

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 98-1807, 98-2311

DOROTHY GAUTREAUX, et al.,	)	Appeal from the United
	)	States District Court for
	)	the Northern District of
Plaintiffs-Appellees,	)	Illinois, Eastern Division
	)	
v.	)	No. 66 C 1459
	)	
	)	Chief Judge Marvin E. Aspen
CHICAGO HOUSING AUTHORITY,	)	
and Executive Director Joseph	)	
Shuldiner in his official	)	
capacity,	)	
	)	
Defendants-Appellants.	)	

U.S.C.A.—7th Circuit
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APPELLEES' APPENDIX
ACCOMPANYING BRIEF OF
PLAINTIFFS DOROTHY GAUTREAUX, ET AL.

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Dated: July 29, 1998

APPELLEES' APPENDIX
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PLAINTIFFS-APPELLEES DOROTHY GAUTREAUX, ET AL.

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**SUPPLEMENTAL DOCKET ENTRIES
FOR
GAUTREAUX, ET AL. V. CHICAGO HOUSING AUTHORITY
NO. 66 C 1459**

On July 21, 1998 the District Court ordered that the record on appeal should include all documents theretofore transmitted by the District Court Clerk to the Clerk of the Court of Appeals for the Seventh Circuit as the record on appeal, and the following additional documents:

<u>Date</u>	<u>Document</u>
11/29/83	Enter order dated 11/21/83: Plaintiffs' motion to enter order appointing receiver is allowed. Enter order (DRAFT) Notices mld. 11/29/83.
1/16/84	Enter order dated 1-13-84: Status hearing held. This court's order appointing a receiver is vacated. Aspen, J. Mailed notices 1-16-84.
8/14/95	MINUTE ORDER of 8/14/95 by Hon. Marvin E. Aspen: Granting plaintiffs' motion for entry of further order, as contemplated by this court's order of 03/09/95[41-1] Enter order. Mailed notice.
7/09/87	Minute order of 07/08/87: On CHA's proposed scope of discovery, the Court limits the scope of discovery in the receivership issue to facts directly related to CHA's actual compliance with the consent decree and this Court's previous orders. CHA's request for expedited document production is denied. HUD's motion to quash is moot. For further detail see order attached to the original minute order form. Aspen, J. Notified counsel by telephone. Enter
07/08/87:	Memorandum order.
12/07/87	Filed 12/04/87: Transcript of proceedings before J. Aspen held on 5/14/87, 06/02/87, 06/16/87, 07/27/87, 08/03/87, 08/14/87, 09/29/87 (7 Vols.)
6/19/98	JOINT MOTION by Defendant CHA and the receiver and the plaintiffs [for an order designating ABLA Revitalizing Area and authorizing development of public housing units therein].
6/19/98	ORDER regarding motion for an order designating ABLA Revitalizing Area and authorizing development of public housing units therein [0-1].
6/19/98	MINUTE ORDER of 6/19/98 by Hon. Marvin E. Aspen: Joint motion of defendant CHA, The Receiver, and the plaintiffs for an order designating ABLA Revitalizing Area and authorizing development of public housing units therein is granted. Enter Order. [0-1] Mailed Notice

phone Company, was and is covered by the injunction issued in the Atlas Van-Lines, Inc. suit, if it in any way knowingly acts in concert with the defendant to violate the terms of that injunction. Rule 65(d) of the Federal Rules of Civil Procedure provides in pertinent part:

"Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employers, and attorneys, *and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.*" (emphasis added.)

As soon as South Central Bell was apprised of the fact that its subscriber, Constant, was, by use of South Central Bell's equipment, violating the injunction imposed by this Court, it had a duty not to act in any way in concert with Constant to effectuate or perpetuate the violation. South Central Bell had the means to prevent its equipment from being used to violate the injunction, and its failure to do so would, at the very least, have amounted to a passive participation in the violation. That Constant was, by answering his phone with the word "Atlas," violating the injunction, cannot be denied. Certainly South Central Bell cannot now be ordered by another Court to do the very thing that this Court has ordered Constant and all others acting in concert with him not to do. That is exactly what the State Court judgment has done. Thus, in order to protect, enforce, and effectuate the injunction issued by this Court on November 20, 1968, in the suit entitled Atlas Van-Lines, Inc. v. Dan J. Constant, d/b/a Atlas Moving & Storage Co., bearing Number 68-115 on the docket of this Court, a preliminary injunction as prayed for by South Central Bell Telephone Company will issue, and defendants' motion for summary judgment will be denied. Counsel for plaintiff shall prepare and present a proposed form of injunction to be entered herein.

Dorothy GAUTREAUX, Odell Jones, Doreatha R. Crenshaw, Eva Rodgers, James Rodgers, Robert M. Fairfax and Jimmie Jones, Plaintiffs,

v.

The CHICAGO HOUSING AUTHORITY, a corporation, and C. E. Humphrey, Executive Director, Defendants.

Civ. A. No. 66 C 1459.

United States District Court
N. D. Illinois, E. D.

July 1, 1969.

Negro tenants in or applicants for public housing brought suits alleging that city housing authority and its executive director had violated their rights under Fourteenth Amendment. The District Court, Austin, J., 296 F.Supp. 907, denied defendants' motions for summary judgment, granted plaintiffs summary judgment as to count one and denied plaintiffs' summary judgment motion on count two. In supplemental judgment order, the District Court held that Chicago Housing Authority would not be permitted to cause construction of public housing in part of county, which lay within census tracts having 30% or more nonwhite population, or within distance of one mile from outer perimeter of such tracts, unless within three months following commencement of construction at least 75% of total units caused to be commenced by authority were outside of that part of county.

Order accordingly.

Civil Rights ⇨3

Chicago housing authority would not be permitted to cause construction of public housing in part of county, which lay within census tracts having 30% or more nonwhite population or within distance of one mile from outer perimeter of such tracts, unless, within three months following commencement of construction at least 75% of total units

caused to be commenced by authority were outside of that part of county.

Alexander Polikoff, Charles R. Markels and Bernard Weisberg, Chicago, Ill., for plaintiffs.

Kathryn M. Kula, John W. Hunt, and James T. Otis, Chicago, Ill., for defendants.

JUDGMENT ORDER

AUSTIN, District Judge.

This matter coming on to be heard pursuant to this Court's Memorandum Opinion of February 10, 1969, D.C., 296 F.Supp. 907, and Orders entered on such date denying defendants' motions for summary judgment, denying plaintiffs' motion for summary judgment as to Count II of the Complaint, and granting plaintiffs' motion for summary judgment as to Count I of the Complaint, and

The Court having conferred with counsel for the parties and having determined that the several provisions of this judgment order are necessary to prohibit the future use and to remedy the past effects of the defendant Chicago Housing Authority's unconstitutional site selection and tenant assignment procedures, to the end that plaintiffs and the class of persons represented by them, Negro tenants of and applicants for public housing in Chicago, shall have the full equitable relief to which they are entitled,

It is hereby ordered:

- I. For purposes of this judgment order,
 - A. "CHA" shall mean the defendant, Chicago Housing Authority.
 - B. "Dwelling Unit" shall mean an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA, whether in a structure owned in whole or in part by CHA (whether or not newly constructed)

or to be otherwise made available for occupancy by or through CHA to such a family. "Dwelling Units" include "Leased Dwelling Units" as herein-after defined.

C. "Leased Dwelling Unit" shall mean a Dwelling Unit in a structure leased or partially leased by CHA from any person, firm or corporation.

D. "Limited Public Housing Area" shall mean that part of the County of Cook in the State of Illinois which lies either within census tracts of the United States Bureau of the Census having 30% or more non-white population, or within a distance of one mile from any point on the outer perimeter of any such census tract. "General Public Housing Area" shall mean the remaining part of the County of Cook in the State of Illinois. The terms "non-white" and "white" shall have the meaning given to such terms by the United States Bureau of the Census.

For purposes of this subsection D, results of the 1970 and each subsequent census taken by the United States Bureau of the Census shall presumptively determine the non-white population of census tracts until results of a subsequent such census are officially published; provided, that any party may, on motion, offer evidence as to the non-white population of any census tract for the purpose of rebutting such presumption; and provided further, that Dwelling Units located or proposed to be located in any census tract subsequent to official publication of the results of the last previous such census shall be taken into account in determining the population of such census tract, and for such purpose it shall be assumed that such Dwelling Units will be occupied by non-whites at the rate of two persons per bedroom.

For the period from the date hereof until the official publication of such 1970 census results, the census tracts in the City of Chicago listed on Ex-

hibit A, attached hereto, shall be presumed to have 30% or more non-white population; and, subject to evidence offered on motion by either party, the non-white population of census tracts in the County of Cook outside of the City of Chicago shall be presumed to be as stated in the 1960 census of the United States Bureau of the Census.

E. "Public Housing Project" shall mean any thirteen or more Dwelling Units which are located (1) in the same structure, (2) on the same lot or parcel of real estate, or (3) on two or more lots or parcels of real estate which are contiguous to one another, or are separated only by streets, alleys, bodies of water, railroad tracks or the like.

II. Following the date of this judgment order CHA shall not authorize, approve or implement any plan for Dwelling Units, nor shall CHA seek any approval or request or accept any assistance from any government agency with respect thereto (including without limitation approval of the acquisition of any interest in real estate), unless such plan affirmatively requires that,

A. All Dwelling Units provided for in such plan shall be located in conformity with the provisions of Article III hereof, and

B. The activities to be performed in order to render such Dwelling Units available for occupancy (whether construction, purchase, rehabilitation, leasing or otherwise) shall take place at such times as will result in the location of such Dwelling Units in conformity with the provisions of Article III hereof.

III. Following the date of this judgment order CHA shall provide Dwelling Units as follows, and not otherwise:

A. The following Dwelling Units may be made available for occupancy without restriction imposed by this order:

(1) The 1458 Dwelling Units provided for by pending CHA projects Ill. 2-27, 2-28 (exclusive of

Dwelling Units proposed to be located at 70th and Harper streets in the City of Chicago), 2-32, 2-33, 2-51, 2-64, 2-69 and 2-74.

(2) Leased Dwelling Units (but not more than two per structure) which have been occupied for at least six months prior to CHA's leasing the same by tenants who continue in occupancy following CHA's leasing thereof.

B. CHA shall not commence or cause to be commenced the construction of any Dwelling Units, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, until CHA shall have commenced or caused to be commenced, and shall be continuing or shall have completed, the construction of not less than 700 Dwelling Units located in the General Public Housing Area of the City of Chicago.

C. Subject to the provisions of Subsection B, CHA shall not commence or cause to be commenced the construction of any Dwelling Units in any Limited Public Housing Area, other than said 1458 Dwelling Units referred to in Subsection A of this Article III, unless within three months following such commencement of construction at least 75% of the Dwelling Units on which CHA shall have commenced or caused to have commenced construction, and shall have continued or completed construction, since the commencement of construction of the last of the 700 Dwelling Units referred to in subsection B of this Article III shall have been located (at the time of commencement of construction thereof) in the General Public Housing Area of the City of Chicago.

D. Subject to the provisions of subsection E of this Article III, no Leased Dwelling Unit shall be made available for occupancy in the Limited Public Housing Area of the City of Chicago (in addition to Leased Dwelling Units in such Area which are already occupied) unless, immediately following such occupancy, at least 75% of the Leased Dwelling Units then oc-

cupied are located in the General Public Housing Area of the City of Chicago; provided, that such number of Leased Dwelling Units located in the General Public Housing Area of the City of Chicago may be less than such 75% to the extent Dwelling Units other than Leased Dwelling Units have been occupied, or are under construction which is continuing, in the General Public Housing Area of the City of Chicago in excess of the 75% minimum requirement of subsection C of Article III hereof.

E. Not more than 33 $\frac{1}{3}$ % of the Dwelling Units required by subsection C of this Article III to be located in the General Public Housing Area of the City of Chicago, and not more than 33 $\frac{1}{3}$ % of the Leased Dwelling Units required by subsection D of this Article III to be located in the General Public Housing Area of the City of Chicago, may at the option of CHA, be planned for and located in the General Public Housing Area of the County of Cook in the State of Illinois, outside of the City of Chicago, provided that (whether or not constructed by CHA) the same are made available for occupancy by CHA to, and are occupied by, residents of the City of Chicago who have applied for housing to CHA, and provided further that all such Dwelling Units comply with the provisions of Article IV of this order.

IV. Following the date of this judgment order CHA shall not concentrate large numbers of Dwelling Units in or near a single location. Without limiting the foregoing, unless part of a development specifically designed to assist in achieving the purposes hereof as to which the Court by order shall have given its approval,

A. No Public Housing Project shall contain Dwelling Units designed for occupancy by more than 120 persons, except that if it is impossible for CHA to provide within such limitation Dwelling Units which it is otherwise capable of providing, and if it will

assist in achieving the purposes of this judgment order, a Public Housing Project may contain Dwelling Units designed for occupancy by not more than 240 persons.

B. No Dwelling Units shall be located in any census tract if, following such location, the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA, in such census tract would constitute more than 15% of the total number of apartments and single family residences in such census tract; and

C. No Dwelling Units shall be provided above the third story in any structure except for families without children and except Leased Dwelling Units in a structure in which the number of Dwelling Units aggregates no more than 20% of the total number of apartments in such structure.

V. Within 30 days following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs evidence that CHA has modified its tenant assignment policy, adopted by CHA Board Resolution No. 68-CHA-232, a copy of which is attached hereto as Exhibit B, and its practices thereunder, to include all Leased Dwelling Units as a single "location" for the purposes thereof. Such policy and practices, as so modified, shall be applicable until the further order of this Court.

VI. Within 60 days following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs a tenant assignment plan. Such plan shall include, but need not be limited to, provisions having the following purpose and effect:

A. Such modifications, if any, shall be made in CHA's tenant assignment policy and practices as will assist in achieving the purposes of this judgment order.

B. New registrations on CHA's list of persons desiring housing (the "waiting list") shall be temporarily ended; a determination shall be made promptly as to which registrants remain eligible for and still desire public housing; intensive publicity shall then be employed in such manner as effectively to inform low-income families throughout the City of Chicago, including present CHA tenants, that substantial numbers of Dwelling Units will be made available in the General Public Housing Area of the City of Chicago pursuant to the provisions of this judgment order; and thereafter the "waiting list" shall be reopened to new registrants, including present CHA tenants who wish to apply for Dwelling Units in the General Public Housing Area.

