

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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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.,

Defendants.
----- X

NOTICE OF MOTION

Return Date: July 18, 2022

**Assigned Justice: Hon.
William J. Giacomo, J.S.C.**

PLEASE TAKE NOTICE THAT, UPON THE ANNEXED Affirmation in Support by Peter A. Meisels, affirmed the 31st of May, 2022, and the exhibits annexed thereto, the statement of material undisputed facts submitted pursuant to Uniform Rule 202.8-g and the accompanying memorandum of law, as well as all the pleadings and proceedings heretofore had herein, the City of New Rochelle (“the City”) will move this Court, at the Westchester County Courthouse located at 111 Martin Luther King Blvd., White Plains, New York, 10601, on July 18, 2022 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an

ORDER, (1) pursuant to CPLR 3025 permitting the City to amend its reply to the Defendants’ counterclaims to assert the defenses of statute of limitations, failure to comply with notice of claim requirements, and laches; and (2) pursuant to CPLR 3212, granting summary judgment in favor of the City, on the City’s claims for trespass, negligence, and public nuisances and dismissing the Defendants’ counterclaims, ordering the removal of the encroachment onto City property, enjoining Defendants from further encroachment, and imposing statutory penalties pursuant to New Rochelle City Code § 111-40 of at least \$7,500 plus \$50 for each day the

encroachment has not been remedied, and granting such other, further and different relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Trial Readiness Referee Report & Order issued in this matter on March 11, 2022, opposition papers must be served via NYSCEF within 30 days of service of motion papers; and reply papers, if any, must be served via NYSCEF within 10 days following service of any opposition papers.

Dated: White Plains, New York
May 31, 2022

WILSON, ELSER, MOSKOWITZ
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**PLAINTIFF’S STATEMENT OF MATERIAL FACTS PURSUANT TO
22 NYCRR 202.8-g**

1. Defendants Flavio LaRocca and Maria LaRocca are the owners of several businesses in New Rochelle. They are the only two members of FMLR Realty Management LLC. Ex. 7 (Flavio Dep.) at 12:22-13:8; Ex. 19 (Interrogatory Responses) at p. 7, No. 5; Ex. 22 (Maria LaRocca Dep.) at 15:23-17:10.¹ They are also the owners of LaRocca & Sons, Inc. a.k.a. F. LaRocca & Sons, Inc. (hereinafter, “LaRocca Inc.”), a company that performs landscaping and masonry construction for residential and light commercial properties. Ex. 7 (Flavio Dep.) at 15:11-23; Ex. 19 (Interrogatory Responses) at p. 7, No. 5; Ex. 22 (Maria LaRocca Dep.) at 14:17-15:7. Flavio LaRocca is the President of LaRocca Inc., and Maria LaRocca is the Vice President of LaRocca Inc. Ex. 19 (Interrogatory Responses) at p. 7, No. 5.

2. LaRocca Inc. has a primary place of business of 71 Potter Avenue, New Rochelle. Ex. 22 (Maria LaRocca Dep.) at 15:13-16. Maria LaRocca manages the office of LaRocca Inc., including the performance of all bookkeeping, payroll, insurance, and day-to-day operations.

¹ All exhibits referenced herein are attached to the accompanying Affirmation of Peter A. Meisels, dated May 31, 2022.

Ex. 22 (Maria LaRocca Dep.) at 19:8-18. LaRocca Inc. uses property located at 436 Fifth Avenue, New Rochelle, New York, as a contractor's yard to store its equipment and vehicles.

Ex. 7 (Flavio Dep.) at 17:7-12

The Properties at Issue

3. In September 2002, Defendants Flavio LaRocca and Maria LaRocca purchased property located at 436 Fifth Avenue, New Rochelle, New York, from John and Rose Maffei. Ex. 7 (Flavio Dep.) at 44:11-45:23; Ex. H (2002 Deed). In a deed recorded March 18, 2008, Flavio and Maria LaRocca transferred ownership of 436 Fifth Avenue to their Limited Liability Company, FMLR Management LLC. Ex. I (2008 Deed); Ex. 22 (Maria LaRocca Dep.) at 25:4-15, 28:4-16.

4. 436 Fifth Avenue is located at the corner of Fifth Avenue and East Street. Ex. 6 (2014 Survey); Ex. 36 (Aerial); Ex. 8 (2002 Deed). The southern boundary of 436 Fifth Avenue runs along Fifth Avenue, and the eastern boundary of 436 Fifth Avenue runs along the western side of East Street. Ex. 6 (2014 Survey); Ex. 36; Ex. 8 (2002 Deed) at Schedule A (describing an area of land running along "the westerly side of East Street" and the "northerly side of Fifth Avenue").

5. The eastern border of East Street abuts Flowers Park, also known as City Park, a City-owned park. Ex. 6 (2014 Survey); Ex. 7 (Flavio Dep.) at 110:15-111:10 (the Parcel is off of East Street on Flowers Park property); Ex. 4 (2022 Title Report) (Property located on eastern side of East Street is owned by the City of New Rochelle); Ex. 44 (park deed) (conveying land at the intersection of "the easterly line of East Street with the northerly line of 5th Avenue" to the City).

6. Originally, East Street and several other streets were created and laid out on a subdivision map entitled “Fifth Avenue Heights” dated April 1907 and filed in the Register’s Office of Westchester County (now County Clerk’s Office, Division of Land Records) on June 7, 1907 as Map No. 1728. Ex. 4 (2022 Title Report) at p.1.

7. Title to the bed of East Street as shown on Map No. 1728 is certified in the City of New Rochelle by deed dated April 30, 1914, recorded June 27, 1919, in Liber 2201 cp 231. Ex. 4 (2022 Title Report) at p.1; Ex. 39 (certified 1914 deed).

8. All of the streets on Map No. 1728, including East Street, were conveyed to the City of New Rochelle by Hadert Realty Co. by deed dated April 30, 1914 recorded on June 27, 1919 in Liber 2201. Ex. 4 (2022 Title Report) at p.1; Ex. 5 (2015 Title Report) at PLTF062-63 (Deed); Ex. 39 (certified 1914 deed).

9. The 1914 deed provides:

[T]he party of the first part [Hadert Realty Company] . . . does hereby remise, release and forever quit-claims unto the said party of the second part [City of New Rochelle], 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 party, its successors or assigns, to repair said streets and avenues as there shall be occasion. . . .TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, its successors and assigns forever. . . .

Ex. E at PLTF063 (1914 Deed) (emphasis added); Ex. 39 (certified 1914 deed).

10. The deed does not contain a provision for reentry on the land. Ex. E at PLTF063 (1914 Deed); Ex. 39 (certified 1914 deed).

11. A title search of East Street conducted by First American Title Insurance Company in 2022 shows that the City has owned East Street continuously since 1914 and that no part of East Street has ever been conveyed to any of the owners of property abutting East Street. Ex. 4 (2022 Title Report) at p.1-2.

12. In order to be accepted as a city street, a street must comply with municipal requirements. *See generally* New Rochelle City Code § 281-17 (“No street shall be accepted by the City unless said street is completed with all curbs, sidewalks, lights, sewer system, drain system and monuments or as per the requirements of the Commissioner of Public Works.”); §281-20 (requirements for construction of street).

13. Subsequently, at a June 2, 1914 meeting of the New Rochelle City Council, the Clerk read a communication from the Assistant Corporation Counsel which stated, *inter alia*, “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 the 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.” Ex. 27 (Minutes) at PLTF120.

14. At the June 1914 City Council meeting, the Council passed a resolution accepting streets within Fifth Avenue Heights which were “properly monumented and are fifty feet in width” as public streets. Ex. 27 (Minutes) at PLTF124. East Street, which was not fifty feet in width, was not accepted as a public street, but remained a public right of way. *See* Ex. 27 (Minutes) at PLTF124; Ex. 40 (Moran Aff.) at ¶¶2-4; Ex. 39 (deed).

15. Ownership of East Street was conveyed to the City by Hadert Realty Co. in the 1914 deed as a public right of way. Ex. E at PLTF062-063 (1914 Deed); Ex. 39 (certified deed). East Street remains a public right of way to this day and is used for public purposes including emergency access to properties along East Street and utilities. Ex. 40 (Moran Aff.) ¶¶2-5.

Defendants' Encroachment on East Street

16. As part of his work with LaRocca, Inc., Flavio LaRocca reads and consults property surveys. Ex. 7 (Flavio Dep.) at 37:7-38:2.

17. Prior to purchasing the property at 436 Fifth Avenue, Flavio LaRocca reviewed two surveys of the property, including a survey prepared by land surveyor Rob Iaropoli dated November 2000 (the "2000 Survey"). Ex. 7 (Flavio Dep.) at 45:24-46:8, 47:14-48:19 (2000 Survey is a survey Mr. LaRocca reviewed prior to purchasing 436 Fifth Avenue).

18. The surveys that Flavio LaRocca reviewed at the time of the purchase showed that a fence with a sliding gate on the eastern side of 436 Fifth Avenue encroached over ten feet into East Street. Ex. 7 (Flavio Dep.) at 46:19-25 (testifying that "[t]he fencing was in East Street."), 48:6-49:3; Ex. 10 (2000 Survey showing "sliding gate" located in East Street, over 10 feet east of property line for 436 Fifth Avenue); Ex. 24 (Senor Dep.) at 36:25-38:25 (testifying that 2000 survey shows a 10-foot encroachment).

19. At the time that Flavio and Maria La Rocca purchased 436 Fifth Avenue, they obtained a title insurance policy from Commonwealth Land Title Insurance Company. Ex. 12 (Title Insurance Policy) at D0001-D0015; Ex. 7 (Flavio Dep.) at 49:5-53:9.

20. Even though Flavio LaRocca had reviewed the 2000 Survey prior to purchasing 436 Fifth Avenue and had a copy in his possession, the 2000 Survey was not provided to Commonwealth Title Insurance Company. Ex. 7 (Flavio Dep.) at 49:5-53:9 (reviewed property

surveys before purchasing the property) and Ex. 12 (Title Insurance Policy) at D0013 (Commonwealth could not locate an existing survey).

21. The Commonwealth Title Insurance Policy states that “the policy excepts any state of facts an accurate survey would show. When a survey showing the premises described in Schedule A is received, same will be read into the existing title report. THIS COMPANY IS UNABLE TO LOCATE AN EXISTING SURVEY OF THE PREMISES DESCRIBED IN SCHEDULE ‘A’.” Ex. 12 (Title Insurance Policy) at D0013.

22. LaRocca, Inc. utilizes numerous trucks and other machinery and equipment as part of its business. LaRocca Inc. owns about 10 trucks, including 5 dump trucks, as well as pick-up trucks and vans, and three trailers. Ex. 7 (Flavio Dep.) at 22:23-24:24. LaRocca Inc. also uses tractors, skid-skeeters (like a Bobcat four-wheeled, with a bucket on front), mini excavators, payloaders, compactors, and smaller equipment, like roto-tillers. Ex. 7 (Flavio Dep.) at 24:25-25:17, 26:22-27:11. LaRocca Inc. stores its trucks and equipment at 69-71 Potter Avenue and at 436 Fifth Avenue. At times, it has also stored trucks on the property of Guglielmo Landscaping, one of Mr. LaRocca’s neighbor’s on East Street. Ex. 7 (Flavio Dep.) at 17:25-19:23.

23. The property on the opposite side of East Street from 436 Fifth Avenue is part of City Park (aka Flowers Park) and has been owned by the City since 1911. Ex. 4 (Title Report); Ex. 44 (park deed).

24. The La Roccas knew that the property on the eastern side of East Street was owned by the City of New Rochelle. *See e.g.*, Ex. 7 (Flavio Dep.) at 110-111; Ex. 22 (Maria LaRocca Dep.) at 63:16-20 (LaRoccas asked the City if they could purchase the skate park parcel); Ex. 15 (March 2003 Letter); Ex. 16 (2003 Letters to City).

25. Flavio LaRocca wanted to use the land directly across East Street from 436 Fifth Avenue for his business. At the time that Flavio and Maria LaRocca purchased 436 Fifth Avenue, the property at the corner of Fifth Avenue and East Street, immediately across East Street from 436 Fifth Avenue, was cleared and was being used by Persico Construction as a staging area for construction projects that were underway for the City. Ex. 7 (Flavio LaRocca) at 87:2-25, 89:10-18; Ex. 15 (2003 Strome Letter).

26. On March 6, 2003, Flavio inquired of the City as to whether he could rent the area across East Street following Persico Construction's use. Ex. 15. On March 17, 2003, City Manager Charles B. Strome III informed Flavio LaRocca that Persico's use of the property was intended to be temporary and the City intended to be turn the space into additional parking for the park; thus, it would not be available to lease. Ex. 7 (Flavio LaRocca) at 87:2-88:6; Ex. 15 (2003 Strome Letter).

27. After Persico Construction vacated the property across East Street, the City turned that area into a public skate park, the Sidney E. Frank Skate Park. Ex. 36 (Aerial); Ex. 7 (Flavio Dep.) at 60:14-61:20.

28. LaRocca, Inc. sometimes parks its trucks in East Street in front of the yard at 436 Fifth Avenue. Ex. 7 (Flavio Dep.) at 78:14-79:2; *see also* Ex. 22 (Maria LaRocca Dep.) at 64:14-65:8; Ex. 20 (photo of LaRocca pick-up in East Street). The City has not given LaRocca Inc. permission to park its vehicles in East Street. Ex. 22 (Maria LaRocca Dep.) at 65:15-19.

29. In a letter dated June 22, 2009 and signed by Paul Vacca, the Deputy Commissioner of Development, and Jeffrey C. Coleman, then-Commissioner of Public Works, the City notified Mr. LaRocca that it had come to the City's attention "that the legal non-confirming contractor's yard at [436 Fifth Avenue] is encroaching on City property, specifically,

the public right of way along East Street.” Ex. 17 (6/22/09 letter); Ex. 7 (Flavio Dep.) at 90:24-91:9; Ex. 26 (Vacca Dep.) at 14:24-15:4.

30. According to Flavio LaRocca, following receipt of the June 22, 2009 letter, he and his wife had a meeting with Paul Vacca and Jeffrey Coleman. Ex. 7 (Flavio Dep.) at 92:13-93:4. At the meeting, the City did not give the LaRoccas permission to encroach on East Street. Ex. 7 (Flavio Dep.) at 93:17-25. Rather, the issue was to be discussed further, after the LaRoccas obtained a survey. *Id.*

31. Flavio LaRocca hired Gabriel E. Senior, P.C., a licensed land surveying company, to stake out the eastern side of his property at 436 Fifth Avenue, abutting East Street. Ex. 7 (Flavio Dep.) at 93:22-94:18; Ex. 25 (Senior Invoice – Flavio Ex. 10); Ex. 24 (Senior Dep.) at 16:8-23, 29:4-9; 32:17-20.

32. Eliot Senior is the owner and president of Gabriel E. Senior, P.C. Ex. 24 (Senior Dep.) at 14:21-15:5. Mr. Senior is a New York State licensed land surveyor and a licensed engineer. Ex. 24 (Senior Dep.) at 16:23-18:25. He is a member of the New York State Association of Professional Land Surveyors, among other professional associations. Ex. 24 (Senior Dep.) at 19:22-20:15.

33. Gabriel E. Senior, P.C. performed a stake out of the eastern boundary of 436 Fifth Avenue in or about September of 2009. Ex. 24 (Senior Dep.) at 29:17-20; Ex. 25 (Senior File) at p.9. Mr. Senior reviewed all of the measurements taken at the property. Mr. Senior also reviewed the 2000 Survey, among other documents. Ex. 24 (Senior Dep.) at 33:16-25, 35:23-36:12; and Ex. 25 (Senior File) at Page 4.

34. In Mr. Senior’s professional opinion, the measurements taken at 436 Fifth Avenue were sufficient to mark the property line. Ex. 24 (Senior Dep.) at 43:3-25.

35. At his deposition, Flavio LaRocca testified that the 2009 stake out showed that the fence/gate used by 436 Fifth Avenue only encroached into East Street by “10 inches.” Ex. 7 (Flavio Dep.) at 99:3-18.

36. In fact, the stake out performed by Gabriel E. Senor, PC showed that Defendants’ chain link fence/sliding gate was over 10 feet past the boundary line of 436 Fifth Avenue into East Street. Ex. 24 Senor Dep. at 55:11-57:12. These findings were consistent with what the 2000 Survey showed, *i.e.*, that the fence/gate was encroaching into East Street by over 10 feet. Ex. 24 (Senor Dep.) at 36:25-38:25; Ex. 10 (2000 Survey); Ex. 23 (7/6/16 Email from LaRocca to Gabriel Senor PC); Ex. 24 (Senor Dep.) at 71:11-72:25 (statement that fence is approximately 10 feet outside the property line is accurate).

37. The findings of the stake out were conveyed to Defendants in approximately September or early October 2009. Ex. 24 (Senor Dep.) at 60:24-62:21. Mr. Senor *never* told the LaRoccas that their fence/gate was only encroaching into East Street by mere inches. Ex. 24 (Senor Dep.) at 64:19-65:2. Mr. Senor testified that both the 2000 Survey and his own stake out showed that the LaRoccas’ fence was encroaching into East Street by over 10 feet. Ex. 24 (Senor Dep.) at 36:25-38:25 (2000 Survey shows chain link fence associated with 436 Fifth Avenue is 10-plus feet to the east of the property line).

38. Licensed land surveyor Ward Carpenter prepared a survey map for the City dated December 8, 2014 (the “2014 Survey”) which includes property along East Street in New Rochelle, including 436 Fifth Avenue. Ex. 6. During his deposition, Flavio LaRocca reviewed the 2014 Survey and used pink highlighter to mark an area outside the boundary of 436 Fifth Avenue to LaRocca Inc.’s fence in East Street with diagonal stripes. Ex. 7 (Flavio Dep.) at 100:14-101:8, 102:4-104:4; Ex. 13 (2014 Survey with LaRocca Markings). LaRocca Inc. uses

the entirety of the pink shaded are as its own property; LaRocca Inc. has placed metal and wood shelving in the pink area, which it uses to store tools, cones, silt fencing, wheelbarrows, hand tools, shovels, rakes, and other tools. Ex. 7 (Flavio Dep.) at 102:20-103:7; Ex. 13 (2014 Survey with LaRocca Markings).

39. On November 18, 2015, the City issued a Notice to Remove to Defendant FMLR Management, LLC regarding the encroachment of property at 436 Fifth Avenue into city property. Specifically, in a notice dated November 18, 2015, signed by Alexander Tergis, then-Commissioner of Public Works for the City of New Rochelle, the City notified Defendants that the City had recently completed a survey showing 436 Fifth Avenue and the survey revealed that Defendants were encroaching on City property. Ex. 18 (2015 Tergis Letter). The letter identified the following, non-exhaustive list of items as encroaching or intruding on and over City owned real property: “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.” Ex. 18 (2015 Tergis Letter).

40. After receiving the November 18, 2015 letter, the LaRoccas contacted an attorney. Ex. 7 (Flavio Dep.) at 173:10-174:16. They also reached out to Gabriel E. Senor, P.C. again. Ex. 23 (July 2016 email).

41. On July 6, 2016, the LaRocca’s sent Gabriel E. Senor, P.C. a copy of an April 13, 2016 survey prepared by Ward Carpenter, along with a 1986 survey, Senor’s 2009 stake out drawing, and the property description from their deed. Ex. 24 (Senor Dep.) at 68:24-69:13; Ex. 23 (7/6/16 Email from LaRocca to Gabriel Senor PC with attachments). Maria LaRocca did not include the 2000 Survey in her email to Gabriel E. Senor, PC. Ex. 23.

42. Mr. Senor reviewed the 2016 Ward Carpenter Survey. Ex. 24 (Senor Dep) at 57:13-22; Ex. 25 (Senor File) at p.11. The 2016 survey shows that the Defendants' fence/gate is past the eastern border of Defendants' property at 436 Fifth Avenue. Ex. 24 (Senor Dep) at 59:13-16; Ex. 25 (Senor File) at p.11. The 2016 survey also shows that there are jersey barriers located to the east of the fence/gate, encroaching even farther into East Street. Ex. 25 (Senor File) at p.11.

43. On July 6, 2016, Gabriel E. Senor, P.C. responded to Maria LaRocca, by e-mail, informing her "The fence is aprox. 10 FT on the outside the property line as indicated on our original field sketch." Ex. 23 (7/6/16 Email from LaRocca to Gabriel Senor PC); Ex. 24 (Senor Dep.) at 71:11-72:25 (statement that fence is approximately 10 feet outside the property line is accurate). Maria LaRocca received this email and understood that Gabriel Senor PC was stating "that the fence is approximately ten feet outside the property line." Ex. 22 (Maria LaRocca Dep.) at 156:2-157:5.

44. To date, the LaRoccas have not removed the encroachments into East Street (i.e. the fence with gates, shelving, etc.). Ex. 40 (Moran Aff.) at ¶5; Ex. 7 (Flavio Dep.) at 172:20-173:9. The LaRoccas have declined to apply for a license for the use of any part of East Street.

Trespass on the Flowers Park "Parcel"

45. City of New Rochelle Code § 224-1 "Interference with lands or improvements" provides that "No person shall modify, alter or in any manner interfere with the line or grades of any park or park street, not take up, move or disturb any curb, gutter stone, flagging, tree, tree box, railing, fence, sod, soil or gravel thereof, except by direction of the Commissioner of Parks and Recreation or under the Commissioner's permit."

46. In the Complaint, the City alleged that Flavio LaRocca and LaRocca, Inc. employees entered an area of land adjacent to East Street, which the Complaint referred to as the “Parcel” and removed trees from the Parcel and began to prepare it for use as a parking lot for their personal use. Ex. 1 (Complaint).

47. At his deposition, Flavio LaRocca testified that he was familiar with the property referred to as the “Parcel” and he marked the area with a large yellow circle on a copy of the 2014 Survey, and described it as off of East Street. Ex. 7 (Flavio Dep.) at 104:21-105:11, 110:21-111:10; Ex. 13 (2014 Survey with LaRocca Markings). Flavio LaRocca testified that the “Parcel” lies within Flowers Park. Ex. 7 (Flavio Dep.) at 110:21-111:10. Flavio LaRocca also marked the Guglielmo property where Larocca, Inc. formerly stored some trucks with a green X. Ex. 7 (Flavio Dep.) at 104:21-105:11; Ex. 13 (2014 Survey with LaRocca Markings).

48. Flowers Park abuts the eastern side of East Street. Ex. 7 (Flavio Dep.) at 111:5-10; Exhibit 6 (December 8, 2014 Survey). The “Parcel” is a certain number of feet off of East Street, to the north of 436 Fifth Avenue and the skate park, and is part of Flowers Park. Ex. 7 (Flavio Dep.) at 110:21-111:10; Exhibit 6 (December 8, 2014 Survey); Ex. 7 (Flavio Dep.) at 131:11-25 and 134:14-21 (Flavio has seen City employees clear garbage from the Parcel and maintain the Parcel); Ex. 36 (Aerial)

49. In their Interrogatory Responses in this action, the Defendants refer to the Parcel as the “Parking Area.” See Ex. 19 (Interrogatory Responses).

50. Prior to May 16, 2015, the Parcel contained trees and undergrowth. Ex. 29 (Cox Dep.) at 38:8-12.

51. Shortly before May 16, 2015, the City changed the parking policy at City Park (Flowers Park). Prior to this time, parking at City Park on weekdays was free. The City

announced that it would begin charging for parking at City Park. Ex. 29 (Cox Dep.) at 42:24-43:15).

52. Robert Cox is a local journalist in New Rochelle who publishes articles on an online news website, Talk of the Sound. Ex. 29 (Cox Dep.) at 5:17-25.

53. On May 16, 2015, Robert Cox received a telephone call between 8:00am and 9:00am from a concerned resident alerting him to work being done in the area of East Street, New Rochelle, including the cutting down of trees using chainsaws. Ex. 29 (Cox Dep.) at 7:16-9:13. At approximately 9:15am, Mr. Cox went to East Street to investigate. Ex. 29 (Cox Dep.) at 9:3-4. When he arrived, Mr. Cox did not see chainsaws, but did see large piles of woodchips, trucks, and work; he began video recording the activity. Ex. 29 (Cox. Dep.) at 9:16-11:21; Ex. 30 (“May 16, 2015” video). He filmed for several hours, and then created a composite video of clips taken on May 16, 2015, which he uploaded to YouTube and published on Talk of the Sound. Ex. 29 (Cox Dep.) at 6:6-7:6; 42:6-16 (Cox was present for about 3 hours); Ex. 30 (video).

54. Flavio LaRocca testified that the video is a fair and accurate depiction of the work he did “to rake out the parcel[.]” Ex. 7 (Flavio Dep.) at 156:15-21. All of the individuals seen working on the Parcel in the video are LaRocca Inc. employees. Ex. 28 (Maya Dep.) at 18:12-21, 19:13-22:22.

55. While on East Street on May 15, 2016, Mr. Cox observed people raking out a substance that appeared to be asphalt over the surface of the Parcel, and then using a mini steamroller to pack down the ground. Ex. 29 (Cox Dep.) at 11:4-12. Mr. Cox testified that Flavio LaRocca was present during the work depicted in the video, and that the workers were going back and forth between the Parcel and 436 Fifth Avenue. Ex. 29 (Cox Dep.) at 9:16-

11:21; 14:3-16. After a few hours, the workers had erected a parking lot on the Parcel. Ex. 29 (Cox Dep.) at 42:12-21.

56. Mr. Cox published multiple articles about the LaRoccas on Talk of the Sound, including a May 26, 2015 article entitled “Who Is Flavio LaRocca Part IV” regarding the activities on the Parcel on May 16, 2015, and which included the composite video recording, as well as photographs. Ex. 29 (Cox Dep.) at 116:17-118:8; Ex. 31 (“Who Is Flavio La Rocca ? – Part VI” Article). The City included six photographs from Talk of the Sound as an exhibit to its Complaint in this matter. Ex. 1 (Complaint with Exhibits).

57. In their Interrogatory responses, Defendants admit that the photographs attached to the Complaint depict the Parcel (which has since been fenced off by the City), that the individuals seen in the photographs working on the Parcel are LaRocca Inc. employees, and that the trucks and equipment seen in the photographs belong to LaRocca Inc. Ex. 19 (Interrogatory Responses) at Response to Request No. 2. For example, the first photograph attached to the Complaint (1(a)) to the Complaint shows Defendants' employees raking out the Parcel. Ex. 1; Ex. 7 (Flavio Dep.) at 121:16-23; Ex. 19. The second photograph attached to the Complaint (1(b)) shows Defendants' employees raking and using a ride-on compactor on the Parcel. Ex. 7 (Flavio Dep.) at 136:6-137:7.

58. However, Defendants asserted that the large piles of mulch or woodchips that can be seen on the Parcel were placed on the Parcel by one of the neighboring businesses on East Street (either Benny's Tree Service or PAB Paving) and not by LaRocca Inc. Ex. 19 (Interrogatory Responses) at Response to Request No. 2.

59. In the articles published on Talk of the Sound, it was reported that the work done on the Parcel included the removal of trees and vegetation. Ex. 29 (Cox Dep.) at 70-71. For

example, an article published on November 9, 2015, reported that “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 Sidney Frank Skate Park. . . . 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.” Ex. 33 (Article) at D0120; Ex. 29 (Cox Dep.) at 70-71.

60. At his deposition in this matter, Mr. Cox testified that he had personally observed people raking out a substance that appeared to be asphalt over the surface of the Parcel, and then using a mini steamroller to pack down the ground. The report regarding workers removing trees from the Parcel was based on information Mr. Cox received from a confidential source that he would not reveal. Ex. 29 (Cox Dep.) at 70-76.

61. When the City learned of the work being done on the Parcel on May 16, 2015, Mr. Vacca visited the Parcel the same day. Ex. 26 (Vacca Dep.) at 26:17-21, 27:6-21. When he arrived at the Parcel, Mr. Vacca “observed an area that appeared to have been prepped with some subbase material.” Ex. 26 (Vacca Dep.) at 27:23-28:2. “Subbase” is a material put down to prepare for a parking area, it can be a mixture of gravel, stone, and sand. Ex. 26 (Vacca Dep.) at 28:6-10.

62. The City erected a fence around the Parcel to prevent further construction on the Parcel and any use of the Parcel for parking. Ex. 29 (Cox Dep.) at 44:16-45:15; Ex. 26 (Vacca Dep.) at 92:12-20 and Ex. 43 (Vacca Dep. Ex. GG); Ex. 21 (Photos D0402-405); Ex. 34 (2022 Survey); Ex. 40 (Moran Aff.) at ¶6.

63. In 2022, the City obtained a survey map which demarcates the area of the Parcel where the chain link fence was installed. Ex. 34 (2022 Survey). The Parcel is part of City Park/Flowers Park. Ex. 4 (2022 Title Report).

64. While Flavio LaRocca admits that the work his employees were performing on the Parcel was to facilitate its use as a parking lot, he denied that LaRocca Inc. or its employees have ever utilized the “Parcel” to park their vehicles. Ex. 7 (Flavio Dep.) at 106:20-25. According to Defendants, it is only employees of neighboring properties on East Street that park in the Parcel. Ex. 7 (Flavio Dep.) at 128:16-130:7; Ex. 19 (Interrogatories Response) at p. 4 Response No. 2 (Photograph (a) attached to Plaintiff’s Complaint “Depicts a now fenced-off area near Flowers Park that had been used at that time the photograph was taken (and for many years before and even months after) by the neighboring property owners, Benny Tree Service and PAB Paving for parking of their employees’ vehicles “Parking Area”).

65. However, Flavio LaRocca admits that he instructed his employees to “rake out” the Parcel. Ex. 7 (Flavio Dep.) at 107:6-15, 117:17-119:16 (Flavio LaRocca instructed his employees Felipe Maya and Martin Sanchez to “rake out” and “recompact” the Parcel). They perform the “rake out” “to allow for continued parking of vehicles by the employees of Benny Tree Service and PAB Paving” on the Parcel. Ex. 19 (Response to Interrogatories) at p. 5 Response No. 2 (describing what the men depicted in Photograph 1a are doing).

66. Flavio LaRocca testified that LaRocca Inc. conducts snowplowing on East Street in order to clear the way for LaRocca Inc. to access the vehicles that it stored further down East Street at the Guglielmo property between 2012 and approximately 2016 or 2017. Ex. 7 (Flavio Dep.) at 107:12-15, 109:14-23.

67. East Street does not have gravel on it; the surface of East Street is blacktop. Ex. 7 (Flavio Dep.) at 111:17-21. Accordingly, when LaRocca Inc. plows snow on East Street, it does not move any gravel onto the Parcel. Ex. 7 (Flavio Dep.) at 111:22-112:3.

68. When LaRocca Inc. “rakes out” the Parcel, it uses “a machine to rake out the high spots, then we rake out by hand, and then a compactor to stabilize it.” Ex. 7 (Flavio Dep.) at 112:11-21. “[T]o rake out the high spots,” Defendants use “[e]ither a skid-steer or a payloader”; then they use “[e]ither a walk-behind or ride-on tamper” to compact the area after it is raked out. Ex. 7 (Flavio Dep.) at 112:22-113:7. A “skid-steer” is a small four-wheeler Bobcat with a bucket in front. Ex. 7 (Flavio Dep.) at 25:10-17. On May 16, 2015, when Mr. Cox filmed employees of LaRocca Inc. working on the Parcel, a motorized compacting roller was on hand to smooth out and compact the gravel after Defendants’ employees had finished raking. Ex. 19 (Interrog. Responses) at p. 5 re Exhibit 1 (b); Ex. 1 at Photo 1(b). A LaRocca Inc. employee was using the compactor on the Parcel. Ex. 22 (Maria LaRocca Dep.) at 70:17-71:24; Ex. 28 (Maya Dep.) at 13:12-15:25 (the video depicts Mr. Maya using a machine on the Parcel).

69. The third photograph attached to the Complaint (1(c)) shows a “payloader” owned by Defendants “to spread out the larger piles of gravel disturbed by snow plowing of the Parking Area” Ex. 19 (Interrog. Responses) at p. 5; Ex. 1 (Complaint with Photo 1(c)); Ex. 7 (Flavio Dep) at 140:9-141:5.

70. The City never gave Defendants permission to perform “rake out” work or any other work on the Parcel. Ex. 7 (Flavio Dep.) at 86:15-18, 160:21-24; Ex. 22 (Maria LaRocca Dep.) at 65:20-24, 72:14-23.

71. In a letter dated November 25, 2015, the City notified Mr. LaRocca that, beginning on January 1, 2016, the City would be offering free parking at the Flowers Park

parking lot for employees of area businesses. Ex. 35 (11/25/15 letter). The letter “urged” Mr. LaRocca and his employees “NOT to part on-street in residential areas, where business and employee parking has created significant neighborhood concerns.” *Id.*

Alleged Removal of Jersey Barriers

72. Flavio LaRocca testified that when he purchased 436 Fifth Avenue in 2002, there were over 40 jersey barriers on the property. Ex. 7 (Flavio Dep.) at 63:2-16.

73. A “jersey barrier” is a concrete structure used to delineate areas when doing construction work. They range in size from 4 feet to 20 feet long, and can weigh between approximately 1,000 and 4,000 pounds. Ex. 7 (Flavio Dep.) at 61:24-62:7, 63:17-19.

74. In early 2003, Flavio moved approximately 40 to 44 of the jersey barriers out of his property and into East Street, stacked outside the fence/gate on the eastern side of 436 Fifth Avenue. Ex. 7 (Flavio Dep.) at 64:21-67:19; Ex. 1A (area marked in pink).

75. The jersey barriers did not contain any markings identifying them as belonging to Defendants. Ex. 7 (Flavio Dep.) at 70:9-16.

76. The jersey barriers remained in East Street for several months. Ex. 7 (Flavio Dep.) at 70:22-71:10. The jersey barriers were still in East Street when Defendants allege that they were taken by a contractor, Persico, around the time of the construction of the skate park at Flowers Park and moved to the opposite side of East Street, next to what is now the skate park. Ex. 7 (Flavio Dep.) at 68:10-69:23; Ex. 22 (Maria LaRocca Dep.) at 45:2-20.

77. LaRocca Inc. does not use jersey barriers in its business, and LaRocca Inc. did not replace the jersey barriers after they were moved to the other side of East Street in 2003. Ex. 22 (Maria LaRocca Dep.) at 51:2-5, 50:21-25.

78. In this litigation, Defendants produced two letters dated June 11, 2003 and November 17, 2003 from Flavio LaRocca to City Manager Charles Strome and DPW Commissioner William Zimmerman. Ex. 16. The June 11, 2003 letter states, “the contractor who has been staging at the city-owned property on Fifth Ave (directly across from our yard) has moved 20 of our jersey barriers along the opposite side of East Street.” Ex. 16.

79. Mr. Cox testified that, based on his sources, he believed that Mr. LaRocca had moved the jersey barriers next to the skate park as he was ““staking out his territory” . . . for the purpose of parking his vehicles, equipment and so forth. Same thing he was doing on the other side of the street.” Ex. 29 (Cox Dep.) at 104:25-105:24, 106:7-18.

80. Construction of the Sidney E. Frank Skate Park was completed in approximately 2005 or 2006. See Ex. 7 (Flavio Dep.) at 61.

Maintenance of East Street

81. According to Flavio LaRocca, since September 2002, when he purchased the property at 436 Fifth Avenue, the City has not maintained East Street, though the City uses East Street to access East Place. Ex. 7 (Flavio Dep.) at 76:13-20.

82. When he and his wife purchased 436 Fifth Avenue in September 2002, Flavio never had any expectation or understanding that the City would maintain East Street. Ex. 7 (Flavio Dep.) at 77:6-16. Instead, the seller of the property, Mr. Maffei, told Flavio LaRocca that each property owner abutting the street would maintain the area abutting their property. Ex. 7 (Flavio Dep.) at 77:6-12. The “maintenance” includes “cleaning any debris, sweeping, snowplowing, and repairing the road if needed.” Ex. 7 (Flavio Dep.) at 76:24-77:2.

83. The City has plowed snow from East Street for emergency purposes. Ex. 26 (Vacca Dep.) at 34:14-19.

Procedural History

84. On April 1, 2016, the City filed a Summons and Complaint in this action. Ex. 1. The City asserted claims for (i) trespass, (ii) negligence, (iii) nuisance, (iv) conversion, (v) violation of N.Y. Real Property Actions and Proceedings Law § 861, and (vi) nuisance by encroaching on East Street and Fifth Avenue. The City seeks, *inter alia*, compensatory damages, consequential damages, statutory damages, a permanent injunction prohibiting the Defendants from Encroaching on City property, punitive damages, attorney's fees and costs, prejudgment interest, and such other and further relief as the Court may deem just and proper.

85. The City's Complaint cites and relies upon sections 111-38, 111-39, and 111-40 of the New Rochelle City Code. Ex. 1 at ¶54, and p.11 subpart (d).

86. Section 111-38 of the City Code, entitled "Encroachments onto public property restricted" provides in relevant part:

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.
- 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.

87. New Rochelle City Code § 111-40 provides for penalties for encroachments onto public property. It states:

- 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 . . . 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.

88. The defendants were served with the Summons and Complaint in early April, 2016 and the affidavits of service were filed on April 19, 2016. *See* NYSCEF 54190/2016, Doc. Nos. 6-10 (filed April 19, 2016).

89. The parties entered multiple stipulations extending the time for Defendants to answer, ultimately extending the time to answer to September 30, 2018. *See* NYSCEF 54190/2016, Doc. Nos. 13, 14, 15, 16, 17, 18, 20, 21; Ex. 37 (final stipulation).

90. Defendants did not file an answer by September 30, 2018. Instead, Defendants filed a Verified Answer with Counterclaims on April 30, 2019. Ex. 2 (Answer).

91. On May 17, 2019, Plaintiffs filed a Reply to Counterclaims. Ex. 3 (Reply).

92. A Note of Issue was filed in this case on March 30, 2022. Ex. (Note of Issue).

Dated: White Plains, New York
May 31, 2022

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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 THE CITY OF NEW ROCHELLE'S
MOTION FOR SUMMARY JUDGMENT**

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Introduction

This memorandum of law is submitted in support of the motion made by the plaintiff City of New Rochelle, N.Y. (the “City”), seeking to amend its reply pursuant to CPLR 3025(b), and for summary judgment pursuant to CPLR 3212, on its claims for trespass, negligence, and nuisance, against defendants Flavio LaRocca, Maria LaRocca, Flavio LaRocca & Sons, Inc., and FMLR Realty Management LLC (collectively “Defendants”). The City’s motion also seeks summary judgment dismissing Defendants’ counterclaims.

Preliminary Statement

This case is a modern application of the historic principle that “the king’s highway is not to be used as a stable-yard; and a party cannot eke out the inconvenience of his own premises by taking in the public highway.” *Cohen v. City of New York*, 113 N.Y. 532, 536 (1889). Here, when Defendants could not fit all of the vehicles and supplies for their landscaping and masonry construction company within the confines of their own property, they decided to “eke out the inconvenience” by taking City-owned property and public parkland adjacent to their construction yard. Defendants have expanded their property by utilizing a fence that extends over 10-feet into City-owned property known as East Street and using all of the land between their property and the fence for storage of their business materials. Defendants also expanded their property by constructing a parking lot on City-owned parkland across East Street from their contractor’s yard. The Defendants’ actions were all the more brazen given that they had previously asked the City if they could rent property across East Street in order to store their vehicles and materials and the City had denied their request. Accordingly, the City was compelled to proceed with this lawsuit to protect the integrity of public property.

The undisputed facts establish that the City has been the owner of East Street for over 100 years (since 1914), and the owner of City Park/Flowers Park, adjacent to East Street, for even longer. City Stmt. of Facts ¶¶7-15, ¶23. The undisputed evidence also establishes that the eastern side of Defendants' contractor's yard is encroaching by over 10 feet into East Street, and that in May 2015, Defendants cleared and began preparing an area of land within the public park as a parking lot without permission from the City. Accordingly, the City is entitled to summary judgment on its claims for trespass, negligence, and nuisance.¹ In addition to a finding of liability on the part of Defendants, this Court should issue an order requiring Defendants to remove the encroaching fence and stored materials from City property and enjoin Defendants from future encroachments.

Even though Defendants are well aware of the encroachment into East Street, and were aware that they were attempting to build a parking lot on City property, they refuse to remove the encroaching materials or even to apply for a permit for the encroachment. Instead, Defendants asserted baseless counterclaims against the City. Defendants' first counterclaim for alleged conversion of jersey barriers in 2003 is barred, *inter alia*, by the statute of limitations, by Defendants' failure to comply with notice of claim requirements, and by Defendants' abandonment of the jersey barriers before the alleged conversion. Defendants' second counterclaim for reimbursements of amounts Defendants have supposedly expended maintaining East Street fails to state a claim. Accordingly, in addition to granting summary judgment for the City on its claims, this court should also grant summary judgment to the City dismissing Defendants' counterclaims.

¹ See CPLR 3212(e) ("summary judgment may be granted as to one or more causes of action or part thereof"). Based on Defendants' assertions that they did not remove any trees when they were assisting in the preparation of the Parcel as a parking lot and that the large piles of woodchips were placed on the Parcel by one of the neighboring businesses on East Street, Ex. 19, the City acknowledges that there are likely issues of fact regarding the removal of trees and vegetation from the Parcel. Accordingly, the City is not seeking summary judgment on its claims for conversion of trees or under RPAPL § 861 at this time.

Pertinent Facts and Procedural History

Please refer to the City's 22 NYCRR §202.8-g Statement of Facts ("City Stmt. of Facts") for a complete recitation of the facts and relevant Contract provisions.

Defendants Flavio LaRocca and Maria LaRocca are the owners of several businesses in New Rochelle, including FMLR Realty Management LLC (hereinafter "FMLR"), and LaRocca & Sons, Inc. (hereinafter, "LaRocca Inc."). City Stmt. of Facts ¶1. LaRocca Inc. performs landscaping and masonry construction for residential and light commercial properties; it utilizes a contractor's yard located at 436 Fifth Avenue. 436 Fifth Avenue was owned by Flavio and Maria LaRocca from 2002 to 2008, at which time they transferred the property to their LLC, FMLR. City Stmt. of Facts ¶1-3, 22.

436 Fifth Avenue is located at the corner of Fifth Avenue and East Street in New Rochelle. City Stmt. of Facts ¶4. The southern border of 436 Fifth Avenue runs along Fifth Avenue, and the eastern border of 436 Fifth Avenue runs along the border of East Street. *Id.* The City has been the owner of East Street since 1914. City Stmt. of Facts ¶¶7-15. The eastern side of East Street is bordered by Flowers Park/City Park, a city-owned public park. City Stmt. of Facts ¶5, ¶23.

Prior to purchasing 436 Fifth Avenue in September 2002, Flavio LaRocca had reviewed several surveys of the property. City Stmt. of Facts ¶17. The surveys demonstrated that a fence/gate located outside the eastern side of 436 Fifth Avenue was located more than 10 feet over the boundary of 436 Fifth Avenue, in East Street. *Id.* at ¶18. Flavio LaRocca uses the space between the border of 436 Fifth Avenue and the fence/gate as his property, storing materials there for LaRocca, Inc. *Id.* at ¶38-39.

In 2009, and again in November 2015, the City issued notices to Defendants alerting them to the encroachment into East Street and demanding its removal. City Stmt. of Facts ¶¶29, 39.

Defendants refused to remove the encroachments, even though a stake-out of 436 Fifth Avenue obtained by Defendants in 2009 and subsequent surveys commissioned by the City confirm that the fence utilized by Defendants is encroaching into East Street by more than 10 feet. City Stmt. of Facts ¶18, ¶36-37, 43.

On May 16, 2015, local journalist Robert Cox received a phone call alerting him that Mr. LaRocca was removing trees from a parcel of land in Flowers Park, adjacent to East Street (the “Parcel”). City Stmt. of Facts ¶53. Mr. Cox went to East Street that morning and observed men spreading a substance over the Parcel, and compacting the Parcel with a mini-steamroller in an apparent effort to prepare the Parcel to be turned into a parking lot. City Stmt. of Facts ¶53, 55. Mr. Cox also took a video of the work. City Stmt. of Facts ¶¶53-54. Flavio LaRocca confirmed that he had instructed his employees to “rake out” the Parcel to facilitate its use as a parking lot by the private contractors’ yards along East Street, across from Flowers Park. City Stmt. of Facts ¶54, ¶65. The City was notified of the unauthorized work on public property, went to the scene immediately, and subsequently fenced off the Parcel to prevent further destruction of park property or its use as a private parking lot. *Id.* at ¶¶61-62. The City also filed suit against Defendants, asserting claims for, *inter alia*, trespass, negligence, and public nuisance based on the encroachment onto East Street by Defendants’ contractor’s yard at 436 Fifth Avenue and the attempted creation of a parking lot on the Parcel. City Stmt. of Facts ¶84.

Argument

Summary judgment is warranted when there are no factual disputes to be resolved by the trier of fact. *Mallad Const. Corp. v. County Fed. Savings*, 32 N.Y.2d 285 (1973). This may occur when all issues are strictly legal, *Long Island Railroad Co. v. Northville Indus. Corp.*, 42 N.Y.2d 455 (1977), or when uncontroverted facts allow only one conclusion as a matter of law, *Alvord &*

Swift v. Stewart M. Muller Constr. Co., Inc., 46 N.Y.2d 276 (1978). Once the movant offers *prima facie* evidence showing its entitlement to judgment, the opponent has the burden of demonstrating the need for a trial of the facts. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). “[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form.” *Id.* Mere conclusions, expressions of hope or unsubstantiated allegations are insufficient to meet this burden.” *Id.*

POINT I

THE CITY IS ENTITLED TO SUMMARY JUDGMENT ON ITS CLAIM FOR ENCROACHMENT ON EAST STREET

The undisputed evidence establishes that the Defendants’ contractor’s yard at 436 Fifth Avenue extends over ten feet beyond the property line and into East Street. This is an impermissible encroachment on public property and constitutes a public nuisance. Accordingly, the City is entitled to summary judgment on this claim, and the Court should issue an order requiring Defendants to remove the encroachment and enjoining any future encroachments.

It is well established that landowners abutting public property may not appropriate the public’s property for their own private use. This principle is reflected in case law dating back centuries: the principle “No man may make a stable-yard of the King’s highway” is attributed to Lord Ellenborough in the 1812 case of *Rex v. Cross*, 3 Camp. 224 (1812). The principle has been repeated many times by the courts of this state. *See, e.g. Cohen v. City of New York*, 113 N.Y. 532, 536 (1889) (“The old cases said the king’s highway is not to be used as a stable-yard; and a party cannot eke out the inconvenience of his own premises by taking in the public highway.”); *James v. Sammis*, 10 N.Y.S. 143 (2d Dep’t 1890) (affirming judgment for defendant

commissioners of highways in plaintiff's trespass action where defendants removed plaintiff's fence that was encroaching on a public highway); *Gilsey v. Incorporated Village of Great Neck Plaza*, 170 Misc. 945 (Sup. Ct. Nassau Cnty. 1939), *aff'd* 258 A.D. 901 (2d Dep't 1939) (citing *Rex v. Cross*); *People v. Scudder*, 21 Misc.2d 614 (Police Ct. Village of Lloyd Harbor 1959); *see also* Highway Law § 319 (it is the duty of property owners abutting a highway to remove fences erected within the bounds of the highway).

Encroachment on public property constitutes a public nuisance, which the Court should use its equity powers to remove. *See County of Erie v. Marjorie's Grove & Catering Service, Inc.*, 97 Misc. 2d 329 (Sup. Ct. Erie Cnty. 1978); *Incorporated Village of Bayville v. Viteritti*, 2008 N.Y. Misc. LEXIS 9164, *5 (Sup. Ct. Nassau Cnty. May 27, 2008) ("An action by a municipality to abate a public nuisance is equitable in nature" (citing *New York Trap Rock Corp. v. Clarkstown*, 299 NY 77, 82 (1948)). "While the municipality's power to bring such an action may be codified in its municipal code, it is an inherent power not dependent upon statutory authorization." *Incorporated Village of Bayville*, 2008 N.Y. Misc. LEXIS 9164, at *5. "When a local government, in the proper exercise of its delegated powers, summarily abates a public nuisance, it may compel the owner of the property involved to bear the cost of abatement." *Id.* at *7 (quoting *Lane v. Mt. Vernon*, 38 N.Y.2d 344, 349 (1976)).

Where a survey demonstrates that defendants are encroaching on the plaintiff's property, summary judgment on the issue of liability is appropriate. *Bullock v. Louis*, 188 A.D.3d 783, 784-85 (2d Dep't 2020) ("Since the plaintiff established that the defendant did not acquire title to the disputed property by adverse possession, and the plaintiff's survey demonstrated that the defendants' driveway encroached on her property, the plaintiff is entitled to summary judgment on the issue of liability").

In *County of Erie v. Marjorie's Grove & Catering Service, Inc.*, the county sought an order directing the respondent catering company to remove its advertising sign from a county right of way. The court concluded that the sign, which was “substantial and permanent structure,” was in the right of way and thus, was “an unlawful encroachment on a county highway. As such it is a nuisance and may be abated by the petitioner” including by “seek[ing] the equitable power of this court to enforce the removal of such an encroachment.” 97 Misc. 2d 329, 330-331; *see also* RPAPL § 871 (“an action may be maintained by the owner of any legal estate in land for an injunction directing the removal of a structure encroaching on such land”). Accordingly, the court granted the county’s request “that respondent be directed to remove his advertising sign, ... and further enjoining respondent from erecting any other structures within the right of way of said road.” *Id.* at 332.

Here, the eastern border of Defendants’ property at 436 Fifth Avenue runs along the westerly border of East Street, which is owned by the City. City’s Stmt of Facts ¶¶4, 7-15. The 2022 Title Report establishes that the City has owned East Street since it was conveyed to the City by deed in 1914. City’s Stmt of Facts ¶¶7-15; *see* CPLR 4523 (search certified by title company has same legal effect as an official search); RPAPL § 321 (proof of ownership for twenty years preceding the trespass or encroachment is presumptive evidence of ownership at the time of the trespass or injury), *see Ridgway v. Hawkins*, 123 A.D. 15 (2d Dep’t 1907) (entrant failed to overcome presumption of title to unoccupied lands where plaintiff showed unbroken chain of title for 30 years preceding trespass); *New York & Brooklyn Suburban Inv. Co. v. Leeds*, 100 Misc. 2d 1079 (Sup. Ct. Suffolk Cnty. Sept. 21, 1979) (plaintiff established presumptive evidence of ownership under RPAPL 321). The conveyance to the City was completed by the deed, and there

were no conditions subsequent or right to reentry. Accordingly, East Street constitutes public property, regardless of whether it was subsequently accepted as a public street.

The undisputed evidence establishes that Defendants' fence/gate is located over 10-feet over the boundary line of 436 Fifth Street into East Street. City's Stmt of Facts at ¶¶18, 36, 43; *see also* Exhibits 6, 10, 11, 13, 14, 23, 24. Specifically, the 2000 Survey reviewed by Mr. LaRocca at the time he purchased the property, the 2009 stake out ordered by Mr. LaRocca, the City's 2014 survey, and a 2016 survey ordered by the City all show that Defendants' fence/gate is encroaching into East Street by over 10-feet. Mr. Senor, the licensed land surveyor hired by the LaRoccas in 2009 and consulted by the LaRoccas again in 2016 testified in this matter that the fence/gate is over 10 feet over the boundary line of 436 Fifth Avenue and is located in East Street. City's Stmt of Facts at ¶¶ 36, 42-43.

The undisputed facts also show that Defendants use the space between their property line and the fence/gate for their business purposes to the exclusion of the public. City's Stmt of Facts at ¶¶38-39; Ex. 13; Ex. 7 (Flavio Dep.) at 102-104 (uses the space shaded for his business to store tools and materials). The undisputed evidence also establishes that Flavio LaRocca has been aware of the encroachment since purchasing the property in 2002. The City provided Defendants with notice of the encroachment in 2009 and again in November 2015. City's Stmt of Facts at ¶¶29, 39. *See* New Rochelle City Code §111-40(A). However, Defendants have not taken any action to remove the encroachment. City's Stmt of Facts at ¶44.

Accordingly, the City is entitled to summary judgment on its claim for encroachment into East Street and an order directing Defendants to remove the encroachment within a reasonable time. The City further requests that the Court impose a penalty on Defendants, pursuant to City

Code § 111-40C, or \$2,500 for the initial violation, \$5,000 for the subsequent violation and a penalty of \$50 per day for each day thereafter that the encroachment has not been removed.²

Any argument that the Defendants' encroachment is permissible because it is long-standing, that Defendants gained ownership rights through adverse possession, or that the City gave Defendants permission for the encroachment into East Street in or around 2009 fail to overcome the City's entitlement to summary judgment. "It is settled that title to property owned by a municipality in its governmental capacity cannot be lost through adverse possession." *Litwin v. Town of Huntington*, 208 A.D.2d 905, 906 (2d Dep't 1994).³ Indeed, courts have repeatedly rejected arguments that encroachments on public property are permissible because they are long-standing. For example, in *County of Erie*, in ordering the removal of the encroaching sign, the court rejected as "without merit," the respondent's argument that the County should be estopped from removing the sign because it had existed for over 25 years. 97 Misc. 2d at 331-332 ("No individual, according to well-established principles, can gain for himself an easement on a highway by prescription, or in any way make a valid encroachment upon the public right. ... An obstruction to it, however long continued, is unlawful, and no right can be acquired by persisting in the maintenance of it." (internal citations omitted)). See also *People v. Scudder*, 21 Misc.2d 614, 620-621 (Police Ct. Village of Lloyd Harbor 1959) ("The fact that, for many years, Mr. Scudder has been leaving his car on the roadside near his residence could not, of course, create in him a right to continue to do so.").

² Pursuant to §111-40, a fine of up to \$2,500 may be imposed for a first offense, a fine of not more than \$5,000 may be imposed for a second offense within three years of the first offense, 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 a separate and distinct violation." City Stmt. of Facts ¶87.

³ Defendants did not assert a claim for adverse possession in their Answer. Ex. 2. Nor can Defendants establish the elements of adverse possession here, as there is no evidence of use that is "(1) hostile and under a claim of right, (2) actual, (3) open and notorious, (4) exclusive, and (5) continuous for the statutory period[.]" *CSC Acquisition-NY, Inc. v 404 County Rd. 39A, Inc.*, 96 A.D.3d 986, 987 (2d Dep't 2012).

The City also anticipates that Defendants will argue that they received permission for their encroachment, but any such argument is unavailing. Flavio LaRocca testified that, he obtained a stake out of the property in 2009 showing that his fence encroached into East Street by only 10-inches. City Statement at ¶35. He testified that he met with City officials shortly after the stake out and they agreed that he did not need to remove the encroachment.⁴ Even assuming that, in 2009, someone gave Mr. LaRocca permission for the encroachment at that time, they would have had no authority to make a gift of public property and this would be irrelevant to the continued existence of the encroachment after the November 2015 Notice to Remove. City's Stmt of Facts at ¶¶39. A city employee is without authority to permit a permanent encroachment on City property. New Rochelle City Code § 111-38(E) states "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*." (emphasis added). Accordingly, even if Defendants received permission for the encroachment in 2009—which the City does not concede—they were under an obligation to remove the encroachment after receiving the Notice to Remove in November 2015.

This Court should grant the City summary judgment on its claim of public nuisance based on the encroachment into East Street, order abatement of the nuisance, and issue an injunction against future encroachments by Defendants.

⁴ Mr. LaRocca's testimony that the stake-out showed an encroachment of only 10-inches is not credible as a matter of law. The 2000 survey, the stake out, and the City's 2014 and 2016 surveys all show that the encroachment into East Street was over 10-feet. Moreover, Mr. Senor testified that he never told Mr. LaRocca that the encroachment was only 10-inches. City Stmt. of Facts ¶37. Additionally, Mr. LaRocca knows how to read land surveys and reviewed the 2000 Survey, thus he knew before obtaining the stake out in 2009 that the encroachment was much more than 10-inches. Accordingly, this testimony should be disregarded as a matter of law. However, solely for purposes of this motion, the City assumes that Mr. LaRocca told City officials in 2009 that his property was only encroaching into East Street by 10 inches. In which case, he never received permission for a 10-foot encroachment.

POINT II

THE CITY IS ENTITLED TO SUMMARY JUDGMENT ON ITS CLAIMS BASED ON DEFENDANTS' CREATION OF A PARKING LOT ON THE FLOWERS PARK PARCEL

The City's first, second, and third causes of action state claims for trespass, negligence, and nuisance based on the Defendants' creation of a parking lot on the Flowers Park Parcel on May 16, 2015.

