DOCKET NO: X08-FST-CV19-6044650-S	:	SUPERIOR COURT
	:	
IJ GROUP, LLC	:	JUDICIAL DISTRICT OF
	:	STAMFORD/NORWALK
	:	
V.	:	AT STAMFORD
	:	
REDEVELOPMENT AGENCY	:	
OF THE CITY OF NORWALK	:	DECEMBER 7, 2021

PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Pursuant to Connecticut Practice Book § 17-45 *et seq*., Plaintiff IJ GROUP, LLC (the "Plaintiff"), by and through its undersigned counsel, hereby submits its response to the Motion for Summary Judgment filed by Defendant REDEVELOPMENT AGENCY OF THE CITY OF NORWALK (the "RDA" or "Agency") filed October 22, 2021 directed toward Plaintiff's Declaratory Judgment Count, which itself seeks to declare invalid the City of Norwalk's 2019 Wall Street/West Avenue Redevelopment Plan (the "2019 Redevelopment Plan" or "2019 Plan").

I. INTRODUCTION

The factual record is so vast that the Defendant's Memorandum of Law is 60 pages, almost twice that permitted by Connecticut law (absent judicial approval), 38 pages of which contain purportedly "undisputed" factual allegations, which are cherry picked, irrelevant, inadmissible, and entirely disputed, prior to any actual argument being raised. The legal issues in this case are discreet, clear and straightforward:

1. Did the RDA act unreasonably, in bad faith, or abuse its power in finding a lawful redevelopment area, which is a condition precedent to finding a lawful redevelopment plan?

2. Did the RDA comply with the mandatory statutory requirements set forth in Section 8-127 of the General Statutes in approving the finding of a lawful redevelopment area

and redevelopment plan?[1]

Yet, the RDA's summary judgment memorandum reads like pulp fiction. The RDA creates a rhetorical strawman caricature of Plaintiff's principal, Jason Milligan. Their moving papers are replete with inadmissible, exaggerated and misleading anecdotal character evidence of Mr. Milligan, seemingly tilting at windmills with cravenness and crudity.[2]

Notably, the RDA has raised no special defenses to Plaintiff's declaratory judgment action; no

[1] The Plaintiff's Operative Complaint seeks a declaratory judgment that the 2019 Redevelopment Plan be declared invalid insofar as: (i) The RDA acted unreasonably, in bad faith, and/or exceeded its powers; (ii) the RDA failed to comply with necessary and mandatory statutory requirements and essential steps under Connecticut law; and (iii) the RDA deprived Plaintiff of due process of law.

[2] Nary a page passes without the RDA personally attacking Mr. Milligan, including characterizing him as brazen, audacious, misleading, unhinged, engaged in a relentless torrent and barrage of attacks and theatrics, engaged in foul-mouthed personal insults, engaged in a "campaign of vindictiveness", and not being a person of standing. The RDA further cherry picks politically incorrect quotes (many out of context), from Mr. Milligan's prolific emails, op-eds, on-line commentaries and testimony, such as Ms. Macey, [who the RDA notes for greatest impact is a single mother], as "working out of her bedroom while she's like babysitting. It's fucking retarded"; calling Tami Strauss a "crooked son-of-a-bitch"; and calling the RDA "lying cheating scumbags". (If there were a feature in a Word document for a footnote within a footnote, it would be used to point out Mr. Milligan's insensitive remark concerning Ms. Kaplan-Macey was predicated on the fact that her deposition was taken remotely from her home during COVID, with her young children interrupting her. **Plaintiff's Exhibit A**, Deposition transcript of Melissa Kaplan-Macey at 77. While this does not excuse Mr. Milligan's insensitive remarks in his deposition, it does provide context, and further begs the question as to why such irrelevant and inadmissible testimony is being provided to the Court if not to divert the Court from the actual issues at hand. The RDA claims that Mr. Milligan "attacked and criticized" and "berated" the vendors RPA and Harriman in connection with their blight findings, and threatened to sue them for corrupt practices (which he did, and which claims were settled for monetary payments). In the "who cares" category of adults behaving like children, the RDA claims that Mr. Milligan texted Brian Bidolli a picture of himself holding up the middle finger, which is as relevant as the testimony of Felix Serrano, the then Chairman of the RDA, that Mayor Harry Rilling gave Mr. Milligan the middle finger from across the room at a Norwalk social event. **Plaintiff's Exhibit T**, Deposition transcript of Felix Serrano at 111. The RDA invents the appearance of physical threat by arguing that Mr. Milligan sought to "intimidate" the 6'8" Mr. Bidolli by "tap[ing] a photograph of himself to the windshield of Mr. Bidolli's car", without providing the context that Mr. Milligan actually placed his business card, which contains his photo, in Mr. Bidolli windshield. Then, in the height of irony, lack of self-awareness, and hypocrisy, after injecting these inadmissible and irrelevant allegations into page after page of its summary judgment memorandum, the RDA concludes that "this three-ring circus should not distract from the … actual merit to the case." Def.'s Memo at 9. That may be the only undisputed fact contained in the RDA's memorandum.

claim of unclean hands, nor any other equitable defense or claim that could even arguably render the character or comments of the principal of IJ Group, LLC relevant to the claims herein. As will become crystal clear *infra*, the RDA's attempt to "poison the well" is exactly to distract this Court from the merits of the case; to elevate the personality of the Plaintiff's principal over the relevant claims and actual conduct of the players subject to this Court's judgment.

The RDA's memorandum is further replete with insinuations that question whether Mr. Milligan is, in their words, the proper "vessel" for this lawsuit.[3] Yet, the RDA has raised no counterclaims in this action. There have been no Motions to Dismiss filed for lack of personal or subject matter jurisdiction, nor have there been any jurisdictional arguments raised by the RDA implicating or contesting the Plaintiff's standing. There has been no argument that this declaratory judgment action is either unripe or untimely, nor has there been a claim that Plaintiff lacks sufficient connection to, or harm from, the law or action challenged to support its participation in the case.

So, again, why is so much of the RDA's memorandum centered on the conduct of Plaintiff's principal, conflating his personal conduct as principal of other legal entities and the claims raised in other lawsuits with the Plaintiff's legal arguments herein, when such conduct and claims are of limited or no probative value to the narrow legal issues at bar? Whether Mr. Milligan, as Plaintiff's principal, is the perfect "vessel", to quote the Defendant, is of no moment. The spotlight in this case shines squarely on a determination as to whether the RDA acted "unreasonably, in bad faith, or abused its power", and/or whether it complied with the mandatory statutory requirements set forth in Section 8-

[3] The RDA claims that Mr. Milligan, through a different LLC, purchased property in the redevelopment area which was "brazenly, audaciously and knowingly illegal"; that Mr. Milligan "supported" portions of the redevelopment plan (emphasis in RDA brief at 3); that he brought this case after the ILSR Case was filed "to help him wiggle out of the consequences of the absolute mess he created for himself by illegally purchasing the aforementioned properties"; that Mr. Milligan was invited to participate by the RDA in a working group meeting; and that Plaintiff did not purchase 67 and 69 Wall Street until December, 2018, after the drafting of the Redevelopment Plan was well under way (yet prior to the first public hearing or approval).

127 of the General Statutes.

II. SUMMARY JUDGMENT IS INAPPROPRIATE AS A MATTER OF LAW

A. Unreasonable, Bad Faith, or Abuse of Power Conferred Raise Issues of Fact

The Defendant argues that summary judgment should enter in its favor due to the absence of any material fact that the RDA acted in bad faith, unreasonably, or in excess of its powers. Specifically, Defendant claims that its determination of blight was "eminently reasonable" (Memo. at 58) and "bespeak the utmost of good faith by the Agency" (emphasis in original, id. at 61). Dispositively, however, adjudicating questions of "reasonableness" and "good faith" are inappropriate in the context of summary judgment as a matter of hornbook Connecticut law.

Initially, and dispositively, as held by this very Court (Honorable Sheila Ozalis), the Defendant cannot prove that it acted "reasonably" or "in good faith" in the context of a summary judgment motion as a matter of law. See Zapfel v. Xerox Corp., Superior Court, judicial district of Stamford-Norwalk, at Stamford Complex Litigation Docket No. FST-X08-CV16-6030461, 2021 WL 2011213 (Apr. 21, 2021, Ozalis, J.) ("The issue of whether Xerox breached the implied covenant of good faith and fair dealing necessitates an examination of the state of mind of Xerox and its employees involved, and as such is not an issue which is readily determinable on a motion for summary judgment.").

Our Supreme Court has held, "reasonableness is a question of fact for the trier to determine based on all of the circumstances." Williams Ford, Inc. v. The Hartford Courant, 232 Conn. 559, 580, 657 A.2d 212 (1995). Thus, where the issue of reasonableness requires this Court to consider all of the circumstances surrounding the Defendant's decision to render the Plan Area as blighted, deteriorated or deteriorating, this Court should not find, as a matter of law, that the RDA is entitled to summary judgment. See Ackerman v. Sobol, Superior Court, judicial district of Hartford at Hartford, Docket No. HHD-CV07-4027616S, 2007 WL 4305667, at *9 (Nov. 19, 2007, Elgo, J.) (Where the issue of reasonableness requires this court to consider all the circumstances surrounding the

defendant/appellee's decision… this court cannot find, as a matter of law, in favor of the plaintiffs/appellants. The motion for summary judgment is denied.").[4]

Defendant's claim that it is entitled to Summary Judgment due to the absence of bad faith is fatally flawed for the same reason. See 12 Havemeyer Place Co. v. Gordon, 93 Conn.App. 140, 156-57, 888 A.2d 141 (2006) ("As a rule, whether bad faith is established is a question of fact."). Thus, our Supreme Court has consistently held, "[s]ummary judgment is particularly inappropriate when the inference which the parties seek to have drawn deals with questions of motive, intent and subjective feelings and reactions." (Internal quotation marks omitted.) Suarez v. Dickmont Plastics Corp., 229 Conn. 99, 111, 639 A.2d 507 (1994).

In addition to the foregoing, the Plaintiff will present a factual predicate which is so powerful as to the negligence, audacity and even, at times, deceit of the RDA, that if summary judgment were permissible or appropriate in this case, it would enter in favor of the Plaintiff. It is understood that this is a high (and, in this context, unnecessary) bar, but it is one that the Plaintiff believes it will meet. At a minimum, however, the facts raised herein will be more than sufficient to raise genuine issues of material fact satisfying the concerns articulated by our Appellate Court in Reynolds v. Chrysler First Commercial Corp., 40 Conn.App. 725, 731-31, 673 A.2d 573, cert. denied, 237 Conn. 913, 675 A.2d 885 (1996) that the party opposing summary judgment must present a factual predicate for his argument in order to raise a genuine issue of fact.

B. The RDA Improperly Relies on Expert Testimony

Further, in support of its Motion, the Agency relies upon the Expert Reports of Elizabeth Seifel,

[4] See also Jurgilewicz v. Sita, Superior Court, judicial district of New Haven at New Haven, Docket No. NNH-CV13-6036859, 2014 WL 7525502 (Nov. 26, 2014, Wilson, J.); Orchard Grove Specialty Care Ctr., LLC v. Clairwood, Superior Court, judicial district of New London at New London, Docket No. KNL-CV11-6008580, 2012 WL 1511365 (Apr. 9, 2012, Martin, J.); Delgado v. Achieve Global, Superior Court, judicial district of Fairfield at Bridgeport, Docket No. 362720 (November 15, 2000, Melville, J.); Robinson v. Van Dyck Printing Company, Superior Court, judicial district of New Haven, Docket No. 360526 (April 25, 2000, Devlin, J.).

Michael Keane, and Peter Folino, who were disclosed as experts ten days prior to its Summary Judgment Motion. See Defendant Exhibits 88, 89, and 90.

While Plaintiff does not contest the admissibility of these reports in the context of a summary judgment motion, see Practice Book Section 17-45, they are nonetheless inappropriate for consideration in summary disposition, particularly where, as here, the Plaintiff has disclosed an expert witness with conflicting opinions (Entry No. 195.00). See Straw Pond Assocs., LLC v. Fitzpatrick, Mariano & Santos, P.C., 167 Conn. App. 691, 710, 145 A.3d 292, 306 (2016). See also Vallina v. Capobianco, Superior Court, judicial district of New Britain at New Britain, Docket No: CV186047976S, 2020 WL 8264103, (Dec. 22, 2020, Wiese, J.) ("Interpreting and resolving these conflicting facts would require the court to weigh the credibility of the plaintiff's testimony and each of the expert reports, which is inappropriate for summary judgment"); Gerell v. Holland Joint Venture, LLC, Superior Court, judicial district of Litchfield, at Torrington, Docket No. LLICV176014865S, 2019 WL 423992, at *6 (Jan. 14, 2019, Bentivegna, J.) ("The defendant] argues that its expert report remains uncontroverted, and, as such, the court should grant its motion for summary judgment. While the expert report may be powerful evidence at trial, whether evidence is uncontroverted or not goes to weight, something that inherently requires a credibility determination, which the court is not permitted to make in deciding a motion for summary judgment."); C.H.R.O. v. Ackley, Superior Court, Docket No. CV99550633, 2001 WL 951374, at *7 (July 20, 2001, Corradino, J.) ("jurors are told in any case involving experts that tests of credibility are applied to their testimony and that they can reject the opinion of any expert if his or her opinion is based on subordinate facts they do not find proven. *Nash v. Hunt*, 166 Conn. 118, 426 (1974) It would seem that trial courts should have the same ambit of review when examining expert reports submitted in summary judgment procedure.").

