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IN THE
COURT OF APPEALS OF INDIANA

624 Broadway, LLC,
Appellant-Plaintiff,

v.

Gary Housing Authority,
Appellee-Defendant.

November 10, 2021

Court of Appeals Case No. 21A-CT-653

Appeal from the Lake Superior Court

The Honorable Stephen E. Scheele, Judge

Trial Court Cause No. 45D05-1910-CT-1085

Mathias, Judge.

[1] 624 Broadway, LLC appeals the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's complaint for damages relating to the Gary Housing Authority's exercise of eminent domain over real property owned by 624 Broadway. 624 Broadway raises four issues for our review, which we restate as follows:

I. Whether federal law permitting an administrator appointed by the Secretary of the United States Department of Housing and Urban Development ("HUD") to act in his own discretion in the capacity of the Gary Housing Authority preempts state laws that require a seven-member Board of Commissioners for a local housing authority and the approval by the fiscal body that created the housing authority before the authority can exercise eminent domain.

II. Whether Indiana law permits the Gary Housing Authority to exercise eminent domain to acquire real property for a mixed-use development that will include affordable housing.

III. Whether 624 Broadway's claim that the manner in which the Gary Housing Authority exercised eminent domain violated federal statutory and regulatory procedures is cognizable.

IV. Whether the Gary Housing Authority's exercise of eminent domain over 624 Broadway's property denied 624 Broadway of the notice and opportunity to be heard required under Indiana Code sections 32-24-2-6 and -8.

We affirm in part, reverse in part, and remand with instructions.

Facts and Procedural History

[2] The Gary Housing Authority is a municipal corporation established by the Gary Common Council. The Gary Housing Authority receives substantial funds from HUD pursuant to annual contribution agreements, which agreements require the Gary Housing Authority to meet certain affordable

housing standards. Those same agreements recite HUD's federal statutory authority to take over the Gary Housing Authority in the event HUD were to find the Gary Housing Authority in substantial default of the contribution agreements.

[3] In 2013, HUD designated the Gary Housing Authority as "troubled" under federal housing law, and, based on that designation, HUD concluded that the Gary Housing Authority was in substantial default of its contribution agreements. Appellant's App. Vol. IV p. 206. Accordingly, HUD entered into a Cooperative Endeavor Agreement with the City of Gary. Pursuant to the Cooperative Endeavor Agreement,[1] the City of Gary dissolved the Gary Housing Authority's Board of Commissioners, and, in their place, the Secretary of HUD appointed a HUD employee as an administrator over the Gary Housing Authority. The Cooperative Endeavor Agreement made clear that the HUD administrator's role was "to serve as [the Gary Housing Authority's] Board of Commissioners" and, in that capacity, to "t[ake] possession of [the Gary Housing Authority's] assets, projects, and programs" in order to "correct the conditions that led to [the Gary Housing Authority's] troubled status and recover [the Gary Housing Authority's] performance." *Id.* at 228.

[4] In 2017, the Gary Housing Authority "sought to acquire all of the properties within the western 600 block of Broadway [Avenue] for the purpose of building

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[1] HUD and the City of Gary modified the Cooperative Endeavor Agreement from time to time, and, in 2019, they converted the agreement into a Transitional Agreement.

a block long mixed-use development, inclusive of affordable housing." Appellant's App. Vol. II p. 178. At that time, HTO Investments, LLC, owned the real property located at 624 Broadway Avenue ("the property"). The Gary Housing Authority then proceeded to exercise the power of eminent domain as provided under Indiana Code sections 32-24-1-1 to -17 ("Chapter 1"), and it ordered an appraisal of the property in late 2017 and again in late 2018. Both appraisals valued the property at $24,000.

[5] On January 11, 2019, the Gary Housing Authority offered to purchase the property from HTO Investments for $24,000. However, on January 15, HTO Investments instead sold the property for $25,000 to 624 Broadway. In March, the Gary Housing Authority performed an updated title search for the property, which reflected 624 Broadway as the fee simple title holder. The Gary Housing Authority then filed a complaint against 624 Broadway to acquire the property through eminent domain. 624 Broadway filed various objections and alleged that the Gary Housing Authority had failed to follow the proper procedures under Chapter 1. In May, the Gary Housing Authority moved to dismiss its complaint, which the trial court granted.