A. Defendants Trespassed upon the Parcel

“The elements of a cause of action sounding in trespass are an intentional entry onto the land of another without justification or permission.” *Johnstone v. Babad*, 170 A.D.3d 692, 694 (2d Dep't 2019) (citation omitted). Intent is defined as intending the act which produces the unlawful intrusion, where the intrusion is an immediate or inevitable consequence of that act. *See Phillips v Sun Oil Co.*, 307 N.Y. 328, 331 (1954). “Liability may attach regardless of defendant's mistaken belief that he or she had a right to enter.” *State of New York v Johnson*, 45 A.D.3d 1016, 1019 (2d Dep't 2007); *see Curwin v Verizon Communications [LEC]*, 35 A.D.3d 645 (2d Dep't 2006). “An unlawful encroachment has been consistently characterized as a continuous trespass giving rise to successive causes of action[.]” *CSC Acquisition-NY, Inc. v 404 County Rd. 39A, Inc.*, 96 A.D.3d 986, 987 (2d Dep't 2012).

A defendant's testimony as to their unauthorized use of the plaintiff's property is sufficient to establish a trespass. *CSC Acquisition-NY, Inc. v. 404 Cty. Rd. 39A, Inc.*, 2011 N.Y. Misc. LEXIS 559, *36 (Sup. Ct. Suffolk Cnty. Jan 6, 2011), *aff'd* 96 A.D.3d 986, 987 (2d Dep't 2012). For example, in *CSC Acquisition-NY, Inc.*, the defendant operator of a car wash testified that, while he did not obtain the permission of the neighboring property owners, nor did he ever pay real estate taxes on the adjacent parcels, he did improve upon and create roads and parking areas on adjacent parcels for the use by his car wash business. *Id.* at 15-16. For example, while he testified that he

did not make the roadway wider, he “did have some grading and crushed stone added to the surface and car wash employees pruned the trees.” *Id.* at 16. Additionally, he had woodchips and gravel and some grading placed on another roadway on a neighboring parcel to decrease the dust created by the car wash customers’ use, and created a partially-paved semi-circle on neighboring property for the his customers to turn around more easily. *Id.* at 16-17. The defendant car wash owner conceded that he was never given permission for the work performed or the use of the neighboring property. Accordingly, the *CSC Acquisition* court found that the unauthorized improvements and use constituted a trespass, and granted the plaintiff summary judgement “permanently enjoining the defendants from driving and/or parking on the subject circular driveway/parking area” and the improved roadways depicted on a survey. The defendants were also ordered to remove the circular driveway and encroachments within 30 days. *Id.* at *1-2.

As in *CSC Acquisition*, Defendants’ admitted unauthorized work on the Parcel to facilitate its use as a parking lot constitutes a trespass.

B. The Creation of a Parking Lot on the Parcel Constitutes Negligence

Violation of a municipal ordinance constitutes evidence of negligence. *Elliott v. City of N.Y.*, 95 N.Y.2d 730, 734 (2001). It is well-established that parks are held in trust for public use; it is axiomatic that each member of the public has a duty not to interfere with the public’s use of public property or to convert public property for his own personal use. Chapter 224 of the New Rochelle City Code addresses “Parks,” and § 224-1 provides that “no person shall modify, alter or in any manner interfere with the line or grades of any park or park street, nor take up, move or disturb any . . . tree, . . . sod, soil or gravel thereof, except by direction of the Commissioner of Parks and Recreation or under the Commissioner’s permit.” Flavio LaRocca did not have permission from the Commissioner of Parks and Recreation to perform grading work, move dirt

or gravel, or spread woodchips upon the Parcel. Accordingly, Defendants' work on the Parcel on May 15, 2016 constituted a violation of City Code § 224-1, and constitutes negligence.

C. The Creation of a Parking Lot on the Parcel Constitutes a Public Nuisance

As noted above in Point I, interference with the public's use of public property constitutes a public nuisance.

A public nuisance exists for conduct that amounts of 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 place or endangering or injuring the property, health, safety or comfort of a considerable number of persons. A public nuisance is a violation against the State and is subject to abatement or prosecution by the proper governmental authority.

532 Madison Avenue Gourmet Foods, Inc. v. Finlandia Center, 96 N.Y.2d 280, 292 (2001); *see also Volunteer Fire Assn. of Tappan, Inc v. County of Rockland*, 101 A.D.3d 853, 856 (2d Dep't 2012) (where a party has entered upon the property of another, "causing physical damage to, and depriving the plaintiff of the use and enjoyment of its property," that party may be liable for trespass and nuisance).

Here, it is undisputed that Defendants entered upon park property belonging to the City to create a parking lot for the private businesses on East Street without the permission of the City. Such use interferes with the public's use of the property, and caused damage which required the City to take steps to preserve the property.

Flowers Park is owned by the City of New Rochelle. City Stmt. of Facts ¶23. The eastern border of East Street abuts Flowers Park. *Id.* at ¶5. The Parcel on which Flavio LaRocca instructed his employees to work was off of East Street, in Flowers Park. *Id.* at ¶5, ¶47. Indeed, Flavio LaRocca testified that the Parcel was part of Flowers Park. *Id.* at ¶47. Flavio LaRocca further admitted during his deposition that the City has never given him permission to do work upon the Parcel. *Id.* at ¶70. Nevertheless, on May 16, 2015, Flavio LaRocca instructed his employees to

enter the Parcel and “rake out” the Parcel, including smoothing out any raised areas, spreading a subbase material (potentially woodchips) across the Parcel, and compacting the material down across the entire Parcel with a mini-steamroller so that it could be used as a parking area. Flavio LaRocca testified that the video recorded by Mr. Cox was an accurate representation of the work he instructed his employees to perform on the Parcel. Defendants’ work to create a parking lot on public park property constitutes a public nuisance.

POINT III

DEFENDANTS’ COUNTERCLAIMS FAIL BECAUSE DEFENDANTS DID NOT COMPLY WITH THE NOTICE OF CLAIM REQUIREMENTS OF THE GENERAL MUNICIPAL LAW

In their first counterclaim, Defendants allege that the City converted jersey barriers owned by Defendants and asphalted them in place on the opposite side of East Street from 436 Fifth Avenue. Ex. 2 at ¶¶95-97. Defendants claim that the jersey barriers have a value of \$40,000. Ex. 2 at ¶ 100. Defendants’ second counterclaim asserts a cause of action seeking reimbursement for unspecified costs and expenses for maintenance and improvements to East Street.

Defendants’ counterclaims fail because Defendants did not comply with the notice of claim requirements of General Municipal Law § 50-e or § 50-i. “A notice of claim is a condition precedent to bringing a tort claim against a municipality.” *Finke v. City of Glen Cove*, 55 A.D.3d 785 (2d Dep’t 2008). In *Finke*, the plaintiff sued to recover for the loss of personal property. The plaintiff alleged that the defendant city had consented to a tenancy at will permitting him to store equipment on city property, and that the city was thus required to provide him 30-days notice before removing the equipment, which he claimed it did not do. *Id.* at 786. The court dismissed the plaintiff’s claims for conversion because “service of a notice of claim is a condition precedent to the interposition of negligence and conversion claims against a municipality.” *Id.* at 786.

Accordingly, Defendants' counterclaims are also barred by failure to comply with the notice of claim requirements.

POINT IV

THE COURT SHOULD GRANT THE CITY'S MOTION TO AMEND ITS REPLY

The City moves to amend its Reply to the Defendants' counterclaims to assert affirmative defenses of the statute of limitations and laches. *See* Ex. 42 (Proposed Amended Reply). Under CPLR 3025(b), motions for leave to amend are liberally granted absent prejudice or surprise. *Young v. Estate of Michael B. Young*, 84 A.D.3d 1359, 1360 (2d Dep't 2011) (reversing denial of motion to amend reply to assert defense to counterclaims); *Aurora Loan Servs., LLC v. Dimura*, 2013 NY Slip Op 1797, ¶ 1, 104 A.D.3d 796, 797, 962 N.Y.S.2d 304, 306 (App. Div. 2nd Dept.) (affirming lower court's grant of motion to amend reply to counterclaims to add statute of limitations defense).

Defendants' counterclaim did not plead a date on which the alleged conversion of jersey barriers occurred. However, Defendants subsequently produced documents and gave testimony indicating that the alleged conversion occurred in or around 2003. Here there can be no claim of surprise or prejudice as the information concerning the date on which Defendants' claim accrued was in the defendants' possession.

Notably, while the City has included its notice of claim defense in the Proposed Amended Reply, the City is not required to raise these arguments in a responsive pleading. *See Jimenez v. City of N.Y.*, 24 Misc. 3d 1201(A), 1201A, 889 N.Y.S.2d 882 (Sup. Ct. N.Y. Cnty. June 5, 2009) ("the City did not waive its late notice of claim defense by failing to raise it as an affirmative defense. A plaintiff's failure to comply with the notice of claim requirements is a condition precedent to suit, and as such is part of the plaintiff's substantive cause of action. The municipality is not required to raise it as an affirmative defense to preserve it.") (citing cases).

POINT V**THE CITY IS ENTITLED TO SUMMARY JUDGMENT DISMISSING DEFENDANTS' FIRST COUNTERCLAIM FOR CONVERSION OF JERSEY BARRIERS**

Discovery in this action has revealed that Defendants' claim for conversion of jersey barriers accrued in 2003, sixteen years before Defendants asserted their counterclaim in this case. Accordingly, in addition to being barred by failure to comply with notice of claim requirements, the conversion counterclaim is also barred by the statute of limitations and the doctrine of laches. Moreover, Defendants' testimony establishes that Defendants abandoned the jersey barriers before they were allegedly taken, accordingly, Defendants had no ownership interest in the jersey barriers at the time they were allegedly taken.

First, Defendants' counterclaim for conversion of 20 jersey barriers is barred by the statute of limitations. The statute of limitations for conversion against a municipality is one year and 90 days. Gen. Mun. Law § 50-i. Discovery in this matter establishes that Defendants' counterclaim accrued in 2003. Defendants produced letters from Flavio LaRocca to the City Manager and the City's Director of Parks and Recreation dated June 11, 2003, and November 17, 2003, stating that "the contractor who has been staging at the city-owned property on Fifth Ave (directly across from our yard) has moved 20 of our jersey barriers along the opposite side of East Street." City Stmt. of Facts ¶78; Ex. 16 (Letters). Thus, the statute of limitations began running in 2003 and expired one year and 90 days thereafter. Defendants did not assert their conversion claim until 2019. Ex. 2. Defendants' action for conversion is time-barred.

Second, the conversion counterclaim is also barred by the doctrine of laches. The doctrine of laches is an equitable defense which bars a claim where there has been an unreasonable delay by the plaintiff in undertaking to enforce his rights, which resulted in prejudice to the opposing party. See *Matter of Barabash*, 31 N.Y.2d 76, 81 (1972); *Shiotani v. Walters*, 2012 U.S. Dist.

LEXIS 175464, *23 (S.D.N.Y. Dec. 3, 2012) (action to recover painting under New York State law barred by doctrine of laches where plaintiff was not diligent in pursuing claim, and defendants were prejudiced by passage of time “because certain witnesses and documents are no longer available”). Here, Defendants waited 16 years from the time they allege the jersey barriers were taken by the contractor to assert a claim against the City. Such a delay has resulted in prejudice to the City by the loss of access to relevant evidence. *See* 8 N.Y.C.R.R. 185.15 Appendix L (record retention requirements for reports of incidents of theft, contracts, and capital construction or public improvement file retention period are each 6 years)

Finally, Defendants conversion claim also fails because Defendants abandoned the jersey barriers before they were allegedly taken by the contractor. The “[t]wo key elements of conversion are (1) plaintiff’s possessory right or interest in the property and (2) defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights.” *Colavito v New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49-50 (2006). Where property has been abandoned, “there can be no cause of action for conversion.” *Cretaro v. Huntington*, 2022 N.Y. App. Div. LEXIS 1799 (4th Dep’t Mar. 18, 2022) (“[i]f property can be deemed abandoned, then plaintiff’s possessory interest was forfeited and defendants’ actions were authorized”). Leaving unmarked chattels for several months on city property constitutes abandonment. *See generally Navarro v. New York*, 136 A.D.2d 483, 484, (1st Dep’t 1988) (“Vehicle and Traffic Law § 1224, ... provides that, where a vehicle is left on a city street without license plates for more than six hours, it is deemed abandoned and title vests in the city.”); *Henryka v. Amalgamated Warbasse House, Inc.*, 34 Misc. 3d 157(A), 157A, 950 N.Y.S.2d 608 (App. Term 2d Judicial Dep’t Mar. 6, 2012) (property deemed abandoned after defendants waited approximately 6 weeks following eviction).

Here, Flavio LaRocca testified that he did not purchase the jersey barriers; rather, they were left on 436 Fifth Avenue by the prior owner, John Maffei, when the LaRoccas purchased the property in September 2002. City Stmt of Facts ¶72. The LaRoccas moved all of the jersey barriers out of 436 Fifth Avenue and stacked them in the middle of East Street after purchasing 436 Fifth Avenue.⁵ *Id.* at ¶74. The jersey barriers contained no markings identifying them as belonging to Defendants. *Id.* at ¶75. They remained stacked in the middle of East Street for several months before they were allegedly taken by the contractor. *Id.* at ¶76. Thus, at the time the jersey barriers were allegedly taken by the contractor, they had been abandoned by the Defendants and any possessory interest of the Defendants had been forfeited. Accordingly, even if Defendants' conversion claim were not barred by the statute of limitations, laches, and the failure to comply with the General Municipal Law, the City would be entitled to summary judgment because Defendants had abandoned the jersey barriers before they were allegedly moved by the contractor.

POINT VI

THE CITY IS ENTITLED TO SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIM FOR REIMBURSEMENT OF ALLEGED MAINTENANCE COSTS

Defendants' second counterclaim asserts a cause of action seeking reimbursement for costs and expenses for maintenance and improvements to East Street, "including but not limited to plowing and repairing pot holes and removing debris[.]" Ex. 2 at ¶105. In addition to failing because Defendants did not comply with the notice of claim requirements, the second counterclaim also fails to state a claim, and would be barred by applicable statutes of limitations and the doctrine of laches even if Defendants could state a claim.

⁵ It is undisputed that the fence/gate along 436 Fifth Avenue is at least 10-feet over the boundary of East Street, and the jersey barriers were placed beyond the fence/gate. City Stmt. of Facts ¶74.

There is no cause of action against a municipality for damages related to work that a resident unilaterally undertakes on public property. Even, assuming *arguendo*, that the City has a duty to maintain East Street as a street, a city's duty is only to maintain its streets and sidewalks in a reasonably safe condition, taking into account such factors as the traffic conditions, the terrain, and fiscal practicality. Individual residents are not authorized to purportedly make improvements to city-owned property and then bill the city for them.

With respect to snow removal, a city's "failure to timely remove accumulations of ice or snow is not actionable" "in the absence of prior written notice or a showing that [the city] affirmatively caused or created the dangerous condition." *Roser v. City of Kingston*, 251 A.D.2d 936, 936, (2d Dep't 1998). While a municipality may owe a general duty to the public to maintain public spaces in a reasonably safe condition, "there is no duty to maintain [public property] in a condition acceptable to the abutting landowner." *Seril v. Bureau of Highway Operations of the DOT*, 245 A.D.2d 233, 236 (1st Dep't 1997) *lv. denied* 91 N.Y.2d 813 (1998). Accordingly, there is no basis for Defendants' second counterclaim seeking money damages for reimbursement of maintenance costs.

Finally, even if such a cause of action could be asserted—which it cannot—any claim for expenses dating back to 2002 would be untimely and barred by laches. *See e.g.*, CPLR § 214; Gen. Mun. Law § 50-e (notice of claim must be filed within 90 days); Gen. Mun. Law § 50-i(1) (in addition to notice of claim requirement, an action or special proceeding against a municipality must be commenced within one year and ninety days after the happening of the event upon which the claim is based). Accordingly, the City is entitled to summary judgment on Defendants' second counterclaim.

Conclusion

For the reasons stated above and in the City's statement of facts and affirmation, the City's motion to amend its reply and for summary judgment should be granted.

Dated: White Plains, New York
May 31, 2022

Respectfully submitted,

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CERTIFICATION OF COUNSEL PURSUANT TO RULE 202.8-b

I hereby certify that, pursuant to the Word Count tool in Microsoft Word, this memorandum of law contains 6483 words, excluding the caption, table of contents, table of authorities, and signature block.



Peter A. Meisels

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.,

**AFFIRMATION IN
SUPPORT OF THE CITY
OF NEW ROCHELLE’S
MOTION FOR SUMMARY
JUDGMENT**

Defendants.
----- X

PETER A. MEISELS, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following to be true under the penalties of perjury:

1. I am a member of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, attorneys for plaintiff City of New Rochelle (the “City”). As such, I am fully familiar with the facts and circumstances of this action based upon my review of the legal file maintained by my office and consultation with our client.

2. I submit this affirmation in support of the City’s motion for an Order pursuant to CPLR § 3212 granting summary judgment on the City’s causes of action for (i) trespass, (ii) negligence, (iii) nuisance by creation of a parking lot on public property, and (iv) nuisance by encroaching on East Street and Fifth Avenue, and dismissing Defendants’ counterclaims against the City, and for such other and further relief as this Court deems appropriate.

Exhibits

3. Attached hereto as **Exhibit 1** is a true and accurate copy of the Plaintiff’s Verified Complaint with exhibits, dated April 1, 2016.

4. Attached hereto as **Exhibit 2** is a true and accurate copy of the Defendants’

Verified Answer with Affirmative Defenses dated April 29, 2019.

5. Attached hereto as **Exhibit 3** is a true and accurate copy of the Plaintiff's Verified Reply, dated May 16, 2019.

6. Attached hereto as **Exhibit 4** is a true and accurate copy of a report pursuant to CPLR 4523 regarding a title search performed by a title insurance company regarding the bed of East Street in New Rochelle, New York, dated March 8, 2022 ("the 2022 Title Report"). A copy of the original 2022 Title Report was produced in this action, bearing Bates number PLTF0164-194. In the course of preparing the City's motion for summary judgment, a typographical error was discovered in the first two pages of the report. Accordingly, the title insurance company corrected the error and the corrected pages are included in Exhibit 4.

7. Attached hereto as **Exhibit 5** is a true and accurate copy of a September 9, 2015 Title Report regarding East Street and East Place in New Rochelle ("the 2015 Title Report") and attaching, *inter alia*, the 1914 Deed transferring title in East Street and East Place to the City of New Rochelle. The 2015 Title Report with Attachments was produced in this matter bearing Bates numbers PLTF059-PLTF064.

8. Attached hereto as **Exhibit 6** is a true and accurate copy of a survey map of property prepared for the City of New Rochelle by the licensed land surveyor Ward Carpenter Engineers, Inc., dated December 8, 2014, (hereinafter, the "2014 Survey"). The 2014 Survey depicts, *inter alia*, properties abutting East Street in New Rochelle.

9. Attached hereto as **Exhibit 7** is a true and accurate copy of the transcript of the deposition of defendant Flavio LaRocca.

10. Attached hereto as **Exhibit 8** is a true and accurate copy of the September 2002 Deed transferring ownership of 436 Fifth Avenue to Flavio and Maria La Rocca which was

marked as Plaintiff's Exhibit 1 at Flavio LaRocca's deposition. Ex. 7 (Flavio Dep.) at 44:11-45:6.

11. Attached hereto as **Exhibit 9** is a true and accurate copy of a deed recorded on March 18, 2008, showing the transfer of 436 Fifth Avenue from Flavio and Maria La Rocca to their LLC, FMLR Management LLC, which was produced in this action by Defendants and bears Bates numbers D0016-0019.

12. Attached hereto as **Exhibit 10** is a true and accurate copy of a land survey showing 436 Fifth Avenue and East Street, which was prepared by Rob Iaropoli and dated November 2000 (hereinafter the "2000 Survey"), and which was marked as "Exhibit 1-A" at Mr. LaRocca's deposition. Mr. LaRocca reviewed this survey before purchasing 436 Fifth Avenue in September 2002. Ex. 7 (Flavio Dep.) at 45:24-46:8, 47:14-48:19 (Iaropoli Survey is a survey Mr. LaRocca reviewed prior to purchasing 436 Fifth Avenue).

13. Attached hereto as **Exhibit 11**, is a copy of the 2000 Survey which was marked as Plaintiff's Exhibit 1A at the deposition of Flavio LaRocca, and which contains markings in pink, yellow, and blue highlighter made by Mr. LaRocca at his deposition. Ex. 7 (Flavio Dep.) at 45:24-46:8, 47:14-48:19 (Iaropoli Survey is a survey Mr. LaRocca reviewed prior to purchasing 436 Fifth Avenue).

14. Attached hereto as **Exhibit 12** is a true and accurate copy of a title insurance policy issued by Commonwealth Land Title Insurance Company to Flavio and Maria La Rocca, which was produced by defendants in this litigation bearing Bates numbers D0001-0015.

15. Attached hereto as **Exhibit 13** is a copy of the 2014 Survey that was marked as Plaintiff's Exhibit 11 at Flavio La Rocca's deposition, which contains hand-drawn, colored

markings made by Mr. La Rocca at his deposition. Ex. 7 (Flavio LaRocca Dep.) at 100:14-102:15.

16. Attached hereto as **Exhibit 14** is a true and accurate copy of a Survey of Property prepared for City of New Rochelle in the City of New Rochelle dated April 13, 2016, prepared by Ward Carpenter Engineers, Inc. which is a licensed land surveyor. This was marked as Plaintiff's Exhibit 18 at the deposition of Flavio La Rocca; the pink highlighted markings on the survey were made by Flavio LaRocca to indicate the encroachment of Defendants' property onto East Street. Ex. 7 (Flavio Dep.) at 188:16-13.

17. Attached hereto as **Exhibit 15** is a true and accurate copy of a letter dated March 17, 2003 from New Rochelle City Manager Charles B. Strome, III to Flavio LaRocca bearing Bates number D0033. See Ex. 7 (Flavio Dep.) at 87:2-88:2.

18. Attached hereto as **Exhibit 16** a true and accurate copy of documents produced by defendants in this litigation with bear Bates numbers D0241-242, which appear to be letters dated June 11, 2003 and November 17, 2003 from Flavio LaRocca to "Mr. William Zimmerman, Director of Parks and Recreation, and "Mr. Charles Strome, City Manager."¹

19. Attached hereto as **Exhibit 17** is a true and accurate copy of a letter dated June 22, 2009 from Paul Vacca, Deputy Commissioner of Development/Building Official for the City of New Rochelle and Jeffrey E. Coleman, P.E., then-Commissioner of Public Works for the City of New Rochelle to FMLR Management, LLC and Mr. LaRocca, which was marked as Plaintiff's 9 at Mr. LaRocca's deposition. See Ex. 7 (Flavio Dep.) at 90:18-91:9.

20. Attached hereto as **Exhibit 18** is a true and accurate copy of a letter dated November 18, 2015 from Alexander Tergis, Commissioner of Public Works for the City of New

¹ No evidence was produced that these letters were ever received by the City. They are offered for the Defendants' knowledge of the alleged jersey barrier issue.

Rochelle to FMLR Management LLC, which was marked as Exhibit 3D at the deposition of Flavio LaRocca.

21. Attached hereto as **Exhibit 19** is a true and accurate copy of Defendants' Response to First Set of Interrogatories and Document Demands by Plaintiff (Flavio dep. Ex. 12)

22. Attached hereto as **Exhibit 20** is a true and accurate copy of a photograph taken standing on East Street facing towards Fifth Avenue, which was marked as Plaintiff's Exhibit 19 at Flavio LaRocca's deposition. Ex. 7 at 179:4-180:15. Flavio LaRocca testified that the pick-up truck seen parked on East Street is his truck, parked next to his property at 436 Fifth Avenue. He also used a blue pen to circle a wall which demarks the border of his property and the property of PAB. Mr. LaRocca also depicted PAB's property shown in the photo in yellow highlighted on the survey included as Exhibit 13 herein. Ex. 7 (Flavio Dep.) at 180:16-182:2.

23. Attached hereto as **Exhibit 21** a true and accurate copy of a series of photographs produced by Defendants and bearing Bates stamps D0402-D0405, which depict the Parcel after it was fenced in by the City. Ex. 7 (Flavio Dep.) at 184:12-185:23.

24. Attached hereto as **Exhibit 22** is a true and accurate copy of the transcript of the March 5, 2021 deposition of defendant Maria LaRocca.

25. Attached hereto as **Exhibit 23** is a a true and accurate copy of a July 2016 email chain between Maria LaRocca and the office of Gabriel E. Senor PC, including four pages of documents attached to Ms. LaRocca's July 6, 2016 12:53pm email.

26. Attached hereto as **Exhibit 24** is a true and accurate copy of the transcript of the March 29, 2021 deposition of Eliot Senor.

27. Attached hereto as **Exhibit 25** a true and accurate copy of documents received from Gabriel E. Senor, P.C. in response to Plaintiff's subpoena, which were marked as Plaintiff's

Exhibit 2 at the March 29, 2021 deposition of Mr. Senor. *See* Ex. 24 (Senor Dep.) at 27:4-28:21. Mr. Senor testified that the documents included the job order for 436 Fifth Avenue, the paid bill, and additional documents from his file regarding the stake out at 436 Fifth Avenue in August 2009. *Id.*

28. Attached hereto as **Exhibit 26** is a true and accurate copy of the transcript of the February 25, 2020 deposition of Paul Vacca, the Deputy Commissioner of Development and Building Official for the City of New Rochelle.

29. Attached hereto as **Exhibit 27** a true and accurate copy of minutes of a June 2, 1914 meeting of the City of New Rochelle City Council, Bates stamps PLTF119-126.

30. Attached hereto as **Exhibit 28** is a true and accurate copy of the transcript of the May 28, 2021 deposition of Felipe Maya.

31. Attached hereto as **Exhibit 29** is a true and accurate copy of the transcript of the August 4, 2021 deposition of journalist Robert Cox.

32. Attached hereto as **Exhibit 30** is a true and accurate copy of a video created by Robert Cox on May 16, 2015 depicting work being done at the Parcel, in the area of East Street and Flowers Park, and which was marked as an exhibit at the deposition of Mr. Cox. *See* Ex. 29 (Cox Dep.) at 6:6-7:15.

33. Attached hereto as **Exhibit 31** is a true and accurate copy of an article published by Robert Cox on the website for Talk of the Sound on May 26, 2015 entitled “Who Is Flavio La Rocca ? – Part IV” Article, available at <https://talkofthesound.com/2015/05/26/who-is-flavio-la-rocca-part-iv/> (late visited May 18, 2022). *See* Ex. 29 (Cox Dep.). The article was originally published with a number of photographs, which were attached to Plaintiff’s complaint. Attached hereto as **Exhibit 32** is a copy of the article produced by Defendants as D0197-D0199.

34. Attached hereto as **Exhibit 33** is a true and accurate copy of an article published by Robert Cox on the website for Talk of the Sound on November 9, 2015 entitled “Who Is Flavio La Rocca ? – Part VIII” Article, which was produced in this litigation by Defendants as D0119-D0135 and marked as an exhibit at Mr. Cox’s deposition. *See* Ex. 29 (Cox Dep.) at 69:20-70:18.

35. Attached hereto as **Exhibit 34** is a true and accurate copy of a survey map prepared for the City of New Rochelle on April 12, 2022 marking the location of the chain link fence surrounding the Parcel and containing the embossed seal of licensed land surveyor Aristotle Bournazos, P.C. For each of use, the pdf of Exhibit 34 contains the entire survey, followed by enlarged scans of the survey in 4 parts. At the court or defendants’ request, Plaintiff can submit a hard copy of the survey with the embossed seal to the Court.

36. Attached hereto as **Exhibit 35** is a true and accurate copy of a November 25, 2015 letter from the City of New Rochelle to Flavio LaRocca & Sons, which was produced by Defendants in this matter as Bates number D034 and which was marked as Defendants’ Exhibit AA at the deposition of Paul Vacca.

37. Attached hereto as **Exhibit 36** is a true and accurate copy of an Aerial Photograph showing 436 Fifth Avenue, East Street, the Sidney E Frank Skate Park, and the Parcel, which was marked as “Plaintiff’s 24” at the deposition of Flavio LaRocca. Ex. 7 at 163:9-164:7. Mr. LaRocca circled the area of the Parcel with a yellow highlighter in Exhibit 36. Ex. 7 at 163:9-164:7.

38. Attached hereto as **Exhibit 37** is a true and accurate copy of the July 10, 2018 stipulation extending the time for Defendants to file an answer to September 30, 2018.

39. Attached hereto as **Exhibit 38** is a true and accurate copy of the Note of Issue filed in this matter on March 30, 2022.

40. Attached hereto as **Exhibit 39** is a true and accurate copy of the certified 1914 deed transferring East Street to the City of New Rochelle, filed with the Westchester County Clerk, Division of Land Records, and containing the County Clerk's official seal.

41. Attached hereto as **Exhibit 40** is a true and accurate copy of the Affidavit of James J. Moran, P.E., Commissioner of Public Works for the City of New Rochelle.

42. Attached hereto as **Exhibit 41** is a true and accurate copy of excerpts of the transcript of the July 8, 2021 deposition of Bernardo F. Rivera (pages 1-7, 19-21, 47-48, 76, 79-80).

43. Attached hereto as **Exhibit 42**, in accordance with CPLR 3025(b), is a true and accurate copy of the City's Proposed Amended Verified Reply with track changes to show the changes to be made.

44. Attached hereto as **Exhibit 43** are true and accurate copies of photographs of the Parcel after it was fenced in, which were marked as Defendants' Exhibit GG at the deposition of Paul Vacca.

45. Attached hereto as **Exhibit 44** is a true and accurate copy of the certified 1911 deeds transferring the property containing City Park to the City of New Rochelle, filed with the Westchester County Clerk, Division of Land Records, and containing the County Clerk's official seal.

Conclusion

46. Based on the foregoing and attached exhibits, the City's Statement of Facts pursuant to Rule 202.8-g, and those arguments presented in the accompanying memorandum of law, it is respectfully requested that the City's motion to amend the reply and for summary judgment be granted, permit the City to amend its reply to the Defendants' counterclaims to assert the defenses of statute of limitations, failure to comply with notice of claim requirements, and laches; and granting summary judgment in favor of the City, on the City's claims for trespass, negligence, and public nuisances and dismissing the Defendants' counterclaims, ordering the removal of the encroachment onto City property, enjoining Defendants from further encroachment, and imposing statutory penalties pursuant to New Rochelle City Code § 111-40 of at least \$7,500 plus \$50 for each day the encroachment has not been remedied, and granting such other, further and different relief as this Court deems just and proper.

Dated: White Plains, New York
May 31, 2022

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

**CERTIFICATION OF
WORD COUNT SPECIFICATIONS**

I hereby certify, pursuant to 22 NYCRR 202.8-b (a) (b) and (c), that the foregoing computer generated affirmation was prepared using a proportionally spaced typeface as follows:

Specifications:

Name of typeface: Times New Roman

Point Size: 12 pts

Lines Spacing: Double

Word Count: The total number of words in this affirmation, inclusive of point headings and footnotes if applicable, and exclusive of the pages containing the caption and signature block is 2477 words, which is in compliance with the word count limit of 7000 words.

Dated: White Plains, New York
May 31, 2022

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ
EDELMAN & DICKER LLP
Attorneys for Plaintiff



Peter A. Meisels

1133 Westchester Avenue
White Plains, NY 10604
(914) 323-7000
Our File No. 07367.00101

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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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.

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TO THE ABOVE-NAMED DEFENDANTS:

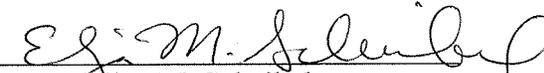
YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service, or, if service of this summons is made by any means other than by personal delivery to you within 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

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

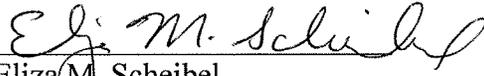
FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.
and FMLR REALTY MANAGEMENT LLC,

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. 02DU6269716
Qualified in New York County
Term Expires October 1, 2016

Exhibit 1

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













Exhibit 2



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,

Paul Vacca
Deputy Commissioner of Development/Building Official

Jeffrey C. Coleman, PE
Commissioner of Public Works

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 insanctioned 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 Maria 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 be 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: 

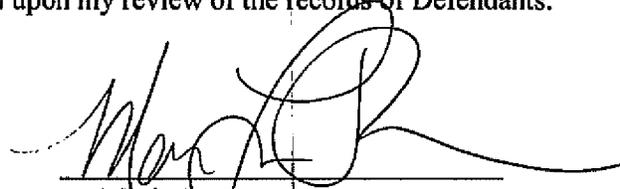
Katherine Zalantis
Attorneys for Defendants
120 White Plains Road, Suite 305
Tarrytown, New York 10591
(914) 682-0707
zalantis@szlawfirm.net

VERIFICATION

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

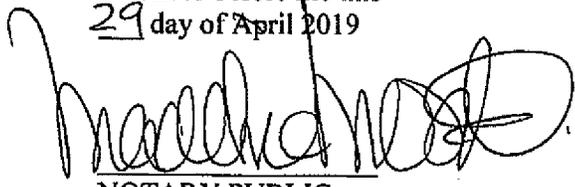
Maria La Rocca, being duly sworn, deposes and says:

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

MADLINE MONSERRATE
No. 01MO6349129
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.

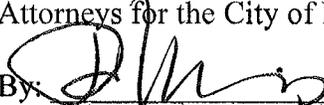
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 109 of the Verified Answer.

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

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.

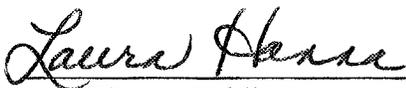
Peter A. Meisels, an attorney admitted to practice law before the Courts of the State of
New York hereby verifies:

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

**FIRST AMERICAN TITLE INSURANCE COMPANY
550 MAMARONECK AVENUE – 4TH FLOOR
HARRISON, NEW YORK 10528
(914)835-7100**

March 8, 2022

Peter A. Meisels, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604

Re: Title No. S7479
Premises: East Street
New Rochelle, NY

Dear Peter:

In recent email correspondence, you asked if we could conduct a search, pursuant to CPLR 4523, of the records of the Westchester County Clerk's Office for the purpose of certifying the owner of the bed of East Street as shown on the official Tax Map of the City of New Rochelle. (see copy attached)

Originally, East Street and several other streets were created and laid out on a subdivision map entitled, "Fifth Avenue Heights" dated April 1907 and filed in the Register's Office of Westchester County (now County Clerk's Office, Division of Land Records) on June 7, 1907 as Map No. 1728 (see copy attached).

CERTIFICATION OF TITLE: Title to the bed of East Street as shown on Map No. 1728 is certified in the City of New Rochelle by deed dated 4/30/1914 recorded 6/27/1919 in Liber 2201 cp 231.

All of the streets on the map, including East Street, were conveyed to the City of New Rochelle by deed dated 4/30/1914 recorded 6/27/1919 in Liber 2201 cp 231. (see copy attached) Deeds for individual subdivision lots conveyed by the map maker, Hadert Realty Co., prior to this street dedication deed did not convey portions of any streets.

We have identified the tax parcels that front on the westerly side of East Street and they are listed on an attachment herewith. The property fronting on the easterly side of East Street is owned by the City of New Rochelle. All of the parcels that front on the westerly side of East Street have been searched in full to determine whether at any time subsequent to the initial sale from the mapmaker a portion of the street was conveyed. No such conveyances from the City of New Rochelle were found. Some of the properties were subject to In Rem foreclosure in the past. In each such instant the resulting deed from the City was examined and found to convey only the lot(s) in question and no interest in the adjoining street.

Cont

Copies of the last record deed for each of the tax parcels that front on the westerly side of East Street are attached hereto. Many of them contain the modern boilerplate statement "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 line thereof" The important part of that statement in this case is "if any" and in each of these specific deeds the grantor had no title to the streets to convey.

Please let us know if you need anything additional on this matter or if we can be of further assistance.

Thank you for choosing First American Title for this search. This search is provided FOR INFORMATION ONLY. NO POLICY WILL BE ISSUED. Liability is limited to the fee paid for negligence only. If you have any questions, please do not hesitate calling our office.

Very truly yours,



Roger C. Crawford
President & Chief Counsel

RCC:
enclosures

Lots fronting on the easterly side of East Street:

Tax Lot	Subdivision Lot(s)	Owner
3-932-1	194 and more	Ferdinand B. Martignetti and Ferdinand G. Martignetti Ctrl No. 620213833
3-932-43	208, 209	PAB Landscaping, Inc. Liber 7750 cp 80
3-931-41	210, 211	P.A.B. Landscaping, Inc. Liber 9320 cp 182
3-931-39	212, 213	Ben Riv Realty LLC Ctrl No. 553003596
3-931-37	214, 215	J&C DiPietro LLC Ctrl No. 542183212
3-931-35	216, 217	Darren Pauling and Jennifer Pauling Ctrl No. 562423334
3-931-29	223, 224	FMLR Management LLC CTRL No. 480660036

NY State Office of Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.

RECEIVED NYSCEF: 05/31/2022

620213833DED002S

Westchester County Recording & Endorsement Page

Submitter Information

Name: CATIC Title Insurance Company Phone: 914-418-9847
Address 1: 660 White Plains Road, Suite 570 Fax: 833-329-2228
Address 2: Email: nyrecordings@CaticTitle.com
City/State/Zip: Tarrytown NY 10591 Reference for Submitter: 4689

Document Details

Control Number: **620213833** Document Type: **Deed (DED)**
Package ID: 2022012100328001001 Document Page Count: **3** Total Page Count: **4**

Parties

Additional Parties on Continuation page

1st PARTY **2nd PARTY**
1: GUGLIELMO GROUP LLC - Other 1: MARTIGNETTI FERDINAND B - Individual
2: 2: MARTIGNETTI FERDINAND G - Individual

Property

Additional Properties on Continuation page

Street Address: 0 EAST PL Tax Designation: 3-931-0001
City/Town: NEW ROCHELLE Village:

Cross-References

Additional Cross-Refs on Continuation page

1: 2: 3: 4:

Supporting Documents

1: RP-5217 2: TP-584

Recording Fees

Statutory Recording Fee: \$40.00
Page Fee: \$20.00
Cross-Reference Fee: \$0.00
Mortgage Affidavit Filing Fee: \$0.00
RP-5217 Filing Fee: \$250.00
TP-584 Filing Fee: \$5.00
RPL 291 Notice Fee: \$10.00
Total Recording Fees Paid: **\$325.00**

Mortgage Taxes

Document Date:
Mortgage Amount:
Basic: \$0.00
Westchester: \$0.00
Additional: \$0.00
MTA: \$0.00
Special: \$0.00
Yonkers: \$0.00
Total Mortgage Tax: **\$0.00**
Dwelling Type: Exempt:
Serial #:

Transfer Taxes

Consideration: \$500,000.00
Transfer Tax: \$2,000.00
Mansion Tax: \$0.00
Transfer Tax Number: 9697

Record and Return To

Pick-up at County Clerk's office

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK
Recorded: 02/03/2022 at 09:57 AM
Control Number: **620213833**
Witness my hand and official seal


Timothy C. Idoni
Westchester County Clerk

Law Office of Andrew M Romano
55 Main Street
3rd Floor
Yonkers, NY 10701
Attn: Karly N. Grosz

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

RBU

As of

THIS INDENTURE, made the 24th day of January, 2022

BETWEEN

Guglielmo Group LLC, a Duly Formed New York Limited Liability Company, 406 5th Avenue, New Rochelle, NY 10801

party of the first part, and

Ferdinand B. Martignetti and Ferdinand G. Martignetti, as joint tenants with right of survivorship, 100 Lawrence Place, New Rochelle, NY 10801

party of the second part,

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

TEN AND ALL OTHER VALUABLE CONSIDERATIONS (\$10.00) 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

BEING the same premises conveyed by deed dated 06/16/2005 between Joseph Guglielmo and Michelina Guglielmo, his wife, Grantors and Guglielmo Group LLC, Grantee and recorded on 08/18/2005 in the Office of the Clerk, County of Westchester, division of land records in Control No. 452240016.

SEE SCHEDULE "A" ATTACHED HERETO AND MADE APART HEREOF

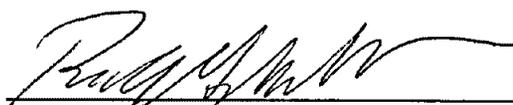
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; 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:


Guglielmo Group LLC, by Pasquale A. Guglielmo

CATIC Title Insurance Company
660 White Plains Road Suite 570 Tarrytown, NY 10591
914-418-9847 - NYServices@CaticTitle.com

Title Number: CAT21-4689-W

SCHEDULE A DESCRIPTION

Parcel I:

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 described as Block 931, Lots 1, 3, 5 & 6 on the official tax assessment map of the City of New Rochelle and also known and designated as Lots 190, 191, 192, 193, 194 in Block "E" on "Map of Fifth Avenue Heights" filed in the office of the Clerk of the County of Westchester, Land Records Division on June 7, 1907 as Map # 1728.

Parcel II:

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, shown and designated on a certain map filed in the office of the Register of the County of Westchester, entitled, "Map of Fifth Avenue Heights in the City of New Rochelle, Westchester County N.Y." made by L. E. Van Etten, engineer and surveyor, April 1907, as Map # 1728 and known as and by Lots 206 and 207, in Block E.

Said Parcel I and Parcel II together being more particularly bounded and described as follows:

Commencing at a point at the southwesterly westerly corner of East Place and East Street;

Thence running S 15-45-18 E 151.32 feet along East Street;

Thence running S 66-40-40 123.27 feet along Lot 208;

Thence running N 23-19-20 W 150.00 feet to East Place;

Thence running N 66-40-40 E 143.20 to the point or place of beginning.

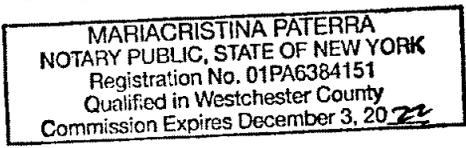
Being the same premises described in the Deed dated 06/16/2005 and recorded in the County Clerk's Office in Control # 452240016.

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Westchester, ss:

On the 22nd day of January in the year 2022, before me, the undersigned, personally appeared Pasquale A. Guglielmo, 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.

NOTARY PUBLIC



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, a Notary Public in and for said State, 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 (if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

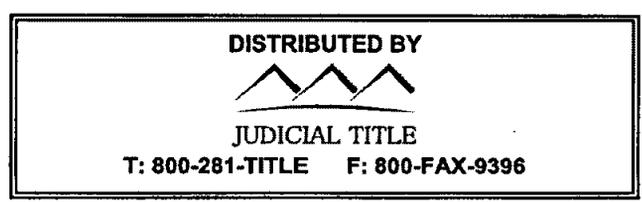
to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto.

NOTARY PUBLIC

Bargain and Sale Deed With Covenants

GUGLIELMO GROUP LLC TO MARTIGNETTI

Title No. CA721-4689-W



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.

NOTARY PUBLIC

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

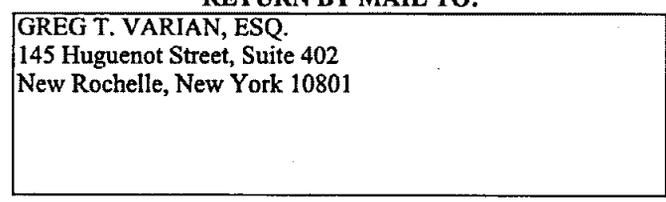
State of, County of, ss:

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), 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 make 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).

NOTARY PUBLIC

COUNTY: WESTCHESTER TOWN/CITY: YONKERS PROPERTY ADDRESS: EAST PLACE NEW ROCHELLE, NY 10801 SECTION: 3 BLOCK: 931 LOT: 0001

RETURN BY MAIL TO:





012082034

Standard N.Y.S.T.C. Form 2005 - 4-51-1076 - Bargain and Sale Deed, without Covenant against Grantor's Acts-Individual or Corporation (single sheet)

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

LIBER 7750 PAGE 80

THIS INDENTURE, made the 8th day of January, nineteen hundred and TWENTY TWO BETWEEN CITY OF NEW ROCHELLE, a domestic municipal corporation duly organized pursuant to the laws of the State of New York with its principal offices located at 515 North Avenue, New Rochelle, New York 10801

party of the first part, and PAB LANDSCRAPING, INC., place of business at 137 Pelham Road, 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 City of New Rochelle, County of Westchester and State of New York and also known and designated as Lots 208 and 209 in Block "E" on "Map of Fifth Avenue Heights" filed June 7, 1907 as Map #1728. Also known as Block 931, Lots 43 and 44.

WEST STAMPS 3.30 FEB - 3 1982

TAX MAP DESIGNATION

Dist.

Sec.

Blk. 931

Lot(s) 43;44

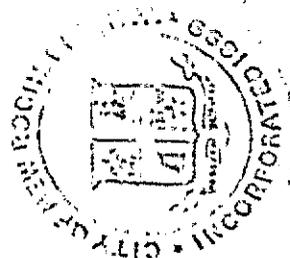
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; 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, 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" 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:



CITY OF NEW ROCHELLE

By: [Signature]
City Manager

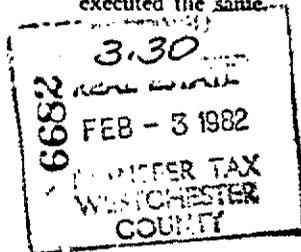
LIBER 7750 PAGE 81

STATE OF NEW YORK, COUNTY OF
On the day of 19 , before me
personally came

STATE OF NEW YORK, COUNTY OF
On the day of 19 , before me
personally came

to me known to be the individual described in and who
executed the foregoing instrument, and acknowledged that
executed the same.

to me known to be the individual described in and who
executed the foregoing instrument, and acknowledged that
executed the same.



STATE OF NEW YORK, COUNTY OF WESTCHESTER
On the 8th day of January 1982, before me
personally came C. SAMUEL KISSINGER
to me known, who, being by me duly sworn, did depose and
say that he resides at No. 122 Forest Avenue,
New Rochelle, New York
that he is the City Manager
of City of New Rochelle

STATE OF NEW YORK, COUNTY OF
On the day of 19 , before me
personally came
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 resides at No.
that he knows

, the corporation described
in and which executed the foregoing 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 pursuant to Council Resolution No. 300 dated
October 20, 1981 and that he signed his name
thereto by like order.

to be the individual
described in and who executed the foregoing instrument;
that he, said subscribing witness, was present and saw
execute the same; and that he, said witness,
at the same time subscribed his name as witness thereto.

Daniel W. Boudie
DANIEL W. BOUDIE
Notary Public, State of New York
No. 604504703
Qualified in Westchester County
Commission Expires March 20, 1983

82
LIBER 7750 PAGE

Bargain and Sale Deed
WITHOUT COVENANT AGAINST GRANTOR'S ACTS
TITLE No.

SECTION
BLOCK
LOT
COUNTY OR TOWN
STREET ADDRESS
TAX BILLING ADDRESS

City of New Rochelle

CITY OF NEW ROCHELLE
TO
P.A.B. LANDSCRAPING, INC.

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:



PAB LANDSCRAPING INC.
137 Pelham Road
New Rochelle, New York
Zip No. 10805

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

7.00 B — CPa 00133 2--3-82
3918

RECEIVED
WESTCHESTER COUNTY CLERK
1982 FEB -3 11 4:30

State's Chg.
Rec'd & Del.
Filing Chg.
Cross Refine
Cert./Recpt.
Total
TOWNS
Exhibit
Returned

WESTCHESTER COUNTY CLERK'S OFFICE
100 STATE ST. ALBANY, N.Y. 12207

The foregoing instrument was endorsed for record as follows:
The property affected by this instrument is situate in the
CITY OF NEW ROCHELLE
County of Westchester, N. Y. A true copy of the original
DEED
Recorded in the Division of Land Records of the County Clerk's
Office of Westchester County on FEB. 3, 1982
at 1:30P M in Liber 7750 Page 80 of Deeds.
Witness my hand and Official Seal *George R. Morrow*
George R. Morrow
County Clerk



V04888272

LIBER 9320 PAGE 182

Form 8002 1-87-204 — Bargain and Sale Deed, with Covenant 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 7th day of September, nineteen hundred and eighty eight
BETWEEN JOHN P. WHALEN, residing at 17 Bonnefoy Place, New Rochelle, N. Y. 10801

party of the first part, and **P.A.B. LANDSCAPING, INC.**, a deomestic corporation with principal place of business at 119 Harmon Avenue, New Rochelle, N. Y. 10805

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 City of New Rochelle, County of Westchester and State of New York, known and designated as Lot Numbers Two Hundred Ten (210) and Two Hundred Eleven (211), in Block E on a certain map entitled "Fifth Avenue Heights, in the City of New Rochelle, Westchester County, N.Y.", L.E. Van Etten, C.E. April, 1907, which map is filed in the Office of the Register of the County of Westchester

TAX MAP DESIGNATION

Dist.
Sec. 3
Blk. 931
Lot(s): 41 & 42

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" 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:

Martha M Whalen
AS ATTORNEY IN FACT FOR
JOHN P. WHALEN

LIBER 9320 PAGE 183

STATE OF NEW YORK)
:ss
COUNTY OF WESTCHESTER)

On the 7th day of September, 1988, before me came
MARINA WHALEN to me known, and known to me, to be
the attorney-in-fact of JOHN P. WHALEN, the individual
described in and who by his said attorney-in-fact executed the
foregoing instrument, and duly acknowledged before me that he
executed the same as the act in deed of JOHN P. WHALEN
therein described, and for the purpose therein mentioned by virtue
of a power of attorney duly executed by the said JOHN P. WHALEN
dated the 2nd day of ~~April~~ 1988, to be recorded simultaneously in
the Office of the Clerk, County of Westchester

John J. Gardner
NOTARY PUBLIC

JOHN J. GARDNER
Notary Public State of New York
No. 60-1374850
Qualified in Westchester County
Commission Expires November 30, 1989 *EP*

that he is the
of
the corporation described
in and which executed the foregoing 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 corpora-
tion, and that he signed his name thereto by like order.

that he knows
to be the individual
described in and who executed the foregoing instrument;
that he, said subscribing witness, was present and saw
execute the same; and that he, said witness,
at the same time subscribed his name as witness thereto.

Bargain and Sale Deed
WITH COVENANT AGAINST GRANOR'S ACTS
TITLE NO. BD914795W

JOHN P. WHALEN
TO
P.A.B. LANDSCAPING, INC.

SECTION 3
BLOCK 931
LOT 41 and 42
COUNTY ~~of~~ Westchester
TAX BILLING ADDRESS Sec. 3, Blk. 931
Lots 41 & 42, New Rochelle, N.Y.

Recorded At Request of Ticor Title Guarantee Company
RETURN BY MAIL TO:

JUDICIAL ABSTRACT CORP
190 East Post Road
White Plains, New York 10601
TICOR (914) 946-4884 (212) 285-9880

Christopher P. Cotroni
107 Lake Avenue
Tuckahoe, N. Y. 10707
Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

LIBER 9320 PAGE 184



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

THE FOREGOING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT DED
(SEE CODES FOR DEFINITIONS)

- THE PROPERTY IS SITUATED IN WESTCHESTER COUNTY, N.Y. IN THE
- 02 TOWN OF BEDFORD
 - 06 TOWN OF CORTLANDT
 - 09 TOWN OF EASTCHESTER
 - 11 TOWN OF GREENBURGH
 - 12 TOWN OF HARRISON
 - 16 TOWN OF LEWISBORO
 - 17 TOWN OF MAMARONECK
 - 19 TOWN OF MT. KISCO
 - 20 TOWN OF MT. PLEASANT
 - 21 CITY OF MT. VERNON
 - 22 TOWN OF NEW CASTLE
 - 23 CITY OF NEW ROCHELLE
 - 24 TOWN OF NORTH CASTLE
 - 26 TOWN OF NORTH SALEM
 - 28 TOWN OF OSSINING
 - 30 CITY OF PEEKSKILL
 - 31 TOWN OF PELHAM
 - 35 TOWN OF POUND RIDGE
 - 36 CITY OF RYE
 - 37 TOWN OF RYE
 - 38 TOWN OF SCARSDALE
 - 39 TOWN OF SOMERS
 - 42 CITY OF WHITE PLAINS
 - 43 CITY OF YONKERS
 - 44 TOWN OF YORKTOWN

LIBER 9320
PAGE 182

STAT'Y CHARGE 5
REC'ING CHARGE 6
FILING CHARGE 1
CROSS REFERENCE _____
CERT/RECEIPT _____

TOTAL
12

\$ 2500
CONSIDERATION

RECEIVED
\$ 10
SEP 28 1988
2907

REAL ESTATE
TRANSFER TAX
WESTCHESTER COUNTY

MORTG. DATE _____
MORTG. AMOUNT _____
EXEMPT YES _____ NO _____
REC'D TAX ON ABOVE MTGE: _____

BASIC \$ _____
ADDTL \$ _____
SUBTOTAL \$ _____
SPECIAL \$ _____
TOTAL \$ _____

SERIAL No. _____
DWELLING:
 1-6 UNITS
 OVER 6 UNITS

ANDREW J. SPANO
WESTCHESTER COUNTY CLERK

ADDITIONAL COMMENTS

TERMINAL No. _____ DATE RETURNED _____
812620048

EXAMINED BY AS
WITNESS MY HAND AND OFFICIAL SEAL
Andrew J. Spano
ANDREW J. SPANO
WESTCHESTER COUNTY CLERK

THE RECORDING DATE OF THIS INSTRUMENT AS INDICATED ABOVE IS THE OFFICIAL DATE ON WHICH THE WESTCHESTER COUNTY CLERK RECEIVED THIS INSTRUMENT. QUESTIONS REGARDING DELAYS PRIOR TO THIS DATE SHOULD BE ADDRESSED TO YOUR REPRESENTATIVE OR ATTORNEY.

RECEIVED
88 SEP 28 AM 7:27
ANDREW J. SPANO
WESTCHESTER COUNTY CLERK

0000058900 09/28/88CPA/DE 12.00
07:37

RECORD AND RETURN

NYSCEF DOC NO 118

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.

RECEIVED NYSCEF: 05/31/2022



553003596DED0010

Westchester County Recording & Endorsement Page

Submitter Information

Name: Judicial Title Insurance- PICK UP	Phone: 914-381-6700
Address 1: 800 Westchester Avenue	Fax: 914-381-6785
Address 2:	Email: ltriglia@judicialtitle.com
City/State/Zip: Rye Brook NY 10573	Reference for Submitter: 115529 ch

Document Details

Control Number: 553003596	Document Type: Deed (DED)	Total Page Count: 4
Package ID: 2015102700263001001	Document Page Count: 3	

Parties

1st PARTY	<input type="checkbox"/> Additional Parties on Continuation page
2nd PARTY	
1: PNP CONTRACTING INC - Other	1: BEN RIV REALTY LLC - Other
2:	2:

Property

Street Address: N/A EAST STREET	<input type="checkbox"/> Additional Properties on Continuation page
City/Town: NEW ROCHELLE	Tax Designation: 3-931-39
	Village:

Cross-References

1:	2:	3:	4:	<input type="checkbox"/> Additional Cross-Refs on Continuation page
----	----	----	----	---

Supporting Documents

1: RP-5217 2: TP-584

Recording Fees

Statutory Recording Fee:	\$40.00
Page Fee:	\$20.00
Cross-Reference Fee:	\$0.00
Mortgage Affidavit Filing Fee:	\$0.00
RP-5217 Filing Fee:	\$250.00
TP-584 Filing Fee:	\$5.00
Total Recording Fees Paid:	\$315.00

Mortgage Taxes

Document Date:	
Mortgage Amount:	
Basic:	\$0.00
Westchester:	\$0.00
Additional:	\$0.00
MTA:	\$0.00
Special:	\$0.00
Yonkers:	\$0.00
Total Mortgage Tax:	\$0.00

Transfer Taxes

Consideration:	\$225,000.00
Transfer Tax:	\$900.00
Mansion Tax:	\$0.00
Transfer Tax Number:	5122

Dwelling Type:	Exempt: <input type="checkbox"/>
Serial #:	

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 11/13/2015 at 12:07 PM
 Control Number: **553003596**
 Witness my hand and official seal

Timothy C. Itoni
 Westchester County Clerk

Record and Return To

Pick-up at County Clerk's office

Judicial Title Ins.
 800 Westchester Ave
 Rye Brook, NY 10573

— Bargain and Sale Deed, with Covenant against Grantor's Acts — Individual or Corporation (Single Sheet)

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

900.00

THIS INDENTURE, made the 30th day of October, in the year 2015

BETWEEN PNP Contracting, Inc., with offices at 2005 Palmer Avenue, , No 314, Larchmont, New York 10538

party of the first part, and Ben Riv Realty LLC, 49 Park Pace, New Rochelle, New York 10801

party of the second part,

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

TEN (\$10.00)..... 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

SEE SCHEDULE "A" ANNEXED HERETO AND MADE A PART HEREOF

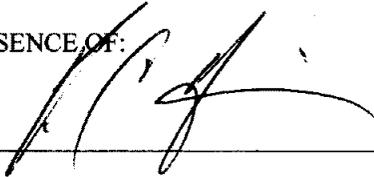
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; 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.

