

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, August 27, 2024
7:30 p.m.
Ridgewood, New Jersey

ZONING BOARD OF ADJUSTMENT MEMBERS:

- GREG BROWN, Chairman
- MATTHEW BANDELT, Vice Chairman **(Absent)**
- GARY NEGRYCZ, Chairman Pro Tem
- 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

CROSS

PETER STECK

BY MR. SEMERARO

6

EXHIBITS

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1 CHAIRMAN BROWN: First up, we have LES
2 Dann, LLC. It's an application for preliminary
3 and final 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 at
7 246 through 264 South Broad Street, Block 3905
8 Lots 12, 13, and 14 in an R-3 Zone.

9 Good evening.

10 MR. SEMERARO: Good evening, Mr. Chairman.
11 How are you?

12 CHAIRMAN BROWN: Good. How are you?

13 MR. SEMERARO: We are also seeking the
14 Certificate of Nonconforming Use with respect to
15 Lots 12 and 14. Just want to clarify the record.

16 As we left off last time, we were going to
17 cross-examine the objector's planner, Mr. Steck,
18 and I understand that that's all we will be doing
19 this evening. Obviously, if Mr. Inglima wants to
20 redirect him and then whatever transpires from
21 there.

22 Thereafter, I anticipate, and I guess we
23 should just cover for basic housekeeping, that the
24 parties would submit position statements in
25 advance of whatever the next hearing would be and

1 that oral argument -- closing rather, closing
2 arguments will be made by both sides to be
3 followed by deliberations and a decision on the
4 Certificate of Nonconforming Use on those two
5 lots.

6 At least that's my understanding as to how
7 we will proceed and I think that we should just
8 clarify that that is the case or if it's something
9 else. And then I'm ready to proceed with the
10 cross-examination.

11 MR. WHITAKER: That would be the approach
12 that would be taken and when we get done tonight
13 with the cross-examination, we will pick a future
14 date for what you just described and then pick a
15 date when any memorandums you wish to submit need
16 to be provided.

17 MR. SEMERARO: Thank you.

18 MR. WHITAKER: Proceed.

19 MR. INGLIMA: If I could just place my
20 appearance on the record. It's Robert Inqlima,
21 Jr. I represent the Religious Society of Friends,
22 Ridgewood Friends Meeting, as well as the Friends
23 Nursery School, the owners and occupants of 224
24 Highwood Avenue, Block 3908, Lot 2. My clients
25 are interested parties based on their property

1 located within 200 feet from the applicant's site.

2 And just for the record, Peter Steck,
3 S-t-e-c-k, is sitting to my left. He is the
4 planner who testified at the last hearing on I
5 believe it was March 26th of this year and he is
6 here for cross-examination.

7 Thank you.

8 MR. SEMERARO: My appearance, Mr.
9 Chairman. Mark Semeraro, S-e-m-e-r-a-r-o,
10 Semeraro & Fahrney on behalf of the applicant.

11 CHAIRMAN BROWN: Great

12 MR. SEMERARO: We will proceed with Mr.
13 Steck being previously sworn and you understand
14 that you're continued to be under oath. Correct,
15 sir?

16 THE WITNESS: I do understand that.

17 MR. SEMERARO: Okay.

18

19 P E T E R S T E C K, having been
20 previously sworn, testified as follows:

21

22 CROSS-EXAMINATION BY MR. SEMERARO:

23 Q Thank you. Good evening.

24 So, Mr. Steck, you had been retained by the
25 objectors to oppose the request for a Certificate of

1 Nonconforming Use on Lots 12 and 14 as sought by the
2 applicant. Correct?

3 A I was hired to analyze the information that was
4 presented and it turns out that it's in opposition.

5 Q Okay. And you understand that that
6 request is governed by a statute, N.J.S.A. 40:55D-68.

7 Correct?

8 A You'll have to remind me of what the content of
9 that section is.

10 Q Nonconforming use.

11 A Yes, that's my understanding.

12 Q Okay. Mr. Steck, what percentage of your
13 practice represents objectors as opposed to applicants of
14 boards?

15 A I would say about half of my practice is objector
16 practice.

17 Q Okay. When was the last time that you
18 represented a public body in any capacity?

19 A I'm representing the City of Linden at the moment.

20 Q Okay. And that's in regard to what?

21 A To the valuation of a property.

22 Q The valuation of the property. Could you
23 explain that, please?

24 A A property was condemned and there was
25 disagreement over the amount of just compensation and I

1 am representing the City of Linden.

2 CHAIRMAN BROWN: Can you just hold on one
3 quick second?

4 (Off the record discussion)

5 CHAIRMAN BROWN: Go ahead, continue.

6 Thank you.

7 MR. SEMERARO: No problem.

8 Q So is that with regard to highest best use
9 of a particular property?

10 A Well, that's what the appraiser does. My job is
11 to determine what use is reasonably probable.

12 Q Okay. When was the last time that you
13 represented a public entity with respect to an
14 application?

15 A About three months ago I represented Allentown.

16 Q New Jersey?

17 A Yes.

18 Q Okay. And when was the last time that you
19 represented an applicant?

20 A Last week.

21 Q Okay. And what town was that in?

22 A Bloomfield.

23 Q Okay. Would you acknowledge that the only
24 resolutions and ordinances that you know exist relative
25 to these properties are the ones that have been submitted

1 before the Board so far?

2 MR. INGLIMA: I object. How can this
3 witness possibly know what's relevant to this
4 application from the many, many documents that may
5 exist in municipal records as well as in the hands
6 of the applicant that haven't been placed in
7 evidence?

8 MR. SEMERARO: Well, the question limited
9 it to resolutions and ordinances. I mean, he is a
10 planner and he should have an idea as to what's
11 relevant if he's testifying to it, so I --

12 MR. INGLIMA: Same objection.

13 MR. SEMERARO: -- maintain my question.

14 MR. WHITAKER: Why don't you ask the
15 question, are you aware of any resolutions that
16 have not been submitted into evidence in
17 connection with this application.

18 MR. SEMERARO: I'll break it down into
19 two. I thought that we were going to try to
20 streamline it.

21 Q Are you aware of any resolutions relative
22 to either of these properties that were not admitted into
23 evidence so far?

24 A I am not aware of any other resolutions.

25 Q Okay. Are you aware of any ordinances

1 that impact the zoning on these properties that have not
2 already been admitted into evidence?

3 MR. INGLIMA: Could we have clarification
4 on --

5 MR. WHITAKER: On the word "impacted".

6 MR. INGLIMA: Yes, thank you.

7 Q Are you aware --

8 MR. WHITAKER: Are you aware of any
9 ordinances that would be relevant to the property
10 that is the subject of this application?

11 MR. INGLIMA: Well, once again, I
12 appreciate Mr. Whitaker's restatement, but I'm
13 asking whether the witness is being asked about
14 the current state of zoning law in the Village of
15 Ridgewood or is he referring to, I'm sorry, Mr.
16 Semeraro, is he referring to ordinances that may
17 have been in affect from time to time over the
18 past 50, 60 years? Because there's a lot of
19 ground that's been covered in this application.

20 MR. WHITAKER: I would think the question
21 would be, well, you can ask, for all ordinances
22 from when this started till now. Correct?

23 A I'm aware of other ordinances which I believe are
24 relevant but have not been introduced yet.

25 Q And do you have copies of them with you

1 here today?

2 A I have them on my computer and my attorney has
3 copies of them.

4 Q Okay. And they're relevant in what
5 regard?

6 A They clarify how Ridgewood has handled auto body
7 repair shops as opposed to public garages, for instance.

8 Q Are you aware of any zoning ordinances
9 that have been passed between 1951 and the present date
10 that relate to the lots in question?

11 MR. INGLIMA: Can you explain whether
12 you're referring to an ordinance that affects a
13 zone in which the properties are located or
14 whether it refers specifically to Lots 12, 13, or
15 14, the subject of the application?

16 MR. SEMERARO: Sure, I'll rephrase.

17 Q Are you aware of any zoning ordinances
18 that have been adopted by the Village of Ridgewood
19 between the years 1951 and present that pertain to the
20 lot zoning or use as a public garage?

21 MR. INGLIMA: I --

22 Q That have not been admitted into evidence?

23 MR. INGLIMA: I have to object to the
24 question because it suggests that there is some
25 history of referring to the property as a public

1 garage, the use of the property as a public garage
2 and I don't think that's been established.

3 MR. WHITAKER: Can you rephrase the
4 question?

5 MR. SEMERARO: Mr. Whitaker, I don't think
6 that I have to because I had indicated nothing
7 about the use of the property. I indicated the
8 use of the zone, not how it's being used. And
9 it's undeniable and has in fact I think been
10 conceded that public garage has been a use that
11 has applied in the B-2 Zone in which these
12 properties were included. Now, if I have to break
13 this all down, I will, but I kind of thought that
14 certain things were conceded already.

15 MR. WHITAKER: Let's break it down.

16 MR. SEMERARO: Okay.

17 Q Are you aware of any zoning ordinances
18 that impacted the B-2 Zone between the years 1951 and
19 present that have not been introduced into evidence so
20 far?

21 A I'm aware of additional ordinances that have not
22 been introduced that clarify the treatment of auto body
23 repair shops versus public garages and they are not
24 necessarily limited to the B-2 Zone but they're
25 instructive of how Ridgewood has distinguished between

1 the two different uses.

2 Q My question was specific to the B-2 Zone.

3 A I'm not sure, because I haven't looked at all the
4 ordinances, but there are ordinances that have not been
5 introduced that are relevant to the issue at hand.

6 Q Sir, you were retained to provide
7 testimony as to this application.

8 A I was retained to review the evidence that you,
9 the applicant, are presenting.

10 Q And you were also retained to opine as to
11 whether or not a Certificate of Nonconforming Use would
12 be appropriate for these two lots. Correct?

13 A That's the outcome of listening to you because you
14 have the burden of proof as the applicant.

15 Q I didn't ask you ask that. I asked you
16 whether or not you were here to testify as to that
17 application, sir. Simple question.

18 A I'm here to respond to the evidence that you
19 present and I understand the first phase of this is a
20 request for a Certificate of Nonconformity.

21 Q Okay. And you already provided your
22 direct testimony. Correct?

23 A Yes.

24 Q Okay. And you didn't refer to any other
25 ordinances in your direct testimony, did you?

1 A Well, the record speaks to what I referred to.

2 Q I'm aware of that, but I'm asking you if
3 you referred to any of these ordinances that you now
4 claim are somehow relevant in your direct testimony?

5 A I do --

6 MR. INGLIMA: I object. You're
7 characterizing his testimony from March using
8 statements that were asked of him tonight. I
9 don't think that the record will reflect that he
10 said anything even close to what you just
11 characterized his testimony as.

12 MR. SEMERARO: I didn't characterize his
13 testimony. I asked him if he made reference to
14 the ordinances.

15 MR. WHITAKER: Shouldn't the question be,
16 have you referred in your recollection from March
17 to any ordinances other than those that have been
18 introduced into evidence during the course of your
19 direct testimony?

20 THE WITNESS: I did not refer to them in
21 my direct testimony, but I am aware of them.

22 MR. WHITAKER: That's it. He didn't ask
23 about being aware, he asked if you referred to
24 them?

25 THE WITNESS: I did read my transcript, I

1 don't recall referring to other ordinances other
2 than those introduced by the applicant.

3 MR. WHITAKER: Okay. The question's been
4 answered. Move on.

5 MR. SEMERARO: Okay.

6 Q And at the time that you provided your
7 testimony, at the conclusion of your testimony at the
8 last hearing, did you provide all of the reasons known to
9 you at that time as to why the application should be
10 denied?

11 A Again, I'll repeat, my understanding is that the
12 burden of proof is on the applicant and if the applicant
13 has not met that burden, the Certificate of Nonconformity
14 should not be issued.

15 There may be other reasons that further affirm my
16 conclusions, but I believe my testimony was adequate at
17 the last meeting.

18 Q I'm not asking you if it was adequate --

19 MR. WHITAKER: That not responsive though.
20 The question that was asked, we can read it back,
21 Mr. Steck, I need a more response to the question
22 itself.

23 THE WITNESS: Could I have the question?

24 MR. WHITAKER: Have the question read back
25 (Whereupon, the following question was

1 read back: And at the time that you provided your
2 testimony, at the conclusion of your testimony at
3 the last hearing, did you provide all of the
4 reasons known to you at that time as to why the
5 application should be denied?)

6 A Yes.

7 Q Okay. Are you aware of any evidence
8 relative to the use of Lot 14 by Barry's Auto Body and
9 related successor or predecessor auto body shops beyond
10 that which has been placed in the record already?

11 MR. INGLIMA: Excuse me, can I ask? Did
12 you say "evidence" in your question?

13 MR. SEMERARO: Correct.

14 MR. INGLIMA: I object to the form of the
15 question.

16 MR. SEMERARO: You could and actually, you
17 know something, I'm going to rephrase it for a
18 different reason than your objection, but I'll
19 rephrase it.

20 Q Are you aware of any facts relative to
21 Barry's Auto Body Shop using Lot 14 or any of its
22 predecessor auto body shops other than the facts that
23 were placed into evidence so far?

24 A No.

25 Q Okay. Are you aware of any facts relative

1 to Shuart Construction's use of Lot 14 beyond the facts
2 that were placed into evidence in this hearing so far?

3 A No.

4 Q What about Ridgewood Taxi, are you aware
5 of any facts beyond that which is in evidence so far?

6 A I am not.

7 Q What about Ridgewood Vehicle or Mountain
8 View Auto Body with respect to Lot 14, are you aware of
9 any facts relative to their uses that are not in evidence
10 before this body already?

11 A No.

12 MR. INGLIMA: I'm sorry, can I ask for
13 clarification? Are you asking about Lot 14 or Lot
14 12?

15 MR. WHITAKER: He said Lot 14.

16 MR. INGLIMA: That's what he said. I want
17 to make sure --

18 MR. SEMERARO: Oh, I meant Lot 12 with
19 respect to --

20 MR. WHITAKER: All of these questions were
21 with Lot 14.

22 MR. SEMERARO: All the questions were Lot
23 14 with the exception of the last one, which is
24 Lot 12.

25 MR. WHITAKER: Okay. I did not hear Lot

1 12.

