PETITION TO THE NEW JERSEY LOCAL FINANCE BOARD
DEMANDING DISSOLUTION OF
THE HARRISON REDEVELOPMENT AGENCY

April 30, 2004

Introduction

Harrison residents, business people and property owners have formed the Harrison Community Coalition to stop the Harrison Redevelopment Agency from carrying out the misguided Waterfront Redevelopment Plan.

An attempt to carry out this Plan would hopelessly overcrowd the streets and schools of Harrison, create unbearable financial burdens on a Town that is already in weak financial condition, and would adversely affect the economic interests and community life of the immigrant groups that form the backbone of the community.

New Jersey State Law Provides, and the Agency's Leaders Acknowledge, that the Local Finance Board Is Authorized to Dissolve the Agency

The formation of the Harrison Redevelopment Agency (HRA) was approved on February 10, 1999 by the New Jersey Local Finance Board. On that date, Gregory J. Castano, Esq., now the attorney for the HRA and the Town of Harrison, and at that time appealing to the Local Finance Board for its consent to the HRA's creation, made the following commitments:

> "we propose [that you] make a provision that we have to come back at a stated interval...maybe every five years...and give you a status report of where we are. Certainly at that point if you're dissatisfied with what's going on with the agency, you can always exercise your authority and direct a dissolution of the agency." (Transcript, page 5, lines 5-13).
>
> we "propose to you: Have us come back in five years, have us give you a status report. And if you're not satisfied with where we are, you can always dissolve the agency." (Transcript, page 21, lines 6-9).

"In fact, in truth, the agency will just go away if this project [i.e., the Waterfront Development Plan] doesn't work.." (1/13/99 Transcript, page38, lines 23-24).

More than five years have elapsed, and the HRA has failed to honor its commitment to come back to the Local Finance Board, as it has failed to honor the other commitments its spokesmen made in 1999. In view of these failures, we, the members of the Harrison Community Coalition, are now presenting our own status report on behalf of the aggrieved citizens and taxpayers of the Town of Harrison. We will show that the project hasn't worked, but the agency has not gone away. This Petition will demonstrate that it is fortunate that the HRA, in its ineptitude, has not yet started to acquire the property of private owners; it is fortunate, because the HRA's plans are

so defective as to be incapable of working. We will also provide ample evidence of how the HRA has so flagrantly violated basic principles of engineering, fiscal stewardship and land use planning, and consequently has created such peril to the community life and future financial health of the Town, as to justify the Local Finance Board ordering the dissolution of the HRA, as it is authorized to do under New Jersey law (N.J.S.A. 40A:5A-21).

Part I. Issues Raised by Members of the Local Finance Board at the 1999 Hearings

Three members of the Local Finance Board raised important, substantive concerns during the 1999 hearings that led to the formation of the Harrison Redevelopment Agency. This Petition sets forth the concerns that were raised, the responses to these concerns made by the HRA's representatives at the hearings, and then analyzes the extent to which the HRA has followed through on those responses during the five years since the Agency's formation.

A. Local Finance Board Member Thomas G. Kenyon: concerns about financing and the huge size of the project.

At the January 13, 1999, hearing, Thomas G. Kenyon, one of the two Members of the Local Finance Board to have personally inspected the Harrison project area prior to the hearing, raised several important concerns. Mr. Kenyon is the former Mayor of Tewksbury and is presently the President of the New Jersey Planning Officials organization. Mr. Kenyon's concerns remain relevant today, and they have not been addressed by the HRA.

Mr. Kenyon stated:

> "This is a Herculean task, because this particular piece of ground is a third of the town. That's number one. The second thing that makes it even more Herculean is the fact that you don't own the ground....you really don't have direct control. Bayonne had direct control, the Army gave them the land. Sayreville had direct control, they owned the land." (Transcript, page 10, lines 6-20).
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> [Note: the same point was made at the February 10, 1999 hearing by Local Finance Board Member M. Claire French, who stated "...unlike other redevelopment agencies we have approved, this one owns almost no land, very little of the site." (Transcript, page 15, lines 18-20).]
>
> "your capital is only $8.7 million. That's not going to go very far if the Town is going to guarantee your financing....that concerns me. Because in a project of this size, that's almost like a drop in the bucket." (Transcript, page 11, lines 20-22, and page 12, lines 2-4).

Mr. Kenyon was perceptively pointing out the enormous financial risks to which Harrison subjects itself in undertaking a 275-acre urban renewal project, and that other communities like Bayonne and Sayreville had undertaken a much lower level of risk. Bayonne and Sayreville had much smaller project areas, and they already owned the land that was the subject of the

redevelopment program, and thus did not have to be concerned about the financial risks of cost overruns in acquiring the land by eminent domain (for a discussion of this point, see Section L. below, pages 27-29). In Harrison, the amount of land involved is gargantuan, the land costs are immense, and, in contrast, the Town's financing capability is tiny. The danger is very great that, in the many years it will take to carry out the project, there will be a default or defaults by one or more of the undercapitalized redevelopers who have been designated by the HRA. If defaults occur, the cost of paying for them will not be sustainable by this small and financially vulnerable community. Harrison has fewer than 15,000 residents, and for the past several years has been unable to meet its financial obligations. As a result, Harrison has been the ward of the Department of Community Affairs, which has been paying millions of dollars a year to the Town under the Aid to Depressed Cities program to keep it afloat.

B. Local Finance Board Member Thomas B. Kenyon: concerns about flooding

> *Summary: The Project area is subject to serious flooding. The Plan originally provided that redevelopment would proceed only after Federally-funded flood control facilities had been constructed. Now, although Federal funding has not become available, the HRA rashly intends to proceed with redevelopment without the flood control measures having being implemented.*

Mr. Kenyon stated, at the hearing on January 13, 1999:

> "one of my concerns is the 100-year floodplain and a ten-year floodplain...Because almost the western and the southwestern [portion of the Project] going around to the eastern side is all floodplain." (Transcript, page 37, lines 11-16).

Mr. Castano responded: "What our plan incorporates is what was proposed to us by the Army Corps of Engineers." (Transcript, page 37, lines 20-22). Mr. Castano was correct in stating that page 16 of the Waterfront Redevelopment Plan, adopted by the Town of Harrison in 1998 (the "1998 Plan"), referred to a U.S. Army Corps of Engineers (USACE) proposal to control flooding by construction of a 7,450-foot-long system of levees and floodwalls along the Passaic River. The 1998 Plan contained a full-page map at page 8, showing (as Mr. Kenyon had indicated) that large portions of the Waterfront Project lie within the Passaic River floodplain. The 1998 Plan (page 16) pointed out that

> "recent floods in 1968, 1971 through 1973, two in 1975, 1984 and 1992 were sufficiently devastating to warrant Federal Disaster declarations. The flood of 1984 resulted in the loss of three lives and caused $493 million in damages."

The 1998 Plan then stated (at page 16) that:

> "The tidal [i.e., flood control] projects are funded primarily through the federal government, with the State and locality contributing lesser amounts. Harrison plans to obtain State sponsorship of the project in time for the 2001 Congressional Budget

allocations, with an anticipated construction date of 2001. USACE estimates that the project could be completed in approximately two to three years."

The 1998 Plan also contained a Development Schedule at page 35, which states:

> "The following is a recommended initial phasing schedule:
>
> 1. Waterfront walkway/flood control project implementation. Obtain Congressional, State and local funding for the project. Work with USACE to design the project....Ensure that the project goes to construction as soon as possible.
> 2. Secure funding and right-of-way for the improvements to The Concourse (Middlesex Street).
> 3. Secure funding and right-of-way for [various street improvements].
> 4. Acquire, assemble and prepare, where necessary, targeted parcels which can be marketed to prospective developers...."

This phasing schedule represents the customary, common-sense approach to the phasing of redevelopment , where necessary infrastructure improvements are funded and constructed before any work on redevelopment parcels is carried out.

The 2003 revision of the Plan, in describing the flooding problem (at page 19), eliminates the disquieting word "devastating" and deletes the unnerving references to Federal Disaster declarations, the three deaths and the $493 million in damages that appeared in the 1998 text. The 2003 revision fails to update the flood data presented in the 1998 Plan, and thus makes no mention of the floods unleashed in the Passaic River basin and elsewhere in northern and central New Jersey by Hurricane Floyd in September, 1999, which caused some of the worst flooding of modern times, although, by the time it reached the Northeast, Floyd had already weakened and had actually been downgraded from a hurricane to a tropical storm.

Most significantly, however, the 2003 Plan removes any discussion of the timing or implementation of the flood-control project (the 2001 Congressional budget having come and gone), and the 2003 Plan deletes, without even a mention, the 1998 Plan's <u>entire</u> phasing schedule. The 2003 Plan just blandly states (at page 20) that:

> "The project will be funded primarily through the federal government. The New Jersey Department of Environmental Protection supports the project and is willing to act as the cost-sharing partner for construction."

What the 2003 Plan wanly attempts to conceal is the fact that there is no Congressional funding in sight for the flood control project, and thus there is no possibility of proceeding with the design, scheduling and implementation of the flood-control work.

To say that the HRA'a approach to the flood control issue in the 2003 Waterfront Redevelopment Plan is disingenuous hardly suffices to describe the enormity of the deception and the total breakdown of rational planning and conscientious stewardship that it involves. Almost the entire project area between the Passaic River on the west and Rodgers Boulevard on

the east is shown on the official maps of the Federal Emergency Management Agency (FEMA), as well as on the HRA's own map, as lying in a floodplain, and it is the height of irresponsibility for a government agency to abandon its previous endorsement of a policy of building necessary infrastructure elements first and instead to sponsor the introduction of large numbers of expensive new buildings in a flood-prone area before adequate flood barriers have been erected. Without the construction of the levees and floodwalls, this area (which already has a high water table) will continue to be subject to serious flooding during and after large storms.

