DOCKET NO. X08-FST-CV19-6044650-S	:	SUPERIOR COURT
	:	COMPLEX LITIGATION
	:	
IJ GROUP, LLC,	:	
	:	JUDICIAL DISTRICT OF
Plaintiff,	:	STAMFORD / NORWALK AT
	:	STAMFORD
v.	:	
	:	
CITY OF NORWALK, *et al.*,	:	
	:	
Defendants.	:	DECEMBER 21, 2021

REDEVELOPMENT AGENCY OF THE CITY OF NORWALK'S
REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

DEFENDANT –
REDEVELOPMENT AGENCY OF THE
CITY OF NORWALK

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When one reviews Plaintiff's Opposition Brief, it becomes abundantly clear exactly why the Connecticut Supreme Court has placed the extreme constraints on judicial review that it has in this context. As Plaintiff acknowledges, there is no formal right to appeal a redevelopment agency's adoption of a redevelopment plan. Yet, a *de novo* appellate review appears to be, in substance, exactly what Plaintiff is seeking in this case. Plaintiff has not presented the Court with any evidence or even argument that the Wall Street/West Avenue area is not a deteriorated or deteriorating area. Rather, Plaintiff devotes nearly 60 pages to attacking the Agency's "deteriorated or deteriorating" conditions finding as "insufficient," at times focusing on pedantic minutiae that are not even dispositive of the Agency's finding. Importantly, many, if not all, of Plaintiff's criticisms of and arguments against the Agency's finding *were in fact presented by Plaintiff and others to the Common Council and the Agency Commissioners during the plan approval process*, oftentimes in quite forceful and colorful terms.[1] The Council and the Commissioners were not swayed by Plaintiff's arguments; the arguments that Plaintiff expressed simply did not prevail. Now, Plaintiff is seeking an improper "second bite at the apple" by asking this Court to review those arguments again (and some new ones as well), and to substitute its own judgment for that of the Common Council and of the Agency's Commissioners.

Plaintiff does not dispute (nor could it) the Agency's recitation of the appropriate legal standard, which is set forth on pages 38-39 of the Agency's forward brief. Because the legislature has vested very broad discretion in the Agency to make these types of determinations, the Courts have cautioned that they will intrude upon the Agency's discretion in only the most

[1] See, e.g., Exhibit 36 (Minutes of January 8, 2019 Public Hearing); Exhibit 46 (WSNA's position statement in opposition to the RPA Report, which was transmitted to the Common Council and the Agency's Commissioners on January 15, 2019); Exhibit 51 (WSNA's op-ed published in Nancy on Norwalk on February 6, 2019); Exhibit 63 (Minutes of March 7, 2019 meeting of the Planning Committee); Exhibit 72 (Minutes of the March 12, 2019 meeting of the Common Council); Exhibit 74 (Minutes of the March 13, 2019 meeting of the Agency).

egregious of circumstances. Mr. Milligan is well aware of the standard of review, which is why he wrote in a March 9, 2019 e-mail that the Agency has "very broad discretion to designate blight," and thus that a challenge to the Plan's "deteriorated or deteriorating" conditions finding would be an "uphill battle." See Exhibit 85.

"The determination of what constitutes a redevelopment area … is primarily a matter for the redevelopment agency, and its decision is open to judicial review only to discover whether it has acted unreasonably or in bad faith or has exceeded its powers." See Graham v. Houlihan, 147 Conn. 321, 238 (1960) (citations omitted); Maritime Ventures, LLC v. City of Norwalk, 277 Conn. 800, 813 (2006); United Oil Co. v. Urban Redevelopment Commission of the City of Stamford, 158 Conn. 364, 381 (1969). Our Supreme Court has held that it is "mindful" of the "limits on judicial review" in this context, and has also acknowledged that "to speculate regarding a redevelopment agency's intent … is inconsistent with that narrow scope of judicial review and would amount to judicial encroachment on the agency's exercise of the broad discretion delegated to it by the legislature." Maritime Ventures, *supra* at 808; 813.

Plaintiff invites this Court to become the first, in the 72 years since the adoption of the redevelopment statutes in 1949, to invalidate a redevelopment plan based on a plaintiff's dissatisfaction with the plan's "deteriorated or deteriorating" conditions findings. In fact, the Agency's research has revealed only one case in which such an argument was even made: the 1960 case of Graham v. Houlihan, 147 Conn. 321 (1960), in which the Supreme Court declined to invalidate a redevelopment plan in Torrington. In that case, a plaintiff argued that the agency acted unreasonably in deeming an area a redevelopment area, because the area was (according to the plaintiff), not a slum and not a social or economic liability. Id. at 327. The Court actually agreed that the area was not a "slum," which is usually thought to be an unsightly or insanitary

neighborhood. Id. at 327-28. Nonetheless, the Court held that "the determination of what constitutes a redevelopment area … is primarily a matter for the redevelopment agency … " Id. at 328 (citations omitted). It noted that there were facts in the record which could support a redevelopment area designation, including the fact that the area contained a "large proportion" of "substandard wooden structures located on small lots." It concluded: "'Where it appears that an honest judgment has been reasonably and fairly exercised after a full hearing, courts should be cautious about disturbing the decision of the local authority.'" Id. at 329-30 (citations omitted). The Supreme Court's approach in Graham should inform and guide the Court in this case.

