogatories dated February 3, 2020 (at Ex. "27") at ¶ 5).

37. The City's Deputy Commissioner of Development and Building Official Paul Vacca testified:

Q. You said it's your understanding that the City does not maintain East Street. What is your basis or understanding?

A. I had a conversation with the City engineer and asked him that very question.

Q. And what were you told?

A. That we don't maintain anything there.

Q. Was there a reason why the City doesn't maintain anything on East Street?

A. No, ma'am.

(Vacca Depo. (Ex. "20", p 36).

38. The City does not perform snow plowing, street cleaning, trash removal, paving or asphaltting work or other maintenance work on East Street (see Ex "27" at ¶ 5).

39. Mr. Vacca testified that the City does not maintain private streets (Vacca Depo (Ex. "20"), p. 37).

40. Flavio testified that since he and his wife purchased the Property, the City has never maintained East Street, including plowing East Street (Flavio Depo (Ex. "8"), pp. 76-77).

41. Bernardo F. Rivera, whose company is Benny Tree Service (formed in 2006 (Rivera Depo. (Ex. "16"), p. 6)) and who owns property on East Street that his company previously rented, testified he never observed the City repairing or maintaining East Street:

Q. Have you ever, since you've had any knowledge of East Street or any involvement in East Street, did anyone from the city maintain East Street?

A. Never.

Q. Have you ever seen anyone from the city make any repairs to East Street?

A. Never.

Q. Have you ever seen anyone from the city fill a pothole on East Street?

A. Never.

(Rivera Depo. (Ex. "16"), p. 61-62).

42. Likewise, Patrick Bongo, whose company, PAB Contractor Corp., has operated from a contractor's yard on East Street since the late 1980s (Bongo Depo (Ex. "11"), p. 5), testified that he has never observed the City doing any maintenance work on East Street and he never saw the City repair potholes, asphalt or pave East Street (Bongo Depo (Ex. "11"), p. 49-50), or sweep or clean East Street (Bongo Depo (Ex. "11"), p. 51).

43. Prior to Flavio and Maria purchasing the Property, the prior owner of the Property advised Flavio that each property owner along East Street maintained East Street (Flavio Depo. (Ex. "8"), p. 77).

44. Specifically, the property owners along East Street are solely responsible for "cleaning any debris, sweeping, snowplowing, and repairing the road if needed." (Flavio Depo. (Ex. "8"), pp. 76-77)

45. Bernardo F. Rivera testified his company has filled potholes in East Street, cleaned East Street, removed garbage from East Street and plowed East Street (Rivera Depo. (Ex. "16") p. 60.).

46. Mr. Rivera further testified that of all the East Street property owners, Flavio does the majority of the maintenance work on East Street:

Q. And would it be fair to say, that the only people that you've ever seen maintain East Street are the owners that have properties along East Street?

A. The one I could say, more, that maintains more than anybody is Flavio La Rocca.

Q. So it is fair to say that Mr. La Rocca maintains the road more than any of the other owners, on East Street?

A. Yes.

Q. Is that correct?

And, is it also fair to say that Mr. La Rocca does the majority of the plowing on East Street?

A. Yeah, as I said that, from the beginning.

(Rivera Depo. (Ex. "16"), p. 62).

47. Felipe Maya, who has worked for F. LaRocca & Sons for 7-8 years (deposition transcript of Felipe Maya taken on May 28, 2021 ("Maya Depo") at Ex. "28", p. 10), testified about the extensive repair work done by F. LaRocca & Sons on East Street:

Q. Do you know who plows the snow on East Street?

A. Yes.

Q. Who does it?

A. I do.

Q. Do you know who repairs East Street?

A. We do.

Q. When you say we do, do you mean Mr. La Rocca's company?

A. Yes.

Q. You said that Mr. La Rocca's company repairs East Street. What does Mr. La Rocca's company do to repair East Street?

A. So, there are quite a few potholes and we fill them in with new black tar. Also where you saw the drain with the cones around it, we fix up those areas so that people can drive by and not get stuck in the holes.

Q. How often does Mr. La Rocca's company do this?

A. We did it every year.

Q. What else does Mr. La Rocca's company do to maintain East Street?

A. We remove the snow in the winter. We remove the gravel when it's there.

Q. How about garbage?

A. We do that too. A lot of people go in that area at nighttime and we clean up their garbage.

Q. How about leaves? Do you do anything with the leaves?

A. Yes, we clean those up too.

Q. The questions I asked you about the leaves and the garbage, just to be clear that was in reference to East Street; is that correct?

A. Yes.

Q. You said you plow East Street. How often have you personally done that; approximately?

A. I've been working with Flavio seven or eight years. I do it every year.

(Maya Depo. (Ex. "28"), pp. 26-27).

48. Mr. Maya's reference to the area with the "drain with cones around it" that F. LaRocca & Sons repaired was to pictures he was previously shown of the cones in the road where there were potholes in East Street (see pictures at Ex. "29"; see Maya Depo (Ex. "28" at p.40 (discussing Exhibit marked as Defendant's C)).

Contractor's Yard Extended onto East Street Prior to Defendants' Purchase of the Property:

49. At the time Maria and Flavio purchased the Property in 2002, the existing contractor's yard on the Property extended onto East Street and Defendants did nothing to alter the existing fencing and gates on East Street (Flavio Aff at ¶ 22; *see infra*).

50. An as-built survey from 2000 that was filed with the City and produced by the City in discovery depicted the contractor's yard's fencing, gates and other portions of the Property extending onto East Street ("2000 As-Built") at Ex. "30").

51. Specifically, after approving the prior owners' proposed plan to construct a rip rap slope (or rock wall) (see stamped approved plan dated August 3, 2000 entitled "proposed riprap" at Ex. "31"), the City issued the then Property's owners (the Maffeis) Building Permit Number B200387 dated August 3, 2000 (at Ex. "32") for this commercial renovation permit (*see also*

Vacca Depo. (Ex. "20"), p. 56-57) and then approved an amended plan that depicted the rip rap slope only approximately two-thirds of the rear of the property instead of along the entire rear as per the original plan (see stamped approved amended plan dated January 2, 2001 at Ex "33"; see also Vacca Depo (Ex. "20"), p. 60 l. 1-10).

52. Included in Building Permit No. B200387 (at Ex. "32") was the condition to "[s]ubmit as-build survey, prepared by a Licensed Surveyor, to show compliance with approved plans."

53. The City's Deputy Commissioner of Development and Building Official Paul Vacca explained as follows:

Q. Can you explain what the conditions to a building permit are just generally?

A. Just general conditions put in place to coincide with the parameters of the project.

Q. Okay. And is it a requirement that this particular applicant would have to submit an as-built plan to get a Certificate of Occupancy or a COC [Certificate of Compliance]?

A. Well, it says, "Submit as-built survey prepared by a surveyor to show compliance with approved plans." So, yes.

(Vacca Depo ("Ex. 20") at p.58).

54. In accordance with the 2000 Building Permit's conditions, the prior owners submitted an the 2000 As-Built (at Ex. "30") and the City subsequently issued a Certificate of Occupancy on January 16, 2001 (at Ex. "34"), which Mr. Vacca explained is "a document that closes out the building permit" (Vacca Depo ("Ex. 20") at p. 61).

55. The 2000 As-Built (at Ex. "30") depicted that there were various encroachments on East Street as testified to by Mr. Vacca:

Q. And is the sliding gate [on the As Built survey] depicted on East Street?

A. It looks like it is depicted on East Street.

Q. And is the chain-link fence depicted on East Street?

A. It appears to be, yes.

Q. Do you see shrubs indicated at the property line that fronts on Fifth Avenue?

A. Yes.

Q. And are the shrubs depicted on East Street, a portion of the shrubs depicted on East Street?

A. They look like they encroach onto East Street, yes.

Q. So the survey seems to indicate that there's an encroachment of a sliding gate onto East Street, correct?

A. Yes.

Q. The survey indicates there's an encroachment of a chain-link fence onto East Street; is that correct?

A. That's what it looks like, correct.

Q. The survey seems to indicate there's an encroachment of shrubs onto East Street; is that correct?

A. That's what it looked like, yes.

(Vacca Depo ("Ex. 20") at pp. 62-63).

56. Gabriel Senor, a licensed surveyor and engineer (see deposition of Eliot Senor taken on March 29, 2021 ("Senor Depo.") at Ex. "35", pp. 17-18), testified that the 2000 As-Built survey (at Ex. "30") contained dimensions indicating that the gate and fencing extended onto East Street between 10.7 feet on one end of the property to 12.9 feet on the other end of the property (Senor Depo (Ex. "35"), p. 36-38).

57. Based upon the City's records, the 2000 As-Built was accepted by the City and a certificate of occupancy was issued based upon that 2000 As-Built depicting the encroachment onto East Street (see Exs. "30" and "34"). When Defendants purchased the Property in 2002, there were no open or pending violations that had been issued by the City (see title company's Department of Buildings search finding "no pending violations" for search done December 23, 2002 at Ex. "36").

Work by Defendants:

58. On May 19, 2003, Defendants obtained a building permit from the City for removal, regrading and excavating at the Property (as Ex. "37").

59. The area of “rock outcrop” to be removed was marked in red on a copy of the 2000 As-Built depicting the contractor’s yard extending onto East Street (Ex. “38”, p. 1.), which was stamped approved and signed by the City Building Official on May 19, 2003 (at Ex. “38”, p. 2).

60. The City approved the removal of rock outcrop even though the plan depicted that the contractor’s yard extending onto East Street (Ex. “38”).

First Notice of Encroachment:

61. Seven years after Defendants purchased the Property and six years after the City issued Defendants a permit to remove rock at the Property based upon the marked-up As-Built Survey depicting the existing contractor’s yard extending onto East Street, the City first raised the issue of a potential encroachment on East Street.

62. By letter dated June 22, 2009 to Defendants from Paul Vacca and Jeffrey C. Coleman, PE, the Commissioner of Public Works, the City advised “that it has come to the attention of both this office and the Department of Public Works that the legal non-conforming contractor’s yard at the aforementioned location [the Property] is encroaching on City property, specifically the public right of way along East Street” and Defendants were directed to remove the encroachment within 30 days (at Ex. “10”).

63. Defendants did not agree that that there was any impermissible encroachment of the existing contractor’s yard as the fencing was: (1) in the same location when Defendants purchased the Property; and (2) in the same location when the City issued the permit to Defendants for the rock removal (Flavio Depo (at Ex. “8”), p. 91-92).

64. “A week or two” after receiving the June 22, 2009 letter (Flavio Depo (at Ex. “8”), p. 92), Flavio and Maria had a meeting at the Property with Mr. Vacca and Mr. Coleman and the City’s representatives advised Flavio and Maria to obtain a survey:

Q. What was discussed at the meeting?

A. The content of this letter.

Q. Was there any resolution to the content of the letter?

A. Yes.

Q. What was the resolution?

A. They both proposed that I would get a surveyor to come out and mark that line to depict where the property was so that they can determine where it was.

Because I explained to them that I thought that was my property, and I've been using it since I've had it, and the previous owner was using it who knows how many years prior to me.

(Flavio Depo (at Ex. “8”), p. 93).

65. Subsequently, Defendants retained Gabriel E. Senor, P.C. to “Stake Out Right Side (Paper Street)” (in other words to stake out the property along East Street) and produce a survey sketch for which he was paid \$900.00 (see Ex. “39”). Gabriel E. Senor, P.C. staked out the property and produced a “stake out sketch” dated September 10, 2009 (see Ex. “40”).

66. Gabriel Senor, a licensed surveyor and engineer (Senor Depo. (Ex. 35”), p. 17-18), testified that the two stakes placed by his company were not actually placed on the Property’s corners but rather, as indicated on the “stake out sketch”, the two markers were placed on to extend beyond both side property lines: (a) four-feet from the intersection of the Fifth Avenue and East Street property lines; and (b) on a “conc[rete] base” located one-foot from the intersection of the upper property line and East Street (Senor Depo. (Ex. 35”), p. 47-49).

67. In response to the City’s subpoena, Mr. Senor’s office produced twelve pages of documents, including internal notations and prior surveys not previously provided to Defendants (see Ex. “41”, at page 10 of 13; Senor Depo. (Ex. 35”), p. 79-80). But based upon what was provided to Defendants in 2009 – namely, the stake out sketch (at Ex. “40” and Senor Depo. (Ex.

“35”), p. 85) – it was impossible to conclude that the contractor’s yard’s fencing along the front property line encroached on East Street (Senor Depo. (Ex. 35”), p. 80-81):

Q. Okay. So is there anything on this document [the stake out sketch] that shows the fence is 10 feet outside of the property?

A. No, except for physically going, standing on the line and seeing where everything is located.

Q. Right, but I'm asking about this document in particular, is there anyway --

A. No, it's not a survey, it doesn't show physical information.

(Senor Depo. (Ex. 35”), p. 81).

68. On July 6, 2016, Gabriel Senor’s office sent the following email to Defendants that Mr. Senor testified he dictated to his receptionist: “[t]he fence is aprox. 10Ft on the outside [sic] the property line as indicated on our original field sketch” (Ex. “42”; see Senor Depo. (Ex. 35”), p. 72).

69. At deposition, however, Mr. Senor explained that it would be impossible to ascertain whether the fencing encroached on East Street from the stake out sketch provided to Defendants in 2009:

Q. Okay. So in that e-mail that you read before, you said that you dictated that the fence is 10 feet outside of the property line, you couldn't tell -- you couldn't come up with this information – that information by looking solely at this document, page 8 of 13 [the stake out sketch]; is that correct?

A. That's correct.

(Senor Depo. (Ex. 35”), p. 82-83)

70. The surveyor marking done in 2009, which Flavio testified was done in orange-pink marking on the concrete wall (see pictures of same attached as Ex. “43”), indicated that the contractor’s yard fencing encroached only approximately 10 inches onto East Street over the property line (Flavio Depo (Ex. “8”), p. 98-99).

71. Based upon the understanding in 2009 (and prior to Mr. Senor's explanation in 2016) that the fencing only extended 10 inches over the property line abutting East Street, the City indicated that no further action was necessary (Flavio Aff. ¶ 25).

72. Nothing further was raised by the City about an alleged impermissible encroachment onto East Street for years until after false claims were made about purported actions taken by Defendants in 2015 (see Complaint (Ex. "1"), ¶¶ 10 to 18).

Skate Park:

73. After Defendants purchased the Property, the City undertook and completed construction of a skate park located directly across East Street from the Property (and other properties abutting the Property) as depicted in the aerial Google Earth image attached with red arrow pointing to the Property (at Ex. "44"). Construction started in or about 2003 and was completed in 2005 or 2006 (Flavio Depo (Ex. "8"), p. 61).

Eminent Domain:

74. In or about 2014, Plaintiff initiated a plan to acquire Defendants' Property and the other contractor's yard properties along East Street by eminent domain to use for the site of the City's Department of Public Works (Flavio Depo (Ex. "8"), p. 56; Answer (Ex. "2") ¶¶ 89-92)

75. Defendants vocally opposed the City's eminent domain plan. (Answer (Ex. "2") ¶ 90).

76. Ultimately, the City did not pursue acquisition of the Property and other East Street properties by eminent domain (Answer (Ex. "2") ¶ 91).

77. In connection with or around the time of the proposed eminent domain, the City had a survey (the 2014 Survey) prepared of all the properties along East Street (attached as Ex. "14").

Alleged May 16, 2015 Incident Regarding the Parcel:

78. Based entirely upon a video and photographs from a "local news website" called Talk of the Town (the Video at Ex. "45"; photographs attached to the Complaint (Ex. "1") as Exhibit "1" to the Complaint), the Complaint alleges that:

on or about May 16, 2015, Defendants, their agents, servants and employees, entered the Parcel with landscaping equipment and began clearing the land to create a parking lot. Defendants' actions included cutting down numerous full-sized trees on the Parcel, leaving woodchips on the site. Defendants used a steamroller to create a parking surface. As part of this process, Defendants deposited potentially contaminated materials on the cleared area. Attached hereto as Exhibit 1 are copies of a photograph taken on May 16, 2015 showing Defendant Flavio La Rocca and his employees clearing the Parcel and constructing the parking lot. These photographs were obtained from the local news website Talk of the Sound, at <http://newrochelle-talk.com/content/who-flavio-la-rocca-part-iv> (last visited March 23, 2016)

(see Complaint (Ex. "1"), ¶ 15).

79. The Parcel referred to in the Complaint is further down from the Property and on the other side of East Street from the Property adjacent to the skate park (Complaint (Ex. "1"), ¶ 12).

80. The Parcel as defined in the Complaint is depicted in an aerial Google Earth image as the area adjacent to the skate park where the white truck shown in the image is parked (see Ex. "46"; see Flavio Depo. (Ex. "8"), p. 83-84).

81. The Parcel as defined in the Complaint is also marked with a yellow highlighted circle on a highlighted version of the City's 2014 Survey (at Ex. "47"; Flavio Depo (Ex. "8"), p. 105).

82. While the Complaint's allegations are based upon the video from Talk of the Sound, the video does not depict Defendants (or their agents, servants and employees), cutting down trees on the Parcel, leaving woodchips on the Parcel or creating a parking lot on the Parcel (Ex. "45").

83. Rather, the video depicts Defendants' employees raking and smoothing out the gravel of the Parcel with rakes and with a compactor machine, and depicts a pile of woodchips already on the Parcel – not being placed there by Defendants.

84. Flavio LaRocca testified that starting in around 2012 or 2013, F. LaRocca & Sons Inc. began raking out the Parcel to remove displaced gravel resulting from the plowing (Flavio Depo. (Ex. "8"), p. 119-120) and would rake the Parcel once or twice a year in around April or May (Flavio Depo. (Ex. "8"), p. 126; 135).

85. At that time, F. LaRocca & Sons Inc. stored some of its equipment at the Guglielmo's contractor's yard located at the end of East Street at the corner of East Street and East Place (Flavio Depo. (Ex. "8"), p. 119) and as a result, Defendants would plow East Street to the entrance of the Guglielmo yard located at the end of East Street so they could access their equipment (Flavio Depo. (Ex. "8"), p. 80 (discussing Ex. "46" (marked as P7)); Flavio Depo., p. 85; 119-120).

86. Flavio explained as follows:

Q. Has Flavio LaRocca & Sons ever done anything to the parcel?

A. We just raked the ground.

Q. What is the reason the ground is raked?

A. Because when we would plow that area to get into where we were storing the equipment in Guglielmo's yard, we would disturb that area which was gravel and

wood chips thrown down by previously. We just raked the area that we would disturb.

Q. How did it become Flavio LaRocca & Sons' responsibility to rake the parcel?

A. Just because we entered into the property down below Guglielmo's yard. The City would not maintain the road.

We would plow it to gain access because otherwise we cannot enter our trucks and equipment and we would damage the area as the plows would go by. And as a courtesy to my neighbors who were there, we just raked out the area and that's it.

(Flavio Depo. (Ex. "8"), p. 85).

87. Pictures taken prior to F. LaRocca & Sons Inc. raking and flattening the gravel on the Parcel on May 16, 2015 depict the poor condition of the East Street, the runoff and standing water (Ex. "48"; Flavio Aff at ¶ 16).

88. When asked how the snowplowing affected the Parcel (the yellow highlighted area on the Marked 2014 Survey at Ex. "47"), Flavio further explained:

Q. So we interrupted you. How does the snowplowing affect the yellow area?

A. When we snowplowed this area, at times, because it's a steep hill going down, our trucks with the snow, depending on how much [snow], or ice, would skid off and scrape into the yellow area where the gravel was at, and some of the gravel would be pushed onto East Street and some of the gravel would be piled up in mounds for the snowplow.

MR. MENDELSON: For the record, he moved his finger up East Street north and then skipped his hand and moved his hand into the yellow area and came back out.

A. Correct. Because in order for us to gain entrance here where the gate was, no one would ever plow this road, so we would plow it so we could gain access.

Q. When you're pointing, you're pointing to an area that's outside of the boundary of East Street. Is it your testimony that your company plows outside of East Street?

I'm sorry. Excuse me. I --

Q. Does your company only plow East Street or does it also plow property that's to the east of East Street?

A. They abut one another. So when you have 6 inches or a foot of snow on the ground, you can't tell where the line is.

(Flavio Depo. (Ex. "8"), p. 110).

89. The 2014 Survey itself depicts that there is no clear delineation through curbing or otherwise between East Street and the City's park borders (Ex. "14").

90. The person that took, edited and uploaded the video from May 16, 2015 was Robert Andrew Cox who is a journalist and owner of Talk of the Sound (see deposition transcript of Robert Andrew Cox taken on August 4, 2021 (“Cox Depo”) at Ex. “49”, pp. 5,-6).

91. Talk of the Sound claimed in an article (titled “Who is Flavio La Rocca? – Part VIII) Mr. Cox wrote that “on the morning of Saturday May, 16th” Talk of the Sound “was **on hand** as La Rocca and his crew chopped down trees, ground them up, dumped broken chunks of toxic asphalt, piled up the asphalt to create a berm to screen the resulting ‘parking lot’ from prying eyes at City Park and used a steamroller to pack down more asphalt to create a parking surface.” (Ex. “50” (*emphasis added*)).

92. At deposition, Mr. Cox admitted that he was not actually present at the Parcel to observe trees allegedly being chopped down and ground up:

Q. What does on hand mean, in this first line of that paragraph?

A. It means I was present on the scene.

Q. But were you present on the scene, when trees were being chopped, allegedly chopped down?

A. Well, I was on scene for what took place that day and I'm describing what took place that day, based on what I believe, based on my sources, so yes.

Q. But were you present, personally, on the scene when trees were being chopped down?

A. No.

Q. And were you present, personally, on the scene when trees were being ground up?

A. No.

(Cox Depo (Ex. “49”), p. 71-72).

93. The City retained D&B Engineers and Architects, PC (“Retained Engineer”) to conduct sampling and testing of the asphalt type material allegedly dumped on the Parcel, which Retained Engineer produced its letter report to the City dated October 8, 2015 concluding that there was no contamination (or toxic asphalt dumped as claimed by Cox or Talk of the Sound) (Ex. “51”).

94. Mr. Cox testified that the “berm” referenced was actually the existing pile of wood chips (Cox Depo (Ex. “49”), p. 72-73), which is depicted in the video (Ex. “45”) and pictures attached to the Complaint (see Exhibit “1” to Complaint (attached as Ex. “1” hereto).

95. Subsequent to May 16, 2015, the City fenced in the Parcel area with a black fence (see pictures of the fenced in Parcel area, including pictures with cars and trucks still parking on the City’s property next to the black fence attached as Ex. “52”). The City paid \$1,930 to install the black fence (Ex. “53”).

96. Despite the Talk of the Sound’s claim that Defendants created a parking lot on the Parcel on May 16, 2015, Mr. Cox testified that he had no knowledge whether the Parcel area (currently fenced in with a black fence) was ever used as parking area prior to May 16, 2015 (Cox Depo (Ex. “49”), p. 81).

97. The 2014 Google Earth image of the Parcel – taken before May 16, 2015 -- however, depicts a truck with an attached trailer and other trucks parked on the Parcel (see historical Google Earth Image from 10/2014 and enlarged portion of same attached as Ex. “54”).

98. Flavio testified that prior to the City installing the black fencing, vehicles used to park on the Parcel (Flavio Depo (Ex. “8”), p. 86; 105), including vehicles of employees of the businesses along East Street ((Flavio Depo (Ex. “8”), p. 133).

99. Flavio testified that neither his business vehicles nor his employees ever parked on the Parcel ((Flavio Depo (Ex. “8”), p. 84; 86; 106).

100. Benny Rivera testified his employee’s vehicle is depicted in the video and pictures of cars from May 16, 2015 parked on the Parcel (Rivera Depo (Ex. “16”), p. 32-33 (discussing video at 2:25 (attached hereto as Ex. “45”) and p. 41 (regarding the 3rd and 6th pages of Marked Deposition Exhibit 3A (which is Exhibit “1” to the Complaint (attached hereto as Ex. “1”))).

101. Mr. Rivera further testified that from the time he first started renting his property on East Street (prior to 2015 (Rivera Depo (Ex. "16"), p. 6, 7, 10-11)) before he purchased it in 2016 (Rivera Depo (Ex. "16"), p. 6) until the City fenced off the Parcel, cars would always park on the Parcel, including before March 2015 – two months prior to Defendants' alleged creation of the parking lot on May 16, 2015 as claimed by Talk of the Sound:

Q. Do you recall having seen, yourself, those cars parked where they're shown in the photograph [asking about Ex. 3A. p. 6, which is page 6 of Exhibit "1" to the Complaint (attached hereto as Ex. "1")]?

A. There's always cars parked there.

Q. When you say always, were there cars parked there from the time you first started renting --

A. Yeah.

Q. -- your property?

A. Yeah.

Q. Are there cars still parked there, as of today?

A. No, 'cause the city had fenced the property off. And they just left the one [spot] where actually my employee's parking is still open.

(Rivera Depo (Ex. "16"), p. 42-43).

Q. You saw a lot of pictures today, of an area fenced in with a black fence. Do you recall seeing those pictures, today? Or do you have personal knowledge of that area, that's currently fenced in by the city with the black fence; is that correct?

A. Yes.

Q. So that area, before the fence was there, cars used to park in that area; is that correct?

A. Yes.

(Rivera Depo (Ex. "16"), Rivera, p. 70)

Q. Correct. So before the fence was up --

A. Yes.

Q. -- that area was used as parking; is that correct?

A. Yes.

Q. And it was used as parking before March of twenty-fifteen, correct?

A. Yes.

(Rivera Depo (Ex. "16"), p. 71)

102. Mr. Rivera was further able to identify one of the vehicles in the picture attached to the Complaint (Exhibit 1, p. 6 of Ex. "1") of the line of cars from May 16, 2015 (the red truck) as an employee of PAB Contracting Corp's vehicle, which same red truck is depicted parked in front of that business on a later date after the black fence was installed (Rivera Depo (Ex. "16"), p. 72; Ex. "15" (at Bates Nos. D0409; and D0410 and D0415 (depicting the red truck and the black fence))).

103. Mr. Rivera further testified that 80% of those parking on the Parcel (prior to the black fence's installation) were PAB Contracting Corp's employees:

Q. So prior to the city installing that black fence, enclosing the area, would it generally be that the PAB employees would park in that area, that's now enclosed with the black fence?

A. I would say 80 percent, yeah.

Q. And the reason why your employees could only potentially park there, on Saturday, was because the PAB employees were not there; is that correct?

Yes?

If you could just answer.

A. Yes

(Rivera Depo (Ex. "16"), p. 76).

104. The one remaining parking spot referenced by Mr. Rivera post-installation of the black fence is between the skate park's fencing and the black fencing as depicted in the attached picture (at Ex. "55") and Mr. Rivera identified the car parked in that area as his car (Rivera Depo (Ex. "16"), p. 46).

105. Felipe Maya, an employee of F. LaRocca & Sons, Inc. for 7-8 years, also testified that the Parcel area was used for parking prior to May 16, 2015:

Q. Before the date of that video, did cars used to park in that area that is shown in the video where the work was being done?

A. Yes, there have always been cars parked there.

(Maya Depo (Ex. "28), p. 55).

Q. We're going back to the last photograph I showed you which is part of Plaintiff's Exhibit 3-A. Is this where people parked after you pushed back the gravel and it was compacted?

A. Yes, it was like that before and after. I just put the gravel back in its place.

Q. Mr. Maya, when you say that it was like that before and after, do you mean that people were parking there before you put the gravel back in its place?

A. Yes, it's always been like that. All I did was put some gravel back.

(Maya Depo (Ex. "28), p. 39-40).

106. In 2002 or 2003, prior to the construction of the skate park, the Parcel was also used as a parking area for employees of Persico, a contractor hired by the City to do construction work on the nearby Potter Avenue Bridge (Flavio Depo. (Ex. "8"), p. 61; 89;109).

107. While doing the bridge work, Persico cleared out the area where the skate park is now located to use as their staging area (Flavio Depo. (Ex. "8"), p. 61;) and the Parcel was used as parking for Persico's employees (Flavio Depo. (Ex. "8"), p. 108-109). Persico placed gravel on the Parcel and this gravel remained after Persico finished the work (Flavio Depo. (Ex. "8"), p. 107; 113).

108. On March 6, 2003, Defendants inquired about renting or leasing the area used by Persico and the City responded by letter dated March 17, 2003 providing that while this area was currently being used as a staging area by Persico, it was the City's intention to create an overflow parking lot in that area and therefore "it is not available for lease/rental following Persico's uses." (Ex. "56").

109. Mr. Bongo testified that he saw neither in the video nor ever observed Flavio or his employees cutting down trees:

Q. Do you remember Mr. Meisels showed you the video earlier today?

A. Yes.

Q. Did you observe anyone in that video cutting down trees?

A. No.

Q. In the area that's now enclosed by the black fence, have you ever observed my client, Mr. La Rocca, cutting down trees in that area?

A. Me personally, no.

Q. Have you ever observed any employees of Mr. La Rocca cutting down trees in that area?

A. No. Just what you guys showed me supposedly. No. Myself personally, no.

Q. You said in that video nobody was cutting down trees, right?

A. Yeah, I didn't see anybody with chain saw, no, cutting down the trees, no, no. You know, I've never seen that.

Q. Have you ever observed Mr. LaRocca or any of his employees place wood chips in the area now enclosed by the black fence?

A. No.

(Bongo Depo. (Ex. "11"), p. 52-53).

110. Likewise, Mr. Rivera testified he never saw Flavio or anyone from Flavio's company cut down any tree in any area adjacent to East Street at any time (Rivera Depo. (Ex. "16"), p. 72-73).

111. Mr. Maya, who identified himself as the person pictured in the video from May 16, 2015 driving the machine (Maya Depo. (Ex. "28"), p. 13-14), testified that he was "cleaning out the gravel and the dirt that accumulates after snowstorms and things like that and pushing it off the road." (Maya Depo. (Ex. "28"), p.14).

112. He testified that he did not do any landscaping work in May of 2015 (Maya Depo. (Ex. "28"), p. 12) and while he saw the wood chips on the Parcel, he did not know where they came from (Maya Depo. (Ex. "28"), p. 13) as they were placed there when he was not at work (Maya Depo. (Ex. "28"), p. 18):

Q. I'm not sure I understand. You say you leave work at 4:30; correct?

A. Yes.

Q. Are you saying to us that those wood chips were placed when you were not there?

A. Correct.

(Maya Depo. (Ex. "28"), p. 17-18).

113. Mr. Maya further testified no brush was removed from the Parcel and that he did not see any trees on the Parcel or anyone using a wood chipper:

Q. In the area where you were spreading the gravel, was it necessary to remove any brush?

A. No, there was no brush there.
There was nothing.

(Maya Depo. (Ex. "28"), p. 18).

Q. If you were sitting in the driver's seat of the car, am I correct that the area that would be to your right would be the area where you pushed back the gravel?

A. Yes.

Q. In that area, did you ever see any trees?

A. No.

Q. Did you ever see anybody using a wood chipper?

A. No

(Maya Depo. (Ex. "28"), p. 47).

114. Mr. Maya testified that the video depicted workers spreading out the gravel (Maya Depo. (Ex. "28"), p. 15 discussing video at 22 seconds) and that the gravel being spread was existing gravel:

Q. Where did the gravel that you spread come from?

A. It was already there. When it snows and it rains that all gets pushed down and it was already down there.

Q. Was it necessary to bring in more gravel?

A. No.

(Maya Depo. (Ex. "28"), p. 16)

115. Martin Sanchez, who has worked for F. LaRocca & Sons for fifteen years (see deposition transcript of Martin Sanchez taken on May 28, 2021 (Ex. "57"), p. 7) testified as follows after being shown the video (at 11 seconds):

Q. I'm particularly referring to the video at 11 seconds. Can you tell me what is fairly and accurately depicted in that photograph?

A. Yes.

Q. Please explain what's shown.

A. I can see a machine and some people. I can't see the rest very well.

Q. Do you remember having seen this back in May of 2015?

A. No, I don't remember.

Q. Back in May of 2015, did you work on a project to clear the gravel in the area where you see the machine?

A. Some guys were sent to work on that but I stayed in the yard to fix some tools that had broken.

Q. Do you remember which guys were sent to work on it?

A. I don't remember because the guys who had worked here before have left.

Q. Do you remember Mr. Maya working on it?

A. No, no, I don't know about him.

Q. Did you see any of the work that those guys were doing?

A. I just know that they were working and cleaning up the gravel because when it rains a lot of gravel comes down the road and a lot of potholes are there and they were filling them in.

Q. And did you see them do that?

A. Yes, because the boss sent them to do that to rake the gravel so that everything would be smoother.

Did you see them do that?

A. Yes, because you can see the whole street from there.

Q. When you say the whole street, do you mean East Street?

A. Yes.

(Sanchez Depo. (Ex. "57"), p. 14-15).

116. Mr. Sanchez similarly testified that he did not observe any trees being removed from the Parcel:

Q. Did Flavio La Rocca's company take down any trees?

MR. MEISELS: Objection to form.

A. No.

Q. Did you see anyone from Mr. LaRocca's company, any employee or Mr. La Rocca himself take down any trees from that area where the people were working in the video?

A. No, I didn't see any coworkers there.

Q. Did you see anyone from Flavio La Rocca's company cut down or remove trees in the area that the people work [were] raking?

A. No.

Q. In the area that's enclosed by the black fence in the picture that you're looking at on the screen right now, Defendant's GG [attached as Ex. "58"], do you see that picture?

A. Yes.

Q. I'm talking about the first page of Defendant's GG [attached as Ex. "58", p. 1] in the area that is enclosed by the black fence. Have you ever seen anyone from Flavio La Rocca's company remove any trees from that area?

A. No, none of us took down any trees.

Q. As part of your work at Flavio La Rocca's company, have you ever seen anybody take down trees for any project?

A. No, we don't do that.

(Sanchez Depo. (Ex. "57"), p. 29-30).

Second Notice of Encroachment:

117. After the claims made by Talk of the Sound, Defendants received another letter from the City about the alleged encroachment. By letter dated November 18, 2015 entitled "Notice to Remove" from Alexander Tergis, Commissioner of Public Works, the City advised it "recently completed an examination of the area" of the Property and the City's review "revealed that at certain points where your property and the property of other owners in the area borders the neighboring property owned by the City, there are circumstances where certain improvements, such as a fence with gates, a row or rows of hedges, a concrete wall and in one instance a metal shelf used for storage of materials and equipment, encroaches and intrudes on and over City owned real property." (Ex. "59").

Post-Litigation Survey

118. This action was commenced by the City thereafter on April 1, 2016 (see Ex. "1").

119. After the commencement of this action, the City had the surveyor, Ward Carpenter Engineers, prepare a survey of the Property dated April 13, 2016, which was produced in the context of this litigation ("2016 Property Survey" at Ex. "60").

120. The 2016 Property Survey depicts a relatively minor encroachment of a “stone masonry wall” extending beyond the Property line but coming flush with the sidewalk running besides Fifth Avenue.

121. As depicted in the attached Google images of the Property from Fifth Avenue (at Ex. “61” and Ex. “6”), the “stone masonry wall” is actually a low garden wall that is the base of planter with an iron railing on top behind which are large Arborvitae trees. The planting base and planting screen the entire contractor’s yard fencing and all other parts of the contractor’s yard from view along Fifth Avenue.

122. This garden wall planter was erected with the knowledge and consent of the City in or about 2003. Flavio was advised by Raj Mehta of the City’s Department of Public Works, who came to the site and stated that so long as the garden wall/planter remained on the Property’s side of the sidewalk and did not extend onto the sidewalk itself and was only four feet high, it was fine to construct the garden wall/planter where it is currently located Flavio Aff at ¶ 29.

123. The garden wall/planter system was constructed as directed as it extends only up to the sidewalk along Fifth Avenue (see Ex. “6” and Ex. “61”) and is a total of four feet high (Flavio Aff. ¶ 31).

124. The location of the garden wall/planter is in line with the City’s own fence in front of its skate park, which the 2016 Survey depicts as extending beyond the skate park’s record property line and located in the area between the sidewalk and skate park’s property line almost abutting the sidewalk (see 2016 Survey, Ex. “60”).

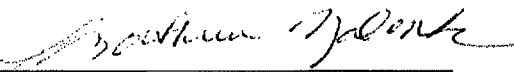
125. And if this garden wall/planter was not in place, the large Arborvitae could not grow as high and full without extending onto the sidewalk area and impeding access (Flavio Aff at ¶ 33).

126. The 2016 Property Survey also depicts a portion of the contractor's yard extending onto East Street, which is how the Property has been since at least 2000.

127. Prior to this litigation, the City never raised any issue with respect to an encroachment onto Fifth Avenue and upon information and belief, does not want Defendants to remove the encroachments on Fifth Avenue. The removal of the attractive garden wall/planter finished on one side in attractive stone with an iron railing and plantings, would result in a complete loss of screening. Instead, the fencing and other portions of the contractor's yard would be visible from Fifth Avenue.

Dated: Tarrytown, New York
May 27, 2022

SILVERBERG ZALANTIS LLC

By: 

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Exhibit Number	Description
Ex. "1"	Verified Complaint with Exhibits
Ex. "2"	Verified Answer with Affirmative Defenses and Counterclaims
Ex. "3"	Verified Reply
Ex. "4"	Bargain and Sale Deed dated September 18, 2002 from Maffeis to La Roccas
Ex. "5"	Relevant portion of City's tax map depicting 436 Fifth Avenue and surrounding properties
Ex. "6"	Google images of Property (436 Fifth Avenue)
Ex. "7"	Deed dated January 30, 2008 from La Roccas to FMLR Management LLC
Ex. "8"	Deposition Transcript of Flavio LaRocca taken March 5, 2020
Ex. "9"	City's Bureau of Building property cards
Ex. "10"	Letter from the City's Paul Vacca and Jeffrey C. Coleman, PE dated June 22, 2009
Ex. "11"	Deposition Transcript of Patrick Bongo taken May 17, 2021
Ex. "12"	Google Earth image depicting the various contractor yard properties along East Street
Ex. "13"	Pictures of property rented by PAB Landscaping, Inc.
Ex. "14"	Survey of Property prepared for the City of New Rochelle dated December 8, 2014
Ex. "15"	Pictures of PAB Contracting Corp's contractor yard with pictures of cars parked in front of the yard
Ex. "16"	Deposition transcript of Bernardo F. Rivera taken on July 8, 2021
Ex. "17"	1907 Subdivision Map
Ex. "18"	1914 Deed
Ex. "19"	City Council's June 2, 1914 meeting minutes
Ex. "20"	Deposition of Paul Vacca taken on February 25, 2020
Ex. "21"	Recording information for 1914 Deed
Ex. "22"	City's 1929 Official Map with highlighting of East Street for ease of reference
Ex. "23"	City's Zoning Map
Ex. "24"	Relevant portion of City's tax map depicting the surrounding streets
Ex. "25"	City's Public Work Department overview
Ex. "26"	City's Bureau of Streets and Highways overview
Ex. "27"	Plaintiff's Response and Objections to Defendants' First Set of Interrogatories dated February 3, 2020
Ex. "28"	Deposition transcript of Felipe Maya taken on May 28, 2021
Ex. "29"	Pictures of East Street including pictures of cones in the road
Ex. "30"	2000 As-Built Plan
Ex. "31"	Stamped approved plan entitled "proposed riprap" dated August 3, 2000
Ex. "32"	Building Permit Number B200387 dated August 3, 2000
Ex. "33"	Stamped approved amended plan dated January 2, 2001
Ex. "34"	Certificate of Occupancy issued on January 16, 2001
Ex. "35"	Deposition of Eliot Senor taken on March 29, 2021

Ex. "36"	Title company's Department of Buildings search finding "no pending violations" for search done December 23, 2002
Ex. "37"	Building Permit issued on May 19, 2003
Ex. "38"	Marked (in red) 2000 As-Built Plan
Ex. "39"	Gabriel E. Senor, P.C. Authorization Form signed August 10, 2009 and Invoice
Ex. "40"	Stake-Out Sketch produced by Gabriel E. Senor, P.C.
Ex. "41"	Gabriel E. Senor, P.C. documents produced in response to subpoena
Ex. "42"	Email dated July 6, 2016 with Gabriel E. Senor, P.C.
Ex. "43"	Pictures of concrete wall with orange marking
Ex. "44"	Google image of City's skate park with arrow pointing to Defendants' Property
Ex. "45"	Talk of the Sound Video (CD with video to be separately provided to the Court)
Ex. "46"	Google Image from 10/2014 (marked P7 at Flavio Deposition)
Ex. "47"	Highlighted 2014 Survey
Ex. "48"	Pictures of poor conditions of East Street
Ex. "49"	Deposition transcript of Robert Andrew Cox taken on August 4, 2021
Ex. "50"	Talk of the Sound article titled "Who is Flavio La Rocca? -- Part VIII"
Ex. "51"	D&B Engineers and Architects, PC letter report to City dated October 8, 2015
Ex. "52"	Pictures of black fence installed on the parcel (with pictures showing cars and trucks still parking on City property)
Ex. "53"	City's purchase order detail for fence (showing cost of \$1,950)
Ex. "54"	Historical Google Earth Images from 10/2014
Ex. "55"	Picture of white car between black fence and skate park's fencing
Ex. "56"	March 17, 2003 letter from the City Manager to Flavio LaRocca
Ex. "57"	Deposition transcript of Martin Sanchez taken on May 28, 2021
Ex. "58"	Pictures of area enclosed by black fence (Deposition Exhibit Defendants' GG)
Ex. "59"	"Notice to Remove" dated November 18, 2015
Ex. "60"	2016 Property Survey
Ex. "61"	Google image of Property from Fifth Avenue side

Exhibit "1"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

CITY OF NEW ROCHELLE

Index No. _____

Plaintiff,

- against -

SUMMONS

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LARocca & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.

----- x

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service, or, if service of this summons is made by any means other than by personal delivery to you within the state, within 30 days after such service is complete. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue designated is the residence of plaintiff and defendants, which is Westchester County.

Dated: White Plains, New York
April 1, 2016

Yours, etc.

Wilson Elser Moskowitz Edelman & Dicker, LLP
Attorneys for Plaintiff
1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000

By: Eliza M. Scheibel
Eliza M. Scheibel



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

CITY OF NEW ROCHELLE

Index No. _____

Plaintiff,

- against -

VERIFIED COMPLAINT

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

.

Defendants.

----- x

Plaintiff the City of New Rochelle (the "City") by its attorneys Wilson Elser Moskowitz
Edelman & Dicker, LLP, alleges as follows:

INTRODUCTION

1. This case arises from the defendants' brazen misappropriation of City property for their private personal and business use and their disregard for the boundaries of the City's rights of way. Acting without the City's permission or knowledge, defendant Flavio LaRocca and his agents, servants, and employees, wrongfully entered vacant City property adjacent to Flowers Park in New Rochelle, New York and cleared the property, including removal of potentially historic and valuable trees, to construct a parking lot. Though the City subsequently erected a fence to prevent access to the parking lot, a number of full-sized trees have been lost and the property remains in a damaged state. The defendants' flagrant disregard for the City's property rights deprived the City and its residents of the enjoyment of its trees and substantially interfered with the City's use of its property. The defendants' actions constitute wrongful entry and

continuous trespass, negligence, the creation of a nuisance, conversion of the City's valuable trees, and a violation of New York Real Property Actions and Proceedings Law § 861.

2. Additionally, the defendants' contractor's yard at 436 Fifth Avenue is encroaching on the City's public rights of way, including but not limited to East Street and Fifth Avenue. The City has informed the defendants of the encroachments and demanded that they be remedied, but the defendants have failed to remove the intrusions.

3. Accordingly, by this action, the City seeks to hold the defendants accountable for the destruction and obstruction of City property and asks this court to issue an order and judgment awarding the City damages for the loss of its trees, property damage, diminution in property value, the costs of restoring the property to its prior condition, and a permanent injunction prohibiting encroachment on City property.

PARTIES

4. Plaintiff, City of New Rochelle, is a municipal corporation, organized and existing under the laws of the State of New York.

5. Upon information and belief, defendant Flavio La Rocca, is a resident of New Rochelle, New York and the owner and CEO of defendant Flavio La Rocca & Sons, Inc., and a member of defendant FMLR Realty Management LLC.

6. Upon information and belief, defendant Maria La Rocca is the spouse of Flavio La Rocca and is a member of FMLR Realty Management LLC.

7. Defendant Flavio La Rocca & Sons, Inc., also known as F. LaRocca & Sons, Inc., is a New York corporation having its principal place of business at 71-B Potter Avenue, New Rochelle, New York 10801.

8. Defendant FMLR Realty Management LLC is a New York limited liability company with a principal place of business at 69-71 Potter Avenue, New Rochelle, New York 10801.

9. Flavio La Rocca, Maria La Rocca, Flavio La Rocca & Sons, Inc., and FMLR Realty Management LLC are referred to collectively herein as “Defendants.”

FACTS COMMON TO ALL CAUSES OF ACTION

10. At all times pertinent hereto, the City has been and presently is the owner of a parcel of property located in the City of New Rochelle, County of Westchester, State of New York, consisting of undeveloped open land between East Street and Flowers Park (“the Parcel”).

11. Prior to May 2015, the Parcel consisted of a wooded area containing trees of potentially historical and financial value.

12. The Parcel is adjacent to the Sidney E. Frank Skate Park, which is part of Flowers Park, a 20-acre park in New Rochelle. Prior to May 16, 2015, the wooded area on the Parcel created privacy and a noise barrier between the Skate Park and the surrounding neighborhood. The trees on the Parcel also contributed to the ambiance of the park.

13. At all times relevant hereto, the City’s interest in the Parcel was a recorded interest and a matter of public record on file in the office of the Westchester County Clerk.

14. At all times relevant hereto, Defendants were aware that the City owned the Parcel.

15. On or about May 16, 2015, Defendants, their agents, servants and employees, entered the Parcel with landscaping equipment and began clearing the land to create a parking lot. Defendants’ actions included cutting down numerous full-sized trees on the Parcel, leaving woodchips on site. Defendants used a steamroller to create a parking surface. As part of this process, Defendants deposited potentially contaminated materials on the cleared area. Attached

hereto as **Exhibit 1** are copies of a photograph taken on May 16, 2015 showing Defendant Flavio La Rocca and his employees clearing the Parcel and constructing the parking lot. These photographs were obtained from the local news website Talk of the Sound, at <http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-iv> (last visited March 23, 2016).

16. The trees removed by Defendants were of potentially significant historic and financial value.

17. After discovery of the wrongful entry and creation of a parking lot on City property, the City erected a fence around the Parcel to prevent Defendants from utilizing the parking lot.

18. The parking lot remains on the Parcel.

**AS AND FOR A FIRST CAUSE OF ACTION
(TRESPASS)**

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-18 of the complaint as if set forth fully herein.

20. The City is the owner of the Parcel.

21. On or about May 16, 2015, Defendants intentionally entered the Parcel, cut down trees, cleared the land, and created a parking lot.

22. Defendants acted without the City's permission and the City never gave consent to Defendants to enter the Parcel, clear it, or create a parking lot.

23. By their actions, Defendants attempted to wrongfully claim interest in the Parcel adverse to the City which is the lawful owner thereof.

24. Defendants' entry onto the Parcel, destruction of City property and construction of a parking lot constitute a trespass.

25. Defendants' creation of a parking lot on the Parcel constitutes a continuing trespass.

**AS AND FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)**

26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25 of the complaint as if set forth fully herein.

27. Pursuant to New Rochelle City Ordinance §301-4, it is unlawful for any person to remove, destroy, cut, break, climb or injure any tree, plant or shrub on City property without a written permit from the Commissioner of the Department of Public Works.

28. Pursuant to New Rochelle City Ordinance §301-7, it is unlawful for any person to place or maintain upon the ground in any public place any stone, cement, or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree, plant or shrub in any such place.

29. Pursuant to § 861 of the New York Real Property Actions and Proceedings Law, it is unlawful for any person to cut, remove, injure, destroy or cause to be cut, removed, injured, or destroyed, any underwood, tree or timber on the land of a city without consent of the owner or to damage land in the course of such activity.

30. Defendants had a duty not to remove trees from the Parcel, not to clear the Parcel, not to place asphalt or other materials on the ground in the Parcel, and not to create a parking lot on City property without permission from the City.

31. Defendants breached their duty by entering the Parcel, cutting down trees, clearing the land, and constructing the parking lot.

32. As a direct and proximate result of Defendants' acts, the City has suffered substantial damages.

33. Therefore, Defendants' acts constitute negligence per se and/or negligence.

**AS AND FOR A THIRD CAUSE OF ACTION
(NUISANCE)**

34. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-33 of the complaint as if set forth fully herein.

35. Defendants' creation of a parking lot on the Parcel was intentional or negligent, and unreasonable.

36. The parking lot substantially interferes with the City's use and enjoyment of the Parcel.

37. Defendants' creation of a parking lot on the Parcel constitutes a nuisance and must be abated forthwith.

**AS AND FOR A FOURTH CAUSE OF ACTION
(CONVERSION)**

38. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-37 of the complaint as if set forth fully herein.

39. The City is the owner of the Parcel and all trees and plants thereon with the right to possession and use thereof.

40. Defendants' actions in cutting down the numerous full-sized, potentially valuable and historic trees on the Parcel constitute conversion of the City's trees.

41. As a direct and proximate result of Defendants' conversion, Plaintiff suffered damages exceeding the jurisdictional limits of all lower courts.

**AS AND FOR A FIFTH CAUSE OF ACTION
(VIOLATION OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW § 861)**

42. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-41 of the complaint as if set forth fully herein.

43. At all times relevant hereto, the City owned the Parcel.

44. On or about May 16, 2015, Defendants, their agents, servants or employees, while in the course of their employment, entered in and upon the Parcel and cut down and destroyed numerous full-sized, potentially valuable and historic trees standing wholly upon the Parcel.

45. The entry of Defendants, their agents, servants or employees was wrongful and unlawful and without leave of the City, either express or implied, and without any reason to believe that the land belonged to Defendants or their agents, servants, or employees.

46. The acts of Defendants, their agents, servants or employees, in cutting down and destroying the trees, was deliberate, and a violation of the property rights of the City.

47. By reason of the aforesaid acts of the Defendants and their agents, servants or employees, the City and its residents have lost said trees and the land belonging to the City was damaged and lessened in value.

48. As provided for in section 861 of the New York Real Property Actions and Proceedings Law, the Defendants are liable to the City for treble the amount of said damage.

**AS AND FOR A SIXTH CAUSE OF ACTION
(NUISANCE BY ENCROACHING ON EAST STREET AND FIFTH AVENUE)**

49. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-48 of the complaint as if set forth fully herein.

50. East Street is now, and at all times mentioned in this complaint was, a public street located within the corporate limits of plaintiff City of New Rochelle, and controlled and maintained by plaintiff.

51. Fifth Avenue is now, and at all times mentioned in this complaint was, a public street located within the corporate limits of plaintiff City of New Rochelle, and controlled and maintained by plaintiff.

52. Defendants operate a contractor's yard at 436 Fifth Avenue in the City of New Rochelle, New York.

53. Structures associated with the Defendants' contractor's yard are encroaching into East Street and Fifth Avenue, including a stone masonry wall which encroaches into the Fifth Avenue right of way, and a concrete storage bin wall and chain link fence and gate which encroach into the East Street right of way. Attached hereto as **Exhibit 2** is a copy of an aerial photograph showing East Street and Fifth Avenue with arrows generally indicating the areas of encroachment.

54. Pursuant to New Rochelle City Code §111-38, "no portion of a building or other structure shall encroach upon or project into any street, alley, park or other public property without a special permit having been issued therefor by the Council of the City of New Rochelle, New York, except as specifically stated in § **111-39**, and the owner of any building, any part of which encroaches on public property, shall be liable to the City of New Rochelle for damage

which may result to any person or property by reason of such encroachment, whether or not such encroachment is specifically allowed by the State Code.”

55. Defendants do not have a special permit for their encroachments into East Street or Fifth Avenue.

56. Defendants’ encroachments are unlawful and greatly impair the aesthetics and usefulness of East Street and Fifth Avenue.

57. Defendants’ encroachments are unreasonable and constitute a nuisance.

58. On June 22, 2009, plaintiff duly notified defendant FMLR Management LLC in writing of the unlawful obstruction and encroachment described above, and demanded that defendant remove the unlawful obstruction and encroachment immediately. A copy of this notice is attached to this complaint, marked **Exhibit 3**, and incorporated by this reference.

59. On November 18, 2015, plaintiff duly notified defendant FMLR Management LLC in writing of the unlawful obstruction and encroachments described above, and demanded that defendant remove the unlawful obstructions and encroachments immediately. A copy of this notice is attached to this complaint, marked **Exhibit 4**, and incorporated by this reference. Defendants have failed and refused to remove the obstructions into East Street and Fifth Avenue.

60. Defendants’ encroachments on East Street and Fifth Avenue are causing irreparable harm to the City and its residents and their ability to use East Street and Fifth Avenue.


WHEREFORE, the City of New Rochelle demands judgment against Defendants for the following:

(a) compensatory damages including but not limited to the value of the removed trees, loss in value of the Parcel, and property damage;

- (b) statutory damages under RPAPL § 861 including stumpage value and \$250 per tree, treble damages, and the costs to restore the property to its prior condition;
- (c) consequential damages including but not limited to the costs of constructing the fence to prohibit access to the parking lot and the costs of removing the parking lot and restoring the Parcel to its prior condition;
- (d) statutory damages under City Code §111-40 of \$2500 per first violation and \$5000 for each subsequent offense;
- (e) a permanent injunction prohibiting defendants from encroaching upon City property at East Street and Fifth Avenue;
- (f) punitive damages;
- (g) attorneys' fees and costs;
- (h) prejudgment interest at the maximum legal rate; and
- (i) such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York
April 1, 2016

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Attorneys for the City of New Rochelle

By: 
Peter A. Meisels
Eliza M. Scheibel
1133 Westchester Avenue
White Plains, NY 10604
Tel. No. (914) 323-7000
Our File No.: 07367.00101

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- x

CITY OF NEW ROCHELLE

Index No. _____

Plaintiff,

- against -

VERIFICATION

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

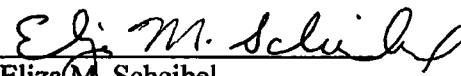
.

Defendants.

----- x

Eliza M. Scheibel, an attorney admitted to practice law before the Courts of the State of
New York hereby verifies:

I am an associate with the firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP,
counsel for the plaintiff, the City of New Rochelle (the "City") in this action. I have reviewed
the foregoing verified complaint and know the same to be true, except as to those matters which
are alleged on information and belief, as to which I believe them to be true. I make this
verification on behalf of the City, a governmental subdivision, pursuant to CPLR 3020(d)(2)
based on my review of the City's records and files.


Eliza M. Scheibel

Sworn to before me this
1st day of April, 2016



Notary Public

MATHEW T. DUDLEY
NOTARY PUBLIC, State of New York
No. 02DU6289716
Qualified in New York County
Term Expires October 1, 2016

“A”

Exhibit 1

Photographs obtained from local news site Talk of the Sound,
available at <http://www.newrochelle.com/content/who-flavio-la-rocca-part-iv>
(last visited March 23, 2016)











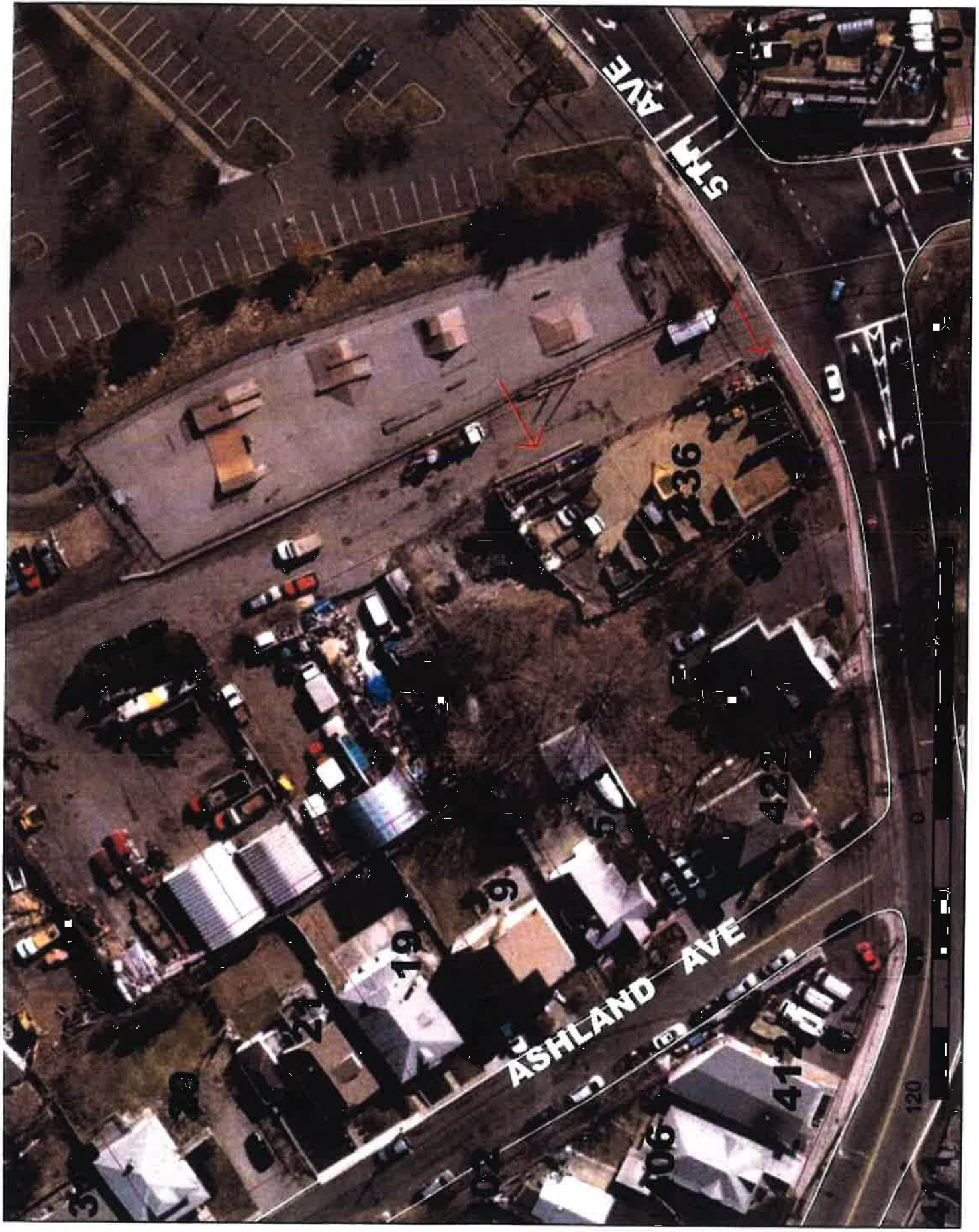




“B”

Exhibit 2





“C”

FILED: WESTCHESTER COUNTY CLERK 05/27/2022 07:24 PM

INDEX NO. 54190/2016

NYSCEF DOC. NO. 48

FILED: WESTCHESTER COUNTY CLERK 04/01/2016 09:34 AM

RECEIVED NYSCEF: 05/27/2022
INDEX NO. 54190/2016

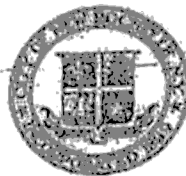
NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 04/01/2016

Exhibit 3



Bureau of Buildings
Department of Development
515 North Avenue
www.newrochelleny.com
New Rochelle, N.Y. 10801



Tel: (914) 654-2035
Fax: (914) 654-2031

Paul Vacca, C.E.O.
Deputy Commissioner
Development - Building Official

Peter Warycha, C.E.O.
Deputy Building Official of

City of New Rochelle NEW YORK

06/22/2009

FMLR Management, LLC
140 Sussex Road
New Rochelle, N.Y. 10804

Re: 436 Fifth Avenue / Contractors Yard
Section 3, Block 931, Lot 29

Mr. LaRocca:

Please be advised that it has come to the attention of both this office and the Department of Public Works that the legal non-conforming contractor's yard at the aforementioned location is encroaching on City property, specifically the public right of way along East Street. The encroachment was discovered during an inspection of the area and a review of records contained in the files of the City of New Rochelle.

Consistent with the provisions of §281 of the Code of the City of New Rochelle, you are ordered to remove the encroachment within 30 days. You may request a hearing for this matter by contacting the Secretary to the Commissioner of Public Works at 654-2132.

Please feel free to contact me at 654-2036 regarding any questions in the interim.

Very truly yours,

Handwritten signature of Paul Vacca in cursive.

Paul Vacca
Deputy Commissioner of Development/Building Official

Handwritten signature of Jeffrey C. Coleman in cursive.

Jeffrey C. Coleman, PE
Commissioner of Public Works

“D”

FILED: WESTCHESTER COUNTY CLERK 05/27/2022 07:24 PM

INDEX NO. 54190/2016

NYSCEF DOC. NO. 48

FILED: WESTCHESTER COUNTY CLERK 04/01/2016 09:34 AM

RECEIVED NYSCEF 540502702022

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 04/01/2016

Exhibit 4



Alexander Tergis
Commissioner



Scott D. Pickup
Deputy Commissioner/Operations

James J. Moran, P.E.
City Engineer



City of New Rochelle
Department of Public Works

November 18, 2015

FMLR Management, LLC
140 Sussex Road
New Rochelle, New York 10804

Re: Notice to Remove
SBL – 3-931-29 – 436 Fifth Ave

Dear Property Owner:

The City of New Rochelle recently completed an examination of the area in which your real property is located, its environs and the siting of improvements made to your property. This review revealed that at certain points where your property and the property of other owners in the area borders the neighboring property owned by the City, there are circumstances where certain improvements, such as a fence with gates, a row or rows of hedges, a concrete wall and in one instance a metal shelf used for storage of materials and equipment, encroaches and intrudes on and over City owned real property. Please note that the above list of encroachments is not and does not constitute a complete list of the intrusions, but is only provided as an example of some of the more obvious transgressions.

Pursuant to Article VII, Section 55 of the Charter of the City, the Commissioner of the Department of Public Works is charged with the duty, among other things, to control the operation and maintenance of public streets. Since permission to use City owned property or a portion thereof has not been given nor secured, this unsanctioned use for your personal or business use must cease forthwith. You are hereby directed immediately to remove at your own cost and expense any and all improvements which encroach beyond the boundary of your property and intrude onto any portion of City owned real property.

If you have any questions concerning this matter or wish to resolve this matter, do not hesitate to contact me undersigned.

Very truly yours,

Alexander Tergis
Commissioner of Public Works

January 26, 2004

Page 2 of 2

cc: Kathleen E. Gill, Chief of Staff for Policy
and Government Affairs/Corporation Counsel

Exhibit "2"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CITY OF NEW ROCHELLE,

Index No. 54190/2016

Plaintiff,

-against-

**VERIFIED ANSWER
WITH AFFIRMATIVE
DEFENSES AND
COUNTERCLAIMS**

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.
-----X

Defendants FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC. and FMLR REALTY MANAGEMENT LLC (collectively "Defendants"), by their attorneys SILVERBERG ZALANTIS LLC, allege as their Verified Answer with Affirmative Defenses and Counterclaims to the Verified Complaint ("Complaint") of the Plaintiff CITY OF NEW ROCHELLE ("City" or "Plaintiff") as follows:

1. Deny the allegations contained in paragraph 1 of the Complaint.
2. Deny the allegations contained in paragraph 2 of the Complaint.
3. Deny the allegations contained in paragraph 3 of the Complaint, except admit that Plaintiff has initiated this Action by the filing of a Summons and Complaint and seeks certain relief of the Court as set forth in the Complaint, which document speaks for itself.
4. Admit the allegations contained in paragraph 4 of the Complaint.
5. Admit the allegations contained in paragraph 5 of the Complaint.
6. Admit the allegations contained in paragraph 6 of the Complaint.
7. Admit the allegations contained in paragraph 7 of the Complaint.
8. Admit the allegations contained in paragraph 8 of the Complaint.



9. No response is necessary to the assertion made in paragraph 9 of the Complaint, which defines the term by which the Defendants are referred to in the Complaint, which document speaks for itself.

10. Deny the allegations contained in paragraph 10 of the Complaint and refer all questions of law to the Court.

11. Deny the allegations contained in paragraph 11 of the Complaint.

12. Deny the allegations contained in paragraph 12 of the Complaint.

13. Deny the allegations contained in paragraph 13 of the Complaint.

14. Deny the allegations contained in paragraph 14 of the Complaint.

15. Deny the allegations contained in paragraph 15 of the Complaint.

16. Deny the allegations contained in paragraph 16 of the Complaint.

17. Deny the allegations contained in paragraph 17 of the Complaint.

18. Deny the allegations contained in paragraph 18 of the Complaint.

**AS AND FOR A FIRST CAUSE OF ACTION
(TRESPASS)**

19. Repeat and reallege the responses to paragraphs 1 through 18 of the Complaint as set forth above.

20. Deny the allegations contained in paragraph 20 of the Complaint and refer all questions of law to the Court.

21. Deny the allegations contained in paragraph 21 of the Complaint.

22. Deny the allegations contained in paragraph 22 of the Complaint.

23. Deny the allegations contained in paragraph 23 of the Complaint.

24. Deny the allegations contained in paragraph 24 of the Complaint.

25. Deny the allegations contained in paragraph 25 of the Complaint.

**AS AND FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)**

26. Repeat and reallege the responses to paragraphs 1 through 25 of the Complaint as set forth above.

27. Deny the allegations contained in paragraph 27 of the Complaint, except admit that the New Rochelle City Ordinance contains Section 301-4, which ordinance speaks for itself and all questions of law are referred to the Court.

28. Deny the allegations contained in paragraph 28 of the Complaint, except admit that the New Rochelle City Ordinance contains Section 301-7, which ordinance speaks for itself and all questions of law are referred to the Court.

29. Deny the allegations contained in paragraph 29 of the Complaint, except admit that the New York Real Property Actions and Proceedings Law contains Section 861, which law speaks for itself and all questions of law are referred to the Court.

30. Deny the allegations contained in paragraph 30 of the Complaint.

31. Deny the allegations contained in paragraph 31 of the Complaint.

32. Deny the allegations contained in paragraph 32 of the Complaint.

33. Deny the allegations contained in paragraph 33 of the Complaint.

**AS AND FOR A THIRD CAUSE OF ACTION
(NUISANCE)**

34. Repeat and reallege the responses to paragraphs 1 through 33 of the Complaint as set forth above.

35. Deny the allegations contained in paragraph 35 of the Complaint.

36. Deny the allegations contained in paragraph 36 of the Complaint.

37. Deny the allegations contained in paragraph 37 of the Complaint.

**AS AND FOR A FOURTH CAUSE OF ACTION
(CONVERSION)**

38. Repeat and reallege the responses to paragraphs 1 through 37 of the Complaint as set forth above.

39. Deny the allegations contained in paragraph 39 of the Complaint and refer all questions of law to the Court.

40. Deny the allegations contained in paragraph 40 of the Complaint.

41. Deny the allegations contained in paragraph 41 of the Complaint.

**AS AND FOR A FIFTH CAUSE OF ACTION
(VIOLATION OF REAL PROPERTY ACTIONS AND PROCEEDINGS LAW § 861)**

42. Repeat and reallege the responses to paragraphs 1 through 41 of the Complaint as set forth above.

43. Deny the allegations contained in paragraph 43 of the Complaint and refer all questions of law to the Court.

44. Deny the allegations contained in paragraph 44 of the Complaint.

45. Deny the allegations contained in paragraph 45 of the Complaint.

46. Deny the allegations contained in paragraph 46 of the Complaint.

47. Deny the allegations contained in paragraph 47 of the Complaint.

48. Deny the allegations contained in paragraph 48 of the Complaint.

**AS AND FOR A SIXTH CAUSE OF ACTION
(NUISANCE BY ENCROACHING ON EAST STREET AND FIFTH AVENUE)**

49. Repeat and reallege the responses to paragraphs 1 through 48 of the Complaint as set forth above.

50. Deny the allegations contained in paragraph 50 of the Complaint and refer all questions of law to the Court.

51. Deny the allegations contained in paragraph 51 of the Complaint and refer all questions of law to the Court.

52. Admit the allegations contained in paragraph 52 of the Complaint.

53. Deny the allegations contained in paragraph 53 of the Complaint.

54. Deny the allegations contained in paragraph 54 of the Complaint, except admit that the New Rochelle City Ordinance contains Section 111-38, which ordinance speaks for itself and all questions of law are referred to the Court.

55. Admit the allegations contained in paragraph 55 of the Complaint, but deny that a special permit is required for Defendants' use of their property.

56. Deny the allegations contained in paragraph 56 of the Complaint.

57. Deny the allegations contained in paragraph 57 of the Complaint.

58. Deny the allegations contained in paragraph 58 of the Complaint, except admit that the City sent Defendant FMLR Management LLC certain correspondence dated June 22, 2009 attached to the Complaint as Exhibit "3", which document speaks for itself.

59. Deny the allegations contained in paragraph 59 of the Complaint, except admit that the City sent Defendant FMLR Management LLC certain correspondence dated November 18, 2015 attached to the Complaint as Exhibit "4", which document speaks for itself.

60. Deny the allegations contained in paragraph 60 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

61. The claims asserted by the Plaintiff in the Complaint fail to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

62. There is a complete defense to this action (and all of the Plaintiff's claims) based upon documentary evidence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

63. Plaintiff's claims are barred in whole or in part under the doctrine of laches and/or waiver.

64. Defendant FMLR Realty Management LLC ("FMLR") owns the property known as 436 Fifth Avenue, New Rochelle, New York (the "Defendants' Property"), which is a corner lot that has frontage on Fifth Avenue and East Street..

65. FMLR acquired Defendants' Property by deed from Defendants Flavio La Rocca and Maria La Rocco (collectively, the "La Roccas") dated January 30, 2008 and recorded in the Westchester County Clerk's Office on March 18, 2008 with Control Number 480660036.

66. The La Roccas acquired Defendants' Property by deed dated September 18, 2002 and recorded in the Westchester County Clerk's Office on November 12, 2002 with Control Number 423020239.

67. From the time the La Roccas purchased Defendants' Property in 2002 to present, the property has been used as a contractor's yard for storage of equipment by the contracting business run by Defendant Flavio La Rocca & Sons, Inc. a.k.a. F. LaRocca & Sons, Inc. ("La Rocca, Inc.").

68. While the City now asserts in this Complaint that it owns East Street, for as long as Defendants have owned Defendants' Property, the City has refused to maintain, repair and/or improve East Street.

69. As a result, Defendants, at their sole cost and expense, maintain, including snow removal, improve and repair East Street, and for years the City did not object to this.

70. While it is impossible to know for certain as the Complaint does not provide a street address, tax lot number or a survey for the property defined as the "Parcel" in the Complaint, it appears that the Parcel is an area of land on the other side of East Street and further north on East Street (farther away from Fifth Avenue) than Defendants' Property.

71. As part of Defendants' maintenance of East Street, Defendants were required to perform certain work on East Street to access its property, which work is what the City appears to object to in the Complaint.

72. Defendants relied upon the City's refusal to maintain, improve or repair East Street and its failure to object to the Defendants' maintenance, repair and improvement of East Street to maintain, improve and repair East Street at its sole cost and expense.

73. However, the Defendants never removed any trees from the Parcel, never installed a parking lot on the Parcel and do not use the Parcel as a parking lot.

74. The City only began objecting to the location of Defendants' property when the City decided to construct a park/playground on the other side of East Street from Defendants' Property, which was last scheduled to be completed in 2018, and, upon information and belief, after Defendants vocally opposed the City's proposed eminent domain of Defendants' Property to be part of a new site for the City's Department of Public Works.

75. The City cannot have it both ways. It cannot assert ownership of East Street in order to allege that Defendants' Property encroaches on East Street, but then refuse to maintain, improve and/or repair East Street as the City, as a municipality, would be required to do for any City road or street used by the public.

76. The City still refuses to maintain, improve and/or repair East Street.

77. Defendants incurred and continue to incur considerable expense in reliance upon the City's inaction with respect to East Street.

78. In addition, the alleged encroachments asserted by the City have existed for years, yet for years the City did not object to these alleged encroachments, which the Defendants relied upon to their detriment.

79. Defendants would be severely prejudiced if the City was now permitted to assert these claims.

80. Defendants would suffer significant financial harm if the City was now permitted to assert these claims.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

81. Plaintiff's claims are barred by the statute of limitations.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

82. The Complaint fails to state a claim against Defendants Flavio La Rocca or Maria La Rocca in their individual capacity.

83. The Defendants' Property is owned by Defendant FMLR.

84. At all relevant times, the business operated at the Defendants' Property, which maintains, improves and repairs East Street, is owned by La Rocca, Inc.

85. Any allegations asserted in the Complaint are against Defendants FMLR or La Rocca, Inc. and not against Defendants Flavio La Rocca or Maria La Rocca in their individual capacities.

86. The Complaint does not assert, nor is there any basis in law, to pierce the corporate veil as against Defendants Flavio La Rocca or Maria La Rocca.

87. The Complaint should be dismissed as against Defendants Flavio La Rocca and Matia La Rocca.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

88. Plaintiff's claims are barred by the doctrines of unclean hands and bad faith.

89. Upon information and belief, in or about 2014, Plaintiff initiated a plan to acquire the Defendants' Property and several other neighboring properties by eminent domain to use for the site of the City's Department of Public Works.

90. Upon information and belief, Defendants vocally opposed the City's eminent domain plan.

91. Upon information and belief, the City ultimately did not acquire Defendants' Property by eminent domain.

92. Upon information and belief, after the City's eminent domain plan did not come to fruition, Plaintiff began targeting Defendants and subjecting them to unequal treatment, both with respect to the Defendants' Property and another property owned by Defendants.

93. Upon information and belief, Plaintiff's actions in bringing this Complaint are a direct result of Defendants' opposition to Plaintiff's plan to acquire the Defendants' Property through eminent domain, and the City's ultimate failure to do so.

AS AND FOR A FIRST COUNTERCLAIM

94. Repeat and reallege the allegations contained in paragraphs 61 to 93 above as if fully-stated herein.

95. Defendants' Property has certain concrete jersey barriers, which barriers the City claims encroach upon East Street.

96. When the City constructed a park across East Street from Defendants' Property, it took certain concrete jersey barriers from Defendants' Property that belonged to the Defendants.

97. The City installed these concrete jersey barriers across the street from Defendants' Property as a barrier to the park and then subsequently asphalted these jersey barriers in place, which installation encroaches upon East Street.

98. The City never asked or offered to pay Defendants to take the concrete jersey barrier's for the City's use, and the Defendants never consented to the City doing so.

99. The City's actions constitute conversion of Defendants' property.

100. The value of the concrete jersey barriers that the City took from Defendants is approximately \$40,000.

101. By removing the Defendants' concrete jersey barriers and installing them on East Street in front of the park for the City's own use, the City has eliminated the utility of the concrete jersey barriers and the Defendants' could no longer use them for their own purposes.

102. Even if the concrete jersey barriers still did have utility, Defendants have not been able to use the property it purchased for its own purposes because of the conversion committed by the City to use the concrete jersey barriers for its own purposes.

103. Defendants are entitled to damages for the City's conversion of Defendants' property and/or compensatory damages.

AS AND FOR A SECOND COUNTERCLAIM

104. Repeat and reallege the allegations contained in paragraphs 61 to 103 above as if fully-stated herein.

105. From 2002 to present, the Defendants, at their sole cost and expense, have maintained and/or improved East Street, including but not limited to plowing and repairing pot holes and removing debris, in order to properly access its property.

106. During that time, the City has refused to maintain, repair and/or improve East Street.

107. If the City is asserting its ownership over East Street, then it should have been maintaining, repairing and improving East Street from 2002 to present.

108. The Defendants have incurred considerable expenses, in an amount to be determined by the Court, from maintaining, repairing and improving East Street for nearly 20 years.

109. The Defendants are entitled to be reimbursed by the City for those expenses related to actions that should have been done by the City, as a municipality that owns East Street.

WHEREFORE, it is respectfully requested that this Court grant the following relief:

- A. That the Verified Complaint be dismissed in its entirety;
- B. On its first Counterclaim, that the Defendants be awarded damages in the amount of \$40,000 for the City's conversion of Defendants' property;
- C. On its second Counterclaim, that the Defendants be awarded damages, in an amount to the determined by the Court, for the costs incurred by Defendants for the maintenance, repair and improvement of East Street;
- D. Reasonable costs and attorneys' fees;
- E. Together with such other and further relief as this Court deems just and proper.

Dated: Tarrytown, New York
April 29, 2019

SILVERBERG ZALANTIS LLC

By: 


Katherine Zalantis
Attorneys for Defendants
120 White Plains Road, Suite 305
Tarrytown, New York 10591
(914) 682-0707
zalantis@szlawfirm.net

VERIFICATION

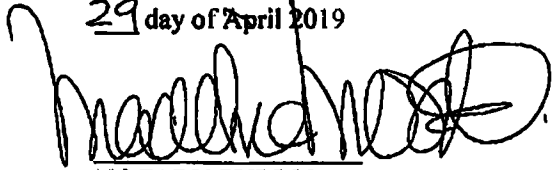
STATE OF NEW YORK)
) SS.:
COUNTY OF WESTCHESTER)

Maria La Rocca, being duly sworn, deposes and says:

I am a named Defendant in the above-referenced action. I have read the annexed Verified Answer with Affirmative Defenses, know the contents thereof and the same are true to my knowledge, except as to the matters therein stated to be on information and belief, and as to such matters I believe the same to be true based upon my review of the records of Defendants.



Maria La Rocca

Sworn to before me this
29 day of April 2019

NOTARY PUBLIC

MADELINE MONSERRATE
No. 01MC6349129
Notary Public, State of New York
Qualified in Westchester County
My Commission Expires 10/11/2028

Exhibit "3"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- X
CITY OF NEW ROCHELLE

Index No. 54190/2016

Plaintiff,

- against -

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LARocca & SONS, INC.
and FMLR REALTY MANAGEMENT LLC.,

VERIFIED REPLY

Defendants.
----- X

Plaintiff the City of New Rochelle (the "City") by its attorneys Wilson Elser Moskowitz
Edelman & Dicker, LLP, alleges for its reply to defendants' counterclaims follows:

**AS AND FOR A REPLY TO
THE FIRST COUNTERCLAIM**

1. Denies knowledge or information sufficient to form a belief concerning the
allegations contained in paragraph 95 of the Verified Answer.

2. Denies the truth of the allegations contained in paragraph 96 of the Verified
Answer.

3. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations contained in paragraph 97 of the Verified Answer.

4. Denies knowledge or information sufficient to form a belief as to the truth of the
allegations contained in paragraph 98 of the Verified Answer.

5. Deny the truth of the allegations contained in paragraph 99 of the Verified
Answer.

6. Deny the truth of the allegations contained in paragraph 100 of the Verified Answer.

7. Deny the truth of the allegations contained in paragraph 101 of the Verified Answer.

8. Deny the truth of the allegations contained in paragraph 102 of the Verified Answer.

9. Deny the truth of the allegations contained in paragraph 103 of the Verified Answer.

**AS AND FOR A REPLY TO
THE SECOND COUNTERCLAIM**

10. Repeat and realleges the responses contain in paragraphs 1-9 above as if fully stated herein.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the Verified Answer.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the Verified Answer.

13. Deny the truth of the allegations contained in paragraph 107 of the Verified Answer.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Verified Answer.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Verified Answer.

16. WHEREFORE, the City of New Rochelle demands judgment against Defendants for the following:

- (a) compensatory damages including but not limited to the value of the removed trees, loss in value of the Parcel, and property damage;
- (b) statutory damages under RPAPL § 861 including stumpage value and \$250 per tree, treble damages, and the costs to restore the property to its prior condition;
- (c) consequential damages including but not limited to the costs of constructing the fence to prohibit access to the parking lot and the costs of removing the parking lot and restoring the Parcel to its prior condition;
- (d) statutory damages under City Code §111-40 of \$2500 per first violation and \$5000 for each subsequent offense;
- (e) a permanent injunction prohibiting defendants from encroaching upon City property at East Street and Fifth Avenue;
- (f) punitive damages;
- (g) attorneys' fees and costs;
- (h) prejudgment interest at the maximum legal rate; and
- (i) such other and further relief as the Court may deem just and proper.

Dated: White Plains, New York
May 16, 2019

Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Attorneys for the City of New Rochelle

By: 

Peter A. Meisels
Eliza M. Scheibel
1133 Westchester Avenue
White Plains, NY 10604
Tel. No. (914) 323-7000
Our File No.: 07367.00101

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- X
CITY OF NEW ROCHELLE

Index No. 54190/2016

Plaintiff,

- against -

VERIFICATION

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LARocca & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.
----- X

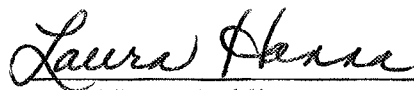
Peter A. Meisels, an attorney admitted to practice law before the Courts of the State of New York hereby verifies:

I am a member of the firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, counsel for the plaintiff, the City of New Rochelle (the "City") in this action. I have reviewed the foregoing verified reply and know the same to be true, except as to those matters which are alleged on information and belief, as to which I believe them to be true. I make this verification on behalf of the City, a governmental subdivision, pursuant to CPLR 3020(d)(2) based on my review of the City's records and files.



Peter A. Meisels

Sworn to before me this
16th day of May, 2019



Notary Public

LAURA HANNA
Notary Public, State of New York
No. 01HA6035322
Qualified in Westchester County
Commission Expires Dec 27, 2021

Exhibit "4"



423020239DEDE

Control Number 423020239	WIID Number 2002302-000116	Instrument Type DED
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WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE
 (THIS PAGE FORMS PART OF THE INSTRUMENT)
 *** DO NOT REMOVE ***

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT DED - DEED
 FEE PAGES 4 TOTAL PAGES 4

RECORDING FEES	
STATUTORY CHARGE	\$6.00
RECORDING CHARGE	\$12.00
RECORD MGT. FUND	\$19.00
RP 5217	\$25.00
TP-584	\$5.00
CROSS REFERENCE	\$0.00
MISCELLANEOUS	\$0.00
TOTAL FEES PAID	\$67.00

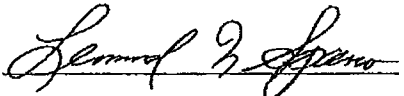
MORTGAGE TAXES	
MORTGAGE DATE	
MORTGAGE AMOUNT	\$0.00
EXEMPT	
YONKERS	\$0.00
BASIC	\$0.00
ADDITIONAL	\$0.00
SUBTOTAL	\$0.00
MTA	\$0.00
SPECIAL	\$0.00
TOTAL PAID	\$0.00

TRANSFER TAXES	
CONSIDERATION	\$165,000.00
TAX PAID	\$660.00
TRANSFER TAX #	6376

SERIAL NUMBER
DWELLING

RECORDING DATE 11/12/2002
 TIME 14:07:00

THE PROPERTY IS SITUATED IN
WESTCHESTER COUNTY, NEW YORK IN THE:
CITY OF NEW ROCHELLE

WITNESS MY HAND AND OFFICIAL SEAL

 LEONARD N. SPANO
 WESTCHESTER COUNTY CLERK

Defendants
EXHIBIT

00
RH 2/25/20

Record & Return to:
 SYDELLE SHULMAN HERZBERG ESQ
 46 LONGVUE AVE
 NEW ROCHELLE, NY 10804

#239

Form 8002 (9/99) - 20M -- Bargain and Sale Deed, with Covenants against Grantor's Acts--Individual or Corporation. (single sheet)
CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT -- THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 16th day of September, 2002 and
BETWEEN JOHN MAFFEI, residing at 83 Park Lane, West Harrison, New York; and
ROSE MAFFEI, residing at 307 Hornidge Road, Mamaroneck, New York; NYRo.

DEF
3P

party of the first part, and
FLAVIO LA ROCCA and MARIA LA ROCCA, Husband and Wife, residing
at 2 Trinity Place, New Rochelle, New York

party of the second part,
WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by
the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and
assigns of the party of the second part forever;

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and
being in the

* SEE SCHEDULED "A" ATTACHED HERETO AND MADE A PART HEREOF *

Section 3
Block 931
Lots 29 & 30

TOGETHER with all right, title and interest, if any, of the party of the first part, in and to any streets and roads
abutting the above-described premises to the center lines thereof; TOGETHER with the appurtenances and all the
estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein
granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.


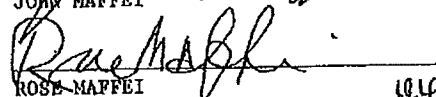
AND the part of the first part covenants that the party of the first part has not done or suffered anything whereby the
said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the
first part will receive the consideration for this conveyance and will hold the right to receive such consider-
ation as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply
the same first to the payment of the cost of the improvement before using any part of the total of the same for
any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above
written.

IN PRESENCE OF:


JOHN MAFFEI

ROSE MAFFEI

10:10 PM
20/21

Acknowledgement taken in New York State
 State of New York, County of Westchester, ss:
 On the 18 day of September, in the year 2002 before me, the undersigned, personally appeared JOHN MAFFEI and ROSE MAFFEI personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies); and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Claire Meadow
 Notary Public CLAIRES S. MEADOW
 Notary Public, State of New York
 No. 4511820
 Qualified in Westchester County
 Commission Expires August 31, 05

Acknowledgement by Subscribing Witness taken in New York State
 State of New York, County of _____, ss:
 On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____ the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who being by me duly sworn, did depose and say, that he/she/they reside(s) in _____ that he/she/they know(s) to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

Title No.: RELIABLE 14350W
 JOHN MAFFEI and ROSE MAFFEI,
 TO
 FLAVIO LA ROCCA and MARIA LA ROCCA.

Distributed by
 Chicago Title Insurance Company

Acknowledgement taken in New York State
 State of New York, County of _____, ss:
 On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Acknowledgement taken outside New York State
 State of _____, County of _____, ss:
 (or Insert District of Columbia, Territory, Possession or Foreign Country)
 On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the (add the city or political subdivision and the state or country or other place the acknowledgement was taken).

SECTION 3
 BLOCK 931
 LOT 29 & 30

COUNTY ~~OF~~ WESTCHESTER
 City of *New Rochelle*
 RETURN BY MAIL TO:

Recorded by
 RELIABLE TITLE AGENCY
 303 OLD TARRYTOWN ROAD
 WHITE PLAINS NY 10603
 (914) 948-4900
 FAX: (914) 948-4999
RELIABLE 14350W

SYDELLE SHOLMAN HERZBERG, ESQ.
 46 LONGVUE AVENUE
 NEW ROCHELLE, NY 10804
 Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

SCHEDULE A

ALL that certain plot, piece or parcel of land situate, lying and being in the City of New Rochelle, County of Westchester and State of New York, and known as Block 931, Lots 29 and 30 on the Official Tax Assessment Map of the City of New Rochelle and also known and designated as Lots 223 and 224, Block "E" on a certain entitled, "Map of Fifth Avenue Heights", filed June 7th, 1907 as Map No. 1728, which property is bounded and described as follows;

BEGINNING at a point where the northerly side of Fifth Avenue is intersected by the division line between Lot 223 and Lot 222;

THENCE RUNNING along the same, North 23 degrees 19' 20" West, 122.00 feet to a point and the intersection of Lot 223, Lot 222 and Lot 217;

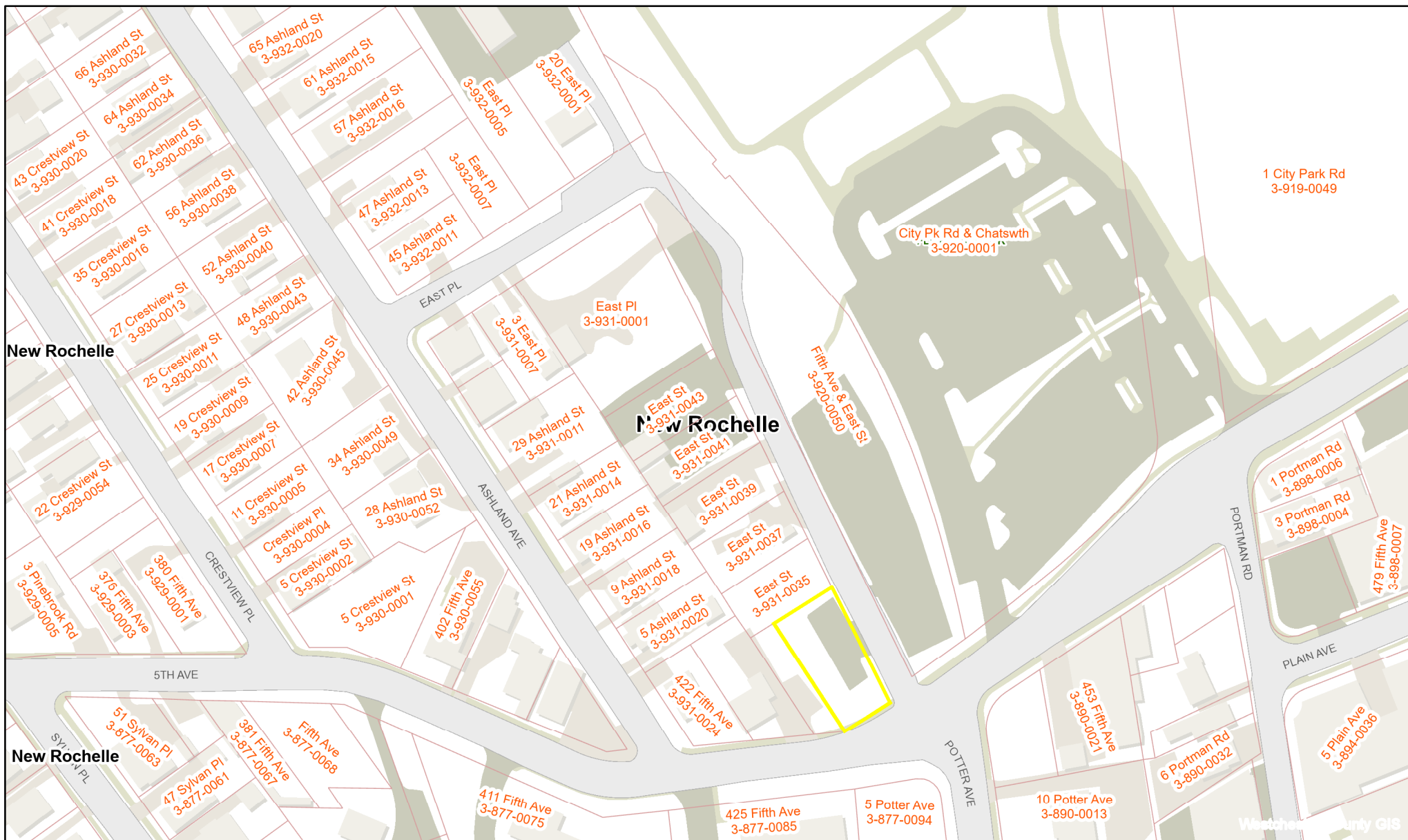
THENCE RUNNING along the division line between Lot 223, Lot 224 and Lot 227 on a course North 66 degrees 45' East, 65.05 feet to the westerly side of East Street;

THENCE RUNNING along the same on a course, South 15 degrees 45' 18" East, 126.11 feet to the intersection of the westerly side of East Street and the northerly side of Fifth Avenue;

THENCE RUNNING along said northerly side of Fifth Avenue the following 2 courses and distances:

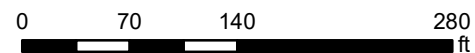
South 66 degrees 45' West, 42.47 feet; and
North 87 degrees West, 6.67 feet to the point or place of BEGINNING.

Exhibit "5"



May 25, 2022

1:1,500



Tax parcel data was provided by local municipality. This map is generated as a public service to Westchester County residents for general information and planning purposes only, and should not be relied upon as a sole informational source. The County of Westchester hereby disclaims any liability from the use of this GIS mapping system by any person or entity. Tax parcel boundaries represent approximate property line location and should NOT be interpreted as or used in lieu of a survey or property boundary description. Property descriptions must be obtained from surveys or deeds. For more information please contact local municipality assessor's office.



Westchester County GIS

GIS
<http://giswww.westchestergov.com>
 Michaelian Office Building
 148 Martine Avenue Rm 214
 White Plains, New York 10601

Exhibit "6"







Exhibit "7"



480660036DED1

Control Number
480660036

Instrument Type
DED



WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE
(THIS PAGE FORMS PART OF THE INSTRUMENT)

*** DO NOT REMOVE ***

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT: **DED - DEED**

FEE PAGES: 4 TOTAL PAGES: 4

RECORDING FEES

STATUTORY CHARGE	\$6.00
RECORDING CHARGE	\$12.00
RECORD MGT. FUND	\$19.00
RP 5217	\$75.00
TP-584	\$5.00
CROSS REFERENCE	\$0.00
MISCELLANEOUS	\$0.00
TOTAL FEES PAID	\$117.00

MORTGAGE TAXES

MORTGAGE DATE	
MORTGAGE AMOUNT	\$0.00
EXEMPT	
COUNTY TAX	\$0.00
YONKERS TAX	\$0.00
BASIC	\$0.00
ADDITIONAL	\$0.00
MTA	\$0.00
SPECIAL	\$0.00
TOTAL PAID	\$0.00

TRANSFER TAXES

CONSIDERATION	\$0.00
TAX PAID	\$0.00
TRANSFER TAX #	9494

SERIAL NUMBER:
DWELLING:

RECORDING DATE: 3/18/2008
TIME: 15:08:00

THE PROPERTY IS SITUATED IN
WESTCHESTER COUNTY, NEW YORK IN THE:
CITY OF NEW ROCHELLE

WITNESS MY HAND AND OFFICIAL SEAL

TIMOTHY C. IDONI
WESTCHESTER COUNTY CLERK

Defendants
EXHIBIT

pp
R17 2/25/20

Record & Return to:
SYDELLE SHULMAN HERZBERG ESQ
46 LONGVUE AVE

NEW ROCHELLE, NY 10804

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT. THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 30 day of January, 2008

BETWEEN

Flavio La Rocca and Maria La Rocca
who reside at 140 Sussex Road, New Rochelle, New York 10804

party of the first part, and

FMLR Management LLC
71B Potter Avenue, New Rochelle, New York 10801

party of the second part,

WITNESSETH, that the party of the first part, in consideration of

dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

City of New Rochelle, County of Westchester and State of New York, and known as Block 931, Lots 29 and 30 on the Official Tax Assessment map of the City of New Rochelle and also known and designated as Lots 223 and 224, Block "E" on a certain map entitled "Map of Fifth Avenue Heights" filed June 7th 1907 as Map No. 1728, which property is bounded and designated as follows:

BEGINNING at a point where the northerly side of Fifth Avenue is intersected by the division line between Lots 223 and 222;

THENCE RUNNING along the same, North 23 degrees 19 minutes 20 seconds West, 122.00 feet to a point and the intersection of Lot 223, Lot 222 and Lot 217;

THENCE RUNNING along the division line between Lot 223, Lot 224 and Lot 227 on a course North 66 degrees 45 minutes East 65.05 feet to the westerly side of East Street;

THENCE RUNNING along the same on a course, South 15 degrees 45 minutes 18 seconds East 126.11 feet to the intersection of the westerly side of East Street and the northerly side of Fifth Avenue;

THENCE RUNNING along said northerly side of Fifth Avenue the following two courses and distances South 66 degrees 45 minutes West 42.47 feet and North 87 degrees West 6.67 feet to the point or place of BEGINNING.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

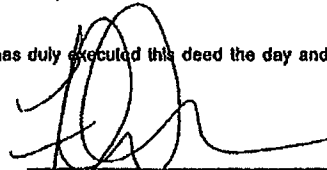
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" when ever the sense of this indenture so requires.

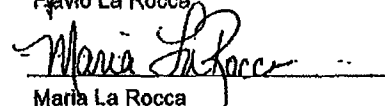
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Catherine A. Porco



Flavio La Rocca



Maria La Rocca

TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE IN NEW YORK STATE

State of New York, County of Westchester ss: State of New York, County of ss:
On the 30 day of May in the year 2008 before me, the undersigned, personally appeared Flavio La Rocca and Maria La Rocca personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment) (signature and office of individual taking acknowledgment)

BYDELLE SHULMAN
Notary Public State of New York
No. 6881840
Qualified in Westchester County
Commission Expires July 31, 2010

TO BE USED ONLY WHEN THE ACKNOWLEDGMENT IS MADE OUTSIDE NEW YORK STATE

State (or District of Columbia, Territory, or Foreign Country) of ss:
On the day of in the year before me, the undersigned, personally appeared
personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the

(insert the City or other political subdivision) in (and insert the State or Country or other place the acknowledgment was taken)
(signature and office of individual taking acknowledgment)

DISTRICT
SECTION 3
BLOCK 931
LOT 29,30
COUNTY OR TOWN New Rochelle
STREET ADDRESS Vacant Land

BARGAIN AND SALE DEED
WITH COVENANT AGAINST GRANTOR'S ACTS

Title No. ACC534
La Rocca

TO
FMLR Management LLC Recorded at Request of

RETURN BY MAIL TO:

DISTRIBUTED BY
REPLER TITLE AGENCY, LLC
111 BROOK STREET, 3RD FLR.
SCARSDALE, NY 10583

Sydelle Shulman Herzberg, Esq.
46 Longvue Avenue
New Rochelle, New York 10804

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

WESTCHESTER COUNTY CLERK RECORDING SHEET
 110 Dr. Martin Luther King, Jr. Boulevard White Plains, NY 10601

..... THIS FORM MUST BE COMPLETED AND SUBMITTED WITH EACH DOCUMENT

This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this document.
 To the best of the submitter's knowledge the information contained on this Recording Sheet is consistent with the information contained in the attached document.

SUBMITTER INFORMATION: Title Number: ACC833

Company: Koppler Title Agency

Address: 111 Brook Street

City: Scarsdale State: NY Zip: 10683 Telephone: 914-723-2001

Attention: dm

Document type: <u>deed</u>	# of pages - <u>2</u>	Mortgage Amount On page ____ of document \$ _____	Dwelling Type: For Mortgage Only On page ____ of document <input type="checkbox"/> 1 to 2 family <input type="checkbox"/> 1 to 6 family <input type="checkbox"/> Not 1 to 6 family
1st party name(s) (i.e. grantor/mortgagor) On page ____ of document <u>LaRocca</u>	Business Entity <input type="checkbox"/>	OR Consideration/Conveyance Amt: <u>\$ 0.00</u>	Check if submitted: <input checked="" type="checkbox"/> RP-5217 - <input type="checkbox"/> \$75 <input type="checkbox"/> \$165 <input checked="" type="checkbox"/> TP-584 - Type of property conveyed [1 through 8] _____ <input type="checkbox"/> TP-584.1 <input type="checkbox"/> IT-2663
2nd party name(s) (i.e. grantee/mortgagee) On page ____ of document <u>FMLR Management LLC</u>	Business Entity <input type="checkbox"/>	TAXES PAID: Mortgage Tax \$ _____ Transfer Tax \$ _____ Mansion Tax \$ _____	Reference # Or Check # _____
Tax designation (Section, Block & Lot) On page ____ of document <u>3-931-29 & 30</u>		RECORDING FEES PAID: Amount \$ _____	Reference # or Check # _____
City(ies) or Town(s) for Property Description On page ____ of document <u>New Rochelle</u>		MORTGAGE TAX AFFIDAVITS SUBMITTED: <input type="checkbox"/> 252 <input type="checkbox"/> 255 <input type="checkbox"/> 280 Other: _____ <input type="checkbox"/> 253 <input type="checkbox"/> 260 <input type="checkbox"/> 339-ec _____	Cross Reference(s): On page ____ of document _____
Property Description -- If required, check the one contained within the document. On page ____ of document <input checked="" type="checkbox"/> Metes & bounds <input type="checkbox"/> Lot number on map filed in the Office of the County Clerk <input type="checkbox"/> Refer to deed recorded in the Office of the County Clerk		Record and Return To: <u>Sydelle Shulman Herzberg, Esq.</u> <u>46 Longvue Avenue</u> <u>New Rochelle, NY 10804</u>	

Exhibit "8"

Page 1

1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x
CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No.
54190/2016

FLAVIO LaROCCA, MARIA LaROCCA,
FLAVIO LaROCCA & SONS, INC. a.k.a.
LaROCCA & SONS, INC. and
FMLR REALTY MANAGEMENT LLC.,
Defendants.

-----x

120 White Plains Road
Tarrytown, New York
March 5, 2020
11:06 a.m.

EXAMINATION BEFORE TRIAL of FLAVIO LaROCCA, one
of the Defendants herein, held at the above time and
place, taken before Cheryl Thompson, a Shorthand
Reporter and Notary Public within and for the State
of New York, pursuant to Order.

Magna Legal Services
866-624-6221
www.MagnaLS.com



Page 2

1

2

2 A P P E A R A N C E S :

3

4 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

Attorneys for Plaintiff

5

1133 Westchester Avenue

White Plains, New York 10604

6

BY: SCOTT MENDELSON, ESQ.

7

8

9 SILVERBERG ZALANTIS LLC

Attorneys for Defendants

10

120 White Plains Road, Suite 305

Tarrytown, New York 10591

11

BY: KATHERINE ZALANTIS, ESQ.

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Page 3

1 S T I P U L A T I O N S 3

2 IT IS HEREBY STIPULATED AND AGREED by and between
3 the attorneys for the respective parties herein, that
4 all rights provided by the CPLR, and Part 221 of the
5 Uniform Rules for the Conduct of Depositions,
6 including the right to object to any question, except
7 as to form, or to move to strike any testimony at this
8 examination, is reserved; and, in addition, the
9 failure to object to any question or to move to strike
10 any testimony at this examination shall not be a bar
11 or waiver to make such motion at, and is reserved to,
12 the trial of this action.

13 IT IS FURTHER STIPULATED AND AGREED that the within
14 deposition may be sworn to by the witness being
15 examined before a Notary Public other than the Notary
16 Public before whom this examination was begun, but the
17 failure to do so or to return the original of this
18 examination to counsel shall not be deemed a waiver of
19 the rights provided by Rules 3116 and 3117 of the
20 CPLR, and shall be controlled thereby.

21 IT IS FURTHER STIPULATED AND AGREED that the filing
22 of the original of the within deposition be waived.

23 IT IS FURTHER STIPULATED AND AGREED that a copy of
24 the within deposition shall be furnished to counsel
25 for the witness without charge.

Page 4

1 Flavio LaRocca 4
2 (Whereupon, Deed was premarked
3 Plaintiff's Exhibit 1 for
4 Identification, as of this date, by
5 Mr. Mendelsohn; Owner's policy was
6 premarked Plaintiff's Exhibit 2 for
7 Identification, as of this date, by
8 Mr. Mendelsohn; Summons and Complaint
9 was premarked Plaintiff's Exhibit 3
10 for Identification, as of this date,
11 by Mr. Mendelsohn; Exhibit 1 to
12 Summons and Complaint was premarked
13 Plaintiff's Exhibit 3-A for
14 Identification, as of this date, by
15 Mr. Mendelsohn; Exhibit 2 to Summons
16 and Complaint was premarked
17 Plaintiff's Exhibit 3-B for
18 Identification, as of this date, by
19 Mr. Mendelsohn; Letter dated June 22,
20 2009 was premarked Plaintiff's Exhibit
21 3-C for Identification, as of this
22 date, by Mr. Mendelsohn; Letter dated
23 November 18, 2015 was premarked
24 Plaintiff's Exhibit 3-D for
25 Identification, as of this date, by

Page 5

1	Flavio LaRocca	5
2	Mr. Mendelsohn; Answer was premarked	
3	Plaintiff's Exhibit 4 for	
4	Identification, as of this date, by	
5	Mr. Mendelsohn; Letter dated June 11,	
6	2003 was premarked Plaintiff's Exhibit	
7	5 for Identification, as of this date,	
8	by Mr. Mendelsohn; Photographs were	
9	premarked Plaintiff's Exhibit 6 for	
10	Identification, as of this date, by	
11	Mr. Mendelsohn; Google Earth dated	
12	October 2014 was premarked Plaintiff's	
13	Exhibit 7 for Identification, as of	
14	this date, by Mr. Mendelsohn; Letter	
15	dated March 17, 2003 was premarked	
16	Plaintiff's Exhibit 8 for	
17	Identification, as of this date, by	
18	Mr. Mendelsohn; Letter dated June 22,	
19	2009 was premarked Plaintiff's	
20	Exhibit 9 for Identification, as of	
21	this date, by Mr. Mendelsohn; Senor PC	
22	was premarked Plaintiff's Exhibit 10	
23	for Identification, as of this date,	
24	by Mr. Mendelsohn; Survey dated	
25	December 8, 2014 was premarked	

Page 6

1 Flavio LaRocca 6

2 Plaintiff's Exhibit 11 for

3 Identification, as of this date, by

4 Mr. Mendelsohn; Interrogatory

5 Responses were premarked Plaintiff's

6 Exhibit 12 for Identification, as of

7 this date, by Mr. Mendelsohn; Video

8 was premarked Plaintiff's Exhibit 13

9 for Identification, as of this date,

10 by Mr. Mendelsohn; Blow-up of October

11 2014 Google Earth was premarked

12 Plaintiff's Exhibit 14 for

13 Identification, as of this date, by

14 Mr. Mendelsohn; Two photographs were

15 premarked Plaintiff's Exhibit 15 for

16 Identification, as of this date, by

17 Mr. Mendelsohn; letter dated

18 November 18, 2015 was premarked

19 Plaintiff's Exhibit 16 for

20 Identification, as of this date, by

21 Mr. Mendelsohn; Photograph of No

22 Parking sign was premarked Plaintiff's

23 Exhibit 17 for Identification, as of

24 this date, by Mr. Mendelsohn; Survey

25 dated April 13, 2016 was premarked

Page 7

1 Flavio LaRocca 7
2 Plaintiff's 18 for Identification, as
3 of this date, by Mr. Mendelsohn; Photo
4 of property was premarked Plaintiff's
5 Exhibit 19 for Identification, as of
6 this date, by Mr. Mendelsohn; Photo
7 of 5th Avenue was premarked
8 Plaintiff's Exhibit 20 for
9 Identification, as of this date, by
10 Mr. Mendelsohn; Multiple photographs
11 were premarked Plaintiff's Exhibit 21
12 for Identification, as of this date,
13 by Mr. Mendelsohn; photograph of yard
14 was premarked Plaintiff's Exhibit 22
15 for Identification, as of this date,
16 by Mr. Mendelsohn; and photograph of
17 fence was premarked Plaintiff's
18 Exhibit 23 for Identification, as of
19 this date, by Mr. Mendelsohn.)
20 FLAVIO LaROCCA,
21 one of the Defendants herein, having
22 been first duly sworn by a Notary
23 Public of the State of New York,
24 upon being examined, testified as
25 follows:

Page 8

1 Flavio LaRocca 8

2 THE COURT REPORTER: Please state
3 your name for the record.

4 THE WITNESS: Flavio LaRocca.

5 THE COURT REPORTER: Please state
6 your address for the record.

7 THE WITNESS: 140 Sussex Road,
8 New Rochelle, New York 10804.

9 EXAMINATION BY

10 MR. MENDELSON:

11 Q Mr LaRocca, my name is Scott
12 Mendelsohn. I am an attorney with Wilson Elser
13 Moskowitz Edelman & Dicker. We represent the
14 Plaintiff in this action who is the City of New
15 Rochelle.

16 I am going to ask you some questions
17 today about the action entitled City of New
18 Rochelle versus Flavio LaRocca et al.

19 If you don't understand a question
20 I've asked you or you cannot hear me, please just
21 let me know and I will try to accommodate your
22 request or ask the question in a different way.

23 Do you understand?

24 A Yes.

25 Q Please let me know if you need to

Page 9

1 Flavio LaRocca 9

2 take a break. I only ask that if there is a
3 question pending, that you answer the question
4 and then we will take a break.

5 Similarly, if you need to speak with
6 your attorney, just let me know, and after the
7 question has been answered you can certainly have
8 that time.

9 We have a court reporter here taking
10 everything down. She cannot take down any nods
11 or shakes of the head. So please respond verbally
12 to or make your responses verbal to my questions.
13 Okay?

14 Lastly, although you may know what my
15 question is going to be, please let me finish my
16 question before you answer so that we can have a
17 clear understanding of our conversation and the
18 record will be clear.

19 Did you review any documents prior to
20 coming here today?

21 A Yes.

22 Q What documents did you review?

23 A The Complaint and some of the
24 exhibits.

25 Q When you say "exhibits," are you

Page 10

1 Flavio LaRocca 10

2 referring to documents that were turned over in
3 discovery?

4 A I think so.

5 Q Was there anything that you reviewed
6 prior to your testimony today that has not been
7 previously provided to your counsel?

8 A No.

9 Q Did you review any pictures before
10 your testimony today that has not been previously
11 provided to your counsel?

12 A No.

13 Q Did you have any conversations
14 regarding this case with anybody other than your
15 attorney prior to coming here and testifying
16 today?

17 A No.

18 Q Are you currently taking any
19 medications or substances that would otherwise
20 impair your ability to testify today?

21 A No.

22 Q How many properties in New York do you
23 own, Mr. LaRocca?

24 MS. ZALANTIS: Individually?

25 MR. MENDELSON: Let me clarify

Page 11

1 Flavio LaRocca 11

2 the question.

3 Q How many properties do you
4 individually own in New York?

5 A One.

6 Q What property is that?

7 A My residence.

8 Q What is the address of that?

9 A 140 Sussex Road, New Rochelle, New
10 York.

11 Q And do you own any properties as the
12 principal of a company?

13 A Yes.

14 Q What properties do you own as a
15 principal of a company?

16 A 71 Palmer Avenue, New Rochelle, and
17 432 5th Avenue, New Rochelle.

18 Q You said 432 5th Avenue?

19 A I think 432. I don't know exactly if
20 it's 432 or 436 the way they have it written.

21 Q Is the property you're referring to
22 as 432 5th Avenue the same property as 436 5th
23 Avenue?

24 A I think so, yes.

25 Q Is that the property that is one of

Page 12

1 Flavio LaRocca 12

2 the substance of this action?

3 A Yes.

4 Q Is that the property that we went to
5 on a site visit --

6 A Correct.

7 Q -- where you were accompanied by your
8 attorney and I was with another attorney from my
9 office as well?

10 A Yes.

11 Q Is that property bordering or is it
12 bordered by 5th Avenue and East Street?

13 A Yes.

14 Q What business owns --

15 MR. MENDELSON: For the record,
16 we will just call it 436 5th Avenue
17 for this proceeding.

18 Q Is that okay?

19 A Yes.

20 Q What company owns 436 5th Avenue?

21 A FMLR Realty.

22 Q And who are the principals of FMLR
23 Realty?

24 A My wife and I.

25 Q What is your official title?

Page 13

1 Flavio LaRocca 13

2 A Member.

3 Q And what is your wife's official

4 title?

5 A Member also.

6 Q Are there any other members of FMLR

7 Realty other than you and your wife?

8 A No.

9 Q Does FMLR Realty own any property

10 other than 436 5th Avenue?

11 A Yes.

12 Q What other property does it own?

13 A 69-71 Potter Avenue, New Rochelle.

14 Q Are both 436 5th Avenue and 69-71

15 Potter Avenue in New Rochelle?

16 A Yes.

17 Q What sort of business is FMLR Realty?

18 A It's a real estate management

19 company.

20 Q Other than FMLR Realty, do you own any

21 other realty management companies?

22 A No.

23 Q Other than FMLR Realty, are you a

24 principal of any other companies?

25 A Yes.

Page 14

1 Flavio LaRocca 14

2 Q And what companies are those?

3 A Flavio LaRocca & Sons Incorporated.

4 Q Other than Flavio LaRocca & Sons
5 Incorporated, are you the principal of any other
6 companies?

7 A Yes.

8 Q What companies are those?

9 A Marco Industry.

10 Q Do either of those companies that you
11 have mentioned own any property?

12 A Yes.

13 Q Which one of those companies?

14 A Marco Industries.

15 Q What property does Marco Industry own?

16 A Commercial property.

17 Q Is that located in the State of New
18 York?

19 A Yes.

20 Q Is it located in New Rochelle?

21 A No.

22 Q Where is it located?

23 A Putnam County.

24 Q What is your position with Marco
25 Industry?

Page 15

1 Flavio LaRocca 15

2 A Member.

3 Q Are there any other members of Marco
4 Industry other than yourself?

5 A Yes.

6 Q Who are they?

7 A My wife.

8 Q What sort of company is Marco
9 Industry?

10 A It's a real estate owning company.

11 Q What sort of company is Flavio
12 LaRocca & Sons?

13 A Landscape and masonry construction
14 company.

15 Q Other than Flavio LaRocca & Sons, is
16 there any other company that you're a part of
17 that does landscape or realty or -- or landscape,
18 that performs landscape work?

19 A No.

20 Q What sort of landscape work does
21 Flavio LaRocca & Sons perform?

22 A Mainly residential and light
23 commercial.

24 Q How long has Flavio LaRocca & Sons
25 been in existence?

Page 16

1 Flavio LaRocca 16

2 A Since the late '90s.

3 Q Do you recall what year it was
4 commenced?

5 A Not precisely, but I think around
6 1998.

7 Q At that time in 1998, where was
8 Flavio LaRocca & Sons' principal place of
9 business?

10 A Two Trinity Place in New Rochelle.

11 Q Did there come a time when that
12 principal place of business changed?

13 A Yes.

14 Q When was that?

15 A After acquiring 69-71 Potter Avenue.

16 Q When was that?

17 A I think around '98, around the same
18 time.

19 Q At that time when 69-71 Potter Avenue
20 was acquired, did that become the principal place
21 of business for Flavio LaRocca & Sons?

22 A Yes.

23 Q And at some time after that, did the
24 principal place of business for that entity move
25 after 69-71 Potter Avenue?

Page 17

1 Flávio LaRocca 17

2 A No.

3 Q Is 69-71 Potter Avenue still the
4 principal place of business for Flávio LaRocca &
5 Sons, Inc.?

6 A Yes.

7 Q Are there any places that Flávio
8 LaRocca & Sons uses to store equipment other than
9 at 69-71 Potter Avenue?

10 A Yes.

11 Q And where are those places?

12 A 436 5th Avenue, New Rochelle.

13 Q Other than those two locations, is
14 there any other real property used to store items
15 for Flávio LaRocca & Sons' business?

16 A No.

17 MS. ZALANTIS: Are you asking now
18 at this present point in time?

19 MR. MENDELSON: At any point.

20 A No.

21 I'm sorry. Can you repeat that? At
22 any point?

23 Q Let me rephrase the question. Your
24 lawyer makes a good objection.

25 Other than 436 5th Avenue,

Page 19

1 Flávio LaRocca 19

2 A Yes.

3 Q What sorts of equipment did you store
4 or did your company store at that location in
5 those dates?

6 A Some trucks, trailers, some bulk
7 material, and some excavation and landscaping
8 equipment.

9 Q Who did you rent that space from?

10 A Joe Guglielmo.

11 Q How do you know Joe Guglielmo?

12 A He's a neighbor.

13 Q Meaning he's a neighbor to 436 5th
14 Avenue?

15 A Yes.

16 Q Was there a lease for that?

17 A No.

18 Q What was the agreement that you came
19 to with Mr. Guglielmo regarding your rental of
20 that property?

21 A It was based on me providing some
22 services for him, he would allow me to store some
23 of my trucks and equipment on his property.

24 Q What sorts of services were you
25 performing to receive all of that property?

Page 20

1 Flávio LaRocca 20

2 A I was providing some landscape
3 materials for him.

4 Q What sorts of landscape materials were
5 you providing?

6 A Soil and mulch.

7 Q Approximately how much soil and mulch
8 were you providing to Mr. Guglielmo during that
9 time?

10 A I don't know. It varied based on his
11 needs. I really don't know.

12 Q Does Mr. Guglielmo have a business
13 himself?

14 A Yes.

15 Q What is Mr. Guglielmo's business?

16 A Landscaping and gardening.

17 Q Is that a competing business to Flávio
18 LaRocca & Sons?

19 A I don't know if it would be competing.
20 My clients are mainly more high-end residential
21 and light commercial.

22 I think he does more basic landscaping
23 and maintenance services, which is something I
24 don't provide, maintenance services.

25 Q Does he have any involvement in your

Page 21

1 Flavio LaRocca 21

2 company?

3 A No.

4 Q And do you have any involvement in
5 his company?

6 A No.

7 Q When I mean involvement, I mean
8 ownership interest or running the company or
9 anything like that.

10 A Correct.

11 Q You testified earlier that Flavio
12 LaRocca & Sons performs landscaping for
13 residential properties.

14 What sorts of activities does it
15 perform?

16 A We put in plantings, trees, we do
17 regrading work, we do stone work as far as
18 retaining walls and steps, patios, we do drainage
19 work, we put in sod or turf.

20 Q How many employees does Flavio
21 LaRocca & Sons have?

22 A Currently? Six.

23 Q Does that include full-time and
24 part-time?

25 A Yes.

Page 22

1 Flavio LaRocca 22

2 Q In 2015, how many employees did Flavio
3 LaRocca & Sons have, approximately?

4 A Six to eight.

5 Q Has Flavio LaRocca & Sons ever had
6 more than eight employees?

7 A Yes.

8 Q And when was that?

9 A Prior to the recession.

10 Q So that's before 2008?

11 A Yes.

12 Q When Flavio LaRocca & Sons first
13 moved to or started storing equipment at 436 5th
14 Avenue, how many employees did it have at that
15 time?

16 A Four to six.

17 Q Does Flavio LaRocca & Sons own any
18 equipment?

19 A Yes.

20 Q What sorts of equipment does it own?

21 A Trucks, trailers, some excavation and
22 regrading equipment, tractors.

23 Q How many trucks does Flavio LaRocca &
24 Sons currently own?

25 A Ten.

Page 23

1 Flavio LaRocca 23

2 Q And when we say "trucks," can you
3 describe those trucks, meaning what types of
4 trucks are those?

5 A Pickups, vans, dump trucks.

6 Q How many dump trucks does your
7 business own?

8 A Five.

9 MS. ZALANTIS: Again you're
10 asking about currently, right?

11 MR. MENDELSON: Yes. All of
12 this is currently.

13 A Yes.

14 Q In 2015, how many dump trucks did your
15 company own?

16 A I don't know. I can't recall that far
17 back.

18 Q Was it more or less than five?

19 A I think around the same.

20 Q And pickups and vans, are those
21 vehicles used in your business?

22 A Yes.

23 Q What are the uses of those vehicles?

24 A Pickups, they are 4x4. They are used
25 for snowplowing and salting.

Page 24

1 Flávio LaRocca 24

2 Vans are used to transport materials.
3 That is enclosed so it doesn't get ruined by the
4 elements.

5 Q And you mentioned trailers.

6 A Yes.

7 Q What is a trailer?

8 A Trailer is a piece of equipment that
9 attaches to a truck, and it can carry another
10 piece of equipment on it which is not road legal
11 or used to be driven on the road.

12 Q How many trailers does Flavio
13 LaRocca & Sons own?

14 MS. ZALANTIS: Currently.

15 A Currently, three.

16 Q Was that approximately the same amount
17 as owned in 2015 or different?

18 A I think we may have had one more.

19 Q When we say "owned," I also want to
20 include used. So if you rent or if you borrow,
21 do these numbers that you've been giving us
22 include what you use, include all those that you
23 use of these vehicles?

24 A Yes.

25 Q Other than trucks that include pickup,

Page 25

1 Flávio LaRocca 25

2 vans, and dump trucks and then trailers, what
3 other sorts of equipment does Flávio LaRocca &
4 Sons use currently?

5 A Tractors, skid-steer, mini excavators,
6 payloader.

7 Q Approximately how many tractors
8 currently?

9 A Two.

10 Q And skid-steers?

11 A Yes.

12 Q What is a skid-steer?

13 A It's a small like a Bobcat four-
14 wheeled with just a bucket in the front and it's
15 compact.

16 Q How many of those?

17 A Four.

18 Q Do you have any wood chippers?

19 A No.

20 Q Does your company ever use wood
21 chippers?

22 A No.

23 Q What about does your company perform
24 any removal of wood from residential properties?

25 A Only what's fallen on the ground.

Page 26

1 Flavio LaRocca 26

2 Q What happens after your company
3 removes that?

4 A We load it on the truck and take it
5 to a dumpsite.

6 Q Is it broken down in any way?

7 A Yes. Usually when they fall, they
8 break, and some may have to be cut into more
9 manageable pieces.

10 Q What is used by your company to cut
11 the wood into more manageable pieces?

12 A Well, we can't cut ourselves. We
13 call one of our affiliated tree companies and we
14 ask them to take care. But usually a chainsaw.

15 Q Who are your affiliated tree companies
16 that help you remove the wood?

17 A Martignetti Landscaping and Tree
18 Service and Moriarty out of Larchmont.

19 Q Do either of those businesses have
20 property on East Street?

21 A No.

22 Q Other than the equipment that we have
23 discussed, is there any other equipment that
24 Flavio LaRocca & Sons uses in its day-to-day
25 business currently?

Page 30

1 Flávio LaRocca 30

2 Q What sorts of applications would
3 necessitate the ride-on versus the walk-behind?

4 A In areas that need more compaction.

5 Q What does it mean to need more
6 compaction?

7 A Well, if you're excavating a footing
8 for let's say a large retaining wall, a plate
9 compactor walk-behind is not sufficient to compact
10 that soil. So you put a bigger piece of equipment
11 in there so it gives more stability to the ground
12 prior to putting up your foundation.

13 Q So is the vibratory compactor used
14 only when something is going to be put on top of
15 the aggregate?

16 MS. ZALANTIS: Objection as to
17 form.

18 You may answer.

19 A I don't --

20 Q I will rephrase it.

21 When you use the vibratory compactor
22 on the aggregate, does it always follow with
23 something going on top of the aggregate afterward?