2 MR. SEMERARO: And that's Ridgewood
3 Vehicle and Mountain View Auto Body.

4 Q Are you aware of any facts relative as to
5 how those entities used Lot 12 beyond that which is in
6 evidence already?

7 A I am not.

8 Q Okay. Are you aware of any facts at all
9 that would support a belief that Ridgewood Taxi used Lot
10 14 in any capacity other than storing and repairing
11 taxis?

12 MR. INGLIMA: Objection. This is an
13 irrelevancy based on the fact that this witness
14 presupposes by -- the attorney presupposes by the
15 form of his question that that's a relevant
16 inquiry with respect to the certification of a
17 nonconforming auto body repair shop, which is what
18 we're here for.

19 MR. WHITAKER: No, I don't understand the
20 objection. The question that was asked was what
21 information or facts have been introduced into
22 evidence as it pertains to Ridgewood Taxi.

23 MR. INGLIMA: No, he asked about a
24 specific use by Ridgewood Taxi, if I'm not
25 mistaken. You can read back the question.

1 MR. SEMERARO: Yeah, that is exactly what
2 the question is and I don't think that there's any
3 secret that it's the applicant's position that an
4 auto body shop falls in the same definition as a
5 public garage, so it's the same use and that's the
6 theory here.

7 MR. WHITAKER: Well, that still has to be
8 established.

9 MR. SEMERARO: Correct, obviously, but I
10 got to get the facts on the record.

11 MR. WHITAKER: So all you have to ask, I
12 believe is, do you understand Ridgewood Taxi
13 having used Lot, was it 14?

14 MR. INGLIMA: 14.

15 MR. SEMERARO: Correct.

16 MR. WHITAKER: 14 as a public garage only?

17 MR. SEMERARO: I'm not asking for that
18 definition because I don't want to have a debate
19 over what a public garage is. The issue of what a
20 public garage is is something that's going to be
21 briefed in our closing statements and ultimately
22 decided by this Board.

23 At this point in time, we have testimony
24 that Ridgewood Taxi was on the property. We had
25 testimony from him at the last hearing talking

1 about accessory uses which begs the question what
2 uses he's aware of that Ridgewood Taxi used on the
3 property. It is pivotal.

4 MR. INGLIMA: Objection. I don't know
5 where the word "accessory use" came from.

6 MR. WHITAKER: Here's the question.

7 MR. SEMERARO: The question is --

8 MR. WHITAKER: What use do you understand
9 Ridgewood Taxi used on Lot 14?

10 MR. SEMERARO: That's fine.

11 MR. INGLIMA: How is this witness supposed
12 to know that? He just testified that --

13 MR. WHITAKER: He knows what was
14 submitted, what he's aware of.

15 MR. INGLIMA: May I finish my objection?
16 Just one quick objection.

17 How is this witness supposed to know
18 anything more about Ridgewood Taxi when he's
19 already answered that the only thing he knows
20 about Ridgewood Taxi is what was placed on the
21 record at these hearings.

22 MR. SEMERARO: And that's fine, if he
23 doesn't know, the answer is no. Or in this
24 particular case since you asked me to rephrase the
25 question, he should list what those uses are.

1 This isn't terribly complex stuff.

2 MR. INGLIMA: The burden of proof in these
3 proceedings is on the applicant.

4 MR. SEMERARO: And that's awfully hard
5 when you're not letting me ask your
6 witness questions.

7 MR. INGLIMA: And now he's trying to prove
8 your case through a witness that says you haven't
9 proved your case. So my objection continues.

10 MR. SEMERARO: He testified --

11 MR. WHITAKER: Would the question not be,
12 based upon the facts that have been submitted so
13 far, what is your understanding of what Ridgewood
14 Taxi used Lot 14 for?

15 THE WITNESS: My understanding is that
16 Ridgewood Taxi used the rear portion of Lot 14 for
17 the storage and servicing of its taxis.

18 MR. WHITAKER: That's the answer.

19 Let's move on.

20 MR. SEMERARO: Okay.

21 Q At the last hearing did you provide any
22 testimony that the servicing and storage of its taxis was
23 an accessory use?

24 MR. INGLIMA: The record speaks for
25 itself. Why is this question being asked? If you

1 have anything in the record, you have a
2 transcript, read from the transcript, but don't
3 ask him to reinvent his own testimony.

4 MR. WHITAKER: Refer to the transcript.

5 MR. SEMERARO: Okay. We can certainly do
6 that.

7 MR. WHITAKER: Well, the answer is going
8 to be he doesn't recall from March 26th.

9 MR. SEMERARO: That's true, in which case
10 the next question simply would be, do you consider
11 an accessory use or a primary use.

12 A The primary use was the storage of taxis and along
13 with that, I believe that the record shows that they were
14 serviced there.

15 Q That's your belief?

16 A That's my recollection from the applicant's
17 testimony.

18 Q Okay. Are you familiar with the Stop &
19 Shop versus Springfield decision?

20 A Yes.

21 Q Okay. And in that case the Supreme Court
22 ruled that an objector could not artificially break down
23 the different activities within the definition of a use.
24 Is that correct?

25 A I think the theme of that case is that the

1 reviewing body is confined to the language of the
2 ordinance.

3 Q And in that case, the ordinance that was
4 at issue was the definition of the use. Correct?

5 A The ordinance did not make a distinction between
6 different types of retail uses, so in terms of the
7 ordinance, a Saks Fifth Avenue was the same as the food
8 store.

9 Q Correct. Because there was no
10 distinction. It was a broad definition. Correct?

11 A The answer is, Springfield did not make a
12 distinction between different types of retail uses.

13 Q Okay. Now, you would agree that when
14 you're looking at a zoning ordinance, if you're looking
15 at a list of permitted uses that are sequentially given,
16 that each use is a different use. Correct?

17 MR. INGLIMA: I'm not sure I understand
18 your question. Could you repeat it, please?

19 Q When you're looking at a zoning ordinance
20 and it's giving a list of permitted uses, each of the
21 uses listed are separated.

22 MR. INGLIMA: Is that a question? I
23 mean,, it sounds like a statement, not a question.

24 MR. SEMERARO: Well, it started with,
25 would you agree, and then I repeated the part you

1 didn't understand. So I could say it a third
2 time.

3 MR. INGLIMA: No, twice is enough.

4 A If there are different words in the ordinance,
5 they typically mean different things.

6 Q When you're talking about different
7 permitted uses. Correct?

8 A I think in general with the English language.

9 Q Okay. When a zoning code gives a
10 definition of a particular use and that use lists a
11 series of different activities, it's your position that
12 that definition is designating different uses?

13 A No, it could be a collection of uses.

14 Q Okay.

15 A That fit under one heading.

16 Q Correct. Okay.

17 And would you not agree that if a defined
18 particular use has a series of activities that could be
19 used for that use, that any or all of those activities
20 all fall within that definition or that singular use?

21 MR. INGLIMA: I'm going to ask that the
22 Board direct Mr. Semeraro to ask his questions of
23 specific ordinance provisions rather than to
24 engage in this generalization of what ordinances
25 may or may not contain. I think it's only fair to

1 the witness that he know exactly what provisions
2 of the ordinances of this municipality he's being
3 asked to assess.

4 MR. WHITAKER: I think the Board members
5 are aware in dealing with ordinances that there's
6 an ordinance that has a heading or what type of
7 use and lists a series of types of within that,
8 that they're all within the scope of that word
9 that's in the ordinance. I don't think we have to
10 go there with the Board.

11 MR. SEMERARO: I understand that, Mr.
12 Whitaker, but in this particular --

13 MR. WHITAKER: It's fairly common
14 knowledge in zoning and we also know that we have
15 an ordinance that says a certain use and it says
16 "such as but not limited to", it can even be
17 expandable. But I think we're way off trail right
18 now of where we want to be.

19 MR. SEMERARO: Okay. I just thought that
20 would be relevant to document how he feels
21 ordinances should be analyzed.

22 We'll get to that in a minute.

23 Q When considering a preexisting
24 nonconforming use, would you agree that the Board should
25 consider all evidence put before it that either tends to

1 prove or disprove the existence of the preexisting use?

2 A Would you ask that again, please?

3 Q Sure.

4 MR. SEMERARO: Could you read it back?

5 (Whereupon, the following question was
6 read back: When considering a preexisting
7 nonconforming use, would you agree that the Board
8 should consider all evidence put before it that
9 either tends to prove or disprove the existence of
10 the preexisting use?)

11 A Yes.

12 Q Okay. Were you present at all the prior
13 hearings?

14 A No.

15 Q Did you read the complete transcripts of
16 the hearings that you did not attend?

17 A Yes.

18 Q In totality?

19 A Yes.

20 Q Okay.

21 A Except for the Index at the end.

22 Q Okay. And so were you present for Mr.
23 Saavedra's testimony or did you read it?

24 A I read that.

25 Q Okay. And did you see the documents that

1 he produced?

2 A I've seen all of the exhibits.

3 Q Okay. And you understand that the
4 exhibits that he received were received through the
5 Village historian. Correct?

6 A From the Village library, I believe. I'm not sure
7 it's from the historian.

8 Q Okay. And within those documents were a
9 series of police reports dating back to the 1930s
10 responding to various calls on Lot 14. Correct?

11 A Yes.

12 Q Okay. And those police reports did
13 reference that the property was used as an auto body shop
14 and sometimes even referenced the name of the auto body
15 shop at the time. Is that correct?

16 MR. INGLIMA: Objection, the reports speak
17 for themselves.

18 MR. SEMERARO: But he can discuss -- just
19 because they speak to themselves doesn't mean that
20 we do not have cross-examination on it. There is
21 some cross-examination associated and I'm laying
22 the foundation.

23 MR. INGLIMA: You introduced documents --

24 MR. SEMERARO: I know what I did, Counsel,
25 and I also know that I'm --

1 MR. INGLIMA: Don't interrupt me, please.

2 You introduced documents that you obtained
3 not from the police department, the custodian of
4 records, or any other certified officer to provide
5 them as evidence of anything, but from the
6 librarian. So to put things in perspective, if
7 you want to refer to them at all, you should not
8 be challenging or questioning what this witness
9 read in those documents. The documents speak for
10 themselves. They are not official records. My
11 objection stands.

12 MR. SEMERARO: To the contrary, I submit
13 that they are official records. Mr. Saavedra
14 discussed the fact that they were obtained via the
15 library but through the Village historian and they
16 were copies of authenticated documents.

17 Notwithstanding the same, they're in
18 evidence and this individual claims to have seen
19 them and I'm asking if he acknowledged that police
20 officers that arrived at the scene within those
21 police reports dating back to the 1930s
22 acknowledged the use of the property at that point
23 in time. That's a perfectly valid --

24 MR. INGLIMA: You cannot ask a witness a
25 question that's based entirely on hearsay on a

1 non-official document. He can't possibly know
2 what anybody observed when they wrote up the
3 reports or whether the information contained in
4 those reports is accurate. So asking him about
5 them is absolutely pointless and unproductive.

6 My objection stands.

7 MR. WHITAKER: So the Board will evaluate
8 the authenticity and the weight that they'll give
9 all of those documents that are in evidence.

10 I believe the question that could be asked
11 is, in your review of the evidence that came from
12 the Village historian through the library, do you
13 recall the use of the word "auto body" in any of
14 those reports, if you recall?

15 THE WITNESS: Without looking at that
16 again, I can't recall exactly what it is, but I
17 clearly don't know what was in the mind of the
18 person that wrote the report or whether they had
19 any expertise on land use.

20 MR. WHITAKER: The Board recognizes the
21 use of the word "auto body" and what referring to
22 it may or may not be in the zoning code. That was
23 not the police officer's job. We recognize that.

24 Let's move on.

25 MR. SEMERARO: Okay.

1 Q And so of course if you don't remember
2 that for Lot 14, you don't remember it for Lot 12 either.
3 Correct?

4 A There was a lot of information presented and if
5 you want to show it to me again, I'll tell you whether I
6 remember it or not.

7 Q No, that's okay. The records speak for
8 themselves, I just thought that you would acknowledge
9 that.

10 Are you aware of any notices of violation ever
11 being issued to Mr. Montick at any point in time up
12 through the time that he sold Lots 12 and 14 for zoning
13 violations or maintenance violations?

14 MR. INGLIMA: Objection. This is way
15 beyond the scope of direct and it's not a matter
16 within the province of this witness.

17 MR. SEMERARO: Asking if he's aware of it.

18 MR. INGLIMA: It is pointless to ask.

19 MR. WHITAKER: Are you aware of it? It's
20 a simple yes or no.

21 THE WITNESS: I'm not aware of any
22 violation that has been issued.

23 MR. SEMERARO: Okay.

24 MR. WHITAKER: I just means he's looked at
25 the evidence. You looked at nothing other than

1 the evidence, correct? The facts, correct?

2 THE WITNESS: They have -- no -- I have
3 not done a separate investigation as to any
4 violation notices. I've largely confined myself
5 to the testimony presented by the applicant or its
6 representatives.

7 Q Okay. Based upon your testimony earlier,
8 is it safe to say that you're not aware of any zoning
9 ordinances that were passed changing the zoning of either
10 one of the two lots in question between the years 1951
11 and 1965?

12 A I'm not aware of a change during that time period.

13 Q Okay. Same question but between the years
14 1965 and 1984.

15 A I'm not aware of the change between the B-2 and
16 the R-3 Zone.

17 Q I'm asking you if you're aware of any
18 zoning ordinances that were passed between 1965 and 1984
19 that relate to the two properties in question?

20 A I don't recall any.

21 Q Okay. Do you acknowledge that both
22 properties were contained within the B-2 Zone between
23 1951 and 1984?

24 MR. INGLIMA: If you can refer to the
25 specific ordinances that you contend made changes

1 to assist, it would this witness in answering the
2 question.