Plaintiff argues that because this case involves questions of "bad faith" and "reasonableness" it cannot, as a matter of law, be decided on summary judgment, and must proceed to trial. See Objection at pp. 4-5. Plaintiff cites to a number of tort cases (including slip-and-fall cases, good faith and fair dealing cases, and negligent misrepresentation cases) to argue that it is "inappropriate" to decide these issues on summary judgment, and that they are questions for the trier of fact.[2] It is beyond dispute, however, that a Court may address the merits of a declaratory judgment action on a motion for summary judgment. See, e.g., United Services Automobile Ass'n v. Marburg, 46 Conn. App. 99, 102 n. 3 (1997). Moreover, Plaintiff is simply incorrect that questions of bad faith and reasonableness may not be adjudicated on a motion for summary judgment. In Wadia Enterprises, Inc. v. Hirschfeld, 224 Conn. 240, 250 (1992), the Connecticut Supreme Court affirmed the trial court's granting of summary judgment against a bad faith claim, and held: " … even with respect to questions of motive, intent and good faith, the party opposing summary judgment must present a factual predicate for his argument in order to raise a genuine issue of fact." Id. (collecting decisions granting summary judgment in cases

[2] Recall that Plaintiff has withdrawn its jury claim, and this case – if it proceeds forward – will be a Court trial and not a jury trial.

involving questions of intent, motive, and bad faith). Indeed, "' … The summary judgment rule would be rendered sterile … if the mere incantation of intent or state of mind would operate as a talisman to defeat an otherwise valid motion …'" Jaser v. Fischer, 65 Conn. App. 349, 357 (2001) (citation omitted). The non-movant's duty to come forth with a specific factual predicate showing bad faith or unreasonableness should be particularly acute in this context. This is not a tort case, but rather a challenge to a municipal action where the legislature has not provided any appellate rights, and where the Supreme Court has cautioned (a) that the scope of judicial review is incredibly narrow, and (b) that speculation regarding the municipal agency's intent would amount to judicial encroachment on the legislative function. Plaintiff's position – that any and all challenges to the adoption of a redevelopment plan must automatically go to trial – is completely at odds with the scope of review repeatedly outlined by the Supreme Court.

The Supreme Court has held that "bad faith" is "'… not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity … it contemplates a state of mind affirmatively operating with furtive design or ill will.'" See Buckman v. People Express, Inc., 205 Conn. 166, 171 (1987). It must be remembered that "'[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.'" Wykham Rise v. Federer, 305 Conn. 448, 461 n. 9 (2012) (citation omitted). Only material facts are to be considered in deciding a motion for summary judgment. See Practice Book § 17-49. "' … A material fact … [is] a fact which will make a difference in the result of the case …'" Stuart v. Freiberg, 316 Conn. 809, 821 (2015) (citation omitted).

Though Plaintiff makes a number of histrionic attacks on the 2019 Plan's redevelopment area finding, it is notable that virtually none of the arguments sound in *bad faith* or

unreasonableness, but rather appear to sound in *negligence*. For example, Plaintiff: (a) engages in repeated attacks on the qualifications and experience levels of various individuals who participated in the formulation of the Plan; (b) attacks the consultants for performing so-called "desktop analyses" rather than engaging in a quantitative analysis of the area; (c) accuses one consultant (incorrectly, as it turns out) of making mathematical errors in her calculations; (d) accuses the Agency of failing to photograph a sufficient number of properties; and (e) argues that the Agency failed to consider other factors or criteria that *Plaintiff* believes might have been relevant to the analysis. Other lines of argument harp on irrelevant trivialities that would have made no difference to the redevelopment area finding, such as Plaintiff's accusation that the Agency incorrectly stated that it considered other criteria in the planning process.

It is notable what Plaintiff does not contest. The following facts are undisputed:

- The Agency engaged a third-party consultant (RPA) to conduct this study, even though the Agency was not statutorily required to do so, and even though it could have performed the analysis itself (see Agency's Brief at pp. 9-10);

- The Agency conveyed to RPA that its study must comport with the General Statutes; and indeed, one of the very first written communications that Ms. Strauss had with Ms. Kaplan-Macey was to send her a link to Chapter 130 of the General Statutes and ask her to read it (See Agency's Brief at pp. 10-11);

- Ms. Strauss sent to Ms. Kaplan-Macey the so-called "blight" determination from another redevelopment plan: Norwalk's approved and enacted "TOD Plan." She instructed Ms. Kaplan-Macey to use the same methodologies for her study (i.e., suspected lead paint, floodplains, and known or suspected environmental contamination) precisely because she knew these methodologies to have been previously approved by both the Common Council and the Agency's Commissioners (See Agency's Brief at pp. 11-14);

- Ms. Strauss never instructed Ms. Kaplan-Macey to reach a particular conclusion, nor did Ms. Kaplan-Macey ever feel any pressure whatsoever to reach a particular conclusion (See Agency's Brief at pp. 13-14);

- Ms. Kaplan-Macey was given the ability to request whatever information and documentation she wanted from the Agency in connection with performing her

analysis, and indeed, the Agency provided her with all of the information and documentation that she requested (See Agency's Brief at p. 14);

- Prior to the Plan's advancement to the Common Council, two attorneys authored letters opining that the methodologies of the Agency's consultants comported with Chapter 130 of the General Statues (a fact which Plaintiff does not mention or acknowledge even once in its 60-page brief) (See Agency's Brief at p. 31).

It is further notable that Plaintiff provides absolutely no response or explanation whatsoever to the farcical fact – pointed out on pages 2-3 of the Agency's forward brief – that in the context of the ILSR Case, Plaintiff is asking the Court for a declaration that the 2019 Plan is valid. Plaintiff does not address this anywhere in its brief. In all candor, the Agency does not understand how Plaintiff *could even* explain this, other than to admit the obvious: that Plaintiff has no genuine views on the Plan's validity and is attempting to "cover all bases" to strengthen (as he sees it) his interests in the ILSR Case. Plaintiff's brief is so replete with distortions of the factual record, quotations taken wildly out of context, and otherwise inadmissible and/or immaterial evidence that it would not be possible to address them all in 25 pages. The Agency does, however, wish to address a number of the more egregious of Plaintiff's arguments:

I. The RPA Report

RPA concluded that 147 buildings in the redevelopment area were suspected of containing lead paint. This conclusion **alone** is sufficient to meet the 20% threshold under Section 8-125(7) of the General Statutes. Plaintiff does not dispute that lead paint is a building or environmental deficiency pursuant to Section 8-125. Further, Plaintiff does not dispute or present any evidence whatsoever against the conclusion that 147 properties in the area are suspected of containing lead paint. Plaintiff's only argument with regard to lead paint appears to be that the statute requires that 20% of the buildings "contain" a building or environmental deficiency, and the Agency did not actually test the properties to confirm the presumed existence

of lead paint. The Agency readily admits that it did not test each property for lead paint, which would have been an incredibly expensive process (and further, the Agency does not even have the ability, legally, to enter each property to test for lead paint). Rather, as reflected in RPA's report, RPA: (a) compiled a list of properties in the area built prior to 1978 (the year in which lead paint was banned on residential properties); and (b) trimmed that list further by studying whether those properties had undergone improvements likely to have included lead abatement. RPA concluded that of the 260 buildings in the area that were built prior to 1978, 147 were deemed suspected of lead paint and 113 were not. In other words, though it did not actually test each property, the Agency concluded that it believed the properties to contain lead paint.