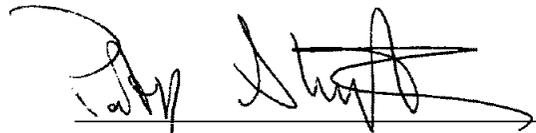
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of 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" 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:



PNP Contracting Inc.



Patsy Staropoli, President

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Westchester, ss:

On the 30th day of October in the year 2015, before me, the undersigned, personally appeared Patsy Staropoli, 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 of Barbara E Sufian
BARBARA E SUFIAN
Notary Public, State of New York
No. 01SU4912633
Qualified in Westchester County
Commission Expires April 11, 2018

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, a Notary Public in and for said State, 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

(if the place of residence is in a city, include the street and street number if any, thereof); 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

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 County)

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 make 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).

Bargain and Sale Deed With Covenants

Title No. 115529 FA-W

PNP Contracting Inc.
TO
Ben Riv Realty, LLC

SECTION: 3
BLOCK: 931
LOT: 39
COUNTY OR TOWN: New Rochelle, Westchester

DISTRIBUTED BY
YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396

RETURN BY MAIL TO:
THE JUDICIAL TITLE INSURANCE AGENCY LLC
800 WESTCHESTER AVENUE SUITE S-340
RYE BROOK, NY 10573
914-381-6700

THE JUDICIAL TITLE INSURANCE AGENCY LLC**Title Number: 115529FA-W****SCHEDULE A**

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, Lot Nos. 39 and 40 on the official tax assessment map of the City of New Rochelle and also known and designated as Lot Nos. 212 and 213 in Block "E" on "Map of Fifth Avenue Heights," filed June 7, 1907 in the Office of the Clerk of the County of Westchester, Division of Land Records, as Map No. 1728, said property having been transferred by deed dated August 8, 1955 by Edgar A. Brennan to Cola Mae Jones and Ruth Brennan Winn, being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of East Street, where the division line between Lot No. 211 and Lot No. 212 intersects said westerly side of East Street;

RUNNING THENCE along said westerly side of East Street, south 15 degrees 45 minutes 18 seconds east, 50.44 feet;

THENCE south 66 degrees 40 minutes 40 seconds west, 103.34 feet;

THENCE north 23 degrees 19 minutes 20 seconds west, 50.00 feet;

THENCE north 66 degrees 40 minutes 40 seconds east, 109.98 feet to the westerly side of East Street at the point or place of BEGINNING.

**FOR
CONVEYANCING
ONLY**

The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party in the first part, or, in and to the land lying in the street in front of and adjoining said premises.

NYSCEF DOC NO 118

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



RECEIVED NYSCEF: 05/31/2022

542183212DED001S

Westchester County Recording & Endorsement Page

Submitter Information

Name: Frank Marino	Phone: 9149971380
Address 1: Marino & Chambers, P.C.	Fax: 9149971096
Address 2: 1 Barker Avenue	Email: marinocham@aol.com
City/State/Zip: White Plains NY 10601	Reference for Submitter: DiPietro East St

Document Details

Control Number: 542183212	Document Type: Deed (DED)	
Package ID: 2014080600099001001	Document Page Count: 2	Total Page Count: 3

Parties

1st PARTY	<input type="checkbox"/> Additional Parties on Continuation page
2nd PARTY	
1: DIPIETRO JOSEPH - Individual	1: J&C DIPIETRO LLC - Other
2:	2:

Property

Street Address: - EAST ST.	<input type="checkbox"/> Additional Properties on Continuation page
City/Town: NEW ROCHELLE	Tax Designation: 3-931-0037
	Village:

Cross-References

				<input type="checkbox"/> Additional Cross-Refs on Continuation page
1:	2:	3:	4:	

Supporting Documents

1: RP-5217 2: TP-584 3: TP-584.1

Recording Fees

Statutory Recording Fee:	\$40.00
Page Fee:	\$15.00
Cross-Reference Fee:	\$0.00
Mortgage Affidavit Filing Fee:	\$0.00
RP-5217 Filing Fee:	\$250.00
TP-584 Filing Fee:	\$5.00
Total Recording Fees Paid:	\$310.00

Mortgage Taxes

Document Date:	
Mortgage Amount:	
Basic:	\$0.00
Westchester:	\$0.00
Additional:	\$0.00
MTA:	\$0.00
Special:	\$0.00
Yonkers:	\$0.00
Total Mortgage Tax:	\$0.00

Transfer Taxes

Consideration:	\$0.00
Transfer Tax:	\$0.00
Mansion Tax:	\$0.00
Transfer Tax Number:	1282

Dwelling Type:	Exempt: <input type="checkbox"/>
Serial #:	

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 08/27/2014 at 10:55 AM

Control Number: **542183212**

Witness my hand and official seal

Timothy C. Idoni
Westchester County Clerk

Record and Return To

 Pick-up at County Clerk's office

Frank P. Marino
Marino & Chambers, P.C.
1 Barker Avenue
White Plains, NY 10601



First American Title Insurance Company of New York

BARGAIN and SALE DEED, with COVENANT
Against Grantor's Acts - Individual or Corporation

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

THIS INDENTURE, made the 26 day of August, in the year 2014

BETWEEN

Name: **Joseph DiPietro** Address: **754 Pelhamdale Ave., New Rochelle, NY 10801**

party of the first part, and

Name: **J&C DIPIETRO LLC** Address: **754 Pelhamdale Ave., New Rochelle, NY 10801**

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 party forever,

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, being also known and designated as Lots No. 214 and 215 in Block "E" on "Map of Fifth Avenue Heights", filed June 7, 1907 as Map No. 1728.

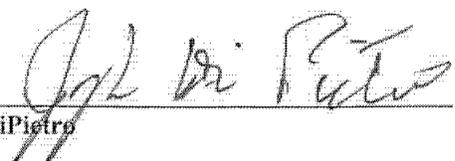
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; 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 party 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" 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: _____



Joseph DiPietro



First American Title Insurance Company of New York

BARGAIN and SALE DEED, with COVENANT Against Grantor's Acts – Individual or Corporation

* STATE OF NEW YORK

COUNTY OF Westchester

ss.:

On the 25 day of August in the year 2014 before me, the undersigned, personally appeared Joseph DiPietro, 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.

FRANK P. MARINO
Notary Public, State of New York
Qualified in Westchester County
No. 02MA4899445
Commission Expires June 15, 2015

* For acknowledgments taken in New York State.

Bargain and Sale Deed

WITH COVENANT AGAINST GRANTOR'S ACTS

PREMISES

TITLE NO.

Joseph DiPietro

TO

J&C DIPIETRO LLC



First American Title Insurance Company
of New York
Hudson Valley Region
188 East Post Road
White Plains, New York, 10601
Phone (914) 428-3433
Fax (914) 428-0159

Sheet
Section 3
Block 931
Lot 0037
Plate
Volume
Page
District

Tax Map Des.
County or Town
Street Number

Westchester
East St., New Rochelle, NY
Recorded At Request of
First American Title Insurance Company of New York
RETURN BY MAIL TO:

Frank P. Marino
Marino & Chambers, P.C.
1 Barker Avenue
White Plains, NY 10601

RESERVE THIS SPACE FOR USE OF
RECORDING OFFICE

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.

562423334DED001W

Westchester County Recording & Endorsement Page

Document Details

Control Number: **562423334**

Document Type: **Deed (DED)**

Package ID: 2016082900150001003

Document Page Count: 4

Total Page Count: 6

Properties Addendum

426 FIFTH AVENUE 10801	NEW ROCHELLE	3 931 28
426 FIFTH AVENUE 10801	NEW ROCHELLE	3 931 35

— Bargain and Sale Deed, with Covenant 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 30 day of August, in the year 2016

BETWEEN JAY ALLEN AS SURVIVING TENANT BY THE ENTIRETY, RESIDING AT 460 E 4TH STREET, MOUNT VERNON, NY 10553

party of the first part, and DARREN PAULING and JENNIFER PAULING AS HUSBAND AND WIFE, RESIDING AT 426 FIFTH AVENUE, NEW ROCHELLE, NY 10801

party of the second part,

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

TEN 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

SEE SCHEDULE A ANNEXED HERETO AND MADE A PART HEREOF

BEING AND INTENDED TO BE THE SAME PREMISES AS DESCRIBED IN DEED DATED 1/30/1989 RECORDED 1/31/1989 IN LIBER 9439, PAGE 87

✓ SAID PREMISES KNOWN AS 426 FIFTH AVENUE, NEW ROCHELLE, NY 10801

Del: 3
BK: 431
LTS: 26, 28, 35

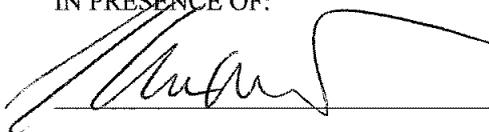
TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; 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.

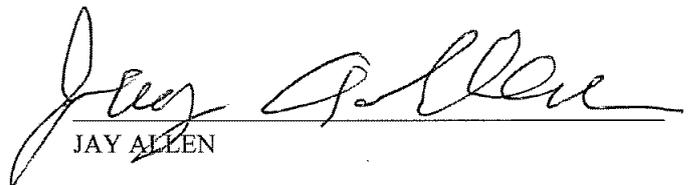
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

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" 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:




JAY ALLEN

*First American Title Insurance Company*Title Number: **USNY09211522044**Page **1**

Amended 10/16/2015

SCHEDULE A DESCRIPTION

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of New Rochelle, County of Westchester, State of New York, known and distinguished as Lots 216, 217, 220, 221 and 222 all in Block E on a certain map entitled, "Fifth Avenue Heights, in the City of New Rochelle, Westchester County, N.Y.", made by L. E. Van Etten, C.E., April, 1907, and filed in the Westchester County Clerk's Office, Division of Land Records, formerly Register's Office, on June 7, 1907, as Map No. 1728, and being more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of Fifth Avenue, distant 55.78 feet (deed) 55.79 feet (survey) easterly from the corner formed by the intersection of the northerly side of Fifth Avenue and the easterly side of Ashland Street, said point also being where the division line between Lots 219 and 220 in Block E on said map intersects said northerly side of Fifth Avenue;

RUNNING thence North 23 degrees 19 minutes 20 seconds West along said division line between said lots 219 and 220, 109.90 feet to the southerly line of Lot 205 in Block E on said map;

THENCE North 66 degrees 40 minutes 40 seconds East along said southerly line of said Lot 205, 50 feet to the division line between Lots 205 and 216 in Block E as shown on said map;

THENCE North 23 degrees 19 minutes 20 seconds West along said division line between said Lots 205 and 216, 25 feet to the southerly line of Lot 215 in Block E as shown on said map;

THENCE North 66 degrees 40 minutes 40 seconds East along said southerly line of said Lot 215, 96.70 feet to the westerly side of East Street as shown on said map;

THENCE South 15 degrees 45 minutes 18 seconds (deed) 10 seconds (survey) East along said westerly side of said East Street, 50.44 feet to the northerly line of Lot 224 in Block E as shown on said map;

THENCE South 66 degrees 40 minutes 40 seconds West along the northerly lines of said Lot 224 and Lot 223 in Block E on said map, 65.05 feet to the division line between Lots 223 and 222 in Block E as shown on said map;

TGI Title Guarantee Inc. d/b/a U.S. Land Title Services

First American Title Insurance Company

Title Number: **USNY09211522044**

Page 2

THENCE South 23 degrees 19 minutes 20 seconds East along said last mentioned division line between Lots 222 and 223 as shown on said map, 122.00 feet to the northerly side of Fifth Avenue as shown on said map;

THENCE North 87 degrees 00 degrees 00 seconds West along said northerly side of Fifth Avenue, 83.68 feet to the point or place of BEGINNING.

FOR INFORMATION ONLY. NOT FOR POLICY.

Section 3 Block 931 Lot 26, 28, 35

Premises being known as: 426 Fifth Avenue, New Rochelle, NY 10801

Issue

TGI Title Guarantee Inc. d/b/a U.S. Land Title Services

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of WESTCHESTER, ss:

On the 30 day of AUGUST in the year 2016, before me, the undersigned, personally appeared JAY ALLEN

, 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.

[Handwritten signature of Kathleen M. Lubrano]

KATHLEEN M. LUBRANO
NOTARY PUBLIC - NYS
#01LU4965125 SUFFOLK COUNTY
COMM EXPIRES APRIL 18, 2018

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, a Notary Public in and for said State, 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

(if the place of residence is in a city, include the street and street number if any, thereof); 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

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 County)

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 make 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).

Bargain and Sale Deed With Covenants

Title No. USNY09211522044

JAY ALLEN
TO
DARREN PAULING & JENNIFER PAULING

SECTION: 3

BLOCK: 931

LOT: 26, 28, 35

COUNTY OR TOWN: WESTCHESTER
City of New Rochelle

RETURN BY MAIL TO:

LESLIE H. JONES, ESQ.
455 CENTRAL PARK AVENUE
SUITE 216
SCARSDALE, NY 10583
(914) 725-4800

DISTRIBUTED BY
YOUR TITLE EXPERTS
The Judicial Title Insurance Agency LLC
800-281-TITLE (8485) FAX: 800-FAX-9396



480660036DED1

Control Number
480660036Instrument 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****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.

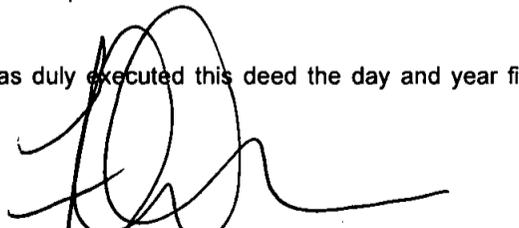
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

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. Ponce



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:
Flavio La Rocca & Maria La Rocca
On the 30 day of January in the year 2008
before me, the undersigned, personally appeared
Flavio La Rocca and Maria La Rocca

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.

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.

Sydelle Shulman
(signature and office of individual taking acknowledgment)

(signature and office of individual taking acknowledgment)

SYDELLE SHULMAN
Notary Public State of New York
No. 8881840
Qualified in Westchester County
Commission Expires July 31, 18 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

_____ in _____
(insert the City or other political subdivision) (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

Recorded at Request of

FMLR Management LLC

RETURN BY MAIL TO:

DISTRICT OF COLUMBIA
KEPPLER 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: ACC533

Company: Kepler Title Agency

Address: 111 Brook Street

City Scarsdale

State: NY

Zip: 10583

Telephone: 914-723-2001

Attention: dm

Document type: deed	# of pages - 2	Mortgage Amount On page ____ of document	Dwelling Type: For Mortgage Only On page ____ of document
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>	<input type="checkbox"/> 1 to 2 family <input type="checkbox"/> 1 to 6 family <input type="checkbox"/> Not 1 to 6 family
2nd party name(s) (i.e. grantee/mortgagee) On page ____ of document <u>FMLR Management LLC</u>	Business Entity <input type="checkbox"/>	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	
Tax designation (Section, Block & Lot) On page ____ of document <u>3-931-29 & 30</u>	TAXES PAID:		Reference # Or Check #
City(ies) or Town(s) for Property Description On page ____ of document <u>New Rochelle</u>	Mortgage Tax \$ _____		
Property Description -- If required, check the one contained within the document. On page <u>1</u> of document	Transfer Tax \$ _____		
<input checked="" type="checkbox"/> Metes & bounds	Mansion Tax \$ _____		
<input type="checkbox"/> Lot number on map filed in the Office of the County Clerk	RECORDING FEES PAID:		Reference # or Check #
<input type="checkbox"/> Refer to deed recorded in the Office of the County Clerk	MORTGAGE TAX AFFIDAVITS SUBMITTED:		
	Cross Reference(s):		
	Record and Return To:		
	<u>Sydelle Shulman Herzberg, Esq.</u>		
	<u>46 Longvue Avenue</u>		
	<u>New Rochelle, NY 10804</u>		

EXHIBIT 5

**CEO TITLE AGENCY, INC.
399 KNOLLWOOD ROAD - SUITE 313
WHITE PLAINS, NEW YORK 10603
(914)683-5313
(914)683-3265 FAX**

September 9, 2015

James J. Moran, P.E.
Deputy Commissioner/City Engineer
New Rochelle Public Works
515 North Avenue
New Rochelle, NY 10801

Re: East Street and East Place
New Rochelle, NY

Dear Mr. Moran:

In accordance with your email request yesterday, we have searched the records and indices of the Westchester County Clerk's Office for the purpose of determining ownership of the streets known as East Street and East Place in the City of New Rochelle.

These two streets were created on a subdivision map entitled "Fifth Avenue Heights" dated April 1907 and filed in the Register's Office of Westchester County, now County Clerk's Office, Division of Land Records on June 7, 1907 as Map No. 1728. (see copy attached)

All of the streets on the map, Weeks Place, Pine Brook Road, Crest View Street, Chatsworth Place, Ashland Street, East Street and East Place were conveyed to the City of New Rochelle by deed dated 4/30/1914 recorded 6/27/1919 in Liber 2201 of Deeds page 231. (see copy)

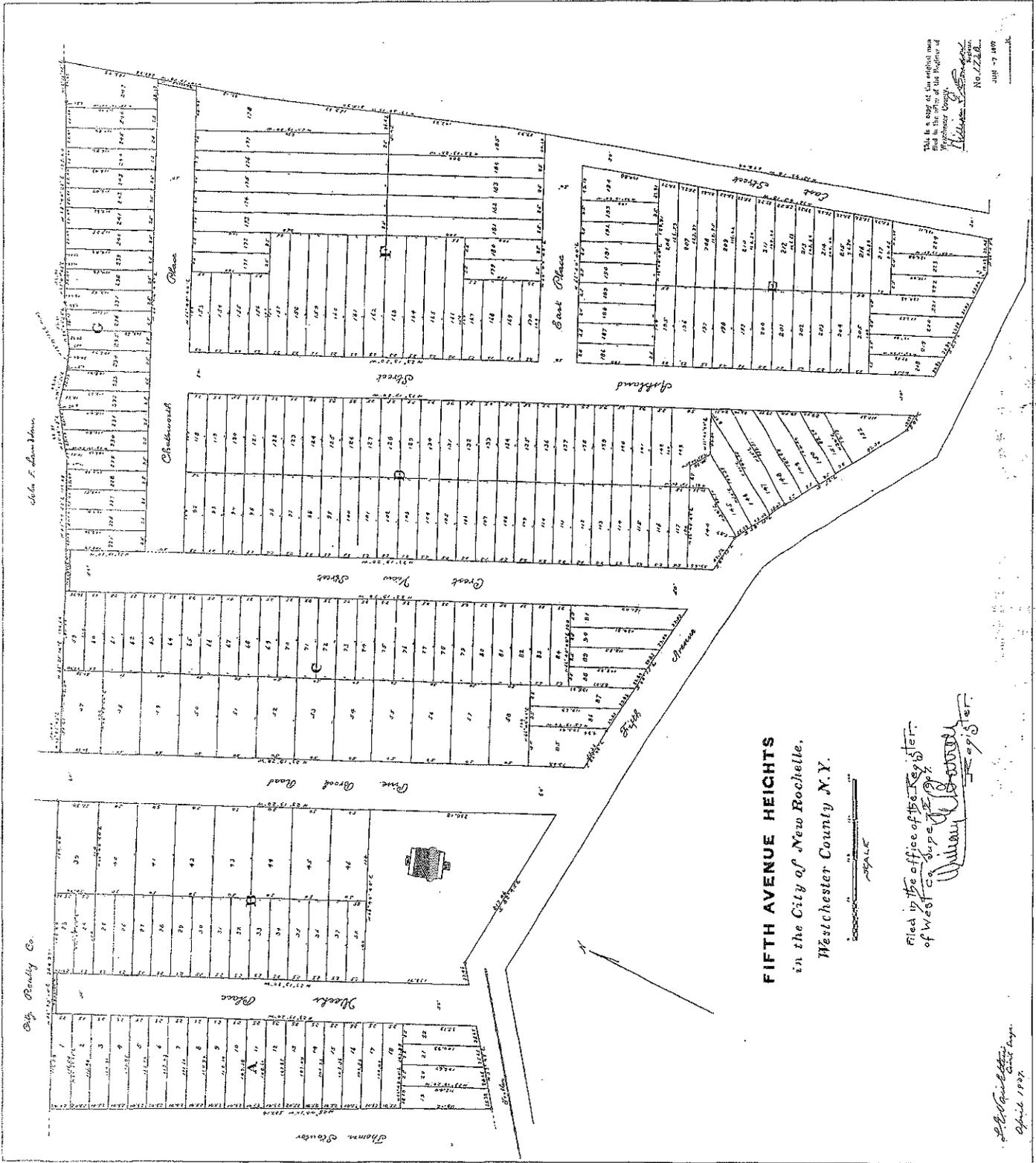
In the interests of time and economy we did not verify the ownership of Hadert Realty Company prior to the making of the map nor did we examine all conveyances from the City of New Rochelle after 1919.

Thank you for choosing CEO Title Agency, Inc. for this search. This search is provided FOR INFORMATION ONLY. NO POLICY WILL BE ISSUED. Liability is limited to the fee paid for negligence only. If you have any questions, please do not hesitate calling our office.

Very truly yours,


Roger C. Crawford
President & Chief Counsel

RCC:
enclosures



FIFTH AVENUE HEIGHTS
 in the City of New Rochelle,
 Westchester County N.Y.

Filed by the office of the Register
 of Westchester County
 William J. [Signature]
 Register

L. E. [Signature]
 Clerk
 Office 1927

This is a copy of an original map
 filed in the office of the Register of
 Westchester County
 No. 1728
 July 17 1927

FILED MAP NO 1728

INDEXED
 SERIALIZED
 FILED
 E 301

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),

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.

[Signature] Register.

HOMMOCK REALTY CORP. :
TO :

WALTER C. HUBBARD. : THIS INSTRUMENT 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,

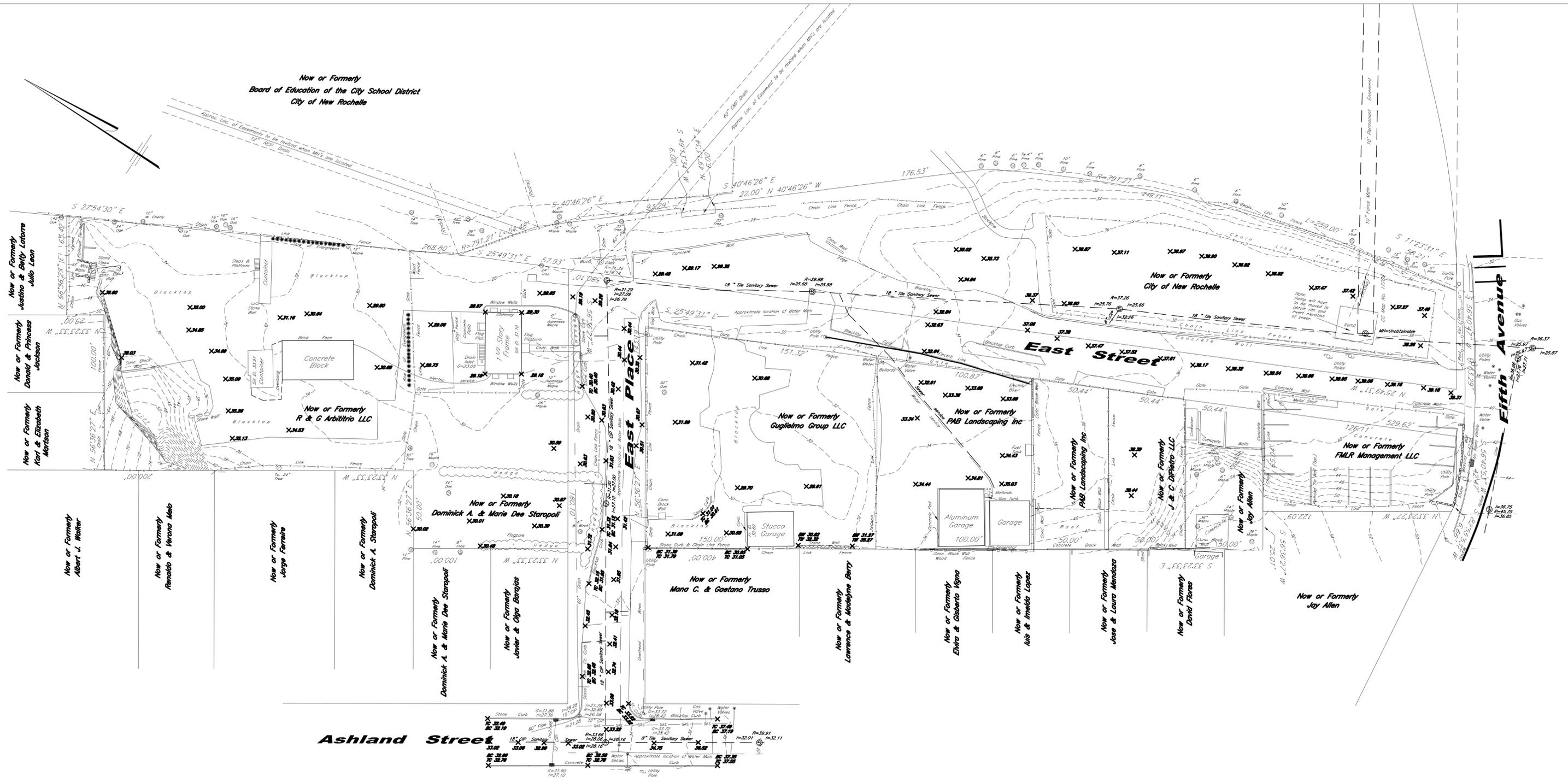
WITNESSETH that the said party of the first part in consideration of ONE (\$1) DOLLAR lawful money of the United States, and OTHER GOOD AND VALUABLE CONSIDERATIONS to it in hand paid by the party of the second part, does hereby grant and release unto the said party of the second part, his heirs and assigns 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 25° 13' 40" east a distance of 150.87 feet; thence in a southwesterly direction on a bearing south 1° 54' 20"

EXHIBIT 6

Now or Formerly
Board of Education of the City School District
City of New Rochelle



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

Spatial Reference System
USA/NAD 83 CORS96/New York
(East Zone)
Vertical Datum - NAVD 88
(Good 09)

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 hereon, and to the assignees of the lending institution. CERTIFICATIONS
ARE NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS.
Copyright (c) 2014 Ward Carpenter Engineers, Inc. All Rights Reserved.

Ward Carpenter Engineers, Inc.
76 Mamaroneck Avenue
White Plains, N.Y. 10601

PLTF163

EXHIBIT 7

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 APPEARANCES: 2
3
4 WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Attorneys for Plaintiff
5 1133 Westchester Avenue
White Plains, New York 10604
6
7 BY: SCOTT MENDELSON, ESQ.
8
9 SILVERBERG ZALANTIS LLC
Attorneys for Defendants
10 120 White Plains Road, Suite 305
Tarrytown, New York 10591
11
12 BY: KATHERINE ZALANTIS, ESQ.
13
14
15
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17
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19
20
21
22
23
24
25

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 3

1 STIPULATIONS 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 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; Senior 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 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 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 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 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 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 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 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 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 17

1 Flavio LaRocca 17
 2 A No.
 3 Q Is 69-71 Potter Avenue still the
 4 principal place of business for Flavio LaRocca &
 5 Sons, Inc.?
 6 A Yes.
 7 Q Are there any places that Flavio
 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 Flavio 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 18

1 Flavio LaRocca 18
 2 69-71 Potter Avenue, and before that the property
 3 you mentioned on Trinity Place, are there any
 4 other properties that Flavio LaRocca & Sons has
 5 stored its equipment on?
 6 A Yes.
 7 Q Where is that?
 8 A Further down on East Street I was
 9 renting a space from Guglielmo Landscape.
 10 Q When was that?
 11 A From around, let's see. I think
 12 around 2010 through 2016, 2017, something like
 13 that.
 14 Q Is there an address for that property
 15 that you were renting?
 16 A No, because it's just a piece of land.
 17 There is no home on it.
 18 Q Is there a business that that piece of
 19 property is located adjacent to?
 20 A Yes.
 21 Q What is that business?
 22 A PAB Contracting or Paving Company.
 23 Q So from 2010 to 2017, Flavio LaRocca &
 24 Sons used that rented location to store equipment
 25 as well?

Page 20

1 Flavio 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 Flavio
 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 19

1 Flavio 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 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 24

1 Flavio 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 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 25

1 Flavio LaRocca 25

2 vans, and dump trucks and then trailers, what

3 other sorts of equipment does Flavio 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 28

1 Flavio LaRocca 28
 2 job, we pick it up ourselves.
 3 Q Describe to me the process of putting
 4 down aggregate.
 5 How is that done?
 6 A Depends on the application. If we
 7 are using it for drainage, it might be put down
 8 with wheelbarrows. If it's a larger area, it
 9 might be put down with a piece of equipment.
 10 Q Is the compactor used when placing
 11 aggregate down?
 12 A Not all the times. Depends on the
 13 application.
 14 Q What sorts of application would
 15 necessitate the use of the compactor?
 16 A If we are creating an area to put a
 17 solid surface over it like a patio walkway.
 18 Q So when you say "a solid surface,"
 19 you're referring to placing the aggregate down
 20 and then there would be another surface placed on
 21 top?
 22 A Correct.
 23 Q Are there any other sorts of
 24 applications of aggregate that would necessitate
 25 the use of a compactor?

Page 27

1 Flavio LaRocca 27
 2 A Small equipment, like rototiller.
 3 Q What is a rototiller?
 4 A It's a mechanical shovel that digs
 5 the soil to cultivate the soil in preparation for
 6 landscaping installation.
 7 Q Compactors. What is a compactor?
 8 A It's a piece of equipment used to
 9 compact the aggregate base prior to us putting
 10 down a patio or walkway, steps, retaining wall,
 11 or even over a drainage system.
 12 Q What is an aggregate base?
 13 A Aggregate base is usually gravel.
 14 Q Does Flavio LaRocca & Sons utilize
 15 gravel in its business?
 16 A Yes.
 17 Q What sorts of gravel does it use?
 18 A We use clean gravel for drainage.
 19 Q Where do you get that gravel from?
 20 A From Edison Materials in Mount Vernon.
 21 Q How does your business transport that
 22 gravel that it uses?
 23 A Depending on the job. If the job is
 24 too big, we have them deliver it to us because
 25 they have bigger equipment. If it's a smaller

Page 29

1 Flavio LaRocca 29
 2 A Sure.
 3 Q And what are those?
 4 A For possibly roadways or parking
 5 areas.
 6 Q Does your company -- we will take one
 7 step back.
 8 Other than the small tools, you were
 9 saying the rototiller, are there any other tools
 10 that your company uses currently?
 11 A Yes. Vibratory compactors.
 12 Q What is a vibratory compactor?
 13 A It's a ride-on piece of equipment
 14 which compacts the soil or base material that
 15 you're trying to compact.
 16 Q Is that the same as the compactor we
 17 were just discussing?
 18 A This is a little bigger.
 19 Q What is the difference between the
 20 vibratory compactor and then the other compactor
 21 that we were just previously discussing?
 22 A One is a walk-behind, the other one
 23 you ride on.
 24 Q Is the ride-on the bigger of the two?
 25 A Yes.

Page 30

1 Flavio 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?

Page 31

1 Flavio LaRocca 31
 2 not follow with putting something on top
 3 afterwards?
 4 A If we are putting in a French drain
 5 system, which is an open gravel trenched area to
 6 collect water and drain it away, we just compact
 7 the surface but put nothing on it so water can
 8 permeate through.
 9 Q Other than a French drain system, is
 10 there any other application where something else
 11 would not be put over that aggregate after using
 12 a vibratory compactor?
 13 A Yes.
 14 Q What are those?
 15 A If we are doing a gravel-exposed
 16 area, sometimes a decorative gravel is used in
 17 landscaping beds or around perimeters of
 18 properties, and we compact it to give it a smooth
 19 and even finished surface.
 20 Q Other than decorative areas or French
 21 drains, are there any other times that a vibratory
 22 compactor would be used and something would not
 23 go on top of the aggregate?
 24 A Yes.
 25 Q What are those times?

Page 33

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.

Page 36

1 Flavio LaRocca 36
 2 Diner parking lot?
 3 A Yes.
 4 Q Was that to fill in cracks and
 5 sealing?
 6 A Yes.
 7 Q Prior to using the compactor on the
 8 Odyssey Diner parking lot, was an aggregate put
 9 down by Flavio LaRocca & Sons?
 10 A Not an aggregate but asphalt was put
 11 down.
 12 Q Flavio LaRocca & Sons places asphalt
 13 as part of its business?
 14 A Occasionally.
 15 Q Approximately how many times has
 16 Flavio LaRocca & Sons placed asphalt?
 17 A In what period of time?
 18 Q From 1998 to the present.
 19 A Forty to fifty times.
 20 Q What generally are the projects that
 21 have required the placing of asphalt?
 22 A Mainly residential.
 23 Q Is that driveways?
 24 A Yes. And pathways.
 25 Q As a part of Flavio LaRocca & Sons'

Page 35

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 37

1 Flavio LaRocca 37
 2 work, is it necessary that you have to read maps
 3 to do the work?
 4 A Maps?
 5 Q Surveys?
 6 A Yes.
 7 Q Do you know how to read a survey?
 8 A Yes.
 9 Q Approximately how often do you read
 10 surveys in your work?
 11 A Not often.
 12 Q When are the times when performing
 13 your work that you have to read surveys?
 14 A When generally it's required by either
 15 building permit or municipality.
 16 Q What sorts of projects do you read
 17 surveys for?
 18 A Depends. If someone is putting up a
 19 retaining wall or wanting to landscape an area of
 20 their property, we need to know the boundaries so
 21 that we can stay within those boundaries.
 22 Q Approximately how often in your
 23 projects are you called to read surveys?
 24 A A couple of times a year.
 25 Q Is that from 1998 to present?

Page 38

1 Flavio LaRocca 38
 2 A Correct.
 3 Q Where currently do you -- and when I
 4 say "you," I'm referring to your business, Flavio
 5 LaRocca & Sons, where currently do you store your
 6 equipment?
 7 A At 71 Potter Avenue and 436 5th
 8 Avenue.
 9 Q What is stored at 71 Potter Avenue?
 10 A Some trucks, trailers, and some
 11 regrading and excavation equipment.
 12 Q Other than the equipment that we've
 13 discussed, is there any other equipment that's
 14 used to regrade?
 15 A There is other equipment, but not that
 16 I own.
 17 Q What other equipment do you use to
 18 regrade?
 19 A Dozer, land grader, a box leveler.
 20 Q Are those types of equipment used to
 21 move earth?
 22 A Yes.
 23 Q Are they ever used to move trees?
 24 A No.
 25 Q Are they ever used to move plants

Page 40

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

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.

Page 41

1 Flavio LaRocca 41
 2 we use the rototiller to pull the vegetation out,
 3 pile it, and then remove it.
 4 Q Has the storage of your equipment, the
 5 split between 71 Potter Avenue and 436 5th Avenue,
 6 that's remained consistent since you acquired
 7 those properties?
 8 MS. ZALANTIS: Objection as to
 9 form.
 10 Q This is what I mean:
 11 Have you always maintained the same
 12 sorts of items at 71 Potter Avenue --
 13 MR. MENDELSON: Withdrawn.
 14 Q Do you maintain different items at
 15 71 Potter Avenue versus what you store at 436 5th
 16 Avenue?
 17 A It's pretty much the same, just more
 18 of it. And maybe just because I can't fit all in
 19 one area, I fill in the other area.
 20 Q Which location can you fit more
 21 equipment for storage?
 22 A Well, they are pretty much both the
 23 same. I can fit pretty much both on the same
 24 location.
 25 Q Is there anything that you store at

Page 42

1 Flavio LaRocca 42
 2 either location that you do not store at the
 3 other?
 4 A Just my bulk material.
 5 Q Where is your bulk material stored?
 6 A At 436 5th Avenue.
 7 Q What does bulk material consist of?
 8 A Topsoil, sand, gravel, compost, rocks.
 9 Q Is mulch stored there?
 10 A No, mulch is not stored. But if I
 11 need it I get it delivered there.
 12 Q Do you ever make your own mulch for
 13 your business?
 14 A No.
 15 Q Do you ever make your own materials,
 16 any materials, for your business?
 17 A Just my own topsoil.
 18 Q How do you make your own topsoil?
 19 A With a screener.
 20 Q Where is the screener located?
 21 A At 436 5th Avenue.
 22 Q What is a screener?
 23 A It's a machine that processes soil
 24 and it sifts out the soil to give you a cleaner
 25 material, which is topsoil, which is used for

Page 44

1 Flavio 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?

Page 43

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 45

1 Flavio LaRocca 45
 2 A Looks like it's the recording of the
 3 property with the Westchester County.
 4 Q Is this the deed from when you
 5 purchased 436 5th Avenue?
 6 A Yes.
 7 Q And if you can look at the second page
 8 of the exhibit, do you see a date when the deed
 9 was made?
 10 A Second page?
 11 Q I will direct your attention to the
 12 top.
 13 A Yes.
 14 Q And what is the date?
 15 A September 18, 2002.
 16 Q Who were the sellers of 436 5th Avenue
 17 who you purchased from?
 18 A Maffei.
 19 Q If you could take a look at where it
 20 says between, and it says the Maffeis, and below
 21 that it says party of the first part and, who were
 22 the purchasers of 436 5th Avenue?
 23 A My wife and I.
 24 Q When you purchased 436 5th Avenue,
 25 prior to purchasing it, did you look at a survey

Page 46

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 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 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 49
 2 he's put yellow highlighter on the
 3 exhibit.
 4 Q Okay. Thank you.
 5 When you purchased 436 5th Avenue, do
 6 you know if you bought what is called title
 7 insurance?
 8 A I think so.
 9 Q Do you know what title insurance is?
 10 A Somewhat.
 11 Q What do you understand title insurance
 12 to be?
 13 A I think it has to do with ensuring
 14 that the property recording is correct for that
 15 property.
 16 Q I'm going to ask you to take a look
 17 at -- you can move that to the side and you can
 18 move 1 to the side. If you can just keep them in
 19 order because you're going to go back probably.
 20 I think it would be easier for you,
 21 I'm not going to suggest, but if you flip them
 22 over just so when we go back -- there you go.
 23 I'm going to ask you to take a look
 24 at what's been marked as Plaintiff's 2, and take
 25 a look through it and let me know when you've had

Page 50

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 51

1 Flavio LaRocca 51
 2 A My wife and I.
 3 Q And do you see a date of a deed that
 4 this title insurance is referring to?
 5 A Are you referring to the date of
 6 policy?
 7 Q I'm referring if you look in number 3.
 8 A Okay.
 9 Q Do you see a date there for a deed?
 10 A Yes.
 11 Q What is the date?
 12 A September 18, 2002.
 13 Q Is that the same date as the deed that
 14 we took a look at in Plaintiff's 1?
 15 If you go to the second page.
 16 A Yes.
 17 Q Is that the same date?
 18 A Yes.
 19 Q I'm going to have you look at D 5.
 20 Do you see under part 1 where it says
 21 survey reading see annexed?
 22 A Yes.
 23 Q Did Flavio LaRocca or Maria LaRocca
 24 have a survey made when you purchased that
 25 property?

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 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 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 57

1 Flavio LaRocca 57
 2 can put those aside.
 3 Plaintiff's 3 is Summons and Complaint
 4 from this action. If you need to take a moment
 5 and review it, please do before I ask you some
 6 questions.
 7 A (Reviewing)
 8 Q Have you had time to look at it?
 9 A Yes.
 10 Q Have you ever viewed or reviewed this
 11 document before?
 12 A Yes.
 13 Q When, approximately, did you review it
 14 first?
 15 A When it was originally submitted.
 16 Q Did you have an opportunity prior to
 17 today to review all of the exhibits attached to
 18 this document as well?
 19 A Yes.
 20 Q And have you read all of the
 21 allegations therein?
 22 A Yes.
 23 Q You can put that aside.
 24 I'm now going to ask you to take a
 25 look at what has been marked as Plaintiff's 4.

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.

Page 60

1 Flavio 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 Flavio 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?

Page 61

1 Flavio LaRocca 61
 2 Q Meaning like August of 2000 or like
 3 2005?
 4 A No, no, towards 2005, 2006, yeah.
 5 Q Do you recall approximately when the
 6 construction started on that skate park?
 7 A I think, I want to say '04 or possibly
 8 '03. I'm going by my recollection.
 9 Q Was that area that the skate park now
 10 occupies used for anything prior to the
 11 construction of the skate park?
 12 A Yes.
 13 Q What, if anything, was it used for?
 14 A There was a construction company that
 15 was working on Potter Avenue. They had cleared
 16 out the area which was predominantly wooded and
 17 used it as their staging area.
 18 Q Do you know what the name of that
 19 contracting company was?
 20 A Persico.
 21 Q Do you know who Persico, if anybody,
 22 was working for at that time?
 23 A The City of New Rochelle.
 24 Q What is a Jersey barrier?
 25 A It's a concrete-formed structure that

Page 62

1 Flavio LaRocca 62
 2 is used to delineate certain areas when doing
 3 construction work.
 4 Q Approximately how big are they?
 5 A They range from about 2 1/2 feet to
 6 3-feet high to anywhere from 4 feet to 20- to
 7 40-feet long.
 8 Q Does Flavio LaRocca & Sons utilize
 9 Jersey barriers in its work?
 10 A No.
 11 Q Has Flavio LaRocca & Sons ever
 12 utilized Jersey barriers in performing its work
 13 for its business?
 14 A No.
 15 Q How do you move a Jersey barrier, if
 16 you know?
 17 A With a piece of equipment.
 18 Q What sort of equipment would you use?
 19 A An excavator, a loader, a skid-steer,
 20 it varied. Depends on the size of the barrier.
 21 Q Have you ever stored Jersey barriers
 22 on 436 5th Avenue?
 23 A Yes.
 24 Q Approximately when was that?
 25 A They were there when I acquired the

Page 64

1 Flavio 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 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.

Page 65

1 Flavio LaRocca 65
 2 A Some within my property and some
 3 outside.
 4 Q And when, approximately, did you move
 5 the Jersey barriers?
 6 A When I took out a building permit to
 7 redo, take out the rock ledge in the corner of
 8 the property.
 9 Q When, approximately, did you remove
 10 the Jersey barriers from inside of your property?
 11 A After I got the permit. I think that
 12 was in '03 sometime.
 13 Q Is it fair to say that was prior to
 14 the construction of the skate park?
 15 A Yes.
 16 Q When you moved those Jersey barriers,
 17 was that the first time that they had been moved
 18 subsequent to you purchasing the property?
 19 A Yes.
 20 Q Approximately how many did you move
 21 outside of your property at that time?
 22 A Maybe about 80 percent of them.
 23 Q In blue, can you mark where those
 24 forty Jersey barriers were that you testified
 25 about when you bought the property.

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1 Flavio LaRocca 66
 2 A Um-hm.
 3 (Witness complies)
 4 A That's what I remember.
 5 Q Okay. And then if you could, you
 6 just testified that at some point in approximately
 7 2003 you moved 80 percent of those Jersey
 8 barriers that are marked in blue outside of your
 9 property.
 10 Could you mark in pink where they were
 11 moved outside of your property.
 12 (Witness complies)
 13 MR. MENDELSON: For the record,
 14 he's marked outside of the
 15 chain-linked fence onto East Street
 16 over the words "East Street," and
 17 then below that on the diagram as
 18 well over the words "sliding gate."
 19 Q So at the time you moved the Jersey
 20 barriers out, approximately how many Jersey
 21 barriers remained inside of your property?
 22 A Roughly six to eight.
 23 Q And the other roughly thirty-two to
 24 thirty-four were moved in the area that you marked
 25 in pink.

Page 68

1 Flavio LaRocca 68
 2 Q Meaning prior to you moving them to
 3 the area in pink, were there already some Jersey
 4 barriers there or were there no Jersey barriers
 5 there?
 6 A No.
 7 Q Meaning there were no Jersey barriers
 8 there prior to Flavio LaRocca & Sons moving them.
 9 A Correct.
 10 Q I want you to take a look on
 11 Plaintiff's 4, which is the Answer, on paragraph
 12 96 on Page 10. Can you read it out loud.
 13 A When the City constructed a park
 14 across East Street, the Defendant's property, it
 15 took certain concrete Jersey barriers from
 16 Defendant's property that belonged to the
 17 Defendants.
 18 Q Did you see the City take Jersey
 19 barriers from your property?
 20 A The contractor that the City was
 21 using was there with an excavator on a Saturday
 22 morning taking the Jersey barriers and placing
 23 them along the City fence line of the park.
 24 Q And who saw that?
 25 A I did.

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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?

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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

Page 72

1 Flavio LaRocca 72
 2 neighbors or deliveries from trucks that come in
 3 and out would hit my fencing, and I would have to
 4 repair it and go through cost of damages.
 5 Q We are talking about the same Jersey
 6 barriers that you moved to the outside of the
 7 gate.
 8 A Temporarily, yes.
 9 Q I want to move on from Plaintiff's 4
 10 and we will go to Plaintiff's 5, and if you could
 11 take a look at Plaintiff's 5, it's a letter dated
 12 June 11, 2003, and then the second page is a
 13 letter dated November 17, 2003.
 14 A Yes.
 15 Q Could you read the letter on Bates
 16 stamp D 241 aloud.
 17 A Dear Sir, this is to inform you that
 18 while we have been doing rock removal, the
 19 contractor who has been staging at the City-owned
 20 property of 5th Avenue directly across from our
 21 yard has moved twenty of our Jersey barriers
 22 along the opposite side of East Street. Please
 23 be advised that these Jersey barriers are from
 24 our property and owned by us. We request that
 25 the Jersey -- the barriers be returned to us

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1 Flavio LaRocca 71
 2 in pink they were double and triple stacked one
 3 on top of another against my fence line, so
 4 leaving more than half of the roadway free for
 5 not only myself and my neighbors for getting out
 6 while I did this work here. And this work was
 7 going on for several months before those were
 8 taken.
 9 Q And that stacking was on East Street.
 10 A Correct. Against my fence line.
 11 Q I want you to take a look at paragraph
 12 102 and read that out loud.
 13 A Even if the concrete Jersey barriers
 14 still did have utility, Defendants have not been
 15 able to use the property it purchased for its own
 16 purpose because the conversion committed by the
 17 City to use the concrete Jersey barriers for its
 18 own purposes.
 19 Q What, if any, utility did those
 20 Jersey barriers have for the business of Flavio
 21 LaRocca & Sons?
 22 A Well, as Maffei was using it before,
 23 there could have been material dividers in the
 24 yard itself, and even a protection against the
 25 fencing line on the outside. Because some of the

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1 Flavio LaRocca 73
 2 where they originally were located.
 3 Q Where is it that you wanted the
 4 Jersey barriers returned to, to the area in pink?
 5 A Correct.
 6 Q Do you know how much a Jersey barrier
 7 costs to purchase?
 8 A New, about \$2,000 apiece.
 9 Q These Jersey barriers that were moved
 10 to the place in pink on 1-A, were they new?
 11 A Some, yes.
 12 Q Approximately what percentage of them
 13 were new?
 14 A A good 70 percent.
 15 Q Did you purchase those?
 16 A They were left by Maffei on the
 17 property when we closed on it.
 18 Q Were those Jersey barriers a part of
 19 your contract of sale to purchase that property?
 20 MS. ZALANTIS: Objection as to
 21 form.
 22 MR. MENDELSON: I will rephrase.
 23 Q Were the Jersey barriers included in
 24 the contract of sale for your purchase of 436 5th
 25 Avenue?

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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 Flavio LaRocca 76

2 when they were moved?

3 A No.

4 Q What is different about them in these

5 pictures?

6 A As you can see, they have been

7 damaged, scratched, hit on.

8 Q When you say that, do you have any

9 pictures of them prior to them being moved in

10 front of the skate park?

11 A I'd have to look. I don't recall. I

12 don't recall.

13 Q Since you purchased 436 5th Avenue,

14 has the city ever maintained East Street?

15 A No.

16 Q When I say "maintained," I mean plow

17 or done anything to maintain the road.

18 A Their trucks come in and out as a

19 shortcut to East Place. But as far as plowing or

20 maintaining the road, no.

21 Q Who maintains East Street?

22 A We the owners of each property

23 maintains the section before their property.

24 Q What is entailed in the maintenance?

25 A Cleaning any debris, sweeping,

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1 Flavio 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 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 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,

Page 81

1 Flavio LaRocca 81
 2 Q And does that -- you've marked an
 3 arrow next to the Bates stamp.
 4 Does that area show right where that
 5 Guglielmo property is?
 6 A Yes.
 7 Q At a certain point is it fair to say
 8 that East Street intersects with East Place?
 9 A Correct.
 10 Q Is the Guglielmo property on the same
 11 side of East Place as 436 5th Avenue, or is it on
 12 the other side?
 13 A It's on both sides. It's a corner
 14 property.
 15 Q So it abuts both East Street and East
 16 Place?
 17 A Correct.
 18 Q In this photograph, can you see East
 19 Place?
 20 A A portion of it.
 21 Q Is that right where you drew the
 22 arrow?
 23 A Just on top of it where that red
 24 vehicle is at.
 25 MR. MENDELSON: And the witness

Page 82

1 Flavio 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

Page 84

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 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 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 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 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 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

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

Page 91

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 93

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.

Page 94

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. Senor, 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 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 Flavio 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 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 Flavio 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 --

Page 100

1 Flavio LaRocca 100
 2 or stakes of the area surrounding 436 5th Avenue,
 3 including East Street?
 4 A Originally the area to the west going
 5 up on 5th Avenue I had surveyed and staked because
 6 I wanted to know where that area abutted to my
 7 neighbor's area.
 8 Q When was that done?
 9 A Shortly after I purchased the
 10 property.
 11 Q So then in approximately 2001, 2?
 12 A 2, 3.
 13 Q 2, 3.
 14 I'm now going to show you -- we will
 15 make room -- Plaintiff's 11, which is a blow-up
 16 of what Bates, a survey dated --
 17 MR. MENDELSON: This is just
 18 for the record so the reporter has
 19 it, December 8, 2014. And it's
 20 Bates stamped Plaintiff 0008.
 21 Q Can you, Mr. LaRocca, identify what
 22 this is?
 23 A Looks like a mapping out of all of
 24 East Street skate park and the adjoining
 25 properties onto East Place.

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1 Flavio 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

Page 101

1 Flavio LaRocca 101
 2 Q Is it a survey?
 3 A Yes.
 4 Q Could you tell what date it was made?
 5 A December 8, 2014.
 6 Q Does this survey show your property
 7 436 5th Avenue?
 8 A Yes.
 9 Q Could you put an X on there in green
 10 where your property is on 436 5th Avenue.
 11 (Witness complies)
 12 Q Now, do you know what -- earlier you
 13 testified you're familiar with surveys.
 14 Is that fair?
 15 A Yes.
 16 Q Do you know what the bold lines on a
 17 survey show?
 18 A Those are usually property lines or
 19 borders.
 20 Q Now, on your property 436 5th Avenue,
 21 is there a bold line there?
 22 A Yes.
 23 Q Now, your X that you drew in green
 24 encompasses an area that is outside of that bold
 25 line.

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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 103
 2 A Metal shelving and wood shelving.
 3 Q Are there materials stored or anything
 4 else stored on that shelving?
 5 A Tools, some cones, silt fencing,
 6 wheelbarrows, hand tools, shovels, rakes, pickax,
 7 things like that, brooms.
 8 Q Is it fair to say that Flavio
 9 LaRocca & Sons uses what is shaded in in that pink
 10 area as its own property?
 11 A Yes.
 12 Q What borders the pink shaded part of
 13 this property?
 14 A On the inside --
 15 Q Yes.
 16 A -- of that area?
 17 There is some material bins and there
 18 is parking for -- a storage for bulk materials and
 19 parking for the equipment and trucks.
 20 Q And on the east side of that pink
 21 shaded area, what borders that?
 22 A Fenceline area?
 23 Q Yes.
 24 A Are you talking about here or here?
 25 Q I'm talking about just the pink

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1 Flavio LaRocca 105
 2 X on a property that says "Now We
 3 Are Formally Guglielmo Group, LLC."
 4 Q Could you then draw a circle around
 5 the parcel that we described.
 6 A The parcel?
 7 Q As defined in the Complaint.
 8 (Witness complies)
 9 MR. MENDELSON: He's drawn
 10 yellow highlighted circle around the
 11 parcel.
 12 Q Now, you stated that there were cars
 13 that sometimes park within the parcel.
 14 Is that fair?
 15 A Yes.
 16 Q Are there also cars that sometimes
 17 park across from the parcel abutting the Guglielmo
 18 property and the PAB Landscaping property?
 19 A Yes.
 20 Q Could you draw and circle it in blue
 21 where that parking is done.
 22 (Witness complies)
 23 A Circle it or, I mean, or just draw the
 24 area? I mean --
 25 Q That's fine what you're doing.

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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 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

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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 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 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 payloador.
 25 Q And what sorts of equipment is used

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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 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 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 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 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 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 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 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 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 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 Flavio LaRocca 125
 2 A It carries our tools and our wheel-
 3 barrows.
 4 Q Does it also carry gravel?
 5 A It can.
 6 Q Has it ever carried gravel?
 7 A For other jobs, yes.
 8 Q Was this gravel that's being raked
 9 out, is that what was existing or is that new?
 10 A That's existing and that's not
 11 gravel.
 12 Q What is it?
 13 A That's more road millings mixed with
 14 gravel.
 15 Q Do you recall when this was taken?
 16 A I wasn't there, so no.
 17 Q Is there any snow on the ground?
 18 A At this time, no.
 19 Q Do you see any snow on the picture?
 20 A No.
 21 Q Would it surprise you if this photo
 22 was taken in May?
 23 A May have been. I don't know.
 24 Q What would be the need to rake out
 25 the parcel in May if there was no snow on the

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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 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 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 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 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 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 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 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 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 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 138
 2 Q Part of your response reads, could
 3 you read the second sentence of that response?
 4 A Starting from where the two men?
 5 Q Also depicted.
 6 A Also depicted is a motorized
 7 compacting roller used --
 8 Q I'm sorry. Above that. So --
 9 A Two men.
 10 Q I will read it.
 11 It says Exhibit 1-B depicts the same
 12 parking area described in response to 1-A.
 13 Is that the premises?
 14 A The parcel you're talking about.
 15 Q Excuse me. The parcel.
 16 Is what you defined as the parking
 17 area also the parcel?
 18 A Yes.
 19 Q Also depicted are piles of mulch and
 20 upon information and belief were placed in the
 21 parking area by Benny Tree Service and/or PAB
 22 Paving.
 23 A Yes.
 24 Q What is your basis for belief for that
 25 statement?

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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 payloaders'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 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 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 142
 2 by employees of Benny Tree Servicing and/or PAB
 3 Paving.
 4 Are you now saying that you're not
 5 sure whose vehicles they are?
 6 A I'm not sure which one of those are,
 7 but I haven't seen those vehicles around since
 8 then, or after that time.
 9 Q If you can turn to the next picture,
 10 we are still in Plaintiff's 3-A.
 11 What is depicted in this photograph?
 12 A It's another view of the parcel
 13 further down looking up towards Flowers Park
 14 towards 5th Avenue.
 15 Q Now, do these pictures in 3-A look to
 16 you to having been taken on the same day?
 17 A I think so.
 18 Q What is on the back or what is inside
 19 of that truck that's depicted in this photograph,
 20 what is in the cab?
 21 A In the pickup truck?
 22 Q Yes.
 23 A Looks like it's some safety cones and
 24 hand tools.
 25 Q What is on the trailer?