Viewing the evidence in the light most favorable to the non-moving party, as required, this Court must find that a fair and reasonable person could not reach only one conclusion with regard to

whether the RDA acted unreasonably, in bad faith, or in excess of its municipal powers. Thus, the issue should be determined by the trier of fact, and summary judgment should be denied.

III. MATERIAL FACTS (MANY DISPUTED) AND APPLICABLE LAW

Plaintiff is the owner of the real property and improvements located at 67 and 69 Wall Street, Norwalk, Connecticut (the "IJ Properties"). See Def.'s Answer, Entry No. 205.00 at ¶ 1. In or about the fall of 2018, Defendant RDA released a draft of the proposed redevelopment plan for "The Wall Street - West Avenue Neighborhood Plan Area". Id. at ¶ 5. The 2019 Redevelopment Plan was prepared and purportedly approved consistent with Chapter 130 of the Connecticut General Statutes. Id. at ¶ 7. The 2019 Redevelopment Plan identified a plan area that combined two separate redevelopment areas, the Wall Street Redevelopment Area and the West Avenue Redevelopment Area, into one new redevelopment area known as the Wall Street-West Avenue Redevelopment Area (the "Plan Area"). Id. at ¶ 13. The IJ Properties are located within the Plan Area. Id. at ¶ 14.

The RDA engaged REGIONAL PLAN ASSOCIATION, INC. ("RPA") to assist in the preparation of the 2019 Redevelopment Plan. Id. at ¶ 15. Their obligations included conducting an analysis of the proposed Plan Area in order to determine whether the Plan Area met the criteria for deteriorated or deteriorating designation provided in both state and federal statutes to ascertain whether the Plan Area qualifies for designation as a redevelopment area.[5]

A. "Public Policy" Behind Redevelopment

The Connecticut legislature has set forth the public policy that underpins the vast governmental powers harnessed through a redevelopment plan. Conn. Gen. Stat. Sec. 8-124 provides in full

[5] Appendix A to the draft Plan, released in October, 2018 and entitled "Blight Determination" provides in its first paragraph as follows: "Regional Plan Association has conducted an analysis of the procured Wall Street-West Avenue Redevelopment Area for the Norwalk Redevelopment Agency. Based on this assessment, RPA has determined that the area meets the criteria for blight designation in both state and federal statutes (Connecticut General Statutes Chapter 130, Section 8-125(7) and CFR 5780.208(b)(1)) and therefore qualified for designation as a redevelopment area." See Plaintiff's **Exhibit AA,** October 2018 draft Redevelopment Plan at p. 57.

(emphasis added):

> It is found and declared that there have existed and will continue to exist in the future in municipalities of the state substandard, insanitary, deteriorated, deteriorating, slum or blighted areas which constitute a serious and growing menace, injurious and inimical to the public health, safety, morals and welfare of the residents of the state; that the existence of such areas contributes substantially and increasingly to the spread of disease and crime, necessitating excessive and disproportionate expenditures of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, and the existence of such areas constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, and retards the provision of housing accommodation; that this menace is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating substandard, insanitary, deteriorated, deteriorating, slum or blighted conditions thereon or preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by municipalities acting through agencies known as redevelopment agencies as herein provided, and any assistance which may be given by any public body in connection therewith, are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions of this chapter is hereby declared as a matter of legislative determination.

Everyone at the RDA who provided deposition testimony confirmed the importance of this public policy in the context of the RDA's redevelopment authority. Public Policy "guide[s] redevelopment planning in the state of Connecticut" and "identif[ies] the conditions that would justify a redevelopment plan". See **Plaintiff's Exhibit C**, Deposition transcript of Brian Bidolli, at 13, 17, 24, 25, 29.[6]

> The majority of this [declaration of public policy] is derived from the police powers focused on preserving the health, safety and welfare of an area, and I think it's important to consider that when evaluating the declaration of public policy... Sometimes the private market does not provide adequate conditions in a community; therefore, the city, state or some sort of public entity must exercise police power to preserve the health, safety, and welfare of the area. (Id. at 24-25, 29).

See also **Plaintiff's Exhibit D**, Deposition transcript of Tami Strauss at 506 (Public Policy is "important" and designed to provide guidance as to why urban redevelopment exists in the first place;

[6] In the interest of consistency and convenience, all testimony of each deponent relied upon by the Plaintiff herein will be contained in their respective Exhibit in chronological order.

what the State is trying to accomplish with these statutes); **Plaintiff's Exhibit E**, Deposition transcript of Timothy Sheehan, former Executive Director of the RDA for approximately 20 years, at 298 ("it's basically putting forth the reasoning for undertaking these types of redevelopment plans").

B. A Redevelopment Plan Requires A Lawful Redevelopment Area

Pursuant to Connecticut statute and federal regulation, in order to have a lawful redevelopment plan, there has to be a finding of a lawful redevelopment area.[7] A finding of blight is "crucial" to supporting a lawful redevelopment area. **Plaintiff's Exhibit F**, Deposition transcript of Emily Innes, at 215. See also **Exhibit C,** Bidolli, at 46, 203; **Plaintiff's Exhibit G**, Tom Livingston, Norwalk Common Council Member who voted to approve the Plan, at 14.

Conn. Gen. Stat. Sec. 8-125 contains the following relevant definitions:

(2) "Redevelopment area" means an area within the state that is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community…

(3) A "redevelopment plan" means a plan that includes: (A) (i) A description of the redevelopment area and the condition, type and use of the structures therein, and **(ii) specification of each parcel proposed to be acquired, including parcels to be acquired by eminent domain [Plaintiff requests that the Court please put a pin in this];** … (**D) schedules showing the number of families displaced by the proposed improvement**, the method of temporary relocation of such families and the availability of sufficient suitable living accommodations at prices and rentals within the financial reach of such families and located within a reasonable distance of the area from which such families are displaced; … [and] (F) a description of how the redevelopment area is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community…

(7) "Deteriorated" or "deteriorating" with respect to a redevelopment area means an area within which at least twenty per cent of the buildings **contain** one or more building deficiencies or environmental deficiencies, including, but not limited to: (A) Defects that warrant clearance; (B) conditions from a defect that are not correctable by normal maintenance [relied on by RPA]; (C) extensive minor defects that collectively have a negative effect on the surrounding area [relied on by Harriman]; (D) inadequate original construction or subsequent alterations; (E) inadequate or unsafe plumbing, heating or electrical facilities; (F) overcrowding or improper location of structures on land; (G) excessive density of dwelling units; (H) conversion of incompatible types of uses, such as conversion of a structure located near family

[7] In order to determine that an area is a "redevelopment area", as that term is defined by statute, the Agency must determine that it is "deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community, or, in other words, blighted". (Internal quotations omitted, emphasis added) Maritime Ventures, LLC v. City of Norwalk, 277 Conn. 800, 820, 894 A.2d 946, 959 (2006).

dwelling units to rooming houses; (I) obsolete building types, such as large residences or other buildings which because of lack of use or maintenance have a blighting influence; (J) detrimental land uses or conditions, such as incompatible uses, structures in mixed use, or adverse influences from noise, smoke or fumes; (K) unsafe, congested, poorly designed, or otherwise deficient streets; (L) inadequate public utilities or community facilities that contribute to unsatisfactory living conditions or economic decline; or (M) other equally significant building deficiencies or environmental deficiencies [relied on by RPA]. (Emphasis added).[8]

As reflected in the statute, a blight finding is an "area" finding made by a redevelopment agency. As such, the RDA may investigate and analyze larger area criteria, such as crumbling infrastructure, police and fire calls, rental vacancies, assessed values in relation to other areas in Norwalk, among other things, in addition to satisfying its analysis on individual properties, to make that area determination. In this case, however, as will be demonstrated, *infra*, the RDA undertook no area analysis whatsoever. The RDA relied exclusively on two property-by-property "desktop" analyses by RPA and Harriman.[9] This was confirmed by Sheehan in his testimony.

Q: And so when you are looking at how these blight determinations were undertaken, they did not include the elements that might be considered outside of a property-by-property analysis, correct?

A: Yes, such as infrastructure and issues like that, I would agree.

Q: So, when I'm referring to meeting the standard of 20 to 25 percent, whether it be for state or federal, you understand that it is based on the analysis that the RDA undertook in conjunction with its consultant, which was a property-by-property determination, correct?

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[8] Significantly, the Connecticut State statute requires that the properties being analyzed to support the finding of a lawful redevelopment area actually contain a building deficiency; not that they "may" or "possibly" or "potentially" contain or are "suspected" of containing a building deficiency or environmental contamination. This is in direct contradistinction to the U.S. Department of Housing and Urban Development (HUD) Code of Federal Regulations, that expressly permits such a finding based on "known or suspected" environmental contamination. This underscores the intent of the Connecticut legislature that there be actual deficiencies. See Hayes v. Smith, 194 Conn. 52, 57–58, 480 A.2d 425 (1984) ("In determining legislative intent, in the absence of ambiguity, we look only to what the legislature actually said, not to what it might have meant to say."). See also Kellems v. Brown, 163 Conn. 478, 514–16, 313 A.2d 53 (1972), appeal dismissed, 409 U.S. 1099, 93 S.Ct. 911, 34 L.Ed.2d 678 (1973) (presuming General Assembly's familiarity with federal regulations).

[9] Strauss defined a "desktop analysis" as a "quantitative" analysis based on data that is undertaken on a computer. Conversely a "qualitative" analysis would include field work. **Exhibit D**, Strauss at 75.

A: Yes it does. (**Exhibit E**, Sheehan, at 421-426).[10]

C. Why the Finding of a Lawful Redevelopment Area Matters

At his deposition, Mr. Sheehan testified as to the consequences of a lawful blight finding:

Q: What does the blight finding get you?

A: Because you're ultimately looking for the authority that is provided to the agency under the statute. And in order to get those authorities you have to meet the requirements. That wouldn't be typical with just a normal neighborhood plan.

Q: And what is your understanding as to the difference, if any, between the use of eminent domain in a redevelopment area where there's been a blight finding and in an area that is not a redevelopment area where there has been no blight finding.

A: The authority wouldn't be there to do eminent domain.

Q: Okay. And it also opens up additional governmental oversight into the design of properties within that area –

A: Correct … (**Exhibit E** at 229-230).

1. Eminent Domain

The finding of a lawful redevelopment area exposes every property in that area, whether old construction or new construction, whether that particular property is deteriorated, deteriorating or brand new, to eminent domain by the agency. Conn. Gen. Stat. Section 8-124, Gohld Realty Co. v. Hartford, 141 Conn. 135, 146, 104 A.2d 365 (1954). See also Maritime Ventures, LLC v. City of Norwalk, 277 Conn. 800, 809, 894 A.2d 946, 953 (2006) ("The authority of a redevelopment agency to exercise the power of eminent domain within a redevelopment area is not confined to substandard properties. In fact, the act specifically provides that a redevelopment area "may include structures not in themselves substandard or insanitary which are found to be essential to complete and adequate unit of development, if the redevelopment area is deteriorated, deteriorating, substandard or detrimental."

[10] The Plaintiff is not claiming there is anything improper about the RDA's failure to utilize area characteristics. However, in determining the "reasonableness" or "good or bad faith" of the analysis, it is relevant to review (i) what was not analyzed in a broader scope; and (ii) the manner in which the actual limited analysis was undertaken.

Sheehan testified similarly (**Exhibit E** at 148-49):

Q: [Is it correct that] once a property is in a lawful redevelopment area, and subject to a redevelopment plan, and thereby subject to eminent domain, that the property does not then have the right to contest eminent domain, they only have the right to contest value?

A: That's correct, yes.

This underscores the significance of this declaratory judgment action. It is the only time for a property owner in a redevelopment area to contest the authority of the redevelopment agency to take one's real property.

Further, there was inconsistent deposition testimony relative to the RDA's and City's authority and intention to utilize eminent domain under the 2019 Plan, rendering even more important a judicial determination as to whether the RDA acted reasonably or in bad faith in connection with establishing the redevelopment area. Kaplan-Macey testified that eminent domain was "off the table" as part of the plan. **Exhibit A** at 156: "[I]t was very clear that there's a concern in the community that [eminent domain] would be a tool they could use and they would not use that. So they just wanted to be very clear that that was not their intention. So they wanted to have that spelled out … Right off the table." Mr. Livingston testified that eminent domain is not a right given to the Common Council under the 2019 Plan; the right was "not included in our Plan" … "We looked at it and said no." **Exhibit G** at 98.

Further, the Minutes of the Special Meeting of the Redevelopment Agency dated March 13, 2019 (when the RDA approved the Plan) reflect the following representation by Strauss relative to the intention of the RDA as to eminent domain:

> Ms. Strauss said she will go through a summary of how the plan meets the statutory requirements that are set forth in Chapter 130 regarding redevelopment plans. Section 8-125 gives the definition of what a redevelopment plan is. It includes (A) a description of the redevelopment area and the condition, type and use of the structures therein and can be found in the document in the existing condition section. (B) The state requires the specification of each parcel proposed to be acquired. This is not applicable to this plan, as there are no anticipated takings in the plan… (E) Schedules showing the number of families displaced. This is not applicable as there are no anticipated takings at this time, and, hence, no displacements. (**Plaintiff's Exhibit H** at 8**)** (emphasis added).