3 MR. SEMERARO: I am simply referencing the
4 zoning code that he familiarized himself with in
5 1951 and I'm giving him an end date of 1984.

6 MR. INGLIMA: We will stipulate that in
7 1984, based on an ordinance that was introduced by
8 the applicant, the zone designation of Lots 12,
9 13, and 14 and Block 3905 or its prior indication
10 in the tax records of the municipality prior to
11 that date affected a change in the zone
12 designation from the B-2 Zone district to the R-3
13 Zone district. That is not contested and it is
14 frankly not a matter that was the subject of this
15 witness's direct testimony.

16 MR. WHITAKER: The Board will be able to
17 establish that themselves when they review all the
18 documentation submitted into evidence.

19 You should move on.

20 MR. SEMERARO: Okay.

21 Q And you acknowledged previously, I
22 believe, that you're not aware of any definition of auto
23 body shop being in the Village zoning code at any point
24 in time. Is that correct?

25 A I'm not aware of a separate designation, but I'm

1 aware of the use of the term.

2 MR. INGLIMA: No, he asked definition.

3 Q Definition.

4 MR. INGLIMA: Just clarifying for the
5 witness. He asked about definition.

6 A I don't recall the specific definition in the
7 Definition section of the ordinance.

8 Q Okay. Have you ever seen the 1974 zoning
9 board of adjustment resolution applicable to Lot 14 that
10 was discussed by Mr. Lydon?

11 A Yes.

12 Q Okay. That zoning ordinance obviously
13 applied to Lot 14. Correct?

14 MR. INGLIMA: You said zoning "ordinance",
15 you mean resolution?

16 MR. SEMERARO: I meant resolution,
17 correct. Thank you.

18 A Yes, it applied to Lot 14.

19 Q Okay. And that resolution acknowledged
20 and found that Barry's body shop was an existing
21 nonconforming use. Correct?

22 MR. INGLIMA: Why don't we read from it,
23 if it helps. Can we open it in front of the
24 witness so he's not asked to guess?

25 A I have a copy in front of me, if you want to

1 direct me to the section.

2 Q If you want to read it.

3 Are you unable to answer that question yes or no?

4 MR. INGLIMA: Oh, come on.

5 MR. WHITAKER: If he's able to answer
6 after he reads it. You've got a lot of documents
7 in evidence.

8 Q Well, rather than direct you --

9 MR. WHITAKER: Give the witness the
10 opportunity to look at the resolution and respond
11 to the question.

12 MR. SEMERARO: That's fine.

13 Q Rather than directing you to a particular
14 part, take a look at the resolution yourself and let me
15 know.

16 A So on page 3, items 10 and 11, 10 says, "The
17 proposed new building is to make possible an expansion of
18 the business of the existing tenant, Ridgewood Auto Body,
19 to provide for the repair of automobile bodies by the
20 straitening of the auto frames indicated by the applicant
21 as being a specialized occupation for which the present
22 building is inadequate."

23 Item 11 reads, "There was evidence at the hearing
24 that the subject premises have for some years been
25 located in a zone which prohibits the operation of an

1 auto body shop."

2 Q Okay. And what about in the Resolved
3 section on page 4 paragraph C?

4 A Would you like me to read paragraph C?

5 Q No. Is there reference to a decision
6 impacting nonconforming use?

7 If you want to read the whole thing, go ahead.

8 A So this is on page 4. "Be it Resolved", a small C
9 in parentheses. "Denial of the requested variance would
10 not result in exceptional and undue hardship upon the
11 owner of Lot 14 in Block 3905 and would not impair the
12 use of the premises for the purpose for which the same
13 are now used, nonconforming auto body repair shop, a taxi
14 service and paint shop and mixed residential use."

15 Q Okay. So in reading that language, do you
16 acknowledge that the Board found and decided that this
17 was a preexisting nonconforming use and that it could
18 continue?

19 MR. INGLIMA: Objection. How is this
20 witness supposed to know what the Board decided?
21 He can read the resolution, but he can't read
22 their minds.

23 MR. SEMERARO: The resolution reflects
24 what their minds were.

25 MR. INGLIMA: No, objection.

1 MR. WHITAKER: Well, the question would
2 be, on the basis of the resolution, what have you
3 determined the findings of the Board to be?

4 MR. INGLIMA: Same objection.

5 A Well, the resolution ends up saying that the
6 applicant did not submit sufficient evidence to show the
7 existence of such special reasons and the application was
8 denied.

9 Q And that was for the expansion?

10 A Yes. They didn't rule on the legality of the
11 other specific components. There was no ruling on the
12 taxi service. The subject before the Board was the
13 expansion for auto frame straightening machinery, which
14 was denied.

15 Q When you look at page 2, could you read
16 the paragraph that begins with "Now, Therefore"?

17 A Do you want me to read that?

18 Q Yes.

19 A Okay. "Now, Therefore, Be It Resolved, that this
20 Board of Adjustment does hereby make the following
21 findings of fact".

22 Q And then following those findings of facts
23 are 14 enumerated paragraphs. Correct?

24 A Yes.

25 Q Okay. And in looking at those paragraphs,

1 paragraph 7 says that the property is occupied by an auto
2 body shop, Ridgewood Auto Body Shop, proposed to be
3 expanded and made a part of a proposed new building. Is
4 that correct?

5 A That part of the paragraph reads as you said.

6 Q Okay. And did paragraph 10 indicate that
7 the proposed new building is to make possible an
8 expansion of the business of the existing tenant,
9 Ridgewood Auto Body, to provide for repairing automobile
10 auto bodies by straightening auto frames indicated by the
11 applicant as being a specialized occupation to which the
12 building is inadequate?

13 MR. INGLIMA: The resolution speaks for
14 itself. Are we engaging in an attempt by the
15 attorney for the applicant to add things to the
16 record that he forgot to do with his own
17 witnesses? I mean, this is getting a little out
18 of hand. It's a resolution. We agree that it's a
19 resolution of this Board. There's no contesting
20 it. It speaks for itself and asking this witness
21 a million questions about it is not advancing the
22 ball at all.

23 MR. WHITAKER: The resolution speaks for
24 itself.

25 MR. SEMERARO: The resolution does speak

1 for itself, but we have an individual that had
2 opined as to what preexisting nonconforming status
3 is with respect to a couple of lots and this
4 relates to that and it is in evidence and he
5 opined that it wasn't.

6 MR. WHITAKER: The Board's going to
7 evaluate the language in that resolution to
8 determine what the Board back then considered the
9 use of the property to be. The Board denied an
10 expansion of whatever that use was.

11 MR. INGLIMA: And if I may, the resolution
12 clearly states in multiple locations that there
13 were three principal uses of the property, not
14 just Ridgewood Taxi.

15 MR. SEMERARO: I would object to that
16 interpretation.

17 MR. INGLIMA: It speaks for itself and
18 it's what it says. Do you not read English?

19 MR. WHITAKER: Let's bring this back in.

20 Let the Board evaluate the resolution and
21 determination of the nonconforming issue. It's
22 one of the many documents the Board's going to
23 review.

24 Q So as part of your preparation for this
25 hearing, did you familiarize yourself with the

1 definitions of public garage in both the 1951 and 1965
2 code?

3 A I believe I've seen both of them.

4 Q Okay. Are you aware as to whether or not
5 the 1951 code had any restrictions on outside storage?

6 If you'd like to see a copy of pertinent sections
7 of the code...

8 MR. INGLIMA: I think, may I ask, has that
9 1951 ordinance to which you refer been placed in
10 evidence?

11 MR. SEMERARO: Yes.

12 MR. INGLIMA: What is the exhibit number,
13 please?

14 MR. SEMERARO: A-73.

15 MR. INGLIMA: This is A-73, which you had
16 previously submitted in microscopic form. I would
17 like to have a full size copy of the exhibit
18 marked at this time and distributed to the board
19 members so that questions are not asked about an
20 ordinance that no one can read.

21 I'll show it to the witness -- I'm
22 sorry -- I'll show it to Mr. Semeraro, the section
23 that I'm talking about in the manner in which it
24 has been reproduced.

25 MR. SEMERARO: It doesn't look microscopic

1 to me and this is the manner in which we were able
2 to produce it, so.

3 MR. INGLIMA: This is the one I'm holding
4 up in front of me that was actually marked as A-73
5 and you would need something akin to a microscope
6 in order to be able to read it.

7 MR. WHITAKER: Or a magnifying glass.
8 It's hard.

9 MR. INGLIMA: Yes. So I have done the
10 Board a service and assisted the witness as well
11 as the questioner by creating an enlargement that
12 I placed in front of Mr. Semeraro. This is the
13 first time anyone at these proceedings have seen
14 this and it is perfectly legible and can be read
15 without the assistance of any kind of
16 magnification and I would ask that this be
17 distributed to the board members and it can be
18 marked with an O number if you would prefer or it
19 could be A-73A.

20 MR. WHITAKER: A-73A. It's just a better
21 version. I read the old one with a magnifying
22 glass.

23 So let's move on.

24 MR. SEMERARO: Yes, if you want to mark
25 it --

1 MR. WHITAKER: Let's not waste time with
2 the Board tonight as to who can read what. Let's
3 get to the gist of what the questions are.

4 MR. SEMERARO: I think that for the
5 purposes of the record, though, marking it as
6 A-73A is an issue. This is an objector's exhibit,
7 it should be Objector's 5.

8 MR. WHITAKER: You want to take the time
9 and go through and compare one to the other?

10 MR. SEMERARO: If we leave it as
11 Objector's 5 --

12 MR. WHITAKER: If you want to do that, we
13 can just adjourn the meeting tonight. Everybody
14 can go home and do their homework and we can come
15 back to another meeting.

16 MR. SEMERARO: No, if we mark it as
17 Objector's 5, at least they're distinguished as to
18 who produced it.

19 MR. WHITAKER: Okay. We'll mark it as
20 Objector's 5. Do you have any objection to having
21 this marked as one of your --

22 MR. INGLIMA: No objection whatsoever.
23 O-5 would be fine.

24 MR. WHITAKER: -- exhibits?

25 What's your number up to? I don't have

1 it.

2 MR. INGLIMA: O-5.

3 MR. WHITAKER: O-5?

4 MR. INGLIMA: Correct.

5 MR. WHITAKER: Okay. So this is O-5 and
6 it purports to be an enlargement of A-73.

7 MR. INGLIMA: I will represent as an
8 attorney licensed in the State of New Jersey to
9 this Board that this is a true enlargement of
10 everything that was printed on A-73 with each
11 section that was shown there having its own page
12 and the page numbers of the ordinance clearly
13 marked starting with page 5 after the cover and
14 Index, page 5 through page 13 inclusive.

15 MR. SEMERARO: Okay.

16 (Enlargement of A-73 was received and
17 marked Exhibit O-5 for identification.)

18 Q So take an opportunity to review this
19 exhibit and let me know if there are any regulations that
20 prohibit outside storage for public garages?

21 A I do not see a prohibition of an outdoor component
22 for a public garage, filling, and service station.

23 Q Okay. Now, did you review the 1965 code?

24 A Was it part of the record?

25 Q It was part of the record, but we had an

1 enlarged copy of it prepared by --

2 A Was that the one that was difficult to read?

3 Q Yes.

4 MR. SEMERARO: I have an additional copy
5 that is somewhat more legible to read than what we
6 had on the board, so I would like to have this
7 marked as A-87.

8 (Legible copy of A-71A and B was received
9 and marked Exhibit A-87 for identification.)

10 MR. SEMERARO: And I represent to the
11 Board that this is identical to what was marked as
12 71A and 71B previously. It's just a more legible
13 copy.

14 Q I'm going to bring that to you and your
15 attorney.

16 Before seeing that --

17 MR. SEMERARO: 71A, I'm corrected.

18 Q I'm going to bring that to your attention,
19 but in the interim I'm going to ask you if you previously
20 familiarized yourself with any regulations in that code
21 for outside storage for public garages?

22 MR. INGLIMA: If there's a specific area
23 of the ordinance that you've identified as A-87 to
24 which you wish to direct the witness, I would ask
25 that you do so specifically.

1 MR. SEMERARO: Sure.

2 Q I'd like to bring your attention to
3 Section 412.

4 A Could you tell me geographically where that is?

5 Q Yes, it's under General Provisions,
6 Article 4. Here, Section 412. Right here.

7 A It's right near my finger. What would you like me
8 to do?

9 Q Okay. Before you saw that today, were you
10 aware of any regulations of outside storage that was
11 applicable to public garages?

12 MR. INGLIMA: You mean in this ordinance
13 or in any ordinance?

14 MR. SEMERARO: In any ordinance.

15 A I believe that there, at one time it was a
16 prohibition of an outdoor storage associated with auto
17 body repair shops.

18 Q When?

19 A I have to do more research. I don't recall the
20 exact date of the ordinance, but there was language that
21 said that you can't work outside.

22 Q Outside storage is different than working,
23 is it not?

24 A Well, you can store a car and park it there, but
25 you can't work on it.

1 Q Okay. Well, my question is about outside
2 storage.

3 A Okay.

4 Q And my question more specifically is,
5 before you saw that section today, were you aware of any
6 prohibition or restrictions on outside storage for public
7 garages?

8 MR. INGLIMA: In this ordinance?

9 MR. SEMERARO: At any time?

10 MR. WHITAKER: In any ordinance.

11 A Well, the restrictions on the placement of where
12 it can go?

13 Q Any restrictions.

14 A Well, you can't put it in the required side yard
15 or the required front yard. There are restrictions other
16 than the storage itself of where the storage can be.

17 Q Okay. Well, we just confirmed that in
18 1951 there were no restrictions or prohibitions.

19 MR. INGLIMA: That has not been confirmed,
20 objection.

21 Q In the 1951 code were there any
22 restrictions or prohibitions of outside storage for
23 public garage, the 1951 code? The code that Mr. Inglima
24 had given you moments ago.

