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Chicago Housing Authority

June 2, 1969

The Honorable Richard B. Austin
United States District Judge
United States Court House
219 South Dearborn Street
Chicago, Illinois

Re: Gautreaux v. CHA, 66 C 1459

Dear Judge Austin:

- As you requested in the conference of May 16, I am submitting herewith the Authority's written comments regarding Plaintiffs proposed judgment order which was transmitted to you under Mr. Polikoff's letter of May 9, 1969. A copy is being served on Plaintiffs.

Also enclosed is a smaller version of the map exhibited in your chambers on the 16th, for your reference. You will recall that this map shows areas of the City which the ACLU would characterize as nonwhite (the red and green colored areas) in applying their 75%-25% formula for additional public housing units. The yellow represents non-residential areas in the City, based on information obtained from the Board of Education.

Very truly yours,

Kathryn M. Kula
General Counsel

KMK:pg

Enclosures

Chicago Housing Authority
Comments Regarding Plaintiffs' Proposed Judgment Order

At a number of points the language and terminology of plaintiffs' proposed judgment order raise specific questions - of meaning, intent and interpretation. CHA's major concern, however, is not with such questions - these could, it is believed, be cleared up one way or another, if the proposed order were otherwise acceptable - but rather with the underlying concepts, their breadth and the detailed and complex judicial legislation of CHA's public housing responsibility that plaintiffs propose. In terms of the continuing need among low income families in Chicago for decent housing at rentals they can afford, plaintiffs' proposals would, CHA believes, prove to be largely self-defeating and unworkable.

More specifically,

(1) Plaintiffs' line of demarcation between "non-white" and "white" areas is so drawn as to limit severely the area within which CHA is to concentrate its site selection. Blockbusting would be encouraged. (2-4)

(2) Within this limited area, plaintiffs propose that CHA locate 75% of all additional regular family units; initially, more than 4 out of 5; all at a time when no one really knows what locations may be available in these limited areas.

(3) On top of the geographical limitations and the 75%-25% formula, plaintiffs propose additional restrictions - as to the number of dwelling units in any given census tract, the number of units in any given project, and a limitation to three stories; all of which may be fine in theory, but unduly restrictive and self-defeating as a practical matter.

(4) The inclusion of CHA's leasing program under the proposed order would as a practical matter mean the end of that program insofar as low income families are concerned.

(5) Whatever standards of site selection and so on apply, plaintiffs propose that CHA's compliance with the Court's order be judged at the time of occupancy - that is, long after site selection, planning, acquisition and development; an impossible proposition.

(6) Although the purpose is laudable, plaintiffs' tenant assignment provisions - freezing the waiting list and affording a neighborhood priority - are doubtful propositions if only as a practical matter.

(7) Plaintiffs' reporting provisions go far beyond what would be required for adequate court supervision.

(1) Line of demarcation

Plaintiffs propose that the area considered "non-white" for purposes of site selection include not only all census tracts having 30% or more non-white population, but also the

entire area lying within one mile from any point on the outer perimeter of any such census tract (I D). CHA suggests again that it is both unwarranted and unwise to characterize as "non-white" any neighborhood having anything less than a 50% white population. Such a characterization by judicial order could, in and of itself, have a "blockbusting" effect - of hastening precipitate racial movement rather than fostering efforts at integration and stabilization. Substitution of some euphemism for "white" and "non-white" areas, as has been suggested by plaintiffs, would not, CHA believes, fool anybody.

CHA's main concern over plaintiffs' proposed line, however, is where it actually falls on a map. Very little area is left within which CHA is to concentrate future public housing, if one overlays on the map, the industrial, commercial and other non-residential areas of the city. Moreover, within the small area in the City that remains, no consideration has been given by Plaintiffs to the actual availability of land for public housing -- to what extent vacant land or properties warranting redevelopment provide potential sites for public housing.