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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 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 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 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 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 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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1 Flavio LaRocca 150
 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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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 Flavio LaRocca 151
 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 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 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 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 157
 2 Do you see that?
 3 A Yes.
 4 Q Do you see there is a wet area right
 5 in front of it?
 6 A Yes.
 7 Q Do you see any trees on that wet area?
 8 A No.
 9 Q Do you know if there were ever trees
 10 there?
 11 A There may have been. I don't know.
 12 Q Do you know if 2014 there were trees
 13 there?
 14 A I don't recall.
 15 Q Is that area that we are speaking of
 16 right here, right in front of this pickup truck,
 17 that's what we are talking about --
 18 A I'm sorry. You're pointing to the
 19 area across the park, from Flowers Park?
 20 Q From the parcel. There is a black
 21 pickup truck.
 22 A Yes.
 23 Q Do you see that?
 24 A Yes.
 25 Q Is that black pickup truck at about

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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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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 159
 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 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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1 Flavio LaRocca 162
 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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1 Flavio LaRocca 164
 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 163
 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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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 Flavio 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 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 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 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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1 Flavio LaRocca 170
 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

Page 171

1 Flavio LaRocca 171
 2 A My wife.
 3 Q So it was you, your wife, Paul Vacca
 4 and Alexander Tergis.
 5 Is that fair?
 6 A Correct.
 7 No, not Tergis, Coleman. Tergis was
 8 not the Commissioner of Public Works in '09.
 9 Q So it was Mr. Coleman.
 10 A Coleman.
 11 Q Were there any emails or anything that
 12 led up to that meeting?
 13 A Just telephone conversations.
 14 Q What was -- take me through that
 15 conversation. What was said.
 16 A Well, they requested that I produce
 17 evidence to where the boundaries of the property
 18 line was, and I showed them the stakes on both
 19 corners, and I showed them the sketch which we
 20 discussed earlier, and they after analyzing things
 21 I said to them, what do you want me to do?
 22 And both Mr. Vacca and Mr. Coleman
 23 said it is minimal, I don't think it's that big
 24 of an encroachment.
 25 As far as I'm concerned they told me

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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 176
 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

Page 175

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.

Page 177

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 180
 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 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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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

<p style="text-align: right;">Page 182</p> <p>1 Flavio LaRocca 182</p> <p>2 gate?</p> <p>3 (Witness complies)</p> <p>4 Q Thank you.</p> <p>5 Is that gate or a portion of that</p> <p>6 gate the same gate that we are discussing in</p> <p>7 Plaintiff's 19?</p> <p>8 A Yes.</p> <p>9 Q Now looking at Plaintiff's 20.</p> <p>10 What is Plaintiff's 20 showing?</p> <p>11 A You're looking at 436 5th Avenue from</p> <p>12 5th Avenue.</p> <p>13 Q My question is, is the stone masonry</p> <p>14 wall that we just highlighted or that you just</p> <p>15 highlighted on Plaintiff's 11 on the 5th Avenue</p> <p>16 side of your property, is that depicted in</p> <p>17 Plaintiff's 20?</p> <p>18 A Yes.</p> <p>19 Q Is that the stone wall with the gate</p> <p>20 on top of it?</p> <p>21 A With the little railing, yes.</p> <p>22 Q Excuse me. The whitish railing?</p> <p>23 A Yes.</p> <p>24 Q Are those the arborvitaes behind it</p> <p>25 that you just discussed?</p>	<p style="text-align: right;">Page 183</p> <p>1 Flavio LaRocca 183</p> <p>2 A Correct.</p> <p>3 Q Is this 5th Avenue in front here?</p> <p>4 A Yes, it is.</p> <p>5 Q I'm going to skip 21.</p> <p>6 Looking at 22, what is 22 showing?</p> <p>7 A The corner of, let's say the north</p> <p>8 corner of my property on East Street bordering my</p> <p>9 neighbor's property.</p> <p>10 Q Is that gate that's in, the gate to</p> <p>11 the right, right behind that red truck, is that</p> <p>12 gate the same gate that we just highlighted or</p> <p>13 that you just highlighted in yellow on Plaintiff's</p> <p>14 11?</p> <p>15 A Yes.</p> <p>16 Q Looking at Plaintiff's 23.</p> <p>17 What is Plaintiff's 23?</p> <p>18 MS. ZALANTIS: I'm sorry. Can</p> <p>19 you just read back that last</p> <p>20 question.</p> <p>21 (Whereupon, the last question was</p> <p>22 read back.)</p> <p>23 MS. ZALANTIS: Okay.</p> <p>24 Q Look at Plaintiff's 23.</p> <p>25 What is depicted there?</p>
<p style="text-align: right;">Page 184</p> <p>1 Flavio LaRocca 184</p> <p>2 A The parcel.</p> <p>3 Q Is there something around the parcel</p> <p>4 in this picture?</p> <p>5 A A fence.</p> <p>6 Q When, approximately, did that fence</p> <p>7 go up?</p> <p>8 A I don't recall the exact date.</p> <p>9 Q Do you know why the fence went up?</p> <p>10 A I guess because the park's department</p> <p>11 didn't want anybody parking there.</p> <p>12 MR. MENDELSON: Lastly I'm</p> <p>13 going to have marked, it's a group</p> <p>14 of photos that I got yesterday.</p> <p>15 They are Bates stamped D 400 through</p> <p>16 D 416.</p> <p>17 I'm going to mark them</p> <p>18 Plaintiff's 25.</p> <p>19 (Whereupon, photographs were</p> <p>20 marked Plaintiff's Exhibit 25 for</p> <p>21 Identification, as of this date, by</p> <p>22 the reporter.)</p> <p>23 Q You're now looking at Plaintiff's 25,</p> <p>24 which is a group of photos I just described.</p> <p>25 Can you take a look at them.</p>	<p style="text-align: right;">Page 185</p> <p>1 Flavio LaRocca 185</p> <p>2 A (Reviewing)</p> <p>3 Okay.</p> <p>4 Q Do you recognize those?</p> <p>5 A Yes.</p> <p>6 Q What are they?</p> <p>7 A Pictures depicting the area of East</p> <p>8 Street with Flowers Park and the vehicles parked</p> <p>9 in that area.</p> <p>10 Q Do you know who took those photos?</p> <p>11 A Yes.</p> <p>12 Q Who took them?</p> <p>13 A I did.</p> <p>14 Q When did you take those photos?</p> <p>15 A About within the last week to ten</p> <p>16 days.</p> <p>17 Q Is there anything on them that you</p> <p>18 feel is important to this case?</p> <p>19 MS. ZALANTIS: Objection as to</p> <p>20 form, but you can answer.</p> <p>21 A Well, it shows that somebody is still</p> <p>22 spreading wood chips in that area, even behind</p> <p>23 the fencing.</p> <p>24 Q For the record, you are looking at</p> <p>25 Page 3 and you're pointing at the ground?</p>

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1 Flavio LaRocca 186
 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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1 Flavio LaRocca 188
 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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1 Flavio LaRocca 187
 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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1 Flavio LaRocca 189
 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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1 Flavio LaRocca 190
 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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1 Flavio LaRocca 192
 2 doing?
 3 A Yes.
 4 Q And during those inspections, where
 5 were the Jersey barriers?
 6 A Outside on East Street in front of my
 7 fence, my gated area.
 8 Q And did the City ever raise any
 9 issues about the placement of the Jersey
 10 barriers?
 11 A No.
 12 Q Were you ever advised that you need
 13 to get a specific permit from the City with
 14 respect to the placement of the Jersey barriers
 15 on East Street?
 16 A Well, commonly if you're obstructing
 17 the street, you're supposed to get what is called
 18 a street obstruction permit from DPW. But when
 19 we filed for the permit, they said that was not
 20 required.
 21 MS. ZALANTIS: I have nothing
 22 further.
 23 Thanks.
 24 MR. MENDELSON: I have some
 25 followup.

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1 Flavio LaRocca 191
 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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1 Flavio LaRocca 193
 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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1 Flavio LaRocca 194
 2 MR. MENDELSON: Thank you. I
 3 have no further questions.
 4
 5 (Time noted: 3:47 p.m.)
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1 Flavio LaRocca 195
 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.
 16
 17 _____
 18 FLAVIO LaROCCA
 19
 20
 21
 22 Subscribed and sworn to
 23 before me this _____ day
 24 of _____, 2020
 25 _____
 NOTARY PUBLIC

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1 Flavio LaRocca 196
 2 I N D E X
 3
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 6 MS. ZALANTIS 190
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 18 3-D Letter dated November 18, 2015 4
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 25 10 Senior PC 5
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 6
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 7
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 13
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 15 Photographs of the stakes from 117 15
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 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 Flavio LaRocca 199
 2 CERTIFICATE
 3
 4 STATE OF NEW YORK)
 5
 6 ss:
 7
 8 COUNTY OF WESTCHESTER)
 9
 10 I, CHERYL THOMPSON, a Shorthand Reporter and
 Notary Public in and for the State of New York, do
 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 _____
 25 CHERYL THOMPSON

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1 Flavio LaRocca 200
 2 ERRATA SHEET
 3
 4 DEPOSITION OF FLAVIO LaROCCA
 RE: City OF NEW ROCHELLE V. FLAVIO LaROCCA
 DATE TAKEN: MARCH 5, 2020
 5
 6 PAGE LINE # CORRECTION REASON
 7 _____
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 FLAVIO LaROCCA

Subscribed and sworn to
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 of _____, 2020

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EXHIBIT 8



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



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 18th day of September, 2002 and DED 30
BETWEEN JOHN MAFFEI, residing at 83 Park Lane, West Harrison, New York; and NYR
ROSE MAFFEI, residing at 307 Hornidge Road, Mamaroneck, New York;

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

WLM

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.

Signature of Claire Meadow, Notary Public, CLAIRE 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).

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

SECTION 3 BLOCK 931 LOT 29 & 30

COUNTY OF WESTCHESTER CITY OF New Rochelle RETURN BY MAIL TO:

SYDELLE SHULMAN 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.

7

EXHIBIT 9



480660036DED1

Control Number
480660036Instrument Type
DEDWESTCHESTER 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

TRANSFER TAXES

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

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

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

SERIAL NUMBER:

DWELLING:

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

WITNESS MY HAND AND OFFICIAL SEAL

TIMOTHY C. DONI
WESTCHESTER COUNTY CLERKRecord & Return to:
SYDELLE SHULMAN HERZBERG ESQ
46 LONGVUE AVE

NEW ROCHELLE, NY 10804

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT-THE 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

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, dollars

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.

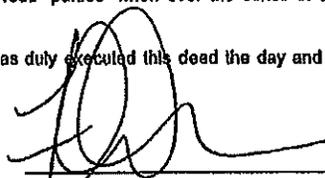
AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

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.

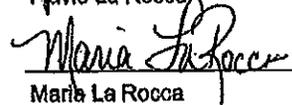
IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Catherine A. Porco



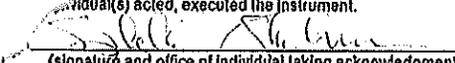
Flavio La Rocca

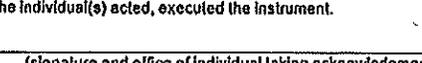


Maria La Rocca

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.

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)

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

_____ in _____
(insert the City or other political subdivision) (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

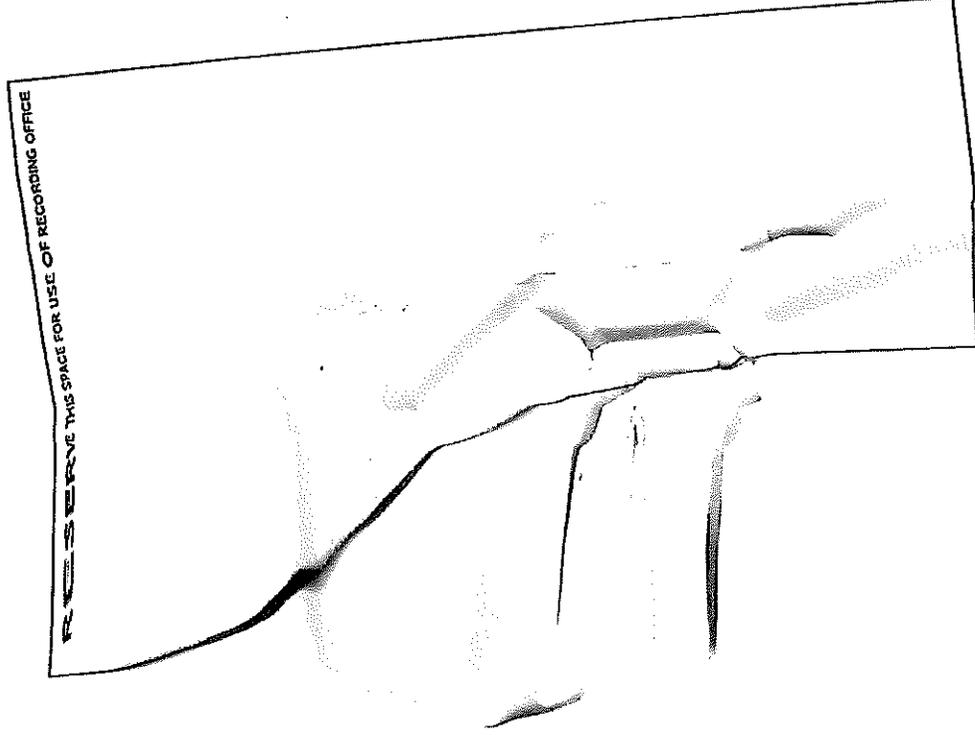
TO
FMLR Management LLC

Recorded at Request of

RETURN BY MAIL TO:

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

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



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: ACC533
 Company: Kepler Title Agency
 Address: 111 Brook Street
 City Scarsdale State: NY Zip: 10583 Telephone: 914-723-2001
 Attention: dm

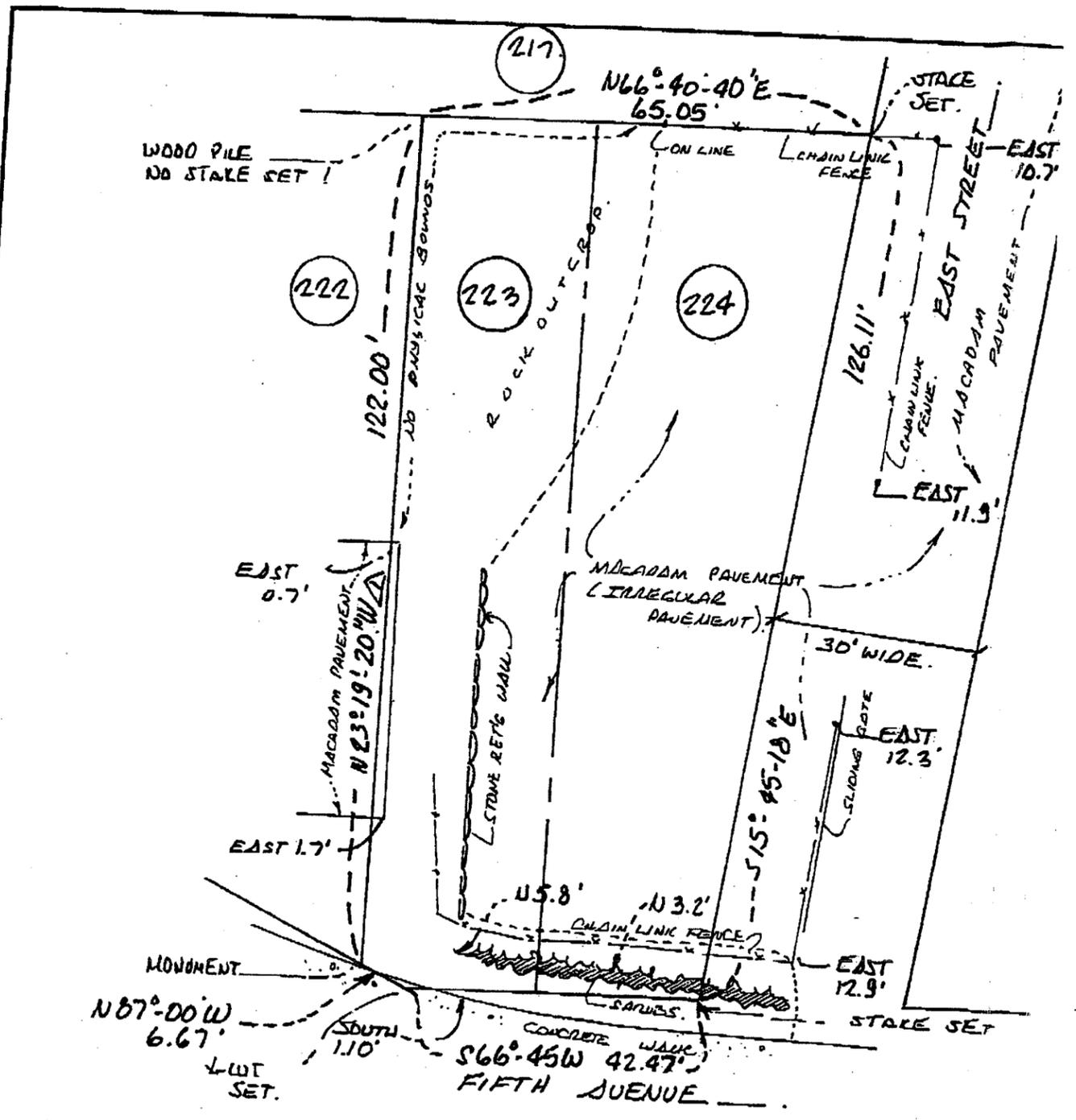
Document type: deed	# of pages - 2	Mortgage Amount On page ____ of document \$ _____	Dwelling Type: For Mortgage Only On page ____ of document <input type="checkbox"/> 1 to 2 family <input type="checkbox"/> 1 to 6 family <input type="checkbox"/> Not 1 to 6 family
1st party name(s) (i.e. grantor/mortgagor) 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: Amount Reference # Or Check #
		Mortgage Tax \$ _____
		Transfer Tax \$ _____
		Mansion Tax \$ _____
		RECORDING FEES PAID: Amount Reference # or Check #
		\$ _____

Tax designation (Section, Block & Lot) On page ____ of document <u>3-931-29 & 30</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-ee _____
City(ies) or Town(s) for Property Description On page ____ of document <u>New Rochelle</u>	Cross Reference(s): On page ____ of document _____ _____

Property Description -- If required, check the one contained within the document. On page 1 ____ 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 10



AREA = 7,083.6548 S.F.

- General Notes:
- 1) The sole intent of the preparation of this map was for title purposes only. It shall not be used to erect fences or any other improvements. Some items shown hereon may be graphic and distorted to clarify a particular condition. This drawing should not be scaled from or electronically scanned for site 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) Encroachments below grade and or sub 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 abstract of title may uncover.
 - 5) The information shown hereon is based upon an actual field survey and is an opinion based upon said survey. Variations in offsets from that of others can and may exist.
 - 6) Certifications 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 7209, Subdivision 2 of the NYS Education Department Law.

CERTIFIED TO: FIRST AMERICAN TITLE INSURANCE COMPANY (231-W-10674); CHRIS MACDONALD; DENISE MACDONALD;

Prepared By:
 Rob Iaropoli, L.S.
 271 North Avenue, Suite 316
 New Rochelle, New York
 10801
 (914)-632-3282
 N21728.2AK: ELECT FUD BOOK.

This map is to be considered unauthoritative if not signed and sealed with an embossed seal.

Rob Iaropoli
 NYS LS LIC. NO. 050126

FIELD: 11/13/00
 MAP: 11/14/00
 REV: " "
 " "

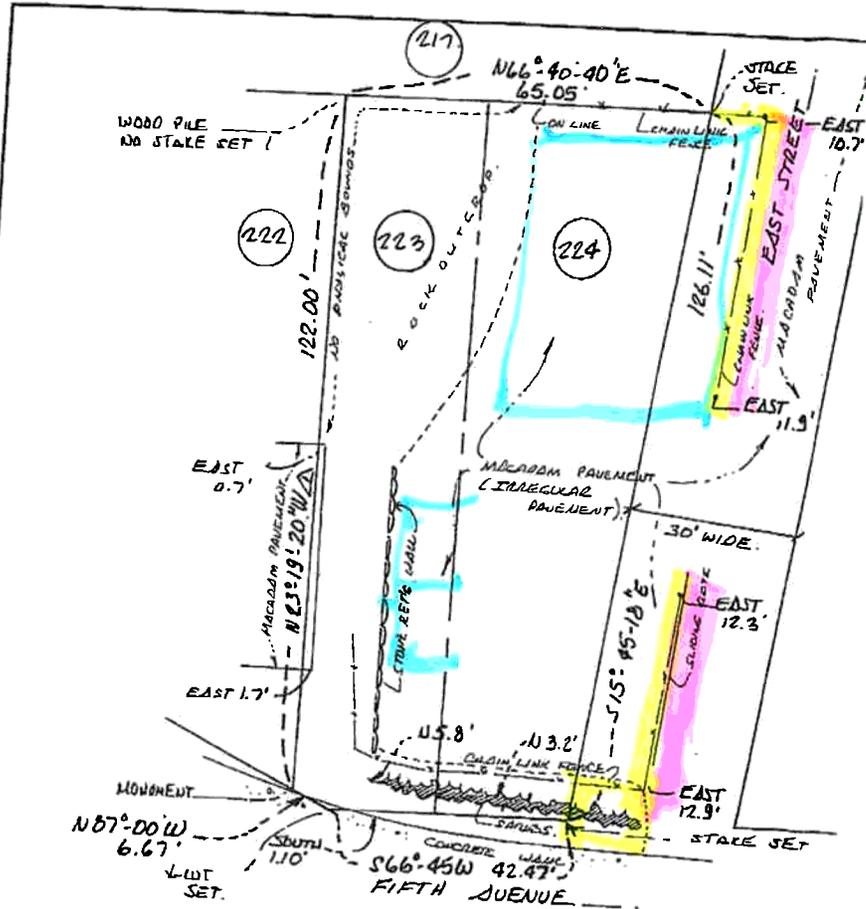
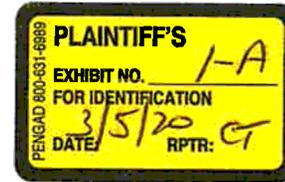
STAKES
 BRG. 11/15/00

rights Reserved

SURVEY OF LOTS 222 & 224, BLOCK "E", AS SHOWN ON A CERTAIN MAP ENTITLED, "MAP OF FIFTH AVENUE HEIGHTS..." IN THE CITY OF NEW ROCHELLE, WESTCHESTER COUNTY, NEW YORK.	
SCALE: 1"=20'	APPROVED BY:
DATE: NOV. 13, 2000	DRAWN BY: R I
SAID "MAP" FILED ON JUNE 7, 1907 AS MAP NO. 1728 IN THE WESTCHESTER COUNTY CLERK'S OFFICE, DIVISION OF LAND RECORDS.	
BEING 430 FIFTH AVENUE NEW ROCHELLE, N.Y.	DRAWING NUMBER 00178

PLTF099

EXHIBIT 11



AREA = 7,083.6548 SF

General Notes:

- 1) The sole intent of the preparation of this map was for title purposes only. It shall not be used to erect fences or any other improvements. Some items shown hereon may be graphic and distorted to clarify a particular condition. This drawing should not be scaled from or electronically scanned for site 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) Encroachments below grade and or sub 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 abstract of title may uncover.
5) The information shown hereon is based upon an actual field survey and is an opinion based upon said survey. Variations in offsets from that of others can and may exist.
6) Certifications 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 7209, Subdivision 2 of the NYS Education Department Law.

CERTIFIED TO: FIRST AMERICAN TITLE INSURANCE COMPANY (231-W-10674); CHRIS MACDONALD; DENISE MACDONALD;

Prepared By: Rob Iaropoli, L.S. 271 North Avenue, Suite 316 New Rochelle, New York 10801 (914)-632-3282

Signature of Rob Iaropoli, L.S. with NYS Lic. No. 050126

FIELD: 11/13/00 MAP: 11/14/00 REV: " " " "

STAKES 3RC 11/15/00

Copyright © 2000: Rob Iaropoli, L.S.

ights Reserved

Table with survey details: SURVEY OF LOTS 223 & 224, BLOCK "E", AS SHOWN ON A CERTAIN MAP ENTITLED, "MAP OF FIFTH AVENUE HEIGHTS...". Includes scale (1"=20'), date (06.13.2006), and drawing number (00178).

PLTF099

U12-1728.2AK: ELECT FUD BOOK.

EXHIBIT 12



ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE COMPANY

OWNER'S POLICY OF TITLE INSURANCE

Commonwealth
A LANDAMERICA COMPANY

POLICY NUMBER
A60-0041665

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest:

Wm. Chadwick Perrine

Secretary



By:

Janet A. Albert

President

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the affect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

NM 1 PA10
ALTA Owner's Policy (10/17/92)
Face Page
Form 1190-2B

Valid Only If Schedu

ORIGINAL
D0001

RELIABLE TITLE AGENCY
303 Old Tarrytown Road
White Plains, NY 10603
(914) 948-4900
Fax: (914) 948-1000



CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE
COMPANY

STANDARD NEW YORK
ENDORSEMENT
(OWNER'S POLICY)



Commonwealth
A LANDAMERICA COMPANY

Attached to and made a part of Policy No.: A60-0041665

- 1. The following is added to the insuring provisions on the face page of this policy:
 - "5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

- 2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:
 - "(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or encumbrances, except real estate taxes, assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of the policy unless otherwise expressly stated.

This endorsement, when countersigned below by a validating signatory, is made a part of the policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Endorsement to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Dated: September 18, 2002

Countersigned:

By: [Signature]
Authorized Officer or Agent



By: [Signature] President

Attest: [Signature] Secretary

Standard New York Endorsement (9/1/93)
For Use With ALTA Owner's Policy (10/17/92)
Form 1190-30

ORIGINAL

POLICY NO. A60-0041665**SCHEDULE A****FILE NO. REL14350-W****Amount of Insurance:** \$165,000.00**Premium:****Date of Policy:** September 18, 2002

1. **Name of Insured:** Flavio La Rocca and Maria La Rocca
2. **The estate or interest in the land which is covered by this policy is:**

FEE SIMPLE

3. **Title to the interest in the land is vested in:**

Deed made by John Maffei and Rose Maffei, his wife to The Insured dated September 18, 2002 to be duly recorded in the Westchester County Clerk's Office, Division of Land Records.

4. **The land referred to in this policy is described as set forth in the insured deed, is situated in the County of Westchester, State of New York and is identified as follows:**

436 Fifth Avenue, New Rochelle, New York
(see description annexed)

Countersigned:
Authorized Officer or Agent

POLICY NO. A60-0041665

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

FILE NO: REL14350-W

PART I

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fee or expenses) which arise by reason of:

1. Survey Reading: See Annexed.
2. The exact distances, dimension and locations of the boundary lines of the premises herein described cannot be guaranteed without a survey acceptable and approved by the company.
3. Utility Easement contained in Liber 1921 cp 1, Liber 1991 cp 177.
4. General Scheme Covenants and Restrictions contained in Liber 2138 cp 310.

**ALTA Owner's Policy
Schedule B
Form - 12**

D0005

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.

TITLE NO:REL14350-W

SURVEY READING

Policy excepts any state of facts an accurate survey would show. When a survey showing the premises described in Schedule A is received, same will be read into the existing title report.

THIS COMPANY IS UNABLE TO LOCATE AN EXISTING SURVEY OF THE PREMISES DESCRIBED IN SCHEDULE "A".

CONDITIONS AND STIPULATIONS

(Continued)

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to: Consumer Affairs Department, P.O. Box 27567, Richmond, Virginia 23261-7567.

A WORD OF THANKS

As we make your policy a part of our permanent records, we want to express our appreciation of this evidence of your faith in Commonwealth Land Title Insurance Company.

There is no recurring premium.

This policy provides valuable title protection and we suggest you keep it in a safe place where it will be readily available for future reference.

If you have any questions about the protection provided by this policy, contact the office that issued your policy or you may write to:

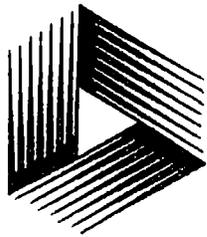
Consumer Affairs Department

Commonwealth Land Title Insurance Company

P.O. Box 27567

Richmond, Virginia 23261-7567

TOLL FREE NUMBER: 1-800-446-7086



**OWNER'S POLICY OF
TITLE INSURANCE
(10-17-92)**

AMERICAN LAND TITLE ASSOCIATION

ISSUED BY

COMMONWEALTH LAND TITLE INSURANCE COMPANY



Commonwealth
A LANGLANDS COMPANY

Title Insurance Since 1876

HOME OFFICE:

101 Gateway Centre Parkway, Gateway One
Richmond, Virginia 23235-5153

B 1190-3

TITLE NO:REL14350-W

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certification may be conveyed or mortgaged by:

John Maffei and Rose Maffei, his wife, by virtue of a deed dated 12-27-95 and recorded in the Westchester County Clerk's Office, Division of Land Records on 3-1-96 in Liber 11372 cp 245 made by Maffei Brothers, Inc.

SCHEDULE B in which are set forth additional matters which will appear in the policy as exceptions from coverage, unless disposed of to the company's satisfaction prior to the closing or delivery of the policy:

DISPOSITION:

1. Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth in Schedule B herein.
2. Mortgages returned herein (NONE). Detailed in Mortgage Schedule herein.
3. Survey Reading: See Annexed
4. Rights of tenants or persons in possession.
5. Any Municipal Searches contained herein, are for information purposes only.
6. Tax Map Designation must appear in the body of all closing instruments.
7. Covenants, Conditions, Easements, Lenses, Agreements, etc. of record, more particularly set forth herein:
 - A. Utility Basement contained in Liber 1921 cp 1, Liber 1991 cp 177.
 - B. General Scheme Covenants and Restrictions contained in Liber 2138 cp 310.

POLICY NO. A60-0041665

SCHEDULE A

FILE NO. REL14350-W

Amount of Insurance: \$165,000.00

Premium:

Date of Policy: September 18, 2002

1. **Name of Insured:** Flavio La Rocca and Maria La Rocca

2. **The estate or interest in the land which is covered by this policy is:**

FEE SIMPLE

3. **Title to the interest in the land is vested in:**

Deed made by John Maffei and Rose Maffei, his wife to The Insured dated September 18, 2002 to be duly recorded in the Westchester County Clerk's Office, Division of Land Records.

4. **The land referred to in this policy is described as set forth in the insured deed, is situated in the County of Westchester, State of New York and is identified as follows:**

436 Fifth Avenue, New Rochelle, New York
(see description annexed)

Countersigned: 
Authorized Officer or Agent

ALTA Owner's Policy
Schedule A
Form 1141-11

ISSUED BY
COMMONWEALTH LAND TITLE INSURANCE
COMPANY

STANDARD NEW YORK
ENDORSEMENT
(OWNER'S POLICY)



Commonwealth
A LANDMARK COMPANY

Attached to and made a part of Policy No.: AB0-0041665

1. The following is added to the Insuring provisions on the face page of this policy:
 - "5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:
 - "(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or encumbrances, except real estate taxes assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of the policy unless otherwise expressly stated.

This endorsement, when countersigned below by a validating signatory, is made a part of the policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Endorsement to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Dated: September 18, 2002

Countersigned:

By: [Signature]
Authorized Officer or Agent



By: [Signature] President
Attest: [Signature] Secretary

Standard New York Endorsement (9/1/93)
For Use With ALTA Owner's Policy (10/17/92)
Form 1190-30
P. 08

ORIGINAL

FAX NO. 9149484999

SEP-18-02 WED 08:41 AM RELIABLE

D0012

TITLE NO:REL14350-W

SURVEY READING

Policy excepts any state of facts an accurate survey would show. When a survey showing the premises described in Schedule A is received, same will be read into the existing title report.

THIS COMPANY IS UNABLE TO LOCATE AN EXISTING SURVEY OF THE PREMISES DESCRIBED IN SCHEDULE "A".

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.

POLICY NO. A60-0041665

**SCHEDULE B
EXCEPTIONS FROM COVERAGE**

FILE NO: REL14350-W

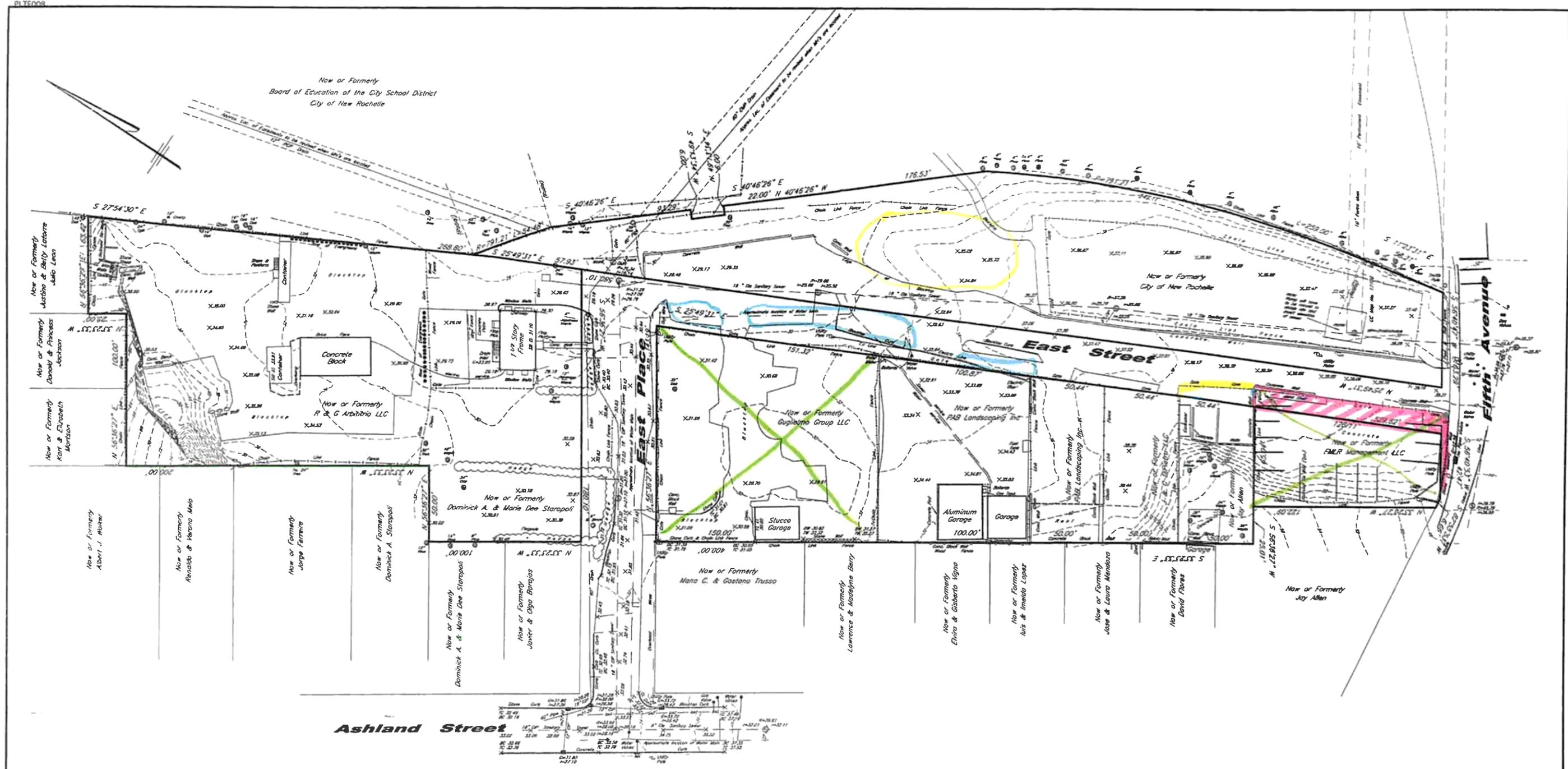
PART I

This policy does not insure against loss or damage (and the company will not pay costs, attorneys' fee or expenses) which arise by reason of:

- 1. Survey Reading: See Annexed.
- 2. The exact distances, dimension and locations of the boundary lines of the premises herein described cannot be guaranteed without a survey acceptable and approved by the company.
- 3. Utility Easement contained in Liber 1921 op 1, Liber 1991 op 177.
- 4. General Scheme Covenants and Restrictions contained in Liber 2138 op 310.

ALTA Owner's Policy
Schedule B
Form - 12

EXHIBIT 13



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 attention or omission to a survey map is a violation of section 7209, sub-section 2, of the New York State Education Law.
 Only stakes of the original survey marked with the land surveyor's inked or embossed seal shall be considered a true and valid copy.

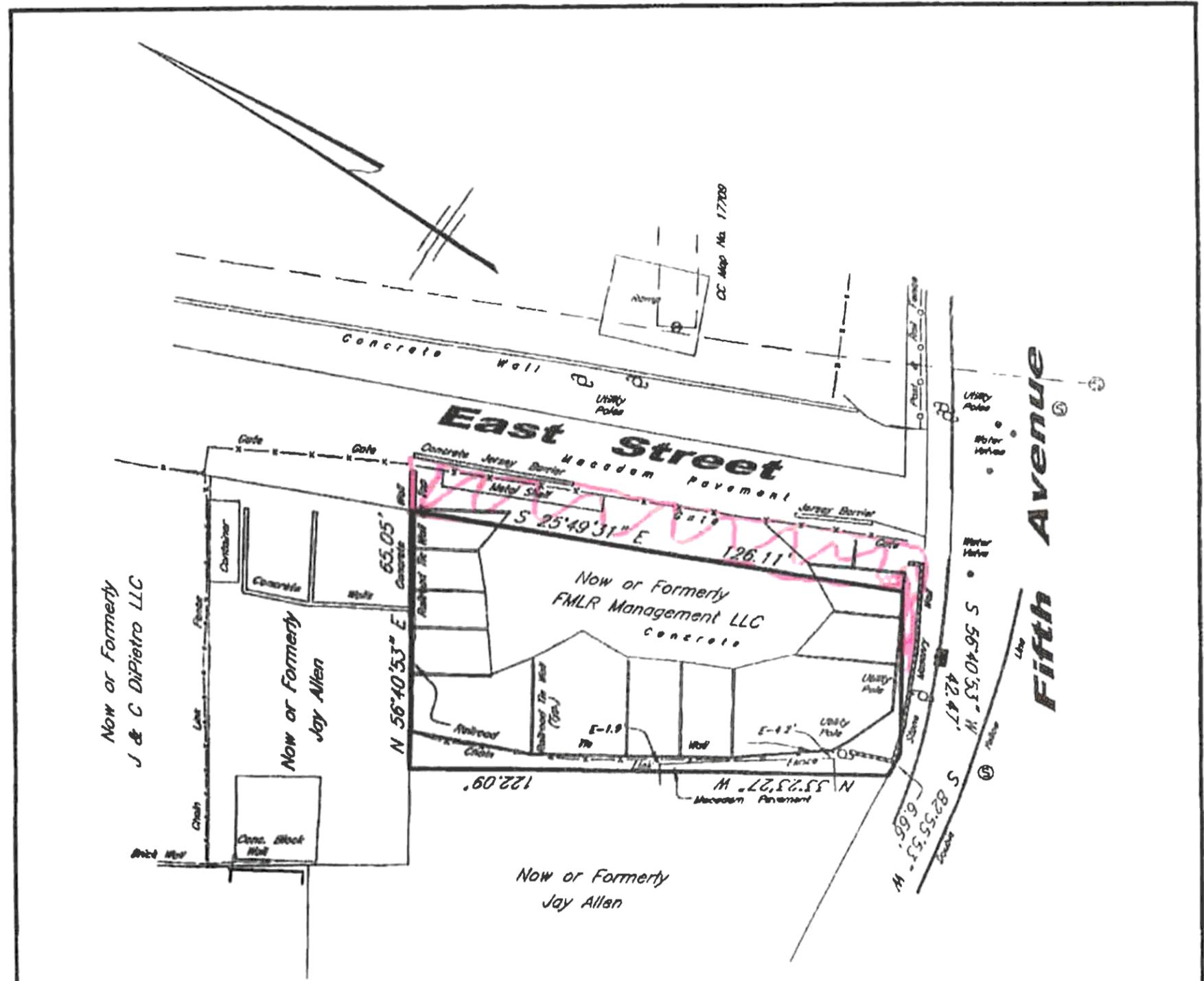
Certifications indicated hereon signify that this survey was prepared in accordance with the existing code of practice for Land Surveyors adopted by the New York State Association of Professional Land Surveyors. Said certifications shall run to the person for whom the survey is prepared only, and on 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 14

PLTF025



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 hereon, 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 A. Freed, Senior V.P.
 Ward Carpenter Engineers, Inc.
 76 Mamaroneck Avenue
 White Plains, N.Y. 10601

EXHIBIT 15



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 16

Flavio & Maria La Rocca
2 Trinity Place
New Rochelle, NY 10805
Tel: 914-447-0173

June 11, 2003

City of New Rochelle
Mr. William Zimmerman, Director of Parks and Recreation
Mr. Charles Strome, City Manager
515 North Ave
New Rochelle, NY 10801

RE: Jersey Barriers - 436 5th Ave, New Rochelle, NY 10801

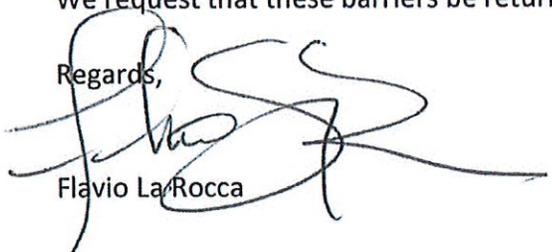
Dear Sirs:

This is to inform you that while we have been doing rock removal, the contractor who has been staging at the city-owned property on Fifth Ave (directly across from our yard) has moved 20 of our jersey barriers along the opposite side of East Street.

Please be advised that these jersey barriers are from our property and owned by us.

We request that these barriers be returned to us where they originally were located.

Regards,


Flavio La Rocca

Flavio & Maria La Rocca
2 Trinity Place
New Rochelle, NY 10805
Tel: 914-447-0173

November 17, 2003

City of New Rochelle
Mr. William Zimmerman
Director of Parks and Recreation
Mr. Charles Strome
City Manager
515 North Ave
New Rochelle, NY 10801

RE: Jersey Barriers - 436 5th Ave, New Rochelle, NY 10801

Dear Sirs:

On June 11, 2003 we sent you a letter regarding our jersey barriers that were taken from our property without permission. Please see attached letter of June 11, 2003.

Please be advised that we requested the 20 jersey barriers returned to us and as of date we have not received them. The value of each of these 20 jersey barriers are \$2,000 per barrier, a value of \$40,000.00.

Your prompt attention to this matter would be appreciated.

Sincerely,



Flavio La Rocca

EXHIBIT 17

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,

Paul Vacca
Deputy Commissioner of Development/Building Official

Jeffrey C. Coleman, PE
Commissioner of Public Works

EXHIBIT 18

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,

A handwritten signature in cursive script, appearing to read "Alexander Tergis".

Alexander Tergis
Commissioner of Public Works

EXHIBIT 19

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----	X	Index No. 54190/2016
CITY OF NEW ROCHELLE,	:	
	:	DEFENDANTS'
Plaintiff,	:	RESPONSE TO
	:	FIRST SET OF
-against-	:	INTERROGATORIES
	:	AND DOCUMENT
FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA	:	DEMANDS BY
ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC.	:	PLAINTIFF
and FMLR REALTY MANAGEMENT LLC.,	::	
Defendants.		
-----	X	

PLEASE TAKE NOTICE, that pursuant to Article 31 of the Civil Practice Law and Rules, 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, provide responses to Plaintiff CITY OF NEW ROCHELLE's ("Plaintiff" or "City") First Set of Interrogatories and Document Demands by Plaintiff dated July 12, 2019 as follows:

GENERAL OBJECTIONS

1. Defendants object to each Request to the extent it seeks documents or information protected from disclosure by the attorney-client privilege.
2. Defendants object to each Request to the extent it seeks documents or information protected from disclosure by the attorney work product doctrine or documents or information considered to be attorney work product.
3. Defendants object to each Request to the extent it seeks the production of documents not within Defendants' possession, care custody or control.



4. Defendants object to each Request to the extent it seeks the production of documents containing, referring to, relating to or constituting personal, confidential or proprietary information.

5. Defendants object to each Request to the extent it seeks the production of documents and information which are within the possession, care, custody or control of Plaintiff or some other third-party.

6. Defendants expressly reserves the right to challenge the competency, relevance, materiality and admissibility of the documents produced in response to the Requests and the information set forth therein in any subsequent proceeding or the trial of this or any other action and to object on any ground to the use of the documents produced in response to the Requests and the information set forth therein in any subsequent proceeding or the trial of this or any other action.

7. To the extent Defendants respond to the Requests, Defendants do not concede that the documents or information requested therein are relevant to this action. Defendants expressly reserve the right to object to further discovery into the subject matter of any of the Requests and the introduction into evidence of any response or portion thereof, or of any documents produced in response, to said Requests.

8. Defendants reserve the right to rely on any facts, documents or other evidence which may develop or come to Defendants' attention subsequent hereto. Defendants' responses are set forth herein without prejudice to Defendants' right to assert additional objections or supplemental responses should Defendants discover additional information or grounds for objections.

9. Defendants object to each Request to the extent it seeks the production of documents or information “indicating,” “tending to establish,” “relating to” and “concerning” certain facts or contentions on grounds that these terms are vague and ambiguous and do not describe the materials sought with sufficient particularity. Defendants further object on grounds that such requests are vague and ambiguous, overly broad, unduly burdensome, oppressive, vexatious and harassing, and that they seek documents or information neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection and any other objection stated herein, Defendant will construe the terms “indicating,” “tending to establish,” “relating to” and “concerning” to request documents which constitute or can reasonably be determined to refer to the matter requested.

10. Defendants object to each Request to the extent it seeks to impose duties and obligations on Defendants in excess of those imposed by the Civil Practice Law and Rules and New York decisional law construing such rules.

11. Defendants expressly reserve the right to supplement or amend these responses at any time prior to trial of this action.

RESPONSES AND SPECIFIC OBJECTIONS

Request No. 1:

Identify all Persons having knowledge of the facts relevant to the subject matter of the Complaint, Answer, Affirmative Defenses and Counterclaims and describe in detail the nature and extent of their knowledge.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome and seeks information within Plaintiff’s possession and control. Notwithstanding such, and without waiving said objection, the

Defendants provide that the following people have knowledge of the claims set forth in Defendants' answer with Affirmative Defenses and Counterclaims:

Flavio LaRocca;
Maria LaRocca,;
Benny Rivera, principal/owner of Benny Tree Service and Landscaping ("Benny Tree Service");
Patrick Bongo, principal/owner of PAB Paving Company ("PAB Paving");
Paul Vacca, Deputy Commissioner/Building Official of the City of New Rochelle
Jeffrey Coleman, current/former Commissioner of Department of Public Works of the City of New Rochelle
Charles B. Strome, III, current/former City Manager

Request No. 2:

State who the people are depicted in the various photographs in Exhibit 1 to the Complaint, the area depicted, and what the individuals are doing. If there is a vehicle depicted, please identify the owner of the vehicle. For purposes of this response please refer to the pictures in Exhibit 1 sequentially a-f.

Produce all Documents and Communications concerning the response to this Request, including but not limited to any Document or Communication purveying a legal right for the Defendants to improve on, build, destroy, or use for commercial or personal purposes the area depicted in any of these photographs.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome and seeks information within Plaintiff's possession and control. Notwithstanding such, and withot waiving said objection, the Defendants respond as follows:

Exhibit 1(a): Depicts a now fenced-off area near Flowers Park that had been used at that time the photograph was taken (and for many years before and even months after) by the neighboring property owners, Benny Tree Service and PAB Paving for parking of their employees' vehicles ("Parking Area"). As the City fails to maintain or repair East Street even though it is a public street, the abutting landowners are forced to maintain and repair East Street and the area surrounding the street where debris is often dumped, even though they have no legal obligation to

do so. The men depicted in exhibit 1(a) are raking existing gravel in the Parking Area with rakes and smoothing and compacting the gravel in the Parking Area that had become displaced as a result of snow plowing East Street and the Parking Area to allow for continued parking of vehicles by the employees of Benny Tree Service and PAB Paving in the Parking Area, which condition had existed for years. The men are not taking any action to “improve on, build, destroy, or use for commercial or personal purposes the area depicted in any of these photographs,” including 1(a). The men depicted in the photographs are current and/or former employees of Defendants. There are four vehicles depicted in the photograph. One of Defendants’ trucks is parked across the street from the Parking Area and another of Defendants’ vehicles parked near the Parking Area. Two other vehicles are depicted in the photograph and it is unknown who the owners of these vehicles are, but upon information and belief, the owners are employees of Benny Tree Service and/or PAB Paving.

Exhibit 1(b): Depicts the same parking area described in response to 1(a). Also depicted are piles of mulch that , upon information and belief, were placed in the Parking Area by Benny Tree Service and/or PAB Paving. The two men depicted are raking and smoothing-out the existing gravel of the Parking Area (that had existed in this condition for years as described in response to 1(a) above). Also depicted is a motorized compacting roller used for smoothing out and compacting gravel to place gravel in the position that it maintained prior to the plowing of the Parking Area. Defendants own the motorized compacting roller.

Exhibit 1(c): Depicts the same parking area described in response to 1(a). Also depicted are piles of mulch placed in the Parking Area by Area by Benny Tree Service and/or PAB Paving. Also depicted are vehicles in the Parking Area that, upon information and belief, are owned by employees of Benny Tree Service and/or PAB Paving. The truck depicted in the left side of the

picture is owned by Defendants. There is also a pay loader used to spread out the larger piles of gravel disturbed by snow plowing of the Parking Area. The pay loader is owned by Defendants. The cars depicted, upon information and belief, belong to employees of Benny Tree Service and/or PAB Paving.

Exhibit 1(d): Depicts the same parking area described in response to 1(a). Also depicted are piles of mulch placed in the Parking Area by Benny Tree Service and/or PAB Paving. The two men depicted are raking and smoothing-out the gravel that was displaced as a result of snow plowing of the Parking Area described in response to 1(a) above. Also depicted is a truck owned by Defendants and cars and trucks owned, upon information and belief, by employees, by employees of Benny Tree Service and/or PAB Paving.

Exhibit 1(e): Depicts mulch piles. Appears to be close-up of mulch piles placed in the Parking Area, upon information and belief, by Benny Tree Service and/or PAB Paving.

Exhibit 1(f): Depicts vehicles parked in the Parking Area that, upon information and belief, are owned by employees of Benny Tree Service and/or PAB Paving.

See also the documents produced as D0262 and D0353.

Request No. 3:

Produce all Documents and Communications concerning any articles, posts, or mentions in the local news site "Talk of the Sound" of the Defendants.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand (i) on the basis that it is overly broad, unduly burdensome, vague and ambiguous; (ii) the documents requested are not in the possession or control of the Defendants; and (iii) the documents are publically available information. Notwithstanding such, and without waiving said objection, see the documents produced as D0197-230.

Request No. 4:

Produce all Documents and Communications regarding the Defendants' ownership of 436 Fifth Avenue, New Rochelle, New York, and any surrounding areas, including but not limited to any surveys, deeds, construction permits and building permits.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that: (i) it is overly broad, unduly burdensome, vague and ambiguous; (ii) the documents are publically available information, including various documents within the custody and control of Plaintiff. Notwithstanding such, and without waiving said objection, see the documents produced as D0001-29; 185-187; 196; 209, 220; D0244; 247-248; 258-261.

Request No.5:

Identify the board members, principals, and owners of the corporate Defendants.
Produce all Documents and Communications concerning the response to this Request.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, Flavio LaRocca is the president and officer of LAROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC. and a member of FMLR REALTY MANAGEMENT LLC. Maria LaRoca is the Vice President of LAROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC. and a member of FMLR REALTY MANAGEMENT LLC

Request No. 6:

State in detail any improvement, demolition, or construction, including the removal of trees or any existing agriculture ("Work"), on any area by the Defendants/affiliates, or any third parties, in the vicinity of East Street and Chatsworth Avenue and/or East Street/East Place and Fifth Avenue in New Rochelle, New York, including any property adjacent to Flowers Park.

Produce all Documents and Communications identified in response to this Request, including but not limited to the identity of any Defendants' affiliate who performed this work.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this

demand on the basis that it is overly broad, unduly burdensome, vague, ambiguous and intentionally misstates or creates facts. Notwithstanding the foregoing, no “improvement, demolition, or construction, including the removal of trees or any existing agriculture” (“Work”) was done by Defendants to the Parking Area. As described in response to Request No. 2, “the Parking Area” is a now fenced-off area near Flowers Park that had been used at the time the photographs attached as Exhibit “1” to the Complaint were taken (and for many years before and even months after) by Benny Tree Service and/or PAB Paving, to park employee vehicles in the Parking Area. As detailed above in response to Request No. 2, the pictures attached to the Complaint depict Defendants and/or its employees and/or representatives maintaining the long-existing Parking Area by smoothing and compacting the gravel that had become displaced as a result of snowplowing. The raking and smoothing of existing gravel in the Parking Area was done at the behest of Benny Tree Service and/or PAB Paving to allow for the continued parking of vehicles by the employees of Benny Tree Service and/or PAB Paving in the Parking Area that had existed for years. Defendants have also removed garbage and other debris from the Parking Area and East Street and the areas surrounding same as Plaintiff has shirked its obligation to maintain such areas. No plantings, landscaping or trees were removed by Defendants or by anyone within Defendants’ control from the Parking Area or any areas surrounding the Parking Area. No mulch piles, debris or other materials were placed by Defendants or by anyone within Defendants’ control in the Parking Area or any areas surrounding the Parking Area.

Request No. 7:

State in detail the Defendants’ Work on any area by the Defendants or its affiliates in the vicinity of 436 Fifth Avenue, New Rochelle, New York.

Produce all Documents and Communications identified in response to this request, including but not limited to the identity of any Defendants’ affiliate who performed this Work.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, Defendants have maintained and improved the exterior of their property at 436 Fifth Avenue to make it more visually appealing and Defendants did work at 436 Fifth Avenue in accordance with the permits and approvals issued by Plaintiff and produced as D0022-0029, 258-261 and see various pictures produced D0263-399.

Request No. 8.

Identify all Documents and Communication regarding permission granted by New Rochelle for the defendants to conduct any Work in the vicinity of 436 Fifth Avenue, New Rochelle, New York, and/or in the vicinity of East Street/East Place and Chatsworth Avenue, and/or in the vicinity of East Street/East Place and Fifth Avenue in New Rochelle, New York, including any property adjacent to Flowers Park.

Produce all Documents and Communications identified in response to this Request

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see responses to Requests No. 6 and No. 7.

Request No. 9:

Produce all Documents and Communications that support the allegations in the Defendants' second affirmative defense in the Answer.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see the documents produced as D0001-0399.

Request No. 10:

Identify all Documents, Communications, Photographs that support the allegations contained in the Defendants' third affirmative defense in the Answer. Identify any individuals who

performed the actions by the Defendants alleged in this third affirmative defense, and the dates on which these actions were performed.

Produce all Documents and Communications identified in response to this Request, including any bills, work orders, contracts, and payments.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see the documents produced as D0001-0399.

Request No. 11:

Produce all Documents and Communications that support the allegations in the Defendants' sixth affirmative defense in the Answer.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see the documents produced as D0001-0399.

Request No. 12:

Produce all Documents and Communications that support the allegations in paragraphs 95-102 of the Answer, including but not limited to Documents that support the damage calculation alleged.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see the documents produced as D0001-0399.

Request No. 13:

Produce all Documents and Communications that support the allegations in paragraphs 105-109 of the Answer, including but not limited to Documents that support the damage calculation alleged.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this

demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous.

Notwithstanding the foregoing, see documents included as part of D0001-0399. .

Request No. 14:

Identify each person who will or may be called to testify on your behalf at the trial in this matter. For each person, identify the person's (a) name; (b) business address; (c) business phone numbers; (d) title and position; (e) dates of employment at such position; (f) substance of the person's anticipated testimony and subjects which the person is expected to address; and (g) all documents, studies, data, or evidence on which the person is expected to rely (and attach a copy of same).

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants intend to call the people identified in Response 1 as well as, Felipe Maya Galinda Martin Sanchez, who will testify as to the subject matter set forth in Defendants' Answer and the documents and information produced herein and who may be contacted through the undersigned. Defendants expressly reserve the right to supplement this response.