See also, Meeting Minutes of the Planning Committee of the Common Council;[11] "Ms. Strauss then spoke about Eminent Domain . . . The Redevelopment Agency has no authority in this Plan to take any property. No properties have been identified for taking." **Plaintiff's Exhibit I** at 11.

However, Sheehan testified that every property in the redevelopment area is subject to eminent domain under the 2019 Plan assuming the City and RDA support it. **Exhibit E** at 147-148. Similarly, Mayor Rilling testified that the Common Council can grant the RDA the right of eminent domain if they choose. **Plaintiff's Exhibit J,** transcript of Mayor Rilling at 103-104.[12]

Further, deposition testimony from the various deponents is inconsistent as to whether the 2019 Redevelopment Plan is a "new" plan, or an "amendment" to the 2004 Redevelopment Plan, which directly implicates the intention of the RDA to use eminent domain.[13] The RDA adopts Sheehan's position in its Memorandum of Law. Def.'s Memo at 8, "The Agency viewed the 2019 Plan as amending, or supplementing, the 2004 Plan". That is a distinction with a difference relative to the City's intention to exercise eminent domain within the Plan Area.

More specifically, the 2004 Redevelopment Plan expressly identifies "properties to be

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[11] The Planning Committee of the Common Counsel "is responsible for dealing with matters relating to City planning, redevelopment, and the like." **Exhibit G**, Livingston at 8.

[12] To that end, after the January 8, 2019 public hearing on the 2019 Plan, the RDA added and inserted in the Plan a Section on Eminent Domain, which was never brought for public review **Exhibit B** at 21. See **Plaintiff's Exhibit K,** Memorandum of Strauss to the RDA Commissioners dated January 30, 2019 at p. 2, reflecting the inclusion of a new section in the Plan on eminent domain.

[13] Strauss testified that the 2019 Plan "replaced" the 2004 Plan. **Exhibit D** at 144-145. "We didn't ask for an amendment." 555-556; Sabrina Church testified that the 2019 Plan "was meant to replace" the 2004 Plan, rendering the 2004 Plan "obsolete". **Plaintiff's Exhibit S**, deposition transcript of Sabrina Church at 233-236. Livingston testified that the 2019 Plan was "a new plan to replace the old plan", "not an Amendment", the result of which is that the 2004 Plan is "no longer operative". **Exhibit G** at 28, 33-35. Mayor Rilling testified that the 2004 Plan has been "replaced" by a new plan. **Exhibit J** at 6. Kaplan-Macey testified that she believed that the term for the 2004 Redevelopment Plan had expired. "That was sort of the baseline piece. It was expired and they needed to update it." **Exhibit A** at 41-42. Sheehan, on the other hand, testified that the 2019 Plan was an Amendment to the 2004 Plan. "It was always advanced as an amendment to an existing plan" so the 2004 Plan remains operative. **Exhibit E** at 174.

acquired" and a "schedule of displaced families", listing thirty-two properties by address to be acquired for site assemblage. See **Plaintiff's Exhibit L**, 2004 Redevelopment Plan at 36-38. Further, Sheehan testified that acquisition of the properties listed in the 2004 Plan is necessary to achieve the objectives of the 2019 Plan. **Exhibit E**, Sheehan at 510. Finally, Sheehan testified that by not specifically listing properties subject to eminent domain in the 2019 Plan, it "opens everything up"; instead being limited to the listed properties, it opened everything up, rendering every property in the redevelopment area subject to eminent domain "assuming the City and RDA support it". Id. at 147-148.

This declaratory action is the proper vehicle to challenge the document that purports to grant that governmental power, and summary judgment should be denied.

2. Governmental Oversight

In addition to eminent domain, the blight designation brings extraordinary regulatory control to the RDA over every single property in the Redevelopment Area. More specifically, the 2019 Redevelopment Plan contains fifteen pages of "Design Guidelines" empowering the RDA to "review for approval or disapproval all development plans for new construction and building rehabilitation within the Redevelopment Area to determine compatibility with the appropriate Design Guidelines." (Emphasis added) **Exhibit B** at 39. Pursuant to the testimony of Mr. Bidolli, the RDA has the authority to conduct design review and evaluate extensive factors contained in the 2019 Plan with respect to any proposed project within the Plan Area. **Exhibit C** at 44.

Bidolli testified that any project can be denied based on the RDA's exercise of its "police powers" in its determination of whether "building orientation, site access, parking, green infrastructure, street furniture, landscaping, open space, lighting and signage" meet design guidelines. Id. at. 88-89. On a more micro level, these powers permit the RDA to decline an application based on single factors, including building massing, materials for construction, facades and roofs. Id. at 90-91. Facade review

does not only permit denial of an application based on that which is viewable by the public from the street, but it includes structural components behind the facade, such as beams Id. at 94, 99, which would appear to be a vast overreach of powers generally delegated to the building department. Mr. Bidolli further testified that the RDA's design guideline authority even extends to its determination of whether projects comply with zoning regulations. Id. at 77.

Further, applicants are required to provide the RDA with "certified estimates from a qualified contractor" relative to an application, which requires property owners who are undertaking renovations "in house" to incur additional expense. Id. at 99. These determinations are not predicated on fixed metrics, but rather, are the "discretionary" or "interpretive" or "subjective" determinations of RDA staff. **Exhibit C** at 112-113, 118, inherent in which is the ability of the RDA to make life more difficult for less favored applicants, like Mr. Milligan.

Bidolli testified at his deposition as follows:

Q: "Do you think it is important from your standpoint as the executive director of the RDA that to the extent there are guidelines or standards that are to be referred to by the RDA consistent with the Design Guidelines and Neighborhood Improvements set forth in the Redevelopment Plan, that those specifically be referenced in the Redevelopment Plan?"

A: "Yes, and they are. We just reviewed. The next question please." (Id. at 169).

However, the extensive authority claimed by the RDA does not stop with a review of the Design Guidelines contained in the 2019 Plan. Additionally, the RDA claims the right to compel any property owner undertaking a construction or renovation project over $50,000.00 to engage and pay a third-party architect in connection with the "submission, review, feedback, comment, adjusting, and decision" on the Application. Id. at 64. This architect must be chosen exclusively from a list of architects who are on-call with the RDA, Id. at 183-185, which results in the architect being compensated by the property owner, while serving as an agent of the RDA, not as an advocate for the applicant paying the fee. Id. at 200. Astonishingly, this mandatory process is not authorized by the Design Guidelines, or even referenced in the Redevelopment Plan itself.

Rather, the obligation is set forth in a footnote in a mystery "pamphlet" that was last authorized in 2011. See **Plaintiff's Exhibit U** at 2**.** On examination, Mr. Bidolli admitted that this pamphlet is not referenced in the Redevelopment Plan. See **Exhibit C** at 172 ("So based on my -- this review [of the Design Guidelines and Neighborhood Improvements set forth in the Redevelopment Plan] currently, I do not see any reference to the design pamphlet in the guidelines the answer is no.").

Further, the pamphlet is not provided to applicants unless requested. When asked at his deposition how the public is supposed to be aware of the police powers being exercised through the pamphlet if it is not even provided to the public, Mr. Bidolli stated that it is available on line or that the public could review the "Agenda" from the 2011 meeting in which it was authorized. Id. at 183. These standards implicate due process rights, as there is no ability to appeal the RDA's subjective determination that a project exceeds $50,000.00, nor is there the right to appeal the declination of an application by the Commissioners to the Connecticut Superior Court.[14] Id. at 194-195.

It further should be noted that Milligan is not the only person in Norwalk that was outraged by this governmental overreach; he is simply the only one who has "put his proverbial money where his mouth is" and chosen to do something about it. Strauss confirmed in her testimony that she had never

[14] Milligan is the managing principal of various entities that own approximately 40 properties in the Plan Area. See **Plaintiff's Exhibit EE**, Affidavit of Jason Milligan, There currently are disputes between Milligan and the RDA relative to RDA's massive over-reach relative to its purported authority, which Milligan believes, adversely affects private enterprise and the ability of businesses to open in the Plan Area. In one dispute, the RDA is refusing to approve an application for a bakery unless Milligan engages a third-party architect, as directed in the footnote in the pamphlet, based on the RDA's claim that the project exceeds $50,000.00, which Milligan disputes, and for which there is no appeal or legal recourse. Milligan otherwise contests what he considers to be unlawful and unnecessary micromanagement of a healthy neighborhood. The undersigned would anticipate an objection to the admissibility of this evidence on the basis of relevance, since neither Milligan nor his other entities are plaintiffs in this case. Such an Objection might be sustained by this Court. Or, it may not, since it directly rebuts the RDA's extensive arguments relating to Milligan's purported motive in bringing this lawsuit (i.e., "to help him wiggle out of the consequences of the absolute mess he created for himself by illegally purchasing the aforementioned properties"). Notably, if it is inadmissible on the basis that Plaintiff is conflating Milligan and other entities with the Plaintiff, half of the arguments set forth in RDA's brief are inadmissible, as well.

seen the public fight the blight determination to this extent. **Exhibit D**. at. 487-88. See also extensive public comments contesting the blight finding reflected in the public meetings, held January 8, February 9, March 12, and March 13, 2019 (**Plaintiff's Exhibit M, W, X, and Y**, respectively).

3. Funding

Finally, and unsurprisingly, a significant issue driving the blight finding is the all-mighty dollar. The City and RDA are improperly designating healthy areas as blighted as a means to an end; the end being money. "[T]he finding of blight is necessary for plan approval … And plan approval is necessary to open up state and federal funding for development of the area." **Exhibit E**, Sheehan at 235.

As stated by Mayor Rilling. "[t]o use that label [blight] is really offensive. Unfortunately, it's what the state of Connecticut and HUD requires in order to get those monies in." **Plaintiff's Exhibit O,** Nancy on Norwalk June 1, 2015 (Dems eying Norwalk Redevelopment Agency in unhappiness over slum/blight designation). See also **Exhibit J** at 14, 45, Mayor Rilling's testimony (Wall Street Redevelopment Area was designated a slum or blight "in order to receive various funds…including state and federal grants, and tax credits"; **Exhibit G**, Livingston at 97 ("[t]he benefit of having a plan with the designation we talked about is additional funding sources, and I don't know if there are other benefits."). Sheehan testified that the blight designation is a means to an end to enhance the opportunity for funding. **Exhibit E** at 248, 255.

This is not the first time that this issue has arisen in Norwalk. The blight determination for the South Norwalk TOD Redevelopment Area also generated debate as to the propriety of designating an area as blighted, deteriorated or deteriorating for the purposes of accessing funds.
See Common Council Meeting Minutes, dated May 12, 2015 (**Plaintiff's Exhibit P**):

> "Mr. Tim Sheehan referred to supporting documents and explained that applying the slum/blighted designation to South Norwalk is necessary to get federal grant money, a reference to state statute of the definition as an area designated as slum, blighted, deteriorated or deteriorating is eligible for funding targeted at addressing such deficiencies." (p. 6).

> "Ms. Tami Strauss said that this designation is in order to maximize the funding resources available to projects in the South Norwalk TOD Redevelopment Area, it is necessary to determine whether or not the area meets the state and federal definitions of slum/blighted." (p. 7).
>
> "Mr. Sheehan explained that HUD looks at the area as an area of opportunity, and what we recognize is that there is a need for additional investment into the neighborhood, not that it is significantly blighted to a degree that we would normally have the standard definition." (p. 7).

At his deposition (**Exhibit E** at 259-260), Sheehan confirmed that he had been quoted accurately in the press when he said, "[t]he 1978 standard does not mean that a house was in poor condition, just that the feds think it might have lead paint."

Q: Just the fact that the feds think it might have lead paint -- if the house is not in poor condition and if there's no actual lead paint in the house, is that satisfactory to satisfy a property falling under the blight determination for calculation of the 20 percent state, 25% federal?

Mr. Elliot: Object to the form.

A: In terms of the standard that's required, yes.

Q: So it would be fair to state then that you would stand behind that statement –

A: Yes.

The final word on the funding issue will be left to a former Norwalk Zoning Chairman:

> I do not know the nuances on funding but it has been my understanding that a finding of blight is necessary for plan approval and plan approval is necessary to open up State and Federal funding for development of the area. Can someone put some context on the money that would be made available to the area if the plan is approved v. if the plan is not approved? If we are talking about significant money I'll take that and let you call anything you want blight. (**Exhibit I** Meeting Minutes, Planning Committee of the Common Council, February 9, 2019 at 8).

The evidence herein will demonstrate how the bight determination has become farcical, as reflected in how the blight determination for the Redevelopment Area was actually undertaken.

IV. THE RDA ACTED UNREASONABLY, IN BAD FAITH, OR ABUSED ITS POWER IN FINDING A LAWFUL REDEVELOPMENT AREA

A. Legal Standard

"Municipal authorities have broad powers to effectuate an urban redevelopment plan, and so

long as they act within the limits of the formal powers conferred upon them and in due form of law the power of the courts to supervise, review or restrain them is necessarily limited. But when those powers are exceeded or exercised unreasonably or in bad faith, as the plaintiffs here allege, their actions are open to judicial review." (Internal citation omitted) United Oil Co. v. Urb. Redevelopment Comm'n of City of Stamford, 158 Conn. 364, 381, 260 A.2d 596, 605 (1969).

