NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3862-06T2

HARRISON REDEVELOPMENT AGENCY,

Plaintiff-Respondent,

v.

AMARAL AUTO CENTER, INC., AMARAL AUTO ELECTRIC, INC., AMARAL AUTO SALES, FERNANDA M. AMARAL, and MANUEL V. AMARAL,

Defendants-Appellants,

and

SYED JAFFRI D/B/A HARRISON NEWSTAND, SONIA J. AMARAL, BANK OF AMERICA, N.A., as successor in interest to The First Jersey National Bank, BPA BANK, NA, INDEPENDENCE COMMUNITY BANK, as successor in interest to Broad National Bank, LEASE AND GO INC., OFFICE OF THE PUBLIC DEFENDER, STATE OF FLORIDA, STATE OF NEW JERSEY DIVISION OF TAXATION, STATE OF NEW JERSEY MOTOR VEHICLE COMMISSION, STATE OF VIRGINIA, and THE TOWN OF HARRISON,

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-4116-06.

Peter Dickson argued the cause for appellants (Potter & Dickson, attorneys; Gary S. Rosensweig, Ross Aboff, Jeffrey Gradone, Mr. Dickson and R. William Potter, on the briefs).

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

This appeal concerns another group of property owners whose land and buildings have been condemned by the Town of Harrison for redevelopment purposes. We address the issues posed by appellants here in conjunction with those we decide today in the

companion cases of Harrison Redev. Agency v. DeRose, A-0958-06T2 and A-0382-07T2 ("DeRose"), ___ N.J. Super. ___ (App. Div. 2008), and in Harrison Redev. Agency v. Harrison Eagle, LLP, A-4474-06T2 ("Harrison Eagle").

For the reasons noted in DeRose and in Harrison Eagle, we vacate in part the Law Division's February 13 and 14, 2007 orders in this case, denying as untimely appellants' effort to contest, by way of defense, the municipality's designation of their properties as in need of redevelopment. We remand for a merits hearing on that issue, as well as for further development of appellants' contention that the Town's redevelopment agency violated the Open Public Meetings Act with respect to their properties. We reject appellants' remaining contentions.

I.

For over twenty years, the property owners who have brought this appeal operated an automobile sales and repair business in the Town of Harrison. Those property owners are appellants Amaral Auto Center, Inc., Amaral Auto Electric, Inc., Amaral Auto Sales, Fernanda M. Amaral and Manuel V. Amaral (collectively "Amaral" or "appellants").

Amaral's now-condemned properties consisted of two parcels, totaling .813 acres.[1] The larger parcel, comprising .574 acres, included a one-story building with an auto showroom and repair shop. The building was about thirty years old and had been renovated several times. The site also included a smaller building, which at one time housed a luncheonette and which appellants eventually converted to offices for their auto business. The second property, comprising .239 acres, was used by Amaral as a commuter parking lot. The lot contained fifty-five parking spaces and also housed a newspaper stand.

In 1997 the Harrison Planning Board retained planning consultants to examine whether about one-third of the Town's area would qualify for redevelopment under the Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1 to -49. With respect to Amaral's properties, all of which were located within the area targeted for redevelopment, consultant Susan Gruel offered the following opinions in her report to the Planning Board:

> [These] parcel[s] meet[] criterion d [of N.J.S.A. 40A:12A-5]. The three uses on this

[1] The subject properties are identified as 801-805 Rodgers Boulevard South (Block 116, Lots 17-21A); 331 Middlesex Street (Block 117, Lot 16); 701-715 Rodgers Boulevard South (Block 117, Lots 17-24); and 330 Somerset Street (Block 117, Lot 25). The properties are all situated in an area of Harrison zoned for industrial uses.

> property are faultily arranged as they are overlapping and undifferentiated. The unsegregated parking areas makes circulation confusing, and therefore potentially dangerous to pedestrians and vehicles. The fact that the parking areas are not separated from the sidewalk area by either fencing or curbing further exacerbates site circulation and decreases safety.

Gruel did acknowledge that the asphalt of the parking lot was "well maintained," and that the building structures were also maintained. She noted, however, that the parking lot was not landscaped or screened from the street, and that the auto center also lacked on-site landscaping or fencing.

