NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4474-06T2

HARRISON REDEVELOPMENT
AGENCY,

Plaintiff-Respondent,

v.

HARRISON EAGLE, LLP and
PROMONTA REALTY CORP.,

Defendants-Appellants,

and

BEVERLY ADLER, BOBANELL'S
LIQUORS, INC., CAPITAL ONE BANK,
CENTRAL PARKING CORPORATION,
JOSEPH COMPRELLI, DRIVER-HARRIS
COMPANY, GLOBE METALS, THE
GREENWOOD TRUST CO., INFINITE
SIGN INDUSTRIES, INC., PATHPARC
ASSOCIATES, LLC, PUBLIC SERVICE
ELECTRIC AND GAS COMPANY, JOHN
SCURA BANKRUPTCY TRUSTEE, SPRINT
NEXTEL CORPORATION (successor to
SPRINT AND NEXTEL COMMUNICATIONS,
INC.), STATE OF NEW JERSEY DIVISION
OF TAXATION, TAK CONSTRUCTION CO.,
INC., THE TOWN OF HARRISON, THE
UNITED STATES OF AMERICA, and
US ICEWEAR, INC.,

Defendants.

Argued February 4, 2008 - Decided February 25, 2008

Before Judges Parrillo, Sabatino and Alvarez.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3250-06.

Paul H. Schafhauser and Edward D. McKirdy argued the cause for appellants (Herrick, Feinstein, LLP, and McKirdy & Riskin, P.A. attorneys; Paul H. Schafhauser, on the brief).

Gregory J. Castano, Jr., argued the cause for respondent (Castano Quigley, LLC, attorneys; Mr. Castano, on the brief).

Ronald K. Chen, Public Advocate, argued the cause for amicus curiae Department of the Public Advocate of New Jersey (Ronald K. Chen, Public Advocate, attorney; Mr. Chen, Catherine Weiss, Director, Division of Public Interest Advocacy, Jean Reilly, Deputy Director, Division of Public Interest Advocacy, Brian Weeks, Deputy Public Advocate, Fenix Manning-Bowman, Assistant Deputy Public Advocate, and Flavio Komuves, Deputy Public Advocate, on the brief).

Daniel P. Reynolds, Senior Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Anne Milgram, Attorney General, attorney; Nancy Kaplen, Assistant Attorney General, of counsel; Mr. Reynolds, on the brief).

PER CURIAM

In this companion opinion to Harrison Redev. Agency v. DeRose, A-0958-06T2 and A-0382-07T2 ("DeRose"), _____ N.J. Super. _____ (App. Div. 2008), and Harrison Redev. Agency v. Amaral Auto Ctr, et al., ("Amaral"), A-3862-06T2, which we also

decide today, we consider herein arguments raised by other local property owners, appellants Harrison Eagle, LLP and Promonta Realty Corporation (collectively "Harrison Eagle" or "appellants") in opposition to the Town of Harrison's determination that their properties are in need of redevelopment and therefore may be taken pursuant to the Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1 to -49, and the Eminent Domain Act, N.J.S.A. 20:3-1 to -50. The Law Division rejected Harrison Eagle's asserted defenses to the redevelopment designation and the taking of its properties in an order dated February 13, 2007. The court reaffirmed its decision in a subsequent order of April 23, 2007 denying reconsideration and a stay.

For the reasons expressed in DeRose and supplemented in this opinion, we affirm the Law Division's orders in part, vacate them in part, and remand for further proceedings.

I.

Appellants in this case are the owners of seven commercial properties[1] in the Town of Harrison. Two of those properties are

[1] The subject properties are (1) 234-242 Middlesex Street (Block 99, Lots 18-27, 45, and Block 118, Lot 41A); (2) 201-219 Middlesex Street (Block 100, Lots 1-10); (3) Rodgers Boulevard South (Block 115, Lots 1-26); (4) 301-321 Somerset Street (Block (continued)

industrial buildings, with combined dimensions of approximately 200,000 square feet. A portion of that industrial space is used for shaping glass, plastics and steel, and a smaller portion is used to store metal drums. The remaining properties are used for 639 outdoor and 376 indoor parking spaces, located within walking distance to the local PATH station. Appellants' properties, which are not all contiguous with one another, collectively span 9.34 acres. The properties are in a district of Harrison zoned for industrial use.

Harrison Eagle, LLP and Promonta Realty Corporation are business entities owned and operated by family members who are related to the late Irving I. Adler. One of those family members is Steven Adler, an attorney licensed in New Jersey.

