
In the
United States Court of Appeals
For the Seventh Circuit

Nos. 72-1409, 1410, 1485 and 1486 (Consolidated)

DOROTHY GAUTREAUX, et al.,
Plaintiffs-Appellees,
vs.

CHICAGO HOUSING AUTHORITY, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division

BRIEF OF PLAINTIFFS-APPELLEES

U. S. C. A. — 7th Circuit

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Plaintiffs-Appellees,

v.

CHICAGO HOUSING AUTHORITY, et al.,

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On Appeal from the United States District Court
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BRIEF OF PLAINTIFFS-APPELLEES

THE ISSUE PRESENTED

Whether, against the background of a long and frustrating pattern of non-compliance with a remedial public housing system desegregation order entered more than 3 years ago,* a federal

*"Since [1969, the district court's] orders have been ignored and his efforts frustrated." Gautreaux v. Romney, 457 F.2d 124, 140 (7th Cir. 1972) (dissenting opinion).

district court may exercise equitable remedial powers to join a city and the members of its city council as additional parties defendant and enter a declaratory judgment that (until further order of the court) a state law giving the council a veto power over the local housing authority's proposed public housing sites should be inapplicable to the authority's proposed sites where the evidence shows,

- (1) The council had refused to act on the proposed sites notwithstanding many of them were suitable for public housing purposes and were selected by the authority to enable it to comply with the court's desegregation order,
- (2) No explanation for the council's refusal to act was offered except that, in the opinion of one alderman, a majority of the council could not be obtained to "put that many housing units in white neighborhoods," and
- (3) The council's refusal to act was preventing the housing authority from implementing the desegregation order of the district court.

STATEMENT OF THE CASE

The facts should not be in dispute but the statements of the case in the briefs of the appellants are seriously

incomplete, and in some respects inaccurate, necessitating the following statement of the case. Relevant background appears in decisions of this Court and the District Court reported at 296 F.Supp. 907, 304 F. Supp. 736, 436 F.2d 306, 448 F.2d 731, 332 F.Supp. 366, and 457 F.2d 124.* The order appealed from is reported at 342 F.Supp. 827.

A. The Events Prior to March 5, 1971

On July 1, 1969 the District Court entered a judgment order in this case. Gautreaux v. Chicago Housing Authority, 304 F.Supp. 736. The order is printed as Appendix B to the brief of the City of Chicago ("City"). A 28-38. Among other things the defendant Chicago Housing Authority ("CHA") was ordered to,

"use its best efforts to increase the supply of Dwelling Units as rapidly as possible in conformity with the provisions of this judgment order and [to] take all steps necessary to that end..."
304 F.Supp. at 741; A38.

The first 700 of CHA's new dwelling units were required to be located in neighborhoods of predominantly white residence (the "General Public Housing Area") and no more than one-fourth of the dwelling units beyond the first 700 could be located in areas of predominantly black residence (the "Limited Public

*An extensive summary of the case is included in the dissenting opinion in Gautreaux v. Romney, 457 F.2d 124, 129-32 (7th Cir. 1972).

Housing Area"). 304 F.Supp. at 738; A31-32.*

2. The 1969 judgment order was entered pursuant to an opinion rendered on February 10, 1969, 296 F.Supp. 907, printed as Appendix C to the City's brief. A13-27. In the opinion the District Court determined that CHA was intentionally discriminating on racial grounds in the selection of sites for public housing in Chicago and directed the parties to attempt to formulate a comprehensive plan to "remedy the past effects of CHA's unconstitutional site selection ...". 296 F.Supp. at 914; A25-26. The 1969 judgment order, including particularly the "best efforts" provision, was intended to provide the remedy for those past effects.

(Contrary to the City's statement (br. 4), the District Court did not eliminate from consideration the separate CHA program for housing the elderly and restrict its inquiry to the family housing program. Although the complaint in the case was directed only to family and not to elderly housing (296 F.Supp. at 912; A20), the Court considered a substantial amount of evidence relating to site selection for the elderly and concluded:

"Therefore, the circumstances surrounding the choice of sites for elderly housing

*The requirement that the first 700 new dwelling units be located in the General Public Housing Area "matches" (though reduced by 50%) the provision of the order that allowed CHA to proceed with 1458 units already planned for the Limited Public Housing Area. See 304 F.Supp. at 738; A31.

tend to prove a purpose to perpetuate racial separation rather than to refute it." 296 F.Supp. at 912; A20.

Contrary also to the City's suggestion (br. 4), repeated throughout its brief (e.g., br. 23, 25), that the finding of racial discrimination was based largely or wholly on a statistical analysis, the District Court considered much testimonial evidence, noted that "numerous other statements" in the record in addition to those referred to in the opinion supported the finding of discrimination (296 F.Supp. at 913; A23), and concluded that the testimonial evidence established plaintiffs' right to judgment "either considered alone or in combination with the statistics." 296 F.Supp. at 913; A24.)*

In a subsequent proceeding this Court characterized the District Court's opinion as follows:

*The City quotes the District Court's statement that sites were chosen primarily to further the praiseworthy and urgent goals of low cost housing and urban renewal (br. 4-5), but not the next succeeding sentence, "Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued." 296 F.Supp. at 914; A24. Similarly the City quotes the Court's statement that there was no evidence that aldermen who vetoed sites in white neighborhoods were necessarily motivated by racial animus, but ignores the Court's succeeding observation that the aldermen "cannot acquiesce in the sentiment of their constituents to keep their neighborhoods White and to deny admission to Negroes via the placement of public housing. [citations omitted.]" 296 F.Supp. at 914; A24.

"[T]he Court found that while defendant CHA did not necessarily harbor a subjectively racist attitude, it had intentionally maintained a system of public housing which discriminated on racial grounds with respect to the selection of sites for public housing in the City of Chicago ..."
436 F.2d at 307.

3. A year passed but there was no compliance by CHA with the order to increase the supply of dwelling units. In particular, no sites were submitted by CHA to the Chicago Plan Commission or to the Chicago City Council as provided in Illinois statutes. (See this Court's observation to that effect, 436 F.2d at 308.)* The events which took place toward the end of that one year period are narrated in an opinion of this Court. 436 F.2d at 308-311. They culminated with the entry of an order by the District Court on July 20, 1970, under which, pursuant to the "best efforts" provision of the 1969 order to increase the supply of dwelling units, CHA was ordered to refer sites appropriate for the construction of not fewer than 1500 dwelling units to the Chicago Plan Commission and to the Chicago City Council by August 20, 1970 and September 20, 1970, respectively. (The relevant parts of the July 20, 1970 order are set out at 436 F.2d at

*The law requiring submission to the Chicago Plan Commission is not mandatory. City of Chicago v. Albert J. Schorsch Realty Co., 238 N.E.2d 426, 432-33 (Ill.App. 1968). The law requiring approval of sites by the City Council is mandatory but is applicable only to Chicago and not to other Illinois cities. Ill.Rev.Stat. ch. 67-1/2, §9.

310-11.)*

4. An appeal was then taken from the July 20, 1970 order and the order was stayed pending appeal. 436 F.2d at 311. On December 16, 1970 this Court affirmed the order, and on February 18, 1971 denied a petition for rehearing. 436 F.2d 306. The Court's opinion directed that the cause be remanded to the District Court "for submission of sites to the Chicago Plan Commission and to the City Council in accordance with a revised timetable." 436 F.2d at 313.

5. Pursuant to remand on March 1, 1971, the District Court ordered CHA to submit sites to the Plan Commission and the City Council on or before March 5, 1971. CHA complied, and on March 5, 1971 submitted 275 proposed sites, 235 of which (intended to accommodate approximately 1450 dwelling units) were located in the General Public Housing Area of the City. Pl. Ex. No. 1, ¶1.**

*1500 dwelling units was the amount of CHA's then current "reservation" from the defendant Department of Housing and Urban Development ("HUD"). Under the provisions of the 1969 judgment order, 1300 of these 1500 units were required to be located in the General Public Housing Area (i.e., the first 700 and three-quarters of the balance).

**The 40 sites in the Limited Public Housing Area would accommodate approximately 300 units. Pl. Ex. 2. Virtually all (38) of these sites received prompt City Council approval. Pl. Ex. 8.

B. The Events Subsequent to March 5, 1971

1. Following their submission to the City Council the CHA sites were referred to the City Council Committee on Planning and Housing for consideration. Pl. Ex. No. 1, ¶2. CHA requested such referral and a meeting of the Committee as early as possible because of "the urgency of this matter ...". Pl. Ex. No. 2. The request, in the form of a letter from CHA's Executive Director, went on:

"The urgency I refer to is, of course, the dire need for additional housing for Chicago's families of low income. And affirmative, prompt action by the City Council in connection with these sites is a prerequisite to construction by CHA for additional housing to meet that need.

Moreover, Judge Richard B. Austin has ruled that the placement of family public housing in past years was discriminatory and ordered that such pattern be reversed. The authority's current site program will implement that order." Ibid.

2. During June 1971 the Planning and Housing Committee held hearings on 43 of the 235 sites in the General Public Housing Area submitted by CHA, approved 12 and disapproved 31. Pl. Ex. No. 1, ¶3. It also approved 32 additional sites in the General Public Housing Area proposed by persons other than CHA. Tr. 190-93. Later the same month the 44 sites were approved by the City Council. Pl. Ex. No. 1, ¶6.*

*For various reasons a number of the approved sites were unacceptable or unavailable to CHA, and the 44 approved sites were reduced in number to 27 sites intended to accommodate 177 dwelling units. Pl. Ex. No. 1, ¶9.

3. Following June, 1971, the Planning and Housing Committee held no hearings and did not otherwise consider any of the remaining 192 sites previously submitted to it by CHA (Pl. Ex. No. 1, ¶5; Tr. 425), and the City Council itself has neither approved nor considered any of such remaining sites. The supplemental complaint was then filed on February 2, 1972 (Appendix A to the City's brief, A1-5), and after answers were filed a hearing commenced on April 4, 1972.

4. No evidence was offered at the hearing on the supplemental complaint to explain why neither the Planning and Housing Committee nor the City Council itself has given any consideration to the remaining CHA sites since June, 1971. Alderman Kelley, the only alderman called as a witness by the City, said under cross examination that he had not discussed that subject with his fellow aldermen. (Tr. 302.) Alderman Holman, testifying in his own behalf, was asked on cross-examination for his opinion as to why the committee had taken no action on CHA sites since June, 1971. He said he could not give an opinion (Tr. 342), but then added:

"I don't think you could get, right now, an affirmative 26 votes [a majority of the council] to put that many housing units in white neighborhoods." (Tr. 343.)

Alderman Simon regretted that the Committee hearings did not continue (Tr. 518), and said that the Council did a "great disservice" by not continuing with them. (Tr. 521.) HUD called

the "refusal" to hold further hearings "a deliberate affront to this [the district] court," and "totally contrary" to representations made by the City in a document signed by the City, CHA and HUD. (Appendix A to this brief, p. A2. See Gautreaux v. Romney, supra, 457 F.2d at 132.)

5. A witness for the City, who is an assistant commissioner of the City's Department of Development and Planning ("DDP"), testified about an examination he and his staff had made of some (but not all) of the remaining CHA sites. (Tr. 69-199.) Contrary to the City's statement that all of these sites "were shown to be in violation of the Chicago Zoning Ordinance, or otherwise burdensome upon public services, including school attendance" (br. 6), the evidence showed that the DDP staff found over 100 of them to be "suitable sites in the General Public Housing Area." Pl. Ex. No. 8. (The relevant portion of Exhibit No. 8 is a part of the order appealed from, although not reprinted in the City's Appendix. 342 F.Supp. 831-32.)* However, neither this nor any other information or recommendation concerning the remaining CHA proposed sites was submitted by the DDP to the Chicago Plan Commission, the agency to which the DDP normally made its recommendations. (Tr. 266.) No

*Of the remaining approximately 190 CHA sites, 148 had been reviewed by the DDP staff at the time of trial. No explanation was given as to why the other 42 had not been reviewed. Only 18 of the 148 reviewed sites were found by the DDP staff to be unsuitable for public housing. 342 F.Supp. at 832.

explanation was given as to why that had not been done.

(Tr. 197-99.)

6. At the conclusion of the hearing, on April 10, 1972, the order now appealed from was entered. Without its appendix the order is printed as Appendix B to the City's brief. A6-12. The order finds, among other things: that acquisition of sites by CHA is necessary to enable CHA to comply with the 1969 judgment order to increase the supply of dwelling units as rapidly as possible (342 F.Supp. at 828; A6-7); that under state law (Ill.Rev.Stat. ch. 67-1/2, §9) CHA may not acquire sites without City Council approval (342 F.Supp. at 829; A7); that there was no showing of any necessity or reason for the failure of the City Council to take any action subsequent to June, 1971 respecting CHA's proposed sites, particularly in light of the evidence that many of the sites were suitable for the provision of dwelling units (Ibid.); and that such failure had had the effect of preventing CHA from complying with the 1969 judgment order and of preventing the Court from assuring that relief to which the plaintiffs were entitled was provided. 342 F.Supp. at 829; A8. After expressing conclusions of law (342 F.Supp. at 829-30; A8-9), the order declares that until further order the statute requiring City Council approval of CHA sites shall not be applicable to CHA's actions taken for the purpose of providing dwelling units (342 F.Supp. at 830; A9-10), and directs CHA

to proceed with appropriate steps to provide the 1500 dwelling units that were the subject of the District Court's July 20, 1970 and subsequent orders. 342 F.Supp. at 830-31; A10-12.

C. The Posture of the Parties on Appeal

Appeals were taken by the City, the Mayor, CHA and 39 of the 48 aldermanic defendants. (Both the District Court - Judge Decker - and this Court denied stays pending appeal.) Five of the non-appealing aldermanic defendants, Aldermen Cousins, Despres, Langford, Simpson and Singer, admitted all allegations of the supplemental complaint, took the position in the court below that they "fully support the efforts being made by the plaintiffs" (Tr. 38), and unsuccessfully sought leave to file a brief on this appeal in support of the order entered below. Four others, Aldermen Hedlund, Hoellen, Lawlor and Simon, have likewise not appealed. In addition, Alderman Holman, who is one of the appellants, while dissatisfied with the provisions of the 1969 judgment order, said,

"I would say that the Court enter an order that whether we have City Council approval or not, that we proceed ... The prayer to by-pass the City Council is one for the Court's suggestion, and I do not quarrel with it ..." Tr. 330-31.

HUD has not appealed. In its answer to the supplemental complaint HUD said:

"[HUD] suggests that the inclusion of the City of Chicago, Richard J. Daley, Mayor of the City of Chicago, and individual members of the City Council, as defendants herein, is appropriate to achieve just and equitable relief and urges this Court to enter such order or orders against the aforesaid defendants as this court deems just and equitable." Answer, Record Doc. No. 5, p. 3.