Request No. 15:

Describe in detail whether you intend to rely upon any admissions made by any party to this action or by any person acting on behalf of any said party. If so, identify the person(s) having made any such admission(s), the substance of such admission(s), to whom it was made, when it was made, and identify each Document and Communication containing such admission.

Produce all Documents and Communications identified in response to this Request.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see documents produced by Defendants from and/or created by the City.

Request No. 16:

Describe in detail whether you intend to rely upon any statements obtained from any person or entity not a party to this action. If so, identify the person(s) making such statement(s), the

substance of such statements(s), to whom it was made, when it was made, and identify and identify each Document and Communication containing such statement(s).

Produce all Documents and Communications identified in response to this Request.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous.

Request No. 17:

Identify each and every proposed expert witness who you or anyone on your behalf has contacted for the purpose of obtaining any written statements or opinions regarding this case, as to each expert witness identified, set forth: [subsections a through m not copied herein].

Produce all Documents and Communications identified in response to this Request.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants have not yet identified any expert witnesses, but expressly reserve the right to supplement this response in accordance with CPLR § 3101(d).

Request No. 18:

State the name, address and field of expertise of each expert (consulted by or on behalf of you in connection with this matter) whose testimony you do not intend to offer at trial or hearing. As to each person identified in response to this Request, set forth: [subsections a through f not copied herein].

Produce all Documents and Communications identified in response to this Request.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, see response to Request No.

17.

Request No. 19:

If you intend to rely upon any book, statute, legislation, document, memoranda, other writing or tangible thing to establish your claims alleged in the Answer, set forth a complete description of each and annex a copy of each. In the event that the item is not annexed, set forth the name and address of the person in present custody of each of the above named books, documents, or other tangible things.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague, ambiguous and patently improper to request legal information in an improper attempt to ascertain Defendants' legal strategy.

Request No. 20:

To the extent not specifically requested above, identify and produce all Documents and Communications (oral and written) upon which you intend to rely upon at trial of this action.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see the documents produced as D0001-0296.

Request No. 21:

Identify and Produce all photographs, videotapes, and or recordings regarding any Work in the vicinity of 436 Fifth Avenue, New Rochelle, New York, and/or in the vicinity of East Street/East Place and Chatsworth Avenue, and/or in the vicinity of East Street/East Place and Fifth Avenue in New Rochelle, New York including any property adjacent to Flowers Park.

Response: Defendants restate and incorporate herein by reference the General Objections set forth herein. Without waiver of the foregoing General Objections, Defendants object to this demand on the basis that it is overly broad, unduly burdensome, vague and ambiguous. Notwithstanding the foregoing, see photographs included with of D0001-0399.

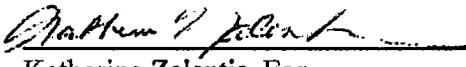
PLEASE TAKE NOTICE, that Defendants reserve the right to supplement their responses up to and including the time of trial.

PLEASE TAKE FURTHER NOTICE, that in responding to these demands Defendants do not waive any attorney-client or work-product privilege.

Dated: Tarrytown, New York
February 7, 2020

Yours, etc.

SILVERBERG ZALANTIS LLC

By: 

Katherine Zalantis, Esq.
Attorneys for Defendants
120 White Plains Road, Suite 305
Tarrytown, NY 10591
(914) 682-0707

To: Scott Mendelsohn, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Attorneys for Plaintiff
1133 Westchester Avenue
White Plains, NY 10604
(914) 872-7385

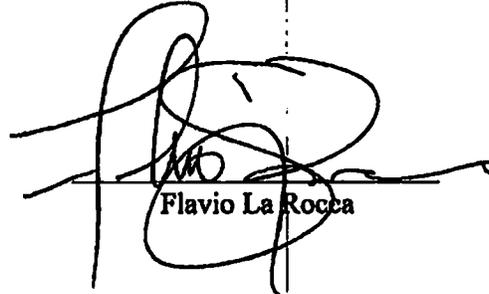
VERIFICATION

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

Flavio La Rocca, being duly sworn and deposes days:

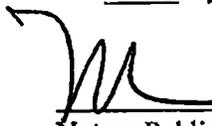
I am a named Defendant in this action and the president and officer of Defendants Flavio La Rocca & Sons, Inc. and FMLR Realty Management LLC and am authorized to act on behalf of the corporate defendants in legal matters.

I have read the within responses to the First Set of Interrogatories and Document Demands by Plaintiff and know the content thereof, and the same are true to my knowledge, except as to those matters therein which are stated to be based upon information and belief. My knowledge is based upon my own records, files and personal knowledge of the events set forth herein.


Flavio La Rocca

Subscribed and Sworn to before me

this 7 day of February 2020


Notary Public

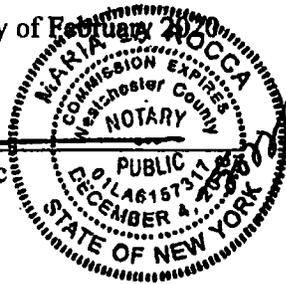


EXHIBIT 20



EXHIBIT
tabbler
P116.19

EXHIBIT 21



D0402



D0403



D0404



D0405

EXHIBIT 22

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

2 WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP
Attorneys for Plaintiff
3 150 East 42nd Street
New York, New York 10017-5639

4
BY: SCOTT MENDELSON, ESQ.

5
6
7 SILVERBERG ZALANTIS, LLC
Attorneys for Defendants
8 120 White Plains Road, Suite 305
Tarrytown, New York 10591

9
BY: KATHY ZALANTIS, ESQ.

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

2

3 IT IS STIPULATED AND AGREED by and between the
4 attorneys for the respective parties herein,
5 and in compliance with Rule 221 of the Uniform
6 Rules for the Trial Courts:

7

8 THAT the parties recognize the provision of
9 Rule 3115 subdivisions (b), (c) and/or (d).

10 All objections made at a deposition shall be
11 noted by the officer before whom the deposition
12 is taken, and the answer shall be given and the
13 deposition shall proceed subject to the
14 objections and to the right of a person to
15 apply for appropriate relief pursuant to
16 Article 31 of the C.P.L.R.;

17

18 THAT every objection raised during a deposition
19 shall be stated succinctly and framed so as not
20 to suggest an answer to the deponent and, at
21 the request of the questioning attorney, shall
22 include a clear statement as to any defect in
23 form or other basis of error or irregularity.

24 Except to the extent permitted by C.P.L.R. Rule
25 3115 or by this Rule, during the course of the

1 examination persons in attendance shall not
2 make statements or comments that interfere with
3 the questioning.

4
5 THAT a deponent shall answer all questions at a
6 deposition, except (i) to preserve a privilege
7 or right of confidentiality, (ii) to enforce a
8 limitation set forth in an order of a court, or
9 (iii) when the question is plainly improper and
10 would, if answered, cause significant prejudice
11 to any person. An attorney shall not direct a
12 deponent not to answer except as provided in
13 C.P.L.R. Rule 3115 or this subdivision. Any
14 refusal to answer or direction not to answer
15 shall be accompanied by a succinct and clear
16 statement on the basis therefore. If the
17 deponent does not answer a question, the
18 examining party shall have the right to
19 complete the remainder of the deposition.

20
21 THAT an attorney shall not interrupt the
22 deposition for the purpose of communicating
23 with the deponent unless all parties consent or
24 the communication is made for the purpose of
25 determining whether the question should not be

1 answered on the grounds set forth in Section
2 221.2 of these Rules, and, in such event, the
3 reason for the communication shall be stated
4 for the record succinctly and clearly.

5
6 THAT the failure to object to any question or
7 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
13 THAT this examination may be signed and sworn
14 to by the witness examined herein before any
15 Notary Public, but the failure to do so or to
16 return the original of the examination to the
17 attorney on whose behalf the examination is
18 taken, shall not be deemed a waiver of the
19 rights provided by Rule 3116 and 3117 of the
20 C.P.L.R., and shall be controlled thereby; and

21
22 THAT the certification and filing of the
23 original of this examination are hereby waived;
24 and

25

1 THAT the questioning attorney shall provide
2 counsel for the witness examined herein with a
3 copy of this examination at no charge.

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1
2 MARIA LA ROCCA, the WITNESS herein,
3 having been first duly sworn by a
4 Notary Public of the State of New York,
5 was examined and testified as follows:

6 EXAMINATION BY

7 MR. MENDELSON:

8 Q. State your name for the
9 record, please.

10 A. Maria La Rocca.

11 Q. State your address for the
12 record, please.

13 A. 140 Sussex Road, New
14 Rochelle, New York 10804.

15 Q. Good morning, Ms. La Rocca.

16 A. Good morning.

17 Q. My name is Scott
18 Mendelsohn. I am an attorney with
19 Wilson Elser, and we represent the
20 Plaintiff in this case, the City of
21 New Rochelle. I am going to be
22 asking you some questions today
23 about the action entitled the City
24 of New Rochelle versus Flavio La
25 Rocca and Maria La Rocca, et al.

1 M. LA ROCCA
2 Before we continue, do you
3 consent to this deposition
4 proceeding virtually over Zoom?

5 A. Yes.

6 MR. MENDELSON: Counsel
7 for Ms. La Rocca, Ms.
8 Zalantis, do you also
9 consent?

10 MS. ZALANTIS: Yes.

11 Q. Ms. La Rocca, is there
12 anybody else in the room presently
13 with you?

14 A. No.

15 Q. If you don't understand a
16 question that I have asked you, or
17 if you cannot hear me, please let me
18 know, and I will try to accommodate
19 your request.

20 A. Yes.

21 Q. Please let me know if you
22 need to take a break. I only ask
23 that if you need to take a break, if
24 there is a question pending, answer
25 the question first, and we will take

1 M. LA ROCCA

2 a break after.

3 Okay?

4 A. Okay.

5 Q. Please let me know if --
6 withdrawn.

7 We have a court reporter
8 here taking everything down, Mrs.
9 Hayden, so I just ask that your
10 responses have to be verbal. They
11 can't be "uh-huh" or head shaking.
12 They have to be yes or no, is that
13 clear?

14 A. Yes.

15 Q. Lastly, although you may
16 think you know what the question is
17 going to be before I get through
18 with it, please let me finish my
19 question before answering.

20 Okay?

21 A. Okay.

22 Q. Did you review any
23 documents prior to testifying --
24 today's testimony?

25 A. I reviewed some of the

1 M. LA ROCCA

2 exhibits that we handed to the
3 attorney, you know, whatever we
4 handed to her.

5 Q. Are you referring to the
6 discovery that was given to me by
7 Ms. Zalantis?

8 A. I believe so.

9 Q. Are you referring to the
10 documents that were collected and
11 that you gave to your attorney?

12 A. Correct.

13 Q. Did you review any
14 testimony in preparation for today's
15 deposition?

16 A. I don't understand.

17 Q. Did you review anybody
18 else's testimony in this case, in
19 preparation for today's deposition?

20 A. I skimmed through the
21 deposition of my husband, but just
22 for the exhibits.

23 Q. Before today, did you
24 review any pictures in preparation
25 for today's deposition?

1 M. LA ROCCA

2 A. Yes.

3 Q. What pictures did you
4 review?

5 A. Whatever we gave to Kathy
6 Zalantis.

7 Q. Before today, other than
8 with your attorney, have you had any
9 conversations regarding East Street
10 and the ownership of East Street?

11 A. No.

12 Q. Before today, have you had
13 any conversations with anybody other
14 than your attorneys, regarding the
15 parcel, which is a piece of property
16 -- withdrawn.

17 Are you aware -- have you
18 reviewed the Complaint in this
19 matter?

20 A. Yes, a while ago, yes.

21 Q. And is it fair to say in
22 the Complaint there is a piece of
23 property referred to as the parcel?

24 A. I don't remember.

25 Q. Are you aware of a piece of

1 M. LA ROCCA
2 property that abuts East Street,
3 that is next to East Street, and is
4 also next to Flowers Park and there
5 is pictures at the parcel, are you
6 familiar with that area?

7 A. Are you referring to our
8 property of 436 Fifth Avenue?

9 Q. No. You know what? We
10 will wait until we get to the
11 pictures so you can accurately see
12 what we are speaking of.

13 Before today's deposition,
14 did you speak with anybody about the
15 allegations of construction of a
16 parking lot next to East Street?

17 A. Only to the -- only to the
18 people that had sent the letter.

19 Q. And who is that?

20 A. The City of New Rochelle.

21 Q. Before today's deposition,
22 have you spoken with anybody
23 regarding the Jersey barriers that
24 are part of your counterclaim in
25 this matter?

1 M. LA ROCCA

2 A. I don't remember honestly.
3 I just know that we have them.

4 Q. Are you currently taking
5 any medications and/or substances
6 that would otherwise impair your
7 ability to testify today?

8 A. No.

9 Q. Where do you currently
10 live?

11 A. 140 Sussex Road, New
12 Rochelle.

13 Q. How many properties do you
14 and your husband own within New
15 Rochelle?

16 A. That we own, one.

17 Q. Which property is that?

18 A. Our personal residence on
19 140.

20 Q. Are you a part of any
21 businesses that own any properties
22 within New Rochelle?

23 A. Yes.

24 Q. What business is that?

25 A. Flavio La Rocca & Sons.

1 M. LA ROCCA

2 Q. Other than Flavio La Rocca
3 & Sons, are you a part of any other
4 businesses?

5 A. Yes.

6 Q. What business is that?

7 A. FMLR Realty Management.

8 Q. Other than Flavio La Rocca
9 & Sons and FMLR Realty Management,
10 are there any other businesses that
11 you are a part of?

12 A. Yes.

13 Q. And what is that?

14 A. Marco Industries.

15 Q. Any more?

16 A. No.

17 Q. Let's start with Flavio La
18 Rocca & Sons. What is your position
19 with Flavio La Rocca & Sons?

20 A. Vice president.

21 Q. Are you a -- an owner of
22 Flavio La Rocca & Sons?

23 A. Correct.

24 Q. Approximately what
25 percentage of Flavio La Rocca & Sons

1 M. LA ROCCA

2 do you own?

3 A. 51 percent.

4 Q. And the other 49 percent is
5 owned by who?

6 A. Flavio La Rocca, my
7 husband.

8 Q. And what properties does
9 Flavio La Rocca & Sons own?

10 A. They don't own any
11 property.

12 Q. Okay.

13 What is the main business
14 address of Flavio La Rocca & Sons?

15 A. 71-B Potter Avenue, New
16 Rochelle, New York 10801.

17 Q. Are there any other
18 addresses that Flavio La Rocca &
19 Sons operates on -- operates from
20 other than 71 Potter Avenue?

21 A. No.

22 Q. Let's discuss FMLR Realty.
23 What is your position with FMLR
24 Realty?

25 A. Member.

1 M. LA ROCCA

2 Q. When you say, "member,"
3 what does that mean to you?

4 A. Just my husband and I are
5 equally members of the LC.

6 Q. Are you an owner of FMLR
7 Realty?

8 A. I am a member so I guess --
9 I mean, I don't know how to answer
10 that honestly.

11 Q. Who are the -- who are the
12 members of FMLR Realty?

13 A. My husband, Flavio La
14 Rocca, and myself.

15 Q. Is there a different
16 percentage of membership within that
17 LLC?

18 A. No.

19 Q. Between the two of you?

20 A. No.

21 Q. Is it fair to say that you
22 are equal partners in FMLR Realty?

23 MS. ZALANTIS: Objection

24 to the form of the question.

25 I just want to note that she

1 M. LA ROCCA
2 said she is a member, and you
3 asked about partnership.

4 MR. MENDELSON: We can
5 -- you know, we will withdraw
6 the question.

7 Q. Is it fair to say that you
8 are equal members of FMLR Realty,
9 you and your husband?

10 A. Yes.

11 Q. Does that FMLR Realty own
12 any property within New Rochelle?

13 A. Yes.

14 Q. What properties does FMLR
15 Realty own?

16 A. 436 Fifth Avenue, in New
17 Rochelle, and 69-71 Potter Avenue,
18 in New Rochelle.

19 Q. What is 436 Fifth Avenue?

20 A. It is our location where
21 our contractor's yard is located.

22 Q. When you say, "contractor's
23 yard," is that a location that
24 Flavio La Rocca & Sons operates out
25 of?

1 M. LA ROCCA

2 A. Correct.

3 Q. So are the only two
4 locations that Flavio La Rocca &
5 Sons operates out of those two
6 locations on Potter Avenue and 436
7 Fifth Avenue?

8 A. Correct.

9 Q. Just for the duration of
10 this deposition, I am going to refer
11 to 436 Fifth Avenue as 436, is that
12 okay?

13 A. Sure, thank you.

14 Q. Other than -- I believe
15 there was another business you said
16 you were a part of, Marco
17 Industries, is that fair?

18 A. Yes.

19 Q. What is Marco Industries?

20 A. It is basically a realty
21 company for the property.

22 Q. How many properties does
23 Marco Industries own?

24 A. One.

25 Q. Where is that property

1 M. LA ROCCA

2 located?

3 A. In Putnam County.

4 Q. Does that property have
5 anything do with Flavio La Rocca &
6 Sons or FMLR Realty?

7 A. No.

8 Q. What is your -- what are
9 your responsibilities regarding
10 Flavio La Rocca & Sons?

11 A. Basically I take care of
12 the office.

13 Q. What does that mean, to
14 take care of the office?

15 A. So I do the bookkeeping,
16 payroll, compliance, insurance,
17 day-to-day operations in the office,
18 management.

19 Q. Are you involved in the
20 construction aspect of Flavio La
21 Rocca & Sons?

22 A. Not really, no.

23 Q. Do you, yourself, know how
24 to read a survey?

25 A. Not really correctly, no.

1 M. LA ROCCA

2 Q. In your business dealings
3 with Flavio La Rocca & Sons, have
4 you had occasion to look at surveys?

5 A. I look at them if they are
6 presented, but I wouldn't know how
7 to give an answer to it correctly.

8 Q. When you say that you keep
9 the payroll, how many employees does
10 Flavio La Rocca & Sons have?

11 A. Currently?

12 Q. Yes.

13 A. Five.

14 Q. And as of 2015, so in 2015,
15 how many employees did Flavio La
16 Rocca & Sons have?

17 A. I don't remember off the
18 top of my head.

19 Q. Was it more or less than
20 five?

21 A. Probably five or less.

22 Q. Are you -- have you met all
23 five of Flavio La Rocca & Sons
24 employees that are currently
25 employees?

1 M. LA ROCCA

2 A. Can you say that again?

3 Q. Sure.

4 Have you personally met all
5 of Flavio La Rocca & Sons employees
6 that are employees currently?

7 A. That are employees
8 currently, yes. I don't always get
9 to meet them all.

10 Q. What are the names of
11 Flavio La Rocca & Sons current
12 employees?

13 A. Felipe Galindez (ph),
14 Martin Sanchez (ph), Katherine Porco
15 (ph), Flavio La Rocca, and Maria La
16 Rocca.

17 Q. What are Felipe Galindez's
18 responsibilities with Flavio La
19 Rocca & Sons?

20 A. He drives our trucks, he
21 does masonry work, he can operate
22 some equipment as far as I know. I
23 don't know what equipment.

24 Q. Is it okay if I refer to
25 Flavio La Rocca & Sons just as La

1 M. LA ROCCA

2 Rocca & Sons?

3 A. Correct.

4 Q. What is Martin Sanchez's
5 responsibilities for La Rocca &
6 Sons?

7 A. He is a driver, and he
8 helps just with, you know, taking
9 stuff off our truck, so just labor.

10 Q. What about, I believe you
11 said Katherine Porco?

12 A. Porco.

13 Q. What are Ms. Porco's
14 responsibilities with Flavio La
15 Rocca & Sons?

16 A. She is just a secretary.

17 Q. And Mr. La Rocca, your
18 husband, Flavio, what are his
19 responsibilities with the company?

20 A. He takes care of the
21 outside field, operates the
22 equipment, takes care of the
23 employees, supplies, maintenance on
24 our trucks.

25 Q. Were all of those employees

1 M. LA ROCCA
2 that you just mentioned that are
3 currently employees of La Rocca &
4 Sons, were they employees of La
5 Rocca & Sons in 2015?

6 A. I believe so.

7 Q. What about Felipe Galindez,
8 was he an employee in 2015?

9 A. I believe so. I don't
10 remember exactly, but I believe so.

11 MS. ZALANTIS: I just --

12 I'm sorry. I just want to
13 instruct my client not to
14 guess. So --

15 Q. What about Martin Sanchez?

16 A. I don't know if he was.

17 Q. Would you have records that
18 would be able to show whether or not
19 those two individuals were employees
20 of La Rocca & Sons in 2015?

21 A. Sure.

22 Q. What would those records
23 be?

24 A. The payroll spreadsheet if,
25 you know, you cut a check for them.

1 M. LA ROCCA

2 Q. Do you maintain the payroll
3 for La Rocca & Sons?

4 A. Yes.

5 Q. Do you currently have in
6 your files of La Rocca & Sons the
7 payrolls going back to at least
8 2015?

9 A. Yes, I should yes.

10 MR. MENDELSON: We are
11 going to ask, and follow up
12 in writing for the production
13 of those payroll records from
14 La Rocca & Sons.

15 Q. What about FMLR Realty,
16 what is -- what is the -- what does
17 that business do?

18 A. Basically owns the
19 property -- properties, the two
20 properties, 436 and 69-71.

21 Q. Does FMLR Realty have any
22 employees?

23 A. No.

24 Q. What about Marco
25 Industries, does that have any

1 M. LA ROCCA

2 employees?

3 A. No.

4 Q. Who currently owns 436?

5 A. FMLR Realty Management.

6 Q. When did FMLR Realty

7 Management come to own 436?

8 A. I don't remember off the
9 top of my head.

10 Q. Was FMLR Realty Management
11 the company that purchased 436?

12 A. No.

13 Q. Who purchased 436?

14 A. Flavio La Rocca & Sons and
15 Maria La Rocca.

16 Q. Who did you and your
17 husband purchase 436 from?

18 A. The Maffeis.

19 Q. Prior to purchasing 436,
20 did you know the Maffeis?

21 A. No, I didn't.

22 Q. Did your husband know the
23 Maffeis?

24 A. I don't remember.

25 Q. Do you recall what year you

1 M. LA ROCCA

2 and your husband purchased 436?

3 A. I believe it was in 2002 or
4 2003.

5 Q. Okay.

6 I am just going to show you
7 the first exhibit here.

8 MR. MENDELSON: Can
9 everybody see my screen?

10 Q. Ms. La Rocca, are you able
11 to see my screen?

12 A. Yes.

13 Q. What is on the screen has
14 been previously marked in the
15 deposition of Flavio La Rocca as
16 Plaintiff's Exhibit 1.

17 MR. MENDELSON: And so
18 just for the record I am not
19 going to remark these
20 exhibits. We are going to
21 refer to them as the exhibits
22 that were marked during
23 Flavio La Rocca's deposition
24 for ease, and so there is
25 only one set of exhibits. Is

1 M. LA ROCCA

2 that okay with you?

3 MS. ZALANTIS: Yes.

4 Q. So Ms. La Rocca, you are
5 looking at what has been marked as
6 Plaintiff's Exhibit 1. Do you
7 recognize this document?

8 A. Yes.

9 Q. And what is this document?

10 A. It is the deed of the
11 property.

12 Q. Now I am going to scroll to
13 page two, and can you see page two?

14 A. Yes.

15 Q. And can you see at the top
16 of the page where I am pointing with
17 my mouse that it says, "This
18 Indenture made the 18th day of
19 September 2002 between John Maffei
20 and Rose Maffei, and the party of
21 the first and Flavio La Rocca and
22 Maria La Rocca." Do you see that?

23 A. Correct, yes.

24 Q. And do you recognize this
25 document as the deed when you

1 M. LA ROCCA

2 purchased 436?

3 A. Yes.

4 Q. And is it fair to say that

5 purchase occurred in September of

6 2002?

7 A. Yes.

8 Q. Do you recall approximately

9 when it was transferred to FMLR

10 Realty?

11 A. I don't. I'm sorry.

12 Q. What was -- was there a

13 reason for transferring it to FMLR

14 Realty, from the ownership of you

15 and your husband?

16 A. No reason in particular.

17 Q. Did you hire a lawyer to do

18 that process for you, the transfer?

19 A. Yes.

20 Q. Do you know if a deed was

21 recorded when you transferred the

22 property?

23 A. Yes.

24 Q. Do you have a copy of that

25 deed?

1 M. LA ROCCA

2 A. I think so.

3 MR. MENDELSON: We will
4 follow up writing, but we are
5 going to request a copy of
6 that deed to FMLR Realty as
7 well.

8 MS. ZALANTIS: I believe
9 it was already produced.

10 MR. MENDELSON: Then we
11 will check our -- our files,
12 but if it hasn't, we will
13 follow up in writing.

14 Q. At the time that you
15 purchased 436, did you have any
16 conversations with the Maffeis
17 regarding the ownership and what
18 they owned regarding 436?

19 MS. ZALANTIS: Objection
20 to the form of the question.

21 MR. MENDELSON: I will
22 withdraw it and clarify the
23 question.

24 Q. Do you recall any
25 conversations you had with the

1 M. LA ROCCA

2 Maffeis during the purchase of 436?

3 A. We met them. We met
4 actually Mr. Maffei there at the
5 property to look at it.

6 Q. And when you met with
7 Mr. Maffei, was that prior to the
8 purchase of that property?

9 A. Correct.

10 Q. Did the -- at that time, is
11 it fair to say -- withdrawn.

12 Currently, is it fair to
13 say that 436 has a gate out on front
14 of the property on the eastern side
15 of the property abutting East
16 Street?

17 A. Yes, it has always been
18 there.

19 Q. And has that eastern side
20 of 436 Fifth Avenue, does that
21 appear the same today as it did when
22 you purchased it in 2002?

23 A. Yes.

24 Q. Has the gate on the eastern
25 side of that property been moved at

1 M. LA ROCCA

2 all since 2002?

3 A. No.

4 Q. Have any of the walls on
5 the eastern side of that property
6 been moved since 2002?

7 A. No.

8 Q. When you -- when you had
9 that conversation with Mr. Maffei,
10 did you discuss the boundary lines
11 of 436 at all?

12 A. Personally, no, I didn't.

13 Q. When you say, "personally,"
14 do you know if anybody else had a
15 discussion with Mr. Maffei about the
16 boundary lines of 436?

17 A. No, not at that time.

18 Q. Did the discussion of the
19 ownership of the East Street come up
20 in a conversation with Mr. Maffei?

21 A. No.

22 Q. Do you know if your husband
23 had any conversations with
24 Mr. Maffei about the ownership of
25 East Street?

1 M. LA ROCCA

2 A. I would think so. I mean,
3 it is there.

4 Q. Do you know what the
5 substance -- I'm sorry.

6 A. It is there. I mean, our
7 property abuts to it. It is part of
8 it.

9 Q. Do you know what the
10 substance of those conversations
11 were if they happened?

12 A. Basically that we take care
13 of the property that is right in
14 front of us, of that East Street,
15 right in front of our property.

16 Q. At the time that you
17 purchased 436, who did you believe
18 owned East Street?

19 A. Each owner.

20 Q. When you say, "each owner,"
21 who are you referring to?

22 A. Each owner of the
23 properties located, you know, on
24 East Street (indicating).

25 Q. What was your basis for

1 M. LA ROCCA

2 that belief?

3 A. Because we were told that,
4 and because the City never maintains
5 it.

6 Q. Who told you that the
7 property owners that abut East
8 Street own East Street?

9 A. Well, we have had meetings
10 even with officials that say that
11 they don't take care of it and it is
12 our responsibility.

13 Q. I am only referring to in
14 2002 when you purchased the
15 property, who did you believe owned
16 East Street?

17 A. Each owner.

18 Q. And did you have any
19 discussions with anybody prior to
20 that purchase about the ownership of
21 East Street?

22 A. No.

23 Q. And what was your basis of
24 your belief in 2002 that each owner
25 of the properties that abut East

1 M. LA ROCCA

2 Street owned East Street?

3 A. Because when my husband
4 spoke with Maffei -- Mr. Maffei, we
5 had asked, you know, "Who takes care
6 of it in front of the property," and
7 he said, "each owner."

8 Q. Did he say that each owner
9 owns the property or just that they
10 take care of it?

11 A. Owns and take care of it.

12 Q. When did that conversation
13 happen?

14 A. I believe before we bought
15 the property.

16 Q. And where did that
17 conversation happen?

18 A. At the property.

19 Q. Who was present for that
20 conversation?

21 A. Just Mr. Maffei, my
22 husband, and myself.

23 Q. What else was discussed
24 during that conversation?

25 A. I don't remember. I mean,

1 M. LA ROCCA

2 just the property in itself.

3 Q. Was there a discussion
4 about any other ownership of
5 anything else either within 436 or
6 outside of 436 at that time?

7 A. We did speak about what was
8 inside the property. Obviously, he
9 was not keeping his trucks there,
10 but whatever other materials and
11 bins he had there, we would keep.

12 Q. Do you know if there was a
13 survey done at the property prior to
14 you purchasing it?

15 A. Yes.

16 Q. When was that survey done?

17 A. I believe it was in 2000.

18 Q. And who commissioned that
19 survey, if you know?

20 A. I don't know. It was
21 before we were there.

22 Q. I am going to show you --
23 are you able to see my screen?

24 A. Yes.

25 Q. What is on my screen now

1 M. LA ROCCA
2 was previously marked at the
3 deposition of Flavio La Rocca as
4 Plaintiff's Exhibit 1A. Do you
5 recognize Plaintiff's Exhibit 1A?

6 A. Yes.

7 Q. What is that?

8 A. It is a survey of the
9 property.

10 Q. And is this the survey that
11 you are referring to in 2000 before
12 the purchase?

13 A. Yes.

14 MS. ZALANTIS: Objection.
15 Can we clarify on the record
16 about the markings?

17 MR. MENDELSON: I have
18 stated this was used at the
19 deposition. The markings
20 were placed by your client at
21 his deposition. It is the
22 same -- it is the document.

23 Q. Now Ms. La Rocca, other
24 than the markings, do you recognize
25 this survey as the survey that you

1 M. LA ROCCA
2 are speaking of that was
3 commissioned prior to your purchase?
4 A. Yes.
5 Q. Did you go through that
6 survey prior to your purchase of the
7 property?
8 A. I did not personally.
9 Q. Do you know if anybody did?
10 A. I believe my husband.
11 Q. Did you get title insurance
12 when you purchased the property?
13 A. I think so, yes.
14 Q. Do you know if the title
15 insurance company had a survey when
16 they issued that title insurance?
17 A. I would think so.
18 Q. Do you know, as you sit
19 here today, if your property 436
20 encroaches onto East Street?
21 A. I'm sorry, say that again?
22 Q. As you sit here today, are
23 you aware if your property, 436,
24 encroaches onto East Street?
25 A. We were told that in a

1 M. LA ROCCA

2 letter.

3 Q. Have you ever viewed any
4 surveys, or any other drawings, or
5 sketches, that depict 436
6 encroaching onto East Street?

7 A. Not that I remember.

8 Q. Have you ever been told by
9 anybody, other than the City of New
10 Rochelle, that 436 encroaches onto
11 East Street?

12 A. No.

13 Q. When is the first time that
14 you were told that 436 encroaches
15 onto East Street?

16 A. I believe '09 or '10, a
17 letter was sent to us.

18 Q. Okay. I want to have you
19 take a look now -- are you able to
20 see my screen?

21 A. Yes.

22 MR. MENDELSON: For the
23 record, what is on my screen
24 is Plaintiff's Exhibit 4 that
25 was identified at the

1 M. LA ROCCA
2 deposition of Flavio La
3 Rocca. It is -- says on it,
4 "Verified Answer with
5 Affirmative Defenses and
6 Counterclaims."

7 Q. Ms. La Rocca, do you
8 recognize this document?

9 A. Yes.

10 Q. And what is this document?

11 A. A document that was sent to
12 us from, you know, that -- the
13 survey.

14 Q. I want to scroll down to
15 page 13 of 13 of this PDF. Can you
16 see what is on that page?

17 A. Yes.

18 Q. What is on that page?

19 A. A verification.

20 Q. Is there a signature
21 appearing on that page?

22 A. Mine, Maria La Rocca, and
23 the Notary.

24 Q. Okay.

25 Does this refresh your

1 M. LA ROCCA
2 recollection that this is a document
3 that you prepared?

4 A. That I prepared?

5 Q. Well, let's take it one
6 step further. Could you read for me
7 the verification that is on page 13?

8 A. Sure, the one that is on
9 the screen?

10 Q. Yes, please.

11 A. "Maria La Rocca, being duly
12 sworn deposes and says, I am named
13 defendant in the above referenced
14 action. I have read the annexed
15 verified answer with affirmative
16 defenses, know the contents thereof,
17 and the same are true to my
18 knowledge, except as to the matters
19 therein stated to be on information
20 and belief, and as to such matter, I
21 believe the same to be true based
22 upon my review of the record of
23 defendant."

24 Q. Just for the record, if you
25 need me to zoom in on anything

1 M. LA ROCCA

2 because I don't want to make you
3 blind, let me know.

4 A. Thank you. I appreciate
5 that.

6 Q. We can -- I know this
7 virtual stuff is fun, but it can
8 also not be fun so let me know.

9 Does that refresh your
10 recollection about this document?

11 A. Yes.

12 Q. Is this a document that you
13 prepared in this litigation?

14 A. When you say that I
15 prepared, I didn't prepare the legal
16 part of it, I just signed the
17 verification.

18 Q. Is it fair to say prior to
19 signing the document that you
20 reviewed this answer and the
21 counterclaims?

22 A. Yes.

23 Q. And you, in your
24 verification, verified that what was
25 in it is true to the best of your

1 M. LA ROCCA

2 knowledge?

3 A. Correct.

4 Q. I want to go to page --
5 Paragraph 95. If you could start
6 reading at Paragraph 95.

7 A. "Defendant's property has
8 certain concrete Jersey barriers,
9 which barriers the City claims
10 encroach upon East Street."

11 Q. You can keep going.

12 A. Sorry.

13 Q. I will let you know when to
14 stop.

15 A. "When the City constructed
16 a park across East Street from
17 Defendant's property, it took
18 certain concrete Jersey barriers
19 from Defendant's property that
20 belonged to the Defendant. The City
21 installed these concrete Jersey
22 barriers across the street from
23 Defendant's property as a barrier to
24 the park, and then subsequently
25 asphalted these Jersey barriers in

1 M. LA ROCCA
2 place, which installation encroaches
3 upon East Street. The City never
4 asked or offered to pay Defendants
5 to take the concrete Jersey barriers
6 for the City's use, and the
7 Defendants never consented to the
8 City doing so."

9 Q. You can stop right there.

10 A. Okay.

11 Q. And you stopped at the end
12 of Paragraph 98, right?

13 A. Yes.

14 Q. What are concrete Jersey
15 barriers?

16 A. They are these big barriers
17 that are used sometime to retain
18 equipment, or maybe define certain
19 things that you are trying to
20 restrict (indicating).

21 Q. Now, you say in Paragraph
22 97 that the City placed these Jersey
23 barriers on East Street, is that
24 fair?

25 A. Yes.

1 M. LA ROCCA

2 Q. And your contention, in
3 this counterclaim, is that those
4 were your Jersey barriers, and that
5 the City took them, is that fair?

6 A. Correct.

7 Q. Where were the Jersey
8 barriers that you allege the City
9 took when they took them?

10 A. They were outside of the --
11 right outside our fenced property.

12 Q. When you say outside of
13 your fenced property -- well, first
14 of all. When we talk about the
15 Jersey barriers, I believe in this
16 you say that -- I don't think you
17 specifically say how many Jersey
18 barriers it was, but when you are
19 saying -- when I ask where the
20 Jersey barriers were, are we
21 referring to all of the Jersey
22 barriers that the City took?

23 A. I don't remember if they
24 took all of them, but they took a
25 good portion of them.

1 M. LA ROCCA

2 Q. And that good portion of
3 the Jersey barriers, where were they
4 located when the City took them?

5 A. Right outside our fence.
6 We had some stacked one on top of
7 another.

8 Q. When you say outside of
9 your fence, is that the fence on the
10 easternmost side of 436?

11 A. Yes, that is the only fence
12 really we have. Yeah, the gate.

13 Q. Is that the fence that
14 abuts East Street?

15 A. Yes.

16 Q. So is it fair to say that
17 your allegation is that the City
18 took Jersey barriers that were on
19 East Street?

20 A. Yes.

21 Q. Now those Jersey barriers,
22 how -- withdrawn.

23 Who owned those Jersey
24 barriers?

25 A. We did.

1 M. LA ROCCA

2 Q. When you say, "we," is that
3 you and your husband, or is that the
4 company?

5 A. When we first purchased the
6 property, they were there.

7 Q. So is it fair to say that
8 you are alleging you and your
9 husband owned those Jersey barriers?

10 A. Yes.

11 Q. Were those Jersey barriers
12 in the contract of sale?

13 A. I don't remember if they
14 were in the contract of sale, but we
15 spoke about it with the owner.

16 MR. MENDELSON: Just for
17 the record, we have an
18 ongoing discovery dispute
19 regarding the contract of
20 sale. We made a follow up
21 writing to Defendant's
22 objections regards the
23 production. We will follow
24 that up with the court.

25 Q. Do you have a copy of the

1 M. LA ROCCA

2 contract of sale?

3 A. Yes. Not in front of me,
4 but yes.

5 Q. We would ask that you
6 preserve that contract of sale as
7 well as any other documents that we
8 are calling for production of.

9 A. When you say, "contract of
10 sale," the deed?

11 Q. No, I am referring to the
12 agreement between the La Roccas and
13 the Maffeis for the purchase of the
14 property?

15 A. Like if there was something
16 else in writing in?

17 Q. There would have been -- on
18 it there would have been a price,
19 and a -- maybe a down payment, or
20 something like that?

21 A. I believe so.

22 Q. How big are these Jersey
23 barriers that the City allegedly
24 took?

25 A. I am not good with

1 M. LA ROCCA
2 measurements, but there are
3 different sizes and some are very
4 big.

5 Q. Where are those Jersey
6 barriers currently, if you know,
7 that were taken?

8 A. They are on the side of the
9 fence that is on East Street
10 opposite of ours.

11 Q. So is it fair to say that
12 those Jersey barriers remain on East
13 Street today?

14 A. Yes, but not on our
15 property.

16 Q. I'm sorry?

17 A. But not on our property.

18 Q. Is it your contention that
19 outside of the gate, where the
20 Jersey barriers were taken, is your
21 property?

22 A. Yes.

23 Q. Okay.

24 And what is the basis for
25 that belief?

1 M. LA ROCCA

2 A. Because we were told that.
3 I mean, it is right outside our
4 fence, and we were told that the
5 pieces in front of our property are
6 ours to maintain.

7 Q. Who took those Jersey
8 barriers?

9 A. When they were doing
10 construction at the park, the skate
11 park, the contractor there took
12 them.

13 Q. Do you know the name of
14 that contractor?

15 A. Persico, P-E-R-S-I-C-O.

16 Q. Did you witness those
17 Jersey barriers being taken?

18 A. I did not personally see
19 them picking it up and putting it
20 there. My husband did, but they
21 were there when they were
22 constructing it.

23 Q. And it is your belief that
24 Persico taking them is the City
25 taking them, is that fair?

1 M. LA ROCCA

2 A. They were working for the
3 City.

4 Q. Do you know if either you
5 or your husband notified the City
6 regarding those Jersey barriers when
7 they were taken?

8 A. Yes.

9 Q. And how did that happen?

10 A. Through a letter.

11 Q. Do you know if those Jersey
12 barriers had any markings on them
13 before they were taken, showing that
14 they were the property of Flavio and
15 Maria La Rocca?

16 A. I believe no.

17 Q. Do you have any receipts or
18 paperwork that would show the value
19 of those Jersey barriers?

20 A. I don't remember.

21 Q. Did Flavio La Rocca & Sons
22 replace those Jersey barriers after
23 they were taken?

24 A. I don't know. I don't
25 remember.

1 M. LA ROCCA

2 Q. Does Flavio La Rocca & Sons
3 use Jersey barriers in its
4 construction or in its business?

5 A. No.

6 Q. Since you purchased 436,
7 has the City ever maintained East
8 Street?

9 A. No.

10 Q. Do you know if the City
11 maintained it prior to purchasing
12 it?

13 A. We were told that they do
14 not maintain it.

15 Q. I am going to go back to
16 the answer, which is -- bear with
17 me, Plaintiff's Exhibit 4. Are we
18 still on the answer?

19 A. Yes.

20 MS. ZALANTIS: Yes.

21 MR. MENDELSON: Off the
22 record.

23 (Whereupon, a discussion
24 was held off the record.)

25 Q. We are looking at -- I am

1 M. LA ROCCA
2 going to go to Paragraphs 105
3 through 109. Can you read starting
4 at Paragraph 150, and let me know if
5 you need me to zoom in?

6 A. Sure. "From 2002, to
7 present, the Defendants at their
8 sole cost and expense have
9 maintained and/or improved East
10 Street including, but not limited
11 to, plowing and repairing potholes
12 and removing debris in order to
13 properly access its property.
14 During that time, the City has
15 refused to maintain, repair, and
16 improve East Street. If the City is
17 asserting its ownership over East
18 Street, than it should have been
19 maintaining, repairing, and
20 improving East Street from 2002 to
21 present. The Defendants have
22 incurred considerable expenses in
23 amount determined by the court for
24 maintaining, repairing, and
25 improving East Street for merely 20

1 M. LA ROCCA
2 years. The Defendants are entitled
3 to be reimbursed by the City for
4 those expenses related to actions
5 that should have been done by the
6 City as a municipality that owns
7 East Street."

8 Q. As you sit here today, do
9 you believe the City should maintain
10 East Street?

11 A. If they say that they own
12 it, yes, they should.

13 Q. Do you believe that the
14 City owns East Street?

15 A. Their actions speak that
16 they don't.

17 Q. Okay.
18 I want to go to what has
19 been previously marked as
20 Plaintiff's Exhibit 3. Now, I am
21 going to zoom out (indicating). Do
22 you see on the first page there it
23 says, "Summons," and on the second
24 page it says, "Verified Complaint" at
25 the top, and this document is 30

1 M. LA ROCCA
2 pages long, and at the end has
3 various pictures and exhibits. Now
4 I am just scrolling to the bottom
5 here so Ms. La Rocca can see it.

6 Ms. La Rocca, have you seen
7 this document before?

8 A. Yes.

9 Q. Is it fair to say that this
10 is the Complaint that was filed by
11 the City of New Rochelle, against
12 you, your husband, and the
13 businesses we have spoken about?

14 A. Yes.

15 Q. I want to go to Paragraph
16 10. Can you -- let me go in for
17 you. Can you read Paragraph 10?

18 A. Sure.

19 "At all times pertinent
20 hereto, the City has been and
21 presently is the owner of a parcel
22 of property located in the City of
23 New Rochelle, County of Westchester,
24 State of New York, consisting of
25 undeveloped open land between East

1 M. LA ROCCA
2 Street and Flowers Park, the
3 parcel."

4 Q. Remember earlier we talked
5 about the parcel, that I was
6 referring to a piece of property,
7 the parcel?

8 A. Yes.

9 Q. I want to go down to -- to
10 -- we will go down to page 16.
11 These pictures I am showing have
12 been premarked as Plaintiff's
13 Exhibit 3A from Flavio La Rocca's
14 deposition. I am going to the
15 second page of pictures. It is page
16 16 of this PDF. Do you see that?

17 A. Yes.

18 Q. Do you recognize that area
19 that is depicted in the picture?

20 A. Somewhat.

21 Q. Where is that area?

22 A. I believe it is on East
23 Street.

24 Q. Okay.

25 Where on East Street

1 M. LA ROCCA

2 relative to 436 is that area?

3 A. Down the road, going
4 towards East Place.

5 Q. Is it fair to say that that
6 is north, past on East Street, down
7 the roads towards East Place?

8 A. Yes.

9 Q. And when you are
10 traveling -- if you were traveling
11 from -- if you walked out the gate
12 of 436, and faced East Place, would
13 this area that is depicted on this
14 picture I am showing you be on your
15 left side or right side as you walk
16 down towards East Place?

17 A. I believe it is to the
18 right.

19 Q. And that is the area that I
20 am referring to as the parcel. Is
21 that fair for the rest of this
22 deposition?

23 A. Yes.

24 Q. Do you recognize what is in
25 this picture that I am showing you?

1 M. LA ROCCA

2 A. Not really.

3 Q. I will show you -- can you
4 see what is on my screen?

5 A. Yes.

6 Q. Do you recognize what this
7 is?

8 A. It says Google earth, so a
9 Google earth view.

10 Q. Do you see down where my
11 marker is here on a red ping
12 (indicating), on the lower middle of
13 the page it says, "436 Fifth
14 Avenue?"

15 A. Yes.

16 Q. And is that an overhead
17 picture of 436 Fifth Avenue from
18 Google earth, with the skate park
19 across the street?

20 A. It seems to be, yes.

21 Q. And the -- the gate we have
22 been talking about, is that viewable
23 on this overhead photograph in front
24 of 436 on the East Street?

25 A. Yes.

1 M. LA ROCCA

2 Q. I will zoom in for you.

3 A. Yes, I mean, it looks like
4 the -- the yard is open, so the
5 gates are on to the side
6 (indicating).

7 Q. Okay.

8 But is that -- in that
9 lower middle right, to the right of
10 that red ping, are those the
11 outermost eastern walls of 436?

12 A. Yes.

13 MS. ZALANTIS: Just for
14 the record, you were putting
15 your mouse over the area that
16 appears next to a white -- I
17 don't know how to describe
18 it, a white vehicle or
19 structure.

20 MR. MENDELSON: Okay.

21 Q. I am moving my mouse down
22 East Street, away from Fifth Avenue,
23 right to the right of that red ping
24 (indicating). If you follow this
25 down East Street, is that the skate

1 M. LA ROCCA
2 park that you were talking about
3 with the little bell marking in it,
4 the green bell marking?

5 A. Yes.

6 MR. MENDELSON: I just
7 moved my mouse around that
8 bell marking (indicating).

9 Q. Going further down East
10 Street towards East Place, can you
11 see East Place on this picture?

12 A. I believe so, yes.

13 Q. And would that be the area
14 down here, following the -- what
15 look to be a soccer field, to the
16 left on this picture, the street
17 that is perpendicular to it?

18 A. Yes.

19 Q. And do you see this area
20 that I am putting my mouse around
21 (indicating), is has been previously
22 drawn a circle around it at another
23 deposition. Do you see that area
24 that is right to the north of the
25 skate park and next -- and abutting

1 M. LA ROCCA

2 to the parking lot right here
3 (indicating)?

4 A. Yes.

5 Q. Is that the -- the parcel
6 that we have been speaking of?

7 A. I believe so.

8 Q. Does that area now have a
9 fence around it?

10 A. Yes.

11 Q. That is the area that we
12 are referring to as the parcel, Ms.
13 La Rocca.

14 A. Okay.

15 Q. Is this picture a fair and
16 accurate depiction of how 436 and
17 the surroundings area looked?

18 A. Yes. I am not there daily,
19 but yes, overall.

20 MS. ZALANTIS: I want to
21 clarify, are you asking her
22 currently or --

23 MR. MENDELSON: Yes,
24 currently.

25 Q. Just generally, an overhead

1 M. LA ROCCA

2 shot of the area?

3 A. I would think so, yes.

4 Q. Has Flavio La Rocca & Sons,
5 or any of its employees, ever parked
6 its vehicles in the parcel?

7 A. No.

8 Q. Has Flavio La Rocca & Sons,
9 or any of its employees, ever
10 performed any work on the parcel?

11 A. Not to my knowledge.

12 Q. Do you see these vehicles
13 that are parked directly across East
14 Street from the parcel that I am
15 moving my mouse over here
16 (indicating)?

17 A. Yes.

18 Q. Do you know who owns this
19 property, meaning, the property at
20 the corner of East Place and East
21 Street?

22 A. Yes.

23 Q. Who owns that property?

24 A. Guglielmo.

25 Q. Has Flavio La Rocca & Sons

1 M. LA ROCCA

2 rented space in that property

3 before?

4 A. Yes.

5 Q. Do you see those vehicles
6 parked right outside, on the eastern
7 side of Mr. Guglielmo's property?

8 A. Yes.

9 Q. Who parks their vehicles
10 there?

11 A. I believe it is Guglielmo's
12 employees and neighbors, or people
13 that even go to the skate park.

14 Q. Has Flavio La Rocca & Sons,
15 or any of its employees or owners,
16 ever parked there?

17 A. No.

18 Q. Has Flavio La Rocca & Sons,
19 or its owners, or employees, ever
20 done work to that area that I am
21 circling my mouse around to the east
22 side of Guglielmo's property
23 (indicating)?

24 A. No.

25 MS. ZALANTIS: Just for

1 M. LA ROCCA
2 the record, you circled
3 parking cars.

4 MR. MENDELSON: Yes.
5 Right to the eastern side
6 there of his property.

7 Q. Has -- I am just going to
8 -- I am going to refer -- when I say
9 La Roccas, I mean FMLR Realty, you,
10 your husband, or Flavio La Rocca &
11 Sons.

12 Have the La Roccas ever
13 applied to the City for the option
14 to park in the parcel?

15 A. No.

16 Q. Have the La Roccas ever
17 asked the City for extra parking?

18 A. No, not there. We -- the
19 skate park we had inquired about
20 purchasing.

21 Q. When did you do that?

22 A. I don't remember the year,
23 but before it was being constructed.

24 Q. Do you know when the skate
25 park was constructed approximately?

1 M. LA ROCCA

2 A. I don't remember. A while
3 ago, but I don't remember.

4 Q. Was that before or after
5 2010?

6 A. I don't know.

7 Q. Was that before or after
8 2015?

9 A. No.

10 Q. No, meaning before?

11 A. It was before 2015, yes. I
12 believe that has been there for five
13 years already, yeah.

14 Q. Now, does -- do the La
15 Roccas ever park their vehicles on
16 East Street?

17 A. We do not park. We
18 temporarily stage when we are taking
19 our trucks out, we temporarily park
20 our trucks outside.

21 Q. When you say, "stage," what
22 does staging mean?

23 A. So we have to back out of
24 our yard, so if we are lining up the
25 trucks before they go out in the

1 M. LA ROCCA

2 morning, that is where we put them.

3 Q. And when you say,
4 "temporarily," how long is
5 temporarily?

6 A. It depends. It could be an
7 hour, it could be four hours. It
8 depends.

9 Q. Has the City of New
10 Rochelle ever given the La Roccas,
11 or the businesses, permission to do
12 that?

13 A. Never needed it.

14 Q. That is not my question.
15 Has the City of New
16 Rochelle ever given the La Roccas
17 permission to park their vehicles on
18 East Street?

19 A. No.

20 Q. Has the City of New
21 Rochelle ever given the La Roccas
22 permission to do anything on the
23 parcel?

24 A. No.

25 Q. I want to go down on

1 M. LA ROCCA
2 Plaintiff's Exhibit 3A, as
3 previously marked, which is page 14
4 of Plaintiff's Exhibit 3. I want to
5 go down to page 15. On page 15, is
6 it fair to say that page 15 depicts
7 part of the parcel?

8 A. It looks that way.

9 Q. Do you recognize any of the
10 individuals in this picture?

11 A. No.

12 Q. Do you see that there is a
13 truck on the left side of this
14 picture as you are looking at it?

15 A. Yes.

16 Q. And what does that truck
17 say on it?

18 A. F La Rocca & Son, Inc.,
19 with our phone number and website.

20 Q. Do you recognize that
21 truck?

22 A. Yes.

23 Q. Is that one of Flavio La
24 Rocca & Sons trucks?

25 A. It was, yes.

1 M. LA ROCCA

2 Q. When you say, "it was," did
3 Flavio La Rocca & Sons own that
4 truck?

5 A. Yes.

6 Q. When approximately did
7 Flavio La Rocca & Sons own that
8 truck?

9 A. I -- I don't remember when
10 exactly.

11 Q. Did it own it in
12 approximately 2015?

13 A. Yes, I believe so, yes.

14 Q. Is that truck still owned
15 by Flavio La Rocca & Sons?

16 A. No.

17 Q. When approximately was it
18 sold -- withdrawn.

19 What happened to that
20 truck?

21 A. It was sold.

22 Q. When approximately was it
23 sold?

24 A. I believe two or three
25 years ago.

1 M. LA ROCCA

2 Q. Now, can you see that there
3 are -- there is another truck in
4 this picture underneath the words
5 Flavio La Rocca?

6 A. Yes.

7 Q. Do you recognize this
8 truck?

9 A. Yes.

10 Q. What is that truck?

11 A. A pick-up.

12 Q. Who owns that truck?

13 A. Flavio La Rocca & Sons.

14 Q. Is it fair to say that
15 truck was owned by Flavio La Rocca &
16 Sons in 2015?

17 A. Yes.

18 Q. Now are these trucks -- in
19 2015, were they owned by the
20 company, or by the -- Flavio La
21 Rocca & Sons, or were they owned by
22 any individuals?

23 A. Flavio La Rocca & Sons.

24 Q. And do you see in the
25 picture there are four individuals

1 M. LA ROCCA

2 depicted in this picture?

3 A. It is hard to see, but
4 yeah.

5 Q. Can we agree there are two
6 individuals on the right side, and I
7 am moving my mouse around the side,
8 about from about the second truck
9 you just identified, and to the
10 right of the picture?

11 A. Yes.

12 Q. Do you recognize either of
13 those individuals?

14 A. No.

15 Q. And what, if anything, does
16 it look like those individuals are
17 doing?

18 A. It is even hard to see,
19 maybe I am just blind.

20 Q. How long have you been
21 married to Flavio La Rocca?

22 A. 26 years.

23 Q. And prior to being married,
24 how long did you know Mr. La Rocca?

25 A. Two years.

1 M. LA ROCCA

2 Q. Is it fair to say that you
3 know what Mr. La Rocca looks like?

4 A. Absolutely.

5 Q. I am moving to page 16 of
6 Plaintiff's Exhibit 3.

7 Does this picture show the
8 parcel?

9 A. Yes.

10 Q. Okay.

11 And is that fair, it is how
12 it looked in approximately 2015?

13 A. Yes, I think so.

14 Q. Do you recognize any of the
15 individuals in this picture?

16 A. No.

17 Q. Do you recognize any of the
18 equipment in this picture?

19 A. Yes.

20 Q. What equipment do you
21 recognize?

22 A. The only piece that is
23 there, the compactor, I think that
24 is called.

25 Q. How do you recognize that

1 M. LA ROCCA

2 compactor?

3 A. Because we purchased it.

4 Q. And when you say, "we," is
5 that Flavio La Rocca & Sons?

6 A. Correct.

7 Q. Did Flavio La Rocca & Sons
8 own that in approximately 2015?

9 A. Yes.

10 Q. Now in this picture, what
11 is the compactor doing?

12 A. Just seems like it is going
13 on top of that area.

14 Q. Now, other than employees
15 of Flavio La Rocca & Sons, did
16 anybody else use that compactor in
17 2015?

18 A. No.

19 Q. So is it fair to say that
20 the person riding that compactor is
21 an employee of Flavio La Rocca &
22 Sons in 2015?

23 A. It would be. I just can't
24 recognize them.

25 Q. And do you recall Flavio La

1 M. LA ROCCA

2 Rocca & Sons doing work to the
3 parcel in 2015?

4 A. I wasn't present.

5 Q. That is not my question.

6 Do you know if Flavio La
7 Rocca & Sons did work to the parcel
8 in 2015?

9 A. No, not really.

10 Q. When you say, "not really,"
11 is it that you are not sure, or no?

12 A. I'm not sure, but yeah --
13 I'm not sure.

14 Q. Did the City of New
15 Rochelle give Flavio La Rocca & Sons
16 permission to use a compactor on the
17 parcel?

18 A. No.

19 Q. Did the City of New
20 Rochelle ever give permission for
21 Flavio La Rocca & Son's employees to
22 be on the parcel?

23 A. No.

24 Q. I am going to go to the
25 next picture, which is page 17. Do

1 M. LA ROCCA

2 you recognize this picture?

3 A. I recognize the equipment.

4 Q. Is it fair to say this is a
5 picture of the parcel?

6 A. Yes.

7 Q. Is it fair to say this is
8 about how it appeared in 2015?

9 A. I guess so, yeah.

10 Q. What equipment do you
11 recognize?

12 A. The loader.

13 Q. And how do you recognize
14 that loader?

15 A. Because it has -- if I am
16 not mistaken, on the door, something
17 of ours, like a logo.

18 Q. Is that loader something
19 that Flavio La Rocca & Sons has
20 owned?

21 A. Yes.

22 Q. Did it own it in
23 approximately 2015?

24 A. Yes.

25 Q. Does Flavio La Rocca & Sons

1 M. LA ROCCA

2 still own that loader?