24 A No.

25 Q What sorts of applications does it

Page 32

1 Flavio LaRocca 32

2 A When you're creating a gravel parking
3 space.

4 Q Other than the equipment that we've
5 discussed, is there any other equipment that
6 Flavio LaRocca & Sons currently uses in its day-
7 to-day business?

8 A No.

9 Q Going back now to the creation of
10 roadways or parking lots, is that something that
11 Flavio LaRocca & Sons does regularly?

12 A No.

13 MS. ZALANTIS: Objection.

14 Q How often does Flavio LaRocca & Sons
15 create parking lots or roadways?

16 A We don't do commercial parking lots
17 or roadways.

18 Q One of those items that you just
19 testified about when you use the vibratory
20 compactor is in breaking a roadway or parking lot,
21 correct?

22 A Yes.

23 Q Has your company ever used a
24 vibratory compactor in making a roadway or a
25 parking lot?

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1 Flavio LaRocca 33

2 MS. ZALANTIS: Objection as to
3 form.

4 A No.

5 Q Has Flavio LaRocca & Sons ever done
6 work to a parking lot or a roadway?

7 A Yes.

8 Q And when it has done that work, did
9 it use a vibratory compactor?

10 A No.

11 Q When it performed that work, did it
12 use a compactor?

13 A No.

14 Q Approximately how many parking lots
15 and/or roadways has Flavio LaRocca & Sons ever
16 worked on?

17 MS. ZALANTIS: Objection as to
18 form.

19 A A few.

20 Q Is that less than five or more than
21 five?

22 A More than five.

23 Q That more than five, is that both
24 parking lots and roadways?

25 A Yes.

Page 34

1 Flavio LaRocca 34

2 Q How many parking lots, approximately,
3 has Flavio LaRocca & Sons worked on?

4 A Five to ten.

5 Q How many roadways has Flavio LaRocca &
6 Sons worked on?

7 A None.

8 Q Those parking lots that Flavio
9 LaRocca & Sons have worked on, are those on
10 residential properties or commercial properties?

11 A Commercial.

12 Q Can you tell me the locations of those
13 parking lots?

14 A One is at 575 Stratton Road in New
15 Rochelle.

16 Q What sort of property is Stratton
17 Road?

18 A It's a house of worship.

19 Q Is there a name?

20 A It's the Jehovah's Witness
21 congregation there.

22 Q What sort of work did Flavio LaRocca &
23 Sons perform on the parking lot there?

24 A Cracked sealing and -- filling and
25 sealing.

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1 Flavio LaRocca 35

2 Q Other than filling and sealing on that
3 parking lot, did Flavio LaRocca & Sons perform
4 any other work on that parking lot?

5 A No.

6 Q Other than 575 Stratton Road, what
7 other parking lots?

8 A I don't know exactly the address but
9 it's on White Plains Road in Eastchester. It's
10 the Odyssey Diner.

11 Q What sort of work did Flavio LaRocca &
12 Sons perform on that parking lot?

13 A Same. Cracked filling and sealing.

14 Q Other than those areas, what parking
15 lots?

16 A I don't know off the top because it's
17 so many years. These are the more recent ones.

18 Q When was the last time that Flavio
19 LaRocca & Sons worked on a parking lot?

20 A December.

21 Q Of 2019?

22 A Yes.

23 Q Which one was that?

24 A The Odyssey Diner.

25 Q Was a compactor used on the Odyssey

Page 39

1 Flavio LaRocca 39

2 from a job site?

3 A No.

4 Q Do you ever have to, does Flavio
5 LaRocca & Sons ever have to move vegetation from
6 a job site prior to starting or completing the
7 work?

8 A Yes.

9 MS. ZALANTIS: Objection as to
10 form.

11 A Yes.

12 MS. ZALANTIS: What do you mean
13 by "vegetation"?

14 Q Does Flavio LaRocca & Sons ever have
15 to clear trees prior to working on a project?

16 A Yes.

17 Q Does Flavio LaRocca & Sons perform
18 that work?

19 A Small stuff, yes.

20 Q Other than tree, removing trees, does
21 Flavio LaRocca & Sons also remove other sorts of
22 vegetation from a job site prior to working on
23 it?

24 MS. ZALANTIS: Objection as to
25 form.

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1 Flavio LaRocca 40

2 MR. MENDELSON: I can rephrase
3 that. I can make it clearer.

4 Q Other than removing trees as you just
5 testified to, does Flavio LaRocca on occasion
6 have to remove other sorts of vegetation from a
7 job site when working on it?

8 A Can you be more specific to what type
9 of vegetation?

10 Q Sure.

11 Bushes --

12 A Okay.

13 Q -- or brush or tall grasses --

14 A Okay.

15 Q -- are those sorts of things that
16 Flavio LaRocca & Sons has occasion to move when
17 working on a job site?

18 A Yes.

19 Q What sorts of equipment is used to
20 remove those items from a job site by your
21 company?

22 A Depending on the size, small bushes
23 can usually be attached with a chain behind one
24 of our skid-steers and pulled out. Or the
25 grasses, we use a sod cutter for the grasses. Or

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1 Flavio LaRocca 43

2 landscaping, and removes roots and stones from
3 the material, the bulk material.

4 Q So if I understand it correctly, a
5 screener, you take material, put it through the
6 screener, and it comes out in a different form?

7 A Correct.

8 Q Where does Flavio LaRocca & Sons
9 obtain its material that goes into the screener?

10 A Some we purchase and some we reclaim
11 from job sites when we do regrading work.

12 Q What are your daily tasks for your
13 business?

14 A I --

15 Q Currently.

16 A I run the daily operations and I meet
17 with clients. I work on estimating and look at
18 job progress.

19 Q What about your wife's daily tasks?

20 A She runs the office.

21 Q Does either one of you own more of the
22 business than the other?

23 A Which business?

24 Q Flavio LaRocca & Sons.

25 A Yes.

Page 44

1 Flávio LaRocca 44

2 Q Which owns more?

3 A My wife does.

4 Q What about FMLR Realty?

5 A I think we are equal members on that.

6 Q When, approximately, did you purchase
7 436 5th Avenue?

8 A I think it was beginning of '03 or
9 late '02.

10 Q We don't have to guess.

11 I'm going to show you or you have in
12 front of you Plaintiff's Exhibit 1.

13 If you could take a look at that and
14 just let me know when you had a moment to look at
15 it.

16 If you note there is also a double O
17 handwritten on that. That's just from the
18 deposition that your counsel conducted of a
19 witness from my client.

20 A (Reviewing)

21 Okay. All right.

22 Q Have you had a chance to look at
23 Plaintiff's Exhibit 1?

24 A Yes.

25 Q What is Plaintiff's Exhibit 1?

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1 Flavio LaRocca 46

2 of that area?

3 A Yes.

4 Q What survey did you look at?

5 A There was I think two surveys that
6 they had shown us. One that was previous and one
7 that was more current and that the Maffeis had
8 shown us.

9 Q Did you or your wife have a survey
10 commissioned of 436 5th Avenue when you purchased
11 it?

12 A When we purchased it, no.

13 Q Did you at that time view the survey
14 that you were given?

15 A Yes.

16 Q And did that survey show 436 5th
17 Avenue?

18 A Yes.

19 Q If you recall, did it show that 436
20 5th Avenue encroached or went over the boundaries
21 of its property lines onto anything?

22 A Yes.

23 Q What, if anything, did it show that
24 it encroached upon?

25 A The fencing was in East Street.

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1 Flavio LaRocca 47

2 Q Approximately, now we are just talking
3 to you prior to you purchasing the property,
4 approximately how far onto East Street did that
5 survey that you viewed show the fencing
6 encroaching?

7 A I don't recall measuring it, but from
8 my recollection it was a few feet.

9 Q Other than that fencing, was there
10 anything else about that survey that showed
11 436 5th Avenue encroaching upon another
12 property?

13 A I don't recall.

14 Q Do you have a copy of that survey
15 that you viewed prior to purchasing 436 5th
16 Avenue?

17 A I think in my file I do have it.

18 Q Was that one of the documents that was
19 given to us by your counsel?

20 A I think so.

21 Q Would you be able to recognize it if
22 you saw it?

23 A I think so.

24 MR. MENDELSON: I'm going to
25 have this marked as Plaintiff's 1-A.

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1 Flavio LaRocca 48

2 (Whereupon, Survey was marked
3 Plaintiff's Exhibit 1-A for
4 Identification, as of this date, by
5 the reporter.)

6 Q Mr. LaRocca, if you can take a look
7 at what's been marked as -- show it to Kathy as
8 well -- what's been marked as Plaintiff's 1-A.

9 Do you recognize that?

10 A Yes.

11 Q What is that?

12 A It's a survey of my property on
13 436 5th Avenue.

14 Q When was that survey created?

15 A I think in November of 2000.

16 Q Is that the same survey that you're
17 testifying you reviewed prior to purchasing the
18 property?

19 A Yes.

20 Q And could you take with a yellow
21 highlighter and mark for me on that exhibit with
22 the highlighter what area you saw encroaching
23 prior to purchasing the property.

24 (Witness complies)

25 MR. MENDELSON: For the record,

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1 Flavio LaRocca 50

2 enough time.

3 A (Reviewing)

4 MR. MENDELSON: For the record,
5 Plaintiff's 2 is a group of documents
6 Bates stamped D-1 through D-15, and
7 on the front it says Owner's Policy
8 of Title Insurance.

9 A Okay.

10 Q Are you ready?

11 A Um-hm.

12 Q I want you to turn to the page that's
13 Bates stamped -- do you know what Bates stamps
14 are?

15 MR. MENDELSON: Off the record.

16 (Whereupon, a discussion was
17 held off the record.)

18 Q D 004.

19 A Okay.

20 Q Do you see at the top it says amount
21 of insurance?

22 A Yes.

23 Q And you see the name of the insured?

24 A Yes.

25 Q Who were the names of the insured?

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1 Flavio LaRocca 52

2 A No.

3 Q Do you know if either of you provided
4 a survey to either the title company or your
5 attorney at that time?

6 A Not us. I think the sellers provided
7 the survey.

8 Q I'm going to have you turn to -- and
9 do you know if the sellers provided a survey?

10 A Yes.

11 Q And who did the sellers provide a
12 survey to?

13 A To us, which in turn we gave it to our
14 attorneys, and they did what they had to do.

15 Q Do you see on -- I want you to go back
16 to D 4.

17 A Okay.

18 Q Is there a date of policy listed?

19 A Yes.

20 Q And what is the date of the policy?

21 A September 18, 2002.

22 Q Turning to D 7, could you read what's
23 on D 7.

24 A This company is unable to locate an
25 existing survey on the premises described in

Page 53

1 Flavio LaRocca 53

2 Schedule A.

3 Q Could you read what is directly above
4 that?

5 A Policy accepts any state of facts.
6 An accurate survey would show when a survey
7 showing the premises described in Schedule A is
8 received. Same will be read into the existing
9 title report.

10 Q Do you know what that means?

11 A No.

12 MS. ZALANTIS: Objection.

13 Q And I'm only asking for your personal
14 basis.

15 MS. ZALANTIS: No, you're asking
16 him for a legal conclusion.

17 MR. MENDELSON: I'm not. I'm
18 asking for his personal basis of
19 belief.

20 Q Do you have a personal basis of belief
21 as to what that means?

22 MS. ZALANTIS: I mean, you can
23 answer if you know.

24 A No.

25 Q Going back to what's been marked as

Page 54

1 Flavio LaRocca 54

2 1-A, which is back there, you highlighted an area
3 which you indicated you knew was encroaching
4 prior to buying that property.

5 Going back to 1-A, you highlighted an
6 area that you stated is encroaching on another
7 piece of property.

8 Is that fair?

9 A Yes.

10 Q What is --

11 MS. ZALANTIS: I just want the
12 record to be clear.

13 He says it was encroaching not on
14 another piece of property, but on
15 East Street.

16 Q Is it fair that it's encroaching on
17 East Street?

18 A Yes.

19 Q At that time prior to you purchasing
20 436 5th Avenue, whose property did you believe
21 that was on East Street?

22 A The Maffeis.

23 Q So your testimony is that --

24 MR. MENDELSON: Withdrawn.

25 Q I'm referring to East Street. I want

Page 55

1 Flavio LaRocca 55

2 to be very clear.

3 At the time you purchased 436 5th
4 Avenue, who did you believe owned East Street?

5 A Are you referring to the property
6 that was encroaching, or East Street in general?

7 Q I'm referring to the property that
8 was encroaching onto East Street.

9 A Maffei.

10 Q So it's your testimony that you
11 believe the encroaching property was Maffeis'.

12 A Correct.

13 Q Who at that time did you believe owned
14 East Street?

15 A The whole road?

16 Q Yes.

17 A I was told by Maffei that it was a
18 private road and it was owned by each section by
19 each owner of the properties that is there.

20 Q Did you speak with your attorney at
21 the time about that?

22 A Yes.

23 Q And what --

24 MS. ZALANTIS: I'm going to --

25 I'm not going to let him testify

Page 56

1 Flavio LaRocca 56

2 about his conversations with his
3 attorney at the time. It's
4 privileged communications.

5 MR. MENDELSON: I will move on.

6 Q Did you ever come to learn that East
7 Street is owned by The City of New Rochelle?

8 A Only by what some municipality
9 officials told me.

10 Q Who do you believe owns East Street
11 currently?

12 A The owners of all the properties along
13 East Street.

14 Q Is that the same understanding that
15 you had when you purchased that property?

16 A Yes.

17 Q When was the first time somebody told
18 you from the City that the City owned East
19 Street?

20 A When the City was planning to do the
21 eminent domain to locate their City yard there.

22 Q Was that in approximately 2009?

23 A No, I think it was around 2014.

24 Q I'm going to ask you to take a look
25 at what's been premarked as Plaintiff's 3, so you

Page 58

1 Flavio LaRocca 58

2 And if you could, please review that document.

3 It's the Verified Answer with

4 Affirmative Defenses and Counterclaims.

5 A (Reviewing)

6 Okay.

7 Q Were you involved in drafting this
8 document, the Answer?

9 A Yes.

10 MS. ZALANTIS: Objection.

11 Q Did you review the Answer prior to it
12 being filed with the Court?

13 A Yes.

14 Q Do you agree with all of the
15 assertions, statements and allegations that are
16 in the Answer?

17 A Yes.

18 Q Is everything in the Answer true?

19 A As far as what I can understand, yes.

20 Q If you could turn to the last page,
21 13 of 13. There is a verification there.

22 A Um-hm.

23 Q Whose signature appears on the
24 verification?

25 A My wife's.

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1 Flávio LaRocca 59

2 Q I want you to turn to Page 9. I want
3 you to if you could review paragraphs 94 through
4 103.

5 A Okay.

6 Q Starting with, if I could draw your
7 attention to paragraph 95, could you read that
8 out loud.

9 A Defendant's properties has certain
10 Jersey barriers, concrete Jersey barriers which
11 barriers the City claims encroach upon East
12 Street.

13 Q What is that referring to?

14 A On the outside of the fence that
15 there are some concrete Jersey barriers that are
16 there.

17 Q When you say "fence," are you
18 referring to the fence which we previously, which
19 you previously highlighted in Plaintiff's 1-A?

20 A Yes.

21 Q So is it your testimony that there
22 are Jersey barriers on the outside of the gate
23 presently?

24 A Yes.

25 Q And whose Jersey barriers are those?

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1 Flávio LaRocca 60

2 A Those were on my property when I
3 purchased the property.

4 Q So whose Jersey barriers do you
5 believe those are?

6 A Mine.

7 Q Are those Jersey barriers on East
8 Street?

9 A Yes.

10 Q I want you to take a look at --

11 MR. MENDELSON: Withdrawn.

12 Because we are talking about the
13 skate park.

14 Q Is there a skate park directly across
15 East Street from 436 5th Avenue?

16 A Yes.

17 MS. ZALANTIS: Currently, right?

18 MR. MENDELSON: Right,
19 currently.

20 A Yes, currently.

21 Q Who owns that skate park?

22 A The City of New Rochelle.

23 Q When, approximately, was it built?

24 A I don't remember the exact date but
25 sometime in I think mid-2000.

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1 Flávio LaRocca 63

2 property.

3 MS. ZALANTIS: By "they," you're
4 referring to the Jersey barriers.

5 A Correct. Jersey barriers were there
6 when I acquired the property.

7 Q When you say they "were there," were
8 they inside the gate or outside the gate?

9 A Inside the gate.

10 Q So your testimony is that when you
11 purchased 436 5th Avenue, there were Jersey
12 barriers stored inside the gate on 5th Avenue.

13 A Yes.

14 Q Approximately how many Jersey barriers
15 were stored there?

16 A Over forty of them.

17 Q How much does a Jersey barrier weigh?

18 A Anywhere from a thousand pounds to
19 about 3- to 4,000 pounds.

20 Q Now, the Jersey barriers that you're
21 testifying forty of them that were inside of your
22 gate when you purchased your property 436 5th
23 Avenue, what, approximately, were the dimensions
24 of each one of those Jersey barriers?

25 A They vary.

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1 Flávio LaRocca 64

2 Q What was the dimensions of the largest
3 one?

4 A Twenty foot.

5 Q What was the dimensions of the
6 smallest one?

7 A Four to five foot.

8 Q How were those stored on your
9 property?

10 A Some were stacked one on top of
11 another, and other was utilized by Maffei,
12 previous owners, to hold materials in from not
13 mixing together.

14 Q If you could, could you take Exhibit
15 1-A back out. And with a blue highlighter,
16 please highlight the approximate location of
17 where those forty Jersey barriers were stored in
18 your property prior to buying it.

19 A Before? Okay. Prior to buying it.

20 MR. MENDELSON: Well, withdrawn.

21 Q Did you eventually move the Jersey
22 barriers yourself?

23 A Yes.

24 Q Okay. Where did you move the Jersey
25 barriers?

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1 Flavio LaRocca 67

2 A No, forty-four, forty-five of them
3 were moved in that area. The other six to eight
4 remained inside.

5 Q So it's your testimony that the area
6 in pink where you moved Jersey barriers that were
7 previously inside of your property, Flavio
8 LaRocca & Sons moved forty to forty-four of them
9 to the area in pink outside of your property.

10 A Correct.

11 Q And that was done in approximately
12 2003.

13 A Correct.

14 Q And that was done by Flavio LaRocca &
15 Sons.

16 A Correct.

17 Q When they were placed in the area in
18 pink, is it fair to say that's on East Street?

19 A Yes.

20 Q Other than the forty to forty-four
21 that Flavio LaRocca & Sons moved outside of
22 436 5th Avenue, were there any Jersey barriers
23 that were present on the outside of that property
24 already?

25 MS. ZALANTIS: The outside of 436?

Page 69

1 Flavio LaRocca 69

2 Q And was there anybody else there from
3 Flavio LaRocca & Sons at that time?

4 A No.

5 Q Approximately when was that that you
6 saw the Jersey barriers being moved?

7 A While they were constructing the
8 park.

9 Q Was that after Flavio LaRocca & Sons
10 had moved them to the area in pink?

11 A Yes.

12 Q So on a Saturday morning you witnessed
13 a contractor taking those Jersey barriers that
14 were on East Street and moving them.

15 A Yes.

16 Q Approximately how many Jersey barriers
17 did that contractor move?

18 A When I got there and I saw it, he had
19 them already placed along the fence. I forget
20 the exact number now.

21 Q When you say "along the fence," what
22 fence are you speaking of?

23 A The skate park fence.

24 Q So is it your testimony that that
25 contractor had moved them from along the sliding

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1 Flavio LaRocca 70

2 gate fence in front of 436 5th Avenue to the gate
3 across from the skate park?

4 A Correct. And along the entire line.
5 He was there with an excavator picking them. He
6 had a hook and chain and one gentleman helping
7 him with the hook and chain while he was in the
8 excavator and just plopping them into place.

9 Q Were those Jersey barriers marked in
10 any way?

11 A No.

12 Q Was there anything that said Flavio
13 LaRocca & Sons or any marking that would have
14 indicated that those were the property of Flavio
15 LaRocca & Sons?

16 A No.

17 Q Was there any indication that those
18 Jersey barriers were the property of 436 5th
19 Avenue?

20 A The way they were stacked would
21 indicate that they belonged to my property.

22 Q When you say "the way they were
23 stacked," how were they stacked in a way that
24 would have shown they were your property?

25 A Well, if you look at the survey where

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1 Flavio LaRocca 74

2 A As a verbal agreement, yes.

3 Q Were they in the contract?

4 MS. ZALANTIS: Objection. I
5 don't know if you're asking him for a
6 legal conclusion.

7 A I don't know if they were written in
8 the contract or not.

9 MR. MENDELSON: I'm going to
10 demand production of the contract of
11 sale from Mr. LaRocca's purchase of
12 436 5th Avenue.

13 MS. ZALANTIS: Take it under
14 advisement.

15 MR. MENDELSON: And we will
16 submit it in writing as well.

17 (REQUEST) _____

18 Q Moving forward.

19 Have you ever purchased a Jersey
20 barrier?

21 A No.

22 Q Has Flavio LaRocca & Sons ever
23 purchased a Jersey barrier?

24 A No.

25 MS. ZALANTIS: Just to clarify,

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1 Flávio LaRocca 75

2 you mean other than in connection
3 with what he already testified to,
4 right?

5 MR. MENDELSON: I think his
6 testimony speaks for itself.

7 Q I'm going to show you now what's been
8 marked as Plaintiff's 6. It's Bates stamps range
9 from 280 to 286.

10 Do you see that?

11 A Yes.

12 Q And it's a pack of photographs.
13 Have you seen those photographs
14 before?

15 A Yes.

16 Q What do those photographs depict?

17 A The Jersey barriers along the skate
18 park.

19 Q Are these the same Jersey barriers
20 that you're alleging that were moved from the
21 area in pink by that contractor to that, in front
22 of the gate in front of the skate park?

23 A Correct.

24 Q Are these Jersey barriers as depicted
25 in substantially the same condition they were in

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1 Flavio LaRocca 77

2 snowplowing, and repairing the road if needed.

3 Q Do you know if the City has ever
4 maintained East Street?

5 A As long as I've been there, no.

6 Q Did you have any conversations with
7 Mr. Maffei about the maintenance of East Street
8 prior to purchasing the property?

9 A Yes.

10 Q What, if anything, did he say?

11 A That each property owner would
12 maintain their portion before their property.

13 Q Was there ever an understanding at
14 that time when you purchased the property that
15 the City would maintain East Street?

16 A No.

17 Q Currently when you store vehicles or
18 equipment for your business at 436 5th Avenue,
19 where are they stored?

20 A At 436 5th Avenue?

21 Q Yes.

22 A 436 5th Avenue.

23 Q Where on 436 5th Avenue are they
24 stored?

25 A Within my property.

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1 Flavio LaRocca 78

2 Q Is that inside of that gate that we
3 mentioned?

4 A Yes.

5 Q Where are they parked, meaning the
6 trucks?

7 A Inside the gate.

8 Q When you purchased the property in
9 approximately 2002, have your trucks ever been
10 stored anywhere other than inside of your property
11 in that vicinity near East Street?

12 A I'm sorry. Can you --

13 Q I will repeat it.

14 Other than inside of your property,
15 have your trucks ever been stored on any place
16 along East Street other than inside of your
17 property.

18 A Well, just in front of my yard we
19 park there temporarily in the morning as we are
20 heading out. And then as we are coming in to
21 open the gate and close the gate.

22 Q Have your trucks, vehicles or
23 equipment been stored anyplace on East Street
24 other than inside of your property?

25 A In front of my yard. On East Street

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1 Flavio LaRocca 79

2 in front of my yard.

3 Q So is it your testimony that other
4 than in front of your yard, which I'm guessing
5 means 436 5th Avenue; is that correct?

6 A Correct.

7 Q And then inside of 436 5th Avenue,
8 it's your testimony that your equipment or trucks
9 have never been stored anywhere else on East
10 Street.

11 A Well, no. Inside the -- you're
12 talking about the street or anywhere else along
13 that street?

14 Q I'm talking about anywhere else in
15 the vicinity of that street.

16 A Well, Guglielmo's yard when I was
17 there for those years.

18 Q Where is -- well, let's take a look
19 at --

20 MR. MENDELSON: Now is a good
21 time for a break. Just so I can set
22 up this next.

23 (Whereupon, a brief recess was
24 taken.)

25 Q I'm going to show you, Mr. LaRocca,

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1 Flávio LaRocca 80

2 if you can take a look at what's been marked as
3 Plaintiff's 7. It is an aerial photograph Bates
4 stamped D 262.

5 Have you viewed this photo before?

6 A I think so.

7 Q Well, as you look at it now, can you
8 tell us what this photo depicts?

9 A The area along East Street, the skate
10 park including my property and my neighbor's
11 property.

12 Q Does that include 436 5th Avenue?

13 A Yes.

14 Q Does this also include -- and I'm
15 going to butcher the name, the Guglielmo
16 property?

17 A Yes.

18 Q Could you mark with, if you could take
19 a yellow highlighter, could you put an X where
20 the Guglielmo property is.

21 A X?

22 Q I don't think it's showing up.

23 You know what? If you take a pen and
24 mark an arrow from the outside.

25 (Witness complies)

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1 Flávio LaRocca 82

2 is pointing to a red vehicle right

3 above the Bates stamp.

4 Q Is that red vehicle on East Place?

5 A Yes.

6 Q So the Guglielmo property is if you're

7 are looking at this picture, it's to the right of

8 that vehicle?

9 A Correct.

10 Q Is that where in that property where

11 you stored some of your equipment?

12 A Yes.

13 Q Is there anywhere else other than the

14 Guglielmo property and 436 5th Avenue where your

15 business has stored equipment that's depicted on

16 this photograph?

17 A Potter Avenue. 69-71 Potter Avenue.

18 Q I'm speaking just on this photograph.

19 A Oh, okay. No.

20 Q Is there anyplace on this photograph

21 other than 436 5th Avenue and the Guglielmo

22 property that your business has stored vehicles

23 that's depicted on this photograph?

24 A No.

25 Q Did you review the Complaint in this

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1 Flavio LaRocca 83

2 case, what we went over as, I believe it was
3 Plaintiff's 3?

4 A Yes.

5 Q And in Plaintiff's 3 there is a piece
6 of property that's referred to as the parcel.

7 Are you familiar with that?

8 A I think so, but refresh my mind.

9 Q Let's take a look at Plaintiff's 3.

10 If you could turn to Page 4 and look
11 at paragraph 10 and read that out loud, please.

12 A At all times pertinent hereto, the
13 City has been and presently is the owner of a
14 parcel of property located in the City of New
15 Rochelle, County of Westchester, State of New
16 York, consisting of undeveloped open land between
17 East Street and Fowlers Park, the parcel.

18 Q Is that Flowers Park?

19 A Flowers. I'm sorry. Yes.

20 Q Are you familiar with that piece of
21 property that this is referring to as the parcel?

22 A Yes.

23 Q Is the parcel as defined in the
24 Complaint represented in Plaintiff's 7?

25 A Yes.

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1 Flavio LaRocca 84

2 Q Could you point to it.

3 A It's where this white truck is here.

4 MR. MENDELSON: And for the
5 record, he's pointing to in the
6 middle left of the photograph there
7 is a white truck pulling, looks like
8 it's pulling something behind it that
9 is directly above East Street as we
10 are looking to this.

11 Q Is that fair?

12 A Yes.

13 Q Has Flavio LaRocca & Sons ever stored
14 any equipment or vehicles on the parcel?

15 A No.

16 Q Has Flavio LaRocca & Sons ever parked
17 vehicles or equipment on the parcel?

18 A No.

19 Q Has Flavio LaRocca & Sons' employees
20 ever parked vehicles on that parcel?

21 A No.

22 Q Has Flavio LaRocca & Sons ever
23 performed any work on that parcel?

24 MS. ZALANTIS: Objection as to
25 form.

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1 Flavio LaRocca 85

2 Q Has Flavio LaRocca & Sons ever done
3 anything to the parcel?

4 A We just raked the ground.

5 Q What is the reason the ground is
6 raked?

7 A Because when we would plow that area
8 to get into where we were storing the equipment
9 in Guglielmo's yard, we would disturb that area
10 which was gravel and wood chips thrown down by
11 previously. We just raked the area that we would
12 disturb.

13 Q How did it become Flavio LaRocca &
14 Sons' responsibility to rake the parcel?

15 A Just because we entered into the
16 property down below Guglielmo's yard. The City
17 would not maintain the road.

18 We would plow it to gain access
19 because otherwise we cannot enter our trucks and
20 equipment and we would damage the area as the
21 plows would go by.

22 And as a courtesy to my neighbors who
23 were there, we just raked out the area and that's
24 it.

25 Q Does anyone park or store equipment

Page 86

1 Flavio LaRocca 86

2 on the parcel?

3 A There is vehicles that used to park
4 there prior to the fencing going up.

5 Q Whose vehicles are those?

6 A Not my vehicles or any of my
7 employees.

8 Q Do you know whose vehicles those are?

9 A Might be one of my neighbors. I'm
10 not sure.

11 Q Is it your testimony that no Flavio
12 LaRocca & Sons' truck has ever or vehicle has ever
13 been parked on the parcel?

14 A Correct.

15 Q Has Flavio LaRocca & Sons ever
16 received permission from the City to do anything
17 to the parcel?

18 A No.

19 Q Have you ever inquired of the City to
20 park your business vehicles on City property?

21 A Excuse me?

22 Q Have you ever asked the City if you
23 can park your business' vehicles opposite your
24 property?

25 A No.

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1 Flavio LaRocca 87

2 Q I'm going to ask you to take a look
3 at what's been marked as Plaintiff's 8.

4 Just take a read over it and let me
5 know when you're done.

6 A Okay.

7 (Reviewing)

8 Yes.

9 Q Have you ever seen this document
10 before?

11 A Yes.

12 Q What is it?

13 A It is a letter from Mr. Strome to our
14 inquiry about purchasing or possibly renting the
15 City property where the park is now.

16 Q What was the reason that you wanted to
17 rent that area from the City?

18 A I really wanted to purchase it but
19 the City had informed me that it was not for
20 sale. And being that there was another contractor
21 there, I thought that maybe they would rent it or
22 lease it to me for my business use.

23 Q This letter is dated March 17, 2003,
24 and it's from Charles Strome to you.

25 Is that fair?

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1 Flavio LaRocca 88

2 A Yes.

3 Q Did you write a letter to Mr. Strome?

4 A I don't remember if it was a letter
5 or an email, but there was something, I had
6 contacted him somehow.

7 Q Do you have that correspondence that
8 you sent?

9 A I don't recall if I have it or not.

10 MR. MENDELSON: I'm going to
11 demand production of that
12 correspondence, and I will follow up
13 in writing.

14 (REQUEST) _____

15 Q At that time in 2003, what did the
16 parcel look like?

17 A At that time it was all cleared out
18 and it was gravel and wood chips by the company
19 that was there that they had spread out when they
20 left.

21 Q Is that the same condition it was in
22 when you purchased 436 5th Avenue?

23 A No.

24 Q What condition was it in when you
25 purchased it?

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1 Flavio LaRocca 89

2 A It was a little bit more wooded.

3 Q What do you mean by "more wooded"?

4 A There was more vegetation in the
5 area, more trees, shrubbery and vegetation in that
6 area.

7 Q We are just referring to the parcel,
8 correct?

9 A Right.

10 Q Do you know what happened to all that
11 vegetation and trees and wooded area?

12 A Yes.

13 Q What happened?

14 A The company that was there, Persico,
15 working on the bridge, they came in and cleared
16 out that area. And that's where their employees
17 and the equipment and materials were being stored
18 as they were working on the Potter Avenue bridge.

19 Q The parcel is not on East Street,
20 right?

21 A It is adjacent to East Street.

22 Q Other than Persico Construction or
23 the contractor that was using the now skate park
24 as a staging premises, do you know who else has
25 parked in the parcel from that time until now?

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1 Flavio LaRocca 90

2 A I know there has been people who come
3 and visit the skate park, they have parked their
4 vehicles there, parents and even kids that go to
5 the park.

6 There has even been vendors that come
7 there, like Mr. Softee the ice cream guy who
8 services the kids at the park.

9 Even the park and rec department has
10 parked there many times. There is actually a
11 access gate going there, and some other people
12 from the neighborhood.

13 Even some of the neighbors down the
14 road have parked some of their vehicles there.

15 Q Who do you believe owns the parcel?

16 A The parcel in question, this is the
17 City's property.

18 Q Now I'm going to show you what's been
19 marked as Plaintiff's 9.

20 Could you take a read over it and let
21 me know when you're done.

22 A (Reviewing)

23 Okay.

24 Q Plaintiff's 9 is a letter from the
25 City of New Rochelle dated June 22, 2009, and

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1 Flavio LaRocca 91

2 it's signed by Paul Vacca and Jeffrey Coleman.

3 Mr. LaRocca, have you seen this letter
4 before?

5 A Yes.

6 Q What does this letter, what, if
7 anything, does it say?

8 A That it came to the City's knowledge
9 that we were encroaching on City property.

10 Q Do you agree with that, that in 2009
11 that 436 5th Avenue was encroaching on City
12 property?

13 A No.

14 Q What is your reason for your belief
15 that in 2009 when this letter was sent that you
16 were not encroaching?

17 A Because when I purchased the property,
18 the fencing was in the same location. When I got
19 the permit to do my work, the fencing was in the
20 same location. Nothing had changed and I was
21 never told that prior to this letter being
22 received some six, seven years after I purchased
23 the property.

24 Q The permit that you're speaking of,
25 was that permit regarding the gate that's at the

Page 92

1 Flavio LaRocca 92

2 front of your property?

3 A The rock removal and regrading work.

4 Q Was that in the front or rear of your
5 property?

6 A Rear of my property.

7 Q From the time you purchased the
8 property until receiving this letter, had you
9 discussed with anyone the encroachment that you
10 saw on the survey prior to purchasing your
11 property other than your attorney?

12 A No.

13 Q What, if anything, did you do in
14 response to getting this letter in Plaintiff's 9?

15 A I called both Mr. Vacca and
16 Mr. Coleman and I set up a meeting there on the
17 site.

18 Q Did that meeting take place?

19 A Yes.

20 Q When, approximately, did that meeting
21 take place?

22 A A week or two after the letter was
23 received.

24 Q Who was present at that meeting?

25 A My wife, myself, and Mr. Vacca and

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1 Flavio LaRocca 93

2 Mr. Coleman.

3 Q What was discussed at the meeting?

4 A The content of this letter.

5 Q Was there any resolution to the
6 content of the letter?

7 A Yes.

8 Q What was the resolution?

9 A They both proposed that I would get a
10 surveyor to come out and mark that line to depict
11 where the property was so that they can determine
12 where it was.

13 Because I explained to them that I
14 thought that was my property, and I've been using
15 it since I've had it, and the previous owner was
16 using it who knows how many years prior to me.

17 Q At any time during that meeting, did
18 either Mr. Vacca or Mr. Coleman tell you that the
19 encroachment was okay?

20 A Not at that meeting. They said we
21 will discuss it after the surveyor comes.

22 Q Did they ever give you permission to
23 having encroachment at that time?

24 A No, they just asked me to get a
25 surveyor come out and stake that line.

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1 Flavio LaRocca 94

2 Q Did you do that?

3 A Yes.

4 Q I will have you look at what's been
5 marked as Plaintiff's 10.

6 This is a document that at the top
7 says Gabriel E. Senior, P.C., and it's Bates
8 stamped D 22 through D 24.

9 Do you recognize this?

10 A Yes.

11 Q And what is this?

12 A This is my work order for them to
13 come out and stake the right side of my property
14 on East Street.

15 Q Was this done by you in response to
16 the letter that you received on June 22nd of 2009
17 in Plaintiff's 9?

18 A Yes.

19 Q How did you come to hire this
20 surveyor?

21 A It was referred to me.

22 Q If you could read on Page D 22, the
23 first page of the exhibit, there is a bold in the
24 middle. Could you read that part.

25 A Please provide a copy of the deed

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1 Flávio LaRocca 95

2 Schedule A and any old surveys of the property
3 you may have. If a copy of the deed Schedule A
4 is not provided, please note that there will be a
5 \$50 research charge.

6 Q Do you know if you provided Gabriel E.
7 Senor with a survey?

8 A Yes.

9 Q Which survey did you provide?

10 A The one that's here, the --

11 Q Is it the one that we marked as 1-A?

12 A I think. I'm not too sure if it was
13 exactly that one.

14 No, I don't remember. I think I
15 marked one, I sent him one, but I don't remember
16 exactly which one it was.

17 Q Do you know how you sent it?

18 A It was given with the, my
19 authorization and deposit when I signed this, a
20 document.

21 MR. MENDELSON: We are going to
22 demand that survey or any
23 documentation that was provided to
24 this company to complete this
25 staking.

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1 Flavio LaRocca 96

2 We will follow up in writing.

3 (REQUEST) _____

4 Q I want you to turn to D 24.

5 What was the purpose that you believed
6 of conducting this stakeout?

7 A To show us where the actual property
8 line was along East Street.

9 Q And do you see where it says for
10 professional services rendered in the middle of
11 the page?

12 A Yes.

13 Q And it says stakeout sketch email to
14 Flavio 9/10/09.

15 Do you remember receiving an email
16 regarding this?

17 A I don't remember the email but I
18 remember receiving the following, this document
19 here. This is what was given to me. It was an
20 actual paper copy that was given to me by the
21 person on the day of the survey, because I was
22 there when they were doing it.

23 MR. MENDELSON: We are going to
24 demand any correspondence with
25 Gabriel Senor and we will follow up

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1 Flávio LaRocca 97

2 in writing.

3 (REQUEST) _____

4 Q Now turning to the last page, D 25,
5 what is this?

6 A This is the sketch that the surveyor
7 who was there staking out the property gave me
8 upon completion of the survey.

9 Q What, if anything, did this say to
10 you?

11 A It showed me where the two reference
12 points were, that they had put a stake in the
13 ground and a cross on the concrete wall at the
14 corner of the property.

15 Q Now, is that at the front of the
16 property where the gate is?

17 A No, at the front of the property
18 along 5th Avenue where the evergreen trees are,
19 and then the back past the gate in the back right
20 corner.

21 Q But it's on the east side of your
22 property.

23 A Both points of east, yes.

24 Q So there is a stake somewhere you're
25 saying on the sidewalk there next to 5th Avenue?

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1 Flávio LaRocca 98

2 A He actually put it right under the
3 shrubbery, the bushes.

4 Q Then there is another stake along
5 East Street.

6 A That's not a stake. On top of the
7 concrete there was a cross which they had then
8 painted with some orange-pink paint.

9 Q But this was done on the east side of
10 your property.

11 A Correct.

12 Q And that's the side that abuts East
13 Street.

14 A Correct.

15 Q What, if anything, did the stakes show
16 about your property?

17 A That where the fencing was was a
18 difference of about 10 inches or so from where
19 their markings were.

20 Q Meaning what?

21 A Well, when my encroachment was only
22 about this much over the property line.

23 MR. MENDELSON: For the record,
24 the witness is holding up his hands
25 about --

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1 Flávio LaRocca 99

2 A Ten inches or so.

3 Q So it's your testimony that where the
4 stakes were drawn out by Gabriel Senor, it showed
5 an encroachment from your property onto East
6 Street of only 10 inches?

7 A Correct.

8 Q What was the encroachment?

9 A The fencing post was over about
10 10 inches or so from where he put the marker.

11 Q And the top of the marker on the north
12 side, most northern marker was on the concrete
13 wall?

14 A Yes.

15 Q The part you're saying there is only
16 a 10-inch encroachment, is that an encroachment
17 onto East Street?

18 A Yes.

19 Q Other than these stakes that were put
20 in by this company depicted in Plaintiff's 10,
21 have you or your business ever commissioned any
22 other surveys or stakes at 436 5th Avenue?

23 A No.

24 Q Have you other than this, have you or
25 your business ever commissioned any other surveys

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1 Flavio LaRocca 102

2 Is that fair?

3 A Yes.

4 Q I want you with the pink, can you
5 shade in the property that you encompass with the
6 green X that is your -- stating is yours that is
7 outside of that bold line.

8 A You want me to shade it or just box
9 it?

10 Q You can shade it or just put lines.
11 However --

12 (Witness complies)

13 MR. MENDELSON: He's drawn a
14 box around that area with diagonal
15 lines.

16 Q Now, would you agree with me that
17 that box with diagonal lines is on the outside of
18 that bold border?

19 A Correct.

20 Q Currently what is inside of the pink
21 shaded area?

22 A Fencing and some shelving.

23 Q Whose property is that?

24 A My property.

25 Q What shelving is it?

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1 Flavio LaRocca 104

2 shaded area, what borders the most eastern pink
3 shade of that area?

4 A The eastern side, the gate.

5 Q The same sliding gate that we've been
6 speaking about and that was also shown on 1-A.

7 A Yes.

8 Q The concrete wall where the stake was
9 put in on the northern part of the property,
10 could you draw a blue circle around where that
11 stake is.

12 (Witness complies)

13 Q Now, could you draw a blue circle on
14 the southern side where the other stake is.

15 (Witness complies)

16 MR. MENDELSON: He's put two
17 blue dots on either side of the north
18 and south of the pink shaded area.

19 Q Now I want you to take the -- let's
20 do it in yellow.

21 The area, the Guglielmo, could you
22 put an X where that is, where the space where you
23 rented to put your materials.

24 (Witness complies)

25 MR. MENDELSON: He's marked an

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1 Flavio LaRocca 106

2 A Okay.

3 Q Is it fair to say those blue areas
4 you've drawn are located on East Street?

5 A On the western side of East Street,
6 yes.

7 Q But they are within the border of
8 East Street.

9 A Correct.

10 Q As shown on this survey.

11 A Yes.

12 Q Who parks in those blue areas?

13 A Some of the workers from the other
14 companies, as well as some of the neighbors from
15 East Place and even Ashland.

16 Q Does Flavio LaRocca & Sons ever park
17 or store any of its equipment or vehicles in those
18 blue areas?

19 A No.

20 Q Does Flavio LaRocca & Sons ever store
21 or park any of its vehicles in the area circled
22 in yellow?

23 A No.

24 Q Has it ever?

25 A No.

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1 Flavio LaRocca 107

2 Q Now, earlier you testified that -- I
3 know Kathy is going to object to my use of the
4 word "work," so we will call it -- I'm going to
5 call it what I want.

6 Has Flavio LaRocca & Sons ever
7 performed any work within the yellow area?

8 MS. ZALANTIS: Objection as to
9 form.

10 You can answer.

11 A Yes.

12 Q What is the work that was performed
13 within the yellow area?

14 A Raking out the disturbed gravel that
15 was there from our snowplowing.

16 Q Tell me how disturbed gravel affects
17 that parcel.

18 A Okay. This area was left with gravel
19 on the ground from the contractor that was using
20 this whole area.

21 The contractor was using this for
22 equipment storage and this for employee parking,
23 Persico Contracting --

24 MS. ZALANTIS: Can we just let
25 the record reflect that --

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1 Flavio LaRocca 108

2 MR. MENDELSON: I was just going
3 to do it.

4 MS. ZALANTIS: Go ahead.

5 MR. MENDELSON: You can go ahead
6 and finish what --

7 A When they left it in that area, when
8 we plowed the road --

9 Q So now stop.

10 MR. MENDELSON: For the record,
11 he has pointed to the part of the
12 survey that's marked now City of New
13 Rochelle to the south of the parcel,
14 and he's moving his finger northbound
15 on East Street.

16 A Correct.

17 MS. ZALANTIS: Could I just, just
18 to clarify for the record, I think he
19 indicated where it's depicted as now
20 and formerly City of New Rochelle as
21 where the contractor was storing
22 equipment --

23 MR. MENDELSON: Yes.

24 MS. ZALANTIS: -- and materials.

25 And the yellow portion that you

Page 109

1 Flavio LaRocca 109

2 circled with the yellow highlighter
3 was where the contractor was using as
4 a staging area; is that correct?

5 A No. That was employee parking for
6 that contractor, Persico contractor.

7 MS. ZALANTIS: Okay. Thank you.

8 MR. MENDELSON: Okay.

9 Q When was that?

10 A When they were using the area to build
11 the bridge in '02 or '03. Prior to the
12 construction of the skate park.

13 Q So we interrupted you.

14 How does the snowplowing affect the
15 yellow area?

16 A When we snowplowed this area, at
17 times, because it's a steep hill going down, our
18 trucks with the snow, depending on how much, or
19 ice, would skid off and scrape into the yellow
20 area where the gravel was at, and some of the
21 gravel would be pushed onto East Street and some
22 of the gravel would be piled up in mounds for the
23 snowplow.

24 MR. MENDELSON: For the record,
25 he moved his finger up East Street

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1 Flavio LaRocca 110

2 north and then skipped his hand and
3 moved his hand into the yellow area
4 and came back out.

5 A Correct. Because in order for us to
6 gain entrance here where the gate was, no one
7 would ever plow this road, so we would plow it so
8 we could gain access.

9 Q When you're pointing, you're pointing
10 to an area that's outside of the boundary of East
11 Street.

12 Is it your testimony that your company
13 plows outside of East Street?

14 A I'm sorry. Excuse me. I --

15 Q Does your company only plow East
16 Street or does it also plow property that's to the
17 east of East Street?

18 A They abut one another. So when you
19 have 6 inches or a foot of snow on the ground, you
20 can't tell where the line is.

21 Q So that yellow parcel is a certain
22 number of feet off of East Street.

23 Is that fair?

24 A Correct.

25 Q And it goes back into where Flowers

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1 Flavio LaRocca 111

2 Park is.

3 Is that fair?

4 A Yes.

5 Q In fact, Flowers Park comes right up
6 to East Street right here, right?

7 A Correct.

8 Q And that includes the yellow circled
9 area, correct?

10 A Yes.

11 MS. ZALANTIS: Can I just take a
12 break for one moment before you ask
13 your next question?

14 MR. MENDELSON: Sure.

15 (Whereupon, a brief recess was
16 taken.)

17 Q Mr. LaRocca, is there gravel on East
18 Street?

19 A On East Street, no.

20 Q What sort of surface is East Street?

21 A Blacktop.

22 Q So when your plows come northbound on
23 East Street as you've described, they are not
24 moving gravel onto the parcel, correct?

25 A No.

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1 Flavio LaRocca 112

2 Q Meaning that is correct.

3 A Correct.

4 Q When your company does work on the
5 parcel, does it use any equipment?

6 MS. ZALANTIS: Objection as to
7 form.

8 Q Does it use any equipment.

9 A Describe what kind of work you're
10 referring to.

11 Q You earlier said that your company
12 does something with gravel on the parcel.

13 Is that fair?

14 A Raking out the gravel, yes.

15 Q Does it when it rakes out the gravel,
16 does it use any equipment?

17 A Yes.

18 Q What sorts of equipment does it use?

19 A A machine to rake out the high spots,
20 and then we rake out by hand, and then a compactor
21 to stabilize it.

22 Q What sorts of machine is used to rake
23 out the high spots?

24 A Either a skid-steer or a payloader.

25 Q And what sorts of equipment is used

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1 Flavio LaRocca 113

2 to rake it out?

3 A Either a walk-behind or ride-on
4 tamper.

5 Q And what sorts of equipment are used
6 to compact it?

7 A That's to compact it. I'm sorry.
8 To rake it out is either shovels or
9 rakes.

10 Q Is it your testimony that the
11 material that's being raked out, is that material
12 that's already there, or is that material that's
13 brought there to the parcel?

14 A Material that was left there by the
15 previous contractor who was utilizing that area
16 as a staging area.

17 Q Has Flavio LaRocca & Sons ever
18 brought material to the parcel to place on the
19 parcel?

20 A No.

21 Q Has Flavio LaRocca ever removed
22 anything from the parcel?

23 A No.

24 Q Has Flavio LaRocca ever removed
25 anything from East Street?

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1 Flavio LaRocca 114

2 A No.

3 Q I want you to look at Plaintiff's 3
4 which is Summons and Complaint. So just have
5 that out.

6 And then I also want you to take out
7 Plaintiff's 12, which has been marked and is the
8 Defendant's Response to First Set of
9 Interrogatories and document demands by Plaintiff.

10 I want you to take a look at
11 Plaintiff's 12.

12 Do you recognizes this document?

13 A (Reviewing)

14 Yes.

15 Q Have you reviewed that document?

16 A Yes.

17 Q And were you involved in creating that
18 document?

19 A Yes.

20 Q I want you to go to the last page of
21 Plaintiff's 12, and it is verification.

22 Whose signature appears on that page?

23 A Mine.

24 Q And prior to signing that, did you
25 read the contents of what is in Plaintiff's 12?

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1 Flavio LaRocca 115

2 A Yes.

3 Q Do you agree that the answers within
4 are true to the best of your knowledge?

5 A Yes.

6 Q I want you to turn to Page 4 of the
7 Plaintiff's 12.

8 A Page 4.

9 Q Do you see there there is a list at
10 the top of the page, there is a list of people
11 that are there.

12 A Yes.

13 Q And this is in response to a question
14 to identify all persons having knowledge of the
15 facts relevant to the subject matter of the
16 Complaint, Answer, affirmative defense and
17 counterclaims, and describe in detail the nature
18 and extent of this knowledge.

19 Is that fair?

20 A Yes.

21 Q What knowledge does Benny Rivera have
22 regarding this action?

23 A He is one of the property owners
24 directly across from Flowers Park, so he may have
25 knowledge that none of my vehicles were ever

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1 Flávio LaRocca 116

2 parked there, and that we haven't done any work
3 besides just raking the ground as we commonly did
4 every time we plowed the road.

5 Q What about Patrick Bongo?

6 A Same.

7 Q How about Jeffrey Coleman?

8 A He is one of the persons who I met
9 regarding the staking out of this property with
10 Mr. Vacca.

11 Q Do you have any pictures of the stakes
12 that were put in in 2009?

13 A Yes.

14 Q Were they produced?

15 A Yes.

16 MR. MENDELSON: Kathy, do you
17 know where they are in the
18 production?

19 MS. ZALANTIS: Not offhand, but
20 there is a picture.

21 Do you want this on the record?

22 There was a picture I believe of
23 the orange X that he testified to
24 before that was produced previously.

25 MR. MENDELSON: Okay. Off the

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1 Flavio LaRocca 117

2 record.

3 (Whereupon, a discussion was
4 held off the record.)

5 MR. MENDELSON: I'm going to
6 demand any photographs of the stakes
7 from Gabriel Senor.

8 I know that counsel is
9 representing to me in the production,
10 and I take her at her word, but any
11 additional ones.

12 If they are only showing one
13 stake, then we want photos of the
14 others as well.

15 (REQUEST) _____

16 Q Going on.

17 What about a person named Felipe Maya
18 Galinda, Martin Sanchez?

19 A Yes.

20 Q Who is that?

21 A That's two different people.

22 Q Who are those two people?

23 And we will start with Felipe Maya
24 Galinda.

25 A My employee.

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1 Flavio LaRocca 118

2 Q What does Felipe Maya Galinda know
3 about this action?

4 A He was one of the people doing the
5 repair or the regrading of the gravel there at
6 Flowers Park.

7 Q So he is one of the people that has
8 worked on the parcel.

9 A Has raked the gravel at Flowers Park,
10 yes.

11 Q Has Felipe Maya -- approximately how
12 many times has he done that?

13 A A few times. I don't remember
14 exactly.

15 Q More than five?

16 A I don't know if it's more than five.
17 I really can't say.

18 Q What about Martin Sanchez?

19 A Same.

20 Q And has he also worked on the parcel?

21 A Yes.

22 Q Has he been involved in what you're
23 calling the raking of the parcel?

24 A Yes.

25 Q Is he an employee of your company?

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1 Flavio LaRocca 119

2 A Yes.

3 Q Have either one of them operated any
4 of the machinery on the parcel that you
5 described?

6 A Yes.

7 Q Both of them or one of them?

8 A No, one of them.

9 Q Which one has operated?

10 A Felipe.

11 Q Who gave them their instructions about
12 the work to do on the parcel?

13 A I did.

14 Q What were those instructions?

15 A To rake out the disturbed area of the
16 gravel and recompact it.

17 Q What is the reason that Flavio
18 LaRocca & Sons does that rake-out instead of any
19 of the other property owners?

20 A Because we are the ones who disturbed
21 it by plowing to get in to where we were keeping
22 our pieces of equipment down at the Guglielmo
23 yard.

24 Q When did the raking out of the parcel
25 start, when did that first happen?

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1 Flavio LaRocca 120

2 A After the first winter that we were
3 down in the parcel, in the Guglielmo's property.

4 Q When was that?

5 A I'm going to say around '12.

6 Q 2012?

7 A 2012 or '13, one of those two. I
8 don't remember exactly.

9 Q Prior to 2012 and '13, who, if
10 anybody, snowplowed that area?

11 A I don't know. I didn't have the need
12 to get into that parcel so I never went down
13 there. Guglielmo, not the parcel, so we don't get
14 it confused.

15 Q Who snowplows it now?

16 A I don't know. This past winter we
17 didn't get much snow, but the previous winter I
18 didn't see anybody snowplowing it.

19 Q Now I want you to go to Page 4. You
20 see there is a request number 2.

21 A Okay.

22 Q And I want you to, it refers to your
23 response. It refers to a exhibit of the Summons
24 and Complaint.

25 Is that fair?

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1 Flavio LaRocca 121

2 A Yes.

3 Q I'd like you to take out that
4 exhibit.

5 So here it's referring to 1-A. So if
6 you could -- or, excuse me. It's referring to
7 Exhibit 1-A. I marked it as 3-A here. So it's
8 attached to the Summons and Complaint.

9 A Oh, okay.

10 MR. MENDELSON: So for the
11 record, 3-A is Exhibit 1, Summons
12 and Complaint, and it's seven pages.

13 Q Have you seen these photographs that
14 are in those pages before?

15 A Yes.

16 Q I want you to turn to Page 2 of 3-A.
17 So it's the first picture.

18 What does this photograph show?

19 A It shows an arrow, some men working
20 with -- some of my employees raking the gravel,
21 some of my trucks there, and an arrow with the
22 name Flavio LaRocca on it and pointing to an
23 individual.

24 Q Is that individual that the arrow is
25 pointing to you?

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1 Flavio LaRocca 122

2 A I can't say for certainty because I
3 don't recall seeing anybody taking pictures or
4 being there when I gave the instructions to my
5 employees. So I'm going to say no.

6 Q That's not my question.

7 Looking at this photograph, and this
8 is the first photograph in 3-A, is that you that
9 the arrow is pointing to?

10 A No.

11 Q Is there a truck next to the person
12 that the arrow is pointing to?

13 A Yes.

14 Q Does the truck have any writing on
15 it?

16 A Yes.

17 Q What does it say?

18 A F. LaRocca & Sons.

19 Q Is that truck of your company's?

20 A Yes.

21 Q What sort of truck is that based on
22 what you've told me earlier?

23 A To the left or to the right?

24 Q If you're looking at the photograph,
25 to the left.

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1 Flavio LaRocca 123

2 A To the left, that is a dump truck with
3 some tools on the sides.

4 Q And is there another truck that
5 belongs to your business in this photograph as
6 well?

7 A Yes.

8 Q And where is that?

9 A On the right side.

10 Q Is that the other yellow truck in the
11 photo?

12 A The brownish-black truck, yes.

13 Q Is it the one that has a little
14 driller on the back of it?

15 A Correct.

16 Q What kind of truck is that?

17 A That's a pickup with a trailer which
18 brings around our compacting equipment.

19 Q Now, who, do you see that there are
20 other people depicted in this photograph as well?

21 A Yes.

22 Q There is the person that the arrow is
23 pointing to. We will call that person the person
24 in white.

25 Do you see that person there?

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1 Flávio LaRocca 124

2 A Yes.

3 Q There is a person standing next to

4 him in blue.

5 Do you know who that person is?

6 A It's a little far away. I can't

7 tell but it looks like possibly one of my

8 employees.

9 Q Which one?

10 A I can't tell. It's too far away.

11 Q There is two men over on the right

12 side of the photograph.

13 Do you see them?

14 A Yes.

15 Q Do you recognize either of them?

16 A One of them, yes.

17 Q Which one do you recognize?

18 A The one furthest to the right.

19 Q Who is that?

20 A Sanchez. Martine Sanchez.

21 Q What is Martin Sanchez or Martine

22 Sanchez doing in the photograph?

23 A Raking the gravel.

24 Q What is the need for the truck on the

25 left in this photograph?

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1 Flavio LaRocca 126

2 ground?

3 A Our snow season goes through April.
4 We don't rake out every time it snows. After
5 several snows or after the season, even when they
6 plow our customers who have driveways, we rake it
7 out at the end of the snow season just at the
8 beginning of spring. So that's the only
9 explanation that I can give.

10 Q So it's fair to say you don't only
11 rake it out just after the plows go by.

12 A You can -- we almost never rake out
13 just after the plows go by because with the snow
14 on the ground, you can't see what is disturbed
15 until the snow melts.

16 Q What times of year do you usually
17 rake?

18 A April, May.

19 Q Do you ever rake in any other months?

20 A Just, like this year has been a dry
21 year for snow. If we have had an earlier snow
22 and a customer may request us to rake it out
23 sooner, we might go sooner, but usually we do it
24 at the end of the season.

25 Q When you say "a customer," who is the

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1 Flavio LaRocca 127

2 customer who would request?

3 A Some of the clients that have
4 driveways that have gravel.

5 Q No. I'm just talking about the
6 parcel.

7 A No. You asked me a question in
8 general when did you rake it out.

9 Q But I'm referring -- my questions here
10 are only regarding the parcel.

11 A Okay. So no, in this case we would
12 wait until later in the year to do it just once.

13 Q So how many times per year do you rake
14 out the parcel?

15 A Once or twice.

16 Q And when does that start, when is the
17 first rake-out done?

18 A Towards the end of the snow season.

19 Q And your testimony is that's April or
20 May.

21 A Correct.

22 Q When is the second rake-out done?

23 A Depends if it's needed or not.
24 Sometimes only once is sufficient.

25 Q Would it be, the rake-out be over the

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1 Flavio LaRocca 128

2 summer, the fall, or winter?

3 A No, there is no need, because we are
4 not plowing that area in those months.

5 Q I want you to look at your request to
6 answer. And if you could see there, can you start
7 reading where it says Exhibit 1-A.

8 A I'm sorry. Where? Okay. Yeah.
9 Page 4 still?

10 Q Yes. Yes.

11 A Okay.

12 Q So Exhibit 1-A is referring to this
13 first photograph.

14 Would you agree?

15 A Yes.

16 Q So can you read that first sentence
17 there.

18 A Depicted are now fenced off area near
19 Flowers Park that had been used at time of the
20 photograph was taken and for many years before
21 and even months after by the neighboring property
22 owners, Benny's Tree Service and PAB Paving, for
23 parking of their employees' vehicles.

24 Q Now I want to stop there.

25 This is referring to the parcel,

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1 Flavio LaRocca 129

2 correct?

3 A Yes.

4 Q How do you know that Benny's Tree
5 Service and PAB used it for parking?

6 A Well, the pictures that you have
7 brought show this to me.

8 Q And you're able to identify cars in
9 those pictures as PAB and Benny's that are parked
10 in the parcel?

11 A Yes. Right from the following
12 pictures that you have here in the exhibits show
13 that those are, not one of them is my employees'
14 vehicles, not one of them is not one of my
15 trucks.

16 Q We will get to those, but my question
17 is very simple.

18 Would you agree with me it's different
19 to say that none of them are your cars versus
20 saying they are somebody else's?

21 A Okay.

22 Q Could you agree with that?

23 A Sure.

24 Q Have you been able or have you
25 witnessed Benny's employees or PAB's employees

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1 Flavio LaRocca 130

2 parking in the parcel?

3 A Ever since this issue came up I've
4 been paying more attention to it, yes.

5 Q And you've seen their vehicles parked
6 in the parcel?

7 A Yes.

8 Q When?

9 A After and from when these pictures and
10 after that time they were parked there.

11 Q Have you ever had any conversations
12 with Benny's, any employees or Benny himself, or
13 PAB or any of its employees about parking in the
14 parcel?

15 A No.

16 Q Would parking in the parcel and
17 driving off disturb the gravel?

18 A Not as much as the snow plow. Maybe
19 very slightly.

20 Q So it's your testimony that driving
21 on the gravel and on and off the gravel to park
22 and unpark would do less disturbance to the parcel
23 than snow plowing East Street.

24 A Correct.

25 Q So have you ever spoken with Benny or

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1 Flavio LaRocca 131

2 anybody from Benny's or PAB about parking on the
3 parcel?

4 A No.

5 Q Have you ever asked them to rake the
6 parcel after they parked on it?

7 A No.

8 Q Have they ever raked the parcel after
9 they parked on it?

10 A I don't know.

11 Q Have you ever witnessed anybody other
12 than Flavio LaRocca & Sons raking the parcel?

13 A I've seen the parks and rec do work
14 there from time to time, personnel from the City.

15 Q When was that?

16 A Before and even during, even now.

17 Q What sorts of work have you seen parks
18 and rec do to this parcel?

19 A They go and pick up the garbage that's
20 dumped there. There is bottles and other things
21 that either the kids or other people passing by
22 throw there.

23 They cut down, weed whacked some of
24 the vegetation. Things like that, maintenance
25 work.

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1 Flavio LaRocca 132

2 Q You've seen members of the City take
3 down vegetations on the parcel?

4 A Yeah. With weed whackers. They go
5 there and cut things down there.

6 Q When was that?

7 A Last summer, throughout the summer.

8 Q Is this before or after the fence was
9 put up?

10 A This is now, this past year, 2019.
11 That's after the fence was put up.

12 Q Before the fence was put up, have you
13 seen the City do anything to the parcel?

14 A Yeah. They would come there and even
15 park their trucks and trailers when they would
16 work on the skate park before that area was fenced
17 off.

18 Q Was that, we are talking about in
19 2006, or up and through now?

20 A Up and through. Once the skate park
21 was put up and that area was already graded by
22 the previous contractor, they would put up with
23 their trucks and trailers and park there and take
24 the equipment off.

25 Even when they would bring in their

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1 Flavio LaRocca 133

2 additional equipment for the skate park, they
3 would back up right over the parcel, back it into
4 the gate, and either discard it there or sometimes
5 they would drive their trucks right into the
6 park.

7 Q Now, Benny and PAB's employees, when
8 do they park there, all year long?

9 A No.

10 Q I'm talking prior to the fence being
11 put up, and I'm specifically talking to about
12 2014, '15 and '16.

13 A Yeah.

14 Q Would they park there all year long
15 in the parcel?

16 A No. PAB and Benny and even Guglielmo,
17 they closed down for the winter months once it
18 got cold and starts snowing.

19 Q So when, approximately, do their
20 businesses open up?

21 A Around this time, March time.

22 Q So is it fair to say they would park
23 in the parcel in March during those years?

24 A March through maybe December.

25 Q And did they ever offer to help rake

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1 Flavio LaRocca 134

2 the parcel?

3 A No.

4 Q I want you to read the next sentence
5 in the interrogatory, please.

6 A As the City fails to maintain or
7 repair East Street even though it is a public
8 street, the abutting landowners are forced to
9 maintain and repair East Street and the area
10 surrounding the street where debris is often
11 dumped even though they have no legal obligation
12 to do so.

13 Q Okay. Stop.

14 You just testified that the City would
15 come and pick up debris around the parcel.

16 Is that fair?

17 A No, just in the parcel.

18 Q And so just speaking about the parcel,
19 it's your testimony that they picked up the debris
20 in the parcel.

21 A Occasionally, yes.

22 MS. ZALANTIS: Off the record for
23 a minute.

24 (Whereupon, a lunch recess was
25 taken.)

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1 Flavio LaRocca 135

2 BY MR. MENDELSON:

3 Q Mr. LaRocca, I just want to be clear
4 about the, what you're calling the raking that
5 you've done to the parcel.

6 When, approximately, did you start
7 raking, was that in 2012 about?

8 A It was the first winter after I was
9 in Guglielmo's yard. I don't know if it was 2012
10 or 2013.

11 Q When did the raking stop?

12 A We only raked it once or twice a year
13 at most, and that happened towards the end and
14 stopped towards the end of the snow season, around
15 April, May.

16 Q Is that of 2000 -- well, when,
17 approximately, would the fence get put up?

18 A When was it, I don't remember exactly
19 the year. When this whole issue came up. I
20 mean, what is it, '15, '16, '17, I don't know
21 exactly what it is.

22 Q Is it fair to say the raking was once
23 or twice a year from whenever you started renting
24 from Mr. Guglielmo up and until the fence was put
25 up?

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1 Flavio LaRocca 136

2 A Actually when this happened, when the,
3 my, when this happened.

4 Q When the action started.

5 A Yes, when the action started.

6 Q I want to now draw your attention to
7 Page 5 of Plaintiff's 12, the interrogatories.
8 And then I want you to turn to the second picture
9 in Plaintiff's 3-A.

10 A Okay.

11 Q So what is depicted in this photo-
12 graph?

13 A Two of my men raking, my employees
14 raking the so-called gravel or millings, whatever
15 was there, with compacting, with a ride-on
16 compactor.

17 Q Who are the men depicted?

18 A One of them is Martine Sanchez and the
19 other two I can't remember. I can't see them from
20 their back.

21 Q Who is Martine Sanchez in this photo?

22 A I think the one with the yellow shirt.

23 Q Is that the one in the middle?

24 A Yes.

25 Q What is in the two workers' hands that

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1 Flavio LaRocca 137

2 are standing on the ground?

3 A Rakes.

4 Q What is your employees riding on, on
5 the left side of the photograph?

6 A That's the compaction, the compactor,
7 the ride-on compactor.

8 Q What is that material that's being
9 raked?

10 A That's millings mixed with gravel.

11 Q How do you know that?

12 A Well, gravel is usually lighter in
13 color, and that's got blacktop into it, it's so
14 dark, and that's what was there on the ground,
15 and when the plows go by, it gets disturbed and
16 we just rake it out and just compact it. That's
17 what we did.

18 Q After it's compacted does anything
19 else happen, or does Flavio LaRocca & Sons do
20 anything else to that area?

21 A No.

22 Q I want you to take a look at Page 5
23 in Plaintiff's 12.

24 Do you see where it says Exhibit 1-B?

25 A Yes.

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1 Flavio LaRocca 139

2 A Well, because those were already
3 there before me. And quite frankly, that's not
4 even mulch. Maybe that's the wrong term being
5 used. Ground-up wood chips and that's it. Mulch
6 is colorized. It's brown, red or black.

7 Q As you sit here today, do you know if
8 that is Benny Tree Services or PAB Paving's wood
9 chips?

10 A I can't say because it was already
11 there. You can see even from this picture the
12 tire tracks going over the gravel prior to us
13 raking it. So when we got there, that was
14 already dumped there. I mean, by all means it
15 could have been even the parks area that dumped
16 that.

17 Q Where are you seeing the tire tracks?

18 A Right here. That's tire tracks that
19 comes across the gravel and my men are working
20 from down. These tire tracks, they have not raked
21 that area yet, and you see the tire tracks over
22 the gravel or the millings, whatever you want to
23 call it.

24 Q The way that tire track is there, that
25 tire track would be pointed south on East Street;

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1 Flavio LaRocca 140

2 is that correct?

3 A Correct.

4 Q And south would be towards 5th Avenue.

5 A Correct.

6 Q Now going to the third picture.

7 Do you see that?

8 A Yes.

9 Q What is in this photograph?

10 A I see a few vehicles parked on the
11 right side and you're looking down towards the
12 Flowers Park area. Or the parcel. Whatever you
13 wants to call it. And you see one of my pay-
14 loaders just flattening out the so-called gravel
15 or millings.

16 Q So what is the payloader's
17 responsibility in relation to the compactor, what
18 is the difference?

19 A Well, the compactor cannot go over
20 the aggregate if it's not smooth because it makes
21 it tip over or creates an uneven surface.

22 The raking by hand is too laborious
23 to rake high spots that the plows have piled up.

24 So the payloader as you see it with
25 the bucket down dragged it backwards, flattens

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1 Flavio LaRocca 141

2 out the high spot, and you smooth out lightly
3 with the rake prior to doing the compactor.

4 Q Is this your payloader?

5 A Yes, it is.

6 Q How much time from the beginning to
7 the end on a day like this that's depicted in
8 those photos would it take to fully finish your
9 work on the parcel?

10 A I don't know. As you can see, there
11 were vehicles parked there. If there were
12 vehicles in the area where they were working
13 prior to that, they probably had to wait for the
14 vehicles to move. I don't know. I can't say.

15 Q Well, approximately how long from
16 beginning to end would it take?

17 A A couple of hours.

18 Q Is that more than two hours?

19 A Two to four.

20 Q Do you know whose vehicles those are
21 parked on the right side of this photograph?

22 A These here, I don't recall.

23 Q So in your response to 1-C, you
24 state: Also depicted are vehicles in the parking
25 area that upon information and belief are owned

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1 Flavio LaRocca 143

2 A On the trailer it has rakes, and then
3 the tire and then the trailer, and that's it.

4 Q Is there anything underneath the hand
5 tools there?

6 A The hand tools?

7 Q Yes.

8 A Where?

9 Q On the trailer.

10 A On the trailer? That storage area
11 where we keep our chains to tie down the trailer
12 and the straps.

13 Q What is the best weather condition to
14 do this work?

15 A Best weather condition, as long as
16 the ground is not frozen and there isn't anything
17 obstructing the area.

18 Q Is it okay to do it when it's wet on
19 the ground?

20 A Yes.

21 Q Is there a reason you would choose to
22 do it when it's wet on the ground?

23 A No, no reason. You could do it either
24 when it's dry or wet.

25 Q Moving to the next photograph. This

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1 Flavio LaRocca 144

2 is now the fifth photograph in 3-A.

3 What is depicted here, if you know?

4 A Looks like wood chips dumped.

5 Q Are those the wood chips that you say
6 are not mulch?

7 A Correct.

8 Q But you don't know whose wood chips
9 those are.

10 A Correct.

11 Q How long were they there for?

12 A I don't know.

13 Q Do you remember when you first saw
14 these piles?

15 A They were already there prior to us
16 doing the raking work so I don't know. I don't
17 park in that area so I don't pay attention to
18 when that's put there.

19 Q Were they there all winter?

20 A I can't say. I don't know.

21 Q Who drives the plows?

22 A Either my employees or myself.

23 Q Do you ever plow East Street or did
24 you plow East Street between 2012 and 2016?

25 A On occasion.

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1 Flavio LaRocca 145

2 Q When you were plowing, did you ever
3 have occasion to see those piles of wood chips?

4 A No.

5 Q Have you seen those piles of wood
6 chips other than in these photographs?

7 A No.

8 Q On the day in question when these
9 photos were taken, it's your testimony that you
10 were not present, correct?

11 A Correct.

12 Q You can put Plaintiff's 3-A aside.

13 I want you to turn to page number 7
14 of Plaintiff's 12.

15 I'm still a little confused as to the
16 snow plowing, how it disturbs the gravel.

17 How wide is the parcel?

18 A I don't know precisely how wide.

19 Q Is it more than 10 feet?

20 A Yes.

21 Q Is it more than 20 feet?

22 A I don't know. I never measured it.

23 Q How deep is it off of East Street,
24 meaning if you were walking from East Street to
25 the back of the parcel, approximately how many

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1 Flavio LaRocca 146

2 feet is it?

3 A The parcel goes up in slope, doesn't
4 go down.

5 Q Sure. But how many, approximately
6 how many feet is it?

7 A On the upper area it's level, and as
8 you go down it's a little higher, because the
9 road East Street goes down and the parcel is a
10 little higher.

11 Q But if you were standing, if you could
12 look at the second page, the second picture in
13 3-A.

14 A Which one is that, the one with the
15 compaction machine?

16 Q Yes.

17 If you were standing on the curb or
18 on the side of East Street, and walked from East
19 Street to the piles of mulch or the piles of wood
20 chips as you called them, how many feet is that?

21 MS. ZALANTIS: Objection.

22 Are you saying the side of East
23 Street? Where?

24 MR. MENDELSON: Withdrawn.

25 Q Can you see on this photograph where

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1 Flavio LaRocca 147

2 East Street ends?

3 A I'm assuming you're referring to the
4 paved area?

5 Q I'm not. My testimony doesn't matter,
6 but can you tell on this photo where East Street
7 ends?

8 A No.

9 Q Do you see the part of the photograph
10 where the what you're calling the mixture meets
11 the asphalt?

12 A Yes.

13 Q From that, if you were standing on
14 that area and walked to these piles of wood chips
15 in the back, approximately how many feet is that?

16 A In length or height or width?

17 Q How many feet is it from that part
18 where the mixture meets the asphalt to the wood
19 chips?

20 A Maybe about 15 feet eyeballing it?

21 Q When you plow or when your employees
22 plow East Street, do the plows go up onto the
23 parcel?

24 A No.

25 Q Okay. You can put that aside. You

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1 Flavio LaRocca 148

2 can put the interrogatories aside.

3 I'm now going to show you what's
4 marked as Plaintiff's 13, which is a video that's
5 been produced in discovery to counsel. And I'm
6 going to play the video.

7 I'm going to ask if you watch it all
8 the way one time through and then we will talk.
9 Okay?

10 A Um-hm.

11 (Video plays)

12 Q What is Talk of the Sound?

13 A I don't know.

14 Q Have you ever heard of Talk of the
15 Sound?

16 A Just through this action.

17 Q So prior to this action you've never
18 heard of Talk of the Sound.

19 A Correct.

20 Q Prior to this action have you ever
21 heard of somebody by the name of Bob Cox?

22 A No.

23 Q Have you ever met somebody by the name
24 of Bob Cox?

25 A Never.

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1 Flavio LaRocca 149

2 Q Have you ever had any conversations
3 with somebody named Bob Cox?

4 A Not that I recall, no.

5 Q Do you know if your wife has?

6 A I don't think so.

7 Q Have you seen this video prior to
8 today?

9 A Yes.

10 Q When did you last see it?

11 A A day or two ago in preparation for
12 some of the questions for this.

13 Q Prior to this action, have you seen
14 this video?

15 A I think I seen it once after it was
16 published and after this action. No, not prior
17 to this action, no.

18 Q I'm pausing it on second ten of this
19 video.

20 Is it fair to say that this video
21 seems to be taken on the same day as those photo-
22 graphs in Exhibit 3-A? If you know.

23 A I don't know.

24 Q Does it look like the same day?

25 A Some of the pictures do but I can't

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2 say for certainty.

3 Q What is depicted in this still frame
4 at 10 seconds in, what is depicted here?

5 A I see a loader and a pickup with a
6 trailer and a couple of guys raking the material.

7 Q Turning to Plaintiff's 3-A, I want
8 you to specifically turn to photo 3.

9 A Okay.

10 Q Was the video in this picture taken
11 on the same day?

12 MS. ZALANTIS: Objection as to
13 form.

14 A I can't say. The video looks like
15 there is more wood on the ground. The picture
16 here seems drier.

17 Q Is that loader the same loader that's
18 depicted on 3-A?

19 A Yes.

20 Q Are those wood chips the same wood
21 chips that are depicted in 3-A?

22 A It looks to be.

23 Q And that vehicle in the back, the
24 brownish vehicle that you described earlier in
25 3-A, is that the same vehicle that seems to be in

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2 the back here at 10 seconds into this video?

3 A Seems to be.

4 Q Do you see -- I'm stopped at 17
5 seconds into the video now.

6 Do you see a vehicle on the left-hand
7 side of the screen?

8 A Yes.

9 Q Is that one of Flavio LaRocca & Sons'
10 vehicles?

11 A Yes.

12 Q Is that the same vehicle that's
13 depicted on picture 3-A?

14 A Seems like a portion of it.

15 Q When you say "a portion of it," it
16 seems like a portion of the same vehicle?

17 A Yes.

18 Q Now do you see an individual in white
19 on the video at 17 seconds and who is standing on
20 the left-hand side of the frame?

21 A Are you talking about in the back by
22 those two cars?

23 Q In front of the two cars, yes.

24 A Okay. Yes.

25 Q Do you see a person talking to him?

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1 Flavio LaRocca 152

2 A Yes.

3 Q Is that also depicted in 3-A?

4 A Different angles but seems like it.

5 Q Who is that person in white on the
6 video?

7 A I can't tell.

8 Q Now stopped at 20 seconds in, can you
9 tell who the individual is in white now?

10 A No. So far back I can't tell.

11 Q Who are the workers on frame 20
12 seconds?

13 A On the right?

14 Q Yes.

15 A One of them looks like Martine
16 Sanchez, and the other one I don't recall. He's
17 not an employee of ours at this time.

18 Q When you look at frame or picture 3-A,
19 are those the same workers that are depicted on
20 the right-hand side?

21 A Yes.

22 Q Stopped at 26 seconds in.

23 Do you see there is a piece of equip-
24 ment at the top?

25 A Yes.

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1 Flávio LaRocca 153

2 Q What is that?

3 A That is our, the compactor roller.

4 Q Is that the same compactor roller
5 that's pictured in the second picture of 3-A?

6 A Yes.

7 MS. ZALANTIS: 3-A?

8 MR. MENDELSON: The second
9 picture in 3-A.

10 Q Mr. LaRocca, do you speak Spanish?

11 A Yes.

12 Q I'm going to start playing the video
13 at 38 seconds in, and I think you're going to hear
14 one of the people you've identified as one of your
15 workers say something.

16 And if you could listen and tell me
17 what he says, please.

18 (Video plays)

19 Q And I've stopped it at forty-five.

20 Could you tell what was said?

21 A Yeah. He was asking somebody if they
22 were going to get the box van.

23 Q What is a box van?

24 A Box van. It's a van with a box.

25 Q What does a box van do?

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1 Flavio LaRocca 154

2 A It carries tools.

3 Q And what would be the reason that one
4 of your employees would need a box van on this
5 job?

6 A Maybe there might have been a tool
7 that they didn't have with them that they needed.

8 Q Do you know who he was speaking to?

9 A No.

10 Q Do you know who that employee was?

11 A I just remember his first name, Hugo.
12 I don't remember his last name.

13 MR. MENDELSON: I demand
14 production of Hugo's last name.

15 (REQUEST) _____

16 Q Is Hugo still an employee of yours?

17 A No.

18 Q When did he cease being an employee?

19 A Let's see. He went back home a
20 couple of years ago I think, two or three years
21 ago.

22 Q Do you know if he was still in the
23 country?

24 A No.

25 Q Meaning he is or he's not?

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1 Flavio LaRocca 155

2 A Last I heard he went back home to
3 Mexico.

4 MR. MENDELSON: I still demand
5 his last name.

6 (Video plays)

7 Q I've stopped at 49, second 49.

8 Can you tell who those two workers are
9 that are depicted there?

10 A The one in the front looks like
11 Martine Sanchez.

12 Q And the one in the back?

13 A The one in the back I don't recall.

14 Q Is it one of your employees?

15 A It doesn't look like one of my
16 employees. I just don't recall the face. I can't
17 see from that far away.

18 Q If it is one of your employees, would
19 Martin Sanchez know who it was?

20 A He should.

21 (Video plays)

22 Q I've stopped it at one minute 50
23 seconds in.

24 There is a gentleman walking a wheel-
25 barrow on the street.

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1 Flavio LaRocca 156

2 Do you know who that is?

3 A I can't tell.

4 Q Is it one of your employees?

5 A I don't think so.

6 Q What location is he in front of at
7 1 minute 50 seconds in this video?

8 A That's right between PAB's property
9 and my property.

10 Q Is he walking towards your property?

11 A Yes.

12 Q Do you know if that's one of your
13 wheelbarrows?

14 A No.

15 Q Now, Mr. LaRocca, while this is
16 playing I'm getting to the next spot.

17 This video, is it a fair and accurate
18 depiction of the work you do to rake out or you
19 did from 2012 to approximately 2016 to rake out
20 the parcel?

21 A Yes.

22 Q I'm stopping it at 2:34.

23 Mr. LaRocca, I want you to look at
24 the, in this frame at 2:34. There is a black
25 pickup truck in the middle of the screen.

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1 Flavio LaRocca 158

2 the entrance to Mr. Guglielmo's property?

3 A I can't tell. I don't know. It's
4 around there somewhere but I don't know if it's
5 right next to it or further in. I can't tell.

6 Q Is it fair to say that to get down
7 East Street and enter Mr. Guglielmo's premises,
8 you would need to go by where that black pickup
9 truck is located in this frame?

10 A To the east of it, on the right side.
11 Not there.

12 Q Now, you had earlier on, Plaintiff's
13 11, you marked some areas in blue.

14 Do you remember doing that?

15 A Yes.

16 Q Are these areas in blue depicted in
17 this frame?

18 A Yes.

19 Q Is that area we are speaking about
20 right in front of that pickup truck?

21 And when I say "right in front of,"
22 what I'm meaning is, you see here there is like a
23 little orange something at the back of the pickup
24 truck?

25 A Yes.

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2 Q And do you see the area directly to
3 the right of that little orange?

4 A Where that puddle of water is?

5 Q Yes.

6 A Okay.

7 Q Is that one of the areas that you
8 circled in blue?

9 A Yes.

10 Q Do people park their vehicles along
11 that area sometimes?

12 A Yes.

13 Q Did Flavio LaRocca & Sons ever park
14 its vehicles along that area?

15 A No.

16 (Video plays)

17 Q That's a better frame for what I'm
18 talking about. I'm stopped at 2:41.

19 Do you see now that it's actually you
20 can kind of see cones at the back of that truck
21 back here?

22 A Okay.

23 Q Do you see what I'm speaking about?

24 A Yes.

25 Q In the back -- right in front of the

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1 Flavio LaRocca 160

2 back rear of that black pickup truck.

3 A Correct.

4 Q Did people park there in 2014 to
5 2016?

6 MS. ZALANTIS: By "there," what
7 are you saying?

8 Q Meaning right in front of those cones
9 that are depicted on the left-hand side of the
10 screen.

11 A Yes. And even previously to that.

12 (Video plays)

13 Q Now I'm at 2:49.

14 Did you just see the Flavio LaRocca &
15 Sons truck that you identified earlier drive down
16 northbound on East Street?

17 A Yes.

18 Q Where is it going?

19 A It looks like it's going towards East
20 Place.

21 Q Now that work that we just saw
22 depicted in this video, did the City give you
23 permission to do any of that work?

24 A No.

25 Q I'm going to show you now what's been

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1 Flavio LaRocca 161

2 marked as Plaintiff's 14.

3 If you could take a look at it. I
4 think it's in the top of your pile there. It was
5 used at the deposition of Paul Vacca and it's
6 Bates stamped D 0353. And there is another photo
7 in this that's Bate stamped D 0262.

8 Do you recognize what is depicted in
9 Plaintiff's 14?

10 A Yes.

11 Q And what is it?

12 A Parts of East Street with Flowers
13 Park.

14 Q Do you see on if you look at the
15 parcel, do you see the parcel in this?

16 A Um-hm.

17 Q Is there any vehicles in the parcel --

18 A Yes.

19 Q -- on this?

20 And what is in the parcel?

21 A Looks like three trucks.

22 Q Is there a white truck as well?

23 A Yes.

24 Q Is that the same parcel that you
25 identified on Plaintiff's 11 with the yellow?

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2 A Yes.

3 Q If you look across East Street to the
4 left when you're looking at this photograph, and
5 you move northbound on East Street, do you see
6 there is like a little peninsula there with trees
7 on it?

8 A I don't know if it's trees. I see
9 vegetation on it but I don't see a tree there.

10 Q Describe to me what that area looks
11 likes to you.

12 A Looks like a little area with stuff
13 growing out of the ground.

14 Q Does it look like it's on dirt or
15 something else that is jutting out onto East
16 Street?

17 A I don't know what that's on. I don't
18 know if it's on dirt or just piled on the
19 asphalt.

20 Q Would you agree with me that on
21 Plaintiff's 13, and I'm going to 2:33, 2 minutes
22 and 33 seconds in, that that little area of
23 vegetation on it is gone?

24 MS. ZALANTIS: Objection as to
25 form.

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2 Q You can answer.

3 A That it's not there, yes.

4 Q Meaning you agree that it's no longer
5 there and on minute 2:33 of the video.

6 A That's what it looks like.

7 Q Do you know what happened to it?

8 A No.

9 Q I'm now going to show you what I'm
10 going to ask to be marked as Plaintiff's 24.

11 (Whereupon, 2016 aerial
12 photograph was marked Plaintiff's
13 Exhibit 24 for Identification, as of
14 this date, by the reporter.)

15 Q Now, I want you to take a look at
16 Plaintiff's 24.

17 Do you recognize what Plaintiff's 24
18 is showing?

19 A Yes.

20 Q What is it showing?

21 A East Street from 5th Avenue down
22 towards East Place.

23 Q And is the parcel shown in Plaintiff's
24 24?

25 A Yes.

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2 Q Can you take a yellow highlighter and
3 draw a circle around the parcel in Plaintiff's
4 24.

5 (Witness complies)

6 A I don't know if it's going to come out
7 on this picture.

8 Q Let's take -- you know what? Take a
9 blue pen and draw around it.

10 (Witness complies)

11 MR. MENDELSON: He's drawn in
12 blue pen around the area marked as
13 the parcel or he's depicted as the
14 parcel.

15 Q Now I want you to take a look at
16 Plaintiff's 14.

17 A Okay.

18 Q Can you do me a favor and draw a
19 circle around, if the parcel is in Plaintiff's
20 14.

21 (Witness complies)

22 MR. MENDELSON: For the record,
23 he's drawn a blue circle around the
24 white truck encompassing the other
25 trucks in the photo.

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1 Flavio LaRocca 165

2 MS. ZALANTIS: There is two
3 pages of Plaintiff's 14 so he just
4 indicated it on the first page.

5 MR. MENDELSON: Yes. Correct.

6 Q Now I want you to take a look at
7 Plaintiff's 24, and do you see the area where you
8 have just been speaking about in Plaintiff's 14
9 with the little piece that juts out onto East
10 Street across from the parcel that has vegetation
11 on it, is that area depicted in Plaintiff's 24?

12 A No.

13 Q Let me ask it a different way.

14 Is the area where that vegetation did
15 exist in Plaintiff's 14, is the general area
16 depicted in --

17 A Oh. The general area. Yes.

18 Q -- in Plaintiff's 24.

19 A Yes.

20 Q Is the vegetation now gone when you
21 look at Plaintiff's 24?

22 A Looks like it.

23 MS. ZALANTIS: Objection as to
24 form.

25 Q When you look up at the top of

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1 Flávio LaRocca 166

2 Plaintiff's 24 to the left-hand side, does it
3 give a date as to when that photo was taken from
4 Google Earth?

5 A Is that, am I reading this right? 4,
6 is it 19, 2019?

7 Q Do you see on the left-hand side it
8 says 1994?

9 A Okay.

10 Q And on the right-hand side it says
11 2019?

12 A Yes.

13 Q And does it say 4/2016 above it?

14 A Yes, 4/2016, yes.

15 Q Then if you look at the second page
16 of Plaintiff's 14, what is the date depicted on
17 it?

18 A The top date?

19 Q Yes.

20 A 10/2014.

21 Q This was produced by you, and your
22 counsel represented that the first page of
23 Plaintiff's 14 is a blow-up of what is in the
24 second page.

25 Does that look fair to you?

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1 Flavio LaRocca 167

2 A I can't tell. One is very dark, the
3 other one is very light. I can't tell if it's a
4 blow-up or not. I can't tell.

5 MR. MENDELSON: Kathy, are you
6 representing that the first page is a
7 blow-up?

8 MS. ZALANTIS: Yes. I believe
9 that's an enlargement of the second
10 page of that.

11 MR. MENDELSON: Okay.

12 Q Plaintiff's 15, if you could look at
13 it.

14 What is depicted in Plaintiff's 15?

15 A Another view of Flowers Park with some
16 vehicles in the area.

17 Q We are looking at two pages of
18 Plaintiff's 15. There is a first picture and a
19 second picture.

20 Are they both depicting the same
21 general area?

22 A To some degree, yes. Just a different
23 angle.

24 Q Is the parcel viewable in both of
25 these photographs?

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1 Flavio LaRocca 168

2 A Yes.

3 Q On the right-hand side?

4 A Yes.

5 Q Do you see on the second page, the
6 second picture of Plaintiff's 15, do you see that
7 area that's in the cones on the left-hand side?

8 A Yes.

9 Q Does that seem to be the same area on
10 Plaintiff's 14 that had the vegetation on it?

11 A Looks like it. Um-hm.

12 Q Thank you.

13 I'm now going to ask you to look at
14 Plaintiff's 16.

15 Take your time and read it and then
16 let me know when you're ready to discuss it.

17 MR. MENDELSON: Off the record.

18 (Whereupon, a discussion was
19 held off the record.)

20 Q Plaintiff's 16 is a letter from the
21 City of New Rochelle dated November 18, 2015, and
22 it's signed by Alexander Tergis.

23 Is that fair?

24 A Yes.

25 Q Do you recall receiving this letter?

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1 Flávio LaRocca 169

2 A Yes.

3 Q What is the substance of this letter?

4 A Basically says that we have property
5 that encroaches onto City-owned property.

6 Q Now, between 2009 and 2015, had you
7 done anything to correct what the City was telling
8 you was an encroachment?

9 A No.

10 Q Up and until today, from the time you
11 purchased the property and you knew there was an
12 encroachment until now, have you taken any steps
13 to, regarding the encroachment --

14 MR. MENDELSON: Withdrawn.

15 Q From the time you purchased the
16 property until today, have you taken any steps
17 regarding the encroachment?

18 A Yes.

19 Q What were those steps?

20 A I contacted the -- when I received in
21 '09 the letter from Mr. Vacca and Coleman, I
22 contacted them, we had a meeting, we had a
23 surveyor come out, he staked the property.

24 At the end of that stake and providing
25 the sketch, I met with both Mr. Vacca and

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2 Mr. Coleman to discuss what was outlined by the
3 surveyor. And it was said to me by both of them
4 at that time that the encroachment was minimal,
5 they weren't concerned about it, and there was
6 really nothing necessary for me to do.

7 Q When did that conversation happen?

8 A A week or two after the survey was
9 done, roughly.

10 Q Where did that conversation occur?

11 A On the site, right outside my
12 property, and when I also showed both of them
13 where the two markings from the surveyor were put
14 to where they were saying it was municipality
15 property.

16 Q So your testimony is you met with
17 City officials at your property on two dates in
18 2009 --

19 A Correct.

20 Q -- correct?

21 One was prior to you had it staked out
22 and one was after.

23 A Correct.

24 Q Who else was present at the meeting
25 after?

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1 Flavio LaRocca 172

2 no action is required at this time.

3 Q Did they give you anything in writing
4 to that effect?

5 A I recall it being all verbal. I don't
6 remember receiving anything in writing.

7 Q Did they ever tell you that you needed
8 to get a license?

9 A No.

10 Q Did they give you any additional steps
11 that you needed to take?

12 A No.

13 Q Did you promise them that you would
14 perform anything in response to that conversation?

15 A No.

16 Q Other than that meeting and the
17 staking out, have you performed any other
18 activities with regard to the encroachment?

19 A No.

20 Q From the 2000 approximately 2 when
21 you purchased the property up and until the
22 present day, has the front of 436 5th Avenue
23 changed?

24 A The only thing that I left there were
25 a couple of Jersey barriers so nobody would

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1 Flavio LaRocca 173

2 barricade into my fence like they had done.

3 Q Has the fence been moved at all?

4 A No.

5 Q Has the storage shelves and anything
6 that are between the fence or that are in the
7 pink area that you outlined in Plaintiff's 11,
8 has that changed at all?

9 A No.

10 Q So what did you do when you received
11 the letter on November 18th of 2015?

12 A That's when I decided to get legal
13 counsel to respond to this.

14 Q Now, there is a handwriting on top
15 that says -- can you read the handwriting that's
16 on top of Plaintiff's 16.

17 A Um-hm.

18 Met with Flavio and Maria and
19 attorneys. Other business owners.

20 Q Is there anything else?

21 A 12/10/15, 10 a.m.

22 Q Whose handwriting is that?

23 A That's my wife's handwriting.

24 Q Your wife's name is Maria, correct?

25 A Correct.

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1 Flavio LaRocca 174

2 Q So she's referring to herself, you
3 and attorneys?

4 A Correct.

5 Q Did that meeting take place?

6 A Yes.

7 Q What was the substance of that
8 conversation?

9 MS. ZALANTIS: I ask him not to
10 discuss anything that is privileged
11 that he may have had with attorneys.

12 Q Well, let's discuss.

13 Who was present at that meeting?

14 A Our attorney, myself, my wife, and I
15 think two or three of the other owners next door
16 to me.

17 Q When you say your attorney, your
18 present attorney?

19 A Not at that time, no.

20 Q Was that attorney, at that time was
21 that attorney representing you?

22 A We were going to ask him to represent
23 us.

24 Q When you say "we were going to ask
25 him," who was going to ask him to represent you?

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1 Flavio LaRocca 175

2 A Myself and my wife.

3 Q And so it's fair to say the other
4 business owners weren't going to ask that attorney
5 to represent them.

6 A Well, they may have also gotten
7 involved until we found out that that attorney
8 did not handle this type of legal matter.

9 Q What was the reason the other business
10 owners were getting involved?

11 A Because they were concerned that
12 possibly their property may have been encroaching
13 on what was called City property on East Street.

14 Q What was the next step you took after
15 that meeting?

16 A I asked for a referral who I could use
17 for this type of a case, and then I was referred
18 to my attorney currently now.

19 Q At that time when you received this
20 letter, had you seen any other additional surveys
21 other than the one that we discussed earlier from
22 2001 and the staking map?

23 A I don't recall if a portion of this
24 survey was sent to me by the City at that time or
25 not. I don't recall.

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2 Q I want you to take a look at
3 Plaintiff's 11, and you have marked an area in
4 pink on there, and I want you to take the pink
5 highlighter again.

6 Are there any areas that's your
7 property or that you believe is your property
8 that's outside of the bold borders that borders
9 5th Avenue?

10 And if there are, please highlight
11 them as you did in front.

12 (Witness complies)

13 MR. MENDELSON: For the record,
14 he's highlighted a portion of 436 5th
15 Avenue annexed to 5th Avenue as well.

16 Q There is a masonry, it says stone
17 masonry right in that area, stone masonry wall.

18 Whose stone masonry wall is that?

19 A Mine.

20 Q Is there anything in between the wall
21 and your, and the bold line there?

22 A There is a row of evergreen trees.

23 Q Whose evergreen trees are those?

24 A Mine as well.

25 Q I want to show you if you could take

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1 Flavio LaRocca 177

2 a look at 17.

3 Exhibit 17 is a group of photographs
4 that was produced by Defendants, D 0109.

5 Do you see the top photograph, what is
6 that depicting?

7 A The front corner of East and 5th
8 Avenue where my property is with the fence, and
9 then my signage and some of the storage bins that
10 are there.

11 Q Do you see there is a No Parking
12 sign?

13 A Yes.

14 Q Whose sign is that?

15 A Mine.

16 Q What is that affixed to?

17 A My fence.

18 Q That No Parking sign, who put that
19 sign there?

20 A I did.

21 Q What is it, what was the purpose of
22 putting that No Parking sign there?

23 A Because people who were pulling in to
24 use the skate park would park and I would not be
25 able to access my property.

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1 Flavio LaRocca 178

2 Q You park your vehicles in front of
3 your property, right?

4 A Not in front of my property. I
5 temporarily parked them as I said earlier to open
6 my gate to get in, but I don't leave them there
7 all day.

8 Q Did the City give you permission to
9 put No Parking signs in front of your property?

10 A We called the police department when
11 that was happening and they said, they had
12 suggested to us to just get some No Parking signs
13 and put them there.

14 Q Who did you speak to at the police
15 department?

16 A I don't remember. I called the
17 general office and even an officer had come down
18 and met with me there. I don't have the name but
19 that was going back when the skate park was first
20 done in '03 I think it was or '04. I don't
21 remember.

22 Q Was there a police report taken?

23 A I don't think so because there was no
24 incident.

25 Q Did you call 911 or just the regular

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1 Flavio LaRocca 179

2 police number?

3 A Regular New Rochelle police.

4 Q I'm going to have you look at

5 Plaintiff's 19.

6 A Okay.

7 Q This is a photograph.

8 What is depicted on Plaintiff's 19?

9 A You're looking at East Street towards
10 5th Avenue just maybe about 30 yards past my
11 property.

12 Q Now, you see the truck parked there
13 in front of your property?

14 A Yes.

15 Q Whose truck is that?

16 A My pickup.

17 Q That's parked on East Street, right?

18 A Correct.

19 Q Now, do you see in Plaintiff's 19, do
20 you see there is a wood, I'll call it wood wall
21 there?

22 A Yes.

23 Q And is that wood wall the boundary of
24 your property?

25 A Correct. With the concrete wall

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2 underneath it.

3 MS. ZALANTIS: Which wood wall
4 are you talking about?

5 Q If you could take a pen and circle
6 around that wood wall we are discussing.

7 A You want just the wall or also the
8 concrete underneath it?

9 Q Either/or is fine.

10 A Okay.

11 (Witness complies)

12 MR. MENDELSON: For the record,
13 he's made a couple of lines outlining
14 the wall that we are discussing now
15 with a blue pen.

16 Q Do you see the gate that's closer to
17 us as you're looking in the photograph on the
18 adjacent property?

19 A Yes.

20 Q Whose gate is that?

21 A PAB.

22 Q Is that gate on Plaintiff's 11, is
23 that shown on Plaintiff's 11?

24 A I think so.

25 Q And if you could, if you see it, can

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1 Flavio LaRocca 181

2 you highlight that in yellow, that gate that's
3 shown?

4 A What is not on my property, what is
5 not related to my property?

6 Q The PAB gate that we are talking
7 about. If you see that on Plaintiff's 11, can
8 you please mark it with the yellow highlighter.

9 A Okay.

10 MS. ZALANTIS: Wait. I'd just
11 like to note that he's doing this to
12 the best of his ability. He's
13 looking at a picture and marking a
14 survey. It's not --

15 Q Let's take a look at Plaintiff's 11.
16 Is there a gate there on the property
17 to the north of yours?

18 A The one behind mine, adjacent to
19 mine.

20 Q Yes. On East Street.

21 A Yes.

22 Q Is there a gate in front of that
23 property?

24 A Yes.

25 Q Can you highlight in yellow that

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2 gate?

3 (Witness complies)

4 Q Thank you.

5 Is that gate or a portion of that
6 gate the same gate that we are discussing in
7 Plaintiff's 19?

8 A Yes.

9 Q Now looking at Plaintiff's 20.

10 What is Plaintiff's 20 showing?

11 A You're looking at 436 5th Avenue from
12 5th Avenue.

13 Q My question is, is the stone masonry
14 wall that we just highlighted or that you just
15 highlighted on Plaintiff's 11 on the 5th Avenue
16 side of your property, is that depicted in
17 Plaintiff's 20?

18 A Yes.

19 Q Is that the stone wall with the gate
20 on top of it?

21 A With the little railing, yes.

22 Q Excuse me. The whitish railing?

23 A Yes.

24 Q Are those the arborvitaes behind it
25 that you just discussed?

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2 A Correct.

3 Q Is this 5th Avenue in front here?

4 A Yes, it is.

5 Q I'm going to skip 21.

6 Looking at 22, what is 22 showing?

7 A The corner of, let's say the north
8 corner of my property on East Street bordering my
9 neighbor's property.

10 Q Is that gate that's in, the gate to
11 the right, right behind that red truck, is that
12 gate the same gate that we just highlighted or
13 that you just highlighted in yellow on Plaintiff's
14 11?

15 A Yes.

16 Q Looking at Plaintiff's 23.

17 What is Plaintiff's 23?

18 MS. ZALANTIS: I'm sorry. Can
19 you just read back that last
20 question.

21 (Whereupon, the last question was
22 read back.)

23 MS. ZALANTIS: Okay.

24 Q Look at Plaintiff's 23.

25 What is depicted there?

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2 A The parcel.

3 Q Is there something around the parcel
4 in this picture?

5 A A fence.

6 Q When, approximately, did that fence
7 go up?

8 A I don't recall the exact date.

9 Q Do you know why the fence went up?

10 A I guess because the park's department
11 didn't want anybody parking there.

12 MR. MENDELSON: Lastly I'm
13 going to have marked, it's a group
14 of photos that I got yesterday.
15 They are Bates stamped D 400 through
16 D 416.

17 I'm going to mark them
18 Plaintiff's 25.

19 (Whereupon, photographs were
20 marked Plaintiff's Exhibit 25 for
21 Identification, as of this date, by
22 the reporter.)

23 Q You're now looking at Plaintiff's 25,
24 which is a group of photos I just described.

25 Can you take a look at them.

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2 A (Reviewing)

3 Okay.

4 Q Do you recognize those?

5 A Yes.

6 Q What are they?

7 A Pictures depicting the area of East
8 Street with Flowers Park and the vehicles parked
9 in that area.

10 Q Do you know who took those photos?

11 A Yes.

12 Q Who took them?

13 A I did.

14 Q When did you take those photos?

15 A About within the last week to ten
16 days.

17 Q Is there anything on them that you
18 feel is important to this case?

19 MS. ZALANTIS: Objection as to
20 form, but you can answer.

21 A Well, it shows that somebody is still
22 spreading wood chips in that area, even behind
23 the fencing.

24 Q For the record, you are looking at
25 Page 3 and you're pointing at the ground?

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2 A Um-hm. Looks that somebody is still
3 cutting vegetation in that area as well.

4 Q What about this shows the vegetation
5 is being cut?

6 A Even Exhibit 23 shows that somebody
7 is going in there and cutting the vegetation from
8 inside the fenced area. That vegetation was much
9 higher at other places at the time.

10 Q Exhibit 23 there is leaves on the
11 trees, right?

12 A Correct.

13 Q And in the third photo here there is
14 not, right?

15 A Correct. And you see vegetation also
16 growing and that somebody has been cutting it.

17 Q Are you talking about the grass?

18 A Correct.

19 Q Exhibit 23 is not in the winter,
20 correct?

21 A Correct.

22 Q Third photo is in the winter,
23 correct?

24 A Yes. But you can see the difference
25 of wood chips being placed in this area.

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2 Q What else?

3 A The damage done to the fencing that
4 was put also in that area who is not only backing
5 into it, but also somebody else who is paving
6 along the fence line area there, that wasn't there
7 previously.

8 Q Do you know who paved that area?

9 A No. I just saw it done.

10 These are other pictures inside that
11 the area, the trees, whatever was there when we
12 did the raking work was not touched.

13 But the area inside, as you can see,
14 even in the wintertime there is new fresh wood
15 chips being thrown on it.

16 Q Refer to the Bates stamp you're
17 looking at.

18 A 406, D 0406, as well as 407.

19 You can clearly see even in the
20 wintertime there is fresh materials that someone
21 is putting on it, and then here who is utilizing
22 the areas in question where the so-called
23 vegetation or peninsula how you had described
24 before is parking in those areas and whose
25 vehicles they belong to. This entire area on the

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2 west side of East Street between PAB and
3 Guglielmo. And I haven't been in that property
4 now since that year. 2015.

5 And some of these vehicles are the
6 same vehicles in the initial pictures that you
7 had depicted in your exhibits.

8 MR. MENDELSON: One moment.

9 I'm just going to make sure I don't
10 have anything else.

11 (Whereupon, a brief recess was
12 taken.)

13 MR. MENDELSON: Oh. I do.

14 Q I'm going to have you take a look at
15 Plaintiff's 18. More arts and crafts.

16 Plaintiff's 18, do you recognize what
17 this is?

18 A Yes.

19 Q What is it?

20 A A blow-up of my parcel, my property,
21 on the corner of East and 5th Avenue.

22 Q Is this a survey?

23 A Yes.

24 Q What is the date of the survey?

25 A April 13, 2016.

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2 Q Does this survey show an encroachment
3 of your property onto East Street?

4 A Yes.

5 Q Can you highlight in pink wherever
6 that encroachment is shown.

7 (Witness complies)

8 MR. MENDELSON: And for the
9 record, the witness has highlighted
10 in pink.

11 Q Does that area remain the same as it
12 was in 2016 today?

13 A Yes.

14 Q One moment.

15 From 2002, approximately, when you
16 bought the property, until 2016, approximately,
17 when this action started, did you ever notice any
18 trees missing from the parcel that were there
19 previously?

20 A No.

21 Q Did you ever notice any vegetation
22 that was gone in the parcel that was there
23 previously during those dates?

24 A No.

25 MR. MENDELSON: I have nothing

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2 further.

3 MS. ZALANTIS: Can I just ask a
4 few questions?

5 MR. MENDELSON: Sure.

6 EXAMINATION BY

7 MS. ZALANTIS:

8 Q So you testified earlier that in
9 connection with your business, sometimes you
10 remove limbs or branches from trees.

11 Is that accurate?

12 A Yes.

13 Q And then you testified --

14 MR. MENDELSON: Objection as to
15 form.

16 Q And then there was some discussion
17 about you removing trees.

18 Can you describe in connection with
19 your business, what types of tree removal work you
20 do?

21 A Yes. It's mainly ornamental trees,
22 small trees. I don't have the license or the
23 insurance to do big trees. I don't have the
24 equipment either to do the big trees.

25 So usually if a job like that comes,

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2 I give it out to other subcontractors to do.

3 Q When did you do the work on your
4 property in connection with the rock removal?

5 MR. MENDELSON: Which property?

6 Q Your current property.

7 A 436.

8 Q 436, yes.

9 A In 2003, I think, early 2003, April-
10 May time.

11 Q And did you obtain a permit in
12 connection with that work?

13 A Yes, I did.

14 Q And at that time did you have to get
15 any kind of street opening or street obstruction
16 permit?

17 A No.

18 Q And in connection with that work done
19 in 2003, you testified that you moved certain
20 Jersey barriers out in front of the existing fence
21 on your property at 436.

22 A Correct.

23 Q And during that time that you were
24 doing that work in 2003, did the City ever
25 conduct any inspections of the work that you were

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2 FURTHER EXAMINATION

3 BY MR. MENDELSON:

4 Q When you say that they said it was
5 not required, who said it was not required?

6 A The building department.

7 Q Who from the building department told
8 you an obstruction permit was not required?

9 A The person that was reviewing the
10 permit application. I think at that time if I'm
11 not mistaken was Peter W-Y-R-I-C-H-E-A? I'm very
12 wrong on that. I think that's what I remember.

13 Q Is that in writing anywhere?

14 A No, it was verbal when I called to
15 find out about the status of my permit and if
16 anything else was required.

17 Q Were the Jersey barriers specifically
18 discussed?

19 A Well, the Jersey barriers were
20 outside --

21 Q That's not my question.

22 My question is, on that phone call
23 were the Jersey barriers specifically discussed.

24 A No, just the regrading work was
25 discussed.

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2 MR. MENDELSON: Thank you. I
3 have no further questions.

4

5 (Time noted: 3:47 p.m.)

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2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)

5 ss:

6 COUNTY OF WESTCHESTER)

7

8

9 I, FLAVIO LaROCCA, hereby certify that I have
10 read the transcript of my testimony taken under oath
11 in my deposition of March 5, 2020; that the transcript
12 is a true, complete, and correct record of what was
13 asked, answered, and said during this deposition, and
14 that the answers on the record as given by me are true
15 and correct.

15

16

FLAVIO LaROCCA

17

18

19

20

21

22 Subscribed and sworn to
before me this _____ day
23 of _____, 2020

24

NOTARY PUBLIC

25

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6	Photographs	5
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7	Google Earth dated October 2014	5
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8	Letter dated March 17, 2003	5
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9	Letter dated June 22, 2009	5
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5 (cont.)

6

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15 19 Photo of property 7

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17 21 Multiple photographs 7

18 22 Photograph of yard 7

19 23 Photograph of fence 7

20 1-A Survey 48

21 24 2016 aerial photograph 163

22 25 Photographs 184

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3

(cont.)

4

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6 Hugo's last name 154 15

7

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11

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12 was provided to Gabriel E. Senior,
P.C. to complete staking

13

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14 Senior

15 Photographs of the stakes from 117 15
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2 C E R T I F I C A T E

3

STATE OF NEW YORK)

4

ss:

5

COUNTY OF WESTCHESTER)

6

7

8 I, CHERYL THOMPSON, a Shorthand Reporter and
9 Notary Public in and for the State of New York, do
10 hereby certify:

11 That the testimony of FLAVIO LaROCCA was held
12 before me at the aforesaid time and place.

13 That said witness was duly sworn before the
14 commencement of the testimony, and that the testimony
15 was taken stenographically by me and is a true and
16 accurate transcription of my stenographic notes.

17 I further certify that I am not related to any of
18 the parties to the action by blood or marriage, and
19 that I am in no way interested in the outcome of this
20 matter.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this 10th day of March 2020.

23

24

CHERYL THOMPSON

25

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2 E R R A T A S H E E T

3

DEPOSITION OF FLAVIO LaROCCA

4 RE: City OF NEW ROCHELLE V. FLAVIO LaROCCA

DATE TAKEN: MARCH 5, 2020

5

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21

FLAVIO LaROCCA

22

Subscribed and sworn to
23 before me this ____ day
of _____, 2020

24

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Exhibit "9"

LOCATION N/W/C Fifth Ave. & East St. OWNER SECTION BLOCK 931 LOT 29

BUREAU OF BUILDINGS CITY OF NEW ROCHELLE, N. Y.

NEW BUILDINGS				CERTIFICATE OF OCCUPANCY		ELECTRICAL PERMITS			VIOLATIONS		
PLAN No.	FILED	FINISHED	TYPE OF BLDG.	DATE	NUMBER	FILED	FINISHED	CERT. No.	TYPE	FILED	REMOVED
				1/17/01	CO#C20010011				20	1/15/62	12/187
			non-conforming, pre-existing contractor's yard						BC-Dumping	4/1/87	5/10/89
									20-Auto	2/11/87	5/10/89
									BC-Dumping (summons)	10/2/88	5/10/89
ADDITIONS AND ALTERATIONS									BC-Temp St.	9/29/88	5/10/89
B20000387	8/3/00	1/17/01	construct rip rap slope						BC-Excavate	10/19/88	5/10/89
									*G.A.-281-47	4/13/89	5/10/89
									III-25A	12-279	1/17/01
									REMARKS		
						SIGNS			Search of Records - 10/17		
						PERMIT No.	FILED	FINISHED	86		
						*See correspondence 10/9/86-in block and lot cc file					
						*Summons 7/10/87 5/10/89					
						*Summons - 4/18/89 5/10/89					
DEMOLITIONS				DEPT. OF LABOR		AREAWAYS					
LOTS 29, 30	MERGED TO										
LOT 29											

5/1/96 - NON-CONFORMING STATUS PER 331-13E1, STORAGE OF CONSTRUCTION MATERIALS AND EQUIPMENT. (EXPANSION OR CHANGE IN CONDITIONS PERMITTED ONLY BY VARIANCE FROM BAZ).

Exhibit "10"

Bureau of Buildings
Department of Development
515 North Avenue
www.newrochelleny.com
New Rochelle, N.Y. 10801



Tel: (914) 654-2035
Fax: (914) 654-2031

Paul Vacca, C.E.O.
Deputy Commissioner
Development - Building Official

Peter Warycha, C.E.O.
Deputy Building Official of

City of New Rochelle

NEW YORK

06/22/2009

FMLR Management, LLC
140 Sussex Road
New Rochelle, N.Y. 10804

Re: 436 Fifth Avenue / Contractors Yard
Section 3, Block 931, Lot 29

Mr. LaRocca:

Please be advised that it has come to the attention of both this office and the Department of Public Works that the legal non-conforming contractor's yard at the aforementioned location is encroaching on City property, specifically the public right of way along East Street. The encroachment was discovered during an inspection of the area and a review of records contained in the files of the City of New Rochelle.

Consistent with the provisions of §281 of the Code of the City of New Rochelle, you are ordered to remove the encroachment within 30 days. You may request a hearing for this matter by contacting the Secretary to the Commissioner of Public Works at 654-2132.

Please feel free to contact me at 654-2036 regarding any questions in the interim.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Vacca".

Paul Vacca
Deputy Commissioner of Development/Building Official

A handwritten signature in black ink, appearing to read "Jeffrey C. Coleman".

Jeffrey C. Coleman, PE
Commissioner of Public Works

Exhibit "11"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
INDEX NO. 54190/2016
-----X
CITY OF NEW ROCHELLE,
Plaintiff,
- against -
FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO
LA ROCCA & SONS, INC., a.k.a. F. LAROCCA
& SONS, INC. and FMLR REALTY MANAGEMENT
LLC,
Defendants.

-----X
May 17, 2021
1:59 p.m.

DEPOSITION of a Non-Party
Witness, PATRICK BONGO, taken by the
Respective Parties, pursuant to Subpoena,
held via Veritext Virtual, before Barbara
Tortora, a Certified Shorthand Reporter
and Notary Public of the State of New
York.

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A P P E A R A N C E S :

WILSON ELSER MOSKOWITZ EDELMAN
& DICKER, LLP

Attorneys for Plaintiff
1133 Westchester Avenue
White Plains, New York 10604

BY: PETER MEISELS, ESQ.

-AND-

ROLAND KOKE, ESQ.

SILVERBERG & ZALANTIS, LLC

Attorneys for Defendants
120 White Plains Road, Suite 305
Tarrytown, New York 10591

BY: KATHY ZALANTIS, ESQ.

ALSO PRESENT:

Flavio La Rocca
Maria La Rocca

* * *

1

2 IT IS HEREBY STIPULATED AND AGREED by
3 and between counsel for the respective
4 parties hereto that all rights provided by
5 the C.P.L.R., and Part 221 of the Uniform
6 Rules for the Conduct of Depositions,
7 including the right to object to any
8 question, except as to the form, or to
9 move to strike any testimony at this
10 examination, are reserved; and, in
11 addition, the failure to object to any
12 question or to move to strike any
13 testimony at this examination shall not be
14 a bar or waiver to make such motion at,
15 and is reserved for, the trial of this
16 action.

17 IT IS FURTHER STIPULATED AND AGREED
18 that this examination may be signed and
19 sworn to, by the witness being examined,
20 before a notary public other than the
21 notary public before whom the examination
22 was begun, but the failure to do so, or to
23 return the original of this examination to
24 counsel, shall not be deemed a waiver of
25 the rights provided by Rules 3116 and 3117

1
2 of the C.P.L.R. shall be controlled
3 thereby. IT IS FURTHER STIPULATED AND
4 AGREED that the filing of the original of
5 this examination shall be and the same
6 hereby is waived.

7 (Bongo Exhibit 1 was marked for
8 identification, as of this date.)

9 P A T R I C K B O N G O, having first
10 been duly sworn by Barbara Tortora, a
11 Notary Public of the State of New York,
12 was examined and testified as follows:

13 EXAMINATION BY

14 MR. MEISELS:

15 Q. What is your full name?

16 A. Patrick Bongo.

17 Q. What is your present home
18 address?

19 A. 76 Maple Avenue, Pelham, New
20 York 10803.

21 Q. Thank you for appearing, being
22 on time and so forth. Got a few questions
23 to ask. I'm going to try to make it
24 brief. In the event that you don't
25 understand the questions or I don't speak

1 BONGO

2 clearly enough, just please tell me and
3 I'll do my best, okay, to rephrase them.
4 I'm going to call your attention back to
5 May of 2015.

6 A. Okay.

7 Q. Back in May of 2015, did you own
8 premises located on East Street in New
9 Rochelle?

10 A. You clicked off, what was that?

11 Q. Back in May of 2015, did you own
12 premises located on East Street in New
13 Rochelle?

14 A. Yes, I did. Yes, I do.

15 Q. You still do; is that right?

16 A. Yes.

17 Q. How long have you owned those
18 premises?

19 A. Oh, God, I would have to say
20 maybe early '80s.

21 Q. From those premises you run a
22 business?

23 A. Yes, I do.

24 Q. Is that PAB Contracting?

25 A. Corp., correct.

1 BONGO

2 Q. Am I correct that PAB stands for
3 Pat A. Bongo?

4 A. Yeah, a couple of here and
5 there. Now it does.

6 Q. Am I correct that you're
7 located, your business is located across
8 from Flowers Park?

9 A. Flowers Park, yes, yes.

10 Q. Are you familiar with Mr. Flavio
11 La Rocca?

12 A. Yes.

13 Q. How long have you known him?

14 A. Oh, God, I don't know. Maybe
15 fifteen, twenty years. Fifteen years.

16 Q. As far as you know, does he
17 operate a business on East Street as well?

18 A. Yes, he does.

19 Q. Is that located across from
20 Flowers Park?

21 A. Correct.

22 Q. Going back to May of 2015, what
23 kind of work was PAB doing?

24 A. We do roadway restoration for
25 utility companies.

1 BONGO

2 Q. Are you still doing that same
3 kind of work today?

4 A. Yes.

5 Q. How long have you done that kind
6 of work?

7 A. I would say, the early '80s.

8 Q. Could you explain to those of us
9 who don't understand construction what
10 roadway reconstruction work means? You're
11 explaining it to a third grader, how would
12 you explain it?

13 A. In other words, whatever --
14 whatever damages are done by the utility
15 company, whether it be concrete, blacktop,
16 landscaping, when they're done doing what
17 they have to do to repair their lines, we
18 go back and bring it to its original
19 restoration.

20 Q. If they make a cut in a paved
21 road, you go and repair the cut?

22 A. Correct.

23 Q. Do you actually make the cut or
24 just do the repairs?

25 A. No, we have work orders. We

1 BONGO

2 receive work orders for what we have to do
3 at every given location.

4 Q. Your orders include actually
5 creating the excavation or do you merely
6 repair it?

7 A. Well, we repair it. We repair
8 what's there. We might -- like you said,
9 whatever -- whatever has to be repaired,
10 whether it be excavation of the blacktop
11 or excavation of the concrete or
12 excavation of the top soil, we take it out
13 and put it back, correct.

14 Q. Back in May of 2015, what kind
15 of equipment did you use?

16 A. I don't understand the question.

17 Q. What kind of equipment did PAB
18 paving own that you did repairs with?
19 What kind of equipment did you use to make
20 those repairs?

21 A. Mack trucks. CASE backhoes.
22 Regular construction, road construction
23 equipment.

24 Q. Could you explain to those
25 people who don't understand it what

1 BONGO

2 regular construction equipment includes?

3 A. Construction equipment is -- I
4 wouldn't even remember at that time what
5 kind of construction equipment I had at
6 that present time. But construction
7 equipment to do asphalt work or to do
8 concrete work is self-explanatory. It's
9 whatever at that time we needed to perform
10 that work. To answer your question, it's
11 trucks, backhoes, a steam roller or
12 whatever might be to do that restoration.

13 Q. Do you still have that kind of
14 equipment today?

15 A. Probably not the same stuff, but
16 on the order of that.

17 Q. Same kind of equipment?

18 A. Same kind, yes.

19 Q. Back in May of 2015, do you
20 recall how many employees you had?

21 A. Probably the same my entire
22 life, fifteen to twenty.

23 Q. Is your business a year-round
24 business or seasonal?

25 A. Seasonal.

1 BONGO

2 Q. What's your season?

3 A. Depending on the weather, I
4 would say December 15th to April 15th.
5 So, in other words, that's our working
6 time, April 15th to December 15th. And
7 then we're shut down from December 15th to
8 April 15th.

9 Q. I understand.

10 Back in May of 2015, where did
11 your employees park their cars every day?

12 A. I believe some parked over here.
13 I remember taking -- going to get permits
14 for the park down below. I paid for
15 parking permits for them to park down
16 below. And then I think at one point
17 after paying for the parking permits for a
18 few years they -- I went to go pay one
19 year and they removed the fee, so we
20 continued to park in the parking lot down
21 below.

22 Q. When you say the parking lot
23 down below, do you mean the parking lot
24 that's in the park?

25 A. Yes, yes, down below. Yes, down

1 BONGO

2 in Flowers Park, correct.

3 Q. Concerning those who parked
4 along East Street back in 2015, where on
5 East Street did they park?

6 A. I have no idea. I don't -- they
7 report in the gate when they come to work.

8 Q. Can you identify an address
9 called 2525 Palmer Avenue?

10 A. Yes, that's my office.

11 Q. Can you identify a person by the
12 name of Joe Guglielmo?

13 A. I think he owns the building.

14 Q. Does he own the building that
15 you operate your business in?

16 A. Yes.

17 Q. Do you know whether or not he
18 ever rented any of his space to Mr. La
19 Rocca to keep Mr. La Rocca's equipment?

20 A. No, not at all.

21 Q. You think he did not do that?

22 A. I don't know. I have no idea.
23 I don't know anything of his business.

24 Q. Do you recall back in May of
25 2015 that there was any construction work

1 BONGO

2 done across East Street to create parking
3 spaces?

4 A. I heard something about it.
5 That was the day of my daughter's
6 graduation from college, and I was at
7 Madison Square Garden that day, and I
8 wasn't even around that day.

9 Q. I'm going to show you a video
10 that's been previously marked as
11 Plaintiff's number 13 and see if this
12 refreshes your recollection of what
13 happened back in May of 2015?

14 A. I don't see it.

15 Q. It's coming, relax.

16 A. I'm new at this.

17 Q. None of us are old hands at this
18 procedure.

19 A. I'm waiting.

20 Q. We're having a problem loading
21 the video. Let's go on to the next
22 exhibit, that might be helpful. We're
23 going to show you what's previously been
24 marked as Exhibit 3A for identification.
25 Do you see it?

1 BONGO

2 A. Yeah, I see it.

3 Q. Mr. Bongo, can you identify
4 anybody who is shown in that photograph?

5 A. No.

6 Q. In reference to the truck, the
7 yellow truck --

8 A. Yes.

9 Q. -- have you ever seen that truck
10 before?

11 A. I have no way of telling. I
12 mean, I see the name on the truck, but
13 other than that I wouldn't know -- if the
14 truck passed me on the street I wouldn't
15 know I seen it before.

