

(5)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES,
DORATHA R. CRINCHAW, EVA RODGERS,
JAMES RODGERS AND ROBERT M. FAIRFAX,
Plaintiffs,

v.

ROBERT C. WEAVER, Secretary of the
Department of Housing and Urban
Development of the United States,
Defendant.

NO. 66 C 1460

SECOND SUPPLEMENTAL MEMORANDUM OF DEFENDANT
IN SUPPORT OF HIS PENDING MOTION TO DISMISS

Now comes the defendant Robert C. Weaver, Secretary of the Department of Housing and Urban Development of the United States, by Edward V. Manrahan, United States Attorney for the Northern District of Illinois, and files herewith his Second Supplemental Memorandum in Support of his Pending Motion to Dismiss. This is done for the purpose of calling to the attention of the court a further change in the factual situation and changes in applicable regulations of which the United States Attorney has just been informed, and which occurred after the original memorandum and first supplemental memorandum were filed.

1. Certain sites complained of are no longer under consideration, and the case is moot as to those sites.

The following sites involved in the complaint, previously proposed for inclusion in the "Twelve Proposed Projects" (1966 Sites), are no longer being considered for inclusion in those projects:

<u>Project No.</u>	<u>Site</u>	<u>Location</u>	<u>No. of Dwelling Units</u>	<u>Community Area</u>
ILL-2-63	A	E. 41st Pl., E. 41st St., & S. Ellis	174	Oakland
ILL-2-63	B	E. 46th & S. Greenwood	60	Kenwood
ILL-2-65	C	S. California & W. Adams (& W. Wilcox)	48	East Garfield Park
ILL-2-65	D	W. Jackson & S. Francisco (W. Van Buren & S. Richmond)	69	East Garfield Park
ILL-2-65	E	W. Van Buren & S. Albany	24	East Garfield Park

Accordingly, the case is moot as to those sites.

2. HUD has amplified its regulations applicable to applications by CHA and other recipients.

Attached hereto are copies of the following documents:

- a. Section 205.1 of the Low-Rent Housing Manual, pages 1-8 inclusive, published by the Public Housing Authority in September of 1965.

- b. Transmittal No. 490 by the Department of Housing and Urban Development, Housing Assistance Administration, dated February 28, 1967, superseding pages 7 and 8 of the earlier Section 205.1 in the Low-Rent Housing Manual. The change amplifies the standards by which HAA will review sites selected by local recipients. The change demonstrates the continuing concern on the part of defendant with the type of contentions made by plaintiffs here. It

serves to emphasize the propriety of dismissing the cause for failure of plaintiffs to exhaust their administrative remedies, as has previously been argued.

Respectfully submitted,

Edward V. Hanrahan
United States Attorney
Room 1500, U.S. Courthouse
219 South Dearborn St.
Chicago, Illinois 60604
353-5312

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiff,)

-vs-

ROBERT C. WEAVER, Secretary of the Department of Housing and Urban Development of the United States,)
Defendant

NO. 66 C 1460

N O T I C E

TO: Charles R. Markels, 120 South LaSalle St., Chicago, Illinois 60603
Alexander Polikoff, 231 South LaSalle St., Chicago, Illinois 60604
Bernard Weisberg, 111 West Jackson Blvd., Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Monday, April 24, 1967, at the opening of court or as soon thereafter as counsel may be heard, I will appear before Judge Richard B. Austin in the courtroom usually occupied by him in the United States Courthouse, 219 S. Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there ask leave to file instantter his Second Supplemental Memorandum in Support of his Pending Motion to Dismiss.

At which time and place you may appear if you so see fit.

UNITED STATES ATTORNEY

STATE OF ILLINOIS)
COUNTY OF COOK) SS

being first duly sworn on oath deposes and says that he is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the day of April 18, 1967, he placed a copy of the foregoing Notice, together with a copy of Second Supplemental Memorandum, to each of the above-named individuals, and deposited each envelope in the United States mail chute, located in the United States Courthouse, Chicago, Illinois, on said date at the hour of about 3:30 P.M.