B. Regional Plan Association is Engaged by the RDA and Directed to Perform the Blight Determination

In or about August, 2016, the RDA received approval to hire RPA to assist with the 2019 Plan. The Meeting Minutes of the Redevelopment Agency, dated August 9, 2016 (TS-295) (**Plaintiff's Exhibit Q**) reflect as follows:

> Mr. Sheehan said the Agency is proposing to enter into a Planning Services Contract with the Regional Plan Association (RPA) to assist with its urban planning work in Norwalk. The RPA has a long and distinguished history of conducting large-scale planning efforts for the tristate area, and he believes that the Agency and its staff can be well served by the folks from RPA. Their Connecticut director has chosen a highly qualified team from RPA to assist the Agency.

The Connecticut director and point person for the project was Melissa Kaplan-Macey. **Exhibit D**, Strauss at 87. While Sheehan was the Executive Director of the RDA and, thus, Strauss's supervisor, Strauss was the Project Manager for the 2019 Plan and was autonomous in connection with managing the project and overseeing RPA. Id. at. 14, 17; **Exhibit E**, Sheehan at 269-270. Kaplan-Macey testified her direct point of contact was Strauss. **Exhibit A** at 36.

Kaplan-Macey testified at her deposition that the 2019 Redevelopment Plan was the very first redevelopment plan on which she ever worked. Id. at 21. Not only was she not an expert in the area, but she had no experience whatsoever at RPA or otherwise in establishing a redevelopment area or analyzing blight. She had never done an analysis of whether a redevelopment area could be established based on state or federal statute in any state or in any area in which she performed urban planning services. She did not work with anyone at RPA regarding the blight determination that may have had experience in determining the lawful existence of a redevelopment area. She was unfamiliar with

Connecticut General Statutes Chapter 130 or HUD requirements regarding the determination of blight. Id. at. 22-25, 52, 92, 270, 271.

Early in the project, Strauss provided Kaplan-Macey with the blight determination for the South Norwalk TOD Redevelopment Area, undertaken several years earlier by, ironically, Emily Innes, (then with the Cecil Group which subsequently merged with Harriman). Id. at 6; **Plaintiff's Exhibit R** at RPA-62, 63, 90.[15] South Norwalk TOD "Determination of Blighted Conditions", Id. at RPA 91-109 ("SONO Blight Determination").

The Agency goes to great lengths in its Memorandum to underscore that the methodology utilized by RPA previously had been utilized in connection with the SONO Blight Determination and had been approved by the Common Council. Def.'s Memo at 11-12. This is a red herring. Prior use of an unchallenged improper methodology does not act as a rubber stamp of that methodology as lawful in perpetuity. Further, Plaintiff did not own property in SONO and would not have had standing to assert a challenge to the finding.

Moreover, the SONO blight determination is not "apples to apples" with the skeletal bare bones math calculations undertaken in RPA's Wall Street-West Avenue Blight Determination ("RPA Blight Determination). Initially, the SONO Blight Determination analyzes additional factors to assure statutory compliance, such as deed uses or conditions, incompatible uses, building conditions, and overcrowding and density. Further, the section on flood blight includes an analysis and evidence of actual "interior and exterior flood conditions" from Superstorm Sandy and Hurricane Irene, some of which served as evidence "in support of applications for assistance in addressing storm-related damage". Further, the SONO Blight Determination section on flood blight reports "regular flooding by tide and normal storms" on actual named streets in the area and expressly addresses why this flooding

[15] The RPA documents relied on herein contain bates numbering with the prefix RPA_000. For the sake of convenience, Plaintiff will refer to the specific pages of **Exhibit R** with the prefix RPA and then cite only the final digits of the page number referenced in said exhibit.

"is not likely to be solved by private enterprise alone and will require partnerships between property owners and the City." None of this work was undertaken in connection with the RPA Blight Determination.[16]

Everyone who provided deposition testimony testified that RPA's Blight Determination was not a qualitative analysis, but rather, was desktop analysis. Kaplan-Macey testified that "[t]he redevelopment blight determination piece was more of a desktop, you know, data analytics process. So it didn't include community input and things of that nature." **Exhibit A** at 58. "A desktop analysis is what we did. We looked at maps and we looked at data.... We didn't do field work. We did computer work. Id. at 190-91. Strauss testified that both RPA and Harriman did desktop analyses. **Exhibit D** at 78.

Strauss "directed" Kaplan-Macey to follow the methodology as to data reflected in the South Norwalk TOD Redevelopment Plan. **Exhibit A** at 64-65. Strauss confirmed that she "instructed" Kaplan-Macey to follow this methodology. **Exhibit D** at 95, 97. As such, the extent of RPA's work in connection with the blight determination was to map properties based on the City's GIS database (geographic spatial database), which was provided to them by the City, and count the properties based solely on the criteria directed by RDA. **Exhibit A** at 110.[17]

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[16] Innes testified that the South Norwalk Blight Analysis was a full quantitative and qualitative blight analysis, not a desktop analysis. **Exhibit F** at 66-67. For instance, for flood blight analysis in SONO, she looked at the topography of the area, and its relationship to other bodies of water, to understand what is meant by the hundred-year floodplain which varies from location to location." Id. at 67, emphasis added. She looked at flood blight in SONO "because South Norwalk had seen heavy flooding from Hurricane Sandy. "I had supplied to me pictures of the results of Hurricane Sandy happening. So when I was looking at the potential for flood blight, it was an assumption based on (A) the location of the properties in the floodplain, (B) the then known projections of sea level rise and flooding from that and from climate change, and (C) my understanding of the impact that the area had already faced." Id. at 66.

[17] RPA did not undertake any in-person site inspections, which, Kaplan-Macey testified, would have been relevant to her analysis. **Exhibit A** at 129. RPA did not look at changes to exterior building conditions, occupancy, property values, rental rates, median sales prices, tax revaluations, police and fire call statistics, code violations, presence of other environmental hazards such as asbestos or

RPA determined that there were 385 properties in the Redevelopment Area, and that 205 of those parcels "meet one or more state and federal criteria for blight determination." See **Plaintiff's Exhibit AA** at 57, RPA's Blight Determination, October 2018. RPA determined that 41 of the parcels (11%) were "brownfields and suspected brownfields"; 147 of the parcels (38%) were "suspected of lead paint" because they were buildings built before 1978 and have "not been improved"; and 44 of the parcels were located partially or fully within a 100-year floodplain and had "potential flood blight". Id.[18] "We didn't voice a separate opinion. Like I said, it was a technical assistance project, and we provided them with technical assistance, and this was the model they told us to use." **Exhibit A** at 64.

This analysis was a sham and cannot sustain a blight determination.

1. "Suspected" Lead Paint

The use of "suspected lead paint" in properties built before 1978, standing alone as the sole criteria, is improper to satisfy Connecticut statute to establish a lawful redevelopment area, particularly in the context of a summary judgment motion.

Initially, as previously noted, Conn. Gen. Stat. Section 8-125 requires that properties actually "contain" a building deficiency or environmental deficiency, not that they are "suspected" of containing a deficiency. If the language of the statute is clear, it is assumed that the words themselves express the intent of the legislature and there is no need to construe the statute. (internal citations omitted) F.A.A. v. Adm'r, Unemployment Comp. Act, 196 Conn. 546, 550, 494 A.2d 564, 567 (1985).

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material spills, the condition of public infrastructure such as roads, sidewalks, water and sewer, the relative valuation of the buildings in the plan area as compared to other areas in Norwalk, property and building vacancies, interior conditions such as inadequate alterations, plumbing, heating or electrical, functional or economic obsolescence, all of which factors, Ms. Kaplan Macey testified, would have been relevant to a blight determination. Id. at. 75, 95, 129-132. Sheehan, too, testified that these factors would be relevant to a blight determination. **Exhibit E** at 287-293.

[18] RPA found that brownfields and suspected lead paint satisfied the Connecticut statutory criteria "conditions from a defect that are not correctable by normal maintenance" and potential flood blight satisfied "other equally significant building deficiencies or environmental deficiencies". Id.

See also **Exhibit BB,** deposition transcript of Plaintiff's expert witness, Rachel Goldberg, former General Counsel of the Stamford URC at 58 ("the buildings are required to have deficiencies").

Strauss initially testified during her deposition that it was her understanding that 20% of the buildings must actually contain a building deficiency or environmental deficiency to support a blight determination. "It must contain it". **Exhibit D** at 509. She sought to dance through those proverbial raindrops at 510:

> I think the word 'contain' allows us some level of presumption that it may contain lead paint based on the age of the building or that it may flood based on its location within a floodplain… I think that 'contain' means -- I don't know. It's not 'may contain'. I just think that 'contain' can mean -- can mean, in this case, built before 1978 or located within a floodplain. It contains an environmental or building deficiency, and just by being built before 1978 or being located in a floodplain it does contain that deficiency.

The RDA had no knowledge of whether any of the 147 properties identified by RPA used to calculate state statutory compliance actually contained lead paint. All 147 are based on "assumption" and "speculation". "I don't know. They weren't tested" Id. at 116-117.

Kaplan-Macey confirmed that the lead paint analysis involved no investigation of the individual properties other than reviewing data as to what year they originally were constructed and whether the data reflected a subsequent alteration. She testified that she has no knowledge, one way or the other, whether any of those 147 properties actually contained lead paint or had inadequate original construction or subsequent alterations. Only data from which she "speculated". **Exhibit A** at 250.

Innes, who undertook the SONO Blight Determination, was clearer. **Exhibit F** at 64-65, 75:

Q: Do you believe that probable lead paint alone is sufficient to establish blight?

A: In my experience, I would look at more than one criteria.

Q: So that answer to that would be no?

A: I agree, the answer to that would be no.

…

Q: Is actual lead paint, standing alone sufficient to support a blight determination for a redevelopment area?

A: In my opinion I would look at more than one condition.

Q: Is it fair to say that the answer to my question is no?

A: Yes.

The Court may take note that the RPA Blight Determination characterizes the Connecticut statute, but does not quote it. Rather, it softens it through graphics and maps, which didn't allow its intended audience to read the statute unless they independently researched it. This could lead to an inaccurate understanding of the statute. For instance, Livingston testified that he was under the impression and belief that lead paint was specifically and expressly identified in the Connecticut statute as a factor that supported the finding of blight. "I don't know that I was aware that lead paint was not a specific part of that … Well, my understanding was that that was one of the criteria set forth in the statute that we satisfied." **Exhibit G** at 122-123. When he was asked how he formed that belief, he responded, "Through – I can't tell you exactly how, but in meetings and discussions." Id. at 123. "My understanding was that there were certain criteria, a third party was hired, I believe, to determine whether or not the Redevelopment Plan Area satisfied those criteria, and that they found it did." Id. at 128.

2. "Probable" Flood Blight

Similarly, the determination of probable flood blight utilized to satisfy the statutory condition of "significant building deficiencies or environmental deficiencies" is predicated on the mere fact that 43 properties exist partially or completely in a 100-year floodplain. **Exhibit D** at 119. This is without regard as to whether these properties involve brand-new waterfront construction and development, with the most modern and up to date technological flood protections. Kaplan-Macey testified the analysis is "completely speculative and hypothesis". **Exhibit A** at 133. So did Strauss, **Exhibit D**. at 119, 122:

A: "And, like the lead paint, the RDA has no idea one way or the other whether or not any of these 43 properties actually contain flood blight, correct?

A: Correct.
…

Q: "So, once in a floodplain, it will always satisfy the statutory provision of environmental deficiencies and significant building deficiencies…?

A: Yes

Notably, the 2019 Redevelopment Plan contains a section on "Flood Risk" which provides that "new construction, as well as rehabilitation, should be considerate of the 100-year floodplain level and construct at or above it." **Exhibit B** at 14. For instance, Head of the Harbor is a beautiful newly constructed mixed-use development on the Norwalk waterfront. **Exhibit E**, Sheehan at 399. Under the RDA analysis, Head of the Harbor will now and forever be considered blighted for purposes of satisfying the Connecticut urban renewal statute. Perhaps that explains Strauss's testimony that she believes that Rowayton, the affluent coastal village in the City of Norwalk, is forever "blighted" for purposes of urban renewal law. **Exhibit D** at 170.[19]

3. "Actual or Suspected" Brownfields

The entire category of "brownfields" in the RPA Blight Determination is a sham. Subsequent to RPA submitting its analysis, RDA learned that the brownfields analysis was demonstrably inaccurate. The RDA received an email from Mark R. Lewis, Brownfields Coordinator, Connecticut Department of Energy and Environmental Protection, which explained that RDA was misusing the brownfield designation in its analysis. **Plaintiff's Exhibit V** at HAR 608-609.[20]

[19] This construct simply cannot be countenanced under Connecticut law. It makes a mockery out of the public policy behind urban redevelopment as promulgated by the Connecticut legislature. It further justifies a lazy and inscrutable "ends justify the means" argument and process, without undertaking the proper legwork required to support the vast governmental powers conferred upon the RDA by the finding of a lawful redevelopment area.

[20] The Harriman documents relied on herein contain bates numbering with the prefix HAR00000. For the sake of convenience, Plaintiff will refer to the specific pages of **Exhibit V** with the prefix HAR and then cite only the final digits of the page number referenced in said exhibit.

After receiving the email, and following a conversation with Mr. Lewis, Strauss contacted Innes on January 23, 2019 and stated:

> The state's brownfield inventory (5 sites in the Redevelopment Area) is comprised only of properties who have applied for and received funding to remediate conditions and that means they have been cleaned. They don't have a publicly available list of applications that have not been funded (potentially still contaminated). I don't think we can use these 5 sites towards our finding. (Id. at HAR 608)(parenthesis in original)

Innes testified about her understanding of this information. "If I were relying on the state's definition [of] brownfields as reflected in the email, there might be five properties that could be included in the analysis. **Exhibit F** at 151. Strauss confirmed in her deposition, "you really can't use that term [Brownfields] unless it's on a state or EPA Brownfields list". **Exhibit D** at 154.