Since 1997, the Town of Harrison has pursued a redevelopment initiative involving over 250 acres, nearly one-third of the Town's total area. We incorporate by reference the history of that initiative, as described in our companion opinion in DeRose, including the various proceedings held before the municipal Planning Board and the Town's Mayor and Council

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(continued)

116, Lots 1-16 and 21B-40); (5) 301-307 Middlesex Street (Block 117, Lots 1-4); (6) 309-329 Middlesex Street (Block 117, Lots 5-15 and 26-34); and (7) 601-615 Rodgers Boulevard South (Block 118, Lots 1-40 and 41B).

and the subsequent creation of respondent, the Harrison Redevelopment Agency ("the Agency").

All seven of Harrison Eagle's parcels are located in the redevelopment zone. Appellants do not dispute that one of their principals, Hanna Adler, received in the mail the Planning Board's notice of its upcoming August 7, 1997 meeting,[2] at which the Board addressed its "preliminary investigation" recommending the designation of the area in question for redevelopment. It is also undisputed that appellants were not supplied with any formal notice that the Mayor and Town Council subsequently adopted a resolution in September 1997 designating their properties for redevelopment. Nor were appellants notified that the Mayor and Council thereafter adopted an ordinance in November 1998 approving a redevelopment plan, which likewise contained their properties.

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[2] It is suggested in the briefs that Steven Adler attended the August 7, 1997 meeting, but did not address the Board. The meeting transcript does not identify him as a speaker, and our record does not otherwise confirm his attendance. His presence or absence is not material to our analysis.

In evaluating the properties currently[3] owned by appellants, the Town's planning consultant, Susan Gruel, opined in 1997 that all of those properties were in need of redevelopment because they were "dilapidated," "underutilized," suffering from a "faulty arrangement," or otherwise blighted. Appellants dispute that assessment, contending that their properties have been and remain profitable and productive. Appellants also note that their facilities generate significant commuter parking tax revenues for the Town.

The procedural history involving Harrison Eagle is complicated by parallel litigation it brought in federal court. In October 2001, Harrison Eagle filed a complaint in the United States District Court for the District of New Jersey, challenging the Town's blight designation and the redevelopment plan. The municipal defendants in that federal litigation moved to dismiss the complaint in lieu of an answer. After Harrison Eagle obtained numerous adjournments of that motion, the district court ultimately dismissed its complaint without prejudice in March 2003. Harrison Eagle contends that it did

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[3] The properties were then owned by Irving I. Adler, who has since died. He was the husband of Hanna Adler and the father of Marion Seltzer and Steven Adler, who are now all principals of Harrison Eagle.

not respond to the motion because it was attempting to negotiate a sale or lease with the Town's redeveloper, Harrison Commons, LLC ("Harrison Commons"). Negotiations intermittently continued from 2001 to about January 2006, but Harrison Eagle and the redeveloper never reached an agreement.

On June 1, 2006, the Agency transmitted to Harrison Eagle an appraisal of the properties with a letter offering to purchase them for the appraisal price of $15.1 million, minus the cost of remediating on-site contamination. The Agency indicated that if Harrison Eagle did not respond within fourteen days, it would file a condemnation action in state court. Harrison Eagle requested three extensions of the fourteen-day period to continue negotiations. The Agency granted those extensions.

After further negotiations stalled, Harrison Eagle filed another federal complaint on July 6, 2006. The complaint advanced the same types of claims that it had made in its first federal action. Again, the Agency filed a motion to dismiss, which apparently has yet to be decided by the federal court.[4]

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[4] We were recently advised at oral argument that the federal action remains pending, but has been dormant while the present appeal was pursued.

Meanwhile, the Agency filed a condemnation action against appellants in the Law Division on July 10, 2006. The Agency's state court filings included a verified complaint, an order to show cause, and a declaration of taking.

Harrison Eagle filed an answer in the Law Division on August 10, 2006. Among other things, Harrison Eagle challenged the Agency's taking on the grounds that (1) the properties were not blighted; (2) the taking was solely for a private purpose; (3) the Agency was not lawfully created; (4) the Town did not properly authorize the Agency to condemn property; and (5) the Agency had not conducted bona fide negotiations with Harrison Eagle prior to filing the condemnation complaint. Those allegations were similar to the ones that Harrison Eagle had advanced in its federal pleadings.

Harrison Eagle also moved to dismiss the Agency's complaint, or, alternatively, for a stay of the state court action, pending a final decision in the federal case. Harrison Eagle requested that if the state court action were not dismissed or stayed, then the Law Division should grant it leave to conduct discovery and, thereafter, a plenary hearing on the Agency's right to condemn its properties. The Law Division

judge[5] promptly denied Harrison Eagle's stay application and its discovery request, and turned to the merits of the contentions.