[6] On August 15, the Gary Housing Authority re-initiated eminent domain proceedings against the property, this time as an administrative taking under

Indiana Code sections 32-24-2-1 to -17 ("Chapter 2").[2] Pursuant to Chapter 2, the HUD administrator, acting as the Board of Commissioners of the Gary Housing Authority, adopted a resolution declaring a necessity and desire for the Gary Housing Authority to acquire the property through eminent domain. The August 15 resolution set a September 19 hearing date for remonstrances against the condemnation of the property. The Gary Housing Authority then published notice of the resolution in newspapers of general circulation in the municipality on August 21 and August 28. The Gary Housing Authority did not mail notice of its resolution to 624 Broadway's registered agent, John Allen.

[7] However, Allen did learn of the September 19 hearing, attended it, and spoke at it. At the conclusion of the hearing, the Gary Housing Authority confirmed the August 15 resolution. The Gary Housing Authority then adopted a second resolution that listed 624 Broadway as the only affected property owner of the condemnation and established a damage award of $75,000 for the taking of the property. The September 19 resolution set a hearing date of October 17 for any remonstrances against the damage award. The Gary Housing Authority published notice of the resolution in newspapers of general circulation in the municipality on September 21, September 28, and October 5. Again, however,

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[2] Chapter 2 provides an alternate procedure to Chapter 1 for a municipality exercising the power of eminent domain. *Util. Ctr., Inc. v. City of Ft. Wayne*, 985 N.E.2d 731, 735 (Ind. 2013). Indiana Code section 36-7-18-28(a)(2) permits a local housing authority to exercise the power of eminent domain under Chapter 2 in certain circumstances.

the Gary Housing Authority did not provide written notice of its resolution to Allen.

[8] Nonetheless, Allen learned of the October 17 hearing date, and 624 Broadway hired an appraiser to assess the property. 624 Broadway then requested that the Gary Housing Authority continue the October 17 hearing date for 624 Broadway's appraiser to complete his valuation, but the Gary Housing Authority denied the request. On October 16, 624 Broadway filed its complaint against the Gary Housing Authority seeking injunctive relief based on the Gary Housing Authority's alleged denial of 624 Broadway's procedural rights. 624 Broadway subsequently amended its complaint to more specifically allege a violation of its constitutional and statutory procedural rights and to add a request for damages.[3] Meanwhile, on October 17, the Gary Housing Authority confirmed the September 19 resolution and issued a check to 624 Broadway in the amount of $75,000. On October 28, 624 Broadway's appraiser completed his valuation of the property and determined that the property had a fair market value of $325,000.

[9] In June 2020, the Gary Housing Authority filed is motion for summary judgment on 624 Broadway's amended complaint. 624 Broadway responded and also moved for summary judgment. In relevant part, 624 Broadway

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[3] We reject the Gary Housing Authority's assertion that the last amended complaint did not relate back to the October 16 filing date, and we further agree with 624 Broadway that the originally filed complaint operated as a timely petition for judicial review from the housing authority's October 17 decision. Thus, we need not consider the Gary Housing Authority's assertion that 624 Broadway's claims were untimely.

asserted that the Gary Housing Authority unlawfully exercised the power of eminent domain. 624 Broadway further asserted numerous constitutional and statutory procedural violations based on the manner in which the Gary Housing Authority exercised eminent domain. The Gary Housing Authority responded that 624 Broadway's arguments were preempted by federal law or otherwise were not supported by the law and the facts. After a hearing, the trial court granted the Gary Housing Authority's motion for summary judgment, denied 624 Broadway's motion, and entered its order as a final judgment. This appeal ensued.