ARGUMENT

The City's brief (on behalf of the City, the Mayor, and all of the aldermanic appellants) argues three propositions: (1) that it was improper to join the City, the Mayor and the Aldermen as parties-defendant in the cause and to grant the declaratory relief prayed for (br. 8-14);* (2) that the City Council's veto power over public housing sites

*With the exception noted in the next sentence of this note, the only relief the April 10 order grants "against" any party other than CHA is the declaratory relief contained in paragraph 2 of the ordering portion that frees CHA (until further order of the court) from the requirement of Ill.Rev. Stat. ch. 67-1/2, §9, that the City Council approve its proposed sites. 342 F.Supp. at 830; A9-10. The City was ordered only to provide CHA with certain information (paragraphs 3A and 4A of the order), which it has already done; no point is made in the appellants' briefs about that direction to the City. Mayor Daley was named a party defendant because under Illinois statutes he presides at City Council meetings and has the power to vote under certain circumstances. (Al.) Under paragraphs 3 and 4 of the April order CHA has prepared and submitted to HUD additional "development plans" covering the remainder of the 1300 dwelling units to be located in the General Public Housing Area.

is analogous to a referendum procedure, the exercise of which cannot be viewed as denying plaintiffs any relief to which they are entitled (br. 14-21); and (3) that both the order appealed from and the 1969 judgment order constitute abuses of discretion because of the hardships that allegedly result from them. (Br. 21-30.) Following an introduction these arguments will be addressed (Parts I, II and III below) in the order stated. Arguments made separately by Alderman Vrdolyak largely duplicate the City's arguments and will not be dealt with separately.*

The other appellant, CHA, argues that the order is an abuse of discretion because it promises to do nothing but add to CHA's "already awesome burdens while contributing nothing to the complex problem of providing integrated public housing opportunities in the Chicago area." (CHA br. 16.)**

*Alderman Vrdolyak does speculate, without any evidentiary support in the record, that scarcity of City resources might explain the City Council's refusal to consider CHA's remaining proposed sites. CHA's 1971 Annual Report says: "The CHA receives no tax funds from the City of Chicago. Development funds are obtained in the private market. Temporary financing is provided by short-term notes sold to banks, and permanent financing is provided by 40-year bonds sold to private investors. CHA receives sufficient Federal funds each year to meet debt service costs on the 40-year bonds, plus operating cost subsidies which enable CHA to charge low rents. In lieu of taxes, CHA pays to the County treasurer 10% of all shelter rents charged (rents exclusive of utility costs). Historically, the payments have been more than private owners were billed in real estate taxes the year before the properties were purchased by CHA and redeveloped with public housing." Appendix C, p. A24, to this brief.

**CHA offered no witnesses or other evidence in support of this or any other contention made in its brief. (Tr. 395; 426-27.)

Since the order has the obvious effect of relieving CHA of the burden of obtaining City Council approval of its sites, and removes the admitted obstacle the City Council approval power has heretofore presented to CHA's compliance with the 1969 judgment order, there appears to be no point in burdening the Court with a response to CHA's brief.*

INTRODUCTION

Explicitly and implicitly much of the City's brief attacks not so much the District Court's order of April 10, 1972, which is the only order specified in the notices of appeal, but the judgment order of July 1, 1969. The evidentiary basis for the 1969 order (and the February 10, 1969 opinion on which it rests) is denigrated (e.g., br. 4, 12); the legal theory of the opinion is analyzed ("simplistic identification of an 'effect'") and, it is asserted, "no longer has validity" (br. 20-21); an entire section discusses the hardship the 1969 order has allegedly caused (br. 21-30); and the brief concludes by asking this Court to remand to the District Court with directions "to vacate ... its order of July 1, 1969 [except as to tenant assignment]." (Br. 31.)

An appeal from the April 10, 1972 order is hardly the

*Why CHA is appealing might appear to be something of a mystery. However the CHA commissioners are all appointed by the Mayor. Ill.Rev.Stat. ch. 67-1/2, §3.

proper vehicle for a request to this Court to vacate the 1969 order. Although several of the answers to the supplemental complaint sought modification of the 1969 order, the case below was not tried on the factual and legal theories now advanced in Parts I and II of the City's brief. For example, neither in the briefs filed below by the Corporation Counsel (supporting motions by certain aldermen to dismiss the supplemental complaint, Record Docs. Nos. 10 and 16), nor in closing argument for the City (Tr. 479-95), was it argued that the evidentiary base of the 1969 opinion was inadequate or that its supposed "simplistic effect" theory no longer had validity.

It is of course hornbook law that a party may not raise for the first time on appeal arguments not made below. Nor should appellate courts be asked to rule on matters properly addressed in the first instance to the trial court. (The Court should be advised that on August 7, 1972 CHA filed a motion to amend the 1969 order that is now pending before the District Court.) Nonetheless we will consider all of the City's arguments, including those directed to the 1969 opinion and order, notwithstanding they are not properly before the Court.

I. JOINING THE CITY, THE MAYOR AND THE ALDERMEN, AND
GRANTING DECLARATORY RELIEF, WAS PROPER

In Part I of its brief the City appears to make two arguments, the first of which may be summarily disposed of in this paragraph. The City says it was improper to join it, the Mayor and the Aldermen and to grant the declaratory relief sought by the supplemental complaint because the new defendants were improperly held "bound" by the 1969 opinion and order which were, of course, entered long before they became parties. (Br. 8-9.) But the new defendants were not so "bound." The order appealed from is based on their failure to act on CHA's remaining proposed sites subsequent to June, 1971, not on their pre-1969 conduct. The City's quotation from the order (br. 9) is deliberately truncated to obscure that fact: the order, which says "such failures" of the City and the Council violate the rights of the plaintiffs, unambiguously refers to the post-June 1971 non-action alleged in the supplemental complaint, not to the pre-1969 conduct discussed in the 1969 opinion.*

*The City rightly says there is no finding that the Council had a duty to carry out the "dictates" of the 1969 opinion and order. (Br. 8.) However, the Council does in fact have a legal duty to cooperate with and not impede other state agencies, such as CHA, in carrying out desegregation orders. "[T]his constitutional duty [to desegregate a segregated school system] also rests upon the Board of Supervisors [of Quitman County, Mississippi, added as a party defendant by a post-judgment supplemental complaint] to the extent that it must cooperate with, and not impede, the County Board of Education in the fulfillment of its plans." Franklin v. Quitman County Board of
(footnote continued on page 18)

The cases showing the propriety of joining new parties and granting relief pursuant to such a supplemental complaint will be discussed in connection with the City's second Part I argument.*

(footnote continued from page 17).

Education, 288 F.Supp. 509, 518 (N.D. Miss. 1968). And see Banks v. Perk, 341 F.Supp. 1175, 1179 (N.D. Ohio 1972), where the court said:

"It is the duty of city administrations in the United States to support and aid progressive proposals which have as their goal the elimination of racial concentrations in their cities. No matter how a housing authority may try, their aims and goals cannot be met without the support and leadership of the administration within the city it attempts to build public housing."

See also 341 F.Supp. at 1185.

*There is a second distortion in the City's brief: the implication that the District Court acted against the new defendants pursuant to Rule 65(d) of the Federal Rules of Civil Procedure. (Br. 9.) It is plain that there was no reliance upon Rule 65(d). The new defendants were added by order pursuant to a motion based on Federal Rules 21, 19 and 15(d). (Motion to Add Parties Defendant and to File Supplemental Complaint, filed February 2, 1972, and Order entered the same day, Record Docs. No. 1 and 3.) Rule 21 provides in relevant part:

"Parties may be ... added by order of the Court on motion of any party ... at any stage of the action and on such terms as are just."

Rule 19(a) provides:

"A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties ..."

Rule 15(d) provides:

"Upon motion of a party the Court may ... permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleadings sought to be supplemented."

The second argument is that joining the City Council and granting declaratory relief with respect to the Council's approval power over CHA sites was wrong because the Council is a legislative body and, respecting CHA sites, has legislative concerns. The cases upon which the District Court relied are sought to be distinguished because they are said to involve only administrative personnel having ministerial functions and not a legislative body such as a City Council. (Br. 10-11.)

The cases are plainly not so distinguishable. In the circumstances of this case they not only support, they compel, the entry of the declaratory judgment order of April 10, 1972.

In Louisiana v. United States, 380 U.S. 145 (1965), the Supreme Court, while declining to pass on the validity of a statutorily authorized voter-qualification test, 380 U.S. at 154, n.17, affirmed a district court order enjoining use of the test in 21 Louisiana parishes until past voter discrimination in those parishes had been remedied. 380 U.S. at 154-55.

In Haney v. County Board of Education of Sevier County, 429 F.2d 364 (8th Cir. 1970), the remedy for school segregation required annexation of a school district and establishment of a new school board for the resulting enlarged district. The Court said:

"Appellees' assertion that the District Court ... is bound to adhere to Arkansas law, unless the state law violates some provision of the Constitution, is not

constitutionally sound where the operation of the state law in question fails to provide the constitutional guarantee of a non-racial unitary school system. The remedial power of the federal courts under the Fourteenth Amendment is not limited by state law. *Louisiana v. United States*, 380 U.S. 145, 154 (1965). Therefore, it was not mandatory that the District Court model its Order dealing with annexation and the composition of the new school board after a state law ...

"[W]e can only conclude that regardless of the constitutionality of The Arkansas Quality Education Act, it in no way limits the equity power of a federal district court in fashioning a decree which will effectuate 'a completely non-racial school system in Sevier County.'" 429 F.2d at 368-69.

In *United States v. Greenwood Municipal Separate School District*, 406 F.2d 1086 (5th Cir. 1969), steps to desegregate a school faculty were not taken because of a mistaken view that state laws governing the hiring and assignment of teachers blocked the way. The court said:

"The school board protests that it is powerless to do what we ask because of state laws ... Of course, one answer to the argument that state laws prevent the board from taking the necessary affirmative steps is that local teacher hiring statutes may not be interposed to frustrate a constitutional mandate. *United States v. Board of Education of City of Bessemer*, 396 F.2d at 51...

"The board further protests that it cannot achieve faculty desegregation by transferring teachers to different schools because under state law teacher contracts are for specific schools, thus making the reassignment of a teacher a breach of contract. Again, however, a state law is invalid to the extent that it frustrates the implementation of a constitutional mandate." 406 F.2d at 1094.

In Bessemer, cited in Greenwood, the court said:

"[W]e are emphatic that the school board could not use local tenure or teacher hiring-security statutes as a justification for failing to initiate and maintain desegregation of faculties." 396 F.2d 44, 51 (5th Cir. 1968).

In Bradley v. School Board of Richmond, Virginia, 324 F.Supp. 396 (E.D. Va. 1971), the defendants contended that the relief sought in a school desegregation case would have the effect of enjoining them from enforcing or complying with state law. 324 F.Supp. at 397-98. The court said:

"Assuming arguendo that this Court, in granting the relief requested, required certain of the defendants to fail to comply with a requirement of state law, such an order would not necessarily imply a holding that the statute violated was unconstitutional ... The question of the law's validity never arises; its disregard is directed as a matter of remedy alone, in order to undo the effects of proved unconstitutionally discriminatory acts." 324 F.Supp. at 400-401.*

Other cases cited by the District Court similarly hold that local officials may be enjoined to ignore state law, or that actions taken or proposed to be taken under otherwise valid state laws may be enjoined, where such injunctions are necessary to remedy the effects of past discrimination. United States v. State of Texas, 321 F.Supp. 1043 (E.D. Texas 1970);

*Contrary to the City's statement (br. 10), not this decision but another one in the Bradley case was reversed. 338 F.Supp. 67, reversed at 462 F.2d 1058, petition for certiorari pending.

Burleson v. County Bd. of Election Commissioners, 308 F.Supp. 352 (E.D. Ark. 1970). See also, Taylor v. Coahoma County School District, 330 F.Supp. 174 (N.D. Miss. 1971), at 176, 183 ("Local conditions, separate legal entities and state laws and statutes cannot frustrate the implementation of constitutionally protected rights. [citations omitted] The remedial power of the federal courts under the Fourteenth Amendment is not limited by state law."), aff'd, 444 F.2d 221 (5th Cir. 1971). The line of cases and the doctrine it embodies is captured in this statement of the Supreme Court:

"[S]tate policy must give way when it operates to hinder vindication of federal constitutional guarantees." North Carolina Board of Education v. Swann, 402 U.S. 43, 45 (1971).*

It is obvious that these cases do not involve administrative personnel having only ministerial functions. Louisiana involved

*Although some of the cases speak loosely of the invalidity of the state law ("a state law is invalid to the extent that it frustrates the implementation of a constitutional mandate," Greenwood, supra, 406 F.2d at 1094), the correct view is that, "The question of the law's validity never arises ...; its disregard is directed as a matter of remedy alone, in order to undo the effects of proved unconstitutionally discriminatory acts." Bradley, supra, 324 F.Supp. at 400. And see Louisiana, supra. In any event, and regardless of the verbal formulation, a single judge may enter the appropriate "disregard" order; a three-judge court is not required. Bradley, supra, 324 F.Supp. at 400-401. See also, Southern Alameda Spanish Speaking Organization v. City of Union City, Cal., 424 F.2d 291, 296 (9th Cir. 1970), and Bradley v. Milliken, 433 F.2d 897, 900, n.2 (6th Cir. 1970).

the legislative determination of whether a particular voter qualification test should be employed in registering the state's voters. Haney involved the legislative determination of the circumstances in which one school district might annex another. Greenwood involved a legislative judgment concerning teacher rights respecting hiring and assignment. And so on. In all of these cases legislative judgments on complex (and obviously not ministerial) matters were overridden when it was determined that adherence to those judgments would frustrate the constitutional mandate to remedy racial discrimination. Thus, as the court in Greenwood ordered that the legislative judgment respecting how teachers should be hired and assigned be disregarded to the extent necessary to desegregate a faculty, so here the District Court ordered that the legislative judgment respecting how public housing sites in Chicago should be selected be disregarded to the extent necessary to desegregate a public housing system.

The principle of these cases is not rendered inapplicable either because the state law in question takes the form of conferring a discretionary power upon a local legislative body such as a city council,* or because that body was joined as a defendant at the relief stage of a case. In Wright v.

*In United States v. Scotland Neck City Board of Education, 407 U.S. 484 (1972), the Supreme Court explicitly rejected the notion that, as affecting desegregation of a school system, the action of city authorities stands on any different footing (footnote continued on page 24)

Council of City of Emporia, 407 U.S. 451 (1972), the Emporia, Virginia, City Council was added as a defendant by a 1969 supplemental complaint (407 U.S. at 458) to a 1965 school desegregation case (Id. at 455) in which relief had been granted against the local school board. Ibid. The supplemental complaint sought to prevent the Council from exercising its powers under state law to create a separate city school system on the ground, as the district court ultimately found, that to do so would constitute an impermissible frustration of its desegregation order. 407 U.S. at 458. Emporia argued that because it was a separate political jurisdiction entitled under state law to establish its own school system its action could be enjoined only upon a finding either that the state law under which it was acting was

(footnote continued from page 23)

than action of school officials on the one hand or the state legislature on the other:

"This [view of the Court of Appeals] suggests that an action of a state legislature affecting the desegregation of a dual system stands on a footing different from an action of a school board. But in North Carolina Board of Education v. Swann, 402 U.S. 43 ... we held that 'if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct . . . the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees.' Id., at 45. The fact that the creation of the Scotland Neck school district was authorized by a special act of the state legislature rather than by school board or city authorities thus has no constitutional significance." 407 U.S. at 488-89.

unconstitutional, that its boundaries were drawn so as to exclude Negroes, or that racial imbalance alone violated the Constitution. Id. at 459. Affirming the injunction that prevented the City Council from exercising its otherwise valid authority under state law to create the separate city school system, the Supreme Court said it "made no such findings," Ibid, but nonetheless concluded:

"If the proposal would impede the dismantling of the dual system, then a district court, in the exercise of its remedial discretion, may enjoin it from being carried out." Id. at 460.

(The determination whether or not to create a separate city school system is not of course "ministerial.")

Other cases similarly involve joinder of local legislative bodies (city councils or county boards) at the relief stage of a case as a predicate for remedial orders that affect the exercise of discretionary legislative powers. For example, in Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964), the County Board of Supervisors was joined by a 1961 supplemental complaint seven years after the determination of liability, in litigation begun 10 years earlier. 377 U.S. at 220-21 and 224. The reason for joinder was that ordinances enacted by the County Board (resulting in the closure of schools) were frustrating the desegregation of public schools. See Allen v. County School Board of Prince Edward County, 198 F.Supp. 497, 502-03 (D.C. Va. 1961). In

remanding to the district court for still further relief
the Supreme Court said:

"[T]he cause is remanded to the District Court with directions to enter a decree which will guarantee that these petitioners will get the kind of education that is given in the State's public schools. And, if it becomes necessary to add new parties to accomplish this end, the District Court is free to do so." 377 U.S. at 234.