As we describe at length in our companion opinion in DeRose, ___ N.J. Super. at ____, the Planning Board adopted Gruel's recommendations in their entirety at a special meeting on August 7, 1997. No one from Amaral attended that meeting, although the Planning Board did mail a notice of the session to the property owners. The following month, the Mayor and Council of Harrison adopted a resolution designating the area, including the Amaral properties, for redevelopment under the LRHL. It is uncontested that the municipality did not supply Amaral with individual notice of the governing body's designation.

About a year later in November 1998, the Mayor and Council passed an ordinance with a redevelopment plan, again including the Amaral properties. Thereafter in March 1999, the governing

body created a new entity, respondent Harrison Redevelopment Agency ("the Agency") to implement the Town's redevelopment plan.

In 2005 the Agency commissioned an appraisal of the Amaral properties, which valued them at $2,575,000 as of December 2005. The Agency then notified Amaral that it was going to exercise its powers of eminent domain and take its properties, relying upon the governing body's blight designation from 1997. Amaral objected to the taking. After negotiations failed, the Agency filed in the Law Division a condemnation action against Amaral in August 2006.

On September 1, 2006, the Law Division entered an order that the Agency could take possession of Amaral's properties after depositing the appraised value with the court. On October 13, 2006, the Agency deposited the funds and filed a motion for possession.

Amaral filed an answer contesting the Agency's verified complaint. By way of defense, Amaral asserted that the Agency did not have authority to condemn Amaral's properties. Amaral argued that its properties were not blighted, and that the Agency's finding to the contrary under the LRHL was not supported by sufficient evidence. Hence, the taking was not based on a legitimate public purpose. Amaral also contended

that the Agency had not been lawfully constituted. Eventually Amaral amplified these claims with a contention that the Agency had violated the Open Public Meetings Act, N.J.S.A. 10:4-6 to -21.

Apart from these predicate contentions, Amaral further asserted that (1) the Agency did not conduct bona fide negotiations prior to filing the complaint and had acted in bad faith; (2) the Agency's appraisal was not in accordance with the law; (3) the Agency had offered Amaral no meaningful or effective relocation assistance; and (4) the Agency did not have an adequate plan for dealing with the increase in vehicular traffic that the redevelopment would cause.

On February 13, 2007, the trial judge[2] issued a written decision rejecting Amaral's arguments and authorizing the Agency to condemn Amaral's properties and appointing commissioners. Similar to his findings in Harrison Eagle (also decided on February 13, 2007), the judge determined that Amaral's defense of the blight designation was time-barred.

The following day, the judge issued a corresponding order authorizing the Agency to enter Amaral's properties and to take

[2] The Law Division judge is the same judge who presided in the DeRose and Harrison Eagle matters.

possession of them. The judge ordered Amaral to vacate the premises within ninety days.

Amaral filed a notice of appeal and a motion for a stay pending appeal. After the stay application was denied, Amaral filed a motion to withdraw the deposit that the Agency had made with the court. The Agency, after initially opposing the application, consented to Amaral's withdrawing a $1,565,000 portion of the deposited funds. On July 6, 2007, the trial court entered a consent order to that effect.

On appeal, Amaral renews the contentions that it made in the Law Division, which largely overlap with the arguments raised on appeal by the property owners in DeRose and in Harrison Eagle. Amaral's pivotal argument is that the trial judge erred in rejecting, as time-barred under R. 4:69-6, its defenses to the blight designation. In support of that argument, Amaral stresses the language of the Eminent Domain Act, which states in N.J.S.A. 20:3-5 that the court hearing a condemnation case "shall have jurisdiction of all matters in condemnation, incidental thereto and arising therefrom," including the condemnor's "authority to exercise the power of eminent domain." Ibid.

In opposition, the Agency submits that the trial judge's determination of untimeliness should be affirmed, emphasizing

that a contrary ruling would imperil the progress of redevelopment. The Agency further contends that Amaral's remaining arguments, to the extent they are not untimely, are without merit.

II.

