

COUNTY OF BERGEN
VILLAGE OF RIDGEWOOD

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IN THE MATTER OF THE)	TRANSCRIPT
APPLICATION OF LES)	OF
DANN, LLC,)	PROCEEDINGS
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Tuesday, March 26, 2024
7:30 p.m.
Ridgewood, New Jersey

BOARD MEMBERS:

- GREG BROWN, Chairman **(Absent)**
- MATTHEW BANDELT, Vice Chairman **(Absent)**
- GARY NEGRYCZ, Chairman Pro Tem **(Absent)**
- JASON CURRERI
- DIANA RUHL
- JONATHAN PAPIETRO
- JAMIE FOX **(Absent)**
- YELENA RAYSTER

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ALSO PRESENT:

McDONNELL & WHITAKER, LLC
BY: BRUCE E. WHITAKER, ESQ.
Attorney for the Zoning Board
of Adjustment

CHRIS RUTISHAUSER (**Absent**)
Village Engineer

HEYER, GRUEL & ASSOCIATES
BY: JOHN BARREE
Village Planner

JANE WONDERGEM
Board Secretary

APPEARANCES:

SEMERARO & FAHRNEY, LLC
BY: MARK J. SEMERARO, ESQ.
Attorney for the Applicant, LES Dann, LLC

ROBERT J. INGLIMA, JR., ESQ.
Attorney for Religious Society of Friends,
Ridgewood Friends Meeting, Friends Nursery School

I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

STEVEN LYDON

BY MR. INGLIMA

5

56

BY MR. SEMERARO

36/67

PETER STECK

BY MR. INGLIMA

69

1 MR. WHITAKER: Old Business. LES Dann,
2 LLC - an application for preliminary and final
3 major site plan approval, expansion of a
4 nonconforming use variance approval, and use
5 variance approval for the construction of an auto
6 body shop, which will serve as the principal use
7 at 246-264 South Broad Street, Block 3905, Lots
8 12, 13 and 14 in the R-3 Zone. This is a
9 continuation of the public hearing that was
10 concluded on January 23rd, 2024.

11 So with that said, Counsel, enter
12 appearance so we can proceed.

13 MR. SEMERARO: Good evening, Counsel,
14 Members of the Board. Mark Semeraro,
15 S-e-m-e-r-a-r-o, law firm of Semeraro & Fahrney on
16 behalf of the applicant.

17 MR. INGLIMA: Good evening. Robert
18 Inglima, Jr., representing the Religious Society
19 of Friends, Ridgewood Friends Meeting, and Friends
20 Nursery School, it's actually two entities, that
21 own property or occupy property at 224 Highwood
22 Avenue, Block 3908, Lot 2.

23 Thank you.

24 MR. WHITAKER: So this evening we're to
25 continue where we left off.

1 MR. SEMERARO: Correct, and I appreciate
2 that.

3 So with respect to the applicant's first
4 prong in the applicant's application for the
5 Certificate of Preexisting Nonconforming Use, the
6 direct testimony of our planner has been
7 concluded. He is ready for cross-examination, but
8 I do reserve the right to call him as a rebuttal
9 witness if necessary depending on the objectors'
10 witnesses.

11 MR. WHITAKER: That is correct.
12 Counsel.

13 MR. INGLIMA: Okay, thank you.

14
15 S T E V E N L Y D O N, having been
16 previously sworn, testified as follows:

17

18 CROSS-EXAMINATION BY MR. INGLIMA:

19 Q Mr. Lydon, good evening.

20 A Good evening, Mr. Inglima. How are you?

21 Q Good. How are you doing?

22 A Not so bad, not so bad.

23 Q Great to hear it.

24 You understand you're still under oath?

25 A Yes, I do.

1 Q Thank you.

2 You testified regarding a number of different laws
3 that you believe from time to time had affected the
4 permitted uses and the standards for the uses at the
5 applicant's site. When I refer to the "applicant's
6 site", I'm referring to all three lots; Lot 12, Lot 13,
7 and Lot 14, and when I want to refer to a specific lot,
8 I'll call it out by number.

9 A Sounds fair.

10 Q Okay. You introduced a copy of --
11 actually, you referred to a copy of a zoning ordinance
12 that I believe bore a date of 1965?

13 A Yes.

14 Q It had been placed in the record by a
15 prior witness. Did you read that ordinance?

16 A Well, can we pull it up on the screen? Is that
17 possible?

18 MR. INGLIMA: It would 71A and 71B.

19 MR. LYDON: I don't know if I could read
20 it from there, so I'm going to put the board up.

21 A So, Mr. Inglima, I did but 71A and 71B up on the
22 board and I read the relevant portions of that ordinance.
23 I don't know if I read the entirety of it. I don't
24 remember at this point.

25 Q What do you consider the relevant portions

1 of the that ordinance to be?

2 A Well, first map and then secondly, the ordinance
3 definition for public garage. The permitted uses for the
4 B-2 Zone and section 5, which talks about the specific
5 regulations that are applicable to the public garages.

6 Q And you said that was section 5?

7 A Yes.

8 Q In your prior testimony you indicated that
9 it was your understanding that this ordinance was adopted
10 in 1965.

11 A Yes.

12 Q Do you know when the provisions that are
13 shown in this ordinance -- and just for clarification,
14 we're referring to an ordinance that appeared in a
15 newspaper. Correct?

16 A It appears to be, yes.

17 Q You don't have a separate volume or
18 document or any other indication in a written form of a
19 codified ordinance that corresponds to the publication
20 that's in 71A and 71B, do you?

21 A No, you're correct, we don't. We did apply for
22 those through OPRA requests and demands and the Village,
23 unfortunately, through diligence of their own, not
24 through any dereliction of their own, could not provide
25 them. We were provided this however.

1 Q So you can't testify as to whether or not
2 there are any typographical errors or omissions that are
3 present in the exhibit, 71A and 71B, that may differ from
4 what was in the ordinance that was actually adopted in
5 1965?

6 A I wouldn't be able to make that determination if
7 there are any, no.

8 Q Did you visit the municipal building and
9 ask to look at the books of ordinances that were adopted
10 by the municipality in 1965 or any other year for that
11 matter?

12 A No, I submitted OPRA requests and then I did come
13 to the Village hall to pick up some documents on a couple
14 of occasions. I didn't ask to look through any annual
15 books of the Village, no.

16 Q You're aware that under law that
17 ordinances that are adopted by a municipality in the
18 State of New Jersey must be kept in a separate log or
19 volume that contains those ordinances?

20 A I'm aware of that. I'm also aware that there's
21 been several floods through the years, unfortunately.

22 Q But you're not testifying that those
23 particular records to which I just referred were
24 destroyed by flood. Right?

25 A I know we OPRA'd ordinances, resolutions, and

1 other Village documents that are supposed to be
2 maintained on the premises and in many cases the Village
3 said they didn't have them. In other cases, quite
4 frankly, we didn't get answers. So how the Village clerk
5 and the staff searched for records, I don't know.

6 Q Okay. You didn't request an opportunity,
7 though, to review the individual ordinance books is what
8 I'm asking?

9 A Actually, I did early on before filing an OPRA and
10 the Village clerk, a very nice woman, was aghast that I
11 thought I could look at Village records and she wasn't
12 going to allow that to happen. So she's obviously a good
13 woman that knows character well.

14 Q With respect to the provisions that appear
15 in section -- I'm sorry -- Exhibit 71A and 71B, do you
16 know when they were first adopted by the Village of
17 Ridgewood as laws?

18 A No.

19 Q I believe you also referred in your
20 testimony to an exhibit that was marked as A-73, which
21 indicates that it was a zoning ordinance of the Village
22 of Ridgewood amended through July 1951. Is that your
23 understanding?

24 A Was that the plot map?

25 Q No, I'm referring to A-73.

1 A Yes.

2 Q You're familiar with this document?

3 A Yes, I am.

4 Q Do you agree that this represents an
5 ordinance that was in place as of July 1951? At least
6 that's what it says on its face.

7 A Yes, I believe that's accurate and there is a map
8 that goes along with that.

9 Q So to the extent that there are any
10 differences between the provisions that are contained in
11 A-73 and the provisions that are contained in A-71A and
12 A-71B, you can't say when those provisions were adopted?

13 A That would be correct.

14 Q So it could have been any time between
15 July of '51 and September of 1965?

16 A That would be correct.

17 Q Okay. You indicated a moment ago that you
18 reviewed the regulations that affect business uses in the
19 B-2 Zone that are contained in Exhibit A-71A and A-71B?

20 A That is correct.

21 Q And you only looked at those zones?

22 A I didn't say only looked at those, most focused on
23 those.

24 Q And was that based on the fact that you
25 saw in 1965 that the zone map indicated the applicant's

1 site was in the B-2 Zone?

2 A That's correct.

3 Q So you would not have reviewed any
4 regulations in A-71A and A-71B that referred to business
5 uses generally?

6 MR. SEMERARO: I object to the form of the
7 question.

8 You can answer.

9 A I did look through the commercial zone just
10 because here all these years later those terms are
11 typically used almost interchangeably and I wanted to see
12 if those uses were permitted in a commercial zone and
13 what the differences might have been, and so I did look
14 at commercial zones, yes.

15 Q Is it fair to say that in the commercial
16 zones and in the B-2 Zone district specifically, I'm
17 going to call it the "1965 ordinance" instead of
18 referring to the exhibit number over and over again, in
19 the 1965 ordinance there were a variety of business uses
20 that were permitted in the B-2 Zone. Correct?

21 A Yes, that's correct.

22 Q And some of them were service uses, were
23 they not?

24 A Some of them were services uses, as we described
25 them, yes.

1 Q And you feel that those service uses do
2 not define the business uses or activities that were
3 taking place on Lot 14, for example, at the time that the
4 ordinance was adopted?

5 A I'm not sure I understand your question I'm
6 afraid.

7 Q Well, you seem to have focused in your
8 direct testimony on the idea that the uses that were
9 present on Lot 14 in at least 1965 fit into the category
10 of public garage use. Right? Am I characterizing your
11 testimony correctly. Correct me if I'm wrong.

12 A No, I think you're right.

13 Q Okay. So you felt that after looking at
14 all the different uses that were permitted in the zone,
15 in the business zones of the municipality, that public
16 garage use was what was the best definition or the best
17 characterization of those uses?

18 A I'm not sure I would phrase it that way. I would
19 say that the '65 ordinance defines public garages and the
20 B-2 Zone specifically permits those uses and the
21 accompanying map clearly indicates the subject property
22 to be in the B-2 zone.

23 Q So you sort of came to the conclusion, if
24 you will, from reading the 1965 ordinance that the uses
25 that were present at that time on Lot 14 were public

1 garage uses?

2 A They fit within the parameters of public garage
3 use, yes.

4 Q Do you know --

5 A If I might, Mr. Inglima.

6 Q Go ahead.

7 A I want to make sure we're using the right term.
8 The ordinance, the '65 ordinance, defines "public garage"
9 or "gasoline service station" and I do believe that the
10 uses that were occurring on the property fit within that
11 term as defined in the ordinance.

12 Q Now, prior testimony had indicated that in
13 1965 there were several uses of Lot 14, several principal
14 uses. Correct?

15 A I was more comfortable with your question when you
16 said several "uses". I'm not sure if the clarification
17 of "principal" or "accessory", I don't know if we delved
18 deep into it. There were a number of uses on there.
19 Some of them were probably related; some of them may have
20 been independent.

21 Q Well, let's start with what was described
22 by Mr. Montick in his testimony as Ridgewood Auto Body
23 Shop.

24 A That was on Lot 14.

25 Q On Lot 14.

1 I'm going to show you, if I can, a copy of
2 what was previously marked as Exhibit O-4.

3 MR. INGLIMA: At the time of the prior
4 meeting when O-4 was identified, I don't think I
5 had enough copies for everyone so if I could take
6 this opportunity to hand out the full size copies.

7 A Mr. Inglima, I think you may have given me your
8 copy. It looks like it was an original.

9 Q Oh, yeah, that's so I know what it was.

10 MR. INGLIMA: Now that everyone has O-4,
11 there are a number of buildings that are
12 identified on O-4 and I would like to use the
13 building number references that I superimposed on
14 the survey that the applicant submitted to the
15 Board.

16 Q So let's go back to my question started
17 with a description of Mr. Montick's testimony and his
18 identification of Lot 14 as the site of Ridgewood Auto
19 Body. Do you know what buildings that are indicated on
20 Exhibit O-4 would correspond to that particular business?

21 A No. And the reason I answer in the negative, Mr.
22 Inglima, is it wasn't particularly important to me as to
23 which building is occupied by which business because the
24 question was which businesses were occupying the property
25 and I really didn't pay much attention to whichever

1 building it was as long as the testimony was that they
2 were operating from the site. So my notes are not as
3 detailed as yours perhaps.

4 Q With respect to a use that was previously
5 described by Mr. Montick in his testimony as Ridgewood
6 Taxi, do you know what building or area of Lot 14 was
7 occupied by Ridgewood Taxi?

8 A No, I do not.

9 Q There was previously testimony and there
10 is a resolution, I believe, that was attached to the
11 applicant's application form from a 1974 application that
12 referred to the fact that there was a dwelling structure,
13 a home, I believe it was a single-family home on Lot 14.
14 Are you familiar with that structure or that use of Lot
15 14?

16 A No.

17 Q So as far as the different events that
18 occurred over the period of time that was covered by your
19 testimony, you can't say to this Board what particular
20 structures or uses were present on Lot 14 at any of those
21 dates?

22 MR. SEMERARO: Objection.

23 Q Well, correct me if I'm wrong, can you?

24 A No, I don't think it's significant either. I was
25 talking about the use on the lot.

1 Q Let's go back to the 1965 ordinance,
2 Exhibits A-71A and A-71B. You referred to the fact that
3 that ordinance permitted public garages or public garages
4 and gasoline service stations in the B-2 Zone?

5 A Correct.

6 Q Are you familiar with all of the
7 regulations and restrictions that were present in that
8 ordinance with respect to that particular category of
9 uses?

10 A Those were listed in Section 5 of the ordinance.

11 Q Did you review other restrictions in the
12 ordinance that would be applicable to that type of use
13 category?

14 Let me ask you specifically. Are you familiar
15 with a provision in the 1965 ordinance that barred a
16 business use from conducting business activities outside
17 a building?

18 A Yes.

19 Q Are you familiar with provisions in that
20 ordinance that barred a business use from storing
21 materials outside a building?

22 A Yes.

23 Q Are you familiar with restrictions or
24 regulations contained in the 1965 ordinance that required
25 public garages or gasoline service stations to be a

1 certain distance from other public garages or gasoline
2 service stations?

3 A The ordinance contained a provision such as that,
4 yes.

5 Q Are you familiar with the fact that the
6 1965 ordinance contained regulations that required a
7 public garage or gasoline service station to be located a
8 certain distance from houses of worship?

9 A That was one of the provisions in the ordinance as
10 well, yes.

11 Q Same question as to places of public
12 assembly?

13 A Yes, that was also a restriction in the ordinance.

14 Q Do you know whether the uses that you have
15 characterized as "public garages" on Lot 14 complied with
16 the specific ordinance provisions to which I just
17 referred in my questions to you?