25 MR. INGLIMA: Are you aware?

1 A I don't recall. I'm unaware of a prohibition of
2 outdoor storage associated with auto body repair shops.

3 Q Are you aware of any restriction on
4 outside storage for public garages in the 1951 code, a
5 copy of which has been enlarged and provided to you by
6 Mr. Inglima a few moments ago?

7 A I'm not aware of any prohibition of outdoor
8 storage, but there are restrictions on where you could
9 store things.

10 Q Okay. Can you please tell me what section
11 and where? And we're talking about the 1951 code.
12 Correct?

13 A Yes, it's first dated 1946 and last amended by
14 Ordinance 1065, July 1951.

15 Q Can you please show me --

16 A I'm looking at it now.

17 Q Okay.

18 A If you'll wait a minute.

19 Q Sure.

20 A So what was marked as O-5 on page 7 in the lower
21 right-hand corner there is a, under Section 7, there's a
22 subparagraph 3 in parentheses that lists a long list of
23 uses that does say including -- it does say, about the
24 fifth line from the bottom, public garage, filling, or
25 service station for motor vehicles. And if you go to the

1 upper left-hand side of page 8, which is a continuation
2 of that article, it says that, I'll just read the end of
3 it, "That only electro motor power be used for operating
4 machinery used incidentally to the permitted use and
5 further provided that no supplies, materials, or goods
6 be" I presume that means, "be stored outside" --
7 "outdoors", excuse me.

8 So there was a prohibition that included public
9 garages that prohibited supplies, materials, or goods
10 stored outside.

11 Q Okay. I'm just reading this right now, so
12 bear with me a second.

13 Okay. With respect to the 1965 ordinance that's
14 before you, can you please let me know what restrictions
15 on outside storage applied to public garages? And
16 specifically, I brought to your attention one section
17 that I knew applied.

18 A Other than what I just read to you?

19 Q No, 1965. I'm referring to the other
20 ordinance now.

21 A Oh, okay.

22 There's a Section 509 that's entitled: Outdoor
23 Repair Prohibited. And I'll read it.

24 Q That's not outdoor storage. Correct?

25 A It says, Outdoor Repair.

1 Q Okay. I asked you about outdoor storage.

2 Section 412 is entitled: Outdoor Storage. Correct?

3 A I'm trying to find that title.

4 Can you tell me where it is geographically on the
5 exhibit?

6 Section 412, Outdoor Storage. You want me to read
7 it.

8 Q Sure, please.

9 A Subparagraph A "Outdoor storage of any kind or
10 nature except for the storage of those items customarily
11 used in conjunction with a residential occupancy is
12 prohibited in all residential zones.

13 B. In all non-residential zones, outdoor storage
14 is only permitted in the side and rear yards as herein
15 regulated. No article, equipment, vehicle, supplies or
16 materials shall be kept stored or displayed outside the
17 confines of any building unless and until the same is
18 screened by special planting or fencing as approved by
19 the planning board and maintained in good condition so
20 that it shall not be visible from any adjacent property
21 or public street. Any fence required by this section to
22 screen the outdoor storage of flammable material
23 otherwise permitted by this ordinance shall not be closer
24 than 20 feet to any property line of the lot upon which
25 it is erected."

1 Q Okay. So based upon that code in 1965,
2 outside storage and side yards and rear yards would be
3 permitted in a public garage that's not in a residential
4 zone. Is that correct?

5 MR. INGLIMA: The ordinance speaks for
6 itself. He just read it in its entirety. I don't
7 know how you can ask anything further.

8 MR. SEMERARO: Well, he's a planner and he
9 interprets code.

10 A Well, you have to screen it. You have to put it
11 in the right place. It has to be accessory to the
12 principal use.

13 Q Okay. And under those circumstances, is
14 it your opinion that it would be permitted?

15 A That's what that section says.

16 MR. INGLIMA: In 1965. Correct?

17 THE WITNESS: In the 1965 ordinance, yes.

18 Q Okay. And are you aware of any evidence
19 that would support a finding or a belief that outside
20 storage on either Lots 12 or 14 were ever discontinued
21 from the 1960s to present?

22 MR. INGLIMA: Objection. He's being asked
23 to confirm the non-existence of something. He
24 can't possibly do that.

25 MR. WHITAKER: He can't do that.

1 MR. SEMERARO: Well, is that a stipulation
2 that there is no evidence?

3 MR. INGLIMA: No, there's no stipulation.

4 MR. SEMERARO: No facts?

5 MR. WHITAKER: No stipulations.

6 MR. SEMERARO: Well, I'm asking if he's
7 aware of any facts that would support a finding
8 that outdoor storage on either of these lots was
9 ever discontinued.

10 MR. INGLIMA: Same objection, same reason.

11 MR. SEMERARO: He either knows or he
12 doesn't.

13 MR. INGLIMA: How is he supposed to know
14 if something didn't happen?

15 MR. SEMERARO: Because he was retained by
16 you to object to this application and I'm asking
17 him if he's aware of any facts that support that.

18 MR. INGLIMA: These are questions you
19 should have directed to your own witness.

20 MR. SEMERARO: And I did.

21 MR. INGLIMA: My client's witness is not
22 here to prove your case.

23 MR. SEMERARO: No, you're here to try to
24 disprove my case and I'm asking if he has any
25 facts to do it.

1 MR. INGLIMA: You haven't made a case to
2 disprove.

3 MR. SEMERARO: I certainly did.

4 MR. WHITAKER: So let the question go, Mr.
5 Steck, are you aware of any facts that were
6 submitted at this point that you have used to see
7 a discontinuance, assuming there was outdoor
8 storage, a discontinuance of outdoor storage, the
9 facts that were submitted?

10 THE WITNESS: Well, on Lot 14, only a
11 portion of the lot was at one time allocated to an
12 auto body use. So, for example, any storage in
13 the area where the single family house was or
14 where the lawn was, the side yards, front yard,
15 rear yard of the house would not be permitted.

16 Q Okay. But that's not answering the
17 question.

18 A So there are limitations that are fact sensitive
19 in the back where there was a taxi service. You can't do
20 outdoor storage that is associated with the auto body use
21 because that's not the same as a taxi service. So in
22 addition to the setbacks and the screening requirements,
23 there's also a question of what was legally established,
24 how much of that property was at one time established as
25 an auto body use.

1 Q Well, that's your testimony. But my
2 question was, simply utilizing outside storage on the
3 lots, are you aware of any discontinuance of outside
4 storage on Lot 12 from the 1960s to the present?

5 MR. INGLIMA: May I ask for clarification?
6 Are you referring to outdoor storage for Ridgewood
7 Vehicle Company or for any other occupants of the
8 property?

9 MR. SEMERARO: I'm asking for any occupant
10 of Lot 12. In this case, it would be Ridgewood
11 Vehicle and then Mountain View.

12 MR. INGLIMA: You're asking about outdoor
13 storage for an auto body repair shop on Lot 12.
14 Correct?

15 MR. SEMERARO: Correct.

16 MR. INGLIMA: Thank you.

17 A So if there are vehicles stored to be worked on
18 by --

19 Q I'm not asking a hypothetical. I don't
20 mean to cut you off.

21 A Well, the answer is, there's evidence on the
22 record that a landscaper was storing equipment on Lot 12.
23 That's not permitted. That's a second principal use.

24 Q That's a different question.

25 A Well, then I don't --

1 Q I'm asking you if you are aware of any
2 evidence that shows that the auto body use on Lot 12 ever
3 discontinued outside storage in the side and rear yards?

4 MR. INGLIMA: Once again, objection. He
5 can't possibly know the answer to that question.

6 MR. SEMERARO: I'm just asking if he is
7 aware. I'm not asking him definitively. I'm
8 asking him if he's aware.

9 MR. INGLIMA: No, I'm saying he can't
10 answer the question.

11 My objection stands.

12 A I'm not aware of any evidence that you've
13 presented that outdoor storage has been discontinued.

14 Q Okay. And are you aware of any outside
15 storage for Barry's Auto Body being discontinued before
16 it left the property?

17 A Well, I don't know the extent. I know that there
18 was storage on areas that were not permitted, but I don't
19 know -- I can't answer your question.

20 Q Okay. Were you familiar with the 1979
21 resolution from the Zoning Board of Adjustment relative
22 to Lot 12?

23 A Yes.

24 MR. INGLIMA: I believe you're misstating
25 the date of the resolution.

1 MR. SEMERARO: 1979?

2 MR. INGLIMA: Can you show it to the
3 witness, please, and identify the exhibit number?

4 Q And this was Exhibit A-84A. The last page
5 indicates a date of October 24, 1979.

6 A I have it in front of me.

7 Q Okay. And are you aware that the Zoning
8 Board of Adjustment at that point in time concluded,
9 found that an automobile shop was a permitted use in the
10 district?

11 MR. INGLIMA: Can you refer to the section
12 of the resolution?

13 MR. SEMERARO: A-8 on paragraph 2.

14 MR. INGLIMA: Why don't you read it, Mr.
15 Steck.

16 A Okay. So this is page 2 of the resolution handed
17 to me and it says, "The applicant submitted in evidence
18 the following, A, B, C, D, E, F, G and testified which
19 testimony may be summarized as follows: The site is used
20 as an auto body repair shop, a permitted use of the
21 district."

22 So that was the information presented by the
23 applicant according to the resolution.

24 Q Oh. And so it's your position that that
25 wasn't a finding of fact?

1 MR. WHITAKER: Well, it's a finding of
2 fact of what the applicant testified to.

3 Q In the resolution, the final decision was
4 that the subject premises are utilized for a shop for
5 automobile repair. Could you please read that, paragraph
6 number 5?

7 A This is --

8 MR. WHITAKER: What page are we on?

9 MR. SEMERARO: Page 3.

10 A 5 reads as follows: The subject premises are
11 utilized as a shop for automobile repair requiring the
12 storage of motor vehicles and automotive parts.

13 Q Okay. And that application was an
14 application to install a six-foot gate. Is that correct?

15 MR. INGLIMA: The resolution speaks for
16 itself. The application itself has not been
17 placed in evidence before this Board so we have to
18 rely exclusively on the statements contained in
19 the resolution, which we don't dispute, but,
20 nevertheless, speak for themselves.

21 Q Did you see the site plan that accompanied
22 that resolution and was referred to in the resolution?

23 A If it was submitted as an exhibit, I have seen it.

24 Q Okay. A-84B --

25 A Is that the Marshall plan?

1 Q Correct. So you do recall seeing it?

2 MR. INGLIMA: Hold on a second. Let me
3 pull it out for the witness.

4 MR. SEMERARO: A-84B.

5 A Do I detect you have a full size copy of it?

6 MR. INGLIMA: Here it is.

7 A Okay, I have it in front of me, A-84B.

8 Q Okay. And in the lower right-hand corner,
9 could you indicate who that plan was made out for?

10 MR. INGLIMA: If you're asking him to read
11 it, he'll read it.

12 A Ridgewood Vehicle it says.

13 Q Okay. And is it your understanding that
14 Ridgewood Vehicle was an auto body shop?

15 A Yes.

16 Q And you don't contest that this property
17 was in the B-2 Zone at that point in time?

18 A My recollection is that it was in the B-2 Zone at
19 this time.

20 Q Okay.

21 A The plan is dated 1979.

22 Q Thank you.

23 And from your interpretation of that resolution,
24 was that gate installed to facilitate protecting items
25 stored in the yard?

1 MR. INGLIMA: Objection. How can this
2 witness possibly know? Were you a member of the
3 Board at that time, Mr. Steck?

4 MR. SEMERARO: He can read the resolution.

5 MR. INGLIMA: You can read the resolution.
6 Why does he have to keep reading it? You just
7 asked him what zone it was. It says right in the
8 resolution it's a B-2 Zone. We're wasting time.

9 MR. SEMERARO: I asked him to confirm it.

10 MR. WHITAKER: Well, he doesn't need to
11 confirm something that's in evidence already.
12 He's not disputing that it's in the B-2 Zone.

13 MR. SEMERARO: Okay.

14 Q Your attorney previously stipulated that
15 in 1984 there was a zoning ordinance that changed the
16 lots in question from B-2 to R-3. You recall that.
17 Correct?

18 A Yes.

19 Q Okay. And you're familiar with a
20 resolution in 1987 relative to Lot 12 seeking to expand
21 the building to include a paint shop?

22 A Yes.

23 Q Okay. And at that point in time is it
24 your recollection and is it your opinion that the Board
25 deemed an auto body repair shop being a preexisting

1 nonconforming use on that property?

2 MR. INGLIMA: The resolution speaks for
3 itself. Same as the prior objections.

4 MR. SEMERARO: You can answer.

5 MR. INGLIMA: No, he can't answer. How
6 does he know what the Board thought other than
7 what he can read from the resolution?

8 MR. SEMERARO: I'm asking if the Board
9 made that decision, if they made that finding.

10 MR. INGLIMA: It's in the resolution.

11 MR. SEMERARO: Well then he can say yes or
12 no.

13 MR. INGLIMA: Are you asking him to read
14 everything in your file, because we're going to be
15 here all night then.

16 MR. SEMERARO: If he answered it, we'd be
17 done with this question and moved onto the next
18 one already.

19 MR. INGLIMA: The resolution speaks for
20 itself. This witness cannot possibly add anymore
21 information regarding a decision made by this
22 Board in 1987.

23 MR. SEMERARO: Yes, he can, because the
24 findings of prior Board in prior applications has
25 an impact on what his present opinion is. So I'm

1 getting his opinion on prior events to lead up to
2 what his opinion is as to the current status of
3 the property. This is absolutely relevant.

