

C.R.D.A.  
APR 01 2013

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

LAND USE REGULATION and ENFORCEMENT DIVISION

MARGARITAVILLE, RESORTS

DGMB CASINO, LLC

AMENDED SITE PLAN, SIGNAGE,

USE VARIANCE CONTINUED

BLOCK 1, LOTS 142 and 142.01

1133 Boardwalk and former Steeplechase Pier,  
Atlantic City, NJ

Thursday - March 21, 2013

---

- All New Jersey Certified Court Reporters
- Realtime/Daily/Expedited/"Rough Draft"
- Litigation Support Realtime from Reporter
- Internet Realtime Depositions/CDs/DVDs
- E-Mail Transcripts for Immediate Delivery
- Condensed (minis) wWord Index

**CSR ASSOCIATES**  
*Certified Shorthand Reporters*

1442 New Road, Northfield, New Jersey 08225

Phone (609) 641-7117 • Fax (609) 641-7640

[www.CSRCourtReporters.com](http://www.CSRCourtReporters.com)

E-Mail: [csr@csrcourtreporters.com](mailto:csr@csrcourtreporters.com)

- Videotaping/Courtroom Playback
- Videoconferencing
- Audio/Videotapes Transcribed/Copied
- Interpreters
- 24-hour Access to Owner
- Complimentary Conference Room

1                   Public hearing in the  
2 above-referenced matter, taken at the CASINO  
3 REINVESTMENT DEVELOPMENT AUTHORITY, 15 South  
4 Pennsylvania Avenue, Atlantic City, New Jersey,  
5 before Karen A. Haworth, a New Jersey Certified  
6 Court Reporter (CCR), nationally certified  
7 Registered Professional Reporter (RPR),  
8 nationally certified Certificate of Merit holder  
9 (CM), nationally certified Certified Realtime  
10 Reporter (CRR), a Delaware Certified Shorthand  
11 Reporter (CSR), nationally certified Certified  
12 LiveNote™ Reporter (CLR), and Notary Public of  
13 the State of New Jersey, on the above date,  
14 commencing at 10:07 a.m., there being present:  
15  
16  
17

18 APPEARANCES:

19 CASINO REINVESTMENT DEVELOPMENT AUTHORITY:

20  
21 PAUL WEISS, ESQUIRE, Chief Legal Officer,  
22 Chairman

23 ROSE ANN LAFFERTY  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROFESSIONALS TO THE BOARD FOR THIS HEARING:

Scott G. Collins, Esquire  
Riker, Danzig, Scherer, Hyland & Perretti

J. Timothy Kernan  
Kernan Consulting Engineers

APPEARANCES - CONTINUED - FOR THE APPLICANT:

COOPER, LEVENSON, APRIL, NIEDELMAN &  
WAGENHEIM, ESQUIRES  
BY: NICHOLAS F. TALVACCHIA, ESQUIRE  
Attorney for the Applicant

ALSO PRESENT - FOR THE APPLICANT:

Jon Barnhart  
Arthur W. Ponzio & Associates

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

<u>WITNESS (ES)</u>	<u>PAGE NO.</u>
JON BARNHART	
By: Nicholas Talvacchia	8

E X H I B I T S

<u>NO./DESCRIPTION</u>	<u>PAGE NO.</u>
A-16	
A-17	
A-18	
A-19	
A-20	
A-21	
A-22	
A-23	
A-24	
A-25	
A-26	
A-27	
A-28	
A-29	
A-30	

1     EXHIBITS - CONTINUED:

2

3     A-31

4     A-32

5     A-33

6     A-34

7     A-35

8     A-36

9     A-37

10    A-38

11    A-39

12    A-40

13    A-41

14    A-42

15    A-43

16    A-44

17

18

19

20

21

22

23

24

25

1 (Time noted: 10:07 a.m.)

2

3 PAUL WEISS: All right. On the  
4 docket for this morning is a continuation of  
5 application 2012-12-511, DGMB Casino, LLC,  
6 Margaritaville, Resorts, project at 1133  
7 Boardwalk and the former Steeplechase Pier, for  
8 amended site plan, signage and use variance.

9 I believe the only matter that's  
10 outstanding from the application when it was  
11 last heard is the use variance.

12 Is that correct, Mr. Talvacchia?

13 NICHOLAS TALVACCHIA: Right. And  
14 to the extent that sign would create an  
15 amendment to the site plan. But, the rest of  
16 the application was approved by the board this  
17 past Tuesday.

18 PAUL WEISS: Right. Okay.

19 All right. Mr. Talvacchia, we're  
20 ready if you are.

21 NICHOLAS TALVACCHIA: Good morning.  
22 Thank you, everyone.

23 For the record, Nick Talvacchia, on  
24 behalf of DGMB Casino, LLC, doing business as  
25 Resorts Casino Hotel.

1                   And with me is our planner and  
2 engineer, Jon Barnhart.

3                   Just a matter of housekeeping. We  
4 marked into the record exhibits A-1 through 15.  
5 I hand-marked A-16, but have not yet entered it.  
6 It is Resolution 13 of 2004. This is the  
7 resolution where the city Zoning Board approved  
8 the 20 billboards for Caesars Pier and found  
9 that that pier, Caesars Pier, because it was one  
10 of only four commercial piers, made that site  
11 particularly well suited.

12                   I'll put that in the record. We  
13 talked about that last month, but we didn't put  
14 that item into the record.

15                   Last month, this board had asked  
16 for some additional information, one of which is  
17 really not relevant to today. It was the height  
18 of the new sign over the Boardwalk, which we did  
19 e-mail to you. And I don't know if there's any  
20 questions on that before we proceed.

21                   PAUL WEISS: Not at the moment.

22                   NICHOLAS TALVACCHIA: Okay.

23                   PAUL WEISS: Why don't you proceed?

24                   NICHOLAS TALVACCHIA: And then you  
25 also asked us to do a solar study, which we've

1 done. And we did provide last week, by  
2 electronic means, the results of that solar  
3 study. So, that's probably a good place to  
4 start, unless you have any questions.