18 A No, I am not.

19 Q In 1963 there was testimony that a new
20 auto -- I'm sorry -- auto body repair shop operated as
21 Ridgewood Vehicle Company was added to Lot 12. Are you
22 familiar with that testimony?

23 A Yes, I am.

24 Q So that would have been from the testimony
25 of Karl Montick, Jr. and I believe Mr. Daniel, Mr.

1 Michael Daniel, in his testimony may have also referred
2 to it, but I'm relying at this time on Mr. Montick's
3 testimony. Do you know whether or not the regulations to
4 which I previously referred in the 1965 ordinance were in
5 affect in 1963 when Ridgewood Vehicle Company was
6 developed at Lot 12?

7 A No, because the inability of the Village to
8 provide all of the resolutions that we requested or all
9 the ordinances that we requested, I'm not sure if those
10 provisions you asked me about were applicable in 1963 or
11 not.

12 Q Certainly, to the extent that any of those
13 regulations were present in the 1951 ordinance that was
14 marked as A-73, would it be true that the development of
15 the Ridgewood Vehicle Company building and use on Lot 12
16 would have been violative of those ordinances?

17 MR. SEMERARO: I'm going to object to the
18 question.

19 You can answer.

20 Q If you can answer?

21 MR. SEMERARO: Could you rephrase the
22 question or repeat it?

23 MR. WHITAKER: The word "violative" is
24 what I have a problem with.

25 MR. INGLIMA: Excuse me?

1 MR. WHITAKER: The word "violative" is
2 what I have a problem with in the question.

3 MR. INGLIMA: Okay. I'll rephrase it.

4 MR. WHITAKER: "Comply".

5 MR. INGLIMA: Thank you.

6 Q If the provisions that I described, and
7 I'll itemize them if you wish, but I believe that the
8 most significant of them were the separation distances
9 between public garage uses and the separation distances
10 that apply to houses of worship or other places of public
11 assembly. If those were in affect in -- if they were
12 contained in the ordinance that was marked as A-73 from
13 1951, would the development of Ridgewood Vehicle
14 Company's facility on Lot 12 have violated those
15 ordinances?

16 MR. SEMERARO: Okay. I'm going to object,
17 again, for the couple of reasons. The first is
18 there isn't a foundation. We don't know what
19 those distances are.

20 Secondly, of course, goes to the
21 possibility of being variances that were granted
22 that gave the right to those uses.

23 MR. WHITAKER: So answer the second one
24 first. You could ask the question on its face, on
25 its surface, did it comply, but only if the

1 witness has any basis of information as to
2 distances between the uses you're describing, we
3 don't know what those uses were in affect in 1951
4 and 1965. That's the problem I have with the
5 question.

6 MR. INGLIMA: Okay. I'll ask it a
7 different way.

8 MR. SEMERARO: And actually, there's a
9 third objection. To the extent that that question
10 applied to both lots, there's a possibility of --
11 not possibility, it's our position it was a
12 preexisting nonconforming use, so with respect to
13 Lot 14 at the time it was existing prior to 1950.

14 MR. WHITAKER: That's why I said the word
15 "violative" was the wrong word, but "comply" would
16 be more appropriate.

17 MR. SEMERARO: Okay.

18 Q Let's talk about something that Mr.
19 Semeraro's objection raised.

20 Are you aware of any variances that were granted
21 in connection with the development of Ridgewood Vehicle
22 Company's facility on Lot 12 in 1963?

23 A Unfortunately, the Village wasn't able to give me
24 the resolution that authorized the construction of that
25 building and I probably shouldn't speculate, but

1 considering the setback of that building to the side
2 property line, I'm thinking there was likely a variance
3 granted and I'm specifically referring to the southerly
4 side line between Lot 12 and Lot 13. It's awfully tight
5 and I suspect that that may have triggered the need for a
6 variance, but without seeing the resolution, I'm sort of
7 speculating.

8 Q The better answer is you don't know?

9 A Okay.

10 MR. SEMERARO: Objection.

11 Q Isn't the better answer that you don't
12 know?

13 A I'm not going to disagree with you, Mr. Inglima.

14 Q Thank you.

15 With respect to the construction of a second
16 public garage use on Lot 12, within a distance of less
17 than a hundred feet from a public garage use on Lot 14,
18 if the separation distance requirements contained in the
19 1965 ordinance had been in affect in 1963, a variance
20 would have been required to allow that, wouldn't it?

21 MR. SEMERARO: Same objection. There's no
22 foundation. We don't know what the distances
23 were.

24 MR. INGLIMA: I'm looking at the survey.

25 This is --

1 MR. SEMERARO: I don't know the distance.
2 You didn't place anything on the record, you
3 didn't ask any questions as to what the requisite
4 distance was between those uses in the code at the
5 point in time that you claim it applied.

6 MR. INGLIMA: Well, I'm reading from
7 Exhibit O-4 that the distance along the frontage
8 of Lot 13 is 60.03 feet.

9 MR. SEMERARO: Again, you didn't place any
10 evidence before the Board as to what the
11 requirement was for spacing between those uses.

12 MR. INGLIMA: Well, it's in the ordinance.
13 It's been marked in the record as 71A and 71B.

14 MR. WHITAKER: The distance is reflected
15 in the ordinance.

16 MR. SEMERARO: Understood, but there's
17 nothing on the record indicating what the distance
18 is and he's asking the witness to opine on it.

19 MR. INGLIMA: Mr. Semeraro, I'm asking a
20 question of a witness who says he's familiar with
21 the provisions of that ordinance and he
22 specifically referred to provisions that are
23 applicable to public garages, so I thought we
24 could shortcut the whole reading of the ordinance
25 by just asking the question.

1 MR. SEMERARO: If you could answer, go
2 ahead.

3 A I'll rely on my other question. I have not been
4 provided a copy of the resolution. I don't know what
5 variances were granted, so I don't think I can answer
6 your question.

7 Q You're familiar with the current zoning
8 ordinance of the Village of Ridgewood. Correct?

9 A I looked at it when this application began, but to
10 tell you the truth, it's been some months now, Mr.
11 Inglima, so you caught me, no. No is the short answer.

12 Q Okay. Well, there is a provision in the
13 ordinance that deals with conditional uses and
14 specifically refers, I believe in section 190-123 subpart
15 A, to public garages and gasoline service stations as
16 conditional uses where permitted in the municipality.
17 Are you familiar with those provisions?

18 MR. SEMERARO: I'm going to object as to
19 relevance. What a current ordinance reads so far
20 as a conditional use is irrelevant. This isn't a
21 conditional use, this is a preexisting
22 nonconforming use.

23 MR. WHITAKER: He didn't testify to that,
24 so it's not part of his direct testimony.

25 MR. INGLIMA: Well, he is the planner --

1 MR. WHITAKER: Well, as a planner. But
2 we're only talking about the nonconforming aspect
3 now.

4 MR. INGLIMA: -- would have a small degree
5 of latitude to ask the witness who has been
6 qualified as an expert planner and has stated his
7 familiarity with the land use ordinances of this
8 municipality to simply ask him what he knows about
9 --

10 MR. WHITAKER: But he's already answered
11 he's not familiar with the most recent ordinance.

12 Q So you wouldn't know, Mr. Lydon, whether
13 the provisions that are contained in the ordinance from
14 1965 that has been marked as A-71B and A-71B are
15 continued into the current zoning ordinance of the
16 Village of Ridgewood in section 190-123A?

17 A I can answer that question and, clearly, they're
18 not because one of our later exhibits showed, I think it
19 was Ordinance 1949, that the subject property, those
20 properties along South Broad Street were rezoned into a
21 new R-3 Zone. So it's now in a Residential Zone.
22 Instead of being a conditional use, which by the way it
23 wasn't in 1965, it's not now.

24 Q I'm not sure that that was responsive to
25 my question, but I'll move on.

1 Are you familiar with the business activities that
2 were conducted at Lot 14 by Ridgewood Taxi?

3 A To the degree that there was testimony about them.
4 I'm not going to sit here and suggest I have any
5 firsthand knowledge of them.

6 Q So you're basing any conclusions you reach
7 with respect to Ridgewood Taxi on testimony of others?

8 A The sworn testimony of others, yes.

9 Q Yes. You didn't speak with any persons
10 associated with the business activities of Ridgewood
11 Taxi?

12 A That would be correct, I did not.

13 Q With respect to Barry's Ridgewood Auto
14 Body, did you speak with anyone associated with the
15 business activities at Barry's?

16 MR. INGLIMA: Is it okay for me to just
17 refer to it as "Barry's" just for shorthand?

18 Thank you.

19 A Mr. Montick, who was here and testified, who came
20 in from Montana.

21 Q No, I'm referring, when I say anyone
22 associated with the operation of Barry's, Mr. Rozema or
23 his son. There's a Barry Rozema, Sr. and Barry Rozema,
24 Jr., did you speak with them?

25 A I did not speak with either one of those

1 individuals.

2 Q Did you observe the activities of Barry's
3 at the site?

4 A No.

5 Q When I say "observe", I'm referring to you
6 personally viewing or being present while the activities
7 were taking place?

8 A No, I'm relying on the testimony of others.

9 Q Okay. Are you familiar with the use of
10 Lot 14 or a portion of Lot 14 by E & G -- I'm sorry, let
11 me be more specific, E & G, with an ampersand between the
12 two letters, Auto Repair?

13 A Yes.

14 Q Did you speak to anyone associated with E
15 & G Auto Repair?

16 A I did not.

17 Q Did you ever view or were you ever present
18 when the activities of E & G Auto Repair were taking
19 place at the site?

20 A I did not.

21 Q In 1974 this Board adopted an ordinance --
22 I'm sorry -- adopted a resolution with respect to an
23 application filed by Karl Montick and it's my
24 understanding that's Karl Montick, Sr., not the gentleman
25 who testified here who would be Karl Montick, Jr., but

1 this was an application that was filed with respect to
2 Lot 14 and the proposal to construct an additional
3 building. Are you familiar with that resolution?

4 A I looked at a lot of resolutions. I may have seen
5 it.

6 MR. INGLIMA: This is a resolution, this
7 is just a representation to the Board, this is a
8 resolution that was attached to the applicant's
9 application form. I don't know whether it was
10 submitted in that manner by the applicant itself
11 or whether it was attached by a representative of
12 the Village in the course of the processing of the
13 application, but is it the position of the Board
14 that that document is considered part of the
15 record of this hearing?

16 MR. WHITAKER: Yes, part of the
17 application.

18 MR. INGLIMA: So I don't have to have it
19 separately marked?

20 MR. WHITAKER: No.

21 MR. INGLIMA: Thank you.

22 Q In the resolution to which I refer from
23 1974 bears a date September 25, 1974. Do you know
24 whether it ever refers to any of the uses or activities
25 that were taking place at the time of the application on

1 Lot 14 as a public garage?

2 A If it's the resolution I looked at, I don't
3 remember that phrase being there.

4 Q Would you like a copy of it to review? I
5 have copies here.

6 A I'll take you up on that offer, certainly.

7 MR. INGLIMA: Anyone else want a copy? I
8 assume everyone else has copies. Thank you.

9 A The term "auto body" is used, "auto body shop".

10 Q Well, I asked specifically about the
11 expression or term "public garage"?

12 A And I do not see the term "public garage".

13 Q Okay. It was your position in your
14 testimony on direct that the Ridgewood Auto Body, later
15 Barry's Ridgewood Auto Body, constituted a public garage.
16 Correct?

17 A Yes.

18 Q In 1974, at the time this resolution was
19 adopted, were public garages permitted in the B-2 Zone of
20 the Village of Ridgewood?

21 A I believe they were, Mr. Inqlima, yes.

22 Q Okay. And the applicant's site and,
23 specifically, Lot 14, was designated within the B-2 Zone
24 of the Village of Ridgewood in 1974. Correct?

25 A Correct.

1 Q All right. I'd like to direct your
2 attention to paragraph numbered 11 on page 3 of the
3 resolution that I've showed you. Could you read that
4 into the record, please?

5 A "There was evidence at the hearing that the
6 subject premises have for some years been located in a
7 zone which prohibits the operation of an auto body shop."

8 Q So the resolution adopted by this Board in
9 1974 said that the use that was the subject of the
10 application was an auto body shop and that it wasn't
11 permitted in the zone.

12 A That's what the resolution says.

13 Q How do you reconcile your opinion that the
14 Ridgewood Auto Body shop was a public garage with the
15 findings of this Board in 1974?

16 A The date that this resolution was adopted,
17 September 25, 1974, predates the Municipal Land Use Law
18 and when it became effective. And the boards of
19 adjustment did not have the ability under the prior
20 enabling legislation to approve or deny use variances, so
21 I am very confused as to what this resolution purports to
22 show. And now I also recognize it, now you handed me
23 this copy, the type changes from page to page and I
24 didn't understand what I was looking at nor did I
25 understand how a board of adjustment could deny an

1 application in 1974 before they had the authority to do
2 so. And I also didn't understand how they label it as an
3 "auto body shop" when that term is not used in the
4 Ridgewood ordinance and the term "public garage" is. And
5 I believe that under the definition on the '65 ordinance,
6 which is up on the board, that this qualifies, the use
7 qualifies as a public garage.

8 So I am very mystified by this, what purports to
9 be a resolution.

10 Q Okay. So you're saying that the Board of
11 Adjustment made errors in its determination in 1974?

12 A No, what I'm really saying is I don't understand
13 what I'm looking at and I don't understand the historical
14 context of how a board of adjustment could do that --
15 could take that action in 1974.

16 Q The resolution clearly says that the Board
17 denied the application, did it not or does it not, I
18 should say? The five pages that I placed in front of you
19 that end with subparagraph E on page 5 and the date
20 September 25th, 1974, and a certification of what I
21 believe to be the Board secretary on that date, that
22 resolution denies the application. Correct?

23 A Well, you didn't give me a five-page document,
24 maybe that's the problem. There's page 1, 2, 3, 4, 5, 5,
25 6 and an unnumbered page and then you have different

1 typesets and fonts, so it wasn't a five-page document.

2 Q I'm sorry, it's the identical document
3 that is attached to the applicant's application form. It
4 appears to contain several additional pages that may have
5 been from a draft or minutes from the Board's meeting.
6 I'm directing your attention only to the first five
7 numbered pages, which my understanding is a resolution
8 adopted by the Board of Adjustment of the Village of
9 Ridgewood on September 25, 1974.

10 MR. SEMERARO: I thought you were
11 referring to a page that consisted of several
12 other pages.

13 MR. INGLIMA: Yeah, there were apparently
14 additional pages that were attached to the
15 application form and I didn't want to omit them,
16 so I can't speak to what those might represent.

17 A Within the body of the document you gave me, it
18 does say that the application was denied, yes.

19 Q Okay. Are you familiar with the
20 resolution adopted by this Board in 1987 relating to a
21 paint spray booth that was being proposed at the rear of
22 the building as labeled as Building number 1. I believe
23 it's part C as it appears on Exhibit O-4. Are you
24 familiar with that resolution?