Recall that this exact methodology ("suspected" lead paint) was chosen by Ms. Strauss precisely because it had been utilized on a prior redevelopment plan in Norwalk (the "TOD Plan") which was approved and enacted by both the Common Council and the Agency Commissioners. See Agency's Brief at pp. 11-14. Ms. Strauss chose it because she was aware that it had previously met with approval of the Council and the Commissioners. Ms. Kaplan-Macey at no point ever disagreed with the methodology. Id. On January 9, 2019, even ***after*** the RPA Report had been criticized by select members of the public, Ms. Strauss wrote to Ms. Kaplan-Macey and reiterated her belief that the RPA Report met the statutory definitions. See Exhibit 38. Further, prior to advancing the Plan to the Council and the Commissioners, the Agency sought **two** opinions from attorneys as to whether this (and other) methodologies comported with the General Statutes. **Both** attorneys (Attorneys Grenier and McCann) authored opinion letters concluding that this methodology **comported** with the General Statutes. Id. at p. 31; Exhibits 61 & 62. All of these facts are undisputed. Moreover, the Agency has appended to its brief the incredibly detailed expert report of Peter J. Folino, who is a deeply-experienced,

State of Connecticut-licensed Lead Paint Inspector and Risk Assessor. See Exhibit 90. In his report, Mr. Folino opines, *inter alia*:

> I am in overall agreement with the findings of the RPA on their conclusion of the presence of environmental deficiencies resulting from the potential presence of lead-based paint on buildings within the redevelopment area. The conclusion was made in accordance with the spirit of current regulations governing lead-based paint in the construction, real estate, abatement, and consulting industries. **The presumption of lead-based paint in pre 1978 housing is not a subjective judgment call but a regulatory obligation**.

See Exhibit 90, p. 12 (emphasis added). Further, after walking through the history of lead paint and the laws and regulations concerning it, he opines: " … I concur with RPA's approach in classifying the pre 1978 buildings as potentially containing lead-based paint." Id. at p. 10. Plaintiff admits that this report is admissible in the context of summary judgment. See Objection at p. 6 (" … Plaintiff does not contest the admissibility of these reports in the context of a summary judgment motion …"); see also Howell v. Aromatique, Inc., No. CV12-6033224, 2016 Conn. Super. LEXIS 6273, at *7-9 (Conn. Super. Ct. Dec. 9, 2016) (Wilson, J.) (holding that the Court has discretion to consider expert reports in the context of deciding a summary judgment motion where the opposing party does not object to the admissibility of the report). Plaintiff's only response to the Agency's expert reports is that it would be "inappropriate" for the Court to consider them because Plaintiff has purportedly disclosed an expert with a "conflicting" opinion. See Objection at p. 6. But Plaintiff has not done so with regard to Mr. Folino. Plaintiff has only disclosed one expert witness: Attorney Rachel Goldberg, who is a lawyer formerly affiliated with the Stamford Urban Redevelopment Commission who has no expertise whatsoever in lead assessment or abatement. See Docket Entry # 195.00. Attorney Goldberg has not authored an expert report. Plaintiff's disclosure of Attorney Goldberg does not reflect that she will be offering any opinions whatsoever on lead paint, on the RPA Report, or even on the 2019 Plan.

Id. The disclosure merely reflects that Attorney Goldberg will be offering opinions on her own personal experiences in Stamford with regard to the formulation of redevelopment plans. Absolutely nothing conflicting with Mr. Folino's expert report has been proffered by Plaintiff.

The lead paint study in the RPA Report **alone** is sufficient for the Agency to meet the 20% threshold of Section 8-125(7) and thus deem the area a "redevelopment area." If the Court deems the lead paint analysis in the RPA Report to be reasonable and in good faith, this entire case is over, and frankly, the Court need not even read the rest of this brief. Plaintiff has made no argument, and has presented no evidence, against the RPA Report's conclusion that 147 buildings in the area are suspected of lead paint. Plaintiff's one and only argument splits the thinnest of hairs: Plaintiff argues that because the Agency did not actually test each and every property to confirm the presumed presence of lead paint, the Agency has not actually determined that 20% of the buildings "contain" a building deficiency or environmental deficiency. Short of testing every property, however, the Agency hired a third-party consultant and commissioned a detailed and eminently reasonable study of factual data points regarding the buildings in the area (with a methodology previously approved by the Common Council) which led the Agency to believe that 147 buildings in the area in all likelihood do contain lead paint. Two attorneys opined that the study comported with the General Statutes. The Agency has proffered an expert report from a seasoned lead paint risk assessor, thoroughly detailing why he agrees with RPA's approach to determining lead paint risk, including the fact that presuming the presence of lead paint is a regulatory obligation in many instances with regard to pre-1978 structures. How Mr. Milligan extrapolates ***bad faith*** and ***unreasonableness*** from this remains a mystery.