Standard of Review

[10] 624 Broadway appeals the trial court's entry of summary judgment for the Gary Housing Authority as well as the court's denial of 624 Broadway's motion for summary judgment. Our standard of review in summary judgment appeals is well established. As our Supreme Court has made clear, "[w]e review summary judgment *de novo*, applying the same standard as the trial court." *G&G Oil Co. v. Cont'l W. Ins. Co.*, 165 N.E.3d 82, 86 (Ind. 2021).

[11] "Indiana's distinctive summary judgment standard imposes a heavy factual burden on the movant." *Siner v. Kindred Hosp. Ltd. P'ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). We draw all reasonable inferences in favor of the non-moving party and affirm summary judgment only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Ind. Trial Rule 56(C)).

And we "give careful scrutiny to assure that the losing party is not improperly prevented from having its day in court." *Id.* (quoting *Tankersley v. Parkview Hosp., Inc.*, 791 N.E.2d 201, 203 (Ind. 2003)). Further, "[p]arties filing cross-motions for summary judgment neither alters" our standard of review "nor changes our analysis—we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law." *G&G Oil Co.*, 165 N.E.3d at 86 (quoting *Erie Indem. Co. v. Estate of Harris*, 99 N.E.3d 625, 629 (Ind. 2018)).

[12] Here, the parties' arguments on summary judgment broadly fall into two categories: whether the Gary Housing Authority had the lawful ability to exercise eminent domain on these facts, and whether the manner in which the Gary Housing Authority exercised that ability was consistent with constitutional and statutory procedural guarantees. Specifically, 624 Broadway asserts that federal law authorizing HUD to take over a troubled local housing authority does not preempt state-law quorum and membership requirements for the housing authority's Board of Commissioners; that federal law granting to the HUD administrator discretion in the management of a local housing authority does not preempt Indiana's requirement that a housing authority seeking to exercise eminent domain first obtain the approval of the fiscal body that created the housing authority; and that Indiana's Housing Authorities Act, I.C. §§ 36-7-18-1 to -44, prohibits a local housing authority from exercising eminent domain to acquire real property for the purposes of a mixed-use development that is inclusive of affordable housing. And, on its procedural

arguments, 624 Broadway asserts that the Gary Housing Authority was required to follow various federal statutory and regulatory procedures and, further, that the manner in which the Gary Housing Authority exercised eminent domain here denied 624 Broadway proper notice and an opportunity to be heard.

[13] We conclude that 624 Broadway's arguments regarding whether the Gary Housing Authority had the lawful ability to exercise eminent domain fail. We also conclude that 624 Broadway's procedural argument under the claimed federal statutes and regulations is not cognizable. However, we agree with 624 Broadway that the manner in which the Gary Housing Authority exercised the power of eminent domain here violated 624 Broadway's state statutory rights to notice and an opportunity to be heard.[4]

I. Under Federal Law, the HUD Administrator Has Discretion to Act in the Capacity of the Gary Housing Authority and, thus, Indiana's Statutory Requirements for a Board of Commissioners or for a Housing Authority to First Obtain Approval by the Local Fiscal Body are Preempted.

[14] We first consider 624 Broadway's two arguments on appeal that the Gary Housing Authority's exercise of eminent domain was unlawful under Indiana's

[4] Because we resolve 624 Broadway's procedural arguments under the Indiana Code, we need not consider 624 Broadway's constitutional process arguments. Further, based on our disposition, we need not reach 624 Broadway's alternative argument that the Gary Housing Authority's taking of and award of damages for the property are not supported by sufficient evidence.

statutory requirements relating to the authority of Boards of Commissioners of local housing authorities. In particular, 624 Broadway first asserts that Indiana Code section 36-7-18-5, which states that the Board of Commissioners for a local housing authority for a city "shall" consist of "seven (7) persons," and Indiana Code section 36-7-18-13, which requires "[f]our (4) commissioners" of the Board to be present for a quorum, prohibit a single HUD administrator from acting in the capacity of the Gary Housing Authority. Second, 624 Broadway asserts that, under Indiana Code section 36-7-18-14(1), the "approval of the fiscal body that established" the Gary Housing Authority, the Gary Common Council, was required before the HUD Administrator could exercise eminent domain.