25 A I'm looking to see if I have it, Mr. Inglima.

1 Q This would be Exhibit A-85.

2 A I see A-87, but I don't see A-85.

3 MR. SEMERARO: Mr. Inglima, you're talking
4 about the 1987 resolution?

5 MR. INGLIMA: Yes, A-85.

6 MR. SEMERARO: Hold on, I'll call it up.

7 MR. INGLIMA: Bears a date of November 11,
8 1987.

9 MR. SEMERARO: Could you read back the
10 pending question while he's familiarizing himself
11 with the document?

12 MR. INGLIMA: Sure. I asked him if he was
13 familiar with the resolution and my secondary
14 question is the approval that it granted.

15 A Yes, I have. I have seen this, yes.

16 Q This resolution was adopted in the course
17 of an application that was filed after the zone of the
18 applicant's site was changed from B-2 to R-3. Correct?

19 A Yes.

20 Q I believe that occurred in 1984.

21 A Right, the property's now in the R-3 zone.

22 Q Are you familiar with any reference in the
23 resolution that was marked as Exhibit A-85 to the use of
24 the property by, I'll say it was Ridgewood Vehicle
25 Company, but Mr. Montick, Jr.'s business as a public

1 garage?

2 A I don't believe it characterizes his use. It says
3 it's for a spray paint booth, but as to the nature of how
4 that's categorized, I don't believe there is a
5 categorization in here.

6 Q Well, perhaps I can direct your attention
7 to paragraph number 6 on page 2 in the body of the
8 resolution. This would be the third page of the
9 document, page bearing a number 2, paragraph 6. Could
10 you read paragraph 6 into the record, please?

11 A Sure.

12 "There is an existing one-story brick building
13 used solely for the use of auto body repair shop" and the
14 word "an" may have been inserted before the --

15 Q It appears to be a handwritten "an", a-n.

16 A Yes.

17 Q "An auto body". In other words, to
18 provide an article to describe the next word "auto body".
19 Right?

20 A That's what it appears to be, yes.

21 Q Okay. So the Board found in 1987 that
22 Ridgewood Vehicle Company was operating an auto body
23 repair shop on Lot 12. Correct?

24 A Correct.

25 Q And they granted in that approval the

1 ability of the applicant to add the paint spray booth at
2 the back of the building. Right? Is that correct?

3 A Yes.

4 Q And they characterized that approval as
5 the expansion of a nonconforming use.

6 A In 1987, correct.

7 Q And in fact, in paragraph 6B on page 3 of
8 the resolution it says, "The applicant already runs an
9 automobile body repair shop on the site."

10 A It does say that, yes.

11 Q Did the approval that was granted by this
12 Board in 1987 with respect to Lot 12 permit any work to
13 be performed on vehicles outside a building?

14 A No, it was to construct a paint spray building.

15 Q Did the approval in 1987 permit the
16 storage of vehicles on Lot 12 by contractors, landscapers
17 or other businesses from Ridgewood Vehicle Company? Let
18 me rephrase that. Or businesses other than Ridgewood
19 Vehicle Company?

20 A No, it did not.

21 Q Did the approval granted in 1987 permit
22 Ridgewood Vehicle Company to store parts or inventory
23 outside the building that is shown on Exhibit O-4 as
24 Building number 1?

25 A Well, I don't know which building it was, but that

1 and those other questions you asked me seemed to be
2 outside the scope of the application.

3 Q Well, I'm just asking you what your
4 understanding of the approval that was granted by this
5 Board in 1987 included. If you don't know, you can say
6 "I don't know".

7 A It was limited to a spray paint booth.

8 Q Okay.

9 A And they didn't address other issues.

10 Q Do you agree that Ridgewood Taxi was not
11 engaged in auto body painting or repair?

12 A The testimony indicated that they were doing
13 repair of their vehicles on the site.

14 Q I said "auto body painting or repair"?

15 A Or repair.

16 Q "Auto body, auto body". Let me just say
17 that they didn't operate an auto body shop?

18 A They did not, no.

19 Q Okay. Same question as to E & G Auto
20 Repair.

21 A No, they did not operate an auto body shop.

22 Q Okay. Same question as to S. Shuart
23 Contracting.

24 MR. INGLIMA: And Shuart is spelled

25 S-h-u-a-r-t.

1 A The answer's the same, they did not do auto body
2 repair.

3 MR. INGLIMA: Okay. I have no further
4 questions.

5 MR. WHITAKER: Any redirect?

6 MR. SEMERARO: Yes, if I could have a few
7 minutes, though, please.

8 MR. WHITAKER: We'll take a five minute
9 recess.

10

11

(Recess)

12

13 MR. WHITAKER: We're back on the record.

14

Mr. Semeraro.

15

MR. SEMERARO: Thank you.

16

17 REDIRECT EXAMINATION BY MR. SEMERARO:

18 Q So, Mr. Lydon, a number of OPRA requests
19 were made to the Village for copies of ordinances that
20 had been passed back to the 1940s. Correct?

21

A Correct.

22

23

Q Okay. And the ordinances that we had
produced through the course of this hearing represent the
ordinances that were produced by the Village as well as
the tax maps that were produced by the Village. Correct?

24

25

1 A Correct.

2 Q Okay. And based upon that, you had
3 concluded that the zone that contained both lots which
4 are the subject of this request for a Certificate of
5 Nonconforming Use remained in the B-2 Zone all the way up
6 until 1984 when they were converted to the R-3 zone.

7 Correct?

8 A That is correct.

9 Q Now, you were present when Mr. Montick
10 provided testimony.

11 A Yes, I was.

12 Q And you were also present when the private
13 investigator, Mr. Saavedra, provided testimony. Correct?

14 A Yes, I was.

15 Q And you saw the evidence of the Sanborn
16 map in 1930?

17 A I did.

18 Q And that Sanborn map showed that the use
19 on Lot 14 in 1930 was that of a body shop. Correct?

20 MR. INGLIMA: I'm going to ask that the
21 questions be direct questions and not statements
22 that the witness is asked to affirm.

23 MR. WHITAKER: Rephrase the question.

24 Q The Sanborn map, do you recall what it
25 disclosed so far as the use of the property on Lot 14?

1 A Yes, it identified as being an auto body or repair
2 shop.

3 Q Okay. Now, you also saw the various
4 newspaper ads that were help wanted or business
5 advertisements for the business that was located on Lot
6 14?

7 A Yes, I did.

8 Q Okay. And do you recall the name of the
9 businesses that existed in the Want Ads and/or the
10 advertisements that were discussed by Mr. Saavedra?

11 A Well, Barry's Ridgewood Auto Body. There was
12 Ridgewood Taxi, I do remember they had an advertisement.

13 Q Do you recall anything from Ridgewood Auto
14 Body with regard to that lot?

15 A That they were selling cars and that they had been
16 in business for like 25 years and I remember from E & G
17 Auto Repair -- no, excuse me -- from Barry's Ridgewood
18 Auto Body, one of their ads talked about replacing
19 mufflers.

20 Q Okay. With regard to your testimony
21 relative to the 1965 ordinance and 1965 tax map, you had
22 provided testimony about your belief that the auto body
23 shop fell within the definition of public garage?

24 A That's correct. But can I ask for clarification?
25 When you said "tax map", did you mean zoning ordinance,

1 zoning map?

2 Q Correct, yes.

3 A Yes.

4 Q Thank you for correcting me.

5 A Yes, there was a zoning map that we produced which
6 showed the property of the B-2 Zone and it accompanied
7 the ordinance, Ordinance number 1316.

8 Q Okay. And at any point in time from 1965
9 up until the passage of the ordinance in 1984 that you
10 had made mention to that changed the zone, did any zoning
11 map show the properties being located in any zone other
12 than B-2?

13 MR. INGLIMA: Could you, I just have a
14 minor objection, perhaps clarification would help.

15 MR. SEMERARO: Yeah, let me rephrase the
16 question.

17 MR. INGLIMA: You're referring to
18 materials he reviewed that are in the record of
19 this hearing.

20 MR. SEMERARO: Correct.

21 MR. INGLIMA: Not anything in the
22 universe. Right?

23 MR. SEMERARO: Correct.

24 A The maps I have seen showed the property in the
25 B-2 Zone and the R-3 Zone.

1 Q Okay. And from the earliest zoning map
2 that you had reviewed that has been submitted into
3 evidence showed the property being located in the B-2
4 Zone. Is that correct?

5 A That is correct.

6 MR. INGLIMA: Could you refer, please, to
7 the map you're using as the basis for that comment
8 because I don't think it's in the record.

9 MR. SEMERARO: It is in the record. He
10 testified on direct previously.

11 Q With regard to the R-3 Zone, have you seen
12 the zoning map referring to these properties as being
13 located in the R-3 Zone?

14 A Yes, that was Ordinance 1949, I believe.

15 Q Okay.

16 A Adopted in 1984.

17 Q And before 1984, did you see any zone map
18 that listed these properties being located in the R-3
19 Zone?

20 A Before that time, no.

21 Q Okay, thank you.

22 Now, is there a definition of public garage in the
23 1965 zoning ordinance?

24 A Yes, there is.

25 Q Could you read that into the record,

1 please?

2 A Sure. It's relatively short. Section 326 "Public
3 garage or gasoline service station. A public garage or
4 gasoline service station is any building, structure, lot
5 or land in or upon which a business, service or industry
6 involving the storage, maintenance, washing or servicing
7 and storage in connection therewith of motor vehicles as
8 maintained, conducted, operated, or rendered."

9 Q Okay. And is it your opinion that an auto
10 body repair shop falls within that definition?

11 A Yes, it is.

12 Q And did you see any separate definition
13 for an auto body repair shop in that zoning ordinance?

14 A No, I did not.

15 Q Okay. Is it your testimony -- well,
16 strike that. Let me ask. Do you have an opinion as to
17 whether or not a business that simply worked on repairing
18 transmissions, would that be included in the definition
19 of public garage?

20 A Yes, it would.

21 Q And what about a business that did oil
22 changes?

23 A That would also be within the definition of a
24 public garage or gasoline service station, yes.

25 Q Okay. Muffler shop?

1 A Certainly.

2 Q If a business were engaged in any practice
3 that involved servicing, repairing, or maintaining motor
4 vehicles, would that have fallen within that definition?

5 A Yes.

6 Q Okay. And is that why you have concluded
7 that the body shop would have been incorporated into that
8 definition?

9 A Yes.

10 Q Okay. Now, you were asked about a 1974
11 resolution?

12 A Yes, I was.

13 Q Okay. That resolution also contained in
14 its conclusion regarding the denial of certain language
15 contained in paragraph 14C. Correct?

16 A Yes, it does.

17 Q Could you please read that for the Board?

18 A Sure.

19 14C reads, "Denial of the requested variance would
20 not result in exceptional and undue hardship upon the
21 owner of Lot 14 and Block 3905 and would not impair the
22 use of the premises for the purpose for which the same
23 are now used, nonconforming auto body repair shop, a tax
24 service, and paint shop and mixed residential use."

25 Q Okay. So you provided testimony and took

1 exception with the form and purpose of this resolution.

2 Correct?

3 A Yes, I did.

4 Q But even if there were no issues with the
5 resolution whatsoever, isn't it true that they
6 acknowledged the body shop being on that property in 1974
7 as a preexisting nonconforming use?

8 A Yes, they do.

9 Q Okay. So even if this resolution was
10 binding and even if somehow at some point in time a body
11 shop became nonconforming prior to 1974, which we do not
12 agree with, it's still, according to this resolution, was
13 legally permissible to continue?

14 A Yes, by being a nonconforming use.

15 Q Okay. So I understand that you have
16 issues with that resolution and for good reason. Let's
17 talk about --

18 MR. INGLIMA: I object, I object.

19 MR. WHITAKER: Improper comment, Counsel.

20 Move on.

21 Q A-84. Are you familiar with Exhibit A-84?

22 A I believe that is a resolution of this Board of
23 Adjustment to Karl Montick for a fence around Lot 12 and
24 Block 3905.

25 Q Okay. So this isn't for the same lot that

1 the 1974 resolution was for, but it's in the same zone,
2 isn't it?

3 A It is in the same zone.

4 Q And this is five years later?

5 A Correct.

6 Q And at that point in time, it's your
7 testimony that regardless of what the 1974 resolution
8 said, a body shop was a permitted use in that zone?

9 A Yes.

10 Q Okay.

11 MR. INGLIMA: Could you please refer the
12 witness to the provision that you're quoting,
13 because I don't see it.

14 MR. SEMERARO: I'm not quoting anything.
15 I asked him testimony.

16 MR. INGLIMA: Where does it say what you
17 just said?

18 MR. SEMERARO: It doesn't.

19 MR. INGLIMA: Objection, because he
20 characterized the content of a resolution without
21 reading from the resolution and referring the
22 witness to the specific provision.

23 MR. SEMERARO: The question was about his
24 testimony, it wasn't about the resolution.

25 MR. INGLIMA: All right. Look, I object.

1 He's referring specifically to Exhibit A-84. I'm
2 asking a very simple question. If you're going to
3 redirect on a witness after he's testified and
4 closed his direct testimony, you're going to
5 introduce a new issue or new subject, you should
6 be fair to the Board and to the objectors by
7 referring specifically to what in this resolution
8 A-84 supports your comment.

9 MR. SEMERARO: My comment was about -- my
10 question was about his testimony, it wasn't about
11 this resolution. I'm going to the resolution now.

12 MR. INGLIMA: Could I ask the court
13 reporter to read back the prior question?
14

15 (Whereupon, the following question was
16 read back: QUESTION: And at that point in time,
17 it's your testimony that regardless of what the
18 1974 resolution said, a body shop was a permitted
19 use in that zone? ANSWER: Yes.)
20

21 MR. INGLIMA: What is he basing that on?

22 MR. WHITAKER: What's the basis, the
23 foundation?

24 MR. SEMERARO: I solicited testimony for
25 about probably seven minutes from him before that

1 point where he explained why he felt the B-2 Zone
2 permitted this use.

3 MR. WHITAKER: Yes, he testified to that
4 on direct and he testified to it again --

5 MR. SEMERARO: Correct.

6 MR. WHITAKER: -- on cross, but your
7 question now goes beyond that, I believe, or I
8 don't understand the question.

9 MR. SEMERARO: I didn't think that it did,
10 but for the purpose of expediency, let me just --

11 MR. WHITAKER: We recognize what his
12 testimony is and what his opinion is as it
13 pertains to the contents of the resolution and his
14 interpretation of a public garage and that it
15 encompasses an auto body shop. That's his
16 position as a planner.

17 MR. SEMERARO: Correct, correct.

18 MR. WHITAKER: So you can move on.

19 MR. INGLIMA: The objection, just for
20 clarification, the objection was based on the use
21 of the words "auto body shop" as a permitted use.

22 MR. WHITAKER: Right.

23 MR. INGLIMA: And I did not want any
24 inference to be drawn from that testimony or
25 question to the effect that "auto body shop" was

1 enumerated among permitted uses in the B-2 Zone.