C. Not more than 50% of the Dwelling Units in all Public Housing Projects shall be made available to eligible neighborhood residents, the remaining Dwelling Units to be made available for occupancy in accordance with subsection A of this Article VI.

D. Vacancies in CHA's Trumbull, Lathrop, Lawndale, and Bridgeport projects shall be filled in accordance with subsection A of this Article VI, except that such tenant assignment plan may contain provisions designed to assure that such projects do not become racially segregated.

E. Suitably detailed information shall be regularly filed with the Court and served upon counsel for the plaintiffs showing CHA's compliance with the provisions of this Article VI and such tenant assignment plan.

Following the filing and service of such tenant assignment plan the Court will enter such further order as it deems appropriate.

VII. Following the date of this judgment order CHA shall file with the Court and serve upon counsel for the plaintiffs, the Civil Rights Division of the United

States Department of Justice, and the Regional Administrator of the Department of Housing and Urban Development, the following:

A. A statement of the following information respecting each location for one or more Dwelling Units, such statement to be filed and served not more than 10 days after any such location is approved by the Board of Commissioners of CHA (or by the appropriate CHA officer or employee with respect to any location not required to be approved by the Board of Commissioners) and prior to the formal submission thereof to any other government agency or official for consideration or action:

(1) a map showing boundaries, placement in relation to adjacent streets and, where available street address;

(2) the area location (whether within the Limited or General Public Housing Area);

(3) the census tract number;

(4) the white and non-white population of such census tract;

(5) the aggregate number of apartments and single family residences theretofore made available to low-income, non-elderly families, directly or indirectly by or through CHA in such census tract;

(6) the aggregate number of apartments and single family residences in such census tract as reflected by the most recent census taken by the United States Bureau of the Census, supplemented by such information with respect thereto as is available to CHA from any other government agency or official (but the statement need not include such number if the number supplied with respect to the preceding paragraph (5) is zero);

(7) the total number of Dwelling Units proposed to be provided at such location;

(8) the number of structures, and the number of Dwelling Units in each, in which such Dwelling Units are proposed to be provided; and (9) such additional data as will show that such proposed Dwelling Units will be made available for occupancy in conformity with the provisions of Articles III and IV hereof, including without limitation, in the event such proposed Dwelling Units would result in a Public Housing Project designed for occupancy by more than 120 persons, information showing that the provisions of subsection A of Article IV hereof have been met with respect to such Public Housing Project.

B. Statements setting forth any change in the information included under paragraphs (1), (2), (3), (5), (7), (8) or (9) in a statement filed and served pursuant to subsection A of this Article VII, and covering the period up to initial occupancy of all Dwelling Units at any location, such statements to be filed and served not more than 10 days after any such change occurs.

C. Statements covering the periods from the date hereof until December 31, 1969, and from the date hereof until the end of each calendar semi-annual period thereafter, containing such data as will show that (1) all plans for Dwelling Units during the period covered by such statements have been in conformity with the provisions of Article II hereof, and (2) all Dwelling Units provided during the period covered by such statements have been in conformity with the provisions of Article III and IV hereof, such statements to be filed and served not more than twenty days after the end of each calendar semi-annual period beginning with such period ended December 31, 1969.

VIII. CHA shall affirmatively administer its public housing system in every respect (whether or not covered by

specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures. Without limiting the foregoing,

A. CHA shall 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 shall take all steps necessary to that end, including making applications for allocations of federal funds and carrying out all necessary planning and development; and

B. CHA is hereby permanently enjoined from invidious discrimination on the basis of race in the conduct or operation of its public housing system, including without limitation the "pre-clearance procedure" described in the Court's Memorandum Opinion of February 10, 1969.

IX. This order shall be binding upon CHA, its officers, agents, servants, employees, attorneys, and their successors, and upon those persons, including the members of the City Council of the City of Chicago, in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

X. This Court retains jurisdiction of this matter for all purposes, including enforcement and the issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information with respect to proposed developments designed by CHA alone or in combination with other private or public agencies to achieve results consistent with this order, material changes in conditions existing at the time of this order or any other matter.

XI. The costs of this action shall be taxed against CHA, subject to the further order of this Court.

EXHIBIT A.

CENSUS TRACT NUMBERS

114 through 116	460 through 467	664
120 through 137	468	666 through 667
280 through 282	469-Z	675 through 678
340 through 347	470	681-Z through 683-Z
348-Z	487	685 through 686
349-Z	519-Z	687-Z
350 through 352	520 through 521	688
353-Z	524	690 through 691
354 through 355	527-Z	695
357 through 362	532-Z	697
363-Z	534-Z	711
364 through 373	539-Z	717-Z
375-Z through 378-Z	541 through 553	719-Z
379 through 383	554-Z	720-Z
384-Z	556 through 562	723
389-Z	564-Z	803 through 805
390-Z	567-Z	852
391 through 392	569-Z	855
395	574 through 610	858 through 859
399-Z	613-Z	861 through 862
401-Z	614 through 619	867-Z
403	620-Z	868 through 895
410-Z	621-Z	897-Z
412 through 420	623 through 641	898 through 900
428 through 429	642-A	903
431-Z	642-B	905 through 911
432	643 through 650	912-A through 912-D
434-Z	652	922
440 through 441	653-Z	923-A
442-Z	655	923-B
444 through 449	656-Z	924 through 927
450-A	657	932
450-B	658-Z	934 through 935
451 through 457	659 through 662	

EXHIBIT B.

TENANT SELECTION AND ASSIGNMENT PLAN

Each applicant shall be assigned his appropriate place on a community wide basis in sequence based upon date and time his application is received, suitable type or size of unit, and factors affecting preference or priority established by the Local Authority's regulations. At a given time, the applicant first on the waiting list shall be offered a dwelling unit in accordance with the following plan:

1. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in three or more locations, the applicant shall be offered the unit at the location that contains the

largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the second vacancy offered he shall be offered a suitable unit at the location containing the next highest number of vacancies. If the applicant rejects the third vacancy offered he shall be moved to last place on the eligible applicant list. When an offer of a suitable vacancy is made to an applicant, there must be a rejection of such offer before the applicant will be offered another location. Thus, the offering of a unit at the location with the second largest number of suitable vacancies will not be made until the applicant has first rejected the unit offered at the location with the largest number of vacancies. The offering of a unit at the location with the third largest number of suitable vacancies will not be made until the applicant has rejected the unit offered at the location with the second largest number of suitable vacancies.

2. If at the time the applicant comes to the top of the waiting list there are suitable vacancies in only two locations, the applicant shall be offered the unit at the location that contains the largest number of vacancies. If the applicant rejects the first vacancy offered he shall be offered a suitable unit at the second location. If the applicant rejects the second vacancy offered he shall be moved to last place on the eligible applicant list. When offers of suitable vacancies are made to applicants, there must be a rejection of the first offer before the applicant will be offered the second suitable vacancy.
3. If at the time the applicant comes to the top of the waiting list there is only one location at which a suitable vacancy exists, the applicant will be offered a unit at that location. If the applicant rejects the unit offered, he shall remain at the top of the waiting list until a second offer of a suitable vacancy can be made. Should the applicant reject the second offer of a suitable vacancy he shall be moved to last place on the eligible applicant list.

In carrying out the above plan, should the applicant be willing to accept the unit offered but be unable to move at the time of the offer and presents clear evidence of his inability to move to the Local Authority's satisfaction, refusal of the offer shall not count as one of the number of allowable refusals permitted the applicant before placing his name at the bottom of the eligible applicant list.

In carrying out the above plan, should the applicant present to the satisfaction of the Local Authority clear evidence that acceptance of a given offer of a suitable vacancy will result in undue hardship or handicap not related to considerations of race, color, or national origin, such as inaccessibility to source of employment, children's day care and the like, refusal of such an offer shall not be counted as one of the number of allowable refusals permitted an applicant before placing his name at the bottom of the eligible list.

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

DOROTHY GAUTREAUX, et al.,
Plaintiffs,

vs.

SAMUEL R. PIERCE, JR., Secretary
of the Department of Housing and
Urban Development, and CHICAGO
HOUSING AUTHORITY, et al.,
Defendants.

Civil Action No. 65C1459
66C1460
(Consolidated)

O R D E R

This matter coming on to be heard pursuant to plaintiffs' motion dated May 8, 1987 for the appointment of a receiver for the scattered site program (defined below), due notice having been given and the Court having heard the presentations of the parties, the Court makes the following findings of fact and conclusions of law:

(A) The Chicago Housing Authority (the "CHA") has joined in plaintiffs' Motion for the appointment of a receiver for the reasons which CHA has heretofore stated in this cause.

(B) This Court has concluded that it has no reasonable alternative but to exercise its inherent power to effectuate its own orders and to so appoint said receiver for the scattered site program in accordance with the provisions of this order. It is the expectation of this Court that the appointment of a receiver will facilitate cooperation between the United States

Department of Housing and Urban Development ("HUD"), CHA and the receiver respecting the scattered site program.

(C) For purposes of this Order the "scattered site program" shall mean (i) the buildings and vacant sites listed in Exhibit A attached hereto (collectively, the "Uncompleted Units") and (ii) CHA Development Programs numbered Il 2-096, Il 2-098, Il 2-103 through Il 2-109, and Il 2-113 (excluding any completed buildings in such programs) and all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of Civil Action No. 66 C 1459.

WHEREFORE, IT IS HEREBY ORDERED:

1. The Court hereby appoints Daniel E. Levin and The Habitat Company jointly as receiver ("Receiver") to develop and administer the scattered site program as effectively and expeditiously as possible in compliance with the orders of this Court, such appointment to be effective as of the Effective Date (defined below). Until the Effective Date, CHA shall continue to be responsible for implementing the scattered site program in compliance with the prior orders of this Court. On the Effective Date CHA shall turn over to the Receiver possession and control of the Uncompleted Units, it being understood, however, that title to the Uncompleted Units shall remain in the name of CHA.

2. The Receiver shall have and exercise all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including:

(a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (i) submission to HUD of applications for funding, development programs and other documents, (ii) site selection and acquisition (including policies respecting the location of sites and buildings to be acquired), (iii) the relocation of occupants, when necessary and (iv) construction and rehabilitation of dwelling units and the design and specifications therefor in compliance with applicable laws and ordinances; and

(b) Carrying out the determinations so made, including without limitation (i) negotiating and executing any contracts or other documents necessary or appropriate to implement the scattered site program, (ii) employing, transferring and discharging staff for the scattered site program, (iii) purchasing insurance insuring the Receiver, and the interest of CHA if feasible and available at no additional cost, against liability for such risks and in such amounts as the Receiver and HUD shall from time to time agree upon, (iv) managing and administering buildings included within the scattered site program prior to the turnover thereof to the CHA in accordance with Paragraph 5 below, and (v) doing such other acts and things, including site selection and acquisition in the name of CHA, construction and rehabilitation of dwelling units and retaining the services of such personnel, consultants, attorneys, accountants and other professionals, as are determined by the Receiver to be necessary and appropriate to implement the scattered site

program and to enable the Receiver to discharge its duties pursuant to the provisions hereof.

3. The Receiver shall have the right at any time, upon due notice to the parties hereto, to make application to the Court requesting that the Receiver be excused from complying with some or all of the provisions set forth in the Annual Contributions Contracts heretofore entered into between HUD and CHA (collectively, the "ACC"), the HUD Procurement Handbook for Public Housing Agencies No. 7460.8, the HUD Public Housing Development Handbook No. 7417.1, or other applicable rules and regulations, or applicable laws or ordinances, or that as to the Receiver, the requirements of such agreements, provisions, laws, ordinances, rules and regulations be modified, if the Receiver determines that compliance therewith would be costly, inefficient or otherwise impede or restrict its ability to carry out this Court's orders. Nothing contained herein shall be deemed to constitute a determination by the Court, or the consent or an acknowledgement by HUD or CHA, that the Court has the jurisdiction or authority to grant any of the foregoing relief.

4. The Receiver shall have no obligation to make any expenditure except from funds provided by HUD in accordance with procedures to be agreed upon between HUD and the Receiver. The Receiver shall keep separate accounts for costs incurred in connection with the scattered site program from and after the Effective Date. The Receiver shall not be responsible for (i) payment of any costs or performance of any obligations incurred

by CHA prior to the Effective Date, except obligations incurred pursuant to the ACC unless the Receiver is excused from complying with the terms thereof pursuant to Paragraph 3 above, or (ii) payment of any costs or performance of any obligations incurred by CHA thereafter, except as may be specifically authorized by the Receiver in writing. Notwithstanding the foregoing, the Receiver shall not be responsible for (iii) compliance with the provisions of any ACC with respect to buildings and sites previously acquired or completed by CHA except those described in Exhibit A, or (iv) any act or omission of CHA either before or after the Effective Date.

5. The Receiver shall promptly turn over to CHA, and CHA shall accept, any building within the scattered site program upon completion of construction or rehabilitation of each such building. For purposes hereof, subject to the reasonable approval of HUD, construction or rehabilitation of a building shall be deemed to be completed when the Receiver's project architect determines that such building is ready for occupancy, and, if required by applicable law or ordinance, a certificate of occupancy has been issued for such building.

6. The Receiver shall prepare reports respecting the status and implementation of the scattered site program as of the end of each month in the year 1987, commencing with the month of September, 1987, and thereafter quarterly as of March 31, June 30, September 30 and December 31 of each year. Copies of the same shall be filed with the Court and served on

the parties within 20 days following the end of the period covered by each such report.

7. CHA, its agents, servants and employees shall provide full cooperation and assistance to, and shall not interfere with, the Receiver in the performance of the Receiver's responsibilities hereunder, including without limitation providing full access to all information, records, documents, files relating to the scattered site program.