RPA further concluded that 44 parcels in the redevelopment area exist in a 100-year floodplain. The Agency concluded that existence in a 100-year floodplain constitutes a building

or environmental deficiency because such properties are at high risk for flooding. Again, Plaintiff does not dispute or present any evidence whatsoever to contradict this conclusion. It is thus an undisputed fact that 44 properties in the area exist in a 100-year floodplain. Plaintiff simply disagrees that existence in a 100-year floodplain constitutes a building or environmental deficiency. Plaintiff protests that some of the properties included in this analysis are "beautiful" and "modern." That may well be so, but it does not change the fact that they exist in a 100-year floodplain. The determination that existence in a 100-year floodplain constitutes a building or environmental deficiency is a judgment for the Agency to make, and not Jason Milligan.

II. The opinions of various witnesses as to whether the Plan's findings comported with the Statutes are inadmissible. In any event, Plaintiff misrepresents the testimony.

In its brief, Plaintiff provides deposition quotations from Melissa Kaplan-Macey and Mayor Harry Rilling to suggest that those individuals believe that the Agency's "deteriorated or deteriorating" conditions analyses do not comport with the General Statutes. First and foremost, to offer the thoughts of witnesses as to whether the studies comport with the General Statutes is clearly ultimate issue evidence, and is plainly inadmissible.[3] Indeed: "It has long been the rule at common law that no witness, expert or otherwise, can testify to a legal opinion, either as to the status or requirements of domestic law or as to the way in which the law should be applied to the facts of a given case." See Pepe & Hazard v. Jones, No. X02-CV96-0151601-S, 2002 Conn. Super. LEXIS 2997, at *5 (Conn. Super. Ct. Sept. 11, 2002) (Sheldon, J.) (citations omitted).

Even if these statements were admissible, they are ***severely*** misleading, and of limited to

[3] Plaintiff's counsel admitted as much when, during the deposition of former Common Council member Douglas Hempstead, he asked the following question: " … [Y]ou know, **this is not admissible** … do you think that suspected lead paint, without knowing if there's lead paint, satisfies the requirement that 20 percent of the buildings actually contain a building deficiency?" See Deposition of Douglas Hempstead at 157:1-11 (emphasis added). Excerpts from the deposition of Douglas Hempstead are attached hereto at Exhibit 1.

no probative value. For instance, Plaintiff argues that Mayor Rilling testified that he does not believe the Wall Street area to be "blighted." See Objection at p. 31, footnote 23. When the transcript is viewed in its full context, however, Mayor Rilling went to lengths to explain that he was not expressing an opinion on Chapter 130 of the General Statutes, which he has never read. Rather, he was testifying as to his own personal understanding of the word "blight."[4] Indeed, this merely underscores the massive problem with Plaintiff's continued and stubborn insistence on use of the word "blight," even in the face of admonishment from Judge Lee that "blight" is not the correct standard under the statute; witnesses may have their own, personal understanding of what "blight" means, and that understanding may be at odds with what the statute actually requires (i.e., a building or environmental deficiency). Plaintiff, however, continues asking about "blight" and then citing the responses in briefs such as this as "support" for its positions.

The citations to Ms. Kaplan-Macey's deposition testimony are even more misleading. Plaintiff provides quotes from Ms. Kaplan-Macey's deposition testimony which suggest that Ms. Kaplan-Macey does not believe that the RPA Report was sufficient to meet the statutory definitions for a redevelopment area. See Objection at pp. 30-31. Many of those responses from Ms. Kaplan-Macey came while Plaintiff's counsel was (for some reason) questioning her on Section 8-124 of the General Statutes, which is the declaration of public policy for the redevelopment statutes. Recall (as discussed on pages 48-55 of the Agency's forward brief) that on May 7, 2019, in the context of the ILSR Case, Judge Lee – in no uncertain terms – informed the Milligan Parties that Section 8-124 does not constitute the definitions for a redevelopment area, and that the actual definitions are set forth in Section 8-125. See Agency's Brief at pp. 51-

[4] See Deposition of Harry Rilling (excerpts attached hereto at Exhibit 2) at 113:4 – 114:10.

52.[5] Undeterred, Plaintiff proceeded to ask Ms. Kaplan-Macey (who is not an attorney) extensive questions on Section *8-124*. Plaintiff ***did not*** ask ***any*** questions on the actual definitions set forth 8-125. When the undersigned showed Ms. Kaplan-Macey the actual definitions of Section 8-125, her testimony was unequivocal:

> Q: … Now, yesterday, Attorney Rubin showed you one section of the Connecticut General Statutes that deals with Redevelopment, and that would be Section 8-124 of the General Statutes … Now, Attorney Rubin asked you whether the so-called blight determination that RPA performed in connection with the 2019 Redevelopment Plan comported with that section. Do you remember that?
>
> A: I do.
>
> Q: Okay. And yesterday you were not asked about the next section in the Redevelopment Statutes, and that would be Section 8-125 …
>
> [Counsel and Ms. Kaplan-Macey review Section 8-125]
>
> Q: Now that we've taken a look [at] the actual definitions of Redevelopment Area in Section 8-125, do you believe that your conclusions in your report were satisfactory to determine that 20 percent or more of the buildings in the area had one or more building deficiencies or environmental deficiencies?
>
> A: Yes.
>
> …
>
> Q: As of March 2019, did you, in fact, stand by RPA's … blight findings for the Redevelopment Area?
>
> A: Yes.
>
> Q: And as we sit here today, do you still stand by your work product on this project?
>
> A: I do.

[5] On pages 7-8 of its Brief, Plaintiff cites to Section 8-124 in full, and provides deposition quotes from Agency staff members to the effect that public policy is "important." Of course public policy is "important," but as Judge Lee has already observed, Section 8-124 does not contain the definitions applicable to a redevelopment area, or any actual requirements to find a redevelopment area. Those definitions and requirements are exclusively set forth in Section 8-125. Plaintiff, for some reason, simply will not accept this fairly self-evident proposition.

Q: Okay. And do you stand by your determinations as to the Redevelopment Area?

A: I do.