2 MR. WHITAKER: Right.

3 MR. SEMERARO: Understood. I did not mean
4 to make that inference.

5 Q Okay. So in 1974 we have the resolution
6 that Mr. Inglima questioned you about. Correct?

7 A Correct.

8 Q So this resolution that's A-84 is dated
9 when?

10 A Well, the application was filed on August 10th,
11 1979.

12 Q Okay. And at that point in time was there
13 discussion in the resolution as to what the property,
14 which was Lot 12, was used for?

15 A Yes, it was the site under, on page 2 8A, the site
16 is used as an automobile repair shop, a permitted use in
17 the district.

18 Q Okay.

19 A And that's not my language. I was just reading
20 from the resolution.

21 MR. WHITAKER: Resolution, yes.

22 Q Okay. So you were present when Mr.
23 Montick testified as to what his father's business was on
24 that property. Correct?

25 A Yes, I was.

1 Q And do you recall the name of that
2 business?

3 A That was Ridgewood -- Lot 12 was Ridgewood
4 Vehicle.

5 Q And do you recall the nature of the
6 automobile repair shop that Ridgewood Vehicle was?

7 A It was an auto body shop and it was an auto body
8 shop with outdoor storage.

9 Q Okay. And going a little bit further
10 where it reads, "Further resolve", can you read paragraph
11 5 and indicate what the Board's conclusions and findings
12 were?

13 A Sure.

14 Paragraph under, "Be it further resolved", the
15 bottom of page 3, item number 5, "The subject premises
16 are utilized as a shop for automobile repair requiring
17 the storage of motor vehicles and automotive parts."

18 Q Okay. Now, take a look at that
19 resolution. Can you tell me what the purpose of that
20 resolution was? What was the application?

21 A The applicant was seeking to erect a fence around
22 the property.

23 Q And what was the reason why he felt he
24 needed the fence at that time?

25 A There was concern with vandalism and there was

1 also concern with theft, so I generally call those police
2 issues.

3 Q Okay. Now, admittedly, that resolution
4 doesn't expressly state that the storage was outside
5 storage, but he was asking for a fence to go around the
6 property to stop the theft and vandalism. Correct?

7 A Correct.

8 Q And the resolution does indicate that it
9 was an auto body repair shop requiring the storage of
10 motor vehicles and automotive parts. Correct?

11 A Yes, it does.

12 Q Okay. So this resolution that's in the
13 B-2 Zone that applies to Lot 12 that was adopted in 1979
14 acknowledged that the uses for which this property was
15 being used were permitted?

16 A That is correct.

17 Q And are you aware as to whether or not
18 those uses were similar to the uses that were discussed
19 and referenced in the 1974 resolution that Mr. Inglima
20 questioned you on?

21 MR. INGLIMA: I object. I don't know how
22 he can say --

23 MR. WHITAKER: How can he be aware of
24 that?

25 MR. SEMERARO: Because there's contents in

1 both resolutions.

2 MR. WHITAKER: That's not how he could be
3 aware.

4 Q Do the resolutions --

5 MR. SEMERARO: I'll rephrase the question.

6 Q The resolution in 1979 indicating
7 enumerated uses or listed uses, are those similar to the
8 uses that were identified in the 1974 resolution
9 indicating non-permitted or prohibited uses?

10 MR. INGLIMA: Same objection. The
11 resolutions speaks for themselves.

12 MR. SEMERARO: He could answer it.

13 MR. INGLIMA: He's stating an opinion
14 then, right?

15 MR. SEMERARO: And he is an expert, so
16 he's permitted to do so.

17 MR. WHITAKER: The question is, are the
18 uses that are listed in the first resolution also
19 listed in that second resolution?

20 MR. SEMERARO: Correct.

21 MR. WHITAKER: But anybody, we don't need
22 a planner to tell us that.

23 MR. SEMERARO: Well, they could, but I
24 wanted the Board Members to hear it as opposed to
25 coming to that conclusion themselves.

1 MR. WHITAKER: Board Members recognize
2 that. Board Members are well aware of that.

3 MR. SEMERARO: Okay.

4 Q So this is, again, A-84, 1979, they listed
5 those uses as permitted uses. Correct?

6 A In the B-2 District, yes.

7 Q You were asked by Mr. Inglema a couple of
8 questions regarding the same property in a resolution
9 that was marked as A-85 that was adopted several years
10 later in 1987. Correct?

11 A That is correct, when the property was no longer
12 in the B-2 Zone. By this time Ordinance 1949 had taken
13 place and it was now in a Residential Zone, the R-3 Zone.

14 Q Okay. So is it your testimony that the
15 1949 ordinance that was adopted in 1984 is the reason why
16 the use became nonconforming at some point in time after
17 the 1979 resolution?

18 A Yes, absolutely.

19 Q And similarly, the Board in this
20 resolution acknowledged in 1987 that that auto body
21 repair shop was an existing nonconforming use. Correct?

22 A Yes, they did.

23 Q Now, you were present when Mr. Montick
24 provided testimony as to his recollection as to how both
25 of these lots were used back in the early '60s. Correct?

1 A Yes.

2 Q And he also provided testimony how those
3 properties continued to be used up until the time that he
4 sold the properties to my client, our client. Correct?

5 A That is also correct.

6 Q Did Mr. Montick acknowledge that both
7 properties involved the outside storage of cars and
8 parts?

9 A Yes.

10 Q Okay. Now, the resolution in 1974 that
11 related to Lot 14 permitted whatever the preexisting uses
12 were of the property to continue. Correct?

13 A Yes.

14 Q Okay. And is the same true with respect
15 to the 1987 resolution on Lot 12?

16 A Yes.

17 Q Okay. In fact, according to the
18 information that we have in your prior testimony, the
19 uses with respect to auto body repairs on Lot 14
20 preexisted any of the code sections that we have. Is
21 that correct?

22 A That is correct.

23 MR. INGLIMA: I'm sorry, could you repeat
24 the question?

25 MR. SEMERARO: You could read it back.

1 (Whereupon, the following question was
2 read back: QUESTION: Okay. In fact, according to
3 the information that we have in your prior
4 testimony, the uses with respect to auto body
5 repairs on Lot 14 preexisted any of the code
6 sections that we have. Is that correct?)

7
8 MR. INGLIMA: All right. I know the horse
9 is out of the barn because he gave the answer, but
10 there is no testimony that supports that question.
11 In fact, tonight Mr. Lydon said he couldn't tell
12 when certain things happened and that he wasn't
13 personally familiar with what happened at the
14 site, so to say that it's his testimony is a
15 misstatement, so I object.

16 MR. WHITAKER: Understood. He testified
17 that he wasn't aware specifically of what occurred
18 there, but he testified that there was exhibits
19 that show when these uses existed there but on the
20 basis of advertisements, et cetera. The Board
21 recognizes that.

22 MR. SEMERARO: Thank you.

23 MR. WHITAKER: You've given that three or
24 four times now. Maybe we can move on.

25 MR. SEMERARO: Thank you.

1 Q In 1965 on the zoning ordinance that was
2 referred to by Mr. Inqlima, he referenced various
3 requirements for public garages. Correct?

4 A Yes, he did.

5 Q Okay. But we know based upon the evidence
6 that was submitted that the use on Lot 14 as well as Lot
7 12 predated the date of that ordinance. Is that correct?

8 MR. INGLIMA: Objection, objection.

9 MR. WHITAKER: We don't know that. It's
10 an improper question.

11 Q Okay. Based upon the evidence before
12 you --

13 MR. WHITAKER: That's for the Board to
14 determine.

15 MR. SEMERARO: Understood.

16 Q Based upon the evidence before you and
17 submitted before this body, do you have an opinion as to
18 whether or not the uses as an auto body shop on both of
19 those lots predated the date of those ordinances that Mr.
20 Inqlima referenced that had restrictions associated with
21 public garages?

22 MR. INGLIMA: Same objection. I mean --

23 MR. WHITAKER: Let the Board make that
24 decision. We know what Mr. Lydon's testimony was
25 when he gave it on direct.

1 MR. INGLIMA: And, furthermore, it hasn't
2 been established when the provisions that
3 regulated public garages that are contained in the
4 1965 ordinance, when they first came into affect
5 and this witness said he couldn't say personally
6 when the uses first were added to the site. So,
7 you know, we're trying to piece this together from
8 anecdotal evidence and advertisements and
9 newspapers and conjecture about when ordinance
10 provisions existed.

11 MR. WHITAKER: That's for the Board to
12 determine.

13 MR. INGLIMA: Exactly.

14 MR. SEMERARO: Yes, it is for the Board to
15 determine, I don't disagree with that, but expert
16 witnesses are permitted to give their opinion as
17 to what the evidence provides.

18 MR. WHITAKER: We know what Mr. Lydon has
19 based his opinion on.

20 Q You testified at the first hearing about
21 an opinion that you had with respect to outside storage
22 and body repair shops. Correct?

23 A Yes, I did testify to that.

24 Q Okay. And could you just remind the Board
25 what your opinion is with respect to outside storage and

1 an auto body repair shop?

2 A Auto body repair shops always have outdoor storage
3 associated with them based on the nature of the business,
4 because cars are damaged. It takes awhile to get parts
5 for those cars and so there's always an element of
6 outdoor storage of both damaged vehicles and in some
7 cases parts.

8 MR. SEMERARO: Okay. I don't think I have
9 any other questions.

10 MR. WHITAKER: Mr. Inglima.

11 MR. INGLIMA: Thank you.

12

13 RECROSS-EXAMINATION BY MR. INGLIMA:

14 Q I'm just trying to make sure I understood
15 what your redirect testimony included, Mr. Lydon. Did
16 you say that the resolution, which was marked as A-84,
17 I'm going to call this "the 1979 fence application", are
18 you saying that that resolution described the use of Lot
19 12 as an auto body repair shop?

20 A It described it as an automobile repair shop, a
21 permitted use in the district.

22 Q Where does it say "permitted use in the
23 district"?

24 A If you look on page 2 8A. I'll just read it, it's
25 short. "The site is used as an automobile repair shop, a

1 permitted use in the district."

2 MR. INGLIMA: I don't have a copy of page
3 2. That was never provided to us. I'm looking at
4 the copy that I received by email from Mr.
5 Semeraro, it doesn't have a page 2.

6 Is the page 2 in the official record, Ms.
7 Wondergem?

8 MR. SEMERARO: This is A-84.

9 It's not in the flash drive?

10 BOARD SECRETARY WONDERGEM: No.

11

12 (Off the record discussion)

13

14 MR. SEMERARO: I don't know how to even
15 explain that. We have it here.

16 MR. INGLIMA: If I could just take a look
17 at it right now, it would be helpful.

18 MR. SEMERARO: Sure, yeah. You're saying
19 that you have the first page, but you don't have
20 the balance?

21 MR. INGLIMA: I have page 1, page 3, page
22 4. That was the document that was emailed to me
23 by your office.

24 MR. WHITAKER: You have it listed as?

25 MR. INGLIMA: A-84.

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(Brief Pause)

MR. SEMERARO: I remember at the hearing before the hearing where we submitted the flash drive that we had marked and submitted a number of the exhibits that we did not quite reach for testimony yet at the conclusion of that hearing and I think that it might have been in that submission and I certainly apologize for any confusion that may have been caused.

MR. INGLIMA: I believe I could continue at this point, unless Mr. Whitaker is looking at something.

MR. WHITAKER: I don't seem to have that page either.

MR. SEMERARO: Bruce, do you have the first page of it?

MR. WHITAKER: Yes.

MR. SEMERARO: You do?

MR. BARREE: 84A and 84B, correct? That's the way I have them labeled in the digital files.

MR. SEMERARO: Correct.

MR. BARREE: 84A is the resolution, digital file that I have has pages 1 and 3 and 4 and 84B is a survey...

1 MR. SEMERARO: Correct.

2 MR. INGLIMA: So you don't have page 2
3 either?

4 MR. BARREE: I don't have page 2 either.

5 MR. SEMERARO: I can't even explain that.

6 MR. INGLIMA: All right. If I could stand
7 next to Mr. Lydon while I ask him the next couple
8 of questions it will make it a little easier since
9 we're working off the same document.

10

11 BY MR. INGLIMA:

12 Q Mr. Lydon, you referred in your testimony
13 on redirect to Exhibit A-84 and you referred to page 2,
14 which I was not aware of before. This page contains a
15 paragraph 8A. Correct?

16 A Yes, it does.

17 Q It says in 8 it says, "The applicant
18 submitted in evidence the following and testified which
19 testimony may be summarized as follows". Correct?

20 A It does say that.

21 Q Then A says, "The site is used as an
22 automobile repair shop".

23 A It does say that.

24 Q "A permitted use in the district".

25 A That's what the resolution says, yes.

1 Q And then if you look at page 3, it has a
2 paragraph that begins in the middle of the page that
3 says, "Be it further resolved that this Board of
4 Adjustment makes the following determinations".

5 A It reads that way.

6 Q And then it says, number 1, "The foregoing
7 facts and testimony, including matters which may be
8 argument are made a part hereof as if set forth in full".
9 Correct?

10 A It does say that.

11 Q Can you tell from reading this resolution
12 whether the paragraph subpart A-8A is fact or argument?

13 You can't, right?

14 I stand by my previous statement that resolutions
15 speak for themselves. But at least to the extent that
16 you have taken this resolution and ingraft an opinion
17 upon it, you can't say whether or not that was argument
18 contained in either testimony or maybe a statement of
19 Counsel during the hearing and then adopted into the
20 resolution or whether that was a finding of fact or a
21 finding of a matter of law by the Board, can you?

22 A There's nothing in the resolution which disputes
23 that or challenges it and I think if there was an
24 objection to that classification, it would have been
25 stated so in the resolution.

1 Q Would you agree that the resolution that
2 was marked as Exhibit A-85 that was adopted several years
3 later, which talks about the specific use and business
4 activity that took place at that time in Building 1 on
5 Lot 12 was a far more definite statement of the use and
6 the classification or characterization of that use that
7 was made by the Board?

8 A It was more detailed, yes.

9 Q Okay, thank you.
10 You testified a few minutes ago about Mr.
11 Montick's statement about the use of Lots 12 and 14 and
12 the outdoor storage of parts. Are you saying to this
13 Board that it is a permitted activity in a B-2 Zone to
14 leave disused parts taken from automobiles out in the
15 open as opposed to placing them in a Dumpster or
16 disposing of them in a legally conforming manner?

17 A It's an accessory use to the permitted use, and I
18 believe it is permitted.

19 Q So you're saying that if a car's being
20 worked on, the owner or the party that is engaged in the
21 auto body repair activity, it's appropriate for them to
22 or legal for them to place cars in an open lot outdoors
23 irrespective of the condition of disassembly or repair
24 that they may be in?

25 A Unless there's a provision in the ordinance to the

1 contrary that further refines and limits what the auto
2 body operator's allowed to do, my answer is yes.

3 Q Same question, but with respect to parts
4 that are taken off of automobiles that are not going to
5 be used again to repair those automobiles. It's okay for
6 the operator of that use to leave them out in the open on
7 the ground?