The Court added that if deemed necessary the district court had the power to require the county supervisors to levy taxes: "require the Supervisors to exercise the power that is theirs to levy taxes to raise funds adequate to reopen, operate and maintain without racial discrimination a public school system in Prince Edward County like that operated in other counties in Virginia." 377 U.S. at 233.

In Kelley v. Metropolitan County Board of Education, 463 F.2d 732 (6th Cir. 1972), the defendant school board had not complied with a desegregation order that required the purchase of buses. The reason was that under Tennessee law the school board budgets had to be approved by the city council which in turn had demanded (and apparently received) assurance that "no funds included in the budget would be used to purchase buses for the purpose of transporting students to establish a racial balance." 463 F.2d at 745. Affirming the district court's desegregation order that included the bus purchase requirement, the court of appeals said:

"[N]either the Metropolitan City Council or, for that matter, the Legislature of Tennessee can forbid the implementation of a court mandate based upon the United States Constitution." 463 F.2d at 745.

Following remand the Mayor and City Council of Nashville were added as parties defendant by an unreported order, entered August 17, 1972, that temporarily restrained them from interfering in any way (including threatened budget reductions) with the purchase of buses by the school board. (The order is included as Appendix B to this brief.)

In Franklin v. Quitman County Board of Education, supra, the Board of Education had been ordered in 1967 to desegregate schools. In 1968 the County Board of Supervisors was joined and ancillary relief was granted against its members. The court said:

"[T]he Board of Supervisors may not act to defeat the constitutionally required obligations of the County Board of Education to plan for, and effectuate, facilities for a biracial, unitary school system. Indeed, this constitutional duty also rests upon the Board of Supervisors to the extent that it must cooperate with, and not impede, the County Board of Education in the fulfillment of its plans ... The affirmative obligation to seek means of disestablishing state-imposed segregation must be shared by all agencies, or agents of the state ... who are charged by law with, and who exercise, official public school functions. Neutrality must be forsaken for an active, affirmative interest in carrying out constitutional commands." 288 F.Supp. at 518-19.

In Bradley v. School Board of City of Richmond, Virginia, 51 F.R.D. 139 (E.D. Va. 1970), joinder of members of the boards

of supervisors of two Virginia counties was ordered by the Court at the relief stage of a school desegregation case. 51 F.R.D. at 143. The Court said, "[A]bsent parties should be joined if it is probable that the relief sought cannot be achieved, or can be achieved only partially or conditionally, without them," Id. at 141.

There is, of course, no question but that a federal court has the power to grant affirmative relief against legislative bodies, including city councils, even with respect to the exercise of discretionary legislative functions (although it may be repeated that no such relief, but only a declaratory judgment, was sought or granted in this case). In Connett v. City of Jerseyville, 125 F.2d 121, 124 (7th Cir. 1941) this Court said:

"Courts have for years compelled city councils to do their legal duty, though the performance of that duty may require the exercise of discretion and be in the performance of legislative functions, such as levying taxes. [citations omitted]"

In Banks v. Perk, 341 F.Supp. 1175, 1180 (N.D. Ohio 1972), the court said, "[L]ocal officials may not exercise the normal modicum of discretion if the clear result of such discretion is the segregation of low-income Blacks from all White neighborhoods."

It is also clear that the command of the Constitution is directed to the state and cannot be avoided by a fragmentation of authority among the state's subordinate entities.

"The United States Constitution recognizes no governing unit except the federal government and the state." Hall v. St. Helena Parish School Board, 197 F.Supp. 649, 658 (E.D. La. 1961) (three judge court), aff'd, 368 U.S. 515 (1962).

In Haney v. County Board of Education of Sevier County, 410 F.2d 920, 925 (8th Cir. 1969), the court said, "Political subdivisions of the state are mere lines of convenience for exercising divided governmental responsibilities. They cannot serve to deny federal rights." And in Avery v. Midland County, 390 U.S. 474, 480 (1968), the Supreme Court said:

"The actions of local government are the actions of the State. A city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law."

The fact that state law gives the Chicago City Council the power to approve CHA sites is thus of no Constitutional significance.*

* * *

* "[A] relationship otherwise rational may be insufficient in itself to meet constitutional standards - if its effect is to freeze-in past discrimination." Henry v. Clarksdale Municipal Separate School District, 409 F.2d 682, 688 (5th Cir. 1969).

The members of the City Council, the Mayor and the City were properly joined as parties to the action, and the District Court was empowered to grant the declaratory relief the April 10, 1972 order provides.*

*That the District Court's orders were frustrated by inaction rather than by affirmative conduct of the City Council is of course of no moment. It is well established that inaction can frustrate as effectively as more positive conduct the implementation of remedial decrees, and the courts have routinely dealt with frustration that takes that form. See Crow v. Brown, 332 U.S. 382, 391, 392 (N.D. Cal. 1971), aff'd, 457 F.2d 788 (5th Cir. 1972); Sisters of Providence v. City of Evanston, 335 F.Supp. 396, 404-405 (N.D. Ill. 1972); Banks v. Perk, supra, 341 F.Supp. at 1180; Davis v. School District of City of Pontiac, 309 F.Supp. 734, 741-42 (E.D. Mich. 1970), aff'd, 443 F.2d 573 (6th Cir. 1971), cert denied, 404 U.S. 913.

At the end of Part I of its brief the City argues that it was "unfair" of the District Court to consider its inaction a frustration of the Court's orders, and it advances for the first time the novel suggestion that a concern about mootness in the related model cities proceeding is the real explanation. (Br. 13-14.) No witness or lawyer for the City or any alderman so testified or argued in the District Court, and that suggestion (even if it had merit) comes most belatedly from the City at this stage of the case. (Again, the rule limiting issues on appeal to those raised below is dispositive.) But the fact is there were three months (July 1 to October 1, 1971) between the June City Council hearings on CHA sites and the entry of the District Court's order in the model cities proceeding, and another month between this Court's decision in that proceeding and the entry of the April 10 order. This was ample time for the City Council to have at least initiated action (quite apart from the more than 6 months that have elapsed since April 10) if the mootness consideration had been its true concern.

II. THE CITY COUNCIL'S INACTION IS NOT INSULATED FROM
THE REMEDIAL EQUITY POWER OF FEDERAL COURTS BY ANY
DECISION UPHOLDING REFERENDA

Next the City argues (br. 14-21) that the referendum procedure upheld in James v. Valtierra, 402 U.S. 137 (1971), and other referendum cases is "directly analogous to the city council consideration voided by the court below" (br. 19), and that the City Council's refusal to consider and approve CHA's public housing sites should therefore be protected by this Court. (Br. 21.) The City also says that these cases "establish a development in the concept of equal protection away from the simplistic identification of an 'effect' that a program may have upon a minority group" (br. 20), and mean that "any legal theory supporting the [1969] memorandum opinion no longer has validity." (Br. 21.)

Valtierra does not support the City's position. Apart from the factual dissimilarity between the California statewide referendum in Valtierra and the refusal of the Chicago City Council even to consider CHA's remaining proposed sites, Valtierra and this case are fundamentally and conceptually different: the Valtierra plaintiffs were seeking (unsuccessfully) to prove racial discrimination (relying heavily on the allegedly facially discriminatory nature of the California constitution's referendum provision); here, racial discrimination has already been established and the issue is how to provide effective relief.

"A distinction exists between what is sought as a form of relief within the power of a court of equity and what is sought as a matter of primary constitutional right ..."
Bradley v. School Board of Richmond, Virginia,
supra, 324 F.Supp. at 400.

This Court has expressly recognized the same distinction in a prior proceeding in this very case:

"Because of the racial distinctions expressly found to be present in the tenant assignment and site selection practices involved in the public housing sites at issue in the CHA case and in this present suit, we do not deal with a situation such as confronted the Supreme Court in its recent decision of James v. Valtierra, 402 U.S. 137 (1971)." Gautreaux v. Romney, 448 F.2d 731, 732, n.2 (1971).

Although the City's brief asserts that a case of racial discrimination was presented to the Supreme Court in Valtierra (in addition, that is, to the argument that the referendum provision was facially discriminatory), the Valtierra majority clearly treated the case as one in which racial discrimination had not been proved. Even the dissenters (as the City's brief itself observes) "found no racial discrimination in the case." (Br. 18.) Accordingly, Valtierra has no relevance to a case such as this in which racial discrimination has been established and the issue is the form of relief.* If there were any doubt about this conclusion the Supreme Court's

*Similarly none of the other referendum cases cited at pp. 18-20 of the City's brief is a case in which racial discrimination had already been established and the issue was relief. Indeed, one of the cases cited by the City, while denying preliminary injunctive relief, said that if apart from motive the result
(footnote continued on page 33)

subsequent decision in Scotland Neck, supra, would put it to rest. There a referendum was invalidated because otherwise it "would have the effect of impeding the disestablishment of the dual school system that existed in Halifax County." 407 U.S. at 490.*

There is a second important distinction between Valtierra and this case, for Valtierra involved a "fundamental suffrage right" significantly different in historical context and application and presenting "quite a different constitutional ingredient" than "a refusal [of a city council] to take affirmative action." Sisters of Providence, supra, 335 F.Supp. at 403 (emphasis is the court's). In Sisters of Providence Judge Marovitz (confronted with a claim that the Evanston City Council's refusal to rezone property for the

(footnote continued from page 32)

of the referendum were shown to be discriminatory, "in our view a substantial constitutional question is presented." Southern Alameda Spanish Speaking Organization v. City of Union City, 424 F.2d 291, 295 (9th Cir. 1970). And in another preliminary injunction case cited by the City the court said: "It may well be that if the Town had engaged in such [housing discrimination] violations of the Constitution, a court could prohibit otherwise lawful acts until the condition had been rectified." English v. Town of Huntington, 448 F.2d 319, 324 (2d Cir. 1971).

*"[A]s stated by the court in Hall v. St. Helena Parish School Bd., 197 F.Supp. 649, 659 (D.C.E.D. La. 1961), aff'd, 368 U.S. 515, 'No plebiscite can legalize an unjust discrimination.'" Lucas v. Colorado Gen. Assembly, 377 U.S. 713, 736 (1964). See also Haney v. County Board of Education of Sevier County, supra, 429 F.2d at 925-26.

construction of low and moderate income housing constituted an equal protection violation, a claim he upheld against a motion to dismiss) concluded that for these reasons, "the cases involving referendums ... are a category unto themselves." Ibid.

The City seems implicitly to recognize that the "direct analogy" between California's referendum and the Chicago City Council's refusal to consider CHA sites is not so direct after all, for it finally develops its Valtierra argument into an attack not so much against the remedial order of April 10 as against the 1969 opinion and its supposed legal theory. The "lesson" of Valtierra and the other cases it cites, the City argues (br. 20-21), is that "whatever equal protection meant in 1969" it has undergone a development away from the "effect" theory (which the City presumes was the legal theory of the 1969 opinion in this case) so that the 1969 opinion is no longer valid, thereby presumably justifying the City's prayer to this Court to vacate the 1969 order.

It is of course not true that the 1969 opinion is founded upon an "effect" theory. The proof of "a deliberate policy to separate the races" (296 F.Supp. at 914; A24) was based on testimonial evidence of practices and procedures that constituted sufficient proof of racial discrimination "either considered alone or in combination with the statistics." 296

F.Supp. at 913; A24.*

Apart from this, however, the law of equal protection has developed in precisely the direction the City says it has not. It is now clearer than ever before that the focus in equal protection cases is on the effect of state action, not upon its motivation, in referenda cases, Scotland Neck, supra, as well as in cases involving action or inaction by city councils. Indeed, in Sisters of Providence Judge Marovitz said that the "very substance" of an equal protection claim is that a seemingly neutral law is being unequally applied or that it "has an unequal effect," and that, "Ultimate effect can therefore be as probative of an intent to discriminate as proof of subjective motivation." Sisters of Providence v. City of Evanston, supra, 335 F.Supp. at 404. And this year the Supreme Court said,

"[W]e have focused upon the effect - not the purpose or motivation - of a school board's action . . . The existence of a permissible purpose cannot sustain an action that has an impermissible effect." Wright v. Council of City of Emporia, supra, 407 U.S. at 462.

*Some of the non-statistical evidence is referred to in this Court's opinion in Gautreaux v. Romney, 448 F.2d 731, 739 (7th Cir. 1971). However, no apology need be made for the District Court's reliance upon statistics. "Figures speak and when they do courts listen. [citations omitted]" Taylor v. Coahoma County School District, supra, 330 F.Supp. at 181.

In Crow v. Brown, supra, and Banks v. Perk, supra, the plaintiffs included persons on the waiting lists of the Atlanta Housing Authority and the Cuyahoga Metropolitan Housing Authority, respectively, who contended that they were being denied access to public housing units outside racially concentrated areas. In each case the contention that is apparently being made by the City (that intent to discriminate must be directly proved) was explicitly rejected. In Crow v. Brown the Court said:

"The Fifth Circuit . . . in Hawkins v. Town of Shaw, Mississippi, 437 F.2d 1286 (5th Cir. 1971) . . . held that in civil rights suits alleging racial discrimination in contravention of the Fourteenth Amendment actual intent to discriminate need not be directly proved. The Second Circuit adopted this view specifically in a housing context . . . The Ninth Circuit has hinted that it agrees with the Second Circuit in this matter . . ." 332 F.Supp. at 391.

Based on these and other decisions the court concluded:

"Given the decisions previously cited it is abundantly clear that, in the absence of supervening necessity, any county action or inaction intended to perpetuate or which in effect does perpetuate the conditions just described [concentration of Negroes in the central city] cannot stand. Nor can county action or inaction which would thwart their correction be permitted to continue." Id. at 392.

The district court opinion was affirmed by the Fifth Circuit Court of Appeals, which said:

"The District Court accurately and incisively stated and applied the legal principles

applicable to the issues raised in this case. We affirm for the reasons stated in the opinion of the District Court reported at 332 F.Supp. 382." 457 F.2d 788, 790 (5th Cir. 1972).

In Banks v. Perk the court said, "Actual intent or motive need not be proven [citations omitted]." 341 F.Supp. at 1183. And in Dailey v. City of Lawton, 425 F.2d 1037, 1039 (10th Cir. 1970), the court said, "[I]f proof of a civil rights violation depends on an open statement by an official of intent to discriminate, the Fourteenth Amendment offers little solace to those seeking its protection."

* * *

It is clear that not only do we "not deal here with a situation such as confronted the Supreme Court in ... James v. Valtierra," Gautreaux, supra, 448 F.2d at 732, but the attack on the 1969 opinion predicated on Valtierra veers 180 degrees from reality.

III. THE ORDER APPEALED FROM IS NOT AN ABUSE OF DISCRETION ON HARDSHIP OR ANY OTHER GROUND

The City's last argument is that hardship allegedly resulting from the April 1972 order, and from the 1969

judgment order, is so great that both orders constitute an abuse of discretion. (Br. 21-30.) The hardship is said to be that in the face of a critical shortage of low income housing, "vast areas of the inner City must remain vacant under the 1969 order." (Br. 23.) The reason the vast areas "must" remain vacant, we are told, is that the 1969 order requires that the first 700 new dwelling units, and 75% of the units built thereafter, be located in the General Public Housing Area. Ibid.