16 Q. Right. You can't identify
17 anybody in the photograph?

18 A. No.

19 Q. The scene that's depicted in
20 that photograph, can you identify what
21 that photograph shows?

22 A. Not really, no. I mean, I see
23 four people standing in an area.

24 Q. Do you know where that area is?

25 A. I mean, it looks like that, but

1 BONGO

2 I can't be 100 percent sure.

3 Q. What does it look like?

4 A. It kind of looks like out front
5 here, but I can't be positive.

6 Q. Let's move on. This is still
7 the same exhibit. Can you identify what's
8 shown in that photograph?

9 A. Anybody? Can I tell whose
10 there?

11 Q. Firstly, can you tell whose
12 there?

13 A. No.

14 Q. Can you identify what the
15 photograph depicts?

16 A. No.

17 Q. Have you ever seen what's
18 depicted in that photograph before?

19 A. No.

20 Q. Did you ever see across from
21 your business those piles of wood chips?

22 A. I can't remember that, no. I
23 would have to say no. But I can't -- no.

24 Q. This is a third photograph of
25 the same exhibit, okay. Can you identify

1 BONGO

2 the cars that are shown?

3 A. No.

4 Q. Do you know who those cars
5 belong to?

6 A. No.

7 Q. Do you know whether any of them
8 belong to your employees?

9 A. No.

10 Q. You see where the cars are
11 parked?

12 A. Kind of, yeah.

13 Q. Do you know your employees used
14 to park at that location?

15 A. I have no idea.

16 Q. The machinery that's there, what
17 kind of machinery is that?

18 A. Looks like a little loader.

19 Q. Does that belong to you?

20 A. No.

21 Q. Do you know who it belonged to?

22 A. No.

23 Q. The scene that's depicted in the
24 photograph, have you ever seen that
25 before?

1 BONGO

2 A. The what?

3 Q. That photograph depicts a
4 certain scene and my question to you is,
5 have you ever seen that scene before?

6 A. I have no idea. It just looks
7 like a green area to me.

8 Q. You don't recognize it; is that
9 correct?

10 A. Yes, I do not.

11 Q. I'm showing you the next
12 photograph in that exhibit, a yellow
13 truck.

14 A. Yes.

15 Q. Do you know who that belongs to?

16 A. Just by looking at the door, I
17 recognize the logo on the door.

18 Q. What is that logo?

19 A. I guess Flavio La Rocca & Sons.

20 Q. Do you recognize the scene
21 that's depicted in the photograph?

22 A. Not 100 percent, no, I don't.

23 Q. Any percent?

24 A. I mean, I'm looking at an area
25 that it could be possibly, but I can't be

1 BONGO

2 sure. It's not clear enough. It's a long
3 time. I can't say 100 percent that's --
4 that I recognize, because I don't.

5 Q. The automobiles that are in the
6 photograph, can you identify any of them?

7 A. No. The automobiles, no.

8 Q. And the people?

9 A. No.

10 Q. Do you know whether or not the
11 scene depicted in this photograph is an
12 area that's across East Street from your
13 place of business?

14 A. I cannot be positive on that,
15 no.

16 Q. We're going to try to get the
17 video to work. If not, we'll move on.
18 Take a three minute break, and we'll try
19 to get the video to work. If not, we'll
20 move on.

21 A. Okay.

22 (At this time, a recess was
23 taken.)

24 Q. We're going to show you what's
25 previously been marked as Exhibit 13. Mr.

1 BONGO

2 Bongo, I'm going to ask you if you can
3 identify any of the people that are shown
4 in this frame of the video?

5 A. No.

6 Q. Somebody noted here, that says
7 Flavio La Rocca in white shirt. Can you
8 tell if that is Mr. La Rocca in the white
9 shirt?

10 A. No, I cannot.

11 Q. Can you identify the scene
12 that's depicted in that video?

13 A. Not 100 percent, no.

14 Q. Any percent?

15 A. I'm looking at something
16 similarity (sic), but I can't be sure. It
17 has -- it looks -- I can't be sure. I
18 would say ten percent.

19 Q. Ten percent what do you think it
20 is?

21 A. It looks like a roadway that
22 goes -- that is possibly out front here.
23 But I can't be 100 percent sure because I
24 can't say that.

25 Q. I'll ask you again, can you

1 BONGO

2 identify any of the people shown in that
3 frame of the video?

4 A. No, I cannot.

5 Q. The angle has changed somewhat,
6 can you now identify what's depicted in
7 the photograph?

8 A. Not the area, no. I see a name
9 on the truck, but that's about it. As far
10 as the area itself, I can't say where that
11 area is 100 percent.

12 Q. We changed the angle a bit. Can
13 you identify the people shown in the
14 photograph?

15 A. No, I cannot.

16 Q. Are you able to identify the
17 area, the scene that's depicted in the
18 photograph?

19 A. No, I cannot.

20 Q. Did you ever notice across from
21 your business there was a point in time
22 where there were piles of wood chips?

23 A. No, I do not.

24 Q. That gentleman depicted in the
25 photograph, can you identify who that is?

1 BONGO

2 A. No, I cannot.

3 Q. Can you identify the scene as
4 depicted in the photograph?

5 A. No, I cannot.

6 Q. Can you identify the people that
7 are depicted in this frame of the
8 photograph?

9 A. No, I cannot.

10 Q. Can you identify the scene as
11 depicted in that photograph?

12 A. No, I cannot.

13 Q. Can you identify anyone depicted
14 in this photograph?

15 A. No, I cannot.

16 Q. The person shown has a shirt
17 that says New York Energy Conservation
18 Company. Did you ever know anyone
19 employed by that company?

20 A. No, I do not.

21 Q. In this particular scene, do you
22 notice that on the left side there is a
23 chain link fence?

24 A. Yes, I do.

25 Q. Have you ever seen that chain

1 BONGO

2 link fence before?

3 A. I believe I have.

4 Q. Where did you see it?

5 A. I believe that's the skate park
6 that I'm looking at, which is up here. It
7 is a skate park. If it's the exact one,
8 I'm not 100 percent. But it's getting
9 close to fifty to sixty percent that I
10 recognize that picture.

11 Q. Would that be the skate park in
12 Flowers Park?

13 A. Correct. On top of Flowers
14 Park, correct.

15 Q. With this angle, on the right
16 side now, do you see the chain link fence?

17 A. Yes. I see guard booth.

18 Q. The guard booth for Flowers
19 Park?

20 A. Yes. I shouldn't say guard
21 booth. I guess a booth where they admit
22 the people to the skate park, if that's
23 the one in question. I'm not 100 percent
24 sure, but it looks like the skate park up
25 the road here.

1 BONGO

2 Q. When you the say up the road
3 here, you mean on East Street?

4 A. East Street, correct. Yes, East
5 Street.

6 Q. In reference to the piles of
7 wood chips that are shown to the left of
8 the car, do you recognize those?

9 A. No, not at all.

10 Q. In reference to the frame being
11 depicted now, can you identify any of the
12 motor vehicles that are shown in that
13 photograph?

14 A. Just only by whatever lettering
15 I can see on them. The truck itself I
16 wouldn't -- I can't be sure. What
17 lettering I can see would be the only
18 thing that would make me believe that I
19 noticed the truck.

20 Q. From the lettering, would it
21 appear that those trucks belong to Mr. La
22 Rocca?

23 A. Correct.

24 Q. Can you identify the black chain
25 link fence?

1 BONGO

2 A. Not 100 percent, but it's
3 looking like that's the skate park here on
4 East Street.

5 Q. During the frame of the exhibit
6 that's being shown now, on the right side
7 there's a gray chain link fence. Can you
8 identify that fence?

9 A. It looks like it's Flavio's yard
10 exiting towards 5th Avenue.

11 MR. MEISELS: For the record,
12 this happens to be frame 1:29, if
13 that's helpful.

14 Q. Mr. Bongo, looking at the frame
15 of the video that's shown at the moment,
16 on the right-hand side, can you identify
17 what's depicted in the right-hand side of
18 the video?

19 A. The right-hand side of the
20 video? Well, it looks like the exit to
21 5th Avenue.

22 Q. On the right-hand side, for
23 example, do you see something that's
24 colored green?

25 A. Yes.

1 BONGO

2 Q. Can you identify what that is?

3 A. It looks like a -- some type of
4 screener, maybe a top soil screener.

5 Q. To the best of your knowledge,
6 was that top soil screener located inside
7 Mr. La Rocca's yard?

8 A. I mean, it looks like it's
9 Flavio's yard, yes. I mean, yes, it
10 looked like Flavio's yard.

11 Q. Looking at the frame of the
12 video that's depicted now, do you see on
13 the right-hand side there's a black chain
14 link fence?

15 A. Yes, I do.

16 Q. Can you identify that fence?

17 A. I believe that is the fence of
18 the skate park on East Street.

19 Q. Can you identify any of the
20 other vehicles shown in the picture?

21 A. No, not really. Just -- no.

22 Q. Mr. Bongo, do you see in the
23 frame of the photograph on the right-hand
24 side there's a black truck with a white
25 cab?

1 BONGO

2 A. Yes.

3 Q. Can you identify, does that
4 truck belong to you?

5 A. No, it does not.

6 Q. Did it belong to you?

7 A. No, it does not.

8 Q. Did it back in May 2015 belong
9 to you?

10 A. No, it did not.

11 Q. Do you know who it belonged to?

12 A. I believe it's one of the
13 gentleman on the road here.

14 Q. From the lettering, who would
15 you judge it to be?

16 A. Pete Carino, because I only
17 recognize the truck from the writing on
18 the truck who owns the truck. And how
19 it's written in law, I have no idea. But
20 I do recognize the P. Carino truck being
21 in this premises, on this road.

22 Q. Was Pete Carino one of the
23 businesses located on East Street back in
24 May of 2015?

25 A. Not that I'm aware of.

1 BONGO

2 Q. Are you familiar with a Pete
3 Carino Enterprise?

4 A. No, I am not.

5 Q. Other than in this photograph,
6 have you seen the Pete Carino trucks on
7 East Street in the past?

8 A. Yes, I have.

9 Q. When you noticed those trucks
10 there, did you notice what they were
11 doing?

12 A. No, I do not.

13 Q. Do you still notice Pete Carino
14 trucks on East Street from time-to-time?

15 A. Possibility, yeah, I see him
16 once in a while. I don't -- your know, I
17 don't look. But there's a possibility I
18 seen him before, yes.

19 Q. Do you do business with Pete
20 Carino?

21 A. No, I do not.

22 Q. Do you know if he does business
23 with anyone else on East Street?

24 A. That's his business, that's none
25 of mine.

1 BONGO

2 Q. Please look at the frame of the
3 video that's presently being shown. Can
4 you identify any of the cars shown in the
5 photograph?

6 A. No, I cannot.

7 Q. Can you identify the scene
8 that's shown in the photographs?

9 A. Less than the others. Much less
10 than the others, I can tell you that.

11 Q. When you say less than, that
12 means --

13 A. Yeah, I'm looking at a dirt area
14 with trees and I don't have anything in
15 the picture to show me it's -- you know,
16 that it's -- you know, that I recognize it
17 100 percent, because I don't.

18 Q. In the left third of the
19 photograph do you notice that there's a
20 structure that appears to be lights?

21 A. Yeah.

22 Q. Can you identify those lights?

23 A. No, I cannot.

24 Q. Mr. Bongo, can you identify the
25 scene that's depicted in the frame that's

1 BONGO

2 being shown now?

3 A. I can recognize the house in the
4 back a little more. It's looking like --
5 it's looking like it's on the East Street
6 order.

7 Q. Do you know who owns that house?

8 A. No, I do not.

9 Q. Can you identify any of the
10 vehicles that are shown in the photograph?

11 A. No. They -- no.

12 Q. Can you identify any of the
13 people shown in the photograph?

14 A. No, I cannot.

15 Q. Can you identify the scene
16 that's depicted in the frame of the
17 photograph that's being shown now?

18 A. No.

19 Q. Can you identify any of the
20 people?

21 A. No, I cannot.

22 Q. The equipment that's being used
23 that's colored yellow, in the construction
24 trade, what would you call that?

25 A. I guess it would be called a

1 BONGO

2 roller.

3 Q. A roller?

4 A. An asphalt roller.

5 Q. Back in May of 2015, did you own
6 that roller?

7 A. Did I own that roller?

8 Q. Yes.

9 A. I would -- no. I don't ever
10 think I owned something like that, no.

11 Q. Do you recognize what's depicted
12 in the photograph?

13 A. Excuse me?

14 Q. Do you recognize what's depicted
15 in the photograph?

16 A. The area, no.

17 Q. We're going to show you some
18 photographs. We're showing you a
19 photograph that's been premarked as
20 Exhibit 3A. Can you identify those
21 automobiles?

22 A. No.

23 Q. Back in May of 2015, did you own
24 any of the automobiles that are shown in
25 that photograph?

1 BONGO

2 A. I don't think so.

3 Q. When you say you don't think so,
4 are you certain that you did not?

5 A. No, yeah, I'm -- yes, I'm 100
6 percent positive me personally did not own
7 any of those cars, yes.

8 Q. Do you know whether or not PAB
9 Paving owned them?

10 A. No, 100 percent not.

11 Q. Do you know if any of them were
12 owned by some business entity that belongs
13 to you?

14 A. That I don't know. That I don't
15 know. Not owned by any business -- yeah,
16 no, no, none at all.

17 Q. Do you know if any of those
18 automobiles are owned by your employees?

19 A. That I don't know.

20 Q. Do you know whether or not your
21 employees parked in that location where
22 you see those automobiles?

23 A. I do not.

24 Q. Mr. Bongo, I show you a
25 photograph that's been premarked as

1 BONGO

2 Exhibit 3A, it's one of the 3A exhibits.

3 I apologize, it's Defendant's C, premarked
4 as Defendant's C. Can you identify what's
5 shown in that photograph?

6 A. The area?

7 Q. Yes.

8 A. The far, far left hand very end
9 of the picture looks like the end of East
10 Street. Otherwise, I couldn't be sure.

11 Q. Can you identify any of the
12 vehicles shown in the photograph?

13 A. No, I cannot.

14 Q. Moving on to the next photograph
15 that is in the same exhibit, one of the
16 photographs marked as Exhibit C, do you
17 recognize what's depicted in this
18 photograph?

19 A. I cannot, no.

20 Q. Do you recognize the car?

21 A. No, I do not.

22 Q. Again, this is another
23 photograph that was premarked as
24 Defendant's Exhibit C for identification.
25 Can you identify what's shown in that

1 BONGO

2 photograph?

3 A. The same thing, the left rear
4 looks like the end of East Street.

5 Q. Would it be correct to say that
6 the person who took the photograph was
7 facing the rear end of East Street?

8 A. I'm not a photographer, I
9 couldn't say on that.

10 Q. Looking at that photograph, on
11 the right side of the photograph do you
12 see a raised area, the area that was just
13 being rolled?

14 MS. ZALANTIS: Objection.

15 MR. MEISELS: I'll withdraw the
16 question. Good objection.

17 Q. On the right side of the
18 photograph, do you see a raised area?

19 A. Looks like there's a difference,
20 a raised area of top soil compared to the
21 rest of the grade.

22 Q. Did there ever come a time that
23 you saw people parking in that raised
24 area?

25 A. I have -- I have no idea.

1 BONGO

2 Q. Do you happen to know who has
3 title and owns that raised area?

4 A. No.

5 Q. Would it be fair to say that you
6 don't know whether that's East Street or
7 whether it's part of the Flowers Park?

8 A. That would be correct.

9 Q. I'm showing you what's been
10 premarked as Exhibit II for
11 identification. Are you able to identify
12 which tax lots on East Street actually
13 belong to you or a business that you
14 control?

15 A. I believe it's -- I know it's
16 forty-four and forty-three. I'm not sure
17 if it's forty-two or forty-one. It just
18 might -- it's forty-four and forty-three
19 for sure. But I can't see, I don't have
20 any glasses, I don't know how wide those
21 lots are, how wide. I know it's
22 forty-four and forty-three for sure.

23 Q. (Indicating.)

24 A. That's better.

25 Q. Does that help?

1 BONGO

2 A. It's fifty by 100. In front of
3 the 209, is that a sixty-six? I would
4 have to say it's just forty-four and
5 forty-three. I mean, the block and block
6 number, the depth is nice and clear, and
7 the width is still I can't read it.

8 Q. Fair enough.

9 Looking at the same tax map,
10 okay, is the skate park you identified
11 before located at the corner of East
12 Street and 5th Avenue?

13 A. It is located on the corner of
14 East Street and 5th Avenue, yes. If
15 that's the same pictures we were looking
16 at, yes.

17 Q. When you stand in front of the
18 property that you own that's lots
19 forty-three and forty-four and look
20 straight across East Street, do you see
21 the skate park?

22 A. Well, I mean, if I turn my head
23 to the right I do.

24 Q. What do you see if you turn to
25 the left?

1 BONGO

2 A. If I turn to the left, I see the
3 end of East Street.

4 Q. I'm going to show you what's
5 been marked as Exhibit X for
6 identification. Can you identify what's
7 shown in that photograph?

8 A. No. I mean, it looks like a
9 manhole cover, that's about it.

10 Q. I'm going to show you some
11 additional photographs that have all been
12 previously marked as part of Exhibit X.
13 Can you identify what's shown in the
14 photograph on top?

15 A. I think the right-hand corner --
16 there you go, yes. Actually, the
17 right-hand corner I believe is my gate,
18 and it looks possibly that that is my
19 cement mixer. It's a little blurry, but
20 it looks like we're looking up towards the
21 skate park and on the right-hand side that
22 is my gate and my cement mixer.

23 Q. We're showing you another
24 photograph as part of the same exhibit.
25 Can you identify that building?

1 BONGO

2 A. I think -- I mean, I believe
3 that's on the corner of Ashland and East
4 Place, yes.

5 Q. Do you know who supposedly owns
6 that building?

7 A. No, I do not.

8 Q. We're going to show you an
9 exhibit premarked as Exhibit GG. Can you
10 identify what's shown in that photograph?

11 A. Going by the -- I go for my walk
12 down there, that looks like the back of
13 Flowers Park. And right outside the gate
14 here with the black fence it looks like
15 East Street and Flowers Park down below.

16 Q. In this particular photograph
17 you see there's a white car?

18 A. Yes.

19 Q. Can you identify that car by any
20 chance?

21 A. No, I can't.

22 Q. You notice that next to the
23 white car as you look towards the left of
24 the photograph there's a black chain link
25 fence?

1 BONGO

2 A. Yes, I do.

3 Q. Do you recall having seen that
4 fence being erected?

5 A. No, not -- no, no.

6 Q. Do you recall roughly --

7 A. I don't know what -- I know that
8 it looks like that's the fence out front
9 here. But when it was put up or how it
10 was put up, I have no knowledge.

11 Q. Do you know who put it up?

12 A. No. I don't for sure, no.

13 Q. Looking at that black fence, do
14 you notice that on the side of that fence
15 opposite East Street there's an area that
16 appears to have wood chips on the ground?

17 A. No.

18 Q. Looking at that black fence, do
19 you notice that that black fence, to the
20 left of it, there's East Street, am I
21 correct?

22 A. Basing off of that street,
23 looking to the right is Flowers Park, yes.

24 Q. To the right of that black
25 fence, do you know whether that's part of

1 BONGO

2 Flowers Park?

3 A. That I don't know.

4 Q. Do you know if there was ever a
5 time that people parked there before the
6 fence was erected?

7 A. I can't say. I don't know.

8 Q. I'm going to show you another
9 photograph, part of the same exhibit, and
10 ask you if you can identify that picture?

11 A. Looks like the skate park and
12 check-in booth, whatever you want to call
13 it. The Joe Cassina (phonetic) building
14 down there. I guess that's part of the
15 Flowers Park down there.

16 Q. I show you another photograph,
17 part of the same exhibit, and ask you if
18 you can identify what's shown in that
19 photograph?

20 A. It looks pretty much like the
21 East Street skate park.

22 MR. MEISELS: We would like to
23 take a five-minute break and we'll
24 finish up with any questions we have
25 and then whatever Ms. Zalantis may

1 BONGO

2 have. It's 2:58. We'll try to keep
3 it five minutes.

4 (At this time a recess was
5 taken.)

6 Q. Mr. Bongo, I got a question for
7 you, in various photographs you identified
8 East Street and, as I understand it, the
9 business you own is on East Street. Back
10 in May of 2015, do you recall who
11 maintained East Street, by maintain, I
12 mean plowed the snow, made repairs, paved
13 the street, things of that sort?

14 A. No. Wasn't me.

15 Q. Do you know who did do it?

16 A. No, I do not.

17 Q. Up until today, do you know who
18 maintains East Street?

19 A. Legally, no. Technically, no.

20 Q. Let me ask this question, you
21 have various businesses there, I realize
22 your business is seasonal and may not
23 necessarily be a major concern for you,
24 but do you know who plows the snow off
25 East Street if it gets plow?

1 BONGO

2 A. I do not. I don't know anything
3 about that.

4 Q. Do you know who paved East
5 Street?

6 A. No.

7 Q. Do you know who makes repairs to
8 East Street?

9 A. No, I do not.

10 Q. In the various photographs we
11 looked at you saw there were certain work
12 being done. Do you know what the
13 condition of that premises were before
14 that work was done?

15 A. No, no, I do not.

16 Q. Is it your understanding that
17 you or any of your business enterprises
18 own any part of East Street?

19 A. No, no, not at all.

20 Q. Has there ever been any
21 discussion amongst the people who have
22 businesses located on East Street
23 concerning maintenance of the street?

24 A. You know, I can't be sure. I
25 know there's things that we talked about

1 BONGO

2 over the years, but I can't -- I can't
3 recall.

4 Q. Do you recall ever having
5 attended any meetings either with other
6 business owners on East Street or with the
7 city or anyone concerning maintenance and
8 ownership of East Street?

9 A. Not -- not for those reasons,
10 no. Not that I can remember.

11 MR. MEISELS: My questioning is
12 complete. I think we'll leave it to
13 Ms. Zalantis.

14 EXAMINATION BY

15 MS. ZALANTIS:

16 Q. My name is Kathy Zalantis, I
17 represent the defendants in this action.
18 Thank you for agreeing to appear for this
19 deposition.

20 I just want to share my screen?
21 Can you see my screen?

22 A. Yes, I can.

23 Q. I think you've seen these
24 pictures before previously identified by
25 Mr. Meisels --

1 BONGO

2 A. Just went off.

3 Q. Hold on. Let me do that one
4 more time.

5 A. Yes.

6 Q. You see the white car in this
7 picture?

8 A. Yes, I do.

9 Q. That was previously, I believe,
10 identified as Defendant's GG. To the
11 right of the white car I think you
12 testified is the skate park.

13 A. I believe that is East Street
14 skate park, yes.

15 Q. And to the left of the white car
16 is an area enclosed by a black fence.

17 A. Correct.

18 Q. Going to the second page, again,
19 to the left of the white car is an area
20 enclosed by a black fence. Do you see the
21 area?

22 A. Yes, I do.

23 Q. Is that area enclosed by the
24 black fence across from your property?

25 A. I -- looking at this picture,

1 BONGO

2 yes.

3 Q. Now, that area, that black fence
4 wasn't always there; is that correct?

5 A. That's correct.

6 Q. The skate park to the right of
7 the white car was not always there; is
8 that correct?

9 A. Yeah, it's true, but I don't
10 remember how long ago it was. But, yes, I
11 do believe it wasn't there at my
12 beginning, yes.

13 Q. Have you ever heard of Persico
14 Construction?

15 A. Yes, I did.

16 Q. What's your knowledge of Persico
17 Construction?

18 A. I just know of Persico
19 Construction. They're a contractor. I'm
20 not sure if they're in business, but they
21 were a contractor at one time.

22 Q. Do you recall several years
23 prior when Persico Construction was
24 restoring the Potter Avenue Bridge over
25 Interstate 95?

1 BONGO

2 A. Yes.

3 Q. Do you remember during that time
4 frame whether Persico Construction was
5 using as a staging area the area that is
6 now the skate park and the area enclosed
7 by the black fence?

8 A. I believe so. And I say I
9 believe so because my memory is not as
10 good as it was. But I do recall that that
11 was a possibility. I can't remember 100
12 percent, but I do recall that there was a
13 time when he was using that area.

14 Q. That area being both the area
15 that is now currently the skate park and
16 the area enclosed by the black fence; is
17 that correct?

18 A. No, it's not. It's the -- I
19 believe it was just the skate park was.

20 Q. Were they using it for
21 construction purposes the staging area or
22 for parking of construction vehicles?

23 A. I can't recall. I can't recall.

24 Q. Is it possible they were parking
25 construction worker vehicles in the area

1 BONGO

2 now enclosed by the black fence?

3 A. Sure, anything is possible. It
4 could have been.

5 Q. Do you recall if you have a
6 recollection of that?

7 A. No, I do not.

8 Q. Prior to the erection of the
9 black fence in the area to the left of the
10 white car, what was the condition of that
11 area?

12 A. Basically the same as it looks
13 now.

14 Q. It's the same as it looks now,
15 was covered in seedling and hay or did it
16 have blacktop and gravel?

17 A. Looks the same to me. I
18 don't -- I don't recall what it looked
19 like anything in the previous. I think
20 the area basically is the same.

21 Q. I know you said that you
22 yourself didn't park or any entities or
23 vehicles that you owned didn't park in
24 this area enclosed by the black fence, but
25 it was possible that your employees may

1 BONGO

2 have parked in this area; is that correct?

3 A. It's possible, yes. I would
4 have no way of knowing that. I did
5 purchase parking permits for my men to
6 park in the area below. And I think the
7 city relieved the fee and then they
8 continued to park there.

9 Q. But it's possible they could
10 have parked right in front of your
11 business?

12 A. I don't know where they parked
13 or how they parked. They come to work,
14 they come in the gate.

15 Q. I'm going to show you what was
16 previously marked. Can you see my screen?

17 A. I see you.

18 Q. I'm sorry.

19 A. That's all right.

20 Q. Can you see my screen now?

21 A. No, I just see you.

22 Q. Sorry. One more time. Now can
23 you see my screen?

24 A. Yes, I can.

25 Q. You went through this series of

1 BONGO

2 pictures, I believe, with Mr. Meisels.

3 A. Um-hum.

4 Q. You weren't able to identify any
5 of these vehicles parked in this area?

6 A. Yes.

7 Q. Is this the same area now
8 enclosed by the black fence?

9 A. I can't be 100 percent sure
10 because you're just showing me an area.

11 Q. I'm going to stop sharing and
12 open up another exhibit. Did you notice
13 that red car in the picture I just showed
14 you, the red truck?

15 A. No.

16 Q. Do you see it now, a red truck?

17 A. I see a red truck.

18 Q. Do you see the next picture I'm
19 showing or still seeing the same picture?

20 A. No, I see the next one.

21 Q. You see a red truck here?

22 A. I see a red truck there, yes, I
23 do.

24 Q. This red truck, does that appear
25 to be parked in front of your business?

1 BONGO

2 A. It's a little blurry, but it
3 looks like it's my truck, yes. My
4 cameras, yes.

5 Q. You said your truck. Is that
6 your truck?

7 A. The truck inside the gate.

8 Q. Here. I could show you some
9 other pictures?

10 A. Yep, that's my yard.

11 Q. Do you see this red truck parked
12 outside your gate?

13 A. Yes, I do.

14 Q. Now, just going back to that
15 prior exhibit, does this appear to be the
16 same truck?

17 A. You're showing me the front and
18 back. It's a red truck. They're both red
19 trucks. I don't know if it's the same
20 truck or not.

21 Q. Do you know who owns this red
22 truck that I'm showing you now?

23 A. No.

24 Q. It's Defendant's 0409.

25 A. Unless you give me a plate, I

1 BONGO

2 can ask, but I don't know.

3 Q. Would your employees generally
4 park outside of your gate by your
5 business?

6 A. Yes, they would.

7 Q. It's possible that this same
8 truck that's in D0409 is potentially the
9 truck in the last page of Exhibit 3A; is
10 that correct?

11 A. Possible, yes, it is.

12 Q. What's the condition of East
13 Street?

14 A. You don't want to know. It's,
15 you know, a contractors' area. It's --
16 you know, it suits its purpose.

17 Q. Have you ever observed the city
18 repairing potholes on East Street?

19 A. Never.

20 Q. Have you ever observed the city
21 doing any maintenance whatsoever on East
22 Street?

23 A. Maybe picking up garbage once or
24 twice. Something that was dumped there,
25 they maybe picked it up. But as far as

1 BONGO

2 maintenance of the road, no.

3 Q. So you've never seen them
4 asphalt the road?

5 A. No.

6 Q. You've never seen them
7 completely repave the road?

8 A. No.

9 Q. Portions of the road or the road
10 in its entirety?

11 A. Not to my knowledge, no.

12 Q. Have you ever observed Mr. La
13 Rocca or his employees or members of his
14 company paving East Street?

15 A. No.

16 Q. Do you know who paves East
17 Street?

18 A. No, I do not.

19 Q. Are you familiar with the
20 property surrounding your property on East
21 Street?

22 A. Familiar by how?

23 Q. Are you aware of who owns the
24 property surrounding your property?

25 A. Yeah. Basically, yes, yes.

1 BONGO

2 Q. The Guglielmo Group LLC owns the
3 property if I'm looking at your property
4 standing on East Street to the right of
5 your property; is that correct?

6 A. Correct.

7 Q. At any point in time have you
8 ever seen a truck with the logo of F. La
9 Rocca & Sons parked in the Guglielmo
10 property?

11 A. I can't -- I can't remember
12 that, no. I have to say no, I can't
13 remember.

14 Q. Have you ever seen the City of
15 New Rochelle clean or sweep the streets,
16 clean or sweep East Street?

17 A. No. I believe not, no.

18 Q. So you said you set up your
19 business after April 15th.

20 A. Yeah. I mean, basically on
21 the -- on the weather. As the winters
22 grew warmer, we periodically would come in
23 during the winter. But years ago, yes,
24 you know, I would think maybe the last
25 four or five years depending if there was

1 BONGO

2 a warm streak we would come back for a few
3 days. But basically as soon as the
4 weather dropped below freezing we shut
5 down. But in previous years we would lock
6 the gate and didn't come back until the
7 spring.

8 Q. What was the condition of East
9 Road after the winter when you came back,
10 was there loose aggregate and asphalt on
11 the road that needed to be back in place?

12 A. Nothing that inconvenienced me.

13 Q. Do you remember Mr. Meisels
14 showed you the video earlier today?

15 A. Yes.

16 Q. Did you observe anyone in that
17 video cutting down trees?

18 A. No.

19 Q. In the area that's now enclosed
20 by the black fence, have you ever observed
21 my client, Mr. La Rocca, cutting down
22 trees in that area?

23 A. Me personally, no.

24 Q. Have you ever observed any
25 employees of Mr. La Rocca cutting down

1 BONGO

2 trees in that area?

3 A. No. Just what you guys showed
4 me supposedly. No. Myself personally,
5 no.

6 Q. You said in that video nobody
7 was cutting down trees, right?

8 A. Yeah, I didn't see anybody with
9 a chain saw, no, cutting down the trees,
10 no, no. You know, I've never seen that.

11 Q. Have you ever observed Mr. La
12 Rocca or any of his employees place wood
13 chips in the area now enclosed by the
14 black fence?

15 A. No.

16 Q. With respect to the area that's
17 now enclosed by the black fence that's
18 against the left of that white car we saw
19 in the picture, have you ever observed Mr.
20 La Rocca and/or any of his employees place
21 asphalt millings in that area?

22 A. No. Me personally, no. I can't
23 recall, no.

24 Q. Do you have any video
25 surveillance cameras on your property?

1 BONGO

2 A. Yes, I do.

3 Q. What direction do they point in?

4 A. I guess they point in all
5 directions. I don't know when they were
6 installed. But they -- yeah, they kind of
7 cover everything.

8 Q. Were they installed back in
9 2015, do you know?

10 A. I believe not. A long time ago.
11 Seven years ago. Yeah, I don't know. I
12 don't know. I don't recall.

13 Q. Do you rent any property on East
14 Street?

15 A. Yes, I do.

16 Q. Is that the lot that's directly
17 adjacent to my client's property?

18 A. Yes, it is.

19 MS. ZALANTIS: I'm going to mark
20 this as Bongo 2. I will forward these
21 exhibit to everybody.

22 (Bongo Exhibit 2 was marked for
23 identification, as of this date.)

24 Q. Do you recognize what's depicted
25 in Bongo 2?

1 BONGO

2 A. Do I?

3 Q. Yes.

4 A. Yes, that's my equipment and my
5 pile of stuff there.

6 Q. When you say your pile of stuff,
7 what is that pile of stuff?

8 A. That's the stuff we clean out
9 the end of the night, probably asphalt or
10 something in the truck. And the next
11 morning we load it back on the truck and
12 take it out.

13 Q. Who do you rent this property
14 from?

15 A. Jennifer Allen.

16 Q. How long have you rented this
17 property from Ms. Allen?

18 A. Maybe three years.

19 Q. As part of your restoration
20 projects that you do, do you ever use any
21 kind of landscaping materials?

22 A. Meaning?

23 Q. Well, you mentioned earlier that
24 you do landscaping as part of your
25 restoration work.

1 BONGO

2 A. Top soil.

3 Q. Would you ever use anything
4 other than top soil?

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

6 Q. Would you put sod in or --

7 A. Very, very rarely. Mostly top
8 soil and grass seed. Very rarely you get
9 a lawn that requires sod. They'd have to
10 find it and put it down.

11 Q. Mostly top soil and grass seed?

12 A. Correct.

13 Q. Would you ever have an occasion
14 to use wood chips?

15 A. Not really. I mean, if it's one
16 out of thirty years or two out of thirty
17 years, that would be the most of it.

18 MS. ZALANTIS: If you can give
19 me five minutes, please, maybe even
20 less. Thank you.

21 (At this time, a recess was
22 taken.)

23 MS. ZALANTIS: I have nothing
24 further. Please just mark Bongo 3.

25 (Bongo Exhibit 3 was marked for

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BONGO

identification, as of this date.)

THE WITNESS: Can I go?

MR. MEISELS: Yes, thank you.

THE COURT REPORTER: Ms.

Zalantis, are you ordering a copy?

MS. ZALANTIS: Yes.

(Time Noted: 3:30 p.m.)

PATRICK BONGO

Subscribed and sworn to before me

this ____ day of _____, 20____.

NOTARY PUBLIC

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C E R T I F I C A T I O N

I, BARBARA TORTORA, a Shorthand Reporter and a Notary Public, do hereby certify that the foregoing witness, PATRICK BONGO, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

BARBARA TORTORA

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	Ms. Zalantis	41
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BONGO

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**** ERRATA SHEET ****

CASE: CITY OF NEW ROCHELLE vs. LA ROCCA, et al.

DEPOSITION DATE: 5/17/2021

DEPONENT: PATRICK BONGO

PAGE	LINE(S)	CHANGE	REASON

PATRICK BONGO

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20____.

(NOTARY PUBLIC) MY COMMISSION EXPIRES:

[& - belongs]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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Exhibit "12"



Sidney E. Frank
Skate Park

Google Earth

20 m

Camera: 136 m

40°55'45"N 73°46'25"W

17 m

Exhibit "13"



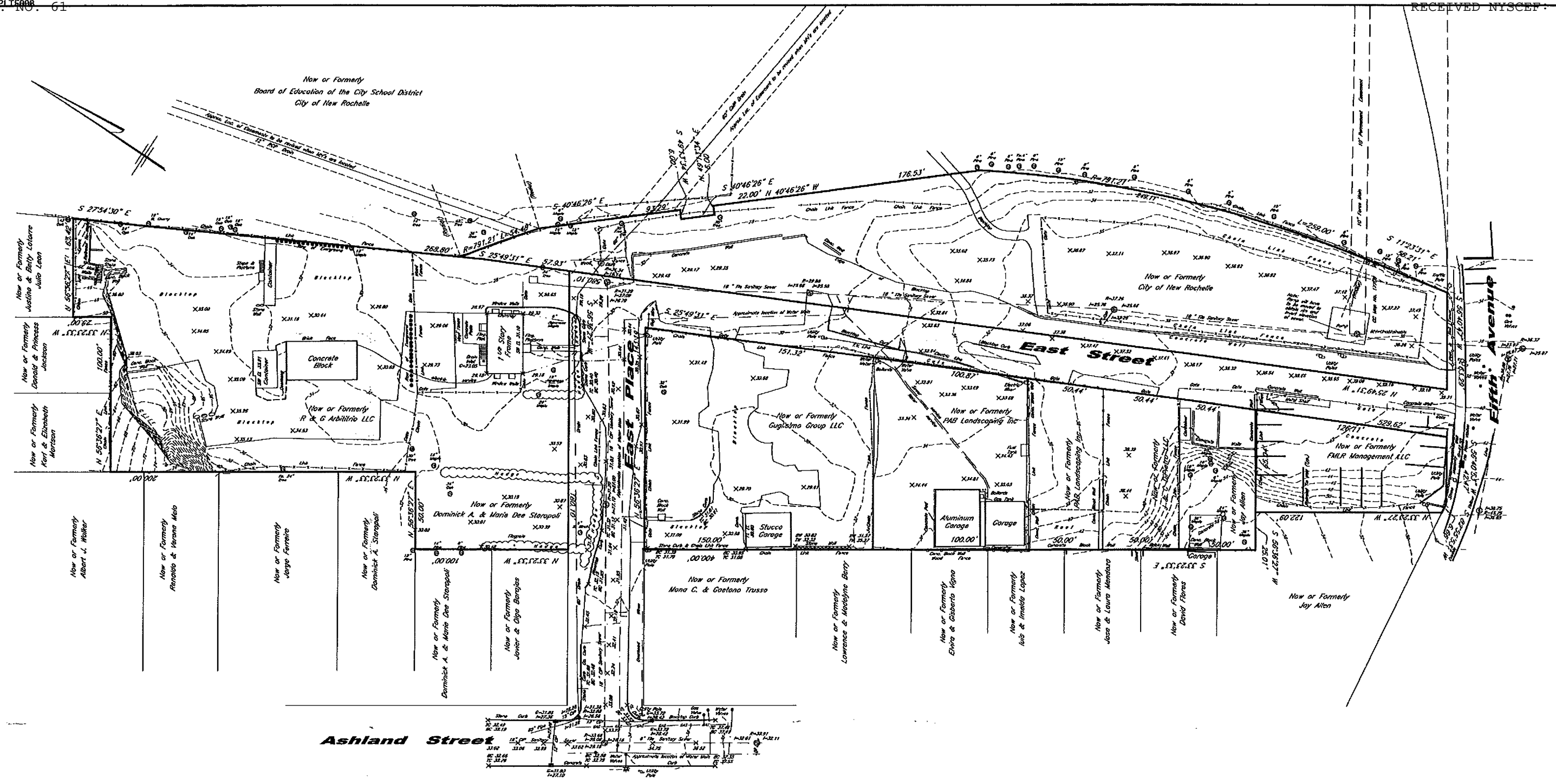
EXHIBIT
2

BONGO 2





Exhibit "14"



Survey of Property
 prepared for
City of New Rochelle
 in the City of
New Rochelle
 Westchester County, N.Y.
 Scale 1"=30' Dec. 8, 2014

Geoid Reference System
 NAVD 83 Express/New York
 (East Zone)
 Vertical Datum - NAVD 83
 (Geoid 09)

Subsurface structures and their encroachments, if any exist, are not shown herein.
 Unauthorized alterations or additions to a survey map is a violation of section 2202, sub-section 2, of the New York State Education Law.
 This copy of the original survey marked with the land surveyor's filed or embossed seal shall be considered a true and valid copy.
 Certifications indicated herein signify that this survey was prepared in accordance with the existing code of practice for Land Surveyors adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run to the person for whom the survey is prepared only, and on his behalf to the Title Company, governmental agency and lending institution listed herein, and to the assignees of the lending institution. CERTIFICATIONS ARE NOT TRANSFERABLE TO SUBSEQUENT DISTRIBUTORS OR SUBSEQUENT OWNERS.
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Ward Copinger
 Ward Copinger Engineers, Inc.
 76 Monroeville Avenue
 White Plains, N.Y. 10601

Exhibit "15"



D0408



D0409



D0410



D0411



D0412



D0413



D0414



D0415



D0416

Exhibit "16"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

- - - - - x

CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No: 54190/2016

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA &
SONS INC and FMLR REALTY MANAGEMENT LLC,
Defendants.

- - - - - x

1133 Westchester Avenue
White Plains, New York

July 8, 2021
11:32 a.m.

DEPOSITION of BERNARDO F. RIVERA, a
NON-PARTY WITNESS in the above-entitled
action, held at the above time and place,
taken before Helen Wandzilak, a Notary
Public of the State of New York, pursuant
to Subpoena and stipulations between
Counsel.

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Suite 305
Tarrytown, New York 10591

BY: KATHERINE ZALANTIS, ESQ.

ALSO PRESENT (VIA ZOOM VIDEOCONFERENCE):

Flavio La Rocca

Maria La Rocca

* * *

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STIPULATIONS

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IT IS HEREBY STIPULATED, by and among
the attorneys for the respective parties
hereto, that:

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All rights provided by the C.P.L.R.,
and Part 221 of the Uniform Rules for the
Conduct of Depositions, including the
right to object to any question, except as
to form, or to move to strike any
testimony at this examination is reserved;
and in addition, the failure to object to
any question or to move to strike any
testimony at this examination shall not be
a bar or waiver to make such motion at,
and is reserved to, the trial of this
action.

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This deposition may be sworn to by the
witness being examined before a Notary
Public other than the Notary Public before
whom this examination was begun, but the
failure to do so or to return the original
of this deposition to counsel, shall not
be deemed a waiver of the rights provided
by Rule 3116, C.P.L.R., and shall be

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controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * *

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B E R N A R D O F. R I V E R A ,

3

having been first duly sworn/affirmed by a

4

Notary Public of the State of New York,

5

upon being examined, testified as follows:

6

EXAMINATION BY MR. MEISELS:

7

Q What is your name?

8

A Bernardo F. Rivera.

9

Q What is your address?

10

A 274 Clove Road, New Rochelle,

11

New York 10804.

12

Q Mr. Rivera, thank you for

13

showing up today and being so patient.

14

My name is Peter Meisels.

15

[Discussion held off the

16

record.]

17

Q Mr. Rivera, my name is Peter

18

Meisels. We represent the City of New

19

Rochelle in a lawsuit which you have

20

nothing to do with.

21

We subpoenaed your testimony as

22

what they call a "non-party witness".

23

That means somebody who may have

24

information but is not a party to the

25

lawsuit. Okay?

1 BERNARDO F. RIVERA

2 Am I correct, you own Benny's
3 Tree Service?

4 A Yes.

5 Q And how long has Benny's Tree
6 Service existed?

7 A Probably around 2006.

8 Q And, as of today, where is
9 Benny's Tree Service located?

10 A We're blocking a lot. But they
11 seem to call that East Street.

12 At the time of that, I did not
13 own the property. I purchased the
14 property a year after.

15 Q And when you say "of that", do
16 you mean the incident --

17 A Yes.

18 Q -- that this lawsuit is about?

19 A Yes.

20 Q And at the time -- we're talking
21 about mid May 2015?

22 A Yes. It was a long time ago.

23 Q Correct. So we're talking about
24 the same time period?

25 A Yes, I was renting and -- I was,

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1 BERNARDO F. RIVERA

2 you know, renting the property at that
3 time.

4 Q And your business was there, but
5 as a tenant?

6 A Yes.

7 Q And I notice, on the Internet,
8 that there is an address that says 49 Park
9 Place.

10 A I don't own that property no
11 more. We moved to 274 Clove.

12 The business is there. But my
13 home, you know, my office is in my home.

14 So Park Place, we sold that and
15 we moved 274 Clove Road.

16 Q Okay.

17 A This one, you come up on the
18 Internet and everything, it stills comes
19 under Park Place.

20 Q It will, forever.

21 A Yeah.

22 Q Now, going back to May of 2015.
23 What kind of business was Benny's Tree
24 Service?

25 A Tree service.

1 BERNARDO F. RIVERA

2 Q Tree service. And what kind of
3 services did it provide? What kind of
4 work did it do?

5 A Tree work. Planting.

6 You know, anything to deal with
7 outdoors and trees and bushes.

8 Q So that would be things, such as
9 repairing trees that get knocked down in a
10 storm?

11 A Yes.

12 Q Planting new trees?

13 Are you familiar -- do you know
14 Mr. Flavio La Rocca?

15 A Yes, we've been neighbors for
16 years.

17 Q And have you ever done any
18 projects with him?

19 A Yes, I have.

20 Q Now back, going back to May of
21 2015, what kind of equipment did Benny's
22 Tree Service own?

23 A We have, pretty much, we still
24 have bucket trucks, chip trucks, you know,
25 dump trucks.

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1 BERNARDO F. RIVERA

2 Q Anything else you can think of?

3 Or is that basically what you use in the
4 tree service business?

5 A Yeah.

6 Q And back, in 2015, how many
7 employees did you have?

8 A Seven to nine.

9 I can't remember, right now. I
10 could go back, in to payroll.

11 Q Approximately?

12 A Yeah, seven to nine.

13 Q And do any of those people still
14 work for you?

15 A One.

16 Q What's that person's name?

17 A Enrique Garcia.

18 Q Did you ever have occasion to
19 discuss this incident with Mr. La Rocca?

20 A No.

21 Q Did he ever tell you what it was
22 about?

23 A No.

24 Q Did you ever ask him?

25 A No.

1 BERNARDO F. RIVERA

2 Q You first occupied the premises
3 you're in, now, first, as a tenant and
4 then you bought the premises?

5 A Yes.

6 Q Am I right? How long ago did
7 Benny's Tree Service first occupy those
8 premises?

9 A I don't -- I can't remember the
10 month, the year because we were around the
11 corner and New Rochelle came in and
12 changed the zoning.

13 Q Right.

14 A And I was looking for a new
15 place.

16 So -- 'cause where we were, they
17 came in and said that commercial vehicles
18 could no longer park outside, where I was.

19 So I was looking and I don't --
20 I can't remember the exact year, the
21 month.

22 And it happened -- I rent the
23 spot two yards down.

24 So I used to rent one spot, for
25 one of my vehicles, which I still -- it's

1 BERNARDO F. RIVERA

2 still there.

3 And it just came across and end
4 up renting the yard.

5 I mean, and, again, I have to go
6 through all of my paperwork, to look at
7 the leases and all that.

8 Because I no longer pay rent, so
9 there's no real record of that, you know.

10 Q You own it now?

11 A Yes.

12 Q You pay taxes?

13 A Yes.

14 Q During the time that your
15 business was located at East Street --

16 A Yes.

17 Q -- who plowed the snow on East
18 Street?

19 A Pretty much, we all did.

20 You know, more or less, it was
21 Mr. La Rocca because, you know, he was the
22 first yard and then we would all clean up,
23 like in front of our yard.

24 Q And did you ever have occasion
25 to make repairs to East Street?

1 BERNARDO F. RIVERA

2 A Yeah. Occasionally. I always
3 try to repair what's in front of my
4 property. We do get potholes. We do.

5 Q So would it be fair to say that
6 the businesses on East Street maintain
7 East Street?

8 A Yes.

9 Q Now going back to May of 2015,
10 where did your employees park their
11 personal cars?

12 A At that time, I would say I have
13 one or two employees that drove.

14 Because a couple of my employees
15 lived at the house that -- where I used to
16 rent, previously, on Plain Avenue.

17 So two.

18 So we used to park, down below
19 because I rented in front of the other
20 yard, I rented a spot.

21 So I used to have one of them
22 park there and a couple cars in front of
23 my yard.

24 Q Now, before we started the
25 actual deposition, there was something on

1 BERNARDO F. RIVERA

2 the screen, which you're going to see
3 later, it's titled the "Talk of the
4 Sound", okay. And you said something
5 about that guy. Who did you mean? Did
6 you mean Mr. Cox?

7 A Yeah, Mr. Cox.

8 Q And do you know him?

9 A I don't know him. But I had a
10 previous problem with him.

11 Q What was that?

12 A You know. Because he claimed
13 that I was illegally dumping in the
14 schools.

15 And so I had to come back at
16 him, if I'm illegally dumping in the
17 schools, how come I have to go to
18 security, so they could open up gates for
19 me.

20 You know. And put this all
21 over. He badmouthed me.

22 You know, he badmouthed people,
23 without getting to your facts, should be.

24 Because he had a personal
25 vendetta from this -- from one of the

1 BERNARDO F. RIVERA

2 maintenance guys that I grew up with.

3 They asked me for wood chips, I
4 dump.

5 But, when I used to have to dump
6 the wood chips, I had to pull in the
7 school, get security, to go open up a back
8 gate, open the gate, allow me in and
9 then --

10 So if I was illegally dumping,
11 why would security and the Board of
12 Education open up that gate for me.

13 Q Did he retract his allegations?
14 Did he take it back?

15 A I never really followed up on
16 it.

17 But, you know, I'm a small
18 business. I'm a, you know, I'm an
19 owner/operator. I don't just set my guys
20 up and go drive around all day.

21 No, I'm with my men. I take my
22 trees down.

23 And I had some customers call me
24 up, you know, questioning me, saying how
25 could you do that.

1 BERNARDO F. RIVERA

2 Number one, my children are in
3 the two schools that I'm dumping chips.
4 You think I'm going to go in there and
5 create problems, when I have one kid in
6 Ward and one kid in Albert Leonard.

7 You know, I think he just does
8 things without getting his facts right.

9 Q Have you ever spoken to him,
10 directly?

11 A Mr. Cox?

12 Q Yes.

13 A One time, because a tree fell
14 down on the house that he lives, but he's
15 not the owner and I did not know it
16 was the house he was renting.

17 So I knocked on his door, had
18 him move his cars out of the driveway.

19 And that's the only time I ever
20 came face-to-face with Robert Cox.

21 And I told the owner, if I
22 would've known it was him, I would have
23 never took this job.

24 Q So, for the owner, you took --

25 A Same, like you. If you own a

1 BERNARDO F. RIVERA

2 house, you say go to my rental house, a
3 tree fell across the property.

4 Q Right.

5 A I go over there, I tell you this
6 is how much it's going to be and you say,
7 okay, do it, sent me a contract and I did
8 the work.

9 When I get over there, I call
10 him up, because I'm ringing the doorbell,
11 nobody's answering.

12 And then -- oh, I was on,
13 whatever, he's doing his thing.

14 So I had to wait.

15 But if I would have known, I
16 would not accept that job.

17 Q Going back to May of 2015, I
18 know, it's a long time ago, was it your
19 usual practice to stay at your business,
20 on East Street or was it your practice to
21 go out with your crew, every day, on jobs?

22 A I would go out.

23 We'd meet in the yard. We set
24 everybody up, because I have a landscape
25 part.

1 BERNARDO F. RIVERA

2 And I send everybody that has to
3 go out and work for the day, what do you
4 need.

5 We all meet and then we usually
6 go out, about.

7 Q We're going to show you a video,
8 okay. And, basically, it is a video that
9 was made by Mr. Cox.

10 And we're going to go through
11 it. I'm just going to ask you about what
12 you see in the video.

13 [Video recording is playing and
14 shared via Zoom.]

15 Q I'm going to ask you to take a
16 look at what is shown at stop number
17 twelve on -- and this is Exhibit 13,
18 Plaintiff's Exhibit 13.

19 And we're looking at stop number
20 twelve.

21 Can you identify what you see in
22 the photograph?

23 A I see a machine and I see a few
24 men standing in the street.

25 Q Do you recall, having seen what

1 BERNARDO F. RIVERA

2 you see in the photograph, now, do you
3 recall having seen that in person?

4 A No. But that's a block that
5 everybody there has machines.

6 There's machines up and down
7 that road, all day long.

8 Q Do you recognize any of the
9 people?

10 A No.

11 Q Were you able to identify any of
12 the people?

13 A No, you can't see a face.

14 Q Okay. Fair enough. Let's
15 continue.

16 Now, we're, of the same exhibit,
17 we're now at Stop 21.

18 First of all, can you recognize
19 any of the people shown in the video?

20 A No. If that's him, that's his
21 employees, I don't know anybody.

22 Q When you say "that's him", you
23 Mr. La Rocca?

24 A Nah. You see his trucks. You
25 see that there. But I don't know anybody

1 BERNARDO F. RIVERA

2 there.

3 Q Okay. Fair enough.

4 And do you recall, back in May,
5 having seen the work that's shown in this
6 photograph, having seen -- did you see, in
7 person, what's shown in this photograph?

8 A No, we -- I pulled in my yard
9 and we did what we had to do and we left.

10 Q The same exhibit. Now we're at
11 Stop 26, okay. Do you see, in the far,
12 the far right-hand side, what looks like
13 piles of wood chips?

14 A Uh-huh.

15 Q Do you know whether or not
16 Benny's Tree Service put the wood chips
17 there?

18 A I didn't, personally, put 'em
19 there. So.

20 Q I'm asking whether your business
21 would have put them there.

22 A (Indicating).

23 Q No?

24 A (Indicating).

25 Q At the time, did you see the

1 BERNARDO F. RIVERA

2 wood chips there?

3 A I never pay attention to that
4 park because that's passed my yard.

5 The city fenced that in.

6 Q Correct?

7 A So when I pull, I pull to my
8 yard. That's passed my yard.

9 Q Right.

10 A And it's a little more downhill,
11 to the right. I never really paid
12 attention to there.

13 Q Do you notice in, roughly, the
14 middle of the photograph, there is a
15 yellow roller?

16 A Yes.

17 Q Do you know who that belongs to?

18 A I couldn't tell you whose roller
19 that was.

20 Q Is it yours?

21 A No, I don't have rollers. I
22 don't have machines, like that.

23 Q But you do have wood chippers?

24 A Yeah.

25 Q And did there ever come a time

1 BERNARDO F. RIVERA

2 that you used your wood chippers to chip
3 wood from an area along East Street?

4 A No. No, just one of the
5 neighbors came out and asked me to chip
6 some branches, 'cause there are other
7 gardeners that I do work for.

8 But, other than that, no.

9 Q Did Mr. La Rocca ever ask you to
10 chip branches for him?

11 A Actually, no. No, I did that
12 for job sites, jobs that he had gave me,
13 yes, but not, not on the road, no.

14 Q Not on East Street, okay.
15 And do you recognize either of
16 the two workers that are shown in the
17 photograph?

18 A No.

19 Q Now we're at Stop 43. Do you
20 recognize any of the people that are
21 depicted in that photograph?

22 A No, I never paid attention to
23 his workers, to be honest.

24 Q Is it your understanding, that
25 these three people are workers, not owners

1 BERNARDO F. RIVERA

2 of any other business?

3 A I would assume that, yes.

4 Q Because they're working?

5 A (Indicating). And where one,
6 two, three, four, five, six -- there were
7 seven owners on that road.

8 So these are none of the owners.

9 Q We're now at Stop 54, okay. Do
10 you see the truck that's in the middle of
11 the picture?

12 A Yes.

13 Q And do you know who owns that
14 truck?

15 A I guess that's Flavio's, it's
16 got his name on the door.

17 Or are you talking to the truck,
18 to the left?

19 Q I'm talking about the truck that
20 is -- the front wheels are slightly to the
21 left of the middle of it.

22 A Yes. Yes, that's Flavio's name
23 on it.

24 Q Now, looking to the left of the
25 photograph, do you see there's a green

1 BERNARDO F. RIVERA

2 truck?

3 A Yes, that's my truck.

4 Q That's your truck.

5 A And the truck, to the right, it
6 was my personal vehicle.

7 Q If your truck and your personal
8 vehicle were in this photograph, does that
9 mean that you were at your place of
10 business?

11 A No, because my truck, to my
12 left, is one of my maintenance trucks.

13 And we don't cut grass on
14 Saturdays.

15 My personal vehicle is to go
16 from my home to my business.

17 And then I have fifteen trucks,
18 myself.

19 So I get in one of my work
20 trucks and I do what I have to do for the
21 day.

22 'Cause I live in residential and
23 I cannot park a commercial vehicle, at
24 that time, in my driveway.

25 Q So given that the truck that you

1 BERNARDO F. RIVERA

2 use, for when you cut grass, was in the
3 yard, does that suggest that this picture
4 was taken on a Saturday?

5 A Yeah.

6 Q Do you happen to recall that
7 particular Saturday?

8 A Not really. Because I got a
9 phone call from one of the other owners,
10 telling me that the police were down
11 there.

12 So I really -- I don't remember.
13 It was like every day. I go there, you
14 know, I don't -- I stay, if I have to
15 stay. But that particular day we left
16 early.

17 Q And the person, who called you,
18 what did they say?

19 A They just asked me if I knew
20 what was going on, just being a nosey
21 neighbor.

22 I mean, that's -- as a matter of
23 fact, the vehicle, coming down, that was
24 the neighbor.

25 Because we have identical -- we

1 BERNARDO F. RIVERA

2 own the same color, same everything
3 vehicles.

4 Q And when you say the vehicle
5 coming down, you mean the one with the
6 lights on?

7 A In the middle, yeah.

8 Q The one with the lights on.
9 That actually belonged to the neighbor?

10 A Yeah.

11 Q Do you remember the neighbor's
12 name?

13 A Joseph Guglielmo.

14 Q And does he own a business?

15 A Yeah, he owns the last yard, on
16 the left.

17 Q And do you know the name of his
18 business?

19 A Probably 'cause the father's --
20 was the father's. Gotta be Guglielmo.
21 Something like.

22 Q Something, Guglielmo. All
23 right.

24 We're now at Stop 1:15. Can you
25 identify any of the vehicles that are

1 BERNARDO F. RIVERA

2 shown in this photograph?

3 A They are Mr. La Rocca's
4 vehicles.

5 Q And going back to May of 2015,
6 where did he usually store his vehicles?

7 A In his yard, usually, every
8 night, his vehicles.

9 In the morning, like my
10 vehicles, I put 'em out. Then, usually,
11 the road is clear, you don't see 'em.

12 Q Going back to May of 2015, was
13 there any difficulty in entering and
14 having your vehicles enter East Street
15 from Fifth Avenue? Was there a problem
16 caused by the width of the road?

17 A No.

18 Q Going back --

19 A Even with those vehicles,
20 there -- because I park there too, in the
21 morning.

22 'Cause, one day, we -- you know,
23 I have different trucks.

24 So every day we don't use the
25 same trucks.

1 BERNARDO F. RIVERA

2 Except for the maintenance guy,
3 Monday through Friday, they use their
4 maintenance truck.

5 And you could still pass two
6 vehicles with all those vehicles parked on
7 the --

8 Q Now we're at stop number 1:34.
9 Looking at the photograph, that's in front
10 of you, now, to the right side of it,
11 where there's a gate that's open, is that
12 Mr. La Rocca's yard?

13 A Yes.

14 Q Now, as you see it in the
15 photograph, do you think it would be
16 possible for two vehicles to pass each
17 other?

18 A Yes. You can't go by a picture.
19 I'm going by --

20 Q Your experience?

21 A -- this is what I do every day,
22 six days a week, sometimes seven.

23 Q When you get unlucky, you have
24 to work Saturday.

25 A Very rare, you gotta stop, you

1 BERNARDO F. RIVERA

2 know. 'Cause maybe there's a larger truck
3 coming, with a larger trailer, that's the
4 only time you pull over.

5 We never have issues. Everybody
6 respects everybody.

7 Q Now looking at the photograph,
8 that's shown at Stop 1:46, do you
9 recognize the truck that's on the right
10 side of the photograph, the black truck?

11 A It could be his. But there's no
12 name on it.

13 Q Any chance that it's yours?

14 A No.

15 Q Now looking at the photograph
16 that's shown at Stop 2:06, can you
17 identify the truck that's on the right,
18 that's on the right side of the
19 photograph?

20 A That's my truck.

21 Q And just looking at the ramps,
22 would I be correct that this truck is used
23 to transport equipment?

24 A Yes.

25 Q What kind of equipment?

1 BERNARDO F. RIVERA

2 A Lawnmowers. That's it.

3 Q These are ride-around mowers,
4 right?

5 A Yeah. Whatever you need to --
6 we have -- 'cause we have two box trucks
7 and they both just carry lawnmowers.
8 That's it. Nothing else ever goes in
9 these trucks.

10 Q Now, in the photograph, it shows
11 that the ramps are down.

12 A Uh-huh.

13 Q And the truck is located, in the
14 photograph, on East Street; is that right?

15 A Yes.

16 Q Had the lawnmowers, that were in
17 the truck, been removed from the truck on
18 East Street?

19 A Yes.

20 Q And what would have been the
21 reason for taking the lawnmowers out of
22 the truck on --

23 A Every Saturday morning the main
24 guy sharpens the blades, cleans the
25 machines and get 'em ready for Monday.

1 BERNARDO F. RIVERA

2 Because my rule is, Monday, we
3 fill up with gas, be ready to go, so
4 you're cutting grass at the first house by
5 eight o'clock.

6 So that's what that vehicle was
7 doing.

8 Q Now, looking at the same
9 photograph, at Stop 2:06, do you see that,
10 to the right of your truck, there's a
11 black fence?

12 A Yeah.

13 Q Okay.

14 A To the right.

15 Q To the right?

16 A Yeah.

17 Q Now is that fence adjacent to
18 the skate park?

19 A Yes, that fence belongs to the
20 skate park.

21 Q Now, I'm showing you the
22 photograph that's at Stop 2:16. Do you
23 see, it's a green truck with a white cab,
24 that's on the right side of the
25 photograph?

1 BERNARDO F. RIVERA

2 A Uh-huh.

3 Q Can you identify that truck?

4 A That's my truck. And, if you
5 rewind, they're both identical. They're
6 both, the same color, the same everything.

7 If you rewind, you'll see the
8 name, same name and everything on this
9 vehicle.

10 Q Fair enough. It doesn't say
11 Benny's, does it?

12 A No, my landscape company is Pete
13 Carino Landscape.

14 Q I see.

15 A My godfather is Patsy Carino.
16 He got sick. I started helping him.

17 So we merged. You know, he
18 brought me in and then I end up eventually
19 buying him out.

20 And I don't remember if we were
21 partners then or if I already had bought
22 him out. I don't remember what year it
23 was.

24 And I made a promise to his
25 wife, I wouldn't change the name until he

1 BERNARDO F. RIVERA

2 passes.

3 Q So he's still alive?

4 A Actually, he's having heart
5 surgery today.

6 Q Wish him well.

7 Now we're looking at a
8 photograph that's at stop number 2:25. Do
9 you see the cars that are parked at the
10 far right-hand of the photograph?

11 A Yeah.

12 Q Can you identify any of those
13 three cars?

14 A The only one, that I know of,
15 that is there, is Mr. Enrique Garcia, he's
16 my employee.

17 And that's the first car, on the
18 right, the pick-up.

19 The other cars, I don't know
20 them.

21 Q Now do you know if he usually
22 parked in that same location?

23 A Only on Saturdays. Because
24 Saturdays, nobody was -- is there.

25 'Cause the company, to the left,

1 BERNARDO F. RIVERA
2 is a union company and they work Monday
3 through Friday.

4 So only on Saturdays -- and the
5 skateboard park was not open yet
6 because -- you know, then -- because when
7 they're open they ask us not to park
8 there.

9 Which we don't park there
10 anymore because the city opened up, that
11 we can park in the city, city parking lot.

12 Q Do you remember when your
13 employee, on Saturdays, started parking
14 where he was parked as shown in the
15 photograph?

16 A I don't pay attention to where
17 people park, you know.

18 Q Did he park there over a number
19 of months?

20 A No. Let me see. Hold on. No.
21 No. I don't remember.

22 Q Before May, back in 2015, before
23 that area was clear, where did he park?

24 A Either down the hill, in front
25 of Guglielmo's yard or right in front of

1 BERNARDO F. RIVERA

2 my yard.

3 Because right, where that
4 vehicle is, is still open. But there's
5 access, where the city could go in there.

6 So that's still open, that one
7 parking spot.

8 Q So am I correct, that after that
9 area was cleared, he was able to park
10 there on Saturdays?

11 MS. ZALANTIS: I'm going to
12 object as to form.

13 Q That means you can answer. But
14 she's has to --

15 MS. ZALANTIS: I just objected
16 as to form, but you can answer.

17 A I don't know why he put it
18 there.

19 You know, like I said, I don't
20 question, as long as my men are in front
21 of my gate, I don't care, really, where
22 they park.

23 Q Of course. And I should
24 rephrase the question because I wasn't
25 asking why. I was just asking, did he

1 BERNARDO F. RIVERA

2 park there on Saturdays, after the area
3 was cleared.

4 A No, he -- that --

5 MS. ZALANTIS: Objection.

6 A -- that area was always cleared.

7 Q So he was always able to park
8 there on Saturdays, if he wanted to?

9 A Yes.

10 Q Let's continue.

11 Looking at the photograph and,
12 now were at Stop 2:47, do you recognize
13 any of the cars that are parked down the
14 hill?

15 A I mean, you see a little bit of
16 Mr. Guglielmo's because I know the car,
17 'cause we had identical cars.

18 Other than that, no.

19 Q Now the "little bit of
20 Mr. Guglielmo's", is that the truck?

21 A It's the one behind the truck.
22 Because this is a little bit a
23 ways from my yard.

24 Q Now is this further down the
25 hill from your yard?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q So when I say further down the
4 hill, when I say further down the hill, I
5 mean further away from Fifth Avenue. We
6 both mean the same thing, right?

7 A No, you're technically -- 'cause
8 as the hill comes down, so where the last
9 green truck, that's my property line.

10 My frontage is only fifty feet.

11 So, technically, I had the two
12 trucks parked on the opposite side, on the
13 wall, but I was pretty much in my footage,
14 there.

15 So from the back of the last
16 truck, then, that goes down.

17 Q Now you're referring to the
18 green truck, in the last -- in the last --

19 A Yes.

20 Q We can go back, just to make
21 sure I understand.

22 MR. KOKE: Off the record.

23 [Discussion held off the
24 record.]

25 Q Is that the picture you're

1 BERNARDO F. RIVERA

2 talking about?

3 A Yeah. So, technically, the back
4 of that truck is the property line.

5 And, then, as you go, it goes
6 downhill.

7 Q So your property is
8 approximately -- would be from, roughly,
9 from the back of the truck, fifty feet
10 towards Fifth Avenue?

11 A Yes.

12 Q Mr. Rivera, that was the video.
13 Is there anything about that video that
14 would explain better what happened that I
15 didn't ask you about?

16 A No.

17 MR. MEISELS: I'd like to take a
18 ten-minute break.

19 [A short recess was taken.]

20 Q Mr. Rivera, I'm going to show
21 you a photograph that's been marked as
22 Plaintiff's Exhibit 3A. Do you recognize
23 any of the people shown in that
24 photograph?

25 A It's way too far.

1 BERNARDO F. RIVERA

2 Q Do you recognize any of the
3 vehicles shown in that photograph?

4 A It says Mr. La Rocca -- you
5 know, La Rocca & Sons' truck, I suppose.

6 Q And more towards the center of
7 it, do you see another yellow truck?

8 A You mean, all the way to the
9 right?

10 Q Well, it's to the right.
11 There's one yellow truck, all the way to
12 the left.

13 And, then, there's one, that you
14 see, it's almost like the middle of the
15 photograph; do you recognize that one?

16 A No.

17 Q And, then, down the hill, do you
18 see what looks like a white car?

19 A Yes.

20 Q Do you recognize that?

21 A I thought you were talking about
22 the white car.

23 No, the white car never -- the
24 other truck is the same color as Mr. La
25 Rocca's vehicles.

1 BERNARDO F. RIVERA

2 Q Are those his colors, yellow and
3 blue? Or what --

4 Now I'm going to show you what's
5 been marked as Defendant's C for
6 identification.

7 MR. KOKE: Off the record.

8 [Discussion held off the
9 record.]

10 Q Now, what we're showing you is a
11 second photograph, that's included in
12 Exhibit 3A.

13 Do you recall having seen what
14 is shown in this photograph?

15 A What do you mean, seen?

16 Q Did you ever, in person, see
17 what is shown in the photograph?

18 A No.

19 Q And can you identify either of
20 the two workers that have their backs to
21 the camera?

22 A No.

23 Q Now, in this photograph, do you
24 see an area that appears to be elevated,
25 where the workers are raking?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q Prior to May of 2015, did that
4 area have bushes and trees in it?

5 A From my knowledge, it was there.
6 I don't remember too much, but I remember
7 seeing, there was like piles of stuff
8 there, whether bushes and trees, no, I
9 don't remember that.

10 Q Do you know what kind of stuff
11 you saw?

12 A I never really paid attention.

13 Q And do you see, at the top of
14 the hill, what looks like piles of wood
15 chips? Do you know, were those wood
16 chips?

17 A I mean, for being in the tree
18 business, it does look like wood chips.

19 Q And do you know how those wood
20 chips got there?

21 A No.

22 Q Do you know whether or not
23 someone working for you put the wood chips
24 there?

25 A Not to my knowledge.

1 BERNARDO F. RIVERA

2 Q Do you know why the wood chips
3 were put there?

4 A To me, it's to beautify.

5 Q When you say to beautify, to
6 spread them out?

7 A Yeah.

8 MR. MEISELS: Let's go to the
9 next photograph.

10 Q Now I'm showing you what's the
11 third photograph, in Exhibit 3A.

12 Looking at the far right-hand
13 side -- I'm sorry, the fourth photograph,
14 in Exhibit 3A, looking at the far
15 right-hand side of the photograph, do you
16 see that there's some cars parked up, on
17 the hill?

18 A Yes.

19 Q Can you identify any of those
20 cars?

21 A The one that I told you belongs
22 to my one employee. The other ones, I've
23 never seen before.

24 My employee still has that
25 vehicle, so.

1 BERNARDO F. RIVERA

2 Q Let's go to the fifth
3 photograph.

4 Now, looking at this photograph,
5 which is number six, the sixth photograph
6 in Exhibit 3A, do you see the line of
7 cars?

8 A (Indicating).

9 Q How many of those cars can you
10 identify?

11 A Just the one.

12 Q Just the one that belongs to
13 your employee?

14 A (Indicating).

15 Q And that's the one that's all
16 the way to the right?

17 A Yes, the first one, on the
18 right.

19 Q And you don't recognize any of
20 the others?

21 A No.

22 Q Do you recall having seen,
23 yourself, those cars parked where they're
24 shown in the photograph?

25 A There's always cars parked

1 BERNARDO F. RIVERA

2 there.

3 Q When you say always, were there
4 cars parked there from the time you first
5 started renting --

6 A Yeah.

7 Q -- your property?

8 A Yeah.

9 Q Are there cars still parked
10 there, as of today?

11 A No, 'cause the city had fenced
12 the property off. And they just left the
13 one where actually my employee's parking
14 is still open.

15 Q Right. We're going to show you
16 what's been premarked as Defendant's C for
17 identification.

18 Looking at what's been marked
19 Defendant's C for identification. Can you
20 identify any of the vehicles shown in that
21 photograph?

22 A No.

23 Q Can you identify that vehicle?

24 A No.

25 MR. MEISELS: Let's go to the

1 BERNARDO F. RIVERA

2 next photograph.

3 Q Looking at what's been marked as
4 the third photograph, that's part of
5 Defendant's C for identification. Is this
6 the area where people used to and still
7 park?

8 A Used to. Can no longer park
9 there.

10 Q Because of the fence --

11 A The city fencing the property.

12 MR. MEISELS: Let's go to the
13 next.

14 Q Can you identify what's shown in
15 this photograph, which is number four of
16 Defendant's C?

17 A It's an open area.

18 Q It's is, I'm sorry?

19 A It's an open area.

20 Q But it's an area that you've
21 seen before?

22 A Yeah.

23 Q Now is this the area, that you
24 recall, that the city enclosed with the
25 fence?

1 BERNARDO F. RIVERA

2 A I would say not the post next to
3 the garbage can, a little more over,
4 that's where the city came in.

5 But that, everything to the
6 right is still open.

7 Q This is the fifth photograph,
8 which makes up Defendant's Exhibit C for
9 identification. Does this photograph show
10 the area where people used to park?

11 A Yeah, they always park there.

12 Q Now I'm going to show you what's
13 been marked as Defendant's II for
14 identification.

15 Mr. Rivera, this exhibit, which
16 has been marked as Defendant's II for
17 identification, it is a tax map. Can you
18 identify, from this tax map, which tax
19 lots you own?

20 A I would say it would be -- I
21 believe it's 37.

22 Q We're going to show you what has
23 been premarked as Defendant's Exhibit X
24 for identification. Can you identify
25 what's shown in that photograph?

1 BERNARDO F. RIVERA

2 A Top of a sewer.

3 Q Do you recall having seen that,
4 the top of that particular sewer before?

5 A No.

6 Q We're going to show you another
7 shot of the same sewer. Does that help
8 you recall whether you've ever seen it
9 before?

10 A I mean, you could see that it's
11 going up road. But I never really paid no
12 mind to it.

13 That's in front of Guglielmo's
14 yard.

15 Q That's in front of Guglielmo's
16 yard?

17 A Yes.

18 Q We're going to show what has
19 been marked as Defendant's Exhibit GG for
20 identification.

21 Firstly, can you identify the
22 white car that's shown in --

23 A Yeah, that was my car.

24 Q That's your car. And, earlier,
25 in your test --

1 BERNARDO F. RIVERA

2 A This is a newer photo because
3 that car, I already had it for like a
4 year.

5 Q Correct. And you had testified
6 that at some point, after May of 2015, the
7 city fenced in some area?

8 A They fenced in that area, like a
9 month after the -- a month or two -- I
10 don't even think -- I think a month after
11 that, what happened.

12 Q And is the black fence, shown in
13 that photograph, that would be on the
14 passenger side of your car, is that the
15 fence you were talking about?

16 A Yes.

17 Q And you recall, that got
18 installed approximately a month after the
19 incident --

20 A More or less. I remember -- I
21 remember coming in and all of a sudden
22 there was a fence company there.

23 Q Now when you say -- you refer to
24 what happened, okay. In your mind, if
25 someone asked you, when you say what

1 BERNARDO F. RIVERA
2 happened and asked you to explain what you
3 understood happened, what would you say,
4 what would be your answer to that
5 question?

6 A Well, I didn't know. You know,
7 like I said, I didn't know too much, what
8 happened there.

9 I only know that the city came
10 in and fenced it in.

11 And not too -- not even a month
12 ago, I didn't even know that there was any
13 kind of lawsuit or any kind of thing going
14 on.

15 Q Right. And you said that the
16 city fenced it in, approximately a month?

17 A I believe it was a month. You
18 know, I can't tell you if was a month.

19 But I remember, when I pulled
20 in, because they were blocking.

21 And when I pulled in with my
22 tree trucks, I gotta go forward and then I
23 back into my yard.

24 And I remember the guy moving
25 the truck for me, 'cause he was blocking

1 BERNARDO F. RIVERA

2 that area.

3 Q When you say that you recall
4 approximately a month after --

5 A I believe it was a month or so.

6 Q You recall that happening, you
7 know, approximately, after what happened,
8 the question is:

9 In your mind, if someone asked
10 you what it is that happened, how would
11 you explain that, what happened?

12 A Well, because of, you know,
13 because of what happened there, you could
14 tell the city came in, you know.

15 And I only knew about when the
16 fen -- when they put the fence in, there
17 was an issue, really.

18 Q I appreciate that. But what do
19 you understood happened?

20 A Well, when I answered the
21 subpoena, they told me that they, you
22 know, they're accusing Mr. La Rocca of
23 cleaning up or whatever they did to city
24 property.

25 That's what I was told on the

1 BERNARDO F. RIVERA

2 subpoena. I don't know who I spoke to,
3 when I called the number.

4 Q So that's what you understood,
5 as what happened?

6 A Uh-huh.

7 Q We're still on the same exhibit,
8 GG. And that's your car; am I right?

9 A Yes.

10 Q Now looking at this second
11 photograph, in Exhibit GG, do you see, on
12 the right-hand side, in the front, there
13 are, looks like piece of concrete, of
14 concrete --

15 A The barriers.

16 Q Barrier, okay. Was that there,
17 when you first moved to East Street?

18 A That was there, already there.
19 When we moved in, that was there.

20 Q And you moved in, approximately?

21 A I don't remember if it was '15
22 or '14. I don't remember the exact.

23 Q How long had you been there,
24 before the incident that we're talking
25 about?

1 BERNARDO F. RIVERA

2 A I can't recall.

3 I can't recall because, you
4 know, like I said, there was -- everything
5 happened fast because where I was, I had
6 to get out and I had thirty days.

7 You know, I don't remember what
8 year. I don't remember.

9 Q Fair enough. But when you moved
10 in, that jersey barrier, that barrier was
11 there?

12 A Yes.

13 Q Do you know who put it there?

14 A No.

15 Q Do you know who it belongs to?

16 A No.

17 Q Same exhibit. One more. That's
18 your car, right?

19 A Yes.

20 Q And, am I correct, that if you
21 were sitting in your driver's seat, the
22 skate park would be on your left?

23 A Yes.

24 Q We're going to show you what has
25 been premarked as Bongo (ph) #2 for

1 BERNARDO F. RIVERA

2 identification.

3 Can you identify what is shown
4 in that photograph?

5 A You see Mr. La Rocca's yard and
6 you see Mr. Bongo's truck.

7 Q Is the red truck Mr. Bongo's
8 truck?

9 A Yes.

10 Q Now we're going to show you
11 what's been marked as Bongo #3.

12 Can you identify what's shown in
13 that photograph?

14 A You see Mr. Bongo's, the front
15 of his gate, to his yard.

16 Q And in reference to the blue
17 car, that's shown at the left of the
18 photograph, do you know who that belongs
19 to?

20 A No.

21 Q Looking into Mr. Bongo's yard,
22 as far as you know, is that red truck his?

23 A Yes.

24 Q And the red dump-truck, is that
25 his?

1 BERNARDO F. RIVERA

2 A Yes.

3 Q So his colors are red?

4 A Yes.

5 Q What kind of business is he in,
6 again?

7 A Blacktop.

8 MR. MEISELS: Just one moment.

9 Off the record.

10 [Discussion held off the
11 record.]

12 Q This is the second photograph,
13 that's part of Bongo 3. Is the white car,
14 shown in that photograph, yours?

15 A No.

16 Q Do you know whose it is?

17 A It's gotta be one of his
18 employees.

19 Q And the red SUV, do you know who
20 that belongs to?

21 A One of the employees.

22 Q They're consistent, with red?

23 A Well, the red one, you know, I
24 see the guy driving that one, you know, he
25 always says good morning to me as he

1 BERNARDO F. RIVERA

2 drives by.

3 Q Let's go to the third one.

4 Now, looking at the third
5 photograph, that's part of Bongo 3, to the
6 left side, you see the black fence?

7 A Yes.

8 Q Is that the fence you were
9 referring to, that the city put up?

10 A Yes.

11 Q And, on the right side, you see
12 automobiles parked perpendicular to the
13 road?

14 A Yes.

15 Q And, I think, you already said
16 you don't know who owns the white one.
17 But the red one belongs to one of Bongo's
18 employees.

19 A Yeah.

20 Q I'm showing you what's the
21 fourth photograph, included in Bongo
22 Exhibit 3.

23 Now looking to the right side of
24 the photograph, there's a car that looks
25 like a Jeep, I'm not sure what it is, an

1 BERNARDO F. RIVERA

2 SUV; do you know who owns that?

3 A No.

4 Q And then there's a car that's
5 all the way to the right, do you know who
6 owns that?

7 A No.

8 Q Now I'm showing you the fifth
9 photograph, that's part of Bongo 3. And
10 starting on the right-hand side, okay, can
11 you identify the white car?

12 A No.

13 Q That small pickup truck?

14 A No.

15 Q The other pickup truck, that's
16 facing the photographer?

17 A No.

18 Q And you already said you can't
19 identify the Jeep; am I right?

20 A (Indicating).

21 Q Looking at the photograph, if
22 you go to the far right, where they show,
23 partially show a vehicle, can you identify
24 that vehicle?

25 A No.

1 BERNARDO F. RIVERA

2 Q Let's go to number six. Can you
3 identify any of the vehicles shown in
4 Photograph 6?

5 A No.

6 Q If looking at Photograph 6, in
7 the far right of the photograph, it
8 appears that there is a house at the
9 bottom of the hill; do you see that
10 building?

11 A Yeah.

12 Q Do you know who owns that?

13 A The Arpeggios (ph).

14 Q Now does their family have a
15 business on East Street?

16 A I believe Tommy's still in
17 business.

18 Q Tommy Arpeggio (ph)?

19 A Yeah.

20 Q What kind of business is he in?

21 A Construction.

22 Q Now do they run the business
23 from that house?

24 A I assume so.

25 Q And they live there, also?

1 BERNARDO F. RIVERA

2 A No, I don't think so.

3 Q No. Do you know if they use
4 East Street to access Fifth Avenue? Or
5 did they go out the other way?

6 A You know, I had seen his trucks
7 go up and down, but I can't, you know.

8 'Cause you can't enter through
9 East Place.

10 Q Place, right.

11 A So a lot of those vehicles come
12 through East Place.

13 Q He really has a choice?

14 A Yeah. You know, 'cause I'm not
15 there during the day. I get in my trucks
16 and we leave.

17 And sometimes, you know, I go
18 back to the yard and I have to fix a
19 machine or something.

20 But I'm not there, watching the
21 road.

22 Q Sure.

23 MR. MEISELS: #7.

24 Q This is the seventh photograph,
25 which is part of Bongo #3. Can you

1 BERNARDO F. RIVERA

2 identify any of the vehicles that are
3 shown in that photograph?

4 A No.

5 Q But in the far right, is that
6 the building that you understand belongs
7 to the Arpeggios?

8 A Yeah.

9 MR. MEISELS: Number eight.

10 Q Showing you Photograph 8 of
11 Bongo Exhibit 3, can you identify any of
12 the vehicles shown in that photograph?

13 A No.

14 Q And, am I correct, if you look
15 at the right side of the photograph, you
16 see a black chain link fence.

17 A Yes.

18 Q And is that the fence that the
19 city put up?

20 A Yes.

21 Q Number nine. I'm showing you
22 Photograph 9 of Bongo Exhibit 3. Can you
23 identify any of those vehicles that you
24 see in that photograph?

25 A Bongo's truck to the left. And

1 BERNARDO F. RIVERA

2 the vehicles, no.

3 Q You explained, that you go to
4 your place of business in the morning, you
5 usually leave and you come back at the end
6 of the day?

7 A Yes.

8 Q Did there ever come a time that,
9 when you came back during the day, that
10 you saw trees that had been cut down?

11 A No.

12 And, again, from my property
13 line, down to Bongo, down, I really don't
14 pass that.

15 You know, I don't pass that.

16 So I'm not driving down the
17 road, looking at exactly everything.

18 But I have never seen anybody
19 taking a tree down.

20 Q Did you ever see any trees, on
21 the ground, that had been cut down?

22 A No.

23 MR. MEISELS: No further
24 questions.

25 MS. ZALANTIS: I just have a few

1 BERNARDO F. RIVERA

2 questions. I'll try to be brief.

3 All the same rules, about
4 depositions, apply that Mr. Meisels
5 mentioned.

6 If you don't understand
7 something, please, let me know, so I
8 can rephrase it.

9 And, if you need to take a break
10 at any point, I just ask that if
11 there's a question pending that you
12 answer the question first.

13 A Uh-huh.

14 BY MS. ZALANTIS:

15 Q You mentioned that you filled
16 potholes on the road, on East Street, in
17 the area in front of your property.

18 A Yes.

19 Q What other types of road
20 maintenance work do you do in front of
21 your property?

22 A Well, we plow and we clean it,
23 when we can.

24 It's hard to clean it because we
25 have the kids from the skateboard park.

1 BERNARDO F. RIVERA

2 You know, they're always with the
3 littering, eating and dumping and it goes
4 up and down the roads.

5 Q Have you ever removed refuse
6 from East Street? Garbage?

7 A Yes, we have.

8 Q And what about after big storms,
9 do you ever have to do anything to the
10 road, after big storms?

11 A What kind of storms?

12 Q Where there's a lot of rain or
13 wind? Anything like that?

14 A No, because we don't have many
15 trees from our part, in the beginning.

16 Q Have you ever, since you've had
17 any knowledge of East Street or any
18 involvement in East Street, did any anyone
19 from the city maintain East Street?

20 A Never.

21 Q Have you ever seen anyone from
22 the city make any repairs to East Street?

23 A Never.

24 Q Have you ever seen anyone from
25 the city fill a pothole on East Street?

1 BERNARDO F. RIVERA

2 A Never.

3 Q And would it be fair to say,
4 that the only people that you've ever seen
5 maintain East Street are the owners that
6 have properties along East Street?

7 A The one I could say, more, that
8 maintains more than anybody is Flavio La
9 Rocca.

10 Q So it is fair to say that Mr. La
11 Rocca maintains the road more than any of
12 the other owners, on East Street?

13 A Yes.

14 Q Is that correct?

15 And, is it also fair to say that
16 Mr. La Rocca does the majority of the
17 plowing on East Street?

18 A Yeah, as I said that, from the
19 beginning.

20 Q Have you ever seen the city,
21 ever, plow East Street?

22 A Never.

23 Q You mentioned you had fifteen
24 trucks. And you mentioned a chip truck.
25 What is a chip truck?

1 BERNARDO F. RIVERA

2 A A chipper truck. That's where
3 we chip the brush.

4 Q Chipper?

5 A Chipper. Chipper and then the
6 truck.

7 Q And you mentioned about Robert
8 Cox, that he doesn't get his facts right.
9 That's something that you said about him.
10 Can you explain why you said that.

11 A Well, because I had a personal
12 thing with him and, you know, he put me
13 out there, on his, his thing and never --
14 he never called me, he never spoke to me.

15 You know, assumed that I was
16 illegally dumping and never got his facts
17 rights.

18 If he would have called the
19 schools, they would have told him, no, I
20 was not.

21 Because Ward Elementary School,
22 I had to wait until school gets out
23 because the children and the buses pick up
24 the children from their parking lot.

25 Albert Leonard, I had to go into

1 BERNARDO F. RIVERA

2 security, so they could come out and open
3 up the gate.

4 So, you know, he just put this
5 on me. He never had his facts right.

6 And when my niece was in school,
7 she did a report and got the facts from
8 him and my niece failed that course
9 because of the fact that they told her
10 that those facts were not right from
11 Robert Cox.

12 Q So, essentially, the school told
13 her, your niece, that she couldn't quote
14 something on Robert Cox's?

15 A Yes.

16 Q -- website; is that correct?

17 A Yes.

18 Q 'Cause he's known to not get his
19 facts right; is that correct?

20 A Yes.

21 Q So you described the
22 experience -- and when you said that he
23 puts it out there, how does he put it out
24 there?

25 A Well, I mean, because he ran

1 BERNARDO F. RIVERA

2 away, he'd make you to be such a monster,
3 a bad person.

4 The only reason why I followed,
5 because I had that situation and, you
6 know, I would read the comments.

7 And, you know, you're following
8 because it's -- it's putting your name out
9 there.

10 And when he went again, on
11 Flavio, that's how I was saying, he was
12 going against personal stuff, not going to
13 what the facts was.

14 And that's when I just -- I just
15 never followed him.

16 Q And when you said he puts it out
17 there, in his Blog, the Talk of the Sound?

18 A Yeah. Whatever it was that go
19 on. Because I put it to follow and then,
20 you know, it would usually come up on my
21 phone and you just look at the e-mails.

22 Q Right. And besides the personal
23 experience that you have with him, of not
24 getting the facts right, do you know of
25 any other people that had similar types of

1 BERNARDO F. RIVERA

2 experiences?

3 A Well, I know a few people that
4 work for the board of education, that he
5 had, he had done that to, you know, going
6 after people, personally, you know, that I
7 happened to know them.

8 Q And do you think that Mr. Cox
9 has an issue with the owners or
10 contractors along East Street?

11 A I think he has an issue with
12 everybody else, except for himself.
13 'Cause you never see him ever put anything
14 good.

15 Q So when he said that about you,
16 personally, is it fair to say that he
17 published or got out to his following
18 information, without first asking you
19 about it or getting a quote from you?

20 A Yeah.

21 Q Is that correct?

22 A Yeah, because he just puts it
23 out, that I'm illegally dumping.

24 So if you're claiming, I'm
25 illegally dumping --

1 BERNARDO F. RIVERA

2 Number one, every school and
3 everything has cameras.

4 So if I'm driving down a truck,
5 in broad daylight, in the back of a
6 school, to dump wood chips, do you think
7 I'm going to do that.

8 Q So you're saying it's something
9 that could be easily verified?

10 A He would've called and say, you
11 know, who gave you permission or who gave
12 this or who gave that, I would've
13 answered.

14 Q And did that impact your
15 business, in any way?

16 A It did, a little bit. It did, a
17 bit. A couple of people cancelled on me.

18 I can't remember because it was
19 a long time ago.

20 But, you know, in the beginning,
21 a couple of people put jobs on hold, you
22 know, because this guy was putting that on
23 me.

24 Q You also said that he has a
25 vendetta against someone. Who did he have

1 BERNARDO F. RIVERA

2 vendetta against?

3 MR. MEISELS: Objection as to
4 form.

5 A Jimmy Banana (sic).

6 You know, that's the person that
7 was head of the maintenance of all the
8 schools.

9 And it's like every day, every
10 week. You know, after he put that on me
11 and I started following him.

12 'Cause, you know, now, he was
13 putting me like, like Jimmy was doing
14 this.

15 So it's just, if you follow and
16 go back to all his old stuff, you see, he
17 was just on Jimmy, personally.

18 Q You also said something to the
19 effect that on East Street there is
20 machines up and down that road all day
21 long. Can you explain what you meant by
22 that?

23 A Well, you have PAB, they go out
24 with their equipment.

25 You know, you have the

1 BERNARDO F. RIVERA

2 Guglielmos, they go out with their
3 equipment.

4 You know, you have Tommy. I
5 don't see Tommy as much.

6 But you see it.

7 When I say all day long, I'm not
8 there. But it's -- businesses are seven
9 different companies.

10 So everybody's going in and out
11 of there with their equipment.

12 Q So it's fair to say that East
13 Street is a busy road, in terms of the use
14 by the contractors?

15 MR. MEISELS: Objection to form.

16 A Yeah.

17 Q So you wouldn't be surprised if
18 you saw trucks going up and down that road
19 on pretty much a daily basis --

20 A Yes.

21 Q Is that correct?

22 So you mentioned that you did
23 some projects with Mr. La Rocca. In any
24 of those projects, that you worked on with
25 Mr. La Rocca or his company, have you ever

1 BERNARDO F. RIVERA

2 seen Mr. La Rocca cut down or anyone from
3 his company cut down trees?

4 A No, he had hired me to do it. I
5 had done a few jobs for him.

6 And when he had tree work, he
7 would hire me and I would come in and I
8 would do his tree work.

9 Q So the person, that he would use
10 to cut down trees, would be you or your
11 employees; is that correct?

12 A Yes.

13 MR. MEISELS: Objection to form.

14 Q You saw a lot of pictures today,
15 of an area fenced in with a black fence.
16 Do you recall seeing those pictures,
17 today? Or do you have personal knowledge
18 of that area, that's currently fenced in
19 by the city with the black fence; is that
20 correct?

21 A Yes.

22 Q So that area, before the fence
23 was there, cars used to park in that area;
24 is that correct?

25 A Yes.

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1 BERNARDO F. RIVERA

2 Q And in the entirety of that
3 area, that's now enclosed with the black
4 fence, did cars park in that area, both
5 before and after March of 2015?

6 A I would say prior, before they
7 put the fence, yes.

8 Q Right.

9 A They can no longer park there
10 because --

11 Q Correct. So before the fence
12 was up --

13 A Yes.

14 Q -- that area was used as
15 parking; is that correct?

16 A Yes.

17 Q And it was used as parking
18 before March of twenty-fifteen, correct?

19 A Yes.

20 Q And it was used as parking
21 between March of 2015 and until the date
22 they put the fence up; is that correct?

23 A Yes.

24 Q And you identified one of the
25 cars was, that you knew, was an employee

1 BERNARDO F. RIVERA

2 of your company; is that correct?

3 A Yes.

4 Q And you also identified, in the
5 group of pictures -- do you remember the
6 group of pictures in front of PAB's yard?

7 A Yes.

8 Q And there was a red truck there.
9 And you said you knew the guy that owned
10 the red truck?

11 A Yes, you know, we say good
12 morning. Personally, never --

13 Q Right.

14 A You know, "how are you". "Good
15 morning".

16 Q But you know he works for PAB?

17 A Yes.

18 Q And did you see the picture of
19 that -- did you also see the picture that
20 had that red truck in the area, that's now
21 closed in with the black fence?

22 A Yeah.

23 Q Did you ever see Mr. La Rocca,
24 or anybody from his company, cut down
25 trees in any area adjacent to East Street?

1 BERNARDO F. RIVERA

2 A No.

3 Q At any time, whatsoever?

4 A No.

5 Q So that's correct, at no time,
6 whatsoever, have you seen Mr. La Rocca or
7 anybody from his company cut down trees in
8 an area near East Street; is that correct?

9 A Yes.

10 Q And you mentioned you have fifty
11 feet of frontage, along East Street, your
12 property?

13 A I would say, more or less.

14 Q Approximately?

15 A I don't remember the exact
16 measurements.

17 Q And that you would generally
18 park -- so from -- you would park in the
19 area, within that fifty feet of frontage,
20 but on the opposite side of the street?

21 A Yeah, a little more up. Because
22 my -- close friend of my mine rents his
23 yard out. He's barely there.

24 So sometimes I'll block his
25 yard. I have permission, of him, to block

1 BERNARDO F. RIVERA

2 his yard.

3 Q If I were looking at East Street
4 and I was standing on Fifth Avenue,
5 looking down East Street --

6 A Yes.

7 Q -- your yard is to the left --

8 A Yes.

9 Q -- correct?

10 A All the yards are to the left.

11 Q All the yards are to the left.

12 And the picture that we saw, the
13 green box trucks, that was parked on the
14 right -- the shoulder on the right of East
15 Street; is that correct?

16 A Yes.

17 Q And is that generally where you
18 would park, on the right of East Street?

19 A Like when we pull the vehicles
20 out, maybe one truck might stay there,
21 that we're not using or whatever.

22 But, you know, just pull out, do
23 what we had to do and then we leave for
24 the day.

25 Q So, essentially, to the

1 BERNARDO F. RIVERA

2 shoulder, on the right, again, looking
3 down --

4 A Yes.

5 Q -- East Street?

6 The shoulder on the right is
7 more like a staging area? Is that
8 correct, to say that?

9 A Yes.

10 MR. MEISELS: Objection to form.

11 Q Do you understand what I mean by
12 staging area?

13 A Yes.

14 Q It's an area that you would load
15 the vehicles and then pull them out to the
16 job site?

17 A (Indicating).

18 Q Yes. And, then, the area to the
19 right, the right shoulder, again, looking
20 down East Street, would your employees
21 park in that area? Or is there no parking
22 there?

23 A Well, the fenced in, no more.
24 But, to the left.

25 But, no, none of my employees

1 BERNARDO F. RIVERA

2 park there. They park, except for
3 Saturdays, because PAB is not there, they
4 can park in front, 'cause they don't work.

5 But we have the city parking,
6 that we're allowed to park in.

7 Q So prior to the city installing
8 that black fence, enclosing the area,
9 would it generally be that the PAB
10 employees would park in that area, that's
11 now enclosed with the black fence?

12 A I would say 80 percent, yeah.

13 Q And the reason why your
14 employees could only potentially park
15 there, on Saturday, was because the PAB
16 employees were not there; is that correct?
17 Yes?

18 If you could just answer.

19 A Yes.

20 Q Do you remember looking at that
21 pile of wood chips, in pictures, today?

22 A (Indicating).

23 Q Yes?

24 A Yes.

25 Q In your profession, you

1 BERNARDO F. RIVERA

2 previously created wood chips, correct?

3 A Yes.

4 Q How do you do that?

5 A We put it into a chipper.

6 Q You put logs or trees in the
7 chipper?

8 A We re-chip up to six to eight
9 inches, depending on the wood.

10 Q And what --

11 A The tree. The tree. You know,
12 the heart of the tree, you don't want chip
13 as big because it kills the machine.

14 The softer the wood, you could
15 go, you know, eight inches or so.

16 Q And you're talking about eight
17 inches in diameter?

18 A Yeah, depending on what kind of
19 tree we removed.

20 Q And based on your experience of
21 someone that chipped trees, branches
22 before, how many trees and branches would
23 have to be chipped to create that pile of
24 wood chips --

25 MR. MEISELS: Objection as to

1 BERNARDO F. RIVERA

2 form, you can answer.

3 A A good amount.

4 Q A good amount, meaning, what?

5 A A normal size tree, you know.

6 Q What's a normal size tree?

7 A An 80 to 120 footer.

8 Q Just so I'm clear, based on your
9 experience -- and, previously, your
10 experience cutting down trees, to create
11 that pile of chips that you saw in the
12 pictures shown to you today, it would have
13 to have come from an 80 to 120 foot tree;
14 is that correct?

15 MR. MEISELS: Objection as to
16 form.

17 A A complete load of my truck,
18 yes.

19 Q And what do you mean by a
20 complete load?

21 MR. MEISELS: Objection to form.

22 A My truck, full.

23 Q Do you think, what you saw
24 today, the pictures of the chips today,
25 would like be a load of your truck?

1 BERNARDO F. RIVERA

2 MS. ZALANTIS: Objection as to
3 form.

4 A I mean, it's a picture, you
5 can't really look and see how much is
6 there.

7 Q Right. We're just estimating.
8 Not specifics.

9 MS. ZALANTIS: Objection as to
10 form.

11 A I can't, no.

12 Q But is it fair to say that
13 amount of wood chips, you would need a
14 substantial amount of trees or branches to
15 create that amount of wood chips?

16 MR. MEISELS: Objection as to
17 form.

18 A I would say yes.

19 Q So when you were answering
20 questions about wood chips, previously,
21 you said that you didn't, personally, put
22 the wood chips in the area that was shown
23 in the pictures; is that correct?

24 A Yes.

25 Q And you don't have any knowledge

1 BERNARDO F. RIVERA

2 of any of your employees, you don't have
3 any personal knowledge of any of your
4 employees putting the wood chips there; is
5 that correct?

6 A No.

7 Q Is it possible that one of your
8 employees put the wood chips there,
9 without you knowing about it?

10 A I can't answer that. Because,
11 again, we have dumps. We have -- you
12 know, I have accounts.

13 My men dump. I pay my bills,
14 monthly. Do I look at every single date,
15 no.

16 Q So it's possible?

17 A I don't think so.

18 Q But you wouldn't know, for sure?

19 A No.

20 MS. ZALANTIS: Give me one
21 minute.

22 One other question:

23 Q You mentioned the lot owned by
24 Guglielmo, correct? And you're familiar,
25 where that lot is?

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1 BERNARDO F. RIVERA

2 A Yes.

3 Q Have you ever seen Mr. La
4 Rocca's trucks parked in Mr. Guglielmo's
5 lot?

6 A No, he has his own yard.

7 MS. ZALANTIS: Give me one
8 moment.

9 Sorry, just one more question.

10 Q With respect to Mr. Guglielmo's
11 lot, do you remember, years prior, that
12 Mr. La Rocca would rent space in that lot?
13 And did you ever see trucks parked in that
14 lot, years ago?

15 MS. ZALANTIS: Objection as to
16 form.

17 A Not that I remember.

18 Q You don't remember?

19 [Continued on the next page to
20 allow for signature line and jurat.]

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BERNARDO F. RIVERA

A No.

MS. ZALANTIS: I have nothing further.

MR. MEISELS: Standard stips?

MS. ZALANTIS: Yes.

MR. MEISELS: Standard stips.

Thank you very much.

[TIME NOTED: 1:20 p.m.]

BERNARDO F. RIVERA

Subscribed and sworn to
before me this _____
day of _____, 2021.

Notary Public

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I N D E X

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B. Rivera	Ms. Zalantis	60

E X H I B I T S

RIVERA DESCRIPTION

Exhibit A subpoena

[Exhibit A was uploaded to the Veritext
Portal]

[Exhibit A was marked via Veritext
Virtual]

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CERTIFICATION

I, Helen Wandzilak, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of July, 2021.

HELEN WANDZILAK

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ERRATA SHEET
 VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: New Rochelle v. La Rocca
 DATE OF DEPOSITION: July 8, 2021
 WITNESS' NAME: Bernardo F. Rivera

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 BERNARDO F. RIVERA

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 BEFORE ME THIS _____ DAY
 OF _____, 2021.

 NOTARY PUBLIC
 MY COMMISSION EXPIRES _____

[& - barrier]

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[city - eating]

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35:12 store 26:6 storm 8:10 storms 61:8,10,11 street 6:11 11:15 11:18,25 12:6,7 16:20 17:24 21:3 21:14 26:14 29:14 29:18 50:17 56:15 57:4 60:16 61:6 61:17,18,19,22,25 62:5,6,12,17,21 66:10 68:19 69:13 72:25 73:8,11,20 74:3,5,15,18 75:5 75:20 strike 3:10,13 stuff 40:7,10 65:12 68:16 subpoena 1:21 49:21 50:2 83:8 subpoenaed 5:21 subscribed 82:13 85:20 substantial 79:14 sudden 47:21 suggest 24:3 suite 2:10 suppose 38:5 supreme 1:2 sure 36:21 54:25 57:22 80:18 surgery 32:5 surprised 69:17 suv 53:19 55:2 sworn 3:18 5:3 82:13 84:7 85:20	taken 1:19 24:4 37:19 talk 13:3 65:17 talking 6:20,23 22:17,19 37:2 38:21 47:15 50:24 77:16 tarrytown 2:11 tax 45:17,18,18 taxes 11:12 technically 36:7 36:11 37:3 tell 9:21 16:5 20:18 48:18 49:14 telling 24:10 ten 37:18 tenant 7:5 10:3 terms 69:13 test 46:25 testified 5:5 47:5 testimony 3:11,14 5:21 84:6,9 thank 5:12 82:8 thing 16:13 36:6 48:13 63:12,13 things 8:8 15:8 think 9:2 15:4,7 27:15 47:10,10 54:15 57:2 66:8 66:11 67:6 78:23 80:17 third 41:11 44:4 54:3,4 thirty 51:6 thought 38:21 three 21:25 22:6 32:13 time 1:18 6:12,20 6:22,24 7:3 11:14 12:12 15:13,19 16:18 19:25 20:25	23:24 28:4 43:4 59:8 67:19 73:3,5 82:9 titled 13:3 today 5:13 6:8 32:5 43:10 70:14 70:17 76:21 78:12 78:24,24 told 15:21 41:21 49:21,25 63:19 64:9,12 tommy 56:18 69:4 69:5 tommy's 56:16 top 40:13 46:2,4 trailer 28:3 transcript 84:8 transport 28:23 tree 6:3,5,9 7:23 7:25 8:2,5,22 9:4 10:7 15:13 16:3 19:16 40:17 48:22 59:19 70:6,8 77:11,11,12,19 78:5,6,13 trees 8:7,9,12 14:22 40:4,8 59:10,20 61:15 70:3,10 72:25 73:7 77:6,21,22 78:10 79:14 trial 3:16 truck 22:10,14,17 22:19 23:2,3,4,5,7 23:11,25 27:4 28:2,9,10,17,20,22 29:13,17,17,22 30:10,23 31:3,4 35:20,21 36:9,16 36:18 37:4,9 38:5 38:7,11,24 48:25	52:6,7,8,22,24 55:13,15 58:25 62:24,25 63:2,6 67:4 72:8,10,20 74:20 78:17,22,25 trucks 8:24,24,25 18:24 23:12,17,20 26:23,25 29:6,9 36:12 48:22 57:6 57:15 62:24 69:18 74:13 81:4,13 true 84:8 try 12:3 60:2 twelve 17:17,20 twenty 71:18 two 10:23 12:13 12:17 15:3 21:16 22:6 27:5,16 29:6 36:11 39:20 47:9 types 60:19 65:25
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t 2:7 83:6 take 14:14,21 17:15 37:17 60:9			uh 19:14 29:12 31:2 50:6 60:13 understand 36:21 58:6 60:6 75:11 understanding 21:24 understood 48:3 49:19 50:4 uniform 3:7 union 33:2 unlucky 27:23 uploaded 83:9 use 9:3 24:2 26:24 27:3 57:3 69:13 70:9 usual 16:19 usually 17:5 26:6 26:7,10 32:21 59:5 65:20

[v - zoom]

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<p>v</p> <p>v 5:2 85:2</p> <p>vehicle 23:6,8,15 23:23 24:23 25:4 30:6 31:9 34:4 41:25 43:23 55:23 55:24</p> <p>vehicles 10:17,25 25:3,25 26:4,6,8 26:10,14,19 27:6,6 27:16 38:3,25 43:20 56:3 57:11 58:2,12,23 59:2 74:19 75:15</p> <p>vendetta 13:25 67:25 68:2</p> <p>verified 67:9</p> <p>veritext 83:9,11 85:1</p> <p>video 17:7,8,12,13 18:19 37:12,13</p> <p>videoconference 2:13</p> <p>virtual 83:11</p>	<p>we've 8:15</p> <p>website 64:16</p> <p>week 27:22 68:10</p> <p>went 65:10</p> <p>westchester 1:3,13 2:5</p> <p>whatsoever 73:3,6</p> <p>wheels 22:20</p> <p>whereof 84:16</p> <p>white 1:13 2:5,10 30:23 38:18,22,23 46:22 53:13 54:16 55:11</p> <p>width 26:16</p> <p>wife 31:25</p> <p>wilson 2:3</p> <p>wind 61:13</p> <p>wish 32:6</p> <p>witness 1:17 3:19 4:7 5:22 83:2 84:6 84:10,16 85:3</p> <p>wood 14:3,6 19:13 19:16 20:2,23 21:2,3 40:14,15,18 40:19,23 41:2 67:6 76:21 77:2,9 77:14,24 79:13,15 79:20,22 80:4,8</p> <p>work 8:4,5 9:14 16:8 17:3 19:5 21:7 23:19 27:24 33:2 60:20 66:4 70:6,8 76:4</p> <p>worked 69:24</p> <p>workers 21:16,23 21:25 39:20,25</p> <p>working 22:4 40:23</p> <p>works 72:16</p> <p>would've 15:22 67:10,12</p>	<p>x</p> <p>x 1:4,12 45:23 83:1,6</p> <p>y</p> <p>yard 11:4,22,23 12:20,23 16:23 19:8 20:4,8,8 24:3 25:15 26:7 27:12 33:25 34:2 35:23 35:25 46:14,16 48:23 52:5,15,21 57:18 72:6 73:23 73:25 74:2,7 81:6</p> <p>yards 10:23 74:10 74:11</p> <p>yeah 7:21 9:5,12 12:2 13:7 20:24 24:5 25:7,10,15 29:5 30:12,16 32:11 37:3 41:7 43:6,8 44:22 45:11 46:23 54:19 56:11,19 57:14 58:8 62:18 65:18 66:20,22 69:16 72:22 73:21 76:12 77:18</p> <p>year 6:14 10:10,20 31:22 47:4 51:8</p> <p>years 8:16 81:11 81:14</p> <p>yellow 20:15 38:7 38:11 39:2</p> <p>york 1:2,13,20 2:5 2:11 5:4,11 84:4 85:1</p> <p>z</p> <p>zalantis 2:9,12 34:11,15 35:5 59:25 60:14 79:2</p>	<p>79:9 80:20 81:7 81:15 82:3,6 83:5</p> <p>zoning 10:12</p> <p>zoom 2:13 17:14</p>
<p>w</p> <p>wait 16:14 63:22</p> <p>waived 4:4</p> <p>waiver 3:15,24</p> <p>wall 36:13</p> <p>wandzilak 1:19 84:3,20</p> <p>want 77:12</p> <p>wanted 35:8</p> <p>ward 15:6 63:21</p> <p>watching 57:20</p> <p>way 37:25 38:8,11 42:16 55:5 57:5 67:15 84:14</p> <p>ways 35:23</p>			

New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

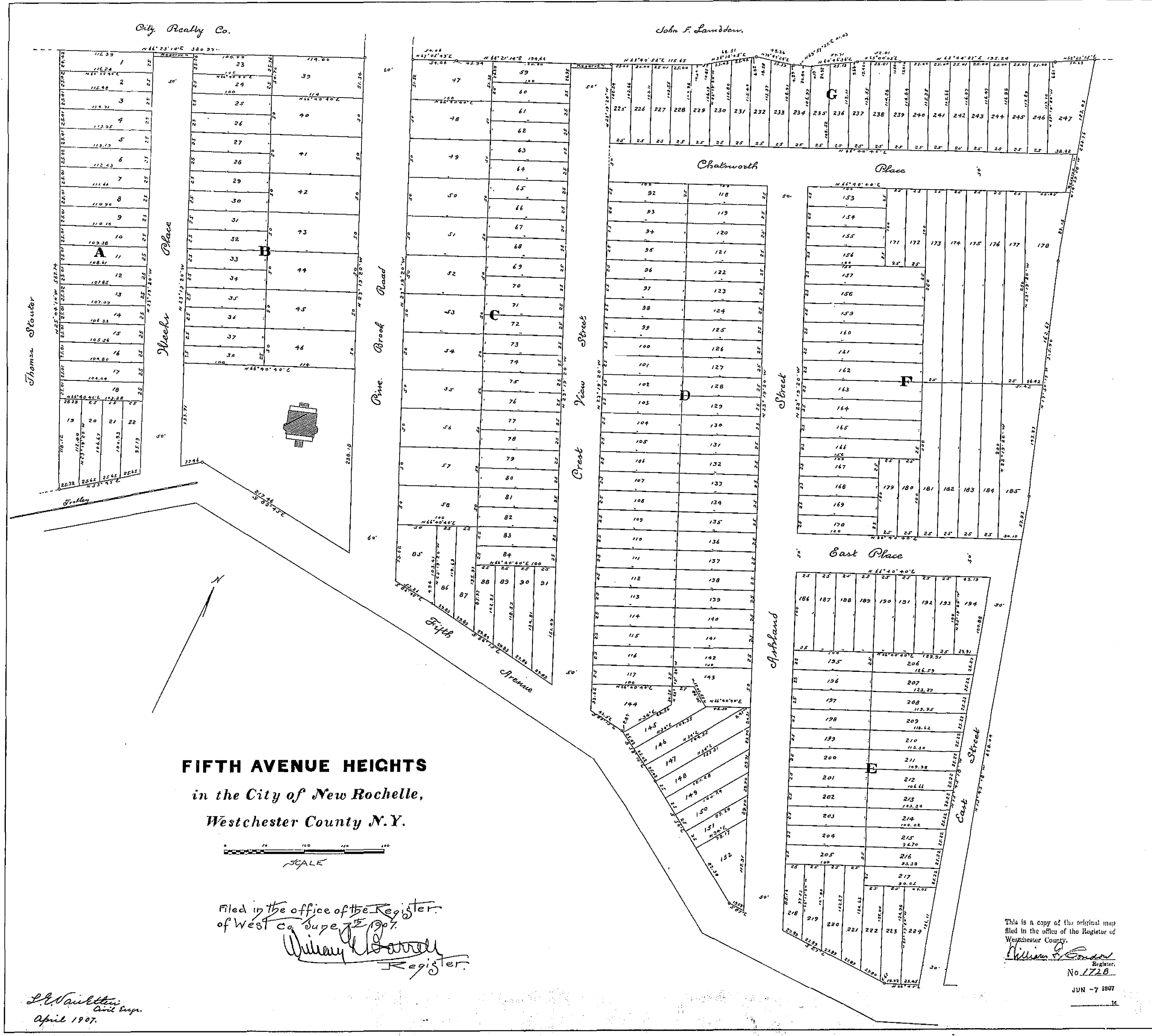
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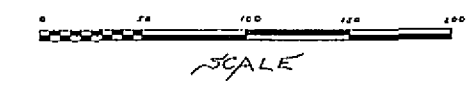
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Exhibit "17"



FIFTH AVENUE HEIGHTS
in the City of New Rochelle,
Westchester County N.Y.



Filed in the office of the Register
of Westchester County N.Y. 1907.

William G. Conson
Register.

L. L. Vaillette
Civil Eng.
April 1907.

This is a copy of the original map
filed in the office of the Register of
Westchester County.
William G. Conson
Register.
No. 1728

JUN -7 1907

FILED MAP No 1728



Exhibit "18"

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ing to Katonah to the center lines thereof, together with all right, title and interest in and to the Old Mill Lane. TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to the said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, her heirs and assigns forever. AND the said party of the first part does covenant with said party of the second part as follows: FIRST. - That the said party of the first part is seized of the said premises in fee simple and has good right to convey the same. SECOND. - That the party of the second part shall quietly enjoy the said premises. THIRD. - That the said premises are free from encumbrances. FOURTH. - That the party of the first part will execute or procure any further necessary assurance of the title to said premises. FIFTH. - That the said party of the first part will forever warrant the title to said premises.

IN WITNESS WHEREOF, the said The Home Savings Bank of White Plains, New York, hath caused its corporate seal to be hereunto affixed, and this instrument to be subscribed by its First Vice President, the day and year first above written.

In presence of

LEON ST. C. DICK. (L.S.) THE HOME SAVINGS BANK OF WHITE PLAINS, NEW YORK.

By HARRY S. HAMILTON, First Vice-President.

Five U. S. I. R. Stamps, two for ten dollars each, one for five dollars, and two for two dollars each, attached and cancelled.

STATE OF NEW YORK, COUNTY OF WESTCHESTER, SS. On this 27th. day of June in the year nineteen hundred and nineteen, before me personally came HARRY S. HAMILTON, to me known, who being by me duly sworn did depose and say that he resides in the City of White Plains, Westchester County, New York; that he is the First Vice-President of The Home Savings Bank of White Plains, New York, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

LEON ST. C. DICK, Notary Public.

The foregoing instrument was endorsed for record as follows: The property affected by the within instrument is situated in the Town of BEDFORD, county of Westchester, State of New York. A true copy of the original Deed and acknowledgment thereof recorded June 27th. 1919 at 3:20 P. M.

[Signature] Register.

HADERT REALTY CO. :
 TO :
 CITY OF NEW ROCHELLE. :

THIS INDENTURE made this 30th. day of April in the year one thousand nine hundred and fourteen (1914),

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BETWEEN, HADERT REALTY COMPANY, a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York, having its principal office in the City of New Rochelle, County of Westchester and State of New York, party of the first part, and CITY OF NEW ROCHELLE, a domestic municipal corporation party of the second part, WITNESSETH that the party of the first part, for and in consideration of the sum of ONE (\$1.) DOLLARS lawful money of the United States, AND OTHER GOOD AND VALUABLE CONSIDERATION, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged does hereby remise, release and forever quit-claim unto the said party of the second part, its successors and assigns forever, ALL the right, title, interest and easement of the said party of the first part, of, in and to all those certain lots, pieces or parcels of land, situate, lying and being in the City of NEW ROCHELLE, Westchester County, New York, known and distinguished as Weeks Place, Pine Brook Road, Crest View Street, Chatsworth Place, Ashland Street, East Place and East Street, upon a certain map entitled, "Fifth Avenue Heights, in the City of New Rochelle, Westchester County, New York" L. E. Van Etten, Civil Engineer, April 1907; which map has been duly filed in the office of the Register of Westchester County. TOGETHER with the right to the party of the second part, its successors and assigns, and its agents and servants, and any other person or persons, for it and their benefit and advantage, at all times freely to pass and repass on foot or with animals, vehicles, loads or otherwise, through and over the said streets or avenues, to the end that said streets and avenues may be forever public streets or highways, and may be used and enjoyed as such, together with the right to the party of the second part, its successors or assigns, to repair said streets and avenues as there shall be occasion. TOGETHER with the appurtenances and all the estate and rights of the said party of the first part, in and to the said premises. TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, its successors and assigns forever. IN WITNESS WHEREOF, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereunto affixed the day and year first above written.

(L.S.) HADERT REALTY COMPANY,

By JOHN A. HADERT, President.

STATE OF NEW YORK, COUNTY OF WESTCHESTER, SS. On this 30th. day of April in the year one thousand nine hundred and fourteen (1914), before me personally came JOHN A. HADERT, to me known, who being by me duly sworn, did depose and say, that he resides in the City of New Rochelle, New York; that he is the President of the Hadert Realty Company, the corporation described in and which executed the foregoing instrument; that he knew the corporate seal; that the seal affixed is

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such corporate seal; and it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto as President by the like order.

CHARLES EDWARD HARVEY, Notary Public, Westchester County, N. Y.

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situated in the City of NEW ROCHELLE, county of Westchester, and State of New York. A true copy of the original Deed and acknowledgment thereof recorded June 27th. 1919 at 9 A. M.

[Handwritten Signature] Register.

HOMMOCK REALTY CORP. :

TO :

WALTER C. HUBBARD. :

THIS INDENTURE made this

19th. day of June 1919 BETWEEN, HOMMOCK REALTY CORPORATION, a corporation organized under the laws of the State of New York, having its principal office and place of business at the Village of Larchmont, County of Westchester, and State of New York, party of the first part and WALTER C. HUBBARD, of and residing at No. 40 East 72nd. Street, in the City and State of New York, party of the second part,

WITNESSETH that the said party of the first part in consideration of ONE (\$1) DOLLAR lawful money of the United States, and OTHER GOOD AND VALUABLE CONSIDERATIONS to it in hand paid by the party of the second part, does hereby grant and release unto the said party of the second part, his heirs and assigns forever,

ALL those certain plots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of MAMARONECK, Westchester County, New York, and which are shown and designated as parcels Nos. 2, 3 and 4 upon a certain map entitled, "Plan of Part of Map of Palmer Hommock, situate Mamaroneck, New York, showing the new lines of Hommock Road and new property lines of Alex. J. Fraser and W. C. Hubbard" prepared July 11, 1918, by Chas. Cohen and Leo J. Ehrhart, Inc. and filed in the office of the Register of Westchester County on the 8th. day of November 1918, in Volume 49 of maps, 13, which said parcels are more particularly bounded and described as follows: PARCEL NO. 3. BEGINNING at a point on the southerly side of the New Hommock Road as laid down on said map, which point is distant easterly 10.88 feet measured along the said southerly side of the Hommock Road on a bearing north 43° 51' 50" east from the intersection of the southerly line of said new Hommock Road with the northerly line of the Old Hommock Road as laid down on said map; thence running easterly along the southerly line of the new Hommock Road and on the bearing north 43° 51' 50" east a distance of 142.95 feet; thence running southerly on a bearing south 28° 18' 40" east a distance of 150.87 feet; thence in a southwesterly direction on a bearing south 1° 54' 20"

Exhibit "19"

COUNCIL
CITY OF NEW ROCHELLE, N. Y.

MINUTES
OF
REGULAR MEETING

HELD TUESDAY, JUNE 2, 1914
IN THE COUNCIL CHAMBERS
CITY HALL

Members of Council:

EDWARD STETSON GRIFFING, Mayor.

GEORGE VALENTINE,
President.

CHARLES KAMMERMEYER,
City Clerk.

COUNCILMEN:

THE APPENZELLER

STEPHEN W. HUNTINGTON

WILLIAM S. INGLIS

MAX C. KOCH

ADAM C. KISTINGER

JOHN STELLA

HARRY SCOTT

GEORGE VALENTINE

Regular meeting of the Council held Tuesday, June 2, 1914, in the
Council Chambers, City Hall Building, corner of Main and Mechanic streets,
11:17 A.M.

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June 2, 1914.

The roll being called the following answered to their names:

Hon. Edward Stetson Griffing, Mayor; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Stella, Scott Valentine.

President Valentine presided.

The Minutes of April 29; May 5, 7 and 19, 1914, were confirmed, there being no corrections.

President Valentine announced that this was the evening set for a public hearing upon the advisability of purchasing real property in this City for dock purposes, and stated that the Council would hear any one who desired to be heard in regard to the matter.

The Council was addressed by Messrs. Gregory M. Dillon, F. M. Wells, H. J. Weldon, F. J. Cuthbertson and John P. Hutchinson who protested against the purchasing of any property at this time. The Council was also addressed by His Honor the Mayor, Frank J. New, Henry A. Siebrecht, Sr., Fred. L. Merritt, F. S. Fisher, James R. Butterworth and H. L. Childs who spoke in favor of the purchasing of property for dock purposes. No one else appearing, the hearing was declared closed.

President Valentine also announced that this was the evening set for a public hearing upon the proposition to purchase property owned by the Salem Baptist Church and known as the "John Coates' property" on 11th Road in Jerusalem woods as a proposed site for a contagious hospital in this City, and stated that the Council would hear any one who desired to be heard in regard to the matter. No one appearing, the hearing was declared closed.

President Valentine also announced that this was the evening set for which objections could be made to the proposed construction of sewer in Warren Street extension from the now existing sewer in Guion Street to the intersection of Guion and Warren Street extension, and through Warren Street for a short distance, as per plan submitted by the Department of Public Works under date of May 19, 1914; also the proposed construction of curb, gutter and flag sidewalks on that part of Thurston Place, both sides between Webster Avenue and Fourth Street where sidewalk is not now laid, and the construction of flag sidewalk on Beechwood Avenue, both sides from the railroad bridge to Main Street, where sidewalk has not been laid, and the construction of curb, gutter and sidewalk on Clinton Avenue, both sides, from DeWitt Place to Winyah Avenue—in accordance with the declaration of intention and the resolutions adopted by the Council on May 19, 1914, and the Clerk read the notice of public hearing after which it was stated that the Council would hear any one who desired to be heard either for or against the same. No one appearing, and the Clerk having announced that no written objections had been filed, the hearing was declared closed.

President Valentine also announced that this was the evening set for which objections could be made to the proposed construction of sewer from the present terminus on Fifth Avenue to sewer Weeks Place, State Street, Sylvan Place and that part of Pinebrook Road which can be drained

June 2, 1914.

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this system—in accordance with the declaration of intention and the resolution adopted by the Council on May 19, 1914; and the Clerk read the notice of public hearing after which it was stated that the Council would hear any one who desired to be heard either for or against the same.