Astonishingly, to remedy this problem in the final plan, the RDA simply cut out the word "brownfield" in the RPA Blight Determination and pasted the words "contaminated or potentially contaminated site". See **Exhibit B** at 62, RPA's Deteriorating or Deteriorated Conditions Analysis. See also **Exhibit D**, Strauss at 261: "We just kind of backdropped the word brownfield because it has a very technical meaning that is not necessarily accurate."

Further, as reflected in the RPA report, the RDA was working off of a 12-year-old brownfields inventory from 2007. Id. at 264.

Q: I mean, it's twelve years outdated.

A: Yes, But there are sites there that are -- probably have not been developed.

Q: But it's all speculation, it's all guess; you don't know that.

A: It says--

Mr. Elliot. Objection. Compound and argumentative.

Mr. Candela: Same objection

Q: It's all speculation, correct?

A: It was based on data that was accurate in 2007. Id. at 264-265.

Sheehan admitted that using a 2007 inventory of brownfields simply was not appropriate. "I would have gone back to determine if there had been remediated actions taken over the course of time since the list had gone out… those remediated actions should be on file with the State." The 2007 inventory should have been "cross checked with the State of Connecticut". **Exhibit E** at 393.[21]

Finally, 13 of the brownfields identified in the RPA plan are "suspected" and not even on the 2007 list. Additionally, both Strauss and Sheehan reviewed the brownfields map in the RPA Blight Determination at their depositions and acknowledged certain of the properties on the map (i.e., Head of the Harbor and Waypointe Development) are new construction and development. **Exhibit E**, Sheehan at 399; **Exhibit D**, Strauss at 32. In the draft RPA Plan discussed at the January 8, 2019 public hearing, there was a map that identified which properties were actual or suspected Brownfields, which generated complaints from residents who had remediated their properties. The RDA's answer to that issue was not to remove the properties from the contamination list, it was to delete the map from the final version of the RPA Report (See **Exhibit B** at 62.) Strauss testified that "We just took it out because it was not relevant to the Plan which properties they were." **Exhibit D** at 269.

C. The January 8, 2019 Public Meeting

On January 8, 2019, the RDA conducted a public hearing to garner public comments on the Plan. Strauss testified, it's important to have public comments because "[w]e're a public agency and this is a neighborhood plan that involves the people who live in the neighborhood." **Exhibit D** at 160. It was "heavily attended" relative to other public meetings. Id. The major issue was the blight determination. Id. at 161; **Exhibit E**, Sheehan at 351. As Strauss testified:

There was enough comments made about the redevelopment -- the blight finding or the quote

[21] To the extent there had been substantial development activities on these properties, the records would be available to determine whether it had been remediated in connection with that development. "There would have had to have been, you know, a site assessment Phase I, probably a Phase II on those projects, and then a remediation plan." Id. at 394. "[c]learly if there were remediation activities that were taken that we were not aware of, that list should have been compared on the state level to ensure that, you know, if any remediation had been done, it should have been considered." Id. at 397.

> unquote blight finding that was going to necessitate a deeper -- a different -- an alternative analysis…People were uncomfortable with the methodology… It was the right thing to do … because we received public comment and we responded to public comment. (**Exhibit D** at 163-164)

Q: What was the general nature of the discomfort with the methodology that was expressed at the meeting?

A: I think it was like what we were talking about before about the floodplain. You know, just because something is in a floodplain doesn't make it blighted" (Id.).

During the January meeting, RDA's Board of Commissioners voted on-the-record to extend the existing contract with RPA, ostensibly so that RDA could do additional research and analysis so that the RDA Commissioners "could be comfortable" with the blight determination. See **Exhibit M** at 4-5; **Exhibit D**, Strauss at 165, 192-93. Strauss testified that if there were "substantial" or "significant" changes with the Plan, the RDA would have held a second public hearing. Id. at 166, 177.

D. The RDA and RPA Cut Ties

The morning following the January 8 Public Meeting, Strauss emailed Kaplan-Macey at 9:18 a.m. **Exhibit R** at RPA 2092-2093. The email stated in relevant part:

> The public hearing on the Plan was held last night and public comments wrap up on Thursday… [T]he major issue that needs to be addressed is the blight finding. There is concern that RPA overreached on what was considered to be blight/potential blight. Although the properties identified meet the definition of blight/potential blight based on their age and location within the flood zone, you can imagine that people are concerned that historic, rehabbed and newly developed properties are still identified in the blight determination. The location within the floodplain is also an issue -- is Rowayton considered blighted because of the potential flood risk? This section needs to be updated with a more property by property specific analysis. Please let me know if you have the resources to address the edits, technical issues, etc. in the Plan and re-look at the blight finding… If RPA does not have the resources to finalize the Plan in a timely fashion, please let me know ASAP so that we may develop a Plan B.

Ms. Kaplan-Macey's reaction when she read the suggestion that the RPA "overreached" was that Ms. Strauss was trying to make it appear as if the blight determination was undertaken independently by RPA and not at the direction of RDA. "She had a problem that she's trying to throw me under the bus… It's pretty clear that there's a problem and she's looking for somebody to blame

and she was looking to blame me… and not take responsibility for having provided the instruction in the first place as to how to go about the analysis…" **Exhibit A** at 183-84. Kaplan-Macey responded to Strauss later that morning, in relevant part:

> Hi Tami. I'm happy to address any typos and technical issues in the document, as well as public comments. With regard to the blight determination, I'm a little uncomfortable with the characterization that 'RPA over-reached' in the analysis. The blight report was the first document that we issued as part of the neighborhood planning process over two years ago and the analysis was based on the direction received from your office regarding the characteristics used to evaluate the blight in the South Norwalk blight determination. 'Flood blight' was a category that was included specifically at the direction of the Redevelopment Agency. But it sounds like the reaction at this point in time is that the criteria that was used for the blight determination was incorrect and that the analysis is flawed. I think that the best course of action at this point is for RPA to address the issues that remain with the plan document itself, but not the blight analysis, and to wrap up our engagement with the Redevelopment Agency on this project.[22](**Exhibit R** at RPA-2092)

Tami responded to Melissa in relevant part, as follows:

> Thank you for your email. Yes, that is a fair assessment of how the blight determination proceeded. We used a previously approved determination. However, now that we are being challenged on the determination, it is necessary that we go a little deeper than a desktop analysis. (Id.)

Sabrina Church testified that Strauss decided to cut RPA out of the Plan process after the January 8 2018 meeting. **Exhibit S**, Church, at 244-45; **Exhibit D**, Strauss at 175.

As such, at this point in time, Strauss, as Project Manager, has admitted the specific problems with the RPA analysis, and laid the foundation for the next steps necessary for RDA's compliance with Connecticut statute. The blight analysis needed to be "updated with a property-by-property specific analysis" and it was "necessary that [the RDA] go a little deeper than a desktop analysis". Strauss confirmed her intentions in her testimony. The RDA needed "to take a deeper look at each property …

[22] Q: Wasn't the lead paint also a category that was included specifically at the direction of the Redevelopment Agency?

A: Yes, but I think the reason I highlighted the flood blight was because she raised that kind of snarky question about Rowayton, the entire neighborhood blighted. So I think that was the context for that response." **Exhibit A** at 188.

We would need to look at each property individually and see if it met the definition of the statute."

Exhibit D at 170. "We knew that additional analysis was needed in order to respond to public comments." Id. at 186.

Kaplan-Macey agreed.

Q: What additional work do you believe needs to be done at this point in time in order to satisfy the -- a consultant would need to do to satisfy that standard to satisfy the statute?

A: Well, it sounds like what we discussed a lot all afternoon, that you would want to do field work in addition to looking at the data and just go out and spot check things and make sure that what you're seeing on the ground is consistent with what you see on paper. (**Exhibit A** at 192-93).

As will be demonstrated, RDA utterly failed to comply with Strauss's own directives.

E. Contrary to RDA's Representations in its Memorandum, It is Not Entirely Accurate that Kaplan-Macey "Stands Behind" RPA's Blight Finding

In the RDA's Memorandum, the RDA represents that, "Ms. Kaplan-Macey stands behind her report, and believes that her work sufficiently established that twenty percent or more of the buildings in the area have one or more building or environmental deficiencies". Def.'s Memo at 17. The Court might find this a less than accurate representation of Kaplan-Macey's testimony and a far cry from an "undisputed fact":

Q: As you sit here today, do you believe the analysis that was provided [by RPA] at the -- based on the RDA's direction of criteria was flawed?

A: Yes (emphasis added) (**Exhibit A** at 190).

Q: Do you believe that the Wall Street West Avenue Redevelopment Area constitutes a lawful redevelopment area … because it is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community solely because 147 properties in that area may have lead paint?

A: No. (Id. at 266).

Q: Same question based on the fact that some parcels are partially or fully within a hundred-year floodplain?

A: No. (Id.).

Q: Is Rowayton considered blighted because of the potential flood risk?

A: No.

Q: Why?

A: In and of itself, you know, I mean, the criteria were the ones we used to make the determination to move forward with the planning process. Is [the] potential for flood blight alone a huge problem? No. Is it a problem with other factors? Perhaps." (Id. at 189).

Q: Do you believe that the RPA report supports the finding of a redevelopment area meaning an area within the state that is deteriorated, deteriorating, substandard or detrimental to the safety, health, morals or welfare of the community?

A: No. (Id. at 138).

When asked to reconcile this testimony with her testimony that she stands behind RPA's Blight Determination, Kaplan-Macey testified as follows:

> If you want me to clarify that, we had an assignment. We undertook that assignment to the best of our ability with the knowledge we had in hand at the time based on a methodology that was used and approved by the Norwalk Common Council. So I stand by that analysis we did… [But] if you're asking me by the statute, then I have to say no. (Id. at 262-64).

Ms. Kaplan-Macey's testimony clearly raises issues of material fact relative to the sufficiency of the blight determination warranting the denial of summary judgment.[23]

F. The RDA Hires Harriman to "Go A Little Deeper Than a Desktop Analysis"

As Sheehan testified, after RPA, there was a concern that "there wasn't necessarily an on-the-ground review of some of the properties that are in the area. My recollection is that that actually happened and then got documented." **Exhibit E** at 306 "I would be hopeful that it wasn't just desktop. And if. If Melissa didn't do more than desktop, I would be hopeful that Tami actually did." Id. at 309.

[23] Notably, Kaplan-Macey's sentiments were echoed by Norwalk Mayor Harry Rilling in his deposition. "Q: [D]o you believe that the Wall Street Redevelopment Area is blighted? A: No, not necessarily. There may be individual properties that could meet the definition based on my understanding of the definition…. My definition of blight." Based on the Mayor's definition of blight, he does not personally believe that if property is built pre-1978 and actually contains lead paint, that that, standing alone, supports a finding of deteriorated or deteriorating conditions. Rilling **Exhibit J**. at 69. Similarly, he testified that the mere existence of a property within a 100-year flood plain, where property could be suspected of containing flood blight, is insufficient to support a finding of deteriorated or deteriorating conditions or of blight per his definition. Id. at 70.

Q: Would you expect your consultant to go deeper than a desktop analysis in connection with the blight determination?

A: I would, yes. If I were managing them directly, yes... (Id. at 309).

Q: What would you like them to do?

A: Um, again, I think documentation of, you know, existing conditions that evidence what you're -- what you're actually putting forward relative to blight… For example, you could use photography to document blight. You could go back and look at, you know, specific property rental records in terms of, you know, how long that property has been vacant, that type of thing. (Id. at 310).

Despite obtaining approval for a contract extension with RPA, and despite the RDA's statements on-the-record at the January 8, 2019 RDA meeting, the RDA replaced RPA with Harriman on January 9 (**Exhibit F**, Innes at 46), which had not been publicly proposed or approved by the RDA Commissioners. The RDA did not inform, nor did Strauss feel the need to inform the public that the RDA was changing horses midstream. **Exhibit D**, Strauss at 193-94.

Innes testified that RDA was looking to Harriman "for confirmation of the original analysis". **Exhibit F** at 167. She testified she was the only person undertaking work on Harriman's behalf, and all the work she performed was from her desk in Massachusetts. Id. at 197-98. Harriman was engaged "to look at one specific aspect of analyzing whether or not there were blighted conditions within the specified area." Id. at 40. Her primary contact was Strauss; she spoke with Sheehan maybe once. Id. at 43. Harriman did not re-analyze RPA's work. Id. at 48. Innes was undertaking a "very specialized tightly scoped effort", id. at 84, "an analysis on a single set of data" to supplement the overall blight analysis. Id. at 84-85 The testimony of both Innes and Sheehan was that the Harriman blight analysis was not intended to and would not, standing alone, support a blight determination in the Redevelopment Area. **Exhibit F**, Innes at 213, **Exhibit E**, Sheehan at 365.[24]

[24] But see the testimony of Strauss that Harriman undertook a "rigorous analysis of existing conditions in the Wall Street-West Avenue Redevelopment Area." **Exhibit D**, at 42, and that the RDA could have relied on the Harriman analysis as the sole analysis, standing alone, to support the blight finding. Id. at 387 "It certainly could stand alone. Either of them could have stood alone."