8. There shall be paid to the Receiver from funds provided by HUD pursuant to the ACC or Annual Contributions Contracts entered into between the Receiver and HUD, or by CHA if appropriate, (i) all direct costs and expenses reasonably incurred by the Receiver in connection with the performance by the Receiver of its duties pursuant hereto, (ii) to the extent not included in clause (i), a pro-rata share of all salary, compensation and other direct costs of those employees of The Habitat Company (other than Daniel E. Levin, James P. McHugh and Douglas R. Woodworth), James McHugh Construction Co. (other than James P. McHugh) or other entities which are affiliates of or controlled either directly or indirectly by the Receiver, who at the direction of the Receiver perform services on behalf of the scattered site program, for the actual time devoted by said employees to the performance of services for the scattered site program, and (iii) a fee in the amount of three percent (3%) of the aggregate development costs (excluding the costs described in clause (ii) above and any costs previously incurred by CHA)

for each building in the scattered site program (except buildings developed pursuant to a turnkey development) as reflected on the original development budget(s) therefor submitted by the Receiver and approved by HUD, the fee for such building being payable upon the completion thereof as determined in accordance with Paragraph 5 hereof. The Court will set a reasonable fee with respect to turnkey developments. The Court hereby determines that included in the category of expenditures for which the Receiver shall be entitled to reimbursement are all costs, expenses and liabilities (including reasonable attorneys' fees and court costs) reasonably incurred or sustained by the Receiver by reason of the performance by the Receiver of its duties pursuant to the provisions hereof to the extent said costs, expenses and liabilities are not covered by the insurance described in Paragraph 2(b)(iii) above.

9. Nothing in this Order shall (i) preclude or restrict the Receiver or any party hereto from asserting any claims against the Receiver or any other party hereto for any matter in connection with the scattered site program or otherwise; provided, however that the foregoing shall not constitute a waiver by the Receiver or any other party of any defense which it may have to such claim, including, but not limited to, a defense by the Receiver that it enjoys immunity from such claim, (ii) obligate HUD to furnish funds to the Receiver in addition to any funds which HUD would otherwise be obligated to provide

to CHA by virtue of any previous order of this Court or otherwise, or (iii) constitute a determination of the amount of funds which HUD is obligated to furnish by virtue of such previous orders or otherwise.

10. The Receiver is hereby excused from complying with Rule 9(b) of the Civil Rules of the United States District Court for the Northern District of Illinois.

11. The effective date of this Order (the "Effective Date") shall be the date upon which the Receiver has filed with this Court and served upon the parties hereto a notice signifying that the Receiver is satisfied that there is in force the insurance coverage referred to in Paragraph 2(b)(iii) above.

12. Except as and to the extent specifically provided in this Order, this Court's judgment orders previously entered herein, as previously modified, remain in full force and effect. The Court retains jurisdiction of this matter for all purposes, including enforcement and issuance, upon proper notice and motion, of orders modifying or supplementing the terms of this order upon the presentation of relevant information or material changes in conditions existing at the time of this order or any other matter.

ENTER:


United States District Judge

August 14, 1987

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units – the 99 1/2 % which were located in predominantly black areas – housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

It is . . . undeniable that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and *urban renewal*. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 30% or more), *id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received \$50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473). This would mean, of

course, that any construction of new public housing units¹ would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA – that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas – rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

¹ The CHA attempts to draw a distinction between replacement construction – construction which does not add to the agency's aggregate housing stock – and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between reconstruction and new construction: it speaks simply of Dwelling Units "initially make available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. See Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI," Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, see S. REP. 102-356, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, see Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. See 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities. See *Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); see also *Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill. 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court.").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.



MARVIN E. ASPEN
United States District Judge

Dated 2/23/58

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux, et al vs. CHA		

(In the following box (a) indicates the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.)

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Motion is granted.

(11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court. ☐ No notices required. ☐ Notices mailed by judge's staff. ☒ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form. ☐ Copy to judge/magistrate judge.	COURTROOM Deputy's initials	Date/time received in central Clerk's Office	Document Number
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ORDER

Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the *Gautreaux* "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[]" . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/12/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	☐	Filed motion of [use listing in "Motion" box above.]
(2)	☐	Brief in support of motion due _____.
(3)	☐	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	☐	Ruling/Hearing on _____ set for _____ at _____.
(5)	☐	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	☐	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	☐	Trial[set for/re-set for] on _____ at _____.
(8)	☐	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	☐	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
(10)	☒	[Other docket entry] CHA's motion to stay enforcement pending appeal of our order of 2/25/98, is denied.
(11)	☒	[For further detail see order on the reverse side of the original minute order.]

☐	No notices required, advised in open court.		☒	number of notices	Document Number
☐	No notices required.			date docketed	
☒	Notices mailed by judge's staff.			docketing deputy initials	
☐	Notified counsel by telephone.			5/12/1998	
☐	Docketing to mail notices.			date mailed notice	
☐	Mail AO 450 form.			GL	
☐	Copy to judge/magistrate judge.			mailing deputy initials	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office			

ORDER

Now before us is defendant Chicago Housing Authority's motion to stay enforcement pending appeal of our order of February 25, 1998, which held that the judgment order entered in *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969), governed the CHA's use of HOPE VI funds.

Rule 62(a), the basis for this motion, provides our order "shall not be stayed . . . during the pendency of an appeal" unless we "otherwise order[.]" The parties agree that the usual four injunction factors govern our analysis here: to obtain a stay, the CHA must show "(1) some likelihood of winning its appeal, (2) some likelihood of irreparable injury absent a stay, (3) that the stay would not unduly harm plaintiffs, and (4) that the stay would be consistent with the public interest." *Thomas v. City of Evanston*, 636 F. Supp. 587, 590 (N.D. Ill. 1986) (Aspen, J.); see also 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 62.06[3] (3d ed. 1997).

First. We seriously doubt that the CHA will win its appeal. Beyond our usual confidence in our own decisions, see *Thomas*, 636 F. Supp. at 590, we observe that the plaintiffs have presented to the Seventh Circuit a substantial motion to dismiss for lack of jurisdiction. The CHA's original motion to us was to clarify the injunction, and it insisted that it was not asking for a modification thereof. In fact, at oral argument, the CHA's attorney stated that "We agree that the HOPE VI new construction . . . does fall within the definition of dwelling unit, no question about it." This was, of course, our eventual holding; an exemption for HOPE VI would have required a modification of the judgment order. We therefore doubt that the Seventh Circuit's jurisdiction may be predicated on 28 U.S.C. § 1292(a)(1). See *ACORN v. Illinois State Bd. of Elections*, 75 F.3d 304, 306 (7th Cir. 1996) ("[I]nterpretations of injunctions as distinct from modifications of them are not appealable. . . , [and this] injunction has not been changed."). We also doubt that 28 U.S.C. § 1291 will suffice for appellate jurisdiction, as we think it is a stretch to say, as the CHA does (in its Seventh Circuit docketing statement with a citation to *ACORN*, *supra*), that our order "sets forth the steps that the CHA must take to comply with the Injunction." (We note as an aside that the Seventh Circuit will, of course, decide its jurisdiction for itself.)

Second. We question whether the CHA will suffer any irreparable injury. The only claimed injury which does not spring from wholesale speculation is that the CHA will have to devote time and resources to bringing itself into compliance with our order, but the CHA's Executive Director has stated that "All Judge Aspen said is that locational restrictions apply *as we have assumed that they do throughout*. We asked that they did not, and he said no, they do. Judge Aspen did not break new ground, he maintained the status quo." Pls.' Resp. Ex. A (emphasis added). It seems that the CHA has been planning its HOPE VI expenditures on this basis all along.

Third. The requested stay would harm the plaintiffs. As they argue, they have waited decades for the desegregation of public housing, and we see no reason to extend that period any longer than necessary.

Fourth. A stay would not be consistent with the public interest. The public's interest here is in the desegregation and modernization of its public housing, and nothing in the CHA's submission has convinced us that our order is inconsistent with those goals.

For the foregoing reasons, we deny the CHA's motion to stay. It is so ordered.



United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/22/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for].on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] CHA's emergency motion to stay order of May 19, 1998, pending appeal is denied.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐ No notices required, advised in open court.			Document Number
☐ No notices required.		number of notices	
☐ Notices mailed by judge's staff.		date docketed	
☒ Notified counsel by telephone.		docketing deputy initials	
☐ Docketing to mail notices.		date mailed notice	
☐ Mail AO 450 form.			
☐ Copy to judge/magistrate judge.			
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/21/1998
CASE TITLE	Gautreaux,etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
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- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Plaintiffs' motion for further relief is denied as moot.

- (11) ☒ [For further detail see order on the reverse side of the original minute order.]

☐	No notices required, advised in open court.		4	Document Number
☐	No notices required.		number of notices	
☒	Notices mailed by judge's staff.		date docketed	
☐	Notified counsel by telephone.		docketing deputy initials	
☐	Docketing to mail notices.		5/21/1998	
☐	Mail AO 450 form.		date mailed notice	
☐	Copy to judge/magistrate judge.		GL	
GL		courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

ORDER

Now before us is the plaintiffs' "Motion for Further Relief." In it they register their concerns with the CHA's conduct vis-à-vis the Receiver and ask that we enter a detailed order directing the CHA to take certain steps to rectify the situation.

We do not believe that such an order will be necessary. In an order issued on May 19, in response to an emergency motion from the Receiver, we wrote that "we [have previously] held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the Gautreaux judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver." Accordingly, we held that the parts of the HOPE VI program discussed in our opinion of February 23 "fit[] entirely within the Receiver's jurisdiction." (We do not wish to be misunderstood; our order neither gave sole authority over HOPE VI in Chicago to the Receiver nor gave the Receiver sole authority to prepare Chicago's 1998 HOPE VI application, as a motion filed earlier today by the CHA states. See CHA's Emergency Mot. to Stay Order Pending Appeal at ¶¶ 13, 14, 27.) Many of the problems detailed in the plaintiffs' motion concern the CHA's HOPE VI-related activity, and those problems were addressed by our prior order.

To the extent that the plaintiffs' motion raises issues unrelated to the Receiver's role in the HOPE VI program, we think it best that the Receiver bring those issues to this Court's attention if it so chooses.

It is so ordered.

A handwritten signature in black ink, appearing to be "JMS", is written on the right side of the page.

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

DOROTHY GAUTREAUX, et al.,	)	Docket No. 66 C 1459
	)	No. 66 C 1460
Plaintiffs,	)	
	)	
vs.	)	Chicago, Illinois
	)	February 10, 1998
SAMUEL R. PIERCE, et al.,	)	10:30 o'clock a.m.
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - STATUS
BEFORE THE HON. MARVIN E. ASPEN

APPEARANCES:

For the Plaintiffs: MR. ALEXANDER POLIKOFF
Business and Professional
People for the Public Interest
(17 East Monroe Street
Chicago, Illinois 60603)

For Defendant CHA: SKADDEN ARPS SLATE MEAGHER & FLOM
BY: MS. SUSAN GETZENDANNER
(333 West Wacker Drive
Chicago, Illinois 60606)

For Defendant Department
of Housing and Urban
Development: MR. JOHN A. JENSEN
(77 West Washington Street
Chicago, Illinois 60604)

1 THE CLERK: 66 C 1459, Gautreaux versus CHA.

2 MS. GETZENDANNER: Good morning, Judge.

3 MR. POLIKOFF: Good morning, your Honor.

4 THE COURT: Good morning.

5 Okay. This is the motion of the CHA, so I guess the
6 CHA will go first, right?

7 MS. GETZENDANNER: Judge, if you have any questions, I
8 would be happy to answer them, otherwise I am content to rely
9 on the briefs, so long as I can go after these fellows.

10 THE COURT: Okay.

11 Anything you wish to say?

12 MR. POLIKOFF: I will be happy to start, your Honor.

13 THE COURT: All right.

14 MR. POLIKOFF: Thank you.

15 Your Honor, as we see it, CHA advances two basic
16 arguments to support its view that the judgment order does not
17 apply to new HOPE VI funded public housing. One is that the
18 order only covers funding that adds to the aggregate housing
19 stock, not replacement funding; and the other is that the
20 judgment order's locational requirements are incompatible with
21 HOPE VI. And if you were to rule that the order applies to new
22 HOPE VI housing, you would effectively eject CHA from the HOPE
23 VI ballgame.

24 I will address these two basic arguments momentarily
25 and persuade you, I believe, that the judgment order clearly

1 does cover replacement housing based on its language, its logic
2 and the conduct of the Court and the parties in carrying it
3 out. And we will also show that there is no incompatibility
4 whatsoever between the judgment order and HOPE VI.

5 But first I would like, in a few words, to place this
6 HOPE VI dispute within the larger framework of the litigation.

7 The Fisher and Hickman affidavits attached to our
8 brief demonstrate that a dramatic current racial imbalance
9 still persists in CHA's housing stock. Largely thanks to the
10 receivership and your subsequent orders, the figure has been
11 reduced from 99 percent to the middle 80's, but we've still got
12 a long way to go.

13 It is, of course, indisputable that sufficient
14 desegregated housing opportunities for plaintiff class families
15 have not been provided to enable anyone to say -- and CHA
16 doesn't even assert -- that this principle remedial purpose of
17 the judgment order has been achieved.

18 Under these circumstances, the law places the burden
19 on CHA, not the plaintiffs, to show that the current racial
20 imbalance is not traceable in a proximate way to the prior
21 violation. That's a quote, as you may recognize, from Freeman
22 versus Pitts, 503 U.S. at 494.

23 And subsequent to Freeman the Supreme Court in U.S. v.
24 Fordice reiterated the same point, quote, that the burden of
25 proof falls on the state, not the aggrieved plaintiffs, to

1 establish that it has dismantled its prior de jure segregated
2 system.

3 Therefore, your Honor, with a current racial imbalance
4 not shown by CHA to be divorced from its original
5 constitutional wrong and as yet unachieved principle remedial
6 purpose, the law stands flatly opposed to CHA's desire to have
7 the judgment order interpreted in a relief-limiting way.

8 We've set forth some of the relevant cases at pages 13
9 to 17 of our written response. CHA's reply brief doesn't
10 address those cases, doesn't even refer to CHA's continuing
11 desegregation obligation. And I suggest, your Honor, that
12 those cases provide the legal framework within which the CHA
13 arguments, to which I now turn on the HOPE VI matter, must be
14 considered.

15 The first of the two major CHA arguments that the
16 judgment order should be interpreted as not applying to
17 replacement housing, flies in the face of the unambiguous
18 language of the judgment order. Indeed, CHA concedes that HOPE
19 VI funded replacement housing is covered by the dwelling unit
20 definition in the judgment order.