After hearing oral argument, the judge issued a written decision on February 13, 2007. In his ruling, the judge granted the Agency's application to proceed with eminent domain, and rejected all of the claims interposed by Harrison Eagle. As a central part of his decision, the judge held that Harrison Eagle was too late in attempting to challenge the blight designation. Observing that "enormous sums of money [had been] already committed to this massive redevelopment," the judge found that it would be "inequitable" to allow Harrison Eagle to contest the designation at this point in time. The judge also held that it made no difference whether Harrison Eagle raised such arguments "by way of prerogative writ or as a defense to a condemnation action."

Apart from his determination of untimeliness, the trial judge found that the proposed condemnation of Harrison Eagle's properties was for a valid public purpose, under the LRHL's criteria set forth at N.J.S.A. 40A:12A-5. The judge also found that the Agency had been lawfully constituted, and that the Town

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[5] The judge is the same judge who presided over the related litigation in DeRose and in Amaral.

had enacted adequate formal measures to authorize the acquisition of the properties in the redevelopment zone. Lastly, the judge rejected Harrison Eagle's contention that the Agency had failed to conduct bona fide negotiations, as prescribed by N.J.S.A. 20:3-6, before filing its condemnation complaint.

Harrison Eagle moved for reconsideration and a stay pending appeal, which the trial judge denied on April 23, 2007. Harrison Eagle's subsequent requests for a stay pending appeal were denied by this court and thereafter by the Supreme Court. This appeal ensued, which was argued back-to-back with the related appeals in DeRose and in Amaral.

II.

We first briefly address the trial judge's determination that Harrison Eagle's challenge to the blight designation is time-barred under R. 4:69-6. For the reasons that we elaborate today in DeRose, supra, _____ N.J. Super. at _____, the judge erred in not permitting Harrison Eagle to raise such a challenge by way of a defense to the Agency's condemnation action. The deficient notice that the Town afforded to Harrison Eagle, as well as to all other property owners in the redevelopment zone,

constitutionally mandates the preservation of such a defense.[6]

Accordingly, consistent with our rulings in DeRose, this matter must be remanded to the trial court for a determination on the merits of Harrison Eagle's blight challenge. In particular, the trial judge must decide whether the blight designation of Harrison Eagle's properties, or their inclusion as ancillary properties necessary for the overall redevelopment, is supported by substantial evidence, under the standards recently expressed by the Supreme Court in Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007).

III.

Even though we are remanding this matter because of the notice deficiency, we nevertheless shall address the various other claims by Harrison Eagle that were disposed of by the trial judge. In particular, we consider (a) whether the Agency was lawfully constituted; (b) whether the municipality authorized the redevelopment plan and the Agency's taking of the properties in a lawful manner; and (c) whether the Agency's complaint against Harrison Eagle should be dismissed under

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[6] That is not altered by the fact that one of the principals of Harrison Eagle happens to be a lawyer. Nor should Harrison Eagle be deprived of its day in court to contest the blight designation simply because substantial money has been spent by others on the redevelopment.

N.J.S.A. 20:3-6 for failure to engage in bona fide negotiations. We sustain the trial judge in rejecting all three of these subsidiary arguments.

A.

Harrison Eagle contends that the Agency was not lawfully constituted because too many of its seven members were also officials or employees of the Town of Harrison. This argument turns on the enabling provision in the LRHL, N.J.S.A. 40A:12A-11(a), which limits the authorized number of municipal officers or employees who may serve on a redevelopment agency.

N.J.S.A. 40A:12A-11(a) provides in its second paragraph that a municipality may create a redevelopment agency of seven appointed commissioners. It prescribes that "[n]o more than two commissioners shall be officers or employees of the municipality." Ibid. The statute also instructs in its third paragraph that "[t]he municipal governing body may provide by ordinance that not more than two of the commissioners shall be members of the governing body." Ibid. Here, the Town of Harrison adopted such an ordinance when it created the Agency. In relevant part, that ordinance states that "[n]o more than two commissioners [at the Agency] shall be officers or employees of the Town of Harrison and no more than two commissioners shall be either the Mayor or members of the Council."