Owners of new buildings will be unable to obtain flood insurance from FEMA if the living quarters or working spaces are vulnerable to flooding, and, even if the builders were to elevate these above the flood level, the open spaces and streets surrounding the buildings will still be subject to inundation. The Waterfront Redevelopment Plan calls for the construction of over 7,000 units of new housing in the 275-acre project area, and about half of the project area is shown on the FEMA map as lying in the floodplain. If only 2,000 units of the new housing were located in the floodplain, and if there were only 2 persons per household (both conservative numbers), that alone would result in 4,000 people moving into and residing in a flood zone as the result of deliberate government policy. Persons working in the Project's new office buildings (the Plan calls for the construction of over 3,500,000 square feet of office space) and those shopping at the new retail stores (the Plan calls for over 1,200,000 square feet of new retail) in the flood-zone portion of the Project could also be at risk.

Thus, the implementation of the Redevelopment Plan will inevitably create a serious threat to public safety. With most of the land and streets in the flood zone under water after a major storm, the inability of residents and others to drive away in their cars, the inability of the police to evacuate people, and the inability of fire engines, ambulances and other emergency vehicles to gain access, would provide all the ingredients for panic and a human disaster.

Although visually it doesn't look like it, the Waterfront Project area has all the characteristics of a peninsula, with water on several sides, and access (and escape routes) restricted to a small number of choke points. When such a peninsula is located on the coast of the Carolinas, everyone becomes aware of the potential danger of a big storm, and FEMA routinely erects prominent signs designating evacuation routes. The risk of large numbers of people being flooded in, and effectively trapped, after another Floyd could be even worse in Harrison than on a barrier island, because the Harrison residents and other users will be present year-round, unlike the summer vacation communities in places like Hilton Head.

It is also unrealistic to assume that builders in a risky and unsound situation like this will be able to obtain long-term (permanent) mortgage financing from an institutional lender, until effective flood barriers have been erected. More immediately, the New Jersey Department of Environmental Protection, which has jurisdiction over land within 500 feet of the Passaic River, a tidal waterway, must issue a Waterfront Development Permit before any construction can start, and it will not issue any such permit until the flooding issue has been resolved to its satisfaction.

Under these circumstances, for the HRA to be permitted to commence condemning land of local property owners against their will, ostensibly for the public purpose of redevelopment, when the intended re-users of the property will find it difficult, if not impossible, to finance construction

on the property for the long, indefinite period until funding finally (if ever) becomes available for the necessary flood control system, and when carrying out construction without the flood controls in place will create unacceptable levels of public danger, is a violation of basic common sense and due process, and constitutes an unacceptable default of the governmental agency's obligation to enhance the public good and protect the public safety.

C. Local Finance Board Member John H. Ewing: concerns about environmental issues

> *Summary: Although the HRA has acknowledged that numerous sites in this formerly industrial area are polluted, it has failed in five years even to begin to study the extent of contamination or determine the costs of remediation, and now, unacceptably, proposes to proceed with redevelopment without even knowing if the legally-required remediation is economically feasible.*

John H. Ewing, the sole member of the 1999 Local Finance Board to still be serving today, raised the subject of environmental pollution at the January 13, 1999 hearing. Mr. Ewing, the State Senator from Bedminster and former Chairman of Abercrombie & Fitch, asked:

> "what preliminary testing have they done on the soil to see what contamination there is? ...how serious is it?" (Transcript, page 30, lines 9-12).

Mr. Castano responded:

> "Each individual parcel may vary, and it is industrial, so we do know that there will be a problem." (Transcript, page 30, lines 13-15).

Mr. Ewing's concerns were also of concern to Thomas Kenyon, who stated:

> "there's still heavy industry operating inside of the area that you have designated. You have a chemical plant, okay, that's there already. You have two printing plants that are in one of the old buildings down there, and of course that's obviously printing, printing means ink, and ink means remediation. And of course the other kicker was the major open site that you have is the Old Crucible Steel Place, and of course I am sure that is going to have to be remediated as well. I am sure the DEP is calling it brown field" (Transcript, page 11, lines 2-12).

Mr. Castano's acknowledgment to Mr. Ewing of the contamination problem was not an off-the-cuff response. The Harrison Town Council had adopted the Waterfront Redevelopment Plan on November 16, 1998, prior to the 1999 hearings. With respect to environmental issues in the Waterfront project area, the 1998 Plan, at page 6, acknowledged that "One negative aspect of the Town's history of industry is the environmental contaminants that have been left behind on several parcels in the Area." The 1998 Plan (at page11) contains a table showing twelve "Facilities with Confirmed Discharges/Violations," and another table (at page 10) showing twenty sites in a category designated "Environmental Conditions - Areas of Concern". All 32 of these sites are located within the project's boundaries.

Astonishingly, after identifying these extensive lists of environmentally-questionable sites, the Waterfront Redevelopment Plan provides no analysis of the costs of remediating these properties, nor even any procedure for determining the remediation costs, in order to ascertain, prior to commencing costly acquisition activities, if the cleanup expenses will be so high as to make acquisition and redevelopment of the parcels economically unfeasible. Rather than setting forth a program for dealing with the pollution issues, the Plan merely states (at page 10) that "This information [contained in the two tables] was collected so that site developers are cognizant of the potential on-site conditions of parcels in the Area." Obviously, any redevelopment for residential, retail or office use is under a legal mandate to eliminate pollution hazards in accordance with New Jersey statutory requirements and the regulations of the New Jersey Department of Environmental Protection, and a new building cannot obtain a certificate of occupancy, or be occupied, until DEP has ruled that it is satisfied with the condition of the site.

Despite the serious environmental issues raised by John Ewing and Thomas Kenyon, the HRA has done nothing in the five years since 1999 to confront and resolve the obstacles that contaminated sites in the project area pose to the proposed redevelopment. Not even the preliminary soil testing referred to in Mr. Ewing's question has been carried out. In fact, the HRA, in revising the Plan in 2003, completely ignored Mr. Ewing's and Mr. Kenyon's observations and did nothing to deal with the environmental issues, merely copying the two tables and the above-cited quotes from pages 6, 10 and 11 of the 1998 Plan, word-for word, into the 2003 Plan (they appear at pages 9 and 10 of the 2003 Plan), and showing so little interest in this critical matter that it failed to perform even the simplest updating by checking the DEP's website, which would have revealed the fact that two of the sites that were included in the 1998 Areas of Concern list today appear on the DEP's website in the more serious category of Sites with On-Site Source(s) of Contamination.
It should also be noted that, initially at least, the HRA was not unaware of the necessity of resolving outstanding environmental issues in the project. Although, as discussed above, the 1998 Plan did not provide any program for dealing with these issues, the HRA, in its early years, approached the matter by incorporating a workable method for investigation and remediation of contamination in its redeveloper agreements (these are the contracts between the HRA and the individual redevelopers).

On July 10, 2000, the HRA entered into a Redeveloper Agreement with Harrison Commons, Inc. ("HCI") for the redevelopment of Blocks 99 and 100 in the Town. On August 28, 2000, the HRA entered into a similar agreement with HCI with respect to a 12-acre parcel of land encompassing the former Hartz Mountain property. On December 11, 2000, the HRA entered into another similar agreement with respect to Blocks 114A, 115 and 116. These three agreements cover major properties at the heart of the project area. Each of these three agreements entered into by the HRA contains an identical Paragraph 2.05, which requires the redeveloper to conduct an environmental assessment of the property, and to enter into a Memorandum of Agreement with the "...NJDEP for the purpose of completing the required investigation and remediation and obtaining a No Further Action letter from the NJDEP upon completion of the remediation."

Despite the passage of more than three years since the signing of these three redeveloper agreements, no environmental assessments of the sites have been carried out and no agreements have been entered into with the DEP. Thus, the HRA appears to be unwilling to enforce, or is incapable of enforcing, the contractual obligations of its redeveloper, even though the agreements cover sites that the HRA itself has identified (in the two tables contained in the Plan) as having confirmed discharges and as being areas of environmental concern.

As a matter of public policy and the fundamental rights of property owners in the free-enterprise system known as the United States, the HRA cannot be permitted to use its extraordinary, coercive power of condemnation to acquire a property owned by one private party for conveyance to another private party for redevelopment, without first (a) obtaining minimal assurance (based on actual study and analysis) that pollution problems on the property can be cleared up and that the costs of remediation will not be so high as to make financing of the redevelopment impossible, and (b) in the case of a New Jersey property, with its active State environmental agency, obtaining a Memorandum of Agreement with the NJDEP. Without first completing steps (a) and (b), there can be no assurance that the condemned property can ever be redeveloped, and it is the actual carrying out of the redevelopment which gives the condemnation its public purpose and thus is the sole justification under our system for declaring the condemnation legal and Constitutional.

The HRA's failure to require prior underlying study and analysis of environmental remediation and its related costs, and its failure to enforce its own requirement that the redevelopers obtain prior written consent from the DEP for an agreed-upon program of investigation and remediation, constitutes a breakdown of fundamental planning procedure and basic common sense so egregious that, when taken together with the failures described in the other parts of this Petition, warrants the granting of the Harrison Community Coalition's petition to disband the HRA.

D. Local Finance Board Member M. Claire French: concerns about expertise on the Agency

> *Summary: The Town has failed to honor its commitments to appoint an agency and executive director with the necessary independence and expertise, and the HRA has shown itself incapable of professionally addressing the issues facing it.*

At the February 10, 1999 hearing, M. Claire French, another Member of the Local Finance Board, expressed concern about the HRA being able to mobilize the necessary expertise to carry out its mission. Ms. French (who, along with Mr. Kenyon, had inspected the project area) is the former Mayor of Wall Township, served for ten years as Chair of the Monmouth County Improvement Authority, and is the County Clerk of Monmouth County.

