

NO: X08-FST-CV18-6038249-S : SUPERIOR COURT
REDEVELOPMENT AGENCY OF THE : JUDICIAL DISTRICT
CITY OF NORWALK, ET AL OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
ILSR OWNERS, LLC, ET AL : MAY 23, 2019

BEFORE THE HONORABLE CHARLES T. LEE, **JUDGE**

A P P E A R A N C E S :

Representing the Plaintiff
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1 THE COURT: Good morning, everyone.

2 This is the case of The Redevelopment Agency of
3 the City of Norwalk versus ILSR Owners, et al, docket
4 number X08-CV18-6038249.

5 If plaintiffs would put in their appearance,
6 please?

7 ATTY. WILLIAMS: Good morning, Joseph Williams
8 for the Redevelopment Agency.

9 ATTY. CALLAHAN: Good morning, Your Honor, Darin
10 Callahan for the City of Norwalk.

11 THE COURT: Good morning.

12 Counsel for the defendants?

13 ATTY. RUBIN: Good morning, Your Honor, David
14 Rubin for the Milligan defendants.

15 THE COURT: Good morning.

16 Okay, well, where we left off I think Mr. Rubin
17 is you were about to call your next witness whoever
18 that might be.

19 ATTY. RUBIN: Thank you, Your Honor, Attorney
20 Goldberg.

21 THE COURT: Very well. Please come up.

22 If you would raise your right hand and face the
23 clerk.

24 THE CLERK: Do you solemnly swear that the
25 evidence you shall give in this case shall be the
26 truth, the whole truth so help you God or upon
27 penalty of perjury?

1 THE WITNESS: I do.

2 THE CLERK: Please state your name and address
3 for the Court's record?

4 THE WITNESS: Rachel Goldberg, 123 Harbor Drive,
5 Unit 201, Stamford, Connecticut.

6 THE COURT: All right. When you are ready, go
7 ahead.

8 **R A C H E L G O L D B E R G,**

9 **(having been duly sworn in, testified to the following):**

10 **DIRECT EXAMINATION BY ATTY. RUBIN:**

11 Q Good morning, Ms. Goldberg.

12 A Good morning.

13 Q Can you identify what I have marked as Exhibit BB?

14 A This is my resume'.

15 ATTY. RUBIN: Your Honor, I offer it.

16 THE COURT: Any objection?

17 ATTY. WILLIAMS: No.

18 THE COURT: All right, BB comes in as full.

19 Q Ms. Goldberg, are you currently employed?

20 A I am semi-retired and self--employed.

21 Q For how long?

22 A Since 2017, February of 2017.

23 Q And when you say you are semi-retired, what do you --
24 what part of you is still actively working?

25 A Well, I left the City of Stamford Redevelopment
26 Agency in 2017 where I had been since 1981 and now I work
27 mostly non-profit matters and I work on things that I find

1 interesting.

2 Q What were the circumstances under which you left the
3 Redevelopment Agency in 1917?

4 A 2017.

5 Q 2017.

6 A We had a difference of opinion. We resolved those
7 differences and I left.

8 Q And do you currently -- are you currently involved in
9 any way in connection with redevelopment work?

10 A At the moment just this matter although I've had
11 conversations with one of my mentors about doing something
12 together.

13 Q Who would that mentor be?

14 A Dwight Miriam (phonetic).

15 Q Should I -- can I ask what you are discussing?

16 A We were looking at creating an arbitration or
17 association specifically for eminent domain takings to
18 resolve them outside the courthouse based on each of our
19 expertise. And that also involves a certain amount of
20 redevelopment activity.

21 Q What do you consider your particular expertise?

22 A The wide range of redevelopment. Everything from
23 plan creation, project development, contract negotiations
24 including land disposition agreements. I've written urban
25 renewal plans. I've written urban renewal plan extensions.
26 I've reviewed real estate developments both financially and
27 from the standpoint of community need. I pretended I knew

1 something about architecture and always commented on design
2 but my experience has run the entire gamut I think of
3 redevelopment activities.

4 Q Drawing your attention to your resume it indicates
5 that you were employed by the Stamford Urban Redevelopment
6 Commission?

7 A Yes.

8 Q What is the Stamford Urban Redevelopment Commission?

9 A It's an agency created pursuant to statute and
10 federal regulations to receive monies from HUD and other
11 Federal agencies for the creation of urban renewal and urban
12 redevelopment projects. The Stamford Agency is also its
13 municipal development agency and its economic and
14 manufacturing assistance agency.

15 Q And you served as general counsel?

16 A That's correct.

17 Q And that can be broken down into in-house counsel and
18 outside counsel?

19 A Yes.

20 Q What were your job duties generally as outside
21 counsel from 1981 to 2001?

22 A The same as they were afterwards. The experience
23 that I just described occurred both inside and outside.
24 Basically I went from outside counsel to in-house because
25 the Redevelopment Agency couldn't afford my rates and they
26 offered me a position in-house with a proviso that I could
27 still handle a few smaller matters.

1 Q Can you describe your duties generally as outside and
2 in-house and distinguish whether there is an distinction
3 between the two.

4 A Well, I did research. I handled the creation of the
5 gateway district. Work on that started in the late 80's and
6 early 90's with a report about the transportation center
7 then a proposal for a federal courthouse there and then
8 Morgan Stanley and eventually Swiss Bank which became UBS
9 and we developed that project. I authored most of that
10 redevelopment plan.

11 In the larger downtown redevelopment plan, I handled
12 conveyances. I handled property acquisition as I did in
13 gateway. I handled tenant relocations. I handled
14 amendments of the urban renewal plan. I handled
15 negotiations with property owners and lenders including the
16 lender at parcel 38 which is known more as the hole in the
17 ground. The Rich's lost that property and city took that
18 property in a deed in lieu and transferred the deed and the
19 paper to Howard Millstein from Emigrant Savings Bank and the
20 Millstein Family Development. I can't remember the name of
21 the development company and we were negotiating with them.

22 I handled the negotiations and the amendments to that
23 plan to allow the lower Summer Street projects to go forward
24 including the Summer Street parking garage and the
25 apartments, the Target store.

26 I handled the modification of the Stamford Town
27 Center mall and while we were building UBS, we moved forward

1 to create the Mill River urban renewal project and plan most
2 of which I author. Obviously the planning pieces were done
3 by planning professionals but I authored the plan.

4 I also wrote probably every budget from somewhere in
5 the mid 80's on and managed much of the agency's finances
6 with a series of bookkeepers as well as an outside
7 accountant and annual city audit. I think that's most of
8 it.

9 Q Who would you consider -- who was the project manager
10 of those redevelopment projects?

11 A Eventually it became me. Early on in my career we
12 had assistant directors and we had project managers but as
13 the years went on and the budget got tighter, I filled in
14 all of those roles. So I managed the process of building
15 the two apartment towers you see in the lower Summer Street
16 area until I left. I managed the -- from the Redevelopment
17 Agency's perspective the RBS development and the UBS
18 development.

19 Q Did you also serve multiple terms as interim
20 executive director of the URC?

21 A I did.

22 Q And generally can you describe those terms?

23 A I guess starting in the mid 90's, we had a director
24 named Ann Dayton (phonetic) who married a previous director
25 named Gary Dayton. When she left I was interim director
26 until we hired a gentleman names Jerry Marquee (phonetic).
27 When he left, I was interim director until we hired someone

1 named Heller whose first name I cannot remember. I was
2 interim again and this was during the development of UBS
3 after Mr. Heller left and Mr. Steinberg came on. And then
4 when he left, I was interim director again for about a year
5 and change when Dr. Jackson was hired to be director.

6 Q And what were your duties as interim director? Maybe
7 let me ask it this way, did your duties as interim director
8 were they materially different than your duties as counsel?

9 A Well, I continued all of the same duties but I also
10 became responsible -- chiefly responsible for communications
11 with city boards, directors and officials and became
12 responsible for management of the staff. I was already
13 managing almost all of the consultants we hired so the rest
14 of my responsibilities didn't change

15 Q Drawing your attention to your resume, there are a
16 number of bullet points. I am going to touch on a few of
17 them.

18 You say you handled all legal management and
19 operational aspects of the URC including some of the most
20 successful public and private commercial and residential
21 real estate and redevelopment projects in Connecticut.

22 Other than you've testified, is there any you would
23 want to add relative to that bullet point?

24 A Well, I didn't mention handling evaluation appeals
25 which I did as well as the acquisitions. And I wrote --
26 there is a provision in the federal regulations that permit
27 summary appraisals of small properties and I wrote a few of

1 those for the Transit Way project.