21 CHA says -- and I quote from page 6 of its reply brief
22 -- quote, the CHA does not disagree that HOPE VI funded units
23 would come within the definition of dwelling unit in the
24 judgment order. It's perfectly understandable that CHA doesn't
25 disagree. That dwelling unit definition was obviously written

1 to cover every imagineable way in which CHA might provide new
2 housing -- and I am quoting now from the order -- directly or
3 indirectly, whether in a structure owned in whole or in part by
4 CHA, whether or not newly constructed, whether otherwise made
5 available by or through CHA.

6 Plainly, Judge Austin was strained not to overlook any
7 kind of new housing CHA might provide.)

8 THE COURT: How about replacement housing on the site
9 that's demolished?

10 MR. POLIKOFF: Replacement housing -- it is new
11 construction -- is covered by this, your Honor, clearly, new
12 housing initially made available after the date of the judgment
13 order. And as I will show you in a moment, you have already
14 ruled, already exercised jurisdiction over replacement housing
15 designed for precisely that purpose.

16 THE COURT: How does that differ from a situation
17 where CHA might rehab completely?

18 MR. POLIKOFF: Big difference, because the judgment
19 order says, "initially made available after the date of the
20 order."

21 As we pointed out in our briefs, we have not sought --
22 ever in this case we have not sought to stretch the judgment
23 order to cover a rehab of a prior unit.

24 We have only said, when you are putting up a new unit,
25 even if it's in replacement of a demolished unit, it's covered

1 by the language of the judgment order, which, as I point out,
2 CHA itself concedes.

3 THE COURT: As a practical matter, is there really any
4 difference between the two?

5 Let's assume a hypothetical of 100 units; CHA razes
6 the building, puts up another building of 100 units, or, CHA
7 takes that original building, really guts it, rehabs it and
8 comes up with 100 units. You're saying one would be treated
9 differently than the other?

10 MR. POLIKOFF: Enormous difference, your Honor. Why?

11 THE COURT: But as a practical matter, should there be
12 any difference?

13 MR. POLIKOFF: Yes, there should be, and I will tell
14 you why.

15 If CHA razes a 100-unit building and is going to build
16 100 new replacement units, it has the opportunity thereby to
17 provide relief for the plaintiff class, because the 100 new
18 units don't have to be built in the same place that the razed
19 building stands. If you're gutting a building and rehabbing it
20 on site, you don't have that opportunity.

21 So desegregation opportunities, relief for the
22 plaintiff class, can be provided by the new 100 units. You can
23 put 50 of them out there, 50 of them in here, under your
24 current orders 50/50, so we would get 50 units of desegregated
25 housing.

1 If, on the other hand, they are simply rehabbing a
2 building, we could have drafted the order differently -- I
3 don't know whether Judge Austin would have gone along -- but we
4 made a distinction right at the outset between -- and he made a
5 judgment order on his own, a judgment decision on his own, I am
6 not going to tell CHA how to run its existing housing stock.
7 They want to rehab it -- and we didn't oppose that. We never
8 argued for that.

9 The distinction then is the distinction between an
10 opportunity to provide remedial housing opportunities to the
11 plaintiff class through newly constructed housing which has no
12 locational requirements imposed upon it and rehabbing an
13 existing building which obviously isn't being moved.

14 From the look on your face, I'm not sure you're 100
15 percent persuaded, but --

16 THE COURT: Well, following your construction, CHA may
17 have the -- assuming that your construction is the one that
18 will be followed, CHA may have the very difficult task of
19 making a policy decision that would be more costly.

20 For example, if CHA decides that it wants to keep the
21 100 units in the hypothetical building that I suggested and the
22 cost to rehab those units is more than the cost to raze the
23 building and put up 100 new units, CHA would be in a position
24 of having to pay that extra cost in order to keep those units
25 at the same site.

1 MR. POLIKOFF: They may very well, your Honor, if the
2 economics worked out that way; they might work out differently.
3 But --

4 THE COURT: It's taxpayers' money that we're talking
5 about, though.

6 MR. POLIKOFF: Yes, but if CHA has an obligation to
7 provide desegregation housing opportunities to the plaintiff
8 class members, which it does, that decision as to which way to
9 go ought to include a consideration of that persisting CHA
10 obligation to provide desegregation.

11 Indeed, I would argue -- not here arguing this point,
12 but in a hypothetical situation I would argue that that
13 obligation to provide desegregation housing for the plaintiff
14 class should weigh very heavily in CHA's decision-making.

15 But we have not tried to get into that, your Honor.
16 And if they decide to rehab under the language of the order,
17 they are free to do it without consequences under the Gautreaux
18 orders.

19 I pointed out that your Honor is being asked to
20 interpret the order in a way that does violence to its
21 language. For the reasons we have just discussed, it also does
22 violence to the logic.

23 The purpose of the order can be served, i.e.,
24 desegregation housing opportunities provided to the plaintiff
25 class through replacement housing just as effectively as

1 through incremental housing. So the purpose of the order also
2 argues for not imposing the restrictive limitation on it that
3 CHA is proposing. Indeed, I would say that CHA's request to
4 you is at war not only with the language of the order, but also
5 with its logic.

6 Finally, and perhaps most tellingly, the Court and the
7 parties have already interpreted the judgment order to embrace
8 replacement housing, starting with the Court's order of
9 December 10, 1993. The order is cited and discussed in the
10 briefs, but I've made extra copies for the Court and counsel.
11 This is the order that HUD calls the nunc pro tunc order.

12 (Document tendered.)

13 MR. POLIKOFF: Do you need an extra copy?

14 MS. GETZENDANNER: Sure.

15 MR. POLIKOFF: On page 2 and 3 of this so-called nunc
16 pro tunc order, you see that paragraph -- it's at the bottom of
17 page 2 -- paragraph number 1 refers to CHA funding applications
18 for the familiar 18 units in Lawndale.

19 But paragraph 1 over at the top of page 3 now, your
20 Honor, also covers an additional 377 units. And two project
21 numbers are referenced there, which are at Washington Park,
22 which is at North Kenwood/Oakland, for 187 units, and Cabrini
23 Green for 190, making the total of 377.

24 Paragraph 2 of the order in the middle of page 3
25 authorizes the joint venture, led by Habitat as Receiver and

1 previously approved by the Court, to develop those 18 Lawndale
2 units. And then if you drop down to paragraph 4, at the bottom
3 of page 3, you see that that authorizes the same joint venture
4 to develop the 377 Washington Park and Cabrini units.

5 Now, your Honor, a couple of months before you entered
6 this order the funding for these same 377 units had begun to
7 come from HUD.

8 On September 10, 1993, HUD notified CHA that its
9 funding application for these Washington Park and Cabrini units
10 had been partially approved, quote -- and I emphasize this --
11 for replacement housing. That's in one of the letters that was
12 delivered to the Court and counsel early last week, and I
13 emphasize those replacement housing words. In other words,
14 your Honor, these 377 units were being funded with true
15 replacement, not incremental dollars.

16 Incidentally, the same HUD letter, which is signed by
17 Mr. Shuldiner, who was then in Washington with HUD, also says
18 -- and I am quoting -- these fund reservations are conditioned
19 upon agreement of the parties to the Gautreaux litigation and
20 approval by the Court of the entity that will develop these
21 replacement units, end quote.

22 So two months later, when the Court signed the nunc
23 pro tunc order you're holding in your lap, it was not only
24 authorizing the joint venture to develop true replacement
25 housing funded with replacement, not incremental dollars; it

1 was also satisfying the HUD requirement that the Court and the
2 Gautreaux parties agree on the entity to do the developing of
3 those 377 units.

4 By the way, your Honor, the Gautreaux-funded portion
5 of the 466 units at Horner, those are also true replacement
6 dollars, not incremental dollars.

7 Now, of course, we pointed out in our brief, referring
8 to this nunc pro tunc order, that true replacement housing
9 funding had already been subjected to the Court's orders.

10 Now, what does CHA say about that? Well, in its reply
11 brief CHA says correctly that the 18 Lawndale units are being
12 built with incremental funding. But CHA is then thunderously
13 silent about the Washington Park and Cabrini Green units,
14 thereby implying that the nunc pro tunc order relates only to
15 incremental funding and does not embrace true replacement
16 funding as well.

17 We are not favored with an observation from CHA,
18 therefore, your Honor, on the fact that the Court, with the
19 written approval of all the parties -- you will note that that
20 order was consented to in writing; the signature pages are also
21 in your lap, by all the parties. The Court and all the parties
22 already agreed upon an exercise by the Court of its
23 jurisdiction over true replacement housing.

24 Parenthetically, I want to note that this nunc pro
25 tunc order covers not only true replacement housing in a

1 non-HOPE VI context, which is Washington Park in North
2 Kenwood/Oakland, but it also covers replacement housing funding
3 to be used in a HOPE VI project at Cabrini Green, 190 out of
4 those 377 units.

5 It's true, those aren't HOPE VI dollars, but they are
6 dollars to be used in a HOPE VI project for the same
7 replacement housing purpose as HOPE VI dollars themselves may
8 be used.

9 In conclusion, your Honor, the replacement housing
10 horse has long since left the barn. The Court, with the
11 written concurrence of CHA and the other parties, has already
12 exercised judgment-ordered jurisdiction over replacement
13 housing, specifically including replacement housing for HOPE VI
14 projects. And you've done this not just in the nunc pro tunc
15 order but in subsequent orders.

16 As to the location of those replacement units, you
17 will note that paragraph 4 of that order refers to subsequent
18 orders having to do with location.

19 In the face, your Honor, of these several orders
20 relating to North Kenwood/Oakland, Cabrini, Henry Horner and
21 with the language of the judgment order concededly covering
22 replacement housing, while the rationale of the order supports
23 such coverage, it would be totally inappropriate to now reverse
24 field and act inconsistently with a whole series of the Court's
25 orders as well as extensive conduct of the parties based on

1 those orders.

2 I turn to the second major CHA argument, which is the
3 supposed incompatibility between HOPE VI and the judgment
4 order, a point made about a dozen times -- I counted them -- in
5 the CHA's briefs.

6 HOPE VI and the judgment order are said to be
7 inherently and absolutely inconsistent. We are told that CHA
8 could not hope to be competitive in HOPE VI awards if the
9 judgment order applied, and that denying CHA's motion is the
10 functional equivalent of enjoining CHA from HOPE VI
11 participation.

12 Simple answer to all this: It ain't true. It is not
13 true if one compares HOPE VI and judgment order language, and
14 it is not true if one looks at the competitive record of CHA in
15 HOPE VI competitions.

16 Let me turn to the language first. CHA says -- and
17 I'm quoting -- HOPE VI has clear locational requirements for
18 which proposition it cites and quotes the HOPE VI statute which
19 provides funding for addressing, as you know, severely
20 distressed or obsolete public housing projects, for the HOPE VI
21 statute does say the following: No more than 500 units shall
22 be provided to each participating city, and such units shall be
23 located in up to three separately defined areas containing the
24 community's most severely distressed projects, including family
25 high-rise projects, end quote. That's from the HOPE VI

1 statute, which is Exhibit B to CHA's brief.

2 And this is the locational requirement, the one I just
3 quoted, to which CHA refers when it says we are, quote, clearly
4 wrong in contending that HOPE VI has no locational requirements
5 for replacement housing.

6 But, your Honor, this locational requirement I just
7 quoted applies only to the 500 selected distressed or obsolete
8 units, not to their replacement units. That's perfectly clear
9 from the statutory, quote, such units, end quote, language that
10 I just quoted. Just read it; you can see it.

11 Moreover, the same statute specifically says
12 replacement housing may include tenant-based Section 8, which,
13 of course, can be located anywhere.

14 Now, if there were any doubt about the statutory
15 language point I am making, which there is not, there is a HUD
16 HOPE VI handbook, as you know, and that would resolve the
17 doubt.

18 For the guidebook says explicitly -- and the relevant pages are
19 in the exhibits to the briefs -- that replacement housing may
20 include, quote, construction of off-site housing, end quote,
21 and it says not one word about where off site.

22 And if there were any doubt about that, under the
23 heading Purpose of the HOPE VI Program, the guidebook includes
24 the following quote as a purpose: Lessening concentrations of
25 poverty by placing public housing in non-poverty neighborhoods.

1 Obviously the neighborhoods that contain the community's most
2 distressed and obsolete public housing units are not likely to
3 be non-poverty neighborhoods.

4 In short, your Honor, there exists no locational
5 requirement for HOPE VI replacement housing at all, and CHA is
6 simply wrong in implying that the locational requirement
7 applicable to the 500 selected distressed or obsolete units
8 applies to the replacement housing for those units.

9 Now, CHA then attempts to buttress this mistaken
10 argument with a flat-out misstatement, presumably designed to
11 show that contrary to the statutory and guidebook language,
12 replacement housing is confined to these severely distressed
13 neighborhoods.

14 Referring to each of CHA's HOPE VI applications, CHA
15 says at page 15 of its reply brief, "All new construction was
16 designated for neighborhoods that were in limited areas." And
17 again, "No application called for the building of any new units
18 in any general area."

19 From among many statements which demonstrate the
20 contrary, I will refer to but one which has to do with
21 replacement housing for Cabrini.

22 Here is what CHA said in its August 11, 1993
23 application to HUD, which is another of the letters that was
24 delivered to Court and counsel early last week. In this letter
25 CHA seeks HUD's approval to demolish the first building it

1 wanted to tear down at Cabrini. The sentence appears under the
2 heading, quote, Location of Replacement Units, and I now quote
3 the sentence: The proposed new units will be built on
4 scattered sites in community areas around the Cabrini Green and
5 in other sites throughout the Chicago metropolitan area in
6 accordance with the consent decree and subsequent orders of the
7 Gautreaux litigation, end quote. That statement and the others
8 like it cannot be reconciled with CHA's reply brief assertion
9 that all new construction was designated for limited areas.

10 I turn to the competitiveness issue, the other aspect
11 of this HOPE VI judgment order alleged incompatibility.
12 CHA won its initial HOPE VI award at the end of '93 in a
13 nationwide competition.

14 Now, look at the dates of the letters I've just
15 referred to. In August '93 CHA says, we're going to develop
16 replacement housing in accordance with Gautreaux. In September
17 CHA receives its first HOPE VI replacement housing funding from
18 HUD.

19 Moreover, we know what HUD believes from its own
20 lawyer's legal opinion; I'm quoting from Receiver Exhibit B.
21 Quote, in regard to the 377 replacement units for Cabrini and
22 Washington Park approved for funding by HUD in September of '93
23 and '94, the joint venture has clearly been authorized by Judge
24 Aspen. Still quoting, we also believe that any funds under
25 HOPE VI which go to replacement housing are currently a

1 Receiver responsibility. We do not believe the CHA currently
2 has any development authority for non-elderly units, end quote.

