

BOROUGH OF WANAQUE
BOARD OF ADJUSTMENT MEETING

APPLICATION #ZBA2016-05 -
MKR Enterprises, LLC 17 Park
Street, Wanaque, NJ (Block
240/Lot 3)

_____X

DATE: February 1st 2017
TIME: 8:05 p.m.

BEFORE: PATRICIA PUCCIARELLO a
Notary Public and
Court Reporter of the
State of New Jersey

LOCATION: WANAQUE MUNICIPAL BUILDING
579 Ringwood Avenue
Wanaque, New Jersey 07465

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VICE CHAIRMAN BRUCE GRYGUS
3 MEMBER DON LUDWIG
MEMBER FRANK COVELLI
4 MEMBER PETER HOFFMAN
MEMBER MICHAEL LEVINE
5 MEMBER BARRY HAIN
MEMBER SUZANNE HENDERSON
6 MEMBER DAVID KARP
RONALD P. MONDELLO, Esq., Board Attorney
7 CHRISTOPHER NASH, Board Engineer
JENNIFER FIORITO, Board Secretary
8

9 A P P E A R A N C E S

10 LAW OFFICES OF A. MICHAEL RUBIN
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12 Attorney for the Applicant, Tree Tavern Wine Bar

13 PAUL V. FERNICOLA & ASSOCIATES, LLC
BY: Paul V. Fernicola, Esq.
14 219 Broad Street
Red Bank, New Jersey 07701
15 Attorney for Mr. And Mrs. Bellante
16
17
18

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ADC 13:43-5.9 ***
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MIKE RYAN				
By Mr. Fernicola:		8	33	
ROSEMARY PREYERS				
By Mr. Fernicola:	11			
By Mr. Rubin:		14		36
KATHY ASSIDIO				
By Mr. Fernicola:	39			
By Mr. Rubin:		47		
ROBERT BAGALLO				
By Mr. Fernicola:	61			
By Mr. Rubin:		70		
LUCILLE BRULE				
By Mr. Fernicola:	76			
By Mr. Rubin:		86		
LISA BELLANTE				
By Mr. Fernicola:	91			

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E X H I B I T S

EXHIBIT NO.	DESCRIPTION	IDENT.
A-9	Site Plan Dated June 23, 2015	21
015	Photograph	34
016	1994 Real Estate Listing	78
017	1951 Lease	94
018	1979 Liquor Licence Renewal	100
019	1980 Liquor License Renewal	101
020	1981 Liquor License Renewal	107
021	1982 Liquor License Renewal	108
022	1985 Liquor License Renewal	108
023	Facebook Photos	114
024	Four Resolutions	121
	Produced by Wanaque	

1 (On Record at 8:05 p.m.)

2 CHAIRMAN DUNNING: Will everybody
3 please rise for a salute for our flag.

4 (Pledge of Allegiance)

5 CHAIRMAN DUNNING: This is a regular
6 meeting of the Wanaque Board of Adjustment.
7 Adequate notice has been given by duly advertised
8 notice, place in the Herald News on January 11th,
9 2017. A copy of this is on file with the borough
10 clerk and posted on the bulletin board in the
11 borough.

12 Roll call, please.

13 MS. FIORITO: Chairman Dunning?

14 CHAIRMAN DUNNING: Here.

15 MS. FIORITO: Vice Chairman Grygus is
16 on his way. Member Covelli will be late.

17 Member Hain?

18 MR. HAIN: Here.

19 MS. FIORITO: Member Hoffman?

20 MR. HOFFMAN: Here.

21 MS. FIORITO: Member Ludwig?

22 MR. LUDWIG: Here.

23 MS. FIORITO: Member Levine?

24 MR. LEVINE: Here.

25 MS. FIORITO: Member Henderson?

1 MS. HENDERSON: Here.

2 MS. FIORITO: Member Karp?

3 MR. KARP: Here.

4 MS. FIORITO: Attorney Mondello?

5 MR. MONDELLO: Here.

6 MS. FIORITO: Engineer Nash?

7 MR. NASH: Here.

8 MR. MONDELLO: Mr. Rubin, welcome.

9 Mr. Fernicola, nice to see you again. Can you
10 please enter your appearances into the record?

11 MR. RUBIN: Yes, if the Board please,
12 Michael Rubin, appearing for the applicant. And
13 as I recall, we finished our redirect at the last
14 time and we would be ready for recross this
15 evening of the applicant himself.

16 MR. MONDELLO: Fair enough. Your
17 memory is much better than mine.

18 Mr. Fernicola, is that the way you
19 see the application tonight starting?

20 MR. FERNICOLA: Yes. Good evening,
21 Paul Fernicola on behalf of the adjacent property
22 owners, Lisa and Mark Bellante. Yes, it was. And
23 I want to thank the Board, and I apologize for any
24 inconvenience last month when I was ill and I to
25 cancel at the last minute. I appreciate your

1 courtesy and Mr. Rubin's courtesy.

2 MR. MONDELLO: No problem at all. We
3 understand.

4 All right, Mr. Rubin, let's call the
5 applicant for recross, is that it?

6 MR. RUBIN: It would be recross. We
7 had a hiatus between Mr. Ryan, when we brought in
8 some of other witnesses, because everyone had
9 places to go, as you recall. They're all busy
10 senior citizens. Everyone has a place to be. So
11 they all wanted to come in, say their peace and go
12 out and do whatever, and we did that and you
13 accommodated them.

14 So we brought back Mr. Ryan for some
15 questioning. And it is my understanding that this
16 cross-examination will be confined to whatever was
17 brought on the recross.

18 MR. MONDELLO: Understood. Let the
19 record reflect that Vice-Chairman Grygus has
20 arrived and is being seated.

21 You may begin.

22 MR. FERNICOLA: Thank you, counsel.

23 I'm sorry, does the secretary have
24 the actual exhibits? You want me to use what the
25 witness, the actual what was marked, counselor?

1 MR. MONDELLO: That's fine. Use what
2 you have. There's no reason to start pulling
3 apart whatever has been filed with the Board
4 Secretary.

5 MR. FERNICOLA: Thank you, counsel.

6 CROSS EXAMINATION BY MR. FERNICOLA:

7 Q. So Mr. Ryan, when you were last here
8 on December 7th, you had testified with regard to
9 a letter that was marked as Applicant's Exhibit 8,
10 it was a letter from the township attorney,
11 borough attorney, dated April 22nd, 2010. Let me
12 show you my copy, some of the handwriting on it is
13 mine, but everyone agreed I can use my copy.

14 MR. MONDELLO: Also, for the Board's
15 edification, this was A-8, correct? It's an April
16 22nd, 2010 letter from Mr. Fiorello, who of course
17 is the Borough Attorney, to Katherine Falone, who
18 is the Borough Clerk.

19 BY MR. FERNICOLA:

20 Q. And Mr. Ryan, you're familiar with
21 this letter, based on your testimony?

22 A. Yes, I am.

23 Q. And there's an attachment, a 1992
24 liquor license renewal for the subject property,
25 your current property?

1 A. Right.

2 Q. And specifically, you testified as to
3 question 3.4, I believe it is, 3.5, excuse me.

4 It says, "Are any grounds adjacent to
5 the buildings on your license to be included as
6 part of the license premises?"

7 And no, the checkmark is crossed off.
8 And then there's a check next to the word, yes?

9 A. Yes.

10 Q. Do you know whose handwriting this?

11 A. It looks like the signature of Andrew
12 Hack.

13 Q. Do you know why Mr. Hack initially
14 checked off no to the question, are any grounds
15 adjacent to the building under the license?

16 A. Other than the clerk, I wouldn't have
17 any idea.

18 Q. You don't know?

19 A. No.

20 Q. And currently, he was the owner at
21 the time in 1992?

22 A. He was.

23 Q. Now, in the attorney's letter on the
24 second page, second-to-last paragraph, last
25 sentence, "I do not know whether you have in your

1 your archives any applications or transfers older
2 than that enclosed."

3 Did I read that correctly?

4 A. Yes.

5 Q. And the letter itself is addressed to
6 the borough clerk. Correct?

7 A. That's correct.

8 Q. Now, when he says, older, he's
9 referring, than the one enclosed, older than the
10 1992 application. Correct?

11 A. Yes.

12 Q. Have you, yourself, reviewed any
13 liquor license renewal applications prior to 1992
14 for the subject property?

15 A. No.

16 Q. No, you have not?

17 A. No, I have one from '94. I wasn't
18 sure of that last time.

19 MR. FERNICOLA: Nothing further,
20 thank you.

21 MR. MONDELLO: Mr. Rubin?

22 MR. RUBIN: I have nothing on
23 redirect.

24 MR. MONDELLO: Okay. So that's the
25 conclusion of this witness?

1 MR. RUBIN: That is correct. Thank
2 you.

3 MR. MONDELLO: Mr. Rubin, any other
4 witnesses?

5 MR. RUBIN: No, sir. Those are the
6 extent of the applicant's witnesses as to this
7 phase of the application.

8 MR. MONDELLO: Understood.
9 Mr. Fernicola, your case now.

10 MR. FERNICOLA: Thank you, counsel.
11 At this time, I call Rose Preyers.

12 MR. MONDELLO: Ms. Preyers, would you
13 please approach the microphone and raise your
14 right hand?

15 (Witness sworn)

16 MR. MONDELLO: Please state your
17 name, spell your last name and give us your
18 address.

19 MS. PREYERS: Rosemary Preyers,
20 P-r-e-y-e-r-s, 5662 Cypress Creek Drive, Grant,
21 Florida 32949.

22 DIRECT EXAMINATION BY MR. FERNICOLA:

23 Q. Rose, are you related to this young
24 lady to my left?

25 A. Yes, I am. I'm her mother.

1 Q. Rose, did you, at any time, live at
2 the property that's known as 19 Park Street in the
3 Borough of Wanaque?

4 A. Yes, I did.

5 Q. And when did you live at 19 Park
6 Street?

7 A. From mid 1973 until August of 1998.

8 Q. Did your husband's family own the
9 property at 19 Park Street prior to you moving
10 there in 1973?

11 A. Yes.

12 Q. And how long did your husband's
13 family own the property at 19 Park Street?

14 A. Since 1911.

15 Q. Did you, at some point, eventually
16 sell that property to your daughter and her
17 husband, Mark Bellante?

18 A. Yes.

19 Q. Do you recall when you sold them the
20 property located at 19 Park Street?

21 A. 2009.

22 Q. Now, prior to Mr. Ryan owning the
23 property and during the period that you were
24 living there, 1973 to 1998 did you observe, see
25 any outdoor bar located at the rear of the

1 property that's owned by Mr. Ryan?

2 A. No.

3 Q. The same period of time, 1973 to 1998
4 when you were living next door, did you see any
5 outdoor seating located at the rear of the
6 property, 17 Park Street, currently owned by
7 Mr. Ryan?

8 A. No.

9 Q. At any time that you were residing
10 there from 1973 to 1998, did you observe the
11 service, the outdoor service of food and alcohol,
12 at the rear of the property, 17 Park Street?

13 A. No.

14 Q. Did you observe or hear the playing
15 of outdoor music at 17 Park Street when you were
16 residing next door between 1973 and 1998?

17 A. No.

18 Q. How about when you were living there
19 that same time period, did you observe any picnics
20 taking place at the adjacent property?

21 A. No.

22 MR. FERNICOLA: I have no further
23 questions.

24 MR. MONDELLO: Mr. Rubin.

25 MR. RUBIN: Yes, thank you.

1 CROSS EXAMINATION BY MR. RUBIN:

2 Q. Ms. Preyers, do you recall, during
3 the time that you lived in number 19, that there
4 was a commercial restaurant, bar, tavern, whatever
5 we might call it, in operation during those years?

6 A. Yes.

7 Q. And do you recall some of the names
8 of the owners at that time while you owned 19 Park
9 Street?

10 A. Allen Pallavicini.

11 Q. And that's when it was called
12 Polly's?

13 A. Yes.

14 Q. And do you recall the name Andrew's?

15 A. Yes.

16 Q. And was that another owner?

17 A. Yes.

18 Q. And was there another name that was
19 used for the restaurant, bar, whatever, tavern,
20 whatever it was, during the time that you lived at
21 19?

22 A. You mean, the name of the business?

23 Q. Yeah, another place, another owner?

24 A. No, I've always known it as Polly's.

25 Q. And so you recall Polly's and you

1 recall Andrew's?

2 A. Correct.

3 Q. Could you describe what kind of
4 business, let's take Polly's for the first
5 instance. Do you recall, generally, when Polly's
6 was an operation?

7 A. It was in operation when I moved in
8 in '73.

9 Q. Were the owners then related to you
10 at any time?

11 A. No.

12 Q. They weren't related. But you do
13 recall it being a restaurant?

14 A. I recall it be being a bar.

15 Q. Were you ever inside the place?

16 A. In '72. I mean, in 1970 I was in the
17 place, yes.

18 Q. You were there once?

19 A. Yes.

20 Q. Did you drink there, eat there,
21 socialize?

22 A. It was my sister's engagement party
23 in 1970.

24 Q. So she had arranged a party or a
25 family member had arranged a party there?

1 A. Correct.

2 Q. And you were there?

3 A. Yes.

4 Q. And that was the only time you were
5 inside while it was Polly's?

6 A. In 1972.

7 Q. And in the years that it was Polly's,
8 do you recall whether you knew, of your own
9 knowledge, not what anybody told you, but just of
10 your own knowledge, whether people ate and drank
11 within the restaurant?

12 A. I don't recall anyone eating there
13 other than peanuts.

14 Q. Did you know, of your own knowledge,
15 if they had a kitchen on the premises?

16 A. I never saw it, but I was told there
17 was a kitchen.

18 Q. So if there was a kitchen, did you
19 know whether it was used?

20 A. I was not aware that it was used. If
21 it was used, it wasn't used when I was there.

22 Q. So when you're talking first about
23 Polly's -- I have to differentiate between Polly's
24 and Andrew's -- so the time that Polly's was in
25 existence, you knew there was a kitchen, but you

1 had no knowledge of it being used?

2 A. No.

3 Q. So it just could have been there?

4 A. It was there.

5 Q. And in those years that it was
6 Polly's, did you ever see anyone utilizing the
7 back area in the Bocce courts or the shuffleboard
8 courts or whatever kind of recreational activities
9 there were in the rear of the place?