The LRHL does not define the terms "officer" or "employee." See N.J.S.A. 40A:12A-3 (definitional section). By way of comparison, those titles are defined in the Local Government Ethics Law, ("the Ethics Law") N.J.S.A. 40A:9-22.1 to -22.25. In particular, the Ethics Law defines a "[l]ocal government officer" as

> any person whether compensated or not, whether part-time or full-time: (1) elected to any office of a local government agency; (2) serving on a local government agency which has the authority to enact ordinances, approve development applications or grant zoning variances; (3) who is a member of an independent municipal, county or regional authority; or (4) who is a managerial executive or confidential employee of a local government agency, as defined in section 3 of the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-3), but shall not mean any employee of a school district or member of a school board[.]
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> [N.J.S.A. 40A:9-22.3(g) (emphasis added).]

The Ethics Law also defines a "[l]ocal government employee" as

> any person, whether compensated or not, whether part-time or full-time, employed by or serving on a local government agency who is not a local government officer, but shall not mean any employee of a school district[.]
>
> [N.J.S.A. 40A:9-22.3(f) (emphasis added).]

Both the definitions of a municipal "officer" and of an "employee" in the Ethics Law refer to the concept of a "[l]ocal

government agency," an entity that the Ethics Law defines as follows:

> any agency, board, governing body, including the chief executive officer, bureau, division, office, commission or other instrumentality within a county or municipality, and any independent local authority, including any entity created by more than one county or municipality, which performs functions other than of a purely advisory nature, but shall not include a school board[.]
>
> [N.J.S.A. 40A:9-22.3(e) (emphasis added).]

At the times relevant to this matter, the seven-member Agency included three commissioners who Harrison Eagle claims were all "officers" or "employees" of the Town of Harrison, who caused the Agency to exceed the statutorily-authorized membership limits. These three commissioners were (1) Raymond McDonough, the Mayor of Harrison; (2) Thomas Powell, coordinator of the Town's neighborhood preservation program; and (3) Anthony Comprelli,[7] the Town's historian and the local district superintendent of schools.

The Agency concedes that Mayor McDonough and Powell were municipal officers or employees, but maintains that Comprelli

[7] Commissioner Comprelli is a different person than Joseph Comprelli, who was named as co-defendant in the Agency's condemnation complaint, in the Amaral companion case, as a person with a potential interest in the Amaral properties.

was neither. It points out that Comprelli's position as school district superintendent did not count towards the membership limits under N.J.S.A. 40:12A-11(a) because school district personnel are specifically exempt from the Ethics Law's definitions of officer and employee. N.J.S.A. 40A:9-22.3(f) and (g); see also 40A:9-22.3(e) (excluding school boards from the definition of a local government agency). The Agency further contends that Comprelli's role as Town historian likewise did not matter, because his functions in that position were essentially "advisory." See N.J.S.A. 40A:9-22.3(e). The trial judge accepted these arguments in ruling that the Agency was lawfully constituted. The judge specifically found that the Agency had only two municipal officers or employees, McDonough and Powell, among its members, and that Comprelli was neither a municipal officer nor an employee.

On appeal, Harrison Eagle contends that the judge's reasoning was flawed because a municipal historian is not a purely "advisory" position but has more expansive functions. See N.J.S.A. 40:10A-7 (enumerating the powers and responsibilities of a municipal historian). These functions, according to Harrison Eagle, render Comprelli a municipal officer, employee, or both. That means that three, not two,

municipal officers or employees served on the Agency at the same time, thereby allegedly invalidating its actions.

We find it unnecessary to reach the nuances of what a municipal historian does or does not do, because there is a simpler way to resolve the membership issue under the LRHL. Specifically, we focus our analysis on the language separately contained in the third unnumbered paragraph of N.J.S.A. 40A:12A-11(a), a provision which was not discussed in the Law Division's opinion. That portion of the statute adds the following requirement:

> The municipal governing body may provide by ordinance that not more than two of the commissioners shall be members of the governing body.

The rest of the third paragraph relates to the length of such persons' terms of service as commissioners. Ibid.

Courts should not "assume that the Legislature used meaningless language," and thus should give "full effect . . . to every word of a statute." Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969). See also McCann v. Clerk of Jersey City, 167 N.J. 311, 321 (2001). Consequently, the third paragraph of N.J.S.A. 40A:12A-11(a), capping at two the number of redevelopment agency commissioners who may be members of the municipal governing body, must be read in a fashion that has independent significance from paragraph two, which imposes a

two-member cap on commissioners who are municipal officers or employees.

No matter what form of local government exists in a municipality, the members of its governing body are undoubtedly "officers" of that municipality. The LRHL itself provides further insight on this proposition, as it defines a "governing body" as "the body exercising general legislative powers in a county or municipality according to the terms and procedural requirements set forth in the form of government adopted by the county or municipality." N.J.S.A. 40A:12A-3 (definitional section). The persons who exercise those legislative functions, in debating and enacting municipal ordinances, are most assuredly officers of the town, city, township or borough that they serve.