Plaintiffs have suggested only one way to get around the severe geographical limitation they would impose by their proposed judgment order - that is to look beyond the city to the rest of Cook county as an area within which CHA can find sites for public housing (III E). This makes the "white" area look much larger. Applicable state and federal law permits CHA to extend its program beyond Chicago into the county area, but only under contract with the Cook County Housing Authority and by agreement with the municipal governing body (where the public

housing would be located within municipal limits). But under plaintiffs' proposal the county area would become available to CHA, for purposes of the judgment order, only to the extent that CHA public housing in that area was occupied by tenants coming from Chicago.

This rules out the one inducement - taking care of local people - that might actually lead to local agreements making the county area available to CHA as a practical matter.

Moreover, the difficulty with plaintiffs' stringent geographical limitation is compounded by the other limitations suggested by plaintiffs. For example, plaintiffs want a limitation of no more than 24 dwelling units in any one public housing project. Assuming HUD approval of CHA's pending application for 5000 additional regular family units, and applying plaintiffs' proposed site selection formula, this would mean that some 170 or so separate sites would have to be found in this limited "white" area of the city simply to take care of this one application.

(2) 75% - 25% Formula

Under the Court's Memorandum Opinion it is clear that CHA must use its best efforts to locate as many regular family dwelling units as possible in "white" neighborhoods, however that term be defined. In the last analysis it is CHA that must go out and look for sites and develop programs for the implementation of the Court's decision. CHA asks the opportunity to

assume maximum responsibility under a final order, and believes that presentation of its program for Court consideration, with all the facts as to availability of sites then before the Court, affords adequate and proper assurance of maximum achievement of the desired results. CHA therefore again suggests that it is both unnecessary and undesirable to attempt, by laying down a fixed formula in the final order, to legislate precisely CHA's responsibility; that a general guideline, with each CHA program to come before the Court for review, is the better approach.

CHA has applied to HUD for funds to finance a thorough survey of all sites that may be available for acquisition in white neighborhoods of the city. When and as HUD allocations are made (CHA has applied to HUD for an allocation of 5,000 regular family dwelling units, and has advised HUD it intends to apply for an additional 2,000 such units in 1970), CHA will proceed immediately to put together sites for specific programs on the basis of all information then available (whether or not a complete survey is then at hand). Judgments can be made then which cannot be made now, by fixed formula or otherwise.

Whatever formula or guideline is evolved, however, surely more should not be required under it during the initial period following the final order than thereafter, when some change has been brought about. But this is what plaintiffs propose, by the inclusion for matching purposes of 1330 dwelling units in CHA's 1965 and 1966 programs (III A and B), both of which programs were approved prior to institution of this suit. The effect would be this: of the (5,000 regular family units) which are the subject of CHA's pending application with HUD, 1330 would be earmarked for "white" areas under plaintiffs' matching approach; of the

why not?

sued to enjoin

3670 units remain g, 75% or 2750 would be e marked for "white" areas under the 75% - 25% formula; meaning a total in white areas of 4080 units, or more than 80% of the initial 5000 units.

good
result
- cf.
posit

7/ The other side of the coin is that the balance of the initial 5000 units - 920 - would not begin to meet the initial requirements of Model Cities in non-white areas - let alone additional urban renewal requirements in such areas - for public housing of low-income families.

explain

1330 under mot. Moreover, the 1330 units that are earmarked for matching do not include the 197 units in CHA's project known as Ill. 2-28. This is a scattered site project with all 8 sites now owned by CHA and designed to provide larger size apartments with start of construction anticipated late this summer. Under plaintiffs' proposal, these 197 apartments could not be constructed and occupied until 1330 units were constructed and occupied in "white" areas. Considering it requires two to three years (depending on whether the site is vacant or requires demolition) from the time of site selection to completion and occupancy, plaintiffs would delay construction and occupancy of 197 units planned for Project Ill. 2-28 for 2 to 3 years, without regard to the desperate need of applicants on CHA's waiting list for larger size apartments.