2 Q You've mentioned that you've authorized some
3 redevelopment plans.

4 A That's correct.

5 Q What is redevelopment plan?

6 A It's basically an overlay. It serves like an overlay
7 zone. But unlike zoning which prohibits you know has
8 regulations have prohibit uses and permit other uses.

9 The redevelopment plan can specify more specifically
10 what uses occur on what parcels even parcels that aren't
11 necessarily controlled by the -- by controlled I mean owned
12 by the agency or the city. It allows a much more targeted
13 approach to development and site assembly and the receipt of
14 federal dollars from HUD and other federal agencies.

15 Q How does permit a more targeted approach?

16 A Zoning regulations you can't do spot zoning. In
17 a lot of ways urban redevelopment plans can be so much
18 site specific than zoning can. You can target a specific
19 redevelopment site and say this site will have housing at
20 X, Y density and 20 percent of that housing will be
21 affordable to people earning 50 percent of median income and
22 five percent earning 60 percent median income and those are
23 the kinds of things we would write into our urban renewal
24 plans. But you cannot really accomplish so well with
25 zoning.

26 Q Were you involved --

27 THE COURT: I just need to ask a question for a

1 second.

2 Attorney Goldberg, I am just not remembering,
3 does the -- in Stamford does the renewal plan
4 pre-empt zoning?

5 THE WITNESS: We looked at that a bunch of times
6 and our ultimate conclusion is that the property must
7 comply with both and zoning is generally much more
8 permissive than the redevelopment plan.

9 THE COURT: In other words, so the more
10 restrictive controls?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 Q Did you have any involvement in the drawing of
14 redevelopment areas?

15 A Yes, I did. Not so much the gateway area. That was
16 defined by an earlier study that occurred under Mayor Sorani
17 (phonetic) but I was very involved in drawing the plans for
18 the Mill River project which extends from I-95 South of the
19 RBS building all the way up to UCONN and exists on both
20 sides of the river.

21 THE COURT: Was that a renewal area?

22 THE WITNESS: Yes, it was.

23 THE COURT: I know you were doing the tax,
24 income and finance. Is that why you had to do it?

25 THE WITNESS: Yes, it was -- we also did it so
26 that we could negotiate a really good deal with the
27 army corp of engineers to remove the dam at Main

1 Street and restore the river to its original lines

2 Q What is the relationship between a redevelopment plan
3 and a redevelopment area?

4 A The redevelopment area is the boundary within which
5 the agency, the Redevelopment Agency and the city determine
6 to comply with the regulations for what constitutes an urban
7 renewal or urban redevelopment area.

8 We at one point in fact extended the Mill River
9 redevelopment area up to Scalzi (phonetic) Park, if you're
10 familiar, a little bit north of UCONN so that we could use
11 some of the financing mechanisms for the park and walkway
12 creation along the river. But we didn't feel we could go
13 much further north because the area itself would no longer
14 qualify as a redevelopment area.

15 And then the plan exists within the urban renewal
16 area and focuses on uses and how the community would like to
17 see the area improved over the next ten years.

18 Q Drawing your attention to the third bullet point it
19 says you negotiated and drafted all agreements, deeds,
20 development plans and related documents.

21 I would like to break that down a bit. When you say
22 -- describe what you are referring to when you said
23 you negotiated and drafted all agreements?

24 A They include everything from contracts with suppliers
25 and consultants, real estate consultants, law firms, bond
26 counsel, planning entities, architects and land disposition
27 agreements and memorandum of understanding.

1 Q How many LDA's did you draft?

2 A Three or four including amendments of LDA's.

3 Q How many amendments to LDA's did you draft?

4 A Quite a few. I don't have a clear count in my mind.

5 Q What is the relationship between - when would an LDA
6 need to be amended?

7 A Perfect example, when we were -- we had an LDA with a
8 Boston developer on lower Summer Street that required the
9 city and the URC, The Redevelopment Agency, to acquire the
10 site. The site included Curley's Diner. And we -- I began
11 the acquisition process. We filed the papers with the
12 Court. We took title and we argued over valuation and
13 they argued that we didn't have the authority to take the
14 property. It went up to the Supreme Court. The Supreme
15 Court overruled the trial court and you don't need me to get
16 into why, but they overruled the trial court and said we
17 couldn't acquire the property.

18 It became necessary to amend the LDA because we were
19 no longer able to deliver the development site and it became
20 necessary for the developers to redefine what would be
21 built. And then that Boston developer sold their interest
22 to a different Boston developer, Trinity Financial, and we
23 negotiated additional changes to the LDA.

24 In that case largely because the market had changed,
25 CAP rates had changed, how one can finance the project
26 changed and we worked very hard trying to get project based
27 Section 8 certificates applied from one of the round towers

1 that is no torn down but at that time was going to be torn
2 down redirected to the Trinity project unsuccessfully. And
3 so all of those financial matters required a renegotiation
4 of the LDA and what the developer could and would be
5 required to build.

6 Q What is an LDA?

7 A At its most basic it takes the project -- it
8 identifies a specific project area within a urban renewal
9 plan, a specific site, and it describes how that site will
10 be developed in accordance with the requirements of the
11 plan. The fact that the development is in accordance with
12 the plan is basic to an LDA. It's a statutory requirement.

13 THE COURT: Why don't you describe what the
14 acronym is, LDA?

15 THE WITNESS: Land disposition agreement.

16 Basically, it's a contract for sale and purchase
17 of a redevelopment site. And so everything flows
18 from the plan and the specific project within the
19 plan to the contract, the LDA, which describes how
20 the developer or the redeveloper is going to build
21 what the plan wants and hopefully the plan reflects
22 what the community wants.

23 Q You also state in that bullet point that you
24 negotiated and drafted all agreements and deeds and
25 development plans.

26 What is a development plan? Is that a project or is
27 that --

1 A Not really. A development plan is the more detailed
2 process for how the redeveloper is going to build. For
3 instance, on lower Summer Street we built a public parking
4 garage there right in the middle of the block. We had to
5 create a development plan that took into account where are
6 the people who used to park on the surface lot there going
7 to park while we are taking all of that land for building,
8 you know construction equipment, driving piles and so forth.
9 Where are the construction people going to park? Where are
10 the shoppers going to park? Where are the people who are
11 going to the restaurants and feeding the economy going to
12 park and how is the area immediately surrounding it going to
13 be improved so that it relates to the new development?

14 We did similar things with each of the two towers on
15 lower Summer Street with -- it wasn't so difficult with RBS
16 and UBS because they were basically using the entire site
17 and people could still get by. But it can get very
18 complicated on those more densely developed blocks.

19 Q What is the relationship among a plan -- a
20 redevelopment plan, a redevelopment project and an LDA?

21 ATTY. WILLIAMS: Excuse me, Your Honor. I just
22 need to ask if Attorney Rubin is or I would like to
23 clarify if Attorney Rubin is asking Attorney Goldberg
24 for an expert opinion on the point because I plan to
25 be heard on the delivery of expert opinions by
26 Attorney Goldberg or if it's being limited to --
27 because I know we have gone through her resume. It

1 just seems like it's becoming expansive.

2 THE COURT: Right.

3 ATTY. WILLIAMS: If we are only asking about her
4 experience --

5 THE COURT: Why don't you finish the resume' and
6 the qualifications?

7 ATTY. WILLIAMS: Then I would not object.

8 THE COURT: And then ask other questions.

9 Q It indicated -- bullet point four provides that you
10 provided strategic planning. What is strategic planning?

11 A It involves several things, everything from how we
12 approach a potential redeveloper; how we communicate with
13 the community and elected and appointed officials who have
14 to review and approve a project and how we keep them updated
15 and in the loop. But it also applied to some of the
16 litigation.

17 I purposefully engaged people who I thought were the
18 better evaluation appellate attorneys in the region to
19 represent the city and the URC when we were doing the UBS
20 project so they would not be on the other side in those
21 cases. That is strategic planning.

22 And the how you figure out where you want to end up
23 and then you plan the best way to get to that end thinking
24 about how and who will be potential opposition and then
25 developing a plan to get to the end.

26 Q Does the strategic planning include rolling out plans
27 and rolling out LDA's?

1 A It does and how they are rolled out.

2 Q And compliance with state obligations and
3 requirements?

4 A Well, that's not really -- I wouldn't think of that
5 as strategic planning. That is just an absolute. You must
6 comply.

7 Q Well, actually the next bullet point -- one of the
8 next bullet points is in short compliance with State and
9 Federal statutory and regulatory requirements.

10 What is your experience relative to ensuring
11 compliance with State and let's just say State statutory
12 requirements?