SUBSCRIBED AND SWORN TO before me
this 18 day of April 1967

NOTARY PUBLIC

Department of Housing and Urban Development
Housing Assistance Administration

2-28-67

Low-Rent Housing Manual

Transmittal No. 490

Distribution: Local Authorities With Active Low-Rent Programs in Precon-
struction or Construction (Not Yet Covered by Actual
Development Cost Certificate)

REMOVE: Pages 7-8 of Section 205.1, Site Selection and Tentative Site
Approval, dated September 1965.

INSERT: Pages 7-8 of Section 205.1, Site Selection and Tentative Site
Approval, dated February 1967.

A copy of this Transmittal, with its attachment(s), should be furnished by the Local Authority to its architect. (See Section 206.2, Supplement 2, <i>Material for Use by Architects and Engineers.</i>)

of Executive Order 11063, and Department regulations and requirements issued pursuant thereto. The aim of a Local Authority in carrying out its responsibility for site selection should be to select from among sites which are acceptable under the other criteria of this Section those which will afford the greatest opportunity for inclusion of eligible applicants of all groups regardless of race, color, creed, or national origin, thereby affording members of minority groups an opportunity to locate outside of areas of concentration of their own minority group. Any proposal to locate housing only in areas of racial concentration will be prima facie unacceptable and will be returned to the Local Authority for further consideration and submission of either (1) alternative or additional sites in other areas so as to provide more balanced distribution of the proposed housing or (2) a clear showing, factually substantiated, that no acceptable sites are available outside the areas of racial concentration. Such submissions by Local Authorities may be made to the Project Planner and Land Adviser for inclusion in their report. (See paragraph 7b below.) The advice and assistance of the Regional Office are available to Local Authorities in respect to the selection of sites under the special conditions and considerations pertaining to any particular case.

5. Policy on Purchase of Excess Land

a. No cost for land in excess of that required in connection with the construction of the project (including dwelling and nondwelling facilities and playgrounds) may be included in the development cost of a project except where the site consists of one parcel (or includes a large parcel) with an area in excess of that required for the development of the project and where the severance damage involved in purchasing only the land required for the project would exceed the cost of the excess land. Cost of acquiring land for development of future projects may not be included in the development cost of a project.

b. If existing circumstances should justify approval of the purchase of excess land to obtain a site, the Annual Contributions Contract requires that the excess real property be sold as soon as practicable at public sale for not less than the fair value thereof, unless other disposition or method of disposition is approved. The project shall be so planned as to provide adequate access to the excess land in order that it may be sold.

c. In cases where the excess land is unsuitable for improvement because it is unbuildable or inaccessible, or for other reasons, Local Authorities are urged to give full consideration to the disposition of the property to eligible public bodies under the Open-Space Land Program administered by the Renewal Assistance Administration. Details of the program may be obtained from the office of the Regional Administrator.

(Cont'd)

NOTE: These pages 7-8 supersede pages 7-8 of Section 205.1 dated September 1965. Paragraph 4g has been amplified.

6. Condemnation of Property Owned by Another Public Body. There have been court decisions adversely affecting attempts by local public agencies to acquire, by condemnation, properties belonging to other public or quasi-public bodies. A site containing any property belonging to another public or quasi-public body or institution will not be approved until the Local Authority, after conferring with responsible persons, obtains written assurance from such body or institution that such property may be acquired by amicable negotiation at a cost not in excess of its fair value.