That being so, the two officer/employee limitation contained in the second paragraph of N.J.S.A. 40A:12A-11(a) must be read as imposing a separate and distinct limitation from the provision in paragraph three of that section limiting the Agency to two commissioners drawn from the municipality's governing body. To read the statute in a contrary manner would make one of those two paragraphs meaningless, and thereby violate well-settled principles of statutory interpretation. See Gabin, supra, 54 N.J. at 555.

Further evidence that municipal officers/employees, on the one hand, and members of the governing body, on the other hand, are distinct sources of potential commissioners under the LRHL is the disparity in their respective terms on the Agency's Board. Commissioners who are also municipal officers or employees "shall each serve for a term of five years," while members of the governing body may only serve "for a term of one year" as an Agency commissioner. N.J.S.A. 40A:12A-11(a). Hence, a redevelopment agency lawfully may include up to two municipal employees or officers and also up to two members of the municipal governing body.

This dual-tracked membership limitation is echoed in the Harrison ordinance that created the Agency. As we have already noted, the ordinance instructs that "[n]o more than two commissioners [at the agency] shall be officers or employees of the Town of Harrison and no more than two commissioners shall be either the Mayor or members of the Council." (Emphasis added.) The conjunctive form of that sentence, which separates its two clauses with the word "and," signifies that there are two distinct limitations on membership involved: (1) municipal officers or employees and (2) the Mayor and members of the Council.

Despite contrary assertions in the trial court proceedings, Harrison is not a Faulkner Act municipality, N.J.S.A. 40:69A-1 to -210, but rather has a "town" form of government. See N.J.S.A. 40A:62-1 to -8 (on the organization of a "town" form of government). Under a "town" government, the mayor is the "councilman-at-large" and "possess[es] all the powers of a member of council." N.J.S.A. 40A:62-5(a) and (d). Thus, in Harrison, the Mayor is part of the governing body. Hence, it would be improper to count the Mayor twice in determining whether the separate membership limitations in Section 11 of the LRHL are transgressed.

By the foregoing analysis, Mayor McDonough, as a member of the Harrison governing body, should not be counted as a municipal "officer[] or employee[]" under the second paragraph of N.J.S.A. 40A:12A-11(a). Consequently, the limitations of the second paragraph would not be exceeded by the service of both Powell and Comprelli as Agency commissioners, even if a local historian such as Comprelli is, in fact, a municipal officer or employee.

As a matter of law, McDonough, Powell and Comprelli all could be appointed to the Agency simultaneously without violating the LRHL. Hence, we affirm the trial judge's rejection of Harrison Eagle's unlawful-composition claim, albeit

for slightly different reasons than those that were expressed in the judge's opinion.[8]

B.

Harrison Eagle also contends that the trial judge erred in finding that the Agency had the authority to condemn its properties. This argument grows out of certain aspects of both the State Constitution and the LRHL.

Article IV, section 6, paragraph 3 of the New Jersey Constitution provides that the Legislature must specifically entrust the power of eminent domain to a public body or to an agency of a public body:

> Any agency or political subdivision of the State or <u>any agency</u> of a political subdivision thereof, <u>which may be empowered to take or otherwise acquire private property</u> for any public . . . use, may be authorized by law to take or otherwise acquire a fee simple absolute or any lesser interest . . . [in] property to preserve and protect the public highway, parkway, airport, place, improvement, or use; but such taking shall be with just compensation.

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[8] We likewise reject as without merit Harrison Eagle's claim that the Agency was illegally constituted because of certain predictive statements about the Agency's future membership, which its counsel orally made before the State Local Finance Board in February 1999. <u>R.</u> 2:11-3(e)(1)(E). We note that the Local Finance Board has never taken any regulatory action based upon those statements. Nor has the Attorney General, who has appeared at our request as an amicus curiae in this matter, argued to us that the Agency is illegally constituted.

> [N.J. Const. art. IV, § 6, ¶ 3 (emphasis added).]

This constitutional power is implemented in Section 8 of the LRHL, which authorizes a municipality or its designated agency to condemn, for the purposes of redevelopment, blighted property and other property necessary to such redevelopment:

> Upon the adoption of a redevelopment plan pursuant to section 7 of P.L.1992, c.79 (C.40A:12A-7), the municipality or redevelopment entity designated by the governing body may proceed with the clearance, replanning, development and redevelopment of the area designated in that plan. In order to carry out and effectuate the purposes of this act and the terms of the redevelopment plan, the municipality or designated redevelopment entity may:
>
> . . . .
>
> c. Acquire, by condemnation, any land or building which is necessary for the redevelopment project, pursuant to the provisions of the "Eminent Domain Act of 1971," P.L.1971, c.361 (C.20:3-1 et seq.).
>
> [N.J.S.A. 40A:12A-8.]