This argument is supposed to apply to the April 1972 order as well as to the 1969 judgment order (br. 21), but in fact it is a vehicle for attack on the latter. This is so because the April order removes the obstacle (the City Council veto power) that has prevented public housing from being provided in all areas of the City, including the inner areas to which the City's brief refers.* Were the City

*The 1969 judgment order does not prohibit building in these areas. Under CHA's current 1500 unit reservation from HUD, 200 units of public housing may be provided in the Limited Public Housing Area. In addition, CHA has applied to HUD for another reservation of 3500 units (A22, this brief), 875 of which may be located in the Limited Public Housing Area. Moreover, long ago Judge Austin indicated that once a good faith start on the first 700 units under the 1969 order had been made, he would entertain applications to modify his order. ("[I]f CHA is successful in getting these 700 sites approved, ... there is a strong possibility that I would relax somewhat ..." Transcript of Proceedings in the Court below, July 13, 1970, p. 24.) The judgment order expressly provides that it may be modified at any time. Compare Banks v. Perk, supra, where the housing authority was enjoined from any more construction in black areas of Cleveland. 341 F.Supp. at 1185.

really as concerned about housing in the inner city as it says, it would be supporting, not opposing, the April order as a means of providing some of that housing expeditiously. Thus, the hardship argument is not relevant at all to the April order.

The City's attribution of the lack of progress in the public housing program to the 1969 judgment order is disingenuous. It reminds one of the child who, having slain his parents, sought mercy on the ground that he was an orphan. It is the City and its agencies, not Judge Austin, who have displayed a callous insensitivity to housing needs by refusing to take moderate and legally required steps to desegregate a de jure segregated public housing system. Vast areas of the inner city need not remain vacant if the City and its agencies will but allow CHA to comply with the District Court's orders, one of which is now over 3 years old.*

Moreover, it is a false implication that if the 1969 judgment order were suddenly vacated the City and CHA could populate

*No contention can be or has been made that the District Court's orders cannot be complied with. Although a City witness testified that approximately 75-80% of the vacant and residentially zoned land in the City is within the Limited Public Housing Area (Tr. 217), the same witness said that (even without regard to the City's major land development policy of rezoning land for housing - Pl. Ex. No. 9, p.6) there were 1,914 parcels of vacant, residentially zoned land in the General Public Housing Area of the City, ranging in size from one lot to one block. (Tr. 276.)

the inner city with new public housing projects without simultaneously providing public housing in white neighborhoods. It is no longer the 1969 order that stands in the way of a continuation of that past segregationist practice but a now developed national policy that requires dispersal of public housing.

"[B]oth by legislative act and judicial decision, this nation is committed to a policy of balanced and dispersed public housing. [citations omitted]"

"[I]n the area of public housing local authorities can no more confine low income blacks to a compacted and segregated area than they can confine their children to segregated schools." Crow v. Brown, supra, 332 F.Supp. at 390.*

In affirming the district court the court of appeals, considering the past housing authority practice of locating 75% of public housing units in black neighborhoods of Atlanta, said:

"This policy causes and perpetuates residential racial segregation." Crow v. Brown, supra, 457 F.2d at 790.

To the same effect is Banks v. Perk, supra, 341 F.Supp. at 1179-80, where the housing authority was "enjoined from planning any future public housing in Negro neighborhoods of the City of Cleveland." Id. at 1185 (emphasis added).

*"If plaintiffs ... had proved ... that the AHA [Atlanta Housing Authority] ... is still engaged in furthering racial concentration in Atlanta by promoting low-rent public housing in compacted areas and failing to promote low-rent public housing in dispersed areas ..., plaintiffs would have had grounds for relief against AHA under the Equal Protection Clause." Crow v. Brown, supra, 332 F.Supp. at 394.

HUD has now promulgated so-called site selection criteria which reflect the national policy of dispersed public housing and would themselves preclude building public housing exclusively in racially compacted inner city areas.

"[T]he policy of HUD requires that public housing be dispersed outside racially compacted areas ... [T]he written instructions of ... HUD... direct the building of public housing outside 'ghetto' areas." Crow v. Brown, supra, 332 F.Supp. at 391.

At the hearing below the HUD criteria were called to the Court's attention. The Assistant United States Attorney representing HUD said:

"It has been given the impression during the entire hearing that if your Honor does modify or alter his judgment order either to eliminate the ratio, three to one ratio, or the elimination of 700 units, that that will allow the City or CHA to submit proposals for approval and funding by HUD. The only comment we would have to make as far as that, your Honor, is to refer your Honor's attention to the comments accompanying the new Project Site Selection criteria,* and I am quoting:

'A phrase has been added which permits building in areas of minority concentration if there exists sufficient comparable opportunities for housing for minority families in the income range to be served by the proposed project outside of areas of minority concentration. This is designed to assure that the building in minority areas goes forward only after there truly exists housing opportunities for minorities elsewhere. The phrase 'sufficient comparable opportunities' is

*37 F.R. 203 (January 7, 1972).

designed to assure the housing available to minorities outside areas of minority concentration is more than a token amount of so few units that there is in fact no true opportunity. At the same time, this phrase is not tied to any rigid formula.'

So, your Honor, the position of HUD is that its regulations would apply, even assuming your Honor abolished his order, those regulations would apply to any proposal by CHA or the City of Chicago for low or moderate income housing, and that's an impression we did not want to leave the Court with, that in effect if your Honor had just vacated the entire July 1969, order that that would in and of itself mean that the City could obtain the requisite housing that they think that they need. It has to comply with our regulations." (Tr. 496-98, emphasis added.)

Even some of the City's co-appellants, Alderman Kelley and Holman, favor the requirement of the 1969 order that public housing be built throughout the City (Tr. 298-99, 372), and CHA itself has called that order "a positive policy":

"The judge ordered CHA to build 700 homes or apartments in white areas before any more could be built in black neighborhoods, and thereafter to build 3 units in white neighborhoods for every one built in non-white areas. Actually, this is a positive policy since there is a serious need for low income housing in many areas of the City - for whites as well as blacks."*

*This CHA statement appears at page 10 of CHA's 1971 Annual Report (the emphasis is added) and is a portion of a color slide presentation developed by CHA. The entire presentation, pictures as well as text, is reproduced at pages 6-13 of the report. The report was published in May 1972 and filed with the District Court by CHA on June 30, 1972. The first 16 pages and page 37 of the report (the remainder is irrelevant to issues in this case) are included as Appendix C to this brief.

The reasons for the "positive policy" embodied in the 1969 order are well known. The recent CHA Annual Report (see the preceding footnote) explains them this way:

"So long as low-income families are put into the same areas, whether in high-rise or low-rise buildings, they will lack the network of strong economic, social and educational institutions to take care of the problems of metropolitan living. Into these communities are packed a whole range of difficult conditions. Each problem of the community feeds upon the other, magnifying them all and frustrating programs designed to meet one part of the difficulty. The result is even larger welfare costs without any hope of permanent improvement." CHA 1971 Annual Report, A12 in this brief.*

Some of the very people for whom the City professes keenest concern have spoken about their perception of whether new housing in the inner city or a break with the past policy of

*As to "education institutions" in particular the following is relevant:

"[T]he public housing program in Atlanta has contributed, in no small way, to racial concentration in a compacted area. One of the consequences of this racial concentration is that it has become virtually impossible to achieve meaningful school desegregation. Indeed, as even a glimmering of objectivity will disclose, a dispersal of urban housing patterns is the only alternative to massive bussing if desegregation, rather than resegregation, is to be achieved. Crow v. Brown, supra, 332 F.Supp. at 391.

See also, United States v. Board of School Commissioners of Indianapolis, 332 F.Supp. 655, 673 (S.D. Ind. 1971), writ of prohibition and mandamus denied [addition of new parties for purposes of relief], No. 72-1063 (7th Cir., Feb. 2, 1972), cert denied, 32 L.Ed.2d 805 (1972).

segregated housing should have priority. (However, it is the strength of the 1969 judgment order and the April 1972 order, taken together, that a choice between these two objectives need no longer be made.) In the model cities proceeding in this Court, People United to Save Humanity (PUSH), whose members number thousands of poor black citizens of Chicago, was permitted to file an amicus brief in which it said:

"Although there are many causes and many possible remedies for the oppressed and ghettoized position of poor black people in Chicago, no cause is more significant than deliberate housing segregation and no remedy more important than breaking the pattern of that segregation." Amicus brief of PUSH, p.2., in No. 71-1732, 33, 34 and 71-1807.

And in the proceeding below 22 organizations of the Spanish speaking community in Chicago were permitted to file an amicus brief supporting the prayer of the supplemental complaint.

(Tr. 3-4.)

It is clear that the failure to provide more public housing in the inner city is the fault of the City and CHA, not Judge Austin, and that vacation of the 1969 order would not alleviate that situation. Only affirmance of the April 10 order has a chance of accomplishing that.

Finally, the City argues (br. 26-27) about the importance of zoning in city planning, implying presumably that City Council non-action on CHA proposed sites was justified because

some of those sites would require rezoning.* The evidence shows that sites had previously been routinely rezoned for CHA's purposes (City Ex. No. 1, p.4 of Exhibit A and p.2 of Attachment 3 thereto); that, indeed, a number of the CHA sites recommended by DDP (Tr. 260-62) and approved by the City Council in June 1971 required zoning changes (Pl. Ex. No. 11, Attachment No. 1); that there was a contract between the City and CHA pursuant to which the City was obligated to make such zoning changes "as are reasonable and necessary for the development and protection of [CHA] Projects" (Pl. Ex. No. 13, p.7); and that the City's comprehensive plan expressly provided for zoning changes for housing purposes as a "major residential land development policy." (Pl. Ex. No. 9, p.6.)

Apart from this, there is no evidence that the review of some of the CHA sites by the staff of the DDP, including its zoning analysis (which review, it should be remembered, found most of the sites to be "suitable" for public housing), was ever communicated to the City Council Committee on Planning and Housing or to the Council itself. That review would therefore not have provided an excuse for the City Council's

*According to an affidavit of CHA's Executive Director, filed with the District Court but not a part of the record on this appeal, 95 of CHA's original 275 sites, and 80 of the approximately 190 sites not considered by the City Council, required zoning changes. (Affidavit of C.E. Humphrey, dated and filed December 21, 1971.)

non-action even if (contrary to what in fact happened) it had concluded that for zoning reasons the sites were unsuitable.*

*The thrust of the City's brief at this point appears to be the desirability (necessity?) of judicial deference to the perceptions and determinations of those (i.e., the members of the City Council) "charged with the preservation of the urban environment." (Br. 27.) This sounds hollow when struck against the hard fact of the Council's refusal even to consider CHA's remaining proposed sites, particularly when the DDP staff had found so many of those sites to be "suitable." But even assuming that it is in principle desirable to defer to the Council in the matter of CHA sites, the following from Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 28 (1971), seems apt:

"All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes [read, "to defer to City Council action or inaction with regard to CHA sites"]. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation."

And see Kennedy Park Homes Ass'n v. City of Lackawanna, 436 F.3d 108, 114 (2d Cir. 1970), cert denied, 401 U.S. 1010 (1971).

CONCLUSION

Since July 1969 the District Judge has been trying unsuccessfully to alleviate the "crucial and monumental" effects of the segregated public housing system in Chicago by directing that unsegregated public housing opportunities be provided as rapidly as possible. 457 F.2d at 138.

For a long time his direction was not obeyed because CHA refused to submit proposed sites to the City Council. See 436 F.2d at 308-10. When the District Judge finally ordered it to do so, another long delay ensued while CHA appealed. When the order was finally complied with and proposed sites submitted, the City Council considered only a small fraction of them - just enough so that HUD "reversed its position" (457 F.2d at 137) and released to the City model cities funds that had been made contingent upon satisfaction of at least some part of the City's low income housing needs and upon compliance with orders in this case. 457 F.2d at 131-132. Once HUD's promise to release the money was secured City Council consideration ended, "contrary to the representations made by the City." (A2, this brief; see 457 F.2d at 132.) The District Judge's subsequent effort to enforce the City's representations was overturned by this Court. 457 F.2d 124.

The result has been that of the 1500 units of housing

required to be provided by the District Court's order of July 20, 1970 (1300 of which must be in the General Public Housing Area), the City Council has to date approved sites that will provide fewer than 200 of these units and for 16 months has taken no action whatever with respect to CHA's remaining (approximately 190) proposed sites. In the circumstances of this case that non-action constitutes, as HUD has termed it, a deliberate affront to the District Court.

It is well over 3 years since CHA was first ordered to provide the unsegregated public housing opportunities that form the essential ingredient of relief in this case. A District Judge supervising a desegregation case has "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.

[citations omitted]" Green v. School Board of New Kent County, 391 U.S. 430, 438, n.4 (1968). The obligation includes the duty to take account of changing factual situations and to employ whatever equitable remedial powers are necessary to assure "effectiveness" of the desegregation plan, Davis v. School Comm'rs of Mobile County, 402 U.S. 33, 37 (1971), to assure "that state-imposed segregation has been completely removed," "eliminated root and branch." Green v. County School Board, supra, 391 U.S. at 438, 439. To this end a District Judge "may and should consider the use of all available

techniques ..." Davis, supra, 402 U.S. at 37.

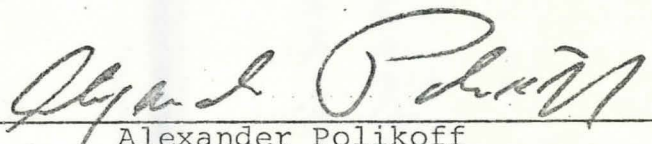
It is clear beyond cavil that to accomplish such remedial purposes the District Court could order that new parties be joined. It is equally clear that state laws, including state laws which confer discretionary powers upon city councils, may not be relied upon to impede or frustrate the carrying out of such remedial orders.

In the circumstances of this case these principles clearly compelled the entry of the April order appealed from. The action of the District Court in entering that order should be affirmed in the strongest possible terms.

Respectfully submitted,

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By:


Alexander Polikoff
One of the Attorneys for Plaintiffs-
Appellees

October 30, 1972

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641-5570

APPENDIX A

(Excerpt from Memorandum Filed by HUD on
November 23, 1971 in the District Court.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,)

Plaintiffs,)

v.)

No. 66 C 1460

GEORGE W. ROMNEY, et al.,)

Defendants.)

MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE
AND MOTION TO ALTER OR AMEND THE JUDGMENT ORDER
ENTERED NOVEMBER 11, 1971

An examination of the record in these cases reveals that the City of Chicago holds the key to any meaningful progress in redressing the racially discriminatory public housing program which has evolved over the last three decades in the City of Chicago.

More recently, it has been the City of Chicago, through the City Council and the Committee on Planning and Housing, which has effectively blocked the consideration of approximately 190 of the 275 sites proposed for public housing and submitted by the Chicago Housing Authority for approval, pursuant to an

order of this court entered March 1, 1971 in Gautreaux v. Chicago Housing Authority. To date, the Committee on Planning and Housing has held no public hearings on these 190 sites and has not even scheduled such hearings... The refusal to hold public hearings and presenting the proposed sites to the City Council for consideration is a deliberate affront to this court and is totally contrary to the representations made by the City in the May 12, 1971 Letter of Intent, between the City of Chicago, the Chicago Housing Authority and the United States Department of Housing and Urban Development. Thus, if there is to be any real progress in the construction of low-rent family housing in the City of Chicago in conformity with the orders of this court it is essential that any further remedial order encompass the intervenor, the City of Chicago ...

The veto power as exercised by the City Council of the City of Chicago over low cost housing sites has created a situation identical with that found in Kennedy Park Homes Association v. City of Lackawanna, supra, [436 F.2d 108 (2d Cir. 1970)]...

CONCLUSION

In order to achieve any real results in correcting the racially discriminatory public housing program in the City of Chicago both the City of Chicago and the Chicago Housing Authority must be actively participating with the Department of Housing and Urban Development...

APPENDIX B

(Order Entered August 17, 1972 in the Below
Captioned Case.)