10 A. No.

11 Q. Did you know that there were Bocce
12 courts and other kind of recreation in the rear of
13 the restaurant?

14 A. I didn't know personally.

15 Q. Well, did you know at all?

16 A. I was told.

17 Q. You lived right next door, did you
18 not?

19 A. Yes.

20 Q. And you didn't see anyone using a
21 Bocce court or any kind of recreational facility
22 in the rear, horseshoes?

23 A. No.

24 Q. Nothing like that?

25 A. No.

1 Q. And in all the years that it was
2 Polly's, you never saw that happening?

3 A. Not when I was there, no.

4 Q. Now, were you there all the time?

5 A. No.

6 Q. So on days -- I mean, while it was
7 Polly's, let's just talk about Polly's ownership,
8 were you living full time at 19 Park Street?

9 A. From 1973, yes.

10 Q. In '73 all the way to 1998?

11 A. Yes.

12 Q. And during all those years, you never
13 saw anyone using the recreational equipment?

14 A. Never.

15 Q. And during all the years between 1973
16 to 1998, you never saw anyone eating in the rear
17 of the premises, and you know what I mean, rear of
18 the premises, you understand how the lot is set
19 up?

20 A. Yes, I do.

21 Q. There was picnic tables back there,
22 weren't there?

23 A. I never saw them.

24 Q. There were other kind of tables and
25 chairs throughout the rear, was there not, through

1 that time?

2 A. Not that I ever saw.

3 Q. So what was there between 1973 and
4 1998 in the back of the property?

5 A. Brush, woods.

6 Q. And there was nothing at all -- I'd
7 like to try and show you --

8 MR. RUBIN: Unless the secretary has
9 the filing of the site plan, I know I have one
10 here. I don't want to take up the Board's time
11 unless Jennifer has it handy.

12 MR. FERNICOLA: Which one are you
13 referring to, because I have marked as 01, the
14 2005 variance plan. Is that what you're referring
15 to?

16 MR. RUBIN: The one that was filed
17 with the application.

18 MS. FIORITO: The new one, the
19 current one?

20 MR. RUBIN: Yes, current.

21 Q. Ms. Preyers, I'm showing you a
22 drawing which came into the case as part of the
23 application. Are you familiar with looking at a
24 map at all?

25 A. Yes, I am.

1 MR. FERNICOLA: Counsel, could you
2 just identify --

3 MR. RUBIN: Yes. This is a map
4 prepared for MKR Enterprises prepared by Petry
5 Engineering, LLC. It's marked as received by the
6 borough on June 30th, 2016. And I assume this is
7 part of the original package?

8 MS. FIORITO: Yes.

9 MR. RUBIN: And I believe I sent you
10 one as a courtesy copy when we filed the
11 application, counsel.

12 MR. FERNICOLA: That's what I'm
13 looking for. I have the application. Let me just
14 take a look.

15 MR. RUBIN: I know I sent one as a
16 courtesy right at the beginning.

17 MR. FERNICOLA: Are we going to mark
18 this, Mr. Rubin?

19 MR. RUBIN: I don't believe it has to
20 be remarked.

21 MR. FERNICOLA: Okay.

22 BY MR. RUBIN:

23 Q. Looking at the site plan of existing
24 conditions, what is shown in the center is the
25 applicant's property, obviously.

1 MR. MONDELLO: Counsel, apparently it
2 wasn't marked, for whatever reason, Mr. Rubin. I
3 think we're at eight, nine.

4 MR. RUBIN: Okay. Just let me get a
5 pen.

6 MR. FERNICOLA: The date I have on it
7 is dated June 23rd, 2016.

8 (A-9, Site Plan Dated June 23rd,
9 2015, marked for identification)

10 Q. And obviously, what we're showing is
11 the applicant's property and what are, in a
12 stripped manner, are the buildings, the garage,
13 existing bar, restaurant. And further in the
14 back, it's showing outdoor seating areas, existing
15 outdoor bar area, stools and such.

16 And so when we were talking about a
17 few moments ago, the rear of the property, I am
18 talking about what is in, I would call it the
19 southerly end of the property, call it the rear of
20 the property, in back of the parking, in back of
21 the buildings and everything.

22 A. Yes.

23 Q. So could we agree that the rear of
24 the property is what we have been referring to as
25 showing, on this map, seating and outdoor bar area

1 and fire pit and such?

2 A. It looks to be that.

3 Q. Now, is it your testimony now that
4 you're telling us that in this back area, from the
5 years that you have told us you lived at 19 Park
6 Street, from 1973 to 1998, there were no
7 recreational facilities back there?

8 A. That's what I'm telling you, there
9 were no recreational facilities back there.

10 Q. No shuffleboard, no Bocce, no
11 horseshoes?

12 A. Not that I saw, no.

13 Q. And you were there on an everyday
14 basis?

15 A. Every day.

16 Q. And you never saw anyone eating or
17 drinking back there?

18 A. No.

19 Q. And when we're talking about back
20 there, it's that back area that we just showed on
21 a map?

22 A. No, I did not.

23 Q. And so that was just a wooded area?

24 A. Yes.

25 Q. So as far as you knew, from '73 to

1 1998, the only commercial use was inside the
2 restaurant area?

3 A. Correct.

4 Q. And was Polly's in operation during
5 that period, '73 to 1998?

6 A. Yes.

7 Q. And you knew it was in operation
8 during those years?

9 A. Yes.

10 Q. You knew it was there?

11 A. Yes.

12 Q. But never outside?

13 A. Never outside.

14 MR. RUBIN: I'm going to hand that
15 drawing back.

16 Q. Did there come a time when Andrew's
17 was the name of the place rather than Polly's?

18 A. Yes.

19 Q. And was that before or after it was
20 Polly's?

21 A. After it was Polly's.

22 Q. So Andrew's came in, and who was the
23 owner of Andrew's, if you know?

24 A. Andrew Hack.

25 Q. Did you know Mr. Hack?

1 A. Yes, I did.

2 Q. He was your neighbor?

3 A. Yes, he was.

4 Q. Did you ever go inside the restaurant
5 while Mr. Hack owned it?

6 A. Yes, I did.

7 Q. And did you frequent it, at some
8 point, during the years?

9 A. We didn't frequent it. My cousins --
10 in 1981, one of my cousins threw an anniversary
11 party for my aunt and uncle there, because it was
12 a private banquet, private party.

13 Q. But you knew it was an operation by
14 Mr. Hack?

15 A. Yes.

16 Q. Did there come a time that Mr. Hack
17 sold the premises to Mr. Ryan?

18 A. Well, yes.

19 Q. You knew that, you knew that Mike
20 Ryan brought it at some point?

21 A. Yes, at some point.

22 Q. Were you still living there then?

23 A. No.

24 Q. Were you living on the premises when
25 Mr. Hack bought it and changed the name to

1 Andrew's?

2 A. Yes.

3 Q. And did you see what kind of
4 operation Mr. Hack had on the premises, did he
5 have a regular restaurant clientele, as far as you
6 knew?

7 A. I don't know about any restaurant
8 clientele.

9 Q. You knew it was restaurant?

10 A. Yeah, I thought it was a banquet.
11 Like I said, we wanted to be good neighbors. He
12 was a nice person. He was a man of his word. And
13 we had our private parties there. And my neighbor
14 had her anniversary party there several years
15 after that.

16 Q. When it was Mr. Hack's property and
17 Mr. Hack owned it under the trade name Andrew's,
18 did you see any eating or drinking in the outside
19 area?

20 A. No.

21 Q. And we're talking about that area in
22 the back as we showed on the map?

23 A. No.

24 Q. And so from '73 to '98, you never saw
25 anyone utilizing that back area?

1 A. No, no one.

2 Q. And that was Polly's, as you've
3 already testified, but now Andrew's under
4 Mr. Hack's ownership, same thing, none?

5 A. Nothing.

6 Q. And as far as you knew, it only
7 started in later years. Is that your testimony?

8 A. It started under Mr. Ryan's
9 ownership.

10 Q. And do you know when that was,
11 approximately?

12 A. I can't give you an exact.

13 Q. Okay. But at some time, Mr. Hack
14 sold it to Mr. Ryan, as far as you know?

15 A. Oh, you're asking me if he sold it?
16 Yeah.

17 Q. Yeah, Mr. Hack was in ill health or
18 whatever?

19 A. Not when he bought it.

20 Q. No, when he sold it?

21 A. When he sold it, yes.

22 Q. That was prior testimony. But your
23 testimony today before this Board is that, for all
24 these years, '73 to '98, no eating, no drinking
25 outside, strictly woods or overgrown or whatever?

1 A. That's right.

2 Q. Was it trees out in the back? Can
3 you describable it for the Board?

4 A. It was trees, it was woods. I
5 expanded my backyard. Parties were in my
6 backyard. There was nothing back there.

7 Q. Did there come a time when a part of
8 number 19 Park Street was sold to number 17 to
9 make number 17 larger?

10 A. No.

11 Q. That never happened?

12 A. No.

13 Q. Just asking you now what the history
14 was, there were always two separate properties?

15 A. Yes.

16 Q. And there was always a driveway in
17 between as there is today, there is a driveway?

18 A. The driveways are next to each other.

19 Q. Correct, they're next to each other,
20 and that's the way the configuration always was?

21 A. To the best of my knowledge, yes.

22 Q. And for the years that you were
23 there, '73 to '98, the driveway configuration was
24 that way and still is today?

25 A. Pretty much, yes.

1 Q. And you do go to the property, from
2 time to time, right to today?

3 A. Yes. You mean 19 Park Street?

4 Q. Yes.

5 A. Yes.

6 Q. So it is your testimony that it is
7 different today than it was then, then meeting
8 1973 to 1998?

9 A. Is what different?

10 Q. The back?

11 A. Definitely. The back of 17 Park
12 Street?

13 Q. Yes.

14 A. Definitely.

15 Q. What is different about it?

16 A. Picnic tables, outdoor lighting,
17 expansion in the back.

18 Q. And this is different than what it
19 was before?

20 A. Major difference.

21 Q. And the trees and the bushes and
22 such, are they gone from what it was earlier?

23 A. Yes.

24 Q. So obviously, Mr. Ryan or his agents
25 or employees cleaned it up?

1 A. Changed it, yes. Cleaned it up, yes.

2 Q. But the tables and chairs and
3 whatever was back there and recreational equipment
4 was never there before until Mr. Ryan?

5 A. I never saw anything back there.

6 Q. That is your testimony?

7 A. That is my testimony.

8 MR. RUBIN: Thank you.

9 MR. MONDELLO: I have a question, if
10 I might, Ms. Preyers.

11 So your testimony is that, although
12 you attended your sister's engagement party in
13 1970, there was no food served at Polly's.

14 THE WITNESS: We had it catered.

15 MR. MONDELLO: Because I'm reading
16 from A-2, which is, it looks like a letterhead
17 from Polly's. It says they served, "Italian
18 American food, drinks and packaged goods,
19 catering, private dining room, pizza pies, party
20 facilities meeting, outdoor picnic grove. Pool
21 and games in our tavern. Lunches and late night
22 snacks."

23 So to your knowledge, they've never
24 served any of this food?

25 THE WITNESS: I have never been there

1 when it was served.

2 MR. MONDELLO: You were never there
3 when it was served, okay.

4 You have never seen a Ballentine beer
5 truck pull up in front of the premises when it was
6 Polly's or owned by anybody else?

7 THE WITNESS: Ballentine, no.

8 MR. MONDELLO: Any beer tuck.

9 THE WITNESS: Well, there was always
10 delivery trucks. I wasn't paying attention.

11 MR. MONDELLO: No. A beer truck that
12 would actually serve beer, like the old Ballentine
13 trucks had spigots.

14 THE WITNESS: I never saw that.

15 MR. MONDELLO: You never saw that,
16 okay.

17 There was submitted by your attorney
18 Mr. Fernicola, it is 012.

19 MR. FERNICOLA: Her daughter's
20 attorney, for the record.

21 MR. MONDELLO: I'm sorry, her
22 daughter's attorney.

23 THE WITNESS: Yes.

24 MR. MONDELLO: Those horseshoes,
25 where is that?

1 THE WITNESS: That's on my property.
2 That's in my backyard and I took those pictures.

3 MR. MONDELLO: Okay. We thought it
4 might be. Okay.

5 CHAIRMAN DUNNING: Did you own that
6 property where those horseshoes are?

7 THE WITNESS: Yes.

8 CHAIRMAN DUNNING: So they overlapped
9 on your property behind your dwelling house?

10 THE WITNESS: There was no
11 overlapping. That was our backyard prior to our
12 improving our backyard.

13 CHAIRMAN DUNNING: Okay. So that
14 fence, that we'll say pulls the property or use of
15 the property over to the Polly's bar, that was
16 actually on your property?

17 THE WITNESS: Yes.

18 CHAIRMAN DUNNING: Okay. But it was
19 fenced off by somebody.

20 THE WITNESS: I would venture to say
21 it was fenced off by my husband's grandfather, but
22 I couldn't say for certain.

23 CHAIRMAN DUNNING: Those pictures are
24 a little confusing.

25 THE WITNESS: This was in 1977, so...

1 MR. MONDELLO: Do you know the folks
2 in the picture?

3 THE WITNESS: Yes, I do.

4 MR. MONDELLO: Who are they?

5 MR. FERNICOLA: She said she took the
6 pictures.

7 MR. MONDELLO: Doesn't mean she knows
8 the people.

9 THE WITNESS: That person, without my
10 glasses, I think that's my brother. That's Steven
11 Shields, Mike McCartney, Jackie Jordan, Joe
12 Walker, Steven Shields, Robert Myers and his sons,
13 one of his sons. And I think that's my cousin,
14 Hank.

15 MR. MONDELLO: Fair enough. Any
16 questions from the Board members?

17 MR. HOFFMAN: I have a question about
18 those pictures. You took those pictures yourself?

19 THE WITNESS: Yes, I did.

20 MR. HOFFMAN: Were those people at a
21 function at your house or at a function at the
22 bar?

23 THE WITNESS: Yes, at my house.

24 MR. MONDELLO: Any other questions
25 from Board members before we turn it over to

1 Mr. Fernicola?

2 CHAIRMAN DUNNING: Let the record
3 reflect Member Covelli arrived at 8:38.

4 MR. MONDELLO: Sporting a wonderful
5 haircut, I might add.

6 MR. COVELLI: Thank you, counsel.

7 MR. HAIN: I have a question. Would
8 it be possible that people who were at Polly's or
9 Andrew's came across your yard and used your
10 facilities at any time?

11 THE WITNESS: No, absolutely not.

12 MR. HOFFMAN: Those pictures are a
13 picture of your backyard?

14 THE WITNESS: Yes, sir.

15 REDIRECT EXAMINATION BY MR. FERNICOLA:

16 Q. Just so we're clear, the property
17 that's depicted with the horseshoes, is that the
18 property, 19 Park Street?

19 A. That's correct.

20 Q. And you testified, you said these
21 pictures were before you improved your property?

22 A. That's correct.

23 Q. When you and your husband owned the
24 property and lived there, did you construct a pool
25 in the rear of your property?