8 A No, if parts are not going to be salvaged or
9 reused, they're scrap and they should be disposed of
10 appropriately.

11 Q You saw photographs that were introduced
12 into this hearing by Mr. Daniel during his testimony of
13 the conditions that he says existed on Lot 14 at the time
14 that his company took title to the property. Are you
15 familiar with those photographs?

16 A Yes.

17 Q I believe they're in the first 49 exhibits
18 that were marked into the record of this proceeding.
19 Correct?

20 A I couldn't pretend to know which exhibit number
21 they are, but I did see some photos of them, yes.

22 Q Based on your understanding of the zoning
23 ordinance and the provisions that are applicable to
24 public garages or any other kind of business use that
25 would have been permitted on Lot 14 in the past, would

1 you say that the condition shown in those photographs,
2 which included piles of tires and scrap metal and junk
3 strewn along Lot 14, that those were permitted activities
4 under the ordinances in affect at the time that they were
5 being conducted in the Village of Ridgewood?

6 A Well, those photos I think were taken after the
7 change to the R-3 Zone, so I would say they weren't
8 permitted at that time, but when they first occurred back
9 in the '30s, yes.

10 Q So, in essence, you're saying that in the
11 1930s, you're saying, that the use occurred. What was
12 the basis for that? You said you didn't know when it
13 started.

14 A You're right, I said I didn't know when it
15 started, but we have Sanborn maps from 1930 which
16 indicated that there was auto body repair going on at the
17 property. It may have been going on in 1922 as well, I
18 don't know.

19 Q The Sanborn map had a label that was on
20 what appears to be possibly a predecessor building to
21 Building number 4 shown on Exhibit O-2. Right?

22 MR. SEMERARO: I'm going to object as to
23 the characterization of "predecessor building".

24 Q Well, a building in the location of the
25 building labeled Building number 4 on O-2. Right?

1 That's what the Sanborn map shows?

2 A Yeah, I would say that's probably a fair
3 characterization, yes.

4 Q And that's all the Sanborn map shows.
5 Right?

6 A Well, no, it shows some other buildings.

7 Q Does it show Building 6?

8 A It shows -- Building number 6. I don't think
9 it -- this is the Sanborn map, what we're calling a
10 Sanborn map. Exhibit A-50-A is a portion of that lot.
11 It doesn't show the entire boundaries of that lot. It
12 doesn't -- what you characterize as Building number 6,
13 you can't tell if that's in existence or not from this
14 exhibit.

15 Q What's the exhibit number for the Sanborn
16 map?

17 A It's A-50-A.

18 MR. SEMERARO: That's the enlarged
19 portion, but it's A-50.

20 MR. INGLIMA: A-50?

21 MR. LYDON: A-50.

22 MR. SEMERARO: Then there's a subsequent
23 A-50 with letters that were more blown up of the
24 same thing.

25 Q And then on A-50-B it says that this is a

1 Sanborn Fire Insurance Company 1930/1948 map. You
2 referred to it as a 1930 map. It says 1948, doesn't it?

3 MR. SEMERARO: Where does it say 1948?

4 A I'm looking, Mr. Inglima.

5 A-50 has a date on it of May 1930.

6 Q I'm referring to A-50-B, which is a
7 Certification provided by Sarah Kiefer, K-i-e-f-e-r,
8 Local History Librarian, dated June 6, 2023, which was
9 marked by one of the applicant's witnesses. It says
10 1948, doesn't it?

11 A It does, but the Exhibit A-50 specifically says
12 1930 on it.

13 Q Yeah, okay. Well, I'm interested in the
14 certification. Thank you.

15 Can you refer to Exhibit A-72, please?

16 A Yes, that's on the board, I believe -- maybe not.

17 Q No, I don't think so. It says it's a 1956
18 revision.

19 A I'm sorry, Mr. Inglima, what number did you say?

20 Q I believe this is A-72.

21 A A-72, oh, yes. I don't believe I testified to
22 this exhibit.

23 Q Well, you indicated in your prior
24 testimony that you were familiar with the exhibits that
25 were placed in the record by the applicant's witnesses.

1 I'm asking you about this one. This is a 1956 map. I
2 believe it bears a date of October 1, 1956. Correct?

3 A Correct.

4 Q It says, Plot, P-l-o-t, Size Map.

5 A Yes.

6 Q And it indicates Business Zone.

7 A It does.

8 Q And I believe Business Zone is indicated
9 in the area that is occupied by the applicant's site,
10 Lots 12, 13, and 14. Correct?

11 A Yes.

12 Q So this doesn't show B-2. It just says
13 "Business Zone". Correct?

14 A Correct.

15 Q So there is an exhibit in the record of
16 this proceeding that indicates a prior designation of the
17 applicant's site apart from B-2. Isn't that correct?

18 A Yes, it's on a map called Plot, P-l-o-t, Size Map,
19 and because it doesn't call it a zoning map, we chose not
20 to testify to it.

21 Q You don't have any zone maps from that
22 time period, do you?

23 A That is correct.

24 MR. INGLIMA: If I may just have one
25 minute?

1 I don't have any further questions for Mr.
2 Lydon. Thank you.

3 MR. SEMERARO: I have a quick followup
4 question.

5

6 RE-REDIRECT EXAMINATION BY MR. SEMERARO:

7 Q You were asked certain questions regarding
8 A-84A, particularly, with respect to the language
9 following, "Be it further resolved that this Board of
10 Adjustment makes the following determinations". Correct?

11 A Yes, I was.

12 Q Okay. And in the course of your business,
13 it's common for you to interpret resolutions. Correct?

14 A Yes.

15 Q Okay. And is it common or uncommon for
16 land use boards to adopt, as a finding of fact and a
17 determination, testimony that was before and is
18 referenced earlier in a resolution?

19 A It's common that they accept that testimony and
20 those exhibits, because that's what their decision's
21 based on.

22 Q Okay.

23 MR. INGLIMA: I'm going to object to any
24 speculation as to what a board based its decision
25 on. That's not contained in the resolution

1 itself.

2 MR. WHITAKER: The resolution speaks for
3 itself. The Board recognizes that. The Board is
4 cognizant of that.

5 MR. SEMERARO: That's all I have.

6 MR. WHITAKER: That concludes this
7 witness.

8 That concludes your presentation?

9 MR. SEMERARO: Correct, but if the
10 objector has witnesses, I do reserve the right to
11 call rebuttal.

12 MR. WHITAKER: You'll have rebuttal.

13 Mr. Inglima.

14 MR. INGLIMA: Thank you, Mr. Whitaker.

15 Members of the Board, I'd like to call
16 Peter Steck.

17
18 P E T E R S T E C K, having been duly
19 sworn, testified as follows:

20
21 MR. WHITAKER: Mr. Steck has appeared
22 before this Board in the past and qualified as an
23 expert witness in planning.

24 Counsel, do you have any voir dire of him
25 as an expert witness?

1 MR. SEMERARO: Only that his license is
2 current.

3 MR. WHITAKER: I was just going to say.

4 MR. STECK: It is.

5 MR. SEMERARO: Thank you. We so
6 stipulate.

7 MR. WHITAKER: We extend that courtesy, so
8 we can move on.

9 MR. INGLIMA: Thank you. I will spare the
10 Board from having Mr. Steck place upon the record
11 his qualifications, background, education. His
12 licensure, he testified to, and we'll just move
13 right into the testimony.

14

15 DIRECT EXAMINATION BY MR. INGLIMA:

16 Q Mr. Steck, as Mr. Whitaker indicated, you
17 have testified before this Board previously. Is that
18 correct?

19 A Yes.

20 Q And you are familiar with the land use
21 ordinances, the zoning structure, if you will, setting of
22 the Village of Ridgewood, other regulations that relate
23 to the conduct of business uses in the Village of
24 Ridgewood, are you not?

25 A Yes.

1 Q And in the course of your prior work and
2 testimony before this Board have you had an occasion to
3 review the background of zoning enactments in the Village
4 of Ridgewood and the current state of the law in terms of
5 its regulations affecting a variety of uses in the zones
6 that are designated in the current land use ordinances?

7 A I've reviewed the current zoning as well as the
8 prior zoning that has been introduced in these
9 proceedings.

10 Q Are you familiar with the property that is
11 occupied by our clients that have engaged you for
12 purposes of testimony before the Board?

13 A Yes.

14 Q And you are familiar with the location of
15 the Friends Meeting House as well as the nursery school
16 on Lot 2 and Block 3908?

17 A Yes, as well as the other church that abuts that
18 as well as the subject property and the surrounding
19 areas.

20 Q Well, I was going to ask you if you're
21 familiar with other properties located near the
22 applicant's site just to get a better feel for your
23 understanding of the activities that take place on those
24 properties?

25 A Yes, I've toured the property and area three times

1 in preparation for my testimony this evening.

2 Q And in the course of that preparation,
3 have you become familiar with the buildings, structures,
4 and uses that are visible to you on your inspections on
5 the applicant's site, specifically, Lots 12 and 14?

6 A Yes, both visually from the public street as well
7 as from aerial photographs.

8 Q The applicant has previously conceded that
9 this proceeding does not affect Lot 13, which currently
10 contains a dwelling that's used in my understanding as
11 the single family residence, are you aware of that fact?

12 A Yes, that is not a subject of a request for an
13 interpretation of whether there was a nonconforming use
14 on the property.

15 Q So as far as any certification that this
16 Board might engage in as a result of this request, it
17 only affects Lots 12 and 14. Is it fair to say that your
18 focus in preparing for your testimony and providing your
19 analysis of the situation focused exclusively on Lots 12
20 and 14?

21 A That was the focus, but I am aware of Lot 13
22 simply because it's there and it appears in the
23 photographs and it has been referenced in those
24 proceedings.

25 Q You attended the January 23rd, 2024

1 hearing in this matter, did you not?

2 A I did.

3 Q And you heard at that time the testimony
4 of Steven Lydon, the applicant's witness?

5 A Yes.

6 Q And you also reviewed the October 24th,
7 2023, hearing transcript and are generally familiar with
8 the testimony given by Karl Montick, Jr., Alexander
9 Saavedra, and Michael Daniel?

10 A Yes, I did review the transcript and I was here
11 earlier this evening to hear the supplemental testimony
12 of Mr. Lydon.

13 Q Okay. Are you familiar with the
14 applicant's properties, Lots 12 and Lot 14, in terms of
15 their size and shape?

16 A Yes.

17 Q And have you reviewed zoning and tax
18 records, the survey exhibit that was marked as Exhibit
19 O-2, and other photographs and exhibits that were placed
20 in the record of these proceedings by the applicant?

21 A Yes.

22 Q In terms of the testimony of Mr. Lydon,
23 specifically, if I may characterize his conclusions, do
24 you have a position, and this is in the nature of an
25 overview of your testimony, I'm not asking you

1 specifically, but do you have an opinion with respect to
2 his interpretation of the uses of Lots 12 and 14 as
3 public garage use?

4 A I do have an opinion.

5 Q Okay. Could you share that with the
6 Board, please?

7 A Yes. I believe that they're not public garages.
8 Looking at the past decisions -- well, first of all, a
9 public garage, as far back as I believe, let me get the
10 date of the ordinance, as far back as '65, allowed them
11 in certain zones, one of the zones being the B-2 Zones,
12 but there were certain standards, distances to another
13 public garage, distances to a church and so they were
14 functionally like a special exception use or a
15 conditional use. There were certain standards before it
16 would become currently a permitted use. And the way I
17 looked at the technical definition of a public garage and
18 the way it has been approached in the resolutions tell me
19 that the uses on either 12 or 14 have historically not
20 been looked at classified as public garages.

21 Lot 12 is best described as an auto body use today
22 and Lot 14 had at least three uses on it; a taxi business
23 in the rear, an auto body in the central portion, and a
24 single-family home in the front. So those are
25 essentially three public uses on the property.

1 And it's important in my mind because the
2 geographic distribution is significant in terms of the
3 extent of the past uses. Just because there was a
4 portion of the property used as an auto body use doesn't
5 mean the whole property automatically could be used as an
6 auto body use.

7 Q Certainly, in terms of Lot 12, since 1963
8 the whole property's been used as an auto body shop.
9 Right?

10 A That is correct.

11 Q So your comment in the prior statement
12 about portions of property being used for different uses,
13 you're referring specifically to Lot 14?

14 A That's correct. Lot 12 was recognized as having
15 an auto body shop on it.

16 Q With respect to the characterization of,
17 and I'm referring to a statement that was made by Mr.
18 Lydon, not tonight, but in his prior testimony on
19 January 23rd, he said that the predominant use or the
20 major use of Lot 14 was as an auto body shop. Do you
21 agree with that statement?

22 A I do not. First of all, the taxi use was a
23 separate principal use on the property that was in the
24 rear. The front portion that had a dwelling at one time
25 was a separate use. And the mid section, which you

1 labeled as Buildings 4 and 5 on your exhibit, those are
2 referenced as having an auto body use and then a variance
3 granted for I think it was categorized as a minor
4 expansion for a painting booth.

5 Q Getting back to Lot 14. Do you feel that
6 the resolution that was adopted by this Board in 1974 in
7 which it denied an application seeking a variance to
8 expand the auto body use is the most accurate reflection
9 of the character of the uses at that time on Lot 14?

10 MR. SEMERARO: Objection to the question.

11 I don't understand it.

12 MR. WHITAKER: I didn't hear the
13 objection, I'm sorry.

14 A It was --

15 MR. WHITAKER: I'm sorry, I did not hear
16 the objection.

17 MR. SEMERARO: I didn't think that the
18 question was clear. I wasn't sure what it was
19 asking.

20 MR. INGLIMA: Well, I'll ask it again.

21 MR. WHITAKER: Ask it again.

22 Q Do you feel that the resolution that was
23 adopted by this Board in 1974 whereby it denied or it
24 memorialized a denial of an application seeking a
25 variance to expand the auto body shop on Lot 14

1 constitutes an accurate description and sets forth
2 findings of facts that are material to your opinion?

3 A Yes.

4 Q So when the Board found that the auto body
5 shop occupied only a portion of Lot 14, do you feel that
6 that was a ruling, if you will, of the extent of that use
7 at the property?

8 A That was a finding --

9 MR. SEMERARO: I'm going to object. I
10 mean, you know, at one point in time the
11 objectors' counsel criticized us for speculating
12 what the Board intended to do and that's exactly
13 what he's asking his expert to do now.

14 MR. INGLIMA: If I can just clarify. I
15 said "ruling". I said was it a ruling of the
16 Board.

17 MR. SEMERARO: You're still asking him to
18 interpret what their intent was.

19 MR. INGLIMA: No, no, it's what did they
20 say?

21 MR. WHITAKER: Yes, what did --

22 MR. SEMERARO: Well --

23 MR. WHITAKER: From the planner's
24 perspective, you've reviewed that resolution?

25 MR. STECK: Yes.

1 MR. WHITAKER: And on the basis of that
2 resolution, what decisions do you see in that
3 resolution having been made?

4 MR. STECK: I see that the Board
5 recognized that the auto body use was only part of
6 the property and that was a finding of fact and
7 that resolution was a challenge, so that's in a
8 sense the zoning ruling on this property.