See Kaplan-Macey Dep. at 207:24 – 215:14; 232:13-22.[6] Indeed, the only ***material*** and ***admissible*** evidence of how Ms. Kaplan-Macey felt about her work product is what she was saying about it ***to the Agency*** and ***at the relevant time periods***, as opposed to what she said in response to hours of grilling years later from an attorney asking for legal conclusions on inapplicable sections of the General Statutes. The sole question in this case is whether there is evidence of bad faith, unreasonableness, or abuse of power ***on the part of the Agency*** in connection with the adoption of the 2019 Plan. What the Agency knew about Ms. Kaplan-Macey's feelings on her work product was what she said ***to the Agency*** ***in writing*** on March 14, 2019: "**To be clear, I stand by RPA's blight finding for the redevelopment area**." See Exhibit 76. Ms. Kaplan-Macey was clear that she was given a task by her client (the Agency), that she completed that task, and that she stands behind the report that she wrote and the conclusions that she drew in response to the questions posed. Again, these are the only ***material*** and ***admissible*** facts as to the Agency's good faith and reasonableness. Ms. Kaplan-Macey's responses years later to questions as to whether she believes her conclusions ***comported with the General Statutes*** (which views were never communicated to the Agency during the relevant time periods) are of no moment and are inadmissible.

III. The Harriman Report

The majority of Plaintiff's opposition brief (approximately 23 out of 60 pages) is devoted to attacking the so-called "Harriman Report." This is strange, as the Harriman Report was not

[6] Excerpts from the deposition of Ms. Kaplan-Macey are attached hereto at Exhibit 3.

the primary "deteriorated or deteriorating" conditions finding with respect to the 2019 Plan, but rather served as a supplement to the RPA Report. The RPA Report alone was and is sufficient for the Agency to find that the area was a redevelopment area. As set forth in the Agency's forward brief, the Harriman Report was not required by statute, but rather was an additional step that the Agency took to provide more evidence to those who were questioning the findings in the RPA Report. Because the RPA Report was sufficient for the Agency to make a redevelopment area conclusion, and because the Harriman Report was an unrequired "extra" step taken by the Agency to be responsive to public comment, Plaintiff's attacks on the Harriman Report are of no moment. If anything, the fact that the Agency did something that it was not even required to do in order to be responsive to public comment bespeaks the Agency's good faith. Even if all of Plaintiff's histrionic attacks on the Harriman Report are correct (which they are not), the 2019 Plan is still valid because of the sufficiency of the RPA Report. Nonetheless, the Agency must respond to a number of egregious statements made by Plaintiff regarding the Harriman Report.

Recall that the Harriman Report analyzed the physical depreciation of buildings in the area, and focused on properties that have between 30 and 40% physical depreciation. Notably, just as is the case with the RPA Report, Plaintiff does not dispute the conclusions of the Harriman Report, i.e., that more than 20% of the properties in the area have between 30 and 40% physical depreciation. In other words, it is an undisputed fact that more than 20% of the properties in the area have physical depreciation between 30 and 40%. Rather, Plaintiff's arguments against the Harriman Report seem to be that it is inappropriate to analyze physical depreciation as indicative of building deficiencies, and also (in contradictory fashion) that the metric should have been 60% depreciation, as opposed to 40%. The Agency notes as follows:

a. ***Plaintiff is trying to have it both ways on the issue of physical depreciation***.

In connection with the Harriman Report, Ms. Strauss asked Simon Wake what percentage of physical depreciation he would consider to constitute "deteriorated or deteriorating" conditions, and Mr. Wake responded that he would consider any building with 30% or more depreciation to be "undesirable but fixable." Ms. Strauss used Mr. Wake's opinion as a starting point, but ultimately decided to go higher and to analyze properties with 40% physical depreciation (a fact which Plaintiff unsurprisingly neglects to mention even once in its 60-page brief). Plaintiff devotes nearly 13 pages (pages 34-46) to arguing that physical depreciation of buildings should not be considered an appropriate topic of examination for a "deteriorated or deteriorating" conditions analysis. For instance, it cites testimony (such as from Mr. Wake, Mr. Sheehan, and former Assistant Tax Assessor William O'Brien) indicating that physical depreciation cannot be viewed in a vacuum for assessment purposes, i.e., arriving at a monetary valuation of a property. These citations are highly misleading. The Agency has no doubt that physical depreciation should not be viewed in isolation for assessment purposes. But it should be glaringly obvious that the Agency was not assessing the properties; it was determining whether the buildings had a "building deficiency" as set forth in Section 8-125.[7]

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[7] Plaintiff argues that Mr. Sheehan has opined that physical depreciation should not be used as the "sole criteria" for a so-called "blight" determination. See Objection at pp. 42-44. These quotations are apropos of nothing, *as Harriman's analysis **was not** the sole criteria in the 2019 Plan's redevelopment area finding*. The Harriman analysis was a supplement to the RPA Report, which analyzed lead paint, floodplains, and environmental contamination.

Further, Plaintiff argues that Ms. Innes, at the direction of the Agency, "cherry-picked" data for her analysis. See Objection at p. 38. Plaintiff does not cite to Ms. Innes' deposition testimony, in which Plaintiff repeatedly asked her whether she "cherry-picked" information. Ms. Innes, dumfounded by the questions, denied that she had "cherry-picked" information for her analysis, denied that the Agency ever instructed her to do so, and denied that such a conversation ever even occurred. See Innes Dep. at 185:3 – 187:3 ("Q: … Do you recall any conversations with Tami or Sabrina in which you discussed not utilizing certain data because it did not support

