

G. The RDA Materially Misrepresents its Qualitative Analysis (Field Work) to the RDA Commissioners, the Planning Committee, and the Common Council

As previously noted, Sheehan testified that he was hopeful that there was on-the-ground review and documentation of the properties in the area and that RDA's analysis was not simply desktop.

Exhibit E, Sheehan at 306 . Bidolli confirmed that field work was "very important" in determining a redevelopment area... "You could learn a lot by a desktop analysis, but you also want to go out and verify field conditions, depending on the conditions." **Exhibit C**, Bidolli at 213. Strauss testified that she understood that all the properties were going to have to be looked at personally. **Exhibit D**, Strauss. at 246.

Q: And with respect to Harriman, can you describe Harriman's analysis and investigation?

A: Harriman was a quantitative analysis of data and backed up by a qualitative field study.

Q: Okay. Can you describe the field study undertaken by Harriman?

A: The Agency undertook the field study. (Id. at 77).

The Regular Meeting Minutes of the Common Council, dated March 13, 2019 (**Exhibit Y** at 11) reflect as follows:

Chairman Serrano noted that besides the work that was done by Harriman, staff went out, documented these properties, and things like that, and he asked if they could talk a little bit about that.

Ms. Strauss said Redevelopment staff went out and photographed each property in the redevelopment area to document the condition of the area. There are just shy of 400 properties with buildings on them in the redevelopment area...

In her deposition. Strauss confirmed that her statement to the Planning Committee was "accurate" and that Sabrina Church and Steven Ivan took photographs of every property in the Redevelopment Area over several days to evidence the building depreciation and deterioration referenced in the Harriman Report. **Exhibit D**, Strauss at 518-520, 523, 525.

Q: "Would it be your policy for purposes of preparing or undertaking a [blight] determination like this that you would take photographs of all the properties?"

A: Absolutely. (Id. at 62).

Like pulling a thread from the proverbial sweater, Strauss's representations and testimony quickly unraveled.

Church testified that RDA staff was not instructed to, nor did they, photograph each of the 400 properties in the Redevelopment Area. Rather, after lunch, on a single day in January, before it got dark at around 4:30 pm, Church and Steven Ivan from the Building Department photographed exactly 63 of the approximately 400 properties located in the area. They did not seek to photograph blight or deteriorated or deteriorated conditions, but rather "improvements" which could be made to the properties, such as "windows are outdated" or "siding needs to be painted", or house "needs exterior wash". **Exhibit S**, Church a. 268-269. Church did not believe that Mr. Ivan even understood why they were undertaking this task, as "this isn't his expertise. His expertise is construction... he doesn't even know what a redevelopment plan is." Id. at 269-270. When pressed, Strauss, testified as follows:

Q: Why did you make the representation that, in essence, four hundred properties were photographed?

A: I don't know. I can't -- I can't answer that question. (**Exhibit D**, Strauss at 526)

Q: You have no idea how many photographs were taken, right?

A: I don't have an exact number, no.

Q: And, in fact, you don't really have an -- even a range? I mean, you don't know if there was a hundred, if there were two hundred, if there were three hundred, if there were four hundred, correct?

A: I don't remember how many there were, no. I don't even have a range...

Q: To the extent that your representation to the Commissioners that you photographed each property at -- which is consistent with your testimony, was the statement that you made, and to the extent these are the only photographs that exist consistent with Sabrina's testimony, it was dramatically inaccurate, correct?

Mr. Elliot: Objection to the characterization.

Mr. Candela: Same Objection.

Q: It was inaccurate, correct?

A: It's -- it's not accurate. (Id. at 527-28)

Strauss then testified that, in actuality, no qualitative data went into the blight determination at

all.

Q: So what qualitative data went into the blight determination?

A: No qualitative data went into the blight determination, but it's certainly sprinkled throughout the report from people's opinions that the area is unsafe, that it's not well-lit, that it is undesirable, that it's not a destination for people because of the unsafe feeling. So that is qualitative data. Anecdotal data was in the report.

Q: Was in what report? ...What report says any of that?

A: What?

Q: What blight determination says any of that? ... you have a blight determination [RPA] that's Exhibit A.

A: Yes

Q: It's the first exhibit of the Plan, right?

A: Yes.

Q: Where does it say that anywhere in the blight determination?

A: It doesn't. Id. at 533-34

Sheehan testified that it was his understanding that this field work was actually undertaken.

Exhibit E, Sheehan at 51.

A: How many buildings did you say it actually represented?

Q: About 60. Sixty to 63.

A: I think in order to take into consideration – in terms of – you know, if you were going to do an inventory of the properties, you would try to get as close to 50 percent or more to assess.

Q: And so is it fair to state that to the extent this was the full extent of the field work, it's insufficient for a blight determination under your standards, correct?

A: If it was standing alone, yes. (Id. at 515)

Under these circumstances, there are issues of material fact relative to the RDA's claim that it acted "eminently reasonable" and in good faith, and summary judgment is not appropriate.