On January 16, 2019, Strauss sent Innes an email which stated, "[t]he Commissioners have requested that we get them a response on the blight determination by January 30." **Exhibit V** at HAR 550. Sheehan testified that he "[does not] believe that's an accurate statement" **Exhibit E** at 367 "[W]hen you use the word Commissioners, that to me indicates that at some meeting there was a review and the Commissioners said we want to have an update on where we're at with -- with this by such and such a date, and I just don't recall that happening." Id. at 370 "I don't recall the Commissioners ever setting a specific timeline". Id. at 368-69.

Thus, Strauss gave Harriman 2 weeks to do the analysis. **Exhibit V** at HAR 550. On January 18, 2019, Innes sent an email to Strauss giving her, in her own words, "Homework" to form the basis for Harriman's analysis. **Exhibit V at** HAR 549. She requested:

- "water records from the area showing zero balances for the last 20 quarters/5 years (or whatever is easily available, just longer than a year (would show vacancies over time, **Exhibit F**, Innes at 87);
- Any tax liens on properties within the year ("measure of distressed properties" id. at 88);
- Variances and building permits over the last five years (to understand the level of private investment in the area, id at 88);
- Property sales over the last five years (to understand private investment coming into the area and increasing or decreasing market values over time, id at 89);
- Last known street/sidewalk upgrades from DPW - do they have a list of street repairs (including underlying water and sewer infrastructure) for the area and either estimated year of improvement or estimated year of replacement? (to understand physical conditions of an area that absolutely cannot be addressed by the private sector, id. at 90); and
- List of zoning or building enforcement actions against properties in the area (physical deterioration of the area) Innes testified she wanted this information so she could tie it to the GIS information and map it, id at 90-91).

Sheehan testified that the "homework" given by Innes was all relevant to demonstrate blight; the documents sought to demonstrate occupancy, economics, building construction, property values, infrastructure conditions, and code enforcement. **Exhibit E** at 372-373.

Sabrina Church started preparing a spreadsheet to reflect the data that the RDA was to obtain

from the various municipal departments, per the homework requested by Innes. “I am making a master spreadsheet with all of the addresses and criteria columns for ‘blight’ deteriorating structures, property value stagnation, faulty lot layout, unsanitary or unsafe conditions, inadequate density, lease rates, tax delinquency, vacancy, incidents of crime, fire/ems calls, and code violations.” **Exhibit S** at 248.

However, the Agency never actually undertook the research, never actually obtained the documentation, and never actually prepared the spreadsheet. **Exhibit D**, Strauss at 200-201, 204; **Exhibit S**, Church at. 249 (“[H]onestly, if there wasn’t enough information there, we might have deleted this completely if we didn’t fill it out.”). The only piece of information sought by Innes obtained by the RDA was “code violations', which revealed that the Building Department deemed the grand sum of three properties in the Redevelopment Area actually blighted. Id. at 252-253.

1. Strauss Decides to Utilize Tax Assessment Data to Quantitatively Analyze Blight

On or about January 22, 2019, approximately 1week before the purported deadline set by the Commissioners, Strauss sent Innes an email (in response to the “homework” email) in which Strauss suggests the possibility of using assessment data in order to help determine deteriorated and deteriorating conditions. **Exhibit V** at HAR 548-549. ”Sabrina [Church] and I may have to go through each property card individually, but we are willing to do that! I’ll forward you the information from the assessor as soon as I have it.” In an email dated January 24, 2019, Strauss stated to Innes, “We are still working on the other information [homework] but I’m really hoping this assessment data gets us to the finish line.” Id. at HAR 677.

While reviewing tax assessor data at the assessor’s office, an employee of the office, Simon Wake, provided Strauss with some assistance. “She was using the computers at the front of the assessor’s office, the public computers, and it appeared that she was going field card by field card. She asked me if there was a quicker way of getting information. I said yeah, we can do a Vision report and just give me the criteria that you want. So she gave me the criteria that she wanted and I did a

report."[25] **Plaintiff's Exhibit Z**, transcript of Simon Wake at 42.

Sheehan testified that Norwalk had never before used assessment data for a blight analysis, nor had he had seen assessment data utilized for that purpose:

Q: Do you have a belief that assessment data is useful in the context of a blight determination?

A: Up until that point, we had never used that information to make a finding… Assessment data would be relevant information for blight to the extent property values are receding, because that would reflect "disinvestment happening and loss of value". (**Exhibit E** at 375-77)

Strauss requested that Wake provide her an explanation of what the codes meant for each field on the tax card. **Exhibit V** at HAR 605. Wake provided Strauss with an Excel spreadsheet that reflected the assessor's data and provided a "simplified" description of the following categories, among others: 2018 Appraisal; Previous Appraisal; Change (between the two appraisals); Grade; Condition; % of Depreciation; % Good; Functional Obsolescence; and Economic Obsolescence. Id. at HAR 598.

- GRADE: refers to the grade of materials used to construct grades from AAA to D with C being considered average materials used to construct.
- CONDITION: refers to the condition the property is currently noted to be in E = excellent, VG = very good G = good, A = Average, F=fair, P=poor, VP = very poor
- % DEPRECIATION is how depreciated the property is/was as past inspection
- FUNCT OBSOL: is internal functional obsolescence noted expressed as a percentage
- ECON OBSOL: is the external neighborhood issues expressed as a percentage…
  (Id. at HAR 601-602)

Wake testified that he had "no idea at all" why Strauss requested that information. "She asked me to do something for her, and I did it for her." **Exhibit Z** at 43.

Twenty minutes later, Strauss emailed Wake: "Simon. Thank you for the quick response. That

[25] "Vision is a computer-assisted mass appraisal platform that has all of the properties in the city inside it…you can pick which attributes you want for a report and drop it into and create an Excel report." **Exhibit Z** at 42.

is very helpful. What percentage of depreciation, functional obsolescence and economic obsolescence would you consider to be a deteriorated or deteriorating condition?" (**Exhibit V**. at Har 573). Wake responded,

> Anything in functional or economic is undesirable. And anything that is over 30 percent depreciated in general I would consider undesirable but fixable, this is usually reflected with a condition lower than average (fair/poor/very poor) fair is generally considered the last habitable condition but that is not a hard rule. (Id.)

With this simple email exchange, Simon Wake, residential property assessor, unbeknownst to him, set the "standard" as the "expert" for the Redevelopment Area Blight Determination.

2. Meet Simon Wake

Wake started working in Norwalk in 2016 as an assessment analyst, which, he said, is another name for an appraiser. Primarily he does residential inspections. **Exhibit Z** at 22. He testified he "does not deal with commercial properties on a regular basis". Id. at 73. "I can't even pretend to - at this point in my career, I can't pretend to say I understand commercial properties as well as other people, which is why I deferred to Bill O'Brien … the assistant director." Id. at 75.[26]

Wake has no educational or employment background in urban planning or redevelopment. **Exhibit Z** at 27. He is unfamiliar with the 2019 Redevelopment Plan, has never read it, and does not understand what the document purports to do. He is unfamiliar with the authority a redevelopment plan gives a redevelopment authority. Id. at 31-32. He is not familiar with Chapter 130 of the Connecticut General Statutes on redevelopment and urban renewal. He is not familiar, nor does he have an understanding, of the Declaration of Public Policy for Urban Renewal, the statutory definition of a redevelopment area or a redevelopment plan, the phrase "deteriorated or deteriorating conditions" with

[26] Wake holds a Connecticut Municipal Association Level I certification (CCMI I). "Mostly dealing with administration of an assessor's office and residential properties." Id. at 13. To be an assessor of a city, you need to be a Level II, because it focuses more on commercial properties. Id. at 14. "CCMA I, I would say, is a mile wide and an inch deep. CCMA II is an inch wide and a mile deep." Id.

respect to a redevelopment area under Connecticut law, or the criteria for a blight determination under federal regulations. Id. at 33-34.

He has "no idea" what constitutes "extensive minor defects that collectively have a negative impact on the surrounding area", nor does he know how that category is utilized in connection with finding blight. He does not know how to calculate the 20% of properties to meet the criteria of the Connecticut statute. "No, that sounds like a function of the Redevelopment group, not the assessor's office. Id. at. 38-39.

Q: Are you qualified to establish the criteria for deteriorated and deteriorating conditions in a redevelopment area under Connecticut statute?

A: No.

Q: Do you believe you have the expertise or professional qualifications to use assessment data to define deteriorated or deteriorating conditions under Connecticut statute?

A: No, all we do is report the condition that it is at a certain point in time. I have nothing to do with blight. (Id. at 40-42).

3. Strauss and Innes "Sort" the Assessment Data

Innes's review of the sorted assessment data, when viewed holistically, did not support the existence of deteriorated or deteriorating conditions in the Redevelopment Area. **Exhibit V** at HAR 700-701. The data reflected 386 parcels (which was relatively consistent with Kaplan-Macey's determination of 385 total parcels), with 466 buildings on them. Id. Out of the 466 buildings:

- 54% of buildings had a depreciation rate of over 30%
- 14% of buildings had a grade of less than C
- 13% of buildings had a decrease in value (This was predicated on inaccurate information. In fact, only a handful of properties saw their assessed values decrease) See HAR 738 ("So now none of the parcels we are concerned with are showing a decrease in value from 2017 to 2018…) Strauss email to Wake
- 8% of buildings had a condition of fair or less
- 1% of buildings were functionally obsolete

- 1% of buildings were economically obsolete. (Id.)

On January 30, 2019, the date the analysis was due, Strauss emailed Wake: "Is the 30% depreciation being "undesirable" a standard hard and fast rule?" Wake responded as an assessor might, opining on "desirability in the marketplace" and "value": "It is not carved in stone but it is the truth… would you sooner have a new car right from the showroom or one from 2010 with 150,000 miles on it? A 30% depreciated home is significantly less desirable in the marketplace and that does drive value." **Exhibit V** at HAR 737 [ellipsis in original].

Thus, at the direction of her client, Innes cherry-picked "depreciation" data from the assessor's data as the sole criteria for the Harriman Blight Determination, excluding any analysis or reference to grade, condition, appreciating assessed value, and functional and economic obsolescence, as those metrics did not support the blight finding.

4. Depreciation Becomes the Sole Metric Utilized by Harriman to Support the Blight Finding

On February 9, 2019, at the Regular Meeting of the Planning Committee of the Norwalk Common Council, Strauss reported to the Committee as follows:

> The State requires 20% of the properties in the area showing signs of deterioration or deteriorating while the Federal regulations require 25%. The assessment provides evaluation data at the end of 2018 and one of the fields was physical property depreciation. The assessor stated that 30% or more of the buildings are considered undesirable. This was used as the standard. (Emphasis added, **Exhibit W** at 9)

Strauss testified at her deposition that she used depreciation as the sole metric "based on Emily's professional experience with such data that that was sufficient." **Exhibit D** at 313. Strauss further testified that she didn't know Simon Wake was a residential real estate appraiser and she didn't have an understanding as to how this data is used by the assessor's office. Id. at 205, 214. Notwithstanding the foregoing, she testified it was "appropriate" to rely on Simon Wake to set a standard for the Redevelopment Agency for deteriorated or deteriorating conditions for a blight analysis, as he was the "expert" Id. at 227.

Q: "[I]s it your testimony that properties that are 'undesirable but fixable' … fall within the statute to allow a blight determination?

A: Yes. (Id. at 239-241)

a. Wake Dissents

Wake testified that he does not have any expertise or professional qualifications to set the percentage of depreciation that is necessary to establish a blighted area, or a deteriorated or deteriorating area, or to set the percentage of depreciation that reflects extensive minor defect that collectively have a negative impact on the surrounding area for an analysis of a redevelopment are. **Exhibit Z** at 66-68. "All I did was provide data to Tami".

Q: When you were using undesirable [in the email] does undesirable equal blighted or deteriorated or deteriorating for purposes of urban renewal?

Mr. Elliot: Objection to the form.
Mr. Candela: Objection to the form.

A: No, not at all. I would say undesirable is looking at it as someone who's wanting to buy a house. If you have – if you do a match pair analysis of two exactly similar houses except one is next to a sewage which one are you more likely to buy?...

Q: Did you understand at the time that you were being asked to set a standard for a blight analysis?

A: No, I was never told.

Q: Do you believe you're qualified to set the standard for a blight analysis?

Mr. Elliot: Objection to the form.
Mr. Candela: Objection to the form.

A: No. (Id. at 80-81, 85).[27]

Notably, Wake further testified that assessment data should not be cherry-picked, but needs

[27] When Strauss's statements to the RDA were shown to him at his deposition ("The assessor stated that 30% or more of buildings are undesirable. This was used as the standard,") he responded: "Really? Well that's untrue on a couple of levels but (A) I'm not the assessor. I'm an assessment analyst, but I never stated that 30 percent of the – or more of the buildings was considered undesirable…So they are mis-quoting me… I like to think that I do a decent and thorough job to try and help people, and then to be misquoted is a little bit upsetting." Id. at 84-85.

to be viewed holistically, which is why he said in his email to Tami "anything that is over 30% depreciated in general I would consider undesirable but fixable, this is usually reflected with a condition lower than average (fair/poor/very poor)" (Recollect that less than 8% of the buildings reflected a condition of fair or less):

Q: Can you explain, just from an assessor's standpoint, can you – is it possible to describe the Percentage of Depreciation in a vacuum or does it need to be looked at in conjunction with the other metrics, particularly the Condition?

A: They all need to be looked at together, and that's why the site visit is so important…

Q: So is it fair to say that the Percentage of Depreciation, in the way that you use it, is inextricably intertwined with the Condition of the property, as you also use it?