N.J.S.A. 40A:12A-6(c) similarly provides that "[i]f an area is determined to be a redevelopment area and a redevelopment plan is adopted for that area in accordance with the provisions of this act, the municipality is authorized to utilize all those powers provided in [N.J.S.A. 40A:12A-8]."

Harrison Eagle contends that the Agency did not have authority to condemn its properties because the ordinance that created the Agency allegedly did not intend to delegate to the Agency the power to condemn. Alternatively, it argues that if the Town sufficiently authorized the Agency to condemn land in general, then the Agency's actions against Harrison Eagle were still invalid because the Agency did not pass a resolution specifically authorizing condemnation of Harrison Eagle's parcels before it filed its present complaint.

In support of these arguments, Harrison Eagle asserts that the following language in the ordinance creating the Agency shows that the Town intended for it alone, and not the Agency, to have the authority to condemn:

> The [A]gency shall be responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to N.J.S.A. 40A:12 40A:12A-8 [sic].

Because the ordinance referred to both "N.J.S.A. 40A:12," the Local Lands and Building Law, N.J.S.A. 40A:12-1 to -38, and "N.J.S.A. 40A:12A-8," a section of the LRHL, Harrison Eagle maintains that the Agency had to comply with both statutes in pursuing the acquisition of its properties.

Section 5 of the Local Lands and Building Law provides that "any municipality, by ordinance, may provide for the acquisition of any real property . . . [b]y . . . condemnation." N.J.S.A.

40A:12-5 (emphasis added). Thus, contends Harrison Eagle, only the Town of Harrison itself can condemn property to pursue redevelopment. Harrison Eagle also points out that Harrison's redevelopment plan, which was attached to the ordinance, literally authorized "the Town" to exercise its condemnation powers on properties in the redevelopment area, and did not mention the Agency.

The trial judge rejected these arguments. The judge determined that the Town had passed (1) a valid resolution designating the area in need of redevelopment, (2) a valid ordinance adopting a redevelopment plan and (3) a valid ordinance creating the Agency to implement the redevelopment plan. Once the Town accomplished that, the judge reasoned, the Agency had the authority to use any of the powers listed in Section 8 of the LRHL to implement the plan. See N.J.S.A. 40A:12A-6 and -8. One of those enumerated powers in the LRHL is the specific power to condemn. See N.J.S.A. 40A:12A-8(c).

Moreover, the ordinance that created the Agency underscored that it "shall have all powers and rights necessary and convenient to carry out and effectuate the purposes and provisions of the [LRHL]." This provision clearly expresses an intention for the Agency to have the powers to condemn afforded under the LRHL.

Harrison Eagle's argument that the ordinance creating the Agency required the Town to comply separately with the Local Lands and Building Law is without merit, because the reference to "N.J.S.A. 40A:12" in the ordinance was manifestly a typographical error. "N.J.S.A. 40A:12" does not refer to any specific statutory provision. At best, the reference is an incomplete citation to the Local Lands and Buildings Law, a statute which does not concern redevelopment but instead governs a county's or municipality's authority to acquire property that is necessary to the general "functions" of the county or municipality. N.J.S.A. 40A:12-3(a). That statute simply is not on point here.

Harrison Eagle next argues that even if the Agency were generally authorized to condemn property to implement the redevelopment plan, the Agency's actions at issue here were still invalid because the Agency did not pass a resolution authorizing condemnation of Harrison Eagle's specific properties. But, Harrison Eagle cites to no authority in support of its position that the Agency had to act by resolution regarding its individual parcels. Nothing in the ordinance creating the Agency, nor any other ordinance in the record, imposes such a property-by-property requirement.