(3) Additional restrictions

Plaintiffs suggest a limitation of no more than 24 dwelling units in any one public housing project (IV A). This is a severe limitation, wholly arbitrary at a time when so little is known about the sites that may be available in the "white" area within which CHA is to concentrate its future program. As stated already

this would mean finding and acquiring some 170 separate white sites just to accommodate the 4080 dwelling units that plaintiffs' 75% - 25% formula would earmark for the white area out of the one CHA application now pending with HUD. CHA agrees that one of the aims of public housing in the future should be to avoid large concentrations of regular family dwelling units in multi-story projects. It is one of CHA's stated policies that public housing be developed on smaller scattered sites, and not concentrated in larger buildings. The only question again is whether and to what extent the Court should attempt to impose a specific limitation or restriction in its final order. In determining the number of dwelling units to be constructed in a specific location, much depends on the size and character of the sites that can actually be found - a parcel improved with an old building must be acquired in its entirety, and that may mean a land cost requiring 72 units, or some other number, rather than 24. It is of the utmost importance, CHA believes, that the Court's final order be realistic in this as in all other respects: to avoid false promise, to leave CHA with maximum responsibility so long as that responsibility is not abused, and to keep to a minimum those occasions on which either party may feel obliged to come running into court.

This suggested restriction must be read together with the further proposed restriction that CHA dwelling units constitute no more than 15% of the total number of dwelling units in a given census tract (IV B). Taking the city's population and dividing by the total number of census tracts in the city, and dividing further by 5 as the average family size, one gets something like 700 or 800 as the average number of dwelling

25
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units per census tract, 15% of this figure would be 100 or something over. This would then operate as a ceiling for each census tract. The most drastic impact of this 15% limitation would almost certainly be in the non-white area, where existing public housing would undoubtedly rule out any further public housing whether new construction, rehabilitation or leasing and regardless of size, even though located some distance away.

The suggested limitations regarding building height (IV C) are wholly unwarranted, having in mind the provisions now contained in the National Housing Act prohibiting (with only a very limited exception) high-rise elevator buildings.

(4) Leasing program

The proposed order defines dwelling units to include all regular family units under CHA's leasing program (I B and C), and would apply the same 75% - 25% formula to the leasing program as is proposed for CHA public housing projects (III D). Including the leasing program under any formula would be tantamount to ending the program, because of the impossibility of finding any substantial number of apartments for lease in white neighborhoods.

Under the leasing program, in effect since 1965, CHA leases apartments from private owners at fair market rentals and subleases them to eligible applicants at lower rents consistent with that paid by CHA project tenants. The program is entirely voluntary. CHA can only enter into such leasing arrangements in cases where owners and landlords are willing to participate.

There is a severe apartment shortage throughout the city in the case of family size apartments with three or more bedrooms.

The vacancy rate is practically nil. As a consequence, CHA's leasing program, despite efforts to locate apartments and willing landlords wherever they may be found, has thus far resulted in only some 180 families being accommodated, almost all in non-white neighborhoods, because that's where landlords willing to participate have been found. (Of the 180 leases at present, only 44 are in white neighborhoods, and 34 of the 44 are only two-bedrooms).

Additional apartments large enough to house families must come mainly from federally-aided deconversion, rehabilitation and construction of buildings under Section 221(d)(3) of the National Housing Act. Such projects by private developers are made feasible by CHA leasing a number of the apartments for sublease to low-income families. CHA has entered into commitments to make such projects a reality. But the neighborhoods involved are substantially non-white - e.g., Woodlawn and Lawndale - where the need for urban renewal, rehabilitation, new construction and low income housing is the greatest.

There is a project under construction in Woodlawn, sponsored by The Woodlawn Organization (T.W.O.) and the Kate Maremont Foundation financed under Section 221(d)(3). This development will include 504 dwelling units in 27 low-rise buildings and is located on a 9-acre site from 60th to 63rd St. along Cottage Grove. Rev. Brazier, president of T.W.O., originally requested CHA to lease 50% of these units so that the low-income families who could not otherwise afford the rents could be accommodated. CHA agreed to do so, but subsequently FHA has authorized 20% or 101 apartments for public housing in the development and CHA has agreed to lease this number.

open
penn

The so-called "Chicago Plan Agreement" between CHA, FHA and the Chicago Dwelling Association contemplates that approximately 600 units will be rehabilitated under Section 221(d)(3) and rented to applicants on CHA's waiting list. Under this agreement CHA is expected to lease 10-20% of these units for public housing tenants. All units to be rehabilitated under this program will be in non-white areas.