3 Now, both the joint venture and the Receiver are, of
4 course, obligated to adhere to the locational requirements of
5 the judgment order, so HUD's understanding that HOPE VI
6 replacement housing would be developed under Gautreaux clearly
7 didn't render CHA uncompetitive.

8 It didn't render it uncompetitive at first, when it
9 got the Cabrini award in '93, and it hasn't rendered it
10 uncompetitive since, for subsequent to its Cabrini award CHA
11 has received, as you know, two more HOPE VI awards: One for
12 Robert Taylor and one for Henry Horner, ABLA.

13 Thus, your Honor, a HUD that believes replacement
14 housing, including in HOPE VI projects, must be developed under
15 Gautreaux, has awarded CHA three separate HOPE VI grants.

16 What is there, then, to support the competitiveness
17 argument? In answer, your Honor, there's nothing but rhetoric.

18 In sum, there is no incompatibility between HOPE VI
19 and the judgment order. And CHA has not been uncompetitive,
20 even though HUD, not to mention CHA itself, has viewed the
21 judgment order's locational requirements as applicable to HOPE
22 VI public housing.

23 Now, before I conclude, having thus dealt with CHA's
24 two principle arguments, I would like to address a couple of
25 the CHA's subsidiary arguments very briefly, your Honor.

1 First, CHA says we haven't objected to its HOPE VI
2 applications and, therefore, we must not ourselves believe that
3 the judgment order covers new HOPE VI housing. And it derides
4 our explanation; namely, that the applications covered
5 non-housing matters as well that aren't covered by the judgment
6 order.

7 Since this isn't the waiver of rights argument but an
8 argument about what we believe, it's really not worth taking
9 much of your time, for we have told CHA unambiguously what we
10 believe. And I quote from our letter to CHA dated July 15,
11 '97, which is CHA Exhibit F. Quote, it remains the Gautreaux
12 position that court orders require the Receiver to develop all
13 public housing units even though HOPE VI funds are used, end
14 quote.

15 That is what we believe, that is what we have
16 consistently told CHA we believe, and no tortured analysis is
17 required to determine what we believe.

18 Second, CHA says in its reply brief that plaintiffs
19 admit that the HOPE VI Cabrini project has gone forward without
20 any involvement of the Receiver. And they add there is, quote,
21 no dispute that the Receiver has had, quote, no role in the
22 Cabrini HOPE VI project.

23 Your Honor, these assertions are simply not true. For
24 example, among many other things, as a direct recipient from
25 HUD of replacement housing for Cabrini, the Receiver is deeply

1 engaged in the development of the very first Cabrini
2 replacement units. These are the 44 units in the Mohawk North
3 development adjacent to Cabrini that you yourself drove right
4 by, and they were pointed out to you in the bus tour
5 Mr. Shuldiner took you on last year.

6 Now, recently Habitat submitted a public housing
7 development proposal to HUD as Receiver for CHA -- it says it
8 right on the cover -- for these very first replacement units in
9 that Mohawk North development. This is the October 24th
10 letter, also delivered to the Court and counsel last week.

11 These units, by the way, represent not only the first
12 replacement unit at Cabrini, but a potentially important
13 forward step toward mixed income housing for Gautreaux
14 plaintiff class families because they are part of and dispersed
15 throughout a market rate development.

16 Getting approval for these units from HUD is a big
17 deal, as you can easily see by the thickness of the development
18 proposal, which I'm not going to do anything more than show
19 you. These are two thick volumes. (Indicating.)

20 The cover page, which you received as part of the
21 letter that was given to you last week, says, CHA development
22 proposal, Cabrini extension, replacement units, 44 units, the
23 Habitat Company as Receiver for the Chicago Housing Authority
24 Scattered Sites Program, two volumes to get HUD approval for
25 those units. And it was Habitat, as Receiver, that submitted

1 that.

2 But another letter had to be sent, which was the
3 fourth and final letter delivered to you and counsel last week.
4 Why? Because on receipt of this huge two-volume development
5 proposal for the 44 Mohawk North replacement units, HUD pointed
6 out that a couple of the certifications contained in the
7 proposal, the development proposal, were made by CHA and not by
8 the joint venture.

9 You see, these first 44 units, replacement at Cabrini,
10 are part of the original 190 units your nunc pro tunc order
11 authorized the joint venture to develop. Under that order the
12 joint venture, not CHA, has development authority for the
13 units, so HUD wanted the certifications to come from the joint
14 venture, not from CHA. And that's what was done in the second
15 letter sent to HUD December 17, 1997. You have that letter and
16 what was delivered last week.

17 The letter explicitly says, by the way, that the
18 development proposal for these 44 units is submitted pursuant
19 to your order of ten years ago appointing Habitat as Receiver.

20 So much, your Honor, for the assertions that the
21 Cabrini HOPE VI project is going forward without any
22 involvement of the Receiver.

23 A final CHA subsidiary argument seeks to draw an
24 analogy between our current dispute here and your 1991
25 Kenwood/Oakland order as well as a Seventh Circuit decision in

1 Romney. Suffice it to say that our controversy here is about
2 developing new public housing, something clearly covered by the
3 judgment order, whereas the 1991 Kenwood/Oakland order involved
4 only rehabilitation of existing housing, something not covered
5 by the judgment order, as we discussed a few minutes ago, and
6 the Romney model city's order involved no housing at all.

7 Your Honor, you will be pleased to know I am ready to
8 conclude.

9 Even if in the face of the language of the judgment
10 order, the logic of the order and the conduct of the Court and
11 the parties under the order, you were to accept CHA's view that
12 the judgment order doesn't cover new HOPE VI housing, it would
13 be the responsibility of the Court, as we have argued in our
14 briefs, to exercise its, quote, inherent capacity to adjust
15 remedies under Freeman, 503 U.S. at 487, to see to it that the
16 remedial possibilities offered by the new HOPE VI funded public
17 housing aren't lost to the plaintiff class.

18 But given the language, the logic and the conduct of
19 the Court and the parties that we do have, the right answer is
20 not to reach that issue of inherent capacity to adjust
21 remedies, but simply to deny CHA's motion.

22 What is really at stake here, your Honor, is neither
23 the figment of a judgment order that fails to embrace
24 replacement housing, nor an imagined incompatibility between
25 the judgment order and HOPE VI.

1 What is really at stake is whether CHA shall be free
2 to replace its old high-rise ghettos with new low-rise ones
3 and, thereby, deny Gautreaux families the remedial
4 opportunities HOPE VI replacement housing holds out to them.

5 The judgment order in this case is all that prevents a
6 CHA, whose briefs don't even mention its desegregation
7 obligations, from once again taking great swaths of Chicago
8 neighborhoods and thousands of families who have not yet
9 received the relief they are entitled to, down the old familiar
10 path of least resistance to hyper-segregation and concentrated
11 poverty.

12 Happily, your Honor, the judgment order by reason of
13 its language, its logic and your enforcement orders entered
14 with the concurrence of all the parties, does stand in the way.

15 I thank you.

16 THE COURT: Thank you, Mr. Polikoff.

17 Before -- yes, Mr. Shakman, you want to say something
18 on behalf of the Receiver?

19 MR. SHAKMAN: Yes. On behalf of the Receiver, if you
20 would like to hear a little bit, we had some comments.

21 THE COURT: Sure.

22 MR. SHAKMAN: Really three points, your Honor.

23 First, Mr. Levin, who's present in court today and is
24 available to answer any questions the Court may have,
25 recognizes that he serves as the Court's agent and at the

1 Court's discretion. He has not sought to be and does not want
2 to be in an adversarial relationship with anybody, but he does
3 think to the extent he has information that bears on the issue
4 before the Court, it's appropriate that he present that to the
5 Court.

6 It's for that reason that we filed a brief on behalf
7 of the Receiver. And in the brief we pointed out that from the
8 beginning of the appearance on the radar screen of HOPE VI, the
9 Receiver has taken the position that he reads the Court's order
10 appointing the Receiver as requiring that the Receiver
11 construct all new housing that is not elderly housing, and that
12 that includes the HOPE VI program.

13 At times the CHA has agreed with that, and we have
14 attached a letter from Mr. Eisendrath that reflects that
15 agreement. At other times the CHA has not agreed with that, as
16 they do not agree now.

17 Throughout that process Mr. Levin has asked me to
18 emphasize his attitude has been to try to avoid unnecessary
19 disputes with the CHA or with anyone else and to find a way of
20 working through these problems. And he's often been able to do
21 that by agreement with the CHA; for example, by operating under
22 the title of development manager pursuant to an agreement with
23 the CHA, which has permitted him to fulfill what he understands
24 to be the obligation that he assumed when he became the Court's
25 Receiver, and to do so in a manner that has been acceptable to

1 the CHA and has avoided unnecessary disputes. That's point
2 one. I have two more points.

3 The second point I would like to make relates to
4 correcting some errors that are found in the CHA's last brief
5 that, of course, we didn't have an opportunity to respond to.
6 Part of those issues have been addressed by Mr. Polikoff and I
7 won't repeat what he has said. They relate to the Cabrini
8 Green project.

9 But one point he didn't focus on that the Receiver has
10 asked me to respond to, to mention, is this: The last brief
11 filed by the CHA states in passing, but it's one of those
12 passing comments that stings and hurts, that the Receiver has
13 sought to extract a three percent fee solely for its work on
14 these 44 townhouses that Mr. Polikoff just referred to.

15 The Receiver asked me to mention to the Court that its
16 involvement in Cabrini Green went way beyond that. It included
17 at least a thousand hours of effort, over a year-and-a-half in
18 planning the redevelopment project, in hiring architects, in
19 preparing the request for proposal that then generated ten
20 responses.

21 In reviewing all of those responses and meeting with
22 the city, with the Park District, with the Board of Education,
23 of course with HUD, of course with the CHA, and in formulating
24 plans and responding to a large redevelopment program, the
25 Receiver also developed initially in Kenwood/Oakland the

1 concept of using rental units on a long-term lease basis for
2 CHA resident housing, and that was then applied and that led to
3 this 44-unit development in Mohawk North that is actually the
4 first housing that -- new housing that Cabrini Green residents
5 have moved into.

6 When it came time to build the 44 units, the
7 Receiver's fee for that would have been \$120,000 computed at
8 the three percent rate. The CHA's brief does not mention that
9 the Receiver offered to accept less than that and, in fact,
10 accepted \$35,000. And the brief doesn't mention that this was
11 the first townhouse -- that the townhouse occasion was the
12 first occasion on which the Receiver could seek to be
13 compensated because it was the first project being built.

14 Perhaps this is more detail than the Court needs in
15 connection with the present motion. I simply wanted to put it
16 before the Court because we did not want to leave you with the
17 impression that those inappropriate comments by the CHA,
18 suggesting a mercenary attitude on the part of the Receiver,
19 were accurate.

20 Indeed, Mr. Eisendrath and Mr. Shuldiner, both of the
21 CHA, told the Receiver that they recognized that the Receiver
22 was entitled to be compensated for efforts made in connection
23 with Cabrini Green. The question was not whether but how it
24 should be structured, out of what project funds it should come.

25 So then I would like to come, if I may, to the third

1 point that the Receiver would like me to make. And he is, as I
2 mentioned, available in court to answer any questions the Court
3 may have.

4 The third point is this: That from the Receiver's own
5 experience in creating housing pursuant to the court order
6 appointing him as Receiver, he has something to say about
7 whether it is possible, as Mr. Polikoff says, or impossible, as
8 CHA says, to provide housing that meets both the goals of HOPE
9 VI and the goals of the Gautreaux receivership.

10 And what he has to say is this: If you look at the
11 material that's attached as Exhibit B to the initial motion
12 filed, the brief filed by CHA, it includes the guidebook
13 published by HUD. And the guidebook makes it quite clear that
14 the purposes of HOPE VI housing are, as Mr. Polikoff indicated,
15 quote, tearing down the eyesores that are often identified with
16 obsolete public housing and replacing them with homes that
17 complement the surrounding neighborhoods and are attractive and
18 marketable to the people they are intended to serve, end of
19 quote. And that they are, quote, intended to lessen
20 concentrations of poverty by placing public housing in non-
21 poverty neighborhoods or by promoting mixed-income communities
22 where public housing once stood, thereby ending the social and
23 economic isolation of public housing residents, end of quote.

24 What Mr. Levin would like me to mention to the Court
25 is that that is exactly what he has been doing in implementing

1 Gautreaux and in using HOPE VI funds, because ABLA and the
2 Horner Phase II are both Receiver projects that use HOPE VI
3 funds. So the notion of incompatibility is inconsistent with
4 what is actually happening in the field.

5 And in doing that, the objective that is reflected in
6 the HUD guidebook, which is a terribly important piece of
7 national policy as well as Gautreaux objective, of
8 deconcentrating and integrating public housing residents into
9 the community so that they have an opportunity for all of the
10 advantages that flow from that kind of deconcentration and that
11 kind of integration, economic, educational, employment
12 opportunities, many others -- that's precisely what the
13 Receiver has been doing in working with the community, because
14 there is an intensive community component in persuading
15 communities that CHA replacement housing will be an asset to
16 the community, in working with elected officials, in working
17 with HUD, in working with the CHA.

18 The message that I have been asked to deliver, and I
19 hope I have, is that there appears to be, to the Receiver, no
20 incompatibility whatsoever between those two programs; that is,
21 this Court's Gautreaux objectives and what the Receiver is
22 actually doing in implementing Gautreaux housing, in some cases
23 using HOPE VI funds.

24 If you have questions for Mr. Levin, he is available.

25 THE COURT: Thank you, Mr. Shakman.

1 Is there anybody from HUD here who wishes to address
2 the Court?

3 MR. JENSEN: Good morning, your Honor. I am Jon
4 Jensen. We did file a brief response.

5 THE COURT: I know you did.

6 MR. JENSEN: But we really had not been prepared to
7 address this particular issue, unless you had any questions for
8 us.

9 THE COURT: Well, by the fact that you have decided
10 not to file a brief and are not prepared to address the issue,
11 I take it that my ruling really is a non-issue as far as HUD is
12 concerned?