9 Q Well, when I ask about a ruling, I'm
10 referring to the entirety of the resolution. The
11 resolution, if I may characterize it for purposes only of
12 a question, is that it said that the auto body shop
13 occupied a specific area of Lot 14 and that they did not
14 want to expand the area or the structures within which
15 the auto body shop was operated. Is that correct?

16 A That's correct.

17 MR. SEMERARO: Again, I have to object. I
18 don't see where it says it said a specific part of
19 the property.

20 MR. WHITAKER: Go through the resolution
21 with Mr. Steck paragraph by paragraph and you can
22 base your opinion on the foundation of what that
23 resolution says to you.

24 Let's go through it.

25 MR. INGLIMA: Yes, I'm going to go.

1 Q Can you read from page 2 of the resolution
2 starting with paragraph 5 under the words, "Now,
3 therefore, be it resolved, that this Board of Adjustment
4 does hereby make the following findings of fact", can you
5 read paragraph 5 through paragraph 10?

6 A If you shift it to me, I could.

7 Q Oh, I'm sorry. I didn't realize you
8 didn't have a copy.

9 A Okay. So here's paragraph 5 on page 2.

10 "There is presently located", so this is Lot 14
11 we're talking about. "There is presently located on the
12 property under appeal at the southwest corner thereof, an
13 existing one-story block building of approximately 1,870
14 square feet presently occupied by a taxi business."

15 So that's the building closest to the railroad.

16 "6. Somewhat to the east and north thereof,
17 approximately, eight feet removed from the northerly line
18 there is located another presently existing block garage
19 approximately, 634 square feet which is used as a paint
20 shop.

21 7. Further to the east of said paint shop, there
22 is located a one-story framed garage presently occupied
23 by an auto body shop (Ridgewood Auto Body) proposed to be
24 expanded and made a part of a proposed new building and
25 to provide hereafter a further expanded area of 1,220

1 square feet.

2 8. Further to the east at the northeastern corner
3 of the premises approximately" --

4 Q Northeasterly.

5 A Excuse me, "Northeasterly corner of the premises
6 approximately 25.56 feet removed from the side line of
7 said lot, there is presently erected an existing
8 two-and-one-half story residential building."

9 Q Dwelling.

10 A "Dwelling", so that's closest to the road.

11 MR. WHITAKER: Stop there, Mr. Steck.
12 Earlier you testified in your opinion there were
13 three principal uses on this piece of property?

14 MR. STECK: Yes.

15 MR. WHITAKER: And your basis or opinion
16 to that, foundation for that is based on what this
17 resolution says?

18 MR. STECK: It's what this resolution
19 said, plus a look at aerial photographs of the
20 property and existing conditions.

21 MR. WHITAKER: Thank you. Move on.

22 A So number 9, "Applicant proposes to erect a new
23 building to be located between the existing one-story
24 framed garage presently housing the Ridgewood Auto Body
25 shop and the one-story block garage presently housing the

1 paint shop, a new building to provide approximately 2,360
2 square feet.

3 10. The proposed building is to make it
4 possible" --

5 Q "New building". I'm sorry to correct you,
6 but I want you to read exactly.

7 A I should be corrected, I apologize.

8 "The proposed new building is to make possible an
9 expansion of the business of the existing tenant,
10 Ridgewood Auto Body, to provide for the repair of
11 automobile bodies by the straightening of the auto frames
12 indicated by the applicant as being a specialized
13 occupation for which the present building is inadequate."

14 Q Can you read paragraph 11, and after you
15 read it can you state whether or not it provides part of
16 the basis for your opinion?

17 A Paragraph 11 on page 3 reads, "There was evidence
18 at the hearing that the subject premises have for some
19 years been located in a zone which prohibits the
20 operation of an auto body shop".

21 And that was important in arriving at my decision.

22 Q So, summarizing, would you say that your
23 position with respect to the interpretation of the auto
24 body shop use on Lot 14 is guided to some degree by the
25 findings of fact set forth in the resolution of this

1 Board of Adjustment in September of 1974?

2 A That's correct.

3 Q We're dealing with a request by the
4 applicant to have uses that it has described in its
5 direct testimony as having taken place at Lot 12 and Lot
6 14 certified as a nonconforming use.

7 A That's my understanding.

8 Q What does the certification of a
9 nonconforming use involve?

10 A Well, if there is a use that at one time was
11 legal, and let's say the zoning was changed to not permit
12 that use anymore, an applicant can apply to the zoning
13 officer within a year of the ordinance change to get a
14 certification that that use by virtue of the new
15 ordinance is a legal nonconforming use.

16 Q And when a Board of Adjustment is called
17 upon to render some type of certification as to a
18 nonconforming use, is the process that it must engage in
19 set forth in the statute or the rules and regulations of
20 the Board or in the law affecting the determination of
21 whether something is a nonconforming use that's entitled
22 to protection and continuation in the law?

23 A Well, it's all of the above. There's a public
24 hearing. An application for interpretation to the Board
25 of Adjustment. It's a fact sensitive situation. And

1 based on evidence that's presented and, again, it is the
2 burden of the applicant to prove the case that the Board
3 can potentially rule based on the evidence that's
4 presented to it that it has protected status as a legal
5 nonconforming use.

6 Q Is it your understanding from reviewing
7 the requests for the certification as well as the
8 testimony that's been produced before this Board, that
9 the applicant is asking for certification of an auto body
10 shop specifically as a nonconforming use?

11 A That's the request is my understanding.

12 Q So they're not asking for certification of
13 a public garage as a nonconforming use. Correct?

14 A That's my understanding.

15 Q Now, you indicated that there's a hearing,
16 that there's factfinding that the Board must conduct,
17 that the burden of proof is the applicant. This Board is
18 being asked to interpret the rights of the applicant
19 based on things that happened 50 years ago or 70 years
20 ago in some cases. In the absence of a certain set of
21 zoning regulations that were in affect on the date a use
22 that was added to the property, how does this Board
23 proceed? How does it make the necessary factfinding?

24 A Well, again, it's the burden of the applicant and
25 there has to be a clear provision of evidence that at one

1 time it was legal. That's the starting point.

2 Q But they have to show?

3 A The applicant has to show that it was legal at one
4 point.

5 Q And that the use was on the property in
6 question. Correct?

7 A Yes, and then it was not abandoned or terminated
8 from that date that it was legally established as a
9 nonconforming use.

10 Q Well, you talked a moment ago about Lot 14
11 and how it had multiple principal uses on it as recently
12 as certainly 1974 when the Board adopted its resolution
13 denying the expansion of a nonconforming use, if that use
14 that they were talking about at that time expanded after
15 1974 without any grant of variance relief or other rights
16 conferred upon the applicant or property owner by a
17 qualified agency of the municipality, do you have an
18 opinion as to whether or not that expanded use would be
19 protected?

20 A It would not be protected. The only way that it
21 would be authorized is to receive a use variance from the
22 Board of Adjustment.

23 Q And we know, and I don't think it's
24 debated or contested by anyone, that the dwelling that
25 was once on Lot 14 was subsequently removed. It was

1 demolished or removed from the property otherwise?

2 A Yes.

3 Q And it appears from aerial photographs
4 that there were cars being parked in the area where that
5 dwelling once stood?

6 A That's correct. The series of photos show that
7 property no longer in residential use, but there are
8 automobiles, I presume, associated with some business on
9 the property in the portion that was historically allowed
10 as a residential dwelling and lawn.

11 Q Has the applicant produced for this Board
12 any type of land use permit, approval, Certificate of
13 Occupancy, variance, anything under the law that would
14 confer upon the property owner or the user of the
15 business, operator of the business the right to place
16 business uses of the property where the dwelling once
17 stood?

18 A There was no evidence that there was any
19 permission to allow, and I'll, for purposes of explaining
20 this from your Building number 4, which is in the mid
21 section of the property to South Broad Street, there's no
22 evidence that that was allowed to be used for anything
23 other than a residential use.

24 Q And is it your opinion that where that
25 dwelling once stood was the area that was occupied by a

1 residential use of Lot 14, at least on the date that the
2 resolution was adopted by this Board in 1974?

3 A That's correct. The older photographs show a
4 building and an unpaved area adjacent to that
5 single-family home.

6 Q There were previously questions raised
7 with respect to Building number 6 shown on Exhibit O-2,
8 and it is my understanding, and I believe the testimony
9 bears this out, that that building was previously
10 occupied by Ridgewood Taxi?

11 A That's what the record shows, yes.

12 Q Do you have an opinion as to whether or
13 not the business use of Building 6 or the area of Lot 14
14 near Building 6 by Ridgewood Taxi was an auto body repair
15 shop?

16 A That would not be an auto body repair shop.
17 That's a different type of use that a taxi location,
18 let's say, may have had offices or may have maintained
19 the taxis, but an auto body use is a different kind of
20 use.

21 Q Is there anything in the record of these
22 proceedings that indicates that the Ridgewood Taxi
23 business use of a portion of Lot 14 invited the public to
24 bring their own vehicles, in other words, customers'
25 vehicles onto that portion of Lot 14 to have work

1 performed on those vehicles?

2 A There's nothing in the record that shows that that
3 back building, so called Building number 6, was used to
4 repair vehicles that were not taxis.

5 Q So would it be fair to say that Ridgewood
6 Taxi's use of Lot 14 was for its own business purposes
7 and its own vehicle maintenance and storage as opposed to
8 any outside public invitees?

9 A The record shows that it was a taxi business
10 location. There's nothing that shows that that could
11 also be classified legally as an auto body shop.

12 Q Mr. Montick, in his testimony, had
13 indicated that in 2017 or 2018, if I could briefly
14 paraphrase his testimony, that Ridgewood Taxi left Lot 14
15 and that he then entered into an oral agreement with E &
16 G Auto Repair to use part of the property. Do you recall
17 reading that in the testimony?

18 A Yes.

19 Q Okay. Do you feel that, and this was in
20 2017 or 2018, that was after the property was rezoned
21 into the R-3 Zone. Correct?

22 A That's my understanding.

23 Q So what is your opinion with respect to
24 the effect of that change in the use of the area of Lot
25 14 that was formally occupied by Ridgewood Taxi?

1 A Well, first of all, as I understand the procedures
2 in Ridgewood, there should have been a Certificate of
3 Occupancy to reflect the change of use if it was to be
4 legally established. But the subsequent user, was it E &
5 G?

6 Q E & G Auto Repair.

7 A It's not an auto body shop.

8 Q Right. And it's not a taxi service.

9 A Right. And also simply because this is a
10 composite of nonconforming uses, that any change of a
11 part presumably would bring the whole property back to
12 the Board of Adjustment for review.

13 Q And certainly the change in a principal
14 use, whatever the original principal use was of a
15 property, a part of a property or a building, whatever
16 that was, if it changed to a different principal use,
17 this Board would have jurisdiction with respect to that
18 where it occupies the property that has other principal
19 uses. Isn't that correct?

20 MR. SEMERARO: I have to object. I
21 missed -- can you please read back the question?

22 MR. INGLIMA: I can reask the question, if
23 it helps.

24 MR. SEMERARO: Sure.

25 Q Regardless of what the principal use of

1 the property may have been over time, if there is a
2 change in principal use of a property or a portion of
3 property or a building of a lot that has other principal
4 uses in principal buildings in the Village of Ridgewood,
5 would that change in use not require or would it require,
6 I should say, action by the Board of Adjustment in order
7 to be lawfully added to the site?

8 A Because there is a generic standard in the
9 Ridgewood ordinance that it's one principal use per
10 property except for garden apartments and institutional
11 uses, any modification of a use on this property, in my
12 opinion, requires an application to the Board of
13 Adjustment for some type of a "D" variance.

14 Q So it wouldn't have to be an expansion of
15 a nonconforming use, per se, it would be any change in
16 use where an additional principal use was being added to
17 the property?

18 A That's my opinion. Because of the fact that this
19 has multiple principal uses on it, even forgetting what
20 the uses are, as long as they're not garden apartments,
21 it has multiple principal uses, any change should go
22 before the Board of Adjustment for a use variance.

23 Q Are you aware of any proceedings that took
24 place in the Village of Ridgewood with respect to Lot 14
25 in or about 2017 or '18 that dealt with the E & G auto

1 body -- I'm sorry -- auto repair business?

2 A There's no record in these proceedings of any
3 approvals that were secured for that rear building.

4 Q There's been testimony that after LES
5 Dann, LLC, which is, just so we're clear, when we refer
6 to "LES Dann", we're also referring to the operator, not
7 only the owner of Lots 12, 13, and 14, but also the
8 operator or related entity to the operator of Mountain
9 View Auto Body on Lot 12. After LES Dann acquired Lot
10 14, there was testimony by Mr. Daniel and by Mr. Montick
11 that Barry's Ridgewood Auto Body vacated Lot 14 and E & G
12 Auto Repair also vacated Lot 14. Are you familiar with
13 that testimony?

14 A I recall that testimony.

15 Q Okay. Subsequently, there is testimony in
16 the record that indicates that a contracting firm by the
17 name of S. Shuart Contracting occupied a portion of Lot
18 14. Are you familiar with that testimony?

19 A Yes.

20 Q Are you familiar with the exhibit that was
21 marked, I believe it was O-2A and O-2B, photographs that
22 were taken from a website, a Facebook site, I'm sorry,
23 operated by S. Shuart company?

24 A Yes, it showed trucks with that name on the
25 photos.

1 Q And there's no denying that there was a
2 business by the name of S. Shuart Contracting that
3 occupied Building 4 as indicated on Exhibit O-2?

4 A Yes, it was a flooring contractor.

5 Q Okay. So do you have an opinion with
6 respect to the vacation of Lot 14 by Barry's Ridgewood
7 Auto Body and the placement or addition of the S. Shuart
8 Contracting business to Lot 14 and, specifically, to
9 Building number 4 on Lot 14?

10 A Well, it's certainly, in my opinion, it's evidence
11 of termination or abandonment of the nonconforming auto
12 body use. Once that use stopped and then it was replaced
13 by another different use, in my opinion, that's an
14 indication of an intent to abandon the prior auto body
15 use that was there.

16 Q Mr. Daniel in his subsequent testimony
17 indicated that it wasn't his intention to abandon the use
18 and that now, as we sit here tonight, Mountain View Auto
19 Body is using Lot 14 for some of its business activities
20 in support of the auto body shop on Lot 12. Do you have
21 an opinion with respect to the significance of those
22 facts?

23 A Yes, I have an opinion.

24 Q Can you state your opinion?

25 A Yes. First of all, accessory uses have to be on

1 the same property as the principal use. So the auto body
2 shop, Mountain View, on Lot 12 has no right to use some
3 of Lot 14 and allege that it is permitted, because Lot 14
4 is physically separated from Lot 12. It's a different
5 property. Doing some of its car storage or auto body
6 work on Lot 14 is another principal use. It can't be
7 categorized as an accessory lot for Lot 12 because it's
8 not on Lot 12.

