

7. The RDA Falsely Alters the Harriman Report

Merriam-Webster defines “deceitful” as “the act of causing someone to accept as true or valid what is false or invalid; the quality of being dishonest or misleading”. As noted previously, deceit, or bad faith, is a question of fact for the trier of fact. In this case, the trier will have to pass judgment on whether the following conduct of the RDA rises to that level.

In Innes’ draft report dated February 5, 2019, she concludes the report with the following:

“State and federal criteria for a deteriorating area includes some conditions that were not examined.

These conditions include the following:

- The presence of environmental hazards, including lead, asbestos, of hazardous material spills
- The condition of public infrastructure, including roads, sidewalks, water, and sewer
- The prevalence of flood-induced blight
- The relative valuation of buildings in this area compared to others (depreciation was, in part a proxy for this calculation)
- Property and building vacancy
- Interior conditions such as inadequate alterations, plumbing, heating or electrical
- Functional and economic obsolescence
- Building grade or condition
- Length of time under construction.

Exhibit V at HAR 839-843. Innes testified that she drafted this language, and that it is accurate to the best of her understanding. **Exhibit F**, Innes at 424.

The RDA edited this provision (Id., at 419-420), and by the draft dated February 7, 2019, the RDA had materially and falsely altered this section of the Harriman Report to state as follows:

State and federal criteria for a deteriorating area include some conditions that were not examined in this analysis but were previously considered in the original determination which was the basis of some public comment. These conditions include the following.

- The presence of environmental hazards, including lead, asbestos, of hazardous material spills
- The condition of public infrastructure, including roads, sidewalks, water, and sewer
- The prevalence of flood-induced blight
- The relative valuation of buildings in this area compared to others (depreciation was, in part a proxy for this calculation)
- Property and building vacancy
- Interior conditions such as inadequate alterations, plumbing, heating or electrical
- Functional and economic obsolescence
- Building grade or condition

- Length of time under construction.

Exhibit V at HAR 884-888.

Innes testified that “the implication of the amended sentence is that all of these conditions were considered in the original determination.” **Exhibit F**, Innes at 430. This is irrefutably false. The presence of asbestos was never undertaken by RPA. *Id.* at 426. Neither was the condition of public infrastructure, including roads, sidewalks and sewer. “No. That was one of the homework questions I had asked.” *Id.* at 427.³⁴ Innes testified the remainder of these factors were inaccurate, as well. *Id.* at 429-431.

Sheehan agreed that this language, inserted by Strauss, is “inaccurate”, “demonstrably false”, and “would leave a misleading impression on those who read it and were relying on the accuracy of the report.” **Exhibit E**, Sheehan at 477-478. “If Emily said there is no basis for that statement, I would be concerned as to why that statement was made in her report” *Id.* at 479.

Strauss conceded that the sentence was “clearly not written very well”, but maintained it was not false:

I think it’s just – it’s just miswording. I – it’s not in – I see what you’re saying that it can be misleading but it’s not – it’s – it’s an exhaustive list and some of them were included and some of them were not included. So, no, I wouldn’t say it’s all wrong. Some of them were looked at.

Exhibit D, Strauss at 405-408.

The penultimate sentence of the Harriman Report, which addresses these factors, is also demonstrably inaccurate. “Had this analysis included these conditions, there is a reasonable likelihood

³⁴ Thus, this statement by RDA is inaccurate in two ways. First, it was not considered by RPA. Second, the information and documentation to undertake this analysis was expressly requested by Harriman for its analysis, and was not provided by the RDA. This applies for “property and building vacancy”, as well. This begs the question: Why add this sentence? Arguably, identifying those factors that should have been considered but weren’t, as if they actually were considered, may be considered by the trier of fact as a tacit admission as to the analysis that should have been undertaken, and the impropriety of the analysis that actually was undertaken.

that additional deteriorating conditions would be identified.” Innes testified that this language also was included “after a discussion with the client.” **Exhibit F**, Innes at 419-420.

Q: Had this analysis included the condition of public infrastructure, including roads, sidewalks, water and sewer, and you sit here today do you believe there is a reasonable likelihood that additional deteriorating conditions would be identified...?

A: I agree with you. I don’t know... I don’t have that information ... I never had the quantitative information to do that analysis” **Exhibit F** at 525-26 I did not have the information at my fingertips that would allow me to say that additional deteriorating conditions were absolutely identifiable.” (Id. at 528).

Innes agreed that there was not a reasonable likelihood that additional deteriorating conditions would be identified had she analyzed these factors. Id. at 529-530. Further, as to building grade and condition, not only had previous analysis not provide a reasonable likelihood that additional deteriorating conditions would be identified, but the actual quantitative data that Harriman analyzed specifically did not support an analysis that this was a blighted area. Id. at 531

Strauss admitted on examination that she was “speculating”.

Q: Well, reasonable likelihood is not the same as speculating. I mean a reasonable likelihood means that at least it’s over a 50% chance, and you don’t know whether there is over a 50% change on any of this, do you?

A: No. (**Exhibit D**, Strauss at 436-37)

Q: With respect to building grade or condition, not only is there not a reasonable likelihood that additional deteriorating conditions could be identified but we know for a fact that additional deteriorating conditions would not be identified, right?

A: Correct. (Id. at 438)

Q: If I go over these one by one, you can't identify any of them that you can state without speculation there would have been a “reasonable likelihood” correct?

A: Not without the back-up data, no. (Id.)

8. Accurate Reporting Matters

One subject upon which all deponents agreed was that the accuracy of agency reporting matters in the context of fair and honest government.