13 MR. JENSEN: I think that is true.

14 I guess the only point is, we decided -- HUD decided,
15 that is, to defer to the suggestion in CHA's original brief.
16 In a footnote in their brief they claim that the issue was not
17 who had development responsibility for HOPE VI funding but
18 whether HOPE VI funded activity was subject to the basic order
19 of the Court.

20 We had very definite opinions, very much reflected in
21 Mr. Shakman's brief of the Receiver, that indeed the Receiver
22 has all responsibility connected with the development, whether
23 HOPE VI or otherwise.

24 But CHA indicated in its footnote that that was not
25 the issue that was being presented to the Court. I think they

1 said that that would entail an entirely different briefing
2 schedule and -- a motion and entirely different briefing. HUD
3 as a department deferred to CHA's suggestion in that regard.

4 THE COURT: Thank you.

5 MR. JENSEN: Thank you.

6 THE COURT: Ms. Getzendanner?

7 (Brief pause.)

8 THE COURT: Let's take about a two-minute break for
9 this case so I can call one other case and let the lawyers go
10 on their way.

11 (Whereupon, the Court directed its attention to another
12 matter on its call, after which the following proceedings were
13 had herein:)

14 THE CLERK: Clerk 66 C 1459, Gautreaux versus CHA.

15 MS. GETZENDANNER: The CHA paid \$35,000 for these two
16 volumes. They have paid him nothing more, the Receiver.

17 The Receiver has no contract with respect to Cabrini
18 Green, he has no role with respect to Cabrini Green. He did
19 ask for a three percent fee based on the building of the
20 townhouses, and knowledge of that was more than the work he had
21 done for which he could be compensated. I believe that's what
22 he said. For the work where he could not be compensated, he
23 wanted that fee to cover that work and the CHA refused. It's
24 that simple.

25 There is no role for the Receiver at Cabrini Green and

1 that's been clear, I think, from the outset, since 1993.

2 To the extent that HOPE VI funds were made available
3 to this Court and to the Gautreaux plaintiffs, those were
4 pursuant to a set-aside that was negotiated back in 1993 when
5 HUD was still in the case.

6 Basically what happened was, HUD agreed to 350 units
7 that could be built with HOPE VI money, provided they got
8 credit under Gautreaux for it. And so that's what brought the
9 Gautreaux order into that 350 units.

10 HUD is no longer a party to the case, at least I don't
11 think -- has it been dismissed?

12 THE COURT: I believe so.

13 MS. GETZENDANNER: They're not here.

14 So the only time HOPE VI money has been used has been
15 for that, quote, replacement housing pursuant to a negotiated
16 deal between HUD, the Receiver and the plaintiff.

17 No other HOPE VI funds have been drawn down, nothing.
18 Nothing has been used at Cabrini Green. No HOPE VI funds are
19 used there. They haven't been drawn down yet. HUD is waiting
20 for the Court's order.

21 So there is no precedent here that HOPE VI funds have
22 been used willy-nilly for replacement housing. That's not what
23 has happened.

24 The public housing, a program that HOPE VI presents,
25 is wildly different from the Gautreaux judgment. We believe

1 there are geographic requirements in the HOPE VI program. The
2 whole thing talks about neighborhoods where distressed public
3 housing exists.

4 If CHA were to submit an application that met the
5 terms of the decree, it would provide 50 percent of any funds
6 used for new construction would be used in general areas. And,
7 Judge, it's the CHA's position that that is a non-starter.
8 That will not be approved by HUD.

9 THE COURT: I think HUD has had the opportunity to
10 speak to that point and apparently has chosen not to.

11 MS. GETZENDANNER: Pardon?

12 THE COURT: I say, HUD has had the opportunity to
13 speak to that point and apparently has chosen not to.

14 MS. GETZENDANNER: There's no question that we have a
15 letter from HUD that says that we cannot draw down the HOPE VI
16 funds unless we get this Court's approval, and that's what
17 drove us to file our motion. And we do not believe that the
18 Court has jurisdiction over the HOPE VI funds.

19 The HUD lawyer who wrote the letter, I am told, was
20 reprimanded for writing that letter. I don't think there's any
21 basis for HUD's conclusion that the injunction governs HOPE VI.

22 They looked at the order appointing the Receiver,
23 which is different. The Receiver has no authority if the
24 plaintiffs have no authority. So the fact that the Receiver's
25 order is broadly stated is not terribly relevant to what we are

1 raising with this Court, which is, what is the scope of this
2 injunction.

3 Now, I think the best way to talk about why HOPE VI
4 isn't covered by the injunction is to assume that it is. If
5 HOPE VI applies to -- or, I'm sorry, if the injunction applies
6 to HOPE VI, what will happen is that to present a competitive
7 application to HUD we will need a waiver from this Court. We
8 cannot submit a program that calls for 50 percent of new
9 construction in general areas.

10 It's the waiver process that is the most intrusive,
11 and we've spent a lot of time in our briefs talking about the
12 waiver process. But here's how it goes in reality: CHA needs
13 to get a waiver from the Court to do a HOPE VI program. That
14 means the Court will ask us to negotiate with Mr. Polikoff, as
15 plaintiffs' representative. And that's a perfectly appropriate
16 thing for the Court to do, to ask the parties to sit down --

17 THE COURT: It's gone on for a couple decades.

18 MS. GETZENDANNER: Yes, no question about it. So we
19 will sit down and negotiate.

20 Mr. Polikoff will begin the negotiations by first
21 examining what neighborhood it is we're focusing on; next, what
22 buildings do we want to demolish; next, what buildings do we
23 want to rehabilitate; next, where are we going to build the
24 replacement housing; and then it's going to go all the way down
25 to tenant selection and then to all of the other miscellaneous

1 things that were brought to the attention of the Court by the
2 Receiver in connection with Horner.

3 So the negotiation that would be required by the
4 Court, and properly so, would bring the plaintiffs into the
5 whole program. It's very intrusive. I don't think that their
6 statement that all they care about is new construction -- the
7 new construction of new units is just part of the whole. It's
8 part of the whole program designed by CHA.

9 So they are going to want to negotiate from the
10 beginning, and in order to get an agreed waiver we would have
11 to negotiate.

12 Now, when CHA negotiates and they agree on a waiver
13 and they bring it to you, they're not happy with that order.
14 That's what they've been able to negotiate. That's not what
15 they wanted, it's not what they hoped for, but it was what they
16 were able to negotiate. So you would be subjecting the entire
17 HOPE VI program to that process because you cannot expect any
18 application to meet the HOPE VI objectives and comply with the
19 injunction. The injunction will have to be waived.

20 And I think when you look at it that way, how can the
21 injunction cover this, this whole program, which is designed to
22 rehabilitate neighborhoods which are in limited areas? I don't
23 -- all the social services, for example -- 20 percent of the
24 funds have to be used for social services. I don't think you
25 can build the units in general areas and have social services

1 make any difference.

2 The whole thing is pointing to neighborhood
3 redevelopment and it's a new program. We cannot agree to waive
4 the HOPE VI requirements. CHA has no power to do that.

5 I think when HUD was in the case this Court had a lot
6 of authority because the HUD consent decree required them to
7 build so many new units, but that authority is now gone. The
8 Court can't tell HUD what to do, and I don't think the Court
9 would want to. I think that really would interfere with the
10 federalism concerns.

11 Mr. Polikoff argued in terms of HOPE VI presents an
12 opportunity for desegregation opportunities for his class.
13 HOPE VI does not provide a desegregation opportunity in the
14 general areas; it simply does not. And that's what the whole
15 injunction is tilted toward, building in general areas. It's a
16 way to achieve integration. It's a 30-year-old way; it's not
17 the way Congress is doing it today.

18 THE COURT: What about the language in the HOPE VI
19 manual? It seems to be consistent with the aims of the
20 plaintiffs.

21 MS. GETZENDANNER: Judge, think of the general areas
22 in the City of Chicago. How can building in the few remaining
23 general areas in the city help the reconstruction of the Robert
24 Taylor home neighborhood? It can't. It's unconnected. It's
25 not part of the program. It's an integrated program, it

1 requires demolition, rehabilitation, Section 8 certificates,
2 building of new replacement units and social services, job
3 training, the whole thing, all devoted to that neighborhood.
4 And the goal is to make it an economically diverse
5 neighborhood.

6 I don't think you can take a line out of a handbook
7 and ignore the legislative history, the language of the
8 statute, the fact that this is a new program that's supposed to
9 reform public housing policy. It's a brand new program. It's
10 never been before this Court before in this context directly:
11 Does HOPE VI apply? Is it governed by the injunction?

12 The CHA is required under HOPE VI to work with the
13 local government, which is the City of Chicago. There's no
14 requirement to -- there's no opportunity to use HOPE VI funds
15 for any remedial injunctive relief. After the Cisneros
16 set-aside for the 350 units, Congress amended the act and said
17 that's not going to happen again. So there really is no
18 opportunity to use those monies for the Gautreaux remedy.

19 We did not respond to the cases cited in
20 Mr. Polikoff's brief -- he made that point -- because they are
21 general statements and totally inconsistent with the Seventh
22 Circuit.

23 So if you look at the Seventh Circuit law, I don't
24 think since alliance to end repression, which was my case -- I
25 don't think there's been a consent decree that the Seventh

1 Circuit hasn't sent back for re-writing, which I think the
2 Rockford case -- or totally rejected; they set it aside. So no
3 consent decree has survived Seventh Circuit scrutiny.

4 I think there was a recent case --

5 THE COURT: CHA has never moved to terminate the
6 consent decree.

7 MS. GETZENDANNER: Nor do we want to, Judge.

8 THE COURT: With your track record in the Seventh
9 Circuit, it might be in your interest to do so.

10 (Laughter.)

11 MS. GETZENDANNER: We think that the evidentiary
12 battle necessary to establish the grounds for changing the
13 injunction would be very divisive for the community. You know,
14 is there segregation, who's responsible for it, what impact
15 does white flight have on it, what impact does any number of
16 factors have to do with it. We don't want that fight, Judge.
17 We don't want it for the community.

18 The Gautreaux remedy should stay in place. In the
19 event future funding is made available which would permit the
20 CHA to build housing in general areas, where we have an
21 opportunity to use that funding for that purpose, a Gautreaux
22 remedy will be there. Perhaps at that time we will move to
23 vacate the decree, but there is no need to do that now.

24 Just as the Court held that the Section 8 certificates
25 are not governed by this decree, there is no distinction

1 between that analysis and the HOPE VI funds.

2 We agree that the HOPE VI new construction, forgetting
3 that it is replacement housing, that does fall within the
4 definition of dwelling unit, no question about it. But we are
5 asking the Court to construe the injunction in a way that's
6 consistent with its requirements, and its requirements are
7 geographical.

8 Judge Austin required the building of housing in
9 general areas. He said, if you're going to build, build one
10 here and three there, and now it's 50/50. And those kinds of
11 requirements only are applicable to new housing, housing that
12 adds to the stock.

13 THE COURT: How do you square that with the language
14 that Mr. Polikoff read about replacement housing in the decree?

15 MS. GETZENDANNER: In the what?

16 THE COURT: How do you square that with the language
17 that Judge Austin used which specifically dealt with
18 replacement housing, the language that Mr. Polikoff read
19 before?

20 MS. GETZENDANNER: I don't recall him saying that.

21 THE COURT: Okay.

22 MS. GETZENDANNER: Surely the rehabilitation process
23 of existing housing was left to the CHA.

24 Mr. Polikoff, what did you say?

25 THE COURT: Well, he will have a chance in a minute.

1 MS. GETZENDANNER: I would like to respond. I just
2 don't recall what he said.

3 THE COURT: I will let you respond to that later, if
4 need be.

5 MS. GETZENDANNER: Okay.

6 I don't think that the Court should interpret the
7 order as applying to HOPE VI because it is, in effect, an
8 injunction against the CHA from applying for the funds. That's
9 exactly the essence of it.

10 The CHA knows they're not going to get funds if you're
11 going to build in general areas, so we can't apply. And we
12 would suggest to the Court that that's as a result of the court
13 order. And that raises concerns, federalism concerns,
14 separation of power concerns, which we have addressed in our
15 brief.

16 Judge, the program, the HOPE VI program, cannot be cut
17 into pieces. It's an integrated, complex solution. Congress
18 has said it's new, it's to reform a new way of thinking about
19 public housing. It is clearly designed to repair neighborhoods
20 that have been destroyed by distressed public housing.

21 There is no possibility that we can apply for funds
22 and expect to use those funds for general areas.

23 We've gone back and forth in our briefs about who said
24 what to whom. And again, we don't want an evidentiary battle
25 here, but there are some things that are in the record,

1 including the letters Mr. Polikoff sent to you. But there are
2 also clear indicia that plaintiffs have known for years that
3 HOPE VI funds were not considered to be under the injunction.

4 On July 11, 1996, Mr. Cisneros wrote to Mr. Polikoff,
5 and that's at Exhibit D attached to our original memorandum,
6 and he says, as a matter of law we cannot use HOPE VI funds as
7 a set-aside for Gautreaux. As a matter of law we can't do
8 that. A set-aside to the Receiver is not appropriate because
9 the statute in the first instance leaves to the public housing
10 authority's discretion whether it wants to apply for a HOPE VI
11 grant at all and how it would want to use the funds for which
12 it applies.

13 So that's a clear statement by the then secretary of
14 HUD that the HOPE VI money could not be used for the Gautreaux
15 remedy, and this is after the 1993 set-aside, which did get
16 through but which Congress then condemned with an amendment to
17 the law. I withdraw condemned. They made sure it wasn't going
18 to happen again.

19 So the plaintiffs have known. We think that their
20 application on the Section 8 certificates is pretty positive
21 proof that they didn't think HOPE VI was governed.

22 There's nothing in the record that should be binding
23 on the CHA that their view is that the injunction covers HOPE
24 VI funds. I don't think there's anything in Edwin Eisendrath's
25 letter from several years ago; I don't think there's anything

1 in the record that should be binding on the CHA.

2 The CHA has taken the position since 1993 that HOPE VI
3 funds are outside the scope of the decree.

4 Thank you.

5 THE COURT: Thank you, Ms. Getzendanner.

6 I have a couple of questions of Mr. Polikoff, which I
7 will let you respond to, if you wish.

8 First of all, as a practical matter, assuming that the
9 social service and job training dollars of HOPE VI are used in
10 the area where the housing is demolished, how will the social
11 service and job training dollars be available in the general
12 areas? Is that a logistical problem?