We have separately held today in DeRose, ___ N.J. Super. at ___, that Harrison failed to supply owners in the targeted area with constitutionally-adequate notice of the designation of their properties for redevelopment. We have also determined that, to avoid a constitutional deprivation in such circumstances, property owners preserve the ability to contest the validity of a blight designation, by way of a defense in an ensuing action in condemnation. We also noted that such a result fairly harmonizes the terms of the LRHL with the dictates of the Eminent Domain Act. We need not repeat that analysis here, but adopt it by reference.

Applying our holdings in DeRose to this case, we similarly conclude, as we also concluded in Harrison Eagle, that the trial judge erred in denying Amaral the chance to raise its challenges to the blight designation as a defense to the condemnation action. We reject the trial judge's invocation of the forty-

five-day limitation of R. 4:69-6[3] to declare such defenses time-barred. The matter must be remanded for the consideration of those defenses on their merits.

In particular, the Law Division shall determine whether there is substantial evidence fulfilling the criteria of Section 5 of the LRHL, N.J.S.A. 40A:12A-5, as interpreted by the Supreme Court in Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007), demonstrating that Amaral's properties were individually in need of redevelopment. Alternatively, the Agency has the burden of proving on remand that the taking of Amaral's properties was justified for ancillary purposes, showing those properties were "necessary . . . for the effective redevelopment of the area of which they are a part." N.J.S.A. 40A:12A-3; see also Gallenthin, supra, 191 N.J. at 372.[4]

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[3] As an aside, we note that the Rules of Court designed for condemnation actions, R. 4:73-1 to R. 4:73-11, contain no forty-five-day limitation analogous to the limitation in R. 4:69-6 governing actions in lieu of prerogative writs.

[4] Amaral's assertion of such defenses in the Agency's condemnation case is not foreclosed by this court's unpublished opinion in Pathparc Assocs., LLC v. Town of Harrison, et al., Nos. A-3417-01 and A-3641-01 (App. Div. April 23, 2003). Amaral was one of several Harrison property owners in the consolidated Pathparc litigation who had attempted to bring affirmative lawsuits, in lieu of prerogative writs and for declaratory relief, challenging the municipality's blight designation. The panel in Pathparc sustained the trial court's finding that such affirmative lawsuits were untimely under R. 4:69-6.

(continued)

The Agency contends that Amaral has waived its right to contest the taking of its properties because it withdrew, with the Agency's consent, a portion of the monies on deposit with the court. We disagree.

The Eminent Domain Act provides that once a condemnor municipality files a declaration of taking it must simultaneously "deposit the amount of such estimated compensation with the clerk of the court." N.J.S.A. 20:3-18. The deposit must be "not less than the amount offered pursuant to section 6 hereof [on bona fide negotiations]," or if commissioners have already set a compensation amount, the deposit shall be that amount. Ibid. After the deposit is made, the court determines whether the condemnor is authorized to condemn the property. N.J.S.A. 20:3-11 and -12. If the court finds authority to condemn, and if the parties do not waive

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(continued)

Significantly, Pathparc did not consider the constitutionality of notice under N.J.S.A. 40A:12A-6. Nor did Pathparc reach the distinct issue, which is now squarely before us, of whether a property owner who does not file an action in lieu of prerogative writs within forty-five-days may still contest a blight designation as a defense when the municipality sues it under the Eminent Domain Act.

We also note that the Agency does not argue that Pathparc collaterally estops Amaral from defending itself. Indeed, that unpublished opinion could not be preclusive of the issues before us because there was no determination of Amaral's claims on the merits. See Olivieri v. Y.M.F. Carpet, Inc., 186 N.J. 511, 521 (2006); see also R. 1:36-3.

their right to have compensation set by commissioners, the court will appoint commissioners to fix the compensation. N.J.S.A. 20:3-12.

Before compensation is set by the commissioners, the court may grant a motion by any party who may be entitled to the deposit to withdraw the deposit or a part of it. N.J.S.A. 20:3-23. If the commissioners' award is less then the amount withdrawn, then the party must refund the difference. Ibid.