[15] 624 Broadway's argument that the Gary Housing Authority's exercise of eminent domain should fail due to an absence of the statutory number of commissioners would create an impermissible conflict between state and federal law. Under the Supremacy Clause of the United States Constitution, federal law is "the supreme Law of the Land," the "Laws of any state to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2. As the Supreme Court of the United States has explained:

> A fundamental principle of the Constitution is that Congress has the power to preempt state law. Even without an express provision for preemption, we have found that state law must yield to a congressional Act in at least two circumstances. When Congress intends federal law to "occupy the field," state law in that area is preempted. And even if Congress has not occupied the field, state law is naturally preempted to the extent of any

> conflict with a federal statute. We will find preemption where it is impossible for a private party to comply with both state and federal law, and where "under the circumstances of a particular case, the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372–73 (2000) (cleaned up).

[16] The United States Code expressly authorizes the Secretary of HUD to appoint an administrator to act in the capacity of a local housing authority that is in substantial default of its agreements with HUD. Specifically, the United States Code provides as follows:

> [U]pon . . . a substantial default by a public housing agency with respect to the covenants or conditions to which the public housing agency is subject . . . the Secretary may—
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> * * *
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> (iv) take possession of all or part of the public housing agency, including all or part of any project or program of the agency . . . .

42 U.S.C.A. § 1437d(j)(3)(A) (West 2021). If the Secretary takes possession of a public housing agency pursuant to subparagraph (A)(iv), the Secretary may "appoint . . . an individual . . . as an administrative receiver to assume the responsibilities of the Secretary for the administration of all or part of the public housing agency." 42 U.S.C.A. § 1437d(j)(3)(B)(III)(bb). And:

> If the Secretary (or an administrative receiver appointed by the Secretary) takes possession of a public housing agency (including all or part of any project or program of the agency), or if a receiver is appointed by a court, *the Secretary or receiver shall be deemed to be acting not in the official capacity of that person or entity, but rather in the capacity of the public housing agency*, and any liability incurred, regardless of whether the incident giving rise to that liability occurred while the Secretary or receiver was in possession of all or part of the public housing agency (including all or part of any project or program of the agency), shall be the liability of the public housing agency.

42 U.S.C.A. § 1437d(j)(3)(H) (emphasis added).

[17] Thus, as a matter of federal law, the HUD administrator exercised the authority of the Gary Housing Authority's Board of Commissioners. It would be impossible for the single HUD administrator to act in the capacity of the Gary Housing Authority if a quorum of the seven-member Board of Commissioners was acting in that same capacity. We conclude that Indiana's statutory membership and quorum requirements are inconsistent with HUD's federal authority under 42 U.S.C.A. § 1437d when HUD has appointed an administrator over that housing authority. Those requirements of Indiana law must yield to the HUD administrator's authority under the United States Code.[5]

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[5] 624 Broadway also asserts that the denial of the statutory quorum denied 624 Broadway its due process rights. But 624 Broadway's due-process argument is derivative of its assumption that the statutory quorum requirement applies. As we reject that position, we conclude that 624 Broadway's related due-process argument is not supported by cogent reasoning, and we do not address it further.

[18] Likewise, we cannot agree with 624 Broadway's assertion that the HUD administrator's exercise of eminent domain, in his capacity as the Gary Housing Authority, is subject to the approval of the Gary Common Council. The United States Code grants the Secretary of HUD's appointed administrator, broad discretion to manage problematic housing authorities. 42 U.S.C.A. § 1437d(j)(3). For example, the United States Code directs that the administrator may "make . . . arrangements acceptable to the Secretary and in the best interests of the public housing residents and families . . . for managing all, or part, of the public housing administered by the agency or of the programs of the agency." 42 U.S.C.A. § 1437d(j)(3)(A)(v).

