

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,)
)
 Plaintiffs,)
)
 -v-)
)
CHICAGO HOUSING AUTHORITY,)
and PATRICIA HARRIS, Successor))
to CARLA A. HILLS, Secretary)
of the Department of Housing)
and Urban Development, et al.,))
)
 Defendants.)

NOS. 66 C 1459
 66 C 1460
(Consolidated)

SUPPLEMENT TO DEFENDANT CHICAGO HOUSING
AUTHORITY MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR RECOMMENDATION
OF THE SPECIAL MASTER

The general issue raised by the plaintiffs' motion, and responded to in CHA's Memorandum of April 28, 1977 is whether the Chicago Housing Authority has the unrestricted power to acquire any existing building in the City of Chicago and rehabilitate it or use it "as is" for low rent housing. A careful review of the statute and case decisions would require that the answer be in the negative. CHA powers to acquire are carefully circumscribed by Section Nine (9) of the

"Housing Authorities Act" (appendix hereto)* and in accordance with its purpose as contained in Section 2 of the Act:

"It is hereby declared as a matter of legislative determination . . . to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects, and undertake such land assembly, clearance, rehabilitation, development, and redevelopment projects as will tend to relieve the shortage of decent, safe, and sanitary dwellings."

To bring in focus the relevant issues requires a close examination of both Sections 9 and 17(g) of the Act, *supra*.

Section 9, in stating the basic grant of power to acquire, says in pertinent part:

"The power of eminent domain shall apply not only to improved or unimproved property which may be acquired for or as an incident to the development or operation of a project or projects, but also to: (a) any improved or unimproved property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, or (b) any improved or unimproved property which the Authority may require to carry out the provisions of this Act".

The language of the statutes explicitly includes the power of eminent domain to acquire improved or unimproved property for or as

*Appendix includes full text of Sections 2, 8.4, 9 and 17(g) of the Housing Authorities Act (Chapter 67½, Illinois Revised Statutes, Section 1, et seq.)

an incident to the development or operation of a project or projects. Crucial to the examination of this statute is the definition of a "project". Project is defined in Section 17(g) of the Act. This section defines project in two parts. The first part reads:

"The term project is defined to include all lands, buildings, and improvements, acquired, owned, leased, managed or operated, and all buildings and improvements constructed, reconstructed or repaired by a housing authority . . ." (Underscoring supplied)

Thus, this portion of the definition of project relates to lands, buildings, and improvements existing and within the jurisdiction of the housing authority and does not include property to be acquired. This is borne out by the language of the statute in the remaining portions of Section 17(g) where it provides:

"'Project' shall also include (1) acquisition of (i) a slum or blighted area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or"

It is evident that the first portion of the definition relates to existing buildings and property within the control of CHA, or else there would be no reason to have a portion relating to a slum or blighted area or a deteriorated or deteriorating area as provided. The statutory limitations apply to property to be acquired.

Having established that the term "project" as it relates to future acquisition applies to slum and blighted areas or deteriorated or deteriorating areas and certain undeveloped lands, we can readily dispose of the question of acquisition incident to a project by observing that plaintiffs' motion does not contemplate an acquisition incident to a project, existing or otherwise. The common meaning of "incident" in this context is something dependent or subordinate to something else of principal importance. (Webster Seventh New Collegiate Dictionary).

As to subpart (a) of the quoted paragraph which grants CHA the power of eminent domain to acquire any improved or unimproved property, the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, it is clear there has to be first a determination of slum or blight or deteriorated or deteriorating area.*

The plaintiffs' counsel does not propose to limit acquisition of existing buildings to slum or blighted or deteriorated or deteriorating areas. Therefore subpart (a) is not applicable to the plaintiffs' motion. Subpart (b) extends the power of eminent domain to any improved or unimproved property which the Authority may require to

*CHA is empowered by the Housing Authorities Act to make these findings (Section 8.1, Chapter 67½, Illinois Revised Statutes).

carry out the provisions of this Act. The purposes of the Act are to clear slums and to increase the supply of low-income housing. Plaintiffs' proposal suggests that CHA acquire property and displace families simply to replace these families with low-income families, perhaps even another group of low-income families. This is proposed without a determination required by law nor for the express reasons set forth in the Act. The Act provides in Section 9, thereof, that power of eminent domain may be exercised by an Authority on its own initiative or as agent of the city, village, etc. for the purpose of sale or lease to:

- (a) a housing corporation operating under "an act in relation to housing";

- (b) neighborhood redevelopment corporations;

- (c) insurance companies under Section 125 of the Illinois Insurance Code;

- (d) non-profit corporations organized for the purpose of constructing, managing and operating for the improvement of housing conditions, including the rental or sale of housing units.