7. Procedure for Site Selection and Tentative Approval

a. Selection by Local Authority and Inspection by Regional Office. Having reached its conclusions as to a suitable site, the Local Authority shall request the Regional Office to send appropriate personnel to inspect the proposed site and to consider all of the reasons advanced for the Local Authority's selection.

b. Tentative Site Approval. After inspecting the proposed site, the Project Planner and the Land Adviser will prepare a report which will be submitted to the Assistant Regional Administrator for Housing Assistance. The Local Authority shall furnish to the Project Planner and the Land Adviser, for inclusion in their report, such material as may be required to support their conclusions, including such supporting data or information as may be required to enable the Regional Office to include, in its tentative approval of the site selected by the Local Authority, a specific determination that the selection is in accordance with HUD policy established under Title VI of the Civil Rights Act of 1964 (see Exhibit 2, Low-Rent Housing Manual Section 102.1). If the report is favorable and if the Assistant Regional Administrator agrees with the recommendations contained in the report, he will, by letter, give tentative approval of the site, whereupon the Local Authority may proceed with completion of the Development Program (see Section 206.3) based upon use of the site proposed. The term "tentative approval" means merely that the Regional Office and the Local Authority have agreed on the site to be presented in the Development Program; such tentative approval does not in any way bind HUD to give final approval to the site.

(Cont'd)

Site Selection and Tentative Site Approval

1. General. This Section sets forth the criteria to be used in judging the suitability of proposed sites for low-rent housing and the procedure for obtaining tentative PHA approval of proposed sites. Special cases are outlined, involving urban renewal sites and the use of existing buildings.

2. Redevelopment and Conservation Programs

a. Relocation

(1) If the Local Authority proposes to acquire a site in an urban renewal area, or outside the area, for the purpose of relocating residents, there are several special considerations. The interdependence of housing and urban renewal is frequently the key to the success or failure of a city's redevelopment efforts.

(2) Joint agreements between the PHA and the Urban Renewal Administration are in effect to coordinate their respective activities. If PHA-aided housing is a necessary resource for the relocation of urban renewal site occupants, coordinated time schedules for development will generally be required. Advice should be obtained from the PHA Regional Office.

b. Conservation Areas

(1) The rehabilitation of existing housing structures and the construction of new dwellings in conservation areas are expected to become increasingly important. In addition to the responsibility of the Local Authority for providing low-rent public housing, the local administration and development of conservation programs may involve many organizations, such as city governments, local public agencies, and private and non-profit agencies, as well as individual property owners.

(2) The PHA Project Planner and Land Adviser are available to assist the Local Authority in providing PHA-aided housing in conservation areas. Generally, such projects will require special handling with regard to site approval and valuation of buildings.

c. Land Price. Section 107 of the Housing Act of 1949, as amended, prescribes the price to be charged the Local Authority for land which is part of an urban renewal project. The PHA Land Adviser is expected to serve as a liaison officer with local and Federal urban renewal agencies concerning land acquisition procedures and agreements.

(Cont'd)

NOTE: This Section supersedes Section 205.1 pages variously dated. Paragraphs 4a, 4g, and 7b have been changed to reflect the requirements of Title VI of the Civil Rights Act of 1964 and agency regulations and requirements issued pursuant thereto.

3. Available Properties in Which the United States Has an Interest

a. In cases where properties owned by the United States or in which the Federal Government has an interest are available in the locality, the Local Authority shall give full consideration to their use for the low-rent program. (As used in this paragraph, "properties" refers to buildings which could be used for low-rent housing.) The feasibility of using available FHA and VA properties shall be considered from the date Program Reservation for housing has been approved by the PHA until the Regional Director approves the Initial Request for Land Purchase Approval. (See Section 205.2.)

b. The PHA Project Planner and Land Adviser are available for consultation and for liaison with the Federal Housing Administration, Veterans Administration, and other Federal agencies.

c. Before tentative site approval is given by the PHA, all such properties which the Local Authority wishes to include in its program will be inspected by the Project Planner and Land Adviser. (See paragraph 7a below.)

