

EXHIBIT 22

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

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4

BY: SCOTT MENDELSON, ESQ.

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BY: KATHY ZALANTIS, ESQ.

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

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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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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.)

13

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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

16

17 Notary Public

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Maria La Rocca	Mr. Mendelsohn	7
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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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