4 MR. INGLIMA: This is cross-examination.

5 MR. WHITAKER: Mr. Steck, you read the
6 resolution. Correct?

7 THE WITNESS: Yes.

8 MR. WHITAKER: Did the Board at that point
9 in that resolution make any finding of fact?

10 THE WITNESS: I'm going to have to re-read
11 the resolution before I answer.

12 MR. WHITAKER: Go ahead.

13 Q I'm going to show you what's been marked
14 A-85.

15 MR. WHITAKER: He's reading the
16 resolution.

17 MR. SEMERARO: This is the 1987
18 resolution.

19 MR. INGLIMA: The witness has the material
20 in front of him.

21 A So the resolution found that it was a prohibited
22 use in the zone and it was ruled to be constituting an
23 expansion of a nonconforming use and it says, the
24 applicant already runs an automobile body repair shop on
25 the site.

1 That was on the bottom of page 3.

2 Q Okay. Now, did you already concede that
3 this lot has a preexisting nonconforming use of an auto
4 body repair shop?

5 A Yes.

6 Q Okay. And do you have an opinion as to
7 whether or not the 1979 ordinance -- not ordinance --
8 variance, relative to the gate has been affected by this
9 resolution?

10 MR. INGLIMA: Objection. How can he
11 possibly know? It's supplemented possibly, but
12 how does he know what the word "affected" means?

13 Q Has it invalidated the 1979 resolution in
14 any way?

15 A I'm sorry, you'll have to ask the question again.

16 Q Sure.

17 This resolution dated 1987, did that invalidate
18 the 1979 resolution in any fashion?

19 A No.

20 Q Okay. Are you aware of any changes
21 regulating outside storage between the years 1965 and
22 1984?

23 MR. INGLIMA: Are you asking him whether
24 he's aware of any ordinance provisions that
25 affected changes to regulations affecting,

1 governing outdoor storage by auto body repair
2 shops?

3 MR. SEMERARO: No, outside storage,
4 general provisions.

5 MR. WHITAKER: In any zone?

6 MR. SEMERARO: In any zone.

7 A Well, this is a -- I'm not aware of the specific
8 ordinance, but this is a nonconforming use on Lot 12 so
9 it can't be expanded. You can't expand the storage area
10 even though it might have been legal at one time, it is
11 now a nonconforming use, so it can't be expanded
12 geographically.

13 Q Okay. But I am asking you if you're aware
14 of any ordinance changes between 1965, the large map that
15 you saw, Section 412, which are general provisions for
16 outside storage, are you aware of any changes to those
17 regulations between 1965 and 1984?

18 MR. INGLIMA: The ordinances of the
19 municipality which we will refer this Board to
20 with liberality govern the answer to the question.
21 Whatever the ordinances provide, they provide.

22 MR. SEMERARO: And that's fine. And I'm
23 asking him if he's aware of any changes.

24 A I don't recall any changes.

25 Q Okay. And are you aware of any changes to

1 the ordinances between 1984 and 1987 when this resolution
2 was adopted?

3 A Once again, please.

4 Q Are you aware of changes similarly to the
5 ordinances for outside storage, the general provisions,
6 between calendar year 1984 and the 1987 resolution that
7 you just looked at?

8 A I don't recall any at the moment.

9 Q Okay. In preparation for your analysis,
10 you analyzed the 1951 and 1965 code. Correct?

11 A I'm aware of the evidence that was presented and I
12 focused on the evidence that you as an applicant
13 presented.

14 Q And did you make any effort to thoroughly
15 analyze the code to see if you disagreed with any of the
16 conclusions made by Steve Lydon?

17 A I disagreed with his conclusions.

18 Q Okay. Did you disagree with his analysis
19 of the code when he testified?

20 A Yes.

21 Q Okay. In so doing when you were
22 evaluating this, did you look at the code to see why you
23 disagreed with his analysis of the code?

24 A At the time I just listened to him and the
25 evidence that was presented and I believe he made

1 conclusions that I disagree with.

2 Q Okay. Are you familiar with the
3 definition of public garage in the 1951 code?

4 A I looked at --

5 MR. INGLIMA: I believe this has been
6 asked and answer.

7 MR. WHITAKER: Asked and answered.

8 MR. SEMERARO: The definition.

9 MR. INGLIMA: Asked and answered.

10 MR. SEMERARO: Well, maybe asked and
11 answered, but now it's a followup.

12 MR. WHITAKER: Well, it's just a -- same
13 answer.

14 Q Okay. Would you agree that the 1951 code
15 identified a public garage as to any garage that is not a
16 private garage?

17 A That was part of the definition, yes.

18 Q Okay. Is there more of a definition in
19 the code?

20 A You'll have to -- I'll have to look at the section
21 again because I don't recall specifically --

22 Q Okay.

23 A -- but I know that there is a -- the ordinance did
24 say that a public garage is not the same as a private
25 garage.

1 Q Okay. If you would take a look at the
2 code.

3 MR. WHITAKER: On page 6.

4 MR. INGLIMA: This is which ordinance?
5 1951?

6 MR. SEMERARO: 1951.

7 MR. WHITAKER: Top of page 6. I see
8 definition of private garage and definition of
9 public garage.

10 MR. INGLIMA: Once again, it shall be the
11 position of my clients that the ordinance speaks
12 for itself.

13 A So in the upper left-hand corner of page 6 of
14 Exhibit O-5 it says, and this is the Definition section
15 of the ordinance, "A private garage is an accessory
16 building in which no business, commercial, service
17 industry connected with motor vehicles is carried on.

18 Public garage. A public garage is any garage
19 other than a private garage."

20 Q Okay. So in your role as Planner, you're
21 called to interpret zoning ordinances from time to time.
22 Correct?

23 A Yes.

24 Q Okay. So would you agree that based upon
25 the definition of "private garage" that any garage that

1 is connected with motor vehicles by a business is a
2 public garage?

3 A Not necessarily. Generically, if you want to just
4 divide the world, the two baskets, you're correct. But
5 there are other regulations that change the definition of
6 what would be a public garage, in my opinion.

7 Q Is there anything in this definitions,
8 looking at these two definitions only, if you had a
9 business that operated a garage, would it fall within
10 public or private?

11 A Confined to those two definitions, it's either one
12 or the other.

13 Q And which one is it?

14 A Which one is what?

15 Q A business that is dealing with motor
16 vehicles within a garage, is that a public or a private?

17 A It's a public garage.

18 Q Okay. By that definition?

19 A Confined to those two definitions.

20 Q In 1951?

21 A Yes.

22 Q And those definitions are set forth for
23 the entirety of the code. Correct?

24 A Well, they're in the code.

25 Q And they are listing two possible uses

1 within the code, public and private garage. Correct?

2 A Well, these are two definitions, they're not
3 necessarily listing of uses. It just defines two things.

4 Q But they're defining uses. Correct?

5 A No, they're defining buildings.

6 Q Okay. Is there any use in the 1951 code
7 that you feel an auto body shop would appropriately fall
8 under?

9 A Other than the public garage definition?

10 Q Yes.

11 A There's nothing in the '51 code that would exclude
12 an auto body shop from those two definitions.

13 Q Okay. And is there anything in that code
14 that would exclude a mechanic's shop?

15 MR. INGLIMA: Can you explain what you
16 mean by "mechanic's shop".

17 MR. SEMERARO: An automobile mechanic
18 shop.

19 A That would be a public garage.

20 MR. INGLIMA: Let me just get
21 clarification. When you say "mechanic shop", you
22 don't mean someone who sells tools or provides
23 services --

24 MR. WHITAKER: He said motor vehicle
25 mechanic shop.

1 MR. INGLIMA: -- on premises for repair.

2 Is that what you're saying?

3 MR. SEMERARO: Yes.

4 MR. INGLIMA: Okay.

5 Q And what about... Now, this was 1951. I
6 would like to use the Fed Ex as an example but they
7 weren't around I don't think. So let's use a milk
8 company because they had delivery vehicles back then.

9 If a milk company had a garage on a piece of
10 property with no other operations other than storing its
11 milk trucks and possibly repairing them from time to
12 time, would that fall within one of these definitions?

13 A Someone storing milk vehicles would not fall under
14 those definitions. That would be a different use.

15 Q What use would that be?

16 A Milk storage.

17 Q Is there a milk storage use in this code?

18 A As I read these definitions, you can have a garage
19 associated with your house, but you can't have a
20 commercial flavor to it. And all other garages are
21 considered a public garage.

22 But the ordinance is larger than those two
23 definitions. If someone has a business where they store
24 vehicles that deliver milk, that would not be in either
25 of these definitions. That's a different use.

1 Q Then what use would it be in this code?

2 A It would be the storage -- a business use. It's
3 warehouses -- it's storage vehicles for milk delivery.

4 Q Well, this is talking about any business
5 that involves motor vehicles. How does that not fall
6 within it and is there a more specific use designated
7 elsewhere in this code that would be more appropriate?

8 A These definitions talk about buildings, the
9 garages. A second issue is what the use is. So this
10 divides the world into two kinds of accessory buildings.
11 One is a private garage, not necessarily accessory. A
12 private garage -- first of all, one of the differences
13 is, the first definition of a private garage is only for
14 accessory buildings. It can't be a principal building.
15 But the public garage says, is any other garage other
16 than a private garage. And, again, I think there's a
17 distinction on whether it's principal or accessory, but
18 these definitions don't talk about the use as much as
19 they do about the type of building.

20 Q So a building that would have stored milk
21 delivery vehicles, would that be considered a public
22 garage, that building?

23 MR. INGLIMA: I think we're beating a dead
24 cow.

25 A Again, if I'm confined to these two definitions

1 and don't look at any other section of the code, the
2 building would be a public garage, if I'm confined to
3 those two definitions.

4 Q Now, you claimed that a public garage
5 wasn't a use. Correct? It was just a definition of a
6 building?

7 A From what you read to me, it says -- the first
8 definition says a private garage is an accessory building
9 in which there's no commercial or industrial operations.

10 Q Okay.

11 A And a public garage is something other. Now, I
12 think that modifies the first definition. A public
13 garage -- if I had a, you know, an excavating business
14 that technically -- in a building, that would be a public
15 garage. But that makes no sense. The second definition
16 is a modification of the first, which talks about
17 accessory buildings. And, again, the ordinance is more
18 than those two definitions.

19 Q I'm not asking about an excavation
20 business.

21 A But I'm switching that from milk trucks, that it
22 leads to absurd results if you say anything that's not a
23 private garage is automatically a public garage. That's
24 an absurd result, because an excavating business is not a
25 private garage.

1 Q No one's talking about businesses. We're
2 asking you about the use.

3 A Well, I'm just reading the definition.

4 Q Storage of vehicles.

5 Okay. But you also acknowledge that a public
6 garage is a use in this code, do you not?

7 A Yes.

8 Q Okay. So if public garage is a use and
9 public garage is defined, then that definition applies to
10 the use, does it not?

11 A In part, yes.

12 Q Okay. There's no requirement in the
13 definition for public garage that work be done on
14 vehicles of third parties, is there?

15 A Would you say that again, please?

16 Q There's no requirement in the definition
17 of public garage that you do work for third parties?

18 A It's not in the definition.

19 Q Okay. And there's no inference or
20 requirement for a bailment to take on vehicles from third
21 parties. Correct?

22 MR. INGLIMA: I'm going to object to the
23 use of the word "inferential". Just because this
24 witness doesn't infer doesn't mean someone else
25 could or vice versa. Do you want to rephrase it?

1 Establish a foundation.

2 MR. SEMERARO: First off, I didn't ask him
3 if it must be. I asked him if it was his opinion
4 and I don't have to give the foundation that you
5 want. The foundation was this definition.

6 MR. INGLIMA: I would respectfully refer
7 the Board and Counsel for the applicant to all of
8 the defined retail business zone uses and general
9 business uses set forth in Sections 7 and 8 of the
10 1951 ordinance, O-5.

11 MR. WHITAKER: So can we not establish the
12 fact that if there's a garage, that doesn't mean
13 the definition of a private garage in 1951 becomes
14 a public garage?

15 THE WITNESS: If you're confined to those
16 two definitions, that's correct.

17 MR. INGLIMA: If the use or activity
18 that's being conducted in that building is not
19 separately defined as a permitted principal use or
20 prohibited use.

21 MR. WHITAKER: The Board recognizes that.

22 MR. INGLIMA: I know where the applicant
23 is trying to go with this. He's trying to say
24 that Ridgewood Taxi was a public garage. We
25 shouldn't be looking at the 1951 ordinance if

1 we're trying to find an answer to that question.
2 And, frankly, his own witness should be the one
3 who gives that.

4 Q You familiarized yourself with the 1965
5 code as well. Correct?

6 A I did look at it, yes.

7 Q And could you advise what the definition
8 of public garage is in that code?

9 A I didn't memorize it.

10 Q Okay. I don't think you did.
11 You still have the legible copy of the large one.
12 Correct?

13 MR. INGLIMA: Can you just identify the
14 section number you're pointing to if you're going
15 to read it into the record?

16 MR. SEMERARO: What is the section?

17 MR. INGLIMA: Section 326, is that what
18 you're referring the witness to? Public Garage or
19 Gasoline Service Station.

20 MR. SEMERARO: Yes.

21 MR. WHITAKER: While Mr. Steck is reading
22 that. Counsel, how long do you believe your
23 cross-examination will continue for? We just got
24 to cover the calendar here.

25 MR. SEMERARO: Maybe another 20 minutes

1 tops.

2 Q Could you just read into the record what
3 that definition is?

4 A Okay. This is Section 326 entitled: Public
5 Garage or Gasoline Service Station. "A public garage or
6 gasoline service station is any building, structure, lot
7 or land in or upon which a business, service or industry
8 involving the storage, maintenance, washing or servicing,
9 and storage in connection therewith, of motor vehicles is
10 maintained, conducted, operated or rendered."

11 Q Okay. Would you agree that there is no
12 definition in this code for the word "servicing"?

13 A There's no separate definition, but it's a term in
14 common use in the English language.

15 Q Okay. And would you agree that that
16 common usage would include, it's a verb and it would
17 include repairing?

18 A It depends on the nature of the repair.
19 Automobile servicing is like changing your oil, greasing
20 your joints, putting windshield washer - probably the
21 cars didn't have windshield washer at that time - but
22 that's my understanding of the term "servicing of a
23 vehicle".