The above represents provisions of the Act in which the power of eminent domain may be used. The plaintiffs' proposal does not seek to carry out any of these provisions of the Act.

In sum, the "Housing Authorities Act" as a matter of legislative determination recognized the need for both slum clearance and low

income housing. Its provisions by explicit language set forth the standards by which this should be accomplished. If the state legislature had wished to give the unrestricted power of a local housing authority to acquire existing buildings without limitations, the statute could easily have been drawn in this fashion.

The basic purpose of the Act to alleviate the housing shortage is evidenced by numerous references in the Act, a few of which are as follows:

HOUSING AUTHORITIES ACT

a. Section 8.1 - Investigate Living and Housing Conditions.

"To study and make recommendations concerning the plans of the area or operation in relation to the problems of acquisition, clearing, replanning and reconstruction of area in which unsanitary or substandard conditions exist or for which are needed for increasing the supply of decent, safe and sanitary dwellings and or related community development."

b. Section 8.2 - Prepare, Carry Out and Operate Projects.

"Including action for elimination of unsafe and unsanitary dwellings. The clearing and redevelopment of blighted or slum areas, the assembly of improved and unimproved land for redevelopment and development purposes, the conservation and rehabilitation of existing housing, and the provision of decent, safe and sanitary housing accommodations."

c. Section 8.4 - Borrow, Lend or Invested Money.

"To make grants, loans and advances on such terms as the Authority shall determine, subject to the approval of the State Housing Board, to any non-profit corporation referred to in Section 9 in order to assist such non-profit corporation in planning, preparing, constructing, reconstructing or improving housing to provide an additional supply of decent, safe and sanitary dwellings."

Chicago Housing Authority does not have the unbridled power
to acquire that plaintiffs suggest in their proposal.

Respectfully submitted,

Calvin H. Hall

Dated: May 16, 1977

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APPENDIX

HOUSING AND REDEVELOPMENT 67½ § 2

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| <p>Sec. 507. Reciprocity.</p> <p>508. Schedule of fees.</p> <p>509. Administration and enforcement of Act—Regulations—Revisions of Code — Notices — Inspections — Suspension of issuance of seals.</p> <p>510. Use of seals—Violations of Act.</p> <p>511. Hearings—Transcript of testimony — Preservation of record—Service of report—Witnesses—Documents, etc.</p> | <p>Sec. 512. Review under Administrative Review Act.</p> <p>513. Effect of invalidity of provision or application of Act.</p> <p>514. Effective date.</p> <p>515. Advisory council in drafting and promulgation of safety codes [New].</p> |
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Rights, powers and duties of the State Housing Board under this Chapter have been conferred on the Department of Local Governmental Affairs, see Chapter 127, § 63b14.3.

HOUSING AUTHORITIES

Law Review Commentaries

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| <p>Community planning and zoning powers in Illinois. Donald S. Frey, 1960, 48 Ill. Bar J. 670.</p> <p>Constitutional objections to creation of state authorities. 1953, 21 U. Chicago L. Rev. 159.</p> <p>Factory-built housing: statutory solutions. 1971, 38 U. Chicago L. Rev. 788.</p> <p>Federal urban renewal program. Quentin Johnstone, 1958, 25 U. Chicago L. Rev. 301.</p> <p>"Freedom of residence" in Illinois. Donald S. Frey, 1959, 41 Chicago Bar Rec. 9.</p> <p>How to earn fees for representing clients in need of housing. Ann Fagan Ginger, 1968 Law Forum 331.</p> <p>Impact of urban renewal on real property law. Julian H. Levi, 1960, 41 Chicago Bar Rec. 443.</p> <p>Land taken by eminent domain redevelopment for private industrial use. 1958 Law Forum 477.</p> | <p>Lease contract between tenant and CHA; modification by subsequent HUD regulation requiring notice and hearing. 1972, 66 N.W.L. Rev. 799.</p> <p>Noncumulative zoning in Illinois. Harry H. Madsen, 1960, 37 Chicago-Kent L. Rev. 108.</p> <p>Public housing and discrimination in site selection. 1970, 47 Chicago-Kent L. Rev. 253.</p> <p>Slum prevention as public purpose. Jack M. Siegel, 1954, 35 Chicago Bar Rec. 151.</p> <p>Subdivision control and planning. Donald S. Frey, 1961 Law Forum 411.</p> <p>Survey of problems of urban decay. Richard L. Wexler, 1968, 56 Ill. Bar J. 448.</p> <p>Tenant unions: the law and lawyers in Chicago. Michael A. O'Connor, 1971, 59 Ill. Bar J. 732.</p> <p>The Illinois law of urban renewal. James H. Handler, 46 Chicago Bar Rec. 277 (1965).</p> |
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§ 1. Short title of act