The Clerk read a petition from property owners in the vicinity of Fifth Avenue favoring the construction of the proposed sewer in the above named streets; also protest from Mrs. Julia M. Ash against the construction of the said sewer at the proposed depth, which were on motion ordered received and filed.

The Council was also addressed by Messrs. John Martin and A. E. Dixon who spoke in favor of the proposed construction of said sewer. No one else appearing, the hearing was declared closed.

The Clerk read the following communication from the Assistant Corporation Counsel, which was on motion ordered received and filed:

June 2, 1914.

Honorable Council,
New Rochelle, N. Y.

Gentlemen:

Pursuant to resolution of the Council, I have examined the deed of the Hadert Realty Company to the City conveying as public streets, certain private streets in Fifth Avenue Heights and find the said deed to be in proper form and duly executed.

My attention has been called to the fact that East Street, one of the streets named in deed, is but thirty feet wide. This street borders on City Park and in view of this fact, it might be well for the City to accept it as it is.

Yours very truly,

FRANK X. FALLON,

Assistant Corporation Counsel.

The Clerk read a communication from the Westchester Electric Railroad Company, acknowledging receipt of copy of report of Railroad Commissioners in regard to the construction of switches in this City; also communications from the Department of Public Works in regard to the re-setting and paving of West Main Street from the Soldiers' Monument to the City and also submitting estimates of cost for construction of curb, gutter and sidewalks on Thurston Place, both sides, between Webster Avenue and Fourth Street; for construction of a drain to abate nuisance of stagnant water on Hickory Street, and for construction of concrete curb, brick gutter and four foot concrete sidewalks on Fifth, Sixth, Seventh and Eighth Streets, both sides, from Union to Washington Avenues, which were on motion ordered received and filed.

The Clerk read a communication from the Department of Public Works submitting plan, profile and estimate of cost for construction of sewer in North Terrace, which was on motion ordered received and referred to the Councilmen of the First Ward.

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June 2, 1914.

The Clerk read a communication from the Department of Public Works submitting estimate of cost for macadamizing that part of Calton Crescent and Calton Terrace between Aberfoyle Road and Argyle Avenue for a distance of about 1350 feet, which was on motion ordered received and referred to the Councilmen of the Third Ward.

The Clerk read a communication from the Board of Fire Commissioners requesting the installation of a hydrant on Main Street opposite the Thanhouser Film Company, which was on motion ordered received and referred to the Fire and Water Hydrant Committee.

The Clerk read the following report from the Fire and Water Hydrant Committee, which was on motion of Councilman Stella, seconded by Councilman Koch, ordered received and filed and the recommendation approved and adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistinger, Koch; Scott, Stella.

Nays: None.

June 2, 1914.

To the Honorable The Council,
City of New Rochelle, N. Y.

Gentlemen:

Your Fire and Water Hydrant Committee would recommend the installation of the following hydrants:

Two on Plain Avenue;

Two on Pleasant Avenue;

One on Fifth Avenue, east of Mill Road.

The installation of the above hydrants is to be under the supervision of the Chief of the Fire Department.

Respectfully submitted,

FRANK C. KOCH,

JOHN APPENZELLER,

WILLIAM S. INGLIS,

GEORGE VALENTINE,

HARRY SCOTT

Fire and Water Hydrant Committee

The Clerk read the following report from the Lighting Committee, which was on motion of Councilman Scott, seconded by Councilman Inglis, ordered received and filed and the recommendation approved and adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistinger, Koch, Scott, Stella.

Nays: None.

June 2, 1914.

To the Honorable The Council,
City of New Rochelle, N. Y.

Gentlemen:

Your Lighting Committee would recommend the installation of a

June 2, 1914.

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gas lamp on Avon Road, 450 feet east of North Avenue; the installation of said light to be under the supervision of the Chairman of the Lighting Committee.

Respectfully submitted,

WILLIAM S. INGLIS,

GEORGE VALENTINE,

FRANK C. KOCH,

Lighting Committee.

On motion of Councilman Stella, seconded by Councilman Appenzeller, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistinger, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Railroad Committee has heretofore submitted a report to this Council under date of May 19, 1914, recommending that the Westchester Electric Railroad Company be granted permission to construct the following switches in this City:

1 switch at the corner of Division Street and Railroad Place;

1 switch at the corner of Bridge Street and Railroad Place;

1 "cross-over" switch at Mechanic Street extension and Railroad Place, so as to connect with the tracks now laid on Mechanic Street extension;

AND WHEREAS, an error was made in the location of one of said switches, now, therefore,

BE IT RESOLVED, that said report of the Railroad Committee be corrected to read in part as follows:

1 switch at the corner of Division Street and Railroad Place;

1 switch at the corner of Huguenot and Bridge Streets;

1 "cross-over" switch at Mechanic Street extension and Railroad Place so as to connect with the tracks now laid on Mechanic Street extension;

AND BE IT FURTHER RESOLVED, that the City Clerk forward a copy of the resolution to the Westchester Electric Railroad Company. (Approved, June 3, 1914.)

On motion of Councilman Valentine, seconded by Councilman Inglis, the following resolution was adopted. The roll call showing the following

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistinger, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has submitted to this Council, under date of May 19, 1914, an estimate of cost for the repaving of North Avenue from Beechmont to Paine Avenue, with asphalt pavement, said estimate being approximately \$6,930.00, and the

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June 2, 1914.

assessable portion thereof being approximately \$2,632.00, to be paid by the Westchester Electric Railroad Company, and the balance—\$4,298.00 to be borne by the City at large, now, therefore,

BE IT RESOLVED, that the sum of \$4,298.00 be appropriated from the Council Fund "for any general or local improvement" and the sum of \$2,632.00 be appropriated from the proceeds of the sale of construction certificates to pay for the assessable share of said work and placed to the credit of the Department of Public Works; and

BE IT FURTHER RESOLVED, that said Department of Public Works proceed at once with said work. (Approved, June 3, 1914.)

On motion of Councilman Kisting, seconded by Councilman Koch, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kisting, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has, under date of June 2, 1914, submitted an estimate of cost to this Council for the construction of a drain in Hickory Street to abate nuisance of stagnant water which runs into private property from said street; said estimate being approximately \$250.00; and

WHEREAS, the Board of Health has requested the construction of said drain, now, therefore,

BE IT RESOLVED, that the sum of \$250.00 be appropriated from the Council Fund "for drains" and placed to the credit of the Department of Public Works to pay for said work; and

BE IT FURTHER RESOLVED, that said Department proceed with said work at once. (Approved, June 3, 1914.)

On motion of Councilman Koch, seconded by Councilman Kisting, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kisting, Koch, Scott, Stella.

Nays: None.

BE IT RESOLVED, that the Council hereby declares its intention to construct a sewer in the following named street and avenue, to-wit: **Mount Aetna Place;**

BE IT FURTHER RESOLVED, that the City Clerk advertise the aforesaid local improvement, pursuant to Section 282 of the City Charter, specifying Tuesday, June 16, 1914, as the time within which objections may be filed. (Approved, June 3, 1914.)

On motion of Councilman Valentine, Seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

June 2, 1914.

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Ayes. President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kisting, Koch, Scott, Stella.

Nays: None.

WHEREAS, the City of New Rochelle has heretofore authorized the issuance of construction certificates for various improvements in said City and has also authorized various improvements for the payment of which bonds or construction certificates are authorized to be issued; and

WHEREAS, it is desired to issue bonds, to be known as Municipal Improvement bonds, for the purpose of paying the City's share of the cost of such improvements, including such part of such construction certificates as represent the City's share of the improvements for which the same were issued, now, therefore,

BE IT RESOLVED, that bonds be issued in the name, on behalf and upon the credit of the City of New Rochelle to the amount of NINETY THOUSAND TWO HUNDRED (\$90,200.00) DOLLARS; said bonds to be dated July 1, 1914, and to bear interest at the rate of four and one-half (4½%) per centum per annum, payable semi-annually on the first days of May and November in each year; said bonds shall be numbered from one to . . . , both inclusive, and shall be for such denomination or sum each as the purchaser thereof may desire, and shall be known and designed as "MUNICIPAL IMPROVEMENT BONDS, Series A. of 1914." The principal and interest shall be payable at the office of the Treasurer of the City of New Rochelle; said bonds shall be in such form as the Comptroller shall hereafter prescribe and shall contain a recital that they are issued pursuant to and in conformity with the provisions of Chapter 559 of the Laws of 1910, and that the proceeds thereof shall be used as hereinafter provided. The principal of said bonds shall be payable as follows: \$10,000.00 on the 1st day of May, 1916, and \$10,000.000 on the 1st day of May of each and every year thereafter to and including the 1st day of May, 1923, and \$10,200.00 on the 1st day of May, 1924; and

BE IT FURTHER RESOLVED, that there be levied and raised by the Council of said City, by a tax, a sum sufficient to pay the interest and principal of the said bonds as the same shall become due; and

BE IT FURTHER RESOLVED, that the Comptroller be and he is hereby authorized and directed to proceed with the sale of said bonds as provided by the present City Charter; and

BE IT FURTHER RESOLVED, that the proceeds of said bonds be applied to the purposes aforesaid, including the payment of the City's share of the following improvements and the redemption of construction certificates issued therefor, to-wit:

In redeeming the unpaid balance of the City's share of Construction Certificates Nos. 57 and 58, issued for

June 2, 1914.

the construction of the Huguenot Park drain, maturing in 1914 amounting to.....\$4,495.00
 In redeeming Construction Certificates Nos. 59 to 86, both inclusive, maturing in 1914, amounting to.... 55,355.00
 In paying the cost of paving lower Main Street, with brick, from the Soldiers' Monument to the Pelham line, excepting that part between the trolley tracks and two feet outside of same, amounting to..... 30,350.00

Total,.....\$90,200.00

BE IT FURTHER RESOLVED, that no part of such proceeds shall be applied to current operating expenses, repairs or supplies, for the City's share of the cost of curbs, gutters or sidewalks (Approved, June 3, 1914.)

On motion of Councilman Inglis, seconded by Councilman Valentine the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

BE IT RESOLVED, that the Council hereby declares its intention to construct natural stone gutter on the following named street and avenue, to-wit: **Otsego Avenue, both sides, full length;**

BE IT FURTHER RESOLVED, that the City Clerk advertise the aforesaid local improvement, pursuant to Section 282 of the City Charter, specifying June 16, 1914, as the time within which objections may be filed, and

BE IT FURTHER RESOLVED, that the Department of Public Works be directed to submit estimated cost to the Council for the above mentioned work at a meeting to be held on June 16, 1914. (Approved, June 3, 1914.)

On motion of Councilman Stella, seconded by Councilman Appenzeller, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has submitted to this Council an estimate of cost for grading Seventh and Eighth Streets from Union to Washington Avenues; said estimate being approximately \$950.00, it being necessary to do said work before the proposed construction of curb, gutter, and sidewalk on these streets is commenced now, therefore,

BE IT RESOLVED, that the sum of \$950.00 be appropriated from the Council Fund "for any general or local improvement" and placed

June 2, 1914.

the credit of the Department of Public Works to pay for said work; and BE IT FURTHER RESOLVED, that said Department proceed at once with said work. (Approved, June 3, 1914.)

On motion of Councilman Appenzeller, seconded by Councilman Stella, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has submitted to this Council at a meeting held on June 2, 1914, an estimate of cost for the construction of concrete curb, brick gutter and four foot concrete sidewalks on Fifth, Sixth, Seventh and Eighth Streets, both sides, from Union to Washington Avenues; said estimate being approximately \$4,325.00, and the assessable portion being approximately \$3,839.00, now therefore,

BE IT RESOLVED, that the sum of \$3,839.00 be appropriated from the sale of sidewalk certificates and the sum of \$486.00 be appropriated from the Council Fund "for any general or local improvement" and placed to the credit of the Department of Public Works to pay for said work; and

BE IT FURTHER RESOLVED, that the Department of Public Works proceed at once with said work. (Approved, June 3, 1914.)

On motion of Councilman Appenzeller, seconded by Councilman Stella, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has submitted to this Council at a meeting held on May 19, 1914, an estimate of cost for the construction of a sewer in Warren Street extension from the now existing sewer on Guion Street to the intersection of Guion and Warren Street extension, thence through Warren Street for a short distance, as per plan submitted by said Department, at an approximate cost of \$1,000.00, and the assessable share being approximately \$275.00, now, therefore,

BE IT RESOLVED, that the sum of \$275.00 be appropriated from the proceeds of the sale of sewer certificates to be redeemed by an issue of bonds as provided in the City Charter, and the sum of \$725.00 be appropriated from the Council Fund "for any general or local improvement" and placed to the credit of the Department of Public Works to pay for said work; and

BE IT FURTHER RESOLVED, that the Department of Public Works proceed at once with said work. (Approved, June 3, 1914.)

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June 2, 1914.

On motion of Councilman Stella, seconded by Councilman Appenzeller, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Public Works has submitted to this Council at a meeting held on June 2, 1914, an estimate of cost for the construction of curb, gutter and flag sidewalks on that part of Thurston Place, both sides, between Webster Avenue and Fourth Street where sidewalk is not now laid; said estimate being approximately \$2,200.00 and the assessable portion being approximately \$2,000.00, now therefore,

BE IT RESOLVED, that the sum of \$2,000.00 be appropriated from the proceeds of the sale of sidewalk certificates and the sum of \$200.00 from the Council Fund "for any general or local improvement" and placed to the credit of the Department of Public Works to pay for said work; and

BE IT FURTHER RESOLVED, that said Department of Public Works proceed at once with said work. (Not approved.)

On motion of Councilman Stella, seconded by Councilman Appenzeller, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

BE IT RESOLVED, that the Department of Public Works prepare and submit to this Council—estimate of cost for re-surfacing Washington Avenue from Grand to Charles Streets. (Approved, June 3, 1914.)

On motion of Councilman Valentine, seconded by Councilman Inglis, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, the Department of Law, by communication dated June 2, 1914, has advised this Council that Weeks Place, Pinebrook Road, Crest View Street, Chatsworth Place and Ashland Street (Fifth Avenue Heights) are public streets and that the City may accept them as public streets if it so desires; and

WHEREAS, the Department of Public Works has, by communication dated May 19, 1914, advised this Council that the said streets have been properly monumented and are fifty feet in width, now, therefore,

BE IT RESOLVED, that Weeks Place, Pinebrook Road, Crest

June 2, 1914.

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View Street, Chatsworth Place and Ashland Street (Fifth Avenue Heights) be and the same are hereby accepted as public streets. (Approved, June 3, 1914.)

The Clerk read the following resolution, which was on motion of Councilman Scott, seconded by Councilman Huntington, laid on the table. The roll call showing the following vote:

Ayes: Councilmen Appenzeller, Huntington, Kistingner, Koch, Stella, Scott.

Nays: President Valentine; Councilman Inglis.

WHEREAS, the Department of Public Works has submitted to this Council, under date of May 19, 1914, an estimate of cost for the re-paving of North Avenue between the N. Y., N. H. & H. R. R. bridge and Fifth Avenue, with block asphalt; said estimate being approximately \$17,900.00, and the assessable portion thereof being approximately \$7,400.00, to be paid by the Westchester Electric Railroad Company, and the balance, \$10,500.00 to be borne by the City at large, now, therefore,

BE IT RESOLVED, that the sum of \$10,500.00 be appropriated from the Council Fund "for any general or local improvement", and the sum of \$7,400.00 be appropriated from the proceeds of the sale of construction certificates to pay for the assessable share of said work and placed to the credit of the Department of Public Works; and

BE IT FURTHER RESOLVED, that said Department of Public Works proceed at once with said work.

On motion of Councilman Scott, the Clerk was instructed to submit to the Council at the next meeting a statement of the appropriations made for this year from the Council Fund "for any general or local improvement."

On motion of Councilman Huntington, seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

RESOLVED, that the City Clerk procure an estimate for a suitable, fire-proof vault to be built in the City Hall for the preservation of City records. (Approved, June 3, 1914.)

On motion of Councilman Valentine, seconded by Councilman Inglis, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

BE IT RESOLVED, that the Department of Public Works prepare and submit to this Council—estimate of cost for construction of curb,

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June 2, 1914.

gutter and flag sidewalks on the unfinished portion of Summit Avenue (Approved, June 3, 1914.)

On motion of Councilman Valentine, seconded by Councilman Inglis, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

BE IT RESOLVED, that the Department of Public Works prepare and submit to this Council—estimate of cost for construction of concrete curb, concrete sidewalk (4 ft.) and brick gutter on Clove Road between Chauncey and Mayflower Avenues. (Approved, June 3, 1914.)

The Clerk read the following resolution, which was on motion of Councilman Scott, seconded by Councilman Huntington, laid on the table. The roll call showing the following vote:

Ayes: Councilmen Appenzeller, Huntington, Kistingner, Stella, Scott.

Nays: President Valentine; Councilmen Inglis, Koch.

WHEREAS, the Department of Public Works has submitted to this Council, under date of May 19, 1914, an estimate of cost for the resurfacing of North Avenue from Fifth to Mayflower Avenues, with bitulithic pavement; said estimate being approximately \$8,120.00 and the assessable portion thereof being approximately \$4,060.00, to be paid by the Westchester Electric Railroad Company, and the balance \$4,060.00 to be borne by the City at large, now, therefore,

BE IT RESOLVED, that the sum of \$4,060.00 be appropriated from the Council Fund "for any general or local improvement" and the sum of \$4,060.00 be appropriated from the proceeds of the sale of construction certificates to pay for the assessable share of said work and placed to the credit of the Department of Public Works; and

BE IT FURTHER RESOLVED, that said Department of Public Works proceed at once with said work.

On motion of Councilman Huntington, seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Inglis, Kistingner, Koch, Scott, Stella.

Nays: None.

WHEREAS, a resolution was duly adopted at a meeting of this Council held April 7, 1914, as follows:

"Be it Resolved, that the Board of Estimate and Apportionment be requested to issue construction certificates to defray the cost of resetting curb and the paving of lower Main Street from the Soldiers' Monument to the Pelham line, with brick, excepting that part between the tracks of the trolley company and two feet outside the same, as per estimate of the Commissioner of Public Works,

June 2, 1914.

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"April 6, 1914, amounting to \$34,000.00 to defray the cost of said work; and

"Be it further Resolved, that the proceeds of the sale of said certificates be placed to the credit of the Department of Public Works. (Approved April 15, 1914.)" now, therefore,

BE IT RESOLVED, that said resolution be and the same hereby is amended by striking therefrom the following words, namely: "resetting curb and" which are the 22nd, 23rd and 24th words in said resolution. (Approved, June 3, 1914.)

On motion of Councilman Huntington, seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

Ayes: Councilman Appenzeller, Huntington, Kistingner, Koch, Scott, Stella.

Nays: President Valentine; Councilman Inglis.

WHEREAS, the Department of Public Works has submitted an estimate of the cost of resetting curb and furnishing and setting new curb on lower Main Street from the Soldiers' Monument to the Pelham line, said estimate being approximately \$3,650.00, now, therefore,

BE IT RESOLVED, that the sum of \$3,650.00 be appropriated from the Council Fund "for any general or local improvement" and placed to the credit of the Department of Public Works to pay for said work. (Approved, June 3, 1914.)

On motion of Councilman Valentine, seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Kistingner, Koch, Scott, Stella.

Nays: None.

RESOLVED, that the City Comptroller be authorized to retain Messrs. Caldwell, Masslich & Reed, of No. 111 Broadway, New York City, for the purpose of supervising the issuance of bonds by the City and rendering an opinion upon the legality thereof. (Approved, June 3, 1914.)

On motion of Councilman Huntington, seconded by Councilman Scott, the following resolution was adopted. The roll call showing the following vote:

Ayes: President Valentine; Councilmen Appenzeller, Huntington, Kistingner, Koch, Scott, Stella.

Nays: None.

RESOLVED, that the Commissioner of Public Works submit an estimate of cost for construction of a concrete sidewalk (full width) a distance of about 125 feet in length in front of the new public library building on Main Street. (Approved, June 3, 1914.)

On motion of Councilman Koch, seconded by Councilman Inglis, the

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June 2, 1914.

Mayor was requested to appoint a committee of ten citizens to act in conjunction with the Fire and Water Hydrant Committee in the matter of the request of the New Rochelle Water Company that the City of New Rochelle obtain permission to tap the New York Aqueduct for future water supply; said committee to report back to the Council. Motion carried and so ordered.

The Clerk read a communication from Hans Sonner in regard to furnishing series of band concerts in the various wards, which was on motion ordered received and referred to the Department of Parks, Docks and Harbors.

On motion of Councilman Stella, the privilege of the floor was extended to Charles E. Woodruff, Health Officer of this City, who urged the Council to make speedy provision for a contagious hospital so that the City may comply with the new State law which requires the complete isolation of a number of diseases. He opposed the location of such a hospital on the outskirts of the City on account of the great expense to equip the same.

Councilman Stella spoke in favor of the purchasing of the property of the Baptist Church as a site for a contagious hospital.

On motion the Council adjourned.



City Clerk

Exhibit "20"

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER

-----X

CITY OF NEW ROCHELLE,

Plaintiff,

Index No.: 54190

-vs-

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA ROCCA
& SONS, INC., a/k/a. F. LA ROCCA & SONS, INC. and
FMLR REALTY MANAGEMENT LLC,

Defendants.

-----X

Tuesday

February 25, 2020

11:00 a.m.

EXAMINATION BEFORE TRIAL of PAUL VACCA, the
Witness, held at the offices of WILSON ELSER
MOSKOWITZ EDELMAN, 1133 Westchester Avenue, White
Plains, New York, before Robyn Harrell, RPR, a
Shorthand Reporter and Notary Public of the State
of New York.

Page 2

1 APPEARANCES:
 2
 3 WILSON ELSER MOSKOWITZ EDELMAN
 4 Attorneys for Plaintiff
 5 1133 Westchester Avenue, Suite N-100
 6 West Harrison, NY 10604
 7 BY: SCOTT I. MENDELSON, ESQ.
 8 PETER A. MEISELS, ESQ.
 9
 10
 11 SILVERBERG ZALANTIS LLC
 12 Attorneys for Defendant
 13 120 White Plains Road, Suite, 305
 14 Tarrytown, NY 10591
 15 BY: KATHERINE ZALANTIS, ESQ.
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1 PAUL VACCA,
 2 having been first duly sworn by
 3 the Notary Public, was examined
 4 and testified as follows:
 5 EXAMINATION BY
 6 MS. ZALANTIS:
 7 Q. State your name for the record, please.
 8 A. Paul Vacca.
 9 Q. State your address for the record,
 10 please.
 11 A. 515 North Avenue, New Rochelle, New York
 12 10801.
 13 MR. MENDELSON: Usual stips and we
 14 reserve the right to amend the transcript
 15 as well.
 16 BY MS. ZALANTIS:
 17 Q. Good morning. My name is Kathy Zalantis.
 18 I represent the defendants in this action who are
 19 Flavio La Rocca, Maria La Rocca, Flavio La Rocca
 20 & Sons, Inc. a/k/a F. La Rocca & Sons, Inc., and
 21 FMLR Reality Management LLC.
 22 I'm going to be asking you some questions
 23 today and your answers are made under oath just
 24 like as if you were in court. Do you understand?
 25 A. I do.

Page 3

1 STIPULATIONS
 2
 3
 4 IT IS HEREBY STIPULATED AND AGREED
 5 by and between the attorneys for the respective
 6 parties herein, that filing and sealing be and
 7 the same are hereby waived
 8 IT IS FURTHER STIPULATED AND AGREED that
 9 all objections, except as to the form of the
 10 question, shall be reserved to the time of the
 11 trial.
 12 IT IS FURTHER STIPULATED AND AGREED that
 13 the within deposition may be sworn to and signed
 14 before any officer authorized to administer an
 15 oath, with the same force and effect as if signed
 16 and sworn to before the Court.
 17 *****
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Page 5

1 Q. Have you ever been deposed before?
 2 A. I have.
 3 Q. How many times?
 4 A. More than a few.
 5 Q. All right. I'm just going to go over
 6 quickly some ground rules you may be familiar
 7 with. I ask that you keep your answers audible
 8 and that you answer not with nods or grunts
 9 because the court reporter can't take it down. I
 10 also ask that even if you know where I'm going
 11 with the question, that you wait until I finish
 12 asking the question before you respond. This way
 13 we're not both speaking over each other.
 14 And I also ask that if you want to take a
 15 break, that's completely fine, that if there's a
 16 question pending, that you answer the question
 17 and then you can go and take a break. And I will
 18 assume that if you answer a question, that you
 19 understood the question. Is that clear?
 20 A. Yes.
 21 Q. And I don't mean to ask any offense by
 22 this next question, but I just have to ask. Have
 23 you had any medication or substances or
 24 medication that's would impair your ability to
 25 testify here today?

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1 A. No.
 2 Q. Can you briefly describe your education?
 3 A. I have a bachelor of science
 4 architectural technologies from New York
 5 Institute of technology.
 6 Q. Are you currently employed?
 7 A. Yes.
 8 Q. What is the nature of your employment?
 9 A. I am the deputy commissioner of
 10 development and building official to the City of
 11 New Rochelle.
 12 Q. And how long have you maintained that
 13 position?
 14 A. 2008.
 15 Q. And prior to 2008, did you have a
 16 position with the City of New Rochelle?
 17 A. Yes.
 18 Q. What was you the that position?
 19 A. I was the plan examiner.
 20 Q. How long were you plan examiner?
 21 A. About six years.
 22 Q. Prior to being a plan examiner, did you
 23 have any other position with City of New
 24 Rochelle?
 25 A. Yes. I was senior building inspector.

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1 BY MS. ZALANTIS:
 2 Q. Which one?
 3 A. I attend planning and zoning hearings.
 4 Q. How about in your capacity as a building
 5 inspector or senior building inspector, did you
 6 attend any land use board hearings?
 7 A. No.
 8 MR. MENDELSON: Objection as to
 9 form.
 10 BY MS. ZALANTIS:
 11 Q. In your capacity in any position with the
 12 City of New Rochelle, have you attended any land
 13 use board meetings other than planning board
 14 meetings?
 15 MR. MENDELSON: Objection as to
 16 form.
 17 A. I attend zoning board hearings as well.
 18 BY MS. ZALANTIS:
 19 Q. In what capacity do you attend those
 20 hearings?
 21 A. I'm building board official.
 22 Q. Do you regularly attend the zoning board
 23 meetings?
 24 A. I do.
 25 Q. And do you regularly attend the planning

Page 7

1 Q. When was that?
 2 A. 2002 to 2006 about.
 3 Q. Okay.
 4 A. And part of that I was building inspector
 5 from 1995. Prior to that I was an assistant
 6 construction engineer, Department of Public Works
 7 for a few months and part of that I was engineer
 8 assistant with the Department of Public Works.
 9 So I began my career in 1990 and I'm still there.
 10 Q. So you've been at New Rochelle the whole
 11 time after completing your education?
 12 A. I completed my education in 2002.
 13 Q. Okay. So you actually were at the New
 14 Rochelle before you got your degree, your BS
 15 degree?
 16 A. Correct.
 17 Q. And so your current position as deputy
 18 commissioner/building official, is that an
 19 appointed position?
 20 A. Yes.
 21 Q. And in your capacity as building
 22 inspector or deputy commissioner, do you attend
 23 any land use board meetings?
 24 MR. MENDELSON: Object to the form.
 25 A. I do.

Page 9

1 board meetings.
 2 A. Yes, ma'am.
 3 Q. And do you meet with potential applicants
 4 about new projects before the land use
 5 application is filed?
 6 A. Occasionally.
 7 Q. And is there a formal process for that in
 8 the City of New Rochelle?
 9 A. You mean -- there is something written in
 10 the code with respect to meeting with folks
 11 before you submit an application.
 12 Q. In your current capacity as a building
 13 commissioner/building inspector, do you ever have
 14 an opportunity to review plans?
 15 A. Yes.
 16 Q. How often would you say you review plans?
 17 A. Regularly.
 18 Q. What type of plans?
 19 A. Site plans, floor plans, elevations, set
 20 of drawings.
 21 Q. How about construction plans?
 22 A. Sure.
 23 Q. As part of your employment, current
 24 employment, are you ever called upon to review
 25 surveys?

1 A. Yes.

2 Q. And are you familiar with how to read a

3 survey?

4 A. Yes.

5 Q. And as building commissioner or in your

6 capacity as building inspector, are you ever

7 called upon to review documents concerning

8 ownership of real estate property?

9 A. I don't really understand the question.

10 Can you --

11 Q. Do you ever have any opportunity to

12 review deeds?

13 A. I've read deeds, but they don't file

14 deeds with me with respect to ownership.

15 Q. When somebody seeks a building permit in

16 the City of New Rochelle, are they required to

17 establish proof of ownership in some way?

18 MR. MENDELSON: Objection as to

19 form.

20 A. They are required to fill out a building

21 permit application with an affidavit on it if

22 they are the owner of it or not. If the land has

23 recently changed hands and it is not updated in

24 the county system, then we will ask them for a

25 copy of the deed to ensure that they are, in

1 fact, the owner.

2 BY MS. ZALANTIS:

3 Q. So would it be correct that the building

4 department would confirm ownership through the

5 county system?

6 MR. MENDELSON: Objection as to

7 form.

8 A. We don't -- it's really automated through

9 the assessor's office so we don't really do that

10 confirmation when a deed is, to the best of my

11 knowledge, when a deed is filed. The County RPS

12 updates the assessor's records and the

13 assessor's records update our portal, if you

14 will.

15 BY MS. ZALANTIS:

16 Q. So when a building permit application is

17 filed and somebody alleges that they are the

18 owner of the property, is that information

19 confirmed in any way by the building department?

20 A. It's confirmed by the affidavit they sign

21 on the application.

22 Q. What, if anything, did you do to prepare

23 for this deposition today?

24 A. I met with my counsel a couple times.

25 Q. And was anyone else present during this

1 meeting?

2 A. No.

3 Q. Did you review any documents in

4 preparation for this deposition?

5 A. A few documents.

6 Q. Prior to today, when did you learn about

7 this dispute that's the basis of this litigation?

8 MR. MENDELSON: Objection as to

9 form.

10 A. I can't really say.

11 BY MS. ZALANTIS:

12 Q. Are you familiar with my client's

13 property located at 436 Fifth Avenue?

14 A. Yes.

15 (DEFENDANT'S EXHIBIT A, SUMMONS;

16 (DEFENDANT'S EXHIBIT 1A, DOCUMENT,

17 WAS MARKED FOR IDENTIFICATION, AS OF THIS

18 DATE.)

19 Q. I'm showing you what's been marked as

20 Defendant's A and Defendant's A1. If you could

21 just look at Defendant's A first.

22 A. Okay.

23 Q. Thank you. Do you know what this

24 document is?

25 A. It's a criminal summons, or a summons.

1 Q. Have you ever seen this document before

2 today?

3 A. I have.

4 Q. Okay.

5 MR. MENDELSON: Off the record.

6 (Discussion held off the record.)

7 MR. MENDELSON: We are looking at

8 what's been marked as Defendant's A,

9 there's some handwriting on 1 of 12, says

10 657 Potter Avenue, New Rochelle.

11 I understand from defense counsel

12 that we are stipulating that that is not

13 part of the exhibit, meaning that I don't

14 know where that handwriting came from and

15 certainly wasn't filed with NYSTAT that

16 way.

17 MS. ZALANTIS: Right. I believe

18 this was the version of the stipulation

19 that was potentially served on my client

20 so it might have been handwriting by the

21 process server. I'm not sure. Okay.

22 Anyway, we'll stipulate that is not part

23 of the documentation that was filed by

24 your counsel.

25 BY MS. ZALANTIS:

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1 Q. If you could turn to the verification
2 page, page 12 of 12, and do you see a reference
3 to an Eliza N. Shabell (phonetic)?
4 A. Yes.
5 Q. Do you know who that person is?
6 A. No.
7 Q. Prior to the City filing this complaint
8 on April 1st of 2016, did you review the
9 allegations in the complaint?
10 A. No.
11 Q. Do you know who in the City did?
12 A. I don't know.
13 Q. Okay. So if you could turn to Exhibit 3.
14 MR. MENDELSON: What has been
15 marked A and what is A1?
16 MS. ZALANTIS: I'll get there.
17 MR. MENDELSON: Okay A1 is not part
18 of summons.
19 MS. ZALANTIS: What I gave you -- no
20 for the record A1 are color copies of
21 Exhibit 1 which you have in black and
22 white.
23 BY MS. ZALANTIS:
24 Q. Okay. Sorry. Turning to Exhibit 3 which
25 is June 22, 2009 letter. Is that your signature

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1 BY MS. ZALANTIS:
2 Q. After this letter was sent on June 22,
3 2009, or thereafter, did you have an opportunity
4 to discuss any of the issues raised in this
5 letter with any of the defendants?
6 A. I don't recall.
7 Q. And after this letter was sent on June
8 22, 2009, or thereafter, did you have an
9 opportunity to visit my client's property at 436
10 Fifth Avenue?
11 A. You got -- you mean between 2009 and
12 today?
13 Q. Yes.
14 A. I've been by the property, yes.
15 Q. You mean driving by the property or --
16 A. Uh-huh, yes, ma'am.
17 Q. Did you have any meetings with any of the
18 defendants at the property 436 Fifth Avenue
19 between 6/22/2009 and today?
20 A. I don't remember.
21 Q. If you could take a look at Exhibit 4.
22 It's a November 19, 2015 letter from Alexander
23 Sturgess. Do you know who that person is?
24 A. Al, Alexander Sturgess, was the
25 Commissioner of Public Works?

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1 that appears on this letter?
2 A. Yes.
3 Q. And did you prepare this letter?
4 A. I did.
5 Q. And you cite to City code Section 281?
6 MR. MENDELSON: Objection as to
7 form.
8 BY MS. ZALANTIS:
9 Q. Well, can you read the second paragraph
10 of your letter?
11 A. "Consistent with the provisions of 281 of
12 the code of the City of New Rochelle, you were
13 ordered to remove the encroachment within 30
14 days. You may be" --
15 Q. That's fine. Are you referencing in your
16 letter City Code Section 281?
17 A. Yes.
18 MR. MENDELSON: Objection to form.
19 BY MS. ZALANTIS:
20 Q. Can you explain the relevancy of this
21 code provision referenced in your letter?
22 MR. MENDELSON: Objection as to
23 form.
24 A. Not without reading the code section, so
25 no.

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1 Q. Is he currently the Commissioner of
2 Public Works?
3 A. No.
4 Q. When did he cease being the Commissioner
5 of Public Works?
6 A. I don't know.
7 Q. Do you know when -- is he currently
8 employed by the City of New Rochelle?
9 A. No, ma'am.
10 Q. Okay. If you could turn to paragraph 10
11 of the complaint which is on page 4 of 12, and if
12 you could just read that paragraph to yourself.
13 A. Okay.
14 Q. Are you personally familiar with the area
15 referred to in the complaint and defined as
16 quote, "The Parcel"?
17 A. Yes.
18 Q. And have you personally observed this
19 area?
20 A. Yes.
21 Q. Okay. How many times approximately?
22 A. It's hard to say.
23 Q. Can you describe where it's located?
24 A. It's located adjacent to East Place -- I
25 want to get the direction right. I'm going to

1 say if you're traveling down East Place going
 2 towards the north end of New Rochelle, it is just
 3 past the Skatepark. There's a little path that
 4 walks down into the park, and this area is right
 5 past there (indicating).
 6 (DEFENDANT'S EXHIBIT B, SURVEY, WAS
 7 MARKED FOR IDENTIFICATION, AS OF THIS
 8 DATE.)
 9 BY MS. ZALANTIS:
 10 Q. Showing you what's been marked as
 11 Defendant's Exhibit B.
 12 MR. MENDELSON: Thank you. Do you
 13 recognize this document?
 14 THE WITNESS: Yes.
 15 BY MS. ZALANTIS:
 16 Q. And what is it?
 17 A. It is a survey.
 18 Q. And does this survey include the area
 19 that's referenced in the complaint, paragraph 10,
 20 as the parcel?
 21 A. I believe it does.
 22 Q. Okay. Would you be able to highlight for
 23 me the approximate location of the parcel?
 24 MR. MENDELSON: How do you want him
 25 to highlight it?

1 MS. ZALANTIS: Pink highlighter.
 2 MR. MENDELSON: Do you want him to
 3 draw around it or put an X approximately
 4 where it is?
 5 BY MS. ZALANTIS:
 6 Q. If you could just highlight the whole
 7 entire area where you believe it is. Color it
 8 in.
 9 A. Want me to color it?
 10 Q. That's fine.
 11 A. Okay.
 12 Q. So in May of 2015, did you have an
 13 opportunity to visit the parcel or observe the
 14 parcel in May of 2015?
 15 A. I did.
 16 Q. Okay. In or about May of 2015, was there
 17 any way that a person would know that this
 18 parcel, the parcel was owned by the City of New
 19 Rochelle?
 20 MR. MENDELSON: Objection as to
 21 form.
 22 A. I don't know.
 23 BY MS. ZALANTIS:
 24 Q. Did you observe any signs providing that
 25 this property was owned by New Rochelle?

1 A. Did I approve any signs?
 2 Q. Yes.
 3 A. Not that I can recall.
 4 MR. MENDELSON: Are you referring
 5 to like deeds and things that were filed?
 6 MS. ZALANTIS: No. I'm asking about
 7 signs, signage.
 8 BY MS. ZALANTIS:
 9 Q. Did you observe anything that would
 10 indicate that the parcel was owned by the City of
 11 New Rochelle?
 12 A. I -- I -- it's hard to see, I know
 13 there's a sign here (indicating).
 14 MR. MENDELSON: I'm going object --
 15 BY MS. ZALANTIS:
 16 Q. What are you referring to?
 17 MR. MENDELSON: -- to any way
 18 anybody would know. I don't think it's
 19 clear. Are we referring to public
 20 records?
 21 MS. ZALANTIS: I'm not asking about
 22 public records and I note your objection.
 23 BY MS. ZALANTIS:
 24 Q. You can answer.
 25 A. The parcel as identified on this survey

1 is this entire parcel here (indicating). That's
 2 one piece of property. And there's a sign right
 3 here (indicating) indicating that this is the
 4 Skatepark. And I believe somewhere on that sign
 5 it says "City of New Rochelle."
 6 Q. Okay. So going back to paragraph 10, if
 7 you can, of Defendant's A. You highlighted two
 8 areas in pink on the survey, correct?
 9 A. Correct.
 10 Q. What is the area that is being referred
 11 to in paragraph 10?
 12 A. "At all times pertinent hereto, the City
 13 has been presently -- has been and presently is
 14 the owner of a parcel of property located in the
 15 City of New Rochelle, County of Westchester
 16 considered an undeveloped land between East
 17 Street and Flowers Park." So to answer your
 18 question, it's a portion of this larger parcel
 19 that I highlighted (indicating).
 20 Q. So the outline in pink?
 21 A. Okay, yes.
 22 Q. Okay. Would it be fair to say that's
 23 representing Flowers Park or a portion of Flowers
 24 Park?
 25 A. It's adjacent to Flowers Park. I don't

Page 22

1 know if it was formerly merged with Flowers Park.
2 Flowers Park is to the east.

3 Q. So that outline, however, does not
4 represent what's being referred to in paragraph
5 10; is that correct?

6 MR. MENDELSON: Objection as to
7 form.

8 A. No. I think it does represent what's
9 being referred to in paragraph 10.

10 BY MS. ZALANTIS:

11 Q. Okay. So you originally said what is
12 being referred to in paragraph 10 was the circle.
13 Can you explain now what you're saying is
14 something different, that it's the outline in
15 pink?

16 MR. MENDELSON: Objection as to
17 form.

18 A. This is all one parcel (indicating), what
19 I highlighted around the outline, and the
20 underdeveloped land. This is developed
21 {indicating). So the underdeveloped portion we
22 are talking about is the smaller circle within
23 the larger area that I highlighted.

24 BY MS. ZALANTIS:

25 Q. So the parcel, what's being defined in

Page 23

1 paragraph 10, is the smaller circle within the
2 larger area that you highlighted; is that
3 correct?

4 A. I'm not sure. I believe that the
5 underdeveloped portion is here in this area
6 (indicating).

7 Q. "Here," you are referring to the circle?

8 A. This circle or oval, whatever you want to
9 refer to it as. And this larger polygon that I
10 drew around the entire parcel, this is all one
11 block owned by the City.

12 Q. Okay. Thank you for that, "polygon,"
13 that word. I will try to remember.

14 A. It's not a square. It's not a circle.
15 So that's what I'm going to call it, a polygon.

16 Q. So can you take a look for me at
17 paragraph 15 and read that entire paragraph to
18 yourself.

19 A. Okay (witness complied).

20 Q. Did you personally observe any of the
21 activities or actions discussed in paragraph 15?

22 A. No.

23 Q. Do you know whether anyone from the City
24 personally observed any of the activities or
25 actions discussed in paragraph 15?

Page 24

1 A. I don't.

2 MR. MENDELSON: Objection as to
3 form.

4 A. I don't.

5 BY MS. ZALANTIS:

6 Q. What, to your understanding, is the basis
7 for the allegations in paragraph 15?

8 MR. MENDELSON: Objection. The
9 witness has already testified that he
10 didn't review his prior writing. I don't
11 know how he can answer what the basis is
12 based on his previous answer.

13 BY MS. ZALANTIS:

14 Q. You can answer.

15 A. Just ask the question one more time so I
16 answer properly.

17 Q. What is your understanding, if you have
18 an understanding, for the basis for the
19 allegations in paragraph 15?

20 MR. MENDELSON: Objection.

21 A. I don't know.

22 BY MS. ZALANTIS:

23 Q. Do you see the reference to "potentially
24 contaminated materials" in paragraph 15?

25 A. Yes.

Page 25

1 Q. Do you know what that refers to?

2 A. No.

3 Q. Can you turn to the pictures attached as
4 Exhibit 1, and I provided you in A1 color
5 photographs that might be easier for you to look
6 at of the pictures.

7 Starting with the first picture that has
8 the words "Flavio La Rocca" on it. Did you take
9 this picture?

10 A. No.

11 Q. Do you know who did?

12 A. No.

13 Q. How about the second picture?

14 A. I did not take that picture.

15 Q. Turning back to the first picture, do you
16 know what the first picture depicts?

17 A. Looks like a couple of gentlemen are
18 standing in the East Place and there's a small
19 dump truck right near them and on the right-hand
20 part of the picture, there's a pickup truck with
21 a small trailer being pulled behind it, and two
22 laborers. Looks like they are spreading out some
23 material.

24 Q. So the second picture you didn't take
25 that picture either, correct?

1 A. No.
 2 Q. And do you know what the materials and
 3 piles in the background are?
 4 A. They appear to be some kind of wood
 5 chippings.
 6 Q. And the third picture, if you can turn to
 7 that, did you take that picture?
 8 A. No, ma'am.
 9 Q. And the forth picture, did you take that
 10 picture?
 11 A. No, ma'am.
 12 Q. And the fifth picture --
 13 A. No, ma'am.
 14 Q. -- you didn't take that?
 15 And the sixth picture, did you take that?
 16 A. I did not.
 17 Q. Okay. Were you present in or around the
 18 parcel on May 15, 2015?
 19 A. I was.
 20 Q. I'm sorry, May 16, 2015?
 21 A. I was in the park that weekend.
 22 Q. Okay.
 23 A. At soccer practice.
 24 Q. When you say you were in the park at
 25 soccer practice you are speaking about Flowers

1 that appeared to have been prepped with some
 2 subbase material.
 3 Q. What do you mean by "prepped"?
 4 A. It looked like somebody had put down some
 5 subbase.
 6 Q. What's subbase?
 7 A. It's usually a granular material.
 8 Sometimes it's gravel. Sometimes it's a mixture
 9 of gravel, stone, sand. So it's like a subbase
 10 material for our parking area.
 11 MR. MENDELSON: Where specifically
 12 are we talking about?
 13 I'm referring to Kathy with the
 14 question. You asked what you observed,
 15 and I'm asking where specifically.
 16 MS. ZALANTIS: I'm asking about the
 17 oval area.
 18 BY MS. ZALANTIS:
 19 Q. You understood that you are responding
 20 with respect to that?
 21 A. To this area (indicating).
 22 Q. The oval area?
 23 A. Yes. Yes, ma'am.
 24 Q. What else did you observe, if anything,
 25 with respect to the oval area?

1 Park?
 2 A. Yes.
 3 Q. So specifically on May 16, were you in
 4 the oval near or in the oval-shaped area?
 5 A. Yes, I was.
 6 Q. And did you observe that specific
 7 oval-shaped area?
 8 A. Yes.
 9 Q. And where were you standing when you
 10 observed that area?
 11 A. Well, I walked up this path (indicating)
 12 from the park so I could observe it from any
 13 particular angle.
 14 MR. MENDELSON: Paul, do you know
 15 whether it was May 15 or 16, because I
 16 don't think it's clear on the record?
 17 THE WITNESS: I'm pretty sure it was
 18 a Saturday. If the 15th was a Saturday,
 19 I was there on Saturday. If it was the
 20 16th, I was there on that Saturday. I
 21 was there twice that day.
 22 BY MS. ZALANTIS:
 23 Q. Okay. And can you describe what you
 24 observed that day?
 25 A. What I observed -- I observed an area

1 A. Just that it had been prepped.
 2 (DEFENDANT'S EXHIBIT C, PHOTOGRAPHS,
 3 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 4 DATE.)
 5 Q. Showing you what has been marked as
 6 Defendant's C which is a series of pictures, five
 7 pages.
 8 A. Okay.
 9 Q. Do you recognize what's depicted in the
 10 series of pictures that are marked as Defendant's
 11 C?
 12 A. Yes.
 13 Q. And do you want to just go through it
 14 page by page, if you can. So the first page, let
 15 me ask, did you take these pictures?
 16 A. No.
 17 Q. So if you could --
 18 MR. MENDELSON: What is the
 19 question?
 20 MS. ZALANTIS: We are going through
 21 the pictures.
 22 MR. MENDELSON: What exactly do you
 23 want him to do with them?
 24 MS. ZALANTIS: He testified he
 25 recognized what's being depicted in the

1 picture.
 2 A. So this is the area that was prepared.
 3 Looked like some clearing took place, and this
 4 area was prepared with a subbase in picture 1.
 5 Is this just taken from a little bit further over
 6 to the east, this picture, depicting the same
 7 area.
 8 MR. MENDELSON: For the record, he
 9 is looking at picture 2 of Exhibit C and
 10 he's pointing to the right side of the
 11 exhibit.
 12 A. Picture 3 depicts the same area just a
 13 little bit south of -- sorry -- north of where
 14 the car was parked in picture 2.
 15 MR. MENDELSON: For the record,
 16 again, circle on the right side of the
 17 photo.
 18 A. This is -- in the top of this picture is
 19 the boundary of the Skatepark fence.
 20 BY MS. ZALANTIS:
 21 Q. You are referring to picture 4?
 22 A. Yes, 4. Again there are some wood chip
 23 material and some gravel subbase put down here
 24 spread throughout the area and picture 5 pretty
 25 much depicts the same thing.

1 Q. Turning back to picture 4, does this
 2 depict subbase over the entire surface area?
 3 A. No. There is wood chips and dirt and
 4 subbase and some asphalt here (indicating).
 5 Q. And how about in picture 3, is there also
 6 dirt and wood chips and asphalt depicted in that
 7 picture?
 8 A. Hold on. I don't see much asphalt but
 9 there is dirt and wood chips and subbase.
 10 Q. How about in picture 2?
 11 A. There's a little bit of broken asphalt a
 12 little bit south of where the car is southeast or
 13 just south of where the car is parked, and then
 14 there is wood chips north of the car and there's
 15 some wood chips spread out on the ground not a
 16 lot but it's mixed in a small bit of asphalt with
 17 some gravel, stone.
 18 Q. Do you see dirt in that picture too?
 19 A. Yes. There is some dirt in here.
 20 Q. And if you could turn to picture 1, do
 21 you see asphalt and dirt in that picture?
 22 A. It looks to be a little bit of dirt here
 23 and just a couple of broken pieces of asphalt
 24 here (indicating).
 25 MR. MENDELSON: For the record, he

1 is pointing to the middle of the photo.
 2 BY MS. ZALANTIS:
 3 Q. How do you know -- -- strike that. What
 4 is the subbase material?
 5 A. It could be broken asphalt. It could be
 6 gravel. It's hard to say. It's very small
 7 aggregate except for a couple of large chunks
 8 that are here. So it could have been processed
 9 asphalt or it could have just been a stone base.
 10 It's hard to say just looking at the picture or
 11 without doing a laboratory test.
 12 Q. So you could tell from the picture that
 13 there's a small aggregate of what you're calling
 14 subbase; is that correct?
 15 A. Well, I would call it a smaller
 16 aggregate, a finer aggregate.
 17 Q. And how do you know that the material is
 18 not just gravel from the road?
 19 A. I don't.
 20 Q. I'm going to ask you if you can go back
 21 to the Complaint which is marked as Defendant's
 22 A.
 23 A. Yes.
 24 Q. And if you could turn to Exhibit 1, the
 25 last picture of Exhibit 1. Yes, if you look,

1 it's better in the color version. Sorry?
 2 A. The last picture?
 3 Q. Yes.
 4 A. Okay.
 5 Q. It's depicting a series of vehicles in
 6 that picture. Do you see that picture?
 7 A. I do.
 8 Q. Okay. Do you know whether the City took
 9 any efforts to ascertain the owners of those
 10 vehicles?
 11 A. I do not.
 12 Q. Do you know whether the City ever issued
 13 violations for illegal parking to the owners of
 14 those vehicles?
 15 A. No, ma'am.
 16 Q. Who in the City would be responsible for
 17 issuing legal parking tickets or summonses?
 18 A. The police department.
 19 MS. ZALANTIS: I request, and I'll
 20 follow this up with a written demand, any
 21 parking tickets or summons issued in
 22 connection with unlawful parking in the
 23 area of East Street and the parcel, what
 24 we refer to as "the parcel."
 25 MR. MENDELSON: Just follow up in

1 writing.
 2 MS. ZALANTIS: I will.
 3 (COUNSEL REQUESTS INFORMATION TO BE
 4 SUPPLIED.)
 5 BY MS. ZALANTIS:
 6 Q. So are you familiar with a street called
 7 East Street? And you can take a look at the
 8 survey if you want.
 9 A. Yes.
 10 Q. And I'm just going to ask you a series of
 11 questions regarding East Street, so I don't have
 12 to keep saying East Street again.
 13 A. Okay.
 14 Q. Does the City plow this street, East
 15 Street?
 16 A. The best of my knowledge, we don't really
 17 do any maintenance there. I think we've plowed
 18 it once for emergency purposes once or twice but
 19 we really don't do any maintenance there.
 20 Q. Do you know who asphalted the road
 21 surface of East Street or --
 22 A. Who paved the surface?
 23 Q. Correct, yes.
 24 A. I do not.
 25 Q. Do you know whether the City ever paved

1 A. I don't know.
 2 Q. You said it's your understanding that the
 3 City does not maintain East Street. What is your
 4 basis or understanding?
 5 A. I had a conversation with the City
 6 engineer and asked him that very question.
 7 Q. And what were you told?
 8 A. That we don't maintain anything there.
 9 Q. Was there a reason why the City doesn't
 10 maintain anything on East Street?
 11 A. No, ma'am.
 12 Q. How about East Place, do you know whether
 13 the City maintains East Place?
 14 A. I do not know.
 15 Q. Can you describe what the City's
 16 responsibilities are with respect to regular
 17 public streets?
 18 MR. MENDELSON: Objection. I don't
 19 think this is the right witness for
 20 that question.
 21 A. Yeah, I don't believe --
 22 BY MS. ZALANTIS:
 23 Q. Who is responsible then for maintaining
 24 public street?
 25 A. Department of Public Works.

1 East Street?
 2 A. I do not know.
 3 Q. Who collects garbage in the City of New
 4 Rochelle?
 5 A. There are public -- we collect garbage
 6 and commercial entities are responsible to
 7 dispose of their own garbage.
 8 Q. Do you know if the City ever collects
 9 leaves from property owners on East Street.
 10 A. I don't know.
 11 Q. Do you know whether the City does any
 12 garbage collection on East Street?
 13 A. I don't know.
 14 Q. Do you know whether the City ever removes
 15 dead animals, car from East Street?
 16 A. I do not know.
 17 Q. How about removing rubbish, did the City
 18 remove rubbish and other garbage materials from
 19 East Street?
 20 MR. MENDELSON: Objection. You can
 21 answer.
 22 A. I do not know.
 23 BY MS. ZALANTIS:
 24 Q. What about blacktop or pothole repairs on
 25 East Street?

1 Q. You don't have knowledge of what the
 2 Department of Public Works does in connection
 3 with public streets?
 4 MR. MENDELSON: Objection to form.
 5 A. Typically the Department of Public Works
 6 will go out and maintain public roads. I don't,
 7 to the best of my knowledge, I don't believe that
 8 the street -- this is a paper street and it was
 9 never accepted by the City.
 10 BY MS. ZALANTIS:
 11 Q. Okay. When you say this is a paper
 12 street, are you referring to East Street?
 13 A. Yes.
 14 Q. It's your understanding East Street was
 15 never accepted by the City; is that correct?
 16 A. Correct.
 17 Q. Are there private streets, to your
 18 knowledge, in New Rochelle?
 19 A. Yes.
 20 Q. And what are the City's responsibilities,
 21 if any, to maintain private streets?
 22 MR. MENDELSON: Objection. I don't
 23 think this is the correct witness for
 24 that question as he previously testified.
 25 BY MS. ZALANTIS:

1 Q. You can answer.
 2 A. Okay. I don't think we do any
 3 maintenance on private streets.
 4 Q. If you could turn to the letter that you
 5 cited, Exhibit 3, in the Complaint. You refer
 6 again to section 281.
 7 MR. MENDELSON: Objection.
 8 Q. You referred to section 281 of the code
 9 of the City New Rochelle, correct?
 10 MR. MENDELSON: Objection as to
 11 form.
 12 A. Yes.
 13 (DEFENDANT'S EXHIBIT D, DOCUMENTS,
 14 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 15 DATE.)
 16 BY MS. ZALANTIS:
 17 Q. Showing you what has been marked as
 18 Exhibit D, which is a portion of Chapter 281
 19 regarding the removal of snow and ice.
 20 A. Okay.
 21 Q. If you could take a look at Section B.
 22 A. Yes.
 23 Q. Prior to today, have you ever had an
 24 opportunity to review this, Section 281-4B?
 25 A. Yes, I did.

1 MR. MENDELSON: Same objection.
 2 He's not going to answer questions that
 3 call for a legal opinion.
 4 BY MS. ZALANTIS:
 5 Q. So you refer to East Street as a paper
 6 street, correct?
 7 A. I did.
 8 Q. Is East Street a public street?
 9 MR. MENDELSON: Objection. He's
 10 not going to answer questions that call
 11 for a legal opinion.
 12 MS. ZALANTIS: It's not a legal
 13 opinion. It's how it's categorized in
 14 the City.
 15 MR. MENDELSON: It calls for a
 16 legal opinion based on legal documents
 17 that had been filed with the City.
 18 MS. ZALANTIS: He gave an opinion
 19 that it was a paper street. You can't
 20 have it both ways. He can't talk about
 21 what something is and then refuse to
 22 answer other questions.
 23 MR. MENDELSON: He won't answer
 24 questions that call for a legal opinion
 25 as if something was a public street or

1 Q. Is it your understanding that this
 2 section puts the burden on the property owner to
 3 remove snow from private streets?
 4 MR. MENDELSON: Objection. Don't
 5 answer that question. Calls for a legal
 6 conclusion.
 7 BY MS. ZALANTIS:
 8 Q. Is it your understanding, irrespective of
 9 this section, that private property owners have
 10 to remove snow and ice from private streets?
 11 DEFENSE ATTORNEY: Objection. Do
 12 not answer that question. Calls for a
 13 legal opinion.
 14 MS. ZALANTIS: I'm not asking on the
 15 basis -- I'm asking what's his
 16 understanding of the City -- I'm not
 17 asking on the basis of 281 which he
 18 specifically cited in his letter.
 19 MR. MENDELSON: It still calls for a
 20 legal opinion. He's not going to answer
 21 any question that calls for a legal
 22 opinion. You don't have to answer.
 23 BY MS. ZALANTIS:
 24 Q. Who is responsible for removing snow on
 25 private streets, if you know?

1 not a public street or whether there's
 2 required maintenance according to the
 3 law.
 4 BY MS. ZALANTIS:
 5 Q. All right. Let me ask you this question.
 6 Is there a list of private streets in the City of
 7 New Rochelle?
 8 A. I believe there is.
 9 Q. Okay. I request a copy of that list of
 10 private streets from 2001 to the present and I'll
 11 put that in writing.
 12 (COUNSEL REQUESTS INFORMATION TO BE
 13 SUPPLIED.)
 14 Q. Is there a list of public streets in the
 15 City of New Rochelle?
 16 A. I believe that there is.
 17 Q. I request a copy of that list of private
 18 streets from 2001 to the present and I'll put
 19 that in writing.
 20 (COUNSEL REQUESTS INFORMATION TO BE
 21 SUPPLIED.)
 22 Q. Is there a list of paper streets in the
 23 City of New Rochelle?
 24 A. I'm not sure.
 25 Q. Is there a list of unaccepted streets in

1 the City of New Rochelle?
 2 A. I'm not sure.
 3 Q. Where is that list maintained in the City
 4 of New Rochelle with respect to private streets?
 5 MR. MENDELSON: Objection as to
 6 form.
 7 A. I would believe that Public Works would
 8 have that list, if one exists.
 9 BY MS. ZALANTIS:
 10 Q. When you visited the parcel, and I'm
 11 referring to the oval area you circled, on May
 12 16, the Saturday, was anyone else with you?
 13 A. Yes.
 14 Q. Who was that?
 15 A. Mr. Cox was there.
 16 Q. Anyone else?
 17 A. No.
 18 Q. Have you personally observed any videos
 19 of my client cutting down trees?
 20 A. No.
 21 Q. Have you personally observed any pictures
 22 of my client cutting down trees?
 23 A. No.
 24 Q. Did Mr. Cox ever submit to the City that
 25 they had evidence of my client cutting down

1 was anybody working at the parcel?
 2 A. No, sir.
 3 MR. MENDELSON: Do you mind if we
 4 take a short break?
 5 (Brief recess: 12:18 p.m to
 6 12:22 p.m.)
 7 BY MS. ZALANTIS:
 8 Q. So you mentioned you were at the oval
 9 area with Mr. Cox on May 16, 2015; is that
 10 correct?
 11 A. It was the Saturday of that weekend.
 12 Q. Okay, Saturday of that weekend. Who is
 13 Robert Cox?
 14 A. He is an idiot journalist.
 15 Q. Do you know whether he is an official of
 16 the City?
 17 A. No.
 18 Q. You don't know or --
 19 A. He's not an official of the City.
 20 Q. Does he work for any city department or
 21 agency?
 22 MR. MENDELSON: Objection as to
 23 form.
 24 A. Not that I'm aware of.
 25 BY MS. ZALANTIS:

1 trees?
 2 A. I don't know.
 3 Q. Based upon your view of the property, the
 4 parcel, on May 16, 2015, did you view any trees
 5 cut down?
 6 MR. MENDELSON: Objection as to
 7 form.
 8 A. I'm not sure, but I don't think so.
 9 BY MS. ZALANTIS:
 10 Q. Well, were there any tree stumps?
 11 A. Not that I could see.
 12 Q. Tree branches?
 13 A. No.
 14 Q. In any of the pictures that we viewed --
 15 and we can go back to the Complaint and you can
 16 look at the photo, the color photographs. You
 17 can look at that color photograph which is A1.
 18 Are there any machines that would chop up pieces
 19 of trees into wood chips?
 20 A. Not in these photos.
 21 Q. In any of the videos, did you review any
 22 videos related to the actions alleged in the
 23 complaint?
 24 A. If I did, I don't recall them.
 25 Q. When you observed the parcel on May 16,

1 Q. Does he have any connection at all to the
 2 City?
 3 MR. MENDELSON: Objection as to
 4 form. What do you mean by "connection"?
 5 BY MS. ZALANTIS:
 6 Q. Do you understand what I mean?
 7 A. Not really.
 8 Q. Okay. Does he have any relationship, to
 9 your knowledge, to the City?
 10 MR. MENDELSON: Objection. Same
 11 objection.
 12 A. I don't understand the question.
 13 BY MS. ZALANTIS:
 14 Q. Does he report on issues directly to City
 15 officials?
 16 MR. MENDELSON: Objection as to
 17 form.
 18 A. Occasionally he had brought some issues
 19 directly to City officials.
 20 BY MS. ZALANTIS:
 21 Q. And does the City at any point have an
 22 opportunity to follow up on tips or leads
 23 provided by Mr. Cox?
 24 MR. MENDELSON: Objection as to
 25 form.

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1 A. I think we tried to follow up on any
2 complaints that we receive no matter who they are
3 from.
4 BY MS. ZALANTIS:
5 Q. Have you ever issued any building or
6 other violations to Mr. Cox?
7 MR. MENDELSON: Objection. I don't
8 see how that's relevant here. You don't
9 have to answer that.
10 MS. ZALANTIS: Relevancy is not a
11 proper objection and you know that.
12 A. I'm not sure.
13 MR. MENDELSON: It's not relevant.
14 MS. ZALANTIS: He's your main
15 witness, so it is relevant.
16 MR. MENDELSON: Whether he issued,
17 personally issued building citations
18 to --
19 MS. ZALANTIS: In his capacity as
20 building inspector.
21 MR. MENDELSON: -- to Robert Cox?
22 MS. ZALANTIS: Yes, or any
23 properties owned by him.
24 MR. MENDELSON: You don't have to
25 answer that.

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1 MR. MENDELSON: He doesn't have to
2 answer that question. If you want to put
3 a demand in writing for anything related
4 to Bob Cox personally that the City of
5 New Rochelle may have, you can certainly
6 do that in writing.
7 MS. ZALANTIS: He is testifying as a
8 representative --
9 THE WITNESS: One second. I have to
10 take this.
11 (Brief recess)
12 (DEFENDANT'S EXHIBIT E, PLAN, WAS
13 MARKED FOR IDENTIFICATION, AS OF THIS
14 DATE.)
15 BY MS. ZALANTIS:
16 Q. Showing you what has been marked as
17 Defendant's E. The first page is the full size
18 or 11 by 17 size plan. And then there's two
19 other pages that I just enlarged for ease of
20 reference.
21 A. Okay.
22 Q. Just looking at the first page which is a
23 plan, drawing number B-100 Design Concept, City
24 of New Rochelle New Operations Center. Do you
25 know what this plan is referring to or depicting?

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1 MS. ZALANTIS: Okay. I'm going to
2 be requesting that documentation from the
3 City and you too.
4 MR. MENDELSON: You can put it in
5 writing.
6 MS. ZALANTIS: I will.
7 (COUNSEL REQUESTS INFORMATION TO BE
8 SUPPLIED.)
9 BY MS. ZALANTIS:
10 Q. Do you know if Mr. Cox has ever been
11 arrested by the City of New Rochelle Police
12 Department?
13 MR. MENDELSON: Objection as to
14 form.
15 A. I believe he has.
16 BY MS. ZALANTIS:
17 Q. What's the basis for your belief?
18 A. I think I read about it on his blog.
19 Q. Do you know whether he has ever filed a
20 lawsuit against the City of New Rochelle?
21 MR. MENDELSON: Objection. You
22 don't have to answer that question.
23 Don't answer that.
24 MS. ZALANTIS: Relevancy is not a
25 proper objection.

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1 A. This plan is titled Sub Surface
2 Exploration Plan. So looks like they did a bunch
3 of borings in a bunch of different locations as
4 marked on this map.
5 Q. And do you know what the Proposed New
6 Operations Center refers to?
7 A. I believe that was a potential location
8 for the City yard.
9 Q. What's the City yard?
10 A. The DPW Operations Center or what I refer
11 to as the City yard.
12 Q. Was there a concept to take private
13 property in connection with this proposed DPW
14 Operations Center?
15 MR. MENDELSON: Objection. Do you
16 know anything about that?
17 THE WITNESS: I -- I don't have a
18 lot of knowledge about this (indicating).
19 I believe this was a potential site or
20 location.
21 MS. ZALANTIS: You know, you can't
22 coach your client.
23 MR. MENDELSON: Can we have one
24 minute, five minutes?
25 (Brief recess: 12:29 p.m. to

1 12:32 p.m.)
 2 BY MS. ZALANTIS:
 3 Q. I think I said was there consideration by
 4 the City to -- what it take to use a private
 5 property in connection with the proposed DPW
 6 Center?
 7 MR. MENDELSON: I'm going to object
 8 to the form. Continue to answer, if he
 9 knows.
 10 MS. ZALANTIS: "If he knows" is
 11 patently improper, in this case on the
 12 subject. Don't say "if he knows." Just
 13 object to form and leave it at that.
 14 BY MS. ZALANTIS:
 15 Q. Okay.
 16 A. To the best of my knowledge, there was
 17 some potential plan to use East Place in an area
 18 here for a potential city yard location. So I
 19 don't know if that answers your question.
 20 Q. Yes. Thank you.
 21 (DEFENDANT'S EXHIBIT F, EMAIL, WAS
 22 MARKED FOR IDENTIFICATION, AS OF THIS
 23 DATE.)
 24 BY MS. ZALANTIS:
 25 Q. I'm showing you what was a marked as

1 MR. MENDELSON: Objection as to
 2 form.
 3 A. No.
 4 BY MS. ZALANTIS:
 5 Q. And I'm referring to after the date of
 6 this e-mail on March 17, 2007. Is your answer
 7 still "no"?
 8 A. Yes.
 9 (DEFENDANT'S EXHIBIT G, SERIES OF
 10 EMAILS, WAS MARKED FOR IDENTIFICATION, AS
 11 OF THIS DATE.)
 12 Q. Showing you what has been marked as
 13 Defendant's G which is a series of emails that
 14 you can glance through first.
 15 A. Okay. So go ahead.
 16 Q. So those e-mails seem to be referring to
 17 the issue with snow removal; is that correct?
 18 A. That's what it appears to be to me.
 19 Q. Do you know whether the City ever paid
 20 these defendant's to plow East Street?
 21 A. No.
 22 Q. No, you don't know or they didn't?
 23 A. No, I don't know.
 24 Q. Do you know whether the City ever
 25 contracts with any other companies to plow East

1 Defendant's F. If you can, can you just identify
 2 who the "from" and the "to" is that's indicated
 3 on this e-mail?
 4 A. From Bill Zimmerman.
 5 Q. And who is Mr. Zimmerman.
 6 A. He is the -- he was the commissioner of
 7 Parks and Recreation.
 8 Q. Is he currently employed with the City?
 9 A. You know, I think he is a consultant to
 10 the City. I'm not quite sure of his title right
 11 now so I don't want to speculate.
 12 Q. Do you know who Janice Carrol is?
 13 A. She's a clerk that works in the City
 14 manager's office.
 15 Q. And if you could, to yourself, just read
 16 that e-mail from Mr. Zimmerman.
 17 A. Okay.
 18 Q. Do you know whether the Building
 19 Department ever followed up on this e-mail?
 20 MR. MENDELSON: Objection as to
 21 form.
 22 A. No.
 23 BY MS. ZALANTIS:
 24 Q. Do you know whether there was a visit to
 25 the property by a building official?

1 Street?
 2 MR. MENDELSON: Objection as to
 3 form.
 4 A. I don't know.
 5 BY MS. ZALANTIS:
 6 Q. Does the City of New Rochelle do its own
 7 plowing or does it contract with other companies?
 8 A. Both.
 9 (DEFENDANT'S EXHIBIT H, PHOTOGRAPHS,
 10 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 11 DATE.)
 12 Q. I'm showing you what's been marked as
 13 Defendant's H, two pictures.
 14 A. Yes.
 15 Q. Are you familiar with what's depicted in
 16 these photographs?
 17 A. Yes.
 18 Q. And what is it?
 19 A. It looks like a big pile of snow in front
 20 of the Skatepark.
 21 Q. Do you know who took this picture?
 22 A. No.
 23 Q. Do you know when this picture was taken?
 24 A. No.
 25 Q. Have you ever personally observed my

1 client, any of my clients, the defendants in this
 2 action, piling snow in any area depicted in these
 3 photographs?
 4 A. No.
 5 Q. Do you know whether anyone from the City
 6 has personally observed my client piling snow in
 7 any of the areas depicted in the photographs
 8 marked as Defendant's H?
 9 A. I don't know.
 10 (DEFENDANT'S EXHIBIT I, NOTICE OF
 11 VIOLATION;
 12 (DEFENDANT'S EXHIBIT J, RESPONSE
 13 NOTICE;
 14 (DEFENDANT'S EXHIBIT K, BUILDING
 15 PERMIT;
 16 (DEFENDANT'S EXHIBIT L, PLAN;
 17 (DEFENDANT'S EXHIBIT M, SURVEY;
 18 (DEFENDANT'S EXHIBIT N, AMENDED
 19 PLAN;
 20 (DEFENDANT'S EXHIBIT O, DOCUMENT;
 21 (DEFENDANT'S EXHIBIT P, CERTIFICATE
 22 OF OCCUPANCY;
 23 (DEFENDANT'S EXHIBIT Q, DOCUMENT;
 24 were MARKED FOR IDENTIFICATION, AS OF
 25 THIS DATE.)

1 Notice of Violation.
 2 Q. So Exhibit J is in response to Exhibit I;
 3 is that correct?
 4 A. Yes.
 5 Q. Okay. Showing you what has been marked
 6 as Exhibit K, and I'll give you J at the same
 7 time. Okay, this is L. Okay.
 8 So with respect to the Exhibit K, do you
 9 recognize that document?
 10 A. Yes.
 11 Q. What is it?
 12 A. It's a building permit.
 13 Q. And this building permit was issued to
 14 the Muffi's and the job application was 436 Fifth
 15 Avenue; is that correct?
 16 A. Correct.
 17 Q. Okay. If you can take a look at Exhibit
 18 L?
 19 A. Yes.
 20 Q. There's two pages. Do you see on the
 21 second page there's a stamp from the City of New
 22 Rochelle?
 23 A. Yes.
 24 Q. What does that stamp indicate?
 25 A. It's the building permit number in the

1 Q. Showing you what has been marked as
 2 Defendant's I. Do you recognize this document?
 3 A. I do.
 4 Q. What do you recognize it to be?
 5 A. It's a Notice of Violation.
 6 Q. And there's a reference, if you look at
 7 the bottom of the paragraph, to please telephone
 8 Mr. Vacca?
 9 A. That's me.
 10 Q. That's you?
 11 A. Yes, ma'am.
 12 Q. And this Notice of Violation was issued
 13 on 12/2/1999 to a John Muffi (phonetic). Do you
 14 know who that person is?
 15 A. He was I believe the previous owner of
 16 the property.
 17 Q. Showing you what has been marked as
 18 Exhibit J, which is a January 21, 2000 letter
 19 from Mr. Muffi to you. Have you seen this letter
 20 before today?
 21 A. I have.
 22 Q. And does this appear to respond -- do you
 23 remember having a telephone conversation with
 24 Mr. Muffi?
 25 A. Yes. This letter is in response to the

1 bottom left-hand portion of the stamp. In the
 2 bottom right-hand portion of the stamp is the
 3 date the drawings were stamped.
 4 Q. And the building, it says -- see where it
 5 says "plan number" in the stamp.
 6 A. Yes.
 7 Q. And it has a number B20000387?
 8 A. Yes.
 9 Q. Is that the same as the permit number set
 10 forth on the building permit on Exhibit K?
 11 A. It is.
 12 Q. What would that indicate to you?
 13 A. That this is the plan for this building
 14 permit.
 15 Q. Okay. So that indicates that the
 16 building permit was issued in connection, Exhibit
 17 K, the building permit was issued in connection
 18 with the second page of the plan attached as
 19 Exhibit L; is that correct?
 20 A. With the plan, yes.
 21 Q. And the stamp indicates on the second
 22 page of Exhibit L, the City of New Rochelle
 23 Building Department approved this plan, correct?
 24 A. That the plan examiner reviewed and
 25 approved that plan, correct.

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1 Q. If you could turn back to the building
2 permit on page 2, there's a list of conditions.
3 A. Uh-huh.
4 Q. Can you explain what the conditions to a
5 building permit are just generally?
6 A. Just general conditions put in place to
7 coincide with the parameters of the project.
8 Q. Okay. And is it a requirement that this
9 particular applicant would have to submit an
10 as-built plan to get a Certificate of Occupancy
11 or a COC?
12 A. Well, it says, "Submit as-built survey
13 prepared by a surveyor to show compliance with
14 approved plans." So, yes.
15 Q. I'm showing you what's been marked as;
16 'Exhibit N, and I've attached various copies of
17 plans in various sizes that was produced by the
18 City. Unfortunately, it's cut off in the middle
19 of the plan, so I request that that be reproduced
20 correctly. But, in any event, you could see
21 through the various different copies of this that
22 the date of the plan is November 13, 2000. Do
23 you see that? You can look on the first page.
24 In the box.
25 A. Says 11 -- yeah, it's cut off, yes. Yes,

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1 Q. And this appears to be an amended plan
2 that was approved; is that correct?
3 A. Correct.
4 Q. And this amended plan shows less proposed
5 riprap than the original plan; is that correct?
6 A. Yes.
7 Q. And that's consistent with what is
8 depicted on the survey. There is not riprap
9 stretching the whole line of property, correct?
10 A. Correct.
11 Q. I'm showing you what's been marked as
12 Exhibit L. Do you recognize this document?
13 A. It was the application for Certificate of
14 Occupancy/Compliance.
15 Q. Take a look at the permit number
16 reflected on the second line, Application for a
17 Certificate of Occupancy/Compliance. Do you see
18 the permit number?
19 A. I do.
20 Q. Is that the same permit number that's
21 reflected on the building permit and the original
22 and amended plan?
23 A. Yes.
24 Q. So is this about the Application to
25 obtain a Certificate of Occupancy/Compliance for

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1 November 15, 2000.
2 Q. And this is a survey, correct?
3 A. It says "survey" on it, correct.
4 Q. And there's a reference to "field," do
5 you see that, and the date?
6 A. Yes.
7 Q. And is that an indication, to your
8 knowledge, that that's when field work was done?
9 A. I would say so, yes.
10 Q. Okay. And does this plan that was
11 produced by the City the as-built plan?
12 A. You mean, this survey was produced by a
13 private surveyor?
14 Q. Correct. I'm sorry --
15 A. But it was in our file?
16 Q. Yes.
17 A. Yes. That is a field date, which is
18 usually typically the date they went into the
19 field and the map date is the date they made the
20 revisions to the map.
21 Q. Okay, thank you.
22 A. You're welcome.
23 Q. Just to show the complete picture, I'm
24 showing you what's been Exhibit N.
25 A. Okay.

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1 the work authorized under building permit number
2 B20000387?
3 A. Yes.
4 Q. Showing you what has been marked as
5 Exhibit P. Do you recognize this document?
6 A. That would be the Certificate of
7 Occupancy.
8 Q. And I know that Certificate of Occupancy
9 has a number of C20010011; is that correct?
10 A. That's what's denoted here, yes.
11 Q. What does that indicate to you?
12 A. That was just a number that was assigned
13 to that certificate.
14 Q. Okay. Was this Certificate of Occupancy
15 issued in connection with permit number
16 B20000387?
17 A. Yes.
18 Q. Okay. And what does a Certificate of
19 Occupancy signify?
20 MR. MENDELSON: Objection as to
21 form.
22 A. So, the Certificate of Occupancy
23 typically is a document that closes out the
24 building permit. Typically the Certificate of
25 Occupancy are only typically issued to buildings.

1 The building official at the time, Mr. Shaw has
 2 issued this Certificate of Occupancy, Peter did
 3 it for Mr. Shaw. If I was doing this, I would
 4 have issued a Certificate of Compliance because
 5 there is no building on this property.
 6 Effectively, they're the same document.
 7 BY MS. ZALANTIS:
 8 Q. So if you can turn back to the survey
 9 which you have in front of you which is Exhibit
 10 M?
 11 A. Thank you.
 12 Q. Do you see where the survey depicts a
 13 sliding gate?
 14 A. Yes.
 15 Q. And do you see where the survey depicts a
 16 chain-link fence?
 17 A. Yes.
 18 Q. And is the sliding gate depicted on East
 19 Street?
 20 A. It looks like it is depicted on East
 21 Street.
 22 Q. And is the chain-link fence depicted on
 23 East Street?
 24 A. It appears to be, yes.
 25 Q. Do you see shrubs indicated at the

1 property line that fronts on Fifth Avenue?
 2 A. Yes.
 3 Q. And are the shrubs depicted on East
 4 Street, a portion of the shrubs depicted on East
 5 Street?
 6 A. They look like they encroach onto East
 7 Street, yes.
 8 Q. So the survey seems to indicate that
 9 there's an encroachment of a sliding gate onto
 10 East Street, correct?
 11 A. Yes.
 12 Q. The survey indicates there's an
 13 encroachment of a chain-link fence onto East
 14 Street; is that correct?
 15 A. That's what it looks like, correct.
 16 Q. The survey seems to indicate there's an
 17 encroachment of shrubs onto East Street; is that
 18 correct?
 19 A. That's what it looked like, yes.
 20 Q. Do you know whether the City took the
 21 position in 2000 when the survey was done or 2001
 22 when the Certificate of Occupancy was issued that
 23 there was an encroachment on East Street?
 24 A. I don't.
 25 Q. Do you know whether the City took the

1 position with the Muffis, the prior owner, at any
 2 time there was an encroachment onto East Street?
 3 A. I am not sure.
 4 (DEFENDANT'S EXHIBIT R, IMAGES, WAS
 5 MARKED FOR IDENTIFICATION, AS OF THIS
 6 DATE.)
 7 Q. I'm showing you what been marked as
 8 Exhibit R. The first page is an enlarged image
 9 and the second page is an image, both from Google
 10 Earth. One is just in large and one is not. And
 11 if you could look at the second page, there is an
 12 imagery date reflected?
 13 A. 10/11/2014.
 14 Q. Do you see the area depicted on the
 15 second page that you previously indicated with an
 16 oval on the survey marked as Exhibit --
 17 A. B?
 18 Q. -- B?
 19 A. Yes.
 20 Q. And do you see vehicles parked in that
 21 area that you indicated with an oval shape on
 22 Exhibit B?
 23 A. I see, yes.
 24 Q. Do you see a large tractor trailer parked
 25 in that area that you indicated was the parcel?

1 A. I do not.
 2 Q. What do you see?
 3 A. I see two small dump trucks and it looks
 4 like a tree box truck.
 5 Q. And what's attached to that? Can you
 6 indicate what the tree box truck is?
 7 A. I think it's this white vehicle here
 8 (indicating).
 9 Q. Is there an attachment to that tree --
 10 A. It's pulling something. Could be a stump
 11 grinder. I'm not sure.
 12 Q. And the other two vehicles you
 13 referenced, can you just describe them?
 14 A. They look like two small dump trucks.
 15 Q. Okay. Does this area look like the same
 16 area that you viewed on March 16, 2015?
 17 MR. MENDELSON: Objection as to
 18 form.
 19 BY MS. ZALANTIS:
 20 Q. Let me clarify.
 21 A. I wasn't there on March 16, 2000. That
 22 was not the right date and it looks similar.
 23 Q. Sorry. May 16. I apologize, May 16.
 24 A. It's similar but it's more wooded in this
 25 picture (indicating).

1 Q. Well, in this picture you are looking
 2 down, correct?
 3 A. This is an aerial (indicating).
 4 Q. Right.
 5 A. This is log shots. Yes, ma'am.
 6 Q. Has the City planted any trees in the
 7 area of the parcel after May 15 -- sorry, May
 8 2015?
 9 A. I don't know.
 10 Q. Let me go back -- let me give you a fresh
 11 copy of the 2014 survey.
 12 (EXHIBIT T, PHOTOGRAPH, WAS MARKED
 13 FOR IDENTIFICATION AS OF THIS DATE.)
 14 Q. Showing you what's been marked as
 15 Exhibit T. Do you see the parcel marked now or
 16 formerly FML management LLC?
 17 A. Yes.
 18 Q. Okay. Can you indicate the alleged
 19 encroachment on East Main Street?
 20 MR. MENDELSON: Objection as to
 21 form.
 22 A. So towards the northerly corner of the
 23 property, the north, the northern corner,
 24 northeastern corner, there's a wall, a concrete
 25 wall, and a fence, and I can't -- sorry -- make

1 "encroachment," are you talking about --
 2 MS. ZALANTIS: Sorry. On to
 3 East Street.
 4 A. "Now or formerly PAB Landscaping," their
 5 gate appears to be on the front property line.
 6 And "Now or formerly PAB Landscaping," the second
 7 parcel to the north, what appears to bridge the
 8 property line, looks like, and it says --
 9 electric line, looks like, it comes out here
 10 (indicating). It looks like this a slight trench
 11 encroachment to the north, northern corner of the
 12 property.
 13 BY MS. ZALANTIS:
 14 Q. Do you see in the middle of East Street
 15 there seems to be some kind of curb --
 16 A. Yes.
 17 Q. -- under the word "East" of East Street?
 18 A. Yes. It says "blacktop curb."
 19 Q. Do you know who erected that blacktop
 20 curb?
 21 A. I don't.
 22 Q. Did you ever have an opportunity to
 23 personally view that blacktop curb?
 24 A. To the best of my knowledge, no.
 25 Q. And do you see there's a property on the

1 sense. It says "southern" something "shelf" --
 2 I'm not quite sure what that says, Southern East
 3 Southeastern corner there appears to be part of a
 4 bin approaching onto East Place, another portion
 5 of a concrete wall and the fence with the gate.
 6 BY MS. ZALANTIS:
 7 Q. Okay. Thank you.
 8 Do you see the property next to it
 9 entitled "Now or formerly Joy Allen"?
 10 A. I do.
 11 Q. Does the survey depict any kind of
 12 encroachment related to that property?
 13 A. Yes.
 14 Q. Do you see the property next to "Now or
 15 formerly Joy Allen," and the property now next to
 16 that "Now or formerly entitled PAB Landscaping"?
 17 A. Yes.
 18 Q. Are there encroachments depicted from
 19 those two properties?
 20 MR. MENDELSON: Objection as to
 21 form. Are we only talking about East
 22 Street, Kathy?
 23 MS. ZALANTIS: I'm talking about
 24 these two properties.
 25 MR. MENDELSON: When you say

1 corner of East Street and East Place entitled
 2 "Now or formerly Lemler (phonetic) Group LLC?"
 3 A. Yes.
 4 Q. Do you see fronting on that property that
 5 appears to be some indication of curbing or
 6 concrete line? Do you see that, black -- maybe
 7 blacktop curb --
 8 A. Here (indicating)?
 9 Q. -- concrete lines --
 10 MR. MENDELSON: Talking about East
 11 Street?
 12 MS. ZALANTIS: Yes, East Street.
 13 A. So in the north, I'll call it the same
 14 northern corner, there looks like a guide wire
 15 which is typically what supports utility poles --
 16 not fully supports them but reinforces them -- in
 17 that corner. And to the south corner looks like
 18 there's a fence that meanders along the property
 19 line, and it looks like there's a small
 20 encroachment on to East Street.
 21 BY MS. ZALANTIS:
 22 Q. See where it says "blacktop curb" here
 23 and concrete, this area here (indicating). It's
 24 hard to read that little print.
 25 A. I see a utility pole out in the road. I

1 see a fence. I don't know what that says,
 2 "Approximate location of water main" -- curb,
 3 blacktop curb, out here (indicating). In front
 4 of the PAB, I'm going to say to the east of the
 5 PAB property in East Street and to the East of
 6 the Biliago (phonetic) property on East Street.
 7 Q. Thank you. Do you know who erected that
 8 blacktop curb?
 9 A. I do not.
 10 Q. Do you know if the City has contacted any
 11 other property owners along East Street regarding
 12 an alleged encroachments on to East Street?
 13 A. I don't know.
 14 MR. MENDELSON: Objection as to
 15 form.
 16 (DEFENDANT'S EXHIBIT U, PHOTOGRAPH,
 17 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 18 DATE.)
 19 BY MS. ZALANTIS:
 20 Q. Showing you what has been marked as
 21 Defendant's M, which was a photograph produced by
 22 the City and it had that handwriting on the
 23 bottom, 8/17/12.
 24 A. Yes.
 25 Q. Okay. Are you familiar with what's being

1 depicted in this picture?
 2 A. Could be East Street.
 3 Q. If it was East Street, do you also see
 4 this area where you indicated was the parcel
 5 area?
 6 MR. MENDELSON: Objection as to
 7 form.
 8 A. Part of this area (indicating) as to the
 9 upper right-hand part of the page?
 10 BY MS. ZALANTIS:
 11 Q. Yes.
 12 A. Yes.
 13 Q. Have you ever personally observed cars
 14 parked in the parcel area?
 15 A. I don't know. Besides the pictures?
 16 Q. Besides the pictures.
 17 A. Personally?
 18 Q. Personally.
 19 A. I'm not sure.
 20 Q. Have you ever personally observed, not
 21 just cars but any vehicles parked in the parcel
 22 area?
 23 A. I'm not sure.
 24 (DEFENDANT'S EXHIBIT V, DOCUMENT,
 25 WAS MARKED FOR IDENTIFICATION, AS OF THIS

1 DATE.)
 2 Q. Do you know what this document is?
 3 A. It's a letter from D & B Engineers to Ed
 4 Duffy (phonetic).
 5 Q. And have you had, prior to today, have
 6 you had an opportunity review this report?
 7 A. I don't remember. May I look it over?
 8 Q. Sure.
 9 A. It looks like a -- looks like somebody
 10 hired the D&B Engineers to take some samples of
 11 some materials. (Reading document)
 12 Q. If you can look at Attachment A to this
 13 report.
 14 A. Yes.
 15 Q. And there's a ledger that indicates soil
 16 --
 17 A. Locations.
 18 Q. -- sample locations.
 19 A. Okay. So we took sample SS01 and SS02.
 20 Q. And were the soil samples taken from the
 21 approximate location of where you indicated the
 22 parcel was?
 23 MR. MENDELSON: Objection as to
 24 form.
 25 A. Close to it.

1 (DEFENDANT'S EXHIBIT W, PHOTOGRAPH,
 2 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 3 DATE.)
 4 BY MS. ZALANTIS:
 5 Q. Showing you what has been depicted as
 6 Defendant's W, what has been marked as
 7 Defendant's W. If you can take a look at the
 8 first picture, do you know what is depicted in
 9 that picture?
 10 A. It's a pavement marking.
 11 Q. Do you know where this picture --
 12 A. No.
 13 Q. How about the second page depicting a
 14 manhole?
 15 A. It doesn't depict a manhole.
 16 Q. Do you know where this picture was taken?
 17 A. No.
 18 Q. What vantage point, what street?
 19 A. No.
 20 Q. How about the second -- the third page,
 21 depicts some kind of marking in the street, do
 22 you know what that marking is?
 23 A. The marking says "S," so I'm pretty sure
 24 that marking is sanitary sewer.
 25 Q. And do you know where this picture was

1 taken?
 2 A. No.
 3 Q. What street?
 4 A. No.
 5 Q. What vantage point?
 6 A. No.
 7 Q. How about the forth picture?
 8 A. The forth picture looks like kind going
 9 towards the back of East Street going towards
 10 East Place.
 11 Q. So what vantage point was the picture
 12 taken? Where would you be standing if you were
 13 taking the picture?
 14 A. Kind of hard to say. (Indicating). I'm
 15 not sure.
 16 Q. And what gave you some indication that
 17 this could be a picture of East Street or some
 18 portion of East Street?
 19 A. This looks like the parcel near the rear
 20 door. It's hard to say. Not sure.
 21 Q. Do you know whether there's a sewer line
 22 on East Street?
 23 A. There is a sewer there.
 24 Q. And does it run the length of the street?
 25 A. I'm not sure, but it is indicated on that

1 manholes are indicated with what, an M or S?
 2 A. No. There's an S, circle with an S
 3 inside and there are markings -- hold on --
 4 18-inch tile sanitary sewer. There's a rim and
 5 an invert elevation. The rim is 29.88 and the
 6 invert is 25.58. And there's an 18-inch sewer
 7 that runs back toward Fifth Avenue that gives rim
 8 in invert elevations and then there's a forth
 9 manhole out closer to Fifth Avenue. So there's
 10 one, two, three, four manholes and the sewer
 11 turns and goes down East Dorsey.
 12 Q. And does the City maintain those sewer
 13 lines?
 14 A. I'm not sure. I would imagine that we --
 15 I don't know. I don't know.
 16 (DEFENDANT'S EXHIBIT X, PHOTOGRAPH,
 17 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 18 DATE.)
 19 Q. I show you what's been marked as Exhibit
 20 X.
 21 A. Okay.
 22 Q. Which appears to be a picture of a
 23 manhole but there's another picture of a manhole
 24 on the next page, if you want to take a look at
 25 that.

1 survey though.
 2 Q. Are there any other utilities? I know
 3 you mentioned electric before. Those are
 4 overhead lines, correct?
 5 A. I believe it said overhead wires on that
 6 document.
 7 Q. And how about that first picture, do you
 8 know what that marking indicates?
 9 A. Looks like it says "60-inch SM." Sewer
 10 manhole, I'm assuming. I don't know what that
 11 mark means underneath, and this says three
 12 feet wide. Not sure.
 13 Q. And did you take any of these pictures
 14 that we just went through?
 15 A. No. The sewer manholes indicated on this
 16 survey right at this location right here
 17 (indicating). There's another sewer manhole
 18 indicated right here (indicating). There's
 19 another sewer manhole indicated right here
 20 (indicating).
 21 Q. So I just want to reflect this in the
 22 transcript.
 23 A. There's a forth sewer manhole indicated
 24 on back here (indicating).
 25 Q. Okay. So you're explaining that the

1 A. Okay.
 2 Q. From these pictures, can you tell where
 3 that manhole is?
 4 A. I believe that this manhole is the same
 5 manhole in picture 1, in Exhibit C, located right
 6 here (indicating) three cones, three cones. I
 7 think that's the same manhole.
 8 Q. Okay. Can you indicate back on Exhibit
 9 B. Do we have another highlighter color?
 10 A. But this is going the direction towards
 11 Fifth Avenue and this is the direction going
 12 towards East Place (indicating).
 13 MS. ZALANTIS: Off the record.
 14 (DISCUSSION HELD OFF THE RECORD.)
 15 BY MS. ZALANTIS:
 16 Q. Back on the record. Can you indicate on
 17 the survey like with an arrow pointing to it
 18 where the manhole is depicted that you were
 19 testifying about?
 20 A. In this picture?
 21 Q. Yes. You indicated it was the same
 22 manhole as depicted in Exhibit C, the first page,
 23 correct?
 24 A. Yes, so give me a second.
 25 Q. Okay.

1 A. I'm pretty sure that this, Exhibit X
2 (indicating). And I'm just going to write on
3 here, okay?
4 Q. Yes.
5 A. So Exhibit X, page 2, facing that
6 direction (indicating). And then --
7 MR. MENDELSON: Paul, wait for her
8 to ask you a question.
9 BY MS. ZALANTIS:
10 Q. So you're going to mark it with the other
11 picture, right?
12 A. Yes.
13 Q. All right. Go ahead.
14 A. This is Exhibit C facing that direction
15 (indicating).
16 Q. Okay. And can you just indicate Exhibit
17 C, page 1, or you can look through the other
18 pages if you want?
19 A. It's on page 1 and on page 3 and -- page
20 1 and 3.
21 Q. And when you said "this direction," you
22 indicated this direction by the direction of your
23 arrow, correct?
24 A. Yes.
25 Q. If you could just turn to Exhibit X, the

1 Q. In connection with what?
2 A. Some building permit he took at some
3 point in time.
4 Q. And do you know why these pictures taken?
5 A. No.
6 Q. And were they taken in connection, if you
7 know, with proposed projects at my client's
8 house?
9 A. I have no idea.
10 MR. MENDELSON: Off the record.
11 (Lunch recess: 1:26 p.m. to
12 2:04 p.m.)
13 BY MS. ZALANTIS:
14 Q. You previously talked about how you had
15 an opportunity to look at East Street or drew
16 East Street; is that correct?
17 A. Yes.
18 MR. MENDELSON: Objection as to
19 form.
20 BY MS. ZALANTIS:
21 Q. Can you describe the condition of the
22 road surface of East Street?
23 MR. MENDELSON: Objection as to
24 form. When are we talking about?
25 BY MS. ZALANTIS:

1 second page with the manhole.
2 A. Yes.
3 Q. Do you see a picture of a house or on
4 that page, the second picture under the manhole?
5 A. Yes.
6 Q. Do you know what that is depicting?
7 A. That looks like the corner of East Place
8 and Ashland Street.
9 Q. Okay.
10 A. That's what the street sign says in that
11 picture.
12 Q. Thank you. This doesn't depict any
13 properties owned by my client; is that correct?
14 A. To the best of my knowledge, no.
15 (DEFENDANT'S EXHIBIT Y, PHOTOGRAPHS,
16 WAS MARKED FOR IDENTIFICATION, AS OF THIS
17 DATE.)
18 Q. I'm showing you what's been marked as
19 Defendant's Y. It has a series of pictures. Go
20 through them if you like.
21 Do you know what is being depicted in any
22 of those pictures?
23 A. Flavio's house, my client's house.
24 Q. How do you know that?
25 A. I've been to his house.

1 Q. When have you viewed East Street?
2 A. I haven't been there recently.
3 Q. How about when you were there in 2015,
4 what was the condition of the road surface?
5 A. I would say it was in fair condition.
6 Not great condition, fair condition.
7 Q. And you had an opportunity after that
8 time you were there in 2015 to view East Street?
9 A. You mean have I returned?
10 Q. Yes.
11 A. No.
12 Q. How about prior to 2015, have you had an
13 opportunity before that meeting in May of 2015 to
14 view East Street?
15 A. I know I was there in the past. It's
16 just hard to say when.
17 (DEFENDANT'S EXHIBIT Z, LETTER, WAS
18 MARKED FOR IDENTIFICATION, AS OF THIS
19 DATE.)
20 Q. I'm showing you a March 17, 2003 letter
21 to my client Flavio La Rocca from Charles B.
22 Strum, the city manager, and it refers to an area
23 currently used by Persico Construction as a
24 staging area. You can read the letter to
25 yourself.

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1 A. I just did.
 2 Q. All right. Are you familiar with the
 3 location of the area that was used by Persico
 4 Construction as a staging area?
 5 A. No.
 6 Q. Is Mr. Strum still the City manager?
 7 A. Yes.
 8 MS. ZALANTIS: Double A.
 9 (DEFENDANT'S EXHIBIT AA, UNSIGNED
 10 LETTER, WAS MARKED FOR IDENTIFICATION, AS
 11 OF THIS DATE.)
 12 Q. Showing you an unsigned letter to my
 13 client dated November 25, 2015, referring to the
 14 City offering free parking at the Flowers Park
 15 parking lot. Do you know what area this is
 16 referring to at the Flowers Park parking lot?
 17 A. That's the City Park's parking lot.
 18 Q. Is that a paved surface?
 19 A. Yes.
 20 (DEFENDANT'S EXHIBIT BB, LETTERS,
 21 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 22 DATE.)
 23 Q. Showing you what has been marked as
 24 Defendant's BB, and there's two letters. One IS
 25 from June 11, 2003, and one November 17, 2003

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1 MS. ZALANTIS: I would request any
 2 information regarding violations issued
 3 in connection with this complaint or any
 4 investigations done.
 5 MR. MENDELSON: You can certainly
 6 put it in writing.
 7 MS. ZALANTIS: I will.
 8 (COUNSEL REQUESTS INFORMATION TO BE
 9 SUPPLIED.)
 10 (DEFENDANT'S EXHIBIT DD,
 11 12/23/02 SEARCH, WAS MARKED FOR
 12 IDENTIFICATION, AS OF THIS DATE.)
 13 BY MS. ZALANTIS:
 14 Q. Showing you what has been marked as
 15 Exhibit DD which was a search performed on or
 16 about 12/23/02 that revealed no pending
 17 violations in either the Department of Buildings,
 18 Department of Fire Prevention, and Department of
 19 Buildings.
 20 A. Okay.
 21 Q. Are you familiar with how property owners
 22 inquire whether there's any pending violations
 23 issued by the City for property they're intending
 24 on purchasing?
 25 A. Yes.

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1 from Flavio and Maria La Rocca to the City of
 2 New Rochelle, Mr. Williams.
 3 A. Okay.
 4 Q. Do you have any knowledge of the City
 5 using or removing jersey barriers from my
 6 client's property?
 7 A. No.
 8 (DEFENDANT'S EXHIBIT CC, COMPLAINT,
 9 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 10 DATE.)
 11 Q. Showing you what's been marked as
 12 Defendant's CC. Do you recognize this document?
 13 A. This is a complaint form.
 14 Q. And the date of complaint was 5/8/2002?
 15 A. Correct.
 16 Q. What's the distinction between a
 17 complaint and a violation?
 18 A. A complaint can be received by any
 19 department for anything and then the violation is
 20 issued if there's a violation after an
 21 investigation occurs.
 22 Q. Okay. And do you know, with respect to
 23 this complaint, whether a violation was issued by
 24 the Building Department?
 25 A. I am not sure.

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1 Q. Can you explain that process?
 2 A. They ask for a search of records. The
 3 title company typically asks for a search of
 4 records. They pay a title company to come in.
 5 One of the clerks performs the search of records
 6 and then generates the information and then sends
 7 it back to them.
 8 Q. So if you turn back Exhibit M.
 9 A. Okay.
 10 Q. So previously you testified how the
 11 survey depicted encroachments onto East Avenue;
 12 is that correct?
 13 A. I did.
 14 Q. And the survey was done in 2000, correct?
 15 A. Yes.
 16 Q. But as of 12/23/02, according to Exhibit
 17 DD, there had been no violation issued for that
 18 alleged encroachment on East Street; is that
 19 correct?
 20 MR. MENDELSON: Objection as to
 21 form.
 22 A. I believe that is correct.
 23 BY MS. ZALANTIS:
 24 Q. Do you know whether the City changed any
 25 position with respect to East Street and alleged

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1 encroachments on East Street from 2000 until
2 today?
3 MR. MENDELSON: Objection as to
4 form.
5 A. No.
6 BY MS. ZALANTIS:
7 Q. At some point did the City believe that
8 East Street was a private street?
9 MR. MENDELSON: Objection as to
10 form.
11 A. I'm not sure.
12 (DEFENDANT'S EXHIBIT EE, TWO-PAGE
13 DOCUMENT, WAS MARKED FOR IDENTIFICATION,
14 AS OF THIS DATE.)
15 BY MS. ZALANTIS:
16 Q. I'm showing you a two-page document seems
17 to be another copy of that November 2000 survey
18 with markings indicated and there's a stamp on
19 the second page. Do you know what this refers
20 to?
21 A. The only indication on this plan says
22 "Proposed rock ledge cut out." Looks like "MP"
23 miscellaneous permit 20030029 from 5/19/03.
24 Q. Would a building permit have been issued
25 with respect to this?

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1 in the City of New Rochelle?
2 A. It's more of an electronic card now, but
3 yes.
4 Q. So I just want to clarify that it's more
5 of an electronic system than an actual card for
6 the City of New Rochelle?
7 A. Yes.
8 Q. You see the reference for "Non-conforming
9 preexisting contractor's yard"?
10 A. Yes.
11 Q. Do you know who would have made or
12 written that?
13 A. I do not know who put that on the card.
14 I do not know who put that on the card.
15 Q. Would it have been somebody from the
16 Building Department that filled out these cards?
17 MR. MENDELSON: Objection as to
18 form.
19 A. Yes.
20 BY MS. ZALANTIS:
21 Q. Property owners are not allowed to fill
22 out these cards, right?
23 A. No, ma'am.
24 Q. If you could pull out a copy of the
25 survey for me, please, T.

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1 A. This stamp indicates that there was a
2 permit.
3 Q. What is MP versus?
4 A. Miscellaneous.
5 Q. Okay. So I request documentation
6 regarding the issuance of the building permit and
7 any CFCs or CFOs in connection with this plan
8 issued under permit MP2003-0029, and I'll make
9 that request in writing.
10 (COUNSEL REQUESTS INFORMATION TO BE
11 SUPPLIED.)
12 (DEFENDANT'S EXHIBIT FF, BUILDING
13 CARD, WAS MARKED FOR IDENTIFICATION, AS
14 OF THIS DATE.)
15 Q. Showing you what's been marked as
16 Defendant's FF. Do you recognize this document?
17 A. Yes.
18 Q. What is it?
19 A. It's a building card for the property.
20 Q. And is this building card something that
21 the Building Department maintains in the regular
22 course of its business?
23 A. Yes.
24 Q. And does the Building Department
25 currently maintain building cards for properties

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1 A. T?
2 Q. Yes. Do you see in the area -- you may
3 want to pull out B also, the survey that you
4 marked up. In the area where you indicated where
5 the parcel was, the oval-shaped area, there's
6 something indicating concrete wall or --
7 A. Yes. Yes, there's a little area. Yes, I
8 see the concrete wall on the parcel in the
9 polygon right there (indicating) just east of the
10 manhole.
11 Q. Okay. Can you pull out, if you can, that
12 aerial shot?
13 MR. MENDELSON: Talking about this
14 one?
15 MS. ZALANTIS: Yes.
16 MR. MENDELSON: R.
17 BY MS. ZALANTIS:
18 Q. In that aerial shot, do you see what
19 appears to be some kind of concrete path or --
20 A. I see -- okay. This path (indicating)?
21 Q. Yes. Is that a path?
22 A. Yes. And this is the path here
23 (indicating) on the survey.
24 Q. Okay. Can you indicate that in yellow
25 highlighting on Exhibit B?

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1 A. (Witness complied.)
 2 Q. At some point after 2015, did the City
 3 install a fence in or around the parcel area?
 4 A. I don't know.
 5 (DEFENDANT'S Exhibit GG,
 6 PHOTOGRAPHS, WAS MARKED FOR
 7 IDENTIFICATION, AS OF THIS DATE.)
 8 Q. Showing you what has been marked
 9 Defendant's GG and I'll represent those are
 10 pictures, and I apologize for the rain, that were
 11 taken the date of the site visit that I had with
 12 your attorneys at the property. And if turn to
 13 the -- just to orient yourself, if you turn to
 14 the third page, you could see a portion of the
 15 Skatepark?
 16 A. Yes.
 17 Q. And do you see the area then where the
 18 fence has been installed?
 19 A. Yes.
 20 Q. Is that the parcel area that has been
 21 fenced off?
 22 A. That's part of the parcel area, yes.
 23 MR. MENDELSON: Objection as to
 24 form.
 25 BY MS. ZALANTIS:

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1 So I'm trying to ascertain --
 2 MR. MENDELSON: Objection as to
 3 form. Is there a question?
 4 MS. ZALANTIS: Yes. I'm trying to
 5 ascertain what is depicted in the second
 6 picture of the exhibit to the area where
 7 the work was done, and I'm acknowledging
 8 that he did not view the actual work that
 9 was done but he viewed it later in the
 10 Day.
 11 BY MS. ZALANTIS:
 12 Q. Is that the same area where you indicated
 13 that there had been a surface placed down? Is
 14 that the same area as depicted in the fenced-off
 15 area as in Exhibit GG?
 16 MR. MENDELSON: Objection as to
 17 form.
 18 A. I don't know if the edges are exactly the
 19 same around the perimeter but it seems to be the
 20 same general area.
 21 BY MS. ZALANTIS:
 22 Q. Okay. If you could just take a look, for
 23 example --
 24 A. Yes.
 25 MR. MENDELSON: Wait for a

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1 Q. Okay. What part of the parcel area is
 2 not depicted?
 3 MR. MENDELSON: Objection as to
 4 form.
 5 A. This whole thing is one parcel
 6 (indicating).
 7 BY MS. ZALANTIS:
 8 Q. Okay.
 9 A. The south side isn't depicted in Picture
 10 1. Part of Picture 3 has the south. And I'm not
 11 sure if he went all the way to the end of parcel
 12 1 to the north with any of these photos.
 13 Q. So if you can pull out the pictures from
 14 the Complaint and the pictures that -- the
 15 colored version marked as A1.
 16 A. Okay. Go ahead.
 17 Q. If you could just open to Exhibit 1.
 18 A. Okay.
 19 Q. Okay. So, for example, if you could turn
 20 to the second page of Exhibit 1. You indicated
 21 that you viewed this area on May 16th, on a
 22 Saturday, whenever that weekend Saturday's date
 23 was, and what is being depicted in the fenced-off
 24 area, the same area? I know you didn't view the
 25 work actually being done but you viewed it after.

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1 question.
 2 BY MS. ZALANTIS:
 3 Q. The second and third pages -- here
 4 (indicating).
 5 A. Sure.
 6 Q. The last page of exhibit -- just call out
 7 the exhibit.
 8 A. Yes, it's Exhibit C.
 9 Q. The last page of Exhibit C, is that the
 10 same general area as what's depicted as being
 11 fenced off in Exhibit GG?
 12 A. It's the same general area but the
 13 fencing does not encompass the entire prepared
 14 area.
 15 Q. Can you explain that?
 16 A. The prepared area exceeds the limits of
 17 the fence by a bit.
 18 Q. What do you mean by "prepared area"?
 19 A. This prepped area here (indicating) with
 20 the subbase exceeds the limits of the fence line
 21 by quite a bit.
 22 MR. MENDELSON: For the record, he
 23 has pointed to the right-hand side of
 24 Exhibit C picture, the last picture of
 25 Exhibit C, and he's pointing to the

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1 bottom right side of that picture.
 2 BY MS. ZALANTIS:
 3 Q. I'm just trying to understand. Are you
 4 saying that the road surface is outside of the
 5 limits of what's enclosed by the fence in
 6 Exhibit GG?
 7 MR. MENDELSON: Objection as to
 8 form.
 9 A. I think that the prepped area here
 10 (indicating) is partially within the road
 11 surface.
 12 BY MS. ZALANTIS:
 13 Q. By the prepped surface here {indicating),
 14 you're referring to what is being depicted in the
 15 last page of Exhibit GG?
 16 A. Yes.
 17 MR. MENDELSON: He's pointing to
 18 the lower right-hand side of that last
 19 picture.
 20 BY MS. ZALANTIS:
 21 Q. And do you see in Exhibit GG the first
 22 page, the path, or a path?
 23 A. Yes. It's not really clear but it looks
 24 like it's towards the back side of the picture.
 25 Q. And is that, to your knowledge, the same

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1 Q. To your knowledge is that what you
 2 indicated on Survey B in yellow highlighting?
 3 A. I believe it is.
 4 (DEFENDANT'S EXHIBIT HH, ZONING MAP,
 5 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 6 DATE.)
 7 Q. I'm showing you what has been marked as
 8 Exhibit HH, which is the zoning map of the City
 9 of New Rochelle, and I blew up a section of it so
 10 that we can actually see it. And if you can turn
 11 to the second page of the blown-up section. Do
 12 both East Place and East Street appear on the
 13 zoning map?
 14 A. Yes.
 15 MR. MENDELSON: Objection as to
 16 form.
 17 (DEFENDANT'S EXHIBIT II, TAX MAP,
 18 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 19 DATE.)
 20 BY MS. ZALANTIS:
 21 Q. You've been handed what has been marked
 22 Exhibit II. Do you know what is this map is pro.
 23 A. Looks like a tax map.
 24 Q. Portion of a tax map?
 25 A. Yes.

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1 path that you indicated in yellow highlighting on
 2 Exhibit B?
 3 A. It looks like the end of the path is
 4 parallel -- just the beginning of the path in
 5 this GG?
 6 Q. Okay. And do you see in GG that that
 7 there's various trees depicted, of course, in
 8 winter-type state behind the path you can see the
 9 first -- on the first page?
 10 MS. ZALANTIS: Objection as to form.
 11 A. Yes.
 12 BY MS. ZALANTIS:
 13 Q. Is it your contention or the City's
 14 contention that there were trees previously
 15 existing in the area now fenced in with the fence
 16 depicted in GG?
 17 MR. MENDELSON: Objection as to
 18 form.
 19 A. I don't know.
 20 BY MS. ZALANTIS:
 21 Q. Can you pull up that aerial picture
 22 again, the Google images one, I think it was.
 23 And do you see the path depicted in that
 24 Google images?
 25 A. Right here, I see the path (indicating).

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1 Q. All right.
 2 (DEFENDANT'S EXHIBIT JJ, GIS SYSTEM
 3 MAPPING OF WESTCHESTER COUNTY, WAS MARKED
 4 FOR IDENTIFICATION, AS OF THIS DATE.)
 5 Q. Showing you what has been copied from I
 6 believe the GIS System Mapping of Westchester
 7 County are you familiar with that system?
 8 MR. MENDELSON: Objection as to
 9 form.
 10 A. I use part of their GIS so I'm familiar
 11 with this -- not this particular map, but part of
 12 it.
 13 (DEFENDANT'S EXHIBIT KK, MAP, WAS
 14 MARKED FOR IDENTIFICATION, AS OF THIS
 15 DATE.)
 16 BY MS. ZALANTIS:
 17 Q. Showing what has been marked as Exhibit
 18 KK. Do you know what this map is from?
 19 MR. MENDELSON: Objection as to
 20 form.
 21 A. I don't.
 22 MS. ZALANTIS: I request information
 23 regarding any legend or explanation of
 24 what the basis of this plan and map is
 25 and I will put that request in writing.

1 (COUNSEL REQUESTS INFORMATION TO BE
 2 SUPPLIED.)
 3 (DEFENDANT'S EXHIBIT LL, DEED;
 4 (DEFENDANT'S EXHIBIT MM, SUBDIVISION
 5 MAP, WAS MARKED FOR IDENTIFICATION, AS OF
 6 THIS DATE.)
 7 BY MS. ZALANTIS:
 8 Q. So LL is a deed from 1914?
 9 MR. MENDELSON: Objection as to
 10 form.
 11 BY MS. ZALANTIS:
 12 Q. And MM is a subdivision map. And then
 13 just so we can see the pages clearly, I blew up
 14 the date of the subdivision map of the first
 15 page.
 16 MR. MENDELSON: Objection as to
 17 form.
 18 BY MS. ZALANTIS:
 19 Q. So if you could turn to MM first, the
 20 second page, do you know what a fuel subdivision
 21 map is?
 22 A. Yes.
 23 Q. Okay. What is it?
 24 A. It the map that's prepared for, prepared
 25 and submitted to the City typically today we do

1 that before the planning board process.
 2 Q. If you could, just because it may be
 3 easier for you to read, on the first page just
 4 because it's below that, there's markings with a
 5 number. Does that indicate the subdivision flat
 6 was filed?
 7 A. Yes. It's low but.
 8 MR. MENDELSON: Objection as to
 9 form.
 10 A. This is a copy of the original map filed
 11 in the Office of the Registrar of Westchester
 12 county.
 13 BY MS. ZALANTIS:
 14 Q. Okay. Today we file it differently.
 15 A. Yeah, with the county clerk.
 16 Q. Right. So do you see that there's
 17 various streets on the subdivision map that are
 18 indicated? You may have to turn to the second
 19 page.
 20 A. Yes.
 21 Q. Starting from, if you hold it this way
 22 (indicating) --
 23 A. (Indicating.)
 24 Q. Correct. And reading down, do you see
 25 Weeks Place (phonetic)?

1 A. Yes.
 2 Q. Pinebrook Road?
 3 A. Yes.
 4 Q. Crestview Street?
 5 A. Yes.
 6 Q. Ashland Street?
 7 A. Yes.
 8 Q. And then the other direction there's
 9 Chatworth Place?
 10 A. Yes.
 11 Q. East Place?
 12 A. Yes.
 13 Q. And at the very bottom it's East Street?
 14 A. I see that.
 15 Q. Okay. If you could turn to the deed that
 16 I provided to you marked as Exhibit LL. Look at
 17 the language referenced or highlighted in orange,
 18 and if you could compare it to the streets that
 19 we just read and reviewed on the subdivision map.
 20 Are there any streets referenced in orange that
 21 are not on the filed subdivision map?
 22 MR. MENDELSON: Objection as to
 23 form.
 24 A. The only read I see on this map that's
 25 not on this map is Fifth Avenue which is just on

1 the peripheral of the subdivisions.
 2 BY MS. ZALANTIS:
 3 Q. Okay. And other than that, all the other
 4 streets on the subdivision plat are referenced in
 5 the orange language; is that correct?
 6 MR. MENDELSON: Object as to form .
 7 A. Yes.
 8 BY MS. ZALANTIS:
 9 Q. Okay. Now can you look at the language
 10 in yellow, highlighted in yellow?
 11 A. Yes.
 12 Q. And just read it to yourself. Let me
 13 know when you're ready.
 14 A. Yes.
 15 Q. Have you ever seen language like that or
 16 similar to that language in any deeds that you
 17 ever reviewed?
 18 MR. MENDELSON: Objection as to
 19 form.
 20 A. I don't recall.
 21 BY MS. ZALANTIS:
 22 Q. What do you understand that language to
 23 mean?
 24 A. It says.
 25 MR. MENDELSON: Objection as to

1 form.

2 A. To the end, and "Said streets and avenues

3 may -- may be forever public streets or highways

4 and may be enjoyed as such," that the person that

5 entered into this subdivision chose to sub divide

6 all these parcels, gave all these streets names,

7 and gave the rights of these streets to the City.

8 Q. Okay.

9 (DEFENDANT'S EXHIBIT NN, MINUTES,

10 WAS MARKED FOR IDENTIFICATION, AS OF THIS

11 DATE.)

12 BY MS. ZALANTIS:

13 Q. Showing you what's been marked as Exhibit

14 NN. Prior to today, have you ever had an

15 opportunity to review these minutes?

16 A. No.

17 Q. If you could look at what's marked as

18 page 179, and I highlighted it for you in yellow

19 certain language.

20 A. I see that.

21 Q. And it notes in the minutes of the clerk,

22 read the following communication from assistant

23 Corp Counsel which was on motion order received

24 and filed and then the following language appears

25 in yellow that seems to suggest that the deed was

1 Q. There's certain streets referenced.

2 A. Okay.

3 Q. And if you compare it to the deed, if you

4 could tell us which streets are not referenced as

5 compared to the orange language in the deed?

6 MR. MENDELSON: Objection as to

7 form.

8 A. East Place and East Street are not in

9 this resolution.

10 BY MS. ZALANTIS:

11 Q. So it appears that despite the attorney's

12 recommendation, the City decided not to accept

13 East Street as a public street; is that correct?

14 MR. MENDELSON: Objection as to

15 form.

16 A. It doesn't say that they accepted it

17 here.

18 BY MS. ZALANTIS:

19 Q. Right. And this resolution, if you could

20 look at the date of the deed and compare. Did

21 this resolution happen after the date of the

22 deed?

23 MR. MENDELSON: Objection as to

24 form.

25 BY MS. ZALANTIS:

1 conveying as public streets certain private

2 streets.

3 MR. MENDELSON: Objection as to

4 form.

5 BY MS. ZALANTIS:

6 Q. Is that correct?

7 A. "The City conveying as public streets

8 certain private" -- yes.

9 Q. Okay. And the attorney notes that, "East

10 Street is only 30 feet wide." But he writes,

11 "The street board is on City park and in view of

12 this, it might be well for the City to accept it

13 as it is." Do you see that language?

14 A. I do.

15 Q. Now if you can turn to pages 186 and 187,

16 and I highlighted it because there was a ton of

17 resolutions in these minutes, the relevant

18 section. If you could read it. It starts at the

19 bottom 186 then goes to the bottom of 187,

20 correct?

21 A. Yes.

22 Q. If you could just read it to yourself?

23 A. Okay.

24 Q. If you look at first via resolve clause?

25 A. Yes.

1 Q. Its on the first page.

2 MR. MENDELSON: Objection as to

3 form.

4 A. The 30th day of April, 1914.

5 BY MS. ZALANTIS:

6 Q. And the date of the resolution?

7 A. May 19, 1914.

8 Q. Sorry, where are you seeing that?

9 A. As commander -- dated May 19th of --

10 Q. That was the date of communication.

11 A. 1914, sorry. Sorry. Approved June 3rd,

12 1914.

13 Q. Okay. Just note that the date of the

14 minutes are June 2nd, 1914, correct? Look at the

15 first page.

16 A. Correct, June 2nd, 1914.

17 Q. So if you could put the subdivision map

18 in front of you again from 1907. So go back to

19 the subdivision map. From 1907 until June 2,

20 1914, all street were private streets; is that

21 correct?

22 MR. MENDELSON: Just for the

23 record, you're the one calling it a

24 subdivision map.

25 MS. ZALANTIS: He identified it as a

1 subdivision map.
 2 MR. MENDELSON: The record will
 3 speak for itself. Objection as to form.
 4 A. Okay. What was the question?
 5 BY MS. ZALANTIS:
 6 Q. So let's start over. Is this a file
 7 subdivision map, what is --
 8 A. I thought we went over this.
 9 Q. -- Exhibit MM?
 10 A. Okay. It says file map number 1728 Fifth
 11 Avenue Heights.
 12 Q. So does this appear to be a file
 13 subdivision map?
 14 A. It does -- it appears to be a file
 15 subdivision map.
 16 Q. So from 1907 to June 2nd, 1914, all the
 17 streets depicted on this map were private
 18 streets; is that correct?
 19 MR. MENDELSON: Objection as to
 20 form.
 21 A. I'm not sure. It says here that they
 22 wanted to, maybe forever, public streets or
 23 highways that maybe used, and enjoys as such, but
 24 I don't know what happened between 1907 and 1914.
 25 BY MS. ZALANTIS:

1 form.
 2 A. I don't know if it was a private street
 3 or if it was under construction, so it could have
 4 been one or the other.
 5 BY MS. ZALANTIS:
 6 Q. Assuming that it was constructed in 1907,
 7 was it a private street, Weeks Street, until it
 8 was accepted by the City on June 2nd, 1914?
 9 MR. MENDELSON: Objection as to
 10 form.
 11 A. Yes.
 12 BY MS. ZALANTIS:
 13 Q. Have you ever had an opportunity as
 14 building commissioner or in any other capacities
 15 when working for the City to be involved when
 16 developers dedicate streets formed as part
 17 subdivisions as public streets to the
 18 municipality?
 19 MR. MENDELSON: Objection as to
 20 form.
 21 A. No, no.
 22 BY MS. ZALANTIS:
 23 Q. Are you familiar with the rights of
 24 property owners in streets laid out as part of
 25 the subdivision plan?

1 Q. At some point, and we went over it, in
 2 1914, certain streets were accepted as public
 3 streets, correct?
 4 MR. MENDELSON: Objection.
 5 A. That's what it states in these minutes.
 6 BY MS. ZALANTIS:
 7 Q. Correct. And you're referring to the
 8 minutes marked as Exhibit MM?
 9 A. From 1914.
 10 Q. But East Street was not accepted as a
 11 public street?
 12 A. It doesn't appear that it was as per that
 13 resolution, those minutes.
 14 Q. Let me not ask you about East Street.
 15 Let me ask you about a different street, Weeks
 16 Place.
 17 A. Okay.
 18 Q. So Weeks Place appears as one of the
 19 streets listed in the resolution from June 2,
 20 1914; is that correct?
 21 A. Yes.
 22 Q. So from 1907 until Weeks Place was
 23 accepted by the City as a public street, was
 24 Weeks Street a private street?
 25 MR. MENDELSON: Objection as to

1 MR. MENDELSON: Objection as to
 2 form. Are you asking for his legal
 3 opinion or his --
 4 MS. ZALANTIS: His understanding.
 5 A. No.
 6 BY MS. ZALANTIS:
 7 Q. So again Weeks Street, for example, was
 8 accepted by the City as a public street but not
 9 East Street or East Place; is that correct?
 10 A. That's what the document reflects.
 11 Q. So what is East Street, a street?
 12 MR. MENDELSON: Objection as to
 13 form. Again, are you asking for his
 14 legal opinion?
 15 MS. ZALANTIS: His understanding
 16 based on his work in the City?
 17 MR. MENDELSON: Objection as to
 18 form.
 19 A. I'm not sure.
 20 BY MS. ZALANTIS:
 21 Q. Is there anything from barring the public
 22 from driving over East Street?
 23 MR. MENDELSON: Objection as to
 24 form.
 25 A. Not that I'm aware of.

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1 BY MS. ZALANTIS:
 2 Q. Is it the City's position that it evens
 3 East Street?
 4 MR. MENDELSON: Objection as to
 5 form.
 6 A. I believe it is a public right-of-way.
 7 BY MS. ZALANTIS:
 8 Q. Is there a list of public right-of-ways
 9 in the City of New Rochelle?
 10 A. I'm not sure.
 11 Q. Are there lists of public right-of-ways
 12 owned by the City of New Rochelle?
 13 MR. MENDELSON: Objection. Asked
 14 and answered.
 15 A. I don't know.
 16 MS. ZALANTIS: No. I think I asked
 17 first for a list of public rights of way
 18 and then second asked for a list of
 19 public rights of way owned by the City of
 20 New Rochelle.
 21 MR. MENDELSON: I think you asked
 22 for the list of public streets earlier.
 23 MS. ZALANTIS: That was a different
 24 than public right-of-way.
 25 BY MS. ZALANTIS:

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1 Q. See where it says map number 1728?
 2 A. Yes.
 3 Q. Is that the same map number referenced in
 4 Exhibit MM?
 5 A. Yes.
 6 Q. P, if you can take a look at it, it's a
 7 deed from the La Roccas to FMLR Management LLC,
 8 dated January 30, 2008. And if I could again --
 9 there is no Schedule A, but if you can look at
 10 the section of the deed, the first paragraph
 11 under the section "All that certain parts deeds
 12 with the building and improvements thereon
 13 erected lying being in the" -- and you can look
 14 at the forth line down that refers to map number.
 15 MR. MENDELSON: Objection as to
 16 form.
 17 A. File map, June 7 -- yes.
 18 BY MS. ZALANTIS:
 19 Q. Is that the same map number that's
 20 referenced in Exhibit MM?
 21 A. Yes.
 22 (SKIPPED EXHIBIT PP)
 23 (DEFENDANT'S EXHIBIT QQ, DOCUMENT,
 24 WAS MARKED FOR IDENTIFICATION, AS OF THIS
 25 DATE.)