5 PAUL WEISS: Go ahead.

6 NICHOLAS TALVACCHIA: All right.

7 Mr. Barnhart --

8 Do you need to swear him in again  
9 or is he still under oath?

10 PAUL WEISS: You're still under  
11 oath.

12 And we'll note for the record that  
13 Mr. Barnhart has been recognized as an expert in  
14 prior hearings. And unless he's changed his  
15 stripes, he's still an expert.

16 Thank you.

17

18

JON BARNHART,

19

having been previously sworn in by the  
20 court reporter, was examined and testified  
21 as follows:

22

23

24

25

EXAMINATION BY NICHOLAS TALVACCHIA:



1           Q.       Mr. Barnhart, working with the SOSH  
2 architectural firm, was a solar study conducted  
3 for this project to analyze the shadowing  
4 impacts of the proposed outdoor advertising sign  
5 and -- primarily, for the beach purposes?

6           A.       Yes.   SOSH Architecture, together  
7 with our assistance, put together a sun shadow  
8 study, which includes, basically, three  
9 elements.

10                    It's a study of the billboard as it  
11 existed prior to start of construction. It's a  
12 study of the proposed billboard that's the  
13 subject of this application. And it's also a  
14 study of the full pier buildout and how that  
15 actually affects shadows in and around the beach  
16 area, assuming a full pier buildout at some  
17 point in the future.

18           Q.       All right. And can you describe  
19 the methodology, in terms of what were the dates  
20 selected and why and the times that they  
21 selected for the study?

22           A.       Yeah. The dates --  
23                    Well, the sun shadow study,  
24 generally the dates that you utilize are the end  
25 of June and then again in September, because

1 they are what create the most -- the longest  
2 shadows, the shadows that potentially have the  
3 biggest impact.

4 Q. Is that consistent with the way DEP  
5 conducts their sun shadow studies?

6 A. Yeah. In fact, DEP also asks for  
7 shadows in December. But, shadows in December  
8 in this location are really not relevant because  
9 they're very short.

10 Q. So --

11 A. And people aren't on the beach, as  
12 well.

13 NICHOLAS TALVACCHIA: We have --  
14 And I apologize. These are not  
15 labeled correctly, in terms of the prior order.

16 So, this AO8 is probably A-17.

17 Right, Jon?

18 ROSE ANN LAFFERTY: Yes.

19 JON BARNHART: Yeah.

20 NICHOLAS TALVACCHIA: We will  
21 correct that and resubmit those to you.

22 PAUL WEISS: Okay. Thank you. I  
23 appreciate that.

24 THE WITNESS: (Witness indicating.)  
25 So, the first exhibit that I have before you

1 here is the prior -- the previous billboard that  
2 existed just prior to the start of construction.  
3 And the shadow that you see here is created from  
4 a June 22nd date at 9 a.m. in the morning. You  
5 see the location of the billboard as I'm  
6 highlighting it, right adjacent to the Boardwalk  
7 there, and you can see the shadow created by  
8 that billboard at 9 a.m. And again, that is on  
9 June 22nd.

10 When you --

11 (Witness indicating.) June 22nd,  
12 again, that same billboard at 1 p.m., just after  
13 lunchtime. You can see, basically, the sun, at  
14 that point, is high in the sky and there's  
15 essentially no shadow at that point.

16 (Witness indicating.) That  
17 billboard at 5 p.m. And 5 p.m. was chosen  
18 because 5 p.m. is that point where, you know,  
19 beach-goers start to head off, it's getting  
20 later in the day. And we want to show you the  
21 impact of shadow at that point. You can see it  
22 -- the existing -- the existing shadow cast back  
23 toward the pier structure in that -- in that  
24 study.

25 (Witness indicating.) Now going on

1 to September. This will be right at the end of  
2 the summer.

3 BY MR. TALVACCHIA:

4 Q. Could you give the date, Jon, for  
5 the record?

6 A. September 21st is the date, at 9  
7 a.m. is this exhibit.

8 Again, this is the previous  
9 billboard. And you can see the shadow that's  
10 cast back over the Boardwalk from that existing  
11 billboard.

12 (Witness indicating.) Moving on to  
13 1 p.m., again, the sun is high at that point, so  
14 the shadow is, essentially, straight down.

15 (Witness indicating.) And moving  
16 on to that same date, September 21st, at 5 p.m.,  
17 the shadow of that billboard is cast back --  
18 back over the pier. And actually, you can see  
19 the shadows of the pier start to show on the  
20 dune at 5 p.m.

21 (Witness indicating.) Moving on to  
22 the proposed billboard location, here we have --

23 We're going back to the June date,  
24 June 22nd, at 9 a.m. And this is the proposed  
25 billboard, which you can see right at that

1 location. The proposed billboard, at 9 a.m.,  
2 has the shadow which is cast back overtop of the  
3 pier.

4 (Witness indicating.) At 1 p.m.,  
5 you can see, again, the sun is high. It's,  
6 basically, a vertical shadow straight down,  
7 basically on the dune.

8 (Witness indicating.) And then  
9 that's 5 p.m., where it is, basically, just past  
10 the toe of the dune at that location with the  
11 shadow. And it goes back to the discussion we  
12 had before. You know, beach-goers --

13 The concern Mr. Weiss had at the  
14 last hearing was beach-goers would be shadowed  
15 by the sign. This is not a location where a  
16 beach-goer would sit. Beach-goers are down in  
17 this area, down in front. (Witness indicating.)

18 Just to give you an idea of scope  
19 of where the water is, that line that I'm  
20 highlighting there is what is known as the  
21 usable beach line. That's the upper one-third,  
22 from the highest point of where the waves run up  
23 to to the bottom of the dune.

24 So, there's another two-thirds of  
25 dry sand beach. There's two-thirds of that

1 distance, of the dry sand beach, from that point  
2 out to the water, which is, you know, generally,  
3 where we know the beach-goers all sunbathe and  
4 sit. So, from a perspective --

5 This having an impact on a  
6 sunbather, it really does not.

7 Q. And Jon, just right to the right  
8 there's a notation, "Steel Pier property line."

9 A. Oh, yeah. One thing we did want to  
10 point out is we added the location of the Steel  
11 Pier line. That's the property line. But, as  
12 I'm sure you're aware, the Steel Pier structure  
13 is the full buildout pier, from property line to  
14 property line, from the Boardwalk, out a  
15 thousand feet or more.