Library references

I.L.P. Cities, Villages and Other Municipal Corporations §§ 1711-1714.

§ 2. Declaration of public interest

It is hereby declared as a matter of legislative determination that in order to promote and protect the health, safety, morals and welfare of the public, it is necessary in the public interest to provide for the creation of municipal corporations to be known as housing authorities, and to confer upon and vest in said housing authorities all powers necessary or appropriate in order that they may engage in low-rent housing and slum clearance projects, and undertake such land assembly, clearance, rehabilitation, development, and redevelopment projects as will tend to relieve the shortage of decent, safe, and sanitary dwellings; and that the powers herein conferred upon the housing authorities including the power to acquire and dispose of improved or unimproved property, to remove unsanitary or substandard conditions, to construct and operate housing accommodations, to regulate the maintenance of housing projects and to borrow, expend, loan, invest, and repay moneys for the purposes herein set forth, are public objects and governmental functions essential to the public interest.

It is further declared as a matter of legislative determination that the crucial housing shortage which prevails throughout the State has contributed and will continue to contribute materially toward an increase in crime, juvenile delinquency, infant mortality, and disease; that by reason thereof it has become a social and economic imperative to broaden the powers of housing authorities with respect to the acquisition of property, the construction of housing accommodations, and the assembly, clearance and sale or other disposition of property acquired for development or redevelopment by persons,

67½ § 2 HOUSING AND REDEVELOPMENT

firms and corporations; that the provisions of this Act are grounded in public necessity and predicated upon serious emergency conditions requiring immediate consideration and action, and that this amendatory Act embraces public objects and governmental functions essential to the public interest.

It is further declared that in municipalities of less than 500,000 population further stimulus must be provided for the conservation of urban areas and the prevention of slums if the public interest objectives of the "Urban Community Conservation Act," approved July 13, 1953, as amended,¹ are to be secured; that in such municipalities housing authorities should be authorized to initiate, plan, study and execute urban conservation projects, subject to the approval of the governing bodies of the municipalities and the Department of Local Government Affairs, as an alternative mechanism to that provided in the Urban Community Conservation Act; that unless such authority is so delegated there is a serious and substantial risk that many urban areas will deteriorate into actual slum and blight areas; and that to prevent the occurrence of such conditions and the social evils attendant thereon, and to protect and conserve the public interest, the provisions of this amendatory Act are necessary.

Amended by 1963, July 15, Laws 1963, p. 1495, § 1; P.A. 79-140, § 2, eff. Oct. 1, 1975.

¹ Chapter 67½, § 91.8 et seq.

P.A. 79-140 substituted "Department of Local Government Affairs" for "State Housing Board".

1. Construction and application

Negro tenants in or applicants for public housing had right under Fourteenth Amendment to have sites selected for public housing projects without regard to racial composition of either surrounding neighborhood or of projects themselves and had right to maintain action to determine whether their opinion that such right was being denied them was correct and to secure appropriate remedy to insure protection of their right. *Gautreaux v. Chicago Housing Authority*, D.C.1967, 265 F.Supp. 582.

Public housing program, conscientiously administered in accord with mandates § 1 et seq. of this chapter, surrounding its inception and free of any

intent or purpose, however slight, to segregate races, cannot be condemned, even though it may not affirmatively achieve alterations in existing patterns of racial concentration in housing. *Id.*

In action by Negro tenant in or applicants for public housing challenging constitutional validity of site selection policy of housing authority, issues as to motive or intent of selection of sites for housing and racial composition of neighborhoods involved were presented precluding summary judgment for defendants. *Id.*

Obvious self-interests of any public housing tenant coincide with legislative purpose behind local public housing authorities to provide decent housing at low rents to low-income individuals. *Brown v. Kirk*, 1975, 33 Ill.App.3d 477, 342 N.E.2d 137.