After arguing that physical depreciation cannot constitute a building deficiency for purposes of Section 8-125(7), Plaintiff then strangely pivots and (on pages 47-48) begins arguing that *60% physical depreciation should be the appropriate metric*, thus implicitly, if not explicitly, conceding the point that physical depreciation *may indeed* constitute a building deficiency. In other words, Plaintiff is trying to have its cake and eat it too on the topic of physical depreciation. Plaintiff cites to an article by Morgan Gilreath, an assessor from Florida, as apparent support for its argument that 60% should be the appropriate metric in the analysis.[8] Plaintiff cannot have it both ways; either physical depreciation can or cannot be considered a building deficiency for purposes of a "deteriorated or deteriorating" conditions analysis. Notably, Michael McGuire presented this exact argument to the Agency prior to its approval of the Plan. During his comments to the Agency on March 13, 2019, Mr. McGuire argued that 60% was the appropriate metric for the analysis. See Exhibit 74 at pp. 2-3. The argument simply did not prevail. But this brings us right back to what should be the overarching theme here: the legislature has given **the Agency** broad discretion to make this determination, and the Supreme Court has warned against the judiciary substituting its own judgment for that of the Agency with regard to these matters. Asking the Court to wade into, and ultimately decide, a dispute as to whether 40% or 60% depreciation is the appropriate number to indicate that a building has a

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the blight determination? A: … I recall with Tami having an extensive discussion about depreciation … I do not recall using it in the terms that you have used to say that we will only use this because we're trying to reach a result. **I'm sorry, I just don't recall that**") (emphasis added). Excerpts from Ms. Innes' deposition are attached hereto at Exhibit 4.

[8] Plaintiff has not disclosed Mr. Gilreath as an expert witness. Indeed, Plaintiff has not disclosed any experts at all on the topic of physical depreciation. Further, the Agency hastens to point out that Mr. Gilreath's article (if it is even appropriately considered at all) is totally irrelevant. It is limited to a discussion of assessment in Florida. The Connecticut General Statutes are never once mentioned in the article, and indeed, the topic of redevelopment itself, or the designation of a redevelopment area, is never once mentioned in the article.

"building deficiency" is way outside the bounds of appropriate judicial review in this context, as outlined by the Supreme Court in Graham and its progeny.

b. ***Plaintiff thoroughly distorts the testimony of William O'Brien.***

On pages 45-46 of its brief, Plaintiff includes a section titled: "The Assessor's Office Dissents." In this section, Plaintiff argues that William O'Brien, the former Assistant Tax Assessor for the City of Norwalk, disagrees with the conclusions of the Harriman Report. The entire section is a complete distortion of Mr. O'Brien's testimony. Indeed, Plaintiff has bafflingly done precisely what Mr. O'Brien, in his deposition, pointedly admonished people not to do: twist his words to suggest that he disagrees with the conclusions in the Harriman Report.

First, Plaintiff includes quotations from Mr. O'Brien to the effect that assessment data must be viewed holistically for assessment purposes and that one single component of the data could not be singularly used to arrive at a valuation for the property. As stated above, these quotations are totally irrelevant as the Agency was not using the data to assess properties.

Further, Plaintiff recites in its entirety a strongly-worded e-mail that Mr. O'Brien sent to Ms. Strauss regarding her use of the Assessor's data in the 2019 Plan. Plaintiff proffers this e-mail to suggest that Mr. O'Brien disagrees with the conclusions in the Harriman Report. During his deposition, however, Mr. O'Brien confirmed that he has no views on the Harriman Report one way or the other. He testified that Ms. Strauss was perfectly free to use the Assessor's data for whatever purpose she wanted, so long as she and her Agency owned any conclusions drawn from their review of the data. His sole issue with Ms. Strauss was that he felt that she was citing his office as a source for conclusions in the Harriman Report, and he did not want his office cited in such a manner. He testified: "She [Ms. Strauss] can do whatever she wants to do and whatever's appropriate, we have no objection to that, and she can take our data and use it for the

basis of conclusions that she may wish to draw. She cannot say that the Assessment Department is categorizing or characterizing neighborhoods or properties in any deteriorating or negative way." See O'Brien Dep. at 113:18-25;[9] see also O'Brien Dep. at 57:14-17 ("All kinds of people and all kinds of agencies take assessment data and use it for all kinds of purposes. It's not what the assessor's department uses it for. What other people do with it is their business"); 58:20-25 ("Mr. Rubin, I told you I do not do that … Other people may use the data. It is public information, and we put it out there. Whatever they want to use it for, they're entitled to do that"). When Plaintiff asked Mr. O'Brien for his opinion on how Ms. Strauss was using the assessment data, he responded: "I have no idea. She can do whatever she wants with it." See O'Brien Dep. at 65:25 – 66:1. He has no opinion either way as to the methodologies used and conclusions drawn in the Harriman Report. Indeed, during his deposition, he pointedly took issue with those who are attempting to "twist" his words to suggest that he disagrees with the Harriman Report. See O'Brien Dep. at 126:1 – 133:18. During the deposition, Mr. O'Brien was shown documents in which Michael McGuire claimed that he had interviewed Mr. O'Brien, and that Mr. O'Brien had opined: (a) that depreciation is not an accurate indication of deterioration in the plan area, and (2) that he disagreed with the Harriman findings. Id. Mr. O'Brien responded that Mr. McGuire's statements were "false," that "creative liberties" were taken with respect to his words, and that he did not, and would not render such opinions for Mr. McGuire or "anybody else in the world." Id. He repeatedly emphasized that he has no views on the Harriman Report, and that he certainly has never said, and would not say that he disagrees with it.

c. ***Plaintiff's "improper math" argument is factually incorrect.***

On pages 49 and 50 of its brief, Plaintiff argues that Ms. Innes used an improper

[9] Excerpts from the deposition of William O'Brien are attached hereto at Exhibit 5.

denominator in her final calculations, and thus that the entire study is "flawed" from a "mathematical basis." The discussion is dense, but it may be summarized as follows. Because Ms. Innes was analyzing the physical depreciation of buildings, she included only those parcels with buildings on them in her analysis, and did not include vacant parcels. In the first draft of her report, Ms. Innes mentioned that there were 372 buildings on 304 parcels in the area. She concluded that: (1) 221 buildings (59% of buildings and 73% of parcels) had depreciation of 30% or over; (2) 158 buildings (42% of buildings and 52% of parcels) had depreciation of 35% or over; and (3) 109 buildings (29% of buildings and 36% of parcels) had depreciation of 40% or over. Subsequently, the Agency requested that Ms. Innes update her report to focus solely on parcels, rather than buildings. Ms. Innes testified that she continued to focus on parcels with buildings as the denominator, rather than all parcels. Her final report mentioned that there were 380 buildings on 320 parcels and concluded as follows: (1) 177 parcels (55% of parcels) had depreciation of 30% or more; (2) 125 parcels (39% or parcels) had depreciation of 35% or more; and (3) 86 parcels (27% of parcels) had depreciation of 40% or more.