13 A Sure. Every plan, every redevelopment plan or
14 renewal plan or municipal development plan must comply
15 with a specific set of statutory criteria and in some cases
16 regulatory criteria. And it was my job to make sure that
17 every plan that we put out was in full compliance. And any
18 time we amended the plan, we had to determine whether or not
19 it was a significant change or a minor change and whose
20 approvals would be required and if for example a redeveloper
21 needed to approve it was my job to make sure they did and
22 part of the strategic planning was how we made sure we got
23 those approvals.

24 Q I am going to move to your professional memberships,
25 honors and accomplishments.

26 THE COURT: Briefly. We've had half an hour
27 now. I am willing to accept his qualifications as an

1 expert in urban redevelopment. So do what you need
2 to do but take just a few minutes, okay.

3 ATTY. RUBIN: Okay, I will highlight four.

4 THE COURT: Good.

5 Q What is a James W. Cooper Life Fellow of the
6 Connecticut Bar Foundation?

7 A The Connecticut Bar Foundation is a group of
8 lawyers who support them, trying to find the word, the
9 legal services organizations in the State that provide
10 representation for people of low income. And its membership
11 consists of lawyers who are selected to be members.

12 Q There is three bullet points in a row, 2010, 2007 and
13 2006. I want to just ask you about those.

14 What is the 2010 University of Connecticut Stamford
15 Campus Study member for the City of Stamford?

16 A We looked at how to take advantage of the
17 Bloomingdale's garage, if you will, that was at that time
18 servicing the UCONN downtown campus and whether or not it
19 made sense to make a deal with a private redeveloper to
20 replace that structure which was in very poor condition with
21 a new parking facility for the university. At the time we
22 were trying to get dormitories and with a supported and paid
23 for in large part by a private development

24 Q Let me ask it this way, your professional
25 memberships, honors and accomplishments are there any
26 that particularly relate to the issues in this case?

27 A Not really. I served on the business relocation

1 study task force because of my experience in redevelopment.
2 And likewise, I served on the Brownfield's task force
3 because of my knowledge of the subject but that don't really
4 relate specifically to the issues in this matter.

5 THE COURT: All right, let's move on.

6 ATTY. RUBIN: Okay.

7 Q Can you describe the relationship among an LDA and a
8 project?

9 A The LDA is the document that specifically describes
10 how a redeveloper will meet the goals of the plan -- the
11 urban renewal plan and construct an improvement or series
12 of improvements and how that improvement or series of
13 improvements will be financed and what the city brings to
14 the party to permit the redeveloper to build the project
15 specified in the plan.

16 Q And what is the relationship among the project and
17 the LDA with the redevelopment plan?

18 A Basically they are the same as they are to the plan.
19 It's -- in Stamford's downtown plan originally we were one
20 of the few communities that had a single redeveloper for
21 the entire downtown area. Most communities have different
22 redevelopers for each project. Eventually Stamford moved
23 in that direction for the downtown project and the Mill
24 River project. But most communities now including Stamford
25 have a specific redeveloper for each project or each
26 development site within the larger redevelopment area and
27 plan.

1 Q Can an LDA exist without a redevelopment plan?

2 ATTY. WILLIAMS: Well, objection.

3 THE COURT: Sustained.

4 That's an expert opinion and you know it was
5 prohibited by my ruling in the motion in limine, so
6 I will sustain the objection.

7 Q Do you have any experience with having an LDA in
8 connection with an invalid redevelopment plan?

9 A At parcel 38 and elsewhere in the downtown, we looked
10 vey carefully at what would happened if we allowed plans to
11 expire starting in the mid 90's. And I consulted with a
12 number of people who were mentors and other people I thought
13 expert and it was our belief that allowing the --

14 ATTY. WILLIAMS: Objection. Excuse me. I am
15 sorry to interrupt but I believe the response is
16 going beyond the question and it's starting to talk
17 about beliefs and conclusions and apparently expert
18 consultation and things that were formed at the time
19 and the question was whether Attorney Goldberg had
20 experience with a plan -- with an LDA where the plan
21 had expired.

22 THE COURT: Well, that's true. I guess I will
23 sustain it but there may be another way to ask it.

24 Q I will ask it this way. Do you have personal
25 experience regarding the potential expiration of
26 redevelopment plans?

27 ATTY. WILLIAMS: Objection to the relevance of

1 the potential expiration and it's not the subject
2 that was disclosed to us and it's not the subject
3 that the Court ruled could be testified to by
4 Attorney Goldberg which was the impact of the
5 expiration on an LDA or a redevelopment project so
6 the potential expiration is really irrelevant.

7 THE COURT: Okay, so I guess what I understand
8 for the witness is that she has not had experience
9 where the plan has actually expired.

10 Let's -- I am going to -- let's go a little
11 further. We have to avoid speculation, legal
12 conclusions but I think you could examine a little
13 further in that area.

14 Q The question was do you have personal experience
15 regarding the potential expiration of redevelopment plans?

16 A Yes.

17 Q And what is that personal experience?

18 A Beginning in the mid 90's we were looking at the
19 expiration for the downtown redevelopment plan with a number
20 of sites that had not yet been developed and with an
21 existing LDA. And we examined very carefully whether we
22 should allow it to expire or not or whether we should extend
23 the plan so that it would not expire. And we determined
24 that it was necessary to extend the plan because we believed
25 and I still believe that allowing the plan to expire would
26 have caused the failure of an LDA and put the city and
27 agency potentially in default with the redeveloper.

1 Q So based on your personal experience --

2 ATTY. WILLIAMS: Sorry --

3 Q -- what did you do?

4 THE COURT: Just a minute.

5 Go ahead. You have an objection?

6 ATTY. WILLIAMS: I do and I am sorry. I didn't
7 realize the question -- the response had ended before
8 we get to the next one.

9 I have to renew my objection and move to strike
10 the response, Your Honor, because the experience with
11 the potential expiration which didn't happen is not
12 relevant to the case and it's not within the bounds
13 of what the Court has allowed the witness to provide
14 expert testimony and it's not relevant.

15 ATTY. RUBIN: Your Honor, I don't believe that's
16 accurate on a number of grounds.

17 One, it certainly is relevant. To the extent
18 that the issue is looked at and there is personal
19 experience relating to the expiration of an LDA,
20 and the determination it was an issue that was
21 affirmatively looked at that and the determination
22 was made not to let it expire because there could be
23 ramifications of that and so action was taken so as
24 to prevent the expiration. That is certainly as
25 relevant as what happened if it expired and what do
26 you do then.

27 THE COURT: No, it's not. But I am not saying

1 it's irrelevant. It's not the same as if -- my
2 understanding and I thought from your proffer
3 Attorney Goldberg was going to talk about situations
4 where a plan had expired either in Stamford or
5 someplace else in Connecticut or elsewhere in his
6 experience. I gather that is not the basis of the
7 testimony at all and we are talking about a concern
8 in the mid 90's in Stamford about that and opinions
9 about the impact of the expiration on the LDA slide
10 in.

11 Clearly an expert can testify about hearsay but
12 only as to an expert opinion not a factual assertion.

13 ATTY. WILLIAMS: Attorney Rubin hasn't asked a
14 question seeking an expert opinion with a proper
15 foundation for an expert opinion yet and I would like
16 to be heard if and when such a question is asked. But
17 for now the question was simply personal experience
18 with a potential expiration, what was thought about,
19 who was consulted.

20 THE COURT: Right.

21 ATTY. WILLIAMS: So I claim that's also legal
22 opinion and legal research being into that answer and
23 that improper but it's irrelevant to the facts before
24 the Court and it's irrelevant to any expert opinions
25 that would be permissible.

26 THE COURT: Well, I don't know about that. We
27 have an expired -- well, maybe it didn't expire but

1 people thought that the plan was going to expire in
2 Norwalk. That's another question. Although it's
3 interesting here there is no claim that the RDA
4 expired -- the LDA expired. I mean there is a term
5 there till 2024. There is no claim that the LDA has
6 expired at all.

7 ATTY. WILLIAMS: Right. And the subject that
8 was disclosed, Your Honor, that your ruling on our
9 motion to precluded allowed is the impact of the
10 expiration of redevelopment plans on underlying
11 and/or extent redevelopment agreements and projects.

12 So to try to state it more succinctly our
13 argument is testimony about the lack of expiration of
14 a plan is not relevant or helpful.

15 ATTY. RUBIN: I would disagree. I think its --
16 if the argument is relevance and helpfulness, it's
17 clearly relevant and helpful to the extent that
18 action was taken under similar circumstances so as to
19 assure that something didn't expire because if it did
20 expire there would be repercussions. And inherent in
21 the Court's determination of the impact of the
22 expiration of plans is whether the plan is expired.

23 THE COURT: I am going to allow it. I will
24 attribute it to the way to -- with an understanding
25 that there are so many reasons why you make a
26 decision in the context of municipal politics as
27 stakeholders the attitude of the board of reps or

1 common council towards urban redevelopment but I am
2 going to allow it.