1 A. Yes, we did.

2 Q. Do you remember when you constructed
3 the pool?

4 A. 1982.

5 MR. HOFFMAN: Counselor, can I see
6 these pictures?

7 MR. FERNICOLA: Sure, I'm just going
8 to have this marked.

9 MR. MONDELLO: I think we are up to
10 015.

11 MR. FERNICOLA: Yes, counsel.

12 (Exhibit-015, Photograph, marked for
13 identification)

14 Q. I'm sorry, the pool you constructed
15 in 1982?

16 A. 1982.

17 Q. So let's me show you what's been
18 marked at Exhibit-015, and can you tell the Board
19 what is depicted in this photograph?

20 A. That's a picture preparing for one of
21 my sister's weddings that was going to take place
22 in our backyard. And the picture is taken from
23 the master bedroom window on the second floor of
24 19 Park Street.

25 MR. MONDELLO: Who took the picture?

1 THE WITNESS: I did.

2 Q. Does it depict the pool that you and
3 your husband constructed in 1982?

4 A. Yes.

5 Q. Does it also, on the left-hand corner
6 of the photograph, does it depict the rear area of
7 what is currently Mr. Ryan's property?

8 A. It does.

9 Q. And does this photograph accurately
10 depict the areas depicted in the photograph at the
11 time that it was taken?

12 A. Yes, it does.

13 Q. It was your sister's wedding you were
14 preparing for?

15 A. Yeah.

16 Q. Do you recall when this photo was
17 taken?

18 A. It was August, either 3rd or 6th, and
19 it was 1985.

20 Q. Do you see any fire pits depicted in
21 the rear of Mr. Ryan's property, the portion
22 that's depicted in the photograph?

23 A. No.

24 Q. Do you see any picnic tables or other
25 seated located on the portion of the rear of Mr.

1 Ryan's property depicted in this 1985 photograph?

2 A. No.

3 Q. Do you see any outdoor bar or
4 seating?

5 A. No.

6 MR. FERNICOLA: I have no further
7 questions, counsel.

8 MR. MONDELLO: Your witness,
9 Mr. Rubin, and then I think the Board would like
10 to see that after you're through.

11 MR. RUBIN: Yes, one moment.

12 RECROSS EXAMINATION BY MR. RUBIN:

13 Q. Ms. Preyers, I'm looking at the
14 photograph we've marked 015 now. And where were
15 you on your property when you took the photo?

16 A. I was looking out the back window of
17 the second floor master bedroom.

18 Q. And you took it down looking at your
19 pool area?

20 A. Looking at the arrangements for what
21 was going to be the wedding that day.

22 Q. And is the stockade fence that's
23 shown here on the property line?

24 A. Which fence are you talking about?

25 Q. The fence that is immediately at the

1 back of this pool area, is that near or about the
2 property line?

3 A. Behind the pool?

4 Q. No, on the side.

5 A. On the side?

6 Q. Yeah.

7 A. That's around the property line, as
8 close as I can tell.

9 Q. Right. Obviously, from just looking
10 at a photograph, it's hard to tell where the
11 property line is. But on this side, on the left
12 side would generally be Mr. Ryan's property?

13 A. Correct. At the time, it was
14 Andrew's property.

15 Q. Excuse me?

16 A. At the time it was Andrew's property.

17 Q. Okay. So that was Mr. Hack's
18 property at that moment?

19 A. Correct.

20 Q. And Mr. Hack's property and
21 Mr. Ryan's property is several acres in size, is
22 it not?

23 A. Not several acres.

24 Q. Do you know how big it is, do you
25 have any idea?

1 A. It's not as big at the Park Street
2 property. The Park Street property goes back much
3 further.

4 Q. When you say, the Park Street
5 property, what does that mean?

6 A. That piece of property where the pool
7 is.

8 Q. Your property?

9 A. My property goes back further than
10 Mr. Ryan's property does.

11 Q. So there is property owned by
12 Mr. Hack and then Mr. Ryan, obviously, that is not
13 depicted on his photograph?

14 A. I can't answer that. Yeah, I would
15 say, yes, but I can't be definite. I don't know
16 how far back he goes, but I know how far back I
17 go.

18 Q. You don't know where the property
19 lines are?

20 A. No.

21 Q. Of course not.

22 MR. RUBIN: No further questions.

23 MR. FERNICOLA: I have no further
24 questions.

25 CHAIRMAN DUNNING: Does any Board

1 members have any questions on this one?

2 MR. MONDELLO: Any residents within
3 200 feet have any questions, questions only for
4 Ms. Preyers, residents at all, questions for Ms.
5 Preyers? Hearing none, seeing none, thank you.

6 Next witness, Mr. Fernicola.

7 MR. FERNICOLA: At this time, I would
8 like to Kathy Assidio.

9 MR. MONDELLO: Good evening, how are
10 you?

11 MS. ASSIDIO: I'm fine.

12 (Witness Sworn)

13 MR. MONDELLO: Please state your
14 name, spell your last name and give us your
15 address.

16 MS. ASSIDIO: Kathy, with a K.
17 Assidio, A-s-s-i-d-i-o, 7 Park Street, Wanaque.

18 MR. MONDELLO: Your witness, Mr.
19 Fernicola.

20 MR. FERNICOLA: Thank you.

21 DIRECT EXAMINATION BY MR. FERNICOLA:

22 Q. Ms. Assidio, Where do you currently
23 reside?

24 A. At 7 Park Street.

25 Q. And how long have you lived at 7 Park

1 Street in Wanaque?

2 A. 64 years.

3 MR. MONDELLO: Use the microphone,
4 please.

5 A. Oh, sorry, 64 years.

6 Q. And do you own any property adjacent
7 to 7 Park Street?

8 A. I own 13 Park Street.

9 Q. And where is 13 Park Street in
10 relation to the property subject to this hearing,
11 17 Park Street, currently owned?

12 A. It's right next door to Mr. Ryan's
13 property.

14 Q. Now, were you familiar with 17 Park
15 Street prior to it being purchased by Mr. Ryan?

16 A. Yes, all my life.

17 Q. And prior to Mr. Ryan purchasing the
18 property, did you ever see any outdoor bars
19 located at the rear of the property?

20 A. No.

21 Q. Prior to Mr. Ryan owning the
22 property, did you observe or see any outdoor
23 seating located in the rear of what is now
24 Mr. Ryan's property?

25 A. No.

1 Q. Did you hear any outdoor music being
2 played at the rear of the property prior to it
3 being purchased by Mr. Ryan?

4 A. Never.

5 Q. Did you ever observe the outdoor
6 service of food and alcohol at the property, 17
7 Park Street, prior to it being purchased by Mr.
8 Ryan?

9 A. No.

10 Q. Now, after Mr. Ryan purchased the
11 property, did you observe any physical changes to
12 the rear of the property?

13 A. Yes.

14 Q. Would you describe those physical
15 changes that you observed to the rear of Mr.
16 Ryan's property after he bought it?

17 A. Buildings were added, he took his
18 jacuzzi that was behind his house at the beginning
19 and he moved it in the back.

20 Q. What is that jacuzzi currently used
21 for, if you know?

22 A. I don't know, but I was ordered to
23 cut down trees on my property that were 20 feet
24 away, because it was going to fall on his jacuzzi
25 that should have never been moved, but that's

1 another sorry.

2 Q. Is the jacuzzi in a shed, like a
3 structure?

4 A. Yes.

5 Q. In addition to the jacuzzi, what
6 other changes, if any, that you recall?

7 A. There's another type of round dome
8 over there that has cameras in it, I don't know
9 what that's for.

10 Q. Were any picnic tables and seating
11 installed to the rear of Mr. Ryan's property?

12 A. Oh, yes, picnic tables. There's fire
13 pits in the woods. I'm back there a lot cutting
14 grass, so I can see everything that's going on.
15 He had to actually get his landscaper to use my
16 property to do the work that was done on his
17 property.

18 Q. Are you referring to tree removal?

19 A. Tree removal and also, as far as
20 fulling the stone over there and everything else,
21 because he had to get it right close to the
22 property line.

23 Q. Now, why did they have to go into
24 your property, can you describe it?

25 A. Because he has no room to maneuver

1 over there, so they came on my property to do the
2 work.

3 Q. Did they use equipment on your
4 property?

5 A. Oh, yes, they used equipment on my
6 property. And the only reason why he did it is
7 because, at that time, my tenant was the one that
8 was doing the trees for him and I didn't want to
9 say no to my tenant.

10 Q. Your tenant was doing the tree
11 removal work?

12 A. Yes.

13 Q. Now, since Mr. Ryan expanded the
14 outdoor use of the property, is there sufficient
15 onsite parking on Mr. Ryan's property for the
16 patrons of Tree Tavern?

17 A. No, there's no parking. He has very
18 limited parking. He should have took in where he
19 has a picnic area and he should have maybe made
20 that more parking. I have the problem now because
21 I own like 200 feet of frontage from my house to
22 the other house and they're all parking their cars
23 on my grass, where I have called the cops several
24 times to get the cars removed. My tenant almost
25 had an accident pulling out of the driveway

1 because the cars were blocking the view because
2 they were on both sides.

3 Q. Now, prior to Mr. Ryan owning the
4 property, did you ever hear outdoor music being
5 placed?

6 A. No, there was never any outdoor
7 music. When Polly's was there and Andy Hack was
8 there, there was never any problem about parking
9 at all. They had ample parking for whatever
10 functions they had going on there.

11 Q. Okay. Now, I'm asking about music.
12 When it was Polly's and Andrew's, did you have the
13 playing of music in the outdoor --

14 A. No, there was no outdoor music.

15 Q. Do you have outdoor music now with --

16 A. Yes, the outdoor music now that is
17 very loud that I can't sit by my pool and have a
18 nice, quite time every day without hearing the
19 music. And then on top of that, then you get the
20 people that have a few too many cocktails that are
21 laughing and carrying on and you hear them. It's
22 ridiculous half of the time back there.

23 Q. Has the expansion by Mr. Ryan of the
24 rear of his property had a negative impact on your
25 property?

1 A. Yeah.

2 Q. Would you describe to the Board how
3 it's had a negative impact on your property?

4 A. First of all, the property value is
5 property going to go down, because who wants to go
6 live next to a place where there's going to be
7 outside music all the time.

8 MR. RUBIN: Mr. Chairman, on that
9 note, I must object, because this witness is not
10 competent to testify as to value or diminution of
11 value for any reason, that is outside of her
12 knowledge. That's an expert opinion. It can't be
13 a layman's opinion.

14 MR. MONDELLO: For the record, noted,
15 Mr. Rubin. The Board can take that comment as it
16 so pleases, but Mr. Rubin is correct, she's not a
17 real estate agent. She is not a tax assessor.
18 She is not an appraiser. So she is speculating as
19 to whether or not loud music in somebody's
20 backyard would diminish the value.

21 BY MR. FERNICOLA:

22 Q. Okay. Putting aside any diminution
23 in fair market value, have you suffered a negative
24 effect on your use and enjoyment of your property
25 because of the expansion by Mr. Ryan?

1 A. Yes.

2 Q. And so putting aside, not describing
3 -- what's the negative effect then on yourself and
4 your property?

5 A. The negative effect is that I can't
6 have peace and quite in my yard. I have to hear
7 the noise. You go back there and you work and you
8 want to rest and you want nice quite down time and
9 you don't have it.

10 Q. Prior to Mr. Ryan purchasing the
11 property when it was Polly's and Andrew's and
12 there predecessor, was the service of food and
13 alcohol limited to the indoor area of 17 Park
14 Street?

15 A. Yes.

16 MR. MONDELLO: When did you live
17 there, from what year to now?

18 THE WITNESS: 1952 until present.

19 MR. FERNICOLA: She said 64 years
20 earlier.

21 THE WITNESS: 64 years.

22 MR. MONDELLO: Any of the Board
23 members have any questions before we turn to Mr.
24 Rubin?

25 VICE CHAIRMAN GRYGUS: Is your house

1 next to number 13 or are you the corner lot?

2 THE WITNESS: No, I'm the house next
3 -- 13 is right next to Mr. Ryan. I'm at seven,
4 which is the next house over.

5 VICE CHAIRMAN GRYGUS: And then
6 there's a house on the other side of you that's on
7 the corner?

8 THE WITNESS: Yes, that's my cousin's
9 house.

10 MR. MONDELLO: Any other questions
11 from Board members before we turn it over to Mr.
12 Rubin?

13 Mr. Rubin, your witness.

14 MR. RUBIN: Thank you.

15 CROSS EXAMINATION BY MR. RUBIN:

16 Q. Ms. Assidio, when you first came on
17 the property, your home in 1952, was there an
18 active restaurant on 17 Park Street?

19 A. Well, in 1952 I was born, so I could
20 give you like maybe.

21 Q. We won't give you that one.

22 A. Okay, don't give me that one. Yes,
23 there was always a place there. Polly's has been
24 there forever, but it was a nice, quite place.

25 Q. So when you were old enough to

1 realize that there was a commercial business, you
2 knew that in the '50s and '60s and '70s as the
3 years went on, there was a restaurant on the site?

4 A. Yes.

5 Q. And it's always been there?

6 A. It's always been there.

7 Q. And did you know whether it had a
8 kitchen?

9 A. They had a kitchen in the back, yeah.

10 Q. And did they, from those years, and
11 you knew that there were several owners through
12 the years?

13 A. There was only two owners. I mean,
14 you can't say White, because White was part of
15 Polly's. I mean, he was the stepson that took
16 over, and then that's when it was Polly's from
17 hell. That's when the police were back there all
18 the time. But how many times was it Polly's that
19 there was underage drinking and they were shut
20 down for two, three weeks at a time. I mean, that
21 was going on back there too. Everybody talking
22 about how wonderful Polly's was, but the whole
23 thing is that Polly's had underage drinking going
24 on. When White took over, it was people throwing
25 beer bottles through your window and it was a

1 terrible place. When Andy Hack took it over, he
2 promised that he wasn't going turn it into another
3 Polly's. Mr. Ryan stood right in my driveway at
4 13 Park Street when he wanted to remodel and told
5 me that he wanted to take it and remodel and make
6 the place where him and his extended family. And
7 he was going to use the downstairs for private
8 banquets and occasionally special meetings for his
9 companies, which I said, okay, and I approved of.