In contending that Amaral's withdrawal of part of the deposit precludes its challenges on appeal, the Agency relies on N.J.S.A. 20:3-27, which provides that "[n]either the making of the deposit nor any withdrawal thereof pursuant to this article, shall affect or prejudice the rights of either the condemnor or the condemnee in the determination of compensation. The amount of such deposit and any withdrawal thereof, shall not be evidential in such determination." Ibid. (Emphasis added.) The Agency argues that this language signifies that a condemnee's withdrawal of any of the deposited funds from the court disables it from asserting any rights other than those relating to the amount of compensation. It argues that the partial withdrawal here stripped Amaral of its ability to challenge or appeal the condemnor's right to take its property.

We do not read the statute in such a manner, and have been supplied with no published authority that adopts that harsh interpretation. Indeed, other provisions in the statute point to a contrary interpretation. N.J.S.A. 20:3-23 provides that if the commissioners' award is less than an amount withdrawn the condemnee simply must refund the condemnor the difference, which suggests that a withdrawal of the deposit does not control the substantive outcome of the condemnation proceedings. Moreover, N.J.S.A. 20:3-24 provides that if the condemnation proceeding is dismissed, the parties should be placed in the positions that they occupied prior to the taking. This cognate provision logically supports our view that a withdrawal of funds should not preclude an eventual dismissal of the action and a cessation of the taking.

Lastly, we note that when it consented to Amaral's withdrawal of part of the deposited funds, the Agency did not include in the consent order any language specifying that the withdrawal would foreclose Amaral's continued challenge to the blight designation. Under the circumstances, it would be unfair to visit such a consequence upon Amaral, even if the Agency's novel interpretation of N.J.S.A. 20:3-27 were correct.

III.

Because we find it necessary and just to vacate in part the trial judge's orders, and to remand this matter for a plenary hearing on the blight issues, we need not comment at length on most of the remaining points that Amaral raises on appeal. In particular, we reject Amaral's contentions that the Agency was improperly constituted under N.J.S.A. 40A:12A-11(a) and that the Agency was not properly delegated the authority to condemn property, for the reasons we set forth at length in our companion opinion in Harrison Eagle.

We also sustain, without further comment, the trial judge's sound rejection of Amaral's legally-unsupported claim that the Agency's condemnation is premature because improvements to the traffic and flood control infrastructure have yet to be completed. R. 2:11-3(e)(1)(E).

We turn to Amaral's three remaining points: (a) whether the Agency conducted sufficient bona fide pre-suit negotiations with Amaral; (b) whether the Agency supplied Amaral with adequate relocation assistance; and (c) whether the Agency violated the Open Public Meetings Act.

A.

Amaral contends that the Agency failed to engage in bona fide negotiations sufficient to proceed with condemnation under

N.J.S.A. 20:3-6. The trial judge concluded that the record shows that such bona fide negotiations did, in fact, occur. We agree.

The pertinent chronology is as follows. In 2005, the Agency retained the firm of Value Research Group, LLC ("Value Research") to conduct an appraisal of Amaral's properties. By letter dated October 11, 2005, Richard Polton on behalf of Value Research notified Amaral that the Agency had retained it to perform the appraisal and requested access to the properties. On October 26, 2005, Polton conducted the appraisal, accompanied by a representative of Amaral.

On January 6, 2006, Value Research submitted a written report to the Agency, appraising Amaral's properties at $2,575,000 as of December 2005. In setting that figure, Value Research considered the zoning ordinances that were in effect in 1998, and not the zoning that subsequently applied to the overall redevelopment plan. As of 1998, the Town's zoning ordinances did not allow for residential uses of the properties, but such residential uses were permitted under the revised zoning applicable to the redevelopment plan.

On June 1, 2006, the Agency sent Amaral a written offer,[5] which included a copy of the appraisal report and notice that the Agency would condemn the properties within fourteen days if Amaral did not agree to sell them. Thirteen days later, Amaral requested a sixty-day extension of the date on which the Agency would commence a condemnation proceeding so that Amaral could "review and respond to [the Agency's] letter and reports." The Agency declined to grant a full sixty-day extension, but agreed to extend Amaral's response deadline to July 14, 2006.