24 Q So that's your opinion. Do you have
25 anything to base that upon? Anything in writing in this

1 code?

2 A Just the use of the English language and my
3 understanding of the common usage of the term "servicing
4 of automobiles".

5 Q Would you agree that Webster's is a pretty
6 good benchmark as to what common usage means for various
7 definitions?

8 MR. INGLIMA: Objection, objection. For
9 every definition that this attorney might be able
10 to find, perhaps the objector would be able to
11 find a contrary definition and we're not here for
12 competing definitions. You asked this gentleman
13 what his opinion was as an expert planner, he gave
14 it to you. Let's not quibble over what the word
15 means.

16 MR. WHITAKER: Stated another way, as an
17 expert planner tell us what the word "service"
18 means.

19 THE WITNESS: The word "service" in
20 general, what we're talking "automobile service"
21 here, and that has a meaning that's much narrower
22 than the word "servicing".

23 Q Could you read the activities permitted by
24 this use with punctuation noted?

25 MR. INGLIMA: Please refer the witness to

1 a specific provision you want him to read.

2 MR. SEMERARO: Same section he just read
3 starting with, "Any building" - comma -
4 "structure" - comma - "lot or land."

5 MR. INGLIMA: You're just asking him to
6 read it?

7 MR. SEMERARO: Yeah, but this time with
8 punctuation.

9 A "Any building" - comma - "structure" - comma -
10 "lot or land in or upon which a business" - comma -
11 "service or industry involving the storage" - comma -
12 "maintenance" - comma - "washing or servicing" - comma -
13 "and storage in connection therewith" - comma - "of motor
14 vehicles is maintained" - comma - "conducted" - comma -
15 "operated or rendered" - period.

16 Q Okay. So when you read that definition,
17 would you not agree that storage is permitted if it's
18 related to, "and storage in connection therewith, of
19 motor vehicles is maintained, conducted, operated or
20 rendered"?

21 MR. INGLIMA: Objection. It doesn't say
22 whether it's indoor storage or outdoor storage.

23 MR. SEMERARO: And I'm not asking that.
24 I'm just talking about storage.

25 A Well, it uses the word "service" after the comma,

1 but the title of the section is Public Garage or Gasoline
2 Service Station. So the term "service" is modified, in
3 my opinion, by what the title of that section is.

4 Q Would you not agree that storage is
5 permitted when it's in connection with the prior
6 activities, that being maintenance, washing, or
7 servicing?

8 A Storage is listed as an accessory component.

9 Q Correct. To maintenance, washing --

10 A To public garage or gasoline service station.

11 Q Well, first off, it's not listed as an
12 accessory, it's listed as activities of what a public
13 garage is allowed to do, is it not?

14 MR. INGLIMA: If I may? I mean, this is
15 going so far and I've tried to allow the
16 applicant's attorney to ask questions, but there
17 is never a question as to this witness and an
18 answer provided that is not the subject of a
19 further debate or argument or disagreement. I
20 mean, he's giving his testimony. His testimony is
21 very clear. Let's move on.

22 MR. SEMERARO: The definition and
23 interpretation of this definition is integral to
24 the relief that is being sought and his
25 interpretation of it is relevant.

1 MR. WHITAKER: Mr. Steck, the definition
2 doesn't use the word "accessory".

3 THE WITNESS: It doesn't use the word
4 accessory.

5 MR. WHITAKER: So, Mr. Steck, it has a
6 series of words in there pertaining to the service
7 station.

8 THE WITNESS: To a public garage or
9 gasoline service station.

10 MR. WHITAKER: Service, and it includes
11 the word "storage".

12 THE WITNESS: It says, "involving the
13 storage" - comma - "maintenance". So that use can
14 involve storage. It doesn't say whether it's
15 indoors or outdoors.

16 MR. WHITAKER: I never said that.

17 THE WITNESS: It just says storage.

18 MR. WHITAKER: The Board recognizes that
19 storage is one of the permitted uses. The
20 ordinance doesn't say indoor or outdoor.

21 MR. SEMERARO: And actually --

22 MR. WHITAKER: I mean, it's clear on its
23 face, is it not, Counsel?

24 MR. SEMERARO: I have to just take
25 exception to the use of "permitted use". In other

1 words, this definition, and maybe I could just
2 clarify, this definition would include -- well,
3 strike that. This definition would define any
4 business that stores motor vehicles as a public
5 garage, would it not or maintenance of motor
6 vehicles or washing motor vehicles or servicing
7 motor vehicles? Those are just a list of things
8 that a public garage is permitted to do. Correct?

9 MR. WHITAKER: Are we all in agreement
10 it's a list a public garage can do and they all
11 don't have to be inclusive, meaning, that they
12 don't have to have every one of them? Can we
13 agree to that?

14 THE WITNESS: It's not necessarily all
15 inclusive.

16 MR. INGLIMA: And the ordinance speaks for
17 itself.

18 MR. WHITAKER: And the Board can interpret
19 that when they go through and review this.

20 Q Okay. So the storage in this particular
21 series of activities is permitted on its own or
22 associated with maintenance, washing or servicing. Is
23 that not correct as written?

24 A Yes.

25 Q Okay. So you're indicating that servicing

1 is just "windshield wipers and windshield fluid"?

2 A No, I don't think "servicing" is like -- it's not
3 the sale of necessarily automobiles. It's not the
4 manufacturing of automobiles and it may not be -- the
5 crushing of automobiles. I think the common sense uses
6 of "servicing" comes under the heading of "maintenance".

7 Q Well, you used examples of windshield
8 wipers and washer fluids before and vehicles aren't
9 stored overnight for that.

10 A Well, I struck the washer fluids because they
11 weren't around in the '50s.

12 MR. INGLIMA: '65.

13 Q So it's your position that more
14 significant repairs are excluded from this definition?

15 A I'm saying that the word "servicing" does not
16 imply necessarily something that's akin to manufacturing,
17 et cetera.

18 Q Well, I'm not talking about manufacturing
19 and you know that. Right?

20 MR. INGLIMA: Well, wait a minute. I
21 don't like the tone of that last statement. Ask a
22 question.

23 MR. WHITAKER: So I think what the Board
24 will review when we come up with this issue is how
25 expandable is the word "servicing". Does it

1 pertain to repair? Does it pertain to rebuilding?
2 The Board understands what each parties' position
3 is.

4 A I would say transmission rebuilding would not be
5 servicing, for example.

6 Q And that's your opinion not based upon
7 anything in this code, just your general opinion?

8 A That's my opinion as someone that was alive in
9 1965 and was familiar with automobile repair.

10 Q Okay. As a planner, when a definition is
11 not contained in the code, have you ever relied upon
12 Webster's Dictionary for an understanding as to what the
13 terminology could be?

14 MR. INGLIMA: Objection.

15 MR. WHITAKER: You can ask what he relies
16 on.

17 A When an ordinance -- some ordinances in the -- the
18 provision of the ordinance identified the dictionary that
19 you look at. In that case, I've looked at that
20 dictionary.

21 Q And what if they didn't, have you ever
22 looked at Webster's Dictionary where a dictionary wasn't
23 designated as the source of reference?

24 A I've looked at a variety -- I didn't cherry pick a
25 dictionary. I would look at the Harvey Moskowitz book of

1 definitions, I would look at several dictionaries not to
2 cherry pick what the common usage of the word was.

3 Q And in the course of your cherry picking,
4 have you ever referred to Webster's?

5 A Yes.

6 Q Okay.

7 A But I wasn't cherry picking, I was culling from
8 different sources to see what made the most sense and was
9 the most accurate.

10 Q Okay. You're familiar with the term "res
11 judicata". Correct?

12 A Yes.

13 Q And could you explain to the Board what it
14 is?

15 A It's the principle that once a determination is
16 made by the Board, the applicant can't come back in and
17 essentially try to secure a review of an application,
18 it's essentially the same as the one that was already
19 decided, and waste the Board's time.

20 Q Doesn't it also require a Board to defer
21 to its past decisions and findings of fact?

22 MR. INGLIMA: No, objection. That is a
23 legal conclusion the definition of res judicata.

24 MR. WHITAKER: Well, I don't think we have
25 to go down this path very simply because the Board

1 has had many instances of having to determine
2 whether something is res judicata or not. They've
3 been given a memorandum in the past by Counsel
4 here in connection with the issue of res judicata,
5 so I think the Board's well aware of that factor.

6 MR. SEMERARO: Okay.

7 MR. WHITAKER: And will apply what they
8 know to the issues at hand.

9 Q So in determining whether or not a use is
10 a preexisting nonconforming use, would you agree that
11 prior resolutions of that same Board could have bearing?

12 A It's possible.

13 Q Okay. And, generally, the Board is
14 required to follow its prior determinations and decisions
15 unless facts have changed?

16 A It's a fact sensitive situation, so there's no
17 overriding principle that would say that a prior decision
18 was controlled.

19 Q If the facts remain unchanged it would be,
20 though. Would you agree with that?

21 A Or time has changed. People view things
22 differently in different decades.

23 Q But a Board decision doesn't change just
24 because people view things differently, you would agree
25 with that. Correct?

1 A It depends upon the circumstances of the
2 application for interpretation.

3 Q So if a board made a decision to grant
4 relief, you're saying that based upon how people feel in
5 the future that relief could be changed?

6 A Not how they feel in the future, but if you're
7 asking what was in the Board's mind 30 years ago --

8 Q I didn't ask that. I asked the decision
9 of the Board.

10 A The answer is it could be relevant, but it's not
11 controlling.

12 Q Okay. And if a board ended up making
13 certain findings of fact ten years ago, 20 years ago, is
14 that same board required to at least acknowledge those
15 facts existed back at that time?

16 MR. INGLIMA: May I ask, are you referring
17 to the resolution from 1974?

18 MR. SEMERARO: I'm asking a general
19 proposition.

20 MR. INGLIMA: Let me finish my question.

21 MR. WHITAKER: He's asking a general
22 concept.

23 MR. INGLIMA: Are you asking --

24 MR. WHITAKER: He answered part of the res
25 judicata in which he said that a Board has to look

1 at the resolutions in the past unless there's a
2 change of circumstances.

3 MR. INGLIMA: I respectfully --

4 MR. WHITAKER: The Board here is cognizant
5 of that, there's a change in the ordinance.

6 MR. INGLIMA: I respect that, Mr.
7 Whitaker, but I'm asking him specifically whether
8 he's referring to some binding affect, a res
9 judicata affect of the decision of this Board in
10 1974 to deny the expansion of a nonconforming use
11 on Lot 14.

12 MR. WHITAKER: He didn't ask that
13 question.

14 MR. SEMERARO: It's clear I didn't ask
15 that question.

16 MR. WHITAKER: It's a very generic
17 question about what does the Board do with the
18 term "res judicata".

19 MR. INGLIMA: I just wanted to know
20 whether he was aware.

21 MR. WHITAKER: He wasn't referring to any
22 specific resolution.

23 MR. INGLIMA: Thank you.

24 A A past resolution may or may not be relevant. It
25 has to be evaluated with respect to the facts before the

1 Board.

2 Q My question was, if the Board made a
3 finding of fact as it existed ten years ago, is that
4 Board still obligated to acknowledge that that fact
5 existed ten years ago?

6 A Yes.

7 MR. INGLIMA: No, no, no, no, objection.
8 If you're stating that in the context of a current
9 application that happened in 2024 whether the
10 Board is obligated to accept the state of facts
11 that existed in 1974, 1987, 19 whatever, how can
12 that be a question this witness can answer? The
13 facts may have changed.

14 MR. WHITAKER: He's asking a generic
15 question saying if there was the finding of fact,
16 as I understand it, if there was a finding of fact
17 in 1974, the Board has to when they're looking at
18 the application now, has to acknowledge what the
19 Board determined to be factual in 1974.

20 MR. INGLIMA: If the facts in the current
21 application are the same obviously.

22 MR. WHITAKER: That's the second step.

23 MR. INGLIMA: Yes.

24 MR. WHITAKER: The first step, as I
25 understand it as we know in res judicata, is to

1 determine what the Board found at a certain period
2 of time, period.

3 MR. SEMERARO: Correct.

4 MR. INGLIMA: No, the application's
5 substantial --

6 MR. WHITAKER: And then the Board then
7 evaluates to see if that finding of fact is still
8 relevant in the current application and I think
9 we've established that.

10 MR. SEMERARO: Yes.

11 MR. WHITAKER: The five-prong test, the
12 Board's well aware of it.

13 MR. SEMERARO: Okay.

14 Q Now, at the time of your last testimony,
15 you provided testimony where you felt that by Shuart
16 Construction storing its vehicles on Lot 14 there was an
17 abandonment of the auto body use. Is that correct?

18 MR. INGLIMA: No, the record speaks for
19 itself. Whatever his testimony was --

20 MR. SEMERARO: He can answer.

21 MR. INGLIMA: -- he said in the record.
22 If you want to refer the witness to a specific
23 statement he made under oath, please do so.

24 MR. WHITAKER: Go to the transcript.

25 Q While that's being looked for, let me ask

1 you this question. Is it your opinion here today that by
2 Shuart Construction storing equipment on Lot 14 that
3 there was an abandonment of the auto body use on Lot 14?

4 MR. INGLIMA: Objection.

5 MR. SEMERARO: You can reread the
6 question, please.

7 (Whereupon, the following question was
8 read back: Is it your opinion here today that by
9 Shuart Construction storing equipment on Lot 14
10 that there was an abandonment of the auto body use
11 on Lot 14?)

12 A When the auto body use stopped and was replaced by
13 a different use, that, in my opinion, is evidence of
14 abandonment.

15 Q And is it your opinion that that occurred
16 on Lot 14?

17 A The evidence suggests that that did occur on at
18 least part of Lot 14.

19 Q Okay. You're aware of the fact that
20 there's a two-part test for abandonment?

21 A I'm aware that there is a test and it has to do
22 with some action and the intent of the owner or operator,
23 some evidence of intent.