Ms. French asked Mr. Castano:

> "On the makeup of the Authority, who would it be, and how would the Town decide who it would be? You are trying to reach out for expertise." (Transcript, page 18, lines 19-21).

Mr. Castano responded, with repsect to the HRA members, that:

> "...this would be seven of them, and it would be people who are either leaders in the community or in surrounding communities...who would be focused only on the redevelopment process. They would not be involved in any of the other aspects of local government.... And so you would have seven people energized for this particular purpose." (Transcript, page 19, lines 7-17).

At the January 13, 1999 hearing, Mr. Castano had stated that the creation of a redevelopment agency for Harrison was necessary because

> "we need the benefit, also, of all the people that will be appointed to the agency that will be additional expertise that we now don't have and will have as a result of it." (Transcript, page 6, lines 16-19).

At the same hearing, Peter Higgins (a former Harrison Councilman, and today Chair of the HRA) stated:

> "More to Mr. Kenyon's comments about the magnitude of this project, we felt that the agency, as opposed to the mayor and council...would allow us to...take on a redevelopment of this magnitude, which is clearly beyond–over and above the expertise that's available to the governing body right now." (Transcript, page 23, lines 4-13).

In his February 10, 1999 presentation to the Local Finance Board, Mr. Castano stated that the HRA would be

> "not so much a financial instrument as it is a management tool. It will give us the ability to have advisors and people...with the sophistication that we need, which doesn't exist on the governing body itself. People who are focused on this particular area." (Transcript, page 12, line 21-25 and page 13, line 1).

And he also stated "that you have an agency made up of people who are going to manage it." (Transcript, page 20, line 19-20).

Despite Mr. Castano's and Mr. Higgins's commitments, the Mayor and Town Council of Harrison have not reached out to community leaders with relevant expertise, either in Harrison, or in surrounding communities, in appointing members of the Harrison Redevelopment Agency. And they have failed to honor Mr. Castano's promise that there would be an independent board which would "not be involved in any other aspects of local government." The seven members of the Redevelopment Agency are:

> 1. Raymond J. McDonough, Mayor of Harrison, also an employee of the Passaic Valley Sewerage Authority.

2. Thomas Powell, who works in Harrison Town Hall as coordinator of the Town's Neighborhood Preservation Program, and also is a Commissioner of the Passaic Valley Sewerage Authority.

3. Peter B.Higgins, III, a former member of the Harrison Town Council, and Secretary to the Town's Board of Education.

4. James Fife, formerly a teacher in the Harrison school system and former Principal of Harrison High School. At present Mr. Fife is employed by Harrison Realty, which is owned by Harrison Council Member James Doran.

5. Anthony Comprelli, Harrison Town Historian and Assistant Superintendent of Harrison Public Schools.

6. Rodrigo Marques, former President of the Portuguese-American Club Harrison (Centro Romeu Cascases). Mr. Marques is self-employed as a tailor in Morristown.

7. Robert Garrison, an official of the Laborers International Union, and formerly a candidate for the Harrison Town Council in the Third Ward.

It should be noted that the following two persons should be disqualified from serving on the board of the HRA, for the following reasons:

a. Mr. Fife's presence on the Agency constitutes a conflict of interest, since Harrison Realty, a real estate brokerage firm where he is employed, and which is owned by Harrison Councilman James Doran, has announced that it is handling resales of parcels in the Waterfront Redevelopment Area.

b. Mr. Marques, a respected leader in the Harrison Portuguese-American community, nevertheless has a very limited command of English, cannot comprehend substantive discussions or documentation dealing with the redevelopment process, and has been unable to participate in a meaningful way in the deliberations of the Agency.

Three HRA members (McDonough, Powell and Comprelli) are officers or employees of the Town, and two HRA members (Higgins and Comprelli) are "involved in other aspects of local government" (i.e., the Board of Education) and therefore imputed to be Town employees. Thus, four of the seven members are presently members of the local government, despite Mr. Castano's 1999 pledge to the Local Finance Board that none would be.

Further, the HRA presently is not, and in the past has not been, legally constituted, because:

(a) the relevant New Jersey state statute [N.J.S.A. 40A:12A-11. Creation of municipal redevelopment agency] provides that "No more than two commissioners shall be officers or employees of the municipality"; and

(b) the 1999 Harrison ordinance creating the HRA stipulates that "No more than two commissioners shall be officers or employees of the Town of Harrison."

Thus, all resolutions adopted by, and actions of, the HRA to date are null and void.

Of the remaining three HRA members, one (Fife) should be disqualified by reason of conflict of interest, and another (Marques) does not have the capacity to participate significantly in the Agency's activities, because of lack of relevant background and a severe language barrier. It should also be noted that Mr. Marques's and Mr. Garrison's seats on the HRA were previously occupied by John Pinho and Maureen Vaskis, both of whom are former Harrison Town Attorneys, and that the original appointee to Mr. Comprelli's seat was Joan Michaelson, the Chair of the Harrison Planning Board (although Ms. Michaelson withdrew from the HRA before taking her seat) . The fact that Pinho, Vaskis and Fife are former Town employees, that Garrison is a former Town Council candidate (and that Garrison's brother Gary works for the Harrison Police Department), and that Michaelson chaired the Town's Planning Board means that their appointments to the HRA do not comply with the spirit of Mr. Castano's 1999 pledge to make appointments of independent persons with relevant expertise who come from outside the limited circle of the local political establishment.

Mr. Castano's eloquent presentation, in 1999, succeeded in convincing the Local Finance Board to authorize the formation of an independent, separate Harrison Redevelopment Agency, even though (as is the case in many other New Jersey municipalities) redevelopment activities could legally be carried out by the existing Town government. As quoted above, Mr. Castano employed the following operative words and phrases to describe the qualities that would make the Agency and its board members different from, and superior to, the regular Town government in carrying out a large redevelopment program:

- the independent Agency would serve as a "management tool"
- the Agency members would be "advisors"
- they would bring "sophistication" to the process
- "all the people that will be appointed to the agency that will [have] additional expertise that we now don't have and will have as a result of it"
- the agency members would be "focused "
- there would be "an agency made up of people who are going to manage it"
- they would be "leaders in the community or in surrounding communities" and not be "involved in any other aspects of local government"
- they would be "seven people energized"

It is abundantly clear that in the five years since the creation of the Harrison Redevelopment Agency, the Harrison governing body has failed to abide by the commitment to appoint HRA members who meet Mr. Castano's voluntarily-adopted standards of independence, expertise, focus and leadership. **Further, because more than the permitted number of Town officers and employees have been on the HRA board since its inception in 1999, all of the resolutions adopted by the Agency are void and invalid.**

It might be hoped that the leadership deficiencies described above could have been corrected by the appointment of a knowledgeable, experienced executive director with the necessary expertise to head the Agency and lead the Town's efforts in the complex and risky redevelopment process for the massive, 275-acre Waterfront project.

Indeed, the critical need for expertise in the position of executive director had been agreed to at the February 10, 1999 hearing. Claire French said to Mr. Castano: "You are trying to reach out for expertise." (Transcript, page 18, line 21). Mr. Castano responded: "As far as expertise, depending on the area of expertise, I am sure that the agency will have to rely on consultants from time to time. (Transcript, page 19, lines 20-22). This statement was immediately amplified by Dennis Enright of the Hudson County Improvement Authority, who was speaking on behalf of Harrison's application, and who stated:

> "And also they are hiring an executive director, which will provide the leadership that they need to deal with developers...." (Transcript, page 19, lines 23-25).

Unfortunately, despite this indication that the Agency would be relying on an executive director with the necessary expertise, the Town's failure to appoint HRA board members on the basis of independence, expertise, focus and leadership has been compounded by the selection of Mayor McDonough's brother-in-law, Gregory F. Kowalski, as the Executive Director of the Agency. Mr. Kowalski, who works as an appeals attorney for the Hudson County Welfare Department office in Harrison, has brought no relevant experience in development or related areas to his position. The sole element in his background that appears to have underlain his selection to this crucial position is that his sister Constance is married to the Mayor.

The result of these doleful exercises in nepotism, patronage and inbreeding in the selection of the Agency's membership and executive director is not simply to make Harrison appear like a tawdry throwback to the corrupt Hudson County political machines of sixty or eighty years ago. The result is much more serious and consequential. It means that in the five years since its formation, the Agency has failed even to begin to seriously examine, plan for and prepare a workable and integrated program for the 275-acre Waterfront project that deals with the basic underlying issues of economic and market feasibility; financing; provision of an expanded street network with the capacity to handle increased volumes of vehicular traffic; water supply and sewage treatment; flood control; environmental remediation; relocation of existing utility lines and provision of adequate new utility services; availability of insurance; provision of schools and other necessary public facilities; and required approvals by regulatory agencies, all of which must be addressed and resolved before any redevelopment, public or private, can proceed. The Agency, in its naivete, seems to believe that simply designating redevelopers for various blocks of land, without doing any additional planning for a program which, according to the 2003 Plan, is to build over 7,000 new units of housing (in a municipality that currently has only about 4,700 units), in addition to over 3,500,000 square feet of new office space, over 1,200,000 square feet of new retail space, and a 25,000-seat soccer stadium, will miraculously result in the creation of an enormous but smoothly-functioning new metropolitan center.