On July 14, 2006, the parties and their representatives met to discuss a possible sale price. The meeting was attended by Manuel Amaral, his son Neil Amaral, Amaral's then-counsel Jeffrey Gordon, Amaral's appraiser William Steinhart, representatives of the redeveloper, Harrison Commons, LLC, the Agency's appraiser Polton, and the Agency's counsel.

During that meeting, Amaral disputed Polton's appraisal amount, mainly because it was based on the zoning in effect in 1998, not 2005. Amaral believed that the residential uses permitted by the 2005 zoning ordinances, adopted in connection with the redevelopment plan, substantially increased the value

[5] We have not been furnished in the record with a copy of that letter, but the parties appear to agree that the letter conveyed an offer for $2,575,000, the appraisal amount.

of the properties. It argued that those 2005 ordinances should be applied in appraising its properties. The Agency disagreed, explaining that Amaral's position was inconsistent with the "project enhancement rule," which provides that "any diminution or enhancement in value thus stimulated cannot be charged against or credited to the owner in the later condemnation proceedings." See Jersey City Redev. Agency v. Kugler, 58 N.J. 374, 379 (1971).

Amaral counter-offered at the meeting to sell its properties for $10,475,000, a value supported by its appraiser Steinhart, as well as its planner Richard Preiss. The Agency's representatives asked Steinhart and Preiss to justify their competing appraisal figure in a formal appraisal report, or at the very least with documentation of comparable sales. They declined at that time to do so. The Agency consequently rejected Amaral's counter-offer, but agreed to have Polton meet with Steinhart and Preiss to further discuss the appraisals.

The three experts met on August 2, 2006. According to Gordon, Steinhart and Preiss contacted him after that meeting. They advised Gordon that Polton had said that he would recommend to the Agency that it should offer $5,000,000 to purchase the properties. Polton denies, however, making such a statement.

In any event, on August 15, 2006, Amaral reduced its asking price to $7,500,000. The Agency counter-offered $3,700,000. Amaral rejected that increased offer.

On August 17, 2006, the Agency's counsel notified Amaral that "condemnation proceedings will be initiated shortly." Five days later, the Agency filed its condemnation complaint.

The trial judge concluded that the Agency had complied with N.J.S.A. 20:3-6 because (1) the Agency gave Amaral sufficient notice of the October 2005 appraisal; (2) with its offer letter the Agency sent Amaral a copy of the appraisal report; (3) the Agency's offer was not less than the appraisal amount; (4) the Agency gave Amaral at least fourteen days to negotiate a sale before the Agency initiated this condemnation proceeding; and (5) Amaral presented no counter-appraisal or value analysis to dispute Polton's conclusions.

On appeal, Amaral contends that the judge erred in finding that the Agency complied with N.J.S.A. 20:3-6 because Polton had considered the zoning ordinances in effect in 1998 but appraised the property's value as of December 2005. This alleged discrepancy, according to Amaral, means that the Agency's appraisal did not accurately reflect the property's value. In opposition, the Agency contends that it complied with N.J.S.A. 20:3-6, for the reasons that the trial judge noted, and that

Amaral's position on the applicable zoning is contrary to the project enhancement rule.

Having considered these arguments, we are satisfied that the trial judge's finding that the Agency complied with N.J.S.A. 20:3-6 is supported by substantial proof in the record. Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84 (1974). As the trial judge determined, the Agency gave Amaral sufficient notice of the appraisal and allowed Amaral to attend Polton's inspection of the property. The Agency also submitted a written offer to Amaral that was not less than the appraisal amount and that explained the basis for the offer. The Agency provided Amaral with at least fourteen days to respond to the offer. All of these steps comport with the condemnor's obligations under N.J.S.A. 20:31-6.[6] We therefore affirm the judge's findings.

B.

Amaral contends that the Agency failed to satisfy its obligations under the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 to -12, because when the Agency filed its condemnation complaint it had provided Amaral with little or no

[6] Amaral's contention that Polton undervalued its properties by misapplying the zoning ordinances that were in effect in 1998 for a 2005 appraisal is something that Amaral can raise when the commissioners determine just compensation.

assistance in relocating its business. The trial judge rejected that contention, and so do we.