§ 3. Creation of housing authority—Commissioners, appointment, terms, territorial jurisdiction

The governing body of any city, village or incorporated town having more than 10,000 inhabitants, or of any county of this State, may, by resolution, determine that there is need for a housing authority in such city, village, incorporated town or county. Upon adoption, such resolution shall be forwarded to the Department of Local Government Affairs together with a statement of reasons or findings supporting such resolution. The Department of Local Government Affairs shall thereupon issue a certificate to the presiding officer of such city, village, incorporated town or county for the creation of such authority if it shall find (a) that unsanitary or unsafe inhabited dwelling accommodations exist in such city, village, incorporated town or county, or (b) that there is a shortage of safe or sanitary dwelling accommodations in such city, village, incorporated town or county available to persons who lack the amount of income which is necessary (as determined by said Department) to enable them without financial assistance to live in decent, safe and sanitary dwellings without over-crowding. In determining whether dwelling accommodations are unsafe or unsanitary the Department of Local Government Affairs may take into consideration the degree of over-crowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes. The Department of Local Government Affairs shall also have authority upon its own initiative or upon petition

67½ § 8.2 HOUSING AND REDEVELOPMENT

of public facilities or for the acquisition by any government or any agency, instrumentality or subdivision thereof, of property, options or property rights or for the furnishing of property or services in connection with a project; to function as an agency of the city, village, incorporated town or county for which it is constituted an Authority and to act as an agent (when so designated) for any government, with respect to matters relating to housing and the purposes of this Act, including action for the elimination of unsafe and unsanitary dwellings, the clearing and redevelopment of blighted or slum areas, the assembly of improved and unimproved land for development or redevelopment purposes, the conservation and rehabilitation of existing housing, and the provision of decent, safe and sanitary housing accommodations, and to utilize any and all of its powers to assist such governments in any manner which will tend to further the objectives of this Act; to assist through the exercise of the powers herein conferred any individual, association, corporation or organization which presents a plan for developing or redeveloping any property within the area of operation of the Authority which will tend to provide decent, safe and sanitary housing, or promote other uses essential to sound community growth.

In counties having a population of less than 1,000,000, any contract by which State funds are used for repair, improvement or rehabilitation of existing improvements which involves in excess of \$2,500 shall be let by free and competitive bidding to the lowest responsible bidder upon such bond and subject to such regulations as may be set by the Department of Local Government Affairs and with the written approval of the Department of Local Government Affairs. In the case of an emergency affecting the public health or safety declared by a majority vote of the commissioners of the Housing Authority, contracts may be let, to the extent necessary to resolve such emergency, without public advertisement or competitive bidding.

Amended by P.A. 76-1731, § 1, eff. Oct. 6, 1969; P.A. 79-140, § 2, eff. Oct. 1, 1975.

P.A. 79-140 substituted "Department of Local Government Affairs" for "State Housing Board".

1. Construction and application
Section 8 of this chapter providing for incorporation of housing authority does not grant chairman of authority or any other member of authority power to contract. *M.A.T.H., Inc. v. Housing Authority of East St. Louis*, 1976, 34 Ill. App.3d 884, 341 N.E.2d 51.

Where contractor had duty to perform nonemergency contract with housing authority for installation of floor coverings in existing housing project and may have been liable for damages had it not done so, and where contractor sought to renegotiate terms of contract due to in-

creases in cost of doing job, mere fact that contractor's actions in completing job were allegedly induced by letter from chairman of housing authority promising to renegotiate terms of contract did not constitute sufficient special circumstances which would estop housing authority from denying acts of chairman which went beyond his statutory authority. *Id.*

Chairman of housing authority had no power, expressed or implied, to renegotiate terms of contract for installation of floor covering in existing housing project where contract called for payment of \$105,000 and where such contract was not shown to have been let in an emergency situation. *Id.*

§ 8.3a Hearing—Notice

Before any proposed new construction of a specific project or proposed rehabilitation project is commenced by a local Housing Authority in a county having a population of less than 1,000,000, a public hearing must be held by the local Housing Authority affording interested persons residing in the area an opportunity to be heard. There shall be a notice of the time and place of the hearing published at least once, not more than 30 nor less than 15 days before the hearing, in one or more newspapers published in the municipality of the project. This notice shall contain the particular site and location to be affected as well as a brief statement of what is proposed in the project.