13 MR. POLIKOFF: It isn't a problem because the
14 objective is not one that's required or even sought. I have an
15 example of that at Horner, which I will give you in a moment.
16 Even though it's not a HOPE VI project, it presents the
17 identical question you're raising.

18 I want to make it clear at the outset, in answering
19 your question, that as I think is plain but it keeps getting
20 blurred in CHA's written and oral presentations, we are not
21 talking about all of HOPE VI funding and programs, including
22 specifically the one you used in your question, the social
23 service programs. We have not suggested, are not suggesting,
24 we do not intend to suggest that your orders cover in any way
25 the social service programs --

1 THE COURT: No, and I understand that completely.

2 MR. POLIKOFF: Okay.

3 THE COURT: I am just concerned about whether the
4 persons in the new housing in the general areas will, by
5 necessity, not have the benefit of the HOPE VI dollars for
6 these other ancillary activities.

7 MR. POLIKOFF: It's up to CHA, your Honor, and I refer
8 to the example of Horner. In Horner a vote was taken -- which
9 is not a HOPE VI project but which CHA acknowledges in its
10 brief in many respects is like a HOPE VI project.

11 The tenants were given an opportunity to express their
12 choice with respect to the form of replacement housing, on
13 site, in the neighborhood, in other neighborhoods, scattered
14 site or Section 8. Roughly about half chose one, half chose
15 the other. So half of the Horner people have been dispersed to
16 other neighborhoods of the city.

17 Are the job training dollars, if there were any at
18 Horner, all the social services activities at Horner, to follow
19 those people to West Rogers Park? That's for CHA to decide or
20 not to decide. I think it's pretty clear that they are not.

21 Indeed, there was supposed to be a family needs
22 assessment taken under the Horner consent decree of all of the
23 people, and my understanding is it's pretty well decided not to
24 take such an assessment of people who have chosen to leave.
25 But even if it is taken, not to follow up the services.

1 Ms. Getzendanner is right when she says there is a
2 neighborhood focus to HOPE VI activities, and the focus on the
3 neighborhood of the job training dollars would be perfectly
4 appropriate.

5 If CHA wanted to offer any of those social services to
6 people who moved, it would be up to them. They could do that;
7 nothing to prevent them. We are not asserting, have not
8 asserted, any claim by a Gautreaux on anything but the
9 replacement housing, where it's located.

10 THE COURT: Okay.

11 Ms. Getzendanner --

12 MR. POLIKOFF: By the way, I want to add a footnote to
13 what I just said. That's consistent with the language of HOPE
14 VI. HOPE VI talks, as I quoted to you, about replacement
15 housing going into non-poverty neighborhoods. There is not one
16 indication in the statute or the guidebook that the HOPE VI
17 proponent, in this case CHA, has got to follow those people
18 into non-poverty neighborhoods with job training.

19 The whole theory of desegregation is that if you
20 enable families to move into non-poverty neighborhoods, they
21 would be forced to get into places where security is better,
22 where access to jobs is better, where schools is better and
23 they have a lesser need by reason of their location for social
24 services.

25 THE COURT: You quoted some language earlier of Judge

1 Austin's that applied to replacement housing in particular.

2 Ms. Getzendanner, I think --

3 MR. POLIKOFF: Yes. I think Ms. Getzendanner is -- it
4 pains me to say this, your Honor -- right and that we were not
5 right in this respect.

6 THE COURT: All right.

7 MR. POLIKOFF: I think what she is referring to and
8 what you were asking about was language that I quoted from the
9 judgment order.

10 THE COURT: Okay.

11 MR. POLIKOFF: And it referred -- it didn't use the
12 word replacement. It did talk in terms of housing provided
13 directly or indirectly by CHA, whether in a structure owned in
14 whole or in part by CHA, whether or not newly constructed or
15 not, et cetera. It did not use the word replacement.

16 THE COURT: It did not use the word replacement.
17 Okay. That's fine.

18 It's your contention that that language embraces
19 replacement housing, is that correct?

20 MR. POLIKOFF: Well, not only the language embraces
21 it, but as I argued, that's the rational thrust of the order,
22 because through replacement housing you can provide
23 desegregation opportunities. But, also, that your prior
24 orders, the nunc pro tunc and subsequent orders --

25 THE COURT: I understand my prior orders. I just want

1 to make sure we all have the same reference to Judge Austin's
2 --

3 MR. POLIKOFF: When I say embraces -- answer you
4 affirmatively by saying, yes, it's my contention it embraces
5 replacement housing, I mean that not because it says that in so
6 many words, but that it obviously sought to cover all kinds of
7 housing provided by CHA which could be used to provide
8 desegregation opportunities, and replacement housing answers
9 that description.

10 THE COURT: Okay. Thank you.

11 MR. POLIKOFF: Thank you, your Honor.

12 THE COURT: Do you want to reply to either of those
13 points, Ms. Getzendanner?

14 MS. GETZENDANNER: No. I'm happy to have his
15 concession.

16 MR. SHAKMAN: Mr. Levin asked me if I would poke my
17 nose in for a moment. May I?

18 THE COURT: Sure.

19 MR. SHAKMAN: He asked me to make this point, that
20 Cabrini, Horner II, which is a HOPE VI program, and ABLA, which
21 involves HOPE VI money, none of those required a waiver from
22 Gautreaux to permit a HOPE VI application. He asked me to
23 underscore that point for the Court.

24 Therefore, the statement that automatically you must
25 have a Gautreaux waiver in order to implement a HOPE VI

1 activity, for example, in those revitalizing areas, is not
2 correct.

3 And I am going to resist the urge to further debate
4 the scope of the --

5 THE COURT: You don't have to debate any ancillary
6 issues. I understand your position.

7 MR. POLIKOFF: Your Honor, might I make one more
8 observation?

9 THE COURT: Yes.

10 MR. POLIKOFF: Ms. Getzendanner has repeatedly said,
11 both today and in the briefs, they couldn't file a HOPE VI
12 application that provided 50/50. The answer is that in your
13 Horner order you have clearly recognized that housing on site,
14 if done under the right conditions imposed by your orders, as
15 at Horner, mixed income and so on, under revitalizing
16 conditions, is an alternative way of providing desegregation
17 opportunities to the plaintiffs. And the Horner precedent
18 stands against the contention that the only way is to do 50/50.

19 THE COURT: Okay. Thank you.

20 MS. GETZENDANNER: Your Honor, I just make the
21 observation that there's your orders to which we could agree --
22 CHA could agree to those orders. The CHA cannot agree to
23 divert money from HOPE VI to general areas.

24 THE COURT: Okay. Thank you very much.

25 I will rule in due course and due course will be soon.

1 Thank you.

2 MR. POLIKOFF: Thank you, your Honor.

3 (Which were all the proceedings had at the hearing of
4 the within cause on the day and date hereof.)

5 CERTIFICATE

6 I HEREBY CERTIFY that the foregoing is a true,
7 correct and complete transcript of the proceedings had at the
8 hearing of the aforementioned cause on the day and date hereof.

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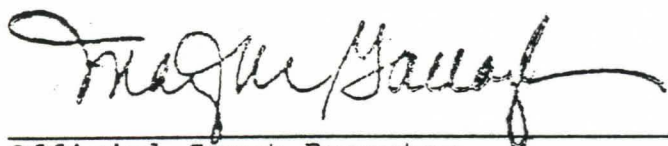
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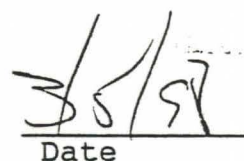
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Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division


Date

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

RECEIVED

DOROTHY GAUTREAUX, et al.,

JUN 19 1998

Plaintiffs,

Judge Marvin E. Aspen
U.S. District Court

v.

66 C 1459

CHICAGO HOUSING AUTHORITY, et al.,

Hon. Marvin Aspen

Defendants.

JOINT MOTION OF DEFENDANT CHICAGO HOUSING AUTHORITY,
THE RECEIVER, AND THE PLAINTIFFS
FOR AN AGREED ORDER DESIGNATING ABLA REVITALIZING AREA AND
AUTHORIZING DEVELOPMENT OF PUBLIC HOUSING UNITS THEREIN

Defendant Chicago Housing Authority ("CHA"), Daniel E. Levin
and The Habitat Company (the "Receiver"), and the plaintiffs
respectfully move the Court as follows:

A. To designate as the ABLA Revitalizing Area
("Revitalizing Area") that portion of the City of Chicago that
lies within the following boundaries: on the west, Ashland
Avenue; on the south, the Burlington Northern Railway tracks
immediately south of 15th Street; on the east along Racine Avenue
from such Burlington Northern Railway tracks to Blue Island
Avenue, northeast along Blue Island Avenue to Roosevelt Road,
west along Roosevelt Road to Racine Avenue, and north along
Racine Avenue to Cabrini Street; and on the north, along Cabrini
Street to Loomis Street, north along Loomis Street to Polk
Street, and west along Polk Street to Ashland Avenue.

B. To authorize the development of such number of new non-
elderly public housing units within the Revitalizing Area subject

to such conditions as are specified by further orders of the Court.

In support hereof, the parties state as follows:

1. In collaboration with the City of Chicago, CHA and the Receiver have been preparing an application to be submitted to the United States Department of Housing and Urban Development ("HUD") for a grant of \$35 million for the proposed ABLA Revitalizing Area pursuant to HUD's Notice of Funding Availability under the HOPE VI program published in 63 Federal Register 15577-84, March 31, 1998. The application is the first step in a competitive process by which HUD may award up to \$35 million for HOPE VI authorized activities to each successful applicant.

2. The application will propose to redevelop CHA's ABLA housing development by adding substantial components of market-rate housing and "affordable" housing to the Revitalizing Area to be marketed to persons with incomes above 120 percent and from 80 to 120 percent of area median income, respectively, and by demolition and rehabilitation of existing, and development of new, public housing within the Revitalizing Area, such that upon completion of the proposed redevelopment activity public housing units will comprise no more than approximately 37.5 percent of a total of approximately 2,895 residential units within the Revitalizing Area and will be dispersed geographically throughout the Revitalizing Area, thereby creating opportunities for economically integrated, and over the longer term the possibility of racially integrated, housing for plaintiff class families.

Specifically the application will propose that of a total of approximately 2,895 residential units within the Revitalizing Area, 1,084 units would be public housing units initially occupied by persons with incomes 0-35 percent of area median income, 845 non-public housing units would be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units would be occupied by persons with incomes in excess of 120 percent of area median income.

3. By arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of \$24,483,250 in FY1996 for a portion of the Revitalizing Area. The current HOPE VI application contemplates and proposes that this prior grant would be utilized in conjunction with the grant currently being applied for.

4. As specified in the proposed HOPE VI application, the City of Chicago will commit substantial resources to the proposed redevelopment of the Revitalizing Area, including but not limited to tax credits under the City's low-income housing tax credit program and financing under the City's multi-family rehabilitation and new construction programs for the development of new housing. The City has also agreed to consider the use of community development block grant funds, the development of a tax increment financing district, and the sale of tax-exempt bonds, all for the further support of redevelopment in the Revitalizing Area.

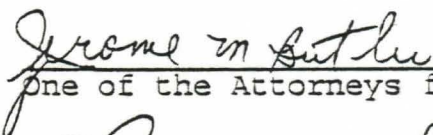
5. The Revitalizing Area lies within a section of the City of Chicago that is undergoing substantial institutional and market-driven development activity. A short distance to the west

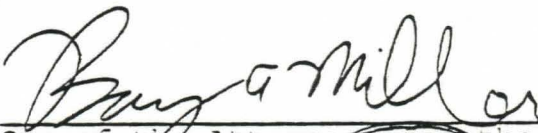
lies the Illinois Medical Center District. A short distance to the east lies the University of Illinois, Chicago. Both institutions have already carried out substantial development activity and have plans for further such activity. Surrounding and nearby neighborhoods already evidence strong commercial and market-rate housing activity.

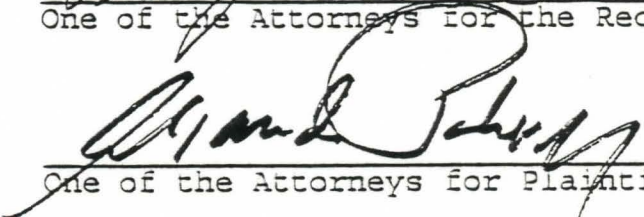
6. Based on the foregoing movants believe that should the Receiver and CHA receive a FY1998 HOPE VI grant for the Revitalizing Area, a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made for the Area.

7. For the foregoing reasons, movants respectfully request entry of an order designating an ABLA Revitalizing Area and authorizing the development of public housing units therein. A proposed form of order is attached hereto.

Respectfully submitted,


One of the Attorneys for CHA


One of the Attorneys for the Receiver


One of the Attorneys for Plaintiffs

June 18, 1998

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Chicago Housing Authority
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Barry A. Miller
Edward W. Feldman
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Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570; fax: 312/641-5454

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.	)	Hon. Marvin Aspen
	)	
Defendant.	)	

O R D E R

This matter coming on to be heard on the joint motion of the parties and the Receiver for an order designating an ABLA Revitalizing Area ("Revitalizing Area") and authorizing the development of non-elderly public housing units therein; and

The Court having heard the presentations of the parties and the Receiver respecting, and being advised that the City of Chicago supports entry of, the proposed order; and

The Court being further advised that the Receiver and the defendant, Chicago Housing Authority, in collaboration with the City of Chicago, are engaged in the preparation of an application for a FY1998 HOPE VI grant of \$35 million for the ABLA Revitalizing Area to be submitted by them to the United States Department of Housing and Urban Development (HUD) on or before June 29, 1998; and

The Court also being advised that by arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of \$24,483,250 in FY1996 for a portion of the Revitalizing Area, and that the

current HOPE VI application contemplates and proposes that this prior grant be utilized in conjunction with the grant currently being applied for; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be developed in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view, based on the presentations of the parties and the Receiver, that subject to appropriate terms and conditions such a forecast can be made with respect to the Revitalizing Area should the Receiver and the defendant, Chicago Housing Authority (CHA), be awarded a FY1998 HOPE VI grant therefor pursuant to their proposed joint application;

IT IS HEREBY ORDERED:

1. Effective upon advice to the Court from the parties that a FY1998 HOPE VI grant has been made to the Receiver and CHA pursuant to a joint application to be submitted by them to HUD respecting the Revitalizing Area, the Court designates as the ABLA Revitalizing Area that portion of the City of Chicago that lies within the following boundaries: on the west, Ashland Avenue; on the south, the Burlington Northern Railway tracks

immediately south of 15th Street; on the east along Racine Avenue from such Burlington Northern Railway tracks to Blue Island Avenue, northeast along Blue Island Avenue to Roosevelt Road, west along Roosevelt Road to Racine Avenue, and north along Racine Avenue to Cabrini Street; and on the north, along Cabrini Street to Loomis Street, north along Loomis Street to Polk Street, and west along Polk Street to Ashland Avenue; and

2. Subject to such terms and conditions as are specified by further orders of the Court, the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area, which is the approximate number of public housing and total residential units within the Revitalizing Area presently contemplated by such grant application, as part of an overall development including approximately 845 non-public housing units to be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units to be occupied by persons with incomes in excess of 120 percent of area median income.