4. Criteria for Site Selection

a. General. The considerations involved in site selection include:

- (1) The suitability of the site in relation to the surrounding neighborhood and the city plan.
- (2) The physical characteristics of the site, which should be of a nature to permit an orderly and appropriate arrangement of the proposed number and type of units and should make economical construction and management costs possible.
- (3) The cost of the site itself and of the required site improvements.
- (4) In the case of slum sites, the feasibility of relocating the site occupants without undue hardship.
- (5) The suitability of the site from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 and agency regulations and requirements issued pursuant thereto (and of Executive Order 11063, with respect to creed).

b. Single Sites Versus Scattered Sites

- (1) Nothing in this Section shall be construed as requiring that the site for a project must consist of one large parcel or an assembly of parcels. A single project may be located on one or more relatively large sites; or scattered sites (each accommodating one or more dwellings) may be used.

(Cont'd)

(2) In selecting sites, due consideration should be given to any features of neighborhood renewal proposals which might influence the choice or affect suitable planning and economic development of the individual sites. Scattered sites should not be chosen if a decent standard of livability in the proposed housing is not possible because of intermingled neighborhood blight, unless reasonable steps are taken through urban renewal or other proper means to ensure rehabilitation of the neighborhood.

c. Suitability in Relation to Surrounding Neighborhood and City Plan

(1) The site shall be chosen with due regard for and consistency with local plans for long-range city plans and related development and slum clearance and urban renewal proposals which would control or influence the site location.

(2) The site shall be located where zoning laws protect its residential character, or agreements for obtaining such protection through amendment of existing requirements must be made in advance. This requirement shall not be construed as prohibiting the location of a project in the general proximity of business, manufacturing, or industry, but is intended to ensure that the project and its immediate environment are reasonably free from danger of adverse effect by nonresidential land use.

(3) The site shall be well related to public transportation, public schools, shopping, and all other facilities necessary to the health, safety, and general welfare of the tenants.

(4) In addition to appropriate population density, due consideration shall be given to local regulations regarding off-street parking. Accessibility and adequacy of existing neighborhood playgrounds require careful appraisal, as the presence or lack of these facilities may materially affect the size of the site to be acquired. Also, where sub-surface sewage disposal is planned, the site shall be of ample size for disposal fields plus sufficient space for 100 percent expansion.

(5) Systems of water and sewerage, electricity, and other utilities available to the community must also be available to the project site at reasonable cost. When water and sewerage are not so available to the project, water supply and sewage disposal systems provided and operated by the project will be permitted on condition that an adequate supply of potable water can be made obtainable without excessive cost, and provided that the proposed method of sewage disposal is feasible, is economical in initial and operating cost, and will not result in actual or possible contamination of any water supply or involve a nuisance of any kind.

(Cont'd)

(6) In the standard form of Cooperation Agreement, the city agrees to grade and pave boundary and necessary access streets and to provide or cause to be provided water mains and storm and sanitary sewers leading to and serving the bounding streets of the project. In each case the Local Authority agrees to pay to the city such amount as would be assessed against the project site for such work if the site were privately owned. If any substantial amount of such work will be required, the Local Authority should, at the time of preliminary site selection, advise the city by letter of the approximate extent and type of facilities which the city will need to provide for the site pursuant to the terms of the Cooperation Agreement. If any substantial extensions of electric lines or gas mains will be necessary, at least verbal assurance must be obtained from responsible officials that such facilities will be provided and that the Local Authority will not be charged for any costs which would not be charged to a private owner.

(7) No project shall be located where it would be subject to serious and chronic nuisances such as smoke, fumes, odors, or open sewerage. So far as local choice will reasonably permit, sites near or adjacent to railroads, waterways, expressways, airports, and similar hazards shall be avoided.

d. Physical Characteristics. No site shall be selected where topographic or subsurface conditions prevent economical and well-planned development and operation of the project.