The crux of Plaintiff's argument is this: when Ms. Innes shifted to focusing solely on parcels, she should have used the total number of parcels (including vacant parcels) as the denominator, rather than only those parcels that have buildings on them. Plaintiff argues that the "correct number" to be used as the denominator was the number in the RPA Report: 385. Plaintiff argues: " … 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." See Objection at p. 50.

This statement is simply factually incorrect, and the Agency struggles to understand why Plaintiff has even made it. If one assumes that Plaintiff is correct that Harriman's denominator

should have been 385, then the results are as follows: (1) 46% of parcels (177 out of 385) have depreciation of 30% or more; (2) 32% of parcels (125 out of 385) have depreciation of 35% or more; and (3) 22% of parcels (86 out of 385) have depreciation of 40% or over. In other words, even with a denominator of 385, the Harriman Report has still satisfied the 20% threshold under Section 8-125. Even if Plaintiff is correct that Ms. Innes made an error with respect to the denominator, it was an error that **would have made no difference at all as to the ultimate conclusion of the report**. The fact that Plaintiff is picking on such trivialities which would not have altered the ultimate result bespeaks the weakness of this case.

IV. The powers conferred upon the Agency by virtue of a redevelopment plan are irrelevant to the question of whether the plan was validly adopted.

Pages 11 through 18 of Plaintiff's brief are devoted to a discussion of the powers (as Plaintiff sees it) that are conferred upon the Agency by virtue of the 2019 Plan. The question in this case, however, is whether the 2019 Plan was validly adopted. The "powers" that are vested in the Agency by virtue of the Plan are totally irrelevant to the question of whether the Plan was validly adopted. Moreover, the Agency emphasizes that various of the "powers" described by Plaintiff are demonstrably false, and Plaintiff's characterizations call into question whether Plaintiff has actually read Chapter 130 of the General Statutes. For example, Plaintiff argues that if a property in a redevelopment area is acquired by eminent domain, the property owner has no right to challenge the taking, and may only challenge the valuation of the property. See Objection at p. 12. Plaintiff argues: "[This declaratory judgment action] is the only time for a property owner in a redevelopment area to contest the authority of the redevelopment area to take one's property." Id. (emphasis in original). Plaintiff ignores Section 8-127a of the General Statutes, which explicitly allows the owner of a property acquired by eminent domain pursuant to the redevelopment statutes to file an application in the Superior Court to enjoin the taking.

This whole discussion, however, is perplexing as the Plan itself states that the Agency does not intend any eminent domain in connection with the Plan. Further, Plaintiff has confirmed that since the Plan was adopted, the Agency has never indicated an intention to acquire its properties.

V. Plaintiff's "Funding" Arguments

Pages 17-18 of Plaintiff's brief are devoted to arguing that "the all-mighty dollar," i.e., state and federal "funding," were a "significant issue driving the blight finding." Plaintiff's argument begins with an egregiously misleading quote from the deposition of Mr. Sheehan: "[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." See Objection at p. 17. But Mr. Sheehan did not say this. The quotation comes from a question from Plaintiff's counsel. See Sheehan Dep. at 234:5-23.[10] Plaintiff's counsel asked Mr. Sheehan for his reaction to this sentence. Importantly, Mr. Sheehan proceeded to disagree with the characterization. Id. at 235:7:25 (" … And plan approval is necessary to open up state and federal funding for development of this area. I … that sounds to me more like we're talking about a specific source of funding. And, quite frankly, I don't think that is – I know that not to be the case").

This is another one of Plaintiff's evidence-free conspiracy theories; that the Agency adopted the 2019 Plan in order to obtain state and federal funding. Plaintiff, however, fundamentally misunderstands its own argument. As Ms. Strauss clarified: " … I don't think there are any financial resources that open up solely because of that [redevelopment area] determination. I think that the determination would only strengthen an application to one of those sources." See Strauss Dep. at 43:11-18.[11] In other words, a redevelopment agency does not

[10] Excerpts from the deposition of Timothy Sheehan are attached hereto at Exhibit 6.

[11] Excerpts from the deposition of Tami Strauss are attached hereto at Exhibit 7.

automatically begin receiving money from the state or federal government because of a redevelopment area designation. Rather, a redevelopment area designation is one factor that might strengthen an application for various types of state or federal funding should the Agency choose to pursue such an application. Plaintiff, however, has not even proffered any evidence that the Agency actually received any funding, or even applied for any such funding, on the basis of the 2019 Plan. Even if there had been evidence that the Agency sought or received such funding, or was motivated to seek such funding, the Agency must ask the obvious: what is even improper or nefarious about seeking funding to improve a distressed area of the City?