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1 Q. Do you know if there was any discussion
 2 about incorporating East Street into the City's
 3 parking area?
 4 MR. MENDELSON: Objection as to
 5 form.
 6 A. No.
 7 (DEFENDANT'S EXHIBIT OO, DEED, WAS
 8 MARKED FOR IDENTIFICATION, AS OF THIS
 9 DATE.
 10 Q. So Exhibit OO is the deed from the
 11 Demaces (phonetic) to the La Roccas dated
 12 September 18, 2002. And if you can just look,
 13 turn to Schedule A, you can ask for any legal
 14 interpretations but, if you know, the first
 15 paragraph, fifth line down, there's a reference
 16 to a map.
 17 A. Okay.
 18 MR. MENDELSON: Where are we?
 19 MS. ZALANTIS: Fifth line down,
 20 first paragraph of Schedule A.
 21 BY MS. ZALANTIS:
 22 Q. Do you see that?
 23 A. I do.
 24 MR. MENDELSON: Okay.
 25 BY MS. ZALANTIS:

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1 Q. Showing you a document marked as Exhibit
 2 QQ. Do you know what this document is?
 3 A. No. Looks like -- no -- an invoice. I'm
 4 not sure.
 5 Q. Okay, that's fine.
 6 (DEFENDANT'S EXHIBIT RR, LIST OF
 7 STREETS, WAS MARKED FOR IDENTIFICATION,
 8 AS OF THIS DATE.)
 9 Q. Showing you a list of what appears to be
 10 streets.
 11 MR. MENDELSON: Objection.
 12 BY MS. ZALANTIS:
 13 Q. Do you know what this list is from?
 14 MR. MENDELSON: Objection as to
 15 form.
 16 A. No.
 17 BY MS. ZALANTIS:
 18 Q. Okay. So just to the final series of
 19 question, we heard a lot today about Flavio but I
 20 note that Maria La Rocca is named in this
 21 litigation. Can you explain what allegations
 22 relate to Maria La Rocca?
 23 MR. MENDELSON: Objection as to
 24 form. It's calling for a legal opinion.
 25 BY MS. ZALANTIS:

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1 Q. Was there any allegations that
 2 Maria La Rocca was involved in any way of
 3 resurfacing an area of City owned property?
 4 MR. MENDELSON: Objection as to
 5 form.
 6 A. I don't know. If she's listed as the
 7 owner of the property, then the answer is yes.
 8 BY MS. ZALANTIS:
 9 Q. Well, we saw the last deed base was not
 10 in the name of either of the two.
 11 A. No. It's in the name of a holding
 12 corporation that they probably own that she has
 13 shares of. So ...
 14 Q. Okay. So that's the basis, in other
 15 words?
 16 MR. MENDELSON: Objection as to
 17 form.
 18 A. I don't have a basis. I don't a basis.
 19 MS. ZALANTIS: I have nothing
 20 further.
 21 (Proceedings concluded: 3:03 p.m.)
 22
 23
 24
 25

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1 CERTIFICATION
 2
 3 STATE OF NEW YORK)
 4 ss.
 5 COUNTY OF WESTCHESTER)
 6
 7
 8 I, Robyn Harrell, Notary Public within
 9 and for the State of New York, do hereby certify:
 10 That I reported the proceedings in the
 11 within entitled matter, and that the within
 12 transcript is a true record of said proceedings.
 13 I further certify that I am not related
 14 to any of the parties to this action by blood or
 15 marriage, and that I am in no way interested in
 16 the outcome of this matter.
 17 IN WITNESS WHEREOF, I have hereunto set
 18 my hand this 5th day of March, 2020.
 19
 20
 21
 22 _____
 23 ROBYN HARRELL, RPR
 24
 25

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1 STATE OF NEW YORK)
 2 ss:
 3 COUNTY OF WESTCHESTER)
 4
 5
 6 I, PAUL VACCA, the Witness herein,
 7 having read the foregoing testimony of the
 8 pages of this deposition, do hereby certify
 9 it to be a true and correct transcript,
 10 subject to the corrections, if any, shown on
 11 the attached page.
 12
 13
 14 _____
 15 PAUL VACCA
 16
 17
 18 Subscribed and sworn to before me
 19 this ___ day of _____, _____.
 20
 21 _____
 22 NOTARY PUBLIC
 23
 24
 25

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 25 W PHOTOGRAPH 72

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1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF WESTCHESTER)

4

5

6 I, PAUL VACCA, the Witness herein,
7 having read the foregoing testimony of the
8 pages of this deposition, do hereby certify
9 it to be a true and correct transcript,
10 subject to the corrections, if any, shown on
11 the attached page.

12

13



14

PAUL VACCA

15

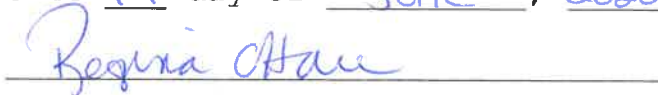
16

17

18 Subscribed and sworn to before me

19 this 17 day of June, 2020.

20



21

NOTARY PUBLIC

22

Regina O'Hare
Notary Public, State of New York
No. 01OH5067784
Qualified in Westchester County
Commission Expires Oct. 28, 2022

23

24

25

ERRATA SHEET

Re:

Our File No.: 7367.101

The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter, held on February 25, 2020.

<i>PAGE</i>	<i>LINE</i>	<i>SHOULD READ</i>
8	21	I'm a building official
16	24	Alexander Tergis (sp.)
42	7	I would believe
44	14	He is an online journalist
46	1	I think we try to follow up on any
55	13	Maffei (sp.)
56	14	Maffei (sp.)
64	1	Maffei (sp.)
68	10	It looks like this a slight (strike trench)
74	20	Strike Door
76	11	Turns and goes down East Street
82	6	Strome (sp.)
88	7	Yes. It is the block and lot card stored electronically.
93	13	not (sp.)
98	20	Second page, do you know what a filed subdivision
99	5	number. Does that indicate the subdivision plat
106	10	Okay. It says filed map number 1728 Fifth
106	14	It does – it appears to be a filed
114	18	I don't have a basis.

The reason for the above revisions is stenographic error and/or that my present recollection of the aforementioned facts is more accurate than it was on the date of my deposition.

Sworn to before me this
day of 6/17, 2020

Regina O'Hare
Notary Public

Paul Vann
Regina O'Hare
Notary Public, State of New York
No. 01OH5067784
Qualified in Westchester County
Commission Expires Oct. 28, 2022

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Exhibit "21"

City of New Rochelle

2

GRANTOR TO GRANTEE

RECORDED

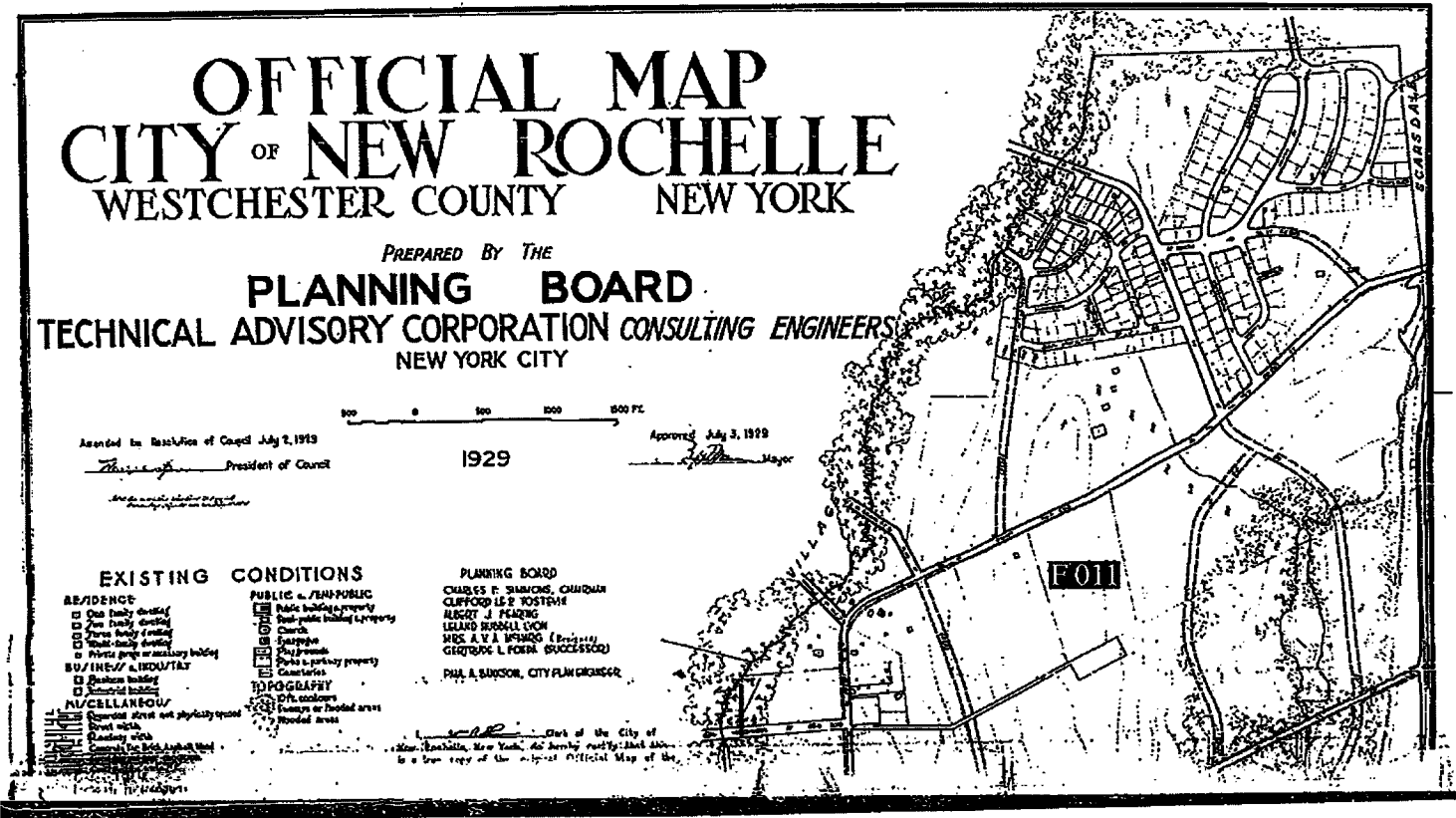
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PAGE

Year Month Day

GRANTOR TO GRANTEE			RECORDED	LIBER	PAGE
			Year	Month	Day
Hayes	Nellie Thomas	Louis Love	1919	Apr	29 2194 74
Hawas	Katherine S.	Cecilia J. Rowland	"	May	2 " 150
Halcyon Park Co.		Charles E. Rice	"	"	12 2195 184
Halberstadt	Constance von H.	Sedney W. Goodsmith	"	"	13 2196 99
Hadert	John A.	Isadore D. Kalow	"	"	16 2195 329
Hayden	James A. Ept	Francis Draz	"	"	17 2196 185
"	Heire	"	"	"	" " 186
"	Thomas F.	"	"	"	" " 187
"	Annie E.	"	"	"	" " 187
Hadert	Albert J. (L ³²)	William B. E. Lockwood	"	"	26 2197 107
Hall	Lucia C.	Ethel Cockran	"	"	28 2198 32
Harrison	George H.	Gabriel S. Kraus	"	"	31 " 88
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Hadert Realty Co.		Luigi Mancini	"	June	14 2200 76
"	John A.		"	"	" " 397
"	Alice M.	Aurora Louisa	"	"	24 " 397
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Huass	Charles		"	"	" " 213
"	Dora	Vincenzo Meccia	"	"	30 2202 120
Hatch	Fanny Cus	Robert Caterson	"	July	1 " 213
Halcyon Park Co.		Margaret F. Conwell	"	"	9 2203 59
Haviland	James S. (R ¹⁰⁹)	John F. Lamberson	"	"	14 " 258
Haar	Emma Ept	Fenny Chasserot	"	"	18 " 481
Halcyon Park Co.		Touise E. Okon	"	Aug	2 2207 163
Hatterate	John J. Redr	W. Edward R. Wells	"	"	" " 205
Huass	Charles	Felicie Ciardullo	"	"	5 2205 417
"	Dora		"	"	" " 417

Exhibit "22"



D0231

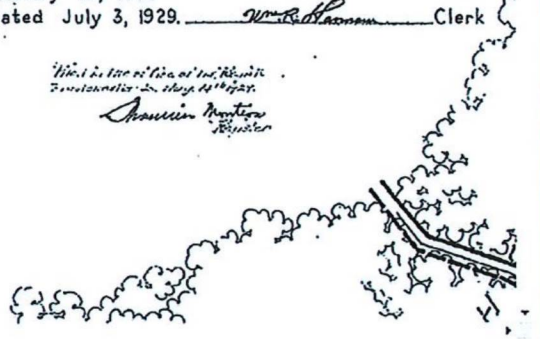
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EXISTING CONDITIONS

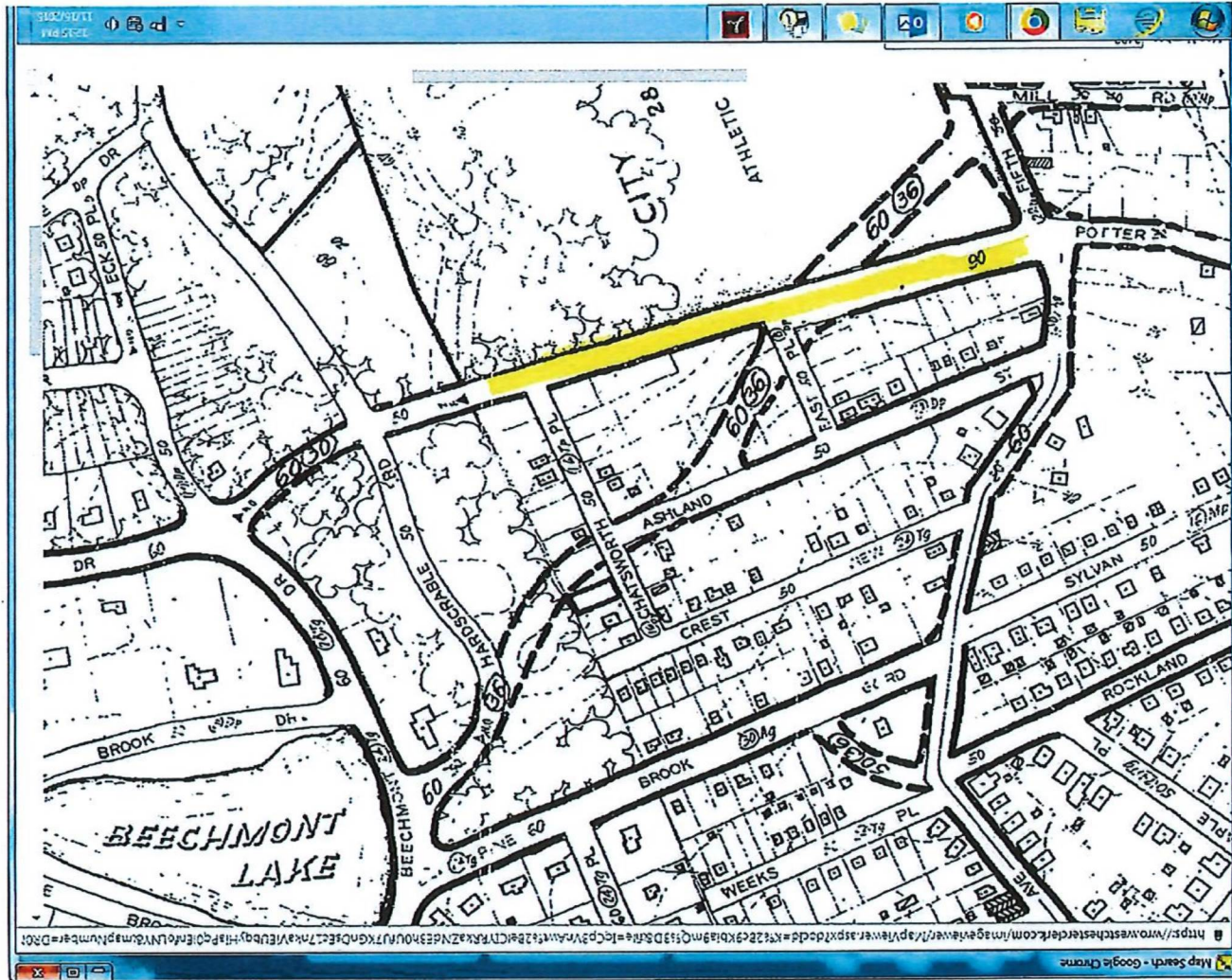
<p>RESIDENCE</p> <ul style="list-style-type: none"> <input type="checkbox"/> One family dwelling <input type="checkbox"/> Two family dwelling <input type="checkbox"/> Three family dwelling <input type="checkbox"/> Multi-family dwelling <input type="checkbox"/> Private garage or accessory building <p>BUSINESS & INDUSTRY</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Business building <input checked="" type="checkbox"/> Industrial building <p>MISCELLANEOUS</p> <ul style="list-style-type: none"> <input type="checkbox"/> Recorded street not physically opened <input type="checkbox"/> Street width <input type="checkbox"/> Roadway width <input type="checkbox"/> Concrete, Tar, Brick, Asphalt, Wood <input type="checkbox"/> Good, fair and poor condition. <input type="checkbox"/> Central grass strip 	<p>PUBLIC & SEMI-PUBLIC</p> <ul style="list-style-type: none"> <input type="checkbox"/> Public building & property <input type="checkbox"/> Semi-public building & property <input type="checkbox"/> Church <input type="checkbox"/> Synagogue <input type="checkbox"/> Playgrounds <input type="checkbox"/> Parks & parkway property <input type="checkbox"/> Cemeteries <p>TOPOGRAPHY</p> <ul style="list-style-type: none"> <input type="checkbox"/> 10ft. contours <input type="checkbox"/> Swamps or flooded areas <input type="checkbox"/> Wooded areas 	<p style="text-align: center;">PLANNING BOARD</p> <p>CHARLES F. SIMMONS, CHAIRMAN. CLIFFORD L. P. TOSTEVIN ALBERT J. FEARING LELAND HUBBELL LYON MRS. A. V. A. MCHARG (Resigned) GERTRUDE L. FONDA (SUCCESSOR)</p> <p style="text-align: center;">PAUL A. BANKSON, CITY PLAN ENGINEER</p>
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CITY PLAN PROPOSALS

<ul style="list-style-type: none"> <input type="checkbox"/> Existing street to be designated as Thoroughfare <input type="checkbox"/> Existing street to be widened & designated as Thoroughfare <input type="checkbox"/> Proposed Thoroughfare <input type="checkbox"/> Proposed Park <input type="checkbox"/> Existing street width <input type="checkbox"/> Proposed street width <input type="checkbox"/> Existing roadway width <input type="checkbox"/> Proposed roadway width 	<p>I, <u>Wm. R. Blanton</u> Clerk of the City of New Rochelle, New York, do hereby certify that this is a true copy of the original Official Map of the City of New Rochelle, New York, with amendments thereto adopted February 7, 1928 and approved February 10, 1928</p> <p>Dated July 3, 1929. <u>Wm. R. Blanton</u> Clerk</p> <p style="text-align: right;"><i>William R. Blanton</i> Clerk</p>
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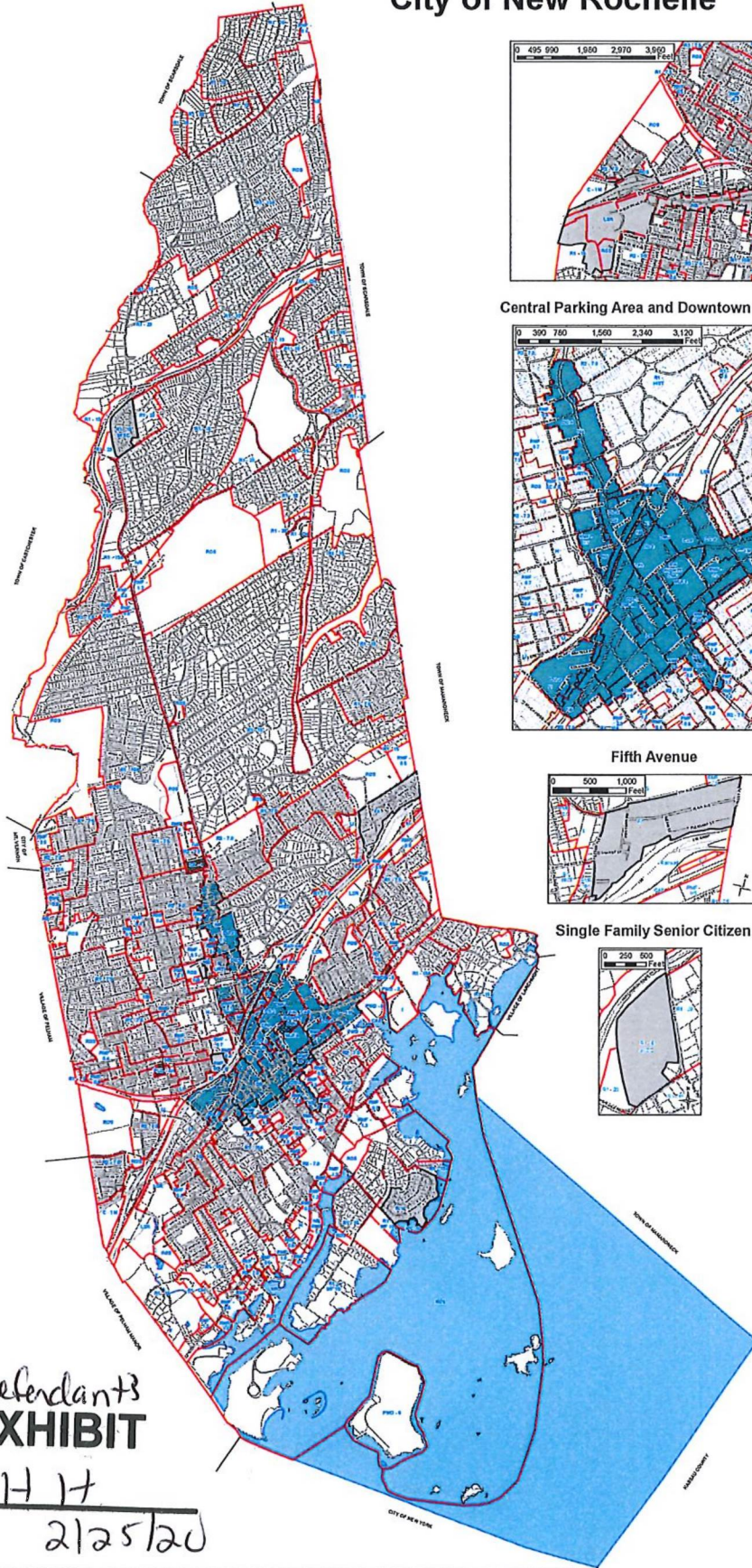
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11/16/2015



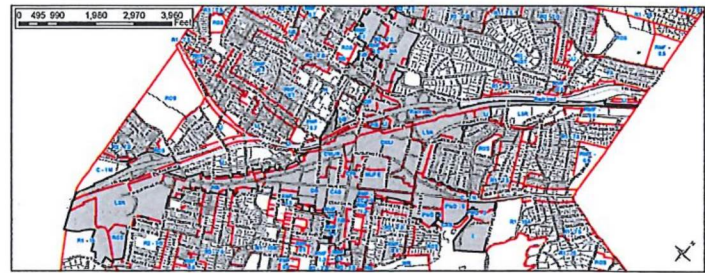
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Exhibit "23"

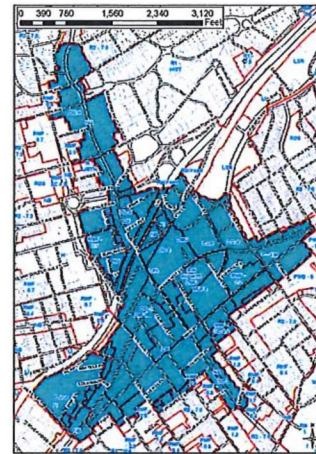
Zoning and Overlays City of New Rochelle



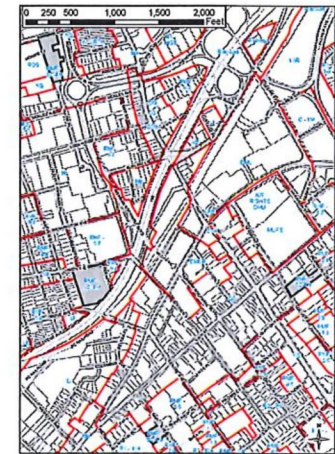
Cabaret Overlay



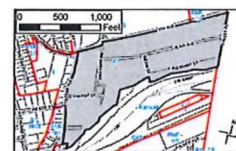
Central Parking Area and Downtown Overlay



Multi Family Senior Citizen



Fifth Avenue



Water View



Single Family Senior Citizen



Defendant's
EXHIBIT

H 17

RH 2/12/20

Legend:

- AR RIGHTS DMU
- Downtown Overlay Zone
- Central Parking Area
- Zoning Boundaries
- Floating Zone
- Overlay Zone

The depicted floating zones and floating overlay zones show only those areas where those classifications are possible. It does not indicate parcels where that zoning has been applied.

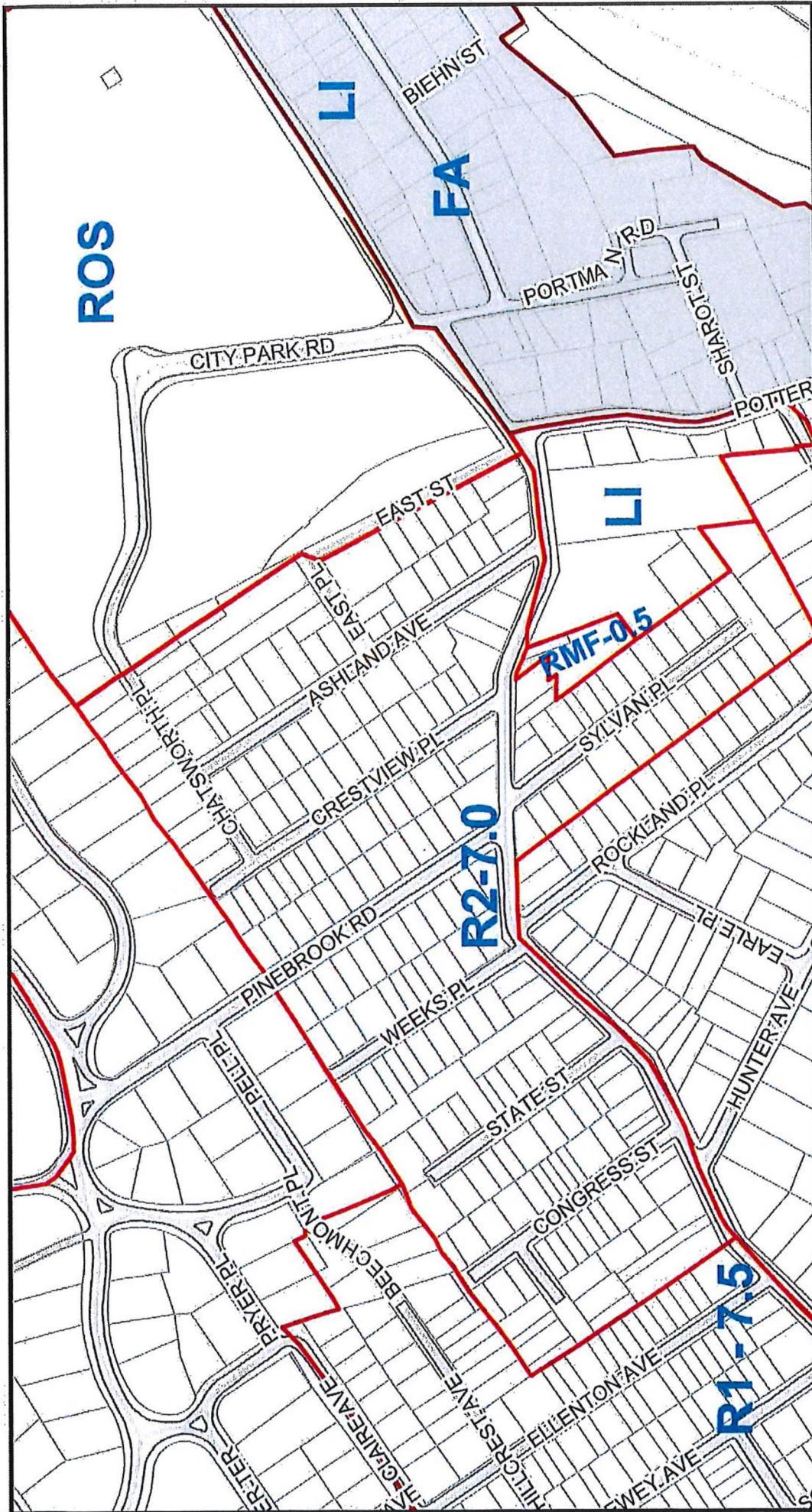
Creation date: 2/02/2016 Copyright: 2016



**CITY OF
NEW ROCHELLE,
NEW YORK**

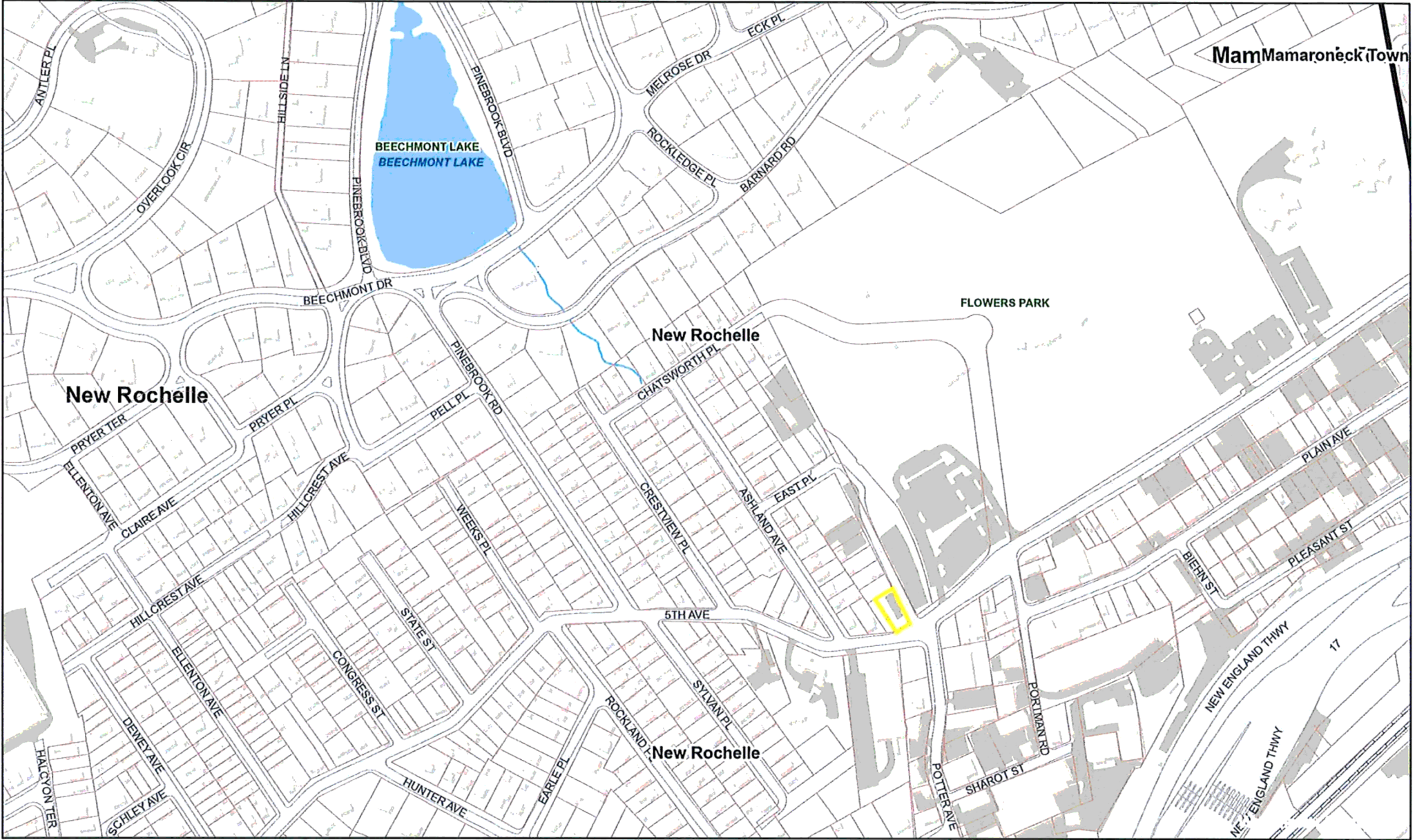
This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the validity of the information.

Zone	Destination
AR RIGHTS DMU	Air Rights Downtown Mixed Use
G-1M	General Commercial Modified
CAB	Cabaret Overlay
CFA	Central Parking Area Overlay Zone
CR-1	College Related
DB	Downtown Business
DMU	Downtown Mixed Use
DMUR	Downtown Mixed Use Urban Renewal
DO-1	Downtown Overlay Zone
DO-2	Downtown Overlay Zone
DO-3	Downtown Overlay Zone
DO-4	Downtown Overlay Zone
DO-5	Downtown Overlay Zone
DO-6	Downtown Overlay Zone
FA	Fifth Ave Overlay Zone
H	Hospital
I	Industry
LI	Light Industry
LSR	Large Scale Retail
MUFE	Mixed Use Family Entertainment
NA	North Avenue
NB	Neighborhood Business
NR	Neighborhood Retail
PUD - AH	Planned Unit Development Affordable Housing Floating Zone
PWD - 3	Planned Waterfront Development
PWD - 5	Planned Waterfront Development
PWD - 8	Planned Unit Development
PWDE - 5	Planned Waterfront Development Extension Floating Zone
R-URTH	Urban Renewal Townhouse Residence
R1-10	One Family Residence
R1-10A	One Family Residence
R1-15	One Family Residence
R1-20	One Family Residence
R1-7.5	One Family Residence
R1-CH	One Family Cluster Residence
R1-HIST	One Family Historic Residence
R1-WF10	One Family Waterfront Residence
R2-7.0	Two Family Residence
Railroad	Railroad
RMF - 0.4	Multi-Family Residence
RMF - 0.5	Multi-Family Residence
RMF - 0.7	Multi-Family Residence
RMF - 1.0	Multi-Family Residence
RMF - 1.3	Multi-Family Residence
RMF - 2.0	Multi-Family Residence
RMF - SC 4.0	Multi-Family Senior Citizen Residence
RMBO - 4	Multi-Family Residence
ROB	Recreation Open Space
SFSC	Single Family Senior Citizen Overlay Zone
WV	Water View Overlay Zone
WR	Water Front Residence



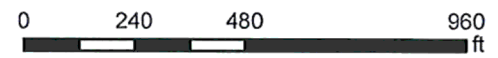
D0252

Exhibit "24"



May 25, 2022

1:5,000



Tax parcel data was provided by local municipality. This map is generated as a public service to Westchester County residents for general information and planning purposes only, and should not be relied upon as a sole informational source. The County of Westchester hereby disclaims any liability from the use of this GIS mapping system by any person or entity. Tax parcel boundaries represent approximate property line location and should NOT be interpreted as or used in lieu of a survey or property boundary description. Property descriptions must be obtained from surveys or deeds. For more information please contact local municipality assessor's office.

Westchester County GIS

GIS
<http://giswww.westchestergov.com>
 Michaelan Office Building
 148 Martine Avenue Rm 214
 White Plains, New York 10601

Exhibit "25"



Public Works

Department Overview

The Department of Public Works provides and maintains the City's physical facilities through its various operations bureaus and services:

- Municipal engineering
- Traffic engineering
- Maintenance, repair and construction of sewers and drains
- Cleaning of streets and highways
- Collection and disposal of refuse and recyclable materials
- Maintenance, repair, construction, reconstruction and resurfacing of streets
- Maintenance of traffic control devices
- Installation of street lights
- Maintenance of City-owned trees
- Removal of ice and snow from public thoroughfares
- Leaf and yard waste removal and recycling
- Maintenance of City-owned buildings and structures
- Maintenance of City vehicles.

The Department is the third element of the City's Emergency Management Response Effort.

ONLINE PERMIT SYSTEM

Moratorium Period for Permit Applications

During the moratorium period, no work is permitted from November 8th - January 15th on Lincoln Ave, Main St, North Ave, Huguenot St, and Pelham Rd.

No work is permitted City wide from December 1st though January 15th.

Exhibit "26"



Streets & Highways

Overview

The functions of the Bureau of Streets & Highways includes: mechanical sweeping of streets, maintenance and repair of roads, construction and maintenance of parking lots and traffic dividers, collection of leaves, collection of residential yard waste, control of snow and ice, removal of dead animals, roadside maintenance, structural work, painting, etc.

Services

- Yard Waste Recycling
- Leaf Collection
- Snow Removal
- Blacktop and Pothole Repairs
- Street Sweeping
- Forestry
- Traffic Services
- Roadside Maintenance
- Graffiti Removal
- On-Street Trash Removal
- Animal Carcass
- Christmas Tree Removal
- Ice conditions

CONTACT US

Exhibit "27"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

----- X
CITY OF NEW ROCHELLE,

Plaintiff,

Index No. 54190/2016

- against -

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC.,

**PLAINTIFF'S RESPONSE
AND OBJECTIONS TO
DEFENDANTS' FIRST SET
OF INTERROGATORIES**

Defendants.

----- X

PLEASE TAKE NOTICE that plaintiff, CITY OF NEW ROCHELLE, (hereinafter, the "City" or "Plaintiff"), as a for a response and objections to the defendants', FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC. and FMLR REALTY MANAGEMENT LLC (hereinafter, the "Defendants"), first set of interrogatories, respectfully sets forth the following:

GENERAL OBJECTIONS

1. These "General Objections" are applicable to and incorporated into each of THE CITY's specific responses below as if fully repeated in each response and are intended, and shall be deemed, to be in addition to any specific objection included therein. The stating of specific objections to a request shall not be construed as a waiver of these "General Objections" nor does the restatement of, or specific reference to, a "General Objection" in response to a particular Interrogatory waive any other "General Objection."

2. The disclosure of information and/or the production of documents in response to these Interrogatories and these responses and objections shall be without prejudice to any objections THE CITY may have as to competency, relevance or admissibility of any response

hereto at any hearing or trial in this litigation. Unless otherwise stated, THE CITY's General Objections apply to the entirety of the Interrogatories and accompanying demands to produce, including each and every subparagraph of said documents.

3. THE CITY objects to the Interrogatories to the extent that they require THE CITY to disclose information or produce documents and impose obligations on THE CITY greater than, inconsistent with and/or in addition to those provided for or required by the by the New York Civil Practice Law and Rules ("CPLR"), as interpreted, and applicable case law. To the extent that these Interrogatories do not comply with the CPLR, THE CITY will construe and respond to these Interrogatories in accordance with the CPLR.

4. THE CITY objects to each and every Interrogatory to the extent that, as presently constituted, the requests are vague, overbroad, ambiguous, and/or ill-defined such that the Interrogatory may be reasonably susceptible to various interpretations.

5. THE CITY objects to providing information and documents in response to these Interrogatories to the extent that compilation of such information would be unduly burdensome, oppressive, and unreasonably expensive and/or require unreasonable investigation on the part of THE CITY.

6. THE CITY objects to these Interrogatories to the extent that they are vague, ambiguous, overbroad, unduly burdensome and oppressive, seek information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, and seek information beyond that permitted by the CPLR.

7. THE CITY objects to these Interrogatories to the extent that they call for the identification and production of "any," "all" "every" or "each" of a category of documents or information. Such requests place an unreasonable and impossible burden on THE CITY, which

burden is far beyond that imposed by the CPLR. Further, it is unreasonable and impossible to represent, even after a reasonably diligent search, that “any,” “all,” “each” or “every” document, person, or thing falling within a description can be, or has been, located, identified and/or produced or destroyed. Information and documents may be kept in a myriad of locations or files. Many people may have handled them. They may have been moved frequently and may have been arranged, rearranged or reordered. Information and documents may have been lost or may have been part of materials disposed of in accordance with a record retention program. Individuals with discrete knowledge relative to the content, existence and/or storage of documents or information may have left the company, taking that knowledge with them. Therefore, THE CITY cannot warrant or represent that it has presently produced “each” or “all” or “any” or “every” type of requested information, document(s) or thing(s). Nor can THE CITY identify “each” or “all” or “any” or “every” type of requested information, document(s) or thing(s).

8. THE CITY objects to these Interrogatories to the extent that they seek privileged information, documents or materials, including, without limitation, that which was prepared, generated, or received for or in anticipation of litigation, constitutes attorney work product, or is protected by attorney-client privilege, or any other applicable privilege, rule of privacy and confidentiality, immunity, protection, or restriction that makes such information non-discoverable. Any inadvertent disclosure or production shall not be deemed a waiver of the applicable privilege or protection.

9. THE CITY objects to the Interrogatories to the extent that they do not incorporate time limitations. THE CITY is not obligated to produce documents or provide information concerning time periods before or after the relevant time frame.

10. THE CITY objects to each and every Interrogatory on the ground and to the extent that it calls for confidential business information or personally sensitive information, including of third-parties. THE CITY objects to each and every Interrogatory on the ground and to the extent that it seeks the disclosure of confidential financial, trade secret, proprietary, or sensitive business information, or information protected from disclosure by law, agreement, or court order.

11. THE CITY states that these responses have been prepared after a reasonable investigation and are based upon the best information presently available. THE CITY's investigation of the facts and allegations of this case is expected to continue up and through the time of trial. The following responses are given without prejudice to the THE CITY's right to produce evidence of any subsequently discovered facts. To the extent that further investigation may disclose additional information or documents that have been requested, such responsive information and/or documents will be produced via supplemental response(s). THE CITY reserves the right to amend, modify and/or supplement, in part or in whole, its responses to these requests as additional facts and details are ascertained, analysis is made, discovery is undertaken and legal research is completed. THE CITY also reserves the right to introduce subsequently obtained information at trial.

12. THE CITY's decision to provide information requested, notwithstanding the objectionable nature of any of the Interrogatories themselves, is not: (a) a concession that the material is relevant to this proceeding; (b) a waiver of the General Objections or the objections asserted in response to specific Interrogatories; (c) an acceptance by THE CITY of the factual assertions made in the Interrogatories; (d) an admission that any such information exists; or (e) an agreement that requests for similar information will be treated in a similar manner.

13. THE CITY specifically reserves the right to object, as appropriate, to the admission of these written answers as evidence at trial or for any other purpose.

14. The foregoing General Objections are continuing in nature and are incorporated by reference into each of the specific Responses set forth below. Any specific objection set forth in response to a particular Interrogatory is not intended to be a waiver, in whole or in part, of any of the foregoing General Objections. Nothing contained in these responses shall be deemed an admission, concession or waiver by THE CITY to the validity of any claim(s) or defense(s) asserted.

INDIVIDUAL RESPONSES

1. State the following:
 - (a) the full name of any and all persons who answered, prepared, or helped prepare the answers to these interrogatories;
 - (b) for each person identified in subparagraph (a) above, set forth their: i) relation to Plaintiff; and ii) the basis of their knowledge concerning the allegations in the Complaint and/or Answers served in connection with this action.

Response: The City objects to this Interrogatory as not proper, overly broad, harassing, and that it calls for the production of privileged information.

2. Identify all persons and/or business entities who have knowledge or who the City has reason to believe has knowledge of the facts alleged in the Verified Complaint and Reply to Counterclaims, and for each person/entity identified, briefly summarize the facts of which that person/entity has knowledge or may have knowledge.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing, it is not yet possible to identify all witnesses and The City specifically reserves its right to amend any response. Without waiving said objections, please refer to the City's Response to PC Order, number 7 and the documents produced in connection with the City's responses and objections to defendant's combined document demands.

3. Identify all persons Plaintiff (including its officials, representatives, employees, board members, and/or agents) has communicated with the Defendants from 2002 to the present: (a) about the alleged encroachments on Fifth Avenue; (b) about the alleged encroachments on East Street; and, (c) about City's maintenance of East Street. For responses to each subparagraph above, include the parties to each communication, each person's title, the date of communication(s) and a detailed description of what was discussed.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing, it is not yet possible to identify all witnesses and The City specifically reserves its right to amend any response. Without waiving said

objections, please refer to the City's Response to PC Order and the Verified Complaint including Exhibits 3 and 4 thereto and the documents produced in connection with the City's responses and objections to defendants' combined document demands.

4. State all functions that the City performs with respect to East Street.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing, and that it impermissibly calls for a legal conclusion. Without waiving said objections, refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

5. From 2002 to present, with respect to East Street describe with specificity the dates and times the City, including any of the City's officials, board members, employees, representative, and/or agents performed or engaged in:

- (a) street cleaning;
- (b) snow removal;
- (c) plowing;
- (d) repair work (and explain and describe such work);
- (e) paving and/or asphaltting work (and explain and describe such work);
- (f) maintenance work (and explain and describe such work);
- (g) maintenance of any manhole (and explain and describe such work); and

(h) maintenance of any sewer and/or water lines (and explain and describe such work).

For responses to each subparagraph above, include and state the name and address of the City representatives who did and/or witnessed the work.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, the City does not maintain East Street. The City did repair and protect the Parcel, as defined in the Complaint, including the installation of a fence, due to the destruction of its property by the Defendants. Refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

6. Identify the record owner of East Street and the manner in which ownership was attained.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving

said objections, please refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

7. Explain in detail the basis for the City's position that it has no obligation to maintain or repair East Street.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, please refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

8. Describe and identify with specificity the reasons and evidence upon which the City bases its statement in paragraph 44 of the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to

this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, please refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

9. Identify any and all City officials, representatives, employees, board members, and/or agents who have allegedly witnessed the following with respect to the property referenced in the Verified Complaint as the "Parcel":

- (a) the Defendants' alleged construction of an alleged parking lot or parking area;
- (b) the Defendants' alleged clearing of land; and
- (c) the Defendants' alleged removal of trees or plantings.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, refer to the documents provided in connection with the City's responses to the defendants' combined document demands, with the addition of William Zimmerman of the Parks Department.

10. Identify any and all City officials, representatives, employees, board members, and/or agents who have allegedly witnessed the following with respect to the City's Property on or near Flowers Park:

- (a) the Defendants' alleged construction of an alleged parking lot or parking area;
- (b) the Defendants' alleged clearing of land; and
- (c) the Defendants' alleged removal of trees or plantings.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, refer to the documents provided in connection with the City's responses to the defendants' combined document demands, with the addition of William Zimmerman of the Parks Department.

11. State each and every date and time, and describe in detail for each date and time the exact actions of Defendants, when the City alleges Defendants engaged in the following with respect to the property referenced in the Verified Complaint as the "Parcel":

- (a) the Defendants' alleged construction of an alleged parking lot or parking area;
- (b) the Defendants' alleged clearing of land; and

(c) the Defendants' alleged removal of trees or plantings.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

12. State each and every date and time, and describe in detail for each date and time the exact actions of Defendants, when the City alleges Defendants engaged in the following with respect to the City's Property on or near Flowers Park:

(a) the Defendants' alleged construction of an alleged parking lot or parking area;

(b) the Defendants' alleged clearing of land; and

(c) the Defendants' alleged removal of trees or plantings.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion.

Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving said objections, refer to the documents provided in connection with the City's responses to the defendants' combined document demands.

13. State the amount of the City's alleged damages, and how that amount was calculated, related to the "consequential damages including but not limited to the value of the removed trees, loss of value of the Parcel, and property damage" as alleged in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving these objections, refer to the documents provided in connection with the City's response to the defendants' document demands.

14. State the amount of the City's alleged damages, and how that amount was calculated, related to the City's RPAPL § 861 claim alleged in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed

narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving these objections, refer to the documents provided in connection with the City's response to the defendants' document demands.

15. State the amount of the City's alleged damages, and how that amount was calculated, related to the "consequential damages including but not limited to the costs of constructing the fence to prohibit access to the parking lot and the costs of removing the parking lot and restoring the Parcel to its prior location" as alleged in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving these objections, refer to the documents provided in connection with the City's response to the defendants' document demands.

16. State the amount of the City's alleged damages, and how that amount was calculated, related to the City's claim for statutory damages under City Code § 111-40 alleged in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad,

unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Without waiving these objections, refer to the documents provided in connection with the City's response to the defendants' document demands.

17. Describe in detail the reason the City claims it is entitled to punitive damages as set forth in the Verified Complaint and the amount of damages the City is seeking.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing.

18. Describe in detail the reason the City claims it is entitled to attorneys' fees and costs as set forth in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing.

19. Describe in detail the reason the City claims it is entitled to prejudgment interest at the maximum legal rate as set forth in the Verified Complaint.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing.

20. Identify any and all experts you intend to rely on at trial.

Response: The City incorporates the General Objections as if fully set forth herein. The City objects to this Interrogatory on the grounds and to the extent that it is overly broad, unduly burdensome, vague, and ambiguous. Furthermore The City objects to this Interrogatory, which improperly purports to require the City to provide a detailed narrative of its case and provide a legal conclusion. Additionally, The City objects to this Interrogatory as premature because fact discovery is ongoing. Subject to the foregoing objections, the City will provide the requested information in accordance with the timeline outlined in the CPLR.

Dated: White Plains, New York
February 3, 2020

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER, LLP
Attorneys for Plaintiff




Peter A. Meisels, Esq.
Scott Mendelsohn, Esq.
1133 Westchester Avenue
White Plains, NY 10604
(914) 872-7385
Our File No. 07367.00101

Silverberg Zalantis LLC
Katherine Zalantis, Esq.
Attorneys for Defendants
120 White Plains Road, Suite 305
Tarrytown, NY 10591
(914) 682-0011

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, PAUL VACCA am the Commissioner of Buildings for the City of New Rochelle. I have read foregoing responses to Defendants' First Set of Interrogatories and I am familiar with the contents thereof, and am informed and believe that the responses are true and correct. The same are true to my knowledge, except those matters therein stated upon information and belief, and as to those matter, I believe them to be true.



PAUL VACCA

Sworn to before me on
December 3~~rd~~, 2020
JAN (12)



Notary Public

Regina O'Hare
Notary Public, State of New York
No. 01OH5067784
Qualified in Westchester County
Commission Expires Oct. 28, 2022

Index No. 54190/2016

Scott Mendelsohn
07367.00101

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

CITY OF NEW ROCHELLE

Plaintiff,

- against -

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS,
INC. and FMLR REALTY MANAGEMENT LLC.,

Defendants.

**PLAINTIFF'S RESPONSE AND OBJECTIONS TO
DEFENDANTS' FIRST SET OF INTERROGATORIES**

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

Attorneys For Plaintiff

1133 Westchester Avenue
White Plains, NY 10604
914.323.7000

Exhibit "28"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CITY OF NEW ROCHELLE,

PLAINTIFF,

- against -

Index No. :
54190/2016

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC., a/k/a F. LA ROCCA &
SONS, INC. And FMLR REALTY MANAGEMENT LLC,
DEFENDANTS.

-----X

DATE: May 28, 2021

TIME: 10:05 A.M.

EXAMINATION BEFORE TRIAL of the
Defendant, FLAVIO LA ROCCA & SONS, INC., by
FELIPE MAYA, taken by the Plaintiff,
pursuant to a Court Order, held via
Veritext Virtual Services, before Edith
Tirado-Plaza, a Notary Public of the State
of New York.

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A P P E A R A N C E S:

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER,
LLP

Attorneys for the Plaintiff
1133 Westchester Avenue
White Plains, New York 10604
BY: ROLAND KOKE, ESQ.
roland.koke@wilsonelser.com

SILVERBERG ZALANTIS, LLC

Attorneys for the Defendants
120 White Plains Road, Suite 305
Tarrytown, New York 10591
BY: KATHY ZALANTIS, ESQ.

ALSO PRESENT:

ROLAND KOKE
KARA GALLAHER - SPANISH INTERPRETER
ELITE LANGUAGE SERVICES

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

1 F. MAYA

2

3 COURT REPORTER: Due to the
4 need for this deposition to take
5 place remotely because of the
6 Government's order for social
7 distancing the parties will stipulate
8 that the court reporter may swear in
9 the and the Spanish interpreter
10 witness over the phone/Veritext
11 Virtual video conference and that the
12 witness has verified that he is in
13 fact Felipe Maya.

14 May I swear in the Spanish
15 Interpreter and the witness?

16 MR. KOKE: Yes.

17 MS. ZALANTIS: Yes.

18 K A R A G A L L A G H E R, a Spanish
19 interpreter, solemnly swore to translate
20 the following questions from English to
21 Spanish and answers from Spanish to
22 English:

23 F E L I P E M A Y A, called as a witness,
24 having been first duly sworn by a Notary
25 Public of the State of New York, was

1 F. MAYA

2 examined and testified as follows:

3 EXAMINATION BY

4 MR. MEISELS:

5 Q. Please state your name for the
6 record.

7 A. Felipe Maya.

8 Q. What is your business address?

9 A. 436 Fifth Avenue, New Rochelle,
10 New York 10801.

11 Q. Good morning, Mr. Maya.

12 A. Good morning.

13 Q. My name is Peter Meisels. We
14 represent the city of New Rochelle and I'm
15 going to be asking you a few questions.

16 A. That's fine.

17 Q. If my questions are not clear,
18 please tell me and I will rephrase them.

19 A. That's fine.

20 Q. When did you first learn that
21 you would be deposed today?

22 A. Yesterday.

23 Q. How did you find out about it?

24 A. My boss told me.

25 Q. Who is your boss?

Page 7

1 F. MAYA

2 A. Flavio La Rocca.

3 Q. What did he say to you?

4 A. That I was going to have an
5 interview.

6 Q. Did he tell you what it was
7 about?

8 A. Yes.

9 Q. What did he say?

10 A. About some property on the
11 street.

12 Q. What else did he say?

13 A. That's all.

14 Q. What do you understand this
15 deposition to be about?

16 A. Things about the property on
17 the street and things that you need to
18 know.

19 Q. When you say the property on
20 the street, what property are you speaking
21 about?

22 A. The property that's in Flavio
23 La Rocca's yard.

24 MS. ZALANTIS: For the record,
25 he's talking about the yard meaning

Page 8

1 F. MAYA

2 the property is the yard that's what
3 they call that.

4 Q. Mr. Maya, do you also go under
5 the last name of Galindo?

6 A. Yes.

7 Q. What is the full name that your
8 parents gave you?

9 A. Filipe Maya Galindo.

10 Q. In reference to the your
11 understanding that this was about property
12 in Mr. La Rocca's yard, do you understand
13 that to include a parking area?

14 A. No.

15 Q. Before now has anyone told you
16 that this case is about a parking area?

17 A. Yes.

18 Q. Mr. Maya, how did you find out
19 that the case was about a parking area?

20 A. From my boss.

21 Q. Was that Mr. La Rocca?

22 A. Yes.

23 Q. What did he explain to you
24 about the parking area?

25 A. Just about some cars that were

Page 9

1 F. MAYA

2 parked there and he wanted to know if we
3 were parked there as well.

4 Q. Did he show you what place he
5 was talking about?

6 A. Yes.

7 Q. Did you ever park in that
8 place?

9 A. No.

10 Q. Did you see other people
11 parking in that place?

12 A. Do you mean the bosses trucks
13 or my personal car?

14 Q. Both.

15 A. No, not mine and not my bosses.

16 Q. Did you ever see other cars
17 parked at that place?

18 A. Yes.

19 Q. Who did those cars belong to?

20 A. I don't know.

21 Q. Was that parking area a new
22 parking lot?

23 MS. ZALANTIS: Objection as to
24 form. You can answer.

25 A. No.

1 F. MAYA

2 Q. Do you know when that parking
3 place was built?

4 A. No.

5 Q. How are you presently employed?

6 A. I don't understand the
7 question.

8 Q. Are you working?

9 A. Yes.

10 Q. Who do you work for?

11 A. For Flavio La Rocca.

12 Q. How long have you worked for
13 Flavio La Rocca?

14 A. Seven, eight years maybe.

15 Q. Were you working for Mr. La
16 Rocca in 2015?

17 A. Yes.

18 Q. Were you working for Mr. La
19 Rocca in May of 2015?

20 A. Yes.

21 Q. In May of 2015, what kind of
22 work did you do for Mr. La Rocca?

23 A. I always do construction. We
24 put down rocks and we lay asphalt.

25 Q. In addition to laying asphalt

1 F. MAYA

2 and putting down rocks, do you do any other
3 sort of construction work?

4 A. No, we just do that type of
5 construction and cement.

6 Q. As of today, are you doing the
7 same kind of work?

8 A. Yes.

9 Q. Going back to May 2015, where
10 did you live?

11 A. Fifth Avenue. I don't
12 remember.

13 Q. Do you mean Fifth Avenue in New
14 Rochelle?

15 A. Yes.

16 Q. Did you rent the place that you
17 lived at?

18 A. Yes.

19 Q. How did you get from your house
20 to your job?

21 A. I walked but sometimes I drove.

22 Q. When you drove, did you drive
23 your car?

24 A. Yes.

25 Q. When you drove your car, where

1 F. MAYA

2 did you park when you got to work?

3 A. In city parking.

4 Q. Was that city parking in the
5 park?

6 A. In the park, yes.

7 Q. While you were working for Mr.
8 La Rocca in May of 2015, did you have
9 occasion to see anyone doing landscaping
10 work on the other side of your street?

11 A. No.

12 Q. I'm now going to show you a
13 short video and see if you can identify
14 some of the things that happened in May of
15 2015; okay?

16 Mr. Maya, can you see that
17 screen it says Talk of The Sound TV?

18 A. Yes.

19 Q. Let's start. Mr. Maya, do you
20 recognize that's shown in that photograph?

21 A. Yes.

22 Q. Can you explain what that is?

23 A. There's a machine and there are
24 some people working there.

25 Q. Do you recognize any of the

1 F. MAYA

2 people?

3 A. No, I can't recognize them.

4 Q. Do you recognize the machine?

5 A. Yes.

6 Q. Who owns the machine?

7 A. Flavio.

8 Q. Now, looking at the right side
9 of the photograph, do you see piles of wood
10 chips?

11 A. Yes.

12 Q. Do you remember seeing those
13 wood chips in May of 2015?

14 A. Yes.

15 Q. Where did those wood chips come
16 from?

17 A. I don't know.

18 Q. Do you recall seeing that
19 machine in 2015?

20 A. Yes.

21 Q. When you saw the machine in
22 2015, what was it doing?

23 A. I was there.

24 Q. Where were you?

25 A. I was there driving the

1 F. MAYA

2 machine.

3 Q. Can you tell me what you were
4 doing with the machine when you were
5 driving it?

6 A. I was cleaning out the gravel
7 and the dirt that accumulates after
8 snowstorms and things like that and pushing
9 it off the road.

10 Q. When you were pushing it off
11 the road, where did you push it?

12 A. Just right there. Maybe four
13 or five feet further in.

14 Q. Looking at this picture is the
15 machine on the road or is it on the
16 property next to the road?

17 A. It's next to the road.

18 Q. Is the machine on property next
19 to the road across the road from your
20 office?

21 A. No -- I mean yes. There are
22 two yards, one that's in front and one that
23 shows in the video now.

24 Q. Do you know whether Mr. La
25 Rocca's yard is shown in the photograph

1 F. MAYA

2 that you are looking at now?

3 A. In this picture, no.

4 MS. ZALANTIS: Off the record.

5 (Whereupon, an off-the-record
6 discussion was held.)

7 MR. MEISELS: For the record,
8 this particular video has been
9 previously marked as Plaintiff's
10 Exhibit 13 and we've been presently
11 viewing it at 15 seconds on the
12 video.

13 MS. ZALANTIS: Thank you.

14 Q. Mr. Maya, I'm showing you the
15 same video but now at 22 seconds. Can you
16 see the picture in front of you?

17 A. Yes.

18 Q. Do you recognize what's shown
19 in the photograph?

20 A. Yes.

21 Q. Can you explain what you see in
22 the photograph?

23 A. There are some guys who were
24 spreading out the gravel that I had put up
25 there.

1 F. MAYA

2 Q. Do you recognize any of the
3 guys shown in the photograph?

4 A. No.

5 Q. Is the truck that's shown on
6 the left-hand side of the photograph Mr. La
7 Rocca's truck?

8 A. Yes.

9 Q. Where did the gravel that you
10 spread come from?

11 A. It was already there. When it
12 snows and it rains that all gets pushed
13 down and it was already down there.

14 Q. Was it necessary to bring in
15 more gravel?

16 A. No.

17 Q. It appears in the photograph
18 that the property where you spread the
19 gravel is not flat; am I correct?

20 A. Correct.

21 Q. Did there ever come a time when
22 that property became flat?

23 A. No, the way you see it here is
24 the way it is.

25 Q. Mr. Maya, I'm showing you the

1 F. MAYA

2 same video but at 29 seconds. Can you see
3 the photograph?

4 A. Yes.

5 Q. Do you recognize the
6 photograph?

7 A. Yes.

8 Q. What does it show?

9 A. You can see the gravel that had
10 been there and some piles of wood chips.

11 Q. Did you put the piles of wood
12 chips that you see in the photograph?

13 A. No.

14 Q. Do you know who put the piles
15 of wood chips that we see in the
16 photograph?

17 A. No.

18 Q. Do you remember seeing those
19 wood chips being placed where we see them
20 now?

21 A. I just saw them there. We
22 leave work at 4:30 and they were just
23 there.

24 Q. I'm not sure I understand. You
25 say you leave work at 4:30; correct?

1 F. MAYA

2 A. Yes.

3 Q. Are you saying to us that those
4 wood chips were placed when you were not
5 there?

6 A. Correct.

7 Q. In the area where you were
8 spreading the gravel, was it necessary to
9 remove any brush?

10 A. No, there was no brush there.
11 There was nothing.

12 Q. Referring to the photograph, do
13 you see the yellow machine on the
14 right-hand side?

15 A. Yes.

16 Q. Is that one of Mr. La Rocca's
17 machines?

18 A. Yes.

19 Q. Is that the machine that you
20 operated?

21 A. Yes.

22 Q. And in addition to spreading
23 the gravel, what else did you do with that
24 machine?

25 A. Work to be done in the yard,

1 F. MAYA

2 that's all.

3 Q. What kind of work could that
4 machine do?

5 A. It's used for loading onto the
6 trucks things like stones and cement.

7 Q. Have you ever seen that machine
8 being used to load wood chips?

9 A. No.

10 Q. In your work for Mr. La Rocca,
11 have you ever used wood chips?

12 A. No, we do construction.

13 Q. Mr. Maya, I'm showing you the
14 same video but now at 34 seconds. Do you
15 recognize the men shown in the photograph?

16 A. No, I don't recognize them.
17 They're not facing. They have their backs
18 to me and it's been a long time since this
19 happened.

20 Q. Mr. Maya, I'm going to show you
21 the same video but now it's at 43 seconds.
22 First, do you see the gentleman standing in
23 front wearing a blue T-shirt?

24 A. Yes.

25 Q. Do you know who he is?

1 F. MAYA

2 A. I knew him at the time when he
3 worked but now I don't know.

4 Q. Did he work for Mr. La Rocca?

5 A. Yes.

6 Q. Looking at the same photograph
7 to the right of the photograph do you see a
8 man with a beige T-shirt?

9 A. Yes.

10 Q. Do you recognize that man?

11 A. No.

12 Q. Have you ever seen that man
13 before?

14 A. Yes, I saw him but it's been a
15 long time.

16 Q. Did you see those men back in
17 May of 2015 working on this job?

18 A. Yes, because when I was moving
19 the gravel I was up higher and they were a
20 little bit down from me.

21 Q. And were those men that were
22 moving the gravel working for Mr. La Rocca?

23 A. Yes.

24 Q. Mr. Maya, I'm going to show you
25 the same video but now we're at 55 seconds.

1 F. MAYA

2 Do you recognize the truck that's shown in
3 the photograph?

4 A. Yes.

5 Q. Is that truck owned by Mr. La
6 Rocca?

7 A. Yes.

8 Q. Looking at the same photograph
9 to the left of the photograph do you see a
10 black metal fence?

11 A. Yes.

12 Q. Do you know what is behind that
13 fence?

14 A. It's a park.

15 Q. Is that the skate park?

16 A. Yes.

17 Q. Mr. Maya, looking at the right
18 side of this photograph, do you see a man
19 wearing a T-shirt that says New York
20 Energy?

21 A. Yes.

22 Q. Do you recognize that man?

23 A. Yes.

24 Q. Who is he?

25 A. I knew him at the time but now

1 F. MAYA

2 I don't know.

3 Q. At the time that you knew him,
4 was he working for Mr. La Rocca?

5 A. Yes.

6 Q. Was he working for Mr. La Rocca
7 when you were pushing the gravel back away
8 from the street?

9 A. Yes.

10 Q. At the time that you were
11 pushing the gravel away from the street,
12 was that part of a project to build a
13 parking lot?

14 A. No.

15 Q. At the time that you were
16 pushing the gravel away from the street,
17 how many other people were working on that
18 project?

19 A. Maybe four or five.

20 Q. Were those four or five people
21 all working for Mr. La Rocca?

22 A. Yes.

23 Q. And what did you understand to
24 be the purpose of the project?

25 A. I don't know. I was just

1 F. MAYA

2 getting the gravel that had fallen and
3 putting it back in its place, that's all.

4 Q. Mr. Maya, I'm showing you the
5 same video but now at 114 seconds. Do you
6 see the photograph in front of you?

7 A. Yes.

8 Q. Does that photograph show East
9 Street?

10 A. Yes.

11 Q. The trucks shown in the
12 photograph, do they belong to Mr. La Rocca?

13 A. Yes.

14 Q. Looking at the photograph on
15 the other side of the trucks, do you see a
16 black metal fence?

17 A. Yes.

18 Q. Is that fence the fence between
19 East Street and the skate park?

20 A. Yes.

21 Q. Mr. Maya, I'm showing you the
22 same video but now at 131 seconds. Do you
23 see the photograph?

24 A. Yes.

25 Q. Does the yellow truck shown in

1 F. MAYA

2 the photograph belong to Mr. La Rocca?

3 A. Yes.

4 Q. Looking to the right side of
5 the photograph, is that Mr. La Rocca's
6 yard?

7 A. Yes.

8 Q. Earlier when you said that you
9 would park in Mr. La Rocca's yard if you
10 drove to work, is this the yard that you
11 would park in?

12 A. Yes.

13 Q. In looking into Mr. La Rocca's
14 yard, do you see the green machine?

15 A. Yes.

16 Q. What kind of machine is that?

17 A. That's a machine for cleaning
18 the dirt.

19 Q. Can you explain to somebody who
20 knows nothing about construction how that
21 machine cleans the dirt?

22 A. So when we bring dirt from jobs
23 we put it in this machine and it cleans the
24 dirt. Sometimes the dirt has roots or
25 grass in it and this machine cleans that.

1 F. MAYA

2 Q. Mr. Maya, I'm showing you the
3 same video but now at 149 seconds.

4 Is the yellow truck shown in
5 that video a truck that belonged to Mr. La
6 Rocca?

7 A. Yes.

8 Q. The truck next to it, the black
9 truck next to it, does that belong to Mr.
10 La Rocca?

11 A. Yes.

12 Q. Looking at the black truck, can
13 you tell us what's inside that truck?

14 A. It's sand that we use for our
15 work.

16 Q. Referring to the day when you
17 were using the machine to push back the
18 gravel, was that sand spread in the same
19 area?

20 THE INTERPRETER: Miss

21 Reporter, can you read back the
22 question, please?

23 (Whereupon, the referred to
24 question was read back by the
25 Reporter.)

1 F. MAYA

2 A. No, this is sand that we use
3 for work jobs. That sand is taken to jobs
4 and the gravel that I was cleaning up is
5 not really a job. It's something that I
6 was -- that we do from time to time to
7 clean up the area because otherwise people
8 can get hurt or people can fall.

9 Q. Do you know who plows the snow
10 on East Street?

11 A. Yes.

12 Q. Who does it?

13 A. I do.

14 Q. Do you know who repairs East
15 Street?

16 A. We do.

17 Q. When you say we do, do you mean
18 Mr. La Rocca's company?

19 A. Yes.

20 Q. Showing you the same video but
21 now at 156 seconds, do you see that there
22 are cars parked along the black fence?

23 A. Yes.

24 Q. Looking at the right-hand side
25 of the photograph, do you see a silver

1 F. MAYA

2 colored car?

3 A. Yes.

4 Q. Do you know who owns that car?

5 A. No, I don't know.

6 Q. Am I correct that the skate
7 park is on the other side of that black
8 metal fence?

9 A. Yes.

10 Q. Mr. Maya, looking at the
11 portion of the photograph that's between
12 the silver colored car and the black metal
13 fence, do you see some concrete structures
14 at the base of the fence?

15 A. Yes.

16 Q. Do you know what those are?

17 A. It's a containment wall.

18 Q. Do you know who built that
19 containment wall?

20 A. A barrier. No, I don't know
21 who did it.

22 Q. Do you know if that containment
23 wall is on East Street?

24 A. Yes, it is.

25 Q. I'm showing you the same video

1 F. MAYA

2 but now at 203. Do you see a silver
3 colored truck with a ramp?

4 A. Yes.

5 Q. Was that truck owned by Mr. La
6 Rocca?

7 A. No.

8 Q. Do you know who owned the
9 truck?

10 A. No, I don't know.

11 Q. Mr. Maya, I'm showing you the
12 same video but now at 225. Can you see
13 that picture?

14 A. Yes.

15 Q. On the right-hand side of the
16 photograph, do you see three cars parked
17 near the piles of wood chips?

18 A. Yes.

19 Q. Concerning the first one
20 farthest to your right, that truck, do you
21 know who that truck belonged to?

22 A. No.

23 Q. Concerning the one in the
24 middle, the green vehicle in the middle, do
25 you know who that one belonged to?

1 F. MAYA

2 A. No.

3 Q. And concerning the one that's
4 farthest away closer to the left side, the
5 black one, do you know who that belonged
6 to?

7 A. No.

8 Q. Mr. Maya, do you see in the
9 lower half of the photograph almost in the
10 middle there's a yellow machine?

11 A. Yes.

12 Q. What kind of machine is that?

13 A. A compactor.

14 Q. Was that compactor owned by Mr.
15 La Rocca?

16 A. Yes.

17 Q. At the time of this project,
18 what was that compactor doing?

19 MS. ZALANTIS: Objection to
20 form but you can answer.

21 A. We used this to compact the
22 gravel so it doesn't fall down to the
23 bottom so easily.

24 Q. Is that the gravel that you had
25 pushed back with the other machine?

1 F. MAYA

2 A. Yes.

3 Q. Mr. Maya, I'm showing you the
4 same video but now at 235. That paved area
5 in the middle of the photograph, is that
6 East Street?

7 A. Yes.

8 Q. Is the yellow truck shown in
9 the left side of the photograph a truck
10 owned by Mr. La Rocca?

11 A. Yes.

12 Q. And looking down the hill, do
13 you see some vehicles parked perpendicular
14 to East Street?

15 A. Yes.

16 Q. Do you recognize those
17 vehicles?

18 A. No.

19 Q. Do you know who owned those
20 vehicles?

21 A. No.

22 Q. Looking to the other side of
23 East Street, do you see two cars that are
24 parked parallel to East Street?

25 A. Yes.

1 F. MAYA

2 Q. Do you recognize those cars?

3 A. No.

4 Q. Do you know who owned those
5 cars?

6 A. No, I don't know. There are a
7 lot of people who work around there. There
8 are a lot of yards.

9 Q. Mr. Maya, showing you the same
10 video but now at 250. Do you see the
11 machine that you explained was a compactor?

12 A. Yes.

13 Q. Am I correct that the gentleman
14 wearing the blue T-shirt whose operating it
15 is one of Mr. La Rocca's employees?

16 A. Yes.

17 Q. Do you happen to remember that
18 guy's name?

19 A. No, it's been a long time. I
20 don't remember.

21 MR. MEISELS: Would anyone
22 have any objection to us taking a
23 short break?

24 MS. ZALANTIS: Not at all.

25 MR. MEISELS: Let's take ten

1 F. MAYA

2 minutes.

3 (Whereupon, a brief break was
4 taken.)

5 Q. Mr. Maya, I'm going to show you
6 a photograph which should be on the screen
7 which was previously marked as Plaintiff's
8 Exhibit 3-A for identification. Do you
9 recognize what's depicted in that
10 photograph?

11 A. Yes.

12 Q. Can you explain to us what's
13 shown in that photograph?

14 A. You can see some people, some
15 truck, some cars, a few vehicles.

16 Q. Do you know what they're doing?

17 A. It looks like they're working.

18 Q. Do you know what kind of work
19 they're doing?

20 A. It looks like they're raking
21 and smoothing some dirt -- some ground.

22 Q. Do you recall was this part of
23 the project where you were using the
24 machine to push the gravel back?

25 MS. ZALANTIS: Objection to

1 F. MAYA

2 form. You may answer.

3 A. Yes.

4 Q. And do you see the yellow truck
5 that's facing us? Is that yellow truck
6 owned by Mr. La Rocca?

7 A. Yes.

8 Q. Is that Mr. La Rocca standing
9 next to the truck?

10 A. No, I can't recognize him.

11 Q. Am I correct that you don't
12 know whether that's Mr. La Rocca or not?

13 A. Yes, that is correct.

14 Q. Mr. Maya, this is the second
15 photograph which is part of that same
16 exhibit. Do you recognize what's shown in
17 that photograph?

18 A. Yes.

19 Q. Could you explain what's shown
20 in the photograph?

21 A. You see some people raking and
22 levelling.

23 Q. To the left of the photograph I
24 see a yellow machine. Is that the machine
25 that you described before as a compactor?

1 F. MAYA

2 A. Yes.

3 Q. Is that machine being operated
4 by one of Mr. La Rocca's employees?

5 A. Yes.

6 Q. Was that part of the project
7 where you were using the machine to push
8 back the gravel?

9 A. Yes.

10 Q. I'm showing you the next
11 photograph which is part of the same
12 exhibit. Do you recognize what's shown in
13 this photograph?

14 A. Yes.

15 Q. Could you explain what's being
16 shown in this photograph?

17 A. The machine, some vehicles and
18 some people.

19 Q. The yellow machine that's shown
20 in this photograph, is that a machine that
21 you were operating back in May of 2015?

22 A. Yes.

23 Q. Is that the machine that you
24 used to push back the gravel?

25 A. Yes.

1 F. MAYA

2 Q. I'm showing you the next
3 photograph that's part of the same exhibit.
4 Do you recognize what's shown in that
5 photograph?

6 A. Yes.

7 Q. Can you explain what's shown in
8 that photograph?

9 A. It's a truck and there's a lot
10 of gravel that hadn't been cleaned up in
11 the street.

12 Q. Is that street East Street?

13 A. Yes.

14 Q. Do you know how that gravel got
15 into the street?

16 A. From the rain.

17 Q. Is the yellow truck that's
18 shown on the left side of the photograph a
19 truck that belongs to Mr. La Rocca?

20 A. Yes.

21 Q. Does this appear that that
22 yellow truck is pulling another piece of
23 equipment?

24 A. That truck has a trailer and
25 that's the truck that we use for

1 F. MAYA

2 transporting the compactor.

3 Q. Is the compactor on top of that
4 trailer?

5 A. No.

6 Q. What kind of machine is on that
7 trailer?

8 A. There's no machine. It's
9 empty. The machine is below it.

10 Q. Mr. Maya, I'm showing you the
11 last photograph as part of that exhibit.
12 Do you recognize what's shown in that
13 photograph?

14 A. It looks like -- no, no, I
15 don't know. You can't see very well what
16 it is.

17 Q. This is actually the last
18 photograph that's part of Plaintiff's
19 Exhibit 3-A. Do you recognize that's shown
20 in this photograph?

21 A. Yes.

22 Q. Can you explain what you see?

23 A. Cars, vehicles.

24 Q. Are those vehicles parked in
25 the area where you pushed back the gravel?

1 F. MAYA

2 A. Yes.

3 Q. Are the cars parked next to
4 East Street?

5 A. That's the same, yes.

6 Q. And do you recognize any of the
7 cars shown in the photograph?

8 A. No.

9 Q. Is your car shown in the
10 photograph?

11 A. No.

12 Q. Do you know who owns any one of
13 those cars?

14 A. No, as I said, there are a lot
15 of different people there and cars. I
16 don't recognize them.

17 Q. Does a gentleman named Pat
18 Bongo have a yard on East Street?

19 A. Excuse me, the name?

20 Q. Pat Bongo, B-O-N-G-O.

21 A. Maybe. I just know of someone
22 named Pat, yes.

23 Q. Is there a business on East
24 Street known as PAB Contracting?

25 A. Yes.

1 F. MAYA

2 Q. Do you see the red car in the
3 photograph?

4 A. Yes.

5 Q. Does that red car belong to PAB
6 Contracting?

7 A. I don't know. His trucks have
8 a logo on them with the name of the
9 company.

10 Q. Mr. Maya, I'm going to show you
11 now a photograph that was previously as
12 Defendant's Exhibit C for identification.
13 Do you see that?

14 A. Yes.

15 Q. Have you seen this before?

16 A. Yes.

17 Q. Can you tell us what's shown in
18 the photograph?

19 A. Cars.

20 Q. Do you know who owns those
21 cars?

22 A. No.

23 Q. Does this photograph show the
24 area where you were pushing back the
25 gravel?

1 F. MAYA

2 A. Yes.

3 Q. After you finished pushing back
4 the gravel, was that area flat?

5 A. No, it was always a little bit
6 up, a little bit down.

7 Q. After you pushed back the
8 gravel, am I correct that that gravel was
9 then compacted?

10 A. Yes, it was compacted so that
11 it wouldn't move again.

12 Q. After it was compacted, was
13 anything else done to that area?

14 A. No.

15 Q. After it was compacted, did
16 people park in that area?

17 A. Yes, maybe they took advantage
18 that it looked nice maybe.

19 Q. We're going back to the last
20 photograph I showed you which is part of
21 Plaintiff's Exhibit 3-A. Is this where
22 people parked after you pushed back the
23 gravel and it was compacted?

24 A. Yes, it was like that before
25 and after. I just put the gravel back in

1 F. MAYA

2 its place.

3 Q. Mr. Maya, when you say that it
4 was like that before and after, do you mean
5 that people were parking there before you
6 put the gravel back in its place?

7 A. Yes, it's always been like
8 that. All I did was put some gravel back.

9 Q. Mr. Maya, I'm showing you
10 another photograph which is part of
11 Defendant's C which was previously marked
12 for identification. Can you identify
13 what's shown in that photograph?

14 A. Yes, some cones, some cars,
15 that's all.

16 Q. Does this photograph show the
17 area where you pushed back the gravel?

18 A. Yes.

19 Q. Does this photograph show where
20 those cars were parked after you pushed
21 back the gravel?

22 A. Yes.

23 Q. I'm going to show you another
24 photograph that's part of Defendant's
25 Exhibit C for identification. Do you

1 F. MAYA

2 recognize what's depicted in this
3 photograph?

4 A. Yes.

5 Q. Can you tell us what's depicted
6 in that photograph?

7 A. Some cars and the parking for
8 the skate park.

9 Q. Do you see the black metal
10 fence that goes from one side of the
11 photograph to the other?

12 A. Yes.

13 Q. Do you ever remember a time
14 when you worked for Mr. La Rocca that that
15 fence was not there?

16 A. No, that fence has always been
17 there.

18 Q. Did you ever have occasion to
19 push back gravel in the area that's shown
20 on this photograph?

21 A. Yes, because that's the same
22 place.

23 Q. I'm showing you the next
24 photograph which is part of Defendant's
25 Exhibit C for identification. Is the area

1 F. MAYA
2 shown on the right side of this photograph
3 the same area as was shown on the
4 photograph before? I'm going to show you
5 the photograph from before so you can
6 compare the two.

7 So, the question is is this
8 area the same as that area?

9 A. Yes.

10 MS. ZALANTIS: For the record,
11 can we identify the two photographs
12 that you're comparing?

13 MR. MEISELS: We were
14 comparing the photos four and five of
15 Defendant's Exhibit C.

16 Q. Mr. Maya, I'm going to show you
17 what's been previously marked as
18 Defendant's X for identification. Can you
19 identify what's shown in that photograph?

20 A. Maybe it's like a sewer.

21 Q. Do you recall having seen
22 what's depicted in that photograph before
23 this?

24 A. Yes.

25 Q. Where did you see that?

1 F. MAYA

2 A. On the street -- I don't
3 remember the name. The same street.

4 MR. MEISELS: Read back the
5 answer.

6 (Whereupon, the referred to
7 answer was read back by the
8 Reporter.)

9 Q. Is that East Street?

10 A. Yes, I think so.

11 Q. Is it on the street that runs
12 in front of Mr. La Rocca's yard?

13 A. Yes, Mr. La Rocca had two yards
14 on that street, one at the beginning of the
15 street and one further down the street.

16 Q. Was that East Street?

17 A. Yes.

18 Q. Mr. Maya, I'm going to show you
19 a second photograph which is part of
20 Defendant's Exhibit X for identification.
21 Do you recognize what's shown in that
22 photograph?

23 A. Yes.

24 Q. Can you explain what's shown in
25 that photograph?

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1 F. MAYA

2 A. Yes, it's the sewer once again
3 and a bit of a mess in the street --
4 disorder in the street.

5 Q. In reference to the sewer that
6 you see, is that a sewer for drainage or is
7 it a sewer for toilets?

8 A. I think it's for toilets.

9 Q. Do you know who maintains that
10 sewer?

11 A. No.

12 Q. Mr. Maya, I'm going to show you
13 the first of three photographs that have
14 been marked as Defendant's Exhibit GG. Do
15 you see the photograph in front of you?

16 A. Yes.

17 Q. It's a photograph with a white
18 car?

19 A. Yes.

20 Q. Do you recognize what's shown
21 in that photograph?

22 A. Yes.

23 Q. Can you explain to us what's
24 shown in the photograph?

25 A. The same area where I cleaned

1 F. MAYA

2 up the gravel and that's all.

3 Q. The area where you cleaned up
4 the gravel, is that the area that is shown
5 as being inside the black metal fence?

6 A. Yes.

7 Q. Do you know who put up the
8 black metal fence?

9 A. No.

10 Q. Do you know if the area where
11 you pushed back the gravel that is now
12 inside the black metal fence is part of the
13 park?

14 A. No, I don't know.

15 Q. Did anyone tell you to clean up
16 and push back the gravel?

17 A. Yes.

18 Q. Who was that?

19 A. My boss, Flavio La Rocca.

20 Q. Do you recognize the white car?

21 A. What do you mean do I recognize
22 it?

23 Q. Have you ever seen that white
24 car before?

25 A. There are a lot of white cars

1 F. MAYA

2 around there. I don't know. There are a
3 lot of white cars.

4 Q. Do you know who owns that white
5 car?

6 A. No.

7 Q. Do you know who usually drives
8 that white car?

9 A. No.

10 Q. Looking at the right side of
11 the photograph in the lower quarter, do you
12 see two concrete items?

13 A. Yes.

14 Q. What do you understand those to
15 be?

16 A. They are separation walls.

17 Q. Do you know who placed the
18 separation walls where you see them?

19 A. No.

20 Q. Mr. Maya, I'm now going to show
21 you the second photograph that's part of
22 Exhibit GG. Do you recognize what's shown
23 in that photograph?

24 A. Yes.

25 Q. Can you explain to us what's

1 F. MAYA

2 depicted in that photograph?

3 A. It's part of the skate park.

4 Q. Now, looking at the white car,
5 is the skate park toward the right side of
6 the photograph?

7 A. Yes, to the right. It's close
8 to where you can see where the bench is.

9 Q. If you were sitting in the car
10 it would be to your left side; am I
11 correct?

12 A. Yes.

13 Q. If you were sitting in the
14 driver's seat of the car, would the area
15 where you pushed back the gravel be to your
16 right side?

17 THE INTERPRETER: Can you read
18 back the question?

19 (Whereupon, the referred to
20 question was read back by the
21 Reporter.)

22 A. Yes.

23 Q. Mr. Maya, I'm going to show you
24 the last photograph that's part of that
25 exhibit. I ask you if you can identify

1 F. MAYA

2 what's shown in that photograph.

3 A. Excuse me?

4 Q. Was that a question for me?

5 A. Yes.

6 MR. MEISELS: Read it back.

7 (Whereupon, the referred to

8 question was read back by the

9 Reporter.)

10 A. A white car, a park and a black
11 fence, a metal fence.

12 Q. Looking at the right side of
13 the photograph, is that the skate park?

14 A. Yes.

15 Q. Looking at the left side of the
16 photograph, is that the area where you
17 pushed back the gravel?

18 A. Yes.

19 Q. Mr. Maya, I'm going to show you
20 what's been marked as Bongo Exhibit 2. I
21 ask you if you can identify what's shown in
22 that photograph?

23 A. Yes.

24 Q. Could you explain to us what's
25 depicted in that photograph?

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1 F. MAYA

2 A. Some trucks and a pile of -- I
3 don't know what it is. Some dirt.

4 Q. And do you see some machinery
5 in the photograph?

6 A. Machines, no. I see trucks.

7 Q. What kind of trucks are those?

8 A. There's a cement truck and the
9 other one is a sweeper.

10 MS. ZALANTIS: Off the record.

11 (Whereupon, an off-the-record
12 discussion was held.)

13 Q. Mr. Maya, those trucks that are
14 shown in that photograph, the cement truck,
15 the mixer and what was the other kind of
16 truck?

17 A. Sweeper.

18 Q. Do you know who owns those
19 trucks?

20 A. Yes.

21 Q. Who owns them?

22 A. I don't know the exact name but
23 it's PAB.

24 Q. Is it PAB Contracting?

25 A. PAB.

1 F. MAYA

2 Q. I'm going to show you what's
3 been marked as Bongo Exhibit 3 marked by
4 plaintiff's counsel in our last deposition.
5 I'm going to show you the first one. Do
6 you recognize what's shown in this
7 photograph?

8 A. Yes.

9 Q. What is it?

10 A. Some trucks and a car.

11 Q. Do you see the red pickup truck
12 in the middle of the photograph?

13 A. Yes.

14 Q. Do you know who usually drove
15 that truck?

16 A. No.

17 Q. Do you know who owned the
18 truck?

19 A. No, I don't know who the owner
20 is.

21 Q. Is the area depicted in that
22 photograph PAB's yard?

23 A. Yes.

24 Q. Do you see the blue car that's
25 at the left side of the photograph?

1 F. MAYA

2 A. Yes.

3 Q. Do you know who usually drove
4 that car?

5 A. No, a lot of people park their
6 cars over there. A lot of kids go to the
7 skate park and the parents bring them so I
8 don't know.

9 Q. Do you know who owns the car?

10 A. No.

11 Q. I'm showing you the first
12 photograph that is a part of Defendant's
13 Exhibit GG. Do you see that picture?

14 A. Yes.

15 Q. If you were sitting in the
16 driver's seat of the white car -- I'm
17 referring to the area that would be to your
18 right and specifically the area where you
19 pushed back the gravel. Do you see that in
20 the photograph?

21 MS. ZALANTIS: He said he's
22 sitting in the car the area to the
23 right would be where he pushed the
24 gravel.

25 MR. MEISELS: If you were

1 F. MAYA

2 sitting in the driver's seat of the
3 car.

4 MS. ZALANTIS: I got it.

5 MR. MEISELS: I'll restate the
6 question.

7 Q. If you were sitting in the
8 driver's seat of the car, am I correct that
9 the area that would be to your right would
10 be the area where you pushed back the
11 gravel?

12 A. Yes.

13 Q. In that area, did you ever see
14 any trees?

15 A. No.

16 Q. Did you ever see anybody using
17 a wood chipper?

18 A. No.

19 MR. MEISELS: No further
20 questions.

21 EXAMINATION BY

22 MS. ZALANTIS:

23 Q. I have a few quick questions.

24 You said that Mr. La Rocca's
25 company repairs East Street. What does Mr.

1 F. MAYA

2 La Rocca's company do to repair East
3 Street?

4 A. So, there are quite a few
5 potholes and we fill them in with new black
6 tar. Also where you saw the drain with the
7 cones around it, we fix up those areas so
8 that people can drive by and not get stuck
9 in the holes.

10 Q. How often does Mr. La Rocca's
11 company do this?

12 A. We did it every year.

13 Q. What else does Mr. La Rocca's
14 company do to maintain East Street?

15 A. We remove the snow in the
16 winter. We remove the gravel when it's
17 there.

18 Q. How about garbage?

19 A. We do that too. A lot of
20 people go in that area at nighttime and we
21 clean up their garbage.

22 Q. How about leaves? Do you do
23 anything with the leaves?

24 A. Yes, we clean those up too.

25 Q. The questions I asked you about

1 F. MAYA

2 the leaves and the garbage, just to be
3 clear that was in reference to East Street;
4 is that correct?

5 A. Yes.

6 Q. You said you plow East Street.
7 How often have you personally done that;
8 approximately?

9 A. I've been working with Flavio
10 seven or eight years. I do it every year.

11 Q. Do other people from Mr. La
12 Rocca's company also plow East Street?

13 A. No.

14 Q. You said you parked vehicles in
15 Mr. La Rocca's yard. Is there any other
16 place on East Street where you have parked
17 vehicles for Mr. La Rocca's company?

18 A. For La Rocca's company in the
19 yard. Only in the yard.

20 Q. Is there any other yard that
21 you park or back in 2015 that you used to
22 park vehicles for Mr. La Rocca's company?
23 Any other yard on East Street?

24 A. Yes, there's one at the
25 beginning of the street and the other one

1 F. MAYA

2 at the end of the street.

3 Q. You watched with Mr. Meisels
4 the video that was taken of work being done
5 in May of 2015. Before this videotape was
6 taken, was there gravel in the area that
7 you were doing that the work was being done
8 on?

9 A. Yes.

10 Q. How about after the date that
11 you were doing work in that area, was there
12 gravel in that area?

13 A. No, because we cleaned it up.

14 Q. Before the date of that video,
15 did cars used to park in that area that is
16 shown in the video where the work was being
17 done?

18 A. Yes, there have always been
19 cars parked there.

20 Q. So, is it fair to say that
21 before and after the date of that video
22 cars would park in that area where the work
23 was being done?

24 A. Yes, because they're always
25 arriving there for the park.

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F. MAYA

MS. ZALANTIS: I have nothing further.

(Whereupon, at 12:55 P.M., the Examination of this witness was concluded.)

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F. MAYA

D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

FELIPE MAYA

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

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F. MAYA

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F. MAYA

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

I, EDITH TIRADO-PLAZA, a Notary
Public for and within the State of New
York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 10th day of June, 2021.



EDITH TIRADO-PLAZA

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: City Of New Rochelle v. Larocca, Flavio
DATE OF DEPOSITION: 5/28/2021
WITNESSES' NAME: Felite Galinda

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[& - business]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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Exhibit "29"



Defendant's
EXHIBIT

c
R# 2/28/20



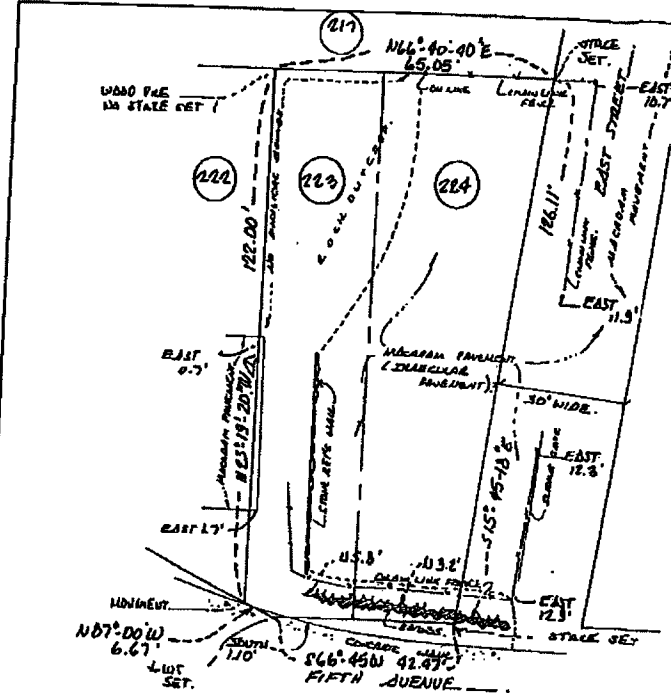






Exhibit "30"

PLTF161



AREA = 7,083.6548 S.F.

- General Note:**
- 1) This site plan of the preparation of this map was for the purposes only. It shall not be used in erecting or any other improvements. Some items shown hereon may be graphic and distorted to clarify a particular condition. This drawing should not be used for any development plans, etc.
 - 2) This map was prepared in accordance with the New York State Association of Professional Land Surveyors Existing Code of Practice.
 - 3) Easements below grade and or rail grade features are not shown or located hereon.
 - 4) This map is based upon the information supplied by the Client and or his representative and subject to the findings that a complete absence of title may inappert.
 - 5) The information shown hereon is based upon an actual field survey and is an opinion based upon said survey. Variations in efforts from that of others can and may exist.
 - 6) Confessions shown hereon are not transferable to subsequent owners, etc. Only copies bearing an embossed seal and signature of the Land Surveyor who prepared are to be considered true and valid copies.
 - 7) Unauthorized alteration and or addition to this map is a violation of Section 7100, Subdivision 2 of the NYS Education Department Law.

CLEARIFIED TO: FIRST AMERICAN TITLE INSURANCE COMPANY (251-W-10678) i CHAS MACDONALD, SENIOR SURVEYOR

Prepared By:
 Rob Taropok, L.S.
 271 North Avenue, Suite 316
 New Rochelle, New York
 10801
 (914)-632-3282
 UR-1728.2A1C: ELEC PLO BOOK.

Rob Taropok
 LICENSE NO. 4044

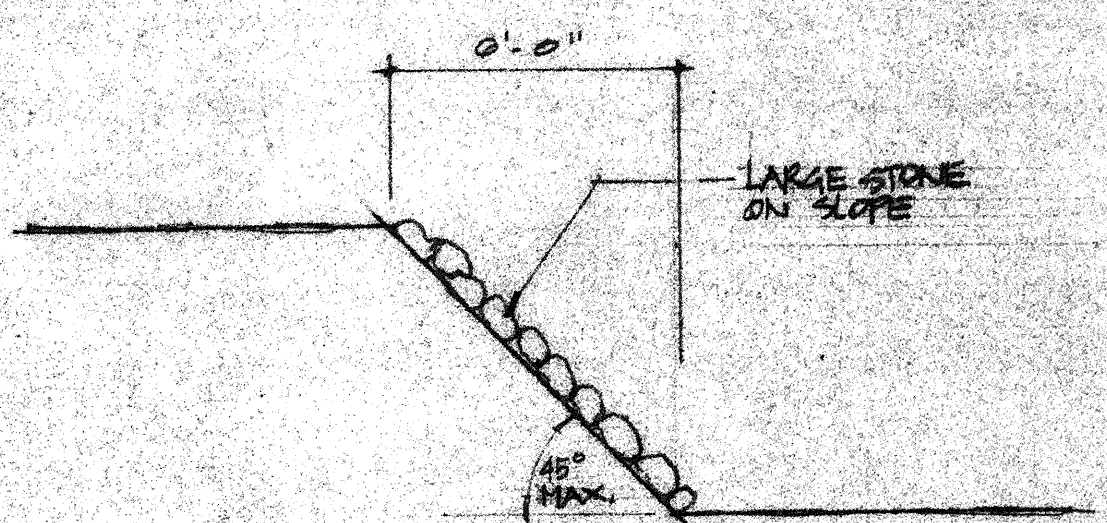
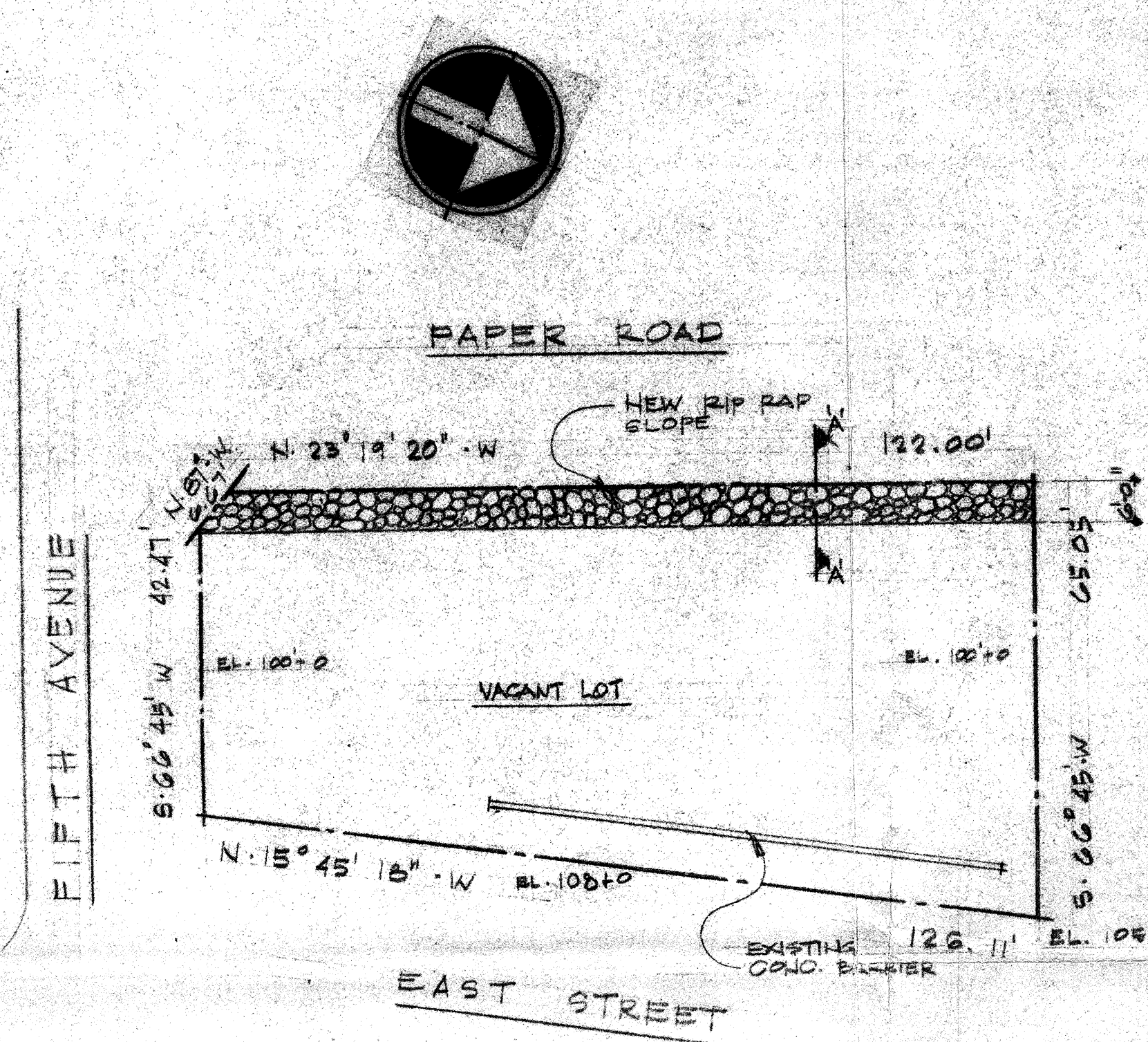
FIELD: 11/13/00
 MAP: 11/14/00
 REV: "

STAKES --
 SRC: 11/15/00

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SUBJECT OF LOTS 222 & 224; BLOCK "B" AS SHOWN ON A CERTAIN MAP ENTITLED "MAP OF FIFTH AVENUE HEIGHTS... " 1 IN THE CITY OF NEW ROCHELLE, WESTCHESTER COUNTY, NEW YORK	
SCALE 1"=20'	APPROVED BY: G. J.
DATE 10/15/2000	BY: [Signature]
SAID "MAP" FILED ON JUNE 7, 1907 AS MAP NO. 1728 IN THE WESTCHESTER COUNTY CLERK'S OFFICE, DIVISION OF LAND RECORDS.	
BEING 636 FIFTH AVENUE NEW ROCHELLE, N.Y.	
INDEXED NUMBER	CD178

Exhibit "31"



RIPRAP SECTION

SCALE: 1/4" = 1'-0"

A-A

10FI

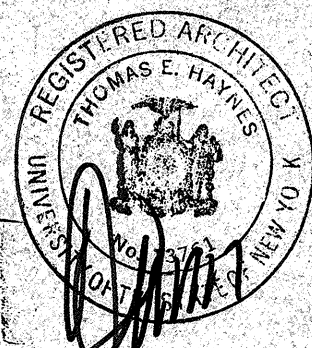
SITE PLAN

SCALE: 1" = 20'

**CITY OF NEW ROCHELLE
BUREAU OF BUILDING**

THESE PLANS AND APPLICATION WERE EXAMINED AND APPROVED AS NOTED. THEY SHALL NOT BE CONSTRUED AS AUTHORITY TO VIOLATE, CANCEL, ALTER, OR SET ASIDE ANY PROVISIONS OF THE BUILDING CODE, ZONING ORDINANCE, OR ANY OTHER LOCAL, COUNTY OR STATE REGULATIONS.

PLAN NO. **200000387** DATE **08-03-20**



TA **THOMAS E. HAYNES • ARCHITECT**
570 YONKERS AVENUE
YONKERS, NEW YORK

PROPOSED RIPRAP
AT
496 FIFTH AVENUE

These documents and all the ideas, arrangement, design signs and plans indicated thereon or presented thereby are owned by and remain the property of Thomas E. Haynes, R.A., and no part thereof shall be utilized by any person, firm, or corporation for any purpose whatsoever except with the specific written permission of Thomas E. Haynes, R.A. All rights reserved. ©

Exhibit "32"

Department of Development
Bureau of Buildings
515 North Avenue
New Rochelle, N.Y. 10801



(914) 654-2035
Fax: (914) 654-2031

Peter Warycha, C.E., C.E.O
Deputy Building Official

Noel Shaw, Jr.,
R.A., AIA., NOMA, P.P., C.E.O.
Building Official

City of New Rochelle
New York

BUILDING PERMIT

Permit Number: B20000387

Permit Date: Thursday, August 03, 2000

Section / Block / Lot(s): 551000-003.000-0931-000029- Zoning:

Property Owner: JOHN MAFFEI
ROSE MAFFEI
307 HORNIDGE Rd
MAMARONECK, NY 10543

Job Location: 436 Fifth Ave

Type of Permit Commercial Renovation Permit

Permission is granted to:
construct a rip rap slope

Conditions of the Building Permit:

1. All work shall be executed in strict compliance with the permit application, approved plans, and the New Rochelle Zoning Code, New York State Uniform Fire Prevention and Building Code, and all other applicable laws, rules, and regulations. This building permit does not constitute authority to build in violation of any Federal, State, or local law.
2. Construction must begin within 90 days of date of permit issuance. The work shall not be suspended or abandoned for a period of 6 months. Otherwise, the building permit will be rendered null & void.
3. Revisions to the work which deviate from the stamp approved plans shall be submitted to the Bureau of Buildings for approval before the changes are made. The approved plans and building permit shall be retained on the job and made available to the builder and the building construction inspector at all times.
4. Contractor to request all required building construction inspections, as indicated on the attached sheet.

THIS BUILDING PERMIT SHALL BE POSTED AND IN FULL VIEW AT THE JOB SITE.

[Signature]
for
Noel Shaw, Jr.
Building Official

Defendant's
EXHIBIT
K

RH 2/25/20

This building permit is issued subject to the following approvals: See page two for conditions where applicable

Section / Block / Lot(s): 551000-003.000-0931-000029-

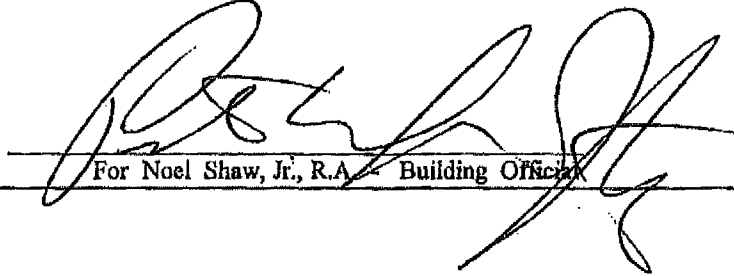
Job Location: PLTE108
436 Fifth Ave

Permit Number: B20000387

Date: Thursday, August 03, 2000

- 1: Applicable rules and regulations shall be strictly adhered to and complied with.
- 2: Contractor to request/file all required inspection(s).
- 3: Subject work shall be done on referenced property only.
- 4: Must stake out property line prior to start of rip rap work.
- 5: Submit as-built survey, prepared by an Licensed Surveyor, to show compliance with approved plans.
- 6: Upon completion of said job, must file request for final inspection and Certificate of Occupancy.

pw:js

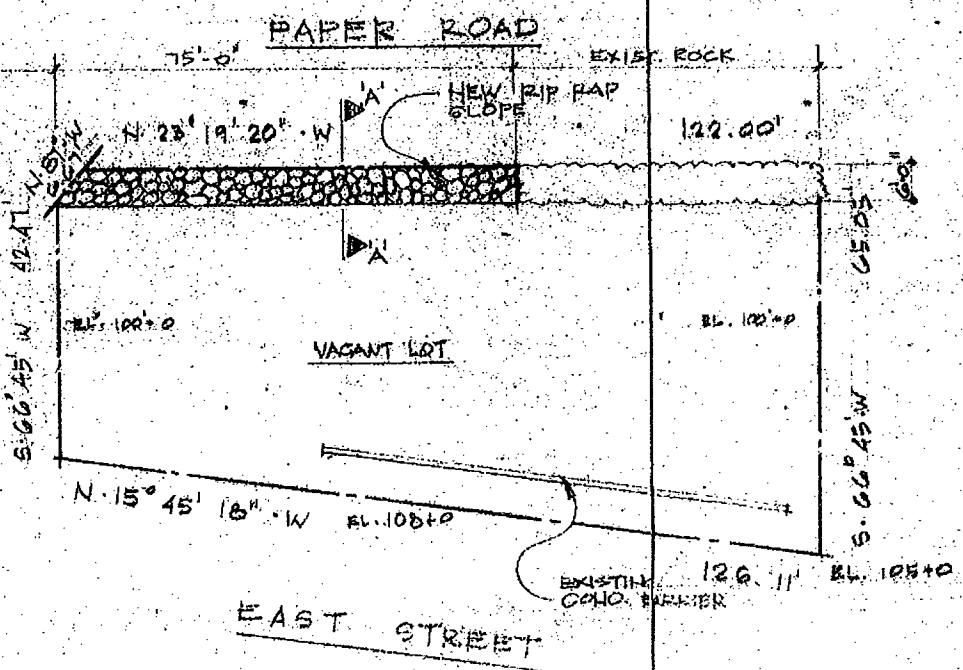


For Noel Shaw, Jr., R.A. Building Official

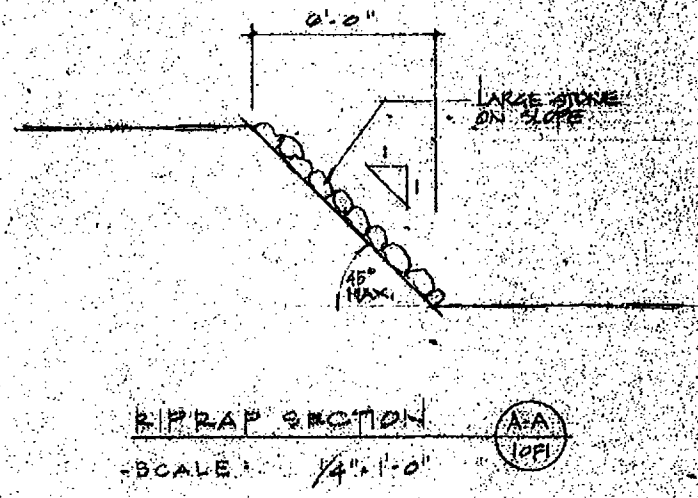
Exhibit "33"



FIFTH AVENUE



SITE PLAN
SCALE: 1" = 20'



CITY OF NEW ROCHELLE
 AND APPROVED AS AUTHORITY TO
 CONSTRUED AS AUTHORITY TO
 ALTER, OR SET ASIDE ANY PROVISIONS OF
 BUILDING CODE, ZONING ORDINANCE, OR ANY
 OTHER LOCAL, COUNTY OR STATE REGULATIONS

[Signature]

PLAN NO. 20000387 DATE 08-03-00

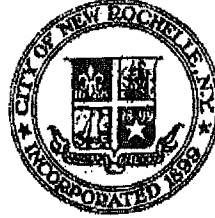
APPROVED PLANS
 NO. 20000387
 APPROVED
 01-02-01



PLTF102

Exhibit "34"

Department of
Development
Bureau of Buildings
515 North Avenue
New Rochelle, N.Y. 10801



(914) 654-2035
Fax: (914) 654-2031

Peter Warycha, C.E., C.E.O.
Deputy Building Official

Noel Shaw, Jr.,
R.A., AIA., NOMA, P.P., C.E.O.
Building Official

City of New Rochelle
New York

CERTIFICATE OF OCCUPANCY

Certificate of Occupancy C20010011
Section/Block/Lot 551000-003.000-0931

Date: Tuesday, January 16, 2001
Zoning:

Job Location: 436 Fifth Ave

This Certificate of Occupancy certifies that the
construct a rip rap slope

has been completed, inspected and conforms substantially with the approved plans bearing PERMIT # B20000387
and with the applicable requirements of the New Rochelle Building Code, Zoning Ordinance, the New York Uniform
Prevention and Building Code and all other applicable laws, rules, and regulations.

PW:js

No addition or alteration or change in use of the structure or land is permitted without a new building
permit and Certificate of Occupancy. This Certificate is issued pursuant to the following approvals:

Noel Shaw, Jr., R.A., C.E.O.
Building Official

Defendants
EXHIBIT

P
RH 2/25/20

Exhibit "35"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

- - - - - x

CITY OF NEW ROCHELLE,
Plaintiffs,

Index No.
541 90/2016

-against-

FLAVIO LAROCCA, MARIA LAROCCA, FLAVIO LAROCCA
& SONS, a.k.a. F. LAROCCA & SONS, INC. And
FMLR REALTY MANAGEMENT LLC,
Defendants.

- - - - - x

March 29, 2021
10:07 a.m.

VIDEO CONFERENCE EXAMINATION BEFORE TRIAL
of ELIOT SENOR, a non-party witness herein,
taken by MR. MENDELSON in the above-entitled
action, held at the above time and place,
pursuant to Subpoena, taken before CHRISTA M.
MILOSCIA, a Shorthand Reporter and Notary
Public within and for the State of New York.

Magna Legal Services
(866) 624-6221
www.MagnaLS.com

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A P P E A R A N C E S:

WILSON ELSER

Attorneys for Defendant
1133 Westchester Avenue
White Plains, New York 10604

BY: SCOTT MENDELSON, ESQ.

SILVERBERG ZALANTIS

Attorneys for Defendant
120 White Plains Road
Tarrytown, New York 10591

BY: KATHERINE ZALANTIS, ESQ.

1

2

S T I P U L A T I O N S

3

IT IS STIPULATED AND AGREED by and between

4

the attorneys for the respective parties

5

herein, and in compliance with Rule 221 of the

6

Uniform Rules for the Trial Courts:

7

THAT the parties recognize the provision of

8

Rule 3115 subdivisions (b), (c) and/or (d).

9

All objections made at a deposition shall be

10

noted by the officer before whom the

11

deposition is taken, and the answer shall be

12

given and the deposition shall proceed subject

13

to the objections and to the right of a person

14

to apply for appropriate relief pursuant to

15

Article 31 of the CPLR;

16

THAT every objection raised during a

17

deposition shall be stated succinctly and

18

framed so as not to suggest an answer to the

19

deponent and, at the request of the

20

questioning attorney, shall include a clear

21

statement as to any defect in form or other

22

basis of error or irregularity. Except to the

23

extent permitted by CPLR Rule 3115 or by this

24

rule, during the course of the examination

25

persons in attendance shall not make

1
2 statements or comments that interfere with the
3 questioning.

4 THAT a deponent shall answer all questions
5 at a deposition, except (i) to preserve a
6 privilege or right of confidentiality, (ii) to
7 enforce a limitation set forth in an order of
8 a court, or (iii) when the question is plainly
9 improper and would, if answered, cause
10 significant prejudice to any person. An
11 attorney shall not direct a deponent not to
12 answer except as provided in CPLR Rule 3115 or
13 this subdivision. Any refusal to answer or
14 direction not to answer shall be accompanied
15 by a succinct and clear statement on the basis
16 therefore. If the deponent does not answer a
17 question, the examining party shall have the
18 right to complete the remainder of the
19 deposition.

20 THAT an attorney shall not interrupt the
21 deposition for the purpose of communicating
22 with the deponent unless all parties consent
23 or the communication is made for the purpose
24 of determining whether the question should not
25 be answered on the grounds set forth in

1
2 Section 221.2 of these rules, and, in such
3 event, the reason for the communication shall
4 be stated for the record succinctly and
5 clearly.

6 THAT the failure to object to any question
7 or to move to strike any testimony at this
8 examination shall not be a bar or waiver to
9 make such objection or motion at the time of
10 the trial of this action, and is hereby
11 reserved; and

12 THAT this examination may be signed and
13 sworn to by the witness examined herein before
14 any Notary Public, but the failure to do so or
15 to return the original of the examination to
16 the attorney on whose behalf the examination
17 is taken, shall not be deemed a waiver of the
18 rights provided by Rules 3116 and 3117 of the
19 C.P.L.R, and shall be controlled thereby; and

20 THAT the certification and filing of the
21 original of this examination are hereby
22 waived; and

23 THAT the questioning attorney shall provide
24 counsel for the witness examined herein with a
25 copy of this examination at no charge.

1 E. SENOR
2 E L I O T S E N O R, the Witness
3 herein, having been first duly sworn by
4 a Notary Public of the State of
5 New York, was examined and testified as
6 follows:

7 EXAMINATION

8 BY MR. MENDELSON:

9 THE REPORTER: Ms. Zalantis,
10 would you like a copy of today's
11 transcript?

12 MS. ZALANTIS: Yes, please

13 Q. State your name for the record,
14 please.

15 A. Eliot Senior.

16 Q. State your address for the
17 record, please.

18 A. 90 North Central Avenue,
19 Hartsdale, New York 10530.

20 Q. Good morning, Mr. Senior. My
21 name is Scott Mendelsohn. I'm with
22 Wilson Elser and we represent the
23 Plaintiffs in this case, the City of
24 New Rochelle. I'm going to ask you
25 some questions today about the action

1 E. SENOR
2 entitled the City of New Rochelle
3 versus Flavio LaRocca et al, and
4 specifically some work, which I believe
5 your business performed on a certain
6 property located at 436 Fifth Avenue,
7 which I'm just going to refer to as
8 "436" for the rest of this deposition;
9 is that okay?

10 A. Yes.

11 Q. Now, Mr. Senor, you received a
12 subpoena to testify here today; is that
13 right?

14 A. Correct.

15 Q. I'm going to now share my
16 screen, and before I continue --

17 MR. MENDELSON: Kathy, do
18 you consent to this being done
19 over Zoom?

20 MS. ZALANTIS: Yes, I do.

21 Q. And, Mr. Senor, do you consent
22 to your deposition being taken over
23 Zoom, virtually?

24 A. Sure, yes.

25 Q. I'm going to share my screen,

1 E. SENOR
2 now, Mr. Senor, are you able to see
3 what's on my screen?

4 A. Yes.

5 Q. And I'm going to scroll down to
6 Page 3 and Zoom out a bit of this
7 document and I'm going to mark this
8 exhibit that I'm sharing now as
9 Plaintiff's 1.

10 (Whereupon, Subpoena was
11 marked as Plaintiff's Exhibit 1 for
12 identification as of this date.)

13 Q. Mr. Senor, do you recognize what
14 I marked as Plaintiff's 1? And if at
15 any time you need me to zoom in, it can
16 become a bit hard to see, so I am happy
17 to do so.

18 A. Looking at the papers that I
19 have here, the papers that I have
20 don't -- I don't know -- I don't have
21 anything that has my name on the top
22 like you had there. Well, let's see --
23 no, I'm not sure. I mean I have --
24 1916. Yeah, the one I have has Gabriel
25 Senor PC, not the Elliot --

1 E. SENOR

2 Q. Now, Mr. Senor, did you receive
3 multiple subpoenas, more than one
4 subpoena from my office?

5 A. I'm not sure, I only have one in
6 my file envelope here.

7 Q. Did you receive one subpoena
8 approximately in January for documents?

9 A. We did receive a request for
10 documents and we sent them out.

11 Q. All right.

12 And then did you receive an
13 additional subpoena to testify here
14 today?

15 A. I guess so, yes. May not have
16 printed it out I guess, I don't know.

17 Q. If you can take a look at what's
18 on my screen, Page 3.

19 A. Yes.

20 Q. Can you see where it says
21 subpoena at testificandum, where my
22 cursor is?

23 A. Yes.

24 Q. And do you see it says to Eliot
25 Senor at 90 North Central Avenue?

1 E. SENOR

2 A. Yes.

3 Q. And it has the date March 29th,
4 2001, at 10:00?

5 A. All right.

6 Q. And on Page 4 of this exhibit,
7 it's dated February 18th, 2021?

8 A. All right. Yes.

9 Q. It's signed, you see the
10 signature at the bottom?

11 A. Yes.

12 Q. And you're here today pursuant
13 to a subpoena to give your testimony?

14 A. Yes, so I guess I must have
15 received it because I'm here today at
16 the right date and time.

17 Q. If you don't -- Mr. Senor, just
18 a few ground rules. If you don't
19 understand a question that myself or
20 Ms. Zalantis may ask, then please let
21 us know, and we'll try to rephrase the
22 question and accommodate your request.
23 If you need to take any breaks, I only
24 ask that if you -- if there's a
25 question pending that you answer the

1 E. SENOR
2 question and then you're free to take
3 any break you need. We have a court
4 reporter here, she is taking down
5 everything you say, she cannot take
6 down any head nods or shakes of the
7 head, so please respond verbally to any
8 questions that we have.

9 Lastly, although you may know
10 what my question is going to be, please
11 let me finish asking my question before
12 you answer it, so that we have a clear
13 record; is that fair?

14 A. Yes.

15 Q. Is there anybody else in the
16 room with you?

17 A. No.

18 Q. Are you in your office
19 currently?

20 A. Yes.

21 Q. Did you and I speak prior to
22 this deposition?

23 A. I think so.

24 Q. Did you have a phone call with
25 an attorney from Wilson Elser and

1 E. SENOR
2 various e-mails with an attorney from
3 Wilson Elser about this deposition or
4 about 436?

5 A. Yes.

6 Q. And what was discussed on those
7 phone calls?

8 A. It's mostly about producing
9 records and being available for a
10 deposition.

11 Q. And did you produce any Wilson
12 Elser records in response to a
13 Subpoena; did you produce records
14 regarding 436 5th Avenue?

15 A. Yes.

16 Q. And after producing an initial
17 response to this Subpoena, were
18 additional communications or documents
19 located by you or your office and were
20 those also produced?

21 A. I remember a conversation about
22 additional information, but I don't
23 think that we found any additional
24 information subsequent to the initial
25 request.

1 E. SENOR

2 Q. We'll go through everything that
3 you've produced. Did we go through
4 some of the documents that you did
5 produce?

6 A. Yes.

7 Q. Other than the documents that
8 you provided in response to the
9 Subpoenas, did you review any documents
10 prior to your testimony here today?

11 A. Just the documents in the file
12 that we sent out.

13 Q. Okay. And could you just let us
14 know what those are?

15 A. It's some various field notes
16 and sketches that were done when we did
17 the original stakeout of the property.

18 Q. And when you say "property,"
19 you're referring to 436?

20 A. Yes.

21 Q. Did you review any pictures in
22 preparation for this testimony?

23 A. I don't think we had any
24 pictures from that time.

25 Q. Did you have any conversation

1 E. SENOR
2 prior to this -- this deposition, other
3 than with the attorney from Wilson
4 Elser regarding the property in the --
5 withdrawn.

6 In preparation for this
7 deposition, have you had any
8 conversations other than with me
9 regarding the property?

10 A. No.

11 Q. Mr. Senor, do you work for a
12 business?

13 A. Yes.

14 Q. And what is that business?

15 A. The company is Gabriel E. Senor
16 P.C.

17 Q. And what is the general -- what
18 does Gabriel E. Senor P.C. do?

19 A. We're engineers and land
20 surveyors.

21 Q. What is your title with Gabriel
22 E. Senor P.C.?

23 A. President.

24 Q. How many -- withdrawn.

25 Is that the highest position in

1 E. SENOR

2 the company?

3 A. Yes.

4 Q. Do you own the company?

5 A. Yes.

6 Q. How long has the company been
7 around?

8 A. Originally in 1954, but I think
9 it was created as a P.C. in 1971 or
10 1972.

11 Q. How many employees, and I'm just
12 going to refer to the P.C. as "the
13 company," how many employees does the
14 company have?

15 A. About 10.

16 Q. And what are your
17 responsibilities, Mr. Senor, for the
18 company?

19 A. I'm -- I do everything. I talk
20 to clients, I take orders, I review
21 work, sign surveys and engineering
22 plans.