The real problem with having no background at all in the complex and stress-ridden field of development and redevelopment is that the participants don't even know what questions to start asking. The Town and Agency officials have latched onto their consultant's 2003 revision of the

1998 Redevelopment Plan, an attractive booklet which creates a fantasy that an old, working-class town can somehow morph into a Beverly Hills East, and has most of its pages taken up with designer graphics, engaging photographs of places other than Harrison, catchy but inane category headings (*Progression, Future, Trend setting, Character, Expressions, Urban Forest, Balance),* imaginative drawings, a tautological description of signage standards ("Signage that enhances the presence of the various uses along these streets will be encouraged and will incorporate innovative and dynamic signage." 2003 Plan, page 49), endorsements of specific suppliers ("The recommended manufacturer is Architectural Area Lighting" - page 52), prescriptions for sidewalk pavement colors, tree species, public statuary, etc., not at all realizing that all this is just the froth, and that the expensive, time-consuming, hard, unglamorous work of road capacity analysis, street design, underground and overhead utility planning and design, site and soil evaluation, engineering studies and drawings, budgeting and market studies, and regulatory agency approvals must be undertaken and completed, and financing must be arranged, before a project of this magnitude can commence. If all the requisite analyses and arrangements are not completed beforehand, and parts of the project were somehow permitted to commence willy-nilly, the result will inevitably be disorganization, unconnected pieces, growing traffic strangulation, unintended financial and other consequences, and the certainty of increasing chaos in a small and vulnerable community that cannot afford to be whipsawed in this way.

The Harrison Mayor and Town Council, when confronted with their hopelessly inept performance in designating the Agency's membership and executive director, will no doubt argue that patronage and the selection of politically-connected persons to appointive positions is a common and long-standing practice in Hudson County, and that the appointments they made to the HRA should be viewed in the light of everyday practice. The answer to that is that the Local Finance Board's 1999 granting of permission to create the HRA was not an everyday act, and its approval was not pre-ordained and automatic; it was the result of a considered judgment made by the Local Finance Board's members after thoughtfully evaluating the Town's extensive submission of written evidence and its oral presentations. This granting of permission was a discrete act of special approval, by an agency specially created by the Legislature.

The members of this specially-created agency, the Local Finance Board, were within their prerogative when they asked probing questions about the makeup and staffing of the redevelopment agency, and the Town's representatives, Mr. Castano and Mr. Higgins, then and now the principal decision-makers and spokespersons for the HRA, in an open public hearing, voluntarily made specific commitments about the Agency's makeup and staffing. Shortly after obtaining the Local Finance Board's approval, the Harrison Town Council, in adopting the local ordinance creating the HRA, specifically endorsed those commitments (and complied with State law) by providing, in that ordinance, that no more than two members of the HRA could be Town officers or employees. The Mayor and Council, starting immediately afterwards, and ever since, have flagrantly transgressed the spirit of the commitments to the Local Finance Board, and they have illegally violated the specific provisions of State law and their own ordinance. The fact that this illegality has rendered null and void all of the resolutions and actions taken by the HRA in the past five years is bad enough. The selection of Agency members and executive director who lack the promised independence and expertise is worse, because it means that the really important questions never get asked. This heedless group of persons who are in charge of the Town, who for years have been unable to put their own financial house in order, and in

consequence have already seen the Town placed under the close fiscal supervision of the Department of Community Affairs, cannot be permitted to compound the Town's problems and continue to waste the taxpayers' money in a directionless and futile attempt to carry out a massively-misconceived urban renewal project that will be a financial and land use disaster if it proceeds.

The Local Finance Board must order the dissolution of the Harrison Redevelopment Agency.

E. Local Finance Board Member Claire French: concerns about progress reports, community dialogue and local support

> *Summary: The HRA has failed to produce required annual reports, and has failed to engage in a dialogue with local residents or to work to develop local support.*

At the end of the February 10, 1999 hearing, Claire French made a motion, with conditions, that the Harrison application be approved. The motion was adopted, and thus authority to form the HRA was granted.

Ms. French's motion was as follows:

> "I would like to move this application. When I came in here today, I was not convinced of it. But Mr. Castano, you--I have confidence in you and your judgment. And I would like to move the approval subject to each year you giving us a progress report so that we can see what steps you've taken, how much of a dialogue you've had with the community so that we feel comfortable that the community is truly behind you. As many public hearings as you can have. And certainly it's a public process, and I believe Sunshine Rule applies to them also." [Mr. Castano answered the last question with "Yes."] (Transcript, page 22, lines 15-25, and page 23, lines 1-2).

Despite the fact that these conditions were contained in the motion that authorized the formation of the HRA, and that the formal Resolution adopted by the Local Finance Board stated:

> "BE IT FURTHER RESOLVED that the Town of Harrison is hereby required, by the Local Finance Board, to submit an annual progress report to the Board detailing the status of all agency projects...." ,

the requirement concerning meaningful annual reporting has not been complied with. There have been no public hearings, there has been no dialogue at all with the community, and the Agency does not solicit the opinions or participation of community residents. In fact, at meetings of the HRA, members of the public are not even permitted to raise their hands and address the Agency or comment, a form of censorship almost unheard of in public institutions in the United States of America. Further, long-time local property owners who want to upgrade and develop their own properties, with their own private funds, are cursorily dismissed.

Ms. French had first expressed her desire to receive assurances about genuine public support for the redevelopment project and its attendant costs at the initial hearing held by the Local Finance Board on December 9, 1998. At the next hearing, on January 13, 1999, Mr. Castano said he was providing an answer to the

> "question as to whether there was support from the local taxpayers...where the town pledged its financial support for the debt coming well into the future. And there was a public hearing on that, and there was absolutely no opposition to it. (Transcript, page 7, lines 2-3, and page 8, lines 11-14).

Mr. Castano's assertion that there had been "absolutely no opposition" is misleading, because the substantial financial risks associated with taking on of that debt had not been disclosed to the Town citizens at the 1998 public hearing. These risks, inherent in a redevelopment program that relies on public-agency condemnation of huge quantities of environmentally-questionable land, without the availability of public funding, are discussed in detail in Section L. below (pages 27-29).

The failure of Town officials and their consultants to present the relevant issues of public financial risk at the 1998 public hearing show that, even before creation of the HRA, the Town was not employing the public hearing process to clarify issues for the public and to present citizens with the real alternatives that would enable them to make informed decisions, a process which could in fact engender the knowledgeable, genuine, meaningful public support for the redevelopment program that Ms. French's was seeking. In not holding public hearings since the time of its formation, and in silencing the public at Agency meetings, the HRA has failed to comply with the conditions that Ms. French inserted in the resolution that authorized the Agency's very formation. This conduct warrants a conclusion that the leaders of the Agency are at best seriously neglectful, and at worst in bad faith.

By dishonoring the enabling resolution that authorized its founding, the Agency has acted in a way that would make it reasonable to assert that these defaults alone technically invalidate the legal existence of the HRA. When these defaults are viewed in conjunction with the substantive and organizational failures and deficiencies discussed in this Petition, and the serious harm that would ensue for the Town if the project fails, the conclusion that must inevitably be drawn is that, in order to vindicate the public good, the Harrison Redevelopment Agency should be dissolved.

Part II. Additional Defects in the Waterfront Redevelopment Plan

In addition to the issues raised at the 1999 hearings by the Local Finance Board, which were discussed above in Sections A. through E., other defects in Harrison's Waterfront Development Plan and program are examined in Sections F. through O. below.

F. Failure to Provide for the Vehicular Traffic to be Generated by the Project

Summary: The Redevelopment Plan will result in intolerable traffic congestion, and the Plan and the HRA cannot produce any measures for coping with it.

The 2003 Plan is critically defective in that it does not contain any analysis of the vehicular traffic to be generated by the planned construction of over 7,000 units of housing, 3,500,000 square feet of office space, 1,200,000 square feet of retail space, and a 25,000-seat stadium. Even without a formal analysis, however, it is obvious even to a lay person that this great increase in traffic volumes will place an enormous strain on the Town's century-old street system.

In fact, the Harrison Community Coalition's traffic consultant has studied the Plan, and has calculated that an additional eight feeder lanes into the Project area will be needed to handle the increased traffic volumes. The Plan does not provide for any additional feeder lanes, and, because of the constricted nature of the project area, surrounded as it is by a river and by built-up urban areas, it would be very difficult, and extremely costly, to provide additional vehicle-carrying capacity.

Consequently, the carrying out of the Plan will create intolerable traffic jams within the project area, and these will spill over into other parts of the Town and across the bridges into Newark. Our traffic consultant's analysis is that the traffic volumes will be so immense that they will even create serious congestion on the nearby portions of Interstate 280, and then spread from the expressway down the ramps at the Harrison exits, and onto local streets.

The temerity of the HRA and its Plan in proposing massive amounts of new development, while not dealing at all with the inevitable traffic overload it will generate, is no doubt the most serious, the most fundamental, but also the most easily understandable defect of a program and a Plan that are riddled with defects.

While the 2003 Plan makes no mention of increases in traffic volumes and how to deal with them, it does contain an acknowledgment of the need to "facilitate circulation and increase roadway efficiency in the Area" (page 21) and provides on the same page a map entitled "Key Circulation Proposals." The map proposes a revised street system for the area, and also shows:

(i) a new bridge across the Passaic River to Newark, at a location east of the Jackson Street bridge. The Plan shows this bridge merely as an oblong shape on the map, but then enticingly states (page 25) that the bridge "has the potential to become a focal point and a signature design element that would be associated with Harrison."

(ii) a new interchange with Interstate 280, east of Fifth Street. The Plan envisions a huge facility, stating (at page 25) that this will be a "structure, which would extend approximately 350 feet...south across I-280, the NJ Transit Morris & Essex line, and the five track Amtrak/NJ Transit/ PATH right-of-way."