The Department of Urban Renewal of the City of Chicago is involved in large scale rehabilitation (1000 dwelling units) on West Douglas Blvd. as well as rehabilitation of properties on 10 blocks of Independence Avenue. CHA is expected to participate in the program by leasing rehabilitated units for sublease to low-income families now living in the neighborhood.

Given these facts: (a) that CHA's regular family leasing program thus far has accommodated only some 180 families, mostly in non-white neighborhoods; (b) that additional apartments becoming available to CHA through Section 221(d)(3) projects will be concentrated in non-white urban renewal neighborhoods; (c) that under plaintiffs' proposal (III D), or anything like it, a very substantial number of apartments would have to be found in white neighborhoods before even one additional apartment could be leased in a non-white neighborhood; (d) that due to the apartment shortage it is illusory to expect that any large number of family size apartments will become available in white neighborhoods - the conclusion must be, CHA believes, that to attempt to include this leasing program under any site selection formula or guideline in the final order would be tantamount simply to ending the program and thereby diminishing the chances for low income families to be housed in decent, safe and sanitary housing.

(5) Judging compliance by CHA
"after the fact" - that is,
at time of occupancy

A basic concept of plaintiffs' proposed order is that CHA's location of additional dwelling units - i.e., whether the units are in "white" area or "non-white" area - be judged by hindsight, that is, not only at the time of site selection and submissions to the city and HUD for necessary approvals, but also at the time the units ultimately become available for occupancy. Thus, the proposed order provides that all "activities to be performed in order to render such Dwelling Units available for occupancy. . . shall take place at such time as will result in the location of such Dwelling Units in conformity with the provisions of Article II thereof." (II B). And the suggested formula provides that "at least 75% of the Dwelling Units . . . shall be located in the areas which at the time of such initial occupancy are in/white area of the City of Chicago." (III C). Other pertinent provisions suggested by Plaintiffs are in conformity with this concept.

This is an impossible proposition. It amounts to saying that public housing projects, notwithstanding proper planning, necessary approvals, site acquisition and construction, would always remain tentative only, during the extensive period of time involved in all of this, up until the final point at which tenants can be moved in. All risk of racial changes in any given census tract during this period would be upon CHA, whether or not CHA had anything at all to do with such changes. If hindsight indicated, then the mere fact of such change would place CHA in violation of the order.

not a question
of risk or
but effective
result

only
if by
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The problem is not an academic one. From the time of initial site selection through necessary approvals, letting of contracts and construction a substantial period of time is involved, possibly up to several years. To the extent plaintiffs' proposal addresses itself to a real problem, it is ignoring reality to say that CHA should carry out all development plans at its peril - the peril that any given public housing project, even though the construction stage, may turn out to be an exercise of futility. Whatever standard of site selection be incorporated in the final order, CHA believes that such standard must be applied with finality at a realistic stage of the whole process of selecting and developing sites - at the latest, CHA believes, at the time necessary site approvals have been obtained.

(6) Tenant Assignment

Plaintiffs propose freezing CHA's present waiting list; then weeding out all applicants who are no longer eligible or no longer desire public housing; then "intensive publicity"; and, finally a 50% neighborhood priority (V B and C). The obvious purpose is to aim for the inclusion of more whites in the public housing program and consequent integration of future public housing projects. This is a laudable aim. We believe, however, that anything short of CHA's suggestion (that there be no presumption of racial discrimination if there is an occupancy ratio in any given project of not less than one-fourth non-white) is impractical and almost surely bound to fail.