23 Q. I'm just going to stop my
24 sharing here. Do you have -- well,
25 generally what is "land surveying" and

1 E. SENOR

2 "staking"?

3 A. Well, "land surveying" is the
4 measurement of items physically on the
5 ground. "Staking" is to reproduce the
6 deed lines from -- on a particular
7 property.

8 Q. And do you have any education,
9 Mr. Senor?

10 A. Yes, and it's licensed -- I
11 require licenses by the State Education
12 Department.

13 Q. Did you graduate from college?

14 A. Manhattan College in 1984, I
15 suppose.

16 Q. And what was your degree that
17 you received from Manhattan College?

18 A. Bachelor of Science and
19 Engineering.

20 Q. And did you have any
21 post-college education?

22 A. No.

23 Q. Do you have any licenses,
24 currently?

25 A. Right, I'm a licensed land

1 E. SENOR
2 surveyor and licensed professional
3 engineer.

4 Q. Let's start with the licensed
5 land surveyor, what, if anything, did
6 you have to accomplish to become a
7 licensed land surveyor?

8 A. You have to have the education
9 and you have to have so many years of
10 experience, then you apply for and sit
11 through state tests through the
12 Licensing Board.

13 Q. Did you have the requisite
14 education to become a licensed land
15 surveyor?

16 A. Yes, I had a license some time
17 in the 80's as land surveyor.

18 Q. I would assume that means you
19 sat and passed the exam?

20 A. It's ongoing education,
21 continuing education that's required
22 every three years that I keep up on.

23 Q. What is the agency that issues
24 that certification?

25 A. New York State Certification

1 E. SENOR

2 Department.

3 Q. And your license is current --
4 or your certification is currently
5 active?

6 A. My license is currently active,
7 yes.

8 Q. And regarding the professional
9 engineer, what, if anything, did you
10 have to accomplish to become a
11 professional engineer?

12 A. Same thing, have your education,
13 have experience, you'll apply for a
14 license, take a couple of days of
15 testing, and as long as you pass, you
16 get a license and then you have, again,
17 continuing education.

18 Q. Do you currently have a license
19 as a professional engineer?

20 A. Yes.

21 Q. And what is the organization or
22 part of the government that issued that
23 license?

24 A. New York State Department of
25 Education.

1 E. SENOR

2 Q. What aspects of your work with
3 the company requires a professional
4 engineer and land surveyor sort of
5 license?

6 A. Everything we do requires a
7 license, every survey that we prepare
8 or survey that we do is required to be
9 licensed and we're required to be
10 licensed to do that, and same thing
11 with engineering, any engineering that
12 we do has to be signed by a licensed
13 professional.

14 Q. Are those survey engineering
15 plans?

16 A. It's a subcategory of land
17 surveying, but not every engineer can
18 be land surveying, they have to be
19 separately licensed.

20 Q. What about staking?

21 A. That's part of land surveying.

22 Q. Are you a member of any
23 professional associations?

24 A. Yeah, I'm a member of the New
25 York State Association of Professional

1 E. SENOR

2 Land Surveyors, as well as some
3 national and local engineering sites.

4 Q. Could you give us just a -- if
5 you recall some of the national
6 associations that you're a part of or
7 local associations?

8 A. National Association of
9 Professional Engineers, New York
10 Association of Professional Engineers,
11 New York Association of Civil
12 Engineers, National Fire Association,
13 and like he said, the State Surveyors
14 Association, New York State Association
15 of Professional Land Surveyors.

16 Q. Other than the licenses that we
17 already discussed, do you have any
18 other professional licenses?

19 A. No.

20 Q. Would you say or -- withdrawn.

21 Do you specialize in any certain
22 field of land surveying or engineering?

23 A. I mean, I -- as far as, yeah,
24 surveying, there's no specialization,
25 it's not like we do one particular

1 E. SENOR

2 style of land surveying; we work across
3 the entire spectrum.

4 Q. And have you ever testified
5 before?

6 A. Yes.

7 Q. Have you ever testified at
8 depositions before?

9 A. Yes.

10 Q. In what -- withdrawn.

11 Have you ever testified about
12 land surveying or staking prior to
13 today?

14 A. Yes.

15 Q. Approximately how many times?

16 A. A dozen or more.

17 Q. Have -- were those all at
18 depositions or have they been at trials
19 as well?

20 A. They've been at trials as well.

21 I mean I've been hired as an expert
22 witness on surveying before as well as
23 depositions for other reasons.

24 Q. Approximately how many times
25 have you been hired or retained as an

1 E. SENOR

2 expert witness?

3 A. I don't know, another dozen, I
4 don't keep track, so I don't have the
5 specific number.

6 Q. Have you ever been qualified as
7 an expert witness?

8 A. Yes.

9 Q. And do you recall in what courts
10 you were qualified as an expert
11 witness?

12 A. Mostly White Plains, I guess
13 it's the Supreme.

14 Q. Is that the Westchester County
15 Supreme Court?

16 A. Yes.

17 Q. Approximately how many times
18 have you been qualified as an expert?

19 A. I don't know the exact number,
20 many times, or several times.

21 Q. Is it more than one?

22 A. More than one.

23 Q. And what was the quality -- what
24 was the expertise that you were
25 qualified?

1 E. SENOR

2 A. In land surveying and
3 engineering, I guess.

4 Q. And does that involve staking?

5 A. In terms of what, I don't
6 understand.

7 Q. Is staking a subset of land
8 surveying and engineering?

9 A. Staking is part of land
10 surveying.

11 Q. Have you worked -- have you
12 previously worked at any other company
13 other than your current company?

14 A. No.

15 Q. When you or your company perform
16 a survey for staking, what processes do
17 you undergo?

18 A. The process is the same for all
19 survey work, we go and -- first we do
20 our research inhouse, we're trying to
21 find out vinyl maps, deeds, records,
22 we, you know, prior surveys, surveys of
23 adjacent properties, monumentation that
24 may be shown in maps that are found in
25 the County Register's Office.

1 E. SENOR

2 We collect that information in
3 the office, we send the field crew out
4 to then collect that information and
5 the physical presence of that
6 information in the field. We do some
7 computations to ascertain where we can
8 produce the deed lines on the earth and
9 if we're staking, we go back and we put
10 the stakes or the marks on those
11 corners, or whatever corner the client
12 asks us to do it. We don't necessarily
13 stake the entire property in all
14 instances.

15 Q. Is one of the purposes for
16 staking to determine where the boundary
17 lines of the property are?

18 A. The purpose of staking is to
19 reproduce those boundary lines
20 physically on a property. You don't
21 need to physically stake the property
22 for us to draw a map relative --
23 improvement relative to the property
24 lines.

25 Q. Is there a benefit to staking

1 E. SENOR

2 versus a survey?

3 A. There is for different items,
4 staking is -- like I said, we don't
5 always stake the property corners when
6 we do a survey, so in this case, we did
7 not do a survey, we only staked the
8 property lines so the client can see
9 where the corners are relative -- in
10 the field, relative to what's there.

11 Q. If, like, you just testified to
12 in this case, you just do a staking and
13 not produce a survey, is it fair to say
14 that the boundaries that the staking
15 would depict are the same boundaries
16 that a survey would depict of a
17 property?

18 A. Yes.

19 Q. Are there any special machines
20 or technology that you use for your
21 work?

22 A. Just typical equipment used by
23 every surveyor. It's our -- it's our
24 (inaudible) in measuring distances and
25 all that. Nothing specifically

1 E. SENOR
2 specialized for our office, just
3 typical equipment.

4 Q. And the process that you
5 described, is that the same process
6 that's used every time when you're
7 doing a survey or staking?

8 A. Yes.

9 Q. What is a "stake"?

10 A. Well, when you talk about
11 "stake," you're really talking about
12 marking the property line. A stake is
13 generally recognized as a wooden peg,
14 they sit flush with the ground, but in
15 substance to this, we can't use a
16 wooden peg or a wooden wedge, we either
17 put cross cuts or iron pins or some
18 other marking that would physically
19 mark it.

20 A nail and a piece of pavement
21 would be a stake, so to speak. We
22 can't put a stake in because of
23 pavement or concrete or what have you.

24 Q. Now, in those times that you've
25 been qualified as an expert, have you

1 E. SENOR
2 testified about boundary lines?

3 A. Yes.

4 Q. I'm going to share my screen.

5 (Whereupon, Document was
6 marked as Plaintiff's Exhibit 2 for
7 identification as of this date.)

8 Q. Mr. Senor, are you able to
9 identify what this 13-page document is?
10 And if you need me to scroll, I will.

11 A. Yeah, if you can scroll. The
12 job order, the paid bill, all right,
13 and some other information that we use.
14 So I guess this is a set of what we
15 sent to you in terms of what we did to
16 do the survey or do the stakeout.

17 Q. Okay. And is it fair to say,
18 I'm looking at page one, it reads -- is
19 that you are -- is that the company,
20 Gabriel E. Senor P.C. at the top?

21 A. Yes.

22 Q. And it's dated January 31, 2021;
23 is that right?

24 A. Yes.

25 Q. And it's e-mailed to me?

1 E. SENOR

2 A. Yes.

3 Q. This action is located in the
4 grey and I'm going to read below there;
5 it states, "Information from our files
6 regarding the stakeout performed at the
7 436 Fifth Avenue in New Rochelle"?

8 A. Yes.

9 Q. Are you able to identify where
10 these documents came from?

11 A. The documents that we sent, the
12 copies are all from our file of -- at
13 the time we performed the work.

14 Q. And is this -- this
15 Plaintiff's 2, this document I'm
16 showing you, is this a fair and
17 accurate depiction of the documents
18 that you sent to Wilson Elser in
19 response to a document subpoena you
20 sent in this case?

21 A. Yes.

22 Q. And for the record, we also
23 provided this to Defense Counsel with a
24 notice. Are you familiar, Mr. Senor,
25 with the property located at 436 Fifth

1 E. SENOR

2 Avenue in New Rochelle?

3 A. Yes, somewhat.

4 Q. How did you become familiar with
5 that job?

6 A. Well, they called us to do -- in
7 2009 to do a stakeout of property as
8 you see from the job order there.
9 Yeah, that.

10 MR. MENDELSON: For the
11 record, I'm on Page 2 of
12 Plaintiff's 2 now.

13 Q. What is this document,
14 Mr. Senor?

15 A. That's our job order that we
16 create when we start a job.

17 Q. Do you recall when this job was
18 created?

19 A. Well, I assume August 10th of
20 2009.

21 Q. Do you, personally, recall
22 speaking to anybody about this job
23 before it was performed?

24 A. I don't remember speaking before
25 it was performed, not necessarily.

1 E. SENOR

2 Q. Are you familiar with
3 individuals named Flavio LaRocca or
4 Maria LaRocca?

5 A. Yes.

6 Q. Have you previously spoken to
7 either one of those individuals?

8 A. I remember going to the site
9 after we performed our stakeout to talk
10 to them.

11 Q. Do you know if you spoke to
12 either one of them -- withdrawn.

13 Do you recall if you spoke to
14 either of the LaRoccas prior to the
15 stakeout?

16 A. I don't remember necessarily if
17 I talked to them when they originally
18 called for the work or -- yeah. No
19 recollection.

20 Q. Based on the documents that
21 you -- that were in your files
22 regarding 436, do you know the reason
23 why the stakeout was requested?

24 A. Not necessarily, they wanted us
25 to mark out the eastside of

1 E. SENOR

2 (inaudible).

3 Q. Do you -- just based on your
4 knowledge of 436 and that area, do you
5 know what the side of the 436 abuts?

6 A. I think it was some sort of
7 right of way or something leading back
8 to a town park or a town property, I
9 don't remember.

10 Q. Does East Street sound right?

11 A. Yeah, I mean I think I would
12 say, yes. I don't know if I have that
13 or any documentation, but I certainly
14 have seen the right of way.

15 Q. I'm going to go to Page 3 of
16 Plaintiff's 2. Do you -- can you --
17 can you see that Page 3?

18 A. Yes.

19 Q. What is this?

20 A. That's the paid bill that we
21 sent out after the work was complete.

22 Q. And what is the amount that this
23 job costs?

24 A. \$900, paid.

25 Q. Is -- what is more expensive, a

1 E. SENOR

2 survey or stakeout?

3 A. It's a hard question to answer.

4 It's not necessarily a -- one or the

5 other. It depends on how many stakes

6 or how big a property they are. Not

7 necessarily -- if we're doing a survey

8 in stakes, we don't charge a base fee

9 for the stakeout, it's not cut and dry.

10 Q. Okay. Do you see up here on the

11 top left there's a Bill to portion of

12 this Page 3?

13 A. Yes.

14 Q. Who was billed for this job?

15 A. I guess it's FMLR and Flavio

16 LaRocca.

17 Q. Okay. And does this document

18 reflect what the job was?

19 A. Stakeout on the east side Lot

20 224. It's the same as the job order on

21 the previous page.

22 Q. And based on these documents,

23 Lot 224 is 436?

24 A. Yes.

25 Q. I'm going to Page 4, can you --

1 E. SENOR

2 on this document can you see Lot 224
3 reflected?

4 A. Yes.

5 Q. On this document?

6 A. Yes.

7 Q. And is it reflected where I'm --

8 A. Yes.

9 Q. Putting my cursor around where
10 there's a 224 with a circle and then
11 there's boundary lines in the middle of
12 this drawing?

13 A. Yes.

14 Q. Do you know when or --
15 withdrawn.

16 What is this Page 4?

17 A. That's a survey done by somebody
18 else, the date looks like in 2002,
19 maybe, but that's maybe some of the
20 data that we collect. Like I said, we
21 did some research, we try and collect
22 other surveys of the property and
23 surrounding properties, and that's one
24 of the pieces of information we had in
25 our file for our stakeout, our marking.

1 E. SENOR

2 Q. Is it fair to say that this
3 survey was done prior -- or was drawn
4 prior to your stakeout of 436?

5 A. Yeah, I mean the date is sort of
6 hard to read, but it looks like maybe
7 it's 1, 2, or 06, it's 0-something. I
8 wouldn't say it's 09, so that's prior
9 to us.

10 Q. So it was in your file, and as
11 you testified, you used it for data,
12 what would be the purpose of gathering
13 this data prior to doing the stakeout?

14 A. Some of it has to do with just
15 the property line information, we also
16 had chosen other information in terms
17 of fence locations and things, so looks
18 like it's 06, so it's just data that we
19 try and -- and you see I'm not -- on
20 the corner in the upper left, it says
21 "Prepared By," it says "Monument," so
22 that's the kind of thing we try and
23 find. If it says "Monument," it's a
24 corner marker, not necessarily on the
25 corner of the property, sometimes it

1 E. SENOR
2 shows up on the -- creating when the
3 subdivision is filed or billed, they
4 put the -- the original surveyor puts
5 in monuments so that other surveyors
6 can go back and have a starting point.

7 So monuments, so he probably
8 used this information to find that
9 monument.

10 Q. You just testified that you were
11 able to determine that page 4 of
12 Plaintiff's 2 was prepared in 2006?

13 A. Yeah, I think the original, I
14 could read the original a little better
15 and -- yeah, November 13th, I think
16 it's looking like an 06, again, it's
17 still just almost as bad, but it was
18 0-something in 2000 and -- so.

19 Q. But this document would have
20 been something you used to aide in the
21 preparation of the stakeout?

22 A. Yes.

23 Q. Based on this document, are you
24 able to tell -- and who was this
25 prepared by?

1 E. SENOR

2 A. Rob Irpoly.

3 Q. Are you familiar with Rob
4 Irpoly?

5 A. I was. I haven't heard or seen
6 him in quite a number of years. Not
7 really sure what happened to him, but I
8 knew of him or knew him at that time.

9 Q. Do you know what his profession
10 was when you knew them?

11 A. He was a land surveyor and he
12 was licensed by the State of New York.

13 Q. Are you able to identify based
14 on this document the boundary lines
15 that were determined for Lot 224, which
16 is lot 436?

17 A. Yeah, it's the heavy line around
18 the outside. This map includes 224,
19 and Lot 223.

20 Q. Are you able -- based on this,
21 determine what the right of way is that
22 you're discussing east of 436?

23 A. Yeah, it says there's a street
24 called East Street that's 30 feet wide.

25 Q. Based on this drawing of a

1 E. SENOR
2 survey, are you able to determine
3 whether or not 436 is encroaching on
4 East Street?

5 A. Well, I see a gate and a
6 chain-link fence in the street right
7 away. I mean as far as defining
8 "encroachment," it's who put it up and
9 who's using that property, but I do
10 see -- this does depict a sliding gate
11 and a chain-link fence that's east of
12 the right of way line between 10 and 12
13 feet and/or 10.7 on one side and 10.9
14 on the other.

15 Q. And how are you able to
16 determine that gate that's on
17 East Street? Are those measurements on
18 East Street?

19 A. Well, they say after each corner
20 and say on the left side, it says "East
21 12.9," it looks like. Right where it
22 says "Sliding Gate," it says "East
23 12.3," and subsequently continues onto
24 10.7 on the right side.

25 Q. Based on your expertise of

1 E. SENOR
2 understanding surveys, you understand
3 that number, "East 12.9," "East 12.3,"
4 "East 11.9," and "East 10.7," as you
5 follow the sliding gate, to be the
6 number of feet that that gate is
7 encroaching onto East Street?

8 MS. ZALANTIS: Objection.

9 Q. I'll phrase it in another way,
10 based on your expertise on -- in
11 interpreting and reading surveys, do
12 you understand those numbers that you
13 just referred to, the "East 12.9," the
14 "East 12.3," the "East 11.9," and "East
15 10.7," as you follow the sliding gate
16 up this page, do you understand those
17 numbers to be the distance between the
18 date and the boundary line of 436?

19 A. Yeah, a gate and a chain-link
20 fence. It's not a gate the whole way,
21 but it's the difference from --
22 generally when the survey is prepared,
23 those measurements are from the
24 property line to the physical
25 apprentice.

1 E. SENOR

2 Q. I want to go to page 5 of
3 Plaintiff's 2. Are you able to
4 recognize this?

5 A. Yes.

6 Q. What is there, it's another
7 survey of the same property, this one
8 was done, and I read the date in
9 December of '86, by Richard Spinelli,
10 and was this page five -- was this also
11 a document that you received and looked
12 at prior to the staking of 436?

13 A. Yes.

14 Q. And are you -- do you know
15 Richard Spinelli?

16 A. Yes.

17 Q. And what is Richard Spinelli's
18 occupation?

19 A. He's a land surveyor, currently
20 operating.

21 Q. Is he also licensed by the State
22 of New York?

23 A. Yes, as far as I know.

24 Q. I'm going to go to page 6 of
25 this document; do you recognize this?

1 E. SENOR

2 A. Yes.

3 Q. What is this?

4 A. It's a coordinate file of
5 information we collected. I guess it's
6 the -- it looks like some baseline, a
7 cross cut set, monument, some property
8 line information.

9 Q. Now, at the top it says "Fifth
10 Avenue and East Street," are those the
11 streets that abut 436?

12 A. Yes.

13 Q. And is it fair to say that these
14 measurements are measurements that were
15 taken with regard to the work that your
16 company performed on 436?

17 A. Yes.

18 Q. Are these -- the rightmost
19 column where it says "CC Set," what
20 does that refer to?

21 A. Cross cut that we physically
22 placed on the ground some place.

23 Q. So is that referring to a stake?

24 A. In this case there's probably
25 baseline -- probably our reference

1 E. SENOR

2 points, not necessarily marks on the
3 corner. The coordinate or the PL's
4 property line, that is probably the
5 coordinate for the property corners.

6 Q. Okay. Are you -- you've been to
7 436 before?

8 A. I have.

9 Q. Okay.

10 A. Not recently, I was there, I
11 guess, in -- after the survey was done
12 or after the stakeout was done.

13 Q. Generally, can you describe that
14 property?

15 A. From what I remember, it was a
16 construction yard enclosed by the gate
17 that shows on that survey.

18 Q. Now, going back up to Page 4,
19 the gate that you're speaking of that
20 encloses that construction yard, is
21 that referenced here as the sliding
22 gate?

23 A. Yeah.

24 Q. And that goes up East Street?

25 A. Yes.

1 E. SENOR

2 Q. I'm going to go to page 7 of
3 Plaintiff's 2. Do you recognize this?

4 A. Yeah, it's our -- plotting of
5 our field work that was done.

6 Q. Now, when you say "field work,"
7 is that on 436?

8 A. Well, 436 is that lower
9 property. This also includes the
10 property to the right of it or to the
11 back of it.

12 Q. Now, when you say 436 is the
13 lower property, is that the property
14 enclosed by the dark lines that reads
15 "our job"?

16 A. Yes.

17 Q. All right.

18 So what does this drawing
19 depict?

20 A. It's just a plotting of our
21 field work that we used to mark the
22 corners.

23 Q. And who, if you know, who
24 created this document?

25 A. It was done in our office.

1 E. SENOR

2 Personally, I don't know.

3 Q. Do you review all of the
4 measurements that are taken?

5 A. Yes.

6 Q. Would you have reviewed the
7 measurements that are taken here on
8 this job?

9 A. Yes.

10 Q. And before they are sent to the
11 client, do you approve all of the
12 measurements and conclusions that are
13 drawn?

14 A. The conclusions that are drawn,
15 I don't know if I -- I'm, you know,
16 review the particular measurements. I
17 review the information that is
18 collected and come up to a conclusion
19 whether it's sufficient to mark the
20 property lines.

21 Q. On this property in this job,
22 436, were the measurements sufficient
23 and accurate to perform a measurement
24 of the property line of 436?

25 A. Yes, as far as I'm concerned.

1 E. SENOR

2 Q. On this page 7 at the bottom of
3 the document it says "East Street"; do
4 you see that?

5 A. Yes.

6 Q. And just to the left of that, it
7 says 505 PL?

8 A. Right.

9 Q. What does that mean?

10 A. Well, that's a previous page
11 where you had the coordinates, that
12 references that same coordinate, so the
13 coordinate list that you had is the
14 coordinate of Plan 504.

15 Q. Is it fair to say that
16 coordinate .4 or 4 and 505 make up the
17 eastern boundary of 436?

18 A. Yes.

19 Q. And are those the locations at
20 504 and 505 where stakes were done?

21 A. Or where points were marked,
22 yes.

23 Q. And are those two points the
24 points that you were hired to perform
25 on 536 -- 436, excuse me?

1 E. SENOR

2 A. Yes.

3 Q. What is the significance of all
4 these other points to come to the
5 measurements that you need to
6 accurately measure a border?

7 A. Just out of collection of
8 adjacent, you know, it says we had DRC,
9 that's a Donald Calabry survey that we
10 had in our file, and it must have
11 talked about the building corners, the
12 dimensions of building corners. I see
13 building corners were located and some
14 garage corners, well, at least one was
15 -- a pile of three was a garage on an
16 adjacent property it looks like.

17 Q. 503, you're --

18 A. Up a little bit.

19 Q. Okay. And that's where it says
20 "GARCAL"?

21 A. Yeah, "GARCAL N51" is the actual
22 location of the garage.

23 Q. So prior to Gabriel Senor
24 marking the eastern-most boundary of
25 436, are you aware if there were other

1 E. SENOR

2 markings there before that?

3 A. I wasn't aware, we didn't find

4 any at the time, I guess.

5 Q. I'm going to go to Page 8; do

6 you recognize this?

7 A. Yes.

8 Q. And what is this?

9 A. That's a stakeout sketch that we

10 did to mark the line -- in the eastern

11 boundary line. Now, I guess there was

12 something in the way of each particular

13 corner because the stakes aren't

14 actually on a corner, the stake is on

15 the top of the page, one foot outside

16 of the property and the one on the

17 bottom, the wooden stake is four feet

18 off of the property line.

19 Q. Okay. I want to get to that,

20 but at the top, do you know who

21 prepared this sketch?

22 A. Racage Pahel (phonetic), yes.

23 Q. And who is Mr. and Mrs. Pahel?

24 A. Racage -- he's a man. He was my

25 employee at the time. He is now a

1 E. SENOR

2 licensed land surveyor on his own.

3 Q. And did he -- was that somebody

4 who reported to you in 2009?

5 A. Yes.

6 Q. And did you -- what is the date

7 of this sketch?

8 A. September 10, 2009.

9 Q. And you see it says "Scale NTS";

10 what does that mean?

11 A. Not the scale, just the sketch.

12 Q. How many stakes were placed by

13 your company on 436?

14 A. Two.

15 Q. And it says "two markers on

16 property line, extension as shown,"

17 what does that mean "extension as

18 shown"?

19 A. Extension of the property line.

20 We didn't actually put it on a corner,

21 so the dimensions -- so the stakes are

22 as shown with the dimensions up and

23 down from the property line extensions.

24 Q. So when you said earlier that

25 the stakes were not actually put on the

1 E. SENOR
2 corner, if you go to the bottom of this
3 sketch on the Fifth Avenue -- you see
4 it says Fifth Avenue down there, did
5 that -- indicating that the stake is
6 four feet to the south of the corner of
7 the property --

8 A. Four feet into the Fifth Avenue
9 bridal wave [sic]. There's no north
10 area on here, we don't generally -- it
11 doesn't necessarily mean the top of the
12 page is north, but it's four feet into
13 the right of way, four feet into Fifth
14 Avenue.

15 Q. And because 436 is the corner
16 lot on East Street and Fifth Avenue, is
17 it fair to say the top stake is placed
18 one foot onto the adjacent neighboring
19 property on East Street?

20 A. It's one foot on the right of
21 way line of each street. I mean it's
22 not -- it's dividing East Street from
23 the private property, so it's not
24 necessarily into the neighboring
25 property, is's along the dividing line

1 E. SENOR

2 of East Street.

3 Q. But it's one foot off of the
4 corner of 136.

5 A. Yes.

6 Q. What is the signature, when you
7 put those two stakes down or two
8 markings, what is the significance of
9 that, as to the boundary line of 436?

10 A. Well, it's marking the division
11 line before 436 and East Street.

12 Q. Is the division line the same
13 thing as the property boundary line of
14 436?

15 A. The boundary line between 436
16 and East Street, yes.

17 Q. Did you review this sketch on
18 Page 8 prior -- withdrawn.

19 Did you review this sketch?

20 A. Yes.

21 Q. Would that review have been done
22 prior to accepting it to your client,
23 Flavio LaRocca?

24 A. Yes.

25 Q. And did you agree with the

1 E. SENOR

2 placement of the sketches, I mean the
3 stakes?

4 A. Yes.

5 Q. Going to page 9, do you
6 recognize this?

7 A. Yes.

8 Q. What is this?

9 A. That's the field notes, the
10 angle and distances collected to the
11 various points that we were
12 researching, which goes to the point
13 numbers on one of the previous plots.

14 Q. And who prepared this document?

15 A. That's prepared by the field
16 crew, Racage, the initials are RB and
17 K.A.

18 Q. Do you know who K.A. is?

19 A. K.A., I can't figure out. I
20 don't remember his name, he was an
21 employee.

22 Q. And are these the same
23 measurements that were reflected on
24 page 6?

25 A. Some of them, one and two and 56

1 E. SENOR
2 are there, but if you go to the next
3 page, so you see the plotting is 52,
4 53, 54, 55, those are the same numbers
5 on page 9.

6 Q. So page 7 of this document has
7 all of the same calculations and
8 numbers that are reflecting page 9?

9 A. Yes.

10 Q. How are those measurements
11 taken -- how were those measurements
12 taken?

13 A. Surveying practices with the
14 equipment to measure angles and
15 distances.

16 Q. And do you see below there's a
17 sketch here?

18 A. Yes.

19 Q. What is that?

20 A. That's just a field sketch
21 showing depiction of the point that
22 they've taken on the house corners and
23 that garage, and some reference points
24 and showing some general information in
25 the office for us to prepare the

1 E. SENOR
2 plotting that you had in page 7.

3 Q. Did you review these
4 measurements here on page 9?

5 A. I seen them. I mean, I don't
6 know; physically look at each
7 measurement and make sure they're
8 right. I mean that's information
9 collected from the field.

10 Q. What is the training of the
11 individuals that go out and take the
12 measurements?

13 A. It's basically experience. You
14 start at the bottom and you work your
15 way through.

16 Q. Now, are -- is it fair that R.B.
17 and K.A. took the measurements here?

18 A. Yes.

19 Q. And were they trained to take
20 these measurements?

21 A. Yes.

22 Q. And who were they trained by?

23 A. Well, K.A. was trained by R.B.,
24 R.B. was trained by a previous
25 employee, and you just move through the

1 E. SENOR

2 process, the ranks.

3 Q. And were they ultimately under
4 your supervision?

5 A. Yes.

6 Q. Page 10 of Plaintiff's 2, what,
7 if anything, does this show?

8 A. It just -- the top part is a
9 print out of the coordinates, an
10 extension of a -- or a more complete
11 print out of coordinates that you had
12 in the previous pages. It also -- this
13 is what they took out in the field to
14 set out the corners and then you have
15 some more information about what they
16 did and what they found when they put
17 the stakes in. Just some additional
18 reference information.

19 Q. Now, do you see at the -- in the
20 coordinates part -- the top half of
21 this page, there's some stars across
22 two rows; can you see that?

23 A. Yes.

24 Q. It's 504 and 505?

25 A. Yep.

1 E. SENOR

2 Q. What does that reference?

3 A. Those are the two property
4 corners of the property.

5 Q. And is that the two eastern-most
6 corners?

7 A. Yes.

8 Q. And is that the -- the important
9 or -- withdrawn.

10 Is this significant for your job
11 because it represented the eastern
12 boundary of 436?

13 A. Yes.

14 Q. And I see there's a calculation
15 underneath -- handwritten in --
16 underneath the typewritten part; what
17 does that reference?

18 A. Those are the two reference
19 points that you saw in the previous
20 print out as well. I guess they didn't
21 show up on this print out, so they
22 hand-write them in. It's on a previous
23 print out I think.

24 Q. Do you know who created this
25 document?

1 E. SENOR

2 A. As far as the handwritten, no,
3 that's Racage. I know by the
4 handwriting.

5 Q. And there's a hand-drawn sketch
6 underneath all of these coordinates,
7 what does that represent?

8 A. That's a sketch of what they
9 found when they were actually doing the
10 marking the of the property line.

11 Q. What were the findings of the
12 marking of the property line?

13 A. Well, according to this, there
14 was a -- on the bottom of the page
15 shows a piece of wall one-foot wide,
16 approximately four feet outside off the
17 property. The right side of it is
18 about four and a half feet -- no, eight
19 feet on the right into East Street,
20 right?

21 Q. Are you referring to there, this
22 bottom part that I'm putting my cursor
23 around?

24 A. Yes.

25 Q. It looks like an upside down,

1 E. SENOR

2 sideways "L"?

3 A. Yes.

4 Q. On the very bottom part?

5 A. Yes.

6 Q. Okay.

7 A. And above that we found the
8 chain-link fence. It shows that it's
9 about 12 and a half feet to the right
10 of the property line and then at the
11 top of the page, the dimension is 10
12 and a half feet off the property line.

13 Q. Now, when you say "property
14 line," you're referring to the property
15 line of 436?

16 A. Yes.

17 Q. And then when you refer to that
18 chain-link fence is 12 and a half feet,
19 and then 10 and a half feet, you used
20 the word "off," are you referring to
21 the chain-link fence as those distances
22 past the eastern-most -- our boundary
23 line of 436 and onto East Street?

24 A. Yes.

25 Q. Now, were those measurements --

1 E. SENOR
2 were they similar to the measurements
3 that were reflected on the earlier
4 survey that we went through on page 4
5 here?

6 A. Yeah, within a couple of inches.

7 Q. Is it fair to say that both
8 reflected, that the chain-link fence
9 that we're referring to was over 10
10 feet at all points onto East Street
11 past the boundary line of 436?

12 A. Yes.

13 Q. I'm going to go to page 11; do
14 you recognize this?

15 A. Yes.

16 Q. And what is this?

17 A. It's a survey done by Worth
18 Barbender (phonetic), but the title is
19 not there. I recognize the style of
20 the survey. It's a copy of the survey
21 that was done in 2016, after our work.
22 I'm not sure where I got it or why.

23 Q. That was my next question. Do
24 you know how you got this?

25 A. I don't remember.

1 E. SENOR

2 Q. It's purported to be a survey
3 after your staking of the property?

4 A. Yes.

5 Q. And I will zoom in, is this
6 showing that same property, 436?

7 A. Yes.

8 Q. Are the boundary lines of 436
9 shown on this survey?

10 A. Yes.

11 Q. What are those boundary lines;
12 how are they depicted?

13 A. It's a heavy line, outlines
14 property.

15 Q. I missed that -- part of that.

16 A. It's a heavy line where your
17 cursor is, it's the division line
18 between East Street and the property.

19 Q. And is that the heavy line that
20 starts under the S252931?

21 A. Yes.

22 Q. And it runs to the 12611?

23 A. Yes.

24 Q. And is that heavy line that we
25 just described, is that the

1 E. SENOR

2 eastern-most border of 436?

3 A. Yes.

4 Q. Does this survey show that the
5 gate that you described enclosing 436?

6 A. Yes.

7 Q. Does this survey show whether or
8 not this gate is located to the east of
9 the eastern-most boundary line of 436?

10 A. Yes.

11 Q. And is it?

12 A. I don't understand.

13 Q. Is the gate located on
14 East Street passed the boundary line of
15 436?

16 A. That's what the survey shows.

17 Q. Are you able to tell based on
18 this survey how much or how far that
19 gate is onto East Street past the
20 boundary line of 436?

21 A. No dimensions are shown, no.

22 Q. Going to page 12, do you
23 recognize this?

24 A. Yes.

25 Q. What is this?

1 E. SENOR

2 A. This is a Schedule A, probably
3 taken from the deed of the property,
4 describing the boundary of the
5 property, 436. I think, wait a minute,
6 not 436 -- yes, it's the same property.

7 Q. And that's 436?

8 A. I believe so.

9 Q. Do you know if they had this
10 prior to performing the stakes or
11 after?

12 A. Generally this is part of their
13 research to get boundaries.

14 Q. So that would be before?

15 A. Yes, most likely.

16 Q. And on page 13, do you recognize
17 this?

18 A. Yes, it's the same -- it's
19 probably something we did prior to
20 sending them out because this one is an
21 earlier version of that other map that
22 doesn't have the locations that you
23 gave, those numbers in the 50's.

24 Q. Now, based on what's present on
25 Page 3 of this, is it fair to say that

1 E. SENOR

2 this -- your findings as to the
3 stakeout of the east side of 436 was
4 conveyed to the LaRoccas?

5 A. Yes.

6 Q. And prior to that conveyance of
7 the information, did you review that
8 information?

9 A. I did.

10 Q. And do you know how it was sent
11 to the LaRocca's?

12 A. Not necessarily, sometimes we
13 e-mail it, you know, it depends. We
14 used to fax it and then e-mail it, but
15 I don't know if we e-mailed it or sent
16 it to the post office.

17 Q. Do you recall if you spoke to
18 anyone, either of the LaRocca's or
19 anyone from FMLR Realty Management LLC?

20 A. Yeah, after the stakeout was
21 done, I visited the site at their
22 request and met them there.

23 Q. What was the purpose --
24 withdrawn.

25 What was the substance of that

1 E. SENOR

2 conversation?

3 A. To review the location of the
4 point that we put in.

5 Q. And did you have that meeting?

6 A. Yes.

7 Q. Do you recall when that meeting
8 was?

9 A. Shortly thereafter the work was
10 done, I don't have a particular date.

11 Q. Is it fair to say it would have
12 been approximately September of 2009?

13 A. September, the beginning of
14 October, shortly after the work was
15 done.

16 Q. Do you recall who was present at
17 that meeting?

18 A. I think -- I know that it was
19 Flavio. It may have been his wife
20 there as well, I'm not sure. I don't
21 necessarily -- I don't recall.

22 Q. And what was discussed at that
23 meeting?

24 A. Generally I don't go to a site
25 to point this out unless there's some

1 E. SENOR
2 sort of a question about why the points
3 are where they are, but it was to point
4 out and discuss our work.

5 Q. Do you know what the reason was
6 that the LaRoccas requested that you
7 point out where the stakes were?

8 A. I guess it's somebody who
9 surprised us to where the location is.

10 Q. At that meeting, did you tell
11 them that their -- that gate that --
12 that sliding gate that we've been
13 referring to was encroaching onto
14 East Street?

15 MS. ZALANTIS: Objection.

16 A. Particularly --

17 THE WITNESS: I didn't hear
18 you.

19 Q. She objected, you can answer.

20 A. I don't remember. I remember
21 pointing out the location of the
22 complaints and you can clearly see
23 where the fence was. I don't if it
24 was -- if the fence was in the right of
25 way or not. I don't remember the

1 E. SENOR

2 conversation from that time.

3 Q. Did you tell them that the gate
4 was at least 10 feet tall on that
5 eastern-most side past the boundary
6 lines and onto East Street?

7 A. Again, I know I pointed out the
8 location of the corners relative to the
9 gates, but I didn't necessarily -- I
10 don't remember if I said that the gate
11 was 10 feet or more or whatever.

12 Q. Now, the locations of those
13 corners that you're referring to, those
14 would have been accurate as to the
15 calculations that that gate was 10 feet
16 onto East Street passed the boundary
17 line; is that fair?

18 A. Yes.

19 Q. Did you ever tell anybody from
20 FMLR Realty Management or the LaRoccas
21 that the gate was only inches onto
22 East Street and past the boundary line
23 of 436?

24 A. I would never say it was only
25 inches, no, but I don't remember --

1 E. SENOR

2 necessarily the conversation.

3 Q. Were you ever aware that the
4 City of New Rochelle and that 436 was
5 encroaching onto East Street?

6 A. I'm aware of it, but I don't
7 remember at what point I became aware
8 of it.

9 Q. Did you become aware of that
10 prior to Wilson Elser reaching out to
11 you?

12 A. I don't remember.

13 Q. After that meeting in 2009 --
14 withdrawn.

15 Did you ever meet with any city
16 officials regarding the findings of
17 your stakeout?

18 A. No.

19 Q. Other than meeting with the
20 LaRoccas, you said you believe it was
21 Flavio and possibly his wife in 2009
22 after the stakeout, have you had
23 conversations regarding the
24 eastern-most boundary line of 436 with
25 anybody else other than that?

1 E. SENOR

2 A. No.

3 Q. After that meeting in 2009, did
4 you have any further conversations, or
5 you or your company, with the LaRoccas?

6 A. Not that I remember.

7 Q. Okay. I'm going to -- let's
8 show you -- I'm going to show you
9 what's been marked at a previous
10 deposition, actually the deposition
11 of --

12 MR. MENDELSON: For the
13 record, Maria LaRocca.

14 Q. This is Plaintiff's 26. I'm
15 going to go to the bottom, page two and
16 it's an e-mail that starts on page 1
17 and leads over into page 2 and it says
18 from Flavio, Maria LaRocca,
19 casalarocca@aol.com, sent on July 6th,
20 2016, to info@gabrielesenorpc.com, and
21 subject "Surveys, Deed, and Info on 436
22 Fifth Avenue, New Rochelle." It reads,
23 "Attached please find the info we spoke
24 about earlier. You will find our
25 original survey, deed, stakeout, (from

1 E. SENOR
2 your company) and latest survey done by
3 city of New Rochelle. Please advise
4 ASAP, your findings. We can also meet
5 on the property to view stakeout.
6 Thanks," and it's e-signed Maria
7 LaRocca. Do you recognize any of the
8 e-mail addresses there?

9 A. Yes, the e-mail -- the
10 info@gabrielesenorpc, is the general
11 mailbox here, and that's the one I
12 recognize.

13 Q. Was this document an additional
14 document that you provided to our
15 office as part of the document
16 Subpoena?

17 A. It doesn't look like it came
18 from us.

19 Q. Okay. We're going to the top of
20 the document.

21 A. Yep.

22 Q. You see it says my name at the
23 top?

24 A. Yes.

25 Q. And I'm representing it says my

1 E. SENOR
2 name because I printed it out from my
3 Outlook account.

4 A. Okay.

5 Q. And do you see it says from
6 "Eileen and Gabriel E. Senor P.C."?

7 A. Yes.

8 Q. And the date is Tuesday, January
9 26, 2021?

10 A. Yes.

11 Q. And does that refresh your
12 recollection about how we received
13 that?

14 A. Sure.

15 Q. And is this a document that we
16 received from you as part of the
17 document Subpoena?

18 A. I would say so. Eileen is our
19 front office person and it has her
20 e-mail address.

21 Q. Okay. Do you recall getting
22 this e-mail on July 6th, 2016?

23 A. Not necessarily, no.

24 Q. Okay.

25 A. That may be why we got that

1 E. SENOR
2 survey from Ward Carpenter because it
3 corresponds to the similar date. The
4 Ward Carpenter was dated April 13th,
5 2016, and this was a couple of months
6 later.

7 Q. Okay.

8 A. Because they included the latest
9 survey by New Rochelle, and the title
10 of that Ward Carpenter survey is
11 prepared for the City of New Rochelle,
12 so since 2016, that's how we received
13 that Ward Carpenter map.

14 Q. And then do you see right above
15 the e-mail address reads From:
16 Info@gabrielesenor to them -- to Maria
17 and Flavio LaRocca. It says, "Maria,
18 nothing was attached," and then
19 Maria -- Flavio and Maria right back,
20 "Sorry."

21 A. Right.

22 Q. Now, showing you what's been
23 previously marked as 26A. It's a
24 four-page document. I'm scrolling
25 through it. Are you able to see that?

1 E. SENOR

2 A. Yes.

3 Q. What are these documents?

4 A. It's the survey by Richard
5 Spinelli, and then our -- the Schedule
6 A of the property, the stakeout sketch,
7 and then the survey by Ward Carpenter.

8 Q. Are those the same documents
9 that Maria LaRocca was referring to
10 that she was attaching?

11 A. I would assume so.

12 Q. To that July 6th e-mail?

13 A. Yes.

14 Q. Do you know what the purpose of
15 Ms. LaRocca reaching out to you in July
16 of 2016 was?

17 A. I don't recall.

18 Q. Do you know if you spoke to
19 anybody in your company about that
20 e-mail in 2016?

21 A. I don't recall again.

22 Q. Okay. I'm going to show you
23 what's been previously marked as
24 Plaintiff's 27. It's a two-page
25 document. We're going to the top first

1 E. SENOR

2 you'll see my name is there and it says
3 from Eileen at Gabriel E. Senor P.C.,
4 sent Tuesday, January 26th, to you.

5 Can you see that?

6 A. Yes.

7 Q. Is this another document that
8 was provided by your office in response
9 to our Subpeona?

10 A. Yes.

11 Q. And going down to the bottom,
12 you'll see the same e-mail that we just
13 read, July 6th, 2016, and, again,
14 nothing attached to the e-mail from
15 your office, a story back from the
16 Casalarocca address, and then above
17 that there's an e-mail on July 6th,
18 2016, from info@gabrielesenorpc.com to
19 casalarocca@aol.com, sent July 6th,
20 2016, to an IPM. Could you read that
21 e-mail?

22 A. "Maria, the fence is
23 approximately 10 feet on the outside of
24 the property line, as indicated on our
25 original field sketch. If you have any

1 E. SENOR
2 questions please contact our office
3 at," -- our phone number -- "Kathy."

4 Q. Who is Kathy?

5 A. Kathy is somebody we had at the
6 front office at the time.

7 Q. Now, do you know how from this
8 conversation the property line and the
9 fence became an issue?

10 A. I mean, I guess, I'm not sure --
11 I would assume at that time we informed
12 there was something going on with the
13 city, but I don't -- I don't know what
14 was going on.

15 Q. Is Kathy's e-mail accurate about
16 the property line in the fence?

17 A. Yeah, to the extent,
18 approximately. We know it's 10 to 23
19 feet, but, yeah, at least 10 feet off
20 the property line.

21 Q. And I would have dictated that
22 to Kathy to write in the e-mail; would
23 that have been your interpretation of
24 your company's work on 436?

25 A. Yes.

1 E. SENOR

2 Q. Okay. And lastly, I'm going to
3 show you what's been previously marked
4 as Plaintiff's 28. Are you able to see
5 this document?

6 A. Yes.

7 Q. And do you see at the top again,
8 it has my name and it says "From
9 eileen@gabrielesenorpc," sent on
10 January 26th, 2001, to Eliot Senor.
11 "Subject: Survey and stakeout 436 Fifth
12 Avenue." Is it fair to say this is an
13 additional document provided by your
14 office in response to this subpoena?

15 A. Yes.

16 Q. Okay. And you'll see there's
17 one e-mail, it says "Original message
18 from casalarocca@aol.com, sent
19 Wednesday August 10th, 2016, to
20 (inaudible) "Subject: Survey stakeout
21 436 Fifth Avenue," and it reads, "Hi,
22 please let us know what price it is for
23 survey and stakeout of 436 Fifth
24 Avenue, New Rochelle, New York. If
25 there are any questions, please call

1 E. SENOR

2 us," and the phone number. And it
3 says, "Thanks, Maria LaRocca"; do you
4 recall this e-mail?

5 A. No.

6 Q. Do you know what was the purpose
7 of this e-mail was?

8 A. They're asking for a price to
9 form additional work.

10 Q. Do you know if that additional
11 work was ever ordered?

12 A. I would say it was not ordered.

13 Q. Okay. One of the -- can we take
14 a two-minute break.

15 A. No problem.

16 Q. Okay. Great, just two minutes.
17 Thank you.

18 (Whereupon, a discussion was
19 held off the record.)

20 Q. Okay. I'm back on. I'm sharing
21 again what we previously showed you as
22 27 and you identified as a document
23 that came from your office as part of
24 the subpoena and we talked about this
25 e-mail that you testified you

1 E. SENOR
2 transcribed -- had transcribed about
3 the feet. On top of that, there's
4 another e-mail, and it's from
5 casalarroca@aol.com, it's sent
6 Wednesday July 20th, 2016, to
7 info@gabrielesenor. "Good morning,
8 Kathy and Elliott. We spoke with our
9 attorney as mentioned on our
10 conversation over the phone, and she
11 would like to set up a meeting for
12 August 3rd at it 10:30 a.m. at Fifth
13 Avenue to discuss and look over our
14 copies and what you have. Please let
15 me know if this will work with you, as
16 I do need to confirm with her. She
17 will be going on vacation week after
18 and would to at least meet before she
19 leaves," and it's signed "Thanks,
20 Maria," do you recall receiving that
21 e-mail, Mr. Senor?

22 A. Not necessarily, I mean -- I
23 don't recall -- I see that it says
24 "Sent to the office," but I don't
25 necessarily remember seven years ago or

1 E. SENOR

2 whatever.

3 Q. Does that refresh your
4 recollection as to whether or not you
5 had a conversation with the LaRoccas
6 after 2009, about this property?

7 A. Well, like I said, I know that I
8 met them at some point. Maybe my
9 recollection of the timing of the
10 meeting is a little off. I thought it
11 was shortly after the stakeout, but
12 maybe it was later in time.

13 I can't say, I know I went down
14 there, but I don't know, I don't know
15 if I could look back at our calendar
16 even that long ago.

17 Q. Do you know if there was an
18 attorney present when you were speaking
19 with the LaRoccas?

20 A. I don't remember an attorney
21 being present when I was there.

22 Q. Do you recall ever speaking with
23 an attorney of the LaRoccas about 436?

24 A. I don't recall.

25 Q. Do you know if anybody from your

1 E. SENOR

2 office did that?

3 A. I don't know.

4 Q. Do you recall the substance of
5 any conversation you had in 2016 with
6 them?

7 A. No.

8 Q. One moment. I think I'm done.
9 I have no further questions.

10 EXAMINATION BY

11 MS. ZALANTIS:

12 MS. ZALANTIS: I just have a
13 few questions.

14 A. Can I just clarify -- never
15 mind.

16 MR. MENDELSON: You're free
17 to clarify anything.

18 THE WITNESS: About the
19 timing of when I met on the site.
20 At this point, I remember I
21 pulled into the driveway next
22 door, and called from my car to
23 see where they were and I was at
24 the wrong address, and I backed
25 into something and broke my

1 E. SENOR
2 taillight when I was coming out
3 of the driveway, and the
4 taillight is on my current
5 vehicle which is a 2011 car, so I
6 would say that it was originally
7 in 2009 when I met with them. It
8 had to be after 2011, but as far
9 as 2016, I couldn't tell you.

10 MR. MENDELSON: Off the
11 record.

12 (Whereupon, a discussion was
13 held off the record.)

14 MR. MENDELSON: Thank you
15 for that clarification.

16 THE WITNESS: I was pissed
17 off that I backed into something,
18 you know.

19 MS. ZALANTIS: Sorry, I was
20 just saying that I have a few
21 questions, and, Scott, would you
22 be so kind to assist with pulling
23 up that first batch of documents
24 you showed?

25 MR. MENDELSON: Yeah,

1 E. SENOR

2 what --

3 MS. ZALANTIS: The 13-page
4 document.

5 MR. MENDELSON: I think we
6 marked that as Plaintiff's 1, so
7 you'll tell me if it's the right
8 one.

9 MS. ZALANTIS: Correct,
10 thank you.

11 MR. MENDELSON: Yep. One
12 second. This one?

13 MS. ZALANTIS: Yes. Thank
14 you.

15 Q. Before we start. Good morning,
16 Kathy Zalantis, from Silverberg and
17 Zalantis. I represent the Defendants,
18 the LaRocca entities in this
19 litigation. Everything that Scott said
20 goes equally for what I'm going to ask
21 you and, again, I'll just be very
22 brief.

23 MS. ZALANTIS: If you can go
24 to page 10 of this document.

25 MR. MENDELSON: Sure.

1 E. SENOR

2 Q. Would this particular page of
3 this document have been shared with
4 clients or, in particular, my clients?

5 A. Not necessarily, no.

6 MS. ZALANTIS: And if you
7 can go back a few pages to
8 page 6, please -- I'm sorry, not
9 page 6, page 8.

10 Q. Would this document have been --
11 page 8 of 13 has been shared with the
12 clients?

13 A. Yes.

14 Q. Is there any way from this
15 document, and I'm referring to page 8
16 of 13, that you could tell the distance
17 from 436 East Street property line, to
18 any point in East Street?

19 A. Repeat that.

20 Q. Is there any way to tell by
21 looking at this document, the distance
22 from 436 East Street property line, to
23 any point in East Street?

24 A. Well, it shows that the property
25 line is dividing East Street from the

1 E. SENOR

2 property, so it's the line.

3 Q. Okay. So is there anything on
4 this document that shows the fence is
5 10 feet outside of the property?

6 A. No, except for physically going,
7 standing on the line and seeing where
8 everything is located.

9 Q. Right, but I'm asking about this
10 document in particular, is there any
11 way --

12 A. No, it's not a survey, it
13 doesn't show physical information.

14 Q. Okay. So what it's potentially
15 showing is that the -- where you marked
16 the marking on Fifth Avenue, is four
17 feet away from the corner property
18 line; is that correct?

19 A. Yes.

20 Q. And on the other side, it shows
21 that it's one foot away?

22 A. Correct.

23 Q. Is there any markings that show
24 any points on East Street extending
25 from the property line?

1 E. SENOR

2 A. No.

3 Q. I withdraw that, that's not
4 clear. Can you tell just from looking
5 at this document if there's any part of
6 the property line -- any part of the
7 property that extends onto East Street?

8 A. This doesn't show any physical
9 improvements to the property.

10 Q. And there's no way from looking
11 at this document, page 8 of 13, to see
12 whether any portion of the property is
13 physically on East Street; is that
14 correct?

15 MR. MENDELSON: Objection.

16 Q. You can answer.

17 A. No, the whole point of this
18 document is to show physically a sketch
19 of where the points are. The reason
20 for the staking at the points is so
21 that everything on one side or the
22 other is inside or outside the
23 property.

24 Q. Okay. So in that e-mail that
25 you read before, you said that you

1 E. SENOR
2 dictated that the fence is 10 feet
3 outside of the property line, you
4 couldn't tell -- you couldn't come up
5 with this information -- that
6 information by looking solely at this
7 document, page 8 of 13; is that
8 correct?

9 A. That's correct.

10 Q. Are you familiar with
11 subdivision maps?

12 A. Yes.

13 Q. Are you familiar that some
14 subdivision maps depict streets as part
15 of the subdivision map?

16 A. Yes.

17 Q. Do you know what a "paper
18 street" is?

19 MR. MENDELSON: I'm going
20 to object to this line of
21 questioning. You can answer.

22 A. A "paper street" is a street
23 that it unapproved, generally.

24 Q. When you first started
25 testifying, you referred to East Street

1 E. SENOR

2 as a right of way, why?

3 A. All streets are right of ways as
4 I know.

5 Q. Do you recall a meeting at the
6 property in August of 2016 in which you
7 met with Flavio LaRocca and myself?

8 A. I remember being at the site at
9 some point, yes.

10 Q. Was the purpose of that meeting
11 to point out the marking that you had
12 done for the LaRoccas?

13 A. Yes, I don't remember who it was
14 -- like I said before, who it was with,
15 I guess -- you say it was with you,
16 then I would say okay.

17 Q. But you don't recall that,
18 independently?

19 A. I don't recall.

20 Q. And when you previously said you
21 were there in 2009, it could have
22 actually been in 2016?

23 A. Yeah, because of my recollection
24 of my taillight.

25 MS. ZALANTIS: Could we just

1 E. SENOR

2 scroll through this batch of
3 documents?

4 Q. Aside from page 8 of 13, are
5 there any other of these documents that
6 would have been shared with the
7 clients?

8 A. Certainly with (inaudible) Dill
9 --

10 Q. The invoice?

11 A. The invoice. I'm not sure where
12 I got the other information, it was in
13 our file, but some of it is our
14 creation. The only thing that we would
15 have sent would have been the bill and
16 the stakeout sketch.

17 Q. Okay. So of the documents that
18 you prepared, your office, the only
19 thing that would have been shared with
20 the client is the bill and the stakeout
21 sketch; is that correct?

22 A. Yes.

23 Q. Okay. I have nothing further.

24 MR. MENDELSON: I don't
25 have anything further either.

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E. SENOR

(Time noted: 11:44 a.m.)

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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court.

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A C K N O W L E D G E M E N T

STATE OF NEW YORK)

:SS

COUNTY OF _____)

I, ELIOT SENOR, hereby certify that I have read the transcript of my testimony taken under oath on March 29, 2021, that the transcript is a true, complete and correct record of what was asked, answered and said during my testimony under oath, and that the answers on the record as given by me are true and correct, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

ELIOT SENOR

Signed and subscribed to
before me, this ____ day
of _____, _____.

Notary Public

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WITNESS: ELIOT SENOR

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C E R T I F I C A T E

I, CHRISTA M. MILOSCIA, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the Witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such Witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Christa Miloscia



Christa M. Miloscia, a Court Reporter and Notary Public
Date:

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Exhibit "36"

TITLE NO. 0514-14755 BV

ABSTRACTERS' INFORMATION SERVICE, INC.

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

BUILDING VIOLATION SEARCH

DATE: 12/23/02

PREMISES: 436 FIFTH AVENUE, NEW ROCHELLE

COUNTY: WESTCHESTER

CITY: NEW ROCHELLE

SECTION: 3 BLOCK: 931 LOT: 29&30

DEPARTMENT OF BUILDINGS

A search of Building Department records indicate the following:

There were no pending violations found on file as per search dated: 12/23/02

See attached for pending violations found on file as per search dated:

IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

Abstracters' Information Service Inc. does hereby certify that the records of the above mentioned governmental agency have been examined and that the information recorded above is a true and accurate abstraction of the information furnished by the agency.

This report is submitted for information purposes only. Liability is limited to the cost of the search.

This search does not include other agency violations, nor does it include open permit information, refer to Certificate of Occupancy report. 0514-14755

Exhibit "37"

Bureau of Buildings
Department of Development
515 North Avenue
New Rochelle, N.Y. 10801



Phone: (914) 654-2035
FAX: (914) 632-3031

Noel Shaw, Jr.,
Deputy Commissioner/Building Official



Peter Warychn,
Deputy Building Official

City of New Rochelle
New York

Permit #	MP-2003-0029
Issued on	5/19/2003 0:00:00
Parcel #	00029
Permit type	Excavation
Zoning	R-2
Project #	JS-2003-0465
Use Group	
Const. Class	
Estimated Cost	\$1000.00
Total Fee	\$100.00
Check #	2847

BUILDING PERMIT

Permission is hereby granted to:

OWNER: FLAVIO LA ROCCA
OWNER ADDRESS: 2 TRINITY PLACE, NR 10805
JOB LOCATION: 436 FIFTH AVE.

TO PERFORM THE FOLLOWING WORK:

TYPE OF PERMIT: Excavation

**WORK DESCRIPTION: Removal and regrading 20' X12' X 8" Rockledge.
Excavating.**

CONDITIONS OF THE BUILDING PERMIT

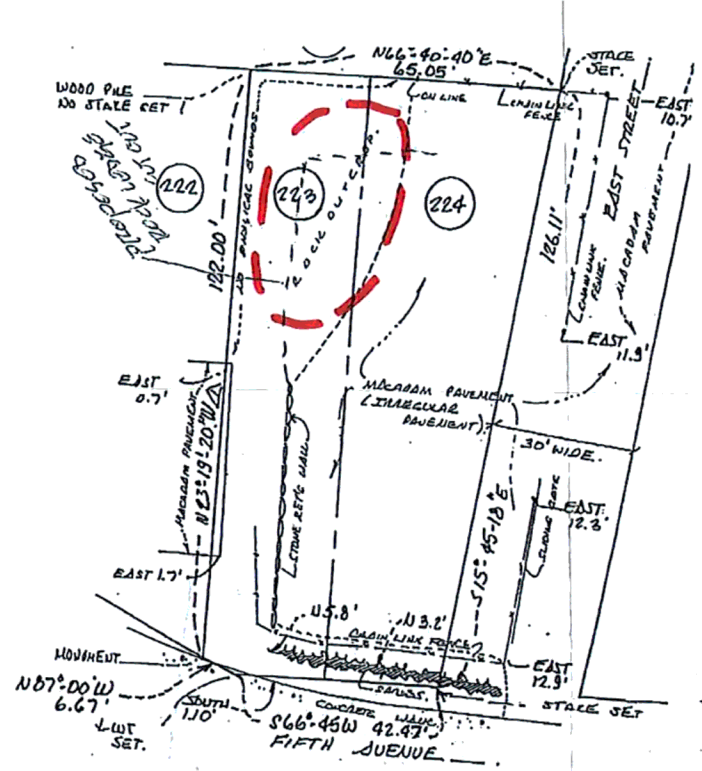
1. All work shall be executed in strict compliance with the permit application, approved plans, and the New Rochelle Zoning Code, New York State Uniform Fire Prevention and Building Code, and all other applicable laws, rules, and regulations. This building permit does not constitute authority to build in violation of any Federal, State, or local law.
2. Construction must begin within 90 days of date of permit issuance. The work shall not be suspended or abandoned for a period of 6 months. Otherwise, the building permit will be rendered null & void.
3. Revisions to the work which deviate from the stamp approved plans shall be submitted to the Bureau of Buildings for approval before the changes are made. The approved plans and building permit shall be retained on the job and made available to the builder and the building construction inspector at all times.
4. Contractor to request all required building construction inspections, as required by Code.
5. During excavation, care must be taken to cover piles of loose dirt and soil and trucks transporting those materials to and from the site should have tarps or appropriate covering to prohibit blowing dust and sand from contaminating the neighboring properties or surrounding streets and curbs.
6. After completion of the work, all debris and loose material is to be removed, leaving the site reasonably clean and orderly.
7. At completion of the excavation, applicant shall request a final inspection and fill out an application for a Certificate of Occupancy and pay all required fees.

THIS BUILDING PERMIT SHALL BE POSTED AND IN FULL VIEW AT THE JOB SITE.



Noel Shaw, Jr., R.A., AIA, CCEO Deputy Commissioner/Building Official

Exhibit "38"



NOTES = 1896548

General Notes:

- 1) The sole intent of this map is to show the location of any other improvements shown on this map for the development of this map.
- 2) This map was prepared by the Association of Professional Surveyors in the State of New York.
- 3) Encroachments be shown or located by this map.
- 4) This map is based on the survey of the lot and or his representative as shown on the abstract of title map.
- 5) The information shown on this map is based on a complete survey and is an opinion of the surveyor.
- 6) Certifications show the signature of the surveyor and are considered true and correct.
- 7) Unauthorized alteration of this map is a violation of Section 87(2)(b) of the NYS Education Department.

CERTIFIED TO: RICHARD J. ...
 ...
 ...

Prepared By:
 Rob Taropoli, L.S.
 271 North Avenue, Suite 316
 New Rochelle, New York
 10801
 (914) 632-2200

The accuracy of this map is based on the survey of the lot and or his representative as shown on the abstract of title map.

FIELD: 11/3/01
 MAP: 11/14/01
 REV: 11/14/01

STAKES ...

SURVEY OF LOTS 223 ...
 ...
 ...
 DATE: 10/13/2006

JOB
 D0258

**CITY OF NEW ROCHELLE
BUREAU OF BUILDINGS**

THESE PLANS AND APPLICATION WERE EXAMINED AND APPROVED AS NOTED. THEY SHALL NOT BE CONSTRUED AS AUTHORITY TO VIOLATE, CANCEL, ALTER, OR SET ASIDE ANY PROVISIONS TO THE BUILDING CODE, ZONING ORDINANCE, OR ANY OTHER LOCAL, COUNTY OR STATE REGULATIONS.

Joe Shaw
PERMIT OFFICIAL

PERMIT NO: *MP-2003-0029* DATE: *5-19-03*

Exhibit "39"



Gabriel E. Senior, P.C.
Engineers - Planners - Surveyors

AUTHORIZATION FORM

TO: Flavio LaRocca
FMLR Management, LLC
Sussex 140 Rd
New Rochelle, NY 10804

DATE: Wednesday, August 05, 2009
FILE #
RE: 436 5th Avenue, New Rochelle

TERMS: PAYMENT DUE UPON RECEIPT OF INVOICE. 1.5% PER MONTH THEREAFTER
DESCRIPTION OF SERVICES:

Stake Out Right Side (Paper Street) \$ 900.00

We require a deposit in the amount of \$ 675.00

To be returned with this sign authorization

*****PLEASE PROVIDE A COPY OF THE DEED (SCHEDULE "A") and any old surveys of the property you may have. If a copy of the deed (Schedule "A") is not provided please note that there will be a \$50 research charge.*****

PRICE QUOTE VALID FOR THIRTY DAYS FROM DATE OF AUTHORIZATION

- 1) ANY ADDITIONAL REQUESTED WORK NOT LISTED ABOVE WILL BE BILLED ON A TIME BASIS, AND SHALL BE PAID FOR IMMEDIATELY UPON BILLING.
- 2) PLEASE NOTE TERMS ABOVE.
- 3) WORK WILL NOT COMMENCE UNTIL THIS SIGNED AUTHORIZATION IS RETURNED AND DEPOSIT IS PAID.
- 4) WE ACCEPT VISA, MASTER CARD, AND AMERICAN EXPRESS.
- 5) CREDIT CARDS WILL BE CHARGED FOR RETAINER NOW AND BALANCE UPON DELIVERY.
- 6) NOTE: ANY TIME FRAME GIVEN IS MERELY AN ESTIMATE OF COMPLETION TIME AND IS SUBJECT TO CHANGE DUE TO CIRCUMSTANCES (SUCH AS WEATHER) BEYOND OUR CONTROL AND THEREFORE IS NOT GUARANTEED.
- 7) WE WILL NOT BE RESPONSIBLE FOR ANY CONSTRUCTION DONE BASED UPON STAKE-OUT MARKS IF SUCH MARKS HAVE BEEN DISTURBED OR REMOVED
- 8) ACCURACY OF ANY SURVEY WORK DONE WITHOUT PROVIDED DEED (SCHEDULE "A") IS NOT GUARANTEED
- 9) ATTORNEY FEES & COSTS: IN ANY ACTION INCURRED TO ENFORCE THIS CONTRACT OR DEFEND SERVICES PROVIDED ACCORDING TO THE CONTRACT, THE PREVAILING PARTY SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES.

ENCLOSED IS A CHECK IN THE AMOUNT OF _____

IF YOU PREFER TO PAY BY CREDIT CARD FILL IN SPACE BELOW

TYPE OF CARD VISA MASTERCARD AMERICAN EXPRESS

ACCOUNT # _____ EXP. DATE _____

AUTHORIZED BY INDIVIDUAL RESPONSIBLE FOR PAYMENT

SIGNATURE DATE 8/10/09

PRINT NAME FLAVIO LARocca

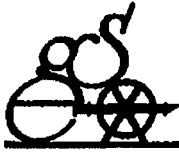
BILLING ADDRESS IF DIFFERENT FROM ABOVE _____

90 NORTH CENTRAL PARK AVE., HARTSDALE, N.Y. 10530,

Tel: (914) 422-0070

Fax: (914) 422-3009

Email: info@gesenor.com



GABRIEL E. SENOR, P.C.

90 North Central Avenue
Hartsdale, NY 10530

BILL TO
FMLR REALTY MANAGEMENT LLC Flavio LaRocca 436 5th Avenue New Rochelle, NY 10804

Invoice	DATE
	9/10/2009
RE:	
436 5th Avenue New Rochelle	
INVOICE #	1728-B-224

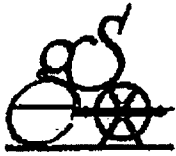
FOR PROFESSIONAL SERVICES RENDERED	AMOUNT
Stake Out East Side of Lot #224 Pd \$675 dep Ck#1031 8/11/09 Stakeout Sketch Emailed to Flavio 9/10/09	900.00

Terms: Due Upon Receipt.
1.5% Per Month Thereafter.

Total	\$900.00
Payments/Credits	\$-675.00
Balance Due	\$225.00
Customer Total Balance	\$225.00
Job Total Balance	\$225.00

Phone #	Fax #	Web Site
(914) 422-0070	(914) 422-3009	www.gesenor.com

Exhibit "40"



Gabriel E. Senor
90 North Central Ave.
Hartsdale, NY 10530
914-422-0070 fax 914-422-3009

Job# 1728-E-224.
Address 436 5TH. AVENUE. NR.
Sheet 1 of 1 Date 9-10-09
Field Crew RB KA Scale NTS

STAKE OUT SKETCH:

2 MARKERS ON
PROPERTY LINE
EXTENSION AS
SHOWN.

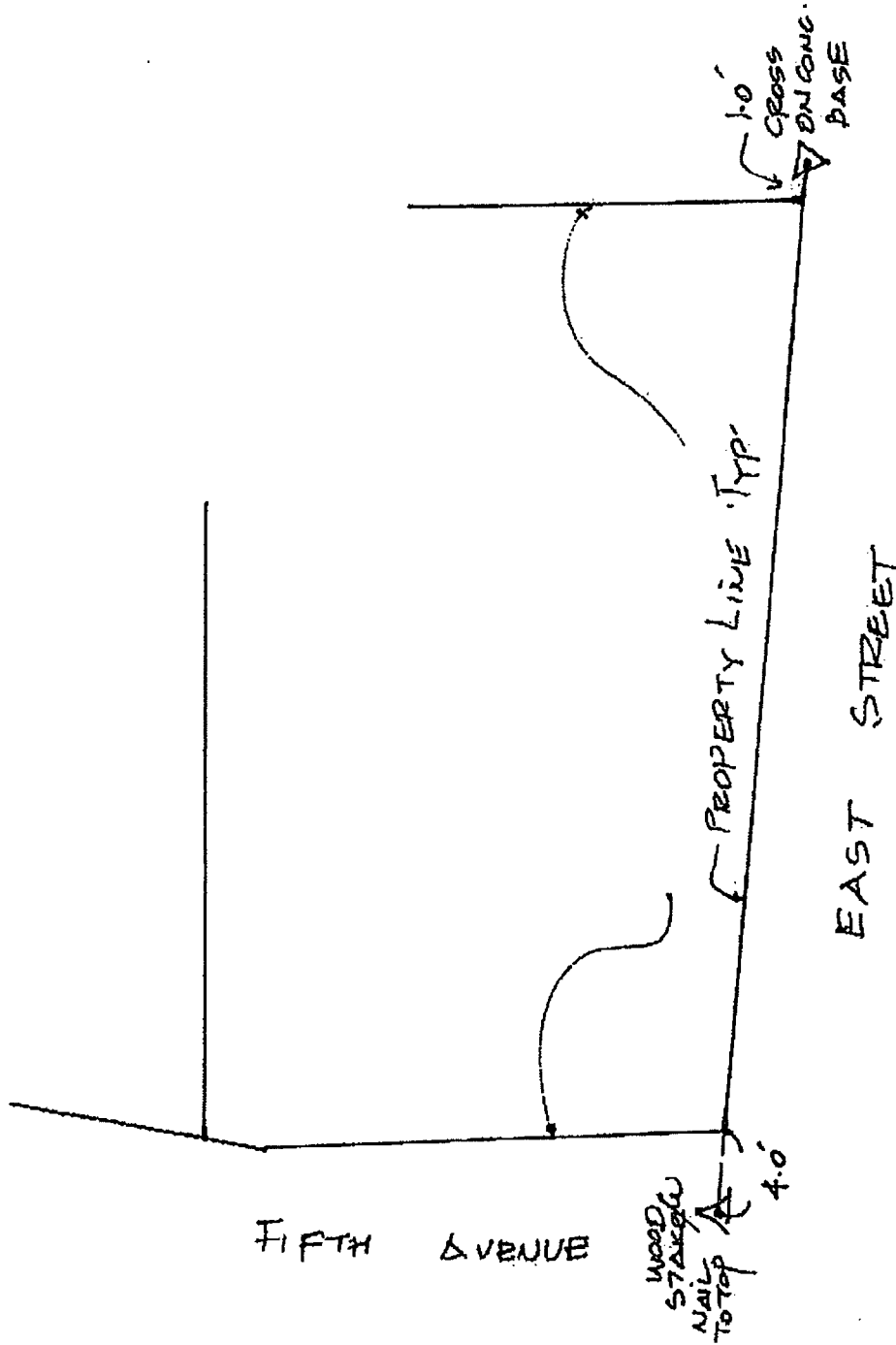
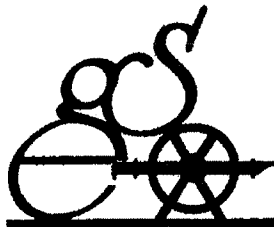


Exhibit "41"



Gabriel E. Senior, P.C.
Engineers Planners Surveyors

90 N. Hartsdale Ave.
Hartsdale, NY 10530
Tel. (914) 422-0070
Fax (914) 422-3009
info@gesenor.com

LETTER OF TRANSMITTAL

DATE: 1-21-2021

OUR FILE No. 1728-E-224

Sent Via

US Mail [X]

**TO: Scott Mendelsohn
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
1133 Westchester Ave.
White Plains, NY 10604**

RE: City of New Rochelle v. Flavio La Rocca - File No.: 07367.00101

ENCLOSED PLEASE FIND:

**Information from our files regarding the stakeout performed at 436
Fifth Ave., New Rochelle**

**Eliot Senior, P.E., L.S.
(914) 422-0070
info@gesenor.com**

DATE ORDERED: **10-Aug-09** DATE DUE: **JOB # 1728-E-224**

FILE MAP# LOT BLOCK

TAX MAP TOWN: **New Rochelle** SECT SHT BLOCK LOT

CERTIFICATIONS:

BANK:

TITLE COMPANY:

OWNER/PURCHASER:

Client/phone#: **Flavio LaRocca / 914-447-0173**

SERVICES REQUIRED: **Stake Out East Side of Lot #224**

DRAFTING REQUIREMENTS

DEED PROVIDED

RESEARCH:

STREET ADDRESS: **436 5th Avenue, New Rochelle** **JOB # 1728-E-224** **JMP**

Atlas Page:

BILLING/CLIENT: **Flavio LaRocca / 914-447-0173**

FEE QUOTE:

DEPOSIT:
DATE RECEIVED:
AMOUNT:
CREDIT:

FAX

EMAIL

GABRIEL E. SENOR, P.C.
 90 North Central Ave.
 Hartsdale, NY 10530

Invoice

INVOICE #
GB 1705-4133
DATE
9/10/2009
RE:
436 5th Avenue New Rochelle
DUE DATE
9/10/2009

PAID
 10/15/2009

BILL TO		
FMLR REALTY MANAGEMENT LLC Flavio LaRocca 436 5th Avenue New Rochelle, NY 10804		
TERMS	LOCATION	TOWN
Due Upon Receipt		

FOR PROFESSIONAL SERVICES RENDERED	AMOUNT
Stake Out East Side of Lot #224 Pd \$675 dep Ck#1031 8/11/09 Pd \$225 in full Ck#1034 10/15/09 Stakeout Sketch Emailed to Flavio 9/10/09	900.00
<i>PO 1728-E-224</i>	

Please Remit By Check To:
Gabriel E. Senior
 90 North Central Avenue
 Hartsdale, NY 10530

Telephone Number:
 (914) 422-0070

Fax: (914) 422-3009

Or Remit ACH To:
 J.P. Morgan Chase
 Routing Number - 021000021
 Account Number: 3010228750

info@gesenor.com

Or Call Office With Credit Card Information -
 Visa, MasterCard, & American Express are
 Accepted

Any additional copies of prints/CAD files, after three months of services, will be an additional charge of \$300. These proposal are valid for three months. Thank You.

Total	\$900.00
Payments/Credits	-\$900.00
Balance Due	\$0.00

Nick

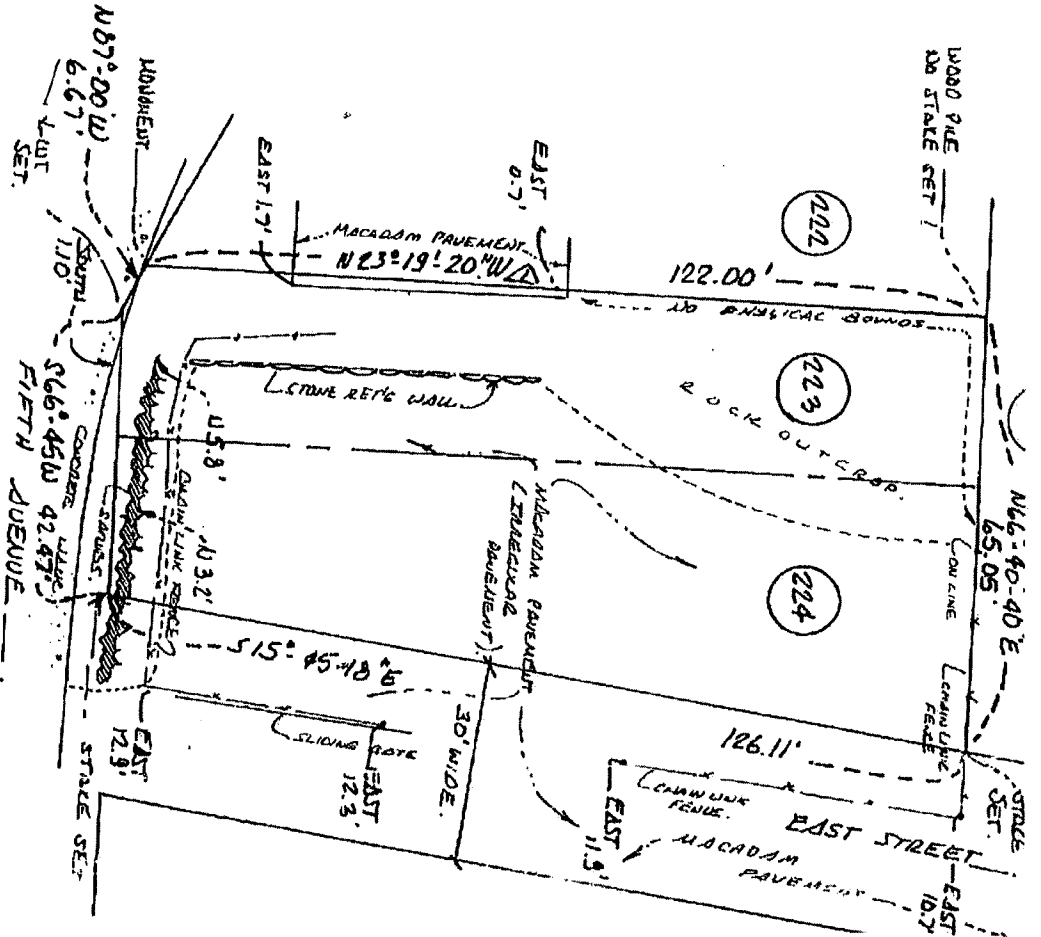
Prepared By:
 Rob Karopik, L.S.
 271 North Avenue, Suite 316
 New Rochelle, New York
 10801

A.N.N.

FIELD: 11/3/02
 M.A.: 11/14/02
 REU: "

STAKES

STAKE
 ON A CE
 AVENUE
 RIDGEMILL
 SCALE: 1" = 20'
 DATE: 000/15



HARRISON PARK CONDOMINIUM

THIS IS TO CERTIFY THAT I HAVE SURVEYED
lots 223, 224 as shown on "Map of Fifth
Avenue Heights in the City of New Rochelle, West
Co., N.Y."

RICHARD A. SPINELLI
733 EAST BOSTON POST ROAD
MAMARONECK, N. Y.
TEL: 301-8387

FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE, DIVISION OF LAND RECORDS
(FORMERLY REGISTER'S OFFICE) June 7, 1907 AS MAP # 1728

I HAVE LOCATED ALL EXISTING BUILDINGS AND LINES OF POSSESSION AS SHOWN HEREON.
TO WHOM

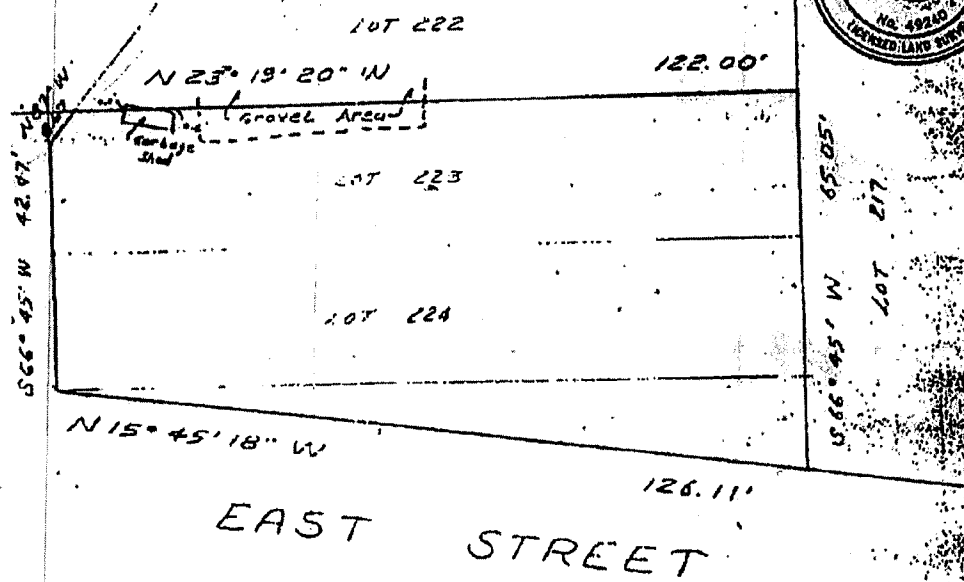
I HEREBY CERTIFY THIS SURVEY TO
LIABILITY IS LIMITED.

SURVEY AND MAP COMPLETED Dec. 12, 1986 SCALE ONE INCH TO 20 FEET.

GUARANTEED IN ACCORDANCE WITH THE MINIMUM STANDARDS FOR TITLE SURVEYS OF THE NEW YORK STATE LAND TITLE ASSOCIATION

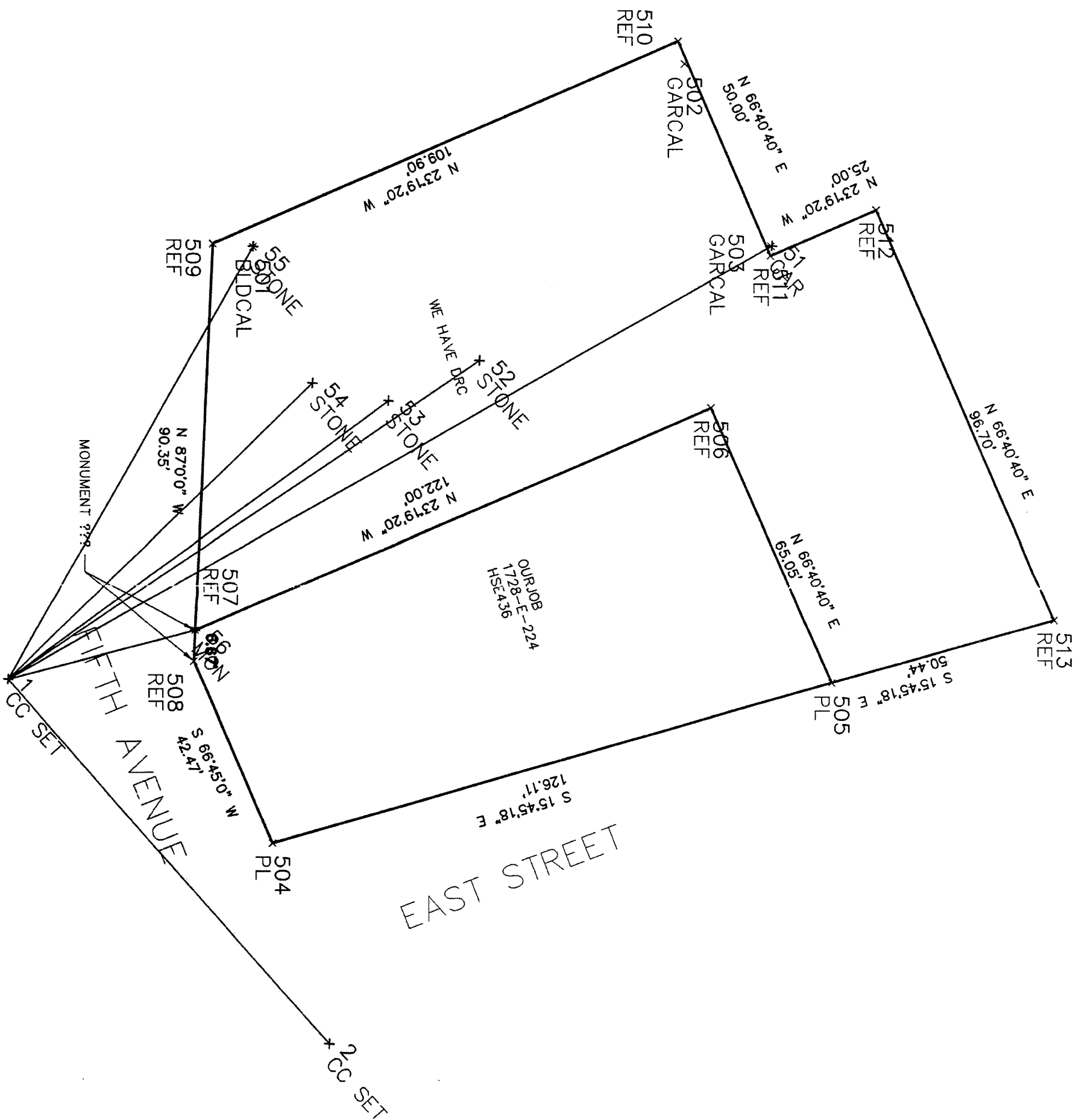
NOTE: ALL CERTIFICATIONS MADE HEREON ARE VALID FOR THIS MAP AND
COPIES THEREOF ONLY IF SAID MAP OR COPIES BEAR THE IMPRESSED
SEAL OF THE SURVEYOR WHOSE SIGNATURE APPEARS HEREON.

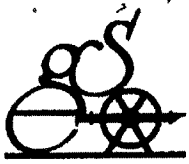
R. Spinelli
RICHARD A. SPINELLI
N. Y. S. LIC. LAND SURVEYOR NO. 48840
EXPIRES 12/31/2008
R. A. SPINELLI



		5TH AVE & EAST STREET		
1,	7694.3631,	17262.1501,	-99999,	CC SET
2,	7763.5105,	17340.3945,	-99999,	CC SET
56,	7735.0747,	17251.5060,	-99999,	MON
504,	7751.4903,	17297.1879,	-99999,	PL
505,	7872.8626,	17262.9460,	-99999,	PL
506,	7847.1064,	17203.2060,	-99999,	REF
508,	7734.7256,	17258.1669,	-99999,	REF

P:\DWG Drawings\RO#\RO1728.dwg



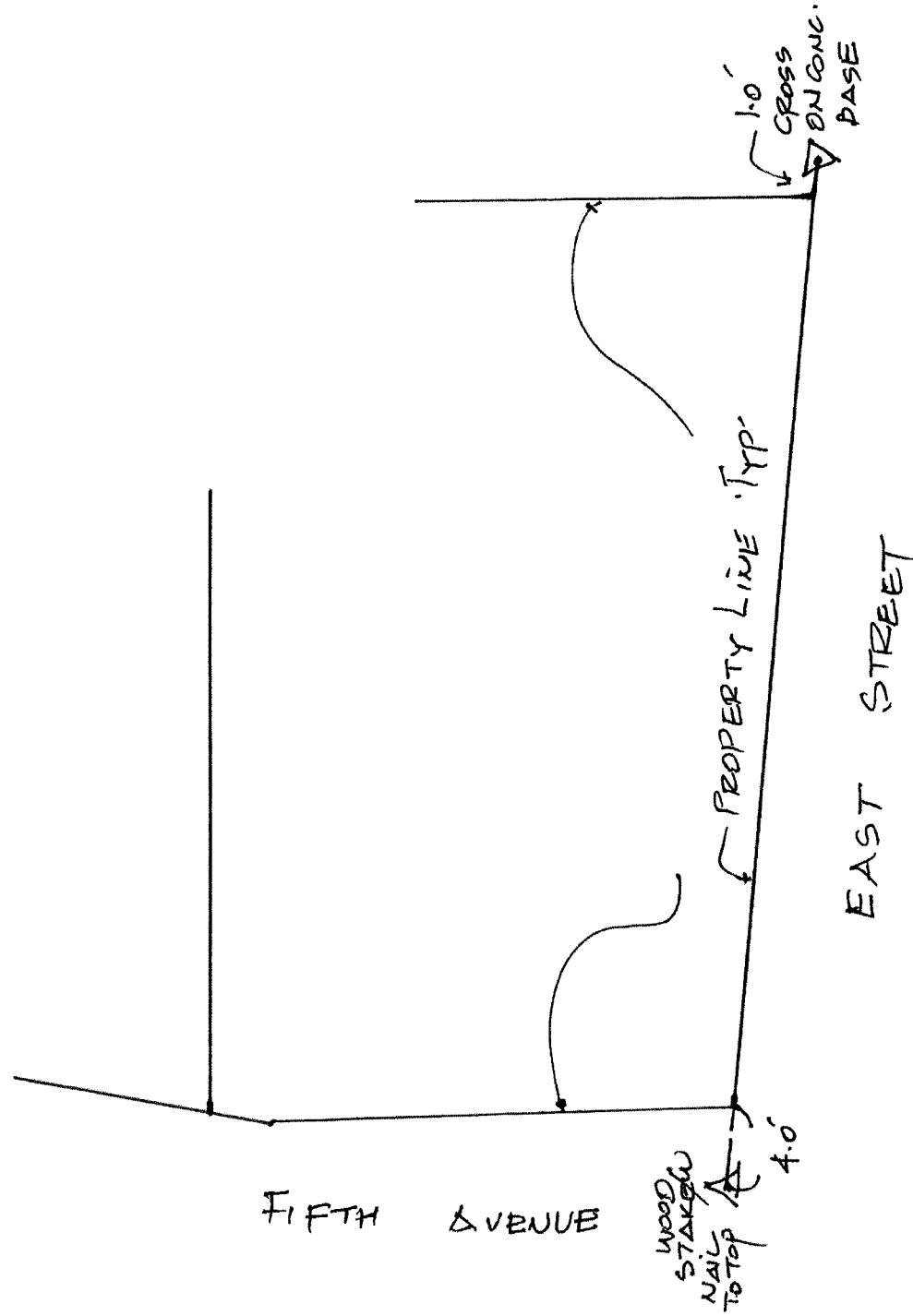


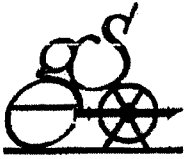
Gabriel E. Senor
90 North Central Ave.
Hartsdale, NY 10530
914-422-0070 fax 914-422-3009

Job# 1728-E-224.
Address 436 5TH. AVENUE. NR.
Sheet 1 of 1 Date 9-10-09
Field Crew RB KA Scale NT3

STAKE OUT SKETCH:

2 MARKERS ON
PROPERTY LINE
EXTENSION AS
SHOWN.





Gabriel E. Senior, P.C.
 90 North Central Ave.
 Hartsdale, NY, 10530
 914-422-0070
 914-422-3009 fax

Job # 1728-E-224
 Address 436 5TH AVE, NR

Sheet ___ of ___ Date 09-10-09
 Field crew RB/KA Scale NTS

Sta #	BS#	BS Dist	Sta IH	Sta elev.	Rod HS		
Pnt	H ANG	H Dist	V Difference	V ANG	ROD HT	ELEV	REMARKS
1-1		104.42					
51 (A)	281.59.02	190.91					
52 (B)	277.31.46	123.74					
53 (C)	275.22.46	102.55					
54 (D)	267.27.22	92.42					
55 (E)	251.20.45	107.97					
56 (F)	296.48.58	42.08					
<div style="border: 1px solid black; padding: 5px; display: inline-block;"> GAP From (A) </div>							

Point Listing made Wed Sep 09 09:41:51 2009

Page 1 of 1

Drawing Name: ro1728
 Project Name: RO1728
 Project Path: P:\SDSKProj\RO1728\
 Username: rakesh

172850-909
 1728N

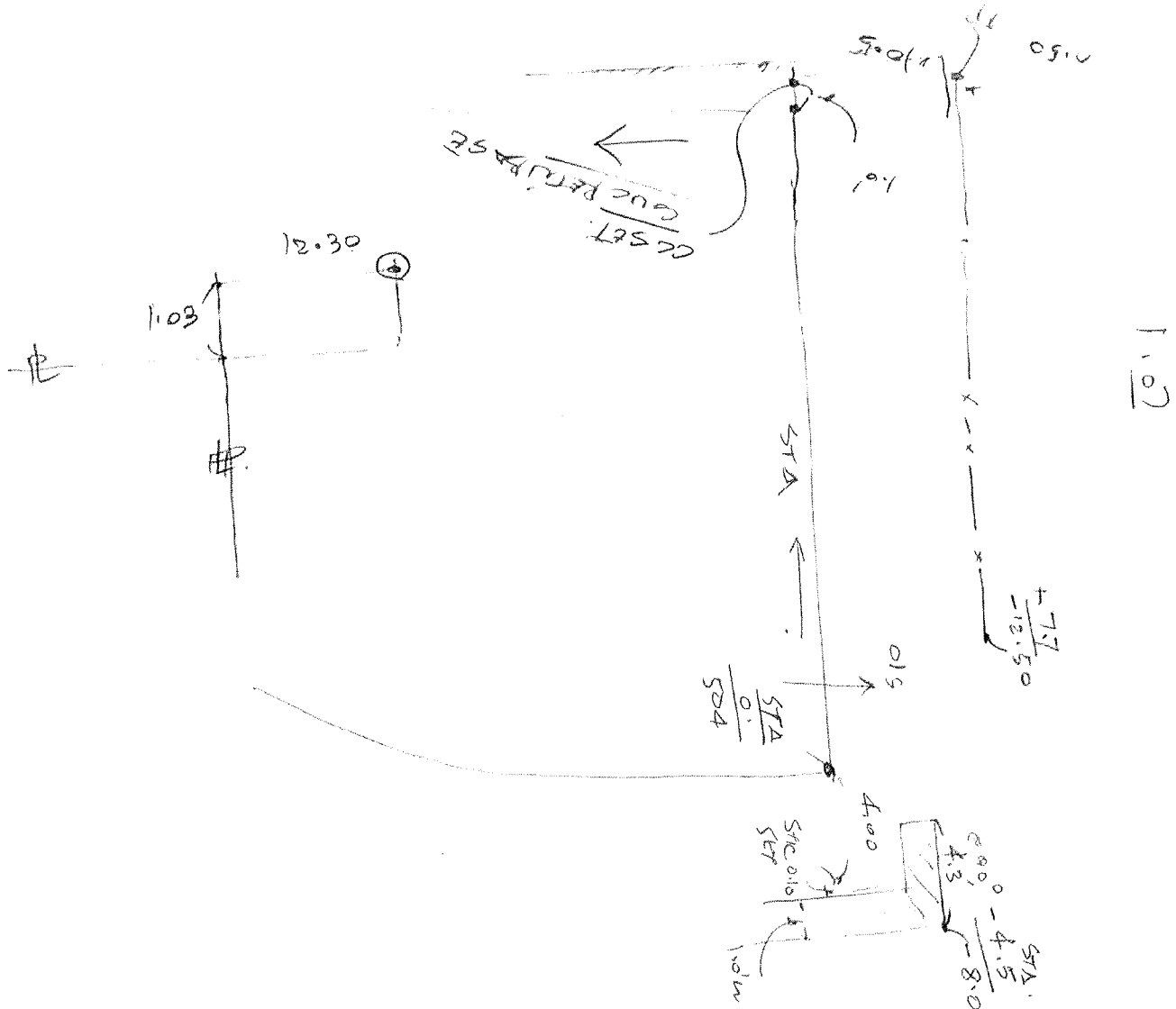
Number	Northing	Easting	Elevation	Raw Desc	Full Desc	Latitude
501	4996.64	4871.47	.	BLDCAL	BLDCAL	0.0049
502	5090.26	4832.06	.	GARCAL	GARCAL	0.0050
503	5108.86	4871.07	.	GARCAL	GARCAL	0.0051
* 504	* 5000.00	* 5000.00	* .	* PL	* PL	* 0.0049
* 505	* 5121.37	* 4965.76	* .	* PL	* PL	* 0.0051
506	5095.62	4906.02	.	REF	REF	0.0050
507	4983.58	4954.32	.	REF	REF	0.0049
508	4983.24	4960.98	.	REF	REF	0.0049
509	4987.96	4870.75	.	REF	REF	0.0049
510	5088.88	4827.24	.	REF	REF	0.0050
511	5108.68	4873.16	.	REF	REF	0.0051
512	5131.64	4863.26	.	REF	REF	0.0051
513	5169.92	4952.06	.	REF	REF	0.0051

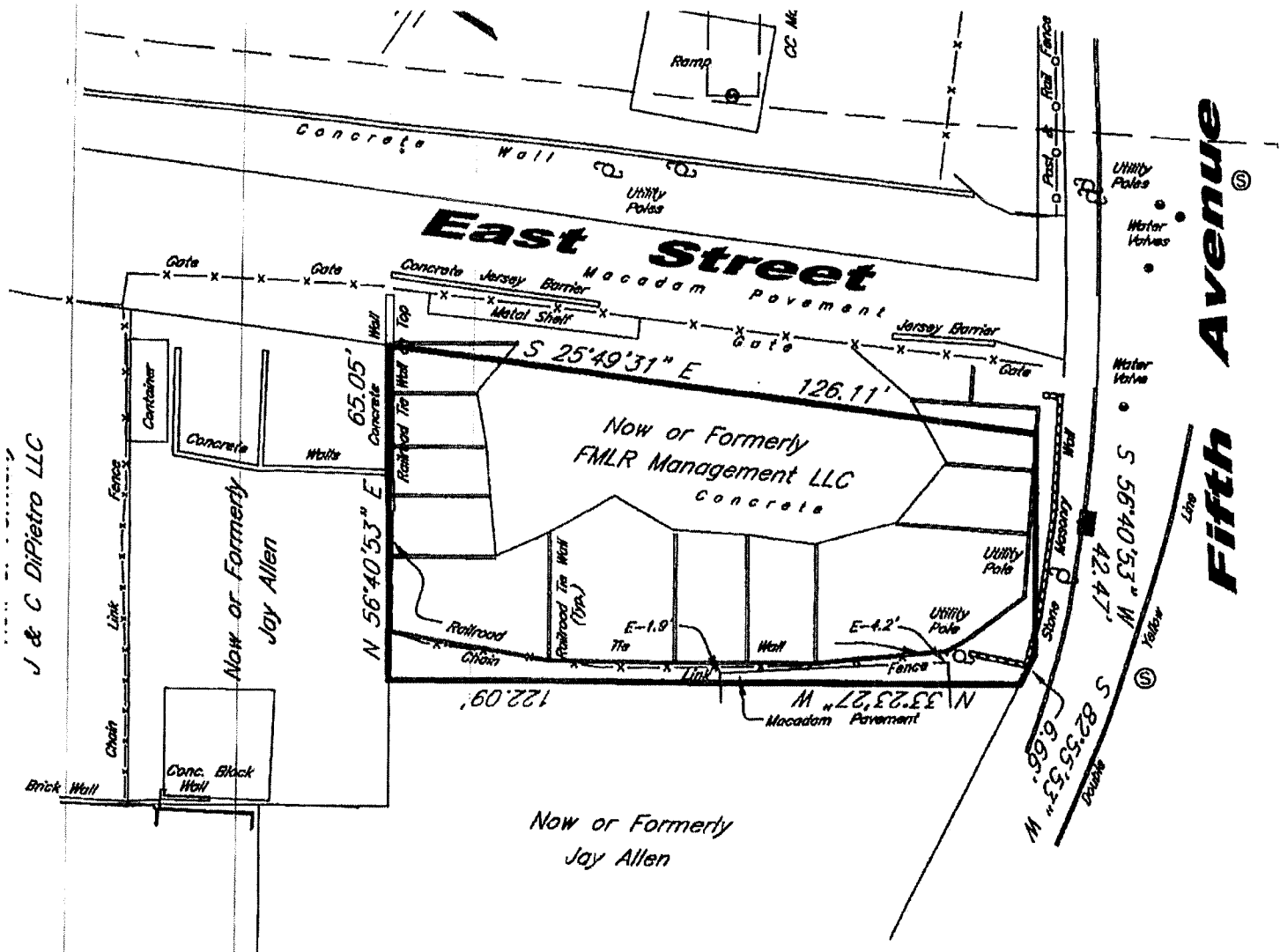
BS (1)

X 4942.87 X 4964.96 X CC SET

K (2)

X 5012.02 X 5043.21 X CC SET





Survey of Property
 prepared for
City of New Rochelle
 in the City of
New Rochelle

Westchester County, N.Y.

Scale 1"=30'

Apr. 13, 2016

The premises being Lot 29, Block 931, Section 3 as shown on the official Tax Assessment Maps of the City of New Rochelle.

TITLE NO:REL14350-W

SCHEDULE A

ALL that certain plot, piece or parcel of land situate, lying and being in the City of New Rochelle, County of Westchester and State of New York, and known as Block 931, Lots 29 and 30 on the Official Tax Assessment Map of the City of New Rochelle and also known and designated as Lots 223 and 224, Block "E" on a certain entitled. "Map of Fifth Avenue Heights", filed June 7th, 1907 as Map No. 1728, which property is bounded and described as follows;

BEGINNING at a point where the northerly side of Fifth Avenue is intersected by the division line between Lot 223 and Lot 222;

THENCE RUNNING along the same, North 23 degrees 19' 20" West, 122.00 feet to a point and the intersection of Lot 223, Lot 222 and Lot 217;

THENCE RUNNING along the division line between Lot 223, Lot 224 and Lot 227 on a course North 66 degrees 45' East, 65.05 feet to the westerly side of East Street;

THENCE RUNNING along the same on a course, South 15 degrees 45' 18" East, 126.11 feet to the intersection of the westerly side of East Street and the northerly side of Fifth Avenue;

THENCE RUNNING along said northerly side of Fifth Avenue the following 2 courses and distances:

South 66 degrees 45' West, 42.47 feet; and
North 87 degrees West, 6.67 feet to the point or place of BEGINNING.

FOR CONVEYANCING ONLY, IF INTENDED TO BE CONVEYED: TOGETHER WITH ALL RIGHT, TITLE AND INTEREST OF, IN AND TO ANY STREETS, ROADS OR AVENUES ABUTTING THE ABOVE DESCRIBED PREMISES, TO THE CENTER LINE THEREOF.

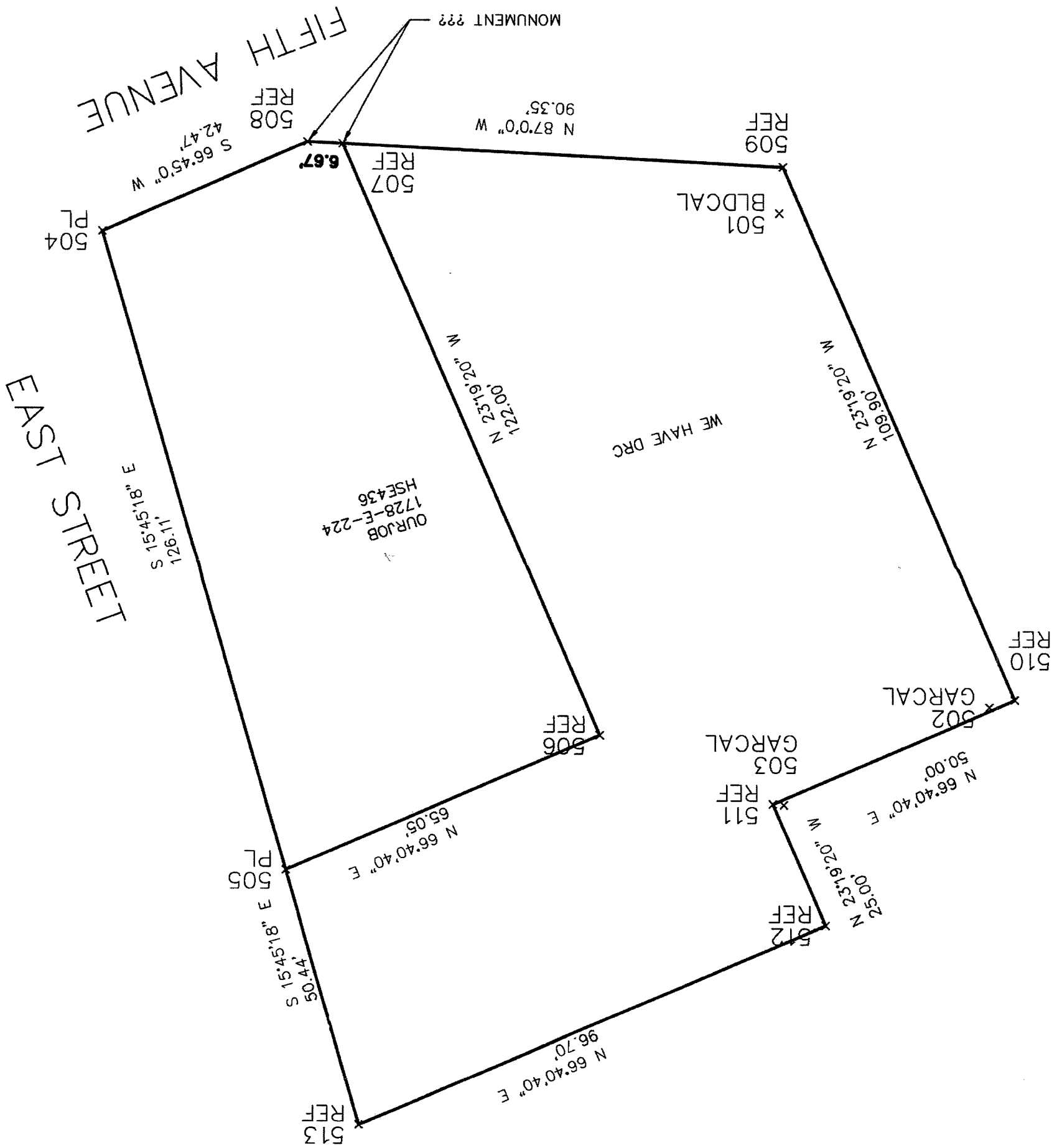


Exhibit "42"

Mendelsohn, Scott

From: eileen@ Gabriel E. Senor PC <eileen@gesenor.com>
Sent: Tuesday, January 26, 2021 2:46 PM
To: Eliot Senor
Subject: FW: Surveys/Deed and Info on 436 5th ave, New Rochelle

From: Flavio & Maria La Rocca <casalarocca@aol.com>
Sent: Wednesday, July 20, 2016 11:18 AM
To: info@ gabrielesenorpc.com <info@gabrielesenorpc.com>
Subject: Re: Surveys/Deed and Info on 436 5th ave, New Rochelle

Good Morning Kathy & Elliott:

We spoke with our attorney as mentioned on our conversation over the phone and she would like to setup a meeting for August 3 at 10:30 a.m. at 5th ave to discuss and look over our copies and what you have.

Please let me know if this will work with you as I do need to confirm with her. She will be going on vacation week after and would to at least meet before she leaves.

Thanks,

Maria
914-447-3715

-----Original Message-----

From: info@ gabrielesenorpc.com <info@gabrielesenorpc.com>
To: Flavio & Maria La Rocca <casalarocca@aol.com>
Sent: Wed, Jul 6, 2016 2:09 pm
Subject: RE: Surveys/Deed and Info on 436 5th ave, New Rochelle

Maria,

The fence is aprox. 10Ft on the outside the property line as indicated on our original field sketch. If you have any questions please contact our office at 914-422-0070.

Kathy

Gabriel E. Senor P.C
90 North Central Ave
Hartsdale, NY 10530
914-422-0070 (Tel)
914-422-3009 (Fax)

From: Flavio & Maria La Rocca [<mailto:casalarocca@aol.com>]
Sent: Wednesday, July 06, 2016 1:28 PM
To: info@ gabrielesenorpc.com <info@gabrielesenorpc.com>
Subject: Re: Surveys/Deed and Info on 436 5th ave, New Rochelle

Sorry!

-----Original Message-----

From: info@ gabrielesenorpc.com <info@gabrielesenorpc.com>
To: Flavio & Maria La Rocca <casalarocca@aol.com>
Sent: Wed, Jul 6, 2016 1:01 pm
Subject: RE: Surveys/Deed and Info on 436 5th ave, New Rochelle

Maria,
There was nothing attached.

Kathy

Gabriel E. Senor P.C
90 North Central Ave
Hartsdale, NY 10530
914-422-0070 (Tel)
914-422-3009 (Fax)

From: Flavio & Maria La Rocca [<mailto:casalarocca@aol.com>]
Sent: Wednesday, July 06, 2016 12:53 PM
To: info@ gabrielesenorpc.com <info@gabrielesenorpc.com>
Subject: Surveys/Deed and Info on 436 5th ave, New Rochelle

Attached please find the info we spoke about earlier.

You will find our original survey, deed, stakeout (from you company) and latest survey done by City of New Rochelle.

Please advise asap your findings. We can also meet on the property to view stakeout.

Thanks,

Maria La Rocca
914-447-3715

Exhibit "43"

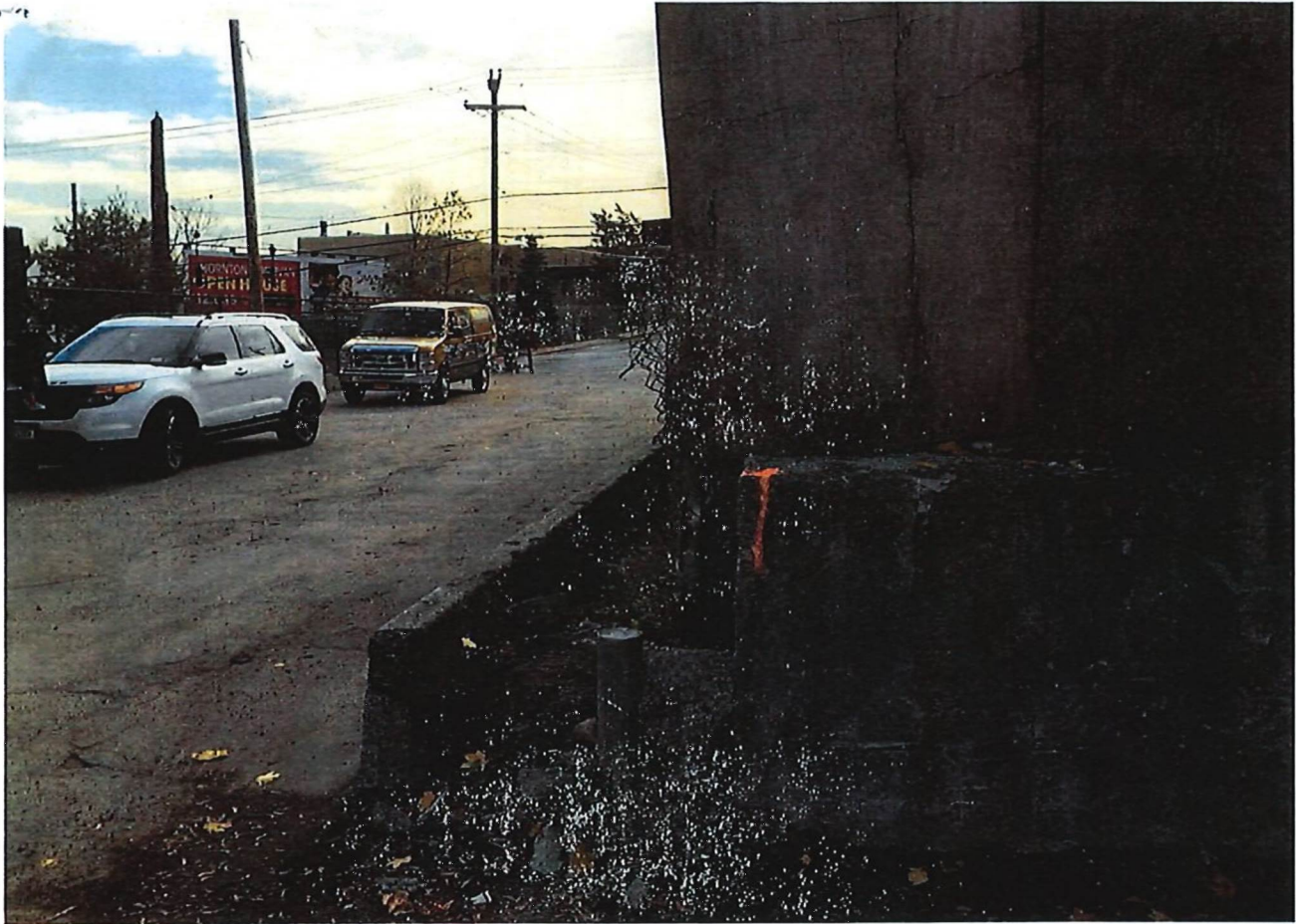


Exhibit "44"

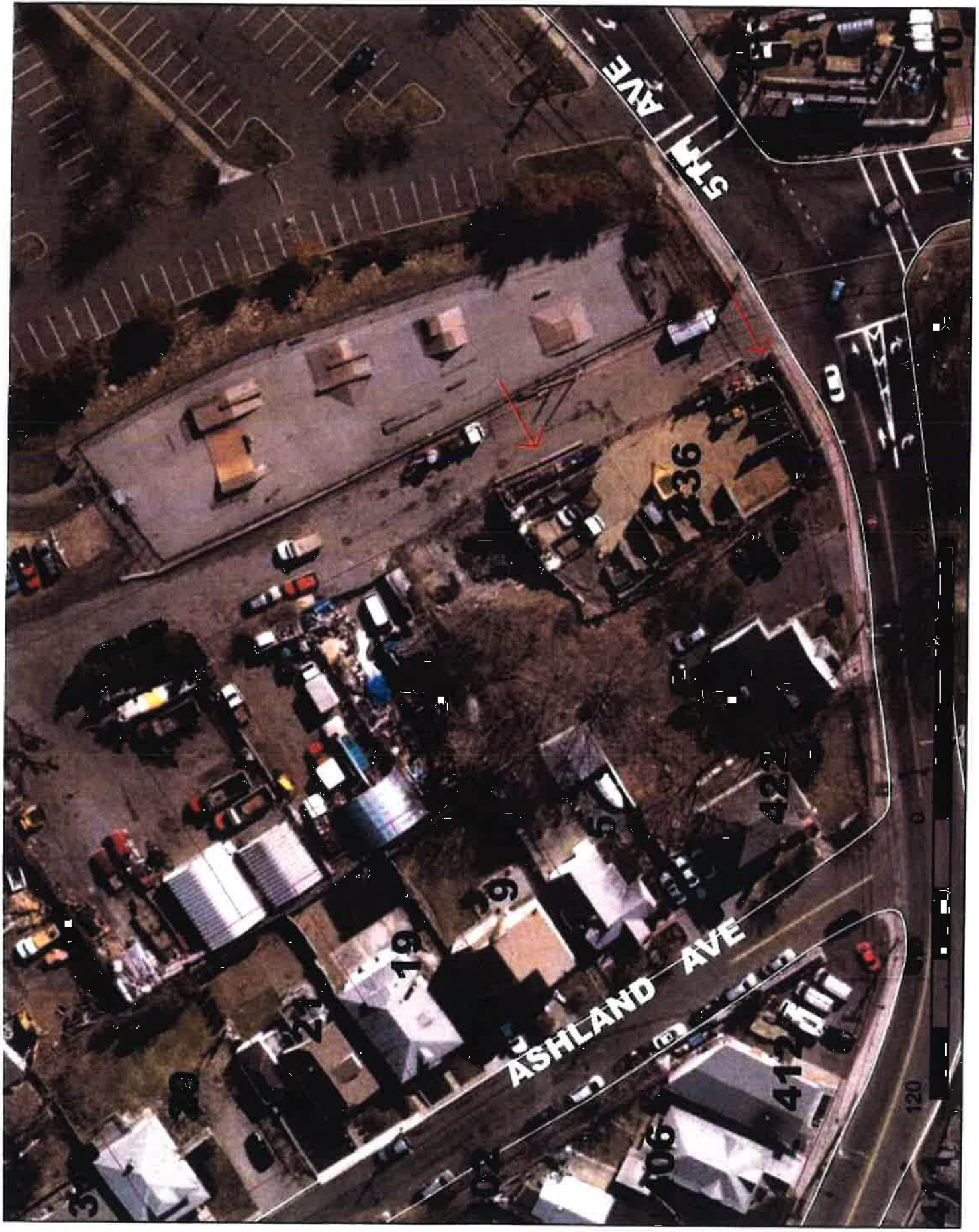
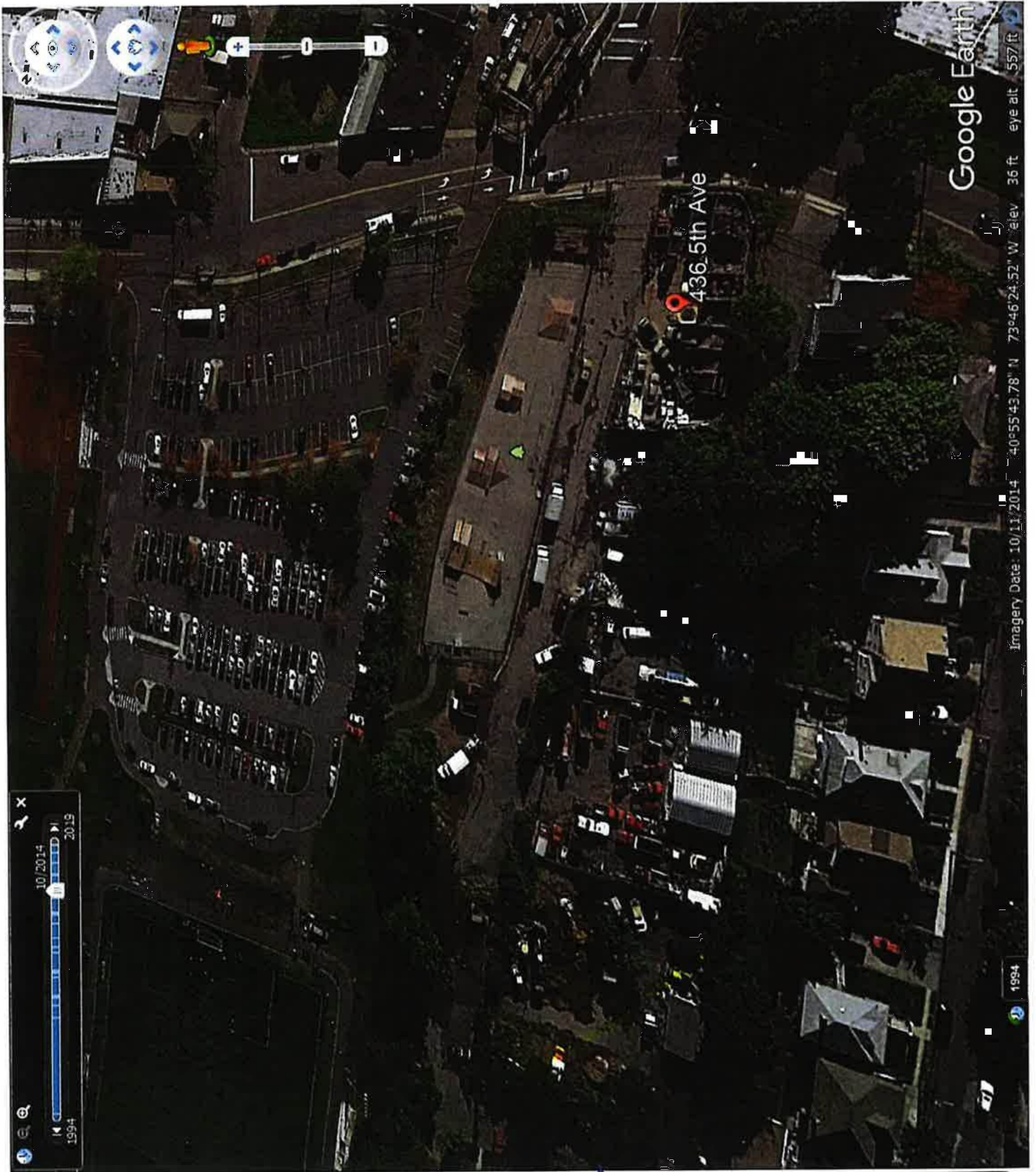


Exhibit "45"

**DISC WITH VIDEO WILL BE
SEPARATELY PROVIDED TO THE COURT**

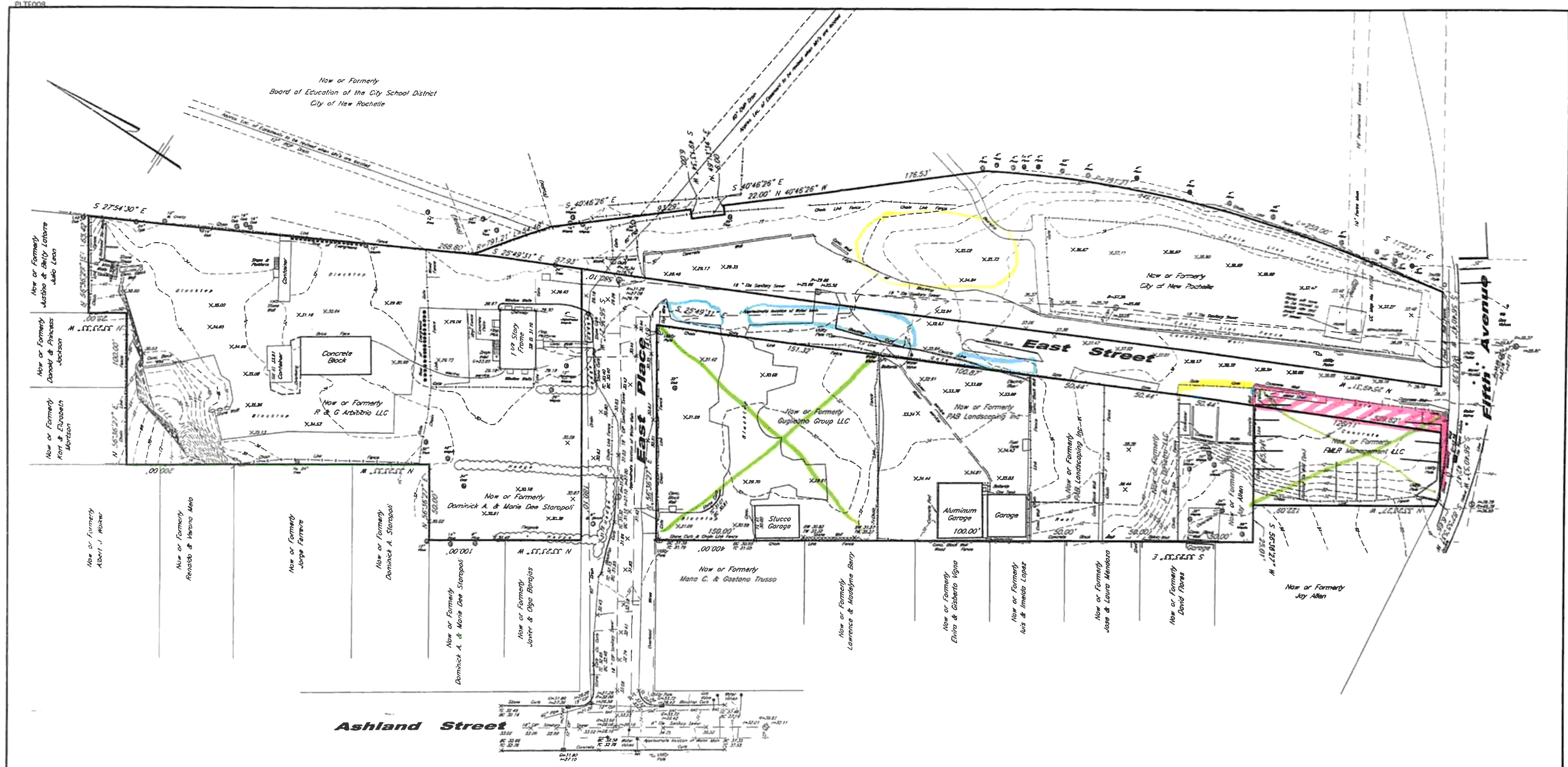
Exhibit "46"



D0262

EXHIBIT
 tabbles
 PH. 7

Exhibit "47"



Survey of Property
 prepared for
City of New Rochelle
 in the City of
New Rochelle
 Westchester County, N.Y.
 Scale 1"=30' Dec. 8, 2014

State Reference System
 USA/NAD 83 CORS96/New York
 (East Zone)
 Vertical Datum - NAVD 88
 (Geoid 00)

Subsurface structures and their encroachments, if any exist, are not shown hereon.
 Circumstantial alterations or additions to a survey map is a violation of section 7208, sub-section 2, of the New York State Education Law.
 Only copies of the original survey marked with the land surveyor's inked or embossed seal shall be considered a true and valid copy.