3 Why don't you rephrase the question for the
4 witness?

5 ATTY. RUBIN: I think I was asking a new
6 question when the objection came up. I will try to
7 reorient myself to the new question.

8 Q When you were addressing the potential expiration of
9 redevelopment plan did you have conversations -- was it a
10 concern?

11 A It was of grave concern.

12 Q And why was it of grave concern?

13 A We were concerned that it would nullify the existing
14 LDA with (indiscernible) Rich company. We were concerned
15 that we would be subject to inverse condemnation claims with
16 respect to sites that had been identified for acquisition.
17 We were concerned that the redevelopment of the downtown
18 would stall completely.

19 Q And so what did you do as a result of those concerns?

20 A I spoke with a consultant named Phil Holt (phonetic)
21 and his partner Harry Wexler. They were not a law firm.
22 They were a development consulting firm although Phil was a
23 lawyer. They had worked for the agency since before I came
24 onboard and Phil shared his experience in New Haven.

25 Q And in addition to talking with those individuals,
26 what else did you do?

27 A We amended the plan.

1 Q What else did you do before you amended the plan, if
2 anything?

3 A We spoke with stakeholders. We looked at the best
4 way to move forward and we got approval from effected
5 redevelopers to modify the plan.

6 Q And what did you discuss regarding the New Haven
7 redevelopment plan?

8 ATTY. WILLIAMS: Objection; calls for hearsay.
9 Not relevant.

10 ATTY. RUBIN: It's clearly relevant. I mean it
11 was what the witness did under the circumstances. I
12 believe an expert witness is allowed to rely on
13 hearsay.

14 THE COURT: That's true.

15 ATTY. WILLIAMS: Is it being offered in support
16 of an expert opinion, Your Honor; that is still what
17 we haven't heard.

18 ATTY. RUBIN: It's being offered in support of
19 what happened.

20 THE COURT: If it's a fact statement, it's
21 hearsay and doesn't come in. If it's an expert
22 talking about what happened, then it is a basis for
23 the opinion and it can come in. Which is it?

24 ATTY. RUBIN: It's the basis of the opinion
25 then?

26 ATTY. WILLIAMS: I object to it coming in just
27 yet or at least right now, Your Honor. The witness

1 should be asked the opinion and then provide the
2 grounds for it so I have the opportunity to be heard
3 as to whether or not the opinion should be provided
4 and so we shouldn't put the cart before the horse and
5 allow things that are not admissible in support of an
6 opinion that may be precluded based on our objection.

7 THE COURT: All right, formally sort of the
8 liturgy is have you formed an opinion; what is the
9 opinion; what is the degree of certainty of the
10 opinion, that kind of thing.

11 ATTY. WILLIAMS: Absolutely. As I said, I want
12 to be heard about whether that opinion can come in
13 and then if it does the basis for it may be
14 considered but because they are not admissible
15 otherwise, I object to it coming in before we can be
16 heard about the opinion.

17 ATTY. RUBIN: That seems very circular. I think
18 this is where the status of this is because it seems
19 very circular.

20 If the witness is going to be permitted to
21 testify as to personal experiences that form the
22 basis of her expert opinion and those personal
23 experiences are involved that there was a potential
24 expiration of a plan and this is what the City of
25 Stamford did under those circumstances in order to
26 address that and part of that is that other agencies
27 were contacted regarding this issue as part of their

1 due diligence into what to do under the
2 circumstances, what they were told in connection with
3 forming their opinion about what to do which is an
4 opinion that is admissible and has been ruled
5 admissible is proper. There is no other foundation
6 to lay.

7 The question is what did you do and what did you
8 rely on.

9 ATTY. WILLIAMS: Then let's do it the proper
10 way. It's linear. It's not at all circular. What
11 is the opinion; does it come in; what are the bases
12 for it.

13 Then if there is an opinion that can be
14 admitted, the expert is allowed to testify to reasons
15 for it that may not be admissible but this the first
16 one that was otherwise inadmissible. The general
17 description of Attorney Goldberg's experience is not
18 objectionable. The hearsay statement is unless and
19 until we have an opinion that it would support.

20 THE COURT: All right. The motion -- my
21 decision on the motion in limine says, however,
22 testimony related to impact to the expiration of
23 plans "on underlying and/or extant redevelopment
24 agreements and projects" might be helpful to such
25 testimony as fact based and not speculative and won't
26 be allowed.

27 So I think then to comply with what Mr. Williams

1 is saying we can proceed where a question is posed to
2 the witness saying, do you an opinion on the impact
3 to the expiration of a plan on underlying or extant
4 redevelopment agreements or projects, okay? Next,
5 what is it; okay? So let's do that.

6 ATTY. RUBIN: I can do that. I wasn't there
7 yet but I will do that and I will use that as the
8 formation. I will do that.

9 Q Do you have an opinion as to the impact of the
10 expiration of a redevelopment plan on redevelopment
11 projects?

12 A Yes.

13 Q And what is that opinion?

14 ATTY. WILLIAMS: Objection.

15 THE COURT: What is the basis?

16 ATTY. WILLIAMS: May I conduct a brief voir
17 dire, Your Honor?

18 The objection will be based on Sections 7-2 and
19 7-4 of the Code of Evidence, Your Honor's opinion and
20 the lack of a proper foundation. That is what I
21 would like the opportunity for a brief voir dire.

22 THE COURT: All right.

23 **VOIR DIRE BY ATTY. WILLIAMS:**

24 Q Good morning, Attorney Goldberg.

25 A Good morning.

26 Q I believe you told us and you gave a deposition last
27 week to Attorney Callahan; do you recall that?

1 A Yes.

2 Q I believe you told us that your experience with
3 redevelopment is in the City of Stamford working for the
4 URC, correct?

5 A Yes.

6 Q And you have not worked for any other towns, right?

7 A I haven't been paid for work in other towns but I
8 have provided advice to other communities. For example, I
9 made a presentation and did some work in Middletown a few
10 years ago which I did for free.

11 Q And you've never been qualified as an expert witness
12 in Connecticut Superior Court?

13 A No, I have not.

14 Q Or ever have been retained as one?

15 A No.

16 Q And you have not authored any publications on the
17 subject for which you have disclosed as an expert
18 specifically the expiration of a redevelopment plan?

19 ATTY. RUBIN: Your Honor, these go to the
20 admissibility, the acceptance of Attorney Goldberg as
21 an expert. This is not a voir dire. This is a cross
22 examination to undermine her credibility relative to
23 the fact after the Court has already admitted her.

24 THE COURT: It's true.

25 ATTY. WILLIAMS: Well, I didn't stipulate to her
26 qualifications but --

27 THE COURT: But I've already ruled.

1 ATTY. WILLIAMS: Pardon me?

2 THE COURT: I've already ruled that is she is
3 sufficiently qualified.

4 ATTY. WILLIAMS: That doesn't mean I can't cross
5 examine her later but right now I am jus setting up
6 an objection to the opinion and it goes to the
7 foundation I would contend, Your Honor.

8 THE COURT: Well, let's get to it.

9 Q You have never, Attorney Goldberg, you've never dealt
10 personally with a situation where a redevelopment expired,
11 correct?

12 A That's not entirely correct. There was a
13 redevelopment project in Stamford called East Meadow project
14 which had expired before I came to Stamford but it had my
15 involvement with that after the fact. It did not involve
16 anything to do with the issues in this matter. They were
17 more questions of title and issues or rights of way that had
18 been confused while that project was developed.

19 Q But you've never been involved in dealing with a land
20 disposition agreement under an expired redevelopment plan?

21 A That's correct.

22 Q And when Attorney Callahan asked you in your
23 deposition for the grounds for your opinion on the subject
24 that Judge Lee has allowed you answered that the absence of
25 information in he documents you reviewed is the grounds; do
26 you recall that?

27 ATTY. RUBIN: Objection -- I withdraw it.

1 There are 50 pages on this but that was one
2 of the answers. I don't see how this goes to the
3 question that was asked.

4 THE COURT: Actually, I don't quite understand
5 what that concerned. I don't understand the meaning
6 of what you just said.

7 ATTY. WILLIAMS: Sure. Attorney Goldberg was
8 asked what are the grounds for your opinion. And the
9 answer was, it is the absence of information and the
10 documents that she reviewed that was the grounds for
11 your opinion.

12 Q That was the response you gave, correct?

13 A That was one -- I was asked that question about a
14 half of a dozen or a dozen times in a dozen different ways
15 and I answered it each time as best I could.