10 All this other stuff that happened
11 was never put on the table for anybody to object
12 when he wanted to remodel Polly's.

13 Q. Well, getting back to the question at
14 hand, through the early days, you knew that there
15 was always a kitchen on the premises and food was
16 served inside the restaurant?

17 A. Yes.

18 Q. And that was during the Polly's days,
19 the Andrew's day and into --

20 A. I don't think Andrew served food. I
21 don't think Andy Hack had much of anything going
22 there, because he would tick off his customers as
23 soon as they walked in. When he first opened up,
24 we went there once and that was it.

25 Q. Well, in any case, it was there, it

1 was open?

2 A. Oh, yeah, it was there.

3 Q. And eventually, Mr. Hack sold it to
4 Mike Ryan?

5 A. Yeah, I guess so.

6 Q. As far as you know?

7 A. Yeah.

8 Q. And Mr. Ryan has been operating the
9 restaurant for these last number of years?

10 A. Well, first it was a banquet hall,
11 which has occasionally had a little parties going
12 on, which was fine. It was nice and quiet back
13 there and there was no problems. Then he extended
14 it to his wine tasting. And all of a sudden, you
15 get a little notice in your mail saying that he's
16 going to have snacks and drinks. And then from
17 there, it turned around and it became a pleasure
18 for everybody to go there and have a few cocktails
19 out in the yard.

20 Q. Now, calling your attention to the
21 early days of Polly's and even Mr. Hack of when it
22 was Andrew's, did you ever see anyone eating or
23 drinking in the rear part of the property?

24 A. No. The only thing Andy Hack was
25 doing in the rear of the property, his father used

1 to have a big tin and he used to go over there and
2 dump the leaves.

3 Q. Well, aside from the leaves --

4 A. I mean, that's the only activity that
5 was doing on there when Andy Hack had it.

6 Q. You never saw, in the early days,
7 Bocce courts?

8 A. What are you talking about? Are you
9 talking in the '50s and the '60s?

10 Q. Yes.

11 A. Yeah, in the '50s and '60s they had
12 casual parties back there from the Republican Club
13 or whatever, which they brought in their food.
14 And they did everything, they were bringing in
15 their food. They were bringing in their little
16 grills to cook. But nothing was ever served from
17 the bar itself out to the back.

18 Q. Well, now we have some new testimony.
19 You did see people eating and drinking in the '50s
20 and '60s way back then?

21 A. It wasn't from the bar. They were
22 using his property to have these little function.

23 Q. Well, how do you know where the food
24 came there?

25 A. Because he never cooked like that.

1 They were having hotdogs and hamburgers and they
2 were cooking them on the grill.

3 Q. Well, the grill was on the premises,
4 wasn't it?

5 A. They were bring in their grills.

6 Q. If they were bringing the grill, but
7 the grill was still on the property, wasn't it?

8 A. They weren't, because if you look at
9 Andy Hack and when they were having these parties,
10 the Preyers house wasn't there. They were using
11 that property to do all their entertaining and
12 whatever they were doing, the functions, that's
13 where everything was taking place.

14 Q. And not on the subject property?

15 A. No.

16 Q. The subject, meaning where the
17 restaurant is today?

18 A. No, because where you're talking
19 about, that was all woods.

20 Q. And you never saw anybody eating or
21 drinking in that area, that area meaning, into the
22 rear of the Hack, Andrew's, Polly's, Ryan's
23 property today?

24 A. No, where it was, it was to the right
25 of it, and then to the right of it was the vacant

1 lot. And the vacant lot, that's where the Preyers
2 house stood right now, that's where they were
3 having their parties.

4 Q. And did you ever see horseshoe pits
5 and things like that, recreational things, you
6 know, stuff that people had recreation, whether it
7 be horseshoes or Bocce courts or things like that?

8 A. To the right of Polly's, yeah. I
9 mean, there was a big tree in the back and there
10 was a lot of bushes in the back on the Polly's
11 property. Once they put the house, the Preyers
12 house on that property, they had no room to
13 entertain on Polly's property.

14 Q. Well, how did you knew whose was
15 whose? You don't know where the property line
16 was.

17 A. They put the house. They put the
18 house over there. Before the Preyers's house was
19 over there, there was a great big field where they
20 had ample parking for cars and they had things
21 going on. Polly's never used the back of his
22 property.

23 Q. So were you in the hearing room when
24 a number of folks came and testified that they ate
25 and drank in the back of the restaurant, were you

1 able to be here at that time?

2 A. Yeah, I was here at that time. And
3 you know something, they talking they were able to
4 eat and drink, they weren't talking about Polly's
5 property. They were talking about the right of
6 the property.

7 Q. But they testified, if you recall,
8 and the Board's --

9 A. Oh, there was a lot of testifying
10 going on there. That if you read through it and
11 you knew the circumstances it was really a bunch
12 of lies. You want to know the truth? When the
13 one guy said that there was a tent back there,
14 there was never a tent, okay. And they went on
15 and on. I mean, I've been on the block for 64
16 years. My cousin has been on the block for over
17 70 years. We're the ones that knew what was going
18 on back there, not the occasional people that came
19 over there with their parents or whatever. We're
20 the ones that lived there. We're the ones that
21 saw it every day.

22 Q. If you recall, those folks didn't
23 sound like they were occasional. They were
24 regulars.

25 MR. FERNICOLA: That's argumentative.

1 I have an objection.

2 Q. Counsel is correct. We shouldn't be
3 arguing. It is up to the Board's recollection
4 that counts, not yours or mine.

5 A. Yeah.

6 Q. In any case, going back to the
7 testimony. It is your testimony that, if there
8 would be eating or drinking on the rear, it was
9 not in the rear of the restaurant, it was the rear
10 on the property next door?

11 A. Yes.

12 Q. Now, who owned that property, do you
13 recall?

14 A. The Villas owned the property.

15 Q. And who was that?

16 A. That is Rose Preyers husband's
17 mother's father and mother.

18 Q. So those are the folks you just
19 asked --

20 A. Yeah, you want to know, you asked me.
21 I'll tell you.

22 Q. We've got it.

23 A. You got it? You understand it?

24 MR. MONDELLO: The Chairman has a
25 burning question for Ms. Assidio.

1 THE WITNESS: Go ahead.

2 CHAIRMAN DUNNING: When was the
3 Preyers's house built, do you know?

4 THE WITNESS: I would say in the late
5 '60s I would think. I mean, you would have to ask
6 Ms. Preyers.

7 CHAIRMAN DUNNING: Well, that's what
8 we'll do next.

9 THE WITNESS: You know. But up until
10 that point, you thought that Polly's had a big
11 place, because it was wide open and everything
12 else. Once that house came there, you saw how,
13 you know, small the Polly's property was, that it
14 was just, you know, on both sides. I mean,
15 there's really nothing but deck there. There's no
16 frontage.

17 BY MR. RUBIN:

18 Q. Do you have any idea how big the
19 Polly's property or Ryan's property is?

20 A. Didn't he say he had three quarters
21 of an acre or something like that at the last
22 meeting?

23 Q. I don't --

24 A. I mean, if you look at your minutes,
25 you'd probably find it. But I thought he said he

1 had three quarters of an acre.

2 Q. So you don't know of your own
3 knowledge how big that is, from your knowledge of
4 the neighborhood?

5 A. No, I know my property is an acre
6 over there. 13 Park Street, I have an acre.

7 Q. 13 Park is an acre?

8 A. Yes.

9 Q. And that's immediately next door?

10 A. Yes.

11 Q. And you're further down where you
12 live?

13 A. I'm right next door to 13.

14 Q. You're number seven?

15 A. I'm number seven.

16 Q. And how big is that property?

17 A. It's like 75 by 125.

18 Q. So it's a smaller lot?

19 A. It's a smaller lot, yeah, my
20 grandmother gave it to my father to build a house,
21 because my grandparents have been through for, you
22 know, they owned property back there for over 100
23 years.

24 MR. RUBIN: Thank you. That's all
25 the questions I have.

1 MR. MONDELLO: Any of the Board
2 members have any questions?

3 MR. HOFFMAN: You're saying that the
4 property that Polly's was using for these
5 political picnics was the property to the right of
6 Polly's, and isn't that where their house is now?

7 THE WITNESS: Yes.

8 MR. HOFFMAN: So they were actually
9 having their party on their property?

10 THE WITNESS: Yes.

11 MR. HOFFMAN: And they were fine with
12 that?

13 THE WITNESS: I think they had an
14 arrangement going on.

15 MR. MONDELLO: Counsel, we will
16 recall Ms. Preyers in a couple minutes.

17 MR. FERNICOLA: Ms. Bellante will
18 address that issue. There was a lease that
19 allowed Polly's to use the property.

20 MR. HOFFMAN: So they had an easement
21 to use the property?

22 MR. FERNICOLA: They had a written
23 agreement.

24 MR. HOFFMAN: So in essence, Polly's
25 was organizing these picnics at the time and just

1 using the property that they had permission to
2 use?

3 MR. FERNICOLA: The Republican Club,
4 I think was the testimony, that used it.

5 MR. MONDELLO: Any other questions
6 for Ms. Assidio from the Board members?

7 Your witness, Mr. Fernicola.

8 MR. FERNICOLA: I have no further
9 questions.

10 MR. MONDELLO: Fair enough. Any
11 residents within 200 feet, any questions for Ms.
12 Assidio? Hearing none, seeing none, residents?
13 Okay, thank you very much.

14 Perhaps we can recall Ms. Preyers for
15 the specific question as to when your house was
16 built? I know there was some testimony that your
17 grandfather owned it from 1911?

18 MS. PREYERS: My husband's
19 grandfather.

20 MR. MONDELLO: Husband's grandfather?

21 MS. PREYERS: Yes.

22 MR. MONDELLO: You remain sworn.
23 When did you build the house?

24 MS. PREYERS: 1962 or 1962.

25 MR. MONDELLO: Any other questions?

1 VICE CHAIRMAN GRYGUS: After the
2 house was built, was there still an agreement and
3 was there any use of the rear of your property by
4 Polly's?

5 MS. PREYERS: No, absolutely not.

6 MR. HOFFMAN: Your permission given
7 to the previous owner was ceased in 1963 when the
8 house was built?

9 MS. PREYERS: Yeah, that was why the
10 house was built, because they took advantage of
11 the conditions of the lease.

12 MR. HOFFMAN: Okay. So then you said
13 they didn't have permission.

14 MS. PREYERS: It was an annual lease.

15 MR. MONDELLO: How so, how did they
16 take advantage of the conditions of this easement
17 or lease?

18 MS. PREYERS: They were given -- my
19 daughter has a copy of the lease. And the size of
20 the property that he could use for picnics and
21 parking was designated and he exceeded that.

22 MR. MONDELLO: Got it, he enlarged
23 it. Fair enough.

24 Any other questions from Board
25 members? Thank you.

1 All right there, Mr. Fernicola, next
2 witness.

3 MR. FERNICOLA: Thank you. Robert
4 Barbagallo.

5 MR. MONDELLO: Welcome, Mr.
6 Barbagallo.

7 (Witness sworn)

8 MR. MONDELLO: Please state your
9 name, spell your last name and give us your
10 address.

11 MR. BARBAGALLO: Robert
12 B-a-r-b-a-g-a-l-l-o.

13 MR. MONDELLO: Address?

14 MR. BARBAGALLO: 48 Short Street,
15 Wanaque, New Jersey.

16 MR. MONDELLO: Your witness, Mr.
17 Fernicola.

18 DIRECT EXAMINATION BY MR. FERNICOLA:

19 Q. Have you lived in Wanaque your entire
20 life?

21 A. 70 years.

22 Q. And did you grow up on Park Street?

23 A. Yes, I did, five Park.

24 Q. Are you familiar with the property
25 that's currently owned by Mr. Ryan?

1 A. Yes, I am.

2 Q. 17 Park Street?

3 A. Um-hmm.

4 Q. Now, prior to Mr. Ryan owning the
5 property, did you ever observe any outdoor bar
6 located at the rear of that property?

7 A. No, sir.

8 Q. Did you, prior to Mr. Ryan owning it,
9 did you observe any outdoor seating located in the
10 rear of the property?

11 A. Yes.

12 Q. Describe it.

13 A. A lot of seating, a lot of tables.

14 Q. Is that now or prior to Mr. Ryan?

15 A. I'm talking about now.

16 Q. Okay. So my question is, prior to
17 Mr. Ryan, was there outdoor seating?

18 A. No. There might have been a picnic
19 table by the Bocce ball court. I'm talking about
20 like 1950 now, '56 or something.

21 MR. MONDELLO: So the testimony is
22 there might have been a picnic table or a Bocce
23 court back then?

24 THE WITNESS: There was definitely a
25 Bocce ball court. All the old Italian people used

1 to play on Sundays.

2 MR. LUDWIG: Was that on that
3 property or the adjoining property?

4 THE WITNESS: I don't know where the
5 property lines where. There was a Bocce ball
6 court there in the back behind the trees where
7 they cut that big 100-foot pine tree, it was right
8 behind there somewhere, but I don't know.

9 MR. HOFFMAN: But it was associated
10 with the bar?

11 THE WITNESS: Excuse me?

12 MR. HOFFMAN: The Bocce court was
13 associated with the bar?

14 THE WITNESS: People from the bar
15 played Bocce.

16 MR. LUDWIG: If you're on Park and
17 you're looking at the building, the Bocce ball
18 court would be to the right?

19 THE WITNESS: If you walked into
20 Polly's bar, you know where it is, right, you walk
21 out of Polly's bar, the door, about 1:00 over
22 there behind the trees, there was a Bocce ball
23 court.

24 MR. HOFFMAN: So the other end of the
25 parking lot?

1 THE WITNESS: Yeah, in the wooded
2 area.

3 BY MR. FERNICOLA:

4 Q. We'll address what's there now in a
5 moment, but let's talk about prior, before Mr.
6 Ryan brought the property, did you ever see the
7 service, the outdoor service of food and alcohol
8 at that property?

9 A. No.

10 Q. Now, after Mr. Ryan acquired the
11 property, were there changes made to the rear of
12 the property?

13 A. Yes.

14 Q. Did you observe those changes?

15 A. Yes.

16 Q. Would you describe for the Board the
17 changes to the rear of the property after Mr. Ryan
18 acquired the property?

19 A. There's a lot of tables back there.
20 There's chairpersons for people to sit down and
21 eat. It's actually pretty nice, but it's been
22 very much expanded.