3 A. I believe so.

4 Q. When, approximately, did
5 Flavio La Rocca & Sons purchase that
6 loader?

7 A. I don't remember, maybe the
8 early 2000s.

9 Q. Is it fair to say that
10 Flavio La Rocca & Sons owned it
11 before 2010?

12 A. Yes.

13 Q. Going to the next picture
14 on page 18. Do you recognize the
15 area in this picture?

16 A. Yes, it is another view of
17 it.

18 Q. And is it another view of
19 the parcel?

20 A. Yes.

21 Q. And is it fair to say that
22 this is how it appeared in about
23 2015?

24 A. I guess, yes.

25 Q. Do you recognize any of the

1 M. LA ROCCA

2 vehicles in this picture?

3 A. Yes.

4 Q. What vehicle do you

5 recognize?

6 A. The pick-up truck.

7 Q. And is that the pick-up

8 truck on the left side of the photo?

9 A. Yes.

10 Q. And how do you recognize

11 that pick-up truck?

12 A. It has our logo on it.

13 Q. Going back to page 17 in

14 3A, do you see these vehicles that

15 are parked on the parcel on the

16 right-hand side of the photograph

17 that I am moving my mouse around

18 (indicating)?

19 A. Yes.

20 Q. Do you recognize any of

21 those vehicles?

22 A. They are not ours.

23 Q. Are they any of your

24 employees?

25 A. No.

1 M. LA ROCCA

2 Q. Going to page 19. Well,
3 actually, we will go back to page
4 18. Do you see in the upper part of
5 this picture on the parcel there is
6 a -- it looks like a mound of
7 material that I am moving my mouse
8 across (indicating)?

9 A. Okay.

10 Q. Light brown, do you see
11 that?

12 A. Okay.

13 Q. Do you recognize that
14 material?

15 A. No.

16 Q. Does Flavio La Rocca & Sons
17 ever use any machines to make wood
18 chips?

19 A. No.

20 Q. Does Flavio La Rocca & Sons
21 own any machines that can do that?

22 A. No.

23 Q. Does Flavio La Rocca & Sons
24 ever use wood chips in any of its
25 construction?

1 M. LA ROCCA

2 A. No, mulch, but not that. I
3 don't even know what that is
4 actually.

5 Q. Going down to page 20, is
6 this another picture of the parcel?

7 A. Yes, it seems.

8 Q. And do you recognize any of
9 these vehicle parked in there?

10 A. Not ours or our employees.

11 Q. I want to now turn -- one
12 moment. I am going to share with
13 you Plaintiff's Exhibit 12, which
14 was previously marked at prior
15 deposition. Do you see at the top
16 it says, "Defendant's Response to
17 First Set of Interrogatories and
18 Document Demands by Plaintiff?"

19 A. Yes.

20 Q. Now I am going to go to the
21 end of the document, page 15, and do
22 you see a verification on that page?

23 A. Yes.

24 Q. Do you recognize any of the
25 signatures on that page?

1 M. LA ROCCA

2 A. Yes, Flavio's and mine.

3 Q. Were you involved in the
4 preparation of this document?

5 A. I don't remember.

6 Q. If you need to take a
7 minute to review it, if you want me
8 to --

9 A. If you can scroll down.

10 Q. Sure, sure. So you tell me
11 when to move, okay?

12 A. Yeah.

13 Q. We are on page one now.

14 A. Yes.

15 Q. Page two. I am going to
16 skip ahead. I am going to skip to
17 page three where it starts the
18 requests. The first request on page
19 three is, "Identify all persons
20 having knowledge of the facts
21 relevant to the subject matter of
22 the Complaint."

23 Do you see that?

24 A. Yes.

25 Q. And page four, their second

1 M. LA ROCCA

2 request, "State who the people are
3 depicted in the various photographs
4 in Exhibit 1 to the Complaint."

5 Do you see that?

6 A. Which request?

7 Q. Request 2, that I just read
8 that first sentence?

9 A. Yes.

10 Q. And then page five,
11 "Produce all documents and
12 communications concerning any
13 articles, posts or mentions in the
14 local news site, Talk of the Sound,
15 of the Defendants."

16 Do you see that?

17 A. Yes.

18 Q. Do you recognize this?

19 A. Yes, somewhat, it has been
20 a while, but somewhat.

21 Q. Do you know if you were
22 involved in preparing the answers to
23 these questions?

24 A. I believe so, yes.

25 Q. And other than you, who

1 M. LA ROCCA

2 else was involved in preparing the
3 answers?

4 A. My husband, Flavio.

5 Q. I am going to go back to
6 page four, and I am looking
7 specifically at Request Number 2.
8 Can you read -- I will read the
9 question, and if you could read the
10 answer, and we will move from there.

11 The Request Number 2 is,
12 "State who the people are depicted
13 in the various photographs in
14 Exhibit 1 to the Complaint. The
15 area depicted and what the
16 individuals are doing." Just to
17 give you some frame of reference,
18 those pictures that we just went
19 through in Plaintiff's Exhibit 3A,
20 those are the pictures that are
21 referring to here, and I am going to
22 move down to your response to
23 Exhibit 1A. Can you start where my
24 mouse is at Exhibit 1A (indicating)?

25 A. "Depicts a now fenced off

1 M. LA ROCCA
2 area near Flowers Park, which had
3 been used at the time the photograph
4 was taken, and for many years before
5 and even months after by the
6 neighboring property owners, Benny's
7 Tree Service and PAB Paving for
8 parking of their employees
9 vehicles."

10 Q. I want you to stop right
11 there. Now, that area that we are
12 speaking about there, that is the
13 parcel, correct?

14 A. Correct.

15 Q. Now, in here you responded
16 that the Benny's Tree Service and
17 PAB Paving use that area as parking.
18 How do you know that?

19 A. Because I have seen it.

20 Q. Okay.

21 And other than PAB Paving
22 and Benny's Tree Service, does
23 anybody else use that area as
24 parking?

25 A. Their employees.

1 M. LA ROCCA

2 Q. In approximately 2015?

3 A. Their employees.

4 Q. How often would they use
5 that as parking?

6 A. Every day.

7 Q. Did PAB Paving or Benny's
8 Tree Service ever do any work to the
9 parcel?

10 A. I don't know.

11 Q. Did you ever see any of
12 their loaders or pavers on the
13 parcel?

14 A. I don't know.

15 Q. Did you ever see any of
16 their employees raking the parcel?

17 A. I don't know.

18 Q. Did you ever see any of
19 their, or do you know, if they
20 placed materials on the parcel?

21 A. I wouldn't know.

22 Q. Have you or anyone you know
23 had conversations with Benny's Tree
24 Service or PAB Paving about the
25 parcel?

1 M. LA ROCCA

2 A. No.

3 Q. I want you to start --
4 still in the same response to 1A,
5 the sentence that starts, "The men."

6 A. You want me to read it?

7 Q. Please.

8 A. "The men depicted in
9 Exhibit 1A are raking existing
10 gravel in the parking area with
11 rakes, and smoothing and compacting
12 the gravel in the parking area that
13 had become displaced as a result of
14 snow plowing East Street and the
15 Parring area to allow for continued
16 parking of vehicles by the employees
17 of Benny's Tree Service and PAB
18 Paving in the parking area, which
19 condition" --

20 Q. Stop right there, please.

21 This talks about
22 snowplowing. Who is snowplowing
23 East Street?

24 A. At that time?

25 Q. In 2015.

1 M. LA ROCCA

2 A. We were.

3 Q. And when you say, "we
4 were," is that Flavio La Rocca &
5 Sons?

6 A. Correct.

7 Q. How often would Flavio La
8 Rocca & Sons plow East Street?

9 A. Depending on the storm.

10 Q. Other than Flavio La Rocca
11 & Sons, did any other people plow
12 East Street?

13 A. I don't think so because we
14 would usually take care of it.

15 Q. Would you agree that this
16 answer to this question is stating
17 that Flavio La Rocca & Sons was
18 doing work on the parcel, in raking
19 it out, and smoothing and compacting
20 the gravel area?

21 A. Based on what I am reading,
22 yes.

23 Q. Do you have personal
24 knowledge of that work?

25 A. No.

1 M. LA ROCCA

2 Q. Do you have personal
3 knowledge of snowplowing East
4 Street?

5 A. Yes.

6 Q. I want to go down to 1B.
7 Can you read 1B?

8 A. "Exhibit 1B depicts the
9 same parking area described in
10 response to 1A. Also depicted are
11 piles of mulch that upon information
12 and belief were placed in the
13 parking area by Benny's Tree Service
14 and/or PAB Paving."

15 Q. Stop right there. You
16 testified earlier that Flavio La
17 Rocca & Sons uses mulch in its
18 business, correct?

19 A. Yes, of clients.

20 Q. And is mulch stored in
21 Flavio La Rocca & Sons property at
22 436?

23 A. No.

24 Q. Where does the mulch come
25 from that is used by Flavio La Rocca

1 M. LA ROCCA

2 & Sons?

3 A. By the supplier that we
4 purchase it from.

5 Q. And is it stored anywhere
6 once it is purchased?

7 A. No, because you pick it up
8 fresh to install it at the clients.

9 Q. What do you pick it up
10 using?

11 A. What do you mean?

12 Q. When Flavio La Rocca & Sons
13 picks up mulch from the supplier --
14 withdrawn.

15 Does it use -- withdrawn.

16 When Flavio La Rocca & Sons
17 picks up mulch from the supplier,
18 does it use any machinery to do
19 that?

20 A. No, Flavio La Rocca & Sons
21 does not.

22 Q. Does it use any trucks to
23 transport it, the mulch?

24 A. Yes.

25 Q. What sort of trucks?

1 M. LA ROCCA

2 A. Dump trucks.

3 Q. In 2015, would it have used
4 those same dump trucks that were
5 pictured in the photographs that I
6 showed you in Plaintiff's 3A?

7 A. For the clients, yes.

8 Q. Now, you just read that
9 upon information and belief the
10 parking area -- the mulch was placed
11 by Benny's Tree Service and/or PAB
12 Paving. Do you believe that to be
13 true?

14 A. Yes.

15 Q. What is your basis for that
16 belief?

17 A. Because Benny's is tree
18 service and he has the equipment to
19 do all that work.

20 Q. Have you ever seen Benny
21 put all that material there?

22 A. No, I didn't personally
23 seen it.

24 Q. Has anyone you have known
25 ever seen Benny put that material

1 M. LA ROCCA

2 there?

3 A. I don't know.

4 Q. Do you know Benny, from
5 Benny's Tree Service?

6 A. Yeah, I mean from seeing
7 each other down the street, yeah.

8 Q. What is his full name?

9 A. Benny Rivera.

10 Q. Have you spoken to Benny
11 Rivera ever about the parcel?

12 A. No.

13 Q. Have you ever spoken to
14 Patrick Bongo (ph) about the parcel?

15 A. No.

16 Q. Is Patrick Bongo the owner
17 of PAB Paving?

18 A. As far as I know, yes.

19 Q. Have you ever spoken to
20 either one of those individuals
21 about East Street?

22 A. Yes.

23 Q. What were those
24 conversations?

25 A. When the eminent domain --

1 M. LA ROCCA
2 when the City was trying to take all
3 of our properties to eminent domain.

4 Q. And when approximately was
5 that?

6 A. I don't remember.
7 Definitely after 2005, 2006. I
8 don't remember exactly the year.

9 Q. Was it before or after
10 2015?

11 A. I don't remember what year
12 it was.

13 Q. Was it before or after this
14 lawsuit started?

15 A. I believe it was before.

16 Q. Did -- during those
17 conversations, were you present for
18 those conversations?

19 A. Which conversations?

20 Q. With -- with either Benny
21 Rivera or Patrick Bongo about the
22 ownership -- about East Street?

23 A. Yes, for the eminent
24 domain, yes.

25 Q. Have you ever spoken to

1 M. LA ROCCA

2 Patrick Bongo or Benny Rivera about

3 the ownership of East Street?

4 A. No. Personally, no.

5 Q. Do you know if anybody else

6 has?

7 A. Sorry, it froze.

8 Q. Do you know if anybody

9 else, other than you, has spoken

10 with either of those individuals

11 about the ownership of East Street?

12 A. I don't know.

13 Q. Do you know if anybody,

14 other than you, has spoken to them

15 about the parcel?

16 A. No, I don't think so.

17 Q. Now, going back to the

18 parcel, in those pictures I showed

19 you, is it fair to say that there

20 are no trees or vegetation on that

21 parcel?

22 A. I would have to look at it

23 again, but, I mean, I thought I saw

24 trees.

25 Q. I am going to go back to 3,

1 M. LA ROCCA

2 page 16. Would you agree it shows
3 the parcel. That area from East
4 Street up to the mulch piles, do you
5 see the light brown piles?

6 A. Yes.

7 Q. Are there any trees on that
8 area?

9 A. No.

10 Q. Is there any vegetation in
11 that area?

12 A. Not that I could tell.

13 Q. Before 2015, was there
14 trees or vegetation in that area?

15 A. I don't believe there were
16 trees because they were parking
17 there.

18 Q. When is the earliest time
19 you recall people parking in the
20 parcel?

21 A. Always.

22 Q. So it is your testimony
23 people have parked in the parcel
24 since 2002 when you bought the
25 property?

1 M. LA ROCCA

2 A. Yes.

3 Q. Do you know when or if that
4 parcel was ever cleared?

5 A. No, I don't.

6 Q. Has Flavio La Rocca & Sons
7 ever moved any trees or vegetation
8 from that parcel?

9 A. No.

10 Q. Do you know if Benny's Tree
11 Service has ever moved any
12 vegetation from that parcel?

13 A. I don't.

14 Q. Or PAB Paving?

15 A. I don't.

16 Q. I haven't asked, if at any
17 time you need a break, let me know.
18 If you need a bathroom break or
19 water break, whatever you need.

20 A. If we can, that would be
21 great.

22 Q. Now is a good time. Do you
23 want to take a five-minute break?

24 A. Sure.

25 MS. ZALANTIS: Can I ask

1 M. LA ROCCA
2 how long you think you may
3 have left of this deposition?

4 MR. MENDELSON: I think
5 I have another hour and a
6 half, Kathy, hopefully
7 shorter.

8 (Whereupon, a recess was
9 taken at this time.)

10 (Whereupon, the requested
11 portion was read back by the
12 reporter:

13 Q: Do you know if
14 Benny's Tree Service has ever
15 moved any vegetation from
16 that parcel?

17 A: I don't.

18 Q: Or PAB Paving.

19 A: I don't.)

20 Q. Ms. La Rocca, are you aware
21 -- withdrawn.

22 Do you know who created the
23 -- or who originally paved over the
24 parcel?

25 A. It was like that when

1 M. LA ROCCA

2 Persico -- they were parking all
3 their vehicles there when they were
4 building the skate park.

5 Q. Did you witness them pave
6 over the parcel?

7 A. No, but all their equipment
8 and trucks were there.

9 Q. And when approximately was
10 that, what year?

11 A. I don't know offhand.

12 Q. Was that before 2010?

13 A. I believe so, that was
14 before the skate park was built,
15 yes.

16 Q. Do you recall how that
17 area, the parcel looked, prior to
18 Persico coming?

19 A. No, I don't. That, I
20 don't.

21 Q. Do you ever remember trees
22 on the parcel?

23 A. No, I don't really
24 remember.

25 Q. Okay.

1 M. LA ROCCA

2 I am going to now show you
3 -- well, withdrawn.

4 Have you ever heard of Talk
5 of the Sound?

6 A. Not until we were published
7 in it.

8 Q. Do you know when
9 approximately that was?

10 A. 2014/2015. I don't
11 remember.

12 Q. Have you ever met any
13 representative or reporters from
14 Talk of the Sound?

15 A. No.

16 Q. Are you aware or do you
17 know an individual named Bob Cox
18 (ph)?

19 A. No, I don't know him
20 personally.

21 Q. Have you ever met Bob Cox?

22 A. No.

23 Q. Have you ever spoken with
24 Bob Cox?

25 A. Nope.

1 M. LA ROCCA

2 Q. Do you know if your husband
3 has?

4 A. No, he hasn't.

5 Q. Do you know if anybody from
6 Flavio La Rocca & Sons or any of
7 your businesses has?

8 A. No.

9 Q. Have you ever been asked to
10 comment for any Talk of the Sound
11 source?

12 A. No.

13 Q. Have you read the articles
14 that were published about you and
15 your businesses in Talk of the
16 Sound?

17 A. Yes, back then.

18 Q. What did you think of them?

19 A. They were all lies.

20 Q. One of the allegations by
21 Talk of the Sound is that you were
22 -- that Flavio La Rocca & Sons and
23 its employees were doing work on the
24 parcel, is that fair?

25 A. I believe so, yes.

1 M. LA ROCCA

2 Q. Was that a lie?

3 A. I wasn't there, personally.

4 Q. I am now going to show you

5 what has been previously marked as

6 Plaintiff's Exhibit 13. Are you

7 able to see my screen?

8 A. No.

9 Q. What about now?

10 A. Yes.

11 Q. This is a video that was

12 produced by us in discovery, and was

13 previously marked at Flavio La

14 Rocca's deposition as Plaintiff's

15 Exhibit 13.

16 Ms. La Rocca, have you seen

17 this video just based on the title

18 that is shown on the screen at

19 minute 00?

20 A. Honestly, I don't remember.

21 I stopped looking at what he was

22 doing, and what he was publishing

23 because it was just following us

24 everywhere. I don't like that.

25 Q. When you say following you

1 M. LA ROCCA
2 everywhere, did you ever see him?

3 A. I saw him driving by my
4 property, my personal --

5 Q. When you say by your
6 property -- I'm sorry. I didn't
7 hear you?

8 A. By my personal residence.

9 Q. When you say -- hold on one
10 second.

11 When you say, "personal
12 residence," are you referring to the
13 residence that you currently live
14 at?

15 A. Yes.

16 Q. Have you ever seen Mr. Cox
17 at 436?

18 A. Yes.

19 Q. When was that?

20 A. After this happened. He
21 was always trying to stalk us. We
22 had to call the police.

23 Q. When you say trying to
24 stalk you, what -- what do you mean?

25 A. If I would be outside of my

1 M. LA ROCCA
2 yard, or my husband, or any of my
3 employees, he would try to attempt
4 to come into our properties. That
5 is where I saw him, at my yard.

6 Q. Is it your -- did Bob Cox
7 ever come into your property?

8 A. He attempted, and we
9 blocked him.

10 Q. What property is that?

11 A. 436 Fifth Avenue.

12 Q. How did he attempt to get
13 into 436 Fifth Avenue?

14 A. By walking.

15 Q. Was he attempting to walk
16 through the gates?

17 A. Yes.

18 Q. And how was he blocked?

19 A. My employees told him to
20 get off the property.

21 Q. Were you there?

22 A. In my car.

23 Q. Was Mr. La Rocca there?

24 A. No, not that time, no.

25 Q. Okay.

1 M. LA ROCCA

2 Approximately how many
3 times have you seen Bob Cox?

4 A. Two times, here at the
5 house when he was trying to
6 videotape my property and my kids
7 playing, and at the yard.

8 Q. Okay.

9 Have you watched this video
10 in preparation for this deposition?

11 A. No.

12 Q. I am going to now play the
13 video that is in Plaintiff's Exhibit
14 13. I am stopping it at ten
15 seconds.

16 Do you recognize what is
17 depicted on this video right now?

18 A. Yes, the same as the other
19 exhibits that you showed.

20 Q. Does that look to be the
21 same -- withdrawn.

22 Does that show the property
23 -- I mean the parcel?

24 A. Part of it.

25 Q. Okay.

1 M. LA ROCCA

2 And is that the same -- is
3 this a fair and accurate
4 representation of how it looked in
5 2015?

6 A. Yes, I don't remember that
7 date or totally that year, but yeah.

8 Q. Is that the same loader
9 that we previously discussed that
10 was in Plaintiff's Exhibit 3 A?

11 A. Yes.

12 Q. And does the parcel look in
13 similar condition as the pictures
14 that we previously looked at in 3A?

15 A. I'm sorry, say that again?

16 Q. Does the parcel look in
17 similar condition as the pictures we
18 looked at in 3A earlier?

19 A. That had like the same
20 view, yes.

21 Q. Is -- is that loader that
22 is depicted, is that the one owned
23 by Flavio La Rocca & Sons in about
24 2015?

25 A. Yes.

1 M. LA ROCCA

2 Q. Is that loader in this
3 frame at second 10 of the video, is
4 it on the parcel?

5 A. Seems to be partially on
6 the parcel and partially on East
7 Street.

8 Q. I am playing the video. I
9 am stopping at second 13. Do you
10 recognize anybody in this video?

11 A. No, I don't.

12 Q. Stopping at 17. Are you
13 able to recognize anybody now?

14 A. No.

15 Q. What is the area back
16 behind -- I am putting my cursor
17 over an area (indicating). It looks
18 to be a scoreboard in the
19 background. What is that area?

20 A. That is the -- what do they
21 call it? City park.

22 Q. Is that Flowers Park?

23 A. I would assume so, yes.

24 Q. Playing the video again.
25 Stopping at minute -- at second 20.

1 M. LA ROCCA

2 Are you able to recognize any people
3 depicted in that now?

4 A. No, very fuzzy.

5 Q. What about any of the
6 vehicles?

7 A. Yes.

8 Q. Which vehicles are you able
9 to recognize?

10 A. The ones that I recognized
11 before, the left one and the right
12 one.

13 Q. And are those the two
14 yellow trucks?

15 A. Yes.

16 Q. And are those -- were those
17 owned by Flavio La Rocca & Sons
18 approximately in 2015?

19 A. Yes.

20 Q. I am stopping at second 20.
21 Do you see the two people on the
22 right here that I am putting my
23 cursor around that are on the parcel
24 (indicating)?

25 A. Yes.

1 M. LA ROCCA

2 Q. What are they doing?

3 A. I see a white slant, but I
4 can't clearly see what they are
5 doing.

6 Q. I am letting it roll to 24.
7 Were you able to tell what they were
8 doing when I rolled the video?

9 A. It looked like raking.

10 Q. And is that on the parcel?

11 A. Seems to be.

12 Q. And do you recognize any of
13 those individuals?

14 A. No.

15 Q. Letting the video play.
16 Stopping it at second 34. Do you
17 recognize any of the individuals
18 that are depicted there?

19 A. No, it is very fuzzy.

20 Q. What about any of the
21 vehicles?

22 A. The compactor that I said
23 before, yes.

24 Q. Was that owned by Flavio La
25 Rocca & Sons in approximately 2015?

1 M. LA ROCCA

2 A. If it is the same one, yes.

3 Q. Well, is it the same one
4 that you identified earlier?

5 A. I would assume so.

6 Q. Stopping at -- I am going
7 to back it up a little. I am
8 stopping it at second 37. Are you
9 able to recognize that individual?

10 A. No.

11 Q. What about now at second
12 39?

13 A. No.

14 Q. It is your testimony you
15 don't know who that person is?

16 A. No.

17 Q. Is that one of the five
18 employees that you had in
19 approximately 2015?

20 A. I don't think so, no. I
21 don't know.

22 Q. Did Flavio La Rocca & Sons
23 in about 2015 ever employ or hire to
24 do work people who weren't employees
25 of the business?

1 M. LA ROCCA

2 A. Sorry, can you say that
3 again?

4 Q. Sure.

5 In approximately 2015, did
6 Flavio La Rocca & Sons use people to
7 do work who weren't employees?

8 A. Subcontractors, yes.

9 Q. What about other than
10 subcontractors?

11 A. No.

12 Q. Did Flavio La Rocca & Sons
13 ever use day laborers?

14 A. No.

15 Q. So would the only people,
16 by your testimony, that would be
17 working for Flavio La Rocca & Sons
18 in approximately 2015 be either
19 employees or subcontractors?

20 A. That worked for the year,
21 yes.

22 Q. What about at any time that
23 Flavio La Rocca & Sons has been at
24 436, has Flavio La Rocca & Sons ever
25 used laborers that are either not

1 M. LA ROCCA

2 employees or subcontractors?

3 A. Subcontractors for our
4 clients, yes.

5 Q. What is -- what is a
6 subcontractor?

7 A. A subcontractor is
8 basically someone that we don't do
9 the work for, for example, tree
10 services we do not do, sprinklers
11 service we don't do.

12 Q. What about laborers, other
13 than employees, were those used by a
14 subcontractors, has Flavio La Rocca
15 & Sons used any other laborers since
16 moving to 436?

17 A. No.

18 Q. Stopping at second 40. Do
19 you recognize that individual?

20 A. No.

21 Q. Do you speak Spanish?

22 A. Very limited, not fluent at
23 all.

24 Q. Can you tell what is in
25 this individual's hand?

1 M. LA ROCCA

2 A. Can you play it?

3 Q. I stopped it at second 43.

4 Would you agree there are three

5 individuals depicted now?

6 A. That is what it seems, yes.

7 Q. The guy in the front

8 wearing the blue shirt, do you

9 recognize that individual?

10 A. No.

11 Q. What about the guy on the

12 right, wearing the black pants and

13 the tan shirt?

14 A. Nope.

15 Q. What about the guy in the

16 back?

17 A. No.

18 Q. So it is your testimony you

19 have never seen these people before?

20 A. No.

21 Q. Meaning --

22 A. I have never seen this.

23 Q. No, you haven't seen them

24 before?

25 A. Correct.

1 M. LA ROCCA

2 Q. I am going to let it play
3 because you can see their faces very
4 clearly from 39. I am stopping it
5 at 44. Was that able -- from
6 playing that, were you able to
7 recognize any of those individuals?

8 A. No.

9 Q. Stopping it at 50. Now are
10 you able to recognize any of those
11 individuals?

12 A. Nope.

13 Q. Were those individuals and
14 that -- specifically that individual
15 depicted holding the shovel, was
16 that -- and withdrawn.

17 Can you see the man in the
18 tan shirt with the black pants on
19 and the gloves on?

20 A. Yes.

21 Q. Would you agree he is
22 holding what looks to be a shovel?

23 A. Seems to be, yes.

24 Q. Have you ever seen that
25 person before?

1 M. LA ROCCA

2 A. No.

3 Q. You handle all the payroll
4 for Flavio La Rocca & Sons, correct?

5 A. Correct.

6 Q. How are your employees
7 paid?

8 A. On the books, by check.

9 Q. And are -- do you hand the
10 checks to your employees?

11 A. No.

12 Q. Have you --

13 A. I don't deal with the field
14 much.

15 Q. Have you met each and every
16 one of the employees that were
17 employed by Flavio La Rocca & Sons
18 in 2015?

19 A. No.

20 Q. When some -- so --
21 withdrawn.

22 Take me through the process
23 of when somebody is hired for
24 Flavio?

25 A. Flavio hires them, he meets

1 M. LA ROCCA

2 with them and interviews them.

3 Q. Do they have to fill out
4 any paperwork with regard to taxes
5 and anything like that?

6 A. Yes, they have to fill out
7 a W-2 -- I always get this wrong,
8 W-4 is it? Yes, I9, W-4, and the
9 driving -- you know, if they are
10 going to drive our trucks because we
11 have to submit it to our insurance.

12 Q. And during that process, do
13 you ever meet with them as the
14 bookkeeper?

15 A. No.

16 Q. Do they ever bring any of
17 the paperworks to you?

18 A. No.

19 Q. How often in about 2015
20 were you at 436?

21 A. Not often.

22 Q. Do you have an office
23 there?

24 A. No.

25 Q. Do you have an office at

1 M. LA ROCCA

2 Potter Avenue?

3 A. I do.

4 Q. And do the employees of
5 Flavio La Rocca & Sons, in 2015,
6 would they also go to Potter Avenue?

7 A. Not in the office, no.

8 Q. How big is Potter Avenue?

9 A. I am not good with
10 dimensions. It has a house in the
11 front, and it has the garage with
12 the office in the back, and the --
13 some trucks parked there and
14 equipment.

15 Q. In 2015, approximately how
16 many employees did Flavio La Rocca &
17 Sons have?

18 A. I don't remember. Not many
19 because our daughter got ill and we
20 had to down size.

21 Q. But it is your testimony
22 that you didn't meet them all?

23 A. Yes, I didn't.

24 Q. I am stopping at 54. Do
25 you recognize any of the individuals

1 M. LA ROCCA

2 -- second 45. Do you recognize any
3 of the individuals in that frame?

4 A. No.

5 Q. Have you ever met Felipe
6 Galindez?

7 A. Yes.

8 Q. Have you ever met Martin
9 Sanchez?

10 A. Yes.

11 Q. Is either one -- any of the
12 individuals depicted in this video
13 so far, are they those people?

14 A. No.

15 Q. I am stopping at 101. What
16 have you seen the individuals do on
17 the parcel thus far?

18 A. Raking.

19 Q. I am stopping the video.
20 Do you recognize the trucks in -- in
21 -- at 122?

22 A. Yes.

23 Q. Are there -- the truck that
24 is closest to us, is that a truck
25 that was owned by Flavio La Rocca &

1 M. LA ROCCA

2 Sons in 2015?

3 A. Yes.

4 Q. Was there one person or
5 many people that drove that truck?

6 A. It depends on the project.

7 Q. Is it your testimony that
8 people other than your husband drove
9 that truck?

10 A. Yes.

11 Q. Now I am stopping it at
12 126. Minute 126. What is depicted
13 here?

14 A. The pick-up truck near our
15 yard.

16 Q. What is that on the
17 right-hand side of the -- of the
18 frame?

19 A. The Jersey barriers with
20 the gate, one gate is open.

21 Q. Is that the gate that we
22 have spoken about that is on the
23 easternmost side of 436?

24 A. Correct.

25 Q. And is that actually 436 on

1 M. LA ROCCA

2 the right-hand side of the frame?

3 A. Yes.

4 Q. Stopping it at 129. Is
5 that also 436 still depicted on the
6 right-hand side?

7 A. Yes.

8 Q. And is that a fair and
9 accurate depiction of how the front
10 of 436, on the east side abutting
11 East Street, looks today?

12 A. Yes.

13 Q. And is that how it looked
14 in 2015?

15 A. It has always looked that
16 way.

17 Q. Is that since you purchased
18 it in 2002?

19 A. Yes.

20 Q. Stopping at 150. Do you
21 see the individual with the wheel
22 barrel on the left-hand side?

23 A. Yes.

24 Q. Do you recognize that
25 person?

1 M. LA ROCCA

2 A. No.

3 Q. How many employees of
4 Flavio La Rocca & Sons did you know
5 in 2015?

6 A. I don't know. I don't have
7 the records in front of me.

8 Q. I mean, did you know any of
9 the employees other than you and
10 your husband?

11 A. Felipe Galindez and Martin
12 because they worked for us. They
13 have been working for us.

14 Q. And it is your testimony
15 you never met anybody -- any other
16 employee of Flavio La Rocca & Sons
17 other than Felipe and Martin?

18 A. Yeah, I don't know these
19 guys.

20 Q. But if -- if they were
21 working for Flavio La Rocca & Sons,
22 they were either employees or
23 subcontractors, is that correct?

24 A. Correct.

25 Q. I am going to stop it at

1 M. LA ROCCA

2 230, two minutes and 30 seconds.

3 Can you see the compactor?

4 A. Yes, to my right.

5 Q. And have you been able to
6 view what its doing?

7 A. No, but usually the job of
8 a compactor is just to roll over.

9 Q. Have you, in this video, up
10 to minute 2:30, have you seen it
11 rolling over the parcel?

12 A. No, I don't remember seeing
13 that.

14 Q. I am going to rewind it
15 back to 226. I am going to stop it
16 at 234. Were you able to view what
17 the compactor was doing?

18 A. It seemed like it was just
19 staying there.

20 MS. ZALANTIS: Can you
21 play it forward?

22 THE WITNESS: I'm sorry?

23 Q. I am going to start it at
24 220. I am going to stop it again at
25 234. Were you able to see if the

1 M. LA ROCCA

2 compactor was moving on the parcel?

3 A. Yes.

4 Q. And was it?

5 A. Yes.

6 Q. Is that the same compactor

7 that we spoke about earlier?

8 A. Yes.

9 Q. You testified that only

10 employees would ride on the

11 compactor of Flavio La Rocca & Sons

12 that you had previously identified.

13 Do you recognize that individual

14 that is riding on it?

15 A. No.

16 Q. You testified earlier, Ms.

17 La Rocca, that at some point the

18 City notified you that 436 was --

19 actually, withdrawn.

20 I am going to show you what

21 was marked as Plaintiff's Exhibit 15

22 at a previous deposition. Can you

23 see this picture?

24 A. Yes.

25 Q. And do you recognize what

1 M. LA ROCCA

2 is depicted in the picture?

3 A. Our park.

4 Q. Is that the parcel that it
5 is showing?

6 A. I can't see the full thing,
7 but it -- yes, it seems like it.

8 Q. And is that a fair and
9 accurate depiction of how it looked
10 in approximately 2015?

11 A. Yes.

12 Q. Do you see over to the --
13 the left-hand side there is an area
14 with cones that I am circling my
15 mouse around (indicating)?

16 A. Yes.

17 Q. Do you ever remember any
18 trees or vegetation being on that
19 area?

20 A. No.

21 Q. Did Flavio La Rocca & Sons
22 remove any vegetation from that area
23 with the cones?

24 A. No.

25 Q. Move -- that is the page

1 M. LA ROCCA
2 one of two we just went through.
3 Page two of two here, do you
4 recognize this as the parcel as
5 well?

6 A. Yes.

7 Q. Is that a fair depiction of
8 the parcel?

9 A. Yes.

10 Q. Do you see that area on the
11 left of the cones?

12 A. Yes.

13 Q. Are there any trees in this
14 photograph in the area with the
15 cones?

16 A. No.

17 Q. You testified earlier that
18 at some point the City notified you
19 that 436 was encroaching onto their
20 property, is that fair?

21 A. Yes.

22 Q. When approximately was
23 that?

24 A. I believe it was in '09.

25 Q. How were you notified?

1 M. LA ROCCA

2 A. Letter, a letter that was
3 written to us by, I believe it was
4 Jeff Coleman and Paul Vacca.

5 Q. Other than that -- Getting
6 that letter, did anything happen
7 previous to receiving that letter
8 that you were notified of an
9 encroachment?

10 A. No, not that I remember.

11 Q. I am going to show you what
12 has been previously marked as
13 Plaintiff's Exhibit 9 in a previous
14 deposition. Take a moment and read
15 through this.

16 A. Yes.

17 Q. What is this?

18 A. It is a letter to FMLR
19 Realty Management regarding a so
20 called encroachment from Jeff
21 Coleman and Paul Vacca.

22 Q. Is this the letter that you
23 were just testifying about?

24 A. Yes.

25 Q. Was this the first

1 M. LA ROCCA
2 notification that you received from
3 the City about the encroachment?

4 A. Yes, I believe so.

5 Q. Can you read the first
6 paragraph?

7 A. "Please be advised that it
8 has come to the attention of both
9 this office and the Department of
10 Public Works that the legal
11 nonconforming contractor's yard at
12 the aforementioned location is
13 encroaching on City property.
14 Specifically, the public right of
15 way along East Street. The
16 encroachment was discovered during
17 an inspection of the area and a
18 review of records contained in the
19 file of the City of New Rochelle."

20 Q. And then the next
21 paragraph?

22 A. "Consistent with the
23 Provision of 281 of the Code of the
24 City of New Rochelle, you are
25 ordered to remove the encroachment

1 M. LA ROCCA
2 within 30 days. You may request a
3 hearing for this matter by
4 contacting the Secretary to the
5 Commissioner of Public Works at
6 654-2132. Please feel free to
7 contact."

8 Q. What, if anything, did you
9 do in response to this letter?

10 A. We called Jeff Coleman and
11 Paul Vacca and we asked for a
12 meeting.

13 Q. Did that meeting occur?

14 A. Yes.

15 Q. When approximately in
16 relation to this letter did that
17 meeting occur?

18 A. Not too long after.

19 Q. A week, two weeks?

20 A. Probably, two weeks. I
21 don't remember exactly.

22 Q. And where did that meeting
23 occur?

24 A. At 436 Fifth Avenue.

25 Q. Who was present for that

1 M. LA ROCCA

2 meeting?

3 A. My husband, Flavio La
4 Rocca, myself, Paul and Jeff.

5 Q. And what was discussed that
6 a meeting?

7 A. The encroachment and how
8 they came to that conclusion, and we
9 discussed about getting a survey to
10 find out how much because they
11 didn't even know how to tell us how
12 much it was so they suggested that
13 we get a survey done, and we told
14 them that we would contact them as
15 soon as it was done.

16 Q. Did you believe at the time
17 of the meeting that 436 was
18 encroaching onto City property?

19 A. No.

20 Q. Did you believe at the time
21 of the meeting that 436 was
22 encroaching onto East Street?

23 A. No, because when we bought
24 the property nothing was said that
25 we were encroaching. If a sale is

1 M. LA ROCCA
2 done, you would think when you are
3 doing the sale it would be brought
4 to your attention.

5 Q. Who would bring that to
6 your attention?

7 A. Either the owner or the
8 attorneys when they are doing their
9 background check. No one ever
10 mentioned anything to us.

11 Q. Now, when you testified
12 that the City suggested you get a
13 survey. Is that something that you
14 did?

15 A. Yes.

16 Q. And when did you do that?

17 A. I want to say within a --
18 we called them as soon as we
19 finished the meeting, I think that
20 day or the day after, and we got the
21 survey done. I don't know exactly
22 what day or how quickly they came,
23 but I know they came fairly within a
24 reasonable amount of time.

25 Q. Do you know what company

1 M. LA ROCCA

2 you hired to do that?

3 A. Gabriel Senor.

4 Q. I am showing you what has
5 been marked a previous deposition at
6 Plaintiff's Exhibit 10. Let me back
7 out. I am going to scroll through.
8 It is a four-page document
9 (indicating). I am done scrolling.
10 Do you recognize that?

11 A. Yes.

12 Q. What is it?

13 A. That is the receipt from
14 Gabriel Senor when they did the
15 stakeout and payment.

16 Q. I am on page one. Is there
17 anybody's signature that appears on
18 that page?

19 A. My husband, Flavio La
20 Rocca.

21 Q. What is the date?

22 A. 8/10/09.

23 Q. So that is about a month
24 and a half after the letter from the
25 City of New Rochelle?

1 M. LA ROCCA

2 A. Yep.

3 Q. And what was -- what was
4 the -- if you could read under this
5 part up here that says, "Terms,"
6 what does it say underneath that?

7 A. "Payment due upon receipt
8 of invoice 1.5 percent per month
9 thereafter description of services."

10 Q. And underneath that?

11 A. "Stakeout right side paper
12 street."

13 Q. What did you understand
14 paper street to mean?

15 A. That it is not a real
16 street belonging to the City.

17 Q. Meaning that it does belong
18 to the City or it does not belong to
19 the City?

20 A. That it does not.

21 Q. And what is your basis for
22 belief of that?

23 A. Because we were told by the
24 City itself, when we called several
25 times for debris, or things that

1 M. LA ROCCA
2 needed to be cleaned up, that they
3 said that they have no interest in
4 taking care of that street and it
5 doesn't belong to them.

6 Q. It is your testimony that
7 you called somebody from the City of
8 New Rochelle, and they said that
9 East Street doesn't belong to them?

10 A. Yes.

11 Q. Who did you speak to from
12 New Rochelle?

13 A. I called DPW, and I called
14 the Department of Buildings.

15 Q. And when was this?

16 A. Back -- I don't know. I
17 mean, years ago.

18 Q. Well, was it before getting
19 the 2009 letter or after?

20 A. We have complained several
21 times about garbage debris being
22 disposed. I don't remember if it
23 was before 2009. It probably was,
24 and even after.

25 Q. Who did you speak to from

1 M. LA ROCCA
2 the City that told you that East
3 Street did not belong to the City?

4 A. I spoke to the secretary
5 there, whoever picked up the phone.
6 But even many times when I have
7 spoken -- many times -- when I spoke
8 with Jeff Coleman and Paul Vacca on
9 the property and they said it was a
10 paper street.

11 Q. Did Paul Vacca and Jeff
12 Coleman say it was a -- what were
13 their exact words about East Street?

14 A. What do you mean?

15 Q. What exactly -- what were
16 their exact words that they told you
17 about East Street?

18 A. That they were there in
19 regard to the encroachment, that
20 they are not responsible for taking
21 care of East Street. Every owner is
22 responsible for taking care of it.

23 Q. Did Paul Vacca and Jeff
24 Coleman every say that the City of
25 New Rochelle does not own East

1 M. LA ROCCA

2 Street?

3 A. I don't remember those
4 words exactly. I don't.

5 Q. Did anybody from the City
6 of New Rochelle ever say, "We don't
7 own East Street?"

8 A. No, they have always used
9 the term paper street.

10 Q. Now, Paul Vacca -- the
11 letter you got was for an
12 encroachment, correct?

13 A. Correct.

14 Q. What does an encroachment
15 mean to you?

16 A. Well, that is what I asked
17 them, and they were basically saying
18 that part of the property may be on
19 East Street.

20 Q. I am going to go back to
21 Plaintiff's Exhibit 9. I want you
22 to read the first sentence, please?

23 A. "Please be advised that it
24 has come to the attention of both
25 this office and the Department of

1 M. LA ROCCA
2 Public Works that the legal
3 nonconforming contractors's yard at
4 the aforementioned location is
5 encroaching on City property.
6 Specifically, the public right of
7 way along East Street."

8 Q. Okay. You can stop there.
9 Now this letter doesn't say that you
10 may be encroaching, right?

11 A. No, it says it was
12 discovered.

13 Q. It says that -- that 436 is
14 encroaching on East Street, correct?

15 A. That is what it says.

16 Q. Going back to Plaintiff's
17 Exhibit 10. I am going down to the
18 second page here.

19 A. Uh-huh.

20 Q. Actually, staying on the
21 first page, do you know what
22 "stakeout right side" means?

23 A. They are basically staking
24 it out, putting stakes to see the
25 boundaries of the property.

1 M. LA ROCCA

2 Q. I am going to the second
3 page, now the third page. Can you
4 see on page three that there were
5 professionals services rendered? I
6 am putting my cursor on the middle
7 of the page (indicating)?

8 A. Yes.

9 Q. And you see it says,
10 "Stakeout east side of lot?"

11 A. Yes.

12 Q. And then it says, "Stakeout
13 sketch e-mailed to Flavio?"

14 A. Yes.

15 Q. Do you recall receiving the
16 e-mail of the stakeout sketch?

17 A. I don't recall. We must
18 have received it at some point.

19 Q. Do you recall e-mailing
20 with this company, Senor, prior to
21 having this stakeout done?

22 A. No.

23 Q. I am going to go down to
24 page four. Have you seen this
25 before?

1 M. LA ROCCA

2 A. Yes.

3 Q. And what is this?

4 A. The stakeout sketch.

5 Q. And what do you believe --
6 withdrawn.

7 Were you ever -- did you
8 come to a belief as to what this
9 stakeout sketch shows?

10 A. The boundaries of the
11 property.

12 Q. Does this stakeout sketch
13 confirm that there is an
14 encroachment onto East Street or
15 does it show something else?

16 MS. ZALANTIS: Objection
17 to the form. You are asking
18 for a legal conclusion.

19 MR. MENDELSON:

20 Withdrawn.

21 Q. Do you know what this
22 sketch shows?

23 A. As I mentioned before, it
24 seems that it is showing the
25 boundaries of the property.

1 M. LA ROCCA

2 Q. Do you know if it shows
3 that the boundaries -- or that the
4 -- that 436 is within the boundaries
5 of the property, or that it is
6 outside the boundaries of the
7 property?

8 A. I don't know how to see it.

9 Q. At some point you received
10 this sketch, correct?

11 A. Yes.

12 Q. And what, if anything, did
13 you do when you received it?

14 A. We met with Paul Vacca, my
15 husband, and I, and Jeff Coleman.

16 Q. And approximately when was
17 that?

18 A. I want to say a week or two
19 after.

20 Q. And where was that meeting?

21 A. At Fifth Avenue, 436 Fifth
22 Avenue.

23 Q. What occurred at that
24 meeting?

25 A. We took out the sketch, we

1 M. LA ROCCA
2 met with them, we showed them where
3 everything was that Senor did.

4 Q. What did you show them that
5 Senor did?

6 A. The stakeout. It says
7 there is a wood stake on the
8 property.

9 Q. And --

10 A. And they marked an -- also
11 an X on the back of our property so
12 if I am looking at this correctly,
13 where it says, "East Street," you go
14 up, and whatever that corner is,
15 triangle.

16 Q. Are you referring to up
17 here where my marker is
18 (indicating)?

19 A. Yes.

20 MR. MENDELSON: For the
21 record, she is referring to
22 the -- it says at the top of
23 the photo, "10 cross on
24 concrete base."

25 Q. So it is your testimony

1 M. LA ROCCA
2 that you showed that marking to Paul
3 Vacca and Mr. Coleman?

4 A. Absolutely.

5 Q. And did you represent or
6 did your husband represent what
7 these markings showed?

8 A. It wouldn't have to
9 represent anything. We showed the
10 sketch and they saw what was
11 written.

12 Q. What was the take away?

13 A. They said that it was very
14 minimal, that the City doesn't
15 really care, so it is fine, as far
16 as we are concerned it is fine.

17 Q. When you say, "minimal,"
18 how much was the encroachment based
19 on the staking an the sketch?

20 MS. ZALANTIS: I am going
21 to object. Again, you are
22 asking her to read -- she is
23 not an expert on reading a
24 stakeout sketch. It speaks
25 for itself. She doesn't need

1 M. LA ROCCA

2 to testify.

3 Q. You can answer the
4 question.

5 A. I don't know.

6 Q. Did you come to an
7 understanding, based on the staking
8 and/or sketch, how much of an
9 encroachment there was?

10 A. No, they just said that it
11 was minimal.

12 Q. My question is, did you and
13 your husband have an understanding,
14 based on the sketch done, how much
15 the encroachment was in 2009 when
16 you received the sketch?

17 A. I don't remember if it was
18 told, or -- I don't remember that.

19 Q. Do you recall whether the
20 stakeout showed that there was an
21 encroachment of 436 onto East
22 Street?

23 MS. ZALANTIS: Objection.

24 A. I don't know how to read
25 it.

1 M. LA ROCCA

2 Q. Did you ever speak to
3 Gabriel Senor or somebody from Senor
4 about the sketch and the staking in
5 2009?

6 A. No, I mean, we called them
7 to ask them to come and sketch out
8 the property.

9 Q. And did they ever tell you
10 how much the property was
11 encroaching onto East Street in
12 2009?

13 A. No.

14 Q. In 2009, did you see where
15 the stakes were and the cross was
16 put?

17 A. Yes.

18 Q. Where are those on your
19 property?

20 A. To the -- so when you are
21 looking at the property, to the
22 right there is the stake mark there,
23 and then as mentioned before, at the
24 back of the property there is an X
25 on like a concrete base, an orange

1 M. LA ROCCA

2 X.

3 Q. And do you have an idea if,
4 you know, how far those stakes are
5 onto East Street?

6 A. No, I don't have an idea.

7 Q. So that meeting in 2009,
8 other than providing Paul Vacca and
9 Jeff Coleman with this sketch, what
10 else was talked about?

11 A. If we needed to do
12 anything, and they said, "It is
13 minimal, the City does not care
14 about this. So if it is so minimal,
15 so you are fine, just leave it that
16 way."

17 Q. So is it your testimony
18 that their belief that it was
19 minimal was based on this sketch?

20 A. I guess so.

21 Q. Now, in response -- after
22 the meeting -- approximately
23 withdrawn.

24 Approximately how long was
25 the meeting?

1 M. LA ROCCA

2 A. If my memory serves me
3 right, maybe 15, 20 minutes.

4 Q. And after that meeting and
5 through 2015, did you, your husband,
6 or the company making any
7 alterations or changes to the east
8 side of 436?

9 A. No.

10 Q. Did there come another time
11 when you were contacted about an
12 encroachment?

13 A. Not that I remember.

14 Q. I am going to show you what
15 was previously been marked as
16 Plaintiff's Exhibit 16. Can you
17 read this out loud?

18 A. "Dear property owner, the
19 City of New Rochelle recently
20 completed an examination of the area
21 in which your real property is
22 located. It is environs and the
23 sitting of improvements made to your
24 property. This review revealed that
25 at certain points where your

1 M. LA ROCCA
2 property and the property of other
3 owners in the area borders the
4 neighboring property, owned by the
5 City, there are circumstances for
6 certain improvements, such as fence
7 with gate, a row of hedges, a
8 concrete wall, and in one instance a
9 metal shelf used for storage of
10 materials and equipment encroaches
11 and intrudes on, and over City owned
12 real property. Please note that the
13 above list of encroachments is not
14 and does not constitute a complete
15 list of intrusions, but is only
16 provided as an example of some of
17 the more obvious transgressions."

18 Do you want me to continue?

19 Q. Please.

20 A. Pursuant to Article 7,
21 Section 55 of the Charter of the
22 City, the Commissioner of the
23 Department of Public Works is
24 charged with the duty, among other
25 things, to control the operation and

1 M. LA ROCCA
2 maintenance of public streets.
3 Since permission to use City owned
4 property or a portion therefore, has
5 not been given nor secured, this
6 unsanctioned use for your personal
7 or business use must cease
8 forthwith. You are hereby directed
9 immediately to remove at your own
10 costs and expense, and any and all
11 improvements which encroach beyond
12 the boundary of your property and
13 intrude onto any portion of City
14 owned real property. If you have
15 any questions concerning this
16 matter, or wish to resolve this
17 matter, do not hesitate to contacted
18 the undersigned."

19 Q. It is a two-page document.

20 Do you recall receiving
21 this letter?

22 A. Yes.

23 Q. And what is the date of the
24 letter?

25 A. November 18, 2015.

1 M. LA ROCCA

2 Q. Is it fair to say this is
3 another letter of the City telling
4 you that 436 is encroaching on City
5 property?

6 A. Yes.

7 Q. And can you see there is
8 handwriting at the top?

9 A. Yes, that is my
10 handwriting.

11 Q. And what does that say?

12 A. That is my handwriting, it
13 says, "Met with Flavio, and Maria,
14 and attorneys, and other business
15 owners."

16 Q. Do you recall that meeting?

17 A. Yes.

18 Q. Who was present at that
19 meeting?

20 A. Some of the other business
21 owners --

22 Q. Who --

23 A. -- and a previous attorney.

24 Q. What others business?

25 A. Benny.

1 M. LA ROCCA

2 Q. Is that Benny Rivera?

3 A. Yes, Benny Rivera, and then
4 I don't remember which other ones
5 were because if I am not mistaken at
6 this time is when the City started
7 attacking us with the eminent
8 domain.

9 Q. Now, what was the substance
10 of that meeting, was it about this
11 letter?

12 A. Yeah.

13 Q. And after that meeting,
14 what, if anything, did you and the
15 other property owners do?

16 A. Like I said, I believe soon
17 after this is when we received the
18 eminent domain. The City wanting to
19 take our property, as well as all
20 the other properties.

21 Q. Now, my question is more
22 focused on with regard to what the
23 substance of this letter, the
24 encroachment; after that meeting,
25 what, if anything, did Flavio La

1 M. LA ROCCA

2 Rocca & Sons and Maria and Flavio La
3 Rocca do?

4 A. I don't remember, honestly.
5 If we sent them -- I believe -- I
6 don't remember. I have to check the
7 record.

8 Q. What record would you
9 check?

10 A. I need to see if I have
11 note or anything. I don't --

12 Q. Do you keep notes regarding
13 this encroachment?

14 A. No.

15 Q. Do you keep notes, in
16 general, regarding 436 or the
17 property?

18 A. Yes.

19 Q. What is on those notes?

20 A. Basically when -- on these,
21 like on the letters, if recalling
22 them, asking them -- meeting with
23 them, giving them information.

24 Q. Do you have other notes,
25 other than the note that appears

1 M. LA ROCCA

2 here on this exhibit?

3 A. I don't think so. My only
4 thing is soon after this is when
5 they were coming, like immediately
6 after -- in December for the eminent
7 domain, so I don't remember exactly
8 what we did.

9 MR. MENDELSON: We are
10 going to call and we will
11 follow up in writing for
12 production of any notes of
13 this witness regarding these
14 letters or this action.

15 Q. In receiving this letter,
16 was it apparent to you now that the
17 City was not okay with the
18 encroachment?

19 A. Yes, that is what it seems.

20 Q. And what, if anything, did
21 you, or your husband, or the
22 businesses do in response?

23 A. Again, right after this
24 were a series of events with the
25 City, when they were trying to take

1 M. LA ROCCA
2 our property for eminent domain so
3 then our focus was basically to save
4 our properties and to save our
5 businesses.

6 Q. Did there come a time when
7 you reached back out to Mr. -- or
8 the Senor company that did the
9 staking?

10 A. I don't remember.

11 Q. Did there come a time when
12 you contacted any other surveying
13 companies to do a full surveying,
14 not just a staking of the property,
15 to determine whether it was in fact
16 encroaching on the City property?

17 A. I don't remember.

18 Q. When was the last time that
19 you spoke with the Senor company?

20 A. When we had the stakeout.

21 Q. I am going to show you what
22 I am now marking as Plaintiff's
23 Exhibit 26.

24 (Whereupon, Plaintiff's
25 Exhibit 26, an e-mail chain,

1 M. LA ROCCA
2 was marked for
3 identification, as of this
4 date.)

5 Q. Now it says my name at the
6 top, but that is just because I
7 printed it off and I can represent
8 that to you. Do you see there is an
9 e-mail chain on this document?

10 A. Yes.

11 Q. What is your e-mail
12 address?

13 A. Casalarocca@aol.com.

14 Q. And starting at the bottom,
15 I am on page one into page two, do
16 you see an e-mail there?

17 MS. ZALANTIS: Can we
18 look at the entire document
19 first?

20 MR. MENDELSON: Sure.

21 Q. Let me know if you need
22 more time.

23 A. Okay.

24 Q. I am on the bottom of page
25 one, onto page two, do you recognize

1 M. LA ROCCA

2 the e-mail address that this is
3 from?

4 A. Yes.

5 Q. And what is that?

6 A. Casalarocca@aol.com.

7 Q. Is that your e-mail?

8 A. Yes.

9 Q. And when was this sent?

10 A. Wednesday, July 6, 2016.

11 Q. And who was it sent to?

12 A. Info@GabrielSenorpc.

13 Q. And that Gabriel Senor PC,
14 is that the company that did the
15 stakeout in 2009?

16 A. Correct.

17 Q. Can you read the subject
18 line?

19 A. "Survey/deed and info on
20 436 Fifth Avenue, New Rochelle."

21 Q. And can you read the
22 e-mail?

23 A. "Attached please find the
24 info we spoke about earlier. You
25 will find our original survey, deed,

1 M. LA ROCCA
2 stakeout (from your company) and
3 latest survey done by City of New
4 Rochelle. Please advise asap your
5 findings. We can also meet on the
6 property to view stakeout."

7 Q. Do you recall sending this
8 e-mail?

9 A. Yes, I am getting --
10 starting to remember.

11 Q. And what was the reason
12 that you sent this e-mail?

13 A. Because, again, with the
14 eminent domain, they started doing
15 drilling in each of our properties.
16 They started digging down, and then
17 they presented a new survey from
18 when they wanted to take the eminent
19 domain, and I wanted to make sure I
20 had everything on file.

21 Q. So were you -- were you
22 seeking to do a new survey?

23 A. I think I was seeking more
24 to verify what the City was doing.

25 Q. Moving up to the top?

1 M. LA ROCCA

2 A. Uh-huh.

3 Q. There is another e-mail
4 right on top of the one that you
5 just read, from July 6, 2016 from
6 info@GabrielSenorpc.com to that
7 casalarocca@aol.com, and it says,
8 "Maria, there was nothing attached.
9 Kathy."

10 Do you remember receiving
11 that e-mail?

12 A. Yes.

13 Q. And then above that, you
14 wrote back on July 6th, to Gabriel
15 Senor PC, "sorry." Can you see
16 that?

17 A. Yes.

18 Q. And then there is also --
19 you can see when we received this
20 e-mail from Gabriel Senor PC, to
21 Elliot Senor, there is an
22 attachment, and it says, "Info on
23 436 Fifth Avenue." What I am going
24 to show you now -- withdrawn.