In municipalities with less than 500 population in which no newspaper is published, only publication of the proposed project by posting the hearing notice in 3 prominent locations in the area affected, and, by delivering a copy of such hearing notice to the 2 nearest residents to the project location, not more than 30 nor less than 15 days before such hearing, is required.

1934, March 19, Laws 1933-34, Third Sp.Sess., p. 159, § 8.3a, added by P.A. 76-1731, § 1, eff. Oct. 6, 1969.

67½ § 8.17 HOUSING AND REDEVELOPMENT

said cost and expense is incurred the Authority or person performing the service by authority of the Authority, in his or its own name files notice of lien in the office of the Recorder of Deeds in the county in which the real estate is located or in the office of the Registrar of Titles of such county if the real estate affected is registered under the Torrens system. The notice shall consist of a sworn statement setting out (1) a description of the real estate sufficient for identification thereof; (2) the amount of money representing the cost and expense incurred or payable for the services; (3) the date or dates when said cost and expense was incurred by the Authority. However, the lien of the Authority shall not be valid as to any purchaser, mortgagee, judgment creditor or other lienor whose rights in and to said real estate have arisen subsequent to such repair or improvements and prior to the filing of the notice of the lien in the office of the Recorder of Deeds, or in the office of the Registrar of Titles, as aforesaid. Upon payment of said cost and expense by the owner of or person interested in said property after notice of lien has been filed, the lien shall be released by the Authority or person in whose name the lien has been filed and the release may be filed of record as in the case of filing notice of lien. The lien may be enforced by proceedings to foreclose as in case of mortgages or mechanics liens. Suit to foreclose this lien shall be commenced within 3 years after the date of filing notice of lien. 1934, March 19, Laws 1933-34, Third Sp.Sess., p. 159, § 8.17, added 1963, July 15, Laws 1963, p. 1495, § 1.

§ 8.18 Financial and other assistance by state public bodies

Any state public body (city, village, incorporated town, county, municipal corporation, commission, district, authority, or other subdivision or public body of the State) (a) may, upon such terms, with or without consideration, as it may determine for the purpose of aiding an Authority in the planning, undertaking or carrying out of a conservation plan in a conservation area: (1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to an Authority; (2) incur the entire expense of any public improvement made by such public body in exercising the powers granted in this section; (3) do any and all things necessary to aid or cooperate in the planning or carrying out of a conservation plan; (4) lend, grant or contribute funds to an Authority; (5) enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a municipality or other public body respecting action to be taken pursuant to any of the powers granted in this Act, including the furnishing of funds or other assistance in connection with a conservation plan, and (6) cause public buildings and public facilities, including parks, playgrounds, recreational, community, or educational facilities, or any other works which it is otherwise empowered to undertake to be furnished; and cause administrative and other services to be furnished to an Authority.

(b) Any sale, conveyance, lease or agreement provided for in this Section may be made by a public body without appraisal, public notice, advertisement or public bidding.

(c) For the purpose of aiding in the planning, undertaking or carrying out of a conservation plan of an Authority hereunder, a municipality or county may (in addition to its other powers and upon such terms with or without consideration, as it may determine) do and perform any or all of the actions or things which, by the provisions of this section, a public body is authorized to do or perform, including the furnishing of financial or other assistance. 1934, March 19, Laws 1933-34, Third Sp.Sess., p. 159, § 8.18, added 1963, July 15, Laws 1963, p. 1495, § 1.

§ 9. Acquisition of property

Whenever it shall be deemed necessary by an Authority in connection with the exercise of its powers herein conferred to take or acquire the fee of any real property in the area of operation or any interest therein or right with respect thereto, such Authority may acquire the same directly or through its

HOUSING AND REDEVELOPMENT 67½ § 9

agent or agents from the owner or owners thereof or may acquire the same by the exercise of eminent domain in the manner provided by an Act entitled "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, as amended.¹

If any of such property is devoted to a public use it may nevertheless be acquired, provided that no property belonging to a government may be acquired without its consent and that no property belonging to a corporation subject to the jurisdiction of the Illinois Commerce Commission may be acquired without the approval of the Illinois Commerce Commission.