[19] To require the Gary Common Council to approve the HUD administrator's exercise of his federal statutory discretion would create "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby*, 530 U.S. at 373. Where, as here, HUD has appointed an administrator to manage a troubled local housing authority, Indiana Code section 36-7-18-14(1)'s requirement that the local housing authority obtain the approval of the local fiscal body before the housing authority can exercise eminent domain is an unacceptable obstacle to the HUD administrator's exercise of his discretion under federal law. Thus, that requirement of Indiana law must yield to the HUD administrator's discretion under the United States Code. We therefore affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under Indiana Code sections 36-7-18-5, -13, and -14(1).

II. 624 Broadway's Argument that the Gary Housing Authority is not Authorized to Exercise Eminent Domain to Acquire Property for a Mixed-Use Development Project Fails as a Matter of Law.

[20] 624 Broadway also argues that the Gary Housing Authority is not authorized to exercise eminent domain to acquire property for a mixed-use development project.[6] In support of its position, 624 Broadway relies on Indiana Code section 36-7-18-2, which provides that "[t]he clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property may be acquired." According to 624 Broadway, that language prohibits a housing authority from acquiring property for a mixed-use development, even if that development would include affordable housing.

[21] We cannot agree. The plain language of section 36-7-18-2 does not restrict a housing authority from providing "safe and sanitary dwelling accommodations for persons of low income" in a mixed-use development, or from otherwise acquiring a specific property when that property is within an area of unsanitary or unsafe housing conditions. Therefore, we reject 624 Broadway's argument

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[6] The Gary Housing Authority does not assert on appeal that this argument is preempted by the HUD administrator's discretion under federal law.

that the Gary Housing Authority's use of eminent domain here is contrary to section 36-7-18-2, and we affirm the trial court's entry of summary judgment for the Gary Housing Authority on this issue.

III. 624 Broadway's Argument that the Gary Housing Authority Violated Federal Statutory and Regulatory Procedures Also Fails as a Matter of Law.

[22] 624 Broadway next asserts numerous violations of federal procedures and related regulations under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C.A. §§ 4601–4655 ("the Uniform Act"). In particular, 624 Broadway relies on section 4651 of the Uniform Act. But section 4602 of the Uniform Act explicitly states that section 4651 creates "no rights or liabilities and shall not affect the validity of property acquisitions . . . ." As we have previously acknowledged: "The intent of the Congress in enacting [section] 4602 . . . could not have been expressed more clearly: the policies set forth in [section] 4651 are advisory only, and they create no right in the condemnee to judicial review of an agency's property acquisition practices." *City of Mishawaka v. Sara*, 396 N.E.2d 946, 947 (Ind. Ct. App. 1979) (citations omitted). Accordingly, we affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under the Uniform Act and associated federal regulations.

IV. The Gary Housing Authority Failed to Follow Indiana's Statutory Process Requirements in its Exercise of the Power of Eminent Domain.

[23] We thus turn to 624 Broadway's arguments that the Gary Housing Authority denied 624 Broadway proper notice and an opportunity to be heard. The designated evidence is clear that the Gary Housing Authority purported to exercise eminent domain over the property under the procedures of Chapter 2.[7] We further note that, while 624 Broadway's complaint and brief on appeal frame the relevant procedural arguments around constitutional provisions, the substance of its claim and arguments on appeal are within Chapter 2, which both parties acknowledge and address in their briefs. Appellant's Br. at 40 n.1; Appellee's Br. at 24–28; *see also* Appellant's App. Vol. II at 97–99. As our supreme court has stated, "constitutional issues are to be avoided as long as there are potentially dispositive statutory or common law issues . . . ." *Edmonds v. State*, 100 N.E.3d 258, 262 (Ind. 2018) (quotation marks omitted). As we conclude that 624 Broadway's procedural arguments are dispositive under Chapter 2, we need not consider the parties' constitutional arguments.