(iii) another new interchange with Interstate 280 from a proposed extension of First Street north of Harrison Avenue. The Plan contains no discussion of this proposed

interchange; it is simply shown as a circular shape on the map and designated "Extension of First Street & Construction of 280 Interchange."

Preparing this map, however, with its conceptual renderings of geometric shapes to symbolize major improvements, is as far as the HRA has gone. The Plan (at page 21) does state that:

> "It is recognized that, due to unknown environmental, topographical or physical constraints, it may be difficult to construct portions of the roadway infrastructure."

Obviously, the role of a redevelopment agency, before it begins incurring the financial risks and public commitments associated with acquiring property under a redevelopment plan, is to perform a thorough engineering study of the project area and identify the locations where these "unknown environmental, topographical or physical constraints" exist, and then to develop a workable program for dealing with them. The failure of the Plan or the Agency to perform these necessary tasks, or even to mention carrying them out, constitutes another critical defect in the Plan. However, this failure is overshadowed by the Plan's lack of any discussion at all of how to obtain approvals and money for the multi-million dollar costs of the new bridge to Newark and the two new Interstate interchanges.

The only possible sources for these major improvements are federal highway funds and State highway funds, and even a cursory inquiry with the relevant agencies will reveal that neither will have money available for years, more realistically decades, given the severe budgetary restraints facing federal domestic, non-entitlement spending programs, and given New Jersey's ongoing budgetary problems. At present, there are numerous fully-approved highway and bridge projects throughout the United States that have been in the pipeline for years, and which cannot be built for lack of funds. There are also extensive and complex federal and State regulations and standards which must be complied with, as well as major environmental studies, reviews and approvals, all of which must first be completed, before any of the three Harrison projects could even get into the pipeline. The HRA has chosen to deal with these daunting hurdles by ignoring them entirely. The 2003 Plan's sole concession to reality is to state (at page 62, repeating the 1998 Plan's statement at page 35) that: "It is also recognized there are limited funding sources [for the 'various public improvements'] which must be factored into any phasing plan."

G. Problems with the Waterfront Redevelopment Project's proposed new street system

> *Summary: The Plan's proposed major revamping of the Project's street system attempts to rely exclusively on private funding, but in reality this program cannot be carried out without public funding, and thus it cannot be carried out at all.*

The 2003 Plan proposes a massive extension, redesign and rebuilding of the street system of the 275-acre Waterfront Redevelopment district.

A major element of this proposal is the introduction of "The Parkway, a north-south connector east of Fifth Street between Interstate 280 and Cape May Street, [which] is intended to alleviate existing traffic problems within the Area...." (2003 Plan, page 21). This road, which is shown

schematically on the maps in the 2003 Plan, would connect with the new I-280 interchange described in Section F. (ii) above and with the new bridge to Newark described in Section F.(i) above. Most of this Parkway connector is located outside the Project boundaries, and runs through the middle of existing buildings, but the Plan contains no proposal for funding the acquisition of right-of-way or the construction of the roadway. It thus constitutes, like the new I-280 interchange and the new bridge to Newark that it is supposed to link, a wish-list item, not a real-world subject for actual planning and implementation.

Another element of the new street system design is a proposed Fifth Street Extension, which is likewise located outside the Project boundaries. "Two lanes in each direction between Sussex Street and the extension of Railroad Avenue will be provided." (2003 Plan, page 23). The Plan contains no indication of how funding will be obtained for construction of the roadway or (if it is required) acquisition of land to widen the street for the four-lane right-of-way.

The 2003 Plan also contains plans for major street improvements within the 275-acre Project area's boundaries, including (i) a new road, designated the Waterfront Boulevard, running south from Harrison Avenue along the First Street right-of-way, then bearing southeast following the curve of the Passaic River, then crossing Rodgers Boulevard and continuing to the east along the Cape May Street right-of-way; (ii) two Concourses, each with a 90-foot right-of-way; and (iii) a revised street grid. The Plan states that "Streets will contain one travel lane and one parking lane in each direction, as well as wide sidewalks." (2003 Plan, page 21).

If it is to materialize, the Waterfront Boulevard will require the dedication of new right-of-way through properties presently used for private, non-road purposes. The two Concourses and much of the revised street network will require street widening, using land to be contributed by the adjacent redeveloper of each section of the street. The private redevelopers will also have to contribute all street construction and reconstruction work, as there are no public funds available for this purpose.

Attempting to build a road network of this size and complexity in a piecemeal manner, without any government funding and relying entirely on the in-kind contributions of private redevelopers, is a radical and unprecedented approach, and is almost certainly bound to fail, because it depends on the private redeveloper of each block completing, in a timely manner, his portion of the adjoining street widening and improvements. If the developer of even one block runs out of money, or isn't ready to proceed because of weak market conditions, the benefit of the widened street, even if all the other developers along that street have completed their work, will not be obtained. This is a principal implication of the point that Thomas Kenyon made when he said "This is a Herculean task...you really don't have direct control." (see Section A. above). Major public initiatives cannot be permitted to proceed if they hang by such a fragile thread.

The 1998 Plan had recognized the truism that a street network cannot be built without a source of funding. In setting forth the phasing under its Development Schedule (page 35), quoted in Section B. above (page 4), the 1998 Plan explicitly acknowledged that funding had first to be secured for the flood control project and the major street improvements before any redevelopment parcels could be acquired, assembled and marketed. However, when the passage

of five years yielded no funding, and thus no infrastructure, the HRA couldn't bring itself to admit that a critical precondition of its program had failed to materialize, and so it tried to hide the reality (from the public and from itself) by the simple, but impermissible, expedient of eliminating any reference to the necessity of first providing for the funding of an improved street system. The Agency accomplished this by entirely deleting, without comment, the 1998 Plan's now-inconvenient phasing schedule when it prepared the Development Schedule section of the 2003 Plan (see page 62 of the 2003 Plan).

As in the case of the never-constructed flood control system (see Section B. above), the Agency's attempt to suppress all mention of a problem will not make the problem go away. This craven approach to inconvenient, but critically-important, facts has become a hallmark of the Agency's approach to its tasks, and justifies the Local Finance Board dissolution of the Agency, before it causes permanent harm to the Town of Harrison.

H. Failure of the HRA to honor its commitment to work with private property owners.

The 1998 Plan gave the HRA the power to condemn property, but then immediately went on to state that "the Town plans, however, to continue working with affected property owners and businesses to promote private redevelopment, where appropriate, of the parcels within the Redevelopment Area." (page 36). Notwithstanding this commitment, Agency and Town officials have insisted on foisting their favored, outside redevelopers on the Town and on the project area, while failing to work with local property owners, ignoring substantial and ongoing expenditures by private owners who have already succeeded in substantially improving their properties, and dismissing proposals by existing private owners to redevelop their properties. The failure by the Town to follow the Plan's mandate to promote local private redevelopment and to permit local property owners to participate in a dialogue and in planning that could result in successful, private-sector urban renewal without the need for heavy-handed, costly and risky governmental intervention, violates the Constitutional rights of the public and of the property owners.

This failure is also short-sighted and foolish, because in the past few years there has been a surge of private-sector investment (both in rehabilitation and new construction) in neighborhoods throughout the area (examples are the Ironbound section of Newark, just across the Passaic River, as well as neighborhoods in Bayonne, Jersey City and South Orange, and, at a somewhat greater distance, large areas of Brooklyn and Queens in New York City) that for decades were viewed by the public and investors alike as hopeless, downwardly-spiraling slums. Harrison's Waterfront Redevelopment Area, afflicted for the past five years with the threat of condemnation, stands in sharp contrast to these other, reviving neighborhoods, because it has been receiving a far lower level of new investment. The cancellation of the ill-conceived Waterfront Redevelopment Plan would unleash a flow of new funds into the district, and, paradoxically, would actually accomplish for the Town what the Plan has repressed.

The one exception to the HRA'a failure to work with local property owners is its designation of Isaac Heller, a long-time local property owner in Harrison, as redeveloper of the triangular-shaped former Hartz Mountain property on the east side of Rodgers Boulevard, south of I-280.

This parcel, which contains a number of older industrial and warehouse buildings (some of which have environmental issues), had been acquired from Hartz Mountain Industries in the late 1990's by Moishe's Movers, a major moving company in New York City, for use as a storage and warehouse facility. However, the HRA and its then-designated redeveloper, Harrison Commons, Inc., harassed Moishe's and prohibited them from renovating and using the property. Moishe's owners complained bitterly about being told by Richard Miller, the principal of Harrison Commons, Inc., what they could and couldn't do with their own property, when Mr. Miller was not a government official and had not invested a penny in the property. After several frustrating years, Moishe's gave up and sold the property to Mr. Heller. Fortunately, the market had risen in the interim, and Moishe's owners made a profit from the sale; otherwise, the Town probably would have been sued by them for the harassment.

The Harrison Community Coalition certainly has no objection to Mr. Heller developing his own property. This is a commendable instance of a wealthy property owner improving his own property with his own funds, and without any need for condemnation or the threat of condemnation by a governmental agency. This property also does not need any public street improvements or other public funding. As a result, there is also no need for the involvement of a redevelopment agency. Mr. Heller, having voluntarily invested millions of dollars in the acquisition of this property, would have more than sufficient motivation to care for, fix up and use his property, even if the Harrison Redevelopment Agency didn't exist. The Town's regular zoning and land use regulations, its Planning Board and its building inspector, as well as the DEP, have the jurisdiction and the expertise to appropriately guide Mr. Heller's improvements and to protect, where necessary, the public interest. The recent history of this property testifies to the fact that, as in almost every other sector of the dynamic economy of the United States, the free-enterprise private sector is quite capable of caring for, using and developing private property. The Harrison Waterfront area is already being improved and renovated by its existing private owners, without unwanted, unnecessary and counterproductive governmental involvement.