We are satisfied that the terms of the LRHL, as well as the terms of the redevelopment plan ratified by the Town's governing body here, suffice to confer upon the Agency the legal authority to acquire Harrison Eagle's property through eminent domain. We are further persuaded that no separate resolution of the Agency was needed to execute that power. See N.J.S.A. 40A:12A-8 (authorizing "the municipality or the redevelopment entity designated by the governing body" to proceed with redevelopment activities, including the acquisition of properties via eminent domain) (emphasis added). Hence, we reject Harrison Eagle's request to remand these issues of delegation and to permit related discovery.[9]

We therefore affirm in all respects the trial judge's conclusion that the municipality adopted the necessary ordinances and resolutions, and that the Agency was lawfully delegated the power to condemn Harrison Eagle's properties, assuming, of course, there is substantial evidence to demonstrate that those properties were in an area in need of

[9] We also sustain the trial judge's rejection of Harrison Eagle's claim that the involvement of Harrison Commons, the private redeveloper designated by the Agency pursuant to N.J.S.A. 40A:12A-8(f), eliminated the public purposes of the redevelopment. The claim lacks merit. See Twp. of W. Orange v. 769 Assocs., 172 N.J. 564, 573 (2002); R. 2:11-3(e)(l)(E).

redevelopment under N.J.S.A. 40A:12A-5, or that the properties are necessary for the redevelopment of nearby blighted properties. See N.J.S.A. 40A:12A-3.

C.

We finally consider the sufficiency of the Agency's negotiations with Harrison Eagle, which are a statutory predicate to a condemnation action. See N.J.S.A. 20:3-6. The trial judge was satisfied that such bona fide negotiations transpired here, and we concur with that assessment.

In relevant part, N.J.S.A. 20:3-6 provides that

> no action to condemn shall be instituted unless the condemnor is unable to acquire such title or possession through bona fide negotiations with the prospective condemnee, which negotiations shall include an offer in writing by the condemnor to the prospective condemnee holding the title of record to the property being condemned, setting forth the property and interest therein to be acquired, the compensation offered to be paid and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated, and such other matters as may be required by the rules. Prior to such offer the taking agency shall appraise said property and the owner shall be given an opportunity to accompany the appraiser during inspection of the property. Such offer shall be served by certified mail. In no event shall such offer be less than the taking agency's approved appraisal of the fair market value of such property. A rejection of said offer or failure to accept the same within the period fixed in written offer, which shall in no case be less than 14 days from the

> mailing of the offer, shall be conclusive proof of the inability of the condemnor to acquire the property or possession thereof through negotiations.
>
> [N.J.S.A. 20:3-6 (emphasis added).]

As we observed in our recitation of the facts, negotiations between the Agency and Harrison Eagle began in the latter part of 2001. From then until about March 2003, the Agency's designated redeveloper, Harrison Commons, and Harrison Eagle attempted to reach a lease agreement, but were unable to agree on terms.

In 2005 the principals resumed negotiations. According to Jeffrey Albert, who negotiated on behalf of Harrison Commons, in November 2005 it offered to purchase all of Harrison Eagle's property for $20 million. Albert contends that Harrison Eagle's principals initially gave their oral assent to that offer, but then refused to include Blocks 99 and 100 in the sale. Albert recalled that Harrison Eagle wanted an additional $10 million for Blocks 99 and 100, a demand which it later reduced to $5 million. Harrison Commons declined that counter-offer, and the negotiations halted.

Steven Adler, who negotiated for Harrison Eagle, contends that he believed that Blocks 99 and 100 were excluded from the offered $20 million price. When he conveyed that belief to Albert, Albert allegedly offered $22 million for all the

properties, but with a $2 million offset to remediate contamination that was on the properties. Adler rejected that revised proposal, and in January 2006 their negotiations ended.

Six months later, on June 1, 2006, counsel for the Agency wrote Harrison Eagle a letter, offering to purchase the properties for $15.1 million, minus the cost of environmental remediation. Counsel included with that formal proposal a copy of the appraisal report that formed the basis for the offer. His letter explained that the Agency would initiate a condemnation proceeding if Harrison Eagle did not respond within fourteen days of receiving the letter.

On June 8, 2006, Adler represented to the Agency's counsel that he had contacted Harrison Commons and that its representatives had agreed to meet him on June 16, 2003, to try and negotiate a sale. Adler accordingly requested a seven-day extension of his time to respond to the Agency's offer. The Agency agreed to that extension.

As anticipated, Adler met with three representatives of Harrison Commons on June 16, 2006. Although no deal was struck, the parties agreed to continue negotiations. This development prompted Harrison Eagle to request another seven-day extension, which the Agency granted. The following week, Adler wrote to the Agency on June 21, 2006, and requested a third seven-day

extension, as he and the redeveloper were still negotiating. The Agency granted that third extension. Despite these protracted efforts, Adler and Harrison Commons never reached an agreement.

After the third extension of time ran out, the Agency notified Harrison Eagle, in a letter dated June 29, 2006, that it had deposited $15.1 million with the court, and that it intended to initiate a condemnation proceeding eleven days later if the negotiations remained unresolved. Harrison Eagle did not respond to the letter, and on July 10, 2006 the Agency filed suit.