The power of eminent domain shall apply not only to improved or unimproved property which may be acquired for or as an incident to the development or operation of a project or projects, but also to: (a) any improved or unimproved property the acquisition of which is necessary or appropriate for the rehabilitation or redevelopment of any blighted or slum area, or (b) any improved or unimproved property which the Authority may require to carry out the provisions of this Act. Such power may be exercised by the Housing Authority on its own initiative or as an agent of the city, village, incorporated town, county or counties, or any government, or for the purpose of sale or lease to: (a) a housing corporation operating under "An Act in relation to housing", approved July 12, 1933, as amended;² (b) neighborhood redevelopment corporations operating under the "Neighborhood Redevelopment Corporation Law", approved July 9, 1941, as amended;³ (c) insurance companies operating under Section 125 of the "Illinois Insurance Code", approved June 29, 1937, as amended;⁴ (d) non-profit corporations organized for the purpose of constructing, managing and operating housing projects and for the improvement of housing conditions, including the rental or sale of housing units to persons in need thereof; or to any other individual, association or corporation desiring to engage in a development or redevelopment project. No sale or lease shall be made hereunder to any of the aforesaid corporations, associations or individuals unless a plan has been approved by the Authority and the Department of Local Government Affairs for the development or redevelopment of such property and unless the purchaser or lessee furnishes the Authority a bond, with satisfactory sureties, in an amount not less than 10% of the cost of such development or redevelopment, conditioned on the completion of such development or redevelopment in accordance with the approved plan; provided that the requirement of the bond may be waived by the Department of Local Government Affairs if it is satisfied of the financial ability of the purchaser or lessee to complete such development or redevelopment in accordance with the approved plan. To further assure that the real property so sold or leased shall be used in accordance with the plan, the Department of Local Government Affairs may require the purchaser or lessee to execute in writing such undertakings as the Department deems necessary to obligate such purchaser or lessee (1) to use the property for the purposes presented in plans; (2) to commence and complete the building of the improvements designated in the plan within the periods of time that the Department of Local Government Affairs fixes as reasonable; and (3) to comply with such other conditions as are necessary to carry out the purpose of this Act. Any such property may be sold pursuant to this section for any legal consideration in an amount to be approved by the Department of Local Government Affairs.

If the area of operation of a housing authority includes a city, village or incorporated town having a population in excess of 500,000 as determined by the last preceding Federal census, no real property or interest in real property shall be acquired in such municipality by the housing authority until such time as the housing authority has advised the governing body of such municipality of the description of the real property, or interest therein, proposed to be acquired, and the governing body of the municipality has approved the acquisition thereof by the housing authority.

A "blighted or slum area" means any area of not less, in the aggregate, than one (1) acre, excepting that in any municipality having a population in excess of 500,000, as determined by the last preceding Federal census, a "blighted or slum area" means any area of not less in the aggregate of two (2) acres which

67½ § 9 HOUSING AND REDEVELOPMENT

area, in either case, has been designated by municipal ordinance or by the Authority as an integrated project for rehabilitation, development or redevelopment, where (a) buildings or improvements, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, excessive land coverage, deleterious land use or layout or any combination of these factors, are a detriment to public safety, health or morals, or welfare, or (b) there exists platted land which is predominantly open and which, because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (c) there exists open unplatted land necessary for sound community growth which is to be developed for predominantly residential uses, or (d) parcels of land remain undeveloped because of improper platting, delinquent taxes or special assessments, scattered or uncertain ownerships, clouds on title, artificial values due to excessive utility costs, or any other impediment to the use of such area for predominantly residential uses; provided, that if in any city, village or incorporated town there exists a land clearance commission, created under the "Blighted Areas Redevelopment Act of 1947",⁵ having the same area of operation as a housing authority created in and for any such municipality, such housing authority shall have no power to acquire land of the character described in sub-paragraphs (b), (c) or (d) of the definition of "blighted or slum area", in this paragraph for the purpose of development or redevelopment by private enterprise.