16 ATTY. WILLIAMS: Well, thank you. So Your
17 Honor, our objection is based first on Code of
18 Evidence Section 7-2 which is opinions by experts and
19 requires that the testimony assist the trier of fact
20 and 7-4A which requires that the expert has to have
21 provided sufficient facts or provided sufficient
22 facts are shown as the foundation for the expert
23 opinion.

24 No sufficient facts have been provided as the
25 foundation for an opinion as to the impact of the
26 expiration of a redevelopment plan on a land
27 disposition agreement or on an extant redevelopment

1 project because Attorney Goldberg has confirmed she
2 has no personal experience in that regard.

3 It also does not comply with the strictures, if
4 you will, of the Court's memorandum of decision at
5 page 5 which states, an opinion on the subject would
6 be allowed if the testimony is fact based and not
7 speculative.

8 There is no basis in fact for the proffered
9 opinion so it would be speculative.

10 And finally, the requested opinion also
11 constitutes an improper legal opinion because by
12 Attorney Goldberg's own testimony here earlier this
13 morning it is necessarily derived from the
14 application of the Connecticut General Statutes and
15 the interpretations of contract terms in an LDA
16 specifically when she was asked what is an LDA.
17 Attorney Goldberg responded, that it's a requirement
18 of statute that the LDA performed in accordance with
19 a plan. So there is legal opinion testimony within
20 the proffered opinion as well and for all the other
21 reasons that I've articulated we object to that
22 opinion coming in.

23 THE COURT: Just a minute.

24 ATTY. RUBIN: Sure.

25 THE COURT: I think it sufficiently complies
26 with the Code of Evidence and my ruling. It may not
27 be persuasive to me because it's based on something

1 that didn't happen. And as I said, it's very hard to
2 remove the universe of collateral causation and what
3 else is going on at a given time especially in
4 Stamford, but I will allow it.

5 **BY ATTY. RUBIN:**

6 Q What is the impact of the expiration of a
7 redevelopment plan on a redevelopment projects?

8 A When the plan fails, the project fails.

9 Q Why?

10 A The project is predicated on the existence of the
11 plan and without it, without any longer having a valid
12 redevelopment area the project that the plan described
13 disappears along with the plan.

14 Q Do you have an opinion as to what is the impact of
15 the expiration on a redevelopment plan on underlying or
16 extant LDA's?

17 A Yes.

18 Q And what is that opinion?

19 A Like the project, most of the LDA also fails.

20 Q Why is that?

21 A Because at its heart the LDA is the document that
22 describes how you are going to build the project and if the
23 project can no longer proceed because the plan no longer
24 exists then the project no longer exists. Most of the
25 provisions in the LDA likewise become frustrated.

26 Q Which provisions of the LDA become frustrated in
27 general because you've drawn a distinction between some do

1 and some don't and I am going to inquire as to what does and
2 what doesn't.

3 ATTY. WILLIAMS: Objection. He can't testify in
4 general about contract terms in a document that's not
5 admitted in evidence and that's beyond the scope of
6 what's permissible for the expert opinion in
7 accordance with the Court's decision.

8 ATTY. RUBIN: No, it's part in parcel. It's a
9 general -- this is a general question. The answer
10 was certain aspects survive and certain aspects
11 don't. And I could have easily started with what
12 aspects don't and then ask what aspects do in general
13 without reference to this particular LDA, without
14 reference to any LDA just an LDA in general.

15 THE COURT: Objection is overruled.

16 A Every LDA contains representations. If there is a
17 claim of inducement some of those representations would
18 survive.

19 Q Fraudulent inducement?

20 A Yes. Every LDA I've ever seen contains provisions as
21 to non discrimination in a variety of areas, employment, use
22 of the property and the like. Those survive.

23 THE COURT: How about conveyance of property by
24 a redeveloper to somebody else.

25 THE WITNESS: There is a question of whether the
26 deed merged with the LDA or the deed contained a non
27 merger provision. If there is a non merger position,

1 typically it's the deed that will control not the
2 LDA.

3 THE COURT: Well, maybe.

4 THE WITNESS: Typically. It goes to who and how
5 the deed was drafted. I used to get in horrible
6 arguments with Larry (indiscernible) about the
7 language in deeds and other things.

8 THE COURT: Go ahead.

9 Q How do construction obligations in an LDA, do they
10 survive?

11 A No, they don't. Again the project no longer exists
12 because the plan doesn't exist, so requirements to construct
13 the project have no -- the project is frustrated.

14 THE COURT: So what is the basis for that
15 opinion?

16 I mean, do you have case law to that effect?

17 THE WITNESS: No, I am not aware of any case
18 law.

19 THE COURT: Well, then so what is your basis?

20 THE WITNESS: Back in the 90's, we looked at it
21 quite extensively and we researched both legally and
22 from experience and the biggest piece came from Phil
23 Holt who related, it's so long ago. I don't remember
24 the specific details. But related a similar
25 situation having to do with the (indiscernible)
26 Hospital where he did a lot of work and that formed
27 the basis of my opinion in the 90's and it hasn't

1 changed.

2 THE COURT: So what happened there?

3 THE WITNESS: They had to start over on
4 something where the plan that they were operating
5 under had expired and they had a contract with
6 somebody and I don't remember what they were building
7 although I am pretty sure he described it in detail
8 at the time. That was the kind of person he was.
9 But I have a very clear recollection of his being
10 adamant that we not allow our plan to expire because
11 of the experience he related to me at the time.

12 THE COURT: And I assume it would impact --
13 might impact your ability to use eminent domain.

14 THE WITNESS: There would no longer be an
15 ability to use eminent domain.

16 THE COURT: Right.

17 THE WITNESS: That goes away when the plan goes
18 away.

19 THE COURT: That's not too relevant here, right?

20 ATTY. RUBIN: Correct.

21 **BY ATTY. RUBIN:**

22 Q Do you have personal experience -- what did you do
23 under the circumstances where the plan that you referenced
24 was going to expire -- withdraw that.

25 What did you do to prevent the plan from expiring?

26 A We prepared a plan amendment and proceeded under
27 8136 to modify the plan. Because of the local politics we

1 eliminated from plan controls any property that was not
2 going to be developed by the agency from out control and we
3 extended the plan. In fact, we extended the plan several
4 times. I don't remember what the most recent one was, but
5 it was to allow sufficient time for the projects that
6 remained to be completed.

7 As of today, there are only two parcels remaining to
8 be developed. I don't know what their current status is.

9 Q When you extended the plan, was that a modification
10 of the plan?

11 A Yeah, any change to a plan is a modification.

12 THE COURT: Are you equating a modification with
13 an amendment?

14 THE WITNESS: I am sorry?

15 THE COURT: Are you equating a modification with
16 an amendment?

17 THE WITNESS: Yes. Any change in the document.
18 It's a public regulation. Any change in that
19 regulation is a modification.

20 THE COURT: Right but doesn't it have to be a
21 material change to require an amendment?

22 THE WITNESS: No, it's what process you go
23 through. In Stamford because we were federally
24 funded unlike the Norwalk project, we had a provision
25 in our plan that said if it is a substantial change
26 you go through this process. If it's a minor change
27 you go through that process which is much simpler.

1 The minor process reflects just talking to
2 redevelopers and getting a sign-off from the
3 redeveloper and the agency could do it on it's on.

4 If it was a substantial change, you had to go
5 back to the board of representatives.

6 The Norwalk project doesn't have that same
7 language in its plan. But no matter what any
8 modification requires the approvals of effective
9 redevelopers and successors and interest.

10 THE COURT: But necessarily the full legislative
11 body.

12 THE WITNESS: But not necessarily the full
13 blown legislative body approvals.

14 THE COURT: In Stamford, did -- but you got
15 the extension before it expired?

16 THE WITNESS: Yes. And when the statute
17 was changed in 2007, we began instituting more
18 substantial decennial reviews not because --
19 initially because we were required to but because
20 I believed it was good process.

21 THE COURT: The Stamford plan was southwest
22 (indiscernible) was '68.

23 THE WITNESS: From the 60's.

24 So we went back to the city boards and the
25 community particularly the downtown services district
26 to get continued public support moving forward and we
27 did it for all three redevelopment plans.

1 Specifically the downtown plan, the gateway and the
2 mill river plan specifically to confirm that we had
3 community support to continue to finish each of those
4 projects.

5 THE COURT: Okay.

6 **BY ATTY. RUBIN:**

7 Q So when you made the determination to extend the plan
8 -- to modify the plan by extending it, what steps did you
9 take?

10 ATTY. CALLAHAN: Objection, Your Honor.

11 THE COURT: I don't think that matters.

12 Q When you undertook the action that you undertook to
13 prevent the expiration, what were the steps that you took?

14 THE COURT: That's the same question.

15 ATTY. RUBIN: I just want to understand why
16 that's not a legitimate question.

17 THE COURT: Because it's not germane. The
18 question is what is the impact on redevelopment
19 agreements if a plan expires and it doesn't really
20 matter what they did in Stamford in the 90's.