23 Q. Would you describe to the Board the
24 expansion?

25 A. It's very much expanded than it ever

1 was before. It was basically wood and trees and
2 brush and stuff. Now it's pretty nice. It's got
3 a walkway patch up to the back of the woods.
4 Tables, a lot of tables, a lot of chairs. I think
5 heaters and there's a fire pit back in the woods
6 and that's all been cleaned up.

7 Q. Did any of those structures exist
8 prior to Mr. Ryan owning the property in the rear?

9 A. No.

10 Q. Has the expanded use of the rear of
11 the property since Mr. Ryan owned it had a
12 negative effect on the neighborhood?

13 A. I don't know about the neighborhood,
14 but it's had a negative effect on me. I told him
15 right to his face.

16 Q. What did you tell Mr. Ryan?

17 A. Parking. I don't know how the
18 parking was ever allowed. I don't know how the
19 town or the board of the police or anybody allows
20 it. It's a health/safety issue. You can't get a
21 fire truck through there the way it is.

22 Q. Why not?

23 A. There should be parking on his
24 property for his people or the town should have
25 down something about it, park on one side. It's

1 too narrow. It's a little street, cars parked
2 both ways. I can get a pickup through, just. How
3 can you get a fire truck through with an
4 ambulance? I can't understand how that ever
5 happened. I heard neighbors -- I never called the
6 police, because I'm on Short Street now, which is
7 right there, but out of the way. They don't park
8 on my street yet. But it's really tight to get
9 through. How do you get a fire truck back there.
10 I own five houses back there. If somebody gets
11 sick or has a fire, how are they going to get
12 water back there? I think it's wrong. It's a
13 disgrace for the town, for the people who live
14 back there. I don't see how any of them haven't
15 complained. I don't get it. I have a concern
16 only about the road. The bar's been there since
17 before I was born. I don't really have a problem
18 with the bar, but parking, something should be
19 done about that. It's wrong, just plain wrong.
20 I'm surprised there isn't more people complaining
21 about it on the street, but they're not, for
22 whatever reason.

23 MR. LUDWIG: May I ask a question?

24 THE WITNESS: Sure.

25 MR. LUDWIG: You say you own five

1 houses, including yours or --

2 THE WITNESS: Yeah, including mine.
3 East of that bar.

4 MR. LUDWIG: So some of those
5 surrounding houses are tenants of yours?

6 THE WITNESS: Yes.

7 MR. LUDWIG: And they haven't
8 mentioned to you --

9 THE WITNESS: I'm not speaking for
10 anybody else, but no.

11 MR. MONDELLO: All right. So some of
12 the guys that are out there playing Bocce ball,
13 you saw that. Right?

14 THE WITNESS: Yes, probably early
15 '60s, maybe.

16 MR. MONDELLO: Sunday afternoon,
17 typically?

18 THE WITNESS: A lot on the weekend
19 and I would say a lot on Sunday.

20 MR. MONDELLO: Did you see it once?
21 Did you see it twice?

22 THE WITNESS: It was all the time.

23 MR. MONDELLO: And you saw it all the
24 time?

25 THE WITNESS: Bocce ball all the

1 time.

2 MR. MONDELLO: Did any of these guys
3 ever have food with them or drinks, they didn't
4 have a beer with them?

5 THE WITNESS: I can't tell you for
6 sure, because I've got to testify to what I
7 actually know, I would assume, if you went to a
8 bar and I was there playing, I'm going to take a
9 beer out with me and have it. So I would think
10 that probably occurred. I can't testify to that,
11 because I'm not sure. I'm a young guy, I'm sure
12 they were drinking back there they were playing
13 way back then.

14 MR. LEVINE: But you're not sure
15 which property this was, whether it was Polly's
16 property or the property next door?

17 THE WITNESS: No, because the
18 horseshoe bits were - actually, when I was young,
19 I didn't realize that Polly's didn't own that big
20 field. But actually, it was owned by the Villa
21 family.

22 VICE CHAIRMAN GRYGUS: To the best of
23 your recollection, seeing what's back there now,
24 could you say that the Bocce ball was in the area
25 that has since been expanded in the back or was

1 it --

2 THE WITNESS: Very possible, but I
3 don't know where the property lines were. And
4 when I heard the testimony tonight about -- I know
5 the horseshoe pits, they were running on Rose's
6 property.

7 MR. LUDWIG: Are you familiar with
8 where the shuffleboard is now?

9 THE WITNESS: What shuffleboard? I
10 never saw a shuffleboard back there. Bocce ball.
11 Unless they were playing shuffleboard on the Bocce
12 ball court.

13 MR. MONDELLO: God forbid.

14 MR. LUDWIG: On the drawing here, it
15 shows a shuffleboard.

16 MR. MONDELLO: Please be careful,
17 because the transcriber cannot take down six
18 voices at the same time, so one at a time.

19 MR. LUDWIG: It shows the shuffle
20 board court right here, is that about --

21 THE WITNESS: This would be the door
22 coming out of Polly's and the Bocce ball court was
23 over here somewhere. That's way back in the
24 woods. That was all trees and brush.

25 MR. LUDWIG: So it was closer to the

1 property line?

2 THE WITNESS: It wasn't there, buddy.
3 That's back in the woods.

4 MR. MONDELLO: Can we just recap?

5 MR. FERNICOLA: He said the
6 shuffleboard court wasn't previously there.

7 MR. MONDELLO: I'm sorry, so you had
8 no other questions? Board members have any
9 questions for Mr. Barbagallo?

10 My only question is, you said you've
11 been here for 70 years, how come you don't have
12 gray like this Italian, what's the secret?

13 THE WITNESS: Good living.

14 MR. MONDELLO: Mr. Rubin, your
15 witness.

16 CROSS EXAMINATION BY MR. RUBIN:

17 Q. Mr. Barbagallo, calling your
18 attention to the past, you were there for all
19 these years watching. Has there always been a
20 restaurant in site?

21 A. Yes, sir, before I was born.

22 Q. And previous to Mr. Ryan, there was
23 Polly's and Andrew's?

24 A. I knew them both personally.

25 Q. And you knew that they were serving

1 food and beverages?

2 A. Beverages. There wasn't a whole lot
3 of food going on in there. They did have food.
4 They had a kitchen, but it wasn't used frequently.
5 It was used if there was a function going on
6 inside.

7 Q. You knew there was a kitchen?

8 A. Yes, sir, I've been in their kitchen.

9 Q. The kitchen was always there?

10 A. Yes. I don't know about always.
11 Since I can remember, there was a kitchen. I was
12 friends with those people.

13 Q. And that was Mr. Hack for Andrew's
14 and the Polly's family from when Polly's had it,
15 whatever family that was, there were always
16 families that owned it?

17 A. Yeah, it was the stepson and the
18 brother looking after -- the older Alby passed
19 away.

20 Q. Calling your attention to your
21 knowledge of the area, but over the years and
22 we're talking back in '60s and '70s, which we
23 heard a lot about in prior testimony from other
24 witnesses, did you see anyone eating or drinking
25 in the rear of the premises, did you actually see

1 it?

2 A. I can't remember. I know the old
3 guys played Bocce ball, I would assume that they
4 brought a beer out there. But if you're going to
5 ask me if I remember seeing somebody sucking down
6 a beer, no. I'm not saying it didn't happen, I
7 just can't testify to that, because I don't
8 remember.

9 Q. And you have seen what's there today?

10 A. Yes.

11 Q. And is it your testimony that some of
12 these recreational facilities, and I call
13 recreation Bocce, the horseshoes happened there
14 for a number of years?

15 A. The Bocce ball court was there as
16 long as I could remember and then it disappeared.

17 Q. And the horseshoe pits?

18 A. Not by the Bocce ball court. Might
19 be over in the field on her property, but not --
20 actually, I never saw the old guys play
21 horseshoes, I don't think they could throw them
22 that far. That used to roll the little balls,
23 that's it.

24 Q. But you do recall that, at one point
25 in time through the years, there was some

1 recreation going on in the rear, but you couldn't
2 tell us whose property it was, it's impossible to
3 tell?

4 A. Well, apparently, the field belonged
5 to the other bar, Flips. And there was a property
6 line difference there. Actually, where they used
7 to park cars way back when they had a party in the
8 '50s, they had a like a republican or democrat
9 party over there, but there was no houses. It
10 used to be a field. I know for sure that was not
11 part of Polly's.

12 Q. How did you know that?

13 A. Because they said it earlier in this
14 meeting.

15 Q. So it's only what you heard today?

16 A. Yeah. Well, when I was a kid, I
17 thought it was Polly's property, to be honest with
18 you.

19 Q. We're asking today what you know of
20 your own knowledge, that's the whole idea of these
21 hearings, is to take what you know yourself and
22 advise the Board.

23 A. Well, I know they never served any
24 food in the back. And I know they probably didn't
25 drink very much in the back and I know they didn't

1 have big parties outside. They had parties
2 inside, but they didn't have big parties outside.
3 They had the republican party or something
4 outside, it was pretty big.

5 Q. But you did see parties from time to
6 time?

7 A. Yeah, sparingly, yeah.

8 Q. And you lived fairly close to the
9 site at that time?

10 A. When I was younger, I lived three
11 houses way.

12 Q. And then when you were older, you
13 lived further away from the site?

14 A. I passed it every day. I always
15 lived in that -- I live on, one of my houses was
16 10 Mountain Avenue for a while when I was younger,
17 when I was 22. But that's everyone closer to the
18 bar, because the property there was actually right
19 behind Mike's bar.

20 Q. And through the years when there was
21 an event, there was always a parking issue, was
22 there not?

23 A. No.

24 Q. There was never a parking issue?

25 A. I never had problem getting up the

1 street in my life until 2014 I think is when they
2 started having problems.

3 Q. So for all the years that the place
4 was in operation, the parking was --

5 A. The parking lot was smaller, but
6 people that went there fit on their own property.

7 MR. RUBIN: Thank you very much.

8 MR. MONDELLO: Mr. Fernicola,
9 anything else?

10 MR. FERNICOLA: No, sir.

11 MR. MONDELLO: Any questions from
12 residents within 200 feet of Mr. Barbagallo?
13 Hearing none, seeing none, we'll close that
14 portion. Next witness.

15 MR. FERNICOLA: Thank you.

16 Lucille Brule.

17 MR. MONDELLO: Welcome.

18 (Witness sworn)

19 MR. MONDELLO: Please state your
20 name, spell your last name, give us your address.

21 MS. BRULE: Lucille, L-u-c-i-l-l-e,
22 Brule, B-r-u-l-e. My address is 91 Milton Road,
23 Oak Ridge, New Jersey.

24 MR. MONDELLO: Your witness, Mr.
25 Fernicola.

1 DIRECT EXAMINATION BY MR. FERNICOLA

2 Q. Are you a real estate agent?

3 A. I'm a broker.

4 Q. Broker. Starting in 1988, did you
5 serve as the listing agent for the rental of the
6 apartment located at 19 Park Street?

7 A. Yes, I did.

8 Q. Can you estimate for the Board the
9 number of times that you've been at 19 Park Street
10 over the years since 1988?

11 A. Many, many, many times.

12 MR. MONDELLO: Is it ten? Is it a
13 hundred?

14 THE WITNESS: Could be hundreds.

15 MR. MONDELLO: Hundreds?

16 THE WITNESS: Yes, I market that area
17 all the time.

18 BY MR. FERNICOLA:

19 Q. Do you manage other properties on the
20 area of Park Street in addition to 19?

21 A. Yes, I'm actually a property manager
22 also for 30 Park Ave. My landlord lives out of
23 the country.

24 Q. From 1988 to 2010, did you ever
25 observe the outdoor service of food or alcohol at

1 the property, 17 Park Street, known as The Tree
2 Tavern property?

3 A. Never.

4 Q. Now, in 1994, were you employed by a
5 real estate agency known as The Blue Realty?

6 A. Yes, I was.

7 Q. And in 1994, was Andrew Hack the
8 owner of the property, 17 Park Street?

9 A. Yes, he was.

10 Q. And did he list the property, 17 Park
11 Street, for sale with The Blue Realty?

12 A. Yes, he did.

13 Q. Let me show you what I'm going to
14 have marked as Exhibit-016 and ask you if you can
15 identify whether this document is the --

16 A. This a garden state -- well, actually
17 not --

18 MR. FERNICOLA: It's two pages. Just
19 take moment and look at it while I give copies to
20 the Board.

21 MR. MONDELLO: While she's doing
22 that, Mr. Fernicola, please explain what it is,
23 just so I can put something down on the exhibit
24 list.

25 MR. FERNICOLA: It's a 1994 listing

1 for the subject property. It's two pages. What
2 my office did, because the print on the second
3 page is kind of small, the more pertinent data we
4 copied in a larger file on the first page, and
5 that's two pages. It's the same document.

6 MS. FIORITO: Is it 17?

7 CHAIRMAN DUNNING: 16.

8 MR. MONDELLO: 016, right.

9 (Exhibit-016, 1994 Real Estate
10 Listing for 17 Park Street, marked for
11 identification)

12 THE WITNESS: It's a listing that we
13 used back that year.

14 MR. FERNICOLA: Just give the Board
15 one second.

16 THE WITNESS: Okay, sorry.

17 MR. RUBIN: Mr. Chairman, before
18 there is testimony on this, can I have a moment of
19 voir dire as to where this is, who prepared it,
20 where it comes from?

21 MR. FERNICOLA: He can do that on
22 cross.

23 MR. RUBIN: No, it's -- I believe the
24 appropriate way to do it is to see if it's
25 appropriate to talk about it, and that's a voir

1 dire on the exhibit.

2 MR. MONDELLO: Well, can't it be done
3 with a proffer?

4 MR. FERNICOLA: I'll lay the
5 foundation. I'm just having her identify the
6 document. We haven't even described it yet.

7 MR. MONDELLO: Just give us a minute,
8 let's see if the Board can get this first. Does
9 everybody have a copy?

10 All right. So lay a foundation, see
11 if we can get a proffer.

12 BY MR. FERNICOLA:

13 Q. Did you retrieve a copy of this 1994
14 listing for the 17 Park Street property?

15 A. Yes, I did.

16 Q. All right. And so, tell the Board
17 what -- would you describe for them this two-page
18 document that's been marked as Exhibit-016?

19 MR. RUBIN: I object. She said she
20 retrieved it, that is not a foundation, it's
21 hearsay. She can't use this document. It's
22 worthless.

23

24 BY MR. FERNICOLA:

25 Q. Where did you retrieve the document

1 from?