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ROBERT W. KELLEY, et al.	)	
HENRY C. MAXWELL, JR., et al.	)	
	)	
v.	)	CIVIL ACTION NOS. 2094
	)	and 2956
METROPOLITAN COUNTY BOARD OF	)	
EDUCATION OF NASHVILLE AND	)	
DAVIDSON COUNTY, TENNESSEE, et al.)	)	

O R D E R

1. The pending motion of plaintiffs, filed in 1971, to add as party defendant the Mayor and City Council of Metropolitan Nashville, Davidson County, Treasurer, is hereby granted.
2. The application of defendant Metropolitan County Board of Education for changes in zone lines for the elementary schools as set forth in Part II of the petition of defendant, filed with this court on July 17, 1972, is hereby granted.
3. The application of defendant Metropolitan County Board of Education to resegment three junior high schools (Washington, Wharton and Hillwood) as set forth in Part I of

the petition of defendant, filed with this court on July 17, 1972, is hereby denied.

4. The defendant Metropolitan County Board of Education is hereby directed and ordered to purchase thirty (30) school buses of an 84 passenger capacity.

5. The defendant Metropolitan County Board of Education is ordered to terminate the scheduling of the departure of students from school after 4:00 P.M.

6. The defendant Metropolitan County Board of Education shall present a plan to this court on Wednesday, August 23, 1972, at 8:00 A.M. detailing the costs of renting adequate busses to accomplish the required rescheduling for the period beginning with the first day of school term in Metropolitan Nashville, Davidson County, Tennessee, to the delivery date of the thirty (30) busses ordered purchased by this court.

7. The members of the City Council and the Mayor of Metropolitan Nashville, Davidson County, Tennessee, are hereby temporarily restrained from interfering with the implementation of this order by:

(A) Discussing the purchases and renting of the busses with the members of the Metropolitan County Board of Education or its staff in any manner which implies that punitive action will be taken if the busses are rented or purchased;
or

(B) Applying any pressures on the Metropolitan County Board of Education to prevent the ordered rental and purchasing of busses; or

(C) Threatening to reduce the budget of the Metropolitan County Board of Education if the Board complies with this Order; or

(D) Impeding in any manner the implementation of this Order.

8. The members of the Metropolitan County Board of Education and its staff shall report to this court in writing any contacts by members of the City Council, individually or as a group, with the Metropolitan County Board of Education or its staff in which any effort is made to interfere with the implementation of this Order.

9. On Wednesday, August 23, 1972, at 8:00 A.M., a hearing will be held in this court to determine whether a temporary injunction will issue as to the continuance of the temporary restraining order.

Findings of facts and conclusions of law will be filed by this court at a later date to become a part of this Order.

This order supersedes the order of this court issued from the bench on Wednesday, August 16, 1972.

ENTER:

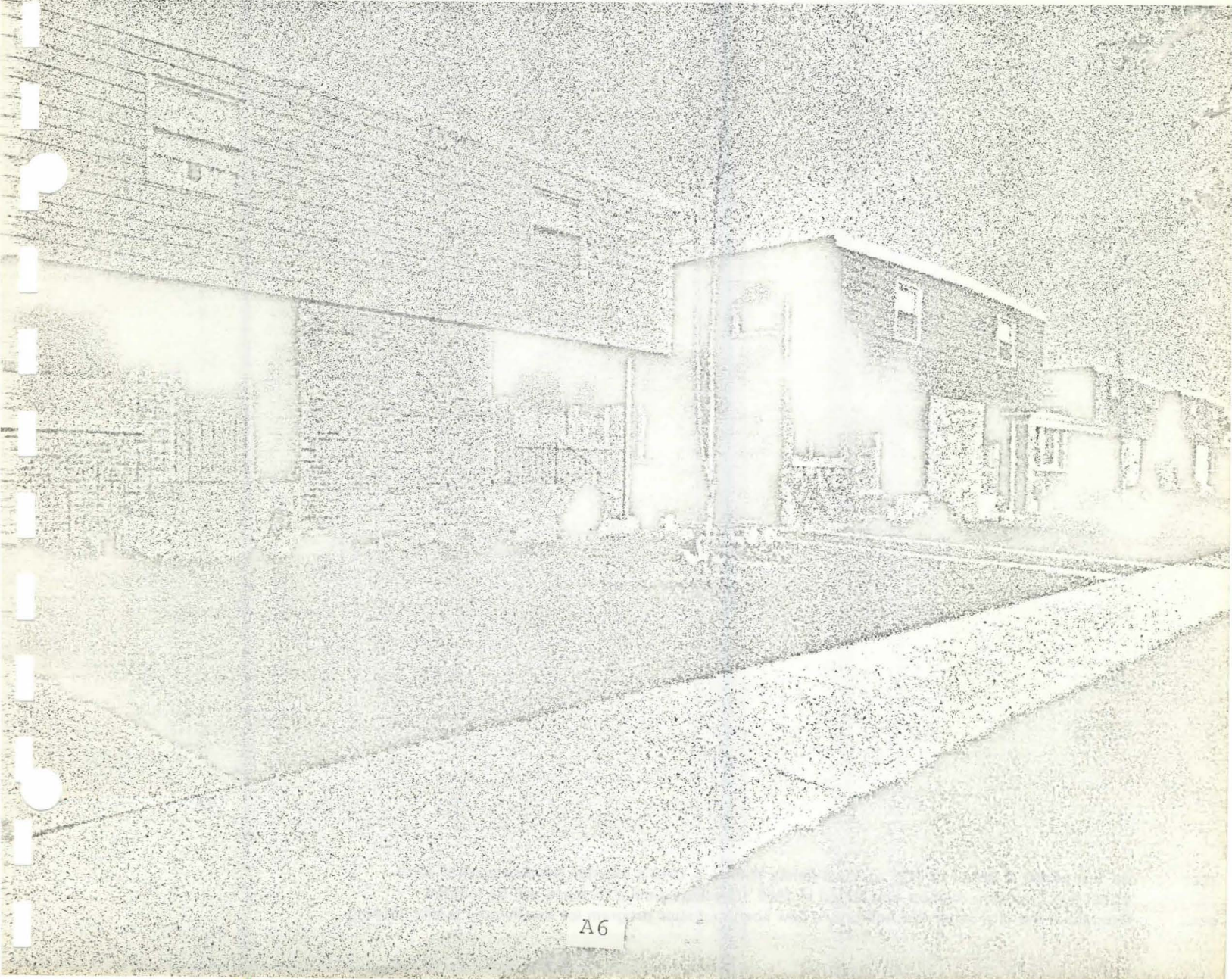
August 17, 1972

/s/ L. Clure Morton

UNITED STATES DISTRICT JUDGE

CHICAGO HOUSING AUTHORITY ANNUAL REPORT 1971

City of Chicago
Richard J. Daley, Mayor
Chicago Housing Authority
11 West Lincoln Street
Chicago, Illinois 60604
Chairman
Charles H. Boardman
President
Franklin D. Jones
Vice President
John A. Martin
Executive Director
James J. Connelley
Executive Director
E. J. Connelley



CHICAGO HOUSING AUTHORITY ANNUAL REPORT 1971

City of Chicago

Richard J. Daley, Mayor

Chicago Housing Authority

55 West Cermak Road

Chicago, Illinois 60616

Commissioners

Charles R. Swibel, Chairman

Theophilus M. Mann, Vice Chairman

John J. Masse, Treasurer

Letitia Nevill, Assistant Treasurer

Nicholas J. Bosen

Executive Director

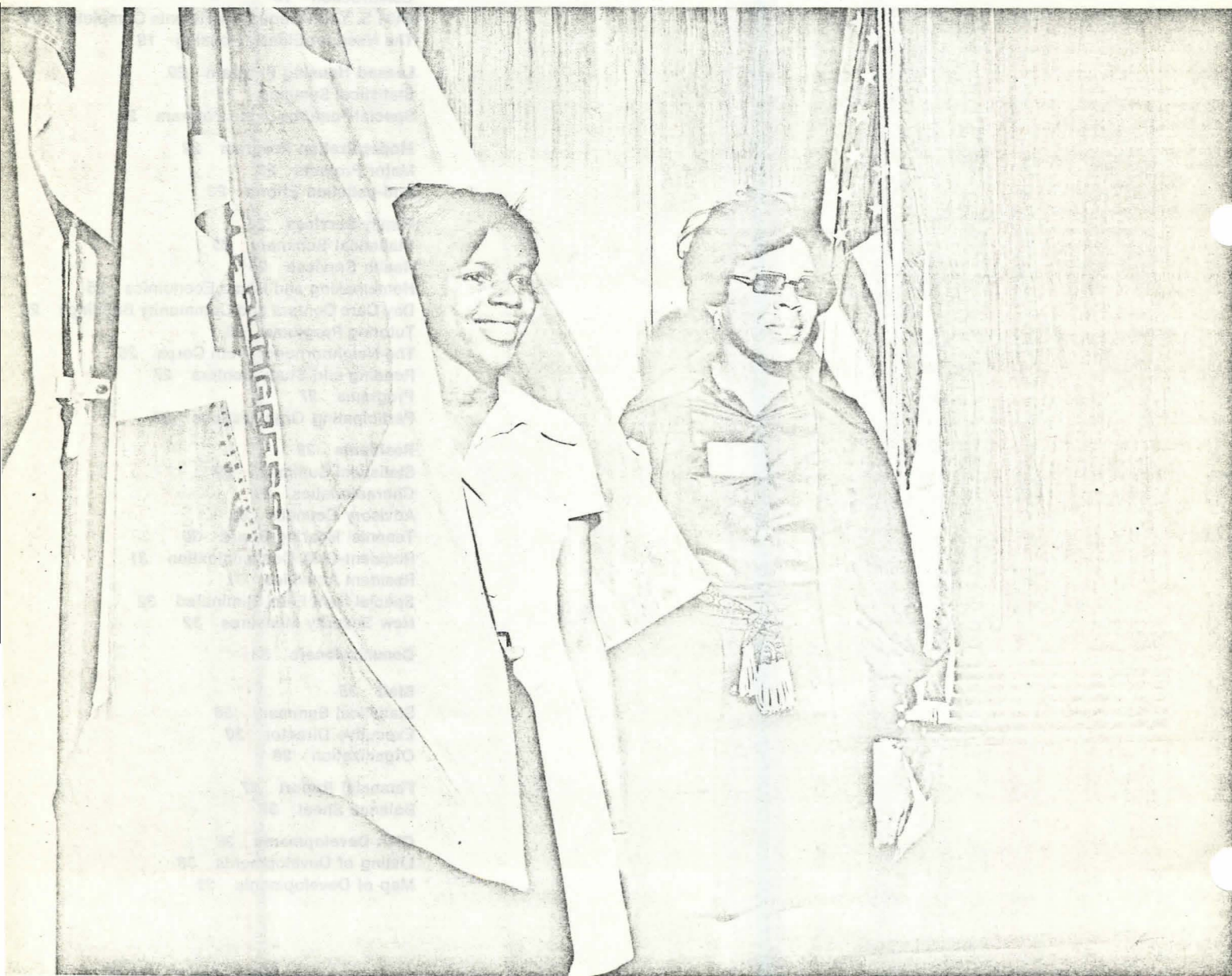
C. E. Humphrey

On the cover: A street of one and two-family homes in CHA's low-rise development at 42nd Street and Princeton Avenue, completed in 1969. Dwellings similar to these will be located throughout the city under the Authority's new scattered sites program for low-income family housing.

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Introduction

Miss Lynn Madison of Dearborn Homes and Miss Rosemary Morgan (right) of Leclaire Courts were among a group of 40 outstanding high school students who traveled to foreign countries last summer under the auspices of the Chicago Council on Foreign Relations and the American Field Service. Interested in Latin American language and culture, the young women lived with Latin American families for eight weeks, going to school, traveling, and exchanging information. Miss Madison lived in Guatemala and Miss Morgan in La Paz, Bolivia. They were recommended for the honor by the Ada S. McKinley Educational Services office in Dearborn Homes, and coincidentally are both freshmen students this year at Eastern Illinois University.



The Chicago Housing Authority is now entering its 35th year, an appropriate time to identify past trends and to attempt to chart a correct course into the future.

The CHA today is a "city" within a city, in population, the second largest in Illinois. The City of CHA houses approximately 155,000 people, more than Rockford (147,000), Peoria (127,000), or Springfield (91,000). Like most American cities, CHA is confronted by all the mounting physical, economic, social, and psychological problems of our urban centers. These are the most serious and urgent problems facing the American people, but they are intensified and compounded many times in the City of CHA because three-quarters of its people are either minors (65%) or elderly (10%), and more than half of the families with children are one parent families who are on public assistance.

Yet, despite these gigantic disadvantages, improvements are being made every year in the quality of life of those who live in CHA. This is being accomplished through the efforts of CHA residents themselves, of a concerned and professional staff, and the assistance of the City, State, and Federal governments.

Since its establishment in 1937 during the Great Depression, CHA has operated under a U.S. housing policy based on the idea of "safe, sound, and sanitary" building. As a Public Works Administration project, public housing originally was a device for putting unemployed people to work and clearing slums. The new housing was viewed as a temporary refuge or way station for average though poor city-dwellers who were battling the "hard-times" of the Depression but who would soon be back on their feet and able to afford private housing. The relatively short sojourns of residents in public housing during the years up to World War II verified this idea.

During the War, a major priority of public housing was providing dwellings for defense plant workers, and after the War, temporary homes for returning veterans and their families. Then, in the late 1940's, Chicago began to build the Eisenhower Expressway. To accommodate the displaced low-income families, additional public housing was erected.

As CHA entered the 1950's, the poor city-dwellers in public housing were slowly replaced by rural migrants from the South, by welfare and one-parent families, and by the generally disadvantaged. The first large-scale Federal funding of public housing came in the early 1950's to meet the growing need for more and better housing. But an over-riding concern of the new program was economy: everything was done to pare down expenses, to get the maximum number of units for the limited money available. Rigid Federal guidelines determined space, arrangement, and tenancy. The new public housing was much better than the deteriorating and neglected buildings it replaced, and long waiting lists attested to the preference of those seeking apartments in the new developments.

Emphasis during the 1950's, then, was on removing slum buildings and the construction of the largest number of housing units that a limited amount of money could buy. But funds for extra programs and services were strictly limited.

In time, criticism of this approach grew, and much of the criticism was sound, especially that coming from the residents as well as some housing authorities. Crowded conditions, inadequate recreation space, evictions of those whose earnings were above Federal regulations, increasing trouble with children who were without nursery schools or youngsters without adequate play supervision, comprised some of the legitimate complaints.

As a result, social agencies slowly began to move into public housing, taking space to bring medical and dental clinics, pre-school and day care centers, welfare and job counseling, libraries, education and athletic programs, and so on. Social services, even so, have remained limited and uncoordinated because the funds to run each agency's program come from many private and public sources, most of which have severe financial limitations.

Then the needs and special requirements of the elderly were recognized in an expanded Federal program designed to provide low-income housing for this neglected segment of society. Legislation was passed in 1956, but the building program did not get under way until the early 1960's.

More recently, additional shortcomings of public housing have been highlighted through social research and the wisdom that comes with experience. High-rise structures for families with children came under sharp criticism, as well as the Federal guidelines that imposed this type of construction in most large urban areas because of high land and construction costs.

Next, court decisions and Federal agency directives have reinforced the necessity of distributing low-income housing throughout urban areas on a metropolitan-wide plan, not only to avoid creating new black ghettos but to make low-income housing available to qualified whites.

Finally, greater participation on the part of residents in the planning and programs of the housing authorities was recognized as a necessary component in the changing picture of public housing. National policy has accelerated this move toward wider cooperation between management and residents, and the latter have shouldered increased responsibilities.

In all of these areas—social services, housing for the elderly, low-rise structures for families, metropolitan-wide distribution of low-income families, and greater participation by residents—the CHA has been in the vanguard of the nation's local housing authorities.

Social Services

CHA was among the first to recognize that the problems of the poor range far beyond those of mere shelter. Under its first executive director, Elizabeth Wood, a dedicated and nationally-known leader in the social welfare field, CHA was heavily involved in attacking these problems as long ago as the early 1950's, even though such involvement was technically in violation of Federal regulations. This involvement was pursued and expanded by her successors.