21 Q Were there different steps to amend the plan versus
22 -- in your experience were there different steps to amend
23 the plan versus rolling out a new plan?

24 ATTY. WILLIAMS: Objection. Again the steps of
25 extending it don't matter.

26 ATTY. RUBIN: The process.

27 ATTY. WILLIAMS: Again the process does not

1 matter. It's not relevant. She has already provided
2 her opinion and the bases for it about the impact of
3 an expired plan. What happens to prevent the
4 expiration is not relevant to that. It's just on its
5 way to our getting into other opinions that have --
6 -- been.

7 THE COURT: It's also cumulative. Attorney
8 Goldberg has also testified about modifications
9 versus amendments and frankly the difference between
10 Stamford and Norwalk on that subject so I will
11 sustain the objection.

12 Q Were there any other circumstances in which you were
13 involved where you took affirmative steps or addressed the
14 issue of the expiration of a redevelopment plan?

15 A I had entered into negotiations with Howard Millstein
16 for the recapture of city land while, I guess this is in the
17 mid 2000's, while the plan was again about to expire. Mr.
18 Millstein owned the paper at that time for parcel 38, the
19 hole in the ground and we were trying to achieve its
20 recapture.

21 Q And what happened?

22 A Another developer Iron State and Tom Rich I
23 discovered were also negotiating at the same time and we
24 didn't believe it was necessary for me to continue. Us
25 acquiring the property back was going to involve a bridge
26 loan from the State so we broke off negotiations and
27 modified the plan by extending it yet again. And that

1 allowed time for Iron State and Mr. Rich to acquire the site
2 which is now under construction on Tresser Boulevard.

3 Q How did you extend that plan?

4 ATTY. WILLIAMS: Objection; relevance.

5 THE COURT: Sustained.

6 ATTY. RUBIN: No further questions.

7 THE COURT: All right. Cross examination.

8 **CROSS EXAMINATION BY ATTY. WILLIAMS:**

9 Q Attorney Goldberg, would you agree that an expert
10 witness testifying in Superior Court should render
11 independent opinions?

12 A Define independent.

13 Q Impartial, not dictated by her client.

14 A Yes.

15 Q And an expert should not act as an advocate for her
16 client, right?

17 ATTY. RUBIN: Object to form.

18 THE COURT: Overruled.

19 A I am not sure I understand the question.

20 Q You are not aware that an expert witness should not
21 also act as an advocate?

22 A Sorry, maybe if you rephrase the question. I got
23 lost in the objection.

24 Q Are you aware that an expert witness should not act
25 as an advocate for her client?

26 A Yes.

27 Q Can you identify this document?

1 A Yes, this is my retainer agreement in this matter.

2 Q Was it signed by you and Attorney David Rubin?

3 A It is.

4 ATTY. WILLIAMS: I will offer it.

5 THE COURT: What number is it?

6 THE CLERK: Fifty-nine.

7 THE COURT: Fifty-nine.

8 Any objection, Mr. Rubin?

9 ATTY. RUBIN: No objection.

10 THE COURT: All right, Exhibit 59 comes in as
11 full.

12 Q Attorney Goldberg, this is an attorney/client
13 retainer/engagement agreement, correct?

14 A Yes.

15 Q And you are defined in the first paragraph of text as
16 the attorney in the matter?

17 A That's correct.

18 Q And it's an agreement by which you will provide legal
19 services to your client?

20 A Well, the services that I am to provide are the top
21 of page 2 under the section engagement; provide advice,
22 assistance and expert testimony in connection with
23 Redevelopment Agency of Norwalk versus ILSR Owners, et al.

24 Q Right. You are advising and assisting in the case,
25 too, right?

26 A I am advising and assisting my client who is Attorney
27 Rubin and his client.

1 THE COURT: One second. Let me just look at
2 this.

3 Where were you looking at?

4 THE WITNESS: At the very top where in bold it
5 says engagement to the right on the top.

6 THE COURT: On the first page or the second
7 page?

8 THE WITNESS: The second page after it says
9 retainer subdivision engagement.

10 THE COURT: Okay, I get it.

11 THE WITNESS: This is my standard agreement for
12 all engagements and I wasn't going to write another
13 one for this case.

14 Q Right. It doesn't state that it's limited to expert
15 witness consultation. It states you will be providing legal
16 services on behalf of the client that's on the first page,
17 right?

18 A I suppose.

19 THE COURT: While we are at it, Attorney
20 Goldberg, have you provided any legal advice or other
21 services outside of -- in connection with testifying
22 as an expert?

23 THE WITNESS: Yes, I have.

24 THE COURT: What did you do?

25 THE WITNESS: I was asked to look at and give my
26 opinion about a complaint in another matter and I did
27 in a couple of conference calls with the client and

1 an attorney not related to this case. I gave my
2 thoughts and I billed for it.

3 THE COURT: Did that other complaint involve the
4 Norwalk renewal area?

5 THE WITNESS: It did.

6 THE COURT: Okay.

7 **BY ATTY. WILLIAMS:**

8 Q Can you identify the documents, two of them, marked
9 as Exhibit 60?

10 A Yes, these are my invoices. One is dated April 1,
11 2019 and the second is dated May 3, 2019.

12 Q Invoices sent to Attorney Rubin for your work on
13 behalf of Mr. Miller?

14 A Yes.

15 ATTY. WILLIAMS: I will offer it.

16 ATTY. RUBIN: No objection.

17 THE COURT: Okay, Exhibit 60 comes in.

18 Q Attorney Goldberg, in your April 1, 2019 invoice it
19 reflects entries that I want to ask you about on the first
20 page for March 22nd and March 23rd, 2019. And there you
21 describe that you were providing comments -- discuss
22 comments with client on the client's motion memorandum and
23 review revised memorandum and meet with client.

24 ATTY. RUBIN: If you are going to recite it, it
25 should be recited accurately. I don't care if its
26 quoted. It just should be quoted accurately.

27 Q On March 22nd were you helping provide comments to

1 Attorney Rubin on a brief being prepared on behalf of the
2 Milligan defendants?

3 A Yeah.

4 Q You said yes?

5 A Yes. I am sorry, I said yeah.

6 Q Thank you. I just wanted to make sure I heard you
7 right. And could you flip to the second page of April 1st
8 invoice, please. Do you see the March 29th entry?

9 A Yes.

10 Q It says review draft complaint and then you were
11 reviewing the RPA's analysis and Harriman's analysis,
12 versions of several statutes and a couple of cases that you
13 listed. And then you have a telephone discussion regarding
14 a draft with Mr. Milligan noting issues I believe to be
15 strengths and weaknesses and a few minor errors.

16 That work is all directed to the complaint that was
17 filed in a new action, right?

18 A That's my understanding that it was filed.

19 Q And this is the lawsuit entitled IJ Group LLC versus
20 the City of Norwalk Redevelopment Agency of the City of
21 Norwalk, Harriman Associates Inc., and Regional Plan
22 Association, Inc.?

23 A I don't remember the specific heading off the top of
24 my head but it sounds correct.

25 Q It's a lawsuit brought by a company owned by Mr.
26 Milligan against the City Redevelopment Agency and its two
27 consultants complaining about the 2019 neighborhood plan,

1 right?

2 A Yes, it is.

3 ATTY. WILLIAMS: And Your Honor it's -- may I
4 give you the docket number?

5 THE COURT: Yes, thank you.

6 ATTY. WILLIAMS: FBT-CV19-6085416-S

7 THE COURT: Let me just read it back,
8 19-6085416.

9 ATTY. WILLIAMS: Correct.

10 THE COURT: Thank you.

11 Q You were providing research and strategy and drafting
12 assistance on that complaint, right?

13 A I didn't provide research or strategy. I was
14 familiar with the cases and I felt the impact how the
15 complaint should be drafted and so I looked at them to
16 confirm my belief. I related my opinion to the attorney
17 involved after Mr. Milligan and that was it.

18 Q Right. Your opinion was provided in a telephone
19 discussion regarding the draft with Mr. Milligan noting the
20 strengths and weaknesses and a few errors in the complaint
21 on March 29th?