2 A. I called the Board of Realtors, which
3 I belong to, Passaic County Board of Realtors,
4 okay. And I had told them I couldn't find it in
5 our system, our Garden State multiple listing
6 system. And I mean, of course you're not going to
7 find it, it's in the books. We weren't
8 electronically on computers back then. So I said
9 to her, this is what I'm looking for, the year. I
10 said, I know the agent who had listed the
11 property, but again, I can't find it in the book.
12 I will go and look for it. She e-mailed it to me,
13 I printed out a copy and here we have it.

14 Q. What agency was that that you
15 received a document for?

16 A. The Board of Realtors, Passaic County
17 Board of Realtors, Michelle Parrone (phonetic).

18 MR. MONDELLO: So when they retrieved
19 the document, where did they retrieve it from and
20 when did they do it?

21 THE WITNESS: Michelle Parrone, she's
22 our head -- I call her the CEO of our board of
23 realtors, she's in charge of everything.

24 MR. MONDELLO: And what's her
25 address?

1 THE WITNESS: She's on Berdan Ave in
2 Wayne, I don't know the exact number of the
3 building. We own the building.

4 MR. MONDELLO: And she retrieved it
5 from where?

6 THE WITNESS: She says, I have to go
7 to the basement of the building and look for the
8 year, the book that was published and that's when
9 she found the book that was published. This is a
10 copy of our printout. This is what we work with
11 with our books.

12 MR. MONDELLO: And this Board of
13 Realtors --

14 MR. FERNICOLA: Passaic County Board
15 of Realtors.

16 THE WITNESS: Passaic County Board of
17 Realtors.

18 MR. MONDELLO: Passaic County Board
19 of Realtors?

20 THE WITNESS: That's where I belong
21 to.

22 MR. MONDELLO: They normally keep
23 these records in books --

24 THE WITNESS: Not anymore.

25 MR. MONDELLO: Well, not anymore, but

1 this wasn't the only one in the book. Right?

2 THE WITNESS: No.

3 MR. MONDELLO: But ones from back
4 then are kept in some book in this building?

5 THE WITNESS: Absolutely.

6 MR. FERNICOLA: Was it a multiple
7 listing that the property was listed for sale in
8 1994?

9 THE WITNESS: Yes.

10 MR. MONDELLO: So this is a business
11 record, it's fairly reliable. It was kept, and
12 continues to be kept, in the normal course of
13 business, though I doubt anybody ever refers to
14 these things anymore, since everything is
15 electronic. So I'll allow it. Please continue.

16 BY MR. FERNICOLA:

17 Q. Does the 1994 real estate listing for
18 the subject property make any mention that the
19 outdoor service of food or alcohol is permitted at
20 the property?

21 A. No, not at all.

22 Q. And from your experience, if outdoor
23 service of food and alcohol was permitted at the
24 subject property in 1994, would the Blue Realty
25 agency have identified it in the remark section of

1 the --

2 MR. RUBIN: I would object to that.
3 That is so hypothetical.

4 THE WITNESS: Well --

5 MR. FERNICOLA: Hold on.

6 MR. RUBIN: I haven't finished my
7 objection. It is a hypothetical question that
8 this witness couldn't possibly answer. How would
9 she know what it is if --

10 MR. FERNICOLA: Well --

11 MR. MONDELLO: Hold on.

12 MR. RUBIN: There is nothing there to
13 substantiate this kind of question. It's the
14 wrong witness for the wrong piece of information.

15 MR. FERNICOLA: It's not a proper
16 objection. She worked at the agency in 1994. We
17 laid the foundation. That does not go to the
18 admissibility. The proper foundation has been
19 laid since she worked at the agency in 1994.
20 She's more than competent to give the testimony.

21 MR. MONDELLO: I concur. She's been
22 a broker since 1988, and whether or not a line
23 like that would be added in the remarks, I don't
24 know. It goes to the weight. Maybe something
25 like that would be put in during the normal course

1 of business, maybe it wouldn't. I don't know
2 that. It would have to go towards the weight of
3 the evidence.

4 THE WITNESS: May I?

5 MR. MONDELLO: Hold on.

6 BY MR. FERNICOLA:

7 Q. So from your experience, if the
8 outdoor service of food and alcohol was permitted
9 at 17 Park Street, would Blue Realty have
10 identified that in the remarks section in the 1994
11 listing?

12 A. We would have to get full disclosure,
13 absolutely. Full disclosure.

14 MR. MONDELLO: Full disclosure of
15 what?

16 THE WITNESS: Of the property, of
17 what's its use is, absolutely. We're not going to
18 -- we can't hide anything. We're not going to
19 lose our license over not getting full disclosure.

20 MR. MONDELLO: All right. Next
21 question.

22 MR. FERNICOLA: No further questions.

23 VICE CHAIRMAN GRYGUS: I have a
24 question.

25 In your recollection of either that

1 timeframe or electronically or now, can you think
2 of any other businesses that were placed for sale
3 that had outdoor use that that listing would
4 indicate, in the remarks column, outdoor seating?

5 THE WITNESS: No, I would have to
6 research that.

7 MR. MONDELLO: Do you know -- I'm
8 sorry, go ahead.

9 MR. LUDWIG: If it did have outside
10 seating, entertainment, whatnot, would it be
11 normal for a good realtor to include it at the
12 sale point?

13 THE WITNESS: Absolutely.

14 MR. MONDELLO: So my question would
15 be, who is Evelyn Ingino (phonetic).

16 THE WITNESS: Ingino, she's an agent
17 that still works with me. We're now at Coldwell
18 Banker. Our company had gotten sold in 2009 and
19 we now work at Coldwell Banker.

20 MR. MONDELLO: But you didn't draft
21 this?

22 THE WITNESS: This is not my listing,
23 no, but I know how to read the listing.

24 MR. MONDELLO: Any other questions
25 from the Board members?

1 Your witness, Mr. Rubin.

2 CROSS EXAMINATION BY MR. RUBIN:

3 Q. Were you ever at the site of what
4 we're calling now the restaurant, the --

5 A. 17 Park?

6 Q. The Polly's, the Andrew's, the Ryan
7 restaurant that's been testified --

8 A. Have I ever been inside the building,
9 is that what you're saying?

10 MR. MONDELLO: Let Mr. Rubin -- I
11 know you're excited. You're nervous. It's cold
12 in here, but let Mr. Rubin finish the question and
13 then answer.

14 Q. Have you been on those premises of
15 the restaurant? And you know which premises I'm
16 talking about, premises that we've been dealing
17 with for these last several hearings, have you
18 been there?

19 A. One time.

20 Q. Now, you said you've been on the
21 premises next door hundreds of times?

22 A. Yes.

23 Q. But you haven't been on this
24 premises?

25 A. One time.

1 Q. And were you there for a business
2 reason?

3 A. A bridal shower. I'm sorry, a baby
4 shower.

5 Q. So you were there to be a patron of
6 the restaurant?

7 A. Four or five years ago.

8 Q. And there was eating and drinking,
9 obviously, doing whatever one does as a shower?

10 A. Right, and I believe it was catered.

11 Q. But it was at that premises?

12 A. Yes.

13 Q. Did you ever have the opportunity to
14 go into the rear of the premises to look around to
15 see what was there, to see what the lay of the
16 land was?

17 A. Yes.

18 Q. You did go in the back?

19 A. Yes, I was outside. I was trying to
20 find a place to park my car.

21 Q. So were you there during the day?

22 A. During the day.

23 Q. And so, obviously, there was nothing
24 happening at that time, I assume?

25 A. Outside, no.

1 Q. You weren't part of the brokerage
2 that bordered these premises, the subject premises
3 that we're dealing with today?

4 A. No.

5 Q. Well, I mean, you were never involved
6 with 17 Park?

7 A. No.

8 MR. RUBIN: Thank you. That's all.

9 MR. MONDELLO: I'm sorry, Mr. Rubin,
10 you said no more questions?

11 MR. RUBIN: No.

12 MR. MONDELLO: Okay, thank you.

13 Any questions from Board members?

14 MR. COVELLI: I have a question.

15 MR. MONDELLO: Go ahead.

16 MR. COVELLI: Ms. Brule, everything
17 that's testified here before you on this case has
18 been a neighbor in the like. You said you live in
19 Oak Ridge?

20 THE WITNESS: Yes.

21 MR. COVELLI: So you're not a
22 resident, you don't live near this property?

23 THE WITNESS: No.

24 MR. COVELLI: Mr. Fernicola, are you
25 presenting her as a professional tonight?

1 MR. FERNICOLA: Really, she's been
2 there hundreds of times since 1988, so that gives
3 her the personal knowledge to testify. And then
4 she testified based on her 20 plus years of
5 experience as a broker, concerning the listing
6 agreement, what was contained in there and her
7 experience.

8 MR. COVELLI: Counsel, that's the
9 reason I'm asking the question, that when
10 professionals present to us, they usually identify
11 their credentials, they --

12 MR. MONDELLO: Well, I don't think
13 that Mr. Fernicola was really presenting her as an
14 expert in the field of real estate to answer a
15 question of some diminution in value. I mean,
16 she's here as really a fact witness. I don't see
17 her as an expert.

18 MR. COVELLI: Are you receiving
19 compensation to be here this evening?

20 THE WITNESS: Absolutely not.

21 MR. COVELLI: That was my question.

22 MR. MONDELLO: Residents within
23 200 feet, have any questions for Ms. Brule?
24 Residents period?

25 Hearing none, seeing none, we do need

1 to take a five-minute break.

2 MR. FERNICOLA: Thank you, counsel.

3 (Short recess taken)

4 MR. MONDELLO: All right. We've
5 reconvened the meeting.

6 CHAIRMAN DUNNING: Let the record
7 reflect everyone is present.

8 MR. MONDELLO: Your next witness, Mr.
9 Fernicola.

10 MR. FERNICOLA: Thank you, counsel.
11 At this time, I'm calling Ms. Lisa Bellante.

12 MR. MONDELLO: Welcome. You've been
13 hear a lot, you finally get to talk.

14 (Witness sworn)

15 MR. MONDELLO: Please state your name
16 and spell your last name.

17 MS. BELLANTE: Lisa Bellante,
18 B-e-l-l-a-n-t-e.

19 MR. MONDELLO: And your address?

20 MS. BELLANTE: 19 Park Street,
21 Wanaque.

22 MR. MONDELLO: Your witness, Mr.
23 Fernicola.

24 DIRECT EXAMINATION BY MR. FERNICOLA:

25 Q. When did you first begin to reside at

1 your home at 19 Park Street?

2 A. 1975.

3 Q. And probably a question I shouldn't
4 ask a woman, but was that the year that you were
5 born?

6 A. Yes.

7 Q. So after you were born in 1975, how
8 long did you live at the property?

9 A. I lived there until 2000.

10 Q. And do you live there full time and
11 continuously for those 25 years?

12 A. Yes.

13 Q. And after 2000, was there a period of
14 time that you came back and once again lived at 19
15 Park Street?

16 A. I came back in 2003 and lived at 19A
17 Park Street.

18 Q. The apartment?

19 A. Yes.

20 Q. And then after 2003, was there a
21 period of time that you moved into your current
22 residence, 19 Park Street?

23 A. 2006.

24 Q. And when did you purchase the
25 property from your mother?

1 A. In February of 2009.

2 Q. And do you own the house with your
3 husband, Mark Bellante?

4 A. Yes.

5 Q. And do you reside there with your two
6 daughters?

7 A. Yes.

8 Q. And they're twin girls?

9 A. Yes.

10 Q. How old are they?

11 A. They just turned five.

12 Q. When you purchased the property in
13 2009, did you and your husband do any renovation
14 work to the property?

15 A. Yes, a lot.

16 Q. Can you describe the work that you
17 did to the house?

18 A. We put new siding, a new roof,
19 remodelled the whole kitchen, the back, grate
20 room, put in a new bathroom downstairs.

21 Q. Now, when you were growing up, were
22 you familiar with the property next door that's
23 the subject of this hearing, 17 Park Street?

24 A. Yes.

25 Q. And when you were growing up, did you

1 ever observe the outdoor service of food and
2 alcohol at 17 Park Street?

3 A. No.

4 Q. Did you observe, when you were
5 growing up, an outdoor bar located at 17 Park
6 Street?

7 A. No.

8 Q. How about outdoor seating?

9 A. No.

10 Q. There's been testimony -- did you
11 observe any Bocce courts located at 17 Park
12 Street?

13 A. I did not.

14 Q. How about horseshoes?

15 A. No.

16 Q. There's been testimony, your mother
17 testified, and it's A-12, the four photographs.

18 MR. FERNICOLA: Do you have that,
19 counsel?

20 MR. MONDELLO: It's 012.

21 MR. FERNICOLA: 012, I'm sorry.

22 MR. MONDELLO: Does anybody have
23 those?

24 BY MR. FERNICOLA:

25 Q. Do you agree with you mother's

1 testimony that these four photographs depict the
2 rear of what is currently your property, 19 Park
3 Street?

4 A. Yes.

5 Q. Now, when you were growing up at 19
6 Park Street, was music played outdoor at the
7 adjacent property, 17 Park Street?

8 A. No.

9 (Exhibit-017, Lease from 1951, marked
10 for identification)

11 Q. Let me show you what I've marked at
12 017 and ask whether or not you can identify this
13 document for the Board?

14 A. It's a lease from 1951 between my
15 great grandparents and Anthony Pallavicini.

16 Q. This is from what year?

17 A. It's August 22nd, 1951.

18 Q. Do you know what property was being
19 leased?

20 A. 19 Park Street.

21 Q. Does the lease describe what the
22 purpose, what the use of the property was?

23 A. Yes.

24 Q. What is that purpose described in the
25 lease?

1 A. It says, "To be used for picnic
2 grounds and parking and for no other use
3 whatsoever."

4 Q. Now, let's talk about more current
5 time period. After Mike Ryan purchased the
6 property next door, were there changes made to the
7 rear of the property?

8 A. Yes.

9 Q. Can you describe those changes?

10 A. The back area was cleared out of the
11 woods. There was a bar back there, lots of
12 chairs, tables, fire pits. There's a trail to
13 goes up into the woods. There was more chairs
14 back there. There's lights.

15 Q. When did Mr. Ryan begin to make the
16 changes to the rear of his property?

17 A. Maybe 2011.

18 Q. And did it continue after 2011?

19 A. Yeah, it was gradual.

20 MR. MONDELLO: Mr. Fernicola, can I
21 see the lease, please?

22 MR. COVELLI: Is that being submitted
23 as an --

24 MR. MONDELLO: We've marked it as
25 017.

1 MR. COVELLI: I'm sorry, Mr.
2 Fernicola, continue.

3 BY MR. FERNICOLA:

4 Q. Now, have you and your family
5 suffered any negative impact from the expansion of
6 the rear of Mr. Ryan's property?