Given this lengthy chronology of meetings, discussions, and correspondence, the trial judge found that the Agency had fully complied with the bona fide negotiations requirement in N.J.S.A. 20:3-6. The judge noted that the Agency had properly submitted a written offer to Harrison Eagle that included an appraisal, and that the Agency had given Harrison Eagle more than fourteen days to negotiate before starting a condemnation proceeding. The judge also found that the Agency's monetary offers were for sums that were at least as high as the appraisal value of the properties, and that Harrison Eagle had presented no evidence challenging the propriety of the Agency's appraisal.

On appeal, Harrison Eagle urges that more than "formalistic compliance" with the tasks in N.J.S.A. 20:3-6 is required to constitute bona fide negotiations. It rests this claim on the fact that the Legislature stated in the Eminent Domain Act that bona fide negotiations "shall include" the tasks which are listed therein. N.J.S.A. 20:3-6. By using the term "include," Harrison Eagle asserts that the Legislature intended a condemnor to do more than the tasks specified in the statute in conducting bona fide negotiations.

Contrary to Harrison Eagle's argument, our cases assessing a municipality's compliance with the statutory bona fide negotiations requirement in N.J.S.A. 20:3-6 have focused on whether or not the condemnor performed the activities listed in the statute. See, e.g., State, by Comm'r of Transp. v. Carroll, 123 N.J. 308, 318 (1991); Hous. Auth. of New Brunswick v. Suydam Investors, L.L.C., 355 N.J. Super. 530, 542-43 (App. Div. 2002), rev'd in part on other grounds, 177 N.J. 2 (2003); Casino Reinv. Dev. Auth. v. Katz, 334 N.J. Super. 473, 484-87 (Law. Div. 2000). Given these precedents, and the marked specificity of the numerous tasks that are listed in N.J.S.A. 20:3-6, we discern no basis for requiring anything further from a public entity to satisfy the bona fide negotiations requirement.

Apart from this argument of statutory construction, Harrison Eagle factually contends that the Agency did not act in good faith during the course of the parties' negotiations. According to Harrison Eagle, such bad faith is evident from the Agency's (1) failure to disclose the December 2005 appraisal to Harrison Eagle until June 2006, (2) the lack of any negotiations between January and June 2006; (3) the Agency's abrupt making of a pre-suit offer in June 2006 that was more than sixty percent lower that the Agency's prior offer in January 2006; and (4) the Agency's threat of condemnation in June 2006 without ever having threatened Harrison Eagle with it in the past. In our view, none of these actions or inactions amount to bad faith.

First, the absence of negotiations between January and June 2006 and the Agency's failure to disclose the December 2005 appraisal until June 2006 are legally insignificant, in light of the preceding years of protracted negotiations. Harrison Eagle had reason to know of the risk of potential condemnation since at least 2001, when it filed its first federal lawsuit. The record also reflects that Harrison Eagle must have known about the pendency of the Agency's appraisal in October 2005, when the appraiser sent a letter explaining that it was going to conduct an appraisal of the property and specifically advising that

"[t]he purpose of the appraisal is for the possible acquisition of the property."

Harrison Eagle's challenge to the bona fides of the Agency's final pre-suit offer in June 2006 is equally unavailing, because Harrison Eagle presents no evidence showing that the appraisal was inaccurate. There is also no evidence in the record that the June 2006 offer was motivated by any bad faith.

In sum, there is substantial evidence to support the trial judge's determination that the Agency fulfilled its statutory obligations under N.J.S.A. 20:3-6 to engage in bona fide pre-suit negotiations with Harrison Eagle. We will not second-guess the judge's factual findings on that score. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974). Nor is a remand for discovery on that issue warranted. The judge's ruling on this issue is entirely sound, and it is sustained.

IV.

We therefore remand this matter, consistent with our reasons in DeRose, supra, for further proceedings concerning the sufficiency of the blight designation for Harrison Eagle's

properties in the redevelopment zone.[10] Apart from that issue, we affirm the trial judge's determinations in all other respects.

Affirmed in part, and remanded in part. We do not retain jurisdiction.

[10] On remand, the Agency may argue, in the alternative, that Harrison Eagle's properties, if they are not shown to be blighted, nevertheless need to be included as ancillary properties "for the effective redevelopment of the area of which they are a part." N.J.S.A. 40A:12A-3 (definitional section); see also Gallenthin, supra, 191 N.J. at 372.