I. Flawed Market Study

> *Summary: The HRA's market study is technically deficient, and even on its own terms is not capable of justifying either the office component or the residential component of the Plan.*

The HRA's proposals for redevelopment in the 1998 Plan were supported by a market study prepared by a consultant known as Real Estate Strategies, Inc. ("RES"). No update of this market study, nor any new study, was prepared in conjunction with the 2003 revision of the Plan. Accordingly, the RES study remains the only backup for the contention that the HRA's redevelopment proposals will have economic viability. However, the Harrison Community Coalition's economic consultant will demonstrate that the assumptions and methods used in the RES study deviate from standard practice and are invalid.

The RES study does not support the residential component of the Plan. The RES study acknowledges that rents for the proposed high-end apartments in the Waterfront project area of

Harrison will have to be cheaper than the rents along the Hudson River waterfront in the Jersey City - Hoboken corridor, but the study is critically defective in that it fails to provide any estimate of the rents that could be attained in Harrison. Without such estimates, the RES study was unable to test the economic feasibility of the proposed residential developments, making the market study worthless for the purpose of evaluating the marketability of the new residential rental buildings.

The RES study estimated a very low rate of absorption for the new residential units in the Redevelopment area, meaning that, on the RES study's own numbers, the residential component of the Plan could not be completed for 60 years. This is not a realistic timeframe for planning, and invalidates the residential component of the Plan as an acceptable basis for public policy and public action. In fact, this timeframe is so long that the obvious conclusion to be drawn is that the market for the proposed housing is insufficient, and that any attempt to carry out the residential component of the Plan will be an economic failure.

The RES study asserts that, based on existing patterns of home ownership versus rentals, 40% of the proposed residential units in the redevelopment area would be ownership units (i.e., condominiums). However, the RES study presents no analysis of the residential sales market. The absence of such an analysis means that the study is critically defective with respect to sales housing in that it is missing a necessary component that any professionally-adequate market study must contain under prevailing industry standards.

With respect to the office component of the RES study, RES's own estimate is that there would be demand for only about 35,000 square feet of office space per year. Based on the total build-out projected under the Plan for the redevelopment area, the office component would not be completed in less than 100 years. Even more than in the case of the 60-year build-out time for the residential component, discussed above, this does not constitute a realistic timeframe for planning, and in fact leads to the conclusion that the market for the proposed office buildings is insufficient, and that any attempt to carry out the office component of the Plan is doomed to be an economic failure. Further, the RES study contains no estimate of office rents. The absence of such estimates means that no feasibility analysis of the proposed office developments (in which consideration is given to whether the projected rent stream is sufficient to cover development costs) could be prepared. The absence of a feasibility analysis means that the RES study fails to comply with minimum industry standards for market studies, and makes the RES study critically defective with respect to the office component of the Plan.

In conclusion, the RES study did not employ appropriate methodology in arriving at estimates of market demand, and the study's own data lead to the conclusion that both the residential and the office components of the Plan are unworkable in economic terms. Accordingly, Harrison officials, in considering and then adopting the Plan, had no basis at all for assuring themselves or the public that the Plan will have even theoretical economic viability, and the adoption of the Plan under such circumstances was arbitrary and capricious and violative of the rights of affected landowners and the citizens of Harrison.

J. The Waterfront Redevelopment Plan violates the civil rights of local residents and workers

Summary: the Plan fails to address the serious disruptions that its effectuation would cause to individuals in the Town's sizeable Spanish-speaking and Portuguese-speaking immigrant communities; these disruptions violate their federal and State civil rights.

The Plan violates the civil rights of the sizeable number of Spanish-speaking and Portuguese-speaking residents and workers in the area. Although the Plan claims that the Waterfront Redevelopment Area is blighted (the new statutory euphemism is "in need of redevelopment"), in fact it is not blighted. It may not be beautiful, but it is an economically viable and healthy area that is used primarily for manufacturing, distribution and warehousing, and provides affordable space for small and medium-size local businesses and jobs for the Town's largely blue-collar work force.

In 1997, nearly 2,000 of the Town's 2,700 jobs were in the manufacturing and distribution sectors, and the great majority of these blue-collar jobs, and the small businesses that employ them, are in the Waterfront Redevelopment Area.

The Plan's proposal to replace these existing uses with new uses will eliminate many small local businesses, as well as hundreds of blue-collar jobs.

Much of the Town's population and resident work force are recent immigrants who are of Hispanic and Portuguese background. Many of these people work in the Redevelopment area. These people, as well as other recent immigrants, are the backbone of the community. They work hard, discipline their children, keep their streets and homes neat and clean, emphasize family life and community closeness, support their elderly parents, focus on improved education for their children, don't commit crimes, stay off welfare, and invest in their homes. They have already done a great deal to reverse the decades of decline in the residential neighborhoods of Harrison. They are the epitome of the American dream. Despite their high productivity as workers, if they are displaced from their present jobs by the redevelopment program, their limited language skills in English will preclude them from filling the new jobs at the law offices, accounting firms, consulting firms, etc. which will occupy the proposed new office buildings.

The 1998 Plan stated, at page 2, that one of its purposes is that "the Plan will accommodate desired social change." This policy statement was repeated at page 5 of the 2003 Plan. However, by eliminating large numbers of jobs held by recent immigrants of Hispanic and Portuguese background, and then by not providing for replacement jobs, the Plan will create harmful rather than desired social change, and will, in a discriminatory manner, cause injury to those who are the most vulnerable.

The 1998 Plan, at page 2 (page 5 of the 2003 Plan) also states that redevelopment will provide "increased employment and entrepreneurial opportunities." However, these opportunities will flow primarily to outsiders, most of whom will be middle-class and upper-middle-class persons from New York City and from suburban areas. The opportunities will not benefit the existing Spanish-speaking and Portuguese-speaking work force. The effectuation of the Plan will also

have an adverse economic impact on local business owners, by disrupting the existing pool of blue-collar workers.

In reviewing and then adopting the Plan, Town officials did not engage in any dialogue with representatives of the Town's Spanish-speaking and Portuguese-speaking communities, and they gave no consideration to the economically and socially discriminatory effects of the displacement of numerous small businesses and hundreds of minority workers of ethnic background and of other resident blue-collar workers, with no provision for their being re-employed locally.

The failure by Town officials to consider the negative effects of the displacement, by government action, of numerous small local businesses and of recent immigrants of Hispanic and Portuguese background is unfair and undemocratic. It discriminates against them and violates their legal and Constitutional rights.

K. The HRA has failed to enforce its own regulations concerning submissions by prospective redevelopers, and has failed to examine the qualifications of prospective redevelopers

(1) Page 41 of the 1998 Plan states that:

> "Applicants for designation as a redeveloper must submit the following materials to the Mayor and Council and/or the Redevelopment Agency for review and approval.
> -Documentation evidencing financial responsibility and capability with respect to the proposed development;
> ...
> -Estimated total development cost;
> -Fiscal impact analysis addressing the effect of the proposed project on municipal services and tax base;
> -Conceptual plans and elevations sufficient in scope to demonstrate the design, architectural concepts, parking, traffic circulation, landscaping, active and/or passive recreation space,and sign proposals for all uses.

Although it began designating redevelopers for the Waterfront Redevelopment project in 2000, the HRA has not enforced its own regulations and has not required submission of the above documentation, and none has been submitted by the redevelopers. In creating a requirement for submission by each prospective redeveloper of proof of financial responsibility and capability, and for approval by the HRA of that submission, the 1998 Plan highlighted the importance of obtaining a satisfactory initial, general showing that an applicant has sufficient financial capability to warrant being designated as a redeveloper, before entering into negotiations with that applicant on the terms of a specific redeveloper agreement.

Similarly, the Plan's requirement for submission of a fiscal impact analysis dealing with the impact of each proposed project on demands for municipal services and on the municipal tax base highlighted the importance of specifying and understanding all of the costs, as well as the potential benefits and detriments to the Town, of a development, before authorizing the start of

that development. In Harrison, this question is of particular importance in the case of public schools, given the chronic severe overcrowding and underfunding of the Town's school system.

The authors of the Plan voluntarily, and wisely, created these submission and review requirements, but the Agency inexplicably has failed to enforce them. The Agency then strayed even further from its responsibilities and completely deleted these requirements when it adopted a revision of the Plan in 2003. The HRA's elimination of this important submission requirement when it redrafted the Plan, like its elimination in the 2003 redraft of the acknowledgment of the necessity of first installing key infrastructure elements (discussed in Section B and in Section G. above), shows that the Agency has failed to properly perform its role and to enforce its own rules and policies.

(2) The HRA has also failed to require submissions concerning, and to evaluate, the moral character and the relevant work history and prior development and construction experience of prospective developers, in order to be able to assure the public and itself that the applicant has the necessary ethical standards, training and professional credentials to justify being entrusted with carrying out the project the applicant is proposing. In this connection, it should be noted that one of the HRA's designated redevelopers, Harrison Commons, Inc., has appeared at an Agency meeting with representatives of the Applied Companies of Hoboken, stating that Applied was its co-venturer. Since the time of that appearance, the principal of Applied, Joseph Barry, has come under federal indictment for bribery of the Hudson County Executive, but the HRA has done nothing to inquire into the role of Applied and its principal in the Harrison project, nor has it sought to determine whether or not it would be in the public interest for the Agency to insist that Harrison Commons, Inc., terminate Applied's participation in the Waterfront Redevelopment Project.