24 Q Okay. At any point in time before today
25 did you take a look at Mr. Whitaker's memo of law that he

1 advised the Board of?

2 A No.

3 Q Okay. Are you familiar with the case of
4 Saddle River versus Bobinski?

5 A I don't recall it.

6 Q Okay. Are you familiar with a case where
7 there was an alleged abandonment of 27 years duration for
8 not using a horse barn?

9 A Yes.

10 Q Okay. And you're familiar with the fact
11 that the Court in that case found that there was not an
12 abandonment based upon the two-part test, intent and --

13 A That's because they didn't change the use. The
14 building stayed and there was no replacement use in the
15 interim.

16 Q Okay. And are you familiar with the case
17 of S & S Auto Body versus Stratford Zoning Board of
18 Adjustment?

19 A No.

20 Q Okay. Are you aware of the general
21 concept that in order to determine whether or not a
22 preexisting use was abandoned you need to balance the
23 subjective intent and proof of the party with the
24 evidence of abandonment, you have to consider both in
25 balance?

1 MR. INGLIMA: Objection. The witness just
2 said he's not familiar with the case you're asking
3 about. The case speaks for itself.

4 MR. SEMERARO: I'm asking about the
5 general concept and the test for determining
6 abandonment. He may not know the case, but I
7 would hope he knows the test.

8 MR. WHITAKER: He doesn't know the case,
9 but he acknowledges he knows the test for
10 abandonment.

11 Q Okay. You would agree that that test
12 requires a balancing of subjective intent and proof to
13 keep it versus evidence of abandonment. Correct?

14 A Both are relevant.

15 Q Correct, and they have to be balanced
16 against each other. Correct?

17 A I don't recall the wording, but both issues are
18 relevant.

19 Q And you had indicated that you went
20 through all the prior transcripts for those hearings that
21 you weren't present. Correct?

22 A Yes.

23 Q Okay. Were you present when Mr. Daniel
24 testified or read the transcript?

25 A I read the transcript is my recollection.

1 Q Okay. Are you aware of the fact that Mr.
2 Daniel had indicated that the storage of vehicles was
3 only intended to be short term?

4 MR. INGLIMA: Objection. Please refer to
5 a specific page and line in the transcript.

6 MR. WHITAKER: Refer to the transcript.

7 Q I refer your attention to this transcript
8 of January 23, 2024, page 29. Just read that.

9 A What do you want me to read?

10 Q Read that page through the continuation of
11 his redirect.

12 A The whole page you want me to read? What do you
13 want me to read?

14 Q From where I highlighted it.

15 A Okay.

16 Q Actually, you could start from this
17 paragraph, line 13 through the next page at line 10.

18 A This is titled: Redirect Examination by Mr.
19 Semeraro.

20 "QUESTION: I just want to revisit an
21 issue regarding Lot 14. At the time of the last
22 hearing you were asked questions regarding that
23 lot and you had indicated that you were already
24 engaged in operations on that lot between the bays
25 that were used for the mechanical shop as well as

1 Barry's. Correct?

2 "ANSWER: Correct.

3 "QUESTION: Okay. So Mr. Shuart wasn't
4 taking the whole building. He was just storing
5 some stuff on that lot temporarily. Correct?

6 "ANSWER: Correct.

7 "QUESTION: Okay. And in allowing him to
8 do that, did you have any intent to abandon the
9 auto body use permanently or were you actually
10 already using the property simultaneously for auto
11 body use?

12 "ANSWER: Correct. We were already using
13 the back building. And like I testified back in
14 October, Mr. Shuart was a temporary, you know, gap
15 while I transitioned the business.

16 "QUESTION: Okay. And those operations
17 have continued from that point to present.
18 Correct?

19 "ANSWER: Correct.

20 "MR. SEMERARO: Okay. I have no other
21 questions."

22 Do you want me to read further?

23 Q No, that's it.

24 So you were familiar with this?

25 A Yes.

1 Q Okay.

2 A Yes.

3 Q But you needed to read it again?

4 A Yes, there's a lot of --

5 MR. INGLIMA: Wait a minute. Objection.

6 You asked him to read it. Don't --

7 MR. SEMERARO: I asked him to read it
8 because I asked him a general question that you
9 objected to with an insistence on a reference to a
10 transcript that he was already familiar with.

11 MR. INGLIMA: All I asked you to do was to
12 identify the page, the transcript date, the page
13 and line that you wanted him to review. I didn't
14 ask you to ask him to read anything.

15 MR. SEMERARO: I didn't want him to review
16 anything. I asked him what his recollection was
17 of the testimony.

18 MR. INGLIMA: Well, then stop the
19 insinuations.

20 MR. WHITAKER: Let's move on.

21 Q Are you aware of the fact that the
22 application, this application, was filed several months
23 before Mr. Shuart began to store equipment on the site?

24 MR. INGLIMA: Objection. How can he
25 possibly know when Mr. Shuart started storing?

1 MR. WHITAKER: The question is, are you
2 aware when he filed it?

3 THE WITNESS: I'm not aware of when Mr.
4 Shuart started storing stuff on the property.

5 Q Okay. If you learned that the application
6 in question was filed several months before -- well,
7 strike that. Let me ask you this.

8 You're familiar with the fact that this
9 application seeks to use all three lots for the common
10 use of an expanded body shop. Correct?

11 A That's the second phase of this application,
12 correct.

13 Q Okay. And would you not agree that that
14 application plays a role with understanding the intent of
15 the applicant's use of the property?

16 MR. INGLIMA: Can you rephrase that,
17 please? I don't think you used words that would
18 be applicable to this application.

19 MR. WHITAKER: Rephrase the question,
20 Counsel.

21 Q Do you agree that the fact that the
22 applicant was seeking approval to use all three lots as
23 an expanded auto body shop is evidence of what his intent
24 to use the property for?

25 MR. INGLIMA: Objection. This witness

1 cannot answer as to intent --

2 MR. WHITAKER: I'm sorry, I don't
3 understand that question at all.

4 MR. SEMERARO: I'm sorry?

5 MR. WHITAKER: I'm sorry, I don't
6 understand that question at all. You're going to
7 ask him to opine on what the applicant's intent
8 was in filing an application?

9 MR. SEMERARO: Well, he's familiar
10 with there's a two-part test and one of the parts
11 of the test require an assessment of the intent of
12 the person that owns the property.

13 MR. WHITAKER: We recognize that.

14 MR. SEMERARO: Okay. So the factors --

15 MR. WHITAKER: The intent to show through
16 the actions of an applicant?

17 MR. SEMERARO: Correct, and I'm asking him
18 that question. That's a conclusion that you
19 reached, Mr. Whitaker. It's a conclusion that I
20 reached. I want him to acknowledge that filing an
21 of an application is something to be considered
22 when you're trying to determine what the intent of
23 the applicant was. It goes to the first prong of
24 the test.

25 MR. INGLIMA: Objection. There's

1 absolutely no foundation for even asking this
2 question, Mr. Whitaker.

3 MR. SEMERARO: Sure there is. He
4 indicated he familiarized himself with this
5 application to provide testimony. It's further
6 acknowledged that there's a two-part test on
7 abandonment. He further acknowledged that the
8 first part of that test is evaluating the intent
9 of the party as well as the evidence that supports
10 the intent of the party.

11 MR. INGLIMA: That is a matter that is a
12 burden of proof of this applicant. They have to
13 establish the intent, not us.

14 MR. WHITAKER: So your proffer is that
15 because the applicant filed an application, it
16 shows his intent to expand a nonconforming use and
17 the applicant believed he had a nonconforming use
18 at the time?

19 MR. SEMERARO: No, the fact that he did
20 not mean nor intend to abandon the use. He was
21 looking to expand it. It's perfectly logical.

22 MR. INGLIMA: Same objection.

23 MR. WHITAKER: That's because he
24 presupposes he had a nonconforming use in the
25 first place.

1 MR. SEMERARO: Correct.

2 MR. WHITAKER: So that shows that in his
3 mind it was nonconforming, but that is not --

4 MR. SEMERARO: But it also shows that he
5 had no intent to give it up.

6 MR. WHITAKER: Well, we'll let the Board
7 evaluate that.

8 MR. SEMERARO: Well, when you're sitting
9 there indicating that there's a two-part test, and
10 I know the Board has to do that, but we have a
11 planner that's supposed to be providing expert
12 testimony as to why he feels this was abandoned.
13 He testified to that. He testified to it again
14 today and I'm proffering or I'm soliciting
15 testimony that in the balancing of the test would
16 he not consider the fact that the application
17 being filed, particularly, before Mr. Shuart's
18 tenancy, was evidence that the Board should
19 consider in determining the intent.

20 MR. WHITAKER: The Board can consider it,
21 but the Board, if you carry that to the logical
22 extent, any person that wanted to establish a
23 nonconformity would file an application and say,
24 my intent's already there because I filed the
25 application.

1 MR. SEMERARO: We're talking about intent
2 of abandonment, Mr. Whitaker. We're not talking
3 about establishing the nonconformity. This is
4 whether or not his leasing or renting part of the
5 property to a contractor was an intent to abandon.
6 In this particular case, he simultaneously was
7 looking to continue the use as evidenced by the
8 fact that he was seeking an application --

9 MR. WHITAKER: The Board will take that
10 into consideration. How they're going to weigh it
11 is to be determined. So I think we established
12 the fact that the Board can consider that and if
13 Mr. Steck, as a planner, doesn't believe that's
14 relevant, the Board will decide whether it's
15 relevant.

16 MR. SEMERARO: Well, I was asking him to
17 advise whether or not he thinks it's relevant
18 because if he does or doesn't --

19 MR. WHITAKER: If you can answer yes or
20 no, Mr. Steck, do you believe it's relevant?

21 THE WITNESS: The fact that you want to
22 use the entire three lots as an auto body shop is
23 not dispositive of whether the use has been
24 abandoned or not on Lot 14, in my opinion.

25 Q And that wasn't my question. My question

1 was whether or not it is a factor in your opinion that
2 should be considered by this Board with respect to what
3 the Daniels' intent was for the future use of the
4 property?

5 MR. INGLIMA: If I could --

6 MR. WHITAKER: Yes or no.

7 A It's something that the Board could take into
8 consideration.

9 MR. WHITAKER: That's what we established
10 already.

11 MR. INGLIMA: If I may say this, for the
12 record. My objection is based on the fact that
13 there's no evidence placed in the record by the
14 applicant, even though they had every opportunity
15 to do so, that was a document establishing, even a
16 memorandum, establishing what the applicant's
17 intent was in entering into a lease with anyone.
18 And if they had presented --

19 MR. SEMERARO: There was no lease.

20 MR. INGLIMA: Let me finish.

21 If they had presented a lease with
22 Barry's, if they had presented a lease with
23 Shuart, if they had presented any kind of document
24 relating to the uses or activities or tenancies
25 that were established on Lot 14 over the years,

1 maybe that would help this witness to evaluate
2 intent. But none of those things were ever put
3 before this Board and they had every opportunity
4 to do so. They even flew in a man from Montana.
5 So I don't know what to tell you other than I
6 object to the inquiry being directed to this
7 witness that goes to the intent of the applicant.
8 He can't possibly know.

9 MR. SEMERARO: I asked if it should simply
10 be considered by the Board in the balancing test
11 that the Board is required to do.

12 MR. WHITAKER: I think it presupposes that
13 the applicant at the time understood what the
14 parameters of abandonment were, whether the
15 application was filed.

16 MR. SEMERARO: I don't necessarily agree
17 with that, but I'm not going to get into the
18 debate.

19 MR. WHITAKER: I'm not saying it does, it
20 may not. We heard Mr. Steck's answer.

21 I think we should move on.

22 Q Okay. At the last hearing you also
23 testified that you thought a Certificate of Occupancy
24 would have been necessary with respect to Shuart storing
25 equipment on the property. Is that correct?

1 A Yes.

2 Q Okay. But if the Board were to conclude
3 that storage of motor vehicles was a public garage use as
4 well as an auto body shop and considered it a single use
5 then there would be no change in use. Correct?

6 MR. INGLIMA: I have to object only
7 insofar as the witness is constantly being asked
8 about his testimony as if it was limited to the
9 issue of storage of equipment. His testimony was
10 about the operation of Shuart's business
11 activities, whatever they may be, at Lot 14. He
12 did not confine his opinion to any particular
13 facts involving only storage of vehicles, so I
14 want that to be clear for the record. Mr.
15 Semeraro keeps saying "storage of vehicles". His
16 testimony, Mr. Steck's testimony, speaks for
17 itself.

18 MR. SEMERARO: I thought that we covered
19 that in the very beginning about me having no
20 further facts other than what was in the record
21 and no facts beyond storage of equipment.

22 Q But let me ask you just in case that
23 wasn't covered, I'm sure it was. Are you aware of any
24 facts that support a finding that Shuart Construction did
25 anything other than store vehicles on the site?

1 A What is ever in the record that was in the
2 transcript or when I was there is what my understanding
3 is.

4 Q Okay. So as you sit here --

5 A I have not done independent research about what
6 actually occurred there, whether there was equipment in
7 addition to vehicles, et cetera, et cetera.

8 Q Okay. As you stand here today, are you
9 aware of any facts that support that anything was done
10 beyond storing motor vehicles on the site?

11 MR. INGLIMA: Are you referring him to the
12 transcript of the --

13 MR. SEMERARO: I'm referring him to
14 anything.

15 MR. INGLIMA: -- prior hearings?

16 A I don't recall it being just storage of vehicles.
17 There were two issues: There was no longer an auto body
18 on that section of the premises, number one.

19 And number two, it was now used by someone that
20 did not do auto body work.

21 Q My question again is, are you aware of any
22 facts that have been put before this Board or outside
23 that universe that lead you to think that the property
24 was used for more than storage of motor vehicles?