16 What we wanted to show you is,  
17 this, historically -- and I didn't know this --  
18 this is coming from some of the lifetime  
19 Atlantic City people -- historically, this  
20 beach, when this pier was in place, was a very  
21 underutilized beach, because you were stuck  
22 between two pier structures.

23 In recent times, I think it's  
24 become a little bit more usable. And probably  
25 -- and with Margaritaville going here, we're

1 hopeful that -- that there will be more people  
2 using this beach.

3 But, there is -- there is a close  
4 proximity between these two pier structures,  
5 which would lend itself to beach-goers being  
6 more on the west side of the Margaritaville pier  
7 than sitting between the two piers. But ...

8 NICHOLAS TALVACCHIA: And I can  
9 attest that when both piers were built out, that  
10 was very empty beach in the '70s and '80s, when  
11 I was a lifeguard there. For the record.

12 JON BARNHART: (Witness  
13 indicating.) So, the -- going on now to the end  
14 of September. September 21st. Again, the  
15 proposed billboard. You can see at this  
16 location, at 9 a.m., those long morning shadows  
17 in this -- with this location are no longer cast  
18 on the Boardwalk from the former location.  
19 They're cast on top of the roof of our new  
20 Margaritaville -- or our new LandShark pier  
21 structure. And that's at 9 a.m. on September  
22 21st.

23 (Witness indicating.) At 1 p.m. at  
24 the end of the summer, September 21st, you can  
25 see the shadow starting to creep onto the dune.

1 Again, no affect on the Boardwalk or the dry  
2 sand beach area.

3 (Witness indicating.) And, again,  
4 at 5 p.m., although, you know, the shadow starts  
5 to really lengthen, it's in a location that has  
6 no negative effect on the beach or the  
7 Boardwalk.

8 Now, what SOSH architecture put  
9 together here, just to give you an idea of, you  
10 know, the scope and scale of what our request  
11 is, especially from a shadowing standpoint, they  
12 plotted a full pier buildout here. They plotted  
13 based on the heights that are permitted by the  
14 ordinance, given the setbacks and how the  
15 heights are allowed to incrementally go higher  
16 as you get away from the Boardwalk. They  
17 plotted that just to give you an understanding  
18 of what is legally permitted from a shadowing  
19 standpoint as per the ordinance and NJDEP.

20 So, I'll just walk you through  
21 those slides that they've created.

22 (Witness indicating.) This is,  
23 again, June -- going back to the beginning of  
24 the summer, June 22nd. At 9 a.m., you can see a  
25 boxed out -- the full pier buildout.



1                   NICHOLAS TALVACCHIA: Which is a  
2 hundred feet at that corner.

3                   JON BARNHART: A hundred feet at  
4 the top corner, which is out in here. (Witness  
5 indicating.)

6                   And you can see that long morning  
7 shadow casting toward the west.

8 BY NICHOLAS TALVACCHIA:

9                   Q.       And, Jon, you said a hundred feet.  
10 A hundred feet of occupied space. It's actually  
11 allowed to be 200 feet with architectural  
12 treatment. We're not showing that. We're  
13 showing it at a hundred?

14                  A.       Correct.

15                  Q.       The ordinance allows up to 200  
16 feet.

17                  A.       (Witness indicating.) Going on to  
18 high sun, you know, just after lunch, at 1  
19 o'clock, the full buildout. Obviously, you  
20 know, literally, no shadow there.

21                         (Witness indicating.) 5 o'clock  
22 casts, essentially, that same morning shadow,  
23 but in the opposite direction, toward the east  
24 as the sun is starting to head down.

25                         (Witness indicating.) And then we

1 move to September and to the end of summer.  
2 September 21st, at 9 a.m., you can see the  
3 casting of a shadow on the beach, the dune and  
4 the Boardwalk.

5 (Witness indicating.) The 1 p.m.  
6 shot of the permitted buildout. Just a slight  
7 shadow on the east side.

8 (Witness indicating.) And then,  
9 obviously, at the full pier buildout basically  
10 casts a shadow all the way to the -- to the line  
11 of the Steel Pier at 5 p.m. at the end of the  
12 summer, which is September -- you know, the date  
13 we used was September 21st.

14 Q. So, Mr. Barnhart, based on this  
15 study, as a planner, do you find that if the new  
16 billboard were to be approved, would it have a  
17 significant adverse impact on beach-goers?

18 A. No. I was -- I was -- you know, I  
19 was actually happy that Mr. Weiss asked for  
20 this, because it helped us prove out exactly  
21 what we thought, and that is that the new  
22 location of the sign on this pier property has  
23 -- has no negative impact. Everything creates a  
24 shadow, but the shadow positioning, as it comes  
25 across this area, does not create an issue for

1 the sunbathers, it does not create an issue for  
2 the enjoyment of the light and the air and the  
3 open space of the beach, and it also reduces the  
4 effect on the Boardwalk because of it being  
5 moved away from the Boardwalk.

6 Q. Okay. I want to clarify one other  
7 point. Did the owner retain some of the old  
8 sign? In other words, was it totally demolished  
9 or is some of it remaining at the foundation  
10 level?

11 A. It's my understanding that the  
12 foundation level was still intact.

13 Q. And that was verified by the  
14 architects?

15 A. Correct.

16 NICHOLAS TALVACCHIA: Unless  
17 there's questions about the solar study, I'll  
18 move on.

19 PAUL WEISS: No questions about the  
20 solar --

21 Well, go ahead.

22 J. TIMOTHY KERNAN: I just have one  
23 question, Jon. If you could go to either the  
24 existing or proposed ones that show the beach  
25 bar that's under construction. I'm just trying

1 to get a handle on what's under roof and what's  
2 open deck for the beach bar itself to see what  
3 the impact is for the shade --

4 JON BARNHART: Okay.

5 J. TIMOTHY KERNAN: -- from either  
6 the existing or proposed billboard location.

7 JON BARNHART: Okay. Well, I mean,  
8 let's see here.

9 J. TIMOTHY KERNAN: I think I see  
10 what's roof and what's --

11 NICHOLAS TALVACCHIA: Are you  
12 talking about the LandShark?

13 J. TIMOTHY KERNAN: Yeah. I'm just  
14 trying to get a better understanding of what --  
15 you know, where the people using the bar are  
16 going to be hanging out.