25 Do you know if you ended up

1 M. LA ROCCA
2 sending anything to Gabriel Senor to
3 follow up on?

4 A. I believe I sent them
5 surveys.

6 Q. Okay.

7 A. I sent it back.

8 Q. I am now going to show you
9 what I am marking as Plaintiff's
10 Exhibit 26A.

11 (Whereupon, Plaintiff's
12 Exhibit 26A, an e-mail chain,
13 was marked for
14 identification, as of this
15 date.)

16 Q. I will scroll through it so
17 you have a chance to review it.

18 MS. ZALANTIS: It is
19 upsidedown.

20 MR. MENDELSON: Yep.

21 Q. On page four of four, does
22 this look familiar?

23 A. Yes.

24 Q. Is this the -- what you
25 sent to Gabriel Senor in those

1 M. LA ROCCA

2 e-mails?

3 A. Yes.

4 Q. I am on page four of four,
5 what is that?

6 A. This is a survey done by
7 the City of New Rochelle for the
8 eminent domain.

9 Q. And is that something that
10 you were sending to Gabriel Senor to
11 review?

12 A. Yes.

13 Q. I am going to show you what
14 I am marking as Plaintiff's Exhibit
15 27.

16 (Whereupon, Plaintiff's
17 Exhibit 27, an e-mail chain,
18 was marked for
19 identification, as of this
20 date.)

21 Q. I will scroll through. I
22 am stopping at the bottom. If you
23 need more time, let me know.

24 A. Can you go back?

25 Q. I'm sorry?

1 M. LA ROCCA

2 A. Can you scroll back up?

3 Q. Uh-huh (indicating). Are
4 you ready?

5 A. Yes.

6 Q. At the bottom of page two,
7 this is a two-page document, and
8 again this is Plaintiff's Exhibit
9 27, do you recognize this?

10 A. Yes.

11 Q. And what is this document?

12 A. E-mail that --
13 conversations that I had with
14 Gabriel Senor.

15 Q. And at the bottom there is
16 an e-mail from Flavio and Maria La
17 Rocca at casalarocca@aol.com to
18 Gabriel Senor, and it says,
19 "Attached please find the info we
20 spoke about earlier. You will find
21 our original survey, deed, stakeout
22 from your company, and latest survey
23 done by City of New Rochelle.
24 Please advise of your findings. We
25 can also meet at the property to do

1 M. LA ROCCA
2 stakeout." Was that -- what I just
3 showed you in 26A, those documents,
4 were those the documents that you
5 sent them to review?

6 A. Yes.

7 Q. And what was the purpose of
8 having them meet at your property to
9 view the stakeout?

10 A. To confirm if the City's
11 survey was correct. We lost trust
12 in the City at that point, and I
13 wanted to confirm everything.

14 Q. Were you able to ultimately
15 confirm that the City was correct
16 with their survey?

17 A. I don't -- I don't remember
18 meeting with them. I don't remember
19 meeting with them so I don't know.
20 I can't say.

21 Q. Well, as you sit here
22 today, what is your belief at how
23 much 436 is encroaching onto East
24 Street?

25 A. I don't know.

1 M. LA ROCCA

2 Q. Moving up to the next

3 e-mail, Gabriel Senor, on July 6,

4 2016, writes back to Flavio and

5 Maria La Rocca, "Maria, nothing

6 attached. Kathy," which seems to be

7 the same e-mail we just read earlier

8 with your "sorry" response right

9 above that, and then from Gabriel

10 Senor to Maria and Flavio La Rocca,

11 July 6, 2016, "Subject: Survey deed

12 and info on 436 Fifth Avenue, New

13 Rochelle," and it says, "Maria, the

14 fence is approximately 10 feet on

15 the outside of the property line as

16 indicated on our original field

17 sketch. If you have any questions,

18 please contact our office at

19 914-422-0070. Kathy, Gabriel Senor

20 PC."

21 Do you recall receiving

22 that e-mail?

23 A. I am sure I did.

24 Q. What is -- what do you

25 believe is being told to you by

1 M. LA ROCCA

2 Gabriel Senor in that e-mail?

3 A. There are saying that the
4 fence is approximately ten feet
5 outside the property line.

6 Q. That is the fence on the
7 east side of 436 east -- 436 Fifth
8 Avenue --

9 A. When you are looking at it,
10 to the right.

11 Q. That is on the easternmost
12 side of 436?

13 A. Yes.

14 Q. There is an e-mail above
15 that from casalarocca@aol.com, to
16 Gabriel Senor PC, sent on July 20,
17 2016, and it says, "Re: Surveys,
18 deed, and info on 436 Fifth Avenue,
19 New Rochelle. Good morning, Kathy
20 and Eliot. We spoke with our
21 attorney, as mentioned on our
22 conversation over the phone, and she
23 would like to set up a meeting for
24 August 3rd, at 10:30 a.m., at Fifth
25 Avenue to discuss and look over our

1 M. LA ROCCA
2 copies and what you have. Please
3 let me know if this will work with
4 you as I do need to confirm with
5 her. She will be going on vacation
6 week after, and would like to at
7 least meet before she leaves."

8 Do you recall sending that
9 e-mail to Senor?

10 A. Yes.

11 Q. It speaks -- this -- in
12 this e-mail, you refer to a phone
13 conversation that you had previous
14 to this e-mail with Senor's company.
15 Do you recall that phone
16 conversation?

17 A. Basically telling them
18 about the survey that we had
19 received, and that we wanted to
20 speak to our attorney about it, and
21 again, I -- if I am not mistaken,
22 that was during the time of eminent
23 domain so there was a lot of stuff
24 happening.

25 Q. Did you end up having this

1 M. LA ROCCA
2 meeting that is referenced in this
3 e-mail?

4 A. I believe so. I don't
5 remember if I was there though.

6 Q. Do you recall the meeting?

7 A. I don't know, no.

8 Q. Do you keep a calendar that
9 keeps track of your day to day?

10 A. Yeah.

11 MR. MENDELSON: We are
12 going to call for the
13 production of Ms. La Rocca's
14 calendar from July of 2016 to
15 confirm whether or not she
16 was at this meeting. We will
17 follow up in writing.

18 Q. Ms. La Rocca, do you know
19 if this meeting happened?

20 A. I believe it did because
21 our attorney wanted it, but again, I
22 don't remember if I was there or
23 not.

24 Q. Do you know what the
25 outcome of the meeting was?

1 M. LA ROCCA

2 A. No, I don't remember.

3 Q. Do you know if your husband
4 attended the meeting?

5 A. I would think so.

6 Q. And when it says,
7 "attorney," is it speaking of Ms.
8 Zalantis?

9 A. I believe so.

10 Q. And at that meeting, was
11 there also somebody present from the
12 Senor office?

13 A. Again, I don't know. I
14 wasn't -- I don't know if I was
15 present at that meeting. I believe
16 I wasn't.

17 Q. Who would know who was
18 present at that meeting?

19 A. I am assuming my husband
20 and Kathy.

21 Q. Do you know what happened
22 after that meeting?

23 A. No, I don't. I think that
24 is when the City wanted to -- they
25 filed a complaint against us.

1 M. LA ROCCA

2 Q. Have you spoken to --
3 withdrawn.

4 Do you have these e-mails
5 in your possession?

6 A. I probably do. I don't
7 remember them, but I probably do.

8 Q. And do you have other
9 e-mails regarding the property line
10 at 436 Fifth Avenue in your
11 possession?

12 A. I don't believe so.

13 MR. MENDELSON: We are
14 going to call -- again, these
15 have been demanded, and they
16 have not been turn over to us
17 from Defendants. It is clear
18 that they were sent and
19 received by Ms. La Rocca.
20 She has identified them, and
21 there may be other e-mails as
22 well. We are going to follow
23 up in writing, but we are
24 certainly going to follow up
25 on that.

1 M. LA ROCCA

2 Q. Other than Senor's office,
3 what other -- who -- what other
4 people or businesses have you or
5 your husband been in contact with
6 regarding either the eminent domain
7 or the property line at 436 Fifth
8 Avenue?

9 A. Regarding the eminent
10 domain, it was with all the property
11 owners.

12 Q. Was there any other tests
13 or surveys done by all the other
14 property owners?

15 A. I don't know. That, I
16 don't know if they did their own
17 test or surveys. I know that for
18 the eminent domain they have -- in
19 each -- they said that they were
20 doing in each property, they were
21 doing pouring as well, and then they
22 did the surveys, and that was one of
23 the surveys, the last page was the
24 surveys from City.

25 Q. Other than Senor PC, has

1 M. LA ROCCA
2 any of the La Rocca's or their
3 businesses been in contact with any
4 other survey or staking companies
5 regarding their property?

6 A. No, I don't think so.

7 Q. You don't think so or no?

8 A. No, no.

9 Q. Other than your attorneys,
10 have you spoken to anybody else
11 about the property line or the
12 eminent domain and your neighbors?

13 A. The officials that were
14 coming to talk to us about the
15 eminent domain.

16 Q. Do you have e-mails or
17 records regarding that?

18 A. No, because when we met, we
19 met in person.

20 Q. Were those meetings set up
21 by e-mail or by phone?

22 A. I believe by phone.

23 MR. MENDELSON:

24 Certainly, that is going to
25 be a part of our a demand of

1 M. LA ROCCA
2 as well. Any records of
3 setting up meetings with City
4 officials about property
5 lines.

6 Q. Now, you testified that
7 Felipe and Martin Sanchez currently
8 work for Flavio La Rocca & Sons, is
9 that fair?

10 A. Yes.

11 Q. Do you have their
12 addresses?

13 A. Yes, I believe so, yes.

14 MR. MENDELSON: We have
15 followed up in writing for
16 both of their addresses and
17 we are awaiting them.

18 Q. Did the City of New
19 Rochelle ever give Flavio, or Maria
20 La Rocca, or any of their businesses
21 permission to encroach on East
22 Street?

23 A. When we met with Paul Vacca
24 and Coleman, and we showed them the
25 stakeout, they said that it was

1 M. LA ROCCA
2 minimal, and as far as they were
3 concerned, and the City was
4 concerned, they were fine with it.

5 Q. What exactly were their
6 words that told you they were fine
7 with it?

8 A. They said, "It is a minimal
9 encroachment."

10 Q. And were they told at that
11 meeting by anybody that the
12 encroachment was inches?

13 A. I don't know.

14 Q. What did Flavio La Rocca
15 tell them about the encroachment?

16 A. We showed them the
17 stakeout, the survey. I don't
18 remember anything else. This was
19 back in '09 so --

20 Q. Just one minute. I may be
21 done.

22 (Whereupon, a recess was
23 taken at this time.)

24 Q. Ms. La Rocca, just a couple
25 of more questions and we will be

1 M. LA ROCCA

2 done.

3 At any time did you --
4 other than the meetings or
5 conversations that we have discussed
6 here today, did you have any other
7 conversations with any City
8 officials about either the parcel or
9 the alleged encroachment?

10 A. No.

11 (Continued on next page
12 to accommodate jurat.)

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1 M. LA ROCCA

2 Q. Did you ever have any
3 conversations with anybody at City
4 Hall about either of those issues?

5 A. No.

6 Q. I have no further
7 questions.

8 (Time Noted: 1:08 p.m.)

9

10 MARIA LA ROCCA

11

12 Subscribed and sworn to
13 before me this day of
14 2021.

15

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17 Notary Public

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I N D E X

WITNESS	EXAMINATION BY	PAGE
Maria La Rocca	Mr. Mendelsohn	7

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C E R T I F I C A T E

I, PAIGE HAYDEN, hereby certify that the Examination Before Trial of MARIA LA ROCCA was held before me on the 5th day of March, 2021; that said witness was duly sworn before the commencement of her testimony; that the testimony was taken stenographically by myself and then transcribed by myself; that the party was represented by counsel as appears herein;

That the within transcript is a true record of the Examination Before Trial of said witness;

That I am not connected by blood or marriage to any of the parties; that I am not interested directly or indirectly in the outcome of this matter; that I am not in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of March, 2021.

PAIGE HAYDEN

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ERRATA SHEET

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MARIA LA ROCCA

SUBSCRIBED AND SWORN TO BEFORE ME

THIS ____ DAY OF _____, 20__.

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:



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EXHIBIT 23

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

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;

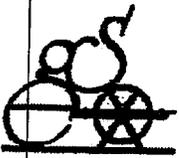
THENCE RUNNING along the division line between Lot 223, Lot 224 and Lot 227 on a course North 66 degrees 45' East, 65.05 feet to the westerly side of East Street;

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.

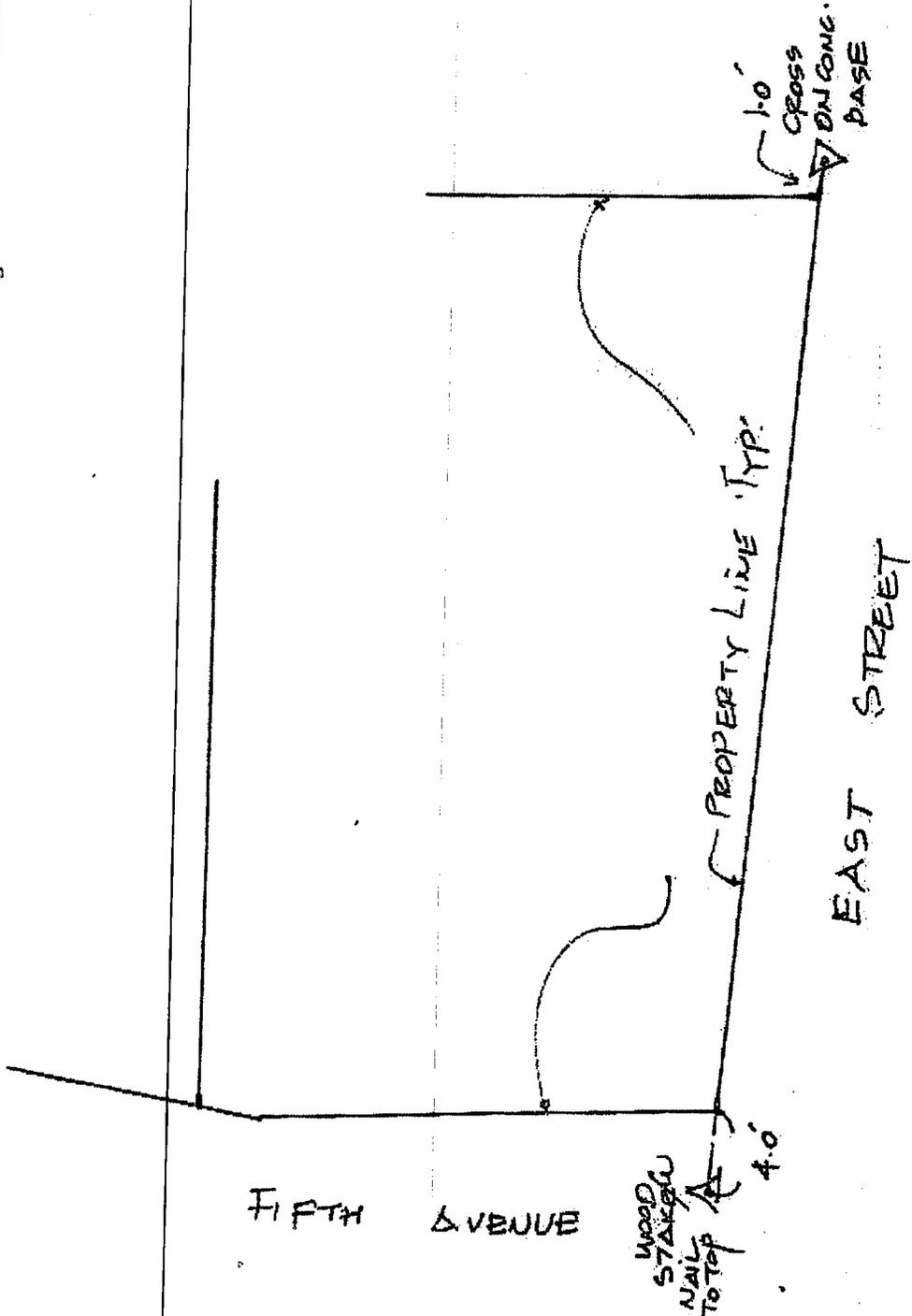


Gabriel E. Senior
90 North Central Ave.
Hartsdale, NY 10530
914-422-0070 fax 914-422-3009

Job# 1728-E-224.
Address 436 5TH. AVENUE. N.Y.
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.



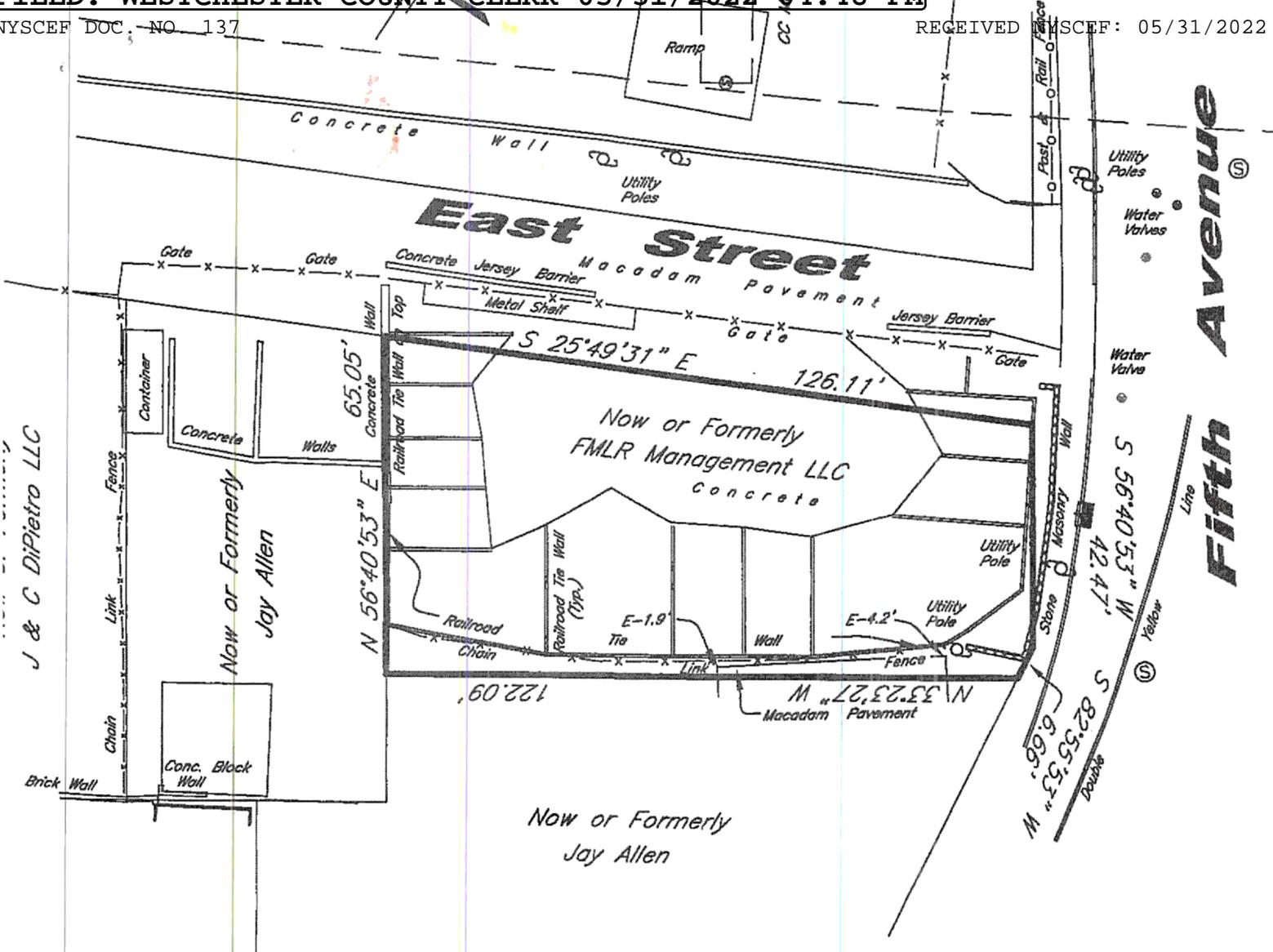
FIFTH AVENUE

EAST STREET

PROPERTY LINE TYP.

1.0' CROSS ON CONC. PASE

WOOD STAKE W NAIL TO TOP 4.0'



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.

EXHIBIT 24

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 Senor.

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. Senor. 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.

1 E. SENOR
2 (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.

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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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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
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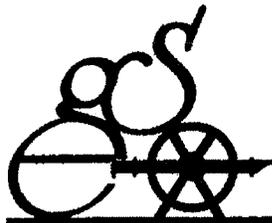
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Y yard 41:16,20 yeah 8:24 19:24 20:23 27:11 29:9 30:18 31:11 34:5 35:13,15 36:17 36:23 38:19 41:23 42:4 45:21 57:6 61:20 72:17,19 78:25 84:23 years 17:9,22 36:6 75:25 Yep 53:25 67:21 79:11 York 1:2,16 2:4,8 6:5,19 17:25 18:24 19:25 20:9,11,14 36:12 39:22 73:24 89:3 91:5	1 1 8:9,11,14 34:7 66:16 79:6 90:8 10 15:15 37:12 47:8 53:6 56:11 56:19 57:9 64:4 64:11,15 71:23 72:18,19 79:24 81:5 83:2 10.7 37:13,24 38:4,15 10.9 37:13 10:00 10:4 10:07 1:11 10:30 75:12 10530 6:19 10591 2:8 10604 2:4 10th 29:19 73:19 11 57:13 11.9 38:4,14 11:44 86:2 1133 2:4 12 37:12 56:9,18 59:22 12.3 37:23 38:3 38:14 12.9 37:21 38:3 38:13 120 2:7 12611 58:22 13 60:16 80:11,16 82:11 83:7 85:4 13-page 27:9 79:3 136 49:4	5 5 39:2 50's 60:23 503 45:17 504 44:14,20 53:24 505 44:7,16,20 53:24 52 51:3	7 7 42:2 44:2 51:6 52:2 77 90:5	
Z Zalantis 2:6,8 6:9 6:12 7:20 10:20 38:8 63:15 77:11,12 78:19 79:3,9,13,16,17 79:23 80:6	8 8 46:5 49:18 80:9 80:11,15 82:11 83:7 85:4 90:8 80's 17:17 86 39:9 866)624-6221 1:17	9 9 50:5 51:5,8 52:4 90 6:18 9:25 90/2016 1:6 900 31:24		

EXHIBIT 25



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

PAID
10/15/2009

BILL TO			INVOICE #
FMLR REALTY MANAGEMENT LLC Flavio LaRocca 436 5th Avenue New Rochelle, NY 10804			GB 1705-4133
			DATE
			9/10/2009
			RE:
			436 5th Avenue New Rochelle
TERMS	LOCATION	TOWN	DUE DATE
Due Upon Receipt			9/10/2009
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
<p><i>RO 1728-E-224</i></p>			

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

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

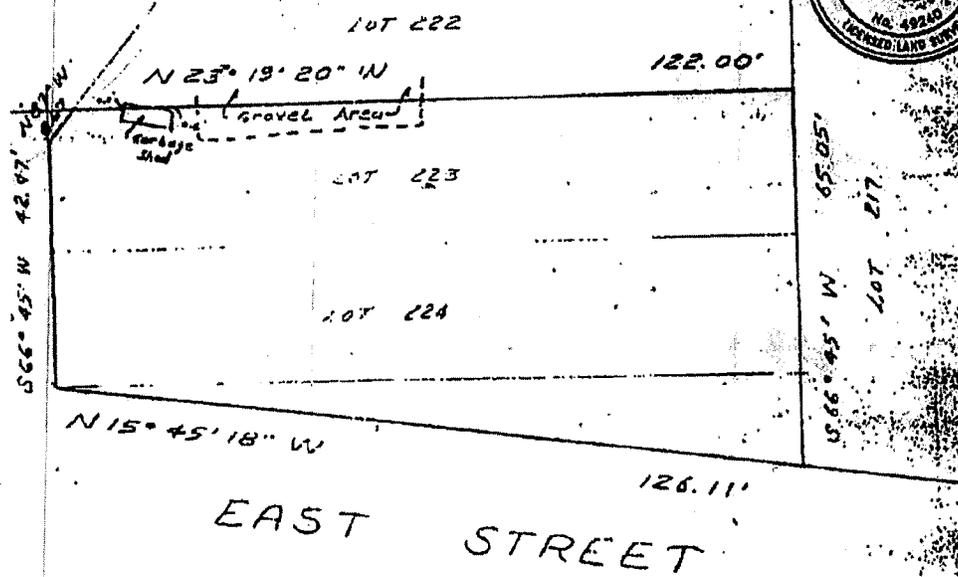
I HEREBY CERTIFY THIS SURVEY TO
LIABILITY IS LIMITED.

SURVEY AND MAP COMPLETED Dec. 12, 1986 SCALE ONE INCH TO 20 FEET.

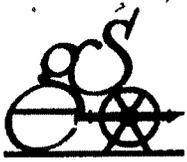
GUARANTEED IN ACCORDANCE WITH THE MINIMUM STANDARDS FOR TITLE SURVEYS OF THE NEW YORK STATE LAND TITLE ASSOCIATION

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 06/01/2008
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

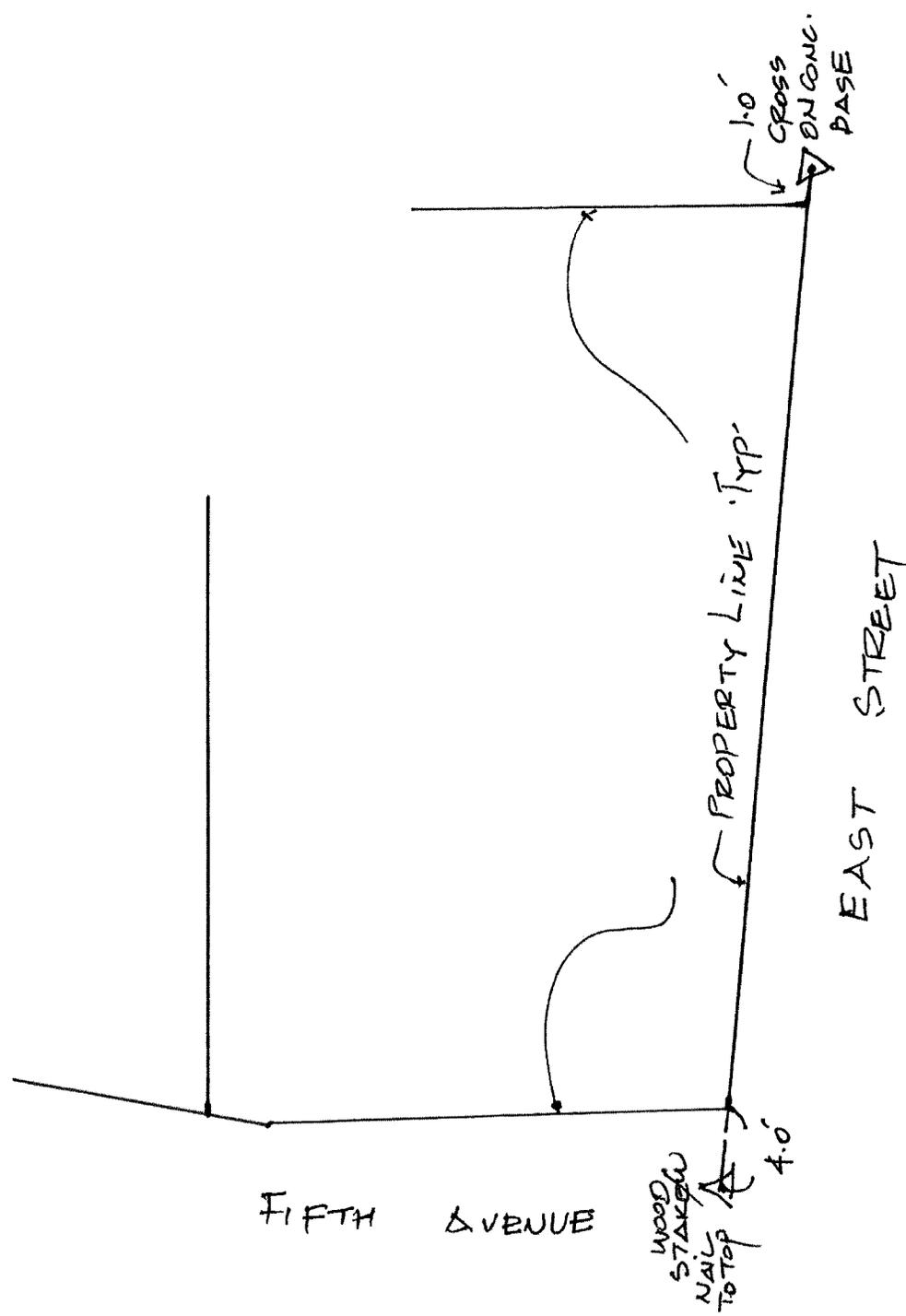


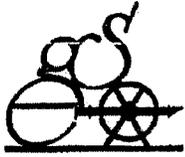
Gabriel E. Senior
90 North Central Ave.
Hartsdale, NY 10530
914-422-0070 fax 914-422-3009

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

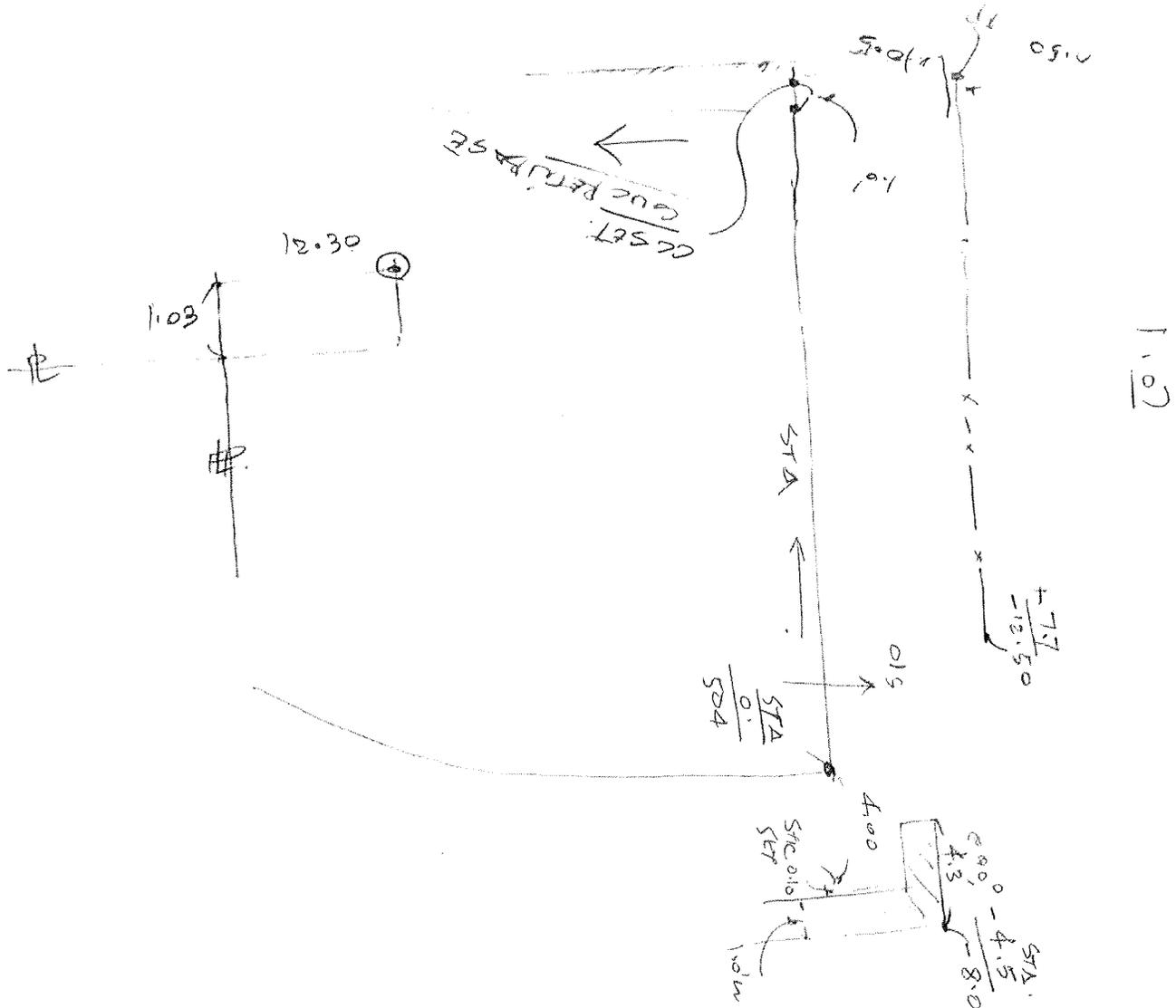
Number	Northing	Easting	Elevation	Raw Desc	Full Desc	Latitude
501	4996.64	4871.47	.	BLDCAL	BLDCAL	0.0049
502	5090.26	4832.06	.	GARCAL	GARCAL	0.0050
503	5108.86	4871.07	.	GARCAL	GARCAL	0.0051
* 504	* 5000.00	* 5000.00	* *	PL	PL	0.0049
* 505	* 5121.37	* 4965.76	* *	PL	PL	0.0051
506	5095.62	4906.02	.	REF	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

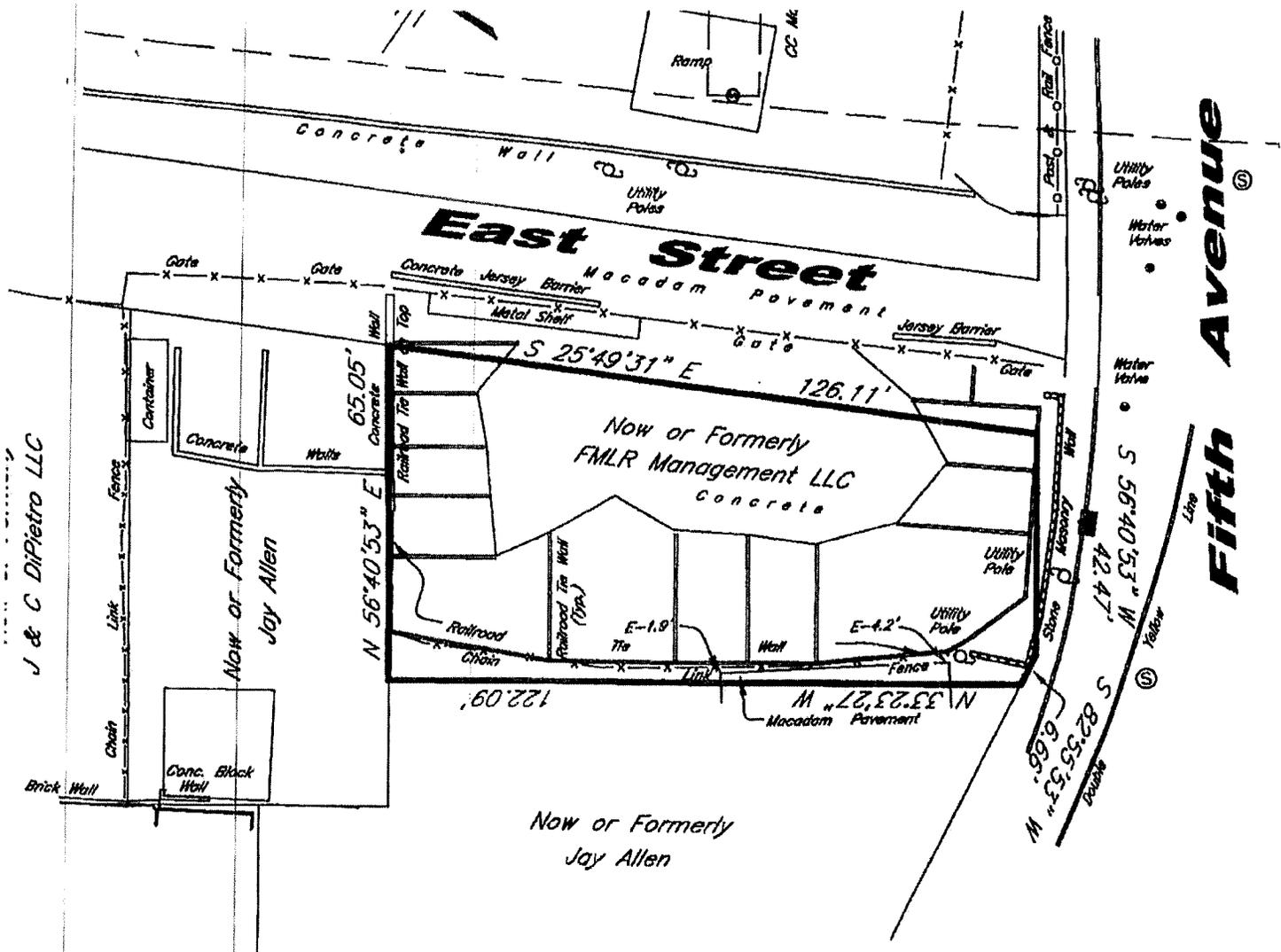
BS (1)

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.

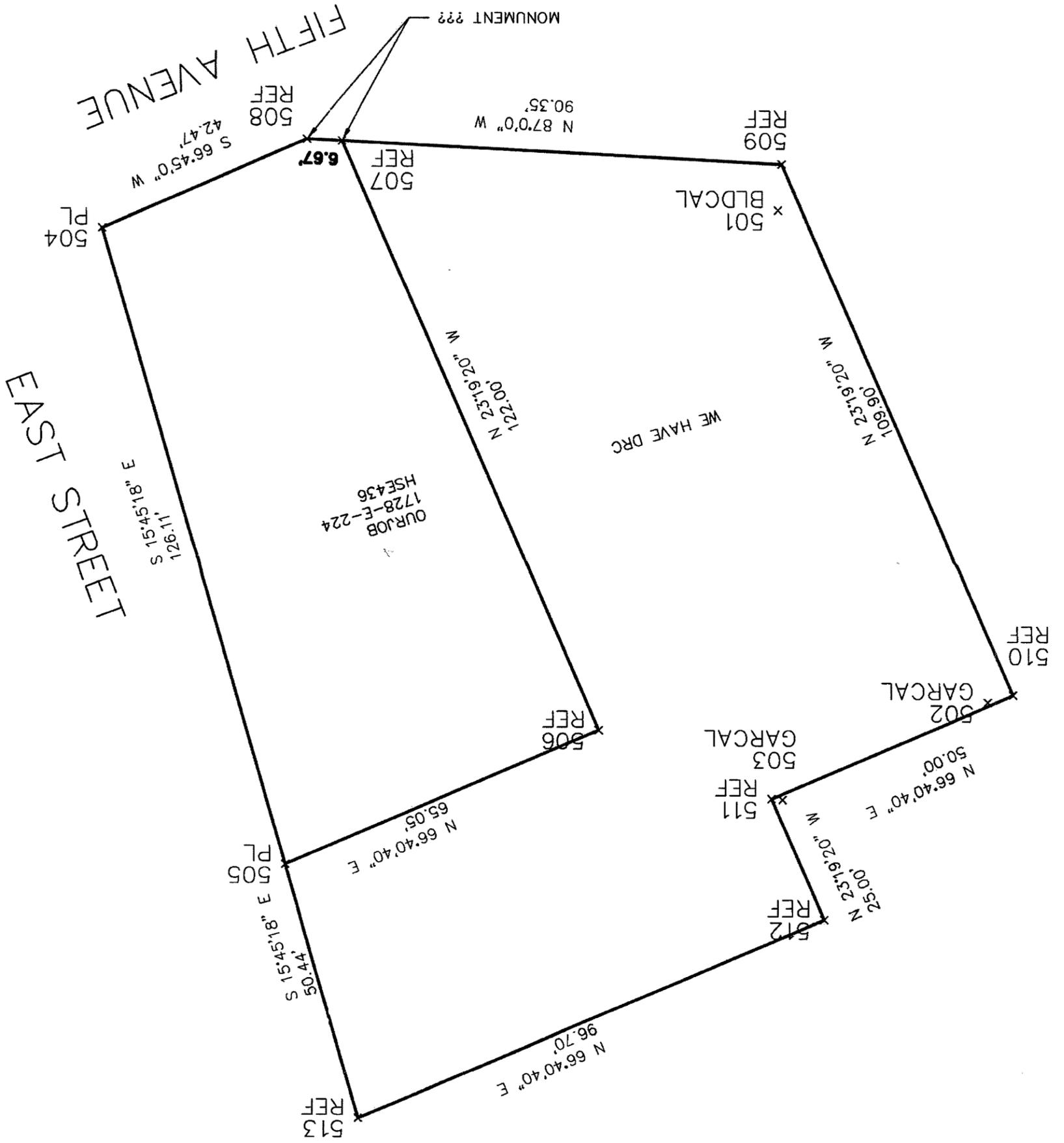


EXHIBIT 26

ERRATA SHEET

Re:

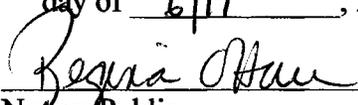
Our File No.: 7367.101

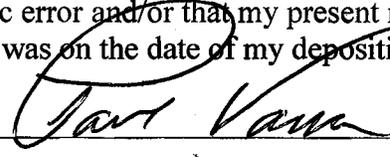
The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter, held on February 25, 2020.

<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


Notary Public


Regina O'Hare
Notary Public, State of New York
No. 01OH5067784
Qualified in Westchester County
Commission Expires Oct. 28, 2022

Page 1

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

2

3 WILSON ELSEER 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.

16

17

18

19

20

21

22

23

24

25

Page 4

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 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?

Page 6

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.

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 8

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 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?

Page 10

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

Page 11

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

Page 12

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.

Page 13

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:

Page 14

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.

Page 15

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.

Page 16

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?

Page 17

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

Page 18

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?

Page 19

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?

Page 20

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

Page 21

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?

Page 26

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

Page 27

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

Page 28

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?

Page 29

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

Page 30

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.

Page 31

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

Page 32

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,

Page 33

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

Page 34

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

Page 35

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?

Page 36

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.

Page 37

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:

Page 38

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.

Page 39

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?

Page 40

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

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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

Page 42

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

Page 43

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,

Page 44

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:

Page 45

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 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 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 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

Page 50

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

Page 51

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?

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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

Page 53

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

Page 54

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.)

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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

Page 56

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

Page 57

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 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.

Page 60

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

Page 61

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.

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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

Page 63

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

Page 64

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?

Page 65

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).

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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

Page 67

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

Page 68

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

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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

Page 70

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

Page 71

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

Page 72

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.

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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

Page 74

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

Page 75

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

Page 76

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.

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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.

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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

Page 79

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.

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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:

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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 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 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 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

Page 86

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 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 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. 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 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 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

Page 93

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 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. 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 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.

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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

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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)?

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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

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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 lock 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

Page 102

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

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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.

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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:

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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

Page 106

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:

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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

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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?

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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. 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. 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. 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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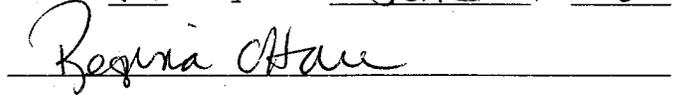
1 STATE OF NEW YORK)
2)
3) SS:
4)
5) COUNTY OF WESTCHESTER)

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 _____

21 NOTARY PUBLIC

22 Regina O'Hare
23 Notary Public, State of New York
24 No. 01OH5067784
25 Qualified in Westchester County
Commission Expires Oct. 28, 2022

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C E R T I F I C A T I O N

STATE OF NEW YORK)

ss.

COUNTY OF WESTCHESTER)

I, Robyn Harrell, Notary Public within
and for the State of New York, do hereby certify:

That I reported the proceedings in the
within entitled matter, and that the within
transcript is a true record of said proceedings.

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 5th day of March, 2020.

ROBYN HARRELL, RPR

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EXHIBIT 27

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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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 Hill 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, 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

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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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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, Kistingner, 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, Kistingner, 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

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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, Kistingner, 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, Kistingner, 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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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:

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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

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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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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

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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) for 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 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.

Certified Original

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

WILSON ELSER 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.

1
2 221. UNIFORM RULES FOR THE
3 CONDUCT OF DEPOSITIONS

4 221.3 Communication with the deponent

5 An attorney shall not interrupt the
6 deposition for the purpose of communicating
7 with the deponent unless all parties
8 consent or the communication is made for
9 the purpose of determining whether the
10 question should not be answered on the
11 grounds set forth in section 221.2 of these
12 rules and, in such event, the reason for
13 the communication shall be stated for the
14 record succinctly and clearly.

15 IT IS FURTHER STIPULATED AND AGREED
16 that the transcript may be signed before
17 any Notary Public with the same force and
18 effect as if signed before a clerk or a
19 Judge of the court.

20 IT IS FURTHER STIPULATED AND AGREED
21 that the examination before trial may be
22 utilized for all purposes as provided by
23 the CPLR.

24 IT IS FURTHER STIPULATED AND AGREED
25 that all rights provided to all parties by
26 the CPLR cannot be deemed waived and the
27 appropriate sections of the CPLR shall be
28 controlling with respect hereto.

29 IT IS FURTHER STIPULATED AND AGREED
30 by and between the attorneys for the
31 respective parties hereto that a copy of
32 this examination shall be furnished,
33 without charge, to the attorneys
34 representing the witness testifying herein.

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F. MAYA

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 and the Spanish interpreter witness over the phone/Veritext Virtual video conference and that the witness has verified that he is in fact Felipe Maya.

May I swear in the Spanish Interpreter and the witness?

MR. KOKE: 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:

F E L I P E M A Y A, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was

Page 6

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.

Page 10

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

Page 11

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

Page 12

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

Page 14

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

Page 15

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.

Page 16

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

Page 17

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?

Page 18

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,

Page 19

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?

Page 20

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.

Page 21

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

Page 23

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

Page 24

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.

Page 25

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

Page 27

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

Page 28

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?

Page 29

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?

Page 30

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.

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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

Page 32

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

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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?

Page 34

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.

Page 35

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

Page 36

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?

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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.

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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?

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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

Page 41

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

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F. MAYA

shown on the right side of this photograph the same area as was shown on the photograph before? I'm going to show you the photograph from before so you can compare the two.

So, the question is is this area the same as that area?

A. Yes.

MS. ZALANTIS: For the record, can we identify the two photographs that you're comparing?

MR. MEISELS: We were comparing the photos four and five of Defendant's Exhibit C.

Q. Mr. Maya, I'm going to show you what's been previously marked as Defendant's X for identification. Can you identify what's shown in that photograph?

A. Maybe it's like a sewer.

Q. Do you recall having seen what's depicted in that photograph before this?

A. Yes.

Q. Where did you see that?

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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

Page 45

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

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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

Page 47

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.

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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?

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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

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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

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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____.

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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

[& - business]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

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EXHIBIT 29

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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.

Certified Copy

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APPEARANCES:

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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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2 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

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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

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

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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,

1 ROBERT ANDREW COX

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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1 ROBERT ANDREW COX

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.

1 ROBERT ANDREW COX

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.]

1 ROBERT ANDREW COX

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

1 ROBERT ANDREW COX

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.

1 ROBERT ANDREW COX

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

1 ROBERT ANDREW COX

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

1 ROBERT ANDREW COX

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

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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

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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

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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

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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.

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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 --

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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

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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.

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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

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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?

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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

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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

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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

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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

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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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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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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.

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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?

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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

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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.

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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.

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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?

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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

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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.

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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

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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

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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

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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

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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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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

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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,

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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

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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,"

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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

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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

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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

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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,

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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

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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,

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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

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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

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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

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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

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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

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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 --

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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.

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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.

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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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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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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

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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

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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

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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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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

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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.

16

Notary Public

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I N D E X

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E X H I B I T S

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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

[& - andrew]

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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 30

5.16.2015 Video

Submitted to Court via CD

NOTICE OF HARD COPY EXHIBIT FILING

Index Number: 54190/2016

Pursuant to Uniform Rule § 202.5-b(d)(7), notice is hereby given that the exhibit described below: Exhibit "30" 5.16.2015 video slip "CD"

was filed in hard copy only with the County Clerk of Westchester County under the above referenced Index Number, Civil Calendar

or

will be retained by the party set forth below until the conclusion of this action/proceeding, including all appeals, and therefore will not appear in electronic form in the e-docket.

Filing/Retaining Party: Wilson ElserBrief Description (e.g., map, videotape, etc.) Exhibit "30" CD
5.16.2015 video slip

and, in either case, has been or will be served in hard copy on all parties in this action, with proof of service filed electronically

Dated: 5-31-2022Eliza M. Scheibel

Name

Wilson Elser

Firm/Department

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Street Address

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City, State and Zip Code

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Phone

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E-Mail Address

EXHIBIT 31

**SALES
RENTALS**

LIBRETT

**PROPERTY
MANAGEMENT**

72 E. Main Street, New Rochelle

REAL ESTATE GROUP

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Who is Flavio La Rocca? – Part IV

Written By: Robert Cox

Who is Flavio La Rocca? - Part IV



NEW ROCHELLE, NY — Over the years Flavio LaRocca has been hard at work, reconstructing the area along East Street where he operates La Rocca & Sons construction company to suit his needs. The problem? All the work has been done on public property.

Last weekend, he was at it again. A crew from LaRocca & Sons, led by Flavio LaRocca himself, went to work on one of the last remaining impediments to La Rocca’s operations on East Street, the trees on City property between East Street and City Park behind the Sidney Frank Skate Park.

Who is Flavio La Rocca? - Part IV



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LaRocca's crew went to work on Saturday May 16th at 7:30 a.m., starting with chainsaws.

This time neighbors called police to complain.

Residents called to complain about the work underway along East Street. A New Rochelle police dispatcher sent Car 5 to East Street and reported back that the call was "unfounded". Shortly after that the police dispatcher reported a second call from neighbors complaining about the work and sent a car back to the area. This time the call came back that it was just workers working on their own property.

Residents in the area say they observed just one police car come through the area. It was raining heavily that morning. These residents have told Talk of the Sound the police car never stopped,

they said it just cruised through the area without stopping, without talking to any of the men working on City property or getting out to look around.

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Luxury Life

A third call went out — this time to Talk of the Sound.

By the time Talk of the Sound arrived on scene at about 9:15 a.m., Flavio La Rocca and a crew of 8 or more workers had cut down all the trees in the area behind the Sidney Frank Skate Park, then used an excavator, a pay-loader and dump trucks, to deposit broken chunks of asphalt on the area, grade out a flat surface, and pile up more asphalt at the back edge of the area he had cleared. A wood-chipper was used to grind up the trees into small pieces. The resulting wood chips were dumped on top of the asphalt both to hide the illegally dumped material and to create an 8-10 foot high berm to screen the area from the soccer field behind the berm.

As photographs and video were taken (above) a steamroller was unloaded from a trailer and used to pack down the asphalt into the dirt.

Flavio La Rocca, suddenly realizing that the work was being photographed and recorded on video, ran and hid behind one of his trucks. He then climbed into the passenger seat and ordered the driver to take off. As he left the scene, he was observed making a phone call on his mobile phone.

La Rocca later returned to the scene in a pickup truck but upon seeing he was again being recorded, again fled the scene. This time he backed his truck up along East Street, towards Fifth Avenue, stopped, then drove forward again along East Street, turning onto East Place and did not return. All of this was captured on video (above).

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Luxury Life

The result of La Rocca's work was a crude parking lot carved out of a wooded area on public property. Before the work was even finished, five cars were parked in the newly-fashioned, "parking lot". The area holds between 10-20 vehicles.

Throughout the morning, police and City officials were called and notified that the illegal work was in progress. No one from the City government came to view the "parking lot" until later in the afternoon by which time the work had long since been completed. Three employees of Flavio La Rocca did return to the area later that afternoon to continue work on the poorly paved outline of what had been the traffic peninsula with several trees on it that La Rocca had removed several weeks before. One the men made a phone call on his mobile phone and the three men soon left the scene and did not return.

On Monday morning, more than two dozen vehicles were parked on and along both sides of East Street, areas that La Rocca had cleared and paved over including the peninsula which had since been paved over.

Flavio La Rocca has not responded to repeated requests to be interviewed for this story but the consensus among City officials and residents that La Rocca was motivated by the City's recently adopted parking policy at City Park which required users to purchase a parking permit at a cost of \$200 a year. Rather than have his workers pay the parking permit fees, he carved out a new parking lot — on City property.

Provided with photographs and video evidence of La Rocca and his men at work on the "parking lot" on City property, City officials held a series of meetings at City Hall over the course of the week. An action plan e was developed to address the matter.

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Talk of the Sound met with New Rochelle Corporation Counsel Mark Blanchard on Thursday. He confirmed that La Rocca has been building on City property and that the City has begun a process to take action against Flavio La Rocca.

The Department of Public Works Commissioner will soon serve an order on all the property owners along East Street to vacate the public right-of-way and to clear the right-of-way of all obstructions. The property owners will be given a deadline, likely 48 hours, to comply with the order. Any vehicles or equipment on City property after the deadline will be towed away and impounded.

Once that step is completed, the City will move to take control over the entire area by installing large poles in the ground and fencing off the entire area.

Next, the City will conduct test borings to determine whether the materials used to pave the roads is toxic. If it is, a referral will be made to the New York State Department of Environmental Conversation.

There is a stream nearby that runs along the edge of the border between the City property along East Street and the designated parkland known as City Park or Flowers Field. If the soil is found to be contaminated, the City will also make a federal referral for potential violations of the Clean Water Act.

Blanchard said the City intends to aggressively pursue civil and criminal charges against Flavio La Rocca. Charges currently contemplated include trespassing, destruction of public property, misappropriation and more.

The total cost of legal fees and fines is expected to exceed the cost of the \$200 a year parking fees his workers would have incurred had they simply paid the parking permit fee to park in the City Park lot.

PREVIOUS: [Who is Flavio La Rocca? – Part III](#)

COMING NEXT: [Who is Flavio La Rocca? – Part V](#)



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📅 May 26, 2015 👤 Robert Cox 📁 Municipal

EXHIBIT 32

FREE Weekly Events for New Rochelle **DIY classes** **THROUGHOUT THIS MONTH**

Grow your best garden Salsa into Spring Millennials on Main Street networking event

'Bike New Rochelle' bike ride Learn about solar options Attend the Contractor's Breakfast

(http://www.newrochelletalk.com/content/free-public-events-all-month-long-habitat)

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Who is Flavio La Rocca? - Part IV

By Robert Cox

Time to read
4 minutes

May 26, 2015 - 01:00

Posted in: CITY (/CATEGORY/TALK-SOUND-CATEGORIES/GOVERNMENT/CITY)

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F. LaRocca & Sons working on new "parking lot" on public property

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(http://twitter.com/WhoIsFlavioLaRocca)
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Your rating: None No votes yet

https://www.youtube.com/watch?v=9GF_Nrc00S0&feature=youtu.be
(https://www.youtube.com/watch?v=9GF_Nrc00S0&feature=youtu.be)

NEW ROCHELLE, NY -- Over the years Flavio LaRocca has been hard at work, reconstructing the area along East Street where he operates La Rocca & Sons construction company to suit his needs. The problem? All the work has been done on public property.



a- a+

Last weekend, he was at it again. A crew from LaRocca & Sons, led by Flavio LaRocca himself, went to work on one of the last remaining impediments to La Rocca's operations on East Street, the trees on City property between East Street and City Park behind the Sidney Frank Skate Park.

Published
4 hours ago

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Last updated
4 hours ago

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Residents in the area say they observed just one police car come through the area. It was raining heavily that morning. These residents have told Talk of the Sound the police car never stopped, it just cruised through the area without stopping, without talking to any of the men working on City property or getting out to look around.

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By the time Talk of the Sound arrive on scene at about 9:15 a.m., Flavio La Rocca and a crew of 8 or more workers had cut down all the trees in the area behind the Sidney Frank Skate Park, then used an excavator, a pay-loader and dump trucks, along to deposit broken chunks of asphalt on the area, grades out a relatively flat surface, and piled up more asphalt at the back edge of the area he had cleared. A wood-chipper was used to grind up the trees. The resulting wood chips were dumped on top of the asphalt both to hide the illegally dumped material and to create an 8-10 foot high berm to screen the area from the soccer field behind the berm.

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Flavio La Rocca has not responded to repeated requests to be interviewed for this story but the consensus among City officials and residents that La Rocca was motivated by the City's relatively new parking policy at City Park which required users to purchase a parking permit at a cost of \$200 a year. Rather than have his workers pay the parking permit fees, he carved out a new parking lot — on City property.