The Housing Authority shall have power to hold or use any such property for uses authorized by this Act, or to sell, lease or exchange such property as is not required for such uses by the Authority. In case of sale or lease to other than a public corporation or public agency, notice shall be given and bids shall be received in the manner provided by Section 11-76-2 of the Illinois Municipal Code, as heretofore and hereafter amended,⁶ and bids may be accepted by vote of three of the five Commissioners of the Authority; provided, however, that such requirement of notice and bidding shall not apply to a sale or lease to any individual, association or corporation described in the preceding paragraph; nor to a sale or lease of an individual dwelling unit in a project, to be used by the purchaser as a dwelling for his family; nor to a sale or lease of a project or part thereof to an association to be so used by its members. In case of exchange of property for property privately owned, three disinterested appraisers shall be appointed to appraise the value of the property to be exchanged, and such exchange shall not be made unless the property to be received by the Authority is equal or greater in value than the property to be exchanged therefor, or if less than such value, that the difference shall be paid in money.

Amended by 1961, May 29, Laws 1961, p. 1378, § 1; P.A. 79-140, § 2, eff. Oct. 1, 1975.

¹ Chapter 47, § 1 et seq.

² Chapter 67½, § 151 et seq.

³ Chapter 67½, § 251 et seq.

⁴ Chapter 73, § 737.

⁵ Chapter 67½, § 63 et seq.

⁶ Chapter 24, § 11-76-2.

P.A. 79-140 substituted "Department of Local Government Affairs" for "State Housing Board".

Law Review Commentaries

Slum prevention as public purpose. Jack M. Siegel, 1954, 35 Chicago Bar Rec. 151.

Library references

Municipal Corporations C-221.

C.J.S. Municipal Corporations § 950 et seq.

I.L.P. Cities, Villages and Other Municipal Corporations § 1713.

2. Construction and application

Where for more than nine months no committee of city council had conducted hearings as to acquisition of real property by housing authority for dwelling units in conformity with prior judgment order, failure to conduct hearings

was unjustified and effectively prevented authority from providing additional dwelling units, thereby thwarting correction of state-imposed segregation and denying equal protection to plaintiffs, city would be ordered to file addresses of sites and housing authority would be required to begin procedures appropriate to acquire such sites and to provide dwelling units. *Gautreaux v. Chicago Housing Authority*, D.C.1972, 342 F.Supp. 827, affirmed 480 F.2d 210, certiorari denied 94 S.Ct. 895, 896.

3. Right to acquire

Where for more than nine months no committee of city council had conducted hearings as to acquisition of real property by housing authority for dwelling units in conformity with prior judgment order which was designed to alleviate

HOUSING AND REDEVELOPMENT 67½ § 17

urban or suburban land necessary for sound community growth which is to be developed for predominantly residential uses, or (v) any other area where parcels of land remain undeveloped because of improper platting, delinquent taxes or special assessments, scattered or uncertain ownerships, clouds on title, artificial values due to excessive utility costs, or any other impediments to the use of such area for predominantly residential uses; (2) installation, construction, or reconstruction of streets, utilities, and other site improvements essential to the preparation of sites for uses in accordance with the development or redevelopment plan; and (3) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the local public agency itself). If in any city, village or incorporated town there exists a land clearance commission created under the "Blighted Areas Redevelopment Act of 1947"¹ having the same area of operation as a housing authority created in and for any such municipality such housing authority shall have no power to acquire land of the character described in subparagraph (iii), (iv) or (v) of paragraph 1 of the definition of "project" for the purpose of development or redevelopment by private enterprise.

(h) "Community facilities" shall include lands, buildings, and equipment for recreation or social assembly, for education, health or welfare activities and other necessary utilities primarily for use and benefit of the occupants of housing accommodations to be constructed, reconstructed, repaired or operated hereunder.

(i) "Real property" shall include lands, lands under water, structures, and any and all easements, franchises and incorporeal hereditaments and estates, and rights, legal and equitable, including terms for years and liens by way of judgment, mortgage or otherwise.

(j) The term "governing body" shall include the city council of any city, the president and board of trustees of any village or incorporated town, the council of any city or village, and the county board of any county.

(k) The phrase "individual, association, corporation or organization" shall include any individual, private corporation, insurance company, housing corporation, neighborhood redevelopment corporation, non-profit corporation, incorporated or unincorporated group or association, educational institution, hospital, or charitable organization, and any mutual ownership or cooperative organization.