17 JON BARNHART: You know, I might  
18 have -- I might have an exhibit -- wait a  
19 minute. I think I have an exhibit from --

20 J. TIMOTHY KERNAN: It looks like  
21 the lower portion is deck and the upper portion  
22 is roof. And I don't know what that yellow  
23 hatched area is.

24 JON BARNHART: Yeah. Let me just  
25 -- let me go back to the exhibits that we used

1 in the first hearing. I think there might -- I  
2 think there's something in there that will  
3 clarify that a little bit better for you. Let  
4 me just flip through these.

5 (Witness indicating.) Okay. There  
6 you go. This is probably a good one to look at.  
7 This is -- this is roof area. Roof area. This  
8 is all roof area. This is open deck area. This  
9 is open deck with a canopy roof overtop of it.  
10 And then this is open deck.

11 J. TIMOTHY KERNAN: The yellow is  
12 open deck?

13 JON BARNHART: Yes.

14 J. TIMOTHY KERNAN: But, to the  
15 left of that is also open deck?

16 JON BARNHART: Hold on one second.

17 NICHOLAS TALVACCHIA: I think it  
18 might be roof, but open to the air.

19 JON BARNHART: Correct.

20 NICHOLAS TALVACCHIA: Do you know  
21 what I mean?

22 JON BARNHART: You can sit under --  
23 So, basically what they did is --

24 J. TIMOTHY KERNAN: The only open  
25 deck is the yellow?

1 JON BARNHART: The only uncovered  
2 open deck.

3 J. TIMOTHY KERNAN: Is the yellow?

4 JON BARNHART: Yeah.

5 And then there's proposed to be  
6 open deck down on the beach area as part of, you  
7 know, your standard beach bar type of thing.  
8 So, there would be on sand deck.

9 J. TIMOTHY KERNAN: So, it would  
10 show on your shade slides?

11 JON BARNHART: Yes. I'll go back  
12 to that in a second.

13 But, this is -- this is open deck  
14 with roof cover.

15 So that, basically, you have the  
16 option of three scenarios when you come here.  
17 You can sit inside the restaurant, you can sit  
18 outside with the nice, you know, cool breeze  
19 roof cover so you're not baking in the sun, or  
20 you can get out into the actual direct sun.

21 J. TIMOTHY KERNAN: Okay.

22 JON BARNHART: So, I'll go back to  
23 the shadow study for you now.

24 (Witness indicating.) Okay. So,  
25 just to take a --

1                   If you want --

2                   Probably the best thing to look at  
3 is the proposed on that issue. So, there you  
4 have it at 9 a.m. It's ovetop of the roof.

5                   (Witness indicating.) There you  
6 have it at 1. It's starting to slide over.

7                   (Witness indicating.) And then,  
8 obviously, at 5, it's headed out over the dune.

9                   (Witness indicating.) And in the  
10 -- in September, on September 21st, again, cast  
11 back over the roof.

12                   (Witness indicating.) Now it's  
13 over the dune at 1.

14                   (Witness indicating.) And now  
15 it's, you know, slid out further over the dune  
16 at 5.

17                   J. TIMOTHY KERNAN: Okay. Thanks.

18                   JON BARNHART: Mmm-hmm.

19                   ROSE ANN LAFFERTY: And now, these  
20 solar studies, just for the exhibit number  
21 purpose, starts with -- we'll start with A-17.

22                   NICHOLAS TALVACCHIA: Okay.

23                   JON BARNHART: Correct.

24                   ROSE ANN LAFFERTY: How many are  
25 there, total?

1 JON BARNHART: I will tell you that  
2 right now.

3 NICHOLAS TALVACCHIA: They start at  
4 A-8.

5 JON BARNHART: Let's see. So, do  
6 you want me to -- I can give you the -- do you  
7 want me to give you the dates and times with the  
8 numbers, so you have them?

9 NICHOLAS TALVACCHIA: Well, we have  
10 to change these just slightly.

11 JON BARNHART: A-17 will be  
12 previous billboard on June 22nd, at 9 a.m.

13 ROSE ANN LAFFERTY: Mmm-hmm.

14 JON BARNHART: A-18 will be  
15 previous billboard on June 22nd, at 1 p.m.  
16 Tell me if I'm going too fast.

17 ROSE ANN LAFFERTY: Go ahead.

18 JON BARNHART: A-19 will be June  
19 22nd, previous billboard, 5 p.m.

20 ROSE ANN LAFFERTY: Mmm-hmm. Go  
21 ahead.

22 JON BARNHART: A-20 will be  
23 previous billboard, September 21st, 9 a.m.

24 ROSE ANN LAFFERTY: Mmm-hmm.

25 JON BARNHART: A-21 will be



1 previous billboard, September 21st, 1 p.m.

2 ROSE ANN LAFFERTY: Go ahead.

3 JON BARNHART: A-22, previous  
4 billboard, September 21st, 5 p.m.

5 ROSE ANN LAFFERTY: Right.

6 JON BARNHART: Now we're on to the  
7 proposed.

8 ROSE ANN LAFFERTY: Right.

9 NICHOLAS TALVACCHIA: Yeah.

10 JON BARNHART: Where were we at?  
11 23, A-23 is proposed, June 22nd, 9  
12 a.m.

13 24, proposed, June 22nd, 1 p.m.

14 ROSE ANN LAFFERTY: Right.

15 JON BARNHART: 25, proposed June  
16 22nd, 5 p.m.

17 ROSE ANN LAFFERTY: Mmm-hmm.

18 JON BARNHART: 26, proposed,  
19 September 21st, 9 a.m.

20 ROSE ANN LAFFERTY: Okay.

21 JON BARNHART: 27, proposed,  
22 September 21st, 1 p.m.

23 28, proposed, September 21st, 5  
24 p.m.

25 ROSE ANN LAFFERTY: Okay.

1                   JON BARNHART: Now we're on to the  
2 permitted pier buildout.

3                   Right?

4                   NICHOLAS TALVACCHIA: Yeah.

5                   JON BARNHART: 29, permitted pier,  
6 June 22nd, 9 a.m.

7                   ROSE ANN LAFFERTY: Mmm-hmm.

8                   JON BARNHART: 30, permitted pier,  
9 June 22nd, 1 p.m.

10                   31, permitted pier, June 22nd, 5  
11 p.m.