Housing for the Elderly

CHA with corporate funds in 1959 built probably the first low-rent public housing for senior citizens in the nation—the Julia C. Lathrop Apartments. This leadership has been a hallmark of CHA's elderly program ever since.

Low-rise Structures for Families

CHA historically has been in favor of this approach. Up to 1949, when Dearborn Homes was first occupied, all CHA buildings were low-rise. Increasingly thereafter, high-rise building became a necessity for all developers—public and private—in Chicago as well as smaller cities throughout the nation because of spiraling costs of both land and construction. Stringent budget limitations imposed on local authorities by the Federal government made it impossible to provide urgently-needed public housing on a large scale any other way. As a result, more than 50 of the buildings erected by CHA between 1949 and 1955 ranged in height from seven to 15 stories largely because of these restrictions. CHA's original plans for the Robert Taylor Homes—completed in 1962—called for housing all families with children in either low-rise structures or on the first three floors of the elevator buildings. But this plan was vetoed by Federal housing officials because of the higher land costs necessitated by lower densities. Fortunately, after years of effort by CHA and other housing authorities the Federal government came to recognize the problems involved in high-rise housing for families with children and eventually relaxed its cost limitations. The Housing Act of 1968 as well as a U.S. District Court order of July 1, 1969, in Chicago require that family-type dwellings—except in certain specific instances—be located no higher than the third floor.

Metropolitan-wide Distribution of Low-income Families

Illinois law places responsibility for approval of public housing sites in the Chicago City Council. And through the years the Council has selected for approval sites for family housing essentially in deteriorated neighborhoods on the theory that slums must be removed and public housing should be located where it is needed and wanted. Now, under the Federal Court order, the next 700 family dwellings CHA builds must be in what the Court defines as the General Housing Area (see page 11), and thereafter the Authority must build three units in the General Housing Area for every one built in the Limited Housing Area.

Greater Participation by Residents

In 1968, CHA took a major step in this direction when it undertook several studies of the effect of existing social, welfare, and health services as they related to the needs of CHA residents. With this information and from years of experience, CHA made a wide-ranging set of proposals in August 1970 titled, "Steps into the Seventies." The broad purpose of the recommendations was to increase the effective participation of residents in management. One of the specific recommendations was regular elections to resident councils on the same day in every development—conducted by an impartial organization. Preliminary to this, the CHA in 1970 formed a Central Advisory Council of residents from each development, and a Tenants' Hearing Board in March 1971 to hear grievances regarding evictions and CHA assessments for damages. A Memorandum of Accord between the Central Advisory Council and the CHA, delineating each group's responsibilities, was signed in April 1971, probably the first of its kind in the country. No U.S. housing authority has an agreement more comprehensive or far-reaching in its implications. City-wide elections in CHA were held for Local Advisory Councils in July 1971, and members and officers of the CAC were elected in July and August 1971. The CAC and the Local Advisory Councils were immediately involved in reviewing the Authority's most recent Modernization Program (for \$14.4 million) as an introduction to further responsibility.

In summary, on the major issues in public housing, and in relation to the country's 3,234 other local housing authorities, CHA has been an innovator with a substantial record of accomplishment.

Over the past two years, CHA has sponsored studies and has evaluated its present policies in consultation with tenant representatives and individual residents. As a result, many changes have been made and many more will follow.

The Authority believes that just as the situation of the 1960's produced CHA's "Quality of Life" or Modernization Program, so the 1970's require still greater changes in the concept of public housing in Chicago and throughout the nation.

The broad purpose of CHA's new programs will be to increase the effective participation of residents in the management of the Authority and to help them build a deeper stake in the day-to-day life of their communities.

CHA now seeks to go beyond the old goals of public housing—decent, sound, and sanitary dwellings—to a new concept of clean, comfortable, and creative communities.

To achieve this goal, many obstacles must be overcome, chief among them a lack of funding to launch the programs that can bring about creative communities. CHA will do its best to obtain the necessary funding from the Federal government.

Then, in collaboration with residents, social programs will be thoroughly evaluated and effective new ones initiated. More space for social services will be provided, even as densities in present developments are reduced. Much emphasis will be given to increasing the economic strength of residents by providing jobs and job-finding services in and outside of the Authority. Increased efforts are being made to assist residents with rising incomes toward home ownership in the private market. And, finally, CHA and its residents through the CAC and the Local Advisory Councils will join their efforts to ameliorate the problem of crime and to provide security for all residents.

The long-range solution to the problems of the poor, however, does not rest only with improved living conditions in present housing communities, but rather with a new national policy. So long as low-income families are put into the same areas, whether in high-rise or low-rise buildings, they will lack the network of strong economic, social, and educational institutions to take care of the problems of metropolitan living. Into these communities are packed a whole range of difficult conditions. Each problem of the community feeds upon the other, magnifying them all and frustrating programs designed to meet one part of the difficulty. The result is even larger welfare costs without any hope of permanent improvement.

The best solution to this worsening situation is a scattering of low-income families throughout metropolitan areas rather than concentrating them in the central city. Until recently, public policy encouraged concentration not only by its requirements for public housing but also by varied subsidies to middle and upper income construction.

Consideration should now be given to a new national housing policy that would combine the elements: a housing allowance program, the fair share concept, and the requirement that all construction employing any kind of public subsidy—Federal, State, or local (whether hidden or visible)—contain 10 to 15% low-income units.

Under the housing allowance program, subsidies are provided directly to eligible families to help them pay for housing of their own choice anywhere in the private market. The subsidy would be the difference between a fixed percentage of the family's income and the actual cost of renting a moderately-priced dwelling. The program would allow a family to seek a suitable home wherever one was available. The U.S. Department of Housing and Urban Development soon will be testing such a plan on an experimental basis in selected cities across the country.

The fair share concept entails a distribution of low and moderate income housing in all suburban communities as well as the city. The concept recognizes the fact that the shortage of decent housing for the poor can only be solved through a metropolitan approach, with each suburb providing its fair share on a pro rata basis of public housing units. The concept already is in operation in Dayton, Ohio; the Metropolitan Washington, D.C., area; Fairfax, Virginia, and Massachusetts.

A national policy that would require construction employing public subsidy to contain 10 to 15% low-income units—the third element—would apply to high-rise apartment construction as well as tract development in the suburbs. It would apply whether the subsidies rest in financing, such as FHA loans, or in governmental assistance in sewers, streets, or utilities. The present broad range of subsidies favor those who need no such help and, consequently, deny support to those with the slimmed resources. Such a new national program would result in dramatic benefits. Low-income families would be spread thinly throughout the metropolitan area. In these new neighborhoods they would find the effective social infrastructure which sustains middle and upper income communities. They would benefit by better schools, competitive buying, good health facilities, extensive social organization, and safer streets and homes. The broader community would be saved the ever rising costs of welfare, and low-income families would have a chance at a decent life and wider opportunities for the young people. This kind of policy would quite literally "bring us together." Moreover, it will work. CHA's Leased Housing Program and developments for the elderly throughout the city demonstrate that low-income people can live harmoniously with wealthier neighbors without discrimination, indeed, sometimes without identification.

No doubt some will say that broad governmental policy is not the concern of the Chicago Housing Authority. Yet, CHA is charged with the responsibility of providing housing for low-income people. In the past this has been accomplished largely by conventional public housing. But even if the country built all the public housing now authorized, it would not make much of a dent on the problem. America now faces the most critical housing crisis in recent history. The crisis will not be met successfully by the old policies, many of which have contributed to the present predicament.

A new national program as outlined above would be cheaper, more effective, and, most of all, more just. It would not only be more just for low-income families, it would be fairer to the rest of the community. At present, all across the country middle class areas resist the placement of low-income families in their neighborhoods. Each complains that it is being sought out to bear a larger economic and social burden than other—sometimes more prosperous—communities. Under this new program, everyone would assume some share of the cost; and all would know that there was no escape from responsibility. With the coming together of now estranged groups, we would be on the way toward restoring the torn social fabric of this great but troubled nation.

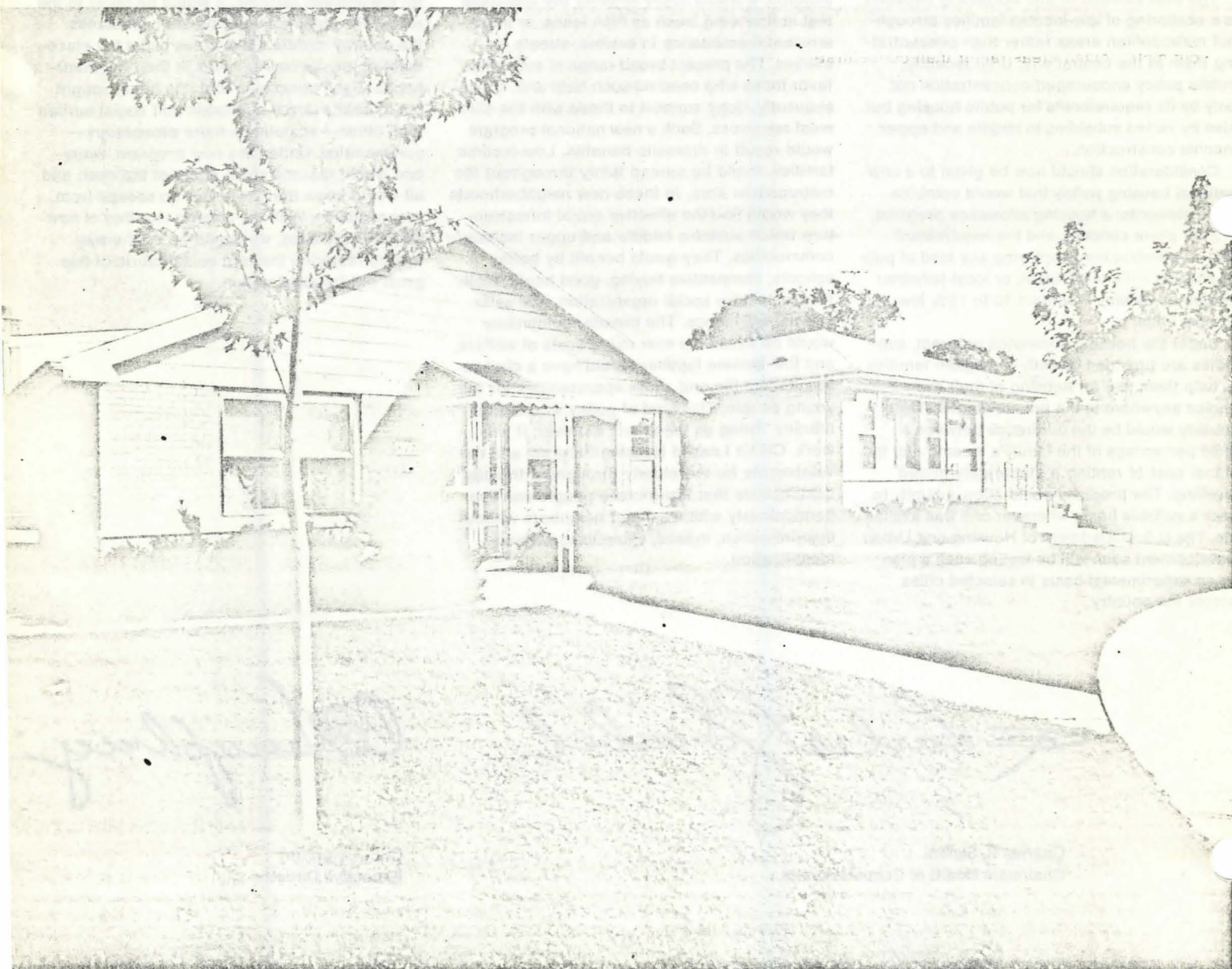


Charles R. Swibel
Chairman, Board of Commissioners



C. E. Humphrey
Executive Director

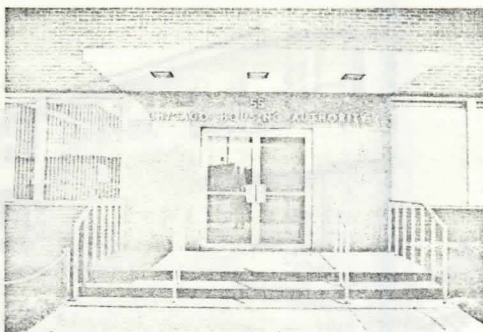
The New Look in Public Housing for Families



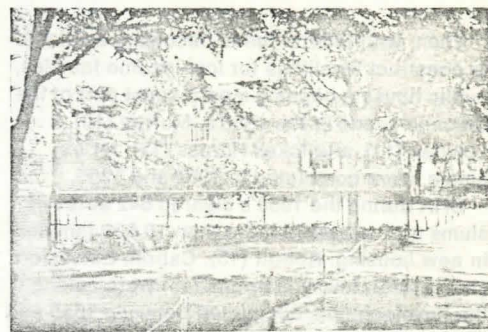
To better inform the public about the Authority's new scattered sites program for low-income housing, a color slide presentation was developed in 1971. Titled "The New Look in Public Housing for Families," the 20-minute presentation explains the program through the use of maps, photographs, and other graphic materials. The availability of the free slide show was made known through the news media and a special mailing to some 800 community, religious, and government leaders. An edited version of the slide show, albeit in black and white, is presented in this photographic essay.

Public housing and the Chicago Housing Authority (1) were born in the Great Depression—in 1937. As a Public Works Administration project, public housing was originally a device for putting unemployed Chicagoans to work. CHA's Trumbull Park (2), Addams (3), and Lathrop Homes (4) were built in 1938.

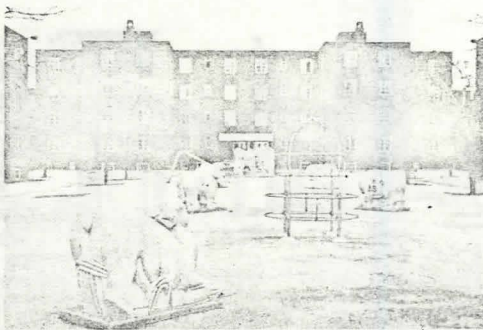
The scope of public housing expanded during World War II when a major war priority was providing housing for defense plant workers. Brooks (5), Altgeld (6), and Wentworth Gardens (7), among others, were completed in 1943, 1945, and 1947. With peace came the swift erection of temporary homes for veterans and their families. Then, with a return to civilian goals, Chicago began to build what is now the Eisenhower Expressway (8). In the process, many families were displaced. Public housing was built to accommodate these low-income families. Leclaire Courts (9), one of these developments, was erected in 1950.