(l) "Conservation area", for the purpose of the exercise of the powers granted in Sections 8.14 to 8.18, inclusive, for housing authorities for municipalities of less than 500,000 population and for counties, means an area of not less than 2 acres in which the structures in 50% or more of the area are residential having an average age of 35 years or more. Such an area is not yet a slum or blighted area as defined in the Blighted Areas Redevelopment Act of 1947, but such an area by reason of dilapidation, obsolescence, deterioration or illegal use of individual structures, overcrowding of structures and community facilities, conversion of residential units into non-residential use, deleterious land use or layout, decline of physical maintenance, lack of community planning, or any combination of these factors may become a slum and blighted area.

(m) "Conservation plan" means the comprehensive program for the physical development and replanning of a "Conservation Area" as defined in paragraph (l) embodying the steps required to prevent such Conservation Area from becoming a slum and blighted area.

(n) "Fair use value" means the fair cash market value of real property when employed for the use contemplated by a "Conservation Plan" in municipalities of less than 500,000 population and in counties.

(o) "Community facilities" means, in relation to a "Conservation Plan", those physical plants which implement, support and facilitate the activities, services and interests of education, recreation, shopping, health, welfare, religion and general culture.

Amended by 1963, July 15, Laws 1963, p. 1495, § 1; P.A. 79-140, § 2, eff. Oct. 1, 1975.

¹ Chapter 67½, § 63 et seq.

APPENDIX

67½ § 17 HOUSING AND REDEVELOPMENT

§ 17. Terms defined

The following terms, wherever used or referred to in this Act shall have the following respective meanings, unless in any case a different meaning clearly appears from the context:

(a) "Authority" or "housing authority" shall mean a municipal corporation organized in accordance with the provisions of this Act for the purposes, with the powers and subject to the restrictions herein set forth.

(b) "Area" or "area of operation" shall mean:

(1) in the case of an authority which is created hereunder for a city, village, or incorporated town, the area within the territorial boundaries of said city, village, or incorporated town, and so long as no county housing authority has jurisdiction therein, the area within three miles from such territorial boundaries, except any part of such area located within the territorial boundaries of any other city, village, or incorporated town; and (2) in the case of a county shall include all of the county except the area of any city, village or incorporated town located therein in which there is an Authority. When an authority is created for a county subsequent to the creation of an authority for a city, village or incorporated town within the same county, the area of operation of the authority for such city, village or incorporated town shall thereafter be limited to the territory of such city, village or incorporated town, but the authority for such city, village or incorporated town may continue to operate any project developed in whole or in part in an area previously a part of its area of operation, or may contract with the county housing authority with respect to the sale, lease, development or administration of such project. When an authority is created for a city, village or incorporated town subsequent to the creation of a county housing authority which previously included such city, village or incorporated town within its area of operation, such county housing authority shall turn over all its property and obligations within such city, village or incorporated town to the authority for such city, village or incorporated town as required by Section 3.

(c) "Presiding officer" shall mean the presiding officer of the board of a county, or the mayor or president of a city, village or incorporated town, as the case may be, for which an Authority is created hereunder.

(d) "Commissioner" shall mean one of the members of an Authority appointed in accordance with the provisions of this Act.

(e) "Government" shall include the State and Federal governments and the governments of any subdivisions, agency or instrumentality, corporate or otherwise, of either of them.

(f) "Department" shall mean the Department of Local Government Affairs.

(g) "Project" shall include all lands, buildings, and improvements, acquired, owned, leased, managed or operated by a housing authority, and all buildings and improvements constructed, reconstructed or repaired by a housing authority, designed to provide housing accommodations and facilities appurtenant thereto (including community facilities and stores) which are planned as a unit, whether or not acquired or constructed at one time even though all or a portion of the buildings are not contiguous or adjacent to one another; and the planning of buildings and improvements, the acquisition of property, the demolition of existing structures, the clearing of land, the construction, reconstruction, and repair of buildings or improvements and all other work in connection therewith. As provided in Sections 8.14 to 8.18, inclusive, "project" also means, for Housing Authorities for municipalities of less than 500,000 population and for counties, the conservation of urban areas in accordance with an approved conservation plan. "Project" shall also include (i) acquisition of (i) a slum or blighted area or a deteriorated or deteriorating area which is predominantly residential in character, or (ii) any other deteriorated or deteriorating area which is to be developed or redeveloped for predominantly residential uses, or (iii) platted urban or suburban land which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise substantially impairs or arrests the sound growth of the community and which is to be developed for predominantly residential uses, or (iv) open unplatted