The Relocation Assistance Law of 1967 provides that before an agency can remove a business owner from his or her property: (1) there must be a workable relocation assistance plan ("WRAP") in place that the Commissioner of the Department of Community Affairs ("DCA") has approved; (2) the chief executive officer of the agency must certify that the WRAP is available to property owners; and (3) the DCA Commissioner must certify that the agency has complied with the provisions of the Relocation Assistance Law. N.J.S.A. 52:31B-6(a)(1),(2) and (4).[7] Amaral does not allege that the WRAP here lacked the requisite statutory elements. Instead, it contends that, despite the written terms of the WRAP, the Agency provided Amaral, in actual practice, with insufficient relocation assistance prior to filing its condemnation complaint.

In January 2002 the DCA approved the first WRAP for the area, and in August 2002 that plan lapsed. At that time, the Agency's relocation-assistance consultant was a firm known as Relo Assisted Development ("Relo"). In January 2006 Relocation

[7] In the case of residential property owners, the statute adds another requirement. Before the agency may displace the property owner, an alternative dwelling must be available for the resident. N.J.S.A. 52:31B-6(a)(3).

Services for the Jersey City Housing Authority ("the JCHA") replaced Relo as the Agency's relocation-assistance consultant.

In April 2006, John D'Elia, Director of the JCHA, discovered that the January 2002 WRAP had lapsed, so he requested a two-year extension of the plan from the DCA. The DCA rejected that request, and instead asked the JCHA to resubmit a new WRAP, in light of the time that had passed since the last plan had expired.

On May 3, 2006, D'Elia wrote to Amaral, notifying it that the Agency had retained the JCHA to assist in the relocation efforts. D'Elia advised Amaral that it was eligible for relocation assistance, and he included with his correspondence an informational statement on what to expect in the near future. D'Elia requested that Amaral schedule an appointment with him so that someone could visit Amaral and assist it in completing a questionnaire that the JCHA needed to assess Amaral's relocation needs. D'Elia also stated that a representative of the JCHA would soon contact Amaral to explain Amaral's rights and to help Amaral find another property.

On June 12, 2006, D'Elia submitted to the DCA a WRAP that, according to D'Elia, did not differ substantively from the January 2002 WRAP with respect to Amaral's property. The DCA

then notified the Agency that there were discrepancies in the plan, which caused the JCHA to make some minor revisions.

On August 15, 2006, D'Elia wrote to Amaral again, noting that he and his colleagues had "tried on several occasions to reach out to you in regard to the properties you own" but had received no response. D'Elia repeated that the JCHA could not provide relocation assistance to Amaral until it could assess Amaral's needs.

According to D'Elia, Amaral did not respond to his letter or telephone calls until September 12, 2006. On that date Amaral's then-attorney asked D'Elia to forward to him all notices that D'Elia had sent to Amaral. However, a September 11, 2006, letter from D'Elia to Amaral suggests that they had actually communicated previously. In relevant part, that letter stated that it "serve[d] as a brief update on our search for a possible suitable location for your auto repair shop. Although we are still looking for available lots in the City of Harrison, we have located three nearby locations (attached) that may be of interest to you."

D'Elia requested Amaral to contact his office if Amaral was interested in any of the locations. However, Amaral rejected the identified properties as unsuitable. Meanwhile, on September 19, 2006, the DCA approved the Agency's revised WRAP.

The trial judge found that the Agency had complied with the Relocation Assistance Law, noting that its motion for possession of Amaral's property had occurred about a month after the DCA had approved the WRAP. The WRAP fully complied with the requirements of N.J.S.A. 52:31B-5(b). Amaral contends that the judge erred in so ruling, because, as of the time the Agency filed its condemnation complaint, little or no actual relocation assistance had been provided to Amaral.

We agree with the trial judge that Amaral's contentions lack merit. The record sufficiently reflects that the relocation provider, the JCHA, had made numerous pre-suit attempts to work with Amaral to find Amaral another property, but Amaral did not respond. Thus, the JCHA's lack of assistance was simply the result of Amaral's failure to cooperate in a prompt fashion. The judge's findings are affirmed.