12                   ROSE ANN LAFFERTY: Right.

13                   JON BARNHART: 32, permitted pier,  
14 September 21st, 9 a.m.

15                   33, permitted pier, September 21st,  
16 1 p.m.

17                   And 34, permitted pier, September  
18 21st, 5 p.m.

19                   And that's all of them.

20                   ROSE ANN LAFFERTY: Okay.

21                   NICHOLAS TALVACCHIA: Thanks, Jon.  
22 Anything further on that or should  
23 I move on?

24                   PAUL WEISS: You can proceed, Mr.

25                   --

1                   NICHOLAS TALVACCHIA: Oh.

2                   Mr. Kernan.

3                   PAUL WEISS: Mr. Kernan, do you  
4                   have any --

5                   J. TIMOTHY KERNAN: Not on the  
6                   shade plan analysis, but the first topic, when  
7                   you mentioned the height of the sign.

8                   NICHOLAS TALVACCHIA: Oh. That was  
9                   on the Boardwalk.

10                  J. TIMOTHY KERNAN: On the  
11                  Boardwalk. It was the blade sign that sticks  
12                  out and they needed a variance because it  
13                  protruded further than the four feet.

14                  NICHOLAS TALVACCHIA: Right. And  
15                  we wanted the height.

16                  J. TIMOTHY KERNAN: And you wanted  
17                  the height. You mentioned that it -- Jon  
18                  mentioned that --

19                  JON BARNHART: We measured it --

20                  J. TIMOTHY KERNAN: -- ten feet --

21                  JON BARNHART: Yeah. We measured  
22                  it from the finished deck of the Boardwalk to  
23                  the bottom of the big marquee that you asked  
24                  about last time, Mr. Weiss, --

25                  PAUL WEISS: Mmm-hmm.

1 JON BARNHART: -- is ten feet.

2 PAUL WEISS: Okay.

3 J. TIMOTHY KERNAN: As opposed to  
4 --

5 But, the proposed sign we're  
6 talking about, the blade sign, is dimensioned at  
7 eight feet off of the Boardwalk.

8 So, that's the distinction between  
9 the two. The existing space is ten; the  
10 proposed space is eight.

11 PAUL WEISS: Understood.

12 ROSE ANN LAFFERTY: So, it's lower.

13 J. TIMOTHY KERNAN: It's a couple  
14 feet lower, as proposed.

15 NICHOLAS TALVACCHIA: Yes.

16 Okay. Moving on.

17 BY NICHOLAS TALVACCHIA:

18 Q. So, Mr. Barnhart, --

19 A. Mmm-hmm.

20 Q. -- we'll get to the special reasons  
21 in a moment, but I think it's instructive to  
22 talk about the 2008 city master plan. Because  
23 when the CRDA, of course, adopts its land use  
24 regulations, the city -- not only the zoning  
25 ordinance, but the city master plan gets

1 superseded. At this point, that hasn't  
2 occurred. The tourism master plan doesn't  
3 supersede the city's master plan; it is your  
4 zoning regulations that do that.

5 Mr. Weiss is nodding in  
6 "concurrent."

7 PAUL WEISS: I --

8 NICHOLAS TALVACCHIA: And I read it  
9 today to be sure.

10 PAUL WEISS: Well, I'm --

11 You're correct in your assessment  
12 of the statute. Yes.

13 NICHOLAS TALVACCHIA: So --

14 And the reason that's important is,  
15 the city master plan is getting close to six  
16 years. And Section 89.1 of the Municipal Land  
17 Use Law, beyond six years, if a re-examination  
18 is not done, the zoning ordinance is  
19 presumptively invalid. But, I'm not -- that's  
20 not my point.

21 My point is that our belief is that  
22 the city master plan has become stale, for a  
23 couple of reasons. One, the dramatic change in  
24 the economy since 2008. Two, the adoption of  
25 the Tourism District legislation, which talks

1 about -- and we talked about this last month --  
2 the restoration of the Boardwalk or expansion of  
3 the Boardwalk to its authentic character. And  
4 three, the assumptions that the city assumed  
5 when it adopted its master plan.

6 BY NICHOLAS TALVACCHIA:

7 Q. And, Jon, you have some excerpts.  
8 One, at the beginning of the master plan, I  
9 think is particularly telling. If you could  
10 just review that.

11 A. Read that into the record?

12 Q. Yes.

13 A. Okay. Sure.

14 It's under Introduction, Goals and  
15 Objectives in the Atlantic City master plan.  
16 What it says is --

17 It's interesting. It says: "The  
18 promised economic benefits of gaming to the  
19 city, although slow to materialize, have now  
20 begun to bear fruit. The 11 casinos that are  
21 now operating in Atlantic City achieve a higher  
22 gaming win and overall revenues than all of the  
23 casinos along the Las Vegas strip, combined.

24 "Plans for a 12th casino,  
25 speculated to be promoted by Morgan Stanley,

1 Revel Entertainment, have been announced, as  
2 well as a 13th casino to replace the recently  
3 demolished Sands Casino. The latter is being  
4 developed by the Pinnacle Group.

5 "There is a discussion in the  
6 public media about MGM's plans for a grand  
7 casino and hotel in the Marina District,  
8 Hilton's major expansion, and a hotel casino to  
9 be located near the former Atlantic City High  
10 School site."

11 Q. I think that's enough of that.

12 A. Okay.

13 Q. And I've given you some additional  
14 pages.

15 A. Yes.

16 Q. And, Jon, just for the record, we  
17 don't have to read them, but there's some of the  
18 points in there that I think are relevant.

19 Just, we're going to mark this, I  
20 guess, as a group of --

21 What are we at? A-24 now?

22 ROSE ANN LAFFERTY: No. 35.

23 JON BARNHART: No. You're up to  
24 35.

25 NICHOLAS TALVACCHIA: Oh. I'm

1 sorry. 35.

2 So, A-35 will consist of  
3 Introduction, Goals and Objectives of the master  
4 plan, page 2.

5 Under the land use section, page 6,  
6 this talks about encouragement of reuse of the  
7 Boardwalk and other areas.

8 Economic plan, page 9. Figures 26  
9 and 27, figure 27 in particular, talks about  
10 proposed projects in the inlet, most of which  
11 have not occurred.