(1) As a general rule any site with dominant grades in excess of 10 percent involves costly development and management expense and shall not be selected unless adequate advance planning studies demonstrate the feasible and economic use of such a site. Conversely, a low-lying and relatively flat site shall not be selected unless it is susceptible to practical and economical means of quick and complete disposal of surface water under normally expected heavy rainfall. Where the topography obviously is such that feasible use of the site is subject to question, topographic information should be sought from available sources such as the U.S. Geological Survey maps and the local City Engineer's office. In cases of rugged topography it will be necessary, prior to tentative site approval, to have some preliminary surveys and drawings made to demonstrate the feasibility of the site.

(2) Where septic tanks and subsurface sewage disposal are to be employed, the site should slope downward away from existing or proposed streets to permit disposal fields near the surface (18-36 inches in depth) and in rear-yard areas. Appropriate subsurface investigation shall be made to determine that (a) the percolation rate is satisfactory for this type of sewage disposal; (b) rock formations or other impervious strata are at a depth greater than six feet below the ground

(Cont'd)

surface; and (c) the maximum elevation of the ground-water table is at least four feet below the ground surface. Unless these conditions are satisfied the site is unsuitable for a subsurface sewage-disposal system, except in certain localities where State or local authorities may grant approval under special conditions.

(3) Sites located where there is any evidence of unsuitable bearing qualities for foundation and underground utilities or of excessive areas of rock to be excavated shall not be selected unless and until it is demonstrated that the site is, in fact, subject to proper and economical development. As a rule, careful inquiry will disclose information at least as to the general conditions which may be expected (see Bulletin No. LR-2, Subsurface Soil Investigation). If such inquiry points to the need for more specific information, the Local Authority should obtain sufficient test borings and/or pits to determine within reasonable limits whether the subsurface conditions will permit economical development of the site. In case of doubtful subsurface conditions, tentative site approval will not be given until such tests have been made and have indicated acceptable conditions.

(4) No site shall be selected where there is suspicion of potential danger of earth slides either on the site itself or on adjacent or nearby land until it has been conclusively established that such danger is non-existent. This injunction must take into consideration the fact that in hilly terrain existing soil conditions may be stable if undisturbed but may tend to move because of grading operations. Expert consulting services will be required in such cases prior to tentative site approval.

(5) No project shall be located where it would be subject to flooding. Where there is even a suspicion of such potential hazard the conditions must be thoroughly investigated and authoritative opinion obtained before tentative site approval will be given.

e. Acquisition Cost

(1) The cost of acquiring the site should bear a reasonable relationship to total development cost. While a higher cost can be justified for a slum site than for a vacant site, the costs of acquiring the most densely developed slum areas are usually greater than can be justified for low-rent housing projects.

(2) In no event shall parcels or blocks that are conspicuously expensive in comparison with the remainder of a site be included within the site boundary merely to facilitate the planning of a symmetrical project or for other similar reasons. Whenever possible, such parcels must

(Cont'd)

be omitted as exceptions to the proposed taking. The provisions in paragraph 4b above, relative to planning projects in sections or on scattered sites, should be given consideration in connection with this question.

(3) No improved site which includes any substantial number of dwellings which are not substandard shall be selected.

(4) No improved site shall be selected if such site includes any substantial number of dwellings which are substandard but which may be rehabilitated at modest cost, unless most of such dwellings are to be rehabilitated and included in the low-rent project.

(5) Special care should be taken to ensure that the estimate of cost of acquiring the proposed site is a realistic one. The estimate shall be made on a parcel-by-parcel basis. The Local Authority should utilize the best information and advice available from public records, previous experience, revenue-producing capacity of the properties comprising the proposed site, and opinions expressed by real estate brokers who have knowledge of recent sales prices or asking prices for properties comparable to those comprising the site. The estimate and the information upon which it is based shall be discussed fully with the PHA Land Adviser (see paragraph 7a below) in order that there shall be mutual agreement between the Local Authority and the PHA that the estimate of site acquisition cost is a valid and realistic one.

f. Feasibility of Relocation. No improved site will be approved by the PHA until there has been submitted a feasible and satisfactory plan demonstrating that the site occupants to be displaced can be relocated without undue hardships to such occupants (see Section 209.1).

g. Nondiscrimination in Housing. Section 1.4(b)(2) of the regulations of the Housing and Home Finance Agency issued under Title VI of the Civil Rights Act of 1964 provides in pertinent part that:

"A recipient [Local Authority], in determining the location or types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided * * * may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect persons of a particular race, color, or national origin."