Certifications indicated hereon signify that this survey was prepared in accordance with the existing code of practice for Land Surveyors adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run to the person for whom the survey is prepared only, and on his behalf to the title company, governmental agency and lending institution listed hereon, and to the assignees of the lending institution. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
 Copyright (c) 2014 Word Carpenter Engineers, Inc. All Rights Reserved.

EXHIBIT
 PIFE 11

Word Carpenter Engineers, Inc.
 Word Carpenter Engineers, Inc.
 76 Mamaroneck Avenue
 White Plains, N.Y. 10601

Exhibit "48"





Exhibit "49"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

- - - - - x

CITY OF NEW ROCHELLE,

Plaintiff,

-against-

Index No: 54190/2016

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA &
SONS INC and FMLR REALTY MANAGEMENT LLC,
Defendants.

- - - - - x

1133 Westchester Avenue
White Plains, New York

August 4, 2021
2:25 p.m.

VIDEOCONFERENCE DEPOSITION of
ROBERT ANDREW COX, in the above-entitled
action, held at the above time and place,
taken before Helen Wandzilak, a Notary
Public of the State of New York, pursuant
to Order and stipulations between Counsel.

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APPEARANCES :

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER, LLP
Attorneys for Plaintiff
1133 Westchester Avenue
White Plains, New York 10604

BY: PETER A. MEISELS, ESQ.

SILVERBERG ZALANTIS, LLC
Attorneys for Defendants
120 White Plains Road
Suite 305
Tarrytown, New York 10591

BY: KATHERINE ZALANTIS, ESQ.

ALSO PRESENT (VIA ZOOM VIDEOCONFERENCE) :

Flavio La Rocca
Maria La Rocca

* * *

1

2

STIPULATIONS

3

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IT IS HEREBY STIPULATED, by and among
the attorneys for the respective parties
hereto, that:

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All rights provided by the C.P.L.R.,
and Part 221 of the Uniform Rules for the
Conduct of Depositions, including the
right to object to any question, except as
to form, or to move to strike any
testimony at this examination is reserved;
and in addition, the failure to object to
any question or to move to strike any
testimony at this examination shall not be
a bar or waiver to make such motion at,
and is reserved to, the trial of this
action.

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This deposition may be sworn to by the
witness being examined before a Notary
Public other than the Notary Public before
whom this examination was begun, but the
failure to do so or to return the original
of this deposition to counsel, shall not
be deemed a waiver of the rights provided
by Rule 3116, C.P.L.R., and shall be

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controlled thereby.

The filing of the original of this deposition is waived.

IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * *

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R O B E R T A N D R E W C O X ,

3

having been first duly sworn/affirmed by a

4

Notary Public of the State of New York,

5

upon being examined, testified as follows:

6

EXAMINATION BY MR. MEISELS:

7

Q What is your name?

8

A Robert Andrew Cox.

9

Q What is your business address?

10

A 165 Huguenot Street, New

11

Rochelle, New York 10801.

12

Q Good afternoon, Mr. Cox. I'm

13

going to ask you a couple of background

14

questions.

15

And, then, as you can see, we're

16

going to show you a video.

17

How are you presently employed?

18

A I'm a journalist. I own Talk of

19

the Sound and I also do freelance, for

20

other people.

21

Q And going back to May of 2015,

22

how were you employed?

23

A Same, working for Talk of the

24

Sound, which I own, as a journalist and

25

doing freelance work.

1 ROBERT ANDREW COX

2 Q And going back to May of 2015,
3 did you have occasion to cover a story
4 involving Flavio LaRocca?

5 A Yes, I did.

6 Q I'm going to show you what's
7 been premarked as a Plaintiff's exhibit.
8 And I'm going to ask you to just take a
9 look at it and then I'm going to ask you
10 to, you know, identify it.

11 First, let's take a look at it.
12 Okay?

13 [Video is playing via Zoom.]

14 A I identify this as the same
15 video we saw.

16 Q Can you identify what I just
17 showed you?

18 A That is a video that I edited
19 together, based on being at the site on
20 East Street, where this work was taking
21 place.

22 It was -- from looking at it, I
23 believe this is a video I uploaded to
24 YouTube.

25 I say that because it's slightly

Page 7

1 ROBERT ANDREW COX

2 graded in quality. The original video was
3 a little sharper.

4 Q And does it fairly and
5 accurately depict what you saw that day?

6 A It does.

7 I might add, that it's not
8 everything because this is edited.

9 So, you know, things that were
10 repetitive, I took out.

11 I had took out, but didn't add
12 to the video file that I was making.

13 Q Am I correct, that the street
14 shown in this video is East Street?

15 A Yes.

16 Q And how did it come about that
17 you ended up on East Street on May 16th,
18 2015?

19 A I received a phone call,
20 sometime probably between eight and nine
21 a.m. on Saturday, that day.

22 I then, based on that phone
23 call, made my way over there, to see what
24 was going on.

25 The person calling was somebody

Page 8

1 ROBERT ANDREW COX
2 who had some connection to the area. I'll
3 just leave it at that.

4 And was telling me that they
5 were the third -- I was their third call
6 that day, because they had called the New
7 Rochelle Police earlier and they had come
8 by the area.

9 But, then, apparently, reported
10 back to headquarters that it was -- they
11 spoke to people who claimed to be working
12 on their own property.

13 Then, I gather, that they made a
14 second call, the police car came through
15 the area and this caller said they didn't
16 stop and report it as an unfounded
17 complaint.

18 And so they called me and my
19 recollection is I arrived around 9:15 a.m.
20 on May 16th.

21 MS. ZALANTIS: Off the record.

22 [Discussion held off the
23 record.]

24 Q So you receive the phone call,
25 and you went over there, to see what was

1 ROBERT ANDREW COX

2 going on?

3 A I got a call and about
4 9:15 a.m., I had arrived on the scene.

5 Q And what did you see, when you
6 got there?

7 A I saw a bunch of work going on.
8 It was pretty much, as was described.

9 Although, the work of actually
10 cutting down the trees was not -- was not
11 happening any longer.

12 The caller said that they were
13 using chainsaws to cut down trees.

14 I didn't see any chainsaws. I
15 did see a pile of wood chips.

16 Should I continue? 'Cause
17 there's more. I can keep going.

18 Q Yes. Please.

19 A So I observed a bunch of trucks,
20 a bunch of work going on.

21 I took it in for a moment and
22 then got out of my car and started
23 filming.

24 And, you know, pretty much what
25 you see in the video, I'm walking around,

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2 holding up an iPhone, just turning it in
3 different directions.

4 I didn't know, when I arrived,
5 exactly, who anybody was.

6 So, in the video, you can see I
7 mentioned -- I'm naming Mr. La Rocca in
8 the video, being in a white shirt.

9 But I didn't know who that was
10 at the time. I just was filming.

11 It was only later that, you
12 know, I realized exactly what I had
13 captured there.

14 Therefore, I knew he was the
15 person who got in the truck and drove away
16 and so forth.

17 But, you know, there was a
18 number of pieces of equipment there.
19 There was people going back and forth
20 between the, let's call it the "job site",
21 for one of a better term and Mr. La
22 Rocca's property at the other end of East
23 Street.

24 So there was some small
25 equipment being moved, back and forth.

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2 There was other equipment in the
3 back of some trucks.

4 At one point, they were using,
5 I'm not sure what you'd call it, but it's
6 like a little, mini steamroller to pack
7 down the ground.

8 You know, people had, previous
9 to that, had been sort of using rakes to
10 kind of spread out asphalt on the sur --
11 what looked like asphalt anyway on the
12 surface.

13 And, you know, I ended up
14 staying there. Although the video doesn't
15 depict this, I ended up staying there for
16 probably about three or more hours.

17 So from the point that you first
18 see the video start, I watched what ended
19 up being the completion of the
20 construction of what I've described as a
21 parking lot.

22 [Video is playing via Zoom.]

23 Q Taking a look at this -- and
24 this is Stop 13 in the video.

25 Taking a look at what's shown at

1 ROBERT ANDREW COX

2 Stop 13, okay, you see, in the far -- on
3 the far right side what appears to be a
4 file of wood chips.

5 A It's slightly blocked by the
6 monitor and with the frame, within the
7 frame here.

8 But, yes, I can see that.

9 Q Were those wood chips there,
10 when you arrived?

11 A Yes.

12 Q And other than what your caller
13 told you about them, did you ever learn
14 how those wood chips got there?

15 A I mean, what I was told. But, I
16 attempted to interview Mr. La Rocca any
17 number of times, to ask him a bunch of
18 questions.

19 But he declined to be
20 interviewed.

21 And one of my questions would
22 have been about that.

23 I did observe, on his property,
24 what's called a tromal, which is a device
25 for dumping debris and it chucks it out

1 ROBERT ANDREW COX

2 the other end and makes piles, just like
3 that.

4 It wasn't on the scene. It was
5 parked inside, at the gate of his
6 property.

7 Specifically, I think it was
8 called a McCloskey 412 Screen Trammel.

9 And that's used for basically to
10 dump any kind of debris, whether it's dirt
11 or wood chips or gravel or anything and
12 it'll shoot it out of like a funnel at the
13 other end and create piles, just like
14 that.

15 Q Now, in terms of the piece of
16 equipment shown in the foreground of the
17 video, were you able to determine who
18 owned that?

19 A I did not determine who owned
20 it.

21 I mean, you know, people I saw
22 there were people working for La Rocca, La
23 Rocca & Sons.

24 And so I just understood that
25 that was to be their piece of equipment.

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2 Their people were using it.

3 Q Now there is a caption added,
4 "Flavio La Rocca in white shirt." Is he
5 shown in this photograph?

6 A Yeah, that's him, off a little
7 bit to the left.

8 He's standing, so that behind
9 him are two parked cars.

10 He's with another person.

11 As I mentioned, this is a
12 somewhat degraded quality of the video
13 because when you upload it to YouTube it
14 degrades the quality.

15 But with the original video, he
16 is clearly visible.

17 And so -- although, I didn't
18 realize I was capturing him in the video,
19 the moment I shot the video, in looking at
20 it later I determined who that was.

21 Q Okay.

22 A That's why the caption is there.
23 And the video, it's, you know, edited in
24 post to add those titles.

25 [Video is playing via Zoom.]

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2 Q And did you ever determine
3 who -- let me backup.

4 If you look left -- right of
5 center of the photograph, do you see two
6 workers with what appear to be rakes,
7 working on spreading material?

8 A Yeah, I see them. One in a
9 beige shirt, one in a blue shirt, they
10 both have rakes.

11 They're spreading something like
12 asphalt which in the moment, in the video,
13 you'll see that it's being compacted with
14 a sort of a mini steamroller.

15 Q Did you ever learn how that
16 material got to that spot?

17 A No.

18 Q Did you actually see the
19 material, yourself?

20 A Yes, I've seen the video. It's
21 in the video I saw, yes.

22 Q And was it some form of asphalt?

23 A That's what it appeared to be,
24 to me. I'm not an expert on building
25 materials, but that's what it looked like

1 ROBERT ANDREW COX

2 to my layperson eyes, yes.

3 Q And, again, now, looking at the
4 right third of the video, do you see three
5 people working on that area?

6 A To see that, I had to take the
7 liberty of moving the screens on my
8 screen.

9 So, yes, I see the same two
10 individuals, one in blue, one in beige and
11 the other wearing a white shirt.

12 Q Now was that area, where that
13 material is being spread, elevated from
14 East Street?

15 A Yes.

16 Q Now were you familiar with East
17 Street prior to your reporting this story?

18 A Yes, I was familiar. It had
19 been the subject of discussions involving
20 the development commissioner to relocate
21 the New Rochelle city yard, where the DPW
22 is located.

23 And there was a plan to use
24 eminent domain to take all the properties
25 along East Street, basically, on the side

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2 of the road where I'm standing, in this
3 camera shot.

4 And, in fact, that's how I first
5 came to ever hear the name Flavio La Rocca
6 because, I believe, it was both he and his
7 wife, if I'm not mistaken, but one or two
8 of them, you know, came to City Hall for
9 public meetings to strenuously oppose the
10 plan.

11 As I recall, the complaint was
12 that they would put their company out of
13 business and they had a sick child and
14 that this would be detrimental to their
15 child's wellbeing.

16 So that, I would just say, it's
17 the kind of thing that gets your
18 attention.

19 So, yeah, I noticed and I
20 actually looked at the plans that they had
21 sketched out.

22 I had looked at some aerial maps
23 and I had interviewed the development
24 commissioner, who was the one that was,
25 you know, advocating for this idea, to

1 ROBERT ANDREW COX

2 move the city yard to this location.

3 Q Now, at the time that you -- at
4 the time of the controversy relating to
5 construction of the city yard in this
6 area, did you notice what was located in
7 that area, where there are now three
8 workers spreading material?

9 A Yeah, there was trees, similar
10 to the trees that are in view, in that
11 shot, on the right, next to the yellow --
12 the little steamroller.

13 Q Now, earlier today, you
14 mentioned that there was a machine that
15 was flattening out and compacting the
16 material that had been spread. Is that,
17 is the yellow steamroller, that we see in
18 this photograph, the machine to which you
19 were referring?

20 A It is. I'm sure it's got some
21 other official name, that my construction
22 friends will tell me I'm butchering. But
23 I'm calling it a mini steamroller and it's
24 yellow, so yes.

25 Q Okay.

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2 [Video is playing via Zoom.]

3 Q We're now at Frame 28. And are
4 the piles, that appear to be wood chips,
5 that are shown in Frame 28, were they all
6 there when you arrived?

7 A They were. And I can say they
8 were definitely wood chips 'cause I went
9 and stood on them and kicked them around.

10 So I know, for a fact, that
11 they're wood chips and, yeah, they were
12 there when I arrived.

13 Q Did you have occasion to ask
14 anybody there, at the scene, about the
15 wood chips?

16 A So I didn't. I would've liked
17 to have asked Mr. La Rocca. But, as
18 indicated in the video we saw earlier, he
19 ran away.

20 When he came back, he left the
21 scene in a hurry, again, so there was no
22 opportunity to ask him.

23 I was not comfortable asking the
24 employees these kinds of questions.

25 You know, there was no language

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2 barrier issue. It happened that my wife
3 was in the car, waiting for me and she
4 often is, while I'm reporting out stories.

5 And she's Cuban. She speaks
6 Spanish. So, if I needed a translator, I
7 could've gotten one, quite easily.

8 But I just figured these guys
9 were doing their job and they're doing
10 what their told and I wasn't going to try
11 to interview them and get them in trouble.

12 So since Mr. La Rocca left there
13 was nobody to talk to.

14 Q You mentioned that when you were
15 covering the story, relating to the
16 possible relocation of the city yard, that
17 at that time there were trees in the area,
18 where the workers are shown, now,
19 spreading material.

20 When was the last time that you
21 ever saw trees in this area?

22 A I mean, I would have to refresh
23 my memory on when the La Rocca's spoke at
24 city hall to the city counsel.

25 Because at that point is when it

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2 got on my radar.

3 I mean, quite frankly, I was
4 sympathetic to what they were saying. I
5 didn't know anything about it.

6 So that's when I began to make
7 inquires, if I saw the date of the video
8 that they spoke to city counsel, I can
9 give you a rough time frame.

10 But within a couple of months of
11 whenever that date was. Obviously, it was
12 before this.

13 But as part of my curiosity, as
14 a journalist, I'm not going to just look
15 at satellite photos and building plans,
16 I'm going to go kick the tires.

17 So I drove down there, to check
18 it out.

19 I believe that that's how people
20 in that neighborhood came to think of me
21 as somebody to contact with complaints.

22 Because the -- you know, the
23 call I got, that Saturday morning, on
24 May 16th, you know, wasn't like part of an
25 ongoing conversation, just somebody was

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2 frustrated and this is the nature of what
3 I do in the community that I cover, which
4 is the whole Sound Shore but it's mostly
5 tilted towards New Rochelle, bigger city,
6 more things happen and I live there.

7 So I'm doing it now for going on
8 thirteen years at the end of this month.
9 Lots of people in New Rochelle know if
10 they have a complaint or a concern they
11 can call me and tell me about it and I'll
12 look into it.

13 And my contact information is on
14 my website. It goes straight to my
15 cellphone, which I have with me, at all
16 times.

17 So, you know, that people down
18 there would either call me or e-mail me or
19 text me with complaints would not be out
20 of the ordinary.

21 But I don't remember the exact
22 time frame, but that DPW issue was, you
23 know before this, not ten years, maybe a
24 year, plus or minus, I'm not really sure
25 exactly when it was.

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2 [Video is playing via Zoom.]

3 Q Did you ever determine the
4 actual identity of the workers, who were
5 working at the site?

6 A I did not. I didn't even
7 attempt to.

8 [Video is playing via Zoom.]

9 Q Now, was that worker speaking to
10 you?

11 A No.

12 What was happening, behind me,
13 although I didn't fully grasp the
14 significance of it, is the person in the
15 white shirt saw me filming.

16 'Cause, remember, I'm holding
17 the camera, but I'm still -- my head's on
18 a swivel. I'm still looking around.

19 So just what you see in frame is
20 not necessarily all that I'm seeing. I'm
21 moving around.

22 And, I believe -- I wish I had
23 my translator handy.

24 But, I believe, he's saying
25 something to Mr. La Rocca because he is

1 ROBERT ANDREW COX
2 getting in a truck, which was in another
3 shot.

4 I don't know what you'd call it
5 exactly. But a bigger truck. The kind of
6 truck landscapers use.

7 And there was somebody else
8 driving it, and he got up, in the car
9 and -- in the cab and they drove off.

10 So, I believe, he was shouting
11 to Mr. La Rocca.

12 And I think I even said a word
13 on there. That's me saying hello.

14 Because I was trying to say
15 something to whoever was speaking.

16 This guy's speaking Spanish.

17 So if someone said hello, that's
18 probably me.

19 Q Now, I'm looking at Frame 46.
20 In the upper right-hand corner, there's a
21 gray car. Is that your car by any chance?

22 A No.

23 Q Do you know whose car it is?

24 A No. I have no idea.

25 [Video is playing via Zoom.]

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2 Q Now, we're in Frame 55. There's
3 a truck moving towards Fifth Avenue that,
4 on the door is Flavio La Rocca.

5 A Uh-huh.

6 Q Is that the vehicle leaving that
7 area, that you just described?

8 A Yeah. So I'm calling it a
9 landscaper truck, for one of the better
10 term.

11 And Mr. La Rocca had been behind
12 it, as was indicated in the previous image
13 and he came walking up and sort of
14 disappeared around the side of the truck.

15 And, you know, there's another
16 person, not Mr. La Rocca, who is driving
17 the vehicle and they drove off.

18 But, yes, that's the vehicle.

19 Q And looking to the left quarter
20 of the video, at Frame 55, do you see a
21 black cyclone fence?

22 A Yes, I do.

23 Q Does that fence enclose the
24 skate park?

25 A Yes, it is. I believe it's the

1 ROBERT ANDREW COX

2 Sidney Frank Skate Park, was donated by
3 him, the Grey Goose vodka heir/founder,
4 whatever you call it.

5 But, yeah, this is his skate
6 park. That's the city's skate park.

7 I can't be sure. But it's
8 possible, that that's my car parked on
9 East Street, facing the truck.

10 I can't really see it too well.
11 Now, I can't see it at all.

12 Q We're looking at Frame 102. Do
13 you notice, in this photo, there's a
14 gentleman depicted, who is digging?

15 A It's blocked. Let me move this.
16 He is digging.

17 The guy, in the back, there, has
18 some kind of --

19 Q -- fellow --

20 A -- shovel, the white shirt.

21 Q I'm looking at the one in the
22 white shirt, who would be closest to the
23 person taking the photograph.

24 A Well, I see, again, in the beige
25 shirt.

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2 And I see a guy in a white
3 shirt. The guy in the beige shirt has
4 some kind of white thing sticking out of
5 his back pocket.

6 But I can't see it anymore.

7 [Video is playing via Zoom.]

8 Q That was it. Did you get a
9 chance -- were you able to see it?

10 A I did see. He's got a shovel,
11 yeah.

12 Q He's got a shovel. Did you see
13 him digging?

14 A To be honest with you, I don't
15 know exactly what he was doing.

16 If you want to call it digging,
17 yeah, he's sticking a shovel into
18 something.

19 I don't know if he's moving
20 asphalt or gravel, around or if he's
21 digging a hole. I can't really tell.

22 Yeah, it seems to me that he's
23 sticking the shovel into some loose
24 material and kind of spraying it around.

25 I wouldn't necessarily call it

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2 digging a hole. But it looks like he's
3 got a pile of material there, of some
4 kind, that's dark material.

5 Q And was that material loose?

6 A Yeah, you can see it spray
7 around, as he's shoveling it.

8 I mean, it looks, to me, like
9 there's a pile of stuff that was dumped
10 there, whatever that is, some black dark
11 material and he's spreading it around with
12 the shovel.

13 But, again, I wouldn't
14 characterize it as digging a hole per say.

15 Q Now I'm looking at Frame 112.
16 And there's a caption "La Rocca flees the
17 seen again".

18 What did you see that caused you
19 to note that at the bottom of the video?

20 A Yeah. So, as I mentioned, this
21 is an edited video.

22 I was on scene for several
23 hours. And so, for a while, there wasn't
24 much of anything happening.

25 But, at one point, I realized he

1 ROBERT ANDREW COX

2 was back in the area.

3 Without seeing the original
4 video, which, I mean, I have, you know, it
5 has the clips and all the time stamps on
6 it, I don't know exactly when this was
7 but, at some point, I got out of my car to
8 videotape him and try to talk to him and
9 then he drove off.

10 [Video is playing via Zoom.]

11 Q Looking at Frame 129, referring
12 to the right-hand half of the picture, do
13 you know whose work yard that is?

14 A Yes, I do, that's Flavio La
15 Rocca & Sons, or whatever the official
16 name of the company is.

17 But it's the La Rocca's
18 property. Or at least mostly their
19 property.

20 Q And looking at the lower
21 right-hand corner of the picture, do you
22 see a concrete, what looks like a concrete
23 barrier?

24 A Yeah, this, I know what it's
25 called, it's called a Jersey barrier.

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2 And, yeah, there's a number of
3 those streaming around the area.

4 Q And did anyone ever discuss with
5 you ownership of those Jersey barriers?

6 A Well, first of all, I guess I
7 should ask: Do you mean that day, on
8 site?

9 Q No.

10 A Or ever?

11 Q Ever. You can start --

12 A I had so many conversations
13 about this and did so much research and
14 pulling up records, that I would say that
15 I had many conversations about things that
16 had been done to carve out space that was
17 beyond the footprint of the La Rocca
18 property, at that location.

19 One of them was the Jersey
20 barriers. Because they effectively carve
21 out an extra foot or two of space in front
22 of that property.

23 There's also, if you got a
24 little further down the road, there,
25 you'll see there's other properties carved

1 ROBERT ANDREW COX

2 out along Fifth Avenue.

3 And, then, on the other -- well,
4 where this video is shot from, to my
5 right, there is also other space that's
6 been carved out.

7 I'm sure, I did. And I believe
8 there's Jersey barriers elsewhere on the
9 street and all of these were attributed to
10 La Rocca.

11 By the way, while you have the
12 frame there, I know, you didn't ask me,
13 but I'll mention:

14 That is a McCloskey 412 Trommel.
15 And that is the device where you'd throw
16 stuff at one end and shoot it out the
17 other and make nice neat piles of gravel,
18 wood chips.

19 Q That's the green colored device,
20 inside the work yard?

21 A Yeah, I will say that, you know,
22 in the business that Mr. La Rocca's in, it
23 wouldn't be a surprise they would have
24 that device.

25 And I didn't see that being

1 ROBERT ANDREW COX

2 used. But that device would output wood
3 chips into nice little piles, like was
4 done back in the putative parking lot.

5 As you move this, by the way, I
6 also see more Jersey barriers up, ahead,
7 on his right, as he's driving away.

8 Q Let's go back.

9 [Video is playing via Zoom.]

10 Q There you go. There, on the
11 left, are those the Jersey barriers that
12 you had mentioned?

13 A Yeah, there's some more there,
14 sort of, in the frame anyway, you know,
15 right in front of where the truck is,
16 obviously.

17 Q Do you know --

18 A So the right of the truck, as
19 they're driving past.

20 Q Do you know who put them there?

21 A I mean, I put it as this way:
22 Upon reason and belief, based on speaking
23 to many people from the city government
24 and people who owned property down there
25 and had businesses down there, all of that

1 ROBERT ANDREW COX

2 stuff was done by Mr. La Rocca, including
3 those barriers.

4 I mean, in this frame, you'll
5 also notice that those are his trucks.

6 So he basically claims that
7 whole side of the street and the other
8 side of the street.

9 So, you know, he's kind of
10 greatly expanded his footprint there.

11 Q Now looking at Frame 201, do you
12 see the back of a truck that appears to
13 have two ramps?

14 A I do.

15 Q Were you ever able to identify
16 who possessed that truck?

17 A I never made any effort to do
18 that, unless it's on the side of the truck
19 in the video. It wasn't something that
20 was my focus.

21 At this point, I'm looking at
22 Mr. La Rocca driving away, I'm not really
23 concerned with that landscaper truck.

24 Q Now, looking --

25 A By the way, I'll add: I can't

1 ROBERT ANDREW COX
2 see the license plate, but highly
3 confident that's my car, off to the left.
4 It looks like it's a Honda Civic with
5 New York plates.

6 And I don't know if we have a
7 clearer picture, but I have special
8 plates, I have NYP, New York Press plates.

9 So, you know, my car would jump
10 out. But I'm pretty sure that's where I
11 ended up parking at that time.

12 Q Now looking at Frame 201, do you
13 notice that on the right-hand side of the
14 photograph there seems to be additional
15 Jersey barriers --

16 A Yes.

17 Q -- adjacent to the skate park
18 fence?

19 A Yes.

20 Q Do you know who put those there?

21 A As I said, based on my
22 interviews of businesses, business owners
23 down there, neighbors, people who live in
24 that area and people from the city
25 government, upon reason and belief, Flavio

1 ROBERT ANDREW COX

2 La Rocca put them there.

3 [Video is playing via Zoom.]

4 A Okay, let me get the name of the
5 company there.

6 Q Excuse me?

7 A Let me get the name on the side
8 of the truck. It looks like P. Cassino or
9 Cassero (ph).

10 Q We can go back.

11 A I think the other truck's the
12 same. It might have a better view.

13 I can't quite see.

14 Anyway, I was not focused on
15 those trucks at the time.

16 But I could see, from the video,
17 that the names are on the sides of the
18 truck.

19 [Video is playing via Zoom.]

20 A By the way, on the left, there,
21 you can see his neighbors also had their
22 fences extended out a little bit.

23 But, after this story ran, they
24 moved them back.

25 You can continue.

1 ROBERT ANDREW COX

2 I'm seeing P. Cassino, C-A -- I
3 thought I saw S-S-I-N-O.

4 Can you go, like one tick
5 further? 'Cause the other truck has the
6 same. Maybe I can get a better read.

7 It looks like there's a logo
8 there.

9 Yeah, it looks S-S. I'm going
10 with Cassino.

11 I don't know who that is though.
12 P, dot, Cassino, C-A-S-S-I-N-O.

13 [Video is playing via Zoom.]

14 A It's in script. So this could
15 be Rs instead of Ss.

16 If I had Google handy, I would
17 be able to tell you, in a heartbeat. It's
18 Carino or Cassino.

19 Q Do you know whether or not that
20 is a d/b/a --

21 A I'm sorry, I didn't hear you.
22 What was the question?

23 Q Let me just try to get the
24 full --

25 A I mean, if the question is --

1 ROBERT ANDREW COX
2 it says on the side of the truck, it says
3 "tree company" "tree work" "tree
4 maintenance".

5 Q Right. So the question that I
6 have is: Do you know whether or not that
7 isn't a d/b/a, doing business as company
8 owned by Benny's Tree Service?

9 A I have no knowledge of that. I
10 do know Benny's Tree Service.

11 Benny's been the subject of past
12 reporting, related to school district
13 corruption.

14 Ironically, my landlord of the
15 house hired him to take down a tree that
16 crashed into my car.

17 And I know that his business
18 owns one of the properties in there, on
19 the left of what we're looking at on East
20 Street. I guess that would be the -- I
21 guess it's the west side of East Street,
22 if that makes any sense.

23 Q East side of East Street, okay.

24 A Yeah.

25 Q Do you recall that when you were

1 ROBERT ANDREW COX
2 covering this story, in reference to the
3 possible relocation of the city yard, do
4 you recall if this area, that's being
5 shown in Frame 224, the video, was used
6 for parking at that time?

7 A Absolutely not.

8 Q And do you recall what, if
9 anything, it was used for?

10 A It's just trees with
11 undergrowth. It abuts the city park,
12 which is just on the other side.

13 I do recall, there was a
14 question, when I called in this incident,
15 in real time, exactly what that property
16 was, if it was City of New Rochelle
17 property or if it was the New Rochelle
18 Parks Department property.

19 And, I know, from other
20 experience, that that makes a difference
21 because the city could theoretically sell
22 its property, except that if it was
23 parkland and then they would need a
24 state -- you're nodding, 'cause you know
25 more than I do.

1 ROBERT ANDREW COX

2 Q Not more. But --

3 A I did learn that they would need
4 a -- I know, you know it, but I'm trying
5 to remember it here.

6 They're going to need --
7 basically, they're going to need
8 approve -- whatever it's called.

9 They're going to need approval
10 from the state, if they want to alienate
11 parkland and then do something else with
12 it.

13 So if there was any desire to
14 turn this property into anything other
15 than a park, build on it, like the DPW
16 yard or put in a parking lot, they would
17 have to get the state assembly and state
18 senate to --

19 Sorry, I remember the term now,
20 "home ruler bill", they would need a home
21 ruler bill.

22 So not something that you do,
23 sort of flipping on a switch. It's a long
24 drawn out process.

25 It's usually something that gets

1 ROBERT ANDREW COX
2 done at the very end of the calendar in
3 the state legislature, they do a bunch of
4 these things.

5 So not the kind of thing that
6 would happen over a weekend because
7 somebody called somebody and said would
8 you mind if I do this.

9 But I don't recall what the
10 resolution of that was. That was my
11 point.

12 I don't know if it was ever
13 determined, whether this extended out from
14 the city park and was there for a parkland
15 or if this was City of New Rochelle
16 property.

17 For my purposes, you know, I
18 never went further than that. But I
19 remember that being a question.

20 Video is playing via Zoom.]

21 Q Now looking at what is Frame
22 238, and looking at the upper right-hand
23 corner of the photograph, do you see that
24 yellow machine that you described as a
25 roller?

1 ROBERT ANDREW COX

2 A (Indicating). Uh-huh. I see
3 it.

4 Q And, to the best of your
5 recollection, what was that worker doing
6 with that machine?

7 A He was rolling back and forth,
8 compacting down, I called it asphalt,
9 gravel, some kind of material.

10 But whatever that was -- I
11 guess, probably, the better thing I should
12 have said, from the beginning, was some
13 sort of surfacing material.

14 Because that was clearly what
15 the material was for.

16 That he is, you know, that guy
17 is driving that yellow mini steamroller,
18 up and down, flattening it.

19 And, after, he would pull away,
20 he would be flat.

21 [Video is playing via Zoom.]

22 A The end.

23 Q In terms of the visit that you
24 made to East Street, on May 16th, 2015,
25 which memorialized in this video, is there

1 ROBERT ANDREW COX

2 anything that you learned about the
3 construction that you see in the video
4 that you haven't already told us, today?

5 A Let me think that through.

6 I mean, I, as I said, stayed
7 there for hours. I want to say sometime
8 between twelve and one is when I left,
9 probably, because I was getting hungry and
10 I had been there all morning and I hadn't
11 eaten breakfast.

12 So I was probably there for
13 about three hours.

14 And they completed the work. So
15 what you see is them in progress, on
16 surfacing that area.

17 And I believe I have other
18 images of this, that by the time we left
19 it was completely finished, effectively a
20 parking lot and there was probably a dozen
21 cars parked on it.

22 So it was in use, as a parking
23 lot.

24 It's not related to
25 construction. But maybe this outside the

1 ROBERT ANDREW COX
2 bounds of what you want to ask about, but
3 there was a motivation for building this,
4 it was a reaction to a decision by the
5 parks commissioner to change the parking
6 policy, the parking lot for City Park.

7 And prior to this time period,
8 people had been able to park there during
9 the day for free.

10 The park was mostly used on the
11 weekends. So there was plenty of empty
12 spaces.

13 And the Parks Commissioner Bill
14 Zimmerman, I recall, made a presentation
15 to the city counsel, said, hey, we should
16 not be giving away this parking for free.

17 So they made it a, I can't
18 remember, I think it was a metered lot or
19 you could buy stickers.

20 But you had to pay, to park
21 there.

22 And I know that that cost a lot
23 of upset because all the businesses in
24 that area had been used to parking for
25 free, not just Mr. La Rocca, but the deli

1 ROBERT ANDREW COX
2 across the street and there's a
3 laundromat.

4 I mean, everybody around there
5 was using it as free parking.

6 And it was my understanding,
7 after the fact, after this day, that the
8 animating of that, that occurred was the
9 enforcement of some sort of fee based
10 parking and this was a way to basically
11 take back some other city property, make
12 another parking lot that would be
13 exclusively for the use of the people who
14 owned businesses up in that area,
15 including Mr. La Rocca.

16 Q And did you ever learn how that
17 ultimately got resolved?

18 A Well, I was onsite when the --
19 that day, later in the afternoon, like I
20 left but then I came back a few hours
21 later.

22 So sometime maybe between three
23 and six p.m. I don't remember exactly.

24 But the building inspector for
25 the city came on a Saturday, which, if you

1 ROBERT ANDREW COX
2 know anything about city government, would
3 be a highly unusual event, to get a bureau
4 head or a commission on scene on a
5 weekend.

6 And, I recall, he was pretty
7 upset and I overheard the conversation and
8 they made plans on the spot to fence off
9 that entire area, basically to take it
10 back.

11 And then I was actually on scene
12 when a fencing company came and built a
13 fence.

14 And, to my knowledge, that area
15 is still fenced off today.

16 Q And were the employees of the
17 local businesses then permitted to park in
18 the park without charge?

19 A Not to my knowledge. No.

20 Q Is there anything else that we
21 haven't gone over or you haven't already
22 told us about, what you saw in your visit?

23 A Yeah, I would say, one thing,
24 which is the initial caller said that the
25 police had been called twice and then at

1 ROBERT ANDREW COX
2 some point, between 9:15 and -- between
3 twelve and one, that morning, let's call
4 it, I called in a complaint, myself and
5 was told that a police car would be
6 dispatched.

7 So I pointed out, earlier, that
8 my car was parked off to the left.

9 And that's primarily because
10 while the work was going on it was very
11 active and there was vehicles moving back
12 and forth.

13 But once everything settled down
14 and there was really nothing going on
15 anymore, at that point there -- I don't
16 know, maybe an hour later, roughly, there
17 was no traffic to speak of, the workers
18 were all gone, the equipment was all gone.

19 So, at that point, I moved my
20 vehicle into the center of East Street, so
21 that nobody could get by me.

22 And then I called into the
23 police.

24 And then I waited and I made a
25 determination that I would wait until the

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1 ROBERT ANDREW COX

2 police came.

3 And, I think, when I finally
4 left, was when I got a call back. I can't
5 remember actually how the call got
6 initiated.

7 But I was on the phone and I was
8 told the police had come, they had driven
9 through the area and that the complaint
10 was unfounded.

11 And I said that's a lie because
12 there's no way any police car could've
13 gotten passed me because the road is
14 blocked.

15 So no police car came here.

16 So didn't really prove anything,
17 except other than the validity and the
18 people calling me earlier, that their
19 complaints, I think, were being ignored.

20 And, you know, I published a
21 theory, for what it's worth, it's not
22 based on fact.

23 But Ms. La Rocca worked for Grey
24 Goose vodka, owned by Sidney Frank, who
25 has since past, who donated the skate

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1 ROBERT ANDREW COX

2 park, right there, next to their business.

3 And Sidney Frank is somebody who
4 I believe did a lot of favors for the New
5 Rochelle Police Commissioner, at the time,
6 Patrick Carol.

7 And I believe Patrick Carol gave
8 him benefits, like extra security.

9 He was a billionaire, so, I
10 guess, maybe he needed it.

11 But there was a friendly
12 relationship there. And my view was that
13 maybe -- and, again, this is just
14 speculation, that this was all part of a
15 friendly understanding that Sidney Frank's
16 friends were going to get treated a little
17 bit better from the police commissioner
18 and what they sometime refer to as
19 "courtesy parking" or courtesy this --

20 It basically means that if
21 you're connected, if you donate money to
22 the police foundation or otherwise are
23 buddy-buddy with the right person that
24 enforcement will not occur, for whatever
25 it is.

1 ROBERT ANDREW COX

2 And so since there's a history
3 of that in New Rochelle, probably other
4 towns, it occurred to me that the reason
5 that the police weren't really looking
6 into this too much is because the police
7 commissioner didn't want them to and other
8 than just let sleeping dogs lay.

9 Again, I don't know, but there
10 was just a lot of dots there and that's my
11 speculation.

12 MR. MEISELS: Thank you very
13 much.

14 Ms. Zalantis has the option to
15 ask you questions as well.

16 And I can't imagine that she
17 would give up the opportunity.

18 MS. ZALANTIS: Good afternoon.
19 Thank you for being here today.

20 My name is Kathy Zalantis and I
21 represent the defendants in this
22 action.

23 EXAMINATION BY MS. ZALANTIS:

24 Q Have you ever appeared for a
25 deposition before?

1 ROBERT ANDREW COX

2 A I have.

3 Q How many times?

4 A One-time.

5 Q And what was the nature of that
6 case?

7 A I was being sued by two New
8 Rochelle school employees for defamation.

9 Q On May 16th, twenty-fifteen,
10 just to reiterate, you took the video; is
11 that correct?

12 A Correct.

13 Q And on the day that you took the
14 video, May 16th, twenty-fifteen, did you
15 ever see my client, Mr. La Rocca, cut down
16 any trees?

17 A No.

18 Q Did you ever see any of his
19 employees cut down trees?

20 A I did not. No.

21 Q Did you see anyone, on that
22 date, cut down trees?

23 A No.

24 Q Did you ever see my client,
25 Mr. La Rocca, grinding up trees?

1 ROBERT ANDREW COX

2 A No.

3 Q Did you ever see any of his
4 employees grinding up trees?

5 A No.

6 Q Did you see anyone grinding up
7 trees?

8 A No.

9 Q Did you ever see my client,
10 Mr. La Rocca, spreading wood chips?

11 A No.

12 Q Did you see any of his employees
13 spreading wood chips?

14 A I'm thinking about that because,
15 you know, they may have, when they were
16 sort of working up by the wood chips and
17 they were working with that, what I'm now
18 calling the surfacing material of whatever
19 it was.

20 So they may have. They probably
21 did, you know, act with those wood chips
22 'cause they were kind loosely along the
23 edge of where they were working.

24 But I would say, if you ask
25 me -- you can ask me, if you want, I

1 ROBERT ANDREW COX

2 didn't see anybody sort of sticking a
3 shovel into the wood chips and moving them
4 around, as a deliberate act.

5 Q How about at any time, not just
6 May 16th, twenty-fifteen, had you ever
7 seen my client cutting down any trees?

8 A No.

9 Q How about any of his employees?

10 A There was one other issue or
11 incident there. And there was a, what do
12 you call it, like a little island that had
13 a tree in it and it was -- had little --
14 it wasn't very big.

15 Quite frankly, I'm not ever sure
16 why it was there. But it was certainly in
17 the road and it was like asphalt with some
18 stone around it, to make like a little
19 triangle.

20 But I was there when they -- a
21 couple of workers from Mr. La Rocca's
22 company removed that.

23 Q And when was that?

24 A I don't remember the date. But
25 it was in the general ballpark of that

1 ROBERT ANDREW COX

2 period of time.

3 There was, at that point, just a
4 stump left. And it wasn't a particularly
5 big tree, as I could see from the -- you
6 know, the width of the -- I guess it would
7 be the diameter of tree.

8 Q How do you know it was Mr. La
9 Rocca's employees that removed this stump?

10 A Sitting here, now, and not
11 refreshing my memory, but I think I
12 actually have pictures, I believe that
13 they were dressed to indicate that they
14 worked for Mr. La Rocca.

15 Q And where was this stump
16 located?

17 A It would have been -- and,
18 again, it's within this little triangle
19 island.

20 But it would have been basically
21 on the other side of the street, from
22 where the people were working in the video
23 that we just saw.

24 So I'm going to call it the west
25 side of East Street.

1 ROBERT ANDREW COX

2 Q Was this stump in the area that
3 is now currently has been fenced in by the
4 city adjacent to the skate park?

5 A No.

6 Q So it was not in the area that
7 was depicted in the video, where the
8 workers were working; is that correct?

9 A That's correct.

10 Q Was anybody else from Talk of
11 the Sound with you on May 16th,
12 twenty-fifteen?

13 A My wife was with me. She
14 handles the publishing side.

15 So she deals with the money.

16 So, yes, she was there.

17 She's not a journalist. She
18 just makes sure that all checks go to her
19 and she gives me whatever I'm entitled to.

20 Q In twenty-fifteen, did you have
21 any other employees that worked for Talk
22 of the Sound?

23 A I had employees all during that
24 period. I don't remember exactly what I
25 had.

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2 But they weren't in the US. I
3 had people overseas, that did work, out of
4 India and Pakistan and other places,
5 having to do with entering data and doing
6 things like that.

7 And a photographer, who is
8 freelance, but was not present at the
9 scene.

10 (Whereupon, an article was
11 marked Cox Exhibit 1 for
12 identification.)

13 Q I'm showing you what's been
14 marked as Cox 1. Please, take a look at
15 all the pages.

16 [Witness is reviewing the
17 document.]

18 A Okay, I skimmed it. Is there
19 anything in particular.

20 Q Are you familiar with this
21 document?

22 A I am familiar, I wrote it.

23 Q And what is it?

24 A It is an article from April 1st,
25 2016 from Talk of the Sound.

1 ROBERT ANDREW COX

2 Q And if you could take a look on
3 page, marked at the bottom as D0099.

4 A Okay.

5 Q And I took the liberty of
6 highlighting a paragraph. Do you see the
7 highlighting?

8 A I do.

9 Q And if you could just take a
10 look at -- read that paragraph to
11 yourself.

12 [Witness is reviewing the
13 document.]

14 A Okay.

15 Q So do you see where it says, on
16 the first two lines, the second line, it
17 says:

18 Early in the morning of
19 Saturday, May 16, of twenty-fifteen, La
20 Rocca and his workers cut down trees.

21 Do you see that?

22 A Yes.

23 Q Without revealing your sources,
24 what was the basis for the claim that La
25 Rocca and his workers cut down trees?

1 ROBERT ANDREW COX

2 A It was first and foremost the
3 initial call that came in to me that
4 morning and subsequent contact with other
5 people who live and work in the area.

6 Q So let's talk about that initial
7 call. You had previously testified that
8 that was the -- essentially the third call
9 that person made to you, after calling the
10 police two times?

11 A That's what they told me, that I
12 was their third call.

13 Q Did you corroborate the claim
14 that there had been calls made to the
15 police?

16 A No.

17 Q Did you attempt to get any
18 police records of calls made to police, on
19 May 16th, twenty-fifteen?

20 A No. I mean, I make so many FOIL
21 requests. But I don't have any
22 recollection of requesting those.

23 Q What is your understanding of
24 when the trees were cut down?

25 A Prior to nine-fifteen, my

1 ROBERT ANDREW COX
2 understanding is that the initial
3 complaint had to do with the use of power
4 tools, chainsaws sometime around
5 seven a.m.

6 So sometime between seven a.m.
7 and nine-fifteen.

8 Q So the trees were allegedly cut
9 down between seven-fifteen and
10 nine-fifteen, Saturday, May 16th,
11 twenty-fifteen; is that your
12 understanding?

13 A That would be my understanding,
14 yeah.

15 Q And how many trees were cut
16 down?

17 A I have no idea.

18 Q Did you ever ask the person how
19 many trees?

20 A No, I did not.

21 Q Did that person, that advised
22 you that trees were cut down, say that
23 they personally viewed trees being cut
24 down?

25 A Yes.

1 ROBERT ANDREW COX

2 Q Does that person live or own
3 property on East Street?

4 A Well, I'm not going to talk
5 about that. So let's skip that one.

6 Q When you were there, on
7 Saturday, May 15th, twenty-fifteen, did
8 you observe any stumps in the area that is
9 now fenced in by the black fence?

10 A No.

11 Q Prior to the time that you got
12 there, at nine-fifteen, the trees would
13 have had to have been cut down and the
14 stumps removed; is that what you're
15 saying?

16 A I don't know that they were
17 removed. But.

18 Q Well, you didn't see the stumps
19 there, right?

20 A Yeah, it's true. But also --

21 Q And we didn't see stumps in the
22 video, right?

23 A Well, what we did see was wood
24 chips and, you know, basically the asphalt
25 or gravel, whatever it was, spread over

1 ROBERT ANDREW COX

2 the entire area.

3 So for all I know the trees were
4 cut at the base and covered over.

5 I don't know how many inches of
6 material was there.

7 So the roots of the trees and
8 the base could still be there, now.

9 Q You talked about the McCloskey
10 412; do you whether that makes wood chips?

11 A It doesn't make wood chips.
12 It's basically a thing that you feed stuff
13 into and it shoots it out the back end and
14 makes piles for people who need to do
15 that.

16 Q Have you ever used the McCloskey
17 412?

18 A No.

19 Q Do you have any knowledge of how
20 it's used to sift dirt and gravel?

21 A Just what I read online, at the
22 time. It's used for a lots of things.

23 And, as I said earlier, somebody
24 in Mr. La Rocca's business could have one
25 for a variety of reasons because you can

1 ROBERT ANDREW COX

2 use it for dirt or gravel, wood chips.

3 Q Just to be clear: You couldn't
4 put a stump? Or, just to be clear: You
5 couldn't put a tree trunk into a McCloskey
6 412 and have wood chips come out the other
7 side?

8 A No, you can put the stump in,
9 but I think the stump would come out.
10 Because that's all it really does, it just
11 moves things through and looks like a
12 conveyer belt.

13 Q So you would need some other
14 kind of machine to transform a tree trunk
15 to wood chips; is that correct?

16 A I believe so, yeah. Or you
17 would have to be very patient with a
18 knife.

19 Q So it also says that Mr. La
20 Rocca and his workers cleared the property
21 with heavy equipment.

22 What was your basis for that
23 claim?

24 A Both, what -- the call that I
25 got, which had described what was going

1 ROBERT ANDREW COX

2 on.

3 You know, I should clarify:
4 Saturday morning, I prefer to be sleeping.
5 So if someone has to convince me to get
6 out of bed and go drive down to East
7 Street to watch all of this.

8 So, you know, they were trying
9 to, you know, convince me, like tell me
10 all the stuff that was going on.

11 So they were animated and they
12 were unhappy about what was happening.

13 But, you know, by the time I got
14 there, there was trucks and pick-up truck,
15 there was a landscaping truck, there was
16 the steamroller, there was a couple of
17 other trucks, which we saw in the video,
18 which were the tree company truck --

19 I think, altogether, maybe, on
20 scene, in that area, there may have been
21 half a dozen La Rocca vehicles.

22 [A short recess was taken.]

23 [The requested portion of the
24 record was read.]

25 A I would not -- I don't know that

1 ROBERT ANDREW COX

2 any vehicles were needed to move anything.

3 Because all of the debris from
4 the trees were piled up along the edge of
5 the property.

6 So, as far as I know, they just
7 round them up and shove them to the side.

8 Q Who would just ground them up
9 and shove them to the side?

10 A Well, I assume, the workers,
11 that were working there, did that, yeah.

12 Q But that's an assumption?

13 A I didn't see it, myself.

14 Q And there's also a claim that
15 Mr. La Rocca and his workers dumped
16 potentially contaminated Bourbon chunk of
17 asphalt onto ground.

18 Can you explain what you mean by
19 chunks of asphalt?

20 A Whatever the material was that
21 they were using, that's what I'm
22 attempting to describe.

23 And the reason I brought up the
24 idea of it potentially being contaminated
25 is because the city brought that up.

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1 ROBERT ANDREW COX

2 'Cause I mentioned the building
3 inspector came to the site, he was not too
4 happy with what he saw.

5 He was concerned that the
6 material that they used to spread over the
7 ground was not clean. He didn't know
8 where it came from.

9 And it's my understanding that
10 you can't just show up and start dumping
11 material onto the ground. There is
12 permits involved and things like that.

13 There has to be some assurance,
14 to whoever would approve such a thing,
15 that that was clean fill or clean material
16 and not something that was pulled out of a
17 love canal.

18 So I think that was the building
19 department's concern. They didn't know
20 where this material came from.

21 And what they told me was that
22 they were going to do test borings to
23 determine if any of the material was
24 contaminated. And, if it was
25 contaminated, they were going to make a

1 ROBERT ANDREW COX
2 report to the New York State Department of
3 Environmental Conservation and whatever
4 other authorities, you know, would apply
5 to that.

6 Q Did you ever learn whether the
7 city found out whether the material was
8 contaminated or not?

9 A I don't have any recollection of
10 that right now, no. I may have. I may
11 not. I just don't recall.

12 Q When you were onsite, did you
13 see any kind of excavator?

14 A No.

15 Well, let me backup. I'm not
16 great with all of these equipment terms.

17 There was a front end loader.
18 So that has the big scoop in the front.

19 So, I mean, I don't know what
20 you'd need exactly to excavate or what
21 we're referring to specifically.

22 But there was certainly a large
23 piece of equipment with a big shovel in
24 front of it.

25 Q But when you were there,

1 ROBERT ANDREW COX

2 personally, you didn't actually see the
3 area being cleared? You saw the spreading
4 of asphalt? Is that --

5 A Yes.

6 Q -- is that fair to say?

7 A Yes, that's fair to say.

8 Q Did you ever, at any point,
9 speak to Mr. La Rocca about the events of
10 March 16th, twenty-fifteen?

11 A I mean, I remember trying to. I
12 left messages. I think I sent a bunch of
13 e-mails.

14 Off the top of my head, I don't
15 recall getting a response. Instead, what
16 I got was contacted by an attorney, who
17 sent me a cease and desist letter, made
18 various threats, suing me or guided by the
19 fact that I'm telling you this or
20 something like that.

21 I don't recall. If there was
22 any kind of conversation, it may have been
23 very short and to the effect of stop
24 calling me.

25 But I don't even recall that, at

1 ROBERT ANDREW COX

2 all. I just remember reaching out a bunch
3 of times and then getting a letter from an
4 attorney and at that point I stopped
5 reaching out.

6 Q If you could look at the
7 paragraph that's highlighted and if you
8 look up two paragraphs up, if you could
9 just read that paragraph to yourself.

10 A The one above? Or two above?

11 Q Two above. Starting with "many
12 of the facts contained in the lawsuit."

13 [Witness is reviewing the
14 document.]

15 A Okay, read it.

16 Q Yes. So just to read it, for
17 the record:

18 Many of the facts contained in
19 the lawsuit are the result of reporting by
20 Robert Cox, who published a series of
21 articles on Talk of the Sound.

22 The lawsuit cites photos and
23 video from the local news organization.

24 So the reference, in that
25 sentence, "the local news organization,"

1 ROBERT ANDREW COX
2 is the Talk of the Sound; is that correct?

3 A Yes, and referenced to my
4 reporting.

5 Q And would it be fair to say that
6 your reporting was the impotence for the
7 city's lawsuit against defendants in this
8 action?

9 MR. MEISELS: Objection as to
10 form, you can answer the question.

11 A They don't consult me.

12 So my ego is such that I'd like
13 to take credit for everything that happens
14 in New Rochelle.

15 I published my story. I brought
16 attention to it.

17 I understood, after that initial
18 day, that other people had been
19 complaining.

20 In fact, they had been
21 complaining for years.

22 I spoke to the counselman for
23 that, who district covers that
24 neighborhood. He acknowledged that he has
25 also received complaints about the La

1 ROBERT ANDREW COX

2 Roccas.

3 So there had been something, you
4 know, going on there, with disputes
5 involving elected officials, city
6 officials well in advance of this event on
7 May 16th.

8 So was I the straw that broke
9 the camel's back, I don't know.

10 Did the counselman read the
11 article and say, hey, we gotta do
12 something about this?

13 Or did some of the people who
14 called me have an effect, I don't know.

15 But, you know, I'd like to take
16 credit for it.

17 The fact is I wasn't in the
18 room, so I don't know what they decided or
19 not.

20 MS. ZALANTIS: I'd like to mark
21 this as Cox 2.

22 (Whereupon, and article was
23 marked Cox Exhibit 2 for
24 identification.)

25 A I'm guessing, you want me to

1 ROBERT ANDREW COX

2 skim through it again?

3 Q Yes. Please.

4 A Okay.

5 [Witness is reviewing the
6 document.]

7 Q Do you recognize this document?

8 A I'm sorry, I haven't finished.

9 And, I know, you want me to read the
10 marked up thing. So I'm going to do that.

11 [Witness is reviewing the
12 document.]

13 A Okay, I have gone through the
14 whole thing.

15 Q Do you recognize this document?

16 A Yeah, this is an article I wrote
17 on November -- published on November 9th,
18 2015 on the Talk of the Sound.

19 Q If you could turn to page two, I
20 took the liberty of highlighting a
21 paragraph. Would you be able to read that
22 paragraph, aloud, for the record?

23 A "Based on a tip from a reader,
24 Talk of the Sound is on hand as La Rocca
25 and his crew chop down trees, ground them

1 ROBERT ANDREW COX
2 up, dump broken chunks of toxic asphalt,
3 piled up the asphalt to create a berm --
4 result in parking lot from prying eyes at
5 City Park.

6 And he used the steamroller to
7 pack -- my version -- printed there -- to
8 pack down, looks like more asphalt to
9 create a parking surface."

10 Q What does on hand mean, in this
11 first line of that paragraph?

12 A It means I was present on the
13 scene.

14 Q But were you present on the
15 scene, when trees were being chopped,
16 allegedly chopped down?

17 A Well, I was on scene for what
18 took place that day and I'm describing
19 what took place that day, based on what I
20 believe, based on my sources, so yes.

21 Q But were you present,
22 personally, on the scene when trees were
23 being chopped down?

24 A No.

25 Q And were you present,

1 ROBERT ANDREW COX

2 personally, on the scene when trees were
3 being ground up?

4 A No.

5 Q And were you present on the
6 scene when broken, quote, chunks of toxic
7 asphalt were being dumped?

8 A Yes.

9 Q And what was your basis? How do
10 you know that?

11 What did you view that day, that
12 gave you reason to believe that chunks of
13 toxic asphalt were being dumped?

14 A Well, this isn't written that
15 day. This is written much later. And
16 this would be based on discussions with
17 people from the city.

18 Q Can you describe or explain,
19 rather, what you mean by creating a berm?
20 Where is that berm?

21 A Well, the back edge of this
22 area, that we have, call it a parking lot
23 area, that was created, was raised up.

24 And so there is asphalt and
25 there is wood chips and it creates a

1 ROBERT ANDREW COX

2 screen.

3 So by a berm, I mean, sort of a
4 hilly little rise that would screen off
5 what's on one side of the berm versus
6 another.

7 Q So are you saying that the berm
8 was the pile of wood chips?

9 A Yeah, and there's asphalt in
10 there too. Yeah.

11 It's a term I know, as somebody
12 who plays golf.

13 And when you play at a golf
14 course, sometimes you want to screen the
15 fairway or screen the green, so they'll
16 put in mounds or hills or things, just to
17 block the view.

18 They can be pretty much
19 anything. But it's, most typically, they
20 put in dirt and they plant grass. But
21 it's anything that blocks your view.

22 Q So, in this case, what exactly
23 was the berm that you're referring to in
24 this paragraph?

25 A Well, if you look at the photo,

1 ROBERT ANDREW COX

2 right above, you can see the yellow
3 material and there is also asphalt in
4 there and that would be what I consider
5 the berm.

6 It's blocking the view of the
7 parking lot from City Park.

8 Q Do you know how many trees would be
9 needed to cut down, to create that amount
10 of wood chips that's depicted in this page
11 D0120 and what we saw in the video?

12 A Well, it could be half a redwood
13 or twenty small trees. I have no idea.

14 Q Do you have any knowledge of
15 whether the wood chips came from trees on
16 this property or that is now enclosed by
17 the black fence?

18 A I'm curious, are the wood chips
19 still there, I don't even know. I haven't
20 been there, recently.

21 But, I mean, I didn't chemically
22 sample the trees. But I would say my
23 answer would be if I go to bed at night
24 and I'm looking at my front window and I
25 see grass and I wake up in the morning and

1 ROBERT ANDREW COX

2 I see that it's covered in two inches of
3 snow, I conclude it snowed last night.

4 I don't need to check the
5 Weather Channel.

6 If I am being told that they're
7 using chainsaws and grinding up wood chips
8 and I'm grinding up trees and I come down
9 there and I find piles of wood chips and
10 men doing all this work, I reasonably
11 conclude that those chips were the
12 remnants of the trees that were taken
13 down.

14 Q And what specifically were you
15 told about the alleged grinding up of
16 trees?

17 A I mean, it was the effect of,
18 you know, they're down here and they're
19 using power tools and there's chainsaws
20 and they're chopping down trees and
21 grinding up trees and making a parking
22 lot.

23 Q But we don't know who the "they"
24 in that statement?

25 A My source, the person who called

1 ROBERT ANDREW COX

2 me.

3 Q Right. So the "they", that your
4 source referred to, did your source
5 identify the they?

6 A Yeah. Yeah. He -- he --

7 Q He said it was Mr. La Rocca?

8 A Absolutely. He's not a big fan.
9 He knew exactly who it was.

10 Q And, just to confirm, this all
11 occurred on that Saturday, as you
12 understand?

13 A I mean, what happened that
14 Saturday is what I said, I got a call, I
15 was interested enough to go down, take a
16 look.

17 It was as advertised.

18 I then shot video and pictures
19 and I reached out to city officials. I
20 also reached out to Mr. La Rocca.

21 I began reporting on it and, you
22 know, like I said, the city was unhappy
23 enough to have the head of the building
24 department come down there, that day and
25 then I don't recall exactly when, but I

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2 think they took a few actions.

3 I think that they had the police
4 department put up no parking signs, so
5 that nobody could park in that area until
6 they got the fencing up.

7 And then, at some point,
8 relatively soon after, a company came and
9 put up fencing all around that area.

10 Q But, again, just for the record
11 to be clear --

12 A Sure.

13 Q -- it's your understanding,
14 sitting here today, that all of the work
15 occurred on that one day?

16 So the work that you didn't see
17 occurred prior to you getting there, at
18 around nine-fifteen; is that correct?

19 A I don't know what it would mean
20 to say all of the work.

21 I just know what I experienced,
22 which is I got a call, saying this was
23 going on and when I arrived it was as
24 described.

25 Q So it's your understanding, the

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2 trees were being cut down, that Saturday?

3 A I mean, yeah, that was my
4 understanding.

5 Q And by that Saturday, I mean,
6 the Saturday that you took the video?

7 A The 16th of May.

8 Q Are you familiar with Benny
9 Rivera?

10 A Is that Benny's Tree Service,
11 Benny Rivera?

12 Q Yes.

13 A I am. Somewhat. Yes. As the
14 subject of a story, mostly.

15 Q Yes. You mentioned that you
16 wrote a story or a Blog about him?

17 A An article.

18 Q An article. And did you ever
19 have to retract that story?

20 A No.

21 Q Did you ever confirm whether he
22 was hired by the schools to do the work
23 performed at the schools?

24 A That was not the issue.

25 I mean, it was not a matter that

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2 he was hired to do work for the school
3 district. It was a matter of, in his line
4 of work, he ends up needing to dump wood
5 chips.

6 And to do that, you have to go
7 to a waste transfer station and pay for
8 it.

9 So if you can dump it somewhere
10 else, without having to pay the fee, it's
11 cheaper.

12 So he made arrangements with
13 another guy, I'm happy to mention his name
14 is Jimmy Bonnano, to dump these wood chips
15 on school property, which is unauthorized
16 from within the department and it's true
17 within the buildings and grounds
18 department and it's, to my understanding,
19 illegal to do that.

20 Having dumped the wood chips,
21 Mr. Bonnano's crew gave -- he was a
22 working foreman for the buildings and
23 grounds department, would then spend time
24 on the job, spreading the wood chips
25 around, on the property, to basically

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2 reduce them from piles that were dumped
3 into something that was spread around.

4 And I will add to it, that this
5 was sort of being done with a wink and a
6 nod from John Gallagher, who was the head
7 of the buildings and grounds department.

8 That article, you referenced,
9 was part of a series of articles I wrote
10 about corruption in the school district
11 that resulted in the US Attorney's office
12 bringing an indictment against
13 Mr. Gallagher.

14 He was found guilty and he was
15 sentenced to federal prison.

16 But that was the tip of the
17 iceberg.

18 There was a tremendous amount of
19 corruption going on in the school
20 district.

21 In fact, why I was appointed to
22 the District Life, Health & Safety
23 Committee, we have oversight on the
24 buildings and grounds department and
25 Mr. Rivera was a party to one element of

1 ROBERT ANDREW COX

2 that.

3 Q I'm turning back to the area
4 that's currently fenced in by the black
5 fence, that was adjacent to -- that is
6 adjacent to the skate park.

7 Is it your contention that that
8 area was never used for parking cars prior
9 to May 16th, twenty-fifteen?

10 A So, basically, the area that
11 sort of got fenced in?

12 Q Correct.

13 A Right?

14 I can't speak to that. I have
15 no knowledge of whether there was a little
16 space or someone had put a car in -- I
17 have no idea.

18 Q Is it your contention, that was
19 a wooded area? A primarily wooded area?

20 A I would -- I don't know how I'd
21 define primary wooded area. There is, you
22 know --

23 From what I could see that day
24 and what's apparent in the video is there
25 is growth there, which is both trees and

1 ROBERT ANDREW COX
2 some type of undergrowth, I'm not a
3 botanist, but a lot of green stuff growing
4 there.

5 And it is basically chopped off
6 so that it forms an unnatural rectangle in
7 that space.

8 So if I look at the size of that
9 rectangle, which became the parking lot --

10 So, basically, from where the --
11 that cut in foliage and trees occurs, all
12 the way to the skate park, primarily would
13 mean there's more than 50 percent of it
14 covered in green stuff and 50 percent of
15 it was, you know, dirt and flat park -- I
16 don't have any recollection of judging
17 exactly how much percentage of that space
18 was foliage and trees and bushes and how
19 much of it was dirt and flat or even park,
20 I don't know.

21 Q So prior to Saturday, May
22 15th --

23 A By the way, I mean, I can add
24 one other thing that I can recall.

25 There is some small sliver of

1 ROBERT ANDREW COX

2 land there, that the people who work at
3 the skate park use.

4 So I don't recall a space. But
5 my understanding is that there was a
6 little bit of a parking area for the
7 workers at the skate park.

8 But I don't know if that's
9 considered incorporated into the fenced
10 off area or not, 'cause I don't
11 remember -- I have to go find these
12 articles, there's a picture of it.

13 But my guess is that they didn't
14 fence off that area, just from
15 recollection, because the people who work
16 there still needed to park there.

17 Q So, currently, there is the
18 skate park, that was fenced in.

19 There's an open area, that you
20 could fit about one car into and then
21 there is the other fenced area?

22 A Right.

23 Q So I'm --

24 A That little gap --

25 Q -- yes --

1 ROBERT ANDREW COX

2 A -- talking about.

3 Q -- that's how it currently
4 exists --

5 A Yes.

6 Q I'm not speaking about that one
7 area, there, where a car can currently --

8 A Well, you asked from the skate
9 park fence, all the way down.

10 What I'm saying is, there was a
11 gap, there, where there was some -- it's
12 called authorized parking space, that the
13 city apparently parks there and had set
14 aside so that they could -- that the
15 workers could park there.

16 But I'll still give the same
17 answer I gave, which is the part that's
18 fenced in, which, I think, we were really
19 talking about --

20 Q Right?

21 A -- the cut all the way to the
22 skate park, that I don't have any specific
23 recollection of what percentage was
24 bushes, trees, dirt, I don't know.

25 Q So let me ask you this: Prior

1 ROBERT ANDREW COX

2 to May 16th, twenty-fifteen, if I wasn't
3 driving, you know, putting all terrain
4 vehicles aside, how many approximate
5 normal size sedans could park in that
6 area --

7 A I have no idea.

8 Q -- if you had to estimate, based
9 on your knowledge of that area?

10 A I wouldn't -- I would go to the
11 stat photos that the county has and I
12 would look at other things that could tell
13 me what it looked like five years ago.

14 I mean, you're asking me long
15 after the fact.

16 So if I was, you know, writing a
17 story, to answer your question, the way I
18 would do it is, I would seek all the
19 available records that they had about what
20 was down there.

21 The county has some aerial
22 photos. I think the city has some. They
23 use an online service, that has others.

24 Of course, there is Google Maps
25 and, theoretically, try to get the

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2 archives from them.

3 But, no, I wouldn't want to
4 guess. It wasn't something that was, you
5 know, high on my list of priorities, when
6 I was looking at that area, regarding
7 moving the city yard because everything
8 was really been talked about on the other
9 side of the street.

10 Q So, in your view, when you were
11 in that area and, again, you were there,
12 looking at the eminent domain issue --

13 A Uh-huh.

14 Q -- but, when you viewed that
15 area, could a tractor trailer park in that
16 area?

17 A I mean, it's the same question
18 in a different way.

19 I don't know how much space was
20 there, so I can't say whether a Volkswagon
21 Bug or an 18-wheeler could fit in there.
22 I just don't have any recollection of
23 that.

24 Q Have you ever had to retract any
25 stories?

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2 A I have published stories that
3 had to be either corrected. I wouldn't
4 say retracted.

5 They weren't necessarily mine.
6 I used to have a lot of people write
7 guests posts and we had a couple of
8 problems.

9 I would say this: None come to
10 the top of my mind.

11 But, I, as a policy, have no
12 problem running corrections or I don't
13 recall retracting a story, but running
14 corrections because it's my view that it's
15 a good thing for me to do because, you
16 know, I write, you know, a million words a
17 year and if I make a mistake, I want to
18 own that and I want to make a correction.

19 And I believe in feature the
20 fact, if I made a correction.

21 And this is not the only place I
22 write, on Talk of the Sound.

23 So I don't recall retracting a
24 story.

25 You can pull one out, I guess,

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2 and tell me I retracted it.

3 But I run corrections, if
4 warranted. Not that many.

5 Because most of my reporting
6 tends to be based on government records,
7 so I'm just quoting from something off of
8 Pacer, from the US court system or I'm
9 pulling something off a police report
10 under FOIL.

11 Things like that.

12 But, if you tell me I've run
13 corrections or something that you think is
14 a retraction, although, I don't recall
15 retracting per say, you know, that
16 wouldn't shock me.

17 Yeah, I have no problem doing
18 it.

19 But, you know, what I would say
20 is that I get lots of people who threaten
21 me all the time, as the La Rocca's
22 attorney did back at the time.

23 And, you know, one time I
24 actually got sued, the -- was the
25 Bonnanos, who I mentioned the father and

1 ROBERT ANDREW COX

2 also the son, that case went so badly for
3 the defendants that their lawyers begged
4 me to help them get out of the case and at
5 the end the law firm paid me several
6 thousand dollars to drop counterclaim.

7 So I would say that they were
8 crushed in that very foolish effort to
9 bring a defamation suit against me and
10 also a radio station that I had a show on,
11 WVOX.

12 But, in any case, if I make a
13 mistake, I have no problem owning it. But
14 I don't recall any specific examples.

15 Q Have you ever had an issue with
16 public apology?

17 A Issue with public apology? I
18 mean, like I was ordered?

19 Q Based on your writing.

20 A Ordered to --

21 Q No.

22 A If I made a mistake and I said
23 that I may have made mistakes, that I
24 probably would apologize if I did. None
25 particularly come to mind.

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2 Q Do you recall issuing an apology
3 in and around twenty-twelve to the New
4 Rochelle Police Department with respect to
5 a claim that they covered up an auto
6 theft?

7 A Yes.

8 Q Can you describe the basis for
9 these apologies?

10 A Well, as I mentioned earlier, I,
11 in the past -- I guess, I should provide
12 context.

13 So I'm going to talk more than
14 you, probably, want me to.

15 I'm a talker. I can't help it.

16 When I started Talk of the
17 Sound, I was working at Newsweek. And I
18 didn't really have any interest to be
19 running a local website.

20 A bunch of people that attempted
21 to run local sites, and I had tried to
22 help them over the years and it never
23 worked out.

24 So I decided to create a
25 website, where anybody could submit

1 ROBERT ANDREW COX
2 articles and generate a discussion about
3 things that were of interest in the
4 community.

5 And my idea was, I could, you
6 know, cover the costs by running some
7 Google ads to pay for the server and the
8 upkeep.

9 But, mostly, it would be people
10 writing about something in their
11 neighborhood or whatever and then other
12 people responding.

13 And it would sort of be like a
14 public square.

15 And, at the time, this is, oh,
16 2008, you know, that a model that people,
17 like myself, were working on.

18 So I used to do a lot with
19 people who were sort of at the forefront
20 of what was happening with, before they
21 called it social media and blogging,
22 citizen journalism.

23 So I, you know, would regularly
24 go around the country and speak at
25 conferences at the Berkman center at

1 ROBERT ANDREW COX

2 Harvard Law School, Stanford Law School
3 different journalism programs.

4 University of North Carolina.
5 Pennsylvania University.

6 So there's like a philosophy
7 that myself and other people were trying
8 to embrace, which is that we, the whole
9 public, can be our own sources, our own
10 journalists.

11 So, ultimately, I concluded that
12 that was a failed idea. Because the
13 reality is is that most people are too
14 scared to put their name on an article
15 criticizing the DPW for not picking up
16 their trash because they're afraid that
17 they won't pick up there trash, ever.

18 Or they don't want to complain
19 about the school because they're afraid
20 that something will happen to their
21 teacher.

22 So the idea, in practice,
23 wasn't as great as it sounded at the think
24 tank discussion at the Berkman center.

25 So over time, I began to just

1 ROBERT ANDREW COX

2 start writing all of my own articles.

3 Now, I, occasionally, let people
4 do a guest post or things like that.

5 But, in 2012, it was sort of at
6 the cusp of that time period.

7 So that's the context.

8 So what happened was, that a
9 woman approached, who lived in New
10 Rochelle, she had this complaint and I was
11 still -- I wasn't actually promoting
12 having everybody in town contribute stuff,
13 but I said, hey, you can write something
14 and then, you know, have your say.

15 So she did.

16 And, then, I got a call from the
17 police department and they were not happy
18 with the article and they said that the
19 article was basically, I don't remember
20 even what the article is about.

21 He was mentioning about a car
22 being stolen. Was it a car dealership?

23 It was something that they said
24 that they were covering up or something.

25 And, you know, the police

1 ROBERT ANDREW COX
2 department showed me that that wasn't
3 true, okay.

4 So I issued apology on behalf of
5 the article that this woman wrote.

6 I also had a direct conversation
7 with the police commissioner to say in
8 retrospect, I shouldn't have let her run
9 the story, I trusted her too much.

10 And even though I didn't write
11 any of it, I took responsibility for it
12 and I apologized.

13 I would cite that as an example
14 of I make mistakes and if I make one I try
15 to own it.

16 And so that's, you know, that's
17 an example. That's what I was trying to
18 do there.

19 And I will tell you, that after
20 some conversations with the police
21 commissioner, the apology was accepted and
22 we went back to the same terrible
23 relationship we already had. But just
24 less terrible.

25 Q So that was a long answer.

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2 A I told you, I would give you
3 context. I'm sorry, I know that, you
4 know, you don't necessarily want me to
5 tell a story, but I am a writer so I can't
6 help myself.

7 Anyway, that's the context for
8 that.

9 But I wanted to tell the story
10 because I think it goes to the heart of
11 what I'm trying to address, which is I
12 have no problem if I make a mistake,
13 trying to correct it, if I have to
14 apologize, even if I'm not the one who
15 actually wrote the article.

16 And there's been, you know,
17 other things that appeared on talk of the
18 Sound that, for whatever reason, needed to
19 be addressed.

20 And I have no problem addressing
21 them.

22 Like I said, 'cause, at the end
23 of the day, I think that it's about -- and
24 this is my philosophy on journalism, my
25 trust relationship with my reader.

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2 So I believe that my readers
3 understand that nobody's perfect and that
4 what's way worse than making a mistake is
5 not acknowledging it.

6 Q So turning back to the issue of
7 May 16th, twenty-fifteen --

8 A Sorry. Yes.

9 Q -- is it your contention that a
10 parking lot was created that day?

11 A I don't know if I'd call it my
12 contention. That's my understanding of
13 what took place.

14 You know, I've already
15 acknowledged that I wasn't there when they
16 chopped down the trees or whatever.

17 But, I mean, the net result of
18 the days work was there was in effect a
19 parking lot in that space where there had
20 not been on.

21 Q Prior to writing about the
22 events of May 16th, twenty-fifteen, did
23 you ever go to Google Images to view what
24 that area had been -- any historical
25 photos from Google Images? Did you ever

1 ROBERT ANDREW COX

2 do that?

3 A Prior to this day?

4 Q No, prior to writing stories
5 about the events of May 16th,
6 twenty-fifteen.

7 A I probably looked at everything
8 I could.

9 Q Do you remember looking
10 specifically at Google Images or
11 historical --

12 A No.

13 Q -- Google Images of this area,
14 that is --

15 A No.

16 Q -- enclosed, wait, that is now
17 enclosed by the black fence?

18 A Oh. Sorry.

19 I'm not saying I didn't. I'm
20 just -- we're talking six years ago.

21 So more than six years ago.

22 I would have. And, just to put
23 the -- also, in context.

24 I mean, I write a lot. Okay.

25 So.

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2 I know you're focused on these
3 stories. But, you know, I've written
4 thousands of stories since then.

5 What I would do is I would try
6 to do everything I could to try to figure
7 out what that area was like pre May 16th,
8 2015. '15. Right.

9 Q So do you have any specific
10 recollection, sitting here today --

11 A No.

12 Q -- of what you did, to find out
13 what that area was like?

14 A No, I don't have any specific
15 recollections of sitting and looking at
16 any particular thing.

17 I would have looked at Google
18 Maps. I would have looked at -- there's
19 this county website, I would have tried to
20 find, also, if any people in the area have
21 photographs of the area.

22 I would have gone back to the
23 people who were contacting me, to ask them
24 what they had or what they knew.

25 I would have talked to the city

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2 because they were making plans down there.

3 Q Those are things that you're
4 saying, sitting here today, that you think
5 you would have done --

6 A Yeah, but I don't --

7 Q -- but you can't confirm that
8 you actually did those things; is that
9 correct?

10 A I cannot confirm it because I
11 don't have any specific recollection of
12 sitting and looking at anything in
13 particular.

14 The problem, that would probably
15 have come up with Google Maps is the time
16 frame of when they would have images for.

17 That's why I would think like
18 the county records might be better.

19 But, you know, there is --
20 unless I could reach out to the CIA and
21 probably have the satellite flying over
22 the area every day, there's going to be
23 large gaps in what I can know.

24 But, you know, as I said and
25 just to be clear, like why I wasn't trying

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2 to, you know, present all of this
3 imaginary and understanding of what was
4 there because that wasn't really the focus
5 of my reporting.

6 I saw what I saw, which is a
7 parking lot and being created out of a
8 space where there wasn't one.

9 So, you know, I don't know.

10 Q But it's clear, that you didn't
11 see the space at the start of what it
12 appeared before any work, alleged work was
13 done; is that correct?

14 A That's true. That's true.

15 And even when I was down there,
16 that's not what I was paying attention to,
17 in like the time for the DPW move, it
18 would not have attracted my attention.

19 I would have been looking at all
20 of these businesses. They were the ones
21 complaining about being relocated,
22 including Mr. La Rocca.

23 So my attention would have been
24 directed driving down that street, to the
25 left.

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2 Q So your focus, when you were
3 previously on East Street, were the
4 businesses on my client's side of the
5 property; is that correct?

6 A Correct. That's correct. That
7 would have been my focus.

8 Q Are you familiar with the
9 condition of the road surface on East
10 Street?

11 A I'm familiar with it not being
12 very good.

13 Q That was what I was going to
14 ask.

15 A Okay.

16 Q You would agree that the asphalt
17 or the wearing surface is not in a very
18 good condition; is that correct?

19 A I haven't been down there in a
20 while. But when I was going down there,
21 from time to time, I would say it was kind
22 of like the Ho Chi Minh trail, pretty bad.

23 Q Are you aware or have any
24 knowledge of who or what entity maintains
25 East Street?

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2 A Well, I had these conversations
3 with a whole range of city officials to
4 try to understand that issue.

5 And there was -- I learned a
6 whole bunch of legal stuff, which I
7 probably not well versed enough to speak
8 about.

9 But the general idea that I got
10 was that the property down there had been
11 given to the city, there was a formal
12 process by which they have to -- I'm going
13 to use the wrong term here, but basically
14 adopt that street.

15 So that that had not happened,
16 that this transfer of the property of the
17 city had occurred maybe a hundred years
18 ago and -- some -- way, way in the past,
19 I'm just -- decades earlier. I don't
20 remember exactly when.

21 But that the process of having
22 the city counsel put that area -- and
23 there's actually two streets down there.

24 So there's East Street and then
25 you make a left and you go -- and it's --

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2 part of it's adopted and part of it isn't.

3 I can't remember that street
4 now.

5 But they never did that
6 resolution, back, at the time, to formally
7 adopt it or whatever the correct term is.

8 So I'm trying to understanding,
9 you know, what was going on there. There
10 is, I think, a -- it's either a sewer line
11 or it's a drain, you know, like a --

12 I think it -- no, I don't know
13 what -- there's some underground piping,
14 it's either to pull water out of the area
15 or push water in the area, I don't know
16 what it is.

17 But there is some manholes
18 there.

19 And then there's also the issue
20 of the city garbage pickup.

21 So the city is responsible for
22 the drainage into the sound and the other
23 plumbing is the responsibility of the Suez
24 water.

25 So depending on whatever is

1 ROBERT ANDREW COX

2 under the ground, there, I never went and
3 looked, one of the two of them would be
4 responsible for that, as I understand it.

5 And I could be wrong, but that's
6 my understanding.

7 And then there's the garbage
8 pickup and then, in terms of physically
9 maintaining the road, I mean, I don't
10 know.

11 I mean, it might -- my
12 understanding is that that road is in sort
13 of a twilight area because it was the
14 city's but it hadn't been formally
15 adopted.

16 So that's about the best answer
17 I can give you there.

18 Q I don't know if you recall, that
19 we stopped at Frame 201 on the video,
20 which showed the Jersey barriers adjacent
21 to the skate park.

22 A Correct.

23 Q Do you remember that frame?

24 A I do.

25 Q You said that it was your

1 ROBERT ANDREW COX

2 understanding that my client put those
3 Jersey barriers there?

4 A That is my understanding.

5 Q And what is the basis for that
6 understanding?

7 A Sources, who live and work and
8 have businesses in that area.

9 Q What benefit would it be to my
10 client to protect the skate park?

11 MR. MEISELS: Objection as to
12 the form, but you can answer the
13 question.

14 A I don't know that the purpose
15 was to protect the skate park. I have no
16 idea what the -- whether that factored
17 into it at all.

18 The way I understood it is that
19 basically Mr. La Rocca was staking out
20 territory that was, quote, unquote, his
21 for the purpose of parking his vehicles,
22 equipment and so forth.

23 Same thing he was doing on the
24 other side of the street.

25 Q But can anybody just park on the

1 ROBERT ANDREW COX

2 street? Why did you have to put a Jersey
3 barrier to park on the street?

4 A I don't know. 'Cause parts of
5 New York that everybody can park in, but I
6 wouldn't park there, you know.

7 Q But I'm talking about that
8 particular street, how did the Jersey
9 barrier enhance parking?

10 A Let's put it this way: If I had
11 some reason to be down there, it wouldn't
12 stop me from parking. I wouldn't even
13 know why they were there.

14 But, I think, within that
15 community, and it is somewhat of a
16 community, it was understood that Mr. La
17 Rocca was staking out territory that was
18 for his equipment and trucks and vehicles.

19 Q So in the video that you took,
20 though, we saw parked next to the Jersey
21 barrier a truck owned by another entity;
22 isn't that correct?

23 A Yeah. Well, I mean, a question
24 was raised about that.

25 But the name on the vehicle was

1 ROBERT ANDREW COX

2 not La Rocca.

3 Q It was a non --

4 A Whether it was some other
5 company, I don't know.

6 Q Your video depicted a non La
7 Rocca truck parked next to the Jersey
8 barriers, correct?

9 A Again, since it was raised, I'm
10 just going to qualify my answer and say I
11 don't know how many companies that Mr. La
12 Rocca has or what names they do business
13 under.

14 I just know that it was a truck
15 that didn't say La Rocca on it, so I can
16 agree with that.

17 Q You said you spoke to people at
18 the city government, regarding the Jersey
19 barriers. Who did you speak to,
20 specifically, about these Jersey barriers?

21 A I'm thinking about whether to
22 answer that or not to answer --

23 Q I don't think that's a
24 confidential source, the city government.

25 A That would be wrong.

1 ROBERT ANDREW COX

2 It was from my understanding of
3 a conversation that took place, when they
4 came down for the fencing, that it was a
5 couple of people, but it was the head of
6 the building department, Paul Vacca and he
7 noted a wide range of things that were
8 wrong about what was happening down there.

9 So the, quote, unquote, parking
10 lot, the Jersey barriers, that the fencing
11 was sticking out too far, that on Fifth
12 Avenue there is a -- some kind of wall
13 built up there with different plants in it
14 and that none of that stuff should be
15 there.

16 So that's one conversation I'm
17 recollecting. I don't know that it
18 answers your question or not, you tell me.

19 But that's one way in which I
20 came to understand that that stuff wasn't
21 supposed to be there.

22 If you need to take another shot
23 at the question, go ahead.

24 Q So I don't even know if you
25 answer it.

1 ROBERT ANDREW COX

2 A Try again.

3 Q Who, specifically, did you speak
4 to -- was it some --

5 I don't even need to know the
6 exact person. How about the departments
7 that you spoke to?

8 A No, I think I did answer your
9 question.

10 Q Okay.

11 A Okay? Paul Vacca, who is the
12 head of the building department,
13 V-A-C-C-A, he was on scene, later that day
14 and he was walking around, I think he was
15 with two other people, maybe one.

16 He was upset about what he was
17 seeing and he was making a variety of
18 comments. I was walking with them.

19 I didn't -- I didn't plan to be
20 there, exactly, you know, with them.

21 Or it wasn't really necessary
22 party to the conversation, they just
23 didn't kick me out. I just wandered along
24 with them.

25 And he was pointing at different

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1 ROBERT ANDREW COX
2 things and saying this is wrong, this is
3 wrong, the parking lot, the Jersey
4 barriers, the fences in front of the La
5 Rocca property were out too far and this
6 thing, at the corner.

7 And I believe, either the
8 development commissioner or the
9 building -- the development -- the develop
10 commissioner is Luiz Aragon, he retired
11 back in December.

12 But I think I had a conversation
13 with one of those two about the maps that
14 the city has about what could and could
15 not be down there.

16 And it was a conversation about
17 this is too far out and this shouldn't be
18 there.

19 So setting the parking a lot
20 aside, because that's the only issue I
21 initially knew about, I found out that
22 there was a bunch of other issues.

23 Q So, that issue, he's referring
24 to the Jersey barriers adjacent to my
25 client's property; is that correct?

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1 ROBERT ANDREW COX

2 A No, everything that down. He
3 was pointing to this and this and this.

4 So the Jersey barriers on both
5 sides, the fence being out too far, the
6 masonry work and plantings that were done
7 around the corner, at the edge of the
8 property on Fifth Avenue.

9 And, of course, the parking lot.

10 And, like I said, he was not
11 happy and he was kind of, I don't know,
12 venting.

13 But, you know, he was sort of
14 flagging a lot of things that were a
15 problem.

16 And, you know, I didn't know
17 they were a problem at the time. But then
18 I dug into that as well.

19 [A short recess was taken.]

20 Q Were you aware or have any
21 knowledge of the construction of the
22 Flowers Park, when the city was doing that
23 construction?

24 A Not if I was parked by the
25 Skidelsky field, a little bit of

1 ROBERT ANDREW COX

2 knowledge. But that's just a small part
3 of the park.

4 Q How about when the city was
5 doing the skate park?

6 A No.

7 Q Are you aware of any areas near
8 or adjacent to East Street that was used
9 for parking by the construction company?

10 A No.

11 Q Are you aware of Persico
12 Construction?

13 A Yeah, that name is familiar.
14 Because I'm on the health and safety
15 committee for the school district and that
16 includes oversight of 106, point,
17 five-million-dollar bond that we did.

18 They were one of the companies
19 that were onsite.

20 But I don't know all that much
21 about them.

22 They may have been wanting to
23 come, because we had a little bit of a
24 problem with. I can't remember.

25 But, other than that, I wouldn't

1 ROBERT ANDREW COX

2 have any --

3 Q Were you aware of any parking
4 areas near East Street that Persico used?

5 A Absolutely not. No idea.

6 MS. ZALANTIS: I'd like to mark
7 this as Cox 3.

8 (Whereupon, an article was
9 marked Cox Exhibit 3 for
10 identification.)

11 A Is there a yellow section in
12 this?

13 Q There isn't.

14 A Okay, so I'll read the whole
15 thing, closely.

16 [Witness is reviewing the
17 document.]

18 MS. ZALANTIS: Off the record.

19 [Discussion held off the
20 record.]

21 A I'll skim through and go back,
22 if I need to.

23 Okay. So if you're going to ask
24 me, do I recognize this article, I do.

25 This is an article I wrote, published

1 ROBERT ANDREW COX

2 June 20th, 2015.

3 Q So if you look at page three,
4 which is marked at the bottom of D0139.

5 A Uh-huh.

6 Q And, at the top of the page
7 there is a picture. Do you see that
8 picture of a house with a red car?

9 A I do.

10 Q And do you know what residence
11 that is?

12 A Well, I believe, based on my own
13 knowledge and the fact that it says it's
14 the La Rocca at 140 Sussex Road or at
15 least it was as of that date of 2015.

16 Q This article would be about the
17 La Rocca's personal residence; is that
18 correct?

19 A It starts off that way. I
20 assume, it finishes that way.

21 Yeah, it looks like about the
22 building permits and other issues with
23 their property.

24 Q And what was the inspiration for
25 you to do a story about a personal

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1 ROBERT ANDREW COX

2 residence?

3 A I don't remember exactly what
4 the inspiration was for it.

5 But I believe it's because I
6 drove passed there -- let me just check.
7 2015.

8 So I probably had a child that
9 was in school at Albert Leonard Middle
10 School. I think.

11 So probably driving passed this,
12 'cause it's proximate to the school
13 grounds.

14 It caught my attention because
15 it's dramatically different than the other
16 houses in the neighborhood.

17 And, at some point, I learned
18 that it was the La Rocca residence and it
19 seemed hard to believe, to me, that this
20 has actually been approved to be built the
21 way that they did it.

22 And so, I believe, I made a FOIL
23 request to get access to the property
24 records from the building department, so I
25 could look at the permits and any

1 ROBERT ANDREW COX

2 violations they had been cited.

3 Q Do you ever do a story on any
4 other person's personal residence in New
5 Rochelle?

6 A Have I ever done a story about
7 anyone's personal residence?

8 Well, I mean, about their
9 personal residence?

10 Q Along the same vein,
11 questioning --

12 A Well, I mean, because I --

13 Q -- the propriety of the building
14 of the residence?

15 A Let me just say, I may have.
16 But I have no recollection of that.

17 Q And what prompted -- I know
18 that, you know, this was part seven and
19 if -- eight. What prompted a
20 multiple-part story about Flavio La Rocca?

21 A Well, I think, you have to start
22 with the part one.

23 So, you know, the incident with
24 the East Street, with the parking lot,
25 that my --

1 ROBERT ANDREW COX

2 Q Well, that was part eight. So
3 how did we get --

4 A Well, just because you're
5 reading the numbers doesn't mean -- I
6 layout my stories in advance.

7 So I'm running a series right
8 now, it's a five-part series. But I wrote
9 seventy pages before I published more than
10 one.

11 'Cause it has to kind of tie
12 together at the end.

13 So I don't remember
14 specifically, here. But I usually write a
15 really long story and then I just chop it
16 up into parts and publish it into a
17 series.

18 Q Were these articles published
19 around the same time?

20 A Well, I mean, I don't know. I
21 mean, I got them in front of me, right.

22 So 7 is June 20, 2015. Another
23 one is -- Part A is November 2015.

24 This other one is April 2016.
25 It's not the same thing. It's different.

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1 ROBERT ANDREW COX

2 It's about that the city is pursuing the
3 matter.

4 I'd have to look at the other
5 ones.

6 But it looks like they were all
7 within the six or eight months after the
8 original incident on May 16th, 2015.

9 But I think I deviated from your
10 question a bit there.

11 But, in terms of -- I think your
12 idea was why did I decide to write this
13 story.

14 I was already working on stories
15 about the La Roccas and when I found out
16 that that house, which I may offend people
17 who are listening, but, in my view, was
18 monstrously out of character with the rest
19 of the neighborhood, was actually the
20 LaRocca's house, then, it raised a bunch
21 of questions in my mind about how did they
22 get all that stuff approved.

23 Because they put in a gate
24 system, they dug tree pits, they redid all
25 of the sidewalk masonry.

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1 ROBERT ANDREW COX

2 There's nothing else, like that,
3 in the whole neighborhood.

4 In fact, I don't think there's
5 really anything like that in New Rochelle.

6 And so, like I said, when I --
7 I'm already working on stories about the
8 La Roccas and then I find out this is
9 their house, the thought that runs through
10 my mind is was this legit, how did they
11 get this approved.

12 Q Did you ever come to see if
13 there was a C of O issued by the city for
14 the house?

15 A Yeah. I mean, I -- I don't know
16 what exactly I mentioned here. I didn't
17 read the whole thing.

18 But, I mean, I did pull all the
19 records and I found out that in terms of
20 the front, the tree pits and all that,
21 that that was approved and then there was
22 a bunch of open permits for things inside
23 the house and around the house that hadn't
24 been closed out or technically in
25 violation and I referenced all of those.

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1 ROBERT ANDREW COX

2 But, actually, that didn't
3 satisfy me, that they had C of Os, because
4 it didn't satisfy me that they built a
5 parking lot on East Street either.

6 Q Did you ever find out whether
7 the city issued any violations to the La
8 Roccas?

9 A For --

10 Q For anything --

11 A For the house?

12 Q Yes, anything in relation to the
13 house.

14 A I had to read the article again.
15 I know that they were -- they had open
16 permits and they had done some things they
17 weren't supposed to do or whatever.

18 Q But I'm saying --

19 A But I don't --

20 Q -- violations issued by the
21 City?

22 A Well, I mean, you said don't
23 read the whole thing.

24 But I didn't. But, I mean, I'd
25 have to go back and refresh my memory by

1 ROBERT ANDREW COX

2 reading the article.

3 But I could see, right off, the
4 point that DPW approved, you know, the
5 plans, right.

6 So they wouldn't have gotten a
7 violation for that.

8 I think the other stuff was
9 building permits that weren't closed out.
10 So they would have been pressed to close
11 them out.

12 They typically don't issue
13 violations for that.

14 But this part, here, that the
15 DPW approved it, you know, was a red flag
16 for me.

17 And, just to be clear, I don't
18 trust anybody. I assume everybody is on
19 the take and everybody's corrupt.

20 Q That my clients got approval
21 from the DPW, does that signal to you that
22 they got the approval?

23 A Right. So that also raises the
24 question in my mind, whether the people in
25 the DPW are corrupt.

1 ROBERT ANDREW COX

2 And, in fact, quite a few people
3 at the DPW, at the time and recently were
4 in fact corrupt.

5 Some of them were indicted and
6 others were terminated for all manor of.

7 Q But --

8 A -- let's call them shenanigans.

9 Q Whether people at the DPW are
10 corrupt doesn't change the fact that my
11 client -- you concluded that my clients
12 got approval from the city to do what they
13 did?

14 A Yes. It's in the article, yes.

15 But, you know, I'm going to push
16 back a little bit, if you don't mind, and
17 just say the fact somebody got approval
18 from somebody in the city, that somehow
19 they're on the up and up is not my
20 experience.

21 It might be on the up and up.
22 It might be that somebody got paid.

23 Q Or, like you said, it might be
24 on the up and up.

25 A Yeah, it might be.

1 ROBERT ANDREW COX

2 I don't think I said anything
3 other than. I said -- I'm just skimming
4 here.

5 But I think that it says they
6 got approval.

7 You know, I made a bunch of
8 points about why I thought it was odd that
9 it got approval.

10 I also subsequently found out
11 that the neighbors were up in arms about
12 what was happening and tried to fight
13 against it.

14 But, you know, in any case, I
15 think it's -- it actually says what you're
16 saying, at the end of the day they got
17 approval.

18 In fact, I think it really
19 starts by saying that they got approval.

20 My question is more like how did
21 they get approval because they shouldn't
22 have, in my opinion.

23 Q How does Talk of the Sound
24 generate revenue?

25 A We sell direct ads and we sell

1 ROBERT ANDREW COX

2 ads though services like Google Ads.

3 And we've been doing it for
4 thirteen years, so it changes over time.

5 But, mostly, it's direct ad
6 sales and through Google Ad sales right
7 now.

8 Q And what's the biggest bulk of
9 your direct ad sales, if I characterized
10 it --

11 A What do you mean?

12 Q Is it business owners in New
13 Rochelle? Or residents? Who's the
14 biggest bulk of --

15 A Well, Google Ad sales runs the
16 most ads. The direct ad sales may be
17 individually hired. Do you know what CPM
18 is?

19 Q No.

20 A So CPM is cost per thousand.
21 And the M is thousand.

22 And it's a rate that ads buy and
23 sell for.

24 So, you know, if I have 100,000
25 page views, on a given time period and I

1 ROBERT ANDREW COX
2 get paid, you know, equivalent of, let's
3 see, I gotta do the math here.

4 If I got \$400, right, and I'm
5 getting -- I'm a little tired.

6 So I'm getting \$4 CPM. Did I do
7 the math right?

8 So if, you know, I get \$500, I'm
9 getting \$5 CPM.

10 So when I'm evaluating ads, I'm
11 saying what's the best source. Well,
12 obviously, the best source for me is to
13 hire a CPM, if you're willing to pay me
14 five and he's willing to pay me four, I
15 sell to you.

16 And that's actually what Google
17 does. They're really an online broker for
18 ads.

19 So they make the markets and I
20 put codes on my site that they sell.

21 Q Do you ever get paid, directly,
22 by individuals or entities to write
23 stories for your Blog?

24 A No. But if you know anybody,
25 let me know.

1 ROBERT ANDREW COX

2 No, I wouldn't, as a journalist
3 that would be kind of frowned upon.

4 Q Were you ever arrested?

5 A Yes, I was?

6 Q And was that in twenty-fourteen?

7 A Yes.

8 Q What were the events surrounding
9 your arrest?

10 A Events were that I was assaulted
11 on my front lawn by six people.

12 My wife called the police, at my
13 direction.

14 The police, who are -- one, in
15 particular, was a corrupt police officer,
16 ordered my arrest.

17 That's what happened.

18 Q And did you commence a lawsuit,
19 against the city, arising from that
20 arrest?

21 A I did.

22 Q And what was the result of that
23 lawsuit?

24 A Well, at this point, it's been
25 into appeal and it was kicked out and

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1 ROBERT ANDREW COX

2 we're gonna go back again.

3 Q That lawsuit was commenced in
4 federal court; is that correct?

5 A The -- which one?

6 Q The lawsuit -- your suit against
7 the city?

8 A Well, there was two -- I don't
9 know if you call 'em suits.

10 I mean, initially appealed the
11 criminal case but then sued all parties,
12 including the city, yes, in federal court.

13 And, basically, because it's
14 essentially, without over simplifying it,
15 it's essentially first amendment case?

16 [Continued on the next page to
17 allow for signature line and jurat.]

18

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1 ROBERT ANDREW COX

2 Q So, in that federal lawsuit, did
3 you have any depositions?

4 A No.

5 MS. ZALANTIS: Give me two
6 minutes.

7 [A short recess was taken.]

8 MS. ZALANTIS: I have nothing
9 further.

10 [TIME NOTED: 5:05 p.m.]

11 -----
ROBERT ANDREW COX

12

13

14 -----
Subscribed and sworn to
before me this _____
15 day of _____, 2021.

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Notary Public

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I N D E X

WITNESS	EXAMINATION BY	PAGE
R. A. Cox	Mr. Meisels	5
R. A. Cox	Ms. Zalantis	49

E X H I B I T S

COX	DESCRIPTION	PAGE
Exhibit 1	article dated 4/1/16 from Talk of the Sound	55
Exhibit 2	article published on 11/9/15	69
Exhibit 3	article published on 7/20/15	113

[Attorneys retained all exhibits]

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CERTIFICATION

I, Helen Wandzilak, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth, was duly sworn by me; and that the within transcript is a true record of the testimony given by said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of August, 2021.

HELEN WANDZILAK

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: New Rochelle v. La Rocca
DATE OF DEPOSITION: August 4, 2021
WITNESS' NAME: Robert Andrew Cox

PAGE/LINE(S) / CHANGE REASON

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ROBERT ANDREW COX

SUBSCRIBED AND SWORN TO
BEFORE ME THIS _____ DAY
OF _____, 2021.

NOTARY PUBLIC
MY COMMISSION EXPIRES _____

[& - andrew]

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[want - zoom]

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<p>want 27:16 39:10 42:7 43:2 49:7 51:25 69:25 70:9 73:14 86:3 87:17 87:18 90:14 92:18 95:4 wanted 95:9 wanting 112:22 warranted 88:4 waste 79:7 watch 62:7 watched 11:18 water 103:14,15 103:24 way 7:23 31:11 32:5,21 33:25 35:20 44:10 47:12 82:12,23 84:9,21 85:17 86:18 96:4 102:18,18 105:18 106:10 108:19 114:19,20 115:21 130:14 we've 124:3 wearing 16:11 101:17 weather 75:5 website 22:14 90:19,25 98:19 weekend 40:6 45:5 weekends 43:11 wellbeing 17:15 went 8:25 19:8 40:18 89:2 94:22 104:2 west 37:21 53:24 westchester 1:3,13 2:5 wheeler 86:21 whereof 130:16</p>	<p>white 1:13 2:5,9 10:8 14:4 16:11 23:15 26:20,22 27:2,4 wide 108:7 width 53:6 wife 17:7 20:2 54:13 126:12 willing 125:13,14 wilson 2:3 window 74:24 wink 80:5 wish 23:22 witness 3:19 4:7 55:16 56:12 67:13 70:5,11 113:16 129:2 130:6,10,16 131:3 woman 93:9 94:5 wood 9:15 12:4,9 12:14 13:11 19:4 19:8,11,15 31:18 32:2 51:10,13,16 51:21 52:3 59:23 60:10,11 61:2,6,15 72:25 73:8 74:10 74:15,18 75:7,9 79:4,14,20,24 wooded 81:19,19 81:21 word 24:12 words 87:16 work 5:25 6:20 9:7,9,20 29:13 31:20 37:3 42:14 46:10 55:3 57:5 75:10 77:14,16,20 78:22 79:2,4 83:2 83:15 96:18 100:12,12 105:7 111:6</p>	<p>worked 47:23 53:14 54:21 90:23 worker 23:9 41:5 workers 15:6 18:8 20:18 23:4 46:17 52:21 54:8 56:20 56:25 61:20 63:10 63:15 83:7 84:15 working 5:23 8:11 13:22 15:7 16:5 23:5 51:16,17,23 53:22 54:8 63:11 79:22 90:17 91:17 118:14 119:7 worse 96:4 worth 47:21 would've 19:16 write 87:6,16,22 93:13 94:10 97:24 117:14 118:12 125:22 writer 95:5 writing 85:16 89:19 91:10 93:2 96:21 97:4 written 72:14,15 98:3 wrong 102:13 104:5 107:25 108:8 110:2,3 wrote 55:22 70:16 78:16 80:9 94:5 95:15 113:25 117:8 wvox 89:11</p> <p style="text-align: center;">x</p> <p>x 1:4,12 5:2 129:1 129:7</p>	<p style="text-align: center;">y</p> <p>yard 16:21 18:2,5 20:16 29:13 31:20 38:3 39:16 86:7 yeah 14:6 15:8 17:19 18:9 19:11 25:8 26:5 27:11 27:17,22 28:6,20 29:24 30:2 31:21 32:13 36:9 37:24 45:23 58:14 59:20 61:16 63:11 70:16 73:9,10 76:6,6 78:3 88:17 99:6 106:23 112:13 114:21 119:15 122:25 year 22:24 87:17 years 22:8,23 68:21 85:13 90:22 97:20,21 102:17 124:4 yellow 18:11,17,24 40:24 41:17 74:2 113:11 york 1:2,13,20 2:5 2:10 5:4,11 34:5,8 65:2 106:5 130:4 131:1 youtube 6:24 14:13</p> <p style="text-align: center;">z</p> <p>zalantis 2:8,11 8:21 49:14,18,20 49:23 69:20 113:6 113:18 128:5,8 129:5 zimmerman 43:14 zoom 2:13 6:13 11:22 14:25 19:2</p>
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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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Exhibit "50"

PLTF028



Rate Article:

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NEW ROCHELLE, NY -- On the morning of Saturday May 16th, Flavio LaRocca and his employees leveled a stand of trees and greenery on public property, in the area behind the Sidney Frank Skate Park. This would appear to be a clear cut case of a criminal act and yet no criminal charges have been brought. Why?

Based on a tip from a reader, Talk of the Sound was on hand as LaRocca and his crew chopped down trees, ground them up, dumped broken chunks of toxic asphalt, piled up the asphalt to create a berm to screen the resulting "parking lot" from prying eyes at City Park and used a steamroller to pack down more asphalt to create a parking surface.

While this crime was in progress, City Manager Chuck Strome was asked by Talk of the Sound whether he was aware of what was transpiring behind the skatepark. Strome deferred the matter to Parks Commissioner Bill Zimmerman who was with him at the time. Strome and Zimmerman debated whether the property behind the skate park was parkland while not disputing that the property was city property regardless of whether it had been designated as parkland. Strome stated he would send the police to investigate. The police never came.

Hours went by and eventually LaRocca and his crew finished their work, packed up and left. Later that afternoon Strome advised Talk of the Sound that a police officer had come by the area and not seen any work going on and left. In fact, no police officer came by the area and a review of police scanner audio shows no dispatch calls were made after Strome said the police had been notified. Taking Strome at his word, why did the police department not dispatch any officers and then tell the City Manager they had?



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Who is Flavio La Rocca? – Part VIII

Written By: Robert Cox

NEW ROCHELLE, NY — On the morning of Saturday May 16th, Flavio LaRocca and his employees leveled a stand of trees and greenery on public property, in the area behind the Sidney Frank Skate Park. This would appear to be a clear cut case of a criminal act and yet no criminal charges have been brought. Why?

▼ [Read on a tip from a reader, Talk of the Sound was on hand as LaRocca and his crew chopped](#)



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Hours went by and eventually LaRocca and his crew finished their work, packed up and left. Later that afternoon Strome advised Talk of the Sound that a police officer had come by the area and not seen any work going on and left. In fact, no police officer came by the area and a review of police scanner audio shows no dispatch calls were made after Strome said the police had been notified. Taking Strome at his word, why did the police department not dispatch any officers and then tell the City Manager they had?

Jole Marlane Tie-Dye Silk Maxi Dress

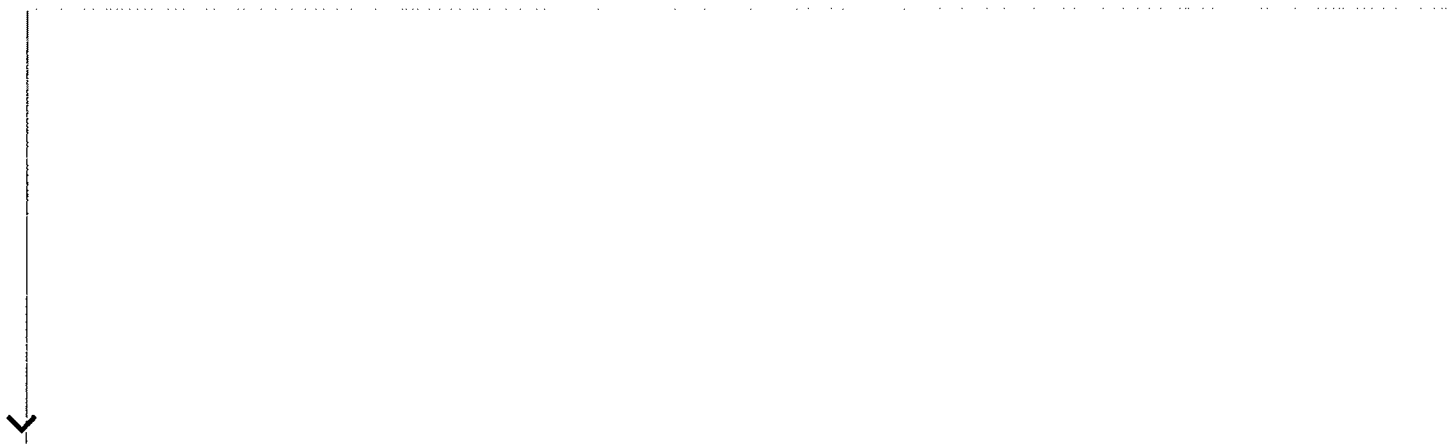
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property, misappropriation and more.” The New Rochelle police would have been the investigating agency and would have been the agency to file charges. No charges of any kind have never been filed.

The only action taken in the first few months came as a suggestion from the New Rochelle Police Department — that “No Parking” signs be posted on East Street as a prelude to fencing off the “Parking Lot”. The lot was fenced off, at a cost of about \$5,000 to the taxpayer. La Rocca has paid nothing nor has he been held accountable for anything.

By the time Blanchard left New Rochelle in mid-August to take job as a law partner with Kristen Wilson virtually none of the items on Blanchard’s list had been accomplished and records promised to Talk of the Sound had not been provided. As a side note, Wilson has, for many years, served as Corporation Counsel in Rye. She has contended with a major scandal involving they Rye Golf Club and former Rye City Manager Scott Pickup who was effectively fired in Rye and wound up working in New Rochelle’s Department of Public Works. It’s not the only New Rochelle – Rye connection that has come up recently. In fact, a few weeks ago Mark Blanchard sat in for Kristen Wilson as the Corporation Counsel at a Rye Council meeting.

Over the past few months there have been several mitigating factors in the slow response of the City of New Rochelle including prolonged illness of senior staff, the sudden departure of Blanchard and the re-hiring of Kathleen Gill as Corporation Counsel and Chief-of-Staff to the City Manager. In an abundance of caution and an effort to give the folks involved the benefit of the doubt, Talk of the Sound has held off on reporting further on this story for months, until Gill got settled back in as Corproration Counsel. Since coming back as the City’s top lawyer, Gill has moved the ball forward. More on that in a moment.



No one will say but there have been hints to the effect of “they don’t want anything done about it”. Asked who “they” is, the response is a shrug and silence.

No one will say for sure who is protecting LaRocca. The best we can do is lay out some facts and let readers draw their own conclusions. This being New Rochelle, the first thing to do is “follow your nose” which invariably leads to New Rochelle Police Commissioner Patrick Carroll and his New Rochelle Police Foundation.

We have reported previously on the highly questionable practices of Carroll and the New Rochelle Police Foundation including giving Foundation board members swipe cards to access locked doors at NRPD headquarters and intervening, in Rye of all places, when a board member was arrested for using his Foundation badge to impersonate a police officer, our first encounter with Kristin Wilson at Talk of the Sound.

Multiple sources have told Talk of the Sound that prior to his death in 2006, Sidney Frank had a close relationship with Patrick Carroll. There have been for years a rumor that Frank willed Carroll a Maybach automobile worth hundreds of thousands of dollars. Based on our review of DMV records in New York and Florida, where Carroll maintains a vacation home, these rumors appear to be just that, unsubstantiated gossip. They persist however due to the correct perception of a special relationship between Frank and Carroll which is substantiated.

The New York Times reported on Frank’s special protection accommodations provided by New Rochelle Police under Carroll including the use of off-duty police officers to work security and allowing those officers to use a marked police cruiser while working for Frank. John Heine, a retired New Rochelle police sergeant, served as Sidney Frank’s personal bodyguard and driver. There is little doubt, according to police sources, that Frank would have hired Heine without first getting the recommendation of Carroll.



Charlie Beaudoin, a retired FBI agent, served as the Director of Security of Sidney Frank Importing from 2004 until this past summer, when Sidney Frank Importing was acquired by Mast-Jägermeister.

John Frank, Sidney Frank's nephew, was the Chairman of Sidney Frank Importing up until the company was acquired by Mast-Jägermeister.

Both Charlie Beaudoin and John Frank have been long-time members of the New Rochelle Police Foundation Board. Charlie Beaudoin, John Frank and Sidney Frank have all been contributors to Carroll's foundation. The Foundation honored Sidney Frank with a Corporate Leader Award.

Sidney Frank donated \$150,000 to build a skatepark on the western edge of City Park on Fifth Avenue and East Street which was named in his honor.

Maria La Rocca worked for four years in Advertising and Marketing for Sidney Frank Importing Company.

Maria La Rocca owns La Rocca & Sons along with her husband.

La Rocca & Sons owns property directly across from the Sidney Frank Skatepark.

The property torn down and converted into a parking lot by Flavio La Rocca and La Rocca & Sons is directly adjacent to the Sidney Frank Skatepark.

From this readers can draw their own conclusions but these facts suggest that if anyone is protecting Flavio La Rocca it is New Rochelle Police Commissioner Patrick Carroll.

So, back to Kathleen Gill moving the ball forward.

This past Spring Talk of the Sound provided a backgrounder on Flavio La Rocca and his role in opposing the move of the City Yard to East Street where he operates his business.

Talk of the Sound reported on how La Rocca repeatedly misappropriated public property for his own use both for his business, his workers and for his family with a focus on the corner property on East Street and Fifth Avenue across from the skatepark. We described confusion by the City of New Rochelle over property near City Park given to the City over a century ago and that various

As a result of this reporting, La Rocca's attorney sent a "cease and desist" letter to Talk of the Sound making various legal threats.

We then expanded out reporting to include property on Potter Avenue including a Clear Channel billboard and at his personal residence at 140 Sussex Road.

From this reporting an action list was developed by Blanchard and later confirmed by Gill. The list follows below, with an update on the status of each item. Progress is due largely to the efforts of Gill over the past few weeks in coordination with the Building Bureau:

140 Sussex Road

140 Sussex Road – Open Building Permit on Swimming Pool since 2005.

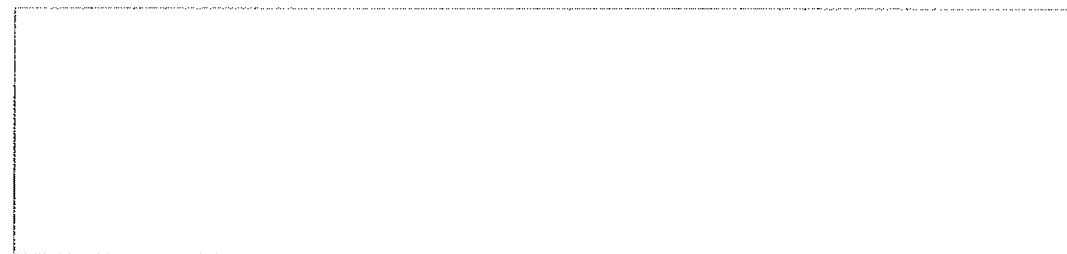
[Violation Issue, Permit Closed out, Certificate of Occupancy for Swimming Pool Issued]

140 Sussex Road – Open Building Permit on Second Floor Bathroom since 2011.

[Violation Issue, Permit Closed out, Certificate of Occupancy for Bathroom Issued]

140 Sussex Road – No Building Permit for Pergola near Swimming Pool.

[Violation Issue, LaRocca has now applied to legalize the pergola]



[Wall encroaches 1.8 feet in area closer to ALMS, will be allowed to remain “as is”; sidewalk size is not specified by the City so it can be any width]

140 Sussex Road – Tree Pits.

[tree pits are allowed just like sidewalk can be any width]

LaRocca “Parking Lot” on City Property

LaRocca “Parking Lot” on City Property – Reclaim property with NRPD parking notices and fence

[Notices posted, fence erected]

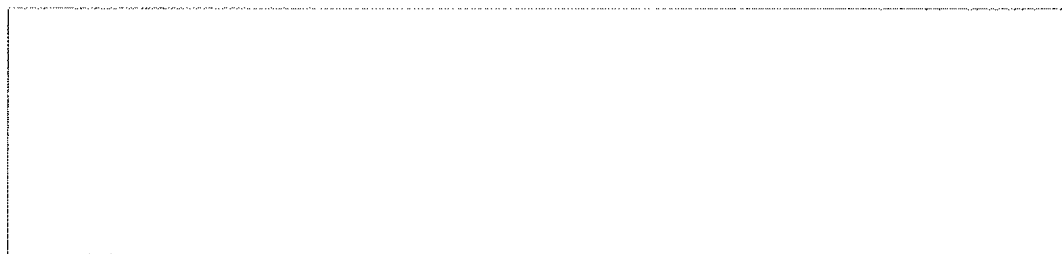
LaRocca “Parking Lot” on City Property – Test Soil Samples

[Soil Samples Taken, Report Produced, Various Levels of toxicity in the area]

LaRocca “Parking Lot” on City Property – Report to DEC/EPA for potential Clean Water Act violations.

[Potential water contamination remains as “open issue”]

LaRocca “Parking Lot” on City Property – Destruction of Public Property.



[No Action, at this time but still possible]

LaRocca "Parking Lot" on City Property – Other Criminal Acts related to the conversion which took place.

[No Action, at this time but still possible]

Clear Channel Property on Potter/Fifth

Clear Channel Property on Potter/Fifth – Billboard; not zoned for current use as Construction Supply Storage

[LaRocca moving structures and building materials out of Clear Channel property (trucks can remain)]

East Street – Send letters to East Street property owners about their encroachment onto City property including LaRocca

[City identified 6 encroachments on East Place, including LaRocca’s property on the corner. Letters to be sent this week to property owners requiring the removal of the encroachments]

East Street – “Accept” street.

[DPW Commissioner Alex Tergis states DPW does plow, pickup garbage, manage sewers on East Street] [No Action, None Planned]

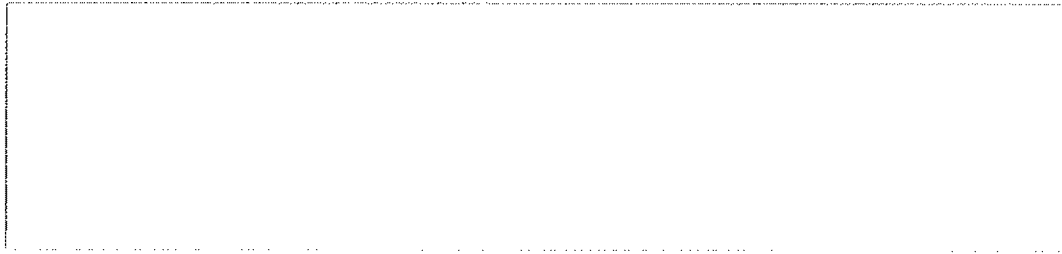
East Street – tree cut down, removed.

[No Action, None Planned]

East Street – traffic “peninsula” destroyed, removed.

[No Action, None Planned]

East Street – Construction equipment illegally stored on Guglielmo property



[No Action, None Planned]

East Place – Remove “Private Road“ signs on East Place.

[Signs removed]

East Place – “Accept” street.

[DPW Commissioner Alex Tergis states DPW does plow, pickup garbage, manage sewers on East Place]

DOCUMENT REQUESTS:

Invoices for Fence at LaRocca “Parking Lot”.

[No records provided]

1914 resolution and any legislative history or discussion or information related to why East Street and East Place were left on the list in the resolution.

[No records provided]

List of Private/Unaccepted streets in New Rochelle that was referenced by Alex on 12/15/14.

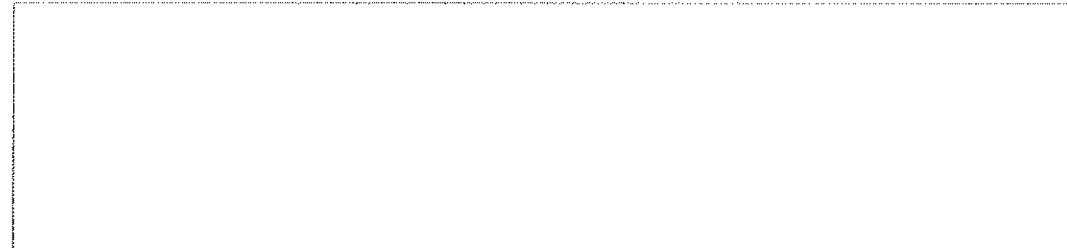
[No records provided]

Deed that was apparently obtained related to East Street and East Place.

[No records provided]

Report/Results related to drilling, testing of area at and around East Street/East Place and any information about contamination in the soil or area.

✓
[Records provided under request]



Several years ago, Parks Commissioner Bill Zimmerman came before the City Council to propose charging to park in the City Park parking lot on Fifth Avenue. Zimmerman noted that local businesses were using the municipal lot as free parking for their workers and Zimmerman wanted to earn revenue from that. As the new parking fees went into effect, La Rocca objected. As the largest employer in the immediate area, it was his employees who were parking their personal vehicles in the City Park lot. La Rocca along with other East Street businesses were also parking large commercial vehicles in the lot. Rather than pay the city for parking, La Rocca carved up city property on East Street to create “free” parking for his workers.

As the “La Rocca parking lot” has now been fenced off by the City, he can no longer use that “free parking” but he still not happy about it.

Does it surprise anyone in New Rochelle that this month’s City Council agenda includes a resolution to remove the parking fee at City Park “at the recommendation of staff” which means Bill Zimmerman — who advocated for over a year to having parking fees — is now advocating they be removed.

Talk of the Sound will continue to monitor progress by the City against the action list developed in May 2015.

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 November 9, 2015  Robert Cox  Archive, Municipal



Exhibit "51"

PLTF010



KNOWN AS DVIRKA AND BARTILUCCI CONSULTING ENGINEERS

4 West Red Oak Lane, White Plains, New York 10604

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Michael G. Savarese, P.E.

Stephen E. Tauss

October 8, 2015

Edward Dunphy
Special Counsel to the Corporation Counsel
City of New Rochelle
515 North Avenue
New Rochelle, NY 10801

Re: Supplemental Sampling Program
Fifth Avenue (East Place and Chatsworth Avenue)
New Rochelle, NY
D&B No. 3372-06

Dear Mr. Dunphy:

The purpose of this letter is to document the activities undertaken and present the findings of the supplemental sampling program for the property located at Fifth Avenue (East Place and Chatsworth Avenue), in New Rochelle, New York.

Background

At the request of the City of New Rochelle (City), D&B Engineers and Architects, P.C. (D&B) conducted sampling in the outdoor area immediately north of the City-owned skate park which is currently fenced off. It was our understanding that the surface characteristics of this area have been altered by an entity other than the City which owns this property. Sampling of the asphalt type material which has been placed in this area was conducted to determine if it contains hazardous constituents. The supplemental sampling program consisted of the following:

- Two samples, identified as SS-01 and SS-02, were collected from two sample locations located in the parking area including one in the northern portion and one in the southern portion of this area as identified on the Sample Location Map provided in Attachment A;
- Samples were collected using a hand auger to a depth of approximately 16 inches below grade;

PLTF011

D&B ENGINEERS AND ARCHITECTS, P.C.

Edward Dunphy
Special Counsel to the Corporation Counsel
City of New Rochelle
October 8, 2015

Page 2

- Samples were screened with a photoionization detector (PID) and the results recorded;
- Samples were collected and analyzed for Target Compound List (TCL) volatile organic compounds (VOCs) by United States Environmental Protection Agency (USEPA) Method 8260, TCL semi-volatile organic compounds (SVOCs) by USEPA Method 8270, pesticides by USEPA Method 8081B, polychlorinated biphenyls (PCBs) by USEPA Method 8082, metals by USEPA Series Methods 6000/7000 and cyanide by USEPA Method 9012B;
- Samples were sent to Chemtech, a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) certified laboratory for the specified environmental media and analysis. All samples were submitted for analysis utilizing a 10-business day (2-week) turn around time.