12 And then page --

13 There's a buildout analysis, page  
14 52, which talks about 148 million square feet of  
15 potential buildout still available in the city.

16 And this, I think, is also  
17 significant. It's called the Evolution of  
18 Zoning in Atlantic City, page 55. And it notes  
19 -- and this is all under the land use element of  
20 the master plan -- "in actuality, the city's  
21 zoning map has remained relatively unchanged  
22 since the advent of casinos, with only minor  
23 changes being made.

24 So, one, I'd like to offer that as  
25 exhibit 35.



1 PAUL WEISS: Okay.

2 NICHOLAS TALVACCHIA: The point of  
3 all that is, other than Revel occurring, nothing  
4 else has really occurred that they anticipated.

5 Two, it's interesting. The master  
6 plan was adopted in 2008. Revel was under  
7 construction in 2007. So, those words about an  
8 announcement of Revel coming was probably  
9 written in 2006.

10 The city went through more than a  
11 two-year process to adopt its plan.

12 So, while it's dated 2008 and  
13 probably acted on in 2008, a lot of that  
14 verbiage was really during the boom years of  
15 2006.

16 So, the only point being that  
17 there's been a c. change. The economy collapsed  
18 in 2008, not only nationally, but for Atlantic  
19 City.

20 The government, the State of New  
21 Jersey, determined that drastic action was  
22 needed and, in an unprecedented way, gave this  
23 authority new powers to deal with zoning,  
24 planning and redevelopment.

25 And as I look through your tourism

1 master plan, it is a blueprint for economic  
2 development more than it is a typical master  
3 plan. And you now also have the authority to  
4 adopt land use rules and regulations.

5 The point being that, in asking for  
6 -- and this is legal argument -- in asking for a  
7 use variance, one of the factors is whether or  
8 not you can reconcile the granting of a use  
9 variance with the zoning. How do you reconcile  
10 it.

11 And our position is that that  
12 master plan -- that zoning ordinance is really  
13 outdated for today. Maybe not as a legal matter  
14 under Section 81.9, although we're getting close  
15 to that in another year, but we believe that the  
16 authority can find that, given the changes, the  
17 prior zoning no longer has the force and effect  
18 that it otherwise would have absent these  
19 extraordinary conditions.

20 And I think not only the economy,  
21 but the extraordinary effort by the State of New  
22 Jersey to give this authority land use  
23 development powers along the Boardwalk and the  
24 Tourism District are significant factors.

25 And the legislative charge to

1 restore the Boardwalk to its authentic character  
2 is important. That's why we showed those  
3 historic photos of the Boardwalk. And we have  
4 new ones, including some that are from materials  
5 developed by the CRDA's consultant, which really  
6 just shows the historic nature of billboards.

7 And we do recognize one just came  
8 down last week that was in poor condition, over  
9 the Boardwalk.

10 We're not advocating, necessarily,  
11 billboards all along the Boardwalk as they were  
12 historically located, but we think the piers  
13 offer a unique opportunity.

14 And Mr. Barnhart will provide us  
15 testimony. But, just the framework of how we  
16 view this.

17 To grant a use variance, the  
18 authority has to find that one or more special  
19 reasons are met. We have to meet that burden.

20 In a commercial context, the  
21 special reason used most often is advancement of  
22 the general welfare, but if you don't have an  
23 inherently beneficial use, the mere advancement  
24 of the general welfare is not sufficient. The  
25 applicant must prove that the site -- the

1 general welfare is advanced because the site is  
2 particularly well suited for that use. For that  
3 use.

4 So, what's our use? It's the  
5 billboard. And what makes this site  
6 particularly well suited? Well, there's only  
7 four commercial piers. That's what makes it  
8 particularly well suited. It's in an  
9 environment where it could be easily seen, it  
10 adds to character, it adds brightness, it adds a  
11 certain quality of energy, not unlike  
12 Times Square.

13 The Atlantic City Zoning Board  
14 found the same thing for Caesars pier; found it  
15 particularly well suited for those 20  
16 billboards. 20. And that's where we're going  
17 with our argument.

18 The other part of the argument is  
19 --

20 And, as you know, in Burbridge, the  
21 Supreme Court said: "The advancement of  
22 aesthetic purposes can also justify a variance."

23 And as Mr. Cox, in his land use  
24 treatise, has stated, Section 7-4.1, although  
25 not listed as a specific purpose of zoning, the

1 Supreme Court and Home Builders League of South  
2 Jersey versus Township of Berlin, at 81 NJ 127,  
3 1979, found that "the preservation of the  
4 character of a neighborhood can be a purpose of  
5 zoning."

6 And we believe that preservation of  
7 this outdoor advertising sign helps preserve the  
8 character of -- the traditional character of the  
9 pier, the neighborhood, which is the Boardwalk.

10 So, that's -- that's our backdrop.

11 BY NICHOLAS TALVACCHIA:

12 Q. And now, Jon, you are a planner.

13 A. That's correct.

14 Q. And you --

15 PAUL WEISS: Mr. Talvacchia, if I  
16 may interrupt you just for a second.

17 NICHOLAS TALVACCHIA: Yes.

18 PAUL WEISS: I want to try to  
19 clarify something you said before I lose my  
20 train of thought --

21 NICHOLAS TALVACCHIA: Sure.

22 PAUL WEISS: -- and I forget it.

23 You said that the preservation of  
24 the sign is one of the aspects of the  
25 applicant's proof here.

1                   NICHOLAS TALVACCHIA: Mmm-hmm.

2                   PAUL WEISS: What sign is being  
3 preserved?

4                   NICHOLAS TALVACCHIA: The one that  
5 we took down but reserved our rights to by  
6 leaving the foundation in place.

7                   We believe we have a right to  
8 rebuild the old sign. It's noted on the plans.  
9 We've advised --

10                  We actually have an application  
11 pending with DEP, CAFRA, to do that.

12                  And it's always been our intent to  
13 preserve the sign. But, at this specific  
14 location, it interferes -- it doesn't really  
15 work with the design of the LandShark pier.  
16 So ...