In addition, in order to effectively evaluate the financial, moral and professional qualifications of prospective redevelopers, the HRA must also evaluate the financial, moral and professional qualifications of the principals of these applicants. The actual applicant for designation as a redeveloper is almost always a shell corporation or other entity without significant assets, and thus the HRA's review of qualifications will not be meaningful if there is not a simultaneous review of the backgrounds of the officers, directors, partners, co-venturers, shareholders and/or other principals and significant participants of the applicant. The above discussion of the problems created by Joseph Barry's recent indictment highlights the problems with which the Agency could be saddled if it doesn't also carefully evaluate these officers, directors, owners, etc.

We contend that the HRA has an independent obligation to the public, whether or not that obligation is included in a redevelopment plan, to impartially examine, and then decide on its approval or disapproval of, the financial qualifications, moral character and relevant work background of each applicant {and its officers, directors, owners, etc.) in connection with proposed redevelopers of land to be publicly condemned, and to examine the impact of a proposed redevelopment on the Town's finances and tax base and on demands for municipal services. The HRA's failure to carry out its obligations unnecessarily puts the Town at additional risk of failed projects, and constitutes another serious shortcoming in the Agency's performance.

(3) From the outset, the HRA has operated under a serious misconception that its role is to recruit and cheerlead for proposed redevelopers, rather than professionally direct and supervise their planning and then impartially evaluate their proposals and their capabilities of carrying out projects. As early as his February 10, 1999 presentation to the Local Finance Board, Gregory Castano spoke of recruiting as Agency members individuals "who would be able to attract developers." (Transcript, page 19, lines 9-10).

This overly-acquiescent approach to developers has led the Agency, over the five years of its existence, to neglect reviewing applicants' credentials [see Section K.(2) above], to fail to insist on required submissions [see Section K.(1) above, and Section O. (1), (2) and(3) below], to fail to require prior proof of the availability of financing [Section M. below] or to demand sureties or performance guarantees [Section O.(4) below], and to improperly delegate governmental functions to designated redevelopers [Section N. below].

The cumulative effect of this growing abdication of the Agency's oversight role can be observed in the revised Waterfront Redevelopment Plan. The original 1998 Plan used the standard method of creating land-use categories (see pages 24-35), different use districts within the Project, and then set objective standards, including parking requirements and setbacks, akin to a municipal zoning ordinance, which in fact is the way in which an urban renewal plan is written and how it operates. The general language, impartiality and objectivity of the usual zoning ordinance or urban renewal plan is what enables it to withstand Constitutional challenges, based on due process or equal protection arguments, from disgruntled citizens or property owners.

The 2003 Plan revision reflects the dominance that the chosen redevelopers have achieved over the Agency. This revision turns standard procedure on its head, abandoning any attempt at objectivity, actually specifying the names of five designated redevelopers, while at the same time allocating huge swaths of land to several of them, and then presenting an unspecific, public-relations-type description of each developer's current proposal. Vague, unsupervised and unexamined developer proposals of this sort have been the HRA's currency for a long time now, and have been subject to frequent, unilateral changes over the past three years, the changes being presented orally (usually accompanied by an architect's sketches on a display board) at Agency meetings, and not being reviewed at all by the Agency. Obviously, nobody associated with preparation of the 2003 revision gave thought to what the state of the Plan would be if one or more of the designated but undercapitalized developers failed, and was unable to proceed with or complete its redevelopment work.

Even the incorporation of the October, 2003 version of the redevelopers' proposals in the expensive, multicolor booklet issued by the HRA in October, 2003, does not seem to have endowed that printed version with more than transitory substance. The October, 2003 published Plan includes, as a major element, a 2,500-car garage to be developed by Harrison Commons, LLC, located adjacent to, and north of, the PATH station. At the April 19, 2004 HRA meeting, the Agency's new parking consultant announced that this garage has been totally eliminated, and that the Town would itself be developing and owning a 3,500-car garage, southeast of, and at a greater distance from, the PATH station. There was no discussion of how the Town, in its

parlous financial condition, would be able to finance this behemoth of a parking structure, probably costing over $70,000,000.

The conclusion that will be reached by an impartial observer is that there is no center of gravity, no clear policy approach, no knowledge base or reservoir of practical experience within the Agency with which to effectively evaluate the frequent and significant alterations in development proposals that have been presented by the designated redevelopers. Like the phantom "signature" bridge over the Passaic River [see Section F. (i) above, on page 17], concepts like this giant garage float for a time in the Agency's discourse, then radically change, and often disappear. For anyone with even a modicum of development experience, observing the Agency's meetings over the past several years is a painful experience. That this Agency, with its utter lack of professionalism, without financial resources, experience or sense of economic reality, and in the grip of political patronage and favoritism, should be blithely endeavoring to dispose of hundreds of acres of prime urban land that it doesn't own and threatening serious property owners with the loss of their property, is a public menace, unconstitutional, and a disgrace. The Local Finance Board should end this travesty and shut down this Agency before it causes real harm to real people.

L. Risks to public finances when a public agency condemns land for private redevelopers, especially contaminated land

> *Summary: The likelihood that condemnations of land in the Project will lead to large cost overruns, coupled with the danger that in some cases undercapitalized redevelopers will default in paying the overages, would impose these cost overruns on the Town and create a financial peril for a municipality that is already in weak financial condition. The danger is worse yet for contaminated sites, since the environmental cleanup costs could also end up as the Town's responsibility after a redeveloper default.*

If a private owner in a redevelopment project does not accept the amount of money offered by the designated redeveloper for his or her property, the public agency (the HRA in this case) will have to condemn the property, and the final amount to be paid for the land will be determined by the courts under New Jersey law. At the time the condemnation action is commenced, the redeveloper will have to pay into court the amount offered to the landowner, or else the HRA will not initiate the condemnation action. In these contested cases, experience has shown that the property owner almost always obtains a larger award (often a much larger award) than the amount offered by the redeveloper and paid into court at the start of the action. If, at the time the final award is made by the court (often several years after the property is taken by the Agency), the redeveloper is unwilling or unable to pay the additional amount to which the property owner is entitled, this obligation will fall on the HRA, which is the condemning agency, and, since the HRA has no resources, ultimately the obligation will fall on the Town. [Under the New Jersey statute, N.J.S.A. 40A:12A-11, the redevelopment agency is "an instrumentality of the municipality creating it."] The Waterfront Redevelopment Project contains an enormous area of 275 acres, and much of that area consists of very valuable, multi-million-dollar properties, usually owned by sophisticated and well-to-do investors who will employ the best lawyers and

appraisers to make sure they get a maximum award. In practice, this means that the risk of significant unanticipated expenses to the Agency and the Town, as the result of large land acquisition cost overruns, in a project lasting many years, is substantial.

Since the risk of these cost overruns is always present, most New Jersey communities and local redevelopment agencies that condemn land for redevelopment purposes require that the redeveloper deliver, at the start of the condemnation, a surety bond, issued by a financially-sound insurance company, to provide some security for both the condemning agency and the property owner that funds will be available from a reliable, independent source to pay any final, increased court award or negotiated settlement. The HRA has failed to follow common practice and require surety bonds either in the Plan or in the Agency's agreements with its designated redevelopers. This is negligent, and unnecessarily puts the HRA and the Town at risk. This failure to require bonding for increased court awards is also subject to challenge in court by the property owners as violating their Constitutional right to fair and full compensation for the condemned property.

An even greater risk to the Town's finances, however, derives from the fact that the land in the Waterfront Redevelopment Project area was intensively used over a period of many decades for manufacturing by heavy industry. Many of the sites in the Project area have already been identified as containing significant contamination or dangers of contamination (see Section C. above, pages 6-8), and the more-thorough site and soil examinations which will be necessary to comply with DEP requirements prior to redevelopment will undoubtedly reveal additional problems. As has already been discussed in Section C. above, the Agency has failed to enforce its own requirement, set forth in its Redeveloper agreements, that the redeveloper, prior to acquiring land, determine the extent and cost of any required remediation and then enter into a Memorandum of Agreement with the DEP to provide for that remediation. Thus, if the Agency is not deterred by the Local Finance Board from proceeding on its present course, it will soon be condemning major, formerly- industrial properties on behalf of its redevelopers, without any idea of the costs or feasibility of remediation of environmental contamination. After a redeveloper acquires a condemned parcel, the redeveloper will be required to thoroughly investigate and test the parcel's condition and its remediation needs, so that there can be compliance with the requirement for DEP's approval prior to obtaining a building permit. If, when the environmental testing is complete, the redeveloper finds that the costs of remediation are too high to make development of the parcel profitable, the redeveloper, a shell corporation or other entity with few or no assets, will have every motivation to default and disappear, and the Agency (which in reality means the Town) will be left owning the property and liable for the cleanup obligation.

Unfortunately, this negative outcome could well occur even if the redeveloper has accurately determined (and agreed to be responsible for) the costs of remediation, and has entered into a Memorandum of Agreement with the DEP prior to condemnation by the HRA. This is because the mere entering into of an Agreement between the redeveloper and the DEP provides no guarantee that the full remediation program will actually be satisfactorily completed and paid for by the redeveloper. The redeveloper could abandon the remediation process at any time prior to completion, for reasons such as the discovery of additional contaminated soil once the cleanup has begun, unanticipated cost overruns, a market downturn, or unavailability of financing. In any of these cases, the redeveloper, having now decided that it will be unable to profit from the

parcel, may well abandon the property to the Agency, and that means that the Town will ultimately inherit the cleanup obligation. With or without a DEP Memorandum of Agreement, the risk in these situations is inherent, deriving from the fact that the HRA, as an asset-less public agency, will be acting as the condemning agent for under-capitalized redevelopers of dozens of acres of land, in a district where (in a pre-environmentally-conscious age) it was common practice over a period of many years to discharge or bury industrial waste directly into the ground.