7 MR. RUBIN: Again, I would object to
8 that form of question, because she is not an
9 expert real estate appraiser or evaluation. It's
10 not the right witness for that kind of question.

11 MR. FERNICOLA: I had not asked Ms.
12 Bellante to express an opinion as to the fair
13 market value, I think counsel for the applicant
14 may have assumed that that was going to be my
15 question. But asking someone who lived next door
16 and has observed what takes place whether there
17 was a negative influence, she's indicated yes.
18 Now I'll have her describe the negative influence.

19 MR. MONDELLO: Fair enough. Let's
20 go.

21 BY MR. FERNICOLA:

22 Q. Go ahead, describe the negative
23 impact that you and your family have suffered.

24 A. Well, the parking, number one, out on
25 the street. The noise. The music. There's

1 always people trespassing across my property that
2 park on the street to go to the Tree Tavern. One
3 time a woman fell on my property leaving the Tree
4 Tavern going to her car. I found cigarette butts
5 in my yard along the fence. I found a big of
6 marijuana floating in my pool. Car alarms going
7 off. Lights constantly shining through our
8 windows.

9 Q. In 2009, if you knew that the outdoor
10 area was going be expanded in use, would you have
11 purchased and renovated the house at 19 Park
12 Street?

13 A. No.

14 MR. RUBIN: Objection. That has
15 absolutely nothing to do with the question before
16 this Board. That's off the wall. There is
17 absolutely no relevance to that kind of question
18 to the object of this hearing.

19 This hearing is a very narrow hearing
20 on an expansion of a nonconforming use. Asking
21 the objector or the interested party that kind of
22 question is prejudicial. It just has nothing to
23 do with the issue.

24 MR. FERNICOLA: First of all, is
25 counsel, I guess, stipulating that this is an

1 expansion of a nonconforming use, that's what he
2 just said. So that, in and of itself, requires a
3 use variance, would it not, counsel?

4 MR. RUBIN: That is the question
5 before this Board. This Board has to decide
6 whether or not there was an expansion of a
7 nonconforming use, that's why we are here.

8 MR. FERNICOLA: No, we're here
9 because you claim there was the existence, a
10 preexisting nonconforming use, that's why we're
11 here. And the uses that were in place, it's
12 relevant and it goes to the uses that were in
13 place.

14 MR. MONDELLO: All right. So at this
15 point, I have forgotten the question. So if I
16 could ask the transcriber to read back the
17 question.

18 (At this point in the proceeding, the
19 requested portion of the record was read back by
20 the reporter)

21 MR. MONDELLO: I'll allow it. What's
22 the next question?

23 BY MR. FERNICOLA:

24 Q. Ms. Bellante, you were a party to a
25 lawsuit involving Mr. Ryan and The Borough of

1 Wanaque with regard to the property?

2 A. Yes.

3 Q. And as part of that lawsuit, did the
4 superior court enter an order requiring the
5 borough to produce all of its files with regard to
6 the property, 17 Park Street?

7 A. Yes.

8 Q. And as part of that court order, were
9 documents produced by the borough?

10 A. Yes, they were.

11 Q. So let me show you what was marked as
12 07, a memorandum from Sergeant Angelo Calabro,
13 dated June 2nd, 2010.

14 Was this memorandum from Sergeant
15 Calabro marked 07 part of the documents produced
16 by the Borough of Wanaque in response to the court
17 order to turn over their files on the subject
18 property?

19 A. Yes.

20 Q. In addition to the memo by Sergeant
21 Calabro, did Wanaque also produce a series of
22 annual liquor license renewal applications
23 concerning 17 Park Street?

24 A. Yes.

25 MR. FERNICOLA: So Mr. Chairman, what

1 I have, and counsel, so I can explain to try to
2 expedite the situation. And I have liquor
3 licenses. I have copies for the Board and for
4 counsel. What I've done is, to expedite this, the
5 relevant page, I have put a tab on it, for all the
6 Board's copies and counsel's copy, because I'm
7 going to ask questions as to that page, and I
8 thought it would be easier.

9 MR. MONDELLO: Are you going to be
10 marking the entire packet as 018?

11 MR. FERNICOLA: Yes, I am.

12 (Exhibit-018, 1979 Liquor License
13 Renewal, marked for identification)

14 MR. MONDELLO: Do you have a copy of
15 the lease, which was marked as 017 for Mr. Rubin
16 or do we need to turn it back to him when he's
17 ready for cross?

18 MR. FERNICOLA: We'll need to turn it
19 over. That's the only copy that I have.

20 MR. MONDELLO: Okay.

21 MR. FERNICOLA: If I may proceed if
22 the Board's ready?

23 MR. MONDELLO: Go ahead.

24 BY MR. FERNICOLA:

25 Q. So Ms. Bellante, Is this the 1979

1 liquor license renewal for the property, 17 Park
2 Street?

3 A. Yes.

4 Q. Let me show you what is the third
5 page of the document, which is the page I tabbed.
6 And on the left-hand side, there's a series of
7 questions, "Any grounds adjacent to this building
8 to be licensed," and what's checked off?

9 A. No.

10 Q. And towards the end of the page it
11 identifies the owners as Andrew and Maureen Hack?

12 A. Yes.

13 MR. FERNICOLA: 019 is going to be
14 the 1980 liquor license renewal.

15 (Exhibit-019, 1980 Liquor License
16 Renewal, marked for identification)

17 Q. Would you turn to the fifth page of
18 the 1980 liquor license renewal, the page that's
19 tabbed. Approximately four lines from the top on
20 the left-hand side, it's a little bit cut off, but
21 can you read it?

22 A. It says, "Adjacent grounds not
23 licensed."

24 Q. And the last page is a January 28th,
25 1980, letter from Wanaque Police Department,

1 license transfer, Andrew Hack, Maureen Hack. Is
2 that correct?

3 A. Yes.

4 MR. MONDELLO: So Mr. Fernicola, how
5 many more liquor licenses are you going to be
6 presenting?

7 MR. FERNICOLA: Three more, counsel.

8 MR. MONDELLO: All right. So let me
9 just understand reason that you're proffering
10 this, because you've had some testimony that there
11 wasn't any beverages or alcohol -- I'm sorry.
12 There weren't beverages or food served there.
13 You've had some testimony from you're own
14 witnesses saying that perhaps there were beverages
15 there. Are you presenting this for what?

16 MR. FERNICOLA: Because over my
17 objection at the December 7th hearing, you allowed
18 counsel for the applicant to present the 1992
19 liquor license where the question, the same
20 question, was crossed off no and then yes. And
21 that was attached to the borough's attorney's
22 letter. In that letter, as I pointed out with
23 Mr. Ryan earlier tonight, the attorney for the
24 borough indicated the he did review prior years
25 liquor license.

1 MR. MONDELLO: Are you trying to
2 suggest that just because there's a series of
3 liquor licenses where that box, "no" has been
4 checked off, that the use was abandoned?

5 MR. FERNICOLA: My argument is,
6 counsel, is that this Board was allowed to see the
7 '92 liquor license and the box was crossed off,
8 "no" and then checked "yes," that was allowed over
9 my objection. The letter itself says they didn't
10 review prior years. You've had the foundation.
11 The borough was ordered to turn over its file, as
12 to this property, including the liquor license.
13 And we're now presenting to show that the prior
14 years --

15 MR. MONDELLO: You said that already.
16 I apologize. It's ten after 10:00.

17 So we have some liquor licenses that
18 the applicant has presented where it says yes, the
19 liquor license will be for the adjoining property,
20 and we have some that say it will not be.

21 MR. FERNICOLA: Right, because
22 December 7th you allowed it in. You said, the
23 weight is to the Board.

24 MR. MONDELLO: Sure, we'll allow it
25 in, yeah. I mean, we'll stipulate that you've got

1 three more that are going to indicate that they're
2 not.

3 Yes, question.

4 MR. HOFFMAN: Do you have any of the
5 liquor licenses from prior to 1979?

6 MR. FERNICOLA: Apparently, that was
7 the first year. That's the first year that we
8 received from the borough.

9 MR. HOFFMAN: Did you ask for any
10 liquor license prior to 1979?

11 MR. FERNICOLA: They were ordered to
12 turn over --

13 MR. HOFFMAN: And this is all?

14 MR. FERNICOLA: Just so we're clear,
15 there was an issue concerning whether they were
16 required. We went to court and the judge entered
17 an order, I have it, if you want see it, they were
18 ordered to turn it over.

19 MR. HOFFMAN: No, I'll take your word
20 for it.

21 MR. FERNICOLA: If there was, they
22 weren't produced to us. The first year we
23 received is 1979.

24 MR. COVELLI: Counsel.

25 MR. MONDELLO: Yes.

1 MR. COVELLI: I have a point of
2 inquiry. I'm not an expert. I've never owned an
3 establishment that had a liquor license. I've
4 never completed a liquor application. I've never
5 gone before, went to get one approved.

6 When I read that question, I can read
7 that question two ways, adjacent to the building,
8 meaning my own property or adjacent property to my
9 property. What is the definition? Can someone
10 shed any light to what does that question mean, so
11 that I can put it in relevance to how it's being
12 answered in two different ways. It almost seems
13 like it's subjective to the interpretation of the
14 applicant.

15 MR. MONDELLO: I think the chairman
16 --

17 MR. COVELLI: The question is, is
18 there another -- because I can read that question
19 meaning, is there another liquor license in the
20 neighborhood adjacent to this one. If I go to
21 where I work, there's two bars next to each other,
22 so --

23 MS. HENDERSON: Then they'd have to
24 testify to --

25 MR. COVELLI: I don't know. I'm just

1 telling you that I don't know how this question is
2 worded.

3 CHAIRMAN DUNNING: It's dealing with
4 this particular piece of property.

5 MR. FERNICOLA: Right. That is
6 correct.

7 CHAIRMAN DUNNING: And the real issue
8 with license is, normally, the license is listed
9 as being an internal use in the building, okay.
10 Most towns, if you want to go outside, you have to
11 reapply and license a portion of your property.
12 If you want to store liquor in the garage up the
13 street, you've got to license that garage under
14 this license for storage. The laws in New Jersey
15 are pretty cut and dry, as far as liquor licenses.

16 MR. COVELLI: That's why we make him
17 the chairman.

18 MR. FERNICOLA: For good reason.

19 MR. MONDELLO: I wouldn't have known
20 that. I drink quite a bit of liquor, but I
21 wouldn't have known that.

22 CHAIRMAN DUNNING: So basically, the
23 license pertains to the interior of the building.

24 MR. FERNICOLA: Thank you,
25 Mr. Chairman.

1 CHAIRMAN DUNNING: Our licenses are
2 strange, because they're asking up front if you
3 want to license something outside of the building.
4 What it doesn't say is that for a storage
5 facility, a patio in the front of the building for
6 a couple tables and chairs -- it's a very broad
7 description of what you're doing. It doesn't tell
8 you exactly what you're doing or what your license
9 by checking off that. Box does it license the
10 parking lot? I mean, it's a wide open question.

11 MR. FERNICOLA: That's why there's
12 typically sketches, are there not, when there's
13 outdoor service depicting the area? That's absent
14 from this record.

15 (Exhibit-020, 1981 Liquor License
16 Renewal, marked for identification)

17 BY MR. FERNICOLA:

18 Q. So 020, from 1981, the first page
19 about the fourth line from the top.

20 A. "Adjacent grounds not licensed."

21 MR. RUBIN: Do you have 020?

22 MR. FERNICOLA: I'm sorry, counsel, I
23 gave a copy to the Board. Do we have an extra
24 copy up there for Mr. Rubin? Thank you.

25 (Exhibit-021, 1982 Liquor License

1 Renewal, marked for identification)

2 Q. Let me show you 021, 1992 or 1982,
3 excuse me.

4 MR. MONDELLO: And this is the last
5 one, is it not?

6 MR. FERNICOLA: I have one other
7 after this one.

8 MR. MONDELLO: Mr. Rubin seems very
9 quiet. There could have been an objection as to
10 repetitive evidence, but he's being --

11 Q. Go ahead. The page that's tabbed,
12 what's reflected on it about four lines from the
13 top?

14 A. "Adjacent grounds not licensed."
15 (Exhibit-022, 1985 Liquor License
16 Renewal, marked for identification)

17 Q. And then, finally, since the Board's
18 indulging us, 1985, 022, so the page that's
19 tabbed, question number three, "Are any grounds
20 adjacent to this building to be licensed?" And
21 the box that's checked off?

22 A. No.

23 MR. FERNICOLA: Thank you.

24 MR. RUBIN: Mr. Chairman, if I may be
25 heard on the proffer of evidence?

1 MR. MONDELLO: Yes.

2 MR. RUBIN: All interesting that all
3 these liquor license have whatever information
4 they have. But most importantly, they have
5 nothing to do with this case. And I would object
6 to all of the items being enter into evidence,
7 because they are not germane to the issue. The
8 issue before this Board is clear, the issue is,
9 was or was there not an expansion of a
10 preexisting, nonconforming use to the outdoor area
11 of the premises. Whether or not the liquor
12 license did what it did is of no value. We
13 presented, if you recall, information about how
14 the liquor license had conditions on it on the
15 use. If you just went on that, this case would
16 have been over meetings ago if you went just with
17 what the liquor license said. Because you recall
18 the municipal council of the municipality granted
19 a liquor license with conditions on the use. That
20 should have been the end of this case, but it
21 wasn't, because the neighbors are objecting and
22 they went to court and they got a court order and
23 there's a court order that says, this matter will
24 be heard by the Board of Adjustment. But all of
25 this is extraneous. It has nothing to do with the

1 issue before the Board, which eventually, this
2 Board will decide whether or not there was an
3 expansion of the use. And all of this information
4 might be very interesting and historical, but has
5 nothing to do with the case.

6 MR. FERNICOLA: Well, first of all,
7 that's not even the issue that's before the Board.
8 The issue before the Board is not whether there
9 was an expansion. We know there was an expansion.

10 MR. MONDELLO: Mr. Fernicola, I just
11 want --

12 MR. FERNICOLA: I'm trying to.

13 MR. MONDELLO: You're not. What I
14 want to tell Mr. Rubin is, what is good for the
15 goose is good for the gander.

16 Now, the applicant entered into the
17 record A-3, the May 31st, 1974, liquor license
18 application and we accepted it and Mr. Fernicola
19 is correct. I said, it goes to the weight of the
20 evidence. And Mr. Fernicola has decided to enter
21 018, 019, 20, 21 and 22, we're going to admit it
22 and we're going to, just as A-3 did, it will go to
23 the weight of the evidence and the Board will
24 decide what to do with it. Let's move on to the
25 next question.