[24] Because eminent domain statutes are in derogation of the common law rights to property, they "must be strictly construed, both as to the extent of the power

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[7] As the designated evidence establishes that the Gary Housing Authority initiated eminent domain proceedings under Chapter 2, 624 Broadway's alternative claim for inverse condemnation must fail. *See, e.g.*, *Lake Cnty. v. House*, 168 N.E.3d 278, 286 (Ind. Ct. App. 2021) (noting that a claim for inverse condemnation exists if the government takes property but fails to initiate eminent domain proceedings), *trans. denied*.

and as to the manner of its exercise." *Util. Ctr., Inc. v. City of Ft. Wayne*, 985 N.E.2d 731, 735 (Ind. 2013). As our supreme court has explained:

> a municipality has the option of pursuing condemnation proceedings under either the general eminent domain statute—Chapter 1—or the eminent domain statute for cities and towns—Chapter 2. *See Michael v. City of Bloomington*, 804 N.E.2d 1225, 1230 (Ind. Ct. App. 2004). We read Chapter 2 as evidencing a legislative intent of merely providing municipalities an alternative and streamlined procedure for taking private property. Among other things this procedure relieves the municipality from the burden of: first making an offer to purchase the property before proceeding to condemn it, *see* I.C. § 32-24-1-3; filing a complaint in court if the property owner does not agree with the amount of the offer, *see* I.C. § 32-24-1-4; complying with detailed notice requirements, *see* I.C. §§ 32-24-1-6 & 7; responding to objections that, among other things, the municipality did not have the right to exercise the power of eminent domain, *see* I.C. § 32-24-1-8; and possibly being forced to appeal a trial court's decision sustaining the objection, or responding to the property owner's appeal in the event the trial court overrules the objection, *see id.* . . .

Id. at 736 (footnote omitted).

[25] Essential to our analysis on this issue are Indiana Code sections 32-24-2-6(b) and -8. Under section 32-24-2-6(b):

> The [housing authority[8]] must adopt a resolution that the municipality wants to acquire the property. The resolution must

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[8] Again, a local housing authority may exercise eminent domain under Chapter 2 in certain circumstances. I.C. § 36-7-18-28(a)(2).

describe the property that may be injuriously or beneficially affected. The [housing authority] shall have notice of the resolution:

(1) published for two (2) consecutive weeks:

(A) with each publication of notice in a newspaper of general circulation published in the municipality; or

(B) with the first publication of notice in a newspaper described in clause (A) and the second publication of notice:

(i) in accordance with IC 5-3-5; and

(ii) on the official web site of the municipality; *and*

(2) *mailed to the owner* of each piece of property affected by the proposed acquisition.

The notice must name a date, at least thirty (30) days after the last publication, at which time the board will receive or hear remonstrances from persons interested in or affected by the proceeding.

(Emphases added.) Similarly, under section 32-24-2-8:

(b) When the assessments or awards are completed, the [housing authority] *shall have a written notice served upon the owner of each piece of property*, showing the amount of the assessment or award, by:

> (1) if the owner is a resident of the municipality, leaving a copy of the notice at the owner's last usual place of residence in the municipality or by delivering a copy to the owner personally and mailing a copy of the notice to the owner's address of record; or
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> (2) if the owner is not a resident of the municipality, by sending the notice to the owner's address of record by certified mail.
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> * * *
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> (d) *The notices must also name a day, at least thirty (30) days after service of notice or after the last publication*, on which the [housing authority] will receive or hear remonstrances from owners with regard to:
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> (1) the amount of their respective awards or assessments; and
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> (2) objections to the municipality's right to exercise the power of eminent domain for the use sought.

(Emphases added.)

[26] Here, the designated evidence is clear. The August 15 resolution set a September 19 hearing date for remonstrances against the condemnation of the property. The Gary Housing Authority did not mail notice of its resolution to 624 Broadway's registered agent, Allen, which failure was contrary to Indiana

Code section 32-24-2-6(b).[9] The Gary Housing Authority last published notice of that resolution on August 28. The date of the last publication was not at least thirty days before the September 19 hearing for remonstrances, which was also contrary to Indiana Code section 32-24-2-6(b).