These are risks that even a large, wealthy corporation or banking institution would not willingly finance; it would be perilous in the extreme for Harrison, a small, unsophisticated municipality, one which for years has been unable to survive financially without large annual State subsidies under the Aid to Depressed Cities program, to heedlessly blunder into exposing itself and its taxpayers to these massive contingent liabilities. It was exactly to avoid dangers of this sort from arising that the Local Finance Board was created by the Legislature in the 1970's as a watchdog over the financing projects of semi-autonomous municipal agencies, and the Local Finance Board must now act decisively and close down the HRA, to bring an end to the peril.

M. Failure of Redeveloper Agreements to Require Prior Proof of Availability of Financing

> *Summary: The HRA's policies are defective in failing to require redevelopers to make a clear showing of the availability of financing before the agency exercises its power of eminent domain.*

In Section K. (1) above, we have shown that the HRA has failed to enforce its own requirement that applicants for designation as redeveloper make a general showing of financial responsibility and capability, at the time they apply for such designation. It is of even greater importance, when the development is ready to proceed and the redeveloper asks the Agency to condemn private property on its behalf, that the redeveloper clearly demonstrate that it has the necessary funding available for completion of that specific development. This important requirement is not properly addressed by the Agency.

In Paragraph 3.02 of each of the three redeveloper agreements with Harrison Commons described in Section C. above (4th paragraph from the end, on page 8), the HRA requires the redeveloper of each site to use due diligence to obtain firm mortgage commitments to finance the completion of the buildings and other work at the site within 180 days after acquiring title to the site. This Paragraph 3.02 is the only reference in the redeveloper agreements that deals with the issue of the redeveloper making a showing of the availability of financing. As such, it highlights a fatal defect in the HRA's approach.. In order to vindicate the rights of the public and of affected property owners, the redeveloper agreements or some other Agency policy must provide for the redeveloper to make a realistic showing of the availability of financing for the completion of the project prior to the Agency exercising its power of eminent domain.

In requiring a showing of the availability of financing only after (as long as a half year after) condemnation has occurred, the HRA unnecessarily creates the danger that the re-use cannot be financed and completed, thus defeating the public-purpose justification for the public taking of

the property of one private owner for the benefit of another private owner. This arrangement does not pass Constitutional scrutiny.

N. Improper Delegation by HRA of Governmental Authority to Private Parties

> *Summary: The HRA has improperly delegated to private redevelopers the governmental authority to dictate the current owner's use of his property, before the redeveloper has made any move or paid any money to acquire it.*

In at least several instances of which the Harrison Community Coalition is aware, the HRA has, during the five-year period since its creation, told property owners who want to use their own property for uses that are customary in the area, that they cannot use their property unless they first obtain the approval of the private firm that has been designated by the HRA as the redeveloper for that property. The unfortunate result has been that the owner has been effectively unable to make any use of his property, and cannot derive any income from the property.

Considering that the designated redeveloper has invested no money in that piece of property, while the property owner has of course paid to acquire his own property, pays real estate taxes on it and also pays for its upkeep, this grant of control and of a veto to the designated redeveloper is an astonishing and outrageously-improper course of conduct. The understandable reaction of a local property owner, on discovering that the use or non-use of his property is now being dictated to him by an interloper, an outside, private individual who has made no investment in the property, is that the HRA has unfairly and illegally created a regime that demonstrates a disdain for the institution of private property that is more reminiscent of the now-defunct Communist dictatorships of Eastern Europe than of the free enterprise system we have a Constitutional right to enjoy in the United States.

Harrison property owners have no trouble in functioning under and complying with a fair system of land use regulation impartially administered by local government officials, but take great offense, and suffer serious economic harm, when an outside private party who has made no investment is empowered to tell them what they can and cannot do with their own property.

We have discussed in Section H above (page 21) the harassment of the owners of the former Hartz Mountain site by the HRA's designated redeveloper, which precluded the owners from making use of their own property, and which ultimately forced them to give up on Harrison and sell. At no time during the discussions with the owner did Mr. Miller, the redeveloper, offer to proceed with actually purchasing the property. He was unable to do so because he didn't have the money. In another instance, Mr. Miller offered to rent out space to Paramount Pictures Location Department for television production in a building he didn't own, and tried to give the impression to the Paramount representative that he was the owner of the property.

There has been another lamentable case, in which the owner of a former industrial property near the PATH station has been unable to rent out the property because prospective tenants all had heard that condemnation under urban renewal was imminent. The owner, desperate because he

was deriving no income from the property, then decided to use his property for commuter parking, which is the predominant use among the properties near the PATH station. The owner was told by the Town in writing that he would have to obtain the consent of The Advance Group, the designated redeveloper of his parcel. When the owner telephoned Thomas Michniewicz, the representative of The Advance Group, he was told that Advance would not permit him to operate a commuter parking facility at his property. Mr. Michniewicz told him that Advance has plans to acquire a nearby parcel and to build a parking garage on that parcel (although Advance had not yet made any moves or expended any money to acquire the site), and that Advance was turning down his request to use his property for parking because, frankly, Advance didn't want the competition!

This assigning to designated redevelopers by the Agency of the right to decide what uses are permitted on privately-owned land is an improper delegation of governmental authority to private parties, and is illegal and unconstitutional. Owners have suffered, and continue to suffer, serious economic damage because of the arrogant misconduct of these puffed-up, improperly-empowered outsiders who are now designated as redevelopers. In five years, these outsiders have spent no money acquiring property in the Town, but they enjoy calling the shots and lording if over local property owners, people who have spent years paying their taxes, and keeping their properties and the Town going, when times were bad.

The acquiescence in, and encouragement by Town officials of, this course of conduct could well subject the Town to suit for loss of income and for an improper partial taking of property. It is also an impermissible misuse of public power.

While it is true that the harassed property owners could seek relief from this misconduct by means of a lawsuit, it is not equitable or just that should have to expend time and money to get the courts to relieve them of the burden of this wrongful conduct. The Local Finance Board can and should act directly to end these impositions, by deciding that this misconduct, together with the other broken commitments and failures of the HRA, warrants the dissolution of the HRA.

O. Failure of HRA to enforce important provisions of its own redeveloper agreements and Plan

> *Summary: The HRA has failed to enforce its own requirement that its redevelopers perform certain key engineering, traffic, parking and market studies, prepare surveys and title reports, and provide performance guarantees or sureties.*

Other instances of the HRA imposing obligations on its designated redevelopers, and then failing to enforce them, involve the non-performance by the redeveloper of certain important mandated activities, as follows:

1. Failure to perform studies. In Paragraph 2.06 of each of the three redeveloper agreements with Harrison Commons described in Section C. above (4th paragraph from the end), the HRA required the redeveloper to perform four studies for each of the redevelopment parcels:

"(i) a Geotechnical Study [i.e., an engineering study to determine if the soils at the site have the load-bearing capacity to sustain the weight of new structures and to accept the installation of extensive new and relocated underground utility conduits and facilities];
(ii) a Traffic Study (which shall specify the proposed ingress and egress points for the Project;
(iii) a Market Study; and
(iv) a Parking Study" (collectively, the "Four Studies")

The carrying out of the Four Studies would have gone some distance to remedy the dismal lack of planning by the HRA that we have criticized in Section D. above (pages 13-14). However, although more than three years have passed since the HRA and Harrison Commons, Inc., signed the three redeveloper agreements, the redeveloper has submitted none of the Four Studies for any parcel, and the HRA has not insisted that they be prepared. We believe that the same studies were required in the redeveloper agreements with The Advance Group and Millrose Developers, other designated redevelopers in the Waterfront Project, and that the Agency has likewise failed to enforce these requirements.

2. Failure to prepare title reports. Paragraph 5.01(a) of each of the Harrison Commons redeveloper agreements provided that "immediately upon execution of this Agreement, the Redeveloper shall cause an examination of title to be made as to the Property. A copy of the title report(s) shall be provided to the Agency upon the Redeveloper's receipt thereof...." In over three years, these title reports have not been submitted, and the HRA has not insisted on their submission.

3. Failure to prepare surveys. Paragraph 5.01(b) of the Harrison Commons redeveloper agreements required the redeveloper to cause surveys to be prepared of the properties to be acquired. These have not been prepared, and the HRA has not insisted on their preparation.

Title reports and surveys are basic planning requirements for any real estate development or redevelopment, public or private. The fact that Harrison Commons, Inc., has not prepared and submitted them in over three years shows the same lack of seriousness and professionalism as that displayed by the HRA, and highlights the inadequacy of the Agency's procedures for evaluating and designating its proposed redevelopers.

4. The 1998 Plan stated (at page 35) that" "As a result of phased development, sureties or other performance guarantees for completion of infrastructure and the project components may be required." This policy was actually strengthened in the 2003 Plan, which states (at page 62) that sureties or other guarantees <u>are</u> required. Despite this initial and recently-repeated indication of the Agency's awareness of the need to protect the public interest by obtaining guarantees of completion from financially-reliable third parties, the above-mentioned redeveloper agreements fail to contain any requirements that the redeveloper provide sureties or performance guarantees.

<u>Conclusion</u>

We apologize to the Local Finance Board for the great length of this Petition, but we are asking you to take the serious step of dissolving the Harrison Redevelopment Agency, and such a serious measure requires serious justification. We believe that we have made the case that, when viewed in their entirety, the defaults, shortcomings and illegalities of the Agency's program and operations are so overwhelming and so incapable, in the aggregate, of being corrected, and that the underlying, systemic impediments to the program's success are so great, as to lead an impartial reviewer to the inevitable conclusion that dissolution is the only reasonable remedy to stop this runaway agency from bringing woe to the unsuspecting people of the Town of Harrison.

We ask that you schedule a hearing on this Petition as soon as possible, and we shall be glad to present our case in person to you in Trenton or in Harrison.

Thank you for your attention.

Very truly yours,

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