A: Yeah, I would say so. I mean, it's essentially a thread being pulled out of a sweater. (**Exhibit Z** at 58-59).

Q: As an assessor, would you cherry pick any of these particular categories in connection with the use of data?

A: No. You have to look – you have to look at everything as a whole. (Id. at 65).

b. Innes Dissents

Innes testified that she had never used depreciation as a metric to assess blight, nor had she ever seen or heard of it being used for that purpose. **Exhibit F** at 99. 107, 129. 300. She undertook no research nor did she review any scholarly articles or professional references to support her analysis. She did not discuss her model of depreciation using assessment data with any colleagues at Harriman or otherwise before submitting it. Id. at 300-302. The sole "professional reference or citation" for her use of the 30% number was Simon's "guidance". Id. at 211, 347. She admits her Draft Report, dated February 5, 2019, concludes, "Properties with depreciation of 30% or more are considered undesirable but fixable." Id. at 293; **Exhibit V** at HAR 839-843.

At her deposition, when asked why she wrote this, Innes responded, "[b]ecause I'd had a conversation with my client and that's the way I was directed, as I recall." **Exhibit F** at 192. ("[T]o the best of my knowledge, it was ultimately directed by the client" (Id. at 195). " I think it's fair to say

that my client expected to have the blight confirmation confirmed." (Id. at 193). Innes would have liked to have had access to data requested as homework. (Id. at 177). Having not received it, she agreed to rely exclusively on assessment data. (Id. at 191). "It's obvious that it [depreciation] was [the] sole criterion that got us to … that level." (Id. at 188).

In truth, Innes ascribed no weight whatsoever to Wake's analysis as it related to blight. She testified that "I would not consider undesirable as being equivalent to blight", which, in and of itself, completely undermines Harriman's blight determination. **Exhibit F** at 132.

Q: It doesn't matter to you what Simon said.

A: Agreed. (Id. at 225).

Q: Yet the Harriman Report specifically cites Simon Wake's email as the standard for the blight analysis. … This says, "Properties with depreciation of 30% or more are considered undesirable but fixable."

A: Yes, I see that sentence.

Q: You took Simon's sentence from his email and put it in your report.

A: I did.

Q: Why?

A: My recollection is that that was the request of my client.[28] (Id. at 259).

Innes further clarified her intent relative to the reference to "depreciation" in her Report as "the most relevant data for evaluation". " Most relevant data available for evaluation …" is not the most relevant data available, but rather, the most relevant data that physically was available to her. The most relevant data for evaluation of a blight determination, in her experience, includes physical review

[28]Anecdotally, Innes testified that one could not simply pull someone off the street to make the blight determination. "They might not have the skills to analyze the data. They might not have familiarity with the statutes which defines the criteria for determining whether or not there are blighted conditions, and they may or may not have the experience to determine whether or not the conditions are blighted." Id. at 216.

of the properties, taking photographs, walking the streets, homework assignment data points, environmental contamination over a wide area, a qualitative analytical review - interviews, site walks where you are relying on judgment and interpretation, not simply on data that can be forwarded and analyzed and mathematically calculated. Id. at 255. "A full inventory of blighted conditions involves using both qualitative and quantitative analysis." Id. at 256.

c. Sheehan Dissents

Sheehan was frank when testifying about Harriman's Report, the use of assessment data to measure blight, and the reference to Simon Wake as an expert on deteriorated and deteriorating conditions.

In describing the Harriman Report in a Memorandum by Strauss to the Planning Committee of the Common Counsel, dated January 30, 2019 (**Exhibit K**), Strauss stated that "the analysis of deteriorated/deteriorating conditions in the Redevelopment Area is being amended to a property-by-property analysis of parcel and building conditions (depreciation, economic obsolescence, functional obsolescence, building condition, etc.)" Sheehan testified that this is simply inaccurate.

Q: Harriman did not do a property-by-property analysis of building conditions in the area, correct?

A: Yes

Q: And it's further correct that Harriman did no analysis of parcel conditions, they did solely an analysis of building conditions, correct?

A: Yes.

Q: And while they may have analyzed depreciation, functional obsolescence, economic obsolescence, building condition, et cetera, they disregarded much of that data, correct?

A: Yes… It's not specific enough as to what Harriman actually reviewed and used in its review…. And there should probably have been more explanation as to what the level of that on-site visit supplement was, was actually all about. (emphasis added) (**Exhibit E** at 444-446) . . . Again, I wasn't working directly with Harriman on this. It was – it was basically Tami that was coordinating this. (Id. at 460)

Sheehan also questioned the relevance of the use of assessment data in general for the blight analysis, and, more specifically, the propriety of use of "depreciation" as the sole criteria in the

determination. “I’m not sure that the assessment data is addressing the multitude of concerns that came forward regarding the [blight] finding…” Id at 406. “My sense of depreciation, as I stated it, it’s a component piece of looking at the – the total area. I wouldn’t raise it up as the most relevant… Especially given the self-identified issues that weren’t considered [the “homework”] Id. at 461.

Sheehan reviewed the assessment data upon which the RDA relied and acknowledged that Grade, Condition, Percentage of Depreciation, and Functional and Economic Obsolescence would all be subjective and analyzed holistically by the assessor to arrive at an appraised value at a moment in time. Id. at 379-380.

Q: Do you believe that you would be able to just pick out one, two or three of these categories and look at them in a vacuum to determine whether or not there were deteriorated or deteriorating conditions?

A: So your question is like could you look at the Grade and Depreciation percentages? … My position on that, you’d have to have, you know, a preponderance of those types of conditions in the area that were probably sub C to make that case.

Q: Sub C meaning sub C on Grade?

A: Yes

Q: Also, sub C on the Condition, correct?

A: Yeah, I’m saying that you couldn’t just pull out one or two and say that -- you’re using that as the finding of the area. You’d have to have a relevant number of properties within the geography that were actually meeting those conditions. (Id. at 380-81) …

Q: Could you pick just one and look at just one?

A: I suppose that you could. It’s importance to the overall finding I think would be questionable. (Id. at 382).

As to just using the “ Condition” as the sole metric, Sheehan testified: “As I said, I think you could do it, but I don’t think it’s -- it’s -- you know, it’s material importance is -- I think you’d have to have more -- in terms of the finding. You couldn’t just do a finding based on that… Because I don’t think it’s sufficient to meet the requirements of the statute.” **Exhibit E** at 383.

Q: Could the Percentage of Depreciation be a category that is pulled out of the chart that we just looked at and relied on as the sole metric for a blight finding:

Mr. Elliot: Objection to form

A: As a sole finding?

Q: Yeah.

A: No, I don't believe so.

Q: For the same reasons that Condition couldn't be?

A: That's correct, you'd have to have more information as to what you're basing the finding on. (Id. at 384) … Every one of these as an individual metric or statistic does not provide a full sense of what the area is. (Id. at 414)

As such, the then RDA Executive Director testified that the Harriman analysis is flawed and does not satisfy Connecticut statute relative to a lawful blight finding, clearly raising questions of fact relative to the reasonableness of the determination of a lawful redevelopment area.

Further, Sheehan testified about Strauss' grasp on the assessment data, and her use of Wake as an expert to set the blight standard based on depreciation. He testified that Strauss did not have a grasp of the assessment process or the revaluation process. Id. at 374.[29] He further testified relative to Strauss' reliance on Simon Wake as expert:

> "I just think there's a lot of grayness around Simon Wake being considered as, you know, the expert with regard to depreciation. I think Tami over time became more steadfast in that, you know, she consulted with Simon who she considered to be the quote, unquote, professional in the assessor's office with regards to this, but I have a real problem with – with us characterizing Simon as an expert in this area … Because I don't believe he is an expert in this area." (Id. at 453-54).

The Assessor's Office agreed with Sheehan's analysis, and directed Strauss not to use Simon Wake as the standard for the blight analysis. Strauss rejected this and plowed forward.

[29] A: So we have – we have Tami Strauss interpreting the assessor's handbook? Q: Yes
A: Okay. Got it. Q: What are your thoughts on that? A: That's not a good situation. Q: Why is that? A: Because I don't see Tami having the qualifications to interpret the assessor's handbook … Insomuch as I wouldn't even attempt to do that. (Id. at 468-469). "[T]here's not a sense of depth in terms of understanding the various aspects here..." (Id. at 468).

d. The Assessor's Office Dissents

On March 6, 2019, prior to the Common Council and RDA voting to approve the 2019 Redevelopment Plan, William O'Brien, Assistant Tax Assessor from the City of Norwalk wrote Strauss a scathing email, which provides in relevant part:

> Immediately prior to this email communication, with others present, you were informed that the Assessment Department is not in the business of or practice of classifying neighborhoods as 'desirable or undesirable' (your words) for any purpose, including any support or opposition to your or your department's agendas, or to support or refute any controversies you may have created for yourself or your agency.
> —
> The Assessment Department makes available to the public all non-exempt (FOIA) data as provided by law. It does not, however, do research for you or others. Simon Wake of our department, in deference to you and your organization, attempted to assist you in expediting and sorting publicly available data for you, and additionally attempted to offer you some general verbal opinions for which you subsequently attempted to cite him for it in a public manner, whereupon you subsequently directed others who questioned your research that it was somehow Mr. Wake's doing and not yours. Your apparent ready unwillingness to accept responsibility for your work and opinions is astonishing.
> —
> As I clearly indicated to you verbally Thursday, you have a right to opine to anything you want. You may not, however, claim that the Assessment Department classifies any property or neighborhood as desirable or undesirable, deteriorating, declining, or any other such descriptions, nor state the Assessment Department authorized you to do so in any capacity.
> —
> In any case, the duties of the Assessment Department invoice valuing property for purposes of assessment and taxation consistent with Connecticut state law. All opinions related to such valuation are contained and delineated on the property record cards available to the public. We are not in the process of providing formal education in appraisal and valuation processes, nor do we provide extra-department opinions or consulting services.; as indicated, there are courses available for that, and your department presumably has a listing of outside professionals who can provide you with appraisal, consulting, or other real estate services. The Assessment Department does not classify property or neighborhoods as more or less "desirable, deteriorating or declining" (again your words) or other similar terms, nor does it rate the degree(s) of marketability. (**Exhibit CC**).

O'Brien has held a CCMA Level II for 20 years. **Plaintiff's Exhibit DD**, deposition testimony of William O'Brien at 18. He testified that Wake holds a CCMA Level I and would not be involved in assessing large or sophisticated mixed use or commercial properties. Id. at 20. "I'm going to tell you, he's kind of on the lower level of the assessment echelon, and I think it was a learning experience for him." Id. at 119.

O'Brien testified that the assessor's data must be viewed holistically for assessment purposes,

and not cherry-picked. “One single component would not necessarily a value make. The property does have to be looked at in its entirety.” Id. at 46.

Q. If you were to look at Percentage of Depreciation standing alone, what would that tell you about the condition of the property?

A. By itself, nothing. It would tell the appraiser's estimate of what the total applicable accrued depreciation would be as of that point in time. (Id. at 60).[30]

He further testified that the substantive information provided by Wake to Strauss is actually professionally inaccurate.

Q. And he says, "And anything over 30 percent depreciated in general I would consider undesirable (but fixable)." Is that accurate?

A. No, I don't think there's enough information there to tell you whether or not anything in that Grade or in that category of Depreciation is either curable or incurable. So, no, I would not have allowed that.

Q. So there's nothing to tell you whether or not it's undesirable, right?

A. Correct.

Q. And there's nothing to tell you whether or not to the extent it is undesirable, it's fixable?

A. Correct.

Q. And Simon then says, "this is usually reflected with a condition lower than average (fair/poor/very poor)." Is that accurate if looked at in the context of the entirety of his response?

A. I can't answer that. I don't know. I can't tell you what he was thinking. I would not have allowed him to characterize it in that way if he had come to me in that manner. He made a mistake. (Id. at 61-62).

O’Brien concluded, “My sole purpose there was to make sure the Assessment Department was not being used to set a standard or a characterization of any deteriorating or undesirable neighborhoods.” (Id. at 74).

[30] O’Brien testified that brand-new buildings can be depreciated, and may not reflect deterioration at all. “It happens all the time… [S]ome buildings are over-improvements, some are under-improvements, and some have obviously built-in depreciation if those circumstances occur… If, for example, the market says the market will support a hundred thousand square foot office building and you build a two hundred thousand square foot office building, you've over-improved by 50 percent. Id., at 38.

5. Strauss Actually Found an Article on the Use of Assessment Data to Model Blight, But Disregarded It

On January 30, 2019, Strauss sent Innes an email: "I don't know if the 30% that Simon quoted is a hard and fast rule to determine deteriorated conditions. I can research it." **Exhibit V at** HAR 733. Her research revealed an article entitled "A Model for Quantitatively Defining Urban Blight By Using Assessment Data" written by Morgan B. Gilreath, Jr.[31] Id. at HAR 57. The article "presents the basis for a decision model, using assessment data as core information, to assist in the recognition, quantification, and documentation of urban blight conditions…. The model described here can be developed with local data, much from property tax assessment, appraisal detailed databases, for comparatively low cost." **Exhibit D** at 359, 365.

Strauss was "glad that something existed." She was aware that, in addition to state guidelines, there were federal guidelines, and the regulations applied to every state in the country, which Connecticut had to satisfy to access federal funds. Id. at 360, 363.