Provided with photographs and video of La Rocca and his men at work on the "parking lot" on City property, City officials held a series of meetings at City Hall over the course of the week and an action place was developed to address the matter.

Talk of the Sound spoke with New Rochelle Corporation Counsel Mark Blanchard who confirmed that La Rocca has been building on City property and that the City is now in the process of taking action against Flavio La Rocca.

The Department of Public Works Commissioner will soon serve an order on all the property owners along East Street to vacate the public right-of-way and to clear the right-of-way of all obstructions. The property owners will be given a deadline, likely 48 hours, to comply with the order. Any vehicles or equipment on City property after the deadline will be towed and impounded.

EXHIBIT 33

New Rochelle Board of Education: Criminal Enterprise Masquerading as an...
(/content/new-rochelle-board-education-criminal-enterprise-masquerading-educational-institution-part-i) >>

HOME (/) / WHO IS FLAVIO LA ROCCA? - PART VIII



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Who is Flavio La Rocca? - Part VIII

By Robert Cox

Time to read
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🕒 November 09, 2015 - 19:27
📍 Posted in:
NEW ROCHELLE (/TALK-SOUND-CATEGORIES/NEW-ROCHELLE) MUNICIPAL (/CATEGORY/TALK-SOUND-CATEGORIES/GOVERNMENT/CITY)
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Who is Flavio La Rocca? - Part VIII | Talk of the Sound
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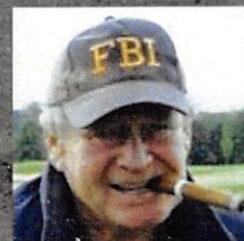
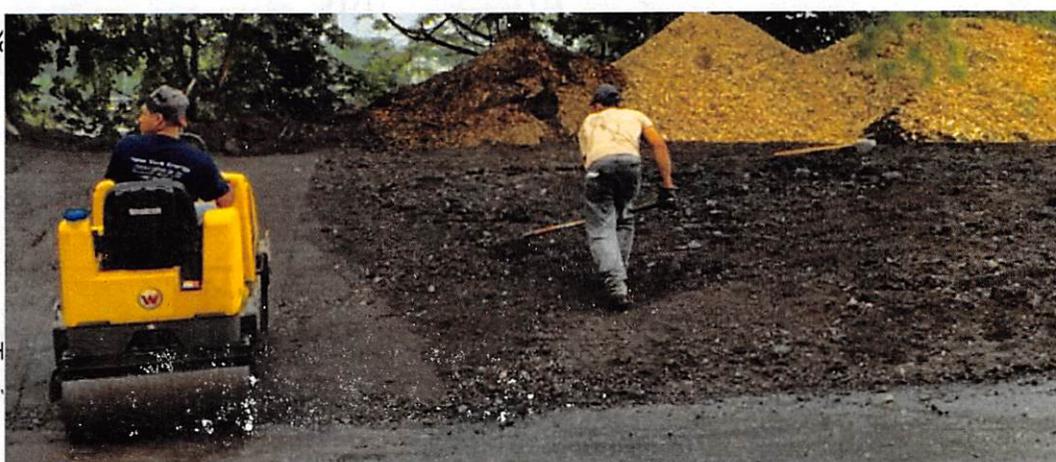
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NEW ROCHELLE, NY -- On the morning of Saturday May 16th, Flavio LaRocca and his employees leveled a stand of trees and greenery on public property, in the area behind the Sidney Frank Skate Park. This would appear to be a clear cut case of a criminal 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 which not

part-
viii)

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.



a- a+

Published
1 day ago

Last
updated
1 day ago

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?

In an interview several days later with then-Corporation Counsel Mark Blanchard, Talk of the Sound was told that the the City intended to "aggressively pursue civil and criminal charges against Flavio La Rocca". Blanchard said charges could include trespassing, destruction of public 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 Corporation Counsel. Since coming back as the City's top lawyer, Gill has moved the ball forward. More on that in a moment.

I want to address a question that everyone who has read my reporting on Flavio LaRocca wants to know – who, if anyone, is protecting him?

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 (<http://www.newrochellestalk.com/content/years-dozens-new-rochelle-police-foundation-directors-quietly-given-swipe-card-access-locked>) 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, the



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 (http://www.nytimes.com/2005/01/01/business/the-seller-of-the-goose-that-laid-a-golden-egg.html?_r=0) 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.

That relationship blossomed in a number of other ways.

Charlie Beaudoin (<https://www.linkedin.com/in/charlie-beaudoin-956a193>), 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 (<https://www.linkedin.com/in/john-frank-5baa4029>), 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 (<http://investor.signatureny.com/releasedetail.cfm?ReleaseID=413453>) with a Corporate Leader Award.

Sidney Frank donated \$150,000 to build a skatepark (<http://www.noambramson.org/2004/12/skate-park-moves-forward/>) 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 (<http://flrandson.com/about-us/>) for Sidney Frank Importing Comp (<https://www.linkedin.com/in/maria-la-rocca-55943978>).



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 (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-i>) 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 (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-ii>) 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 (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-iii>) over property near City Park given to the City over a century ago and that various "land grabs" undertaken by La Rocca. We provided a detailed description of what took place on Saturday May 16th (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-iv>) as La Rocca and his men carved out a "parking lot" from a wooded area on City property.

As a result of this reporting, La Rocca's attorney sent a "cease and desist" letter (<http://www.newrochelletalk.com/content/who-flavio-larocca-part-v>) 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 (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-vi>) and at his personal residence at 140 Sussex Road (<http://www.newrochelletalk.com/content/who-flavio-la-rocca-part-vii>).



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]

140 Sussex Road - Gates.

[do not encroach]

140 Sussex Road - Sidewalk encroaches by 1.8 feet and too wide.

[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 - Misappropriation 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

[Story changed on this, since deemed legal use]

East Street - City "Right of Way" blocked.

[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 review]

One final point on WHY LaRocca suddenly decided to build himself a parking lot on City property.

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.



(<http://www.newrochelletalk.com/crss/node/10852>)



(<http://www.newrochelletalk.com/crss>)

USER MENU

Create a Post (<http://www.newrochelletalk.com/node/add/mt-post>)



(<http://bit.ly/conveymediafbportfolio>)

COMMENTS

TOP RATED (/CONTENT/WHO-FLAVIO-LA-ROCCA-PART-VIII?QT-SIDEBAR_TABS=1#QT-SIDEBAR_

SCANNER (/CONTENT/WHO-FLAVIO-LA-ROCCA-PART-VIII?QT-SIDEBAR_TABS=2#QT-SIDEBAR_

No one listens to the few that do talk at School Board Meetings!

(</comment/20687#comment-20687>)

17 hours 16 min ago

My expectation of reaction to this exposé (</comment/20686#comment-20686>) 1 day 15

hours ago

The Belated Views of Someone who Writes About Homelessness

(</comment/20685#comment-20685>)

1 week 5 hours ago



Where are New Rochelle Debates? (/comment/20684#comment-20684) 1 week 4 days ago

In the Heat of New Rochelle Election (/comment/20683#comment-20683) 1 week 5 days ago

Children, New Rochelle Citizens should be seen and not Heard! (/comment/20682#comment-20682) 1 week 6 days ago

Children, New Rochelle Citizens should be seen and not Heard! (/comment/20681#comment-20681) 2 weeks 17 hours ago

This is really cool! (/comment/20680#comment-20680) 3 weeks 10 hours ago

Time to Suck it Up Emery (/comment/20678#comment-20678) 3 weeks 14 hours ago

Anyone have a report from this event? (/comment/20677#comment-20677) 3 weeks 17 hours ago

LATEST TWEETS FROM @TALKOFTHESOUND

Former New Rochelle GOP candidate, John Earvin sentenced to 3 years probation, 6 mos home confinement, 600 hours community service, \$2,000.

5 hours 13 min ago

RT @CNRTatler (<http://twitter.com/CNRTatler>): Tatler is out! Get your copies in the newspaper racks in the SSC 2nd floor & by the entrance of Mooney Center! <https://t.co/P0XYZHsaJh> (<https://t.co/P0XYZHsaJh>)

5 hours 59 min ago

RT @NewRochelleED (<http://twitter.com/NewRochelleED>): @NewRochelleED (<http://twitter.com/NewRochelleED>) thanks @AielloTV (<http://twitter.com/AielloTV>) @LizAielloVO (<http://twitter.com/LizAielloVO>) for sharing your powerful 9/11 story with students at IEYMS today!!

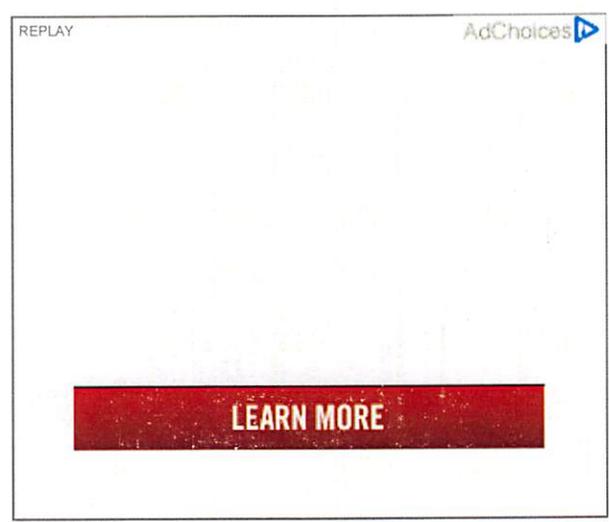


6 hours 2 min ago

RT @FreeBeacon (<http://twitter.com/FreeBeacon>): Maureen O'Hara Laid to Rest in Arlington National Cemetery <https://t.co/ef1Hk0UZmC> (<https://t.co/ef1Hk0UZmC>) via @StephenGutowski (<http://twitter.com/StephenGutowski>) <https://t.co/61WNEmLMUY> (<https://t.co/61WNEmLMUY>)

6 hours 3 min ago

More »



An advertisement for St. Paul Law Firm. At the top left is the firm's logo, a red shield with a white cross, followed by the text "St. Paul Law Firm" and the tagline "Getting Results For You". To the right is a photograph of a classical building with columns. Below the logo is a portrait of a man in a suit and tie. A red banner across the middle contains a white "STOP" sign icon and the text "AND CALL ME FIRST FOR ALL YOUR LEGAL NEEDS". Below this banner, the following services are listed: "Employment Law", "Business Law • Civil Rights • Wills", and "Real Estate Law and Landlord & Tenant". At the bottom, the phone number "914-517-7568" and the website "www.TheStPaulLawFirm.com" are displayed. Social media icons for Facebook and Twitter are also present.

(<http://thestpaulfirm.com>)





(<http://www.newrochelletalk.com/content/advertise-talk-sound>)

MONTHLY ARCHIVE

November 2015 (/archive/201511) (90)

October 2015 (/archive/201510) (217)

September 2015 (/archive/201509) (260)

August 2015 (/archive/201508) (190)

July 2015 (/archive/201507) (134)

June 2015 (/archive/201506) (56)

May 2015 (/archive/201505) (117)

April 2015 (/archive/201504) (136)

March 2015 (/archive/201503) (203)

February 2015 (/archive/201502) (157)



- 1 2 (/content/who-flavio-la-rocca-part-viii?page=1)
- 3 (/content/who-flavio-la-rocca-part-viii?page=2) 4 (/content/who-flavio-la-rocca-part-viii?page=3)
- 5 (/content/who-flavio-la-rocca-part-viii?page=4) 6 (/content/who-flavio-la-rocca-part-viii?page=5)
- 7 (/content/who-flavio-la-rocca-part-viii?page=6) 8 (/content/who-flavio-la-rocca-part-viii?page=7)
- 9 (/content/who-flavio-la-rocca-part-viii?page=8) next › (/content/who-flavio-la-rocca-part-viii?page=1)
- last » (/content/who-flavio-la-rocca-part-viii?page=8)

About

Talk of the Sound is a hyper-local news site, considered the source for news and information in New Rochelle since 2008.

If you would like to become a contributor, suggest a story idea or have a news tip contact us.

[Contact Us »](#)

Poll

Do you like the new web site?

Yes

79%

No

21%

Total votes: 14

[Older polls \(/poll\)](#)



Tags

30TH ANNIVERSARY (/TAGS/30TH-ANNIVERSARY) 7-1 (/TAGS/7-1) ARTS (/TAGS/ARTS)
 BASKETBALL (/TAXONOMY/TERM/737) BETH EL SYNAGOGUE (/TAXONOMY/TERM/748) BIZET (/TAGS/BIZET)
 BLACK HISTORY (/TAXONOMY/TERM/746) BLACK HISTORY MONTH (/TAGS/BLACK-HISTORY-MONTH) BOE (/TAGS/BOE)
 BUS (/TAGS/BUS) CARMEN (/TAGS/CARMEN) CIRCUS (/TAXONOMY/TERM/758) CITY (/TAXONOMY/TERM/733)
 CITY COUNCIL (/TAGS/CITY-COUNCIL) CNR WBB (/TAXONOMY/TERM/743)
 COLLEGE OF NEW ROCHELLE (/TAXONOMY/TERM/740) CONVEY MEDIA (/TAXONOMY/TERM/732)
 COURTS (/TAGS/COURTS) DEFEATS OWENS COMMUNITY (/TAGS/DEFEATS-OWENS-COMMUNITY)
 DEVELOPMENT (/TAXONOMY/TERM/731)

More »

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Web site developed by Convey Media. (http://conveymedia.com)

[Home \(/\)](#)

[Privacy Policy \(/node/9178\)](#)



Advertise (/content/advertise-talk-sound)

Contact (/content/contact)



EXHIBIT 34

This is to certify that I have prepared a Map of Tax Lot No. 50, Block 920, Section 3 as shown on the Tax Maps of the City of New Rochelle, Westchester County, New York.

Chain link fencing located: Apr. 05, 2022
Map Drafted: Apr. 12, 2022 on scale of one inch to 30 feet.

I hereby certify this survey to:

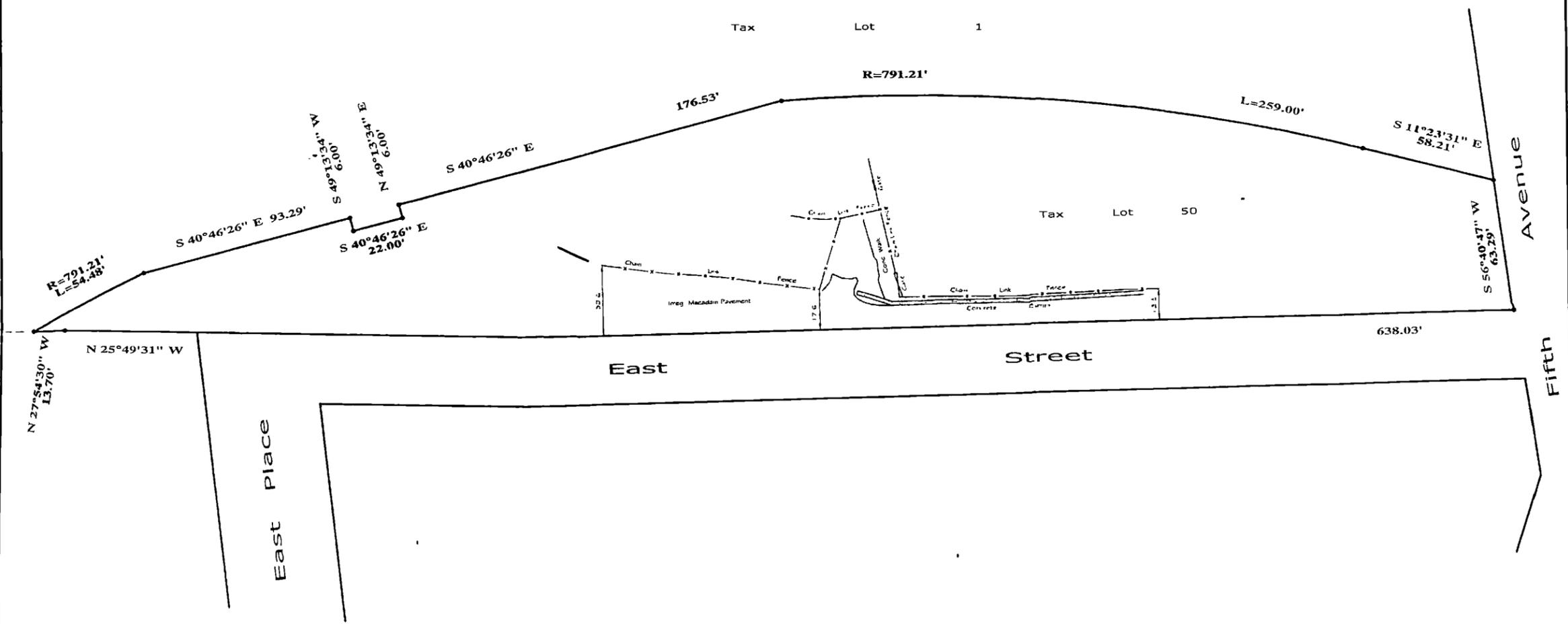
ARISTOTLE BOURNAZOS, P.C.

LAND SURVEYORS - PLANNERS

20 CEDAR STREET
NEW ROCHELLE
NEW YORK 10801
(914) 633-0100



LICENSED IN
NEW YORK
NEW JERSEY
CONNECTICUT



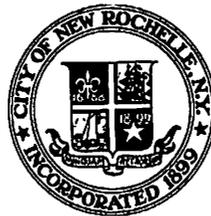
As a surveyor, I do not warrant, defend or hold myself liable to the person or persons for whom the survey is prepared, and on his behalf to the title company, government agency and lending institution listed herein. Guarantees or certifications are not transferable. I do not warrant, defend or hold myself liable to the person or persons for whom the survey is prepared, and on his behalf to the title company, government agency and lending institution listed herein. Guarantees or certifications are not transferable. No guarantee is implied by this map as to the existence or non-existence of any easements of record that would affect any lot or property, unless such easements are shown and a complete copy of the same is provided. This map is for information only and is not intended to be used for construction of fences, structures or other improvements.

EXHIBIT 35

NYSCEF DOC. NO. 149

RECEIVED NYSCEF: 05/31/2022

Department of Development
515 North Avenue
New Rochelle, NY 10801



Phone: (914) 654- 2185
FAX: (914) 632- 3626



Luiz A. Aragon
Commissioner

City of New Rochelle New York

November 25, 2015

Flavio La Rocca
Flavio Larocca & Sons
436 Fifth Avenue
New Rochelle, New York, 10801

Dear Flavio Larocca & Sons,

This is a special opportunity for businesses and employees in the area surrounding Flowers Park. Effective January 1st, 2016, the City will be offering FREE parking at the Flowers Park parking lot.

The City urges you and your employees to take advantage of this opportunity. At the same time, we urge you NOT to park on-street in residential areas, where business and employee parking has created significant neighborhood concerns.

Free parking will be limited to the front portion of the Flowers Park parking lot, designated by signage and will be allowed between the hours of 6a.m. to 5p.m. Monday through Friday (excluding holidays). Commercial vehicles will not be allowed in the parking lot.

Should you have any additional questions or concerns, please contact Parks & Recreation at (914) 654-2087. Thank you.

EXHIBIT 36



436 5th Ave

Google Earth



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT NO. 24

FOR IDENTIFICATION

DATE: 5/20/22

R/PTR: CT

EXHIBIT 37

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
CITY OF NEW ROCHELLE,

Index No. 54190/2016

Plaintiff,

-against-

**STIPULATION
TO EXTEND TIME**

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

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned attorneys for the Plaintiff CITY OF NEW ROCHELLE ("City") and Defendants FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO LA ROCCA & SONS, INC. a.k.a. F. LAROCCA & SONS, INC. and FMLR REALTY MANAGEMENT LLC ("Defendants") as follows:

1. The time for Defendants to answer or otherwise move in connection with the City's Verified Complaint filed in the above-referenced action is hereby further extended to ~~August 31, 2018.~~ *September 30, 2018*
2. This Stipulation to Extend Time ("Stipulation") may be executed via facsimile or electronic signature, which shall be taken as original signatures.
3. This Stipulation may be filed with the Clerk of the Court without further notice.

Dated: July 10, 2018

WILSON ELSER MOSKOWITZ
EDELMAN & DICKER, LLP

SILVERBERG ZALANTIS LLP

By: 
Peter A. Meisels, Esq.
Attorneys for Plaintiff
1133 Westchester Avenue
White Plains, New York 10604
(914) 323-7000

By: 
Katherine Zalantis, Esq.
Attorneys for Defendants
220 White Plains Road
Tarrytown, New York 10591
(914) 682-0707

EXHIBIT 38

NYSCEF DOC. NO. 442

RECEIVED NYSCEF: 05/30/2022
For use of Clerk

NOTE OF ISSUE

Calendar No. (if any) _____
Index No. 54190/2016
SUPREME COURT, WESTCHESTER
COUNTY, N.Y.

CITY OF NEW ROCHELLE
Plaintiff,

-against-

FLAVIO LA ROCCA, MARIA LA ROCCA, FLAVIO
LA ROCCA & SONS, INC. aka F. LAROCCA & SONS,
INC. and FMLR REALY MANAGEMENT LLC,

Defendants.

Name of Judge assigned
Hon. William J. Giacomo

NOTICE FOR TRIAL

- Trial by jury demanded
 - Of all issues
 - Of issues specified below
 - Or attached hereto
- Trial without jury

Filed by Attorney for Plaintiff

Date summons served April 5, 2016

Date service completed April 29, 2016

Date issue joined April 30, 2019

NATURE OF ACTION OR SPECIAL PROCEEDING

- Tort
 - Motor vehicle negligence
 - Medical malpractice
 - Other tort
- Contact
- Contested matrimonial
- Uncontested matrimonial
- Tax certiorari
- Condemnation
- Other (not itemized above) specify _____
- This action is brought as a class action

Amount demanded \$150,000

Other relief Permanent injunction, punitive damages, attorney's fees
and costs, prejudgment interest

Special preference claimed under NA

Insurance carrier(s), if known: _____

Attorney for Plaintiff
Wilson Elser Moskowitz Edelman & Dicker, LLP,
Peter A. Meisels, Esq.
1133 Westchester Avenue
White Plains, New York 10604
(914) 323-7000

**NOTE: Clerk will not accept this note of issue unless accompanied by
a certificate of readiness**

Attorneys for Defendants
Silverberg Zalantis LLC
Katherine H. Zalantis, Esq.
120 White Plains Road Suite 305
Tarrytown, NY 10591
(914) 682-0707

CERTIFICATE OF READINESS FOR TRIAL
(Items 1-7 must be checked)

For Clerk's Use

Table with 3 columns: Completed, Waived, Not required. Rows 1-12 listing trial preparation items with checkboxes.

Dated: New York, New York
March 30, 2022

Yours, etc.

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: /s/ Peter A. Meisels
Peter A. Meisels
Attorneys for Plaintiff
City of New Rochelle
1133 Westchester Avenue
White Plains, New York 10604
(914) 323-7000
File No.07367.00101
Email: peter.meisels@wilsonelser.com

To:
Silverberg Zalantis LLC
Attn: Katherine H. Zalantis, Esq.
Attorneys for Defendants
120 White Plains Road Suite 305
Tarrytown, NY 10591
(914) 682-0707

EXHIBIT 39

JJD

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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 INSTRUMENT made this
 30th. day of April in the year one thousand nine hundred and fourteen (1914),

STATE OF NEW YORK, COUNTY OF WESTCHESTER, SS.
 I, COUNTY CLERK OF SAID COUNTY, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY, WESTCHESTER COUNTY, NEW YORK, ON THE 31ST DAY OF MAY, 2022, AT 4:48 PM.
 THE FEE OF RECORDING THIS INSTRUMENT IS \$127.00.
 I HAVE RECEIVED THE ORIGINAL INSTRUMENT AND THE ORIGINAL ACKNOWLEDGMENT THEREOF.
 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
 CERTIFIED ON 5/31/22 3 TOTAL PGS
 COUNTY CLERK AND CLERK OF THE SUPPLEMENTAL COUNTY CLERK, WESTCHESTER COUNTY, NEW YORK
 FEE PAID

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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

JJD

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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.

M. J. J. Register.

HOMMOCK REALTY CORP. :

TO :

WALTER C. HUBBARD. :

THIS INSTRUMENT 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 45° 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 40

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.,

**AFFIDAVIT OF JAMES J.
MORAN, P.E.,
COMMISSIONER OF
PUBLIC WORKS FOR THE
CITY OF NEW
ROCHELLE**

Defendants.

----- x

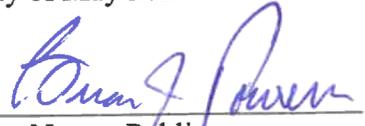
STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER)

James J. Moran, being duly sworn deposes and says:

1. I am the Commissioner of Public Works for the City of New Rochelle, New York. I was appointed to the position of Commissioner in 2020. I joined the City of New Rochelle in 2013 as Deputy Commissioner of Operations. I became City Engineer in 2015 and served in that role until my appointment as Commissioner.
2. East Street is owned by the City of New Rochelle. East Street connects Fifth Avenue and East Place and is bordered on the easterly side by Flowers Park (also known as City Park).
3. East Street also provides emergency access for fire engines and other emergency vehicles to the multiple properties running along East Street between Fifth Avenue and East Place and to the western side of Flowers Park and the Sidney Frank Skate Park.
4. East Street also provides access to the City's drainage sewer system.
5. I am aware that the owners of property at 436 Fifth Avenue have several encroachments into City Property on East Street, identified in a letter from the City on November 18, 2015. These encroachments have not been remedied and continue to intrude over the boundary line of 436 Fifth Avenue, into City property.
6. When the City became aware of the work done on a Parcel of land immediately to the west of East Street in Flowers Park, to prepare it for use as a parking lot, the City put up a fence around the Parcel to prevent any further damage to the property and to prevent its use as a parking lot.



Sworn to before me this
31st day of May 2022



Notary Public

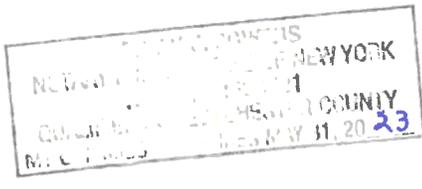


EXHIBIT 41

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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.

* * *

Certified Copy

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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.

ROLAND T. KOKE, 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

* * *

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STIPULATIONS

IT IS HEREBY STIPULATED, by and among the attorneys for the respective parties hereto, that:

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.

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.

* * *

Page 5

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2 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?

Page 6

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,

Page 7

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.

Page 19

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

Page 20

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

Page 21

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

Page 47

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

Page 48

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

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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

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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

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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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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

* * *

EXHIBIT 42

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

AMENDED
VERIFIED REPLY

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.

AS AND FOR THE CITY'S FIRST AFFIRMATIVE DEFENSE TO THE

DEFENDANTS' FIRST COUNTERCLAIM

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16. During the course of discovery, the City learned that the alleged conversion of “Jersey Barriers” is claimed to have occurred in 2003.

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17. Defendants failed to commence an action against the City within one year and ninety days, as required by GML § 50-i.

18. Hence, the Defendants’ counterclaim is barred by the statute of limitations.

AS AND FOR THE CITY’S SECOND AFFIRMATIVE DEFENSE TO THE DEFENDANTS’ FIRST COUNTERCLAIM

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19. Defendants failed to serve a notice of claim on the City as required by

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20. GML §50-e relating to the alleged conversion of “Jersey Barriers” in 2003.

21. Having failed to serve a timely notice of claim on the City, any such claim is barred.

AS AND FOR THE CITY’S THIRD AFFIRMATIVE DEFENSE TO THE DEFENDANTS’ FIRST COUNTERCLAIM

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22. Although silent in their Answer about the date of the alleged conversion of their “Jersey Barriers,” in discovery it was developed that the conversion allegedly occurred in 2003.

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23. Having waited for approximately 16 years to litigate this claim, the Defendants are quilty of laches and the claim should be dismissed.

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~~15.~~

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~~16.24.~~ 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;

~~(i) dismissal of Defendants First Counterclaim; and~~

(i) such other and further relief as the Court may deem just and proper.

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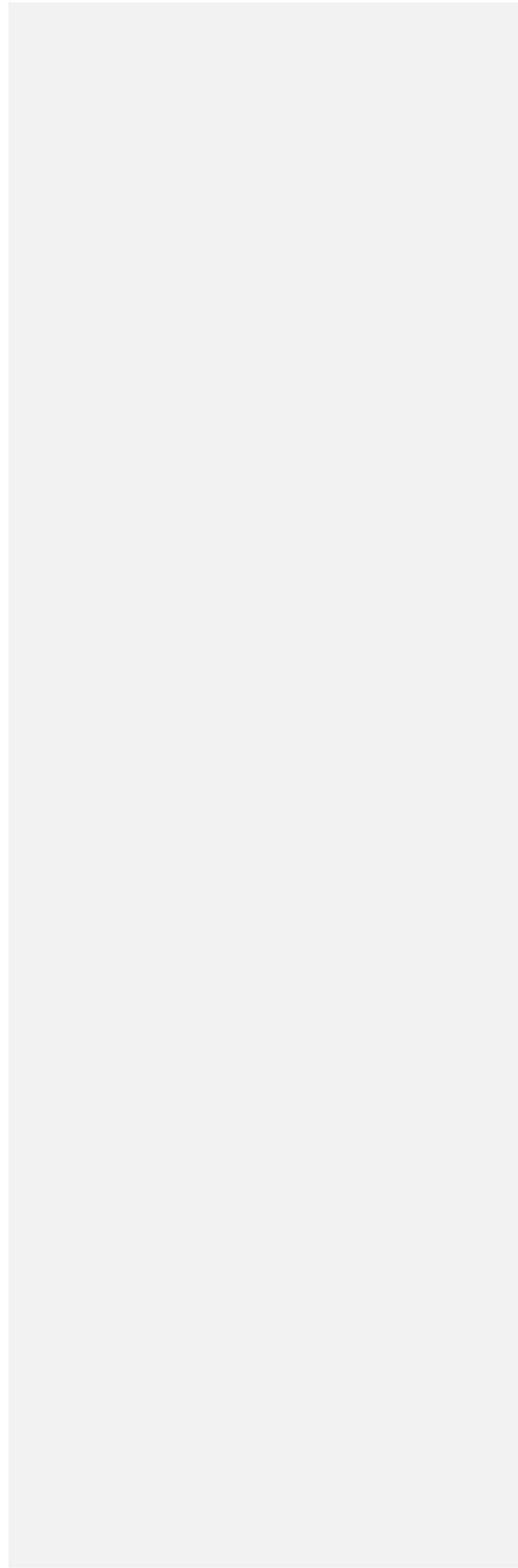
Dated: White Plains, New York

~~May 16, 2022~~
June 16, 2022

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

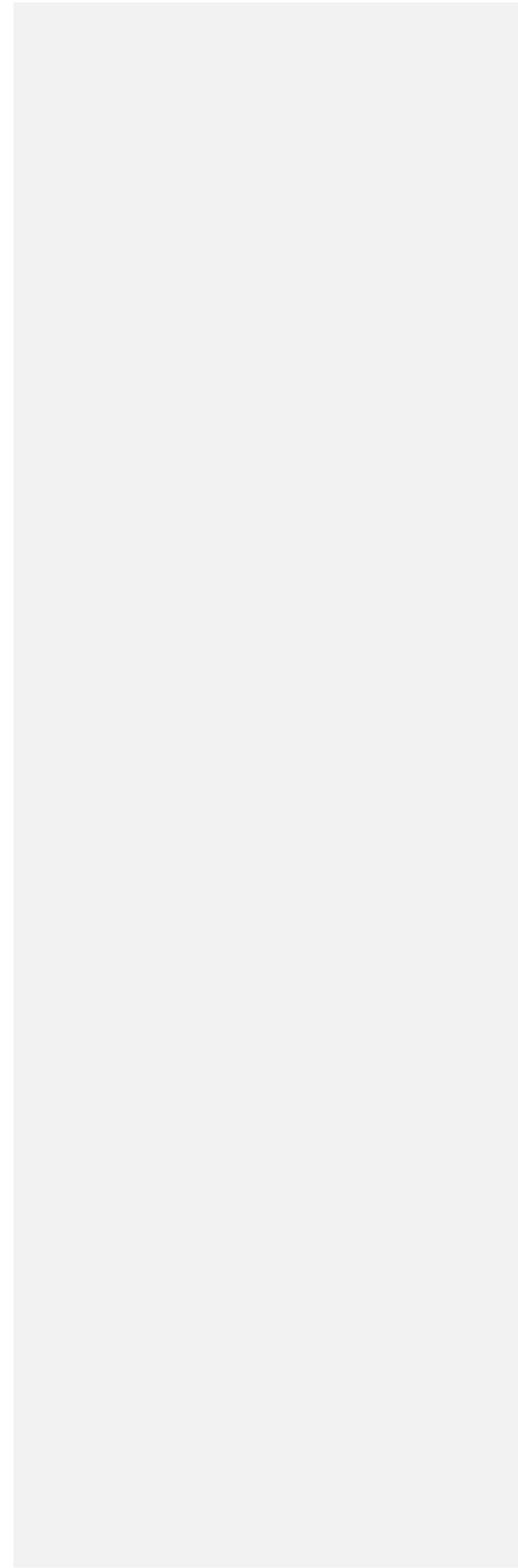


EXHIBIT 43



EXHIBIT

GG

RH 2/26/20





EXHIBIT 44

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STATE OF NEW YORK COUNTY OF NEW YORK, S.S. I, WILLIAM F. SCHNEIDER, Clerk of the County of New York and also Clerk of the Supreme Court for the said County the same being a Court of Record do hereby certify that CHARLES M. FIELD, has filed in the Clerk's office of the County of New York a certified copy of his appointment and qualification as Notary Public, for the County of Kings, with his autograph signature and was at the time of taking the proof or acknowledgment of the annexed instrument duly authorized to take the same, And further that I am well acquainted with the handwriting of such Notary and believe the signature to the said certificate of proof or acknowledgment to be genuine, IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 31 day of Jan. 1911.

(L.S.) Wm. F. Schneider, Clerk,

The foregoing instrument was endorsed for record as follows; The premises affected by the within instrument are situated in the Town of GREENBURGH, County of Westchester, and State of New York, A true copy of the original Deed and acknowledgment thereof with certificate recorded February 1st 1911 at 3.07 P. M.

Edward D. Fox, Register.

FREDERICK AUGUSTUS STOHLMANN AND WIFE. :

TO :

THE CITY OF NEW ROCHELLE. :

THIS INDENTURE, made the 20th day

of January, in the year nineteen hundred and eleven, BETWEEN FREDERICK AUGUSTUS STOHLMANN and JULIA A. M. F. STOHLMANN his wife, residing at #295 Carlton Avenue, Borough of Brooklyn, City of New York, parties of the first part and THE CITY OF NEW ROCHELLE, , a municipal corporation, organized under the laws of the State of New York, residing in the City of New Rochelle, County of Westchester and State of New York, party of the second part, WITNESSETH, that the said parties of the first part in consideration of TEN (\$10.00) DOLLARS, lawful money of the United States, paid by the party of the second part, do hereby grant and release unto the said party of the second part, its successors and assigns forever, ALL the right, title and interest of the parties of the first part, said interest being an undivided one-half in ALL that certain lot, piece and parcel of land, situate lying and being in the City of NEW ROCHELLE, County of Westchester and State of New York, bounded and described as follows; to wit; BEGINNING at the southwesterly corner of the premises now being described and at a point formed by the intersection of the easterly line of East Street with the northerly line of 5th Avenue and running thence partly along said easterly line of East Street and partly along land now or late of Hadert Realty Company north 15° 45' 18" west 638.036 feet; thence partly along said land now or late of said Hadert Realty Company and partly along land now or late in possession of Bruno, north 17° 50' 17" west 305.902 feet; thence still partly along said last mentioned land and partly along land now or late in possession of Bruno and partly along other land now or late of said Hadert Realty Company, north

STATE OF NEW YORK, COUNTY OF WESTCHESTER, N.Y.
 I, THE CLERK OF THE COUNTY OF NEW YORK, DO HEREBY CERTIFY THAT I HAVE COMPAIRED THIS COPY WITH THE ORIGINAL THEREOF RECORDED IN MY OFFICE ON _____ AND THAT THE SAME IS A CORRECT COPY.
 IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL.
 CERTIFIED ON 5-31-22 3 TOTAL PGS
 COUNTY CLERK AND CLERK OF THE SUPREME AND COUNTY COURTS, WESTCHESTER COUNTY, N.Y.

2-1-1911

14° 29' 28" west 262.757 feet to land now or late of John F. Lambden; thence along said last mentioned land the following courses and distances; to wit, North 63° 19' 21" east 113.635 feet; north 67° 44' 46" east 41.375 feet; north 66° 24' 44" east 92.289 feet; north 65° 7' 46" east 313.403 feet; north 70° 48' 38" east 228.001 feet, north 69° 22' 47" east 135.206 feet, north 65° 38' 4" east 56.141 feet; north 70° 56' 56" east 44.100 feet and north 72° 5' 46" east 38.968 feet to land now or late of Sarah Conklin; thence partly along the last mentioned land and partly along land now or late of Sarah Stearns south 24° 45' 4" east 200.575 feet; thence partly along said last mentioned land now or late of Sarah Stearns and partly along land now or late of J. Reeber south 22° 50' 30" east 60.033 feet; thence partly along land now or late of J. Reeber and partly along land now or late of Agostina Griffa and partly along land now or late of Maria F. Ferris, south 24° 45' 4" east 200 feet; thence along said last mentioned land south 23° 16' 56" east 78.026 feet; thence partly along the said land now or late of said Maria F. Ferris and partly along land now or late of Alexander Wildman, and Samuel Barraclough south 24° 45' 4" east 122 feet; thence partly along said land now or late of said Wildman and Barraclough south 23° 53' 30" east 100.011 feet; thence partly along land now or late of Jacob Raynor and partly along land now or late of Henry Gobbels south 24° 27' 53" east 100.001 feet; thence partly along said land now or late of Henry Gobbels and partly along land now or late of Benjamin M. Stilwell and land in possession of the estate of John Reeber and partly along the easterly line of 5th Avenue aforesaid south 24° 20' 56" east 287.512 feet to the northerly line of 5th Avenue aforesaid, thence along said northerly line of 5th Avenue the following courses and distances to wit; south 66° 53' 56" west 355.198 feet; south 69° 32' 46" west 217.840 feet; south 67° 58' 26" west 295.930 feet; south 1° 5' west 34.846 feet and south 66° 45' west 352.506 feet to the place of beginning, Being the same premises which were conveyed by Edward Rinnisland and Catharine his wife, to Frederick Augustus Stohlmann and Julius Edward Stohlmann by deed dated April 1, 1874, recorded in Liber 868 of Deeds, page 400 in the office of the Register of the County of Westchester, TOGETHER with all the right title and interest of the parties of the first part of in and to the land in 5th Avenue and East Street in front of and adjacent to the above described premises to the center line of each of said streets, TOGETHER with the appurtenances and all the estate and rights of the parties 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, AND the said parties of the first part do covenant with the said party of the second part as follows: FIRST.- That the said parties of the first part are seized of the said premises in fee simple and have 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 parties of the first part will execute or procure any further necessary assurance of the

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title to said premises, FIFTH.- That the said parties of the first part will forever warrant the title to said premises, IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

In the presence of: FREDERICK AUGUSTUS STOHLMANN. (L.S.)
Frank K. Fairchild, JULIA A. M. F. STOHLMANN. (L.S.)

STATE OF NEW YORK COUNTY OF KINGS, S. S. On this 25th day of January in the year nineteen hundred and eleven, before me came FREDERICK AUGUSTUS STOHLMANN and JULIA A. M. F. STOHLMANN his wife, to me known to be the individuals described in and who executed the foregoing instrument and they severally acknowledged that they executed the same,

(L.S.) Frank K. Fairchild Notary Public,

STATE OF NEW YORK COUNTY OF KINGS, S. S. I, HENRY P. MOLLOY, Clerk of the County of Kings and also Clerk of the Supreme Court of said County, (said Court being a Court of Record) do hereby certify that Mr. FRANK K. FAIRCHILD, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a Notary Public, of the State of New York, in and for said County of Kings, dwelling in said County commissioned and sworn and duly authorized to take the same; And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to said certificate is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York, , IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said County and Court this 25 day of Jany. 1911.

(L.S.) Henry P. Molloy, Clerk,

The foregoing instrument was endorsed for record as follows: The land affected by the within instrument lies in the City of NEW ROCHELLE, County of Westchester, in the State of New York, A true copy of the original Deed and acknowledgment thereof with certificate recorded February 1st 1911 at 4.30 P. M.

Register.

LOUISE LAURENT STOHLMANN. :

TO :

THE CITY OF NEW ROCHELLE. : THIS INDENTURE, made the 20th day of January, in the year nineteen hundred and eleven, BETWEEN LOUISE LAURENT STOHLMANN, widow of Julius Edward Stohlmann, residing at New City, Rockland County, State of New York, party of the first part and THE CITY OF NEW ROCHELLE, a municipal corporation, organized under the laws of the State of New York, residing in the City of New Rochelle, County of Westchester and State of New York, party of the second part, WITNESSETH, that the said party of the first part in consideration of the sum of TEN (\$10.00) DOLLARS, lawful money of the United States, paid by the said party of the second part, does hereby grant and release unto the said party of the second

part, its successors and assigns forever. ALL the right title and interest of the party of the first part said interest being an undivided one half in ALL that certain lot, piece or parcel of land, situate lying and being in the City of NEW ROCHELLE, County of Westchester and State of New York, bounded and described as follows, to wit: BEGINNING at the southwesterly corner of the premises now being described and at a point formed by the intersection of the easterly line of East Street with the northerly line of 5th Avenue and running thence partly along said easterly line of East Street and partly along land now or late of Hadert Realty Company, North 15° 45' 18" west 638.036 feet; thence partly along said land now or late of said Hadert Realty Company and partly along land now or late in possession of Bruno north 17° 50' 17" west 305.902 feet; thence still partly along said last mentioned land and partly along land now or late in possession of Bruno and partly along other land now or late of said Hadert Realty Company North 14° 29' 28" west 262.757 feet to land now or late of John F. Lambden; thence along said last mentioned land, the following courses and distances; to wit; North 63° 19' 21" east 113.635 feet; North 67° 44' 46" east 41.375 feet; north 66° 24' 44" east 92.289 feet; north 65° 7' 46" east 313.403 feet; north 70° 48' 38" east 228.001 feet; North 69° 22' 47" east 135.106 feet; North 65° 38' 4" east 56.141 feet; north 70° 56' 56" east 44.100 feet and north 72° 5' 46" east 38.968 feet to land now or late of Sarah Conklin, thence partly along the last mentioned land and partly along land now or late of Sarah Sterns south 24° 45' 4" east 200.575 feet; thence partly along said last mentioned land now or late of Sarah Stearns and partly along land now or late of J. Reeber, south 22° 50' 30" east 60.033 feet; thence partly along land now or late of J. Reeber and partly along land now or late of Agostina Griffa and partly along land now or late of Maria F. Ferris south 24° 45' 4" east 200 feet; thence along said last mentioned land south 23° 16' 56" east 78.026 feet; thence partly along said land now or late of said Maria F. Ferris and partly along land now or late of Alexander Wildman and Samuel Barraclough south 24° 45' 4" east 122 feet; thence partly along said land now or late of said Wildman and Barraclough, south 23° 53' 30" east 100.011 feet; thence partly along land now or late of Jacob Raynor and partly along land now or late of Henry Gobbels south 24° 27' 53" east 100.001 feet; thence partly along said land now or late of Henry Gobbels and partly along land now or late of Benjamin M. Stilwell and land in possession of the estate of John Reeber and partly along the easterly line of 5th Avenue aforesaid south 24° 20' 56" east 287.512 feet to the northerly line of 5th Avenue aforesaid, thence along said northerly line of 5th Avenue the following courses and distances, to wit; south 66° 53' 56" west 355.198 feet; south 69° 32' 46" west 217.840 feet, south 67° 58' 26" west 295.930 feet; south 1° 5' west 34.846 feet and south 66° 45' west 352.506 feet to the place of beginning, Being the same premises which was conveyed by Edward Rinnisland and Catharine his wife, to Frederick Augustus Stohlmann and Julius Edward Stohlmann by deed dated April 1, 1874, recorded in Liber 568 of Deeds

page 400 in the office of the Register of the County of Westchester; Together with all the right, title and interest of the party of the first part of, in and to the land in 5th Avenue and East Street in front of and adjacent to the above described premises to the center line of each of said streets, 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 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 hereunto set her hand and seal the day and year first above written.

In the presence of: LOUISE LAURENT STOHLMANN. (L.S.)
Joseph De Noyelles.

STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. On this twenty fifth day of January, in the year nineteen hundred and eleven, before me came, LOUISE LAURENT STOHLMANN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same,

(L.S.) Joseph De Noyelles Notary Public, in & for Rockland Co. N. Y. STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. I, CYRUS M. CRUM, Clerk of the County of Rockland and also Clerk of the County and Supreme Courts for said County the same being Courts of Record do hereby certify that JOSEPH De NOYELLES, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a Notary Public, in and for the County of Rockland dwelling in the said County commissioned and sworn, and duly authorized to take the same, And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 25th day of January 1911.

(L.S.) Cyrus M. Crum. Clerk,

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the City of NEW ROCHELLE, in the County of Westchester, New York, A true copy of the original Deed and acknowledgment thereof with certificate recorded February 1st 1911 at 4,30 P. M.

Edward S. Lane, Register.

JULIUS EDWARD STOHLMANN, EXECUTORS OF: :
TO: :

THE CITY OF NEW ROCHELLE. : THIS INDENTURE, made the 20th day of January, in the year nineteen hundred and eleven, BETWEEN JULIUS EDWARD STOHLMANN and THEODORE STOHLMANN as Executors of the last Will and Testament of JULIUS EDWARD STOHLMANN late of New City, County of Rockland and State of New York, deceased, and LOUISE LAURENT STOHLMANN, the widow of said Julius Edward Shohlmann, deceased, of the same place parties of the first part and THE CITY OF NEW ROCHELLE,

page 400 in the office of the Register of the County of Westchester; Together with all the right, title and interest of the party of the first part of, in and to the land in 5th Avenue and East Street in front of and adjacent to the above described premises to the center line of each of said streets, 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 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 hereunto set her hand and seal the day and year first above written.

In the presence of: LOUISE LAURENT STOHLMANN. (L.S.)
Joseph De Noyelles.

STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. On this twenty fifth day of January, in the year nineteen hundred and eleven, before me came, LOUISE LAURENT STOHLMANN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged that she executed the same,

(L.S.) Joseph De Noyelles Notary Public, in & for Rockland Co. N. Y. STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. I, CYRUS M. CRUM, Clerk of the County of Rockland and also Clerk of the County and Supreme Courts for said County the same being Courts of Record do hereby certify that JOSEPH De NOYELLES, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a Notary Public, in and for the County of Rockland dwelling in the said County commissioned and sworn, and duly authorized to take the same, And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 25th day of January 1911.

(L.S.) Cyrus M. Crum. Clerk,

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the City of NEW ROCHELLE, in the County of Westchester, New York, A true copy of the original Deed and acknowledgment thereof with certificate recorded February 1st 1911 at 4.30 P. M.

Cyrus M. Crum, Register.

JULIUS EDWARD STOHLMANN, EXECUTORS OF: :

TO:

THE CITY OF NEW ROCHELLE. : THIS INDENTURE, made the 20th day of January, in the year nineteen hundred and eleven, BETWEEN JULIUS EDWARD STOHLMANN and THEODORE STOHLMANN as Executors, of the last Will and Testament of JULIUS EDWARD STOHLMANN late of New City, County of Rockland and State of New York, deceased, and LOUISE LAURENT STOHLMANN, the widow of said Julius Edward Shohlmann, deceased, of the same place parties of the first part and THE CITY OF NEW ROCHELLE,

STATE OF NEW YORK COUNTY OF WESTCHESTER SS.
I, THEODORE C. HORN, COUNTY CLERK AND CLERK OF THE SUPREME AND DISTRICT COURTS OF WESTCHESTER COUNTY DO HEREBY CERTIFY THAT I HAVE RECEIVED AND CORRECTLY TRANSCRIBED THE ABOVE INSTRUMENT AND THAT IT IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS THE SAME WAS PRESENTED TO ME FOR RECORD AND APPROVED BY OFFICIAL SEAL.
NYSCEF NUMBER: 184
TOTAL FEE: \$200.00
CERTIFIED BY: [Signature]
COUNTY CLERK AND CLERK OF THE SUPREME AND DISTRICT COURTS, WESTCHESTER COUNTY, NEW YORK

a municipal corporation organized under the laws of the State of New York, residing in the City of New Rochelle, County of Westchester and State of New York, party of the second part, WITNESSETH, that the said parties of the first part by virtue of the power and authority to them given in and by the said last Will and Testament and in consideration of TWENTY TWO THOUSAND FIVE HUNDRED (\$22,500.00) DOLLARS, lawful money of the United States paid by the party of the second part, do hereby grant and release unto the said party of the second part its successors and assigns forever, ALL the right title and interest of the parties of the first part, said interest being an undivided one-half in ALL that certain lot, piece or parcel of land, situate lying and being in the City of NEW ROCHELLE, County of Westchester and State of New York, bounded and described as follows; to wit; BEGINNING at the southwesterly corner of the premises now being described and at a point formed by the intersection of the easterly line of East Street with the northerly line of 5th Avenue and running thence partly along said easterly line of East Street and partly along land now or late of Hadert Realty Company, North 15° 45' 18" west 638.036 feet; thence partly along said land now or late of said Hadert Realty Company and partly along land now or late in possession of Bruno, north 17° 50' 17" west 305.902 feet; thence still partly along said last mentioned land and partly along land now or late in possession of Bruno and partly along other land now or late of said Hadert Realty Company, north 14° 29' 28" west 262.757 feet to land now or late of John F. Lambden, thence along said last mentioned land, the following courses and distances, to wit: North 63° 19' 21" east 113.635 feet; north 67° 44' 46" east 41.375 feet; north 66° 24' 44" east 92.289 feet; north 65° 7' 46" east 313.403 feet; north 70° 48' 38" east 228.001 feet; north 69° 22' 47" east 135.206 feet; north 65° 38' 4" east 56.141 feet; north 70° 56' 56" east 44.100 feet and north 72° 5' 46" east 38.968 feet to land now or late of Sarah Conklin, thence partly along the last mentioned land and partly along land now or late of Sarah Stearns south 24° 45' 4" east 200.575 feet; thence partly along said last mentioned land now or late of Sarah Stearns and partly along land now or late of J. Reeber south 22° 50' 30" east 60.033 feet; thence partly along land now or late of J. Reeber and partly along land now or late of Agostina Griffa and partly along land now or late of Maria F. Ferris, south 24° 45' 4" east 200 feet; thence along said last mentioned land south 23° 16' 56" east 78.026 feet; thence partly along the said land now or late of said Maria F. Ferris and partly along land now or late of Alexander Wildman and Samuel Barraclough, south 24° 45' 4" east 122 feet; thence partly along said land now or late of said Wildman and Barraclough south 23° 53' 30" east 100.011 feet; thence partly along land now or late of Jacob Raynor and partly along land now or late of Henry Gobbels south 24° 27' 53" east 100.001 feet; thence partly along said land now or late of Henry Gobbels and partly along land now or late of Benjamin M. Stillwell and land in possession of the estate of John Reeber and partly along the easterly line of 5th Avenue aforesaid south 24° 20' 56" east 287.512 feet to the northerly

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line of 5th Avenue aforesaid; thence along said northerly line of 5th Avenue the following courses and distances, to wit: south 66° 53' 56" west 355.198 feet; south 69° 32' 46" west 217.840 feet; south 67° 58' 26" west 295.930 feet; south 1° 5' west 34.846 feet and south 66° 45' west 352.506 feet to the place of beginning, Being the same premises which were conveyed by Edward Rinnisland and Catharine his wife to Frederick Augustus Stohlmann and Julius Edward Stohlmann by deed dated April 1, 1874, recorded in Liber 868 of Deeds page 400 in the office of the Register of the County of Westchester, Together with all the right title and interest of the parties of the first part of, in and to the land in 5th Avenue and East Street in front of and adjacent to the above described premises to the center line of each of said streets, The said Louise Laurent Stohlmann hereby joins in the execution of this deed to signify her consent to the conveyance by the executors named in said last Will and Testament, as required by the provisions of said last Will and Testament and in pursuance of the provisions of law in such case made and provided, TOGETHER with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which the said parties of the first part have or have power to convey or dispose of, whether individually or by virtue of said Will or otherwise, TO HAVE AND TO HOLD the above granted premises unto the said party of the second part its successors and assigns forever, AND the said parties of the first part covenant with the said party of the second part that the parties of the first part have not done or suffered anything whereby the said premises have been incumbered, IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

In presence of: JULIUS EDWARD STOHLMANN. (L.S.)
 Joseph De Noyelles As Executor.
 THEODORE STOHLMANN. (L.S.)
 As Executor.
 LOUISE LAURENT STOHLMANN. (L.S.)

STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. On this 25th day of January, in the year nineteen hundred and eleven, before me came, JULIUS EDWARD STOHLMANN and THEODORE STOHLMANN, Executors of the last Will and Testament of JULIUS EDWARD STOHLMANN, deceased, to me known to be the individuals described in and who executed the foregoing deed and acknowledged that they executed the same as such executors,

(L.S.) Joseph De Noyelles Notary Public, In & for Rockland Co. N. Y.

STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. On this 25th day of January, in the year 1911, before me came LOUISE LAURENT STOHLMANN to me known to be the individual described in, and who executed the within instrument, and she acknowledged that she had executed the same,

(L.S.) Joseph De Noyelles Notary Public, In & for Rockland Co. N. Y.

STATE OF NEW YORK COUNTY OF ROCKLAND, S. S. In presence of CYRUS M. CRUM, Clerk of the County

of Rockland and also Clerk of the County and Supreme Courts for said County; the same being Courts of Record, do hereby certify that JOSEPH De NOYELLES, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a Notary Public, in and for the County of Rockland; dwelling in said County Commissioned and sworn and duly authorized to take the same; And further that I am well acquainted with the handwriting of such Notary and verily believe that the signature to the said certificate of proof or acknowledgment is genuine, IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County the 25th day of January 1911:

(L.S.) Cyrus M. Crum, Clerk,

The foregoing instrument was endorsed for record as follows: The property affected by this instrument is situate in the City of NEW ROCHELLE, in the County of Westchester, New York. A true copy of the original Deed and acknowledgments thereof with certificate recorded February 1st 1911 at 4.30 P. M.

Edward D. [Signature] Register.

WILLIAM WHALEN AND WIFE.

TO

WILLIAM KOELBLE AND WIFE. THIS INDENTURE, made the 26th day of January, in the year nineteen hundred and eleven, BETWEEN WILLIAM WHALEN and MARY WHALEN, his wife, both of the Village of Mount Kisco, County of Westchester and State of New York, parties of the first part and WILLIAM KOELBLE and CATHERINE KOELBLE, his wife, both of the Village of Mount Kisco, County of Westchester and State of New York, parties of the second part, WITNESSETH, that the said parties of the first part in consideration of OTHER GOOD AND VALUABLE CONSIDERATION AND ONE (\$1) DOLLARS, lawful money of the United States, paid by the parties of the second part, do hereby grant and release unto the said parties of the second part their heirs and assigns forever, ALL those three certain lots or parcels of land, situate lying and being in the Town of NEW CASTLE, County of Westchester and State of New York, and known and designated by the numbers 53, 54 and 55 on map entitled "Subdivision of property situate in the Village of Mount Kisco, Westchester County, N. Y., belonging to Boltis Moore", dated April 1895, and filed in the office of the Register of Westchester County on October 30, 1896, in Vol. 11 of maps, page 74, and which three lots, taken together are bounded and described as follows: Viz: BEGINNING at the southeasterly corner of the premises hereby described on the northerly side of Moore Avenue, adjoining the land belonging to the Town of New Castle; thence running northerly along said land of the Town of New Castle and land of Emily B. Adams two hundred and twenty five and twenty six one hundredths feet to land formerly of one Wixon, now Mott; thence westerly along land formerly of said Wixon, now of said Mott, and of land formerly of Smith Williamson, now of Daniel Cox; seventy five and two tenths feet to land formerly of Stephen H. Reynolds, now