C.

Finally, we address Amaral's contentions under the Open Public Meetings Act ("OPMA"). Although those contentions were not explicitly set forth in Amaral's pleadings, they were asserted in the oral arguments before the trial judge, and also are of sufficient public import to warrant brief discussion.

With limited exceptions, the OPMA requires public bodies to (1) provide adequate notice of their meetings to the public,

N.J.S.A. 10:4-9; (2) allow public attendance at the meetings, N.J.S.A. 10:4-12; (3) keep minutes of the meetings, N.J.S.A. 10:4-10; and (4) make the minutes available to the public, N.J.S.A. 10:4-14. Our courts have held that a redevelopment agency is a public body subject to the OPMA. Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 522 (2005); Deegan v. Perth Amboy Redev. Agency, 374 N.J. Super. 80, 86 (App. Div.), certif. denied, 183 N.J. 217 (2005).

The OPMA defines "adequate notice" as

> written advance notice of at least 48 hours, giving the time, date, location and, to the extent known, the agenda of any . . . meeting, which notice shall accurately state whether formal action may or may not be taken and which shall be (1) prominently posted in at least one public place reserved for such or similar announcements, (2) mailed, telephoned, telegrammed, or hand delivered to at least two newspapers which newspapers shall be designated by the public body to receive such notices . . . and (3) filed with the clerk of the municipality when the public body's geographic boundaries are coextensive with that of a single municipality, with the clerk of the county when the public body's geographic boundaries are coextensive with that of a single county, and with the Secretary of State if the public body has Statewide jurisdiction. For any other public body the filing shall be with the clerk or chief administrative officer of such other public body and each municipal or county clerk of each municipality or county encompassed within the jurisdiction of such public body.
>
> [N.J.S.A. 10:4-8(d).]

Any person who believes that a public body did not comply with the OPMA may file a challenge by way of an action in lieu of prerogative writs. N.J.S.A. 10:4-15(a) explains:

> Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be voidable in a proceeding in lieu of prerogative writ in the Superior Court, which proceeding may be brought by any person within 45 days after the action sought to be voided has been made public; provided, however, that a public body may take corrective or remedial action by acting de novo at a public meeting held in conformity with this act and other applicable law regarding any action which may otherwise be voidable pursuant to this section; and provided further that any action for which advance published notice of at least 48 hours is provided as required by law shall not be voidable solely for failure to conform with any notice required in this act.
>
> [Ibid.]

Notably, a violation of the OPMA renders the action voidable, not void. Ibid. "A voidable act is one which may be avoided, but until this is done, in the regular course of judicial proceedings, the action stands in full force and effect." Houman v. Mayor of Pompton Lakes, 155 N.J. Super. 129, 159 (Law Div. 1977). A void act is one that is "of no validity or effect, [it is] a complete nullity." Id. at 158.

Amaral contends that the Agency violated the OPMA in the manner in which it decided to take steps to condemn its

property. However, perhaps because this contention was raised in a rather extemporaneous and incidental manner in the Law Division, the judge made no ruling or findings on that issue. Nor did the judge specifically address the timeliness or untimeliness of Amaral's OPMA claim, which may turn on a factual assessment as to when Amaral first became aware of the Agency's decision to exercise its condemnation powers. Because the judge made no such findings, see R. 1:7-4, and because the record is not well developed on the OPMA issue, we remand it for further consideration. See Ins. Co. of N. Am. v. Gov't Employers Ins. Co., 162 N.J. Super. 528, 557 (App. Div. 1978).

IV.

For all of the foregoing reasons, we affirm the Law Division's orders of February 13 and 14, 2007 in part, vacate them in part, and remand for further proceedings consistent with this opinion.[8] We do not retain jurisdiction.

[8] We recognize that the Agency has already taken possession of Amaral's properties, and that the acquisition was not stayed pending appeal. Nonetheless, should Amaral prevail in its claims of invalidity on remand, we trust that the trial court will fashion an appropriate remedy. See Pond Run Watershed Ass'n v. Twp. of Hamilton Zoning Bd. of Adj., 397 N.J. Super. 335, 365-66 (App. Div. 2008).