9 Q Do you feel that it could be characterized
10 a continuation of the prior auto body use of Lot 14 that
11 was undertaken by the owner of Barry's Ridgewood Auto
12 Body?

13 A It can't, in my opinion -- first of all, it is not
14 independent of Lot 12, it's connected. It's
15 characterized as, the applicant is trying to characterize
16 it as an accessory use, but it isn't. But by the fact
17 that that use was terminated and replaced by a flooring
18 contractor use, regardless of what might have been in his
19 mind, that's evidence to me of an intent to abandon the
20 auto body use.

21 MR. WHITAKER: Let's stop right there.

22 The conclusion, is the legal conclusion that this
23 Board has to make as far as the abandonment issue
24 is considered, which you are opining, your opinion
25 is you believe there is evidence to support that?

1 MR. STECK: Yes, the replacement by
2 another use and the cessation of auto body use, in
3 my opinion, is evidence of the intent to abandon
4 the use.

5 MR. WHITAKER: Your determination of
6 abandonment is something obviously this Board has
7 to consider, just so we understand.

8 MR. STECK: I understand it's a fact
9 sensitive situation.

10 MR. INGLIMA: Certainly, to the extent
11 that I ask this witness any questions that turn on
12 legal interpretations that are related to his
13 opinion as an expert witness, as a planner,
14 certainly we defer to the guidance of Mr. Whitaker
15 with respect to the interpretation of that
16 testimony.

17 Q Do you feel that it's also important to
18 consider that in the past the auto body shop that was
19 operated by Barry's and before that by Mr. Montick's
20 grandfather and Ed Kaniff (Phonetic), who was also
21 described in witness's testimony, that that was the
22 business activity of a tenant of Lot 14 and now if the
23 applicant's position is to be accepted, it's being done
24 by an owner of Lot 14?

25 MR. SEMERARO: Objection as to relevancy.

1 MR. INGLIMA: I'll withdraw it.

2 MR. WHITAKER: The type of ownership of a
3 business is not for the Board to consider.

4 Q Is there any evidence in the record that
5 an auto body use of Lot 14 exceeded the areas that were
6 occupied by Barry's Ridgewood Auto Body?

7 A Yes, the photos show, in my view from the street,
8 shows that the area that was used as a single-family
9 dwelling now is a parking area, a paved parking area, and
10 the back building, which you labeled as Building 6,
11 appears to have cars there unrelated to the prior taxi
12 use or the flooring use that was there.

13 Q So, in your opinion, have the occupants of
14 Lot 14 expanded any nonconforming auto body shop use on
15 Lot 14?

16 A Clearly, the area, now, of course, to get to the
17 mid section of Lot 14, you have to drive, you know,
18 driveway out South Broad Street, but it's clear that it
19 has been expanded into the area where the dwelling and
20 the associated lawns were and it has expanded into the
21 rear of the property that was used initially for taxi
22 business and subsequently for an auto repair business,
23 but not auto body.

24 Q Let's turn our attention to Lot 12. Do
25 you feel that the decision of this Board in 1987 is

1 directed to the activities that took place on Lot
2 12. So if Lot 12 is being used in a way that
3 required, shall we say the applicant or customers
4 of the applicant to have traversed other
5 properties, that would be relevant.

6 MR. WHITAKER: It would be relevant, go
7 ahead. It would be if Lot 12 was using Lot 13 for
8 an accessory use.

9 MR. INGLIMA: Yes.

10 Q Do you feel that any rights accrued to any
11 of the owners of Lot 12, including the applicant, with
12 respect to any nonconforming, whether principal or
13 accessory use of Lot 13?

14 A Lot 13 cannot be used for anything associated with
15 the auto body use on Lot 12, including traveling over
16 that property to get to Lot 14.

17 Q Do you have an opinion with respect to
18 whether or not, regardless of what this Board decides
19 with respect to the certification of nonconforming use
20 questions concerns, and in relation to the application
21 that has been filed, application in chief that has been
22 filed to this Board for approval of the new building and
23 parking area and other improvements on Lot 12, 13, and
24 14, do you have an opinion with respect to whether or not
25 "D" variance relief would be required for Lot 13?

1 MR. SEMERARO: Objection. This does not
2 relate to what's before the Board at this time.

3 MR. WHITAKER: No, my understanding is Lot
4 13 is not in front of us for the purposes of
5 nonconforming.

6 MR. SEMERARO: That's correct.

7 MR. WHITAKER: So we can move ahead and
8 just deal with 12 and 14.

9 MR. INGLIMA: Okay.

10 MR. WHITAKER: We recognize and the
11 applicant has already stipulated that Lot 13 does
12 not have the veil of a nonconforming use.

13 Q As far as the significance of what this
14 Board decides, if this Board, for example, decides that
15 there are nonconforming use rights that attach to an auto
16 body shop on Lot 12, would those rights influence the
17 decision making of the Board -- I'll withdraw it.

18 MR. WHITAKER: Going down the wrong path.

19 MR. INGLIMA: Going down the wrong path.

20 Okay.

21 Q In the course of my cross-examination of
22 Mr. Lydon I asked him a number of questions regarding the
23 dates when certain ordinance provisions came into affect
24 and the extent of restrictions upon particular business
25 uses of Lots 12, 13, and 14 when they were in the B-2

1 Zone, do you disagree with any of the positions taken in
2 those questions or Mr. Lydon's responses with respect to
3 the history of the zoning ordinance?

4 A Yes. I mean, there is no evidence prior to the
5 1965 ordinance of what it read. Mr. Lydon said he's not
6 concerned about what portions of Lot 14 were used for
7 different types of uses, he kind of lumped them all
8 together and that's, in my opinion, a fundamental
9 consideration because it doesn't -- you have a part of
10 the property potentially is a nonconforming use, that
11 doesn't mean it extends to the whole property. It's
12 confined to the intensity and the geographic area that
13 has been established, which in my opinion has not been
14 established. So, obviously, those details, in my
15 opinion, are important and this is certainly important if
16 the applicant elects to go for a "D" variance in the
17 future because what's decided to be a legal nonconforming
18 use now --

19 MR. SEMERARO: Objection.

20 A -- sets the baseline --

21 MR. SEMERARO: Objection. That is not for
22 the Board to consider.

23 MR. WHITAKER: Well, I'm going to allow.
24 The Board is aware of the parameters of a legal
25 nonconforming. We dealt with it quite a bit. So

1 I think you can move on. We don't need a lesson
2 tonight in nonconformity law.

3 MR. INGLIMA: That's fine.

4 Q In terms of the ordinances, is it your
5 opinion that there is no proof before this Board as to
6 what the use --

7 MR. SEMERARO: Objection. Objection,
8 leading.

9 MR. WHITAKER: That's a leading question.

10 Q Do you have an opinion with respect to
11 whether or not the applicant submitted to this Board
12 evidence of the use regulations that pertained or
13 governed the development of business uses on Lots 12, 13,
14 and 14 between 1951 and 1965?

15 A I think there is no substantial credible evidence
16 that is presented that establishes, that allows this
17 Board to conclude that there were some nonconforming
18 rights established and the extent of those nonconforming
19 rights.

20 Q And is it your opinion that if this Board
21 doesn't have evidence as to the specific zoning ordinance
22 that was in affect during the time period when uses were
23 established at the site, it cannot make a determination
24 as to whether or not those uses were lawful? In other
25 words, that they didn't violate any specific provisions

1 of the ordinance, whether they applied to a specific use
2 or to the public garage use as urged by Mr. Lydon?

3 A Again, the burden of proof is on the applicant.
4 The Board shouldn't have to guess, shouldn't guess what
5 were the conditions back then. It has to rely on the
6 evidence that's presented and substantial credible
7 opinion.

8 Q What is your opinion with respect to
9 whether this Board should certify a nonconforming auto
10 body shop use on Lot 12?

11 A I believe that it has evidence to certify that the
12 auto body use on Lot 12, provided it is confined to the
13 extent of that last decision, it can say that the
14 applicant has rights as a legal nonconforming use by
15 virtue of that decision.

16 Q So when you say that last decision, you're
17 referring to the 1987 resolution that approved the paint
18 spray booth at the rear of Building number 1 and shown on
19 O-2?

20 A Right. It was described as a minor expansion and
21 the Board approved it, so that conveys the rights to the
22 applicant.

23 Q So whatever use or structures that were at
24 the property or approved by the Board by virtue of the
25 1987 resolution can be continued on Lot 12?

1 A That's correct.

2 Q Okay. Do you have an opinion with respect
3 to the certification of a prior nonconforming use of auto
4 body shop on Lot 14?

5 A In my opinion, there is no substantial credible
6 evidence that would allow this Board to rule that any of
7 the uses at the current time on Lot 14 have status as
8 legal nonconforming uses.

9 MR. INGLIMA: I have no further questions
10 for Mr. Steck.

11 MR. WHITAKER: Mr. Steck, just a few
12 clarifications.

13 You stated that you reviewed certain
14 transcripts. Did you review all the transcripts
15 of all the hearings up until now?

16 MR. STECK: The answer is yes.

17 MR. WHITAKER: In connection with the term
18 "auto body", that's not, you would agree that's
19 not defined in the Ridgewood code?

20 MR. STECK: That's correct.

21 MR. WHITAKER: And it has never been
22 defined in the Ridgewood code?

23 MR. STECK: I believe that's correct.

24 MR. WHITAKER: In connection with the
25 testimony you gave regarding the Ridgewood Taxi

1 location, it would be correct to say as a planner
2 that if Ridgewood Taxi, just as an assumption, if
3 Ridgewood Taxi was using that building for repair
4 of their motor vehicles, including fender benders
5 as an auto body shop, there's no prohibition that
6 an auto body shop has to be an auto body shop and
7 render services to the public. It's the use of a
8 building to repair the motor vehicle, not the
9 person that comes in to have the repair, would you
10 agree?

11 MR. STECK: In my understanding of the
12 evidence is that was the location of a taxi
13 business that --

14 MR. WHITAKER: Well, the Board's going to
15 figure out that evidence. I'm just saying to
16 you --

17 MR. INGLIMA: May I ask for a
18 clarification, Mr. Whitaker?

19 MR. WHITAKER: I'll rephrase it.

20 If the Board determines that that building
21 was used as an auto body shop by the taxi company
22 exclusively, that would fit within an auto body
23 use?

24 MR. STECK: In my opinion, it wouldn't
25 because the principal use is the location of the

1 business and the storage of cars for taxis. The
2 repair of those would be an accessory component.
3 So that does not make the whole use as a principal
4 use as an auto body use.

5 MR. WHITAKER: If just, hypothetically, go
6 back and look through the evidence and find that
7 the building itself was used for the repair of
8 motor vehicles for the taxi company, if that's the
9 case, you're not trying to distinguish an auto
10 body shop between someone where the public coming
11 in or a private owner having their own
12 automobiles.

13 MR. STECK: I think there is a legitimate
14 distinction, because in my opinion to repair your
15 own vehicles is an accessory component, but if you
16 invite the public in to bring in vehicles for auto
17 body use, that's a principal use.

18 MR. WHITAKER: Well, I think it's a
19 stretch only because that's why the word "auto
20 body" is not defined in the code ever.

21 MR. STECK: Correct.

22 MR. WHITAKER: So you as a planner --

23 MR. STECK: Although, the term "public
24 garage" is and that was read into the record.

25 MR. WHITAKER: Right. And is it your

1 opinion on the basis of the fact that the term
2 "auto body", which is a use that's prevalent, is
3 not specifically defined, that it falls within the
4 parameters of the public garage?

5 MR. STECK: I think looking at the past
6 decisions of the Board, it is different because
7 the Board had considered auto body use, but didn't
8 look at the distance, you know, the 300-foot
9 distance requirements and the separation for
10 driveways that applied specifically to public
11 garages, so.

12 MR. WHITAKER: Well, they didn't put in
13 their findings of fact, but you and I weren't
14 there at the time.

15 MR. STECK: Right. But they're not in the
16 ordinance, but because they were not addressed,
17 that's evidence that the Board did not consider
18 auto body to be inclusive in the public garage
19 terms.

20 MR. WHITAKER: But you don't base that on
21 any transcript or anything that you read at the
22 time?

23 MR. STECK: That's correct. That's what I
24 glean from the --

25 MR. WHITAKER: Somewhat with all due

1 respect an assumption. The Board could've just
2 looked at that and made a decision and they just
3 didn't want to see an expansion, notwithstanding
4 the fact that it would infringe upon finding of
5 fact, I think you can find the Boards --

6 MR. STECK: Well, I guess as they say, the
7 resolutions speak for themselves.

8 MR. WHITAKER: That's all I have. I just
9 wanted to get that clarified.

10 BOARD MEMBER RUHL: Can I ask a quick
11 question?

12 So you're saying that there were three
13 uses on the property back in 1960. Right? You're
14 saying there's a house, and auto body, and a taxi?

15 MR. STECK: Yes.

16 BOARD MEMBER RUHL: And then later you're
17 saying that they abandoned the auto body because
18 they brought in a contractor?

19 MR. STECK: Because the auto body left,
20 number one, and rather than leaving it vacant to
21 try to lease it to another auto body shop, they
22 brought in a contractor that had nothing to do
23 with automotive use.

24 BOARD MEMBER RUHL: Couldn't that replace
25 one of the other uses? Why are you saying it

1 replaced the auto body use?

2 MR. STECK: Because the auto body use --

3 BOARD MEMBER RUHL: It used all the
4 structures, the contractor used every single
5 structure?

6 MR. STECK: Well, it's structure by
7 structure.

8 BOARD MEMBER RUHL: Yes, so can you
9 enlighten me on that one?

10 MR. STECK: So maybe I don't understand
11 your question.

12 MR. WHITAKER: I'm going to instruct the
13 Board when this is all over as to the abandonment
14 issue. The classic case, as we've gone over
15 before, is the Saddle River case. We all know
16 that case for abandonment. What the Board's going
17 to determine is if Shuart came in and used the
18 buildings that were being used by the auto body
19 shop or did Shuart come in and create a fourth
20 principal use of the property, which also would
21 not have been, because Mr. Steck would agree, I
22 think, that the three principal uses on the
23 property at one time was not permitted.

24 MR. STECK: That sets the stage to
25 anything that happens to this property, because

1 there are three principal uses on it, any change
2 has to go to the Board of Adjustment.

3 MR. WHITAKER: Right.

4 BOARD MEMBER RUHL: Maybe --

5 MR. WHITAKER: So now what the Board has
6 to determine on an abandonment the fact that if
7 Shuart came onto the site, did that constitute
8 abandonment of the auto body use on the site. You
9 got to go back through the transcripts and look at
10 all that testimony that we had.

11 BOARD MEMBER RUHL: So my question to him
12 is, and I don't remember the facts, maybe someone
13 can enlighten me, did that contractor use every
14 structure on that property? Because, again, going
15 back to the Saddle River thing, if he only used,
16 parked his cars where that house was, is that one
17 thing or did he --

18 MR. WHITAKER: That's why you got to go
19 through the testimony that was provided by the
20 applicant's witnesses.

21 BOARD MEMBER RUHL: Who can make remember
22 all this testimony?

23 MR. WHITAKER: That's why the decision's
24 not being made for awhile, because the Board
25 Members have to go through those transcripts,

1 that's correct.