22 A On March 29th, yes.

23 Q And can you turn to the next invoice dated May 3rd,
24 2019 and do you see the third entry for April 9th?

25 A Yes.

26 Q What does that one say?

27 A Telephone conference call with Mr. Milligan and

1 Attorney Fay regarding thoughts and comments on the revised
2 draft complaint.

3 Q Who is Attorney Fay?

4 A She is an attorney engaged by Mr. Milligan in the
5 matter recited a moment ago.

6 Q And in that new case brought by IJ Group, Attorney
7 Fay is the -- Candace V. Fay is counsel for the plaintiff?

8 A That's my understanding, yes.

9 Q And you provided Attorney Fay your thoughts and
10 comments on the draft complaint before it was filed?

11 ATTY. RUBIN: Your Honor, I object. At this
12 point it's in, it's done and what is the relevance of
13 this anyway.

14 THE COURT: Oh, I think it may be.

15 ATTY. WILLIAMS: The credibility of the witness
16 is always around.

17 THE COURT: Right. Overruled.

18 Q Do you need the question again?

19 A Please.

20 Q You provided your thoughts and comments to Attorney
21 Fay on the draft complaint before it was served?

22 A Yes.

23 Q So you are really serving here in addition to
24 testifying here today as an expert witness, you are serving
25 as litigation counsel to Mr. Milligan in this case and in
26 his new lawsuit against the agency for monetary damages,
27 correct?

1 A I don't believe so. I am providing advice and
2 assistance based on my expertise.

3 Q And you don't think that involves --

4 THE COURT: Let me ask you Mr. Williams, are you
5 saying that if you have -- if a client has counsel
6 that he cannot also designate the counsel to testify
7 as an expert witness?

8 ATTY. WILLIAMS: I think if you are also and if
9 it's not disclosed on your direct and you are also
10 behind the scenes assisting the client as litigation
11 counsel to sue that party, it impacts adversely your
12 impartiality and --

13 THE COURT: I agree with that. But I mean per
14 say, I don't think there is a -- I can't think of a
15 prohibition about a lawyer serving two functions.

16 ATTY. WILLIAMS: I am not arguing a per say
17 prohibition, Your Honor. I believe it impacts the
18 independence of the expert opinion.

19 THE COURT: Okay.

20 Q And in fact all day yesterday here in this courtroom
21 you sat at counsel table and suggested questions and
22 strategy to Attorney Rubin, right?

23 A Questions not strategy.

24 Q At your deposition didn't you ask --

25 THE COURT: It's not unusual to have an expert
26 sit with you during testimony.

27 I am sorry. Go ahead.

1 Q Let's move along to the opinion you gave here this
2 morning, Attorney Goldberg.

3 Would you agree with me that the redevelopment power
4 in Connecticut is bestowed on municipalities by State
5 statute?

6 A Yes.

7 Q And the process is governed by statutes which set
8 forth the rules and the procedures?

9 A Both State and occasionally Federal.

10 Q Sure. And so I am not asking you anything about
11 Federal law unless it's necessary but I am asking you to
12 focus on the State law for now.

13 So to determine if a rule governs some aspect of the
14 redevelopment process by and large your group source is the
15 Connecticut General Statutes, right?

16 A Yes.

17 Q And those rules must be strictly followed to the
18 letter?

19 ATTY. RUBIN: Objection; unless I am permitted
20 to go back in and ask about the following statutes
21 and the statutory scheme. It was specifically
22 precluded. What is -- there is a limited expert
23 disclosure here. I would assume that this cross
24 would be limited to what was permitted by the Court
25 and the expert disclosure and what was raised on
26 direct.

27 THE COURT: Right. The nature of this objection

1 is sauce for the goose is sauce for the gander. I
2 don't think it's fair to elicit legal opinions from
3 Attorney Goldberg when I prevented -- did my best to
4 prevent it from Mr. Rubin.

5 ATTY. WILLIAMS: That's true and I agree
6 with it and I wasn't trying to do that.

7 What I am trying to do and I believe I am
8 permitted to do, Your Honor, is to explore the basis
9 for the opinion that was provided here in the
10 courtroom.

11 THE COURT: And I know that you are kind of
12 setting up framework but go ahead.

13 Q Whether there is an Accord S, Attorney Goldberg, what
14 is the basis for your opinion and that is what I am trying
15 to get at, as well.

16 Now the redevelopment plan, Attorney Goldberg, as a
17 general animal, you were asked about it earlier and I am
18 just wondering sort of another way of putting, would agree
19 that the redevelopment plan sets forth a city's visions for
20 how it would like to see a particular area of the town
21 redeveloped.

22 A It's supposed to go well beyond the vision. The
23 city's plan there is a citywide plan that is the big vision,
24 the master plan.

25 Then the redevelopment plan is supposed to be much
26 more focused on specifics for each redevelopment project or
27 each site within the plan area.

1 Q Sure, but the redevelopment plan doesn't tell a
2 redeveloper specifically what it has to do on a particular
3 piece of property?

4 A It's supposed to, yes.

5 Q Well, you don't even know who the redeveloper is when
6 the plan first come out, do you?

7 A No, you select the redeveloper to meet the goals of
8 each project, each redevelopment project within the larger
9 plan.

10 Q You do that after you adopt a plan?

11 A Yes.

12 Q So the plan does not designate who the redeveloper
13 would be?

14 A Well, not always. The statutory scheme it
15 specifically allow as private citizen to say I want
16 to redevelop these properties and bring a proposed
17 redevelopment plan to the agency and that has happened
18 on several occasions.

19 ATTY. WILLILAMS: Right. Okay.

20 A So it's not -- anyway.

21 Q The adoption of a plan is not the act of formally
22 approving a redeveloper if that is a requirement.

23 A That's correct.

24 Q And the plan does not set forth specific obligations
25 that are binding on any private party just by virtue of the
26 plan itself, right?

27 A That's not necessarily true. The plan may well

1 regulate what can happen on specific parcels or what must
2 happen on specific parcels.

3 The thing that comes immediately to mind is before I
4 left Stamford I was working on a new redevelopment area on
5 the east side of Stamford, down East Main Street. And we
6 were looking specifically at imposing requirements on
7 property owners to make their properties environmentally
8 efficient, replacing windows, installing the appropriate
9 materials and we've spent a lot of time calculating how long
10 it would take for property owners to recap their
11 expenditures on our requirement that they make their
12 properties more energy efficient.

13 So it is absolutely in urban renewal plans to require
14 property owners to comply with new proposals.

15 Q But it's not a contract that somebody is signatory
16 to?

17 A It's not a contract.

18 Q And to name a redeveloper formally and to impose
19 binding obligations on a redeveloper to construct a project,
20 you need a contract for that, right?

21 A It's negotiated process to develop and agreement,
22 yes.

23 Q And likewise, you need a contract to specify
24 obligations of public parties to a redevelopment project
25 like what infrastructure improvements the city would have to
26 build?

27 A Yeah. Typically they are initially set out in the

1 plan such as re-orienting streets, creating improvements, at
2 intersections, re-orienting traffic, those kinds of thing,
3 re-doing sidewalks, streetlights, uniformity of design for
4 the public improvements are typical aspects of a plan.

5 Q Of course. But it's the LDA that is the contract
6 that implements that plan and carries that vision forward it
7 to binding obligations of a contract?

8 A Well, not necessarily the plan but a project within
9 the plan.

10 Q And the statutes don't provide any rules specific to
11 what has to be in an LDA, do they?

12 ATTY. RUBIN: Objection, Your Honor.

13 THE COURT: Overruled.

14 A Yes, it does.

15 Q Well, there is one about no unauthorized property
16 transfers, we know about that one.

17 THE COURT: I am sorry, you know -- wait a
18 minute.

19 So we're clear, you only have an LDA where there
20 is a transfer -- where there is a disposition of
21 (indiscernible) right?

22 THE WITNESS: Or prospective transfer, yes.

23 THE COURT: Right. But I am saying if you're
24 involved, if the project doesn't involve what has
25 been city land then they are just under zoning or
26 whatever.

27 THE WITNESS: Well, it's more detailed. When we

1 were looking at the east side project, we were
2 looking at can we require property owners to upgrade
3 their properties and we believe that you can in a
4 redevelopment plan and then there are communities
5 that have done so successfully and we started looking
6 at doing that and creating a new train station.

7 THE COURT: Well, isn't it also true that in
8 Stamford the URC has a sign-off on building permits
9 whether (indiscernible) as property or not?

10 THE WITNESS: That's correct.

11 THE COURT: Okay. So again that's outside of a
12 conveyance of public land.

13 THE WITNESS: That's right.

14 Q Now, LDA's are typically fairly complicated
15 agreements; aren't they?

16 A Any commercial transfer for a property gets very
17 complicated very quickly including LDA's.

18 Q And they are negotiated in some detail by
19 sophisticated parties and their legal counsel?

20 ATTY. RUBIN: Object to form.

21 THE COURT: You can answer.

22 A Usually yes.

23 Q And the LDA sets forth specific parameters of a
24 development project that the redeveloper is then obligated
25 to build, right?