1 MR. FERNICOLA: The one thing I want
2 to say, the issue is not -- it's not an expansion.
3 The issue is whether or not it was a preexisting.
4 It's not limited to an expansion. Forget the
5 expansion.

6 MR. MONDELLO: We'll get to that
7 stuff in summation.

8 VICE CHAIRMAN GRYGUS: Counsel, I
9 just have a quick question before we go on any
10 further.

11 Regarding the lease, as I read the
12 lease, it says it was for a one-year term, August
13 22nd, 1951 to August 22nd, 1952.

14 MR. FERNICOLA: That was Ms. Preyers
15 testimony as well, they were annual leases.

16 MR. GRYGUS: So there was no lease
17 agreement after 1952?

18 THE WITNESS: That's the only one I
19 had.

20 MR. MONDELLO: Now, it may have been
21 renewed simply upon the payment of ten bucks every
22 year.

23 VICE CHAIRMAN GRYGUS: Right, that
24 was my question. Because in the testimony she
25 repeated that all those activities took place in

1 there after 1952, so I'm was just trying to find
2 out if it was done in agreement still existing
3 under that agreement.

4 MR. COVELLI: Is that what that was
5 for, \$10?

6 MR. MONDELLO: That's what it says,
7 ten bucks. Good deal.

8 Go ahead, Mr. Fernicola.

9 BY MR. FERNICOLA:

10 Q. In addition to reviewing the
11 municipal records on the subject property, did you
12 also review Mike Ryan's Facebook page for the Tree
13 Tavern?

14 A. Yes.

15 Q. Let me show you what's been marked as
16 Exhibit-23, 023.

17 MR. RUBIN: Once again, I would
18 object to the proffer of evidence. I have no idea
19 why this would be marked as to a land use issue.
20 And I would objection to it being made part of
21 this record.

22 MR. FERNICOLA: Because it's an
23 admission by the applicant that it shows
24 photographic evidence with dates showing when he
25 constructed the outdoor bar, when he initially

1 constructed it, when he opened the bar to the
2 public, when he put the it had bar to the public.
3 When he put the roof on it and when he expanded
4 it. So it gives dates certain and it's as
5 admission by the applicant.

6 MR. MONDELLO: But he testified to
7 that. He testified when he came in and he put the
8 bar back there and he did all this stuff. So why
9 do we need this duplicative evidence?

10 MR. FERNICOLA: Because it
11 establishes the precise dates that the applicant
12 posted on the internet when he opened the bar to
13 the public, when he constructed the bar.

14 MR. MONDELLO: Mr. Rubin, you know,
15 the rules of evidence, they're not thrown out the
16 window, but they certainly are relaxed. I'm going
17 to admit it. It will go to the weight. It seems
18 to be to be duplicative evidence. We had
19 testimony as to when he did this, when he did
20 that, et cetera, et cetera. So please don't spend
21 too much more time on this, Mr. Fernicola.

22 MR. RUBIN: Well, there's another
23 issue. This document is hearsay. It's definitely
24 hearsay. It cannot be used for any weight
25 whatsoever.

1 MR. FERNICOLA: An exception to
2 hearsay is a party admission and this is a party
3 admission, so that's the exception to hearsay.

4 MR. MONDELLO: He's right.

5 MR. RUBIN: But there's a right way
6 to do it. Having him bring it in on the
7 objector's case is not the right way. During Mr.
8 Ryan's testimony, it probably could be brought in
9 to impeach his testimony.

10 MR. FERNICOLA: I can do it anyway I
11 want, a party admission.

12 MR. RUBIN: But that is not the right
13 way to do it. I again, reiterate my objection.

14 MR. MONDELLO: So noted. Please just
15 try to -- we've got 10 minutes.

16 (Exhibit-023, Facebook Photos, marked
17 for identification)

18 BY MR. FERNICOLA:

19 Q. The first page is dated October 29th,
20 2013?

21 A. Yes.

22 Q. Does it state in the narrative that,
23 "We'll finally open to the public," the second
24 line under Tree Tavern Wine Bar?

25 A. Yes.

1 Q. Turn over to the next sheet. There
2 are two pages. Look at the date, I know it's kind
3 of faint, but is the date November 3rd, 2013?

4 A. No.

5 MR. MONDELLO: No?

6 Q. What's the date on it?

7 MR. MONDELLO: Well, the document
8 speaks for itself.

9 Q. The second page, excuse me, what's
10 the date of the second page?

11 A. November 3rd, 2013.

12 Q. Okay. Read the statement on the
13 first line.

14 A. "We made it through the first weekend
15 of being open."

16 Q. Turn to the next page, what's the
17 date on it?

18 A. May 20, 2014.

19 Q. The second sentence on the third
20 page, May 20th, 2014, will you read it to the
21 Board? It begins with, "We."

22 A. "We has been working hard to finish
23 the outside area and hope to complete it soon."

24 Q. Next sheet, sheet four, is that dated
25 May 22nd, 2014?

1 A. I think it's May 28th, 2014.

2 Q. And would you read the first line?

3 A. "Starting this Saturday, May 31st,
4 our now hours on Saturday are 1:00 p.m. to 11:00
5 p.m."

6 Q. Turn to the next page. This is a
7 photograph, what's the date on it?

8 A. May 22nd, 2014.

9 Q. Does that depict the outdoor bar?

10 A. Yes.

11 Q. Is there a roof located on the
12 photograph dated May 20th, 2014, over the bar?

13 A. No.

14 Q. Okay. Turn to the next sheet, what's
15 the date?

16 A. August 9th, 2014.

17 Q. Is there an outdoor bar depicted in
18 that photograph dated August 9th, 2014?

19 A. Yes.

20 Q. And does it depict in the photograph
21 a roof structure over the bar?

22 A. Yes.

23 Q. Turn to the next page, also dated
24 August 9th. Is that also another photograph of
25 the outdoor bar with the roof structure?

1 A. Yes.

2 Q. Next page, also stated August 9th,
3 2014, what's depicted?

4 A. A shuffleboard court.

5 Q. Turn to the next page, also dated
6 August 9th, 2014?

7 A. Yes.

8 Q. What is depicted in that photograph?

9 A. A seating area with a fire pit.

10 Q. Turn to the next page, please. What
11 is depicted in that photograph dated August 9th,
12 2014?

13 A. A pathway up into the woods.

14 Q. Turn to the next page. Is the date
15 March 30th, 2015?

16 A. Yes.

17 Q. Okay. Did you read what is captioned
18 under the Tree Tavern Bar on that date?

19 A. "Great News. Beginning Tuesday,
20 April 7th, the Tree Tavern will be open five days
21 a week, Tuesday through Saturday from 4:00 p.m. to
22 11:00 p.m."

23 MR. RUBIN: I reiterate my objection.

24 MR. MONDELLO: So noted. Mr.

25 Fernicola, if there is going to be another

1 document that basically repeats the fact that
2 Mr. Ryan has expanded his business in some way
3 shape or form, I'm going to deem it repetitive.

4 MR. FERNICOLA: Thank you. I'm
5 moving on to the next area, which I'm going to
6 show the witnesses a series of resolutions that
7 were produced by the borough concerning this
8 property pursuant to the court order.

9 MR. MONDELLO: And what purpose would
10 the resolutions serve?

11 MR. FERNICOLA: Because it addresses
12 when the first resolution, signed May 10, 2007,
13 stated, "For the purpose of expanding the premises
14 under the license within the sale."

15 So the first argument is that the
16 borough mayor and counsel were without authority
17 to improve an expansion of the use on the property
18 requiring Board of Adjustment approval.

19 MR. MONDELLO: Maybe we can get into
20 this discussion now, because we only have three
21 minutes.

22 From my perspective, there are three
23 questions that must be answered. The first one
24 basically is, did the serving of food and drink
25 outside occur prior to the enactment of the zoning

1 code prohibiting such activities?

2 The second question is, has the
3 nonconforming use been abandoned?

4 And then finally, the third question
5 is, was there an illegal expansion of the
6 nonconforming use from what it was at the time of
7 the adoption of the ordinance?

8 So the resolutions are nice and maybe
9 the governing body shouldn't have done this and it
10 shouldn't have done that. But none of that
11 evidence, none of those documents are going to
12 help these fact finders answer those three
13 questions.

14 MR. FERNICOLA: Well, the second
15 through fourth pages do, because it addresses the
16 times. And there was an expansion of the time
17 that they were permitted for outdoor service, and
18 it removed -- excuse me. The first resolution
19 limited the -- to control noise and crowd control,
20 that, "The Wanaque Police Department shall be
21 advised of any pre arranged gatherings that will
22 consist of more than 50 guests."

23 If you remember from our first
24 hearing, that that was from the resolution of this
25 Board in 2015, based on the representation as to

1 the seating capacity.

2 MR. MONDELLO: I don't disagree with
3 you. Hasn't there been an abundance of testimony
4 that use has been expanded? We're still stuck at
5 the first question.

6 MR. FERNICOLA: I understand.

7 MR. MONDELLO: And we've got to get
8 past the first question, which is basically, did
9 the serving of food and drink outside occur prior
10 to the enactment of the zoning code prohibiting
11 such actively?

12 MR. FERNICOLA: Yes, and this goes to
13 the third question -- if I may just finish.

14 In 2010, when they were first
15 permitted, the outdoor service of alcohol, number
16 one, it was noted as being an expansion of the
17 use, so that's the argument this it wasn't
18 preexisting.

19 Number two, the time limit was
20 limited to Fridays, Saturdays and Sundays, 2:00
21 p.m. to 9:00 p.m., that's in the first resolution.
22 Then you will see that the conditions that were
23 incorporated from Sergeant Calabro's 07, the
24 exhibit that was marked 07, those were the
25 conditions in the 2010. And then by 2013, that

1 the time limits were removed. It was expanded to
2 Monday through Thursday, noon to 10:00. And
3 Friday/Saturdays from noon to midnight they
4 allowed them the outdoor of live music, for the
5 first time, was permitted. And the limitations,
6 as far as having the police, was removed.

7 MR. MONDELLO: Yeah. There seems to
8 be such an abundance of evidence that a 12 year
9 old could figure out that there was some type of
10 an expansion, but we're not even there yet. But
11 there's a lot of evidence in the record. So if
12 you want to repeat that evidence, go ahead, but
13 you've got about two minutes.

14 (Exhibit-024, Four Resolutions
15 Produced by Wanaque, marked for identification)

16 BY MR. FERNICOLA:

17 Q. 024, are these four resolutions that
18 were produced by Wanaque pursuant to the court
19 order?

20 A. Yes.

21 Q. Is the first resolution dated
22 May 10th, 2010?

23 A. Yes.

24 Q. And these are all pertaining to the
25 subject property, 17 Park Street?

1 A. Yes.

2 Q. Refers to proposed expanding the
3 premises on their license?

4 A. Yes.

5 Q. Turn to the next page.

6 Resolution 110-0-10, is it dated June
7 14th 2010?

8 A. Yes.

9 Q. And does this address the time limits
10 for the outdoor use of the property?

11 A. Yes.

12 Q. "Does it indicate no entertainment
13 outside shall include live entertainment, as well
14 as electronically produced or amplified."

15 Did I read that correctly?

16 A. Yes.

17 Q. And has there been both live and
18 amplified music since the expansion?

19 A. Yes.

20 Q. The next one, 2011, the resolution
21 with regard to the outdoor service at the subject
22 property?

23 A. Yes.

24 Q. Go to the last page, 2013, the
25 resolution is dated June 10th, 2013?

1 A. Yes.

2 Q. Were the time periods expanded?

3 A. Yes.

4 Q. And did this resolution, for the
5 first time, permit outdoor entertainment?

6 A. Yes.

7 Q. And did it remove the requirement for
8 notification to the police for any party of 50 or
9 more?

10 A. Yes.

11 MR. RUBIN: Mr. Chairman, rather than
12 my objecting, I think this is the best piece of
13 evidence that we've heard today in favor of my
14 client. I would rest on it, because I think it's
15 terrific.

16 MR. FERNICOLA: Are you going to
17 referee it fair or is he going to be permitted
18 to --

19 MR. MONDELLO: Hold on a second. I
20 think I've been more than fair.

21 MR. RUBIN: Really, because that's a
22 closing argument. He's giving a closing argument.

23 MR. MONDELLO: You know what, Mr.
24 Fernicola, let's take a deep breath. I get it. I
25 understand. Quite frankly, I think you have made

1 your case for your time that if, in fact, the
2 Board finds that food and beverage was served
3 during that period prior to the ordinance, that he
4 better come back with a D-2 variance. I think
5 you've made that case very well.

6 MR. FERNICOLA: Well, I think even a
7 12 year old could figure that out and I agree with
8 you. That's what you said a moment ago. The
9 evidence on that is not even -- it's, at this
10 point, so undisputed and based on --

11 MR. MONDELLO: So why must you
12 continue?

13 MR. FERNICOLA: Because I'm building
14 a record, as any good lawyer is responsible to do,
15 so in case there is litigation -- and there
16 actually is still pending litigation as to this
17 property.

18 MR. RUBIN: There is.

19 MR. FERNICOLA: Yes, there is,
20 counsel.

21 MR. MONDELLO: And that's why we've
22 been very liberal with respect to repetitive
23 evidence being allowed into the Board's decision
24 making process. So with that, anything else?

25 MR. FERNICOLA: No.

1 MR. MONDELLO: No other questions for
2 this witness?

3 MR. FERNICOLA: Well, I see we're at
4 the time limit. I have no further questions at
5 this time.

6 MR. MONDELLO: Are you going to be
7 recalling Ms. Bellante?

8 MR. FERNICOLA: No, I have no further
9 questions at this time. So when we come back next
10 month, it's cross examination.

11 MR. MONDELLO: All right. So any
12 questions for this witness by the Board --
13 Mr. Rubin, I'm sorry?

14 MR. FERNICOLA: Unless the Board will
15 indulge us and let the cross continue and complete
16 the witness tonight?

17 MR. MONDELLO: What is the Board's
18 pleasure? I think they've had enough. I'm sorry
19 Mr. Rubin, we will continue in March.

20 MR. RUBIN: That's fine. What date
21 would that be?

22 MS. FIORITO: March 1st.

23 MR. MONDELLO: March 1st.

24 MR. RUBIN: Thank you.

25 (Matter adjourned at 10:32 p.m.)

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C E R T I F I C A T E

I, PATRICIA A. PUCCIARELLO, a shorthand reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

[Handwritten Signature]



Notary Public of the State of New Jersey

My commission expires March 12, 2019

License No. 2383485

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