2 BOARD MEMBER RUHL: But does anybody have
3 the facts as to whether the contractor --

4 MR. WHITAKER: It's in the transcripts
5 now. We're not going to open it up now.

6 MR. STECK: My short answer is, you're
7 right, the geography of that replacement use is
8 relevant. How much of the property or how many
9 buildings were used by that flooring contractor,
10 that is a relevant consideration. It doesn't
11 necessarily cancel everything on the property,
12 but, again, any change, because it has three
13 principal uses on it, any change really should go
14 to the Board of Adjustment and secure a use
15 variance.

16 MR. INGLIMA: I'd just like to correct the
17 position of the objector. I mean, at the time
18 Shuart came in, and I believe this was born out by
19 the cross-examination earlier of Mr., I believe of
20 Mr. Daniel, but when Shuart came in they occupied
21 Building 4, but Building 5 and 6, it's our
22 contention, were vacant, and the house which was
23 originally on the front of the property was gone
24 for many years. So just so everybody understands
25 our position.

1 MR. WHITAKER: The Board will review it.

2 BOARD MEMBER PAPIETRO: I have one
3 question for the planner about the dwelling that
4 was on 14. Do you have any information when it
5 was removed?

6 MR. STECK: I don't have a date and not in
7 the record, but it's clear when you look at older
8 aerial photographs and evidence in the record
9 there was a dwelling there and it's clear that the
10 rest of that corner of the property wasn't all
11 paved, so there was lawn there and there was a
12 dwelling there. That freezes that as a
13 residential use and any encroachment by virtue of
14 paving building use requires a "D" variance.

15 MR. WHITAKER: There's a survey that shows
16 it's there in '79, I believe. The current survey
17 shows it's not.

18 BOARD MEMBER PAPIETRO: '79.

19 MR. WHITAKER: '79 we know it's still
20 there.

21 BOARD MEMBER PAPIETRO: Thank you. That's
22 all I have.

23 MR. BARREE: Let me just clarify. That's
24 Exhibit 84-B. That's actually, I believe, the
25 site plan for Lot 12 associated with one of the

1 applications, but it shows the structure that's
2 not on the current survey toward the front of Lot
3 14 right on the edge. So it's not specifically
4 looking at Lot 14, but it's shown as overflow, if
5 you will, from Lot 12.

6 BOARD MEMBER PAPIETRO: Understood.

7 MR. SEMERARO: Mr. Whitaker, if I may?
8 There also is a 1979 aerial photograph that shows
9 that it's not there.

10 MR. WHITAKER: Right. So some time after
11 the survey was made, yes.

12 MR. SEMERARO: And before 1979 photograph
13 was taken.

14 BOARD MEMBER RUHL: Did anyone check the
15 tax records to see when it was demolished and not
16 taxed?

17 MR. SEMERARO: We have made an abundance
18 of OPRA requests and Mr. Lydon provided testimony
19 to the affect.

20 BOARD MEMBER RUHL: To the Tax Department
21 as well?

22 MR. SEMERARO: Including the Tax
23 Department.

24 BOARD MEMBER RUHL: Okay. That's all.
25 Thank you.

1 MR. WHITAKER: Cross?

2 MR. SEMERARO: Yes, I do have a cross, but
3 it is -- I'm not going to be completing it before
4 this evening and I think rather than having it
5 disjointed, this might be a good time for us to
6 break. I know that our reporter is going to need
7 a couple minutes break at a minimum anyway, so I
8 think that this might be a good time to break, Mr.
9 Whitaker.

10 MR. WHITAKER: And continue to another
11 meeting are you suggesting or coming back?

12 MR. SEMERARO: Yes.

13 MR. WHITAKER: How long do you think your
14 cross is going to be?

15 MR. SEMERARO: I think that my cross is
16 probably going to be an hour.

17 MR. WHITAKER: So the Board's policy is
18 not to go past 10:30, but I leave it to the Board
19 tonight as to how you want to proceed. We have
20 four Board Members here tonight, not the normal
21 seven. I see their faces saying it's coming to
22 10:30. So it's the Board's decision to carry
23 this? Consensus? And I believe we picked a date,
24 Jane, of May 7th?

25 MS. WONDERGEM: May 14th.

1 MR. WHITAKER: I'm sorry, May 14th.

2 MR. SEMERARO: So at this pace, and I do
3 appreciate the Board's time certainly, is it
4 possible for us to queue up two meetings, because
5 we know that this application's going to continue
6 past the vote no matter what and I would hate to,
7 we're already missing the month of April because
8 we didn't pick a date until this evening and if we
9 wait until May 15th we're probably going to miss
10 the month of June and go into July for the next
11 meeting.

12 MR. WHITAKER: We had anticipated that
13 this would be concluded tonight and we were going
14 to use the May 14th date for decision making.

15 MR. SEMERARO: Which I think that we still
16 will be able to do.

17 MR. WHITAKER: So you're going to
18 conclude, but you're also going to have your
19 memorandums in for that meeting even though you
20 haven't finished your cross-examination? I'm just
21 asking the question.

22 MR. SEMERARO: No, it doesn't make sense.

23 MR. WHITAKER: It doesn't.

24 MR. SEMERARO: No. So --

25 MR. WHITAKER: Jane, she's going to hate

1 me. Jane, what do we have on April the 30th?
2 It's the fifth Tuesday of the month.

3 BOARD SECRETARY WONDERGEM: I have nothing
4 else besides what we talked about earlier, so...

5 MR. WHITAKER: The reconsiderations.

6 Would if we put this on just for the
7 cross-examination and then the memorandums would
8 have to be in the next week to get on for the
9 May 14th hearing? It's only a week.

10 MR. INGLIMA: Are we going to have the
11 transcripts is the real question?

12 MR. WHITAKER: That's going to be the
13 problem. We can give you April 30th, but then the
14 Board's not going to have enough time to review
15 your memorandums and the transcripts seven days
16 later.

17 MR. SEMERARO: Seven days later?

18 MR. WHITAKER: Or 14 days later.

19 MR. SEMERARO: 14 days later.

20 MR. WHITAKER: It's too much of a burden
21 on the Board Members.

22 MR. SEMERARO: Well, could we pick a later
23 day in the month of May then?

24 MR. WHITAKER: Well, I'm not here the
25 fourth Tuesday of May.

1 MR. SEMERARO: Is there a possibility of a
2 Special Meeting then?

3 MR. WHITAKER: Well, that's what
4 April 30th was. It's the third meeting of the
5 month.

6 MR. SEMERARO: Okay. And that's great and
7 I appreciate that. Is it possible for us to get a
8 Special Meeting at the end of May?

9 MR. WHITAKER: Well, I'm not here the
10 fourth Tuesday in May and then we carry over
11 Memorial Day. There's no fifth Tuesday, if I
12 recall.

13 MR. SEMERARO: A Monday or possibly
14 Thursday?

15 MR. WHITAKER: The fourth Tuesday's after.

16 MR. INGLIMA: Well, if I may? If the May
17 meeting is only going to be for the decision of
18 the Board on this issue and not for any oral
19 presentations by the parties, could it be squeezed
20 onto another agenda?

21 MR. WHITAKER: Well, only because the
22 Board I think may want my assistance during the
23 course of the determination.

24 MR. INGLIMA: No, no, I mean a Regular
25 Meeting in May.

1 MR. BARREE: There's only those two
2 meeting dates in May, the 14th and 28th.

3 MR. INGLIMA: Oh, there's only those two
4 dates. Oh, I see, I'm sorry.

5 MR. SEMERARO: And are we going to be
6 afforded an opportunity just for a closing
7 statement after the briefs are submitted?

8 MR. WHITAKER: April 30th you can do the
9 closing statements and will be part of the
10 transcript.

11 MR. SEMERARO: Oh, okay, so the cross and
12 closing.

13 MR. WHITAKER: I don't have availability
14 May 28th or June the 11th.

15 MR. SEMERARO: And a Special Meeting on an
16 off Tuesday doesn't work, Mr. Whitaker?

17 MR. WHITAKER: No, I have a meeting every
18 Tuesday. The only time I don't have a meeting on
19 a Tuesday is when there's a fifth Tuesday.

20 MR. SEMERARO: No, I'm saying on a day
21 other than Tuesday, maybe the Monday or Wednesday
22 of that week or no?

23 MR. WHITAKER: We don't have availability
24 of the room, that's been the problem.

25 I think April 30th we should have them put

1 on the agenda to conclude cross.

2 MR. INGLIMA: Mr. Steck is available
3 April 30th.

4 MR. WHITAKER: Then you can do your
5 summation that night, if you wish, before we get a
6 memorandum.

7 MR. SEMERARO: Right, that works. Then
8 it's just the next --

9 MR. WHITAKER: Decision making looks like,
10 I have to say May the 14th, but you have to get
11 the last transcript in ten days in advance of the
12 hearing.

13 MR. SEMERARO: Okay. Yeah, we'll get the
14 transcript.

15 MR. WHITAKER: You got three days.

16 MR. SEMERARO: I'm sorry?

17 MR. WHITAKER: Three days.

18 MR. SEMERARO: Yes. We'd have to have it
19 by the --

20 MR. WHITAKER: And a memorandum by May the
21 3rd.

22 MR. SEMERARO: By May the 3rd.

23 MR. WHITAKER: That's a Friday for the
24 Ten-Day Rule. Alternatively, would be June the
25 25th.

1 MR. SEMERARO: Then we'll have to make May
2 3rd work then.

3 MR. WHITAKER: Mr. Inglima, are you
4 available?

5 MR. INGLIMA: For which date?

6 MR. WHITAKER: For the 30th of April?

7 MR. INGLIMA: 30th of April, yes.

8 MR. WHITAKER: And the submission of a
9 memorandum if you wish and then determination on
10 the 14th?

11 MR. INGLIMA: When will the transcript
12 from tonight's hearing be available?

13 MR. WHITAKER: It has to be in by the 3rd.

14 MR. INGLIMA: Well, if I'm going to
15 prepare a memorandum --

16 MR. WHITAKER: It's only going to be the
17 last one. It's only going to be the April 30th
18 transcript.

19 MR. INGLIMA: Tonight, tonight's
20 transcript.

21 Obviously, the Board members who are not
22 in attendance tonight are going to have to review
23 the transcript and it will be helpful if that
24 transcript is going to come in certainly before
25 May 3rd.

1 MR. WHITAKER: We're going to need it
2 quickly to do this by April 30th. So can we have
3 that transcript by April 10th?

4 I'm getting a nod.

5 MR. INGLIMA: And, obviously, the last
6 meeting I didn't...

7

8 (Off the record discussion)

9

10 MR. WHITAKER: We have to have all the
11 transcripts in by May 10th. You got them all now,
12 but this one and the April one. The sooner the
13 better so the Board members can review it.

14 MR. INGLIMA: Did you say by April 10th?

15 MR. WHITAKER: By April the 10th.

16 MR. INGLIMA: Yeah, okay.

17 MR. WHITAKER: So April 30th we conclude.
18 April the 10th all transcripts.

19 MR. SEMERARO: Right. May 3rd you'll have
20 the 30th, April 30th transcript and our legal
21 memos.

22 MR. WHITAKER: Transcript and memo.

23 MR. SEMERARO: Decisions will be slated for
24 May 14th.

25 MR. WHITAKER: May 14th.

1 MR. SEMERARO: Are we able to secure that
2 June date that you had made mention to at this
3 point in time as well because I don't want to lose
4 it.

5 MR. WHITAKER: I have to go to Jane.

6 June 25th they're looking to continue with
7 this for the second step.

8 MS. WONDERGEM: Yes.

9 MR. WHITAKER: Yes.

10 MR. SEMERARO: Okay, good.

11 MR. WHITAKER: We do that the whole night.
12 One thing we got to check, because we have people
13 on vacation, is to make sure there's availability
14 for April 30th and April 10th. I will tell you
15 that as long as we have four Board Members, we can
16 do April 30th, the rest of the members can read
17 the transcript.

18 MR. SEMERARO: So then with respect to the
19 April 30th date...

20 MR. WHITAKER: Your cross-examination.

21 MR. SEMERARO: Correct. But the Board
22 does the Open Public Meetings Act Notice for the
23 Special Meeting?

24 MR. WHITAKER: Yeah, we do that, yes.

25 MR. SEMERARO: And then --

1 MR. WHITAKER: We already have another
2 matter scheduled that night.

3 MR. SEMERARO: Oh, okay. So we know we're
4 going forward, so we announce that's going to be
5 carried then without further notice here this
6 evening.

7 MR. WHITAKER: Right. Board Members,
8 we're going to do residentials then on May the
9 28th and June the 11th.

10 MR. INGLIMA: Just so I understand with
11 all the dates that have been bounced around, we're
12 going to be here again on April 30th.

13 MR. WHITAKER: 7:30.

14 MR. INGLIMA: For Mr. Steck's
15 cross-examination.

16 MR. WHITAKER: Correct.

17 MR. INGLIMA: And then --

18 MR. WHITAKER: That's your only witness,
19 correct, Mr. Inglima?

20 MR. INGLIMA: That's correct.

21 And then May 14th would be the next date
22 for the decision of the Board --

23 MR. WHITAKER: Right.

24 MR. INGLIMA: -- on the nonconforming use
25 certification.

1 And then we would have the June 25th
2 hearing for the next phase of the application.

3 MR. WHITAKER: Correct.

4 MR. INGLIMA: The transcripts for
5 January 23rd and tonight would be submitted by
6 April 10th and the memoranda and the April 30th
7 transcript by May 3rd.

8 MR. WHITAKER: 3rd, yes.

9 We'll open this to the public before we
10 conclude.

11 Come up and state your name.

12 MR. FRANK MORTIMER: Frank Mortimer, 426
13 Van Buren, Ridgewood.

14 I just had a question on the dates. When
15 will the public comment be? Would that be on the
16 30th?

17 MR. WHITAKER: April 30th.

18 MR. FRANK MORTIMER: Okay, thank you.

19 That's all I want.

20 MR. WHITAKER: Okay. We can conclude this
21 evening?

22 MR. SEMERARO: Yes, okay.

23 MR. WHITAKER: We'll move on.

24 MR. SEMERARO: Thank you, everyone. Have
25 a good night.

1 (Whereupon, the proceedings concluded at
2 10:34 p.m.)

3
4 C E R T I F I C A T E

5
6 I, LYNANN DRAGONE, License No. XIO1388, a
7 Certified Court Reporter and Notary Public of the State
8 of New Jersey, certify that the foregoing is a true and
9 accurate transcript of the hearing at the time and the
10 date hereinbefore set forth.

11 I further certify that I am neither attorney
12 nor Counsel for, nor employed by any of the parties to
13 the action in which this hearing was taken.

14 I further certify that I am not an employee of
15 anyone employed in this case, nor am I financially
16 interested in this action.

17
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19 *Lynann Dragone*
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20 Certified Court Reporter
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