If the present waiting list were culled, CHA's experience indicates that it might be reduced by one-half, say to 6,000 or 7,000 families; almost all of whom would be non-white. The white families coming on to such a list after unfreezing would not, apart from the neighborhood priority suggested, be much closer to public housing than they would have been had the list never been frozen in the first

place. And the suggested neighborhood priority, so that white families by-pass the list, is a wholly dubious proposition. It is anybody's guess until a given project is built in a given white neighborhood, how many eligible white families if any would qualify for a neighborhood priority and how many of that number if any might actually apply. *Heaven*

Moreover, the 50% neighborhood priority is suggested by plaintiffs for initial occupancy only (V C). CHA's experience clearly indicates that a 50-50 ratio will not produce integration even at initial occupancy. But even assuming integration at initial occupancy, if the 50% neighborhood priority is dropped in filling subsequent vacancies, any integration initially achieved will be lost. The attached list of projects indicates the dramatic change from substantially white occupancy to substantially non-white occupancy when quotas for these projects were abandoned in the early 1950's

*our experience
of small
projects in
white
neighborhoods*

*wish to
continue
neighborhood
priority?*

Plaintiffs also propose (V A) a modification of CHA's tenant assignment policy (Exhibit B to plaintiffs' draft judgment order) that constitutes one more reason why CHA's leasing program should not be included in the final order. Plaintiffs would treat all leased dwelling units as a single "location" for purposes of an applicant's choice of location. Under Participation Agreements executed with 225 owners only 12% have accepted the option whereby CHA selects the tenant with no right of approval by the owner. (Under other options the owner either selects the tenant or must approve CHA's selection. In any case disapprovals may not be based on race.) Plaintiffs' proposal would take away any control by the owner. But owners generally do not want to lose control of their properties, to be compelled to accept any tenant sent to them without any right of approval.

misleading

It is evident, therefore, that to include all leased dwelling units as a single location, and to assign tenants on a city-wide basis without regard to owners preferences, would result in mass withdrawal from the leasing program and the refusal by other owners to offer vacant units to CHA for low-income families.

Plaintiffs also suggest that the final order provide that CHA file a plan with the Court assuring that Trumbull, Lathrop, Lawndale and Bridgeport do not become racially segregated (V C). Again, CHA agrees with the purpose but believes that any such tenant assignment policy should apply not only to these four projects but to all future projects as well, and the policy should be decided upon and incorporated in the final order.

(7) Reporting Provisions - M13

CHA recognizes that implementation of the Court's final order, whatever form that order may take, will require a degree of continuing judicial supervision in order to assure compliance. But plaintiffs' proposals go far beyond what should be reasonably required, and indeed in many respects seem completely impractical as well as onerous.

For example, plaintiffs would have CHA file, at least 20 days before any submission to CHA Commissioners, detailed information regarding every site under consideration (VI A). How, and why, does anything go to Court before CHA's own Board has anything before it? Then, plaintiffs would require the filing of a statement by CHA on

each such site, during the whole period up to initial occupancy, every time "any official action is proposed to be taken with respect thereto by CHA . . ." (VI B). Why? Also, CHA would have to file a statement every time it had knowledge of "any action . . . taken with respect thereto by any other government agency or official . . ." (VI B). Why? Any action officially approving or disapproving sites would be one thing, but this sort of provision would seem to put the Court in the day-to-day business of CHA and of city and HUD officials.

Plaintiffs would also require quarterly statements showing plans for dwelling units and the providing of dwelling units in conformity with the order (VI C). Why quarterly statements? Why any such statements, other than statements covering any changes in plans made or proposed subsequent to the time such plans are first filed with the court?

Plaintiffs would also require filing of copies of all applications by CHA "to any government agency or official for any form of assistance, participation, approval or other action respecting Dwelling Units to be provided at any location; covering the period up to initial occupancy . . ." (VI D). Such applications are bulky, and include detailed development plans much of which are irrelevant to any issue raised by this suit. Why should all of this become part of any reporting procedure, if the Court and plaintiffs are apprised of CHA's plans and any changes at a proper

stage, and are kept reasonably informed thereafter of the progress of those plans after they are submitted for necessary approvals? Similarly, why should every "written response" to applications by CHA for any form of government assistance or approval, etc. (VI D) require another filing in court? (VI E).

CHA urges that responsible reporting provisions in a final order would require only that CHA, after approval by its Commissioners, submit to the Court the package of sites recommended for acquisition under a HUD allocation of family units; that (assuming Court approval) CHA thereafter report to the Court any changes or modifications in the package proposed by CHA or resulting from action of any government agency whose approval is also required. This would give the Court ample opportunity to enter such further order or orders as might be appropriate.