25 A I'm relying on the record that was presented --

1 Q I know what you're relying on. I'm asking
2 you if you're aware --

3 A Let me finish, if I may? I'm not aware of
4 anything else outside of the record.

5 Q Okay. But notwithstanding the fact that
6 you're not aware of anything outside the record, are you
7 aware of any use other than the storage of motor
8 vehicles? The fourth time I'm asking.

9 A I don't recall the testimony being limited to just
10 the storage of vehicles.

11 Q Do you remember it or recall it being
12 broader than that?

13 A I would have to review the record to say
14 precisely, but I don't recall it to the use being
15 restricted just to the storage of vehicles.

16 Q And do you recall any facts that show that
17 it was broader than that?

18 A I don't recall anything broader in the testimony.
19 What I relied upon was what was in the transcript or when
20 I was present.

21 Q Okay.

22 A The description in the testimony said that the
23 intent was for the auto body use on Lot 12 to be extended
24 onto Lot 14, which was not permitted because it's not
25 accessory anymore to the Mountain View use on Lot 12.

1 The transcript indicates that the intent, in my opinion,
2 was to do something that was illegal.

3 Q I have to go back to the question now I
4 think for the sixth or the seventh time. As you sit here
5 today --

6 MR. INGLIMA: You can ask him 20 times,
7 Mr. Semeraro, you asked it and he answered it.

8 MR. SEMERARO: No, he has not provided an
9 answer.

10 MR. INGLIMA: Now stop the insinuations.

11 MR. SEMERARO: It's a simple yes or no
12 answer.

13 Q Are you aware of any facts that support a
14 finding that Shuart Construction did anything on Lot 14
15 other than store motor vehicles?

16 MR. INGLIMA: Can the witness read from a
17 transcript of prior testimony in order to answer
18 your question?

19 MR. WHITAKER: The answer to the
20 question's a yes or no. Then he can recite, if
21 it's a yes, he can recite from the transcript,
22 could he not?

23 A I'm aware of information that adds coloration to
24 that answer.

25 Q And what is that information?

1 A That there was an intent apparently to use the
2 space associated with the auto body use on Lot 12, which
3 it would not be permitted.

4 Q That has nothing to do with the question
5 that I asked you.

6 A Okay. I'm going to read from page 20 of the
7 transcript.

8 Q Which transcript?

9 A Of January 23rd, 2024. And the question was
10 asked, "However, in prior testimony you indicated that
11 you had relet the space that was formally occupied by
12 Barry's to a company by the name of Shuart Contracting.
13 Is that also correct?"

14 The answer is correct.

15 The point being that that doesn't just describe
16 just storage of vehicles, the use was by a contracting
17 company.

18 Q Okay. And that's the extent of your
19 basis. Correct?

20 A That's a factor in my response.

21 Q Is there any other factor in your
22 response?

23 MR. INGLIMA: Just for the record, the
24 witness was reading from the testimony of Mr.
25 Daniel on cross-examination by me.

1 Q Okay. And what date was that?

2 A January 23rd, 2024.

3 Q And other than that, do you have any basis
4 upon which to base a belief that the property was used
5 for anything other than storage or is that it?

6 A In my opinion, the record does not indicate that
7 it was used just for storage. It was used for a
8 contracting business and I have no other evidence of the
9 square footage used or what materials were -- whatever is
10 in the record is what I relied upon.

11 Q You understand that we're establishing a
12 record for this Board to make a decision. Correct?

13 A I understand that.

14 Q Okay. And you also understand that I want
15 to get from your lips everything upon which you're basing
16 your belief that Shuart Construction did something more
17 than just store equipment on the site. You told me one
18 thing. I'm asking you if there's anything else that you
19 base that belief on?

20 MR. INGLIMA: Other than the record of
21 these proceedings, Mr. Semeraro?

22 MR. SEMERARO: I'm asking him upon his
23 belief, his belief now that he's basing that
24 decision on.

25 A I don't believe that the record affirms that it

1 was just for the parking of vehicles.

2 Q But you have no specific examples of
3 anything more than what you just told me. Correct?

4 MR. WHITAKER: He just said that. He just
5 said that.

6 MR. INGLIMA: Asked and answered. This is
7 being argumentative for the sake of being
8 argumentative.

9 MR. WHITAKER: Let's move on. Let's move
10 on.

11 Q Now, you had indicated your belief that
12 the auto body use was illegally expanded on Lot 14.
13 Correct?

14 A Yes.

15 Q Okay.

16 A The auto body use on Lot 12 was illegally expanded
17 onto Lot 14.

18 Q It was auto body to auto body. Correct?

19 A Well, they were storing vehicles I believe on Lot
20 14 that were associated with the principal use on Lot 12.

21 Q You had indicated earlier that there was
22 testimony that Mountain View intended to expand its
23 business into the former Barry's site. Correct?

24 MR. INGLIMA: Objection, the testimony,
25 the evidence all speak for themselves.

1 Q Isn't what you just testified to a few
2 minutes ago or did I misunderstand you?

3 MR. INGLIMA: You just asked him about
4 intent. We already covered this.

5 MR. WHITAKER: It's been covered, Mr.
6 Semeraro. It's been covered.

7 MR. SEMERARO: I thought that he just said
8 that a few minutes ago regarding when we're
9 talking about Shuart Construction the use of their
10 property, he kept on going back to what Mountain
11 View's intent was. Okay. So now that's auto body
12 to auto body. Same use to same use. It goes to
13 whether or not...

14 Q You're saying that it's illegal. How is
15 it illegal?

16 A You can't have an accessory use without -- an
17 accessory use has to be on the same property as the
18 principal use. If you want to store cars associated with
19 Lot 12, those cars got to be on Lot 12.

20 Q Weren't you saying a moment ago that it
21 was the use of the former Barry's body shop the intent to
22 expand Mountain View that was illegal? Isn't that what
23 your testimony was?

24 A What I testified to I just said, that the reason
25 the car -- I may have misunderstood your question. But

1 in my opinion, the record, I believe, shows that cars
2 that were stored on Lot 14 were associated with the
3 business on Lot 12, that's improper.

4 Q If Mountain View Auto Body was doing body
5 work in the former taxi building and this Board were to
6 conclude that that was public garage to public garage,
7 you're saying that that would be illegal?

8 A It depends upon the extent of it. It's clear that
9 they were storing cars on what was a single family use
10 and that was never permitted.

11 Q Okay. So we're convoluting things.

12 MR. INGLIMA: Objection.

13 Q Let's talk about it in two different ways.

14 MR. INGLIMA: Objection. Once again
15 objection. Stop characterizing this witness's
16 testimony.

17 MR. WHITAKER: Let's break it out from lot
18 to lot.

19 Q I want to actually break it out for use to
20 use because I believe that you testified earlier, correct
21 me if I'm wrong, that the storage of motor vehicles where
22 the house used to be at the front of Lot 14 was what you
23 felt was an unlawful expansion of that use?

24 A That's one of the -- that was an impermissible use
25 on that property, Lot 14.

1 Q An impermissible -- what was an
2 impermissible use or you mean an expansion?

3 A It was -- the answer is that this R-3 Zone does
4 not permit automobile storage, it doesn't permit auto
5 body work, and it doesn't permit the parking of cars
6 associated with a remote business. That activity was
7 occurring on the front portion of Lot 14 where the
8 dwelling was. That's not permissible.

9 Q Okay. And that was an expansion of
10 Barry's?

11 A Regardless of --

12 Q Okay.

13 A It's the expansion of anything. When you don't
14 use the residential portion of Lot 14 for residential
15 use, it's not permitted no matter what it is.

16 Q But you do know that there was a
17 preexisting nonconforming use with respect to Barry's on
18 that site that was continuing. Correct?

19 A A very -- a portion of Lot 14 was used for auto
20 body work.

21 Q Okay. And are you aware of the fact that
22 Karl Montick testified that two buildings, Buildings 4
23 and 5, were used for Barry's?

24 A I believe he testified to that although the --
25 yeah, period.

1 Q Okay, okay. So it's not the presence of
2 an auto body shop or the storage of vehicles related to
3 that auto body shop that was the issue with respect to
4 the house in front, it's the fact that it expanded into
5 that area that was the issue. Correct?

6 A It's clear on its face that you can't use the
7 residential portion of the property for anything other
8 than residential use. This zone doesn't allow more than
9 one principal use on the property, so any time you put
10 something else on, like Shuart, who was going in there,
11 that's another principal use on a property that's only
12 permitted to have one principal use. That's not
13 permissible without a variance from this Board.

14 Q Unless this Board determines that they're
15 all one principal use, being a public garage. If this
16 Board were to conclude that then it's one use. Correct?

17 MR. INGLIMA: Woe, woe, wait a minute.
18 Objection. Are you suggesting that a subsequent
19 determination by this Board would somehow validate
20 illegal conduct that occurred after the Board in
21 1974 ruled against an expansion of the Barry's
22 use? Are you suggesting what happens in 2024
23 makes everything okay? The witness testified --

24 MR. SEMERARO: No, that's creative, that's
25 not what I'm suggesting.

1 MR. INGLIMA: Oh, come on. This witness
2 testified --

3 MR. SEMERARO: No, no, you're
4 mischaracterizing.

5 MR. WHITAKER: One at a time, one at a
6 time.

7 MR. INGLIMA: This witness testified --

8 MR. SEMERARO: Don't tell me what I'm
9 suggesting. I'm advising what I'm suggesting.

10 Buildings 4 and 5 is where Barry's was.
11 He talked about Shuart Construction which moved
12 their vehicles in some of the space that was
13 rented by Barry's.

14 MR. INGLIMA: No, he never said that.

15 MR. SEMERARO: It's not an expansion, it's
16 the same building.

17 MR. INGLIMA: You are mischaracterizing
18 his testimony.

19 MR. WHITAKER: He didn't say that.

20 MR. SEMERARO: No, I'm clarifying how
21 you're misleading the Board in your objection.

22 MR. INGLIMA: That's it.

23 MR. SEMERARO: I'm not suggesting
24 anything.

25 MR. INGLIMA: I want to put an objection

1 on the record to the conduct of the attorney for
2 the applicant. He has been antagonistic
3 throughout this entire evening's proceedings which
4 have gone on now for two and a half hours and this
5 has got to stop. I want a direction, please, with
6 all due respect, Mr. Chairman, to the applicant's
7 attorney that he shall conduct himself in a
8 professional manner, that he shall not fabricate
9 testimony by this witness, and that he shall not
10 be argumentative until the cows from the milking
11 company come home.

12 MR. SEMERARO: With all due respect --

13 MR. WHITAKER: I suggest, Mr. Chairman,
14 that after almost three hours of testimony with
15 the Board having no break that the hearing be
16 continued to a future date.

17 CHAIRMAN BROWN: Okay. We're going to
18 continue to a future date.

19 Jane, what do you have on the calendar?

20 MR. SEMERARO: I don't think that I need
21 to continue. Rather than have it carry to another
22 date, I will rest so that we can close and proceed
23 as outlined from the beginning of the hearing.

24 MR. INGLIMA: If I may ask in response to
25 that, rather than to establish any facts to

1 redirect, I would ask that this Board take
2 judicial notice or quasi-judicial notice of the
3 ordinances that have existed in this municipality
4 without having to have the introduced, identified,
5 and marked at length. I have brought with me
6 copies of different -- did I say ordinances or
7 resolutions? I meant to say ordinances.

8 MR. WHITAKER: Ordinances is what you
9 said.

10 MR. INGLIMA: I have with me copies of the
11 1976 ordinance, the 1996 ordinance, and the
12 individual ordinance that established its
13 approval, and the 2016 ordinance, together with
14 the Ordinance #3492 that established its approval
15 and I would ask that these be considered by the
16 Board for the purposes of our written memoranda
17 that will be submitted subsequent.

18 MR. WHITAKER: They're official records so
19 there can be no objection to having them
20 submitted. They are official. Counsel will have
21 them. Each of you can reference them in your
22 memorandums and you can submit the memorandums at
23 least 20 days in advance of the next hearing.

24 MR. INGLIMA: And I will gladly provide
25 copies, digital copies of them to the Board

1 Secretary as well as to Mr. Semeraro tomorrow so
2 that it's clear and, of course, Mr. Whitaker, so
3 it's clear exactly what I'm referring to.

4 Thank you.

5 The other ordinances which I may wish to
6 refer are already in the record.

7 Thank you.

8 CHAIRMAN BROWN: Thank you.

9 MR. WHITAKER: So the next date being,
10 Jane, October 10th?

11 BOARD SECRETARY WONDERGEM: October 8.

12 CHAIRMAN BROWN: October 8th would be the
13 next date.

14 MR. WHITAKER: Which means 20 days in
15 advance for the memorandums to be submitted.

16 The Board already has my memorandum that I
17 did quite awhile ago and I saw you look before, we
18 had submitted that to both counsel.

19 MR. SEMERARO: Yes.

20 MR. WHITAKER: If you don't have it, I
21 don't know why, but we'll get one over to you in
22 the morning.

23 MR. INGLIMA: It was awhile ago.

24 CHAIRMAN BROWN: So October the 8th works?

25 MR. WHITAKER: It was four months ago I

1 think I did it.

2 So it will be continued to 7:30 on
3 October 8th without any further notice to the
4 public.

5 MR. SEMERARO: And at that point in time
6 we'll have closing statements.

7 MR. WHITAKER: Closing statements and
8 that's the only thing that will be determined that
9 night.

10 MR. SEMERARO: Okay.

11 MR. WHITAKER: And we will limit it to an
12 hour for the whole thing because we're going to
13 put other things on for that night.

14 MR. SEMERARO: Okay.

15 CHAIRMAN BROWN: Thank you.

16

17 (Whereupon, the proceedings concluded at
18 10:18 p.m.)

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C E R T I F I C A T E

I, LYNANN DRAGONE, License No. XI01388, a Certified Court Reporter and Notary Public of the State of New Jersey, certify that the foregoing is a true and accurate transcript of the hearing at the time and the date hereinbefore set forth.

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

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

Lynann Dragone
LYNANN DRAGONE, CCR
Certified Court Reporter

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