26 A Yeah.

27 Q In this context you don't have a construction project

1 until you have a signed LDA if there is city property to be
2 disposed of.

3 A I am sorry. Can you rephrase that or restate it?

4 Q You don't have redevelopment construction project
5 until you have a signed LDA.

6 ATTY. RUBIN: Objection.

7 Are we talking about this particular case or are
8 we talking general custom and practice?

9 THE COURT: Well, I think Attorney Goldberg was
10 talking about his experience with redevelopment
11 projects so I think --

12 ATTY. RUBIN: Okay, so -- because it sounds like
13 the questions that are being asked are case specific
14 and not general specific. I just wanted to clarify
15 that they were --

16 THE COURT: Okay. Why don't you clarify?

17 Q I never asked you to answer case specific, is that
18 understood?

19 A Yes.

20 Q So what is the answer?

21 A I am sorry. One more time, please.

22 Q There is no construction project for a redevelopment
23 project until you have a signed LDA?

24 A For the non public improvement aspect I would agree.

25 Q And the parties to the LDA typically will decide when
26 and why it terminates by the language in the contract that
27 they sign, right?

1 A Sure, yes.

2 Q And they can agree on, they can negotiate and agree
3 on which events might cause or allow a termination of a
4 contract?

5 A Yes.

6 Q And a Court can't superimpose a termination provision
7 into a contract; is that your general experience?

8 ATTY. RUBIN: Objection.

9 THE COURT: Sustained.

10 Q Now, the LDA can be more specific and detailed than
11 the redevelopment plan in setting forth exactly what is to
12 be built on the property, right?

13 A Well, the LDA typically refers to -- well, at the
14 time an LDA is signed, the redeveloper has not ingested huge
15 dollars into architectural plans. They have invested in
16 schematic plans and the LDA will incorporate the approved
17 schematic plans and typically contain a process by which the
18 schematic plans are developed further into design
19 development documents and eventually construction documents
20 and its those set of plans that the construction document
21 that really ultimately define what is being built on the
22 specific project.

23 Q Right. And if you are the redevelopment agency once
24 all of that has happened and now you've gotten to this point
25 of signing a contract, you've laid out your vision in your
26 plan, you've met a redeveloper, they've gone through
27 everything you just described, you would not want a clear

1 statement of required improvements are, right?

2 ATTY. RUBIN: Objection. It's compound. There
3 is twenty questions within that question.

4 THE COURT: Overruled.

5 A Well, the construction plans define exactly what is
6 being built and there is a requirement typically that at the
7 end of the project there is a certificate of completion and
8 if the project that gets built isn't what was in the
9 construction plans, they can't get a certificate of
10 completion or certificate of occupancy. So the construction
11 plans are the best definition of what is going to get built.

12 Q Sure, but we have gone a few steps beyond what I was
13 asking you which is I am just asking about when we get to
14 the signing of the LDA.

15 A All you typically have at that point in time is a set
16 of schematic design documents and their general idea of what
17 the building will look like and how many units if it's
18 residential, how many square feet if it's commercial, how
19 many parking spaces, where the -- how it's going to
20 incorporate site -- from a site perspective into the
21 neighborhood.

22 Q Exactly and that is what I was asking you.

23 If you were the agency, you would want to lock-in now
24 in your agreement based on a schematic or a conceptual plan
25 you would want to specify and lock-in what number of
26 apartments are going to be built, what size retail, how many
27 parking spaces, that sort of thing, right?

1 A Yes, but they already exist in the plan and it's --
2 well not necessarily the number, the ratios. Our plan
3 didn't have specific numbers of parking spaces except with
4 public parking garages. But we had a parking ratio.

5 If you are going to build so many square feet of
6 commercial office space, you have to have so many vehicle
7 parking spaces.

8 If you are going to build so many units of housing,
9 you have to have so many spaces per unit and they have to be
10 this kind of space, that kind of thing.

11 Q And that level --

12 A Those are in the plan.

13 Q And that level of detail the LDA can result in
14 numbers that are slightly different than what was in the
15 plan, right?

16 A Well, they -- and they'll change as you develop from
17 schematic --

18 Q I am sorry, is that a yes?

19 THE COURT: I think so. You are agreeing that.

20 But what he is saying -- she, sorry, I am sorry, that
21 they change as you go through the process.

22 A As you value engineer the project, the construction,
23 the physical building or buildings, those things change.

24 Q I know and I am only asking about the point between
25 the plan and the LDA.

26 So when you get to the LDA and you are specifying how
27 many apartments and how many square feet of retail, those

1 are the requirements that control the redeveloper and what
2 they have to build, right?

3 A In general terms, yes.

4 Q Thank you. Now the agency could agree at that point
5 in the LDA to modify the plan requirements somewhat in order
6 to get a project built, right?

7 A Yes.

8 Q Now when they sign the LDA, you have an executed
9 contract now after all this negotiation, the parties have a
10 right to now that they in front of them now in black and
11 white terms that they have agreed to an that bind the
12 project, correct?

13 A Yes.

14 Q And the lender for a developer usually wants to know
15 that too?

16 A Yes.

17 Q And the parties -- you've talked about many typical
18 provisions in an LDA. I want to ask you about another one.

19 The parties to an LDA will typically provide that
20 there can be no amendment to this agreement unless there is
21 a writing that is executed by all the parties, right?

22 A Yes.

23 Q Now without that kind of executed amendment, without
24 the parties agreement to amend an LDA only a statute could
25 read a provision into an LDA, correct?

26 A I don't know if that's correct.

27 Q Why do you think it's incorrect?

1 A I am not sure if it's incorrect either but the
2 LDA includes the terms contained in the redevelopment --
3 underlying redevelopment plan and so what you say only a
4 statute I guess if we're accepting the premise that the
5 underlying LDA and the language in the underlying LDA
6 becomes part of that LDA, then I guess you're right about
7 the statute. But the LDA itself isn't a stand alone
8 document. It includes all -- you know whatever exhibits and
9 underlying documents such as the plan.

10 Q And as to whatever is incorporated into the official
11 signed LDA, my question is you can't read a provision into
12 it unless it's imposed as a requirement of State statute,
13 right?

14 THE COURT: I think he's answered the question.
15 She doesn't know about the effect of a statute on an
16 LDA contract.

17 ATTY. WILLIAMS: Well then I am not sure if she
18 did answer it, Your Honor. I thought she said I
19 think you're right as to the statute and then added
20 on the additional thing and I was just asking a
21 follow-up for clarity.

22 THE WITNESS: Yes, I was thinking through out
23 loud. I am sorry. It's a bad habit I've never been
24 able to get rid of.

25 I don't think it's just a statute. I think a
26 Court can read in provisions as well.

27 Q Like the blue pencil thing with a non-competition

1 clause sort of thing?

2 A Yeah.

3 Q You believe that applies to the redevelopment
4 context, as well?

5 A It's basically contract law, so I would think so.

6 THE COURT: Let me just ask you. If you're not
7 comfortable answering, tell me that, but let's say
8 you have an LDA which says you developer have a right
9 to build 200 housing units on this parcel. And then
10 subsequently the City no, we want a park there and
11 amends the plan to say it's going to be a park; is
12 that legitimate or do you have a right -- does the
13 developer and the bank and all have a right to build
14 what the LDA says regardless of what a subsequent
15 plan says?

16 THE WITNESS: That's why 8136 exists. It
17 requires if you are going to amend the plan that
18 effected redevelopers and successors in interest
19 approve the modification of the plan.

20 THE COURT: So without approval it doesn't work.

21 THE WITNESS: And it goes even further.

22 There was a community in Connecticut that tried
23 to get around that. They wanted a different project.
24 They had a redeveloper and they passed a local
25 ordinance instead of amending the plan and the Court
26 said you can't do that.

27 THE COURT: All right, thank you.

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ATTY. WILLIAMS: I am just looking to see if we were at the break time, Your Honor.

THE COURT: Oh gosh, we are well beyond it, sorry Pipina.

ATTY. WILLIAMS: If you want to, that's fine with me. That's why I offered.

THE COURT: We are so pressed for time.

Pipina, how are you doing? Do you want a break?

THE MONITOR: Yes.

THE COURT: Then we will take a ten minute break. We will be back at five after.

(RECESS)

NO: X08-FST-CV18-6038249-S : SUPERIOR COURT
REDEVELOPMENT AGENCY OF THE : JUDICIAL DISTRICT
CITY OF NORWALK, ET AL : STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
ILSR OWNERS, ET AL : MAY 23, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Charles T. Lee, Judge, on the 23rd day of May, 2019.

Dated this 30th day of May, 2019 in Stamford,
Connecticut.


Pipina Plakopitas
Court Recording Monitor