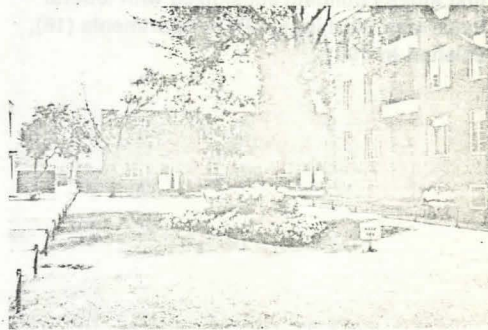
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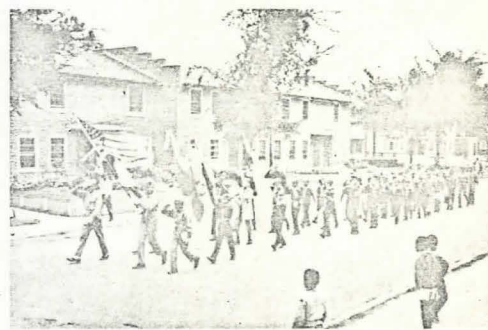
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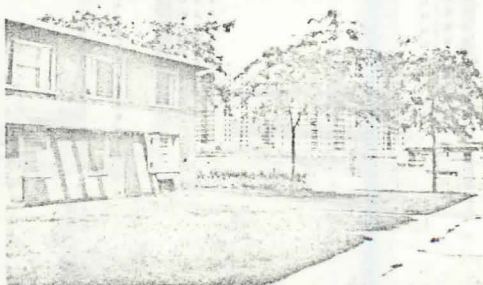
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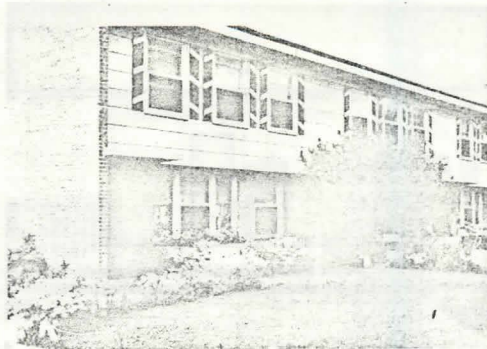


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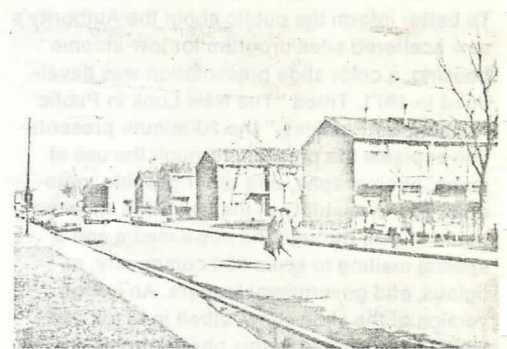
Then, with federal funds becoming available to construct dwellings for low-income families, public housing became a permanent part of the Chicago scene in the 1950's. Murray (10), Lowden (11), and Ickes Homes (12), for example, were completed in 1954 and 1955.

CHA during the 1950's cleared 642 acres of slums and relocated more than 10,000 families in new housing. Abbott (13), Cabrini Extension (14), and Stateway Gardens (15) were among the developments completed between 1955 and 1958.

Public housing expanded even more in 1959 with federal programs for the elderly. CHA's first elderly building subsidized with federal funds was Washington Park Apartments (16), finished in 1961.



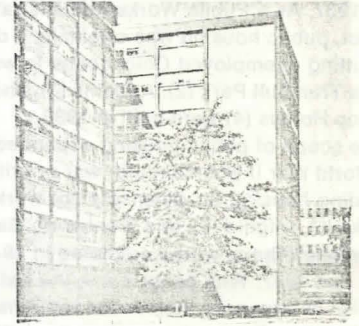
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16

The twin federal programs—one for families and one for the elderly—have gone forward together and expanded to the present time. Among the developments completed in the last five years are Hilliard Center (17), which houses senior citizens in the two round towers and families in the two crescent-shaped buildings; the 6400 N. Sheridan Apartments (18) for the elderly; and 42nd and Princeton (19), a family development of low-rise buildings.

A municipal corporation created by the state legislature, the Chicago Housing Authority today operates 40,900 apartments and homes for approximately 155,000 low-income people. Of these, 30,300 are CHA-owned family dwellings—2,900 of which are occupied by elderly families—and 7,800 are CHA-owned apartments for the elderly. The CHA also leases privately-owned apartments: 600 for families and 2,200 for the elderly. So, in CHA-operated housing, there are 28,000 families and 12,900 elderly households.

Who is eligible to live in public housing? As you can see in this chart (20), eligibility for admission and continued occupancy depends on income. For initial occupancy, two in a family can't make over \$4,800 a year. A family of four can't exceed \$6,000, and a family of six can't exceed \$7,200 a year. For persons 62 years of age or older (21), income from all sources at time of admission may not exceed \$3,000 a year for a single person, \$3,600 for a couple, or \$4,200 for three persons.

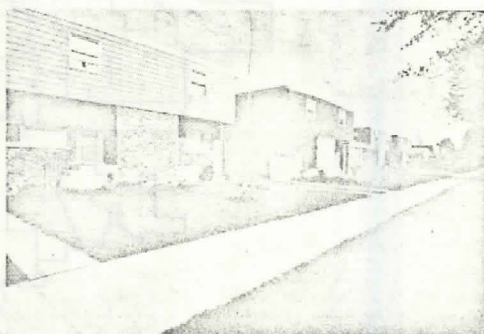
Flat rents for families including all utilities (22) are \$60 for one-bedroom apartments. A two-bedroom unit is \$70 per month. A four-bedroom is \$90. But under no circumstances can the rent exceed 25% of adjusted annual income. The average rent paid by a CHA family is \$69 per month. Rents for the elderly average \$38 a month. Approximately half of all families living in public housing are either wage earners or receive social security or veterans' benefits. The other half receive public assistance (23).



17



18



19

FAMILY INCOME LIMITS	
2 person family	\$4,800
4 person family	\$6,000
6 person family	\$7,200

20

ELDERLY INCOME LIMITS	
1 person	\$3,000
2 persons	\$3,600
3 persons	\$4,200

21

RENTS FOR FAMILIES	
1 bedroom	\$60
2 bedrooms	\$70
3 bedrooms	\$80
4 bedrooms	\$90
5 bedrooms	\$95

22

HALF OF ALL CHA FAMILIES
ARE WAGE EARNERS OR HAVE
SOCIAL SECURITY
OR VETERANS' BENEFITS

23

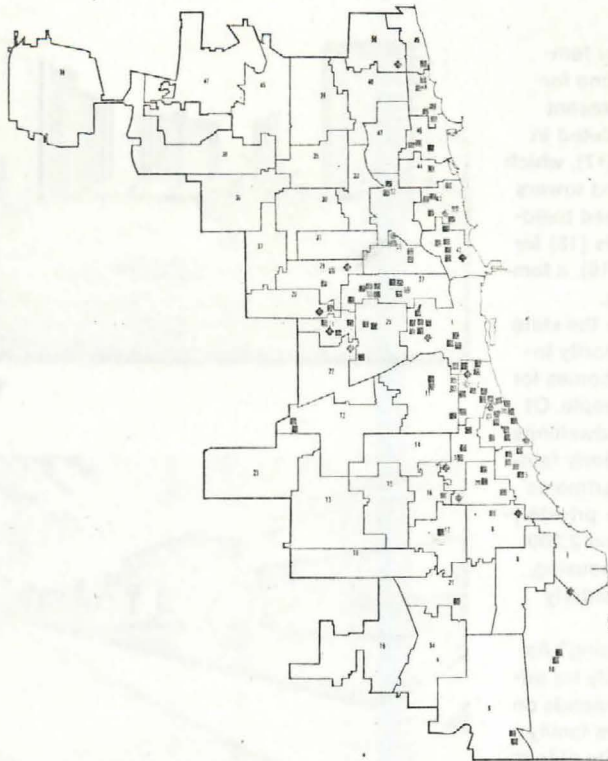
These are interesting statistics, but the one that pushed public housing into the limelight was this one: 92% of Chicago's public housing for families is *now* located in essentially black neighborhoods, as this map of CHA developments shows (24). The black squares represent family housing and the grey squares, elderly housing. The diamonds indicate developments planned or under construction. Of course, these large squares do not represent the size of the developments.

Five years ago the concentration of family housing in the inner city—the black squares—was challenged. The American Civil Liberties Union sued in Federal Court on behalf of a group of people waiting to get into public housing plus some already in public housing. They charged that CHA carried on a site selection program, the effect of which had been to discriminate against Negroes by avoiding their placement in white neighborhoods. This resulted in a concentration of public housing in the inner city.

The case attracted much attention, locally and nationally, and in February 1969 it was decided by U.S. District Court Judge Richard B. Austin. He ruled that the concentration of public housing in black communities had denied *both whites and blacks* free choice and access to Federally-subsidized public housing.

The Judge then directed CHA to comply with a comprehensive plan covering where, what, when, and how to remedy the past effects of this discriminatory concentration. All of the specifics will be covered in a few moments. But the "where" was the key element and the most controversial.

The Judge ordered CHA to build 700 homes or apartments in white areas (25) before any more could be built in black neighborhoods, and thereafter (26) to build three units in white neighborhoods for every one built in non-white areas. Actually, this is a positive policy since there is a serious need for low-income housing in many areas of the city—for whites as well as blacks. The court order also recognized the metropolitan scope of the low-rent housing problem by allowing a third of the "white area" homes to be located in Cook County outside of the city (27).



24

COURT DIRECTIVE
BUILD 700 PUBLIC
HOUSING UNITS IN
WHITE AREAS NOW

25

THEREAFTER 3 UNITS IN
WHITE AREAS FOR EVERY
1 UNIT IN BLACK AREAS

26

ONE THIRD OF WHITE
AREA UNITS CAN BE
BUILT IN THE SUBURBS

27



28

The CHA undertook to follow the Court order, and began the search for vacant land to fit the precise specifications of the Court. These are the kinds of sites actually selected by CHA (28 & 29).

CHA adopted the policy, permitted by the Judge, of also seeking suburban sites. It was a long and arduous process. However, the ACLU and the Judge thought that CHA was taking too long to implement the order. Judge Austin directed that the CHA submit the Chicago sites to the City Council. The CHA appealed that order so that a metropolitan-wide program, suburban as well as city sites, could be announced at the same time. The appeal failed and on March 1, 1971, the Court ordered the submission of sites to the City Council by March 5th (30). This was done and the sites became public.

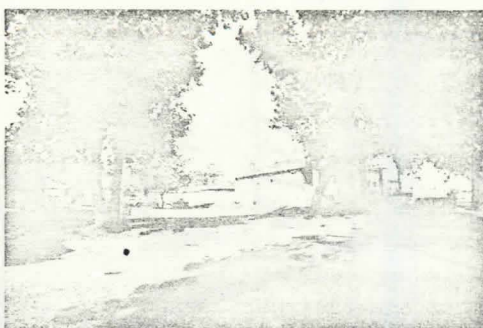
Release of the list of sites was made in the midst of a city election. Not surprisingly, the plan became an election issue (31) and received heavy coverage in the newspapers and on radio and television.

Since the Federal Court had ruled unconstitutional the site selection procedures of the past, new selection criteria had to be formulated. For this purpose, the Court divided the city into two sections: the General Housing Area and the Limited Housing Area. And this is how they were determined (32). The dark grey portion on the map shows 30% or more non-white population. A buffer zone one-mile wide is added—that's the light grey area. The grey areas were designated the Limited Housing Area. The rest of the city was, therefore, deemed to be predominantly white, the General Housing Area, and was designated to receive most of the new housing.

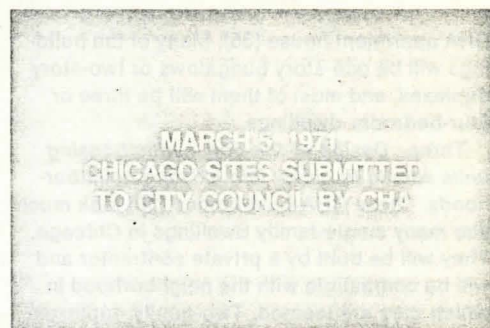
Now, here are the six main provisions of the plan.

One. *There is to be no concentration of people in one location* (33). New public housing sites will be scattered as can be seen on this map of the sites originally submitted by the CHA on March 5, 1971. In fact, public housing units cannot constitute more than 15% of the dwelling units in any neighborhood—technically, in any census tract. In most cases, because of the scarcity of usable vacant property in Chicago, it will be far less than 15%. Generally, the number of units or families at any one location will range from one to a maximum of twenty. The average will be about eight dwelling units for each site.

Two. *There are to be no more high-rise buildings* (34). Structures housing families will be limited to three stories in height like this



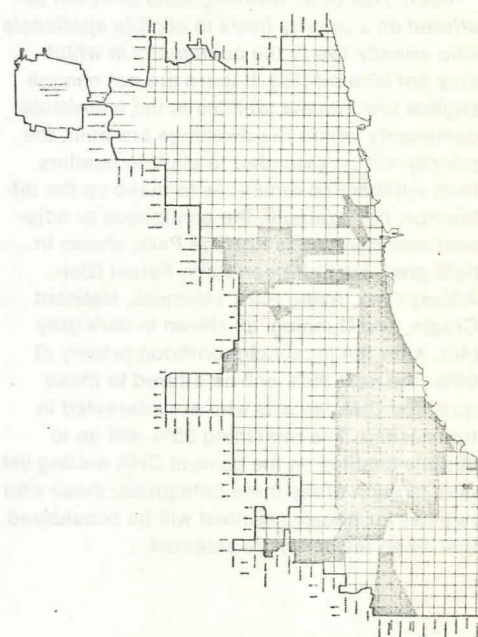
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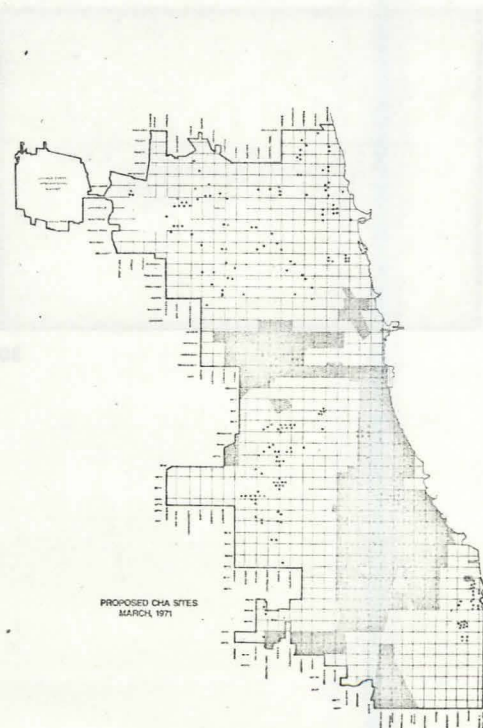
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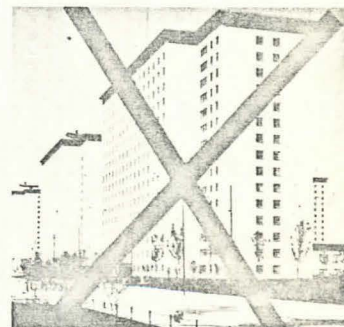
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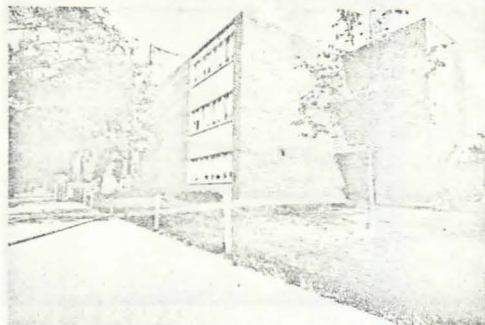


34

CHA apartment house (35). Many of the buildings will be one-story bungalows or two-story duplexes, and most of them will be three or four-bedroom dwellings.

Three. *Design of the new public housing units should fit nicely into existing neighborhoods.* These CHA-built homes (36) look much like many single-family dwellings in Chicago. They will be built by a private contractor and will be compatible with the neighborhood in which they are located. Two-family duplexes like these CHA dwellings (37) would be similarly compatible with existing housing. As would CHA's two-story townhouses (38).

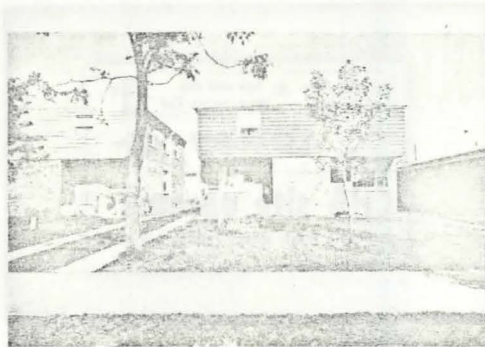
Four. *Half of all dwelling units built will be offered on a priority basis to eligible applicants who already live in the community in which they are located* (39). If there are not enough eligible low-income families in the immediate community where the dwellings are built, the priority will be extended to eligible families from adjacent communities to make up the difference. For example, the contiguous or adjacent communities to Portage Park, shown in light grey, are Jefferson Park, Forest Glen, Albany Park, Irving Park, Hermosa, Belmont Cragin, and Dunning, all shown in dark grey (40). After the local neighborhood priority of 50%, the next 25% will be offered to those qualified CHA tenants who are interested in transferring. The remaining 25% will go to eligible families on the general CHA waiting list (41). In each of the three categories, those who register for housing earliest will be considered first when residents are selected.