17                  But, on the pier property, it's  
18 always been the intent to preserve that sign.

19                  PAUL WEISS: But, the relief that  
20 the applicant is seeking today is not to  
21 reconstruct the sign that you're suggesting  
22 needs to be preserved.

23                  NICHOLAS TALVACCHIA: Correct.

24                  PAUL WEISS: I thought the relief  
25 that the applicant is seeking today is for a

1 d.(1) variance.

2                   NICHOLAS TALVACCHIA: Absolutely.  
3 And I agree with that.

4                   The legal point, though, is that I  
5 think it is relevant to take into account the  
6 grandfathered rights that an applicant has and  
7 compare that alternative to what we're --

8                   So, in other words, if the d.(1)  
9 were denied for the new sign, we, theoretically,  
10 legally, could rebuild the sign where it used to  
11 be, which we think is not a great -- a great  
12 design.

13                   That factor, I believe, can be  
14 considered by the authority in considering  
15 whether or not to grant a d. variance; the  
16 alternatives. I think there's a lot of case law  
17 that would support that position. So ...

18                   The relief is a d.(1). There's no  
19 question about it. But, that has to be placed  
20 in the context of what the applicant's other  
21 rights are.

22                   So, if we had raw ground, that's  
23 one thing, but if we had a use that was not  
24 desirable --

25                   And this Burbridge may be a good

1 example. I think it's a 1990 case. There was a  
2 nonconforming junkyard; cars, whatever, and the  
3 applicant sought a d.(2) variance to expand it,  
4 a nonconforming use. Not a d.(1), but similar.  
5 That was approved.

6 The applicant challenged. The  
7 Supreme Court held -- and this is where -- the  
8 first time it held that advancement of  
9 aesthetics could support a d. variance, although  
10 not a d.(1) in that case, but a d. variance none  
11 the less, is that the applicant proposed a  
12 substantial amount of buffering that the old use  
13 did not have. So, the alternative that the  
14 board in that case had to face is don't grant  
15 the variance and keep the ugly, nonbuffered  
16 junkyard or allow it to get bigger but get a  
17 substantial amount of buffering.

18 So, the idea is similar here. It's  
19 that there's an alternative. There's the new  
20 sign, which we think is aesthetically attractive  
21 and has minimal impacts, versus the old sign,  
22 which we think is not so attractive. It's close  
23 to the Boardwalk. It will interfere with the  
24 use of this building, the entry to this  
25 building.



1                   That's the analysis I'm advocating.

2                   PAUL WEISS: Okay. Go ahead.

3                   NICHOLAS TALVACCHIA: Thank you.

4 BY NICHOLAS TALVACCHIA:

5                   Q.        So, Mr. Barnhart, particularly well  
6 suited. Do you believe -- and give us your  
7 reasons on the record. Do you believe that this  
8 sign would advance any of the purposes of  
9 zoning?

10                  A.        Yes.

11                         And Mr. Talvacchia has pretty  
12 thoroughly already gone through this, so a lot  
13 of this is just going to be --

14                  Q.        I'm not a planner, though. It  
15 doesn't matter what I say.

16                  A.        -- as good as a reiteration.

17                         And I think a lot of this we  
18 already discussed in the first hearing as well.

19                         But, you know, as was pointed out,  
20 you know, there are only four pier locations.  
21 So, the issue of a proliferation of signs along  
22 the oceanfront is, in my opinion, not something  
23 that will take place here, because there are  
24 really only four locations where sign -- where  
25 outdoor advertising signs are appropriate along

1 the oceanfront side of the Boardwalk,  
2 specifically.

3 So, we believe that the general  
4 welfare is advanced because of the idea that  
5 this site is particularly well suited for an  
6 outdoor advertising sign.

7 And I think, furthering  
8 Mr. Talvacchia's comment about the existing  
9 rights versus what we propose, I think the  
10 specific location on this site is more  
11 particularly well suited than what the applicant  
12 has -- than the location the applicant has as  
13 its legal right to reconstruct the sign that he  
14 had prior. I think that the sun shadow study  
15 helps support that. I think that the analysis  
16 that Mr. Kernan just asked us to go through with  
17 regard to our specific pier helps support the  
18 fact that this specific location on this  
19 specific piece of property is a more  
20 particularly well suited location than where --  
21 than the legal location or the location that we  
22 have the right to reconstruct the sign upon.

23 So, for those reasons, we believe  
24 that the general welfare is advanced because of  
25 the particular suitedness of this application.

1           Q.       And when you consider the  
2 legislative goal and creation of the Tourism  
3 District and, again, that language in the  
4 statute; to restore the authentic character of  
5 the Boardwalk, do pier billboards represent the  
6 authentic character of the Boardwalk, in your  
7 judgment?

8           A.       Do pier billboards --

9                    Yes. I mean, we -- you know, we  
10 showed a bunch of historic photos and --

11          Q.       And we have more.

12          A.       -- postcards in the past.

13                    We actually have a book here that  
14 was put together, which we can pass out as  
15 exhibit --

16                    What are we up to?

17                    ROSE ANN LAFFERTY: 36.

18                    JON BARNHART: 36?

19                    That shows a series of photographs  
20 from each one of the pier locations.

21 BY NICHOLAS TALVACCHIA:

22          Q.       Historic.

23          A.       Historic photographs, that date  
24 back into the '40s and the '30s, that show  
25 outdoor advertising signs all over each one of

1 the piers. It was -- it was actually --

2 That was put together in support of  
3 the application that was put before the City of  
4 Atlantic City Zoning Board for the signs for the  
5 pier at Caesars.

6 Q. And we also have some photos in the  
7 CRDA's Tourism District master plan which shows  
8 historic photos on the Boardwalk?

9 A. Yeah. That's correct.

10 There are actually two locations in  
11 the CRDA master plan, in Volume I -- in  
12 Volume II and also in Volume III, that identify  
13 some of the similar pictures and photographs  
14 that are in the book that we're passing around.

15 In Volume II of the master plan, I  
16 believe it is page -- I guess it would be  
17 considered page 2 -- there's actually a  
18 photograph of one of the piers, and it shows at  
19 least three billboards that can be seen depicted  
20 right within the master plan.