The remainder of Plaintiff's argument involves quotations (oftentimes wildly out of context) regarding a different redevelopment plan, which have no bearing on the 2019 Plan. Plaintiff ends its argument with a "quotation" from Norwalk's former Zoning Chairman, Adam Blank, which Plaintiff says should be the "final word" on this issue. See Objection at p. 18. Examined more closely, this "quotation" is *actually* a quotation from a member of the public, Donna Smirniotopoulos, who was purporting to quote Mr. Blank (who was not, and is not, even affiliated with the Agency). See Plaintiff's Exhibit I at p. 8. As such, this "quotation" is not only hearsay, but indeed double-hearsay, and is plainly inadmissible. The true final word on this topic is from the Agency's Executive Director, Brian Bidolli, who testified that he derives no personal benefit whatsoever from the adoption of the 2019 Plan, and that " … the only benefit I get is the gratification of trying to make the community better." See Bidolli Dep. at 223:12-16.[12]

VI. Plaintiff's "Accurate Reporting" Arguments

On pages 53-54 of its brief, Plaintiff cites to portions of the deposition of Common Council member Thomas Livingston in an effort to insinuate that Ms. Strauss provided

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[12] Excerpts from the deposition of Brian Bidolli are attached hereto at Exhibit 8.

inaccurate information to the Council in connection with the 2019 Plan. Plaintiff deposed Mr. Livingston, as well as former Council member Douglas Hempstead, in this case. During the depositions, Plaintiff made presentation and argument to Messrs. Livingston and Hempstead as to why – in Plaintiff's view – the 2019 Plan is invalid. Indeed, during the deposition of Mr. Hempstead, Plaintiff's counsel referred to his questioning as follows: " … I think this is as much of an education as it is anything." See Hempstead Dep. at 152:5-7. Yet, even after hearing hours of Plaintiff's theatrics (including many of the same arguments raised in Plaintiff's opposition brief), Messrs. Livingston and Hempstead were unequivocal that they have no reason whatsoever to believe that they were in any way misled by Ms. Strauss. Mr. Livingston testified:

> Q: … As we sit here today, do you have any reason to believe that the Agency lied to you or attempted to mislead you?
>
> A: No.
>
> Q: Do you have any reason to believe that they lied to you or attempted to mislead any member of the Common Council?
>
> A: I have no basis for that.
>
> Q: Do you have any reason whatsoever to believe that information provided to you in connection with the 2019 Redevelopment Plan was deliberately inaccurate?
>
> A: No.

See Livingston Dep. at 177:21 – 178:8.[13] Mr. Hempstead, who was the lone "no" vote on the Plan, testified (Hempstead Dep. at 145:2-9) as follows:

> Q: Do you have any reason to believe, Doug, that Tami Strauss or anyone at the Redevelopment Agency lied to you or attempted to mislead you with regard to the blight determination?
>
> A: I don't, no. No. No, because I think they were being thoroughly grilled by members of the committee at that time …

[13] Excerpts from the deposition of Thomas Livingston are attached hereto at Exhibit 9.

VII. Plaintiff's Procedural Arguments

In his Complaint, Plaintiff argued that the Agency failed to follow various statutory notice provisions. In its brief, Plaintiff devotes only 2 out of 60 pages (at the very end of the brief) to these procedural arguments, thus clearly indicating that Plaintiff does not consider them to be particularly strong arguments. The Agency responds to Plaintiff's arguments as follows:

a. *Plaintiff's "website" argument*

Plaintiff does not dispute that the Agency posted the Plan on two different websites (the Agency's page on the City website and "Norwalk Tomorrow") more than 35 days prior to the January 8, 2019 Public Hearing; this fact is undisputed. The entirety of Plaintiff's argument here is that (according to Plaintiff) the Agency did not post the plan on what *Plaintiff considers to be* the Agency's "actual" website. The argument represents a shift for Mr. Milligan, who (as explained on page 43 of the Agency's brief) was, *during the relevant time periods* and *in writing*, referring to the Agency's page on the City website as the "their [the Agency's] website." Plaintiff's bare-bones argument further ignores the lengthy discussion of undisputed facts set forth on pages 41-45 of the Agency's forward brief. The undisputed testimony establishes that the Agency maintains three websites, each of which is used for a distinct purpose. Plaintiff fully admits that the Plan was posted on two of those three websites. The testimony establishes that the third website of which Plaintiff complains was a "marketing" website which was maintained by the Agency for the specific purpose of showcasing final, approved redevelopment plans. The undisputed facts set forth in the Agency's brief conclusively establish that not only did the Agency satisfy this particular statutory posting requirement, but it went *well* above and beyond what is contemplated by the statute. There simply is no issue to be tried here.

b. ***The Agency was not obligated to conduct multiple public hearings.***

Plaintiff states that the Agency failed to conduct a second public hearing after it had amended the Plan in response to the comments made at the January 8, 2019 Public Hearing. It argues that "substantial changes" that were made to the Plan after the Public Hearing mandated additional public hearings. Yet, Plaintiff has utterly failed to: (a) offer any legal authorities supporting this argument; or (b) identify what exactly those "changes" were, or explain why they were of such a nature that would mandate further public hearings. Moreover, Plaintiff fails to cite any legal authority that the Agency was authorized, much less obligated, to hold a second public hearing on the Plan. In particular, Plaintiff has wholly failed to address the legal authority in the Agency's brief establishing that: (1) the relevant statute, Conn. Gen. Stat. § 8-127(b), authorizes only a single public hearing on the plan, and case law establishes that a local agency may not hold a second public hearing when only a single hearing is authorized by the enabling statute (see Brief, p. 45); and (2) our Supreme Court has established that the very purpose of a public hearing is to allow interested parties to make their opinions known to the local agency, *and to allow the agency to make changes to the proposal in light of those public comments.*[14] The Agency here was not only authorized, but indeed expected, to make changes to the Plan if it deemed the public to have raised valid points regarding the Plan. Accordingly, there is no merit to Plaintiff's claim that the Agency was required to hold a second public hearing.

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[14] The memorandum from Tami Strauss to the Agency cited by Plaintiff in its Objection establishes that the changes to the Plan made after the Public Hearing were made in order to address the oral and written comments made to the Agency through the public hearing process. See Ex. GG to Plaintiff's Objection ("… "specific public comments were made that sought some form of modification to the plan. These comments have been fully reviewed and I have addressed the specific areas of the plan which will be subject to review/modification below"). Moreover, as Ms. Strauss confirmed in her deposition, the changes made in response to public comment neither changed the geography covered by the Plan nor the conclusions of the Plan. See Ex. D to Plaintiff's Objection, pp. 166, 176.

DEFENDANT –
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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was mailed first-class mail, postage prepaid, as well as e-mailed, to all counsel of record and *pro se* parties in this action on this the 21st day of December, 2021, as follows:

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