Findings

In order to assist in the evaluation of the chemical data, the soil sample results have been compared to both the Unrestricted Use Soil Cleanup Objectives (SCOs) and the Commercial Use SCOs set forth by the New York State Department of Environmental Conservation (NYSDEC) in 6 NYCRR Part 375. A total of two soil samples were collected from two locations within the Site. PID readings were 16.7 parts per million (ppm) in sample SS-01 and 7.6 ppm in SS-02 as noted in the Daily Field Activity Report provided in Attachment B.

As shown on the data summary tables provided in Attachment C, all sample results were either not detected or were detected at concentrations below the Unrestricted Use SCOs and the Commercial Use SCOs, with the exception of the following:

- Acetone was detected at a concentration of 200 micrograms per kilogram (ug/kg) in sample SS-02 which exceeds the Unrestricted Use SCO of 50 ug/kg but is below the Commercial Use SCO of 500,000 ug/kg;
- Benzo(a)anthracene was detected at a concentration of 1,700 ug/kg in sample SS-02 which exceeds the Unrestricted Use SCO of 1,000 ug/kg but is below the Commercial Use SCO of 5,600 ug/kg, and a concentration of 14,700 ug/kg in sample SS-01 which exceeds both the Unrestricted Use and Commercial Use SCOs;

PLTF012

D&B ENGINEERS AND ARCHITECTS, P.C.

Edward Dunphy
Special Counsel to the Corporation Counsel
City of New Rochelle
October 8, 2015

Page 3

- Benzo(a)pyrene was detected at a concentration of 13,300 ug/kg in sample SS-01 and 1,400 ug/kg in sample SS-02 which exceed both the Unrestricted Use SCO of 1,000 ug/kg and the Commercial Use SCO of 1,000 ug/kg;
- Benzo(b)fluoranthene was detected at a concentration of 1,700 ug/kg in sample SS-02 which exceeds the Unrestricted Use SCO of 1,000 ug/kg but is below the Commercial Use SCO of 5,600 ug/kg, and a concentration of 16,300 ug/kg in sample SS-01 which exceeds both the Unrestricted Use and Commercial Use SCOs;
- Benzo(k)fluoranthene was detected at a concentration of 7,300 ug/kg in sample SS-01 and 990ug/kg in sample SS-02 which exceed the Unrestricted Use SCO of 800 ug/kg but are below the Commercial Use SCO of 56,000 ug/kg;
- Chrysene was detected at a concentration of 9,700 ug/kg in sample SS-01 and 1,600ug/kg in sample SS-02 which exceed the Unrestricted Use SCO of 1,000 ug/kg but are below the Commercial Use SCO of 56,000 ug/kg;
- Dibenzo(a,h)anthracene was detected at a concentration of 3,400 ug/kg in sample SS-01 which exceeds both the Unrestricted Use SCO of 330 ug/kg and the Commercial Use SCO of 560 ug/kg;
- Indeno(1,2,3-cd)pyrene was detected at a concentration of 890 ug/kg in sample SS-02 which exceeds the Unrestricted Use SCO of 500 ug/kg but is below the Commercial Use SCO of 5,600 ug/kg, and a concentration of 10,000 ug/kg in sample SS-01 which exceeds both the Unrestricted Use and Commercial Use SCOs;
- Lead was detected at a concentration of 191 ug/kg in sample SS-01 which exceeds the Unrestricted Use SCO of 63 ug/kg but is below the Commercial Use SCO of 1,000 ug/kg;
- Mercury was detected at a concentration of 0.199 ug/kg in sample SS-01 which exceeds the Unrestricted Use SCO of 0.18 ug/kg but is below the Commercial Use SCO of 2.8 ug/kg; and
- Zinc was detected at a concentration of 171 ug/kg in sample SS-01 which exceeds the Unrestricted Use SCO of 109 ug/kg but is below the Commercial Use SCO of 10,000 ug/kg.

PLTF013

D&B ENGINEERS AND ARCHITECTS, P.C.

Edward Dunphy
Special Counsel to the Corporation Counsel
City of New Rochelle
October 8, 2015

Page 4

Conclusions/Recommendations

All compounds/constituents analyzed for were either not detected or were detected at concentrations below their respective Unrestricted Use SCO and Commercial Use SCO in the soil samples, with the exception of one VOC, two SVOCs and three metals which exceeded their respective Unrestricted Use SCO but were below their respective Commercial Use SCO. There were several exceptions including five SVOCs which exceed both their respective Unrestricted Use and Commercial Use SCOs.

The analytical results of the sampling were compared to the soil sampling conducted as part of the *Phase II Environmental Site Assessment for the Proposed DPW Relocation Site, Fifth Avenue (East Place and Chatsworth Avenue), New Rochelle, New York* prepared by D&B dated March 2015. Based on the findings noted above, D&B concludes that the results of the supplemental soil sampling are similar in nature to the results of the soil sampling previously conducted on the property. Since the use of the property is commercial in nature, no further action is required of the areas that were investigated as part of this soil sampling program. However, if in the future the use or zoning of the property is changed, additional investigation may be necessary.

If you have any questions, please do not hesitate to contact me at (914) 467-5300, Ext. 19.

Sincerely,



Brian M. Veith, P.E.
Senior Vice President

BMV/KMt/nc
Attachments
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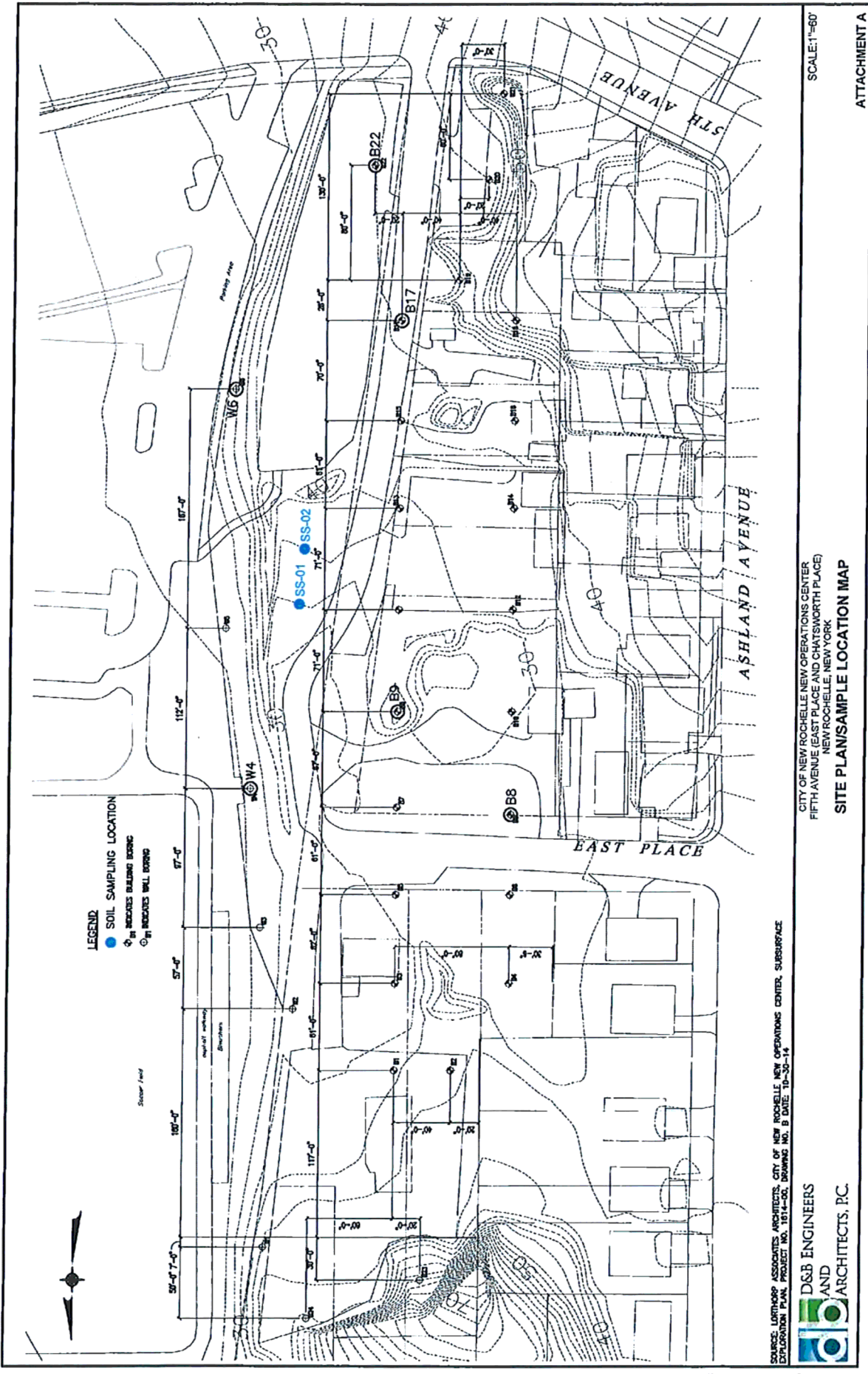
PLTF014

D&B ENGINEERS AND ARCHITECTS, P.C.

ATTACHMENT A

SITE PLAN/SAMPLE LOCATION MAP

PLTF015



CITY OF NEW ROCHELLE NEW OPERATIONS CENTER
 FIFTH AVENUE (EAST PLACE AND CHATSWORTH PLACE)
 NEW ROCHELLE, NEW YORK

SITE PLAN/SAMPLE LOCATION MAP

SCALE: 1"=60'

ATTACHMENT A

SOURCE: LOTHROP ASSOCIATES ARCHITECTS, CITY OF NEW ROCHELLE NEW OPERATIONS CENTER, SUBSURFACE EXPLORATION PLAN, PROJECT NO. 1814-00, DRAWING NO. B DATE: 10-30-14




PLTF016

D&B ENGINEERS AND ARCHITECTS, P.C.

ATTACHMENT B

DAILY FIELD ACTIVITY REPORT

PLTF017

 D&B ENGINEERS AND ARCHITECTS, P.C.		DATE: Aug. 21, 2015	DAY: Friday
		REPORT NO.	
		PAGE NO. 1 OF 2	
		PROJECT NO. 3372	

DAILY FIELD ACTIVITY REPORT

PROJECT	City of New Rochelle	WEATHER	TIME	TEMP.	PRECIP.	WIND (MPH)	WIND (DIR)
LOCATION	5 th Avenue and East Place	Mostly Cloudy	7:30	80	0	10	
ATTACHMENTS							

WORK PERFORMED: Soil Sampling

PERSONNEL ON SITE:

NAME	AFFILIATION	ARRIVAL TIME	DEPART TIME
Peter Mulrean	D&B Engineers and Architects, P.C	7:30	10:00

EQUIPMENT ON SITE:

TYPE	MODEL	TYPE	MODEL
Pick Axe		Shovel	

HEALTH & SAFETY:

PPE REQUIRED: LEVEL D LEVEL C LEVEL B LEVEL A **HASP?** Yes

SITE SAFETY OFFICER:

H & S NOTES: Site work performed in Level D PPE.

PLTF018

		DATE: Aug. 21, 2015 DAY: Friday
		REPORT NO.
		PAGE NO. 2 OF 2
		PROJECT NO. 3372
DAILY FIELD ACTIVITY REPORT		
<i>DESCRIPTION OF WORK PERFORMED AND OBSERVED</i>		
<p>One D&B personnel with pick axe and shovel, 1 support truck on site. The following soil sampling point locations were completed using hand tools by D&B for the day:</p> <ol style="list-style-type: none"> 1. Soil Sampling Point SS-01 completed at the depth of 16". (PID 16.7ppm) 2. Soil Sampling Point SS-02 completed at the depth of 16". (PID 7.6ppm) <p>Two samples were collected from two locations located in the parking area including one in the northern portion and one in the southern portion of this area. Samples were collected using hand tools at a depth of 16" where the surface material changed. All samples were screened with a photoionization detector (PID) and the results recorded. All samples were sent to Chemtech, a New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP) certified laboratory for the specified environmental media and analysis.</p> <p>The detailed soil description was noted in the bound field log book.</p>		
		REVIEWED BY
PRINT NAME: Peter Mulrean		PRINT NAME:
SIGNATURE:		SIGNATURE:
<input type="checkbox"/> electronic copy to _____ - date:		

PLTF019

D&B ENGINEERS AND ARCHITECTS, P.C.

ATTACHMENT C

LABORATORY DATA SUMMARY TABLES

PLTF020

Page 1 of 5

Table 1
City of New Rochelle - Fifth Avenue
Supplemental Soil Sample Results
Volatile Organic Compounds

Sample ID Sampling Date Sample Depth (In Inches) Units	SS-01 8/21/2015 16 ug/kg	SS-02 8/21/2015 16 ug/kg	NYCRR 6 Part 375 Unrestricted Use Soil Cleanup Objectives (SCOs) ug/kg	NYCRR 6 Part 375 Commercial Use Soil Cleanup Objectives (SCO) ug/Kg
VOLATILE COMPOUNDS				
1,1,1-Trichloroethane	U	U	680	500,000
1,1,1,2-Tetrachloroethane	U	U	--	--
1,1,1,2-Trichlorotrifluoroethane	U	U	--	--
1,1,2-Trichloroethane	U	U	--	--
1,1-Dichloroethane	U	U	270	240,000
1,1-Dichloroethene	U	U	330	500,000
1,2,3-Trichlorobenzene	U	U	--	--
1,2,4-Trichlorobenzene	U	U	--	--
1,2-Dibromo-3-Chloropropane	U	U	--	--
1,2-Dibromoethane	U	U	--	--
1,2-Dichlorobenzene	U	U	1100	500,000
1,2-Dichloroethane	U	U	20	30,000
1,2-Dichloropropane	U	U	--	--
1,3-Dichlorobenzene	U	U	2400	280,000
1,4-Dichlorobenzene	U	U	1800	130,000
1,4-Dioxane	U	U	100	13,000
2-Butanone	U	56.7 J	120	500,000
2-Hexanone	U	U	--	--
4-Methyl-2-Pentanone	U	U	--	--
Acetone	U	200	50	500,000
Benzene	U	U	60	44,000
Bromochloromethane	U	U	--	--
Bromodichloromethane	U	U	--	--
Bromoform	U	U	--	--
Bromomethane	U	U	--	--
Carbon Disulfide	U	U	--	--
Carbon Tetrachloride	U	U	760	22,000
Chlorobenzene	U	U	1100	500,000
Chloroethane	U	U	--	--
Chloroform	U	U	370	350,000
Chloromethane	U	U	--	--
cis-1,2-Dichloroethene	U	U	--	500,000
cis-1,3-Dichloropropene	U	U	--	--
Cyclohexane	U	U	--	--
Dibromochloromethane	U	U	--	--
Dichlorodifluoromethane	U	U	--	--
Ethyl Benzene	U	U	1000	390,000
Isopropylbenzene	U	U	--	--
m/p-Xylenes	U	U	260	500,000
Methyl Acetate	U	U	--	--
Methyl tert-butyl Ether	U	U	930	500,000
Methylcyclohexane	U	U	--	--
Methylene Chloride	U	U	50	500,000
o-Xylene	U	U	260	500,000
Styrene	U	U	--	--
t-1,3-Dichloropropene	U	U	--	--
Tetrachloroethene	U	U	1300	150,000
Toluene	U	5.7 J	700	500,000
trans-1,2-Dichloroethene	U	U	190	500,000
Trichloroethene	U	U	470	200,000
Trichlorofluoromethane	U	U	--	--
Vinyl Chloride	U	U	20	13,000
Total Volatile Compounds	0	262.4	--	--

Footnotes/Qualifiers

ug/kg: Micrograms per kilogram

U: Analyzed for but not detected

--: No standard

J: Estimated value

Exceeds Unrestricted Use SCO but below Commercial Use SCO

PLTF021

Table 2
City of New Rochelle - Fifth Avenue
Supplemental Soil Sample Results
Semivolatile Organic Compounds

Sample ID Sampling Date	SS-01 8/21/2015	SS-02 8/21/2015	NYCRR 6 Part 375 Unrestricted Use Soil Cleanup Objectives (SCOs) ug/kg	NYCRR 6 Part 375 Commercial Use Soil Cleanup Objectives (SCOs) ug/kg
Sample Depth (in Inches)	16	16		
Units	ug/kg	ug/kg	ug/kg	ug/kg
SEMIVOLATILE COMPOUNDS				
1,1-Biphenyl	U	U	--	--
1,2,4,5-Tetrachlorobenzene	U	U	--	--
2,2-oxybis(1-Chloropropane)	U	U	--	--
2,3,4,6-Tetrachlorophenol	U	U	--	--
2,4,5-Trichlorophenol	U	U	--	--
2,4,6-Trichlorophenol	U	U	--	--
2,4-Dichlorophenol	U	U	--	--
2,4-Dimethylphenol	U	U	--	--
2,4-Dinitrophenol	U	U	--	--
2,4-Dinitrotoluene	U	U	--	--
2,6-Dinitrotoluene	U	U	--	--
2-Chloronaphthalene	U	U	--	--
2-Chlorophenol	U	U	--	--
2-Methylnaphthalene	U	U	--	--
2-Methylphenol	U	U	330	500,000
2-Nitroaniline	U	U	--	--
2-Nitrophenol	U	U	--	--
3,3-Dichlorobenzidine	U	U	--	--
3+4-Methylphenols	U	U	330	500,000
3-Nitroaniline	U	U	--	--
4,6-Dinitro-2-methylphenol	U	U	--	--
4-Bromophenyl-phenylether	U	U	--	--
4-Chloro-3-methylphenol	U	U	--	--
4-Chloroaniline	U	U	--	--
4-Chlorophenyl-phenylether	U	U	--	--
4-Nitroaniline	U	U	--	--
4-Nitrophenol	U	U	--	--
Acenaphthene	2100 J	U	20,000	500,000
Acenaphthylene	U	U	100,000	500,000
Acetophenone	U	U	--	--
Anthracene	5000	900 J	100,000	500,000
Atrazine	U	U	--	--
Benzaldehyde	U	U	--	--
Benzo(a)anthracene	14700	1700	1,000	5,600
Benzo(a)pyrene	13300	1400	1,000	1,000
Benzo(b)fluoranthene	16300	1700	1,000	5,600
Benzo(g,h,i)perylene	9300	830 J	100,000	500,000
Benzo(k)fluoranthene	7300	990 J	800	56,000
Bis(2-chloroethoxy)methane	U	U	--	--
Bis(2-chloroethyl)ether	U	U	--	--
Bis(2-Ethylhexyl)phthalate	U	U	--	--
Butylbenzylphthalate	U	U	--	--
Caprolactam	U	U	--	--
Carbazole	2300 J	590 J	--	--
Chrysene	9700	1600	1,000	56,000
Dibenzo(a,h)anthracene	3400 J	260 J	330	560
Dibenzofuran	1600 J	U	7,000	350,000
Diethylphthalate	U	U	--	--
Dimethylphthalate	U	2200	--	--
DI-n-butylphthalate	U	U	--	--
DI-n-octyl phthalate	U	U	--	--
Fluoranthene	20600	3800	100,000	500,000
Fluorene	2900 J	360 J	30,000	500,000
Hexachlorobenzene	U	U	330	6,000

See next page for Footnotes/Qualifiers

PLTF022

Table 2
 City of New Rochelle - Fifth Avenue
 Supplemental Soil Sample Results
 Semivolatile Organic Compounds

Sample ID Sampling Date	SS-01 8/21/2015	SS-02 8/21/2015	NYCRR 6 Part 375 Unrestricted Use Soil Cleanup Objectives (SCOs) ug/kg	NYCRR 6 Part 375 Commercial Use Soil Cleanup Objectives (SCOs) ug/kg
Sample Depth (In Inches)	16	16		
Units	ug/kg	ug/kg		
COMPOUNDS CONTINUED				
Hexachlorobutadiene	U	U	--	--
Hexachlorocyclopentadiene	U	U	--	--
Hexachloroethane	U	U	--	--
Indeno(1,2,3-cd)pyrene	<u>10000</u>	890 J	500	5,600
Isophorone	U	U	--	--
Naphthalene	880 J	U	12,000	500,000
Nitrobenzene	U	U	--	69,000
n-Nitroso-di-n-propylamine	U	U	--	--
N-Nitrosodiphenylamine	U	U	--	--
Pentachlorophenol	U	U	800	6,700
Phenanthrene	15400	4000	100,000	500,000
Phenol	U	U	330	500,000
Pyrene	24000	3100	100,000	500,000
Total Semivolatile Compounds	158780	24320	--	--

Footnotes/Qualifiers

ug/kg: Micrograms per kilogram

U: Analyzed for but not detected

--: No standard

J: Estimated value

Exceeds Unrestricted Use SCO but below Commercial Use SCO

Exceeds Unrestricted Use SCO and Commercial Use SCO



PLTF023

Table 3
City of New Rochelle - Fifth Avenue
Supplemental Soil Sample Results
Pesticides and Polychlorinated Biphenyls (PCBs)

Sample ID Sampling Date	SS-01 8/21/2015	SS-02 8/21/2015	NYCRR 6 Part 375 Unrestricted Use Soil Cleanup Objectives (SCOs) ug/kg	NYCRR 6 Part 375 Commercial Use Soil Cleanup Objectives (SCOs) ug/kg
Sample Depth (in Inches)	16	16		
Units	ug/kg	ug/kg		
PESTICIDES				
4,4-DDD	U	U	3	92,000
4,4-DDE	U	U	3	62,000
4,4-DDT	U	U	3	47,000
Aldrin	U	U	5	680
alpha BHC	U	U	20	3,400
alpha-Chlordane	52 P	U	94	24,000
beta-BHC	U	U	36	3,000
delta-BHC	U	U	40	500,000
Dieldrin	U	U	5	1,400
Endosulfan I	U	U	2,400	200,000
Endosulfan II	U	U	2,400	200,000
Endosulfan Sulfate	U	U	2,400	200,000
Endrin	U	U	14	89,000
Endrin Aldehyde	U	U	--	--
Endrin Ketone	U	U	--	--
gamma-BHC (Lindane)	U	U	100	9,200
gamma-Chlordane	26.6	U	94	24,000
Heptachlor	U	U	42	15,000
Heptachlor Epoxide	U	U	--	--
Methoxychlor	U	U	--	--
Toxaphene	U	U	--	--
PCBS				
Aroclor-1016	U	U	100	1,000
Aroclor-1221	U	U	100	1,000
Aroclor-1232	U	U	100	1,000
Aroclor-1242	U	U	100	1,000
Aroclor-1248	U	U	100	1,000
Aroclor-1254	U	U	100	1,000
Aroclor-1260	51 P	U	100	1,000
Total PCBs	51	110	100	1,000

Footnotes/Qualifiers:

- ug/kg: Micrograms per kilogram
- U: Analyzed for but not detected
- : No standard
- P: Indicates >25% difference for detected concentrations between the two GC columns

PLTF024

Table 4
 City of New Rochelle - Fifth Avenue
 Supplemental Soil Sample Results
 Metals and Cyanide

Sample ID	SS-01	SS-02	NYCRR 6 Part 375	NYCRR 6 Part 375
Sampling Date	8/21/2015	8/21/2015	Unrestricted Use Soil	Commercial Use Soil
Sample Depth (In Inches)	16	16	Cleanup	Cleanup
Units	mg/kg	mg/kg	Objectives (SCOs)	Objectives (SCOs)
			mg/kg	mg/kg
Metals				
Aluminum	3360	2450	--	--
Antimony	U	U	--	--
Arsenic	6.86	1.67 J	13	16
Barium	81.7	64.1	350	400
Beryllium	0.322	U	7.2	590
Cadmium	1.82	1.02	2.5	9.3
Calcium	67100	20200	--	--
Chromium	12	4.75	30	1,500
Cobalt	5.34	3.31 J	--	--
Copper	37.7	31.3	50	270
Iron	12500	5580	--	--
Lead	191	14.3	63	1,000
Magnesium	37400	4790	--	--
Manganese	231	185	1,600	10,000
Mercury	0.199	0.027 J	0.18	2.8
Nickel	16.3	6.14 J	30	310
Potassium	694	1070	--	--
Selenium	U	3.38	3.9	1,500
Silver	U	U	2	1,500
Sodium	145	247 J	--	--
Thallium	U	U	--	--
Vanadium	21.1	14.4	--	--
Zinc	171	86.5	109	10,000
Cyanide	U	U	27	27

Footnotes/Qualifiers:

mg/kg: Milligrams per kilogram

U: Analyzed for but not detected

--: No standard

J: Estimated value

Exceeds Unrestricted Use SCO but below Commercial Use SCO

Exhibit "52"



D0297







Exhibit "53"

Main | Terms/Miscellaneous |

Purchase Order Details

Dept/Loc **PLTF007** PW PW
 Buyer **Harriet Newton**
 Status **0 - Closed**
 GL effective date **09/10/2015**
 Receive By Quantity Amount
 Approved Approved
 Entered **09/10/2015**
 Fiscal year **2015** Period **09**
 Needed By
 PO number **150812**
 Expire
 General commodity
 Last Changed **0**
 General description **INSTALLED FENCE AT EAST STREET**

Vendor Details

Vendor **773** Committed
 Name **GLOBE FENCE & RAILINGS INC**
 PO mailing **0**
121 SURREY DRIVE

NEW ROCHELLE NY 10804

 Delivery method Print Fax E-Mail E-Procurement
 Remit **0**

Shipping Details

Ship to **EG**
NEW ROCHELLE DPW- ENGINEERING
515 NORTH AVE

NEW ROCHELLE NY 10801
 Email
 Reference

Line	Ordered Amount	Liquidated	Balance	1st GL Account
1	1,930.00	1,930.00	0.00	1500-20000

Totals

Ordered	1,930.00
Liquidated	1,930.00
Balance	0.00

Exhibit "54"

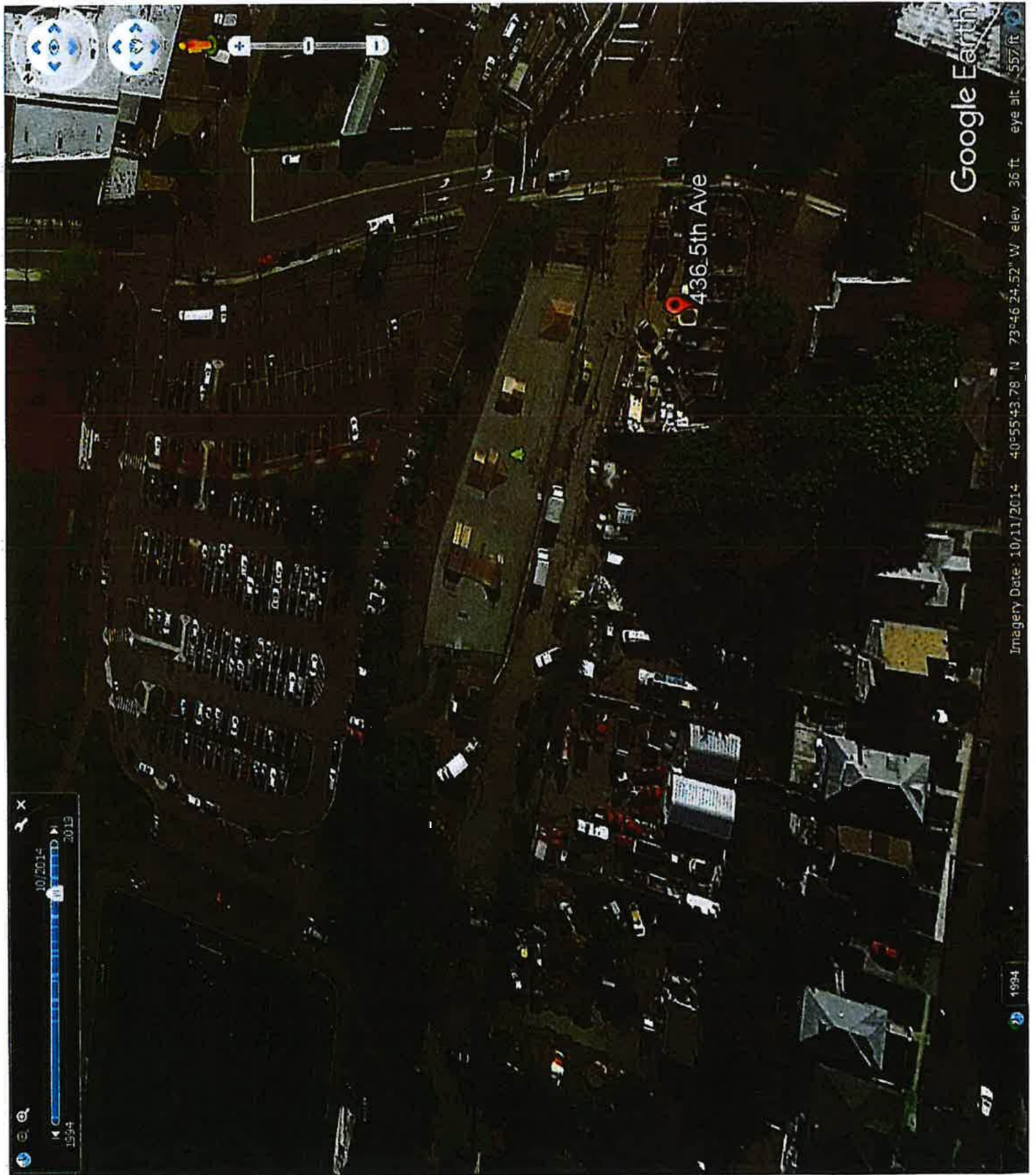


EXHIBIT
P1H14
tabbles



R

405545.24 N 73946.24 W elev. 29 ft eye alt 45 ft



Exhibit "55"



Exhibit "56"



Charles B. Strome III
City Manager
(914) 654-2140

515 North Avenue
New Rochelle, NY 10801
Fax: (914) 654-2174

Email – Cstrome@ci.new-rochelle.ny.us

City of New Rochelle
New York

March 17, 2003

Mr. Flavio La Rocca
F. La Rocca & Sons Landscaping
2 Trinity Place
New Rochelle, New York 10805

Dear Mr. La Rocca:

This is in response to your March 6, 2003 letter to me relative to the rental/lease of space on City-owned property on Fifth Avenue. As you know, the area is currently used by Persico Construction as a staging area.

The use of this property by Persico was intended to be a temporary arrangement so that the area could be used as a staging area for construction projects that are currently underway in the City. As part of the arrangement, Persico will turn this property into an overflow parking area for City Park, which is in need of additional parking.

As a result, it is not available for lease/rental following Persico's use. I am sorry I could not be of more assistance.

Sincerely,

CHARLES B. STROME, III
City Manager

cc: John Clemente, City Engineer
William Zimmermann, Director of Parks and Recreation

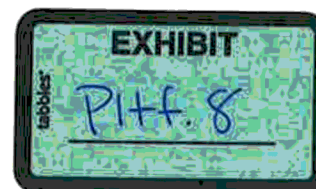


Exhibit "57"

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

3

-----X
CITY OF NEW ROCHELLE,

4

PLAINTIFF,

5

- against -

Index No.:

6

54190/2016

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FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC., a/k/a F. LA ROCCA &

8

SONS, INC. And FMLR REALTY MANAGEMENT LLC,

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DEFENDANTS.
-----X

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DATE: May 28, 2021

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TIME: 1:00 P.M.

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EXAMINATION BEFORE TRIAL of the
Defendant, FLAVIO LA ROCCA & SONS, INC., by
MARTIN SANCHEZ, taken by the Plaintiff,
pursuant to a Court Order, held via
Veritext Virtual Services, before Edith
Tirado-Plaza, a Notary Public of the State
of New York.

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A P P E A R A N C E S:

WILSON ELSEER MOSKOWITZ EDELMAN & DICKER,
LLP

Attorneys for the Plaintiff
1133 Westchester Avenue
White Plains, New York 10604
BY: ROLAND KOKE, ESQ.

roland.koke@wilsonelser.com AND
BY: PETER MEISELS, ESQ.
peter.meisels@wilsonelser.com

SILVERBERG ZALANTIS, LLC

Attorneys for the Defendants
120 White Plains Road, Suite 305
Tarrytown, New York 10591
BY: KATHY ZALANTIS, ESQ.

ALSO PRESENT:

ROLAND KOKE
KARA GALLAHER - SPANISH INTERPRETER
ELITE LANGUAGE SERVICES

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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

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M. SANCHEZ
221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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COURT REPORTER: Due to the need for this deposition to take place remotely because of the Government's Order for social distancing the parties will stipulate that the court reporter may swear in the witness over the phone/Veritext Virtual video conference and that the witness has verified that he is in fact Martin Sanchez Quiroz.

May I swear in the Spanish interpreter and the witness?

MR. MEISELS: Yes.

MS. ZALANTIS: Yes.

K A R A G A L L A G H E R, a Spanish interpreter, solemnly swore to translate the following questions from English to Spanish and answers from Spanish to English:

M A R T I N S A N C H E Z Q U I R O Z, called as a witness, having been first duly sworn, through an interpreter, by a Notary Public of the State of New York, was

1 M. SANCHEZ

2 examined and testified as follows:

3 EXAMINATION BY

4 MR. MEISELS:

5 Q. Mr. Sanchez, my name is Peter
6 Meisels. I'm going to be asking you a few
7 questions. If they're not clear, please
8 tell me and I will rephrase them; okay?

9 A. Yes.

10 Q. When did you find out that you
11 were going to have this deposition today?

12 A. Today.

13 Q. Who told you that you would
14 have the deposition today?

15 A. My boss.

16 Q. Who is your boss?

17 A. Flavio La Rocca.

18 Q. Did he tell you what this
19 deposition was about?

20 A. No.

21 Q. What do you understand this
22 deposition is about?

23 A. I don't know what it's about.

24 Q. How long have you worked for
25 Mr. La Rocca?

1 M. SANCHEZ

2 A. I've been working 15 years for
3 La Rocca.

4 Q. And were you working for Mr. La
5 Rocca in May of 2015?

6 A. Yes.

7 Q. Did you ever have occasion to
8 speak with Miss Zalantis?

9 A. No.

10 Q. Did you ever have occasion to
11 speak to anybody about this deposition?

12 A. No.

13 MS. ZALANTIS: Can you just
14 explain who Miss Zalantis is? I'm
15 not sure if he knows.

16 Q. Mr. Sanchez, when I refer to
17 Miss Zalantis, I was referring to Kathy
18 Zalantis who is the lawyer for Mr. La
19 Rocca. So, with that explanation, did you
20 ever have occasion to speak with Miss
21 Zalantis before today?

22 A. No.

23 Q. When I ask the question did you
24 ever speak with her, I'm including all
25 communications such as a telephone call or

1 M. SANCHEZ

2 a meeting in person. Are you certain that
3 you've never spoken to her?

4 A. No.

5 Q. When you say no, do you mean
6 that you never spoke to her?

7 A. No, I have not spoken to her.

8 MS. ZALANTIS: Can you ask if
9 a Zoom conference would be included
10 in the list of ways that we spoke?

11 Q. Mr. Sanchez, did you ever have
12 a Zoom conference with Miss Zalantis which
13 something like what we're doing now where
14 people were speaking to each other through
15 the computers?

16 A. Yes.

17 Q. Do you recall when that was?

18 A. Yes.

19 Q. I'm not asking you for what you
20 said to each other, but did you learn that
21 you would have this deposition today?

22 A. Yes.

23 Q. What did you understand this
24 deposition was about?

25 A. Some garbage that they said my

1 M. SANCHEZ

2 boss threw out but he didn't throw out
3 anything.

4 Q. So, you understood that the
5 deposition would be about your boss having
6 thrown out garbage; is that right?

7 A. About some trees that were cut
8 down but we don't do that.

9 Q. So, you understood that the
10 deposition would be about trees that got
11 cut down; is that right?

12 A. Yes.

13 Q. Is there any reason that you
14 would have difficulty answering my
15 questions today?

16 A. I don't understand.

17 Q. I'm going to ask you questions.
18 Will you have a problem understanding my
19 questions?

20 A. No.

21 Q. Will you have a problem
22 answering the questions?

23 A. No.

24 Q. Are you taking any medication
25 today?

1 M. SANCHEZ

2 A. No, not today.

3 Q. Did you take any medication
4 yesterday?

5 A. Yesterday afternoon I took two
6 pills, Aleve.

7 Q. Am I correct that you have
8 worked for Mr. La Rocca for 15 years?

9 A. Yes.

10 Q. What kind of work have you done
11 for Mr. La Rocca over those 15 years?

12 A. I drive for him and I do some
13 carpentry work for him and I do joiners for
14 the blue stone. I make the joiners for the
15 blue stone. It's made out of sand and
16 cement.

17 Q. Mr. Sanchez, does that mean
18 that you actually make the joiners that are
19 used when blue stone is installed on the
20 job?

21 A. Yes.

22 Q. Do you install the blue stone?

23 A. Yes.

24 Q. Mr. Sanchez, did you go to
25 public school?

1 M. SANCHEZ

2 A. In my country I went until
3 sixth grade of elementary school.

4 Q. What country do you come from?

5 A. I'm from Mexico.

6 Q. So, am I correct that you came
7 from Mexico and you attended up to the
8 sixth grade?

9 A. Yes.

10 Q. Did you complete the sixth
11 grade?

12 A. I started working in the fields
13 then.

14 Q. Did you start working in the
15 fields after the sixth grade or during the
16 sixth grade?

17 A. After I left sixth grade.

18 Q. In Mexico when you go to the
19 sixth grade, how old would you be?

20 A. About 15 years.

21 Q. Are you literate in Spanish?

22 A. Yes.

23 Q. I'm calling your attention to
24 May of 2015. Do you recall what kind of
25 work you were doing for Mr. La Rocca in May

1 M. SANCHEZ

2 of 2015?

3 A. So we do all different kinds of
4 work. So, we do some pavements like I
5 mentioned, we do walkways, we fix
6 driveways.

7 Q. Do you ever have to cut down
8 trees to do your job?

9 A. No, when a tree has to be cut
10 down then the owner of the house gets in
11 contact with the company to cut down trees.

12 Q. In 2015 where were you living?

13 A. I live now at the same address
14 368 North Avenue, Apartment 1, New
15 Rochelle.

16 Q. Do you work at Mr. La Rocca's
17 yard on East Street?

18 A. Yes.

19 Q. How do you get from your house
20 to your job?

21 A. I have a car.

22 Q. So, you drive?

23 A. Yes.

24 Q. Where do you park your car at
25 work?

1 M. SANCHEZ

2 A. I park it in the city lot.

3 Q. Is that the city lot that's
4 part of Flowers Park?

5 A. A lot of people park there.

6 Q. But my question was do you park
7 at the city lot in Flowers Park?

8 A. In the park by the skating.

9 Q. When you say in the park by the
10 skating, do you mean near the skate park?

11 A. Yes, next to it below.

12 Q. I'm going to show you a short
13 video and see what parts of it you're able
14 to describe for us. This video has been
15 marked as Plaintiff's Exhibit 13 for
16 identification.

17 Mr. Sanchez, are you able to
18 see that picture?

19 A. Yes.

20 Q. I'm particularly referring to
21 the video at 11 seconds. Can you tell me
22 what is fairly and accurately depicted in
23 that photograph?

24 A. Yes.

25 Q. Please explain what's shown.

1 M. SANCHEZ

2 A. I can see a machine and some
3 people. I can't see the rest very well.

4 Q. Do you remember having seen
5 this back in May of 2015?

6 A. No, I don't remember.

7 Q. Back in May of 2015, did you
8 work on a project to clear the gravel in
9 the area where you see the machine?

10 A. Some guys were sent to work on
11 that but I stayed in the yard to fix some
12 tools that had broken.

13 Q. Do you remember which guys were
14 sent to work on it?

15 A. I don't remember because the
16 guys who had worked here before have left.

17 Q. Do you remember Mr. Maya
18 working on it?

19 A. No, no, I don't know about him.

20 Q. Did you see any of the work
21 that those guys were doing?

22 A. I just know that they were
23 working and cleaning up the gravel because
24 when it rains a lot of gravel comes down
25 the road and a lot of potholes are there

1 M. SANCHEZ

2 and they were filling them in.

3 Q. And did you see them do that?

4 A. Yes, because the boss sent them
5 them to do that to rake the gravel so that
6 everything would be smoother.

7 Q. Did you see them do that?

8 A. Yes, because you can see the
9 whole street from there.

10 Q. When you say the whole street,
11 do you mean East Street?

12 A. Yes.

13 Q. Looking at that photograph
14 again, do you recall seeing this?

15 A. No.

16 Q. The yellow machine that you see
17 in the picture, do you know who owns that
18 machine?

19 A. No, I don't know because all of
20 Flavio La Rocca's vehicles and machinery
21 have his name on it and on this one I don't
22 see that.

23 Q. Do you recognize any of the
24 people in the photograph?

25 A. No, you can't see them very

1 M. SANCHEZ

2 well. They're very far away in the photo.

3 Q. Mr. Sanchez, now are you able
4 to recognize any of the workers in the
5 photograph?

6 A. No, I see them even further
7 away.

8 Q. Mr. Sanchez, am I correct that
9 the yellow truck on the left belongs to Mr.
10 La Rocca?

11 A. Yes.

12 Q. Am I correct that the yellow
13 truck on the right belongs to Mr. La Rocca?

14 A. Yes.

15 Q. Mr. Sanchez, are you now able
16 to recognize any of the people shown in the
17 photograph?

18 A. All I can see is the tractor
19 but I can't see the people well.

20 MS. ZALANTIS: For the record,
21 you're asking about 29 seconds into
22 the video.

23 MR. MEISELS: Yes, that's
24 correct.

25 Q. Mr. Sanchez, do you see the

1 M. SANCHEZ

2 piles of wood chips in the middle of the
3 photograph?

4 A. Yes.

5 Q. Did you see who put them there?

6 A. No.

7 THE INTERPRETER: If one of the
8 attorneys can instruct the gentleman
9 I need to interpret the whole thing
10 for him because otherwise the whole
11 thing gets lost.

12 A. No, we didn't bring that there.
13 I don't know how that got there. I wasn't
14 there. That's at the other end of the
15 street. I'm at the other end of the
16 street. No, I don't know how that got
17 there.

18 Q. Do you know what happened to
19 those piles of wood chips?

20 A. No, I didn't notice that.

21 Q. Mr. Sanchez, how old are you?

22 A. 64 years old.

23 Q. Mr. Sanchez, now are you able
24 to recognize any of the men in the picture?

25 A. Those are some workers from

1 M. SANCHEZ

2 there but, as I said, they've gone.

3 Q. Were they workers for Mr. La
4 Rocca?

5 A. Yes, because he had sent them
6 there to rake the gravel that had fallen
7 from the rain.

8 Q. Do you recall what they were
9 doing?

10 A. They were raking the gravel
11 because a lot had come down there.

12 Q. Mr. Sanchez, when you say a lot
13 had come down there, where did it come
14 from?

15 A. From up there where the garbage
16 is thrown out.

17 Q. Mr. Sanchez, do you recognize
18 the gentleman in the photograph? I'm
19 referring to 43 seconds on the video.

20 A. No, no, I don't remember him.

21 Q. Do you recognize the gentleman
22 with the beige shirt?

23 A. No, I don't remember him.

24 Q. Were they working for Mr. La
25 Rocca at that time?

1 M. SANCHEZ

2 A. Yes.

3 Q. Have they left the job since
4 then?

5 A. Some people go to work and
6 they're there for a month or two months and
7 then they leave.

8 Q. Did these two people leave?

9 A. Yes.

10 Q. Mr. Sanchez, do you recognize
11 what's shown in this photograph?

12 A. Yes.

13 Q. Tell us what it is.

14 A. You can see some piles of
15 garbage that was thrown there.

16 MS. ZALANTIS: For the record,
17 can we reflect that you're asking
18 about the video at a minutes and two
19 seconds?

20 MR. MEISELS: Yes.

21 Q. Mr. Sanchez, as I understand
22 your testimony these workers are cleaning
23 up garbage?

24 A. No, they're raking the dirt.

25 Q. Do you know who told them to

1 M. SANCHEZ

2 rake the dirt?

3 A. Flavio has two yards and one of
4 them has gravel inside.

5 Q. Did the gravel that's shown in
6 this photograph come from Mr. La Rocca's
7 yard?

8 A. No, it came from the area where
9 the garbage is thrown out and when it rains
10 it gets carried down there.

11 Q. Is it your testimony that all
12 the gravel that we see in this photograph
13 was carried there by the rain?

14 A. Yes.

15 Q. Mr. Sanchez, I'm referring to
16 the same video but at 128 seconds. It's
17 actually 1.28 minutes. Is the yellow truck
18 shown in the picture Mr. La Rocca's truck?

19 A. Yes.

20 Q. Do you see that there's a metal
21 gate that is shown in the photograph?

22 A. Yes.

23 Q. Does that gate lead to Mr. La
24 Rocca's yard?

25 A. Yes.

1 M. SANCHEZ

2 Q. Is that the yard where he keeps
3 his gravel?

4 A. There we have gravel dirt.

5 Q. Does Mr. La Rocca ever use wood
6 chips on his jobs?

7 A. No.

8 Q. Mr. Sanchez, do you see the
9 truck that's shown in this photograph which
10 in the same video and it's actually at two
11 minutes and 15 seconds? Do you see the
12 truck?

13 A. Yes.

14 Q. I'm not talking about the
15 yellow truck, I'm talking about the black
16 truck. Do you see the black truck?

17 A. Yes.

18 Q. Does that black truck belong to
19 one of the contractors who has a yard on
20 East Street?

21 A. Yes.

22 Q. Do you remember the name of
23 that contractor?

24 A. His name is Bernie.

25 Q. Mr. Sanchez, did you mean

1 M. SANCHEZ

2 Bernie or Benny?

3 A. Benny.

4 Q. Does Benny still have a yard on
5 East Street?

6 A. Yes.

7 Q. Do you know what the name of
8 Benny's business is?

9 A. I just heard that they call him
10 Benny.

11 Q. Is Benny in the landscaping
12 business?

13 A. I don't know exactly what they
14 do. I think they're gardeners. I'm not
15 sure.

16 Q. Did you ever see Benny's trucks
17 loaded with wood chips?

18 A. No, I never seen them.

19 Q. When Mr. La Rocca's workers
20 were cleaning up that gravel area, did
21 anyone who worked for Benny help out?

22 A. No.

23 Q. Referring to the black truck in
24 the photograph, do you know if that truck
25 belonged to Benny?

1 M. SANCHEZ

2 A. That's his vehicle but he sold
3 it and bought another one.

4 Q. Mr. Sanchez, I'm showing you
5 the same video but now we're at two minutes
6 and 42 seconds. Do you recognize what's
7 shown in the video?

8 A. Yes.

9 Q. Can you explain to us what you
10 recognize from the video?

11 A. A roller that is rolling over
12 the gravel that's being raked.

13 Q. Can you identify the person
14 whose driving the roller?

15 A. The roller is only driven by a
16 guy named Felipe.

17 Q. Is that Felipe Maya?

18 A. Yes, he's the only one who
19 drives the machines.

20 Q. Am I correct that Mr. Maya was
21 employed by Mr. La Rocca?

22 A. Yes.

23 Q. Do you recognize the other
24 workers in that photograph?

25 A. No, I can't see them well.

1 M. SANCHEZ

2 Q. Do you know whether or not they
3 were working for Mr. La Rocca?

4 A. As I said, some of the people
5 only work for a month or two and then they
6 leave the work.

7 Q. But do you know whether those
8 other men were working for Mr. La Rocca
9 when they were raking this gravel?

10 A. Yes.

11 Q. Do you know what these workers
12 were told to do?

13 A. No, I don't but they were just
14 raking the dirt.

15 Q. Mr. Sanchez, I'm going to show
16 you a photograph that was marked as Exhibit
17 GG and this is the first photograph in a
18 group that's been marked as GG. Can you
19 see the photograph?

20 A. Yes.

21 Q. Mr. Sanchez, do you see the
22 white car in the middle of the photograph?

23 A. Yes.

24 Q. Do you recognize what's shown
25 in the photograph?

1 M. SANCHEZ

2 A. Yes.

3 Q. Can you explain to us what's
4 fairly and accurately depicted in that
5 photograph?

6 A. There's a fence around one part
7 of the white car.

8 Q. Mr. Sanchez, when you refer to
9 the fence, do you mean the black metal
10 fence that is located on the right-hand
11 side of the car?

12 A. Yes, it's a black fence.

13 Q. Are we talking about the black
14 fence that would be on the front passenger
15 side of the white car?

16 A. Yes.

17 Q. Do you remember when that fence
18 was installed?

19 A. No, I didn't notice that.

20 Q. Do you know who installed it?

21 A. No, I don't know.

22 Q. Mr. Sanchez, do you remember in
23 the video we saw pictures of workers raking
24 gravel?

25 A. Yes.

1 M. SANCHEZ

2 Q. Was the gravel that they were
3 raking inside this fence?

4 A. Yes.

5 Q. Am I correct that the fence was
6 erected after they raked the gravel?

7 A. Yes.

8 Q. Mr. Sanchez, do you remember a
9 time when there were trees in the place
10 where the men were raking the gravel?

11 A. Yes, I had noticed that there
12 had been trees there.

13 Q. Do you remember when those
14 trees were removed?

15 A. No, I didn't notice that.

16 Q. Do you remember who removed the
17 trees?

18 A. No, I don't know who.

19 MR. MEISELS: I have no
20 further questions of this.

21 MS. ZALANTIS: I have a few
22 questions.

23 EXAMINATION BY

24 MS. ZALANTIS:

25 Q. The picture that's on the

1 M. SANCHEZ

2 screen now that you're looking at, the area
3 that's now enclosed by the black fence, do
4 you see that?

5 A. Yes.

6 Q. You referred a few times to
7 basura in that area. Can you explain why?

8 A. There had been a lot of garbage
9 there.

10 Q. Is it fair to say that people
11 would dump garbage in the area that's now
12 enclosed by the black fence?

13 A. Yes, because a lot of children
14 go there because there are fields for
15 playing.

16 Q. And people would use that area
17 as a garbage dump?

18 A. They would walk there where the
19 white car is.

20 Q. I'm asking the area that's
21 enclosed by the black fence. There would
22 be garbage dumped in the area that's now
23 enclosed by the black fence; is that what
24 you're saying?

25 MR. MEISELS: Objection as to

1 M. SANCHEZ

2 form.

3 MS. ZALANTIS: You can answer.

4 A. Yes.

5 Q. What kind of garbage?

6 A. People threw just about
7 everything there.

8 Q. Would you see mattresses there?

9 A. No, not mattresses, but smaller
10 garbage. I never saw mattresses there.

11 Q. Do you remember you just saw a
12 video that Mr. Meisels showed you?

13 A. Yes.

14 Q. There's an area where the
15 workers were raking. Do you remember that
16 area?

17 A. Yes.

18 Q. Were there ever living trees in
19 that area?

20 A. Yes, there had been trees
21 there.

22 Q. How many years ago?

23 A. I don't remember.

24 Q. Were there trees in that area
25 in 2015?

1 M. SANCHEZ

2 MR. MEISELS: Objection as to
3 form.

4 A. Around that date is when they
5 were taken down but I didn't see who did
6 that.

7 Q. Did Flavio La Rocca's company
8 take down any trees?

9 MR. MEISELS: Objection to
10 form.

11 A. No.

12 Q. Did you see anyone from Mr. La
13 Rocca's company, any employee or Mr. La
14 Rocca himself take down any trees from that
15 area where the people were working in the
16 video?

17 A. No, I didn't see any coworkers
18 there.

19 Q. Did you see anyone from Flavio
20 La Rocca's company cut down or remove trees
21 in the area that the people work raking?

22 A. No.

23 Q. In the area that's enclosed by
24 the black fence in the picture that you're
25 looking at on the screen right now,

1 M. SANCHEZ

2 Defendant's GG, do you see that picture?

3 A. Yes.

4 Q. I'm talking about the first
5 page of Defendant's GG in the area that is
6 enclosed by the black fence. Have you ever
7 seen anyone from Flavio La Rocca's company
8 remove any trees from that area?

9 A. No, none of us took down any
10 trees.

11 Q. As part of your work at Flavio
12 La Rocca's company, have you ever seen
13 anybody take down trees for any project?

14 A. No, we don't do that.

15 Q. You previously testified before
16 that the gravel was in the area that the
17 people were working because of the rain.
18 Can you explain your statement?

19 A. Yes.

20 Q. Can you explain that?

21 A. At the end where the fence ends
22 it goes down and the gravel is washed down
23 that way.

24 Q. So, is it fair to say that the
25 gravel washes onto East Street?

1 M. SANCHEZ

2 A. Yes, because a lot of the rain
3 water washes down there to the end of the
4 street.

5 Q. So, is it fair to say that the
6 area that's now enclosed by the black fence
7 had gravel in it so that when it would rain
8 would wash into the street?

9 A. Yes.

10 Q. Then is it fair to say what you
11 were doing was taking the gravel that had
12 washed into the street and pushing it back
13 into the area that is now enclosed by the
14 black fence?

15 A. Yes.

16 MS. ZALANTIS: I have nothing
17 further.

18 MR. MEISELS: I just have one
19 or two follow-up questions.

20 EXAMINATION BY

21 MR. MEISELS:

22 Q. Mr. Sanchez, does the gravel
23 still wash onto East Street after the fence
24 was installed?

25 A. Yes.

1 M. SANCHEZ

2 Q. Since the fence was installed,
3 what is done with the gravel that washes
4 onto the street?

5 A. We no longer go down to that
6 yard anymore. It's just where Flavio keeps
7 some machines.

8 Q. After that fence was installed
9 did gravel continue to wash onto East
10 Street?

11 A. Yes, the gravel still goes down
12 the street.

13 Q. Since the fence was installed,
14 does anybody try to clean up the gravel
15 that washes onto the street?

16 A. No, not anymore. We used to
17 but Flavio doesn't use that yard anymore.

18 Q. Do I understand correctly that
19 as of today there is gravel that washed
20 onto East Street that nobody has cleaned
21 up?

22 A. No, nobody cleans it up.

23 Q. Mr. Sanchez, does Mr. La Rocca
24 ever hire tree removal services as part of
25 his projects?

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M. SANCHEZ

A. No, he never contracts extra people.

MR. MEISELS: We have no further questions.

For the record, can we agree that on both depositions standard stips would apply?

MS. ZALANTIS: Yes.

(Whereupon, at 2:10 P.M., the Examination of this witness was concluded.)

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M. SANCHEZ

D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

MARTIN SANCHEZ

Subscribed and sworn to before me
this _____ day of _____ 20____.

NOTARY PUBLIC

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M. SANCHEZ

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M. SANCHEZ

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

I, EDITH TIRADO-PLAZA, a Notary
Public for and within the State of New
York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 10th day of June, 2021.



EDITH TIRADO-PLAZA

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ERRATA SHEET
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CASE NAME: City Of New Rochelle v. Larocca, Flavio
DATE OF DEPOSITION: 5/28/2021
WITNESSES' NAME: Martin Sanchez

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(NOTARY PUBLIC) MY COMMISSION EXPIRES:

[& - communicating]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Exhibit "58"



EXHIBIT

GG

RH 2/26/20





Exhibit "59"

NYSCEF DOC. NO. 106
one 12/11/15 at 10:30am

RECEIVED NYSCEF: 05/27/2022

Alexander Tergis
Commissioner



Scott D. Pickup
Deputy Commissioner/Operations

James J. Moran, P.E.
City Engineer

Met w/ Flavio & Maria, Attorney &
other business owners.
12/10/15 10am



City of New Rochelle
Department of Public Works

November 18, 2015

FMLR Management, LLC
140 Sussex Road
New Rochelle, New York 10804

Re: Notice to Remove
SBL - 3-931-29 - 436 Fifth Ave

Dear Property Owner:

The City of New Rochelle recently completed an examination of the area in which your real property is located, its environs and the sitting of improvements made to your property. This review revealed that at certain points where your property and the property of other owners in the area borders the neighboring property owned by the City, there are circumstances where certain improvements, such as a fence with gates, a row or rows of hedges, a concrete wall and in one instance a metal shelf used for storage of materials and equipment, encroaches and intrudes on and over City owned real property. Please note that the above list of encroachments is not and does not constitute a complete list of the intrusions, but is only provided as an example of some of the more obvious transgressions.

Pursuant to Article VII, Section 55 of the Charter of the City, the Commissioner of the Department of Public Works is charged with the duty, among other things, to control the operation and maintenance of public streets. Since permission to use City owned property or a portion thereof has not been given nor secured, this unsanctioned use for your personal or business use must cease forthwith. You are hereby directed immediately to remove at your own cost and expense any and all improvements which encroach beyond the boundary of your property and intrude onto any portion of City owned real property.

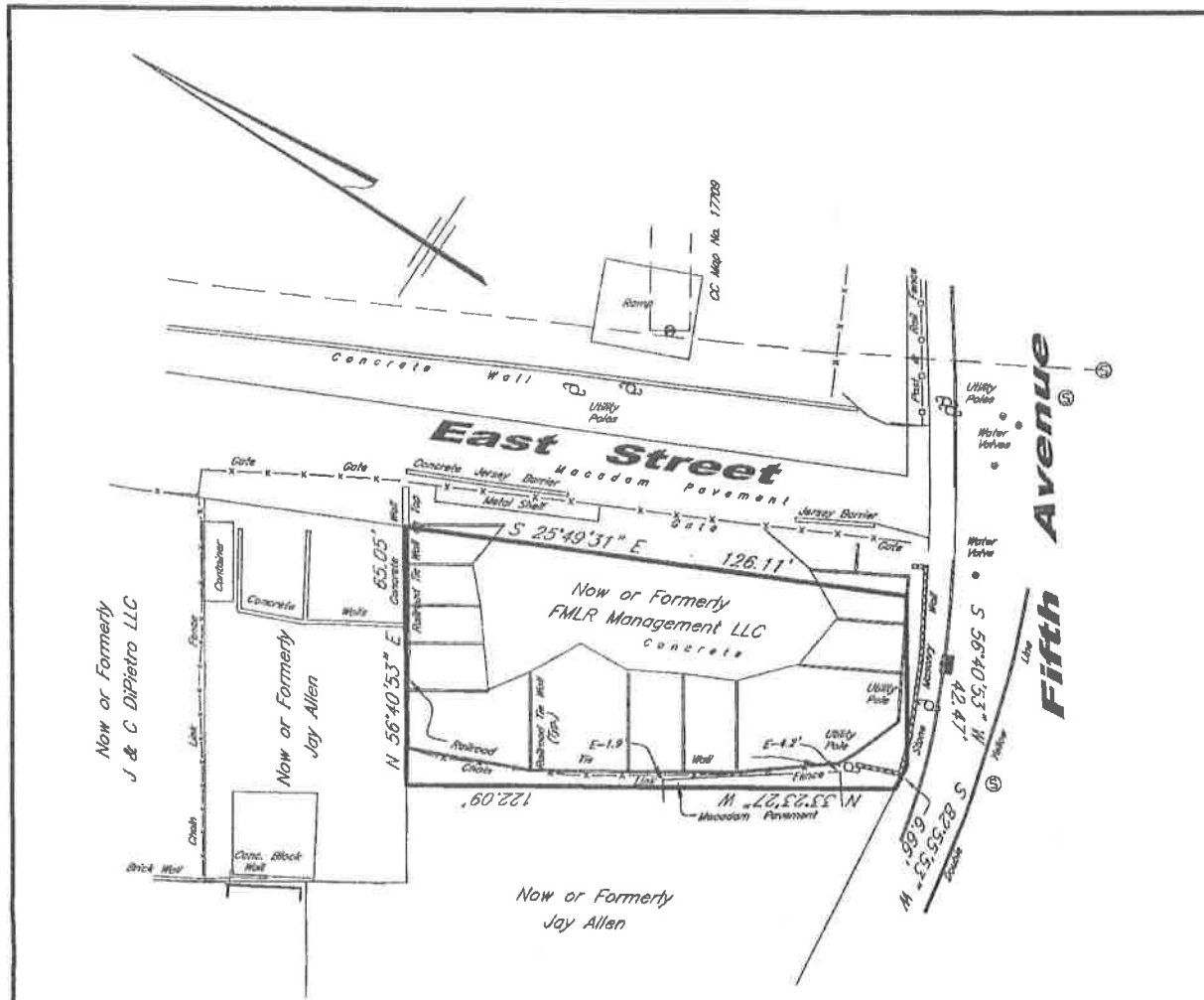
If you have any questions concerning this matter or wish to resolve this matter, do not hesitate to contact the undersigned.

Very truly yours,

Alexander Tergis
Commissioner of Public Works

515 North Avenue, New Rochelle, NY 10801 • (914) 654-2131 • (914) 654-2195 (fax)

Exhibit "60"



Survey of Property
 prepared for
City of New Rochelle
 in the City of
New Rochelle

Westchester County, N.Y.
 Scale 1"=30' Apr. 13, 2016

The premises being Lot 29, Block 931, Section 3 as shown on the official Tax Assessment Maps of the City of New Rochelle.

Lot Area = 7,086 sq. ft. or 0.1627 acres

Subsurface structures and their encroachments, if any exist, are not shown hereon.

Unauthorized alterations or additions to a survey map is a violation of section 7209, sub-division 2, of the New York State Education Law.

Only copies of the original survey marked with the land surveyor's inked or embossed seal shall be considered a true and valid copy.

Certifications indicated hereon signify that this survey was prepared in accordance with the existing code of practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run to the person for whom the survey is prepared only, and on his behalf to the Title Company, governmental agency and lending institution listed herein, and to the assignees of the lending institution. CERTIFICATIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.

Copyright (c) 2016 Ward Carpenter Engineers, Inc. All Rights Reserved.

William H. Freed, Senior V.P.
 Ward Carpenter Engineers, Inc.
 76 Mamaroneck Avenue
 White Plains, N.Y. 10601

Exhibit "61"

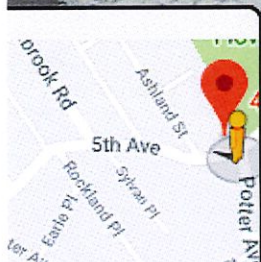
NYSCEF DOC. NO. 108436 5th Ave

RECEIVED NYSCEF: 05/27/2022

New Rochelle, New York



Street View - Sep 2018



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CITY OF NEW ROCHELLE,

Index No. 54190/2016

Plaintiff,

-against-

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.
-----X

**AFFIDAVIT
IN SUPPORT OF
SUMMARY
JUDGMENT**

STATE OF NEW YORK)
) ss
COUNTY OF WESTCHESTER)

FLAVIO LA ROCCA, being duly sworn, deposes and says:

1. I am one of the named defendants in the above referenced action.
2. I respectfully submit this Affidavit in support of Defendants’ motion under CPLR § 3212 for an order granting Defendants summary judgment dismissal of Plaintiff’s Complaint in its entirety.

I. The Complaint’s First Through Fifth Causes of Action Should Be Dismissed

3. The City’s Complaint alleges that I or my company, Defendant F. La Rocca & Sons, Inc., cut down “numerous full sized trees” and cleared land to create a parking lot, and in the process “potentially deposited contaminated materials on the cleared land” abutting East Street (referred to as the “Parcel”). These false allegations are based upon the delusions and rantings of a website called Talk of the Sound and its owner/blogger Robert Cox. The City’s Complaint even goes so far as to rely upon photographs “from the local news website Talk of the Sound, at

<http://www.newrochelle.com/content/who-flavio-la-rocca-part-iv> (last visited March 23, 2016)” as the basis for its claims (see Statement of Material Facts (“SMF”) ¶ 78).

4. The City should have done its own due diligence before suing a local property owner and business owner and alleging these claims in a sworn document given the Talk of the Sound pictures and video do not support the Complaint’s allegations. No matter how many times the City plays the Talk of the Sound video (and Defendants viewed this video numerous times at many depositions), it does not show what is alleged in the Complaint.

5. Had the City done even the slightest due diligence before bringing this action instead of immediately jumping on the Talk of the Sound and Robert Cox bandwagon, the City would have learned that the Parcel was used as a parking area long before May 16, 2015 (starting as early as 2002 or 2003) and therefore, could not have been “created” by me or my employees on May 16, 2015 as the Talk of the Sound alleged.

6. Numerous witnesses, including an owner of another contractor’s yard on East Street, testified that the Parcel (the area now fenced in with a black fence installed by the City) was used for parking before May 16, 2015 (SMF ¶¶ 96-109). The parking area could not have been created on May 16, 2015 as the City claims when cars had been parking in that area for years, and which had nothing to do with me or my business operations.

7. The 2014 Google Earth image alone should have resulted in the City outright dismissing its first through fifth causes of action. The 2014 Google Earth image shows at least three trucks parked on the Parcel (including a truck with a trailer parked on a horizontal angle) (SMF ¶ 97, discussing Ex. “54”). How could I have created a parking area on May 16, 2015 or cut down “full-sized trees” from this area (the Parcel) when trucks were parked in this same area in 2014?

8. Not a single bit of evidence has been produced by the City proving that I or my company cuts down trees, cleared land or deposited potentially contaminated materials on the Parcel. (SMF ¶¶ 91-94; 109-116).

9. Rather, all that was unearthed during discovery, including the numerous costly depositions, was that my company was raking and smoothing out gravel that had been there for years that had become dislodged due to rain and plowing my company performs as part of our maintenance of East Street. (SMF ¶¶ 84-89; 111-116).

10. East Street is a heavily used street as vehicles and large trucks come and go from the abutting contractor yards.

11. All the lots along East Street from one end to the other are used as contractor yards in connection with commercial businesses (SMF ¶¶ 12-16).

12. Prior to my wife and I purchasing the property at 436 Fifth Avenue in New Rochelle and located on the corner of Fifth Avenue and East Street (the "Property") in 2002, the prior owners used the Property as a contractor's yard. From that time until now, we continue to use the Property as a contractor's yard.

13. But East Street is an island unto itself, because the City does not maintain East Street like it does the other nearby streets (Weeks Place, Pinebrook Road, Crestview Place, Chatsworth Place and Ashland Avenue). The City of course also maintain Fifth Avenue, which is a main artery.

14. Instead, the property owners along East Street must repair and maintain East Street themselves. (SMF ¶¶ 33-48).

15. More than any other property owner on East Street, my company performs most of the maintenance and repair of East Street, including snow plowing, filling potholes and removing gravel, refuse, leaves and debris (SMF ¶ 46).

16. Pictures taken before the raking and flattening of the existing gravel on May 16, 2015 depict the poor condition on and along East Street, including the runoff and standing water (SMF ¶ 87). As East Street was never improved to City standards, there is no storm drainage system and the water remains standing on the asphalt or overflows onto abutting properties.

17. Instead of suing me, the City should have thanked me for improving this condition. Left unchecked, there would have been more potential runoff and more of the City's property washed away.

18. But there was certainly no harm to the City's property (the Parcel) that had existing gravel on it and had been used as parking area for years.

19. That the City had to incur costs to fence in the Parcel to prevent its use as a parking area is not related to any action by me or my company as the undisputed evidence is that the area was used by others as a parking area and not by me or my employees (SMF ¶¶ 96-108).

20. As there is no basis for the City's first through fifth causes of action as a matter of fact and law, this Court should dismiss the first through fifth causes of action in their entirety. See also, supporting Memorandum of Law in Support ("MOL"), Point I.

II. The Complaint's Sixth Cause of Action Should Be Dismissed

A. *East Street is a Private Street*

21. Even though the City washes its hands of East Street leaving the property owners to fend for themselves, the City has the nerve in its sixth cause of action to claim some right to force

the removal of a portion of my contractor's yard that allegedly extends onto East Street. The City is speaking out of both sides of its mouth in claiming East Street is public street for them to enforce removal of encroachments, but not a public street that they have to maintain like every other public street in New Rochelle. But the City cannot seek damages relating to East Street and cannot enforce removal of any alleged encroachment on East Street, because East Street is a private street. See MOL Point II(A).

22. When my wife and I purchased the Property in 2002, the existing contractor's yard on the Property extended onto East Street and we did nothing to alter the existing fencing and gates on East Street.

23. To this point, the gate, fencing and other portions of my contractor's yard that extend onto East Street are in the same location: (1) as when the City accepted the 2000 As-Built plan showing the extensions onto East Street, but nonetheless issued the prior Property owners a certificate of occupancy in 2001; (2) as when we purchased the property in 2002; and (3) as when the City issued us a permit in 2003 based upon the same 2000 As-Built plan depicting the encroachments on East Street. (SMF ¶¶ 49-60).

24. Further, while the City did raise the potential encroachment in 2009, I thought this issue was resolved based upon the surveyor's stake out sketch and surveyor's markings I had done in 2009. The picture of these marking (in orange on the concrete wall) indicated to me that my gates and fencing was only approximately 10 inches over the property line (SMF ¶ 70). While the surveyor later explained in 2016 that the encroachment was 10 feet, he admitted that it would be impossible to ascertain whether the fencing encroached on East Street from the "stake out sketch" we paid for and our surveyor provided us in 2009 (SMF ¶¶ 66-71).

25. The City also seemed satisfied with the stake out sketch provided in 2009 as nothing further was raised by the City about an alleged impermissible encroachment onto East Street for years until after the false claims were made by Talk of the Sound about the alleged actions taken on May 16, 2015.

26. Nonetheless, I am advised by my attorneys that the City cannot force the removal of any encroachments from East Street as a matter of law, because the City never accepted East Street and therefore, the City did not acquire title through dedication and East Street remains a private street. See MOL, Point IIA.

27. Given this condition has existed for over 20 years and was not our doing, the City cannot rationally justify why it is necessary to remove them now when they do not own or maintain East Street.

B. *There is No Unlawful Encroachment on Fifth Avenue*

28. While the City has taken a scorched earth approach in asserting claims against me based upon an on-line website's false statements, including now raising claims relating to a purported encroachment on Fifth Avenue, the City does not actually want me to remove the substantial screening erected to block the view of the contractor's yard from Fifth Avenue. The City has indicated that it appreciated the Property's extensive screening along Fifth Avenue.

29. In or about 2003, in an effort to improve the appearance of my Property, I inquired about erecting some kind of a garden wall or planting bed that could be filled with large trees to block the view of my contractor's yard from Fifth Avenue.

30. I met with Raj Mehta of the City's Department of Public Works, who came to the site and advised that so long as the garden wall/planter remained on the Property's side of the

sidewalk and did not extend onto the sidewalk itself, it was fine to construct the garden wall/planter where it is currently located.

31. And this is exactly what was done. We installed a beautiful garden wall/planting bed improved with very attractive and expensive stone work on the exterior side and with an iron railing on top (all under four-feet in height) to hold in place an extensive and full row of Arborvitae trees.

32. The garden wall/planting bed abuts the sidewalk and is erected in the unused section of Fifth Avenue's right-of-way between the sidewalk and my property line. The garden wall/planting bed does not impede access in anyway as it ends at the start of the sidewalk. And as it is located on the side of the sidewalk closest to the Property, it does not (and physically could not) interfere with access along Fifth Avenue itself.

33. The extensive screening along Fifth Avenue is hardly a nuisance as the garden wall/planting bed with its extensive plantings screen the contractor's yard from view and mitigate any potential visual impacts.

34. Without this garden wall/planter in place, the large Arborvitae trees could not grow as high and full without extending onto the sidewalk area and impeding access.

35. Removing the garden wall/planning bed finished in expensive stone with the iron fence and plantings would result in a complete loss of screening, making the unattractive fencing and other portions of the contractor's yard completely visible from Fifth Avenue.

36. In fact, when my company's workers were working on the Fifth Avenue side removing dead Arborvitae trees to replace with new plantings, I found out that the City immediately received complaints about the work being done as the neighbors incorrectly thought the plantings were being permanently removed (and not just replaced).

37. The City would likely withdraw its claim relative to Fifth Avenue if actually faced the reality of my removal of this extensive screening.

38. Nonetheless, I am advised by my attorneys that the City cannot maintain any claim for nuisance (public, private or otherwise) and there is also no basis for the City's claims purportedly brought under New Rochelle City Code § 111-38 See MOL, Point IIB.

39. The sixth cause of action is really all about East Street, but as East Street remains a private road, the sixth cause of action as it relates to East Street must be dismissed as a matter of law.

III. The Claims Against My Wife Should Be Dismissed

40. The City asserts no facts or claims against Maria individually. Maria's only connection to this action is that she is a member of the Property's Owner FMLR and a shareholder of F. LaRocca & Sons, Inc. There is no basis to hold Maria liable for any alleged claims against the LLC and corporate entity and the Complaint does not plead any. See MOL, Point III.

IV. Summary Judgment Should Be Granted

41. I am advised by my attorneys that this Court should grant us summary judgment dismissing the City's Complaint in its entirety. See MOL, Point IV.

WHEREFORE, it is respectfully requested that this Court grant the Defendants' motion in its entirety.


FLAVIO LARocca

Sworn to before me this

27th day of May, 2022


Notary Public

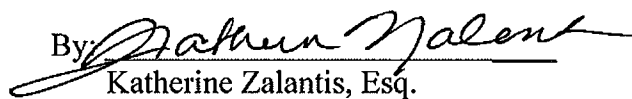
KATHERINE ZALANTIS
Notary Public, State of New York
No. 022A5067359
Qualified in Westchester County
Commission Expires 10/15/21

CERTIFICATION

I hereby certify pursuant to 22 NYCRR § 202.8-b that the foregoing AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT was prepared on a computer using Microsoft Word indicating the following:

Word Count. The total number of words, inclusive of point headings and footnotes, and exclusive of the caption, table of contents and signature block, is 2313.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CITY OF NEW ROCHELLE,

Index No. 54190/2016

Plaintiff,

-against-

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

Defendants.
-----X

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT DISMISSAL
OF THE CITY'S COMPLAINT**

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Preliminary Statement¹

Defendants respectfully submit this Memorandum of Law in support of their application under CPLR § 3212 for an order granting Defendants summary judgment dismissal of the City's Complaint in its entirety.

The City ran to Court accepting as gospel the claims of a website called Talk of the Sound and its owner/blogger that on May 16, 2015 Defendants cuts down trees, dumped contaminated materials and created a parking lot on City property. But the video and photographs from the Talk of the Sound the City relies upon do not support these claims. And the City's case only deteriorates from there as the record is devoid of any evidence supporting these claims and therefore, the City's first five causes of action should be dismissed.

Had the City done even the slightest due diligence (or looked at historical Google images), the City would know the Parcel was used as a parking area long before May 16, 2015 and therefore, Defendants could not have cut down "numerous full-sized trees" and created a parking lot on May 16, 2015. Numerous witnesses testified how other contractor's yards' employees used the Parcel for daily parking, both before and after May 16, 2015.² To the best of Defendants' knowledge, the City has never asserted trespass claims against any of these property owners – only Defendants. This demonstrates that the City's vendetta against Defendants with nothing to do with facts or rationality. The City is using its municipal clout and resources to harass Defendants.

The City's sixth cause of action crystalizes the City's harassment. Defendant's contractor yard has existed in the same location extending onto East Street since at least 2000 before Defendants owned the Property and for which the City issued permits and a certificate of occupancy. Yet, the City now seeks to force removal. The City's arrogant and irrational position

¹ The Defined Terms are set forth in the Statement of Material Facts ("SMF").

² SMF ¶98-108.

is East Street is a public street for the City to enforce removal of any encroachment but not for the City to maintain like any other public street. This Court need not delve into this mind numbing position, however, because East Street is a private street over which the City has no control or authority as a matter of law (see Point IIA).

In a fit of vengeance, the City's Complaint includes a purported encroachment on Fifth Avenue, even though the City cannot conceivably want Defendants to remove the beautifully finished garden wall/planting bed holding in an extensive and full row of Arborvitae trees that screens the Fifth Avenue side of the contractor's yard from view. Nonetheless, these claims also fail as a matter of law (see Point IIB).

Finally, revealing the personal nature of this action, the City sues Maria in her individual capacity even though no allegations relate to Maria and she does not individually own the Property (see Point III). This Court should dismiss the Complaint in its entirety.

Argument

I. The Complaint's First Through Fifth Causes of Action Should Be Dismissed

The City's first through fifth causes of action are based upon the delusions and rantings of a website called Talk of the Sound and its owner/blogger Robert Cox. The City should have undertaken its own separate inquiry before bringing its action based upon a website's unsupported claims. The CPLR provides a summary judgment "motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party."³ Here, the record, compiled through a lengthy discovery process and numerous party and non-party depositions, is devoid of any evidence to support the City's first through fifth causes of action.

³ CPLR 3212(b).

The City claims Defendants, on May 16, 2015, cut down “numerous full-sized trees” and cleared land to create a parking lot, and in the process “potentially deposited contaminated materials on the cleared land” abutting East Street (called the “Parcel”).⁴ The problem for the City is that the video⁵ and photographs from Talk of the Sound⁶ the City relies upon do not support these claims. And it only gets worse for the City from there.

Defendants could not have created the parking area on the Parcel⁷ on May 16, 2015 because cars had been parking there for years. Numerous witnesses, including an owner of another contractor’s yard on East Street, testified the Parcel (now enclosed with a black fence the City installed) was used for parking before May 16, 2015.⁸ This area was not used for parking by Defendants.⁹

Although there is ample evidence, this Court could dismiss the first five causes of action based only upon the 2014 Google Earth image showing at least three trucks parked on the Parcel (including a truck with a trailer parked on a horizontal angle).¹⁰ Clearly, the parking area could not have been created by Defendants on May 16, 2015 or “full-sized trees” cut down from the Parcel on May 16, 2015 when trucks were parked there in 2014.

The City failed to produce any evidence that Defendants cut down trees, cleared land or deposited potentially contaminated materials on the Parcel. Rather, all that was unearthed during discovery, including the numerous costly depositions, was that Defendants raked and smoothed out existing gravel on the Parcel that became dislodged due to rain and plowing Flavio’s company

⁴ SMF Ex. “1”, ¶15.

⁵ SMF Ex. “45”.

⁶ SMF Ex. “1”, subexhibit “1”.

⁷ SMF ¶¶79-80.

⁸ SMF ¶¶96-108.

⁹ SMF ¶99.

¹⁰ SMF ¶97.

performs as part of maintaining East Street.¹¹ East Street is heavily used as vehicles and trucks come and go from the several contractor's yards located on East Street.¹² The City does not maintain East Street and as a result the property owners along East Street must repair and maintain East Street.¹³ Defendant F. Larocca & Sons performs most of the maintenance and repairs of East Street, including snow plowing, filling potholes and removal of gravel, refuse, leaves and debris.¹⁴

The City's first cause of action for trespass alleges "Defendants intentionally entered the Parcel, cut down trees, cleared the land, and created a parking lot."¹⁵ "The elements of a cause of action sounding in trespass are an intentional entry onto the land of another without justification or permission..."¹⁶ Again, the City has produced no evidence Defendants cut down any trees, cleared land and/or created a parking lot. And Defendants' actions of raking and smoothing out gravel that had been there for years and became dislodged due to rain and Defendants' plowing does not constitute a trespass. This action was neither intentional nor unjustified given the City does not maintain East Street and leaves it to the property owners to do so. There is no clear delineation (or curbing) between the Parcel and East Street. Rather, as depicted on the City's 2014 Survey¹⁷ and the City's tax map,¹⁸ the asphalt area extends onto the City's record property. Pictures taken before Defendants' raking and flattening of the existing gravel on May 16, 2015 depict the poor condition of the East Street, including runoff and standing water.¹⁹ As East Street was never improved to City standards, there is no storm drainage system and the water remains

¹¹ SMF ¶¶83-88; 111-116.

¹² Flavio Aff. ¶10.

¹³ SMF ¶¶36-48.

¹⁴ SMF ¶46-47.

¹⁵ SMF Ex. "1", ¶ 21.

¹⁶ *Volunteer Fire Ass'n of Tappan, Inc. v. County of Rockland*, 101 A.D.3d 853, 855 (2d Dep't 2012).

¹⁷ SMF Ex. "14".

¹⁸ SMF Exs. "5" and "24".

¹⁹ SMF ¶87.

standing on the asphalt or overflows onto abutting properties.²⁰ The City should thank Defendants for improving this condition rather than suing Defendants. Left unchecked, there would have been more potential runoff on the Parcel and more of the City's property washed away. But there was no damage to the Parcel that had existing gravel on it and had been a parking area for years.

Further, several witnesses acknowledged other contractor's yards' employees used the Parcel for daily parking, both before and after May 16, 2015.²¹ To the best of Defendants' knowledge, the City has never asserted trespass claims against any of these property owners – only Defendants.

The City's second cause of action sounding in negligence or negligence per se is premised on purported actions of which there is no evidence they ever occurred. The Complaint cites City Ordinance § 301-4 providing it is unlawful to remove trees or plants "on City property without a written permit"²² and City Ordinance § 301-7 providing it is unlawful to "place or maintain upon the ground in any public place any stone, cement, or other impervious material."²³ The Complaint also cites Real Property Actions and Proceeding Law ("RPAPL") § 861 providing it is unlawful to cut trees on the City's land.²⁴

As explained by the Second Department:

Under common law, a person is negligent when he fails to exercise that degree of care which a reasonably prudent person would have exercised under the same circumstances. When a statute designed to protect a particular class of persons against a particular type of harm is invoked by a member of the protected class, a court may, in furtherance of the statutory purpose, interpret the statute as creating an additional standard of care. Violation of such a statutory standard, if unexcused, constitutes negligence per se so that the violating party must be found negligent if the violation is proved. Negligence per se is not liability per se, however, because

²⁰ Flavio Aff. ¶16.

²¹ SMF ¶98-108.

²² SMF Ex. "1", ¶27; attached to Addendum.

²³ SMF Ex. "1", ¶28; attached to Addendum.

²⁴ SMF Ex. "1", ¶29.

the protected class member still must establish that the statutory violation was the proximate cause of the occurrence.²⁵

Here, the City can establish neither negligence nor negligence per se because the City's claims are all based upon actions that did not occur. There is no evidence any of the purported unlawful actions occurred, namely, that Defendants cut down any trees on the Parcel or deposited new gravel on the Parcel as prohibited in the City's ordinance. Accordingly, the City cannot establish a negligence claim because Defendants did not fail to exercise the degree of care a reasonably prudent person would. If anything, Defendants exercised a greater degree of care in maintaining and repairing the Parcel that is adjacent to the road (East Street) that Defendants and their neighbors use to access their respective properties. This is not something Defendants' neighbors did, nor something the City did.

With respect to negligence per se, the key phrase in the Second Department's analysis is that the alleged violation of the statute standard **must be proved**. The City cannot simply make baseless allegations, cite to some statutes and say negligence per se. The burden is on the City to prove Defendants' actions occurred, a burden the extensive discovery record does not support. As the City cannot prove Defendants engaged in any activities that violated the statutes the City cited, there is no negligence per se as a matter of law.

Similarly, the City's third cause of action for nuisance is based upon actions for which there is no support in the record. The City alleges "Defendants' creation of a parking lot on the Parcel was intentional or negligent and unreasonable"²⁶ and interferes with the City's use and enjoyment of the Parcel.²⁷ Again, there is no evidence to support Defendants "created" a parking lot when the evidence establishes the parking lot had existed for years. The City cannot in good

²⁵ *Dance v. Town of Southhampton*, 95 A.D.2d 442, 444-45 (2d Dep't 1983).

²⁶ SMF Ex. "1", ¶35.

²⁷ SMF Ex. "1", ¶36.

faith establish there was any interference with the City's use and enjoyment of the Parcel where it had been a parking lot for years without the City saying a word.

Finally, the City's fourth and fifth causes of action for conversion and RPAPL § 861 violation, respectively, are based upon the unfounded claims that on May 16, 2015 Defendants "cut down and destroyed numerous full-sized, potentially valuable and historic trees standing wholly upon the Parcel."²⁸ Again, the record is devoid of any evidence to support Defendants cut down any trees, especially valuable and historic trees as the City claims.

For the foregoing reasons, this Court should grant summary judgment dismissing the Complaint's first through fifth causes of action.

II. The Complaint's Sixth Cause of Action Should Be Dismissed

A. East Street is a Private Street

This Court should dismiss the City's claims for nuisance and injunctive relief as they relate to East Street. The City cannot enforce removal or seek damages relating to the encroachment on East Street under City Ordinance § 111-38, because East Street is a private street as a matter of law.

A municipality acquires title to real property by "dedication and acceptance" and "[d]edication of a street...is essentially of the nature of a gift by a private owner to the public and it becomes effective when the gift is accepted by the public."²⁹ However, "[t]he test of the validity of a dedication, like the test of the validity of other gift or transfer, is, primarily, whether there has been complete relinquishment on the one side and acceptance on the other."³⁰ In *Romanoff v.*

²⁸ SMF Ex. "1", ¶40, 44.

²⁹ *Romanoff v. Vil. of Scarsdale*, 50 A.D.3d 763, 764 (2d Dep't 2008).

³⁰ *Id.*

Scarsdale,³¹ the Second Department ruled besides an offer and acceptance, there must be **“some formal act on the part of the relevant public authorities adopting the highway.”**³² Accordingly, dedication requires “a complete surrender to public use of the land by the owners, acceptance by the town [municipality], and some formal act on the part of the relevant public authorities adopting the highway, or use by the public coupled with a showing that the road was kept in repair or taken in charge by public authorities.”³³

In addition to common law, General City Law § 34 entitled “Subdivision review, record of plats” (which applies to the City) statutorily mandates that any streets depicted on a filed subdivision map are offered for dedication to the public, but such street shall be “deemed private” until “formally accepted by resolution of a local legislative body”:

4. Cession or dedication of streets, highways or parks. (a) All streets, highways or parks shown on a filed or recorded plat are offered for dedication to the public unless the owner of the affected land, or the owner's agent, makes a notation on the plat to the contrary prior to final plat approval. **Any street, highway or park shown on a filed or recorded plat shall be deemed to be private until such time as it has been formally accepted by a resolution of the local legislative body, or until it has been condemned by the city for use as a public street, highway or park.**³⁴

East Street is shown on the recorded 1907 Subdivision Map.³⁵ This constitutes an offer of dedication to the public by law. The City, however, never formally accepted East Street by resolution. Rather, the City in 1914 did not follow the Assistant Corporation Counsel’s recommendation to accept East Street as it only accepted five of the seven streets on the 1907 Subdivision Map.³⁶ As the City never issued a resolution accepting East Street, East Street is a

³¹ 50 A.D.3d 763 (2d Dep’t 2008).

³² *Id.* at 764 (*emphasis added*).

³³ *Town of Lake George v. Landry*, 96 A.D.3d 1220, 1221 (3d Dep’t 2012).

³⁴ General City Law § 34(4) (*emphasis added*).

³⁵ SMF ¶¶18-19.

³⁶ SMF ¶¶23-25.

private street as a matter of law. For this reason alone, the City's sixth cause of action as it relates to East Street must be dismissed.

In addition, while the City never accepted East Street,³⁷ the record is clear it also never engaged in any other activities identified in the case law that could indicate ownership, such as repairing and maintaining the street. While the City maintains the five streets on the 1907 Subdivision Map that it formally accepted in its 1914 Resolution, it is undisputed that the City does not maintain or repair East Street.³⁸ It is wholly irrelevant that the public may use East Street as this alone does not make East Street a public street.³⁹ Rather, "the Court of Appeals has further determined that use by the public is insufficient to establish property as a public highway absent some showing that the property was in fact kept in repair or taken in charge by public authorities."⁴⁰ East Street was never "kept in repair or taken in charge" by the City as it is undisputed that the property owners (and mostly Defendants) maintain and repair East Street.⁴¹

Further, neither: (1) the execution of the 1914 quitclaim deed conveying all seven streets as "public streets or highways" before the City issued a resolution accepting only five of the seven streets;⁴² nor (2) recording this quitclaim deed in 1919,⁴³ converts East Street from a private street to a public street. The Appellate Division has established "absent a formal act adopting the property as a public street, a town's acceptance of a deed conveying the fee to an unimproved strip of land is not enough to create a public highway."⁴⁴

³⁷ SMF ¶¶21-28.

³⁸ SMF ¶¶36-48.

³⁹ *Desotelle v. Town Bd. of Town of Schuylers Falls*, 301 A.D.2d 1003, 1003-04 (3d Dep't 2003).

⁴⁰ *Id.*

⁴¹ SMF ¶¶35-48.

⁴² SMF ¶¶21-28.

⁴³ SMF ¶29.

⁴⁴ *Perlmutter v. Four Star Dev. Assoc.*, 38 A.D.3d 1139, 1140 (3d Dep't 2007).

In *Desotelle v. Town Bd. of the Town of Schuyler Falls*,⁴⁵ the Appellate Division ruled even though fee simple title to a 50-foot wide strip of land was conveyed to the town and the town board accepted the deed, this was not a public street.⁴⁶ The Court reaffirmed that while a street may become a public street by dedication or use, “[d]edication, in turn, requires absolute relinquishment to public use by the owner, acceptance and a formal opening.”⁴⁷ The Court ruled even though there was “a deeded conveyance of the subject strip of land to the Town and a resolution by respondent accepting the deed, there is no record evidence of any subsequent action by the Town to improve, repair or maintain the strip” nor evidence that the municipality “actually adopted it as a public highway.”⁴⁸ The Court ruled as there was insufficient evidence of dedication, the street was not a public road.⁴⁹

In contrast to *Desotelle*, the Appellate Division in *Town of Lake George v. Landry*⁵⁰ ruled the municipality had acquired title by dedication as besides the Town Board’s formal acceptance of the deed, the Town also maintained the road. Relying on the Second Department’s *Romanoff* decision,⁵¹ the *Landry* Court reaffirmed “[d]edication, which is essentially of the nature of a gift by a private owner to the public” requires “a complete surrender to public use of the land by the owners, acceptance by the town, and some formal act on the part of the relevant public authorities adopting the highway, or use by the public coupled with a showing that the road was kept in repair or taken in charge by public authorities.”⁵²

⁴⁵ 301 A.D.2d 1003 (3d Dep’t 2003).

⁴⁶ *Id.* at 1003-04.

⁴⁷ *Id.* at 1003.

⁴⁸ *Id.* at 1004.

⁴⁹ *Id.* at 1003-04.

⁵⁰ 96 A.D.3d 1220 (3d Dep’t 2012).

⁵¹ *See supra* p. 7.

⁵² *Town of Lake George v. Landry*, 96 A.D.3d 1220, 1221 (3d Dep’t 2012).

The *Landry* Court found that in addition to the deed conveying the land on the 1949 subdivision map known as Beatty Road for “street purposes”, the “Town Board adopted a resolution formally accepting Beatty Road as a public highway in August 2009,³ and even defendant acknowledges that plaintiff [the town] began plowing Beatty Road in January 2005 and graded a portion thereof later that year.”⁵³ Thus, the Court ruled “[s]uch proof, in our view, is more than sufficient to establish that plaintiff acquired title to Beatty Road by dedication, thereby shifting the burden to defendant to raise a question of fact in this regard.”⁵⁴

Here, putting aside that the controlling statute, General City Law § 34 mandates East Street is a private street, *Desotelle* and *Landry* establish that even under common law, the City did not acquire title to East Street by dedication despite the 1914 Deed.⁵⁵ Even with the municipality in *Desotelle* issuing a resolution accepting the deed, the Court ruled this could not establish title by dedication where, like in this case, there was no record evidence of any subsequent action by the municipality to improve, repair or maintain the street. And unlike in *Landry* where the Court ruled the municipality acquired title by dedication, there is no record evidence here that the City issued a resolution accepting East Street or that it ever repaired or maintained East Street. Therefore, as a matter of law, the City did not acquire title to East Street by dedication, deed or otherwise.

As East Street is a private street as a matter of law, the City’s reliance upon City Ordinance § 111-38 entitled “Encroachments onto public property is restricted” is wholly misplaced as this statute relates only to public streets or property.⁵⁶ As the Court of Appeals explained, when interpreting a statute “our ‘starting point’ is the language itself, giving effect to the plain meaning thereof. Where the statutory language is clear and unambiguous, the court should construe it so

⁵³ *Id.* at 1221-1222.

⁵⁴ *Id.* at 1222.

⁵⁵ SMF ¶¶21-22.

⁵⁶ SMF Ex. “1”, ¶54; attached to Addendum.

as to give effect to the plain meaning of the words used.”⁵⁷ Here, the Code’s language could not be clearer that it only applies to encroachments on public property, which is logical because the City has no authority to legislate restrictions on encroachments on private property. Therefore, City Ordinance § 111-38, giving effect to its unambiguous, plain meaning, only applies to public streets or property and is inapplicable here.

As the City’s sixth cause of action related to East Street is premised solely on the City acquiring title to East Street, which it did not, the City lacks standing to bring a nuisance or any other claim relating to encroachments on East Street. As set forth by the Second Department, “[i]t is well established that when property is described in a conveyance with reference to a subdivision map showing streets abutting on the lot conveyed, easements in the private streets appurtenant to the lot generally pass with the grant.”⁵⁸ And “[t]he grantees of lots abutting a street on a filed map are entitled to have the land so demarcated remain as a street forever absent its abandonment, conveyance, condemnation, or adverse possession.”⁵⁹ The owners of lots abutting East Street along the same side of East Street as the Property, which are depicted on the 1907 Subdivision Map (which does not include any lot owned by the City), would have to bring a claim alleging that the encroachment somehow precludes their use of the street.⁶⁰ Aside from there being no interference with access as evidenced by the steady stream of vehicles that go up and down East Street,⁶¹ such a claim by private lot owners abutting East Street would likely fail. The 2000 As-Built plan⁶² is conclusive evidence that the fencing enclosing the contractor’s yard has extended onto East Street for over 20 years, potentially entitling Defendant

⁵⁷ *Commonwealth of Northern Mariana Islands v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 60 (2013).

⁵⁸ *Fischer v. Liebman*, 137 A.D.2d 485, 487 (2d Dep’t 1988).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Flavio Aff.*, ¶ 10.

⁶² SMF ¶¶50-57.

to title in the encroaching area by adverse possession as against the private lot owners.⁶³ But this issue is not before the Court and on the issue before the Court, the City lacks standing to assert claims regarding a private street.

“Standing is a threshold issue. The question of standing is critical because under common law a ‘court has no inherent power to right a wrong unless thereby the civil, property or personal rights of the plaintiff in the action or the petitioner in the proceeding are affected.’”⁶⁴ Here, as the City does not own East Street, and its only alleged harm from the encroachment is its nonexistent interest in East Street, the City cannot establish any property right affected by the encroachment and therefore its claim must be dismissed on this ground also.

Thus, this Court should dismiss the Complaint’s sixth cause of action as it relates to East Street as the City never acquired title to East Street by dedication, but rather, East Street is a private street in which the City has no rights or interest.

B. Defendants’ Plantings and Planting Bed is not an Unlawful “Encroachment”

Unlike East Street, Defendants do not deny Fifth Avenue is a public street maintained by the City, but the sixth cause of action as it relates to Fifth Avenue should nonetheless be dismissed because the encroachment is minimal and does not present a nuisance to the City.

As an initial matter, prior to the May 15, 2006 “incident”, the City raised no concerns about the Fifth Avenue side of the Property. Rather, its sole focus was East Street.⁶⁵ The City has

⁶³ *DuMaurier v. Lindsay-Bushwick Assoc.*, 39 A.D.3d 460, 461 (2d Dep’t 2007) (for adverse possession under common law it is necessary to establish “that the possession was hostile and under claims of right, actual, open and notorious, exclusive and continuous for the statutory period of 10 years.”).

⁶⁴ *Marone v. Nassau County*, 39 Misc.3d 1034, 1039 (Nassau Co. 2013), quoting, *Society of Plastics Indus. V. County of Suffolk*, 77 N.Y.2d 761, 772 (1991).

⁶⁵ SMF ¶¶ 62.

indicated that it appreciated the Property's extensive screening along Fifth Avenue and wanted the Property's East Street side to be improved to look more like the Fifth Avenue side.⁶⁶ Along the Fifth Avenue side is a beautiful garden wall/planting bed improved with very attractive and expensive stone work on the exterior side with an iron railing holding in an extensive and full row of Arborvitae trees.⁶⁷ This garden wall planter was erected with the City's knowledge and consent and constructed as directed by the City, namely, to be in the Fifth Avenue right-of-way but remain on the Property's side of the sidewalk, which it does.⁶⁸

The extensive screening along Fifth Avenue is hardly a nuisance as the garden wall/planting bed with its extensive plantings screen the contractor's yard from view and mitigate any potential visual impacts.⁶⁹ As set forth in Flavio's Affidavit, when work was being done on the Fifth Avenue side of the Property to remove dead Arborvitae trees and replace them with new plantings, the City immediately received complaints about the work as the neighbors incorrectly thought the plantings were being permanently removed.⁷⁰ Further, the planting bed does not impede access in anyway as it ends at the start of the sidewalk.⁷¹ And as it is located on the side of the sidewalk closest to the Property, it does not (and physically could not) interfere with access along Fifth Avenue itself.⁷²

While the Complaint does not specify what type of nuisance the City is claiming, it is irrelevant because as a matter of law the City can establish no form of nuisance. "A private nuisance claim requires a showing of intentional action or inaction that substantially and

⁶⁶ Flavio Aff. ¶27.

⁶⁷ SMF ¶121.

⁶⁸ SMF ¶¶122-123.

⁶⁹ SMF Exs. "6" and "61".

⁷⁰ Flavio Aff. ¶35.

⁷¹ SMF Exs. "6" and "61".

⁷² *Id.*

unreasonably interferes with other people's use and enjoyment of their property."⁷³ As noted above, because the improvements do not encroach upon the sidewalk, there is no interference with the City's or the public's use of Fifth Avenue.⁷⁴ The Complaint does not plead any such interference⁷⁵ and none can be ascertained from the record. The improvements are also not unreasonable as they are an aesthetic benefit over what would otherwise be visible from Fifth Avenue (a contractor's yard) if the improvements were removed. They are an asset to the public and the community. By making this claim, the City is seeking to cut off its nose to spite its face.

With respect to an alleged nuisance per se, the Second Department explains:

Nuisance per se is a nuisance based on an act which is unlawful, even if performed with due care. In an action based on a theory of nuisance per se, the plaintiffs need only establish a violation of law, and need not show that the nuisance was intentional or negligent. They must still, however, establish the remaining elements of the cause of action, which include proof of a situation created by the defendants which endangers or injures the property, health, safety, or comfort of a considerable number of persons.⁷⁶

For the reasons explained above, the City cannot establish the improvements made by Defendants on Fifth Avenue in any way endanger or injure the property, health, safety or comfort of the City where the improvements are a benefit to the City and the public.

And lastly, to the extent the Complaint can be read as alleging a public nuisance, the Court of Appeals has explained "[a] public nuisance exists for conduct that amounts to a substantial interference with the exercise of a common right of the public, thereby offending public morals, interfering with the use by the public of a public plan or endangering or injuring the property,

⁷³ *Overrocker v. Madigan*, 113 A.D.3d 924, 926 (3d Dep't 2014).

⁷⁴ SMF Exs. "6" and "61".

⁷⁵ See generally, SMF Ex. "1", ¶49-60.

⁷⁶ *State v. Fermenta ASC Corp.*, 238 A.D.2d 400, 403 (2d Dept 1997).

health, safety or comfort of a considerable number of persons.”⁷⁷ As explained above, the City cannot establish any interference with the common right of the public to use the sidewalk where the improvements end at the sidewalk line. The improvements also do not endanger or injure the property, health, safety or comfort of a considerable number of persons. If anything, all of those public welfare considerations are enhanced by the improvements as they create a more aesthetically pleasing environment for those members of the public walking or driving along Fifth Avenue. This was demonstrated by the neighbors’ panicked reaction when they thought Defendants were removing the extensive landscaping along Fifth Avenue.

Therefore, even giving the sparse allegations in the Complaint the benefit of alleging every possible nuisance claim, the City cannot establish any of them as a matter of law.

There is also no basis for the City’s claims purportedly brought under City Ordinance § 111-38 alleging an encroachment on Fifth Avenue.⁷⁸ Aside from the fact there is a relatively minor alleged encroachment of an attractive planting bed (constructed with attractive and expensive stonework and iron railing) and plantings on Fifth Avenue, City Ordinance § 111-38 is wholly inapplicable. City Ordinance § 111-38, entitled “Encroachments onto public property restricted” provides:

Except as hereinafter provided, **no portion of a building or other structure** shall encroach upon or project into any street, alley, park or other public property without a special permit having been issued therefor by the Council of the City of New Rochelle, New York, except as specifically stated in § 111-39, and the **owner of any building**, any part of which encroaches on public property, shall be liable to the City of New Rochelle for damage which may result to any person or property by reason of such encroachment, whether or not such encroachment is specifically allowed by the State Code.⁷⁹

⁷⁷ *532 Madison Ave. Gourmet Foods, Inc. v. Finlandia Center, Inc.*, 96 N.Y.2d 280, 292 (2001).

⁷⁸ SMFt Ex. “1”, ¶54-55..

⁷⁹ City Ordinance § 111-38 (*emphasis added*).

By its terms, City Ordinance § 111-38 applies to “a building or other structure,” but provides that only the owners of “any building” (not structure) that encroaches on public property are liable for damages. While Chapter 111 of the City Ordinance (Building Construction), of which § 111-38 is a part, does not define “building”, the Zoning Code defines “building” as “[a]ny structure over four feet high having a roof, self-supporting or supported by columns, walls, air pressure, or similar supports, which is affixed to the ground and intended for the housing or enclosure of persons, animals or chattel.”⁸⁰ Defendants are not owners of a “building,” as that term is defined in the Ordinance, that encroaches on Fifth Avenue, but owners of plants and a planting bed that minimally encroach on the portion of Fifth Avenue between the sidewalk and Defendants’ property line. These improvements do not have a roof and do not exceed four feet in height, the primary, mandatory criteria for something to be considered a “building” under the Ordinance. As no building owned by Defendants encroaches on Fifth Avenue, the City’s claim for damages fails as a matter of law.

As explained by the Court of Appeals, when engaging in statutory interpretation “a statute must be construed as a whole and its various sections must be considered together and with reference to each other.”⁸¹ Here, while City Ordinance § 111-38 initially references “buildings and structures”, it subsequently provides that only encroaching buildings are subject to damages. If the City Council wanted damages to be available for encroaching structures as well, the Ordinance could have easily been drafted to say that, but it was not. Accordingly, in reading the various sentences together, the Court must determine this omission to be intentional by the City Council and the City is not entitled to damages as the improvements at issue are undisputedly not a building.

⁸⁰ City Ordinance § 331-4 attached to Addendum.

⁸¹ *Walsh v. New York State Comptroller*, 34 N.Y.3d 520, 524 (2019).

Further, by its terms, City Ordinance § 111-38 does not apply to fencing or planting beds holding in the plantings. Without the planting bed finished on one side in attractive stone and with the railing atop the stone, the trees would flow onto the sidewalk preventing or impeding passage and creating a potential hazard to the public. Again, Chapter 111 of the Code does not define “structure”, but the Zoning Code defines “structure” as “[a]nything constructed or erected, the use of which requires location in the ground or attachment to something having location in the ground. Included are buildings, swimming pools, parking garages, decks, paddle tennis courts, or any assembly of materials **over four feet in height**, but not anything requiring only simple paving or surfacing of the ground, such as parking lots, driveways or sidewalks.”⁸² The improvements at issue also do not meet the definition of a structure, which does not include plantings or the garden wall/planting bed containing plantings under four feet in height.⁸³ The garden wall/planting bed to allow for extensive screening are also not listed in the definition as examples of items that constitute a “structure”.

Notwithstanding such, even if the planting bed were a “structure” (which Defendants do not concede) the City’s remedy under City Ordinance § 111-38 would be to require Plaintiffs to obtain a special permit from the City Council. If determined by a Court of competent jurisdiction to be necessary, Defendants will make an application to the City Council to maintain the extensive screening in an area of Fifth Avenue wholly outside the asphalt area of the street and sidewalk that is not used by any car or pedestrian, and which was erected in 2003 and has existed in that location for almost twenty years⁸⁴ without issue. Under these circumstances, the City Council would be hard-pressed to require Defendants to remove these improvements that are a benefit to the

⁸² City Ordinance § 331-4 (*emphasis added*).

⁸³ Flavio Aff. ¶31.

⁸⁴ Flavio Aff. ¶28.

community and which removal would upset the neighbors. But, again, because the improvements are undoubtedly not a building, under no circumstances would the City be entitled to damages under the clear reading of City Ordinance § 111-38.

Further, the civil action before this Court is neither the means nor the venue to impose penalties against Defendants for alleged violation of City Ordinance § 111-38 (which is part of Chapter 111 entitled “Building Construction”). Rather, City Ordinance § 111-40 entitled “Penalties for offenses” sets forth the procedure for violations of Chapter 111 (Building Construction) of the Code, including: (1) requiring the “Building Official shall serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, use or occupancy of a building or structure in a violation of the provisions of this Chapter”; (2) the prosecution of the violation by Corporation Counsel; and (3) details of penalties that may be assessed including fines and imprisonment.⁸⁵

As an initial matter, the City Building Inspector has never issued Defendants a notice of violation or order with respect to the Fifth Avenue encroachments, which is the initial step the City must complete to seek to remedy an alleged violation under City Ordinance § 111-40. While the City attached to its Complaint two letters sent to Defendants, only one letter was signed by the Deputy Commissioner of Development/Building Official, and that letter referred exclusively to “the public right of way along East Street.”⁸⁶ The other letter, which is entitled “Notice to Remove”, is signed only by the Commissioner of Public Works, who has no jurisdiction to issue a notice of violation under City Code § 111-40,⁸⁷ which is the Code provision under which the

⁸⁵ City Ordinance § 111-40 attached to Addendum.

⁸⁶ SMF Ex. “1”, ¶58, subexhibit “3”.

⁸⁷ SMF Ex. “1”, ¶59, subexhibit “4”.

Complaint seeks damages.⁸⁸ Accordingly, the City has not satisfied the conditions precedent under its own Ordinance to be entitled to the relief it seeks with respect to Fifth Avenue.

Further, the proper venue for the City to bring this claim would be in New Rochelle City Court, which has jurisdiction over City Ordinance violations. The Uniform City Court Act § 203 provides “[t]he [city] court shall have jurisdiction over the following actions provided that the real property involved is located in whole or in part within the city:..(2) An action brought to impose and collect a civil penalty for a violation of a state or local laws for...any applicable local housing maintenance codes, building codes and health codes.”⁸⁹ As the violation alleged by the City relates to the City’s Building Construction Ordinance, this issue is within the jurisdiction of the City Court and should be adjudicated in that forum, but only if and when the City adheres to its own required process.

In sum, the City should outright withdraw its sixth claim as it relates to Fifth Avenue as it does not want to be in a position to hear the wrath of abutting neighbors when Defendants remove all the plantings screening the contractor’s yard if it decides not to fight the City on its clearly misplaced claims. Defendants took pride in their Property and installed a beautiful planting bed and in the process screened the contractor’s yard from view (from the Fifth Avenue side), but the City, driven by vengeance from an inaccurate claim by Talk of the Sound, is apparently ready and willing to cause harm to the entire neighborhood.

III. The Complaint Should Be Dismissed Against Maria

A pleading must contain “statements sufficiently particular to give the court and parties notice of the transactions, occurrences or series of transactions or occurrences intended to be

⁸⁸ SMF Ex. “1”, WHEREFORE CLAUSE (d).

⁸⁹ Uniform City Ct. Act § 203.

proved and the material elements of each cause of action.”⁹⁰ However, the City asserts no facts or claims against Maria individually. Maria’s connection to this action is only that she is a member of the Property’s Owner FMLR and a shareholder of F. LaRocca & Sons, Inc.⁹¹ There is no basis to hold Maria liable for alleged claims against the LLC and corporate entity and the Complaint does not plead any. The Complaint fails to state a cause of action under any theory of liability as against Maria. The Complaint should be dismissed in its entirety against Maria.

IV. This Court Should Award Defendants Summary Judgment

This Court should grant Defendants’ summary judgment motion. A party seeking summary judgment must establish a *prima facie* entitlement to judgment as a matter of law and provide sufficient evidence to demonstrate the absence of any material issues of fact.⁹² To grant a summary judgment motion it must be clear that no material and triable issue of fact is presented.⁹³ Mere conclusory assertions, devoid of evidentiary facts cannot defeat a well-supported summary judgment motion, as is reliance upon surmise, conjecture or speculation.⁹⁴

“If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material issues of fact.”⁹⁵ Summary judgment permits a party to show, by affidavit or other evidence, there is no material issue of fact to be tried, and that judgment may be directed as a matter of law, thereby avoiding needless litigation cost and delay.⁹⁶ Indeed, “[t]he affidavit or affirmation of an attorney, even if he has no personal knowledge

⁹⁰ *East Hampton Union Free School Dist. v. Sandpebble Builders, Inc.*, 66 A.D.3d 122, 125 (2d Dep’t 2009), quoting, CPLR 3013.

⁹¹ SMF ¶6; Flavio Aff. ¶ 40.

⁹² *Ciccone v. Bedford Cent. School Dist.*, 21 A.D.3d 437, 438 (2d Dep’t 2005).

⁹³ *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 404 (1957).

⁹⁴ *Grullon v. City of New York*, 297 A.D.2d 261263-64 (1st Dep’t 2002).

⁹⁵ *Alder v. Ogden Cap Properties, LLC*, 976 N.Y.S.2d 857, 864 (Sup. Ct. NY Co. 2013) citing, *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980).

⁹⁶ *Brill v. City of New York*, 2 N.Y.3d 648, 651 (2004).

of the facts, may, of course, serve as the vehicle for the submission of acceptable attachments which do provide “evidentiary proof in admissible form”, e. g., documents, transcripts.”⁹⁷

Here, this Court should grant the Defendants’ motion for summary judgment as there are no material issues of fact as a matter of law.

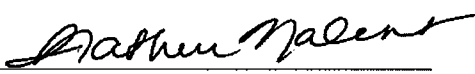
Conclusion

The Court should grant Defendants’ motion for summary judgment dismissal of the City’s Complaint in its entirety.

Dated: Tarrytown, New York
May 27, 2022

Respectfully submitted,

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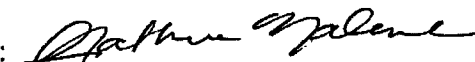
⁹⁷ *Zuckerman v. City of New York*, 49 N.Y.2d 557, 563 (1980).

CERTIFICATION

I hereby certify pursuant to 22 NYCRR § 202.8-b that the foregoing MEMORANDUM OF LAW IN SUPPORT OF SUMMARY JUDGMENT was prepared on a computer using Microsoft Word indicating the following:

Word Count. The total number of words, inclusive of point headings and footnotes, and exclusive of the caption, table of contents and signature block, is 6965.

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ADDENDUM

City of New Rochelle, NY
Friday, May 27, 2022

Chapter 301. Trees and Shrubs

Article II. Trees on City Property

§ 301-4. Permit required.

[Amended 4-15-1986 by Ord. No. 87-1986]

Except upon order of the Commissioner of the Department of Public Works, it shall be unlawful for any person without a written permit from said Commissioner to remove, destroy, cut, break, climb or injure any tree, plant or shrub or portion thereof that is planted or growing in or upon any public highway or public place within the City, or cause, authorize or procure any person to remove, destroy, cut, break, climb or injure any such tree or shrub or portion thereof; or to injure, misuse or remove or cause, authorize or procure any person to injure, misuse or remove any device set for the protection of any tree, plant or shrub in or upon any public highway or public place.

City of New Rochelle, NY
Friday, May 27, 2022

Chapter 301. Trees and Shrubs

Article II. Trees on City Property

§ 301-7. Use of impervious materials.

[Amended 4-15-1986 by Ord. No. 87-1986]

It shall be unlawful for any person, except with a written permit of the Commissioner of the Department of Public Works, to place or maintain upon the ground in any public highway or public place any stone, cement or other impervious material or substance in such a manner as may obstruct the free access of air and water to the roots of any tree, plant or shrub in any such highway or place. Unless otherwise provided for in such written permit, there must be maintained about the base of the trunk of each tree in such highway or place at least nine square feet of ground for a tree three inches in diameter, and for every two inches of such diameter there must be an increase of at least one square foot of open ground.

City of New Rochelle, NY
Friday, May 27, 2022

Chapter 111. Building Construction

Article V. Fire Limits; Encroachments and Projections Onto Public Property

§ 111-38. Encroachments onto public property restricted.

[Amended 3-18-2003 by Ord. No. 63-2003]

Except as hereinafter provided, no portion of a building or other structure shall encroach upon or project into any street, alley, park or other public property without a special permit having been issued therefor by the Council of the City of New Rochelle, New York, except as specifically stated in § 111-39, and the owner of any building, any part of which encroaches on public property, shall be liable to the City of New Rochelle for damage which may result to any person or property by reason of such encroachment, whether or not such encroachment is specifically allowed by the State Code.

- A. Removal of projections. The owner of a building or other structure, any part of which projects in or encroaches upon public property, shall remove said projection or encroachment upon being ordered to do so by the Building Official, and the City of New Rochelle shall not be liable for any damages resulting to the property by reason of such order.
- B. Maintenance of projections. All such projections on buildings shall be structurally safe and shall be kept in safe condition and shall be repaired when necessary in the opinion of the Building Official and at the expense of the owner of the building from which they project.
- C. Below grade. No part of a building hereafter erected below grade that is necessary for structural support of the building shall project beyond the lot lines, except that the footings of street walls or their supports located at least eight feet below grade may project not more than 12 inches beyond the street lot line.
- D. Projections necessary for safety. In any specific application, the Building Official may designate by approved rules such architectural features and accessories which are deemed desirable or necessary for the health or safety of the public and the extent to which they may project beyond the street lot line or the building line subject to all provisions and restrictions that may be otherwise prescribed by law, ordinance or rule of the authorities having jurisdiction.
- E. Permits revocable. Any permit granted or permission expressed or implied in the provisions of this code to construct a building so as to project beyond the street lot line shall be revocable by the City of New Rochelle, New York, at will.
- F. Existing encroachments. Parts of existing buildings and structures which already project beyond the street lot line or building line may be maintained as constructed until their removal is directed by the proper municipal authorities.

City of New Rochelle, NY
Friday, May 27, 2022

Chapter 331. Zoning

Article II. Definitions and Word Usage

§ 331-4. Specific terms defined.

For the purpose of this chapter, the following terms shall have the meanings indicated:

ACCESSORY BUILDING

Building(s) detached from the Principal Buildings located on the same lot and customarily incidental and subordinate to the Principal Buildings or uses, whose Building Area, in the aggregate, does not exceed 25% of the Building Area of the Principal Building(s) on the lot.
[Amended 12-11-2007 by Ord. No. 294-2007; 5-13-2008 by Ord. No. 108-2008]

ACCESSORY DWELLING OF CARETAKER. SUPERINTENDENT OR WATCHMAN

Any dwelling unit that is part of the principal building, whose principal use or uses require such accessory dwelling to provide security, safety, maintenance and/or operation of such principal use or uses and where such accessory dwelling does not exceed 1,600 square feet in area, is incidental and customary to such principal use or uses, and has available on-site parking in accordance with the parking requirements for the zoning district in which it is located. Such accessory dwelling shall not be exempt from the requirements of § 331-152, Requirements for affordable housing, and § 331-118G (regarding open space) when such accessory dwelling is located on a lot that contains other residences or is part of a residential subdivision, except where such accessory dwelling is less than 400 square feet.
[Added 6-15-2010 by Ord. No. 103-2010]

ACCESSORY USE

A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building located on the same lot with the principal use, the Gross Floor Area of which accessory use(s) shall not occupy, in the aggregate; whether enclosed or not, more than 48% of the Gross Floor Area on the lot. Examples of accessory uses include the following:
[Amended 12-11-2007 by Ord. No. 294-2007; 5-13-2008 by Ord. No. 108-2008]

- A. Offices for building management.
- B. Recreation and playrooms.
- C. Laundries for the use of tenants and occupants.
- D. Maintenance and workshops.
- E. Garages within a residential building or on the premises thereof used primarily for the storage of motor vehicles, boats, camper trailers, motor homes, pickup coaches and travel trailers.

ACTIVE RECREATIONAL USE

Any sporting activity, with or without a Structure, performed with others, typically requiring

serving of breakfast to not more than six casual and transient roomers, provided that the renting of such rooms for such purpose is clearly incidental and subordinate to the principal use of the dwelling.

BICYCLE PATH

A pathway, often paved and separated from streets and sidewalks, designed to be used by bikes.

BILLIARD HALL

Any premises, business or establishment that maintains 15 or more billiard tables or pool tables available for public use.

BOARD OF APPEALS ON ZONING

The duly constituted Board of Appeals on Zoning of the City of New Rochelle, consisting of seven members, created pursuant to the provisions of the General City Law of the State of New York.

BOARDWALK

An elevated public pedestrian walkway constructed over a public street or along a waterfront or beach.

BOAT LAUNCH

A facility used by boats on trailers to gain access to a water body. Boat launches can be public or private and may or may not require a fee for their use.

BOAT SERVICE FACILITY

A building, land area, or other premises, or portion thereof, used for the retail dispensing or sales of marine fuels; servicing and repair of boats; and including as an accessory use the sale and installation of lubricants, parts, batteries, and similar marine accessories.

BOAT STORAGE

An area of land or water where boats are stored. In-water boat storage can be in the form of moorings (anchored to buoys) or slips (tied along docks). On-land storage can be out in the open, covered or in enclosed facilities.

BOATYARD

A yard where boats are built, repaired, and stored and often sold or rented.

BOWLING ALLEY

The use of a structure consisting of several lanes for the recreational activity of bowling and customary accessory uses, which may include a snack bar, arcade, or pro-shop.

BUILDING

Any structure over four feet high having a roof, self-supporting or supported by columns, walls, air pressure, or similar supports, which is affixed to the ground and intended for the housing or enclosure of persons, animals or chattel.

BUILDING AREA

The maximum horizontal cross section of a building, including roofed-over porches, covered decks and balconies, but excluding cornices, roof overhangs or gutters projecting not more than two feet from the exterior building wall.

BUILDING COVERAGE

The percentage of lot area covered by the combined building area of all buildings on a lot, excluding those located underground.^[2]

BUILDING LENGTH

SPORTS COURT

A generally paved or grassed surface together with attendant fixed structures such as walls, poles, nets, fences, and other similar sports-related structures, which are detached from the principal structures and garages to which they are accessory, constructed for the purpose of playing sports activities. Sports courts shall include, but not be limited to, basketball courts, tennis courts, paddle tennis courts, squash courts, handball courts, volleyball courts, and skateboard courts.

[Added 9-21-2004 by Ord. No. 198-2004]

STORY

That part of any building comprised between the level of one finished floor and the level of the next higher finished floor or, if there is no higher finished floor, then that part of the building comprised between the level of the highest finished floor and the top of the roof beams. A basement shall be counted as a story when the basement structural ceiling level, as measured from the lowest point of that structural ceiling level, is four or more feet above the average level of the finished grade surrounding the basement.

[Amended 9-21-2004 by Ord. No. 198-2004]

STORY, HALF

Any space partially within the roof framing, where the clear height of not more than 75% of such space between the top of the floor beams and the structural ceiling level is seven feet six inches or more.

[Added 9-21-2004 by Ord. No. 198-2004]

STREET

An existing state, county or City highway or local road, or a local road on a subdivision plat approved by the Planning Board, or on a plat duly filed and recorded in the Office of the County Clerk prior to the approval of the Planning Board and the grant to such Board of the power to approve subdivision plats, including all of the land within the right-of-way.

STREET WALL

The wall of the building closest to the nearest adjacent street.

STRUCTURE

Anything constructed or erected, the use of which requires location in the ground or attachment to something having location in the ground. Included are buildings, swimming pools, parking garages, decks, paddle tennis courts, or any assembly of materials over four feet in height, but not anything requiring only simple paving or surfacing of the ground, such as parking lots, driveways or sidewalks.^[1]

STUDIO, PROFESSIONAL

A room or space in a building in which a person provides professional artistic and/or musical instruction, photography, and exercise or physical improvement classes.

SUBDIVISION

The division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions of land for sale, development, or lease and regulated by Chapter **A361** of the City Code.

SUN-SHADING DEVICE

A device that limits the amount of sunlight entering a building, including, but not limited to, roll down blinds, shutters, vertical louvers, horizontal louvers, canvas awnings, fixed or moveable.

[Added 2-19-2013 by Ord. No. 39-2013]

SWIMMING POOL

A man-made body of water or receptacle for water having a depth of more than 24 inches and

City of New Rochelle, NY
Friday, May 27, 2022

Chapter 111. Building Construction

Article VI. Enforcement

§ 111-40. Penalties for offenses.

[Amended 3-18-2003 by Ord. No. 63-2003; 10-16-2007 by Ord. No. 238-2007]

- A. Notice of violation. The Building Official shall serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, use or occupancy of a building or structure in a violation of the provisions of this Chapter or the State Code or in violation of a detailed statement or a plan approved thereunder or in violation of a permit or certificate issued under the provisions of this Chapter, and such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.
- B. Prosecution of violation. If the notice of violation is not complied with promptly, the Building Official shall request the Corporation Counsel to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of this Chapter or the State Code or of the order or direction made pursuant thereto.
- C. Violation penalties. For any and every violation of the provisions of this Chapter or the State Code, the owner, general agent or contractor of the building or premises where such violation has been committed or shall exist and the lessee or tenant of an entire building or entire premises where such violation has been committed or shall exist and the owner, general agent or contractor, lessee or tenant of any part of a building or premises in which part such violation has been committed or shall exist and the general agent, architect, engineer, builder or contractor or any person who commits, takes part or assists in such violation or who maintains any building or premises in which any such violation shall exist shall be subject to a fine not more than \$2,500 for a first offense and not more than \$5,000 for a second or subsequent offense within three years of a first or other offense of this Chapter, or to imprisonment for not more than 15 days, or both, and each and every day the violation continues after the owner, general agent or contractor of the building or premises where such violation occurred has been notified thereof shall be deemed to be a separate and distinct violation.
- D. Abatement of violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the municipality from instituting appropriate action to prevent unlawful construction or to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises or to stop an illegal act, conduct, business or use of a building or structure in or about any premises.