21 NICHOLAS TALVACCHIA: Mr. Weiss, I  
22 don't know if you want -- since it's one of your  
23 documents, I don't know if you need it into the  
24 record. You can take judicial notice. But,  
25 it's up to you. If you need these books. I got

1       them from you.

2                   PAUL WEISS:  The applicant is  
3 presenting it as an exhibit to its proof.  So,  
4 we'll mark it.

5                   ROSE ANN LAFFERTY:  A-37.

6                   NICHOLAS TALVACCHIA:  So, just for  
7 the record, the book is specifically, so we know  
8 what we're talking about here -- Volume II --

9                   PAUL WEISS:  Volume II.

10                  NICHOLAS TALVACCHIA:  -- of the  
11 master plan.

12                   Is that accurate?

13                  PAUL WEISS:  Mmm-hmm.

14                  NICHOLAS TALVACCHIA:  So,  
15 Volume II.  And I don't know if the pages are  
16 marked.

17 BY NICHOLAS TALVACCHIA:

18                  Q.       And then, Jon, also in --

19                  A.       Again, in Volume III of the master  
20 plan, there's some intended new projects -- or  
21 I'll say a prospective rendering of some  
22 intended new projects along the Boardwalk that  
23 also incorporate and show some -- so, basically,  
24 signage being kind of the key element of -- of  
25 creating that vibrant setting of the Boardwalk.

1 ROSE ANN LAFFERTY: And what is  
2 this?

3 NICHOLAS TALVACCHIA: This is your  
4 Volume III of the Tourism District master plan,  
5 exhibit 3 --

6 ROSE ANN LAFFERTY: 8.

7 NICHOLAS TALVACCHIA: -- 8.

8 I'd like to present exhibit 38,  
9 which is the tourism -- Volume III of the  
10 Tourism District master plan, which shows an  
11 artist's rendering of what the Boardwalk could  
12 look like, and that includes billboards on a  
13 pier there, shown on, I presume it's Caesars  
14 pier.

15 BY NICHOLAS TALVACCHIA:

16 Q. So --

17 And then, Jon, we had been asked to  
18 also provide photos of existing signs as of  
19 today. And you did that?

20 A. That's correct. Yeah. We did --  
21 we did an inventory of the existing signs along  
22 -- outdoor advertising signs along the  
23 Boardwalk. And I'll just go through them  
24 briefly.

25 NICHOLAS TALVACCHIA: Now, this

1 will be exhibit, Rose, 39 or --

2 ROSE ANN LAFFERTY: 39.

3 NICHOLAS TALVACCHIA: 39.

4 JON BARNHART: 39.

5 (Witness indicating.) This is a  
6 photograph of --

7 BY NICHOLAS TALVACCHIA:

8 Q. Is this the one that came down?

9 A. Yes.

10 Q. Yeah.

11 All right. Let's not put that into  
12 the record.

13 A. Okay.

14 Q. There's no --

15 PAUL WEISS: You don't want to put  
16 into the record the sign that the CRDA had  
17 demolished?

18 NICHOLAS TALVACCHIA: Well, I  
19 acknowledged it earlier, in my first comments.  
20 We acknowledged that it was demolished because  
21 of poor maintenance.

22 (Indicating.) All right. Here is  
23 another sign that's there today.

24 PAUL WEISS: That might be one  
25 reason it was demolished.

1           NICHOLAS TALVACCHIA: I was at the  
2 meeting on Tuesday. That's what I was told.

3           JON BARNHART: (Witness  
4 indicating.) This is the sign located at Ocean  
5 Avenue. This is relatively new. This --

6           Well --

7           NICHOLAS TALVACCHIA: And, by the  
8 way, we're not advocating these nonpier signs.  
9 But, you asked for an inventory, so ...

10          PAUL WEISS: I did.

11          And the sign that you're showing is

12 --

13          ROSE ANN LAFFERTY: Ocean and  
14 where?

15          PAUL WEISS: -- is --

16          NICHOLAS TALVACCHIA: A block from  
17 Resorts. It's right near South Carolina. Ocean  
18 Avenue.

19          PAUL WEISS: And in what zoning  
20 district is that sign?

21          NICHOLAS TALVACCHIA: It's all RSC.  
22 But, not in a pier overlay.

23          JON BARNHART: (Witness  
24 indicating.) Obviously, this is the -- what I  
25 call the Schiff pier -- the Steeplechase Pier --



1                   NICHOLAS TALVACCHIA: Central Pier.

2                   JON BARNHART: I mean, Central  
3 Pier.

4                   ROSE ANN LAFFERTY: Central.

5                   JON BARNHART: And you can see the  
6 --

7                   This would be the west side of that  
8 pier; that the -- the pier is lined with four  
9 large billboard faces on the west side.

10 BY NICHOLAS TALVACCHIA:

11                 Q.         Under -- it looks like under repair  
12 from the storm?

13                 A.         Yeah. Under repair from the storm.  
14 And then --

15                   That's an oblique angle picture,  
16 which you can see that same --

17                   That same pattern of four faces is  
18 mirrored on the east side as well.

19                 Q.         Go ahead. Jon.

20                 A.         (Witness indicating.) Here is the  
21 pier at Caesars. You can see the building face  
22 as well as the roof are lined with outdoor  
23 advertising signs. This is the west side of the  
24 pier.

25                   ROSE ANN LAFFERTY: This is

1 Caesars?

2 NICHOLAS TALVACCHIA: Caesars.

3 JON BARNHART: Yes.

4 (Witness indicating.) And this is  
5 the east side of the pier. Again, the building  
6 face and the roof are lined with signs.

7 Q. And these were the signs that were  
8 approved by the Atlantic City Zoning Board in  
9 Exhibit A-16?

10 A. That is correct. Yes.

11 Q. All right. Anything further, Jon,  
12 on existing signs?

13 A. (Witness indicating.) This is just  
14 another shot toward the end of the pier to show  
15 you the -- you know, the signage goes all the  
16 way out to the -- almost to the end of the pier.

17 Q. Anything further?

18 A. And that's it.

19 Q. Okay.

20 NICHOLAS TALVACCHIA: Rose, did you  
21 get all those --

22 ROSE ANN LAFFERTY: I got them. I  
23 got up to A-44.

24 NICHOLAS TALVACCHIA: Jon, are  
25 there any more exhibits?