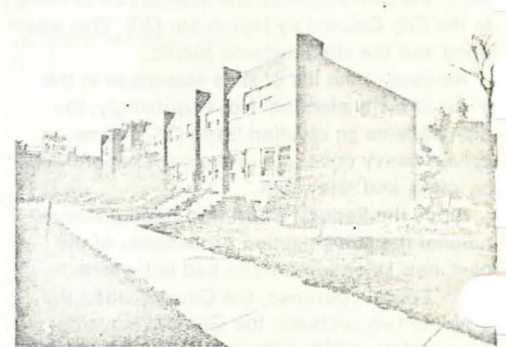
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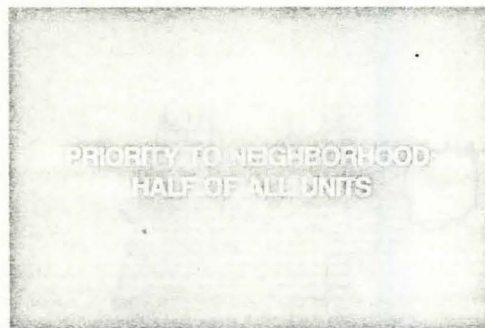
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Five. When tenants establish good records as renters, it is anticipated that, under new Federal legislation, they will be able to buy the apartment or house they live in.

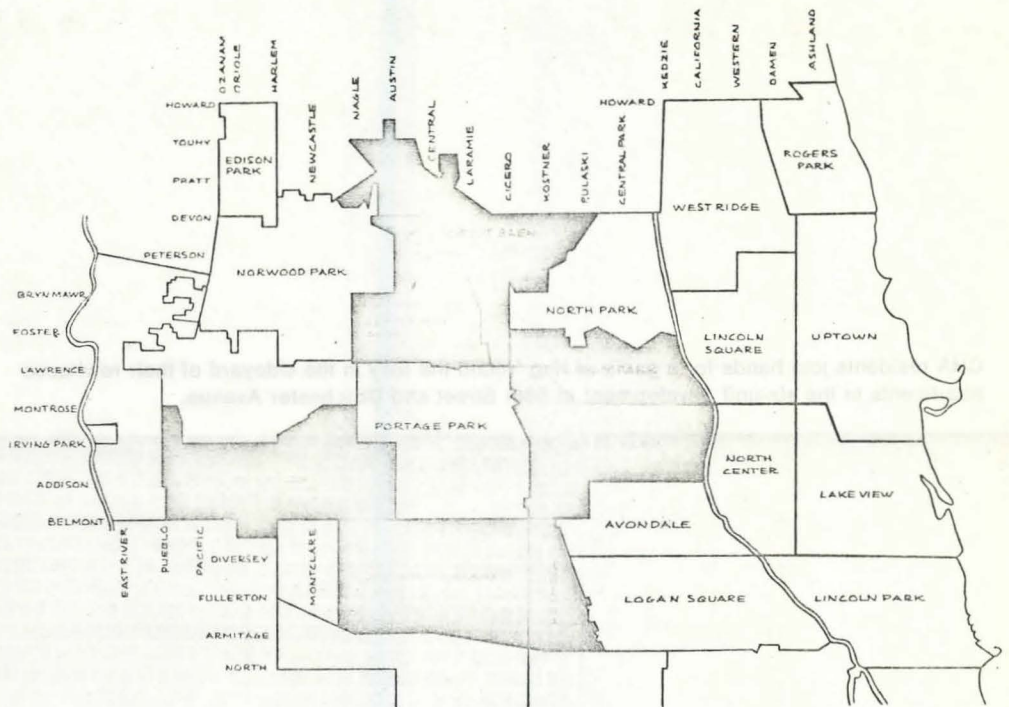
Six. Many have asked what kind of people would move into the new public housing. CHA asked for, and the Court allowed, a selection process for tenants to help insure their being good neighbors (42). Among other factors, the family will have to demonstrate that it is a good housekeeping group and capable also of performing janitorial and minor maintenance work like snow removing and grass cutting. Good neighbors are also made by having good neighbors. Just being friendly helps. A block organization can do much to make the newcomer welcome and to guide him in neighborhood ways.

It is important to note that there are many requirements which must be met before construction of new dwellings can begin. Hearings must be held by the Planning and Housing Committee of the City Council. Approval of all proposed sites has to be obtained from the City Council as well as HUD, the U.S. Department of Housing and Urban Development. Then the CHA must conduct land surveys and obtain HUD-approved appraisals. Negotiations with individual owners are held. After purchase, zoning changes must be obtained if the site is not zoned residential. Then architectural plans must be developed, bids let out, and contracts signed with building contractors. Only then can construction begin (43).

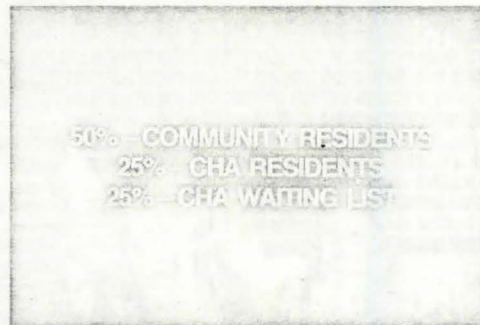
These are the facts about the New Look in Public Housing for Families. To sum up in a quick review, the new CHA plan would have these features:

1. Scattered Sites. 2. No More High-Rise Buildings. 3. Compatible Design. 4. Local Priority. 5. Home Ownership Possibility. 6. Good Neighbor Potential (44).

The "New Look in Public Housing for Families" color slide presentation is available on loan free through CHA's Department of Information. Call 791-8426.



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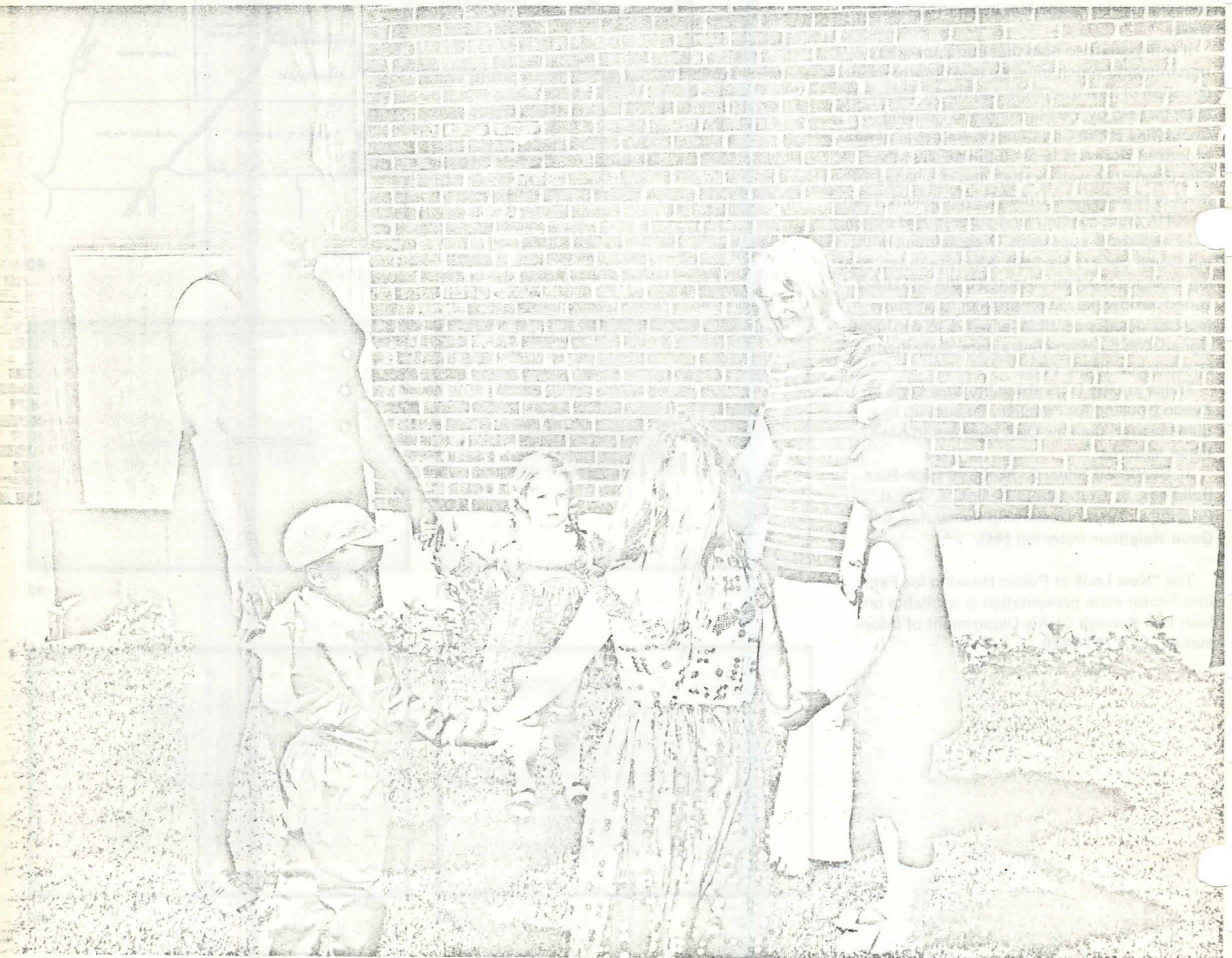
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Family Housing Program

CHA residents join hands for a game of ring 'round the rosy in the sideyard of their rowhouse apartments in the six-unit development at 56th Street and Dorchester Avenue.



CHA-owned family-type apartments numbered 30,305 on December 31, including 29,000 built with federal aid and 1,305 built with city and state financing. Vacant family-type apartments—almost all of them in the high-rise buildings of two developments—numbered 1,129.

The waiting list included 8,178 households. Most of these, however, were waiting either for one-, two-, or three-bedroom apartments in low-rise developments, or for four-, or five-bedroom apartments which are in short supply at virtually all developments. (See CHA Annual Statistical Report for further information.)

During 1971 rehabilitation was completed on a three-story building at 3718-28 W. Douglas Boulevard, making available 53 apartments for families with children. Land acquisition has been completed on eight sites for redevelopment with 199 family-type apartments.

On March 5, CHA submitted a list of 275 sites to the City Council to fill the available HUD allocation of 1,500 units of family housing. The Council approved 100 sites for 732 units on June 11 and 24; of these, 44 sites were in the General Housing Area and 56 were in the Limited Housing Area. HUD approved preparation of a development program on 40 of the sites in the General Housing Area. A \$6.9 million Development Program on 36 sites for 267 units was approved by the CHA Board of Commissioners on November 11, 1971, and by HUD on February 8, 1972. These apartments are scheduled for completion in 1973.

On December 28, an application was refiled with HUD (required by a new directive) asking for authorization to proceed with the development of 3,500 additional units of family housing.

Under Model Cities, CHA has a program to acquire land for not-for-profit developers to build housing for sale and rental under Sections 235 and 236 of the National Housing Act. Ninety-one parcels of land were acquired by CHA in Model Cities areas, and 25 were developed by No. 2 Chicago Dwellings Association and sold under Section 235.

An agreement to attempt to develop up to 500 units of low-income family housing on a cooperative basis in Cook County outside the City of Chicago over a three year period was made in September by the Chicago Housing Authority and the Housing Authority of the County of Cook.

Both authorities agreed to use their best efforts to obtain the support and required approvals of the local governing bodies concerned. These bodies, under existing law, have local options for such programs.

Up to half of all housing built under the agreement may be for Chicago families certified by CHA, subject to approvals by the local governing bodies. The other half would accommodate local residents. Within the 500 unit program, HACC was to undertake and operate a Section 23 Leased Housing Program to attempt to provide housing for low-income families including residents of Chicago.

The agreement was the first of its kind in the country where two independent authorities elected to share responsibility for providing housing for low-income families.

The plan was designed to implement the CHA-HACC joint policy of attempting to place low-income family housing throughout the city and suburbs.

The agreement did not apply to cities and villages already in a cooperative agreement arrangement with either housing authority unless the agreement between the two was revised accordingly.

To better inform the public about the Chicago Housing Authority's new scattered sites program for low-income family housing, a number of special informational materials were developed and distributed free to the public. Moreover, CHA staff members appeared on radio and television programs and addressed neighborhood groups throughout the city.

Printed informational pieces included an illustrated brochure explaining the provisions of the New Look program, a pamphlet of questions and answers on the New Look, and a profile on the CHA including information on its function, housing programs, and financing.

A slide presentation on the New Look program also was developed. The 20-minute talk, illustrated with 50 color slides, was designed to explain the complex plan through the use of maps, photographs of buildings, and other graphic materials.

New Look printed materials and notice of the availability of the slide presentation were distributed through the mail to some 800 community, religious, and political leaders in the city, as well as 200 communications media outlets. Ten thousand copies of the New Look brochure were made available to the public through all 70 branches of the Chicago Public Library. In addition, all requests for appearances by CHA staff members were honored, as were written and telephone requests for printed information.

Financial Report

Federally-aided Developments: The CHA receives no tax funds from the City of Chicago. Development funds are obtained in the private market. Temporary financing is provided by short-term notes sold to banks, and permanent financing is provided by 40-year bonds sold to private investors. CHA receives sufficient Federal funds each year to meet debt service costs on the 40-year bonds, plus operating cost subsidies which enable CHA to charge low rents. In lieu of taxes, CHA pays to the County treasurer 10% of all shelter rents charged (rents exclusive of utility costs). Historically, the payments have been more than private

owners were billed in real estate taxes the year before the properties were purchased by CHA and redeveloped with public housing.

City-State Financed Developments: To provide much needed relocation housing in Chicago after the end of World War II, \$15,000,000 from a City bond issue and \$3,333,000 from a State bond issue were made available to CHA as a capital grant for development purposes. The apartments built with these funds represent about 3% of the Authority's current program.

Government securities held by the Authority amounted to \$17,983,888 on December 31 in keeping with the Authority's longstanding policy of investing all monies not immediately required for disbursement. Such investments yielded interest income of \$1,049,057 during 1971. Operating reserves totaled \$2,867,896.

Balance Sheet December 31, 1971

		ASSETS
Cash		\$ 759,475.65
Investment in Government Securities		17,983,888.20
HUD Annual Contributions Receivable		37,685,572.26
Accounts Receivable		14,397,000.74
Notes and Contracts Receivable		3,950,444.48
Mortgage Receivable		1,807,893.98
Fiscal Agent Funds		80,063.12
Deferred Charges		168,109.73
Land-Buildings & Equipment		508,885,044.87
Incomplete Contracts		8,734,156.59
Less Contract Awards		(8,734,156.59)
TOTAL ASSETS		\$585,717,493.03
		LIABILITIES AND CAPITAL
Accounts Payable		\$ 3,425,213.55
Contract Retentions		945,126.46
Accrued Payments in Lieu of Taxes		6,160,673.03
Other Accrued Liabilities		2,867,259.89
Security Deposits		521,569.00
Deferred Credits		2,090,030.85
Notes Payable		71,730,321.01
Bonds Payable		343,527,000.00
Capital Funds		
City of Chicago	\$ 20,184,831.51	
State of Illinois	8,227,442.48	
Federal Government	126,038,025.25	
Total Capital Funds		\$154,450,299.24
TOTAL LIABILITIES and CAPITAL		\$585,717,493.03