In the article, the author discusses analyzing blight through a combination of several blight related characteristics, including grade (quality of construction), rental property rate differentials, county-wide and/or city-wide police and fire call statistics, city-wide code violations, and physical depreciation. As Sheehan testified, "[w]e are in agreement in terms of the article. The sense was that it [depreciation] should not be used as just a stand-alone relative to a finding." **Exhibit E** at 457.

As to physical depreciation, the article provides "In a blighted area, the average building physical depreciation is more than 60%, and studies seemed to confirm that as well."

[31] Mr. Gilreath's biography in the article states "he has been the Property Appraiser (Assessor) of Volusia County, Florida since 1992. He has been a senior Instructor for IAAO [International Association of Assessing Officers] and a member of the Education Committee and has published articles in the *Journal of Property Tax Assessment & Administration* and in *Fair & Equitable* magazine. He has been presenter at a number of IAAO International Conferences and was awarded Florida's Al Bragg Government Leadership award at the 2006 Governor's Hurricane Conference"

(Emphasis added) **Exhibit V** at HAR 61.

Strauss forwarded the article to Innes on February 1, 2019, **Exhibit V at** HAR 758, and told her to "[l]iberally borrow as much as you want". Innes testified that she did not read the article, as she was preparing the analysis and "did not feel she had the time." **Exhibit F** at 144, 294-297. Notwithstanding that testimony, Innes sent an email to Strauss on February 5, 2019, in which she states, "I considered referencing the article you sent, but I thought the City's own press release would have more weight." **Exhibit V at** HAR 815. This strains credulity and is internally inconsistent with Innes's testimony that she did not read the article.

Strauss decided not to reference the article in the Blight Determination. "While we certainly took that 60% into consideration, we realized that it was not exactly -- it's not a hard and fast rule…" "I didn't interpret that 60% to be a standard … We relied on using physical depreciation as a factor and relied on local knowledge, local professional knowledge and expertise, as to the number to use." Q: And the local expertise was Simon Wake, right? A: Yes. **Exhibit D** at 370.

Notably, Innes did not undertake an analysis of the percentage of buildings in the Redevelopment Area that were depreciated over 60% . There was no need to, as the result of such an analysis was already known: Harriman's analysis evidenced that only 6% of buildings in the Redevelopment Area were depreciated in an amount greater than 45%. See **Exhibit V at** HAR 748-750. So, Innes did not include the analysis of building depreciation over 40%. Id. at HAR 849 (Innes email to Strauss, dated February 5, 2019, "looking at >45% or >50% does not help the argument. Which is why I didn't add those! 😊").

Thus, after segregating and cherry-picking depreciation as the sole metric for the blight analysis, Strauss and Innes cherry-picked that data itself, and included in the Harriman Report only that level of depreciation that met the 20-25% requirements of state statute and federal regulations. Innes acknowledged in her deposition that, using the 60% standard in the Gilreath article, the

Redevelopment Area is not blighted based on depreciation as the sole metric. "Five percent or less is not close" **Exhibit F**, Innes at 353.

6. Harriman's Final Analysis is Materially & Mathematically Inaccurate

It is self-evident from a mathematical standpoint that, in order to determine whether 20% of the parcels in the Plan Area satisfy statutory requirements under Connecticut law, and whether 25% satisfy HUD regulations, the denominator of that percentage must reflect all of the parcels in the Plan Area and the numerator should reflect those properties that had a defect that the RDA believed met the statutory requirements. **Exhibit E**, Sheehan at 416. A proper analysis requires an accurate denominator. Id. at 416.

Innes's analysis was on buildings, as opposed to Kaplan-Macey's analysis, which was on parcels. Recall, the RPA Blight Determination reflected 385 total properties in the Redevelopment Area. See **Exhibit AA** at p. 57, RPA's Blight Determination. Harriman's purported final analysis dated February 7, 2019, on the other hand, reflected 372 buildings on 304 parcels, since only 304 parcels contained buildings. **Exhibit V at** HAR 884-888. From a mathematical standpoint, so long as Harriman's analysis was of buildings, the number of parcels with buildings on them would be the proper denominator. Innes testified that vacant land does not depreciate for building assessment purposes, and so, vacant parcels were not included in her analysis. **Exhibit F**, Innes at 507.

Innes testified that as of Feb 6, 2019, she thought her assignment was completed. Id. at 413. Subsequently, on February 21, 2019, Strauss sent Innes an email requesting that she redo her entire analysis based on the number of parcels, not the number of buildings. **Exhibit V at** HAR1025: "Hi Emily, Tim and I discussed and think that we should focus on the % of parcels (per the state and federal regulations). Let's leave out the number of buildings, as that gets a bit confusing."[32]

[32] This request was baffling since statute 8-125 actually requires a building analysis, not a parcel analysis. ("Deteriorated" or "deteriorating" with respect to a redevelopment area means an area within which at least twenty per cent of the buildings contain one or more building deficiencies or

When Innes amended the analysis at the request of the RDA to reflect an analysis of parcels, as opposed to buildings, she erroneously maintained the same denominator, resulting in an analysis that reflected a much higher rate of depreciation than actually existed under an analysis by parcel. Harriman's final analysis is simply inaccurate:[33] This was confirmed by Strauss.

Q: So the final analysis that she did from a mathematical standpoint is incorrect, right?

A: Yes…

Q: So that incorrect analysis made it into the final report, correct?

A: It is in the final report, yeah.

Q: How do we get the correct data to do -- or how do we get the data, the accurate data, to do the correct math?

A: We have to get the conditions of those vacant parcels, of those parcels that have no buildings on them.

Q: Has anybody done that analysis that you're aware of?

A: Not that I'm aware of. (**Exhibit D**, Strauss at 433-34).

In fact, if you substitute the correct number of parcels as the denominator (as reflected in RPA's report), and maintain the same numerator, the Harriman Report does not support the finding of blight. Innes testified that she was "concerned" that the denominator was off by over 20%. **Exhibit F** at 250 Sheehan agreed that the analysis is flawed, simply from a mathematical basis. **Exhibit E** at 491- 492.

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environmental deficiencies).

[33] "I based the analysis on the total number of parcels with buildings on them, not the total number of parcels in the area" **Plaintiff's Exhibit F**, Innes at 493. "The data I was given from the assessor only had parcels with buildings on them. So the only analysis I would be able to do was the parcels with buildings on them." Id. at 494. In order to include all parcels, "I would have had to evaluate the vacant parcels using a different measure," such as environmental contamination, hazardous conditions, whether they were used for parking or cemeteries. Id. at 506-507. So, Harriman's Final Report, which provides a graph that says "percentage of total parcels" is "misleading". Id. at 506.

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 <u>but were previously considered in the original determination which was the basis of some public comment.</u> 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.

Bidolli testified that under his leadership the RDA strives for accuracy in providing information to the Commissioners so they can make informed decisions. **Exhibit C**, Bidolli at 39-40. Church agreed that the RDA Commissioners relied on the information that was provided to them by Sheehan and Strauss in making their determinations. **Exhibit S**, Church at 262. This was confirmed by Felix Serrano, the Chairman of the RDA at the time. **Exhibit T**, Serrano at 11-12 ("[T]to the extent that they're the professionals and doing the work, we rely on them.").

As a member of the Common Council, Mr. Livingston relies on other City personnel and staff from other departments such as the RDA to provide information in connection with his thought process. He trusts that the information provided is accurate, as he could not analyze issues or reach decisions regarding matters before the Common Council if they couldn't give credit and faith to the information the Common Council was receiving. **Exhibit G**, at 24-25. He was aware that people were concerned about the conclusions found in the blight finding . Id. at 108. "The Common Council was told that the requirements were satisfied." Id., at 106. If somebody says they were considered and they weren't, that's not true. I would be concerned about something that wasn't true … I expect what we put out to be true." Id. at 162.[35]

[35] Livingston testified that these issues "raise questions".
Q: What questions does it raise?
A: What criteria they came up with in the end and how they ended up getting where they got.
Q: And does that matter?
A: Yes.
Q: Why?
A: We want to make -- from my standpoint as a member of the common council, I want to make sure the decisions are made on fair and accurate information.
Q: And were you relying on the RDA to provide you with that fair and accurate information?
A: Yes. p. Id. at 155
…
Q: Are you troubled by this information?
A: It raises questions in my mind, yes.
Q: And what questions does it raise?
A: The question raised is whether this was done properly. Id at 158

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.

V. THE RDA FAILED TO COMPLY WITH THE MANDATORY STATUTORY REQUIREMENTS SET FORTH IN SECTION 8-127 OF THE GENERAL STATUTES IN APPROVING A LAWFUL REDEVELOPMENT PLAN.

Conn. Gen. Stat. §8–127 sets forth the procedures that a redevelopment agency must follow in adopting a redevelopment plan, providing in relevant part that:

(b) Before approving any redevelopment plan, the redevelopment agency shall hold a public hearing on the plan … At least thirty-five days prior to any public hearing, the redevelopment agency shall post the plan on the Internet web site of the redevelopment agency, if any.

Strict compliance with each of the enumerated steps in the statute is a condition to the validity of the entire proceeding concerning a redevelopment plan. Sheehan v. Altschuler, 148 Conn. 517, 523, 172 A.2d 897, 900 (Conn. 1961) (emphasis added). When essential steps are not taken as required by the statute for the adoption of a redevelopment plan, the purported plan, as well as any attempted approval of it and any action taken under it, must be declared invalid. See id.[36]

A. The RDA did Not Post the 2019 Plan on its Website per Connecticut Statute

The RDA did not post the link of the proposed 2019 Redevelopment Plan to its actual website (norwalkredevelopmentagency.com), despite having the ability to do so.[37] The 2019 Plan was not posted on the actual Redevelopment website until it had been approved by the Common Council and RDA, not 35 days prior to the January 8, 2019 public hearing. **Exhibit S**, Church at 237-39 "It was the policy of the Agency to only post the final Plan documents on that website." Id. at 238. See also, email between Church and Strauss date March 13, 2019, (**Plaintiff's Exhibit FF):**

Strauss: What is Jason talking about the plan missing from the Redev site?

Church: We have only posted final plans on the redevelopment agency website.

[36] One of the essentials in adopting a redevelopment plan must be notice as required by the statute, so that the property owners affected may have an opportunity to be heard. Lordship Park Assn. v. Board of Zoning Appeals, 137 Conn. 84, 90, 75 A.2d 379 (1950). The rule applicable to the corporate authorities of municipal bodies is that when the mode in which their power is to be exercised is prescribed, that mode must be followed. Jack v. Torrant, 136 Conn. 414, 419, 71 A.2d 705 [1950].

[37] Rather, the RDA posted the plan to two other websites: a page on the City of Norwalk website (Norwalk.org/redevelopment) and (ii) the Norwalk Tomorrow website (Norwalktomorrow.com).

Strauss: So tomorrow we'll post in [sic] the agency website!"

Whether the RDA complied with this statutory requirement is a question of fact.

B. <u>The RDA Failed to Conduct a Public Hearing After the 2019 Plan was Amended</u>

As Sheehan testified, "[t]here should be public participation in the formulation of the document … I think you want to hear back from the community in general." **Exhibit E**, Sheehan at 20. The substantial changes in the 2019 Redevelopment Plan after the January 8, 2019 public hearing affected the sufficiency of the original notice and the validity of the hearing such that a new public hearing was required and the original public hearing was rendered inadequate.[38] There should have been a second public hearing to address the substantial changes that had been made behind closed doors.

Recall Strauss's testimony that if there were "substantial changes" made to the 2019 Plan subsequent to the January 8 public meeting, the RDA would have another public hearing. **Exhibit D**, Strauss at 177. In an email from Strauss to Kaplan-Macey dated January 9, 2019, Strauss stated: "We have finished up the public comments and have significant changes to make". **Exhibit R** at RPA 2095. In fact, a Memorandum from Strauss to the RDA Commissioners dated January 30, 2019 reflects substantial revisions to the Plan, including the inclusion of eminent domain in the 2019 Plan. **Plaintiffs' Exhibit GG**.

Further, when the RDA amended the Plan, it contained approximately 40 new pages of text. The RDA did not redline the final 2019 Plan to reflect what had been eliminated or what had been added. **Exhibit D**, Strauss at 412. The only way the public could discern the changes in the 2019 Plan, including the blight designations (i.e., the change of "brownfields" to "contaminated sites" in the RPA Blight Determination), was to open both documents and compare them side-by-side, line-by-line.

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[38] "Because the public is entitled to constructive notice of the hearing, the fact that some members of the public, including the plaintiff, appeared at the hearing cannot cure the jurisdictional defect." <u>Koepke v. Zoning Board of Appeals</u>, *supra* at 618-619, *citing* <u>Cocivi v. Plan & Zoning Commission</u>, 20 Conn.App. 705, 708, cert. denied 214 Conn. 808 (1990).

Exhibit D at 415. Sheehan agreed that the public would need to go line by line over both versions of the plan document to determine the changes. Sheehan at 489. This is particularly egregious since the final 2019 Plan was posted on the City website for review by the public and the Common Council less than 24 hours prior to the scheduled vote by the Common Council to approve the Plan. **Exhibit D** at 416-417.

As such, the Plaintiff contests proper public notice per 8-127, raising additional material issues of fact. These same arguments support Plaintiff's claim that the RDA deprived Plaintiff of due process of law, as well.

VI. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment should be denied.

THE PLAINTIFF

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CERTIFICATION

The undersigned certifies that the foregoing was sent via electronic mail this 7th day of December, 2021, to the following counsel of record, to wit:

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