The housing on the site to be selected must be operated in accordance with all applicable requirements of Title VI of the Civil Rights Act of 1964 and

(Cont'd)

*interrelated in
concept*

of Executive Order 11063, and ^{not} agency regulations and requirements issued pursuant thereto. The aim of a Local Authority in carrying out its responsibility for site selection should be to select from among otherwise available and suitable sites those which will afford the greatest acceptability to eligible applicants regardless of race, color, creed, or national origin (see paragraph 3, Commissioner's Circular of 8-27-65, Title VI of Civil Rights Act of 1964). This objective applies regardless of the date on which the project involved was initially covered by Annual Contributions Contract. The advice and assistance of the PHA are available to Local Authorities in respect to the selection of sites under the special conditions and considerations pertaining to any particular case.

5. Policy on Purchase of Excess Land

- a. No cost for land in excess of that required in connection with the construction of the project (including dwelling and nondwelling facilities and playgrounds) may be included in the development cost of a project except where the site consists of one parcel (or includes a large parcel) with an area in excess of that required for the development of the project and where the severance damage involved in purchasing only the land required for the project would exceed the cost of the excess land. Cost of acquiring land for development of future projects may not be included in the development cost of a project.
- b. If existing circumstances should justify approval of the purchase of excess land to obtain a site, the Annual Contributions Contract requires that the excess real property be sold as soon as practicable at public sale for not less than the fair value thereof, unless other disposition or method of disposition is approved by the PHA. The project shall be so planned as to provide adequate access to the excess land in order that it may be sold.
- c. In cases where the excess land is unsuitable for improvement because it is unbuildable or inaccessible, or for other reasons, Local Authorities are urged to give full consideration to the disposition of the property to eligible public bodies under the Open-Space Land Program administered by the Urban Renewal Administration. Details of the program may be obtained from the office of the Regional Administrator, HHFA.

6. Condemnation of Property Owned by Another Public Body. There have been court decisions adversely affecting attempts by local public agencies to acquire, by condemnation, properties belonging to other public or quasi-public bodies. The PHA will not approve any site containing any property belonging to another public or quasi-public body or institution until the Local Authority, after conferring with responsible persons, obtains written assurance from such body or institution that such property may be acquired by amicable negotiation at a cost not in excess of its fair value.

(Cont'd)

7. Procedure for Site Selection and Tentative Approval

a. Selection by Local Authority and Inspection by Regional Office. Having reached its conclusions as to a suitable site, the Local Authority shall request the Regional Office to send a Project Planner and a Land Adviser to inspect the proposed site and to consider all of the reasons advanced for the Local Authority's selection. *

b. Tentative Site Approval. After inspecting the proposed site, the PHA Project Planner and Land Adviser will prepare a report which will be submitted to the Regional Director. The Local Authority shall furnish to the Project Planner and the Land Adviser, for inclusion in their report, such material as may be required to support their conclusions, including such supporting data or information as may be required to enable the PHA to include, in its tentative approval of the site selected by the Local Authority, a specific determination that the selection is in accordance with the policy established by the PHA under Title VI of the Civil Rights Act of 1964 (see Commissioner's Circular of 8-27-65, Title VI of Civil Rights Act of 1964). If the report is favorable and if the Regional Director agrees with the recommendations contained in the report, he will, by letter, give tentative approval of the site, whereupon the Local Authority may proceed with completion of the Development Program (see Section 206.3) based upon use of the site proposed. The term "tentative approval" means merely that the Regional Office and the Local Authority have agreed on the site to be presented in the Development Program; such tentative approval does not in any way bind the PHA to give final approval to the site.