[27] At the September 19 hearing, Gary Housing Authority adopted a second resolution that listed 624 Broadway as the only property owner affected by the condemnation and established an award of $75,000 for the taking of the property. The September 19 resolution set a hearing date of October 17 for any remonstrances against the damage award. The Gary Housing Authority again did not serve written notice of that resolution to Allen, which was contrary to Indiana Code section 32-24-2-8(b). The Gary Housing Authority last published notice of the resolution on October 5. The date of the last publication was not at least thirty days before the October 17 hearing for remonstrances against that resolution, which was contrary to Indiana Code section 32-24-2-8(d).

[28] It is well-settled that the exercise of eminent domain under Chapter 2 is to be "strictly construed, both as to the extent of the power and as to the manner of its exercise." *Util. Ctr., Inc.*, 985 N.E.2d at 735. The Gary Housing Authority did not follow the procedural notice requirements of Chapter 2 when it failed to

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[9] The Gary Housing Authority asserts that Indiana Code section 32-24-2-6(b)(1) and (b)(2) are disjunctive such that notice by publication alone is sufficient under the statute. We reject that reading of the statute, which ignores the "and" immediately before subparagraph (b)(2). Further, even if the statute were ambiguous, our canons of construction would require us to strictly construe it for the property owner, which would also result in applying the "and" to subparagraph (b)(2). *See Util. Ctr., Inc.*, 985 N.E.2d at 735.

serve written notice of both the August 15 resolution and the September 19 resolution on Allen. And it did not follow the procedural opportunity-to-be-heard requirements of Chapter 2 when it held the hearings on each resolution fewer than thirty days after each resolution's date of last publication.

[29] Further, while the Gary Housing Authority suggests that its failure to serve written notice of the resolutions on Allen was harmless as he still learned of the two meetings and attended, we cannot agree. 624 Broadway moved to continue the October 17 hearing to obtain its own appraisal of the property, which motion the Gary Housing Authority denied. The Gary Housing Authority's failure to properly serve 624 Broadway and its failure to hold its damages hearing no fewer than thirty days after the date of last publication contributed to 624 Broadway's inability to obtain its own appraisal of the property prior to the October 17 hearing and to 624 Broadway's inability to present competing evidence of its damages at that hearing. We cannot say with confidence that, had the Gary Housing Authority complied with Chapter 2, as it was required to do, it would have assessed the same damage award for the property to 624 Broadway.

[30] Therefore, we reverse the trial court's entry of summary judgment for the Gary Housing Authority based on the Gary Housing Authority's failure to comply with Chapter 2, and we likewise reverse the court's denial of 624 Broadway's related motion for summary judgment. The designated evidence establishes no genuine issue of material fact regarding whether the Gary Housing Authority complied with the notice and opportunity-to-be-heard requirements of Chapter

2. It did not. As the Gary Housing Authority's taking of the property was contrary to law, we remand with instructions to enter summary judgment for 624 Broadway on its claim that the Gary Housing Authority's administrative taking of the property violated 624 Broadway's procedural rights under Chapter 2, to vacate the Gary Housing Authority's administrative taking of the property, and to hold any further proceedings that are consistent with this opinion.

Conclusion

[31] In sum, we affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under Indiana Code sections 36-7-18-2, -5, -13, and -14(1). We also affirm the trial court's entry of summary judgment for the Gary Housing Authority on 624 Broadway's claims under the Uniform Act and associated federal regulations. However, the trial court erred when it granted the Gary Housing Authority's motion for summary judgment on 624 Broadway's claims under Chapter 2 and denied 624 Broadway's related motion for summary judgment on that issue. Thus, we reverse the trial court's judgment and remand with instructions for the court to enter summary judgment for 624 Broadway on its claim that the Gary Housing Authority's administrative taking of the property violated 624 Broadway's procedural rights under Chapter 2, to vacate the Gary Housing Authority's administrative taking of the property, and to hold any further proceedings that are consistent with this opinion.

[32] Affirmed in part, reversed in part, and remanded with instructions.

Tavitas, J., and Weissmann, J., concur.