ENTER:

Marion E. Caper

June 19, 1998

RECEIVED

DEC 3 1993

Judge Marvin E. Aspen
U.S. District Court

V.

66 C 1459

66 C 1460

(Consolidated)

CHICAGO HOUSING AUTHORITY and HENRY
CISNEROS, Secretary of Department of
Housing and Urban Development

Defendants.

DOCKETED

DEC 15 1993

AGREED ORDER

all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including: (1) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (1) submission to HUD of applications for funding, development programs and other documents (Order, pp. 2-3);

AA-85

WHEREAS, on August 3, 1993 in a status conference with the parties conducted by telephone, the Court approved a Joint Venture Agreement between the Receiver and the Chicago Metropolitan Housing Development Corporation, an affiliate of CHA, for the development of the 350 Demonstration Program units, which agreement contemplated the possibility that the Joint Venture would seek authority to develop 18 units of scattered site housing in the North Lawndale area (as replacement for 18 public housing units proposed to be demolished in that area) and 25 units of scattered site housing under the Family Self-Sufficiency Program (Agreement, p. 5);

WHEREAS, CHA has submitted applications to HUD for funding to develop such 18 scattered site units and such 25 scattered site units, as well as for 377 units of additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing units proposed to be demolished;

WHEREAS, the 18 scattered site units proposed to be constructed in the North Lawndale area are in the Limited Public Housing Area as defined by previous Court orders; and

WHEREAS, believing that it is in the best interests of the Gautreaux plaintiff class that the Joint Venture be authorized to develop the scattered site units referred to above, the parties are in agreement that the aforementioned Court orders should be modified as set forth below;

THEREFORE, IT IS HEREBY ORDERED THAT:

1. CHA shall be deemed, nunc pro tunc, to have had the authority to apply for funding for the development of 18 units of

scattered site housing in the North Lawndale area as replacement for 18 units of public housing proposed to be demolished in that area, 25 units of scattered site housing under the Family Self-Sufficiency Program, and 377 additional scattered site units (Projects IL06-P002-180 and P002-182) to replace certain other public housing proposed to be demolished, provided, however, that unless otherwise ordered by this Court all future funding applications for scattered site development shall be submitted by the Receiver in accordance with the August 14, 1987 Order of this Court;

2. The Joint Venture is hereby authorized to develop such 18 units of scattered site housing in the North Lawndale area of Chicago, a Limited Public Housing Area, in addition to the 350 Demonstration Program units previously authorized;

3. The Joint Venture is hereby authorized to develop such 25 units of scattered site housing under the Family Self-Sufficiency program, in addition to the 350 Demonstration Program units previously authorized, subject to further orders of this Court, if necessary, respecting the location of such units;

4. The Joint Venture is hereby authorized to develop such numbers of units of scattered site housing as HUD may authorize pursuant to such CHA applications for funding for 377 additional scattered site units to replace certain other public housing units proposed to be demolished, subject to further orders of this Court, if necessary, respecting the location of such units; and

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

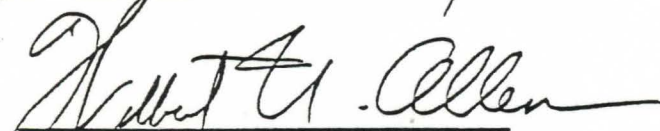
ENTERED:

December 10, 1993


United States District Judge

AGREED TO ON BEHALF OF:


Plaintiffs

 12/1/93
Chicago Housing Authority

U. S. Department of Housing
and Urban Development

Receiver

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

M. G. L.

December 10, 1993

United States District Judge

AGREED TO ON BEHALF OF:

[Signature]
Plaintiffs

[Signature] 12/1/93
Chicago Housing Authority

[Signature]
U.S. Department of Housing
and Urban Development

Receiver

5. Except as provided above, all other currently effective orders of the Court in these consolidated cases shall remain in full force and effect.

ENTERED:

December __, 1993

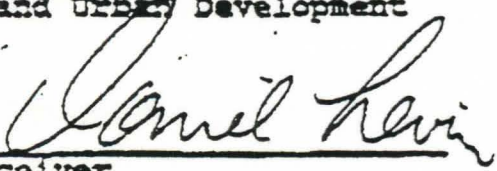
United States District Judge

AGREED TO ON BEHALF OF:

Plaintiffs

Chicago Housing Authority

U. S. Department of Housing
and Urban Development


Receiver

DANIEL LEVIN

TITE HABITAT COMPANY

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

DOROTHY GAUTREAU, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
	)	
Defendants.	)	

O R D E R

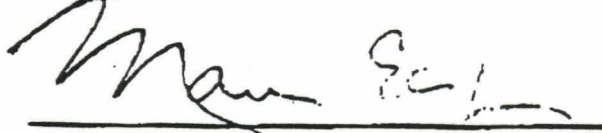
This matter coming on to be heard on the presentations of the parties, and the Court having heard the same, it is hereby ordered:

1. The Court hereby designates as the Horner Revitalizing Area ("HRA") that portion of the City of Chicago that lies between Damen Avenue on the East, Western Avenue on the West, Lake Street on the North, and the Eisenhower Expressway on the South.
2. Notwithstanding any other order in this cause, the joint venture between the Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority ("CHA"), and Chicago Metropolitan Housing Development Authority, CHA's not-for-profit development affiliate, may arrange for the development of such number of public housing units within the HRA, subject to such conditions, as may be approved and specified by further order of

the Court.

3. The Court has examined and now hereby approves
Paragraphs 2.C, 8, 14 and 15 of the proposed Consent Decree in
Henry Horner Mothers Guild v. CHA, 91 C 3316 (USDC N.D. Ill).

ENTER



March 9, 1995

Alexander Polikoff
Julia Elena Brown
Business and Professional People
For the Public Interest
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570

RECEIVED

AUG 14 1995

Judge Marvin E. Aspen
U.S. District Court

Plaintiffs,

V.

Defendants.

66 C 1459

66 C 1460

(Consolidated)

O R D E R

This matter came on to be heard on the motion of plaintiffs, pursuant to this Court's order of March 9, 1995, which authorized public housing units to be provided within the Horner Revitalizing Area ("HRA") subject to a further order of Court specifying the number of such units and the conditions relating thereto, and which approved certain paragraphs of a proposed consent decree in Henry Horner Mothers Guild v. CHA and HUD, 91 C. 3316 (USDC N.D. Ill.) ("Horner litigation"); and

The Court having heard the presentation of plaintiffs in support of their proposed further order, including advice of a Settlement Agreement in the Horner litigation, signed August 7, 1995; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the HRA respecting the appropriate number of public housing units to be

provided therein and the conditions to be made applicable thereto, and that they join in plaintiffs' motion, believing that the further order proposed by plaintiffs embodies both an appropriate number and appropriate conditions as contemplated by this Court's order of March 9, 1995; and

The Court having heard the presentations of the defendants, U. S. Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") with respect to said proposed further order; and

The Court being cognizant that the principle remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the HRA if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

(1) In the event the five buildings owned by CHA at 2111, 2145, 2029 and 2051 West Lake Street, and at 124 North Hoyne Street, containing 466 dwelling units in the aggregate, are

demolished, the Receiver shall be free to provide within the HRA, through new construction and/or acquisition with rehabilitation, 466 replacement dwelling units, provided, however, that one-half of such replacement dwelling units are occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and that such units are geographically distributed approximately evenly among replacement dwelling units, and provided further that in accordance with paragraphs 2(a) and 2(c) of a Settlement Agreement in the Horner litigation signed August 7, 1995, and subsequently approved by the Court in that litigation, of which this Court has been advised and a copy of which has been attached hereto and is hereby incorporated by reference, the parties shall be free to seek a modification of such number of replacement dwelling units to be provided within the HRA;

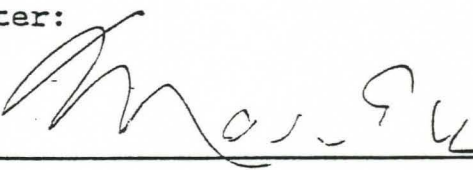
(2) Plaintiffs shall be free to allocate up to \$20 million of the fiscal year 1995 "set-aside" available to them under the Consent Decree approved by this Court in 66 C 1460 to aid in implementing paragraph (1) of this Order, and the Receiver may build and CHA may provide on a priority basis to families who reside in the CHA developments known as Henry Horner Extension, Henry Horner Homes and Henry Horner Annex ("Horner residents"), scattered site units pursuant to paragraph (3)(b) of this Order, provided that scattered site units furnished to residents of the Henry Horner Extension shall be made available without reimbursement therefor from funding supplied under the Consent

Decree in the Horner litigation; and

(3) The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified (a) to afford Horner residents a priority to be housed in one-half of the replacement dwelling units in the HRA as to which the income requirement specified in paragraph (1) of this Order does not apply, and to provide for occupancy of the other half of such replacement dwelling units by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and (b) to afford Horner residents who elect scattered site units in Phase I of the Horner Revitalization Program a priority to be housed in one-half of future scattered site units to be provided by the Receiver elsewhere than in the HRA, all upon presentation of appropriate orders therefor.

August 14, 1995

Enter:



Judge

SETTLEMENT AGREEMENT - August 4, 1995

1. The Horner plaintiffs agree to the demolition of 466 units at the two Horner Extension highrises (2111 W. Lake and 2145 W. Lake) and the three Horner Extension midrises (2029 W. Lake, 2051 W. Lake and 124 N. Hoyne). Demolition of the two Extension highrises shall commence upon approval of this Agreement by Judge Zagel on August 7, 1995, provided however that demolition shall not interfere with the heating plant for 124 N. Hoyne and 2051 W. Lake, and shall not be completed until after the tenants currently residing at 124 N. Hoyne and 2051 W. Lake are relocated pursuant to Paragraph 4 below. Demolition of the 124 N. Hoyne property will occur immediately after the current residents of 124 N. Hoyne have been relocated pursuant to Paragraph 4 below. Demolition of the other two Extension midrises shall occur once CHA has clear title to the land, construction contracts have been let, building permits secured and construction has begun on 203 or more units (see Paragraph 2(c) below) to be occupied by very low income Horner residents on the sites of 2111 W. Lake, 2145 W. Lake and 124 N. Hoyne ("Superblock B") and on sites in other areas of the Horner Revitalization Area.

2. (a) CHA agrees to provide 466 units of replacement housing to be occupied by very low-income Horner residents residing at 2051 W. Lake, 124 N. Hoyne, 2245 W. Lake, 2215 W. Lake, the Annex (if they permanently choose to leave), 1847 W. Lake, 141 W. Wolcott, and as many tenants as are feasible residing at 120 N. Hermitage/111 N. Wood. The location of these units, and the type of units (Section 8, scattered-site or near west side) shall be

determined in accordance

Extensive

determined in accordance with the already completed vote of the Extension residents, and in accordance with a vote by 267 additional residents of the Homes and Annex from the previously mentioned buildings, which vote shall occur within one hundred twenty (120) days of the date this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. At least 233 of these very low-income units shall be located in the Horner Revitalization Area. If more than 50% of the Homes/Annex residents elect near west side replacement housing, the parties will negotiate as provided in Paragraph 2 (c) below respecting the accommodation of additional Horner families in the Horner Revitalization Area. The parties understand that 233 or more units for working families (i.e., low income public housing families with incomes between 50% and 80% of area median income) also shall be included in the Horner Revitalization Area, subject to further negotiations by the parties after review of income and other data relating to working families already living in the Horner Revitalization area. The parties further understand that pursuant to an order to be entered in the Gautreaux case on August 14, 1995, 50% of all scattered-site units ready for occupancy will be made available to Horner residents who elect scattered-site units in Phase I of the Horner Revitalization Program.

(b) Funding for the 699 public housing units to be provided, assuming the Homes/Annex residents choose near west side and non-near west side replacement housing choices in the same proportions as the Extension residents, shall be provided as

follows:

- (1) 466 units in the Horner Revitalization Area, consisting of 233 very low income units to be paid for by \$25 million in HUD development funding, and 233 low income units to be paid for by \$20 million in new Gautreaux dollars and \$5 million in CHA Comprehensive Grant funding;
- (2) 233 units of additional very low-income units, to be paid for with \$8.3 million in Gautreaux dollars, \$5 million in HUD development funding, and \$9.4 million in CHA Comprehensive Grant funding, reduced however by any Section 8 units selected by Horner residents.

(c) If more than 50% of the Homes/Annex residents elect near west side replacement housing, CHA and the Gautreaux plaintiffs shall provide sufficient replacement housing for very low income Horner residents, and the parties shall negotiate the manner of providing such housing, either through additional funding for very low income and working family units, revisions to the one-for-one rule as between very low income Horner residents and low-income working families, expansion of the Horner Revitalization Area or other suitable means, all as agreed to by the Horner plaintiffs. Should additional funds be necessary, HUD will consider any application from CHA for any discretionary HUD funding that could be provided.

3. (a) CHA agrees that the Annex residents shall vote on whether they wish to remain at a rehabilitated Annex, or move to replacement housing (either on the near west side or in Section 8 or scattered-site locations). If 50% or more of the current Annex residents vote to remain at the Annex, the Annex will be rehabilitated. If less than 50% of the current Annex residents

vote to remain at the Annex, the Annex will be demolished. The vote will take place by secret ballot ninety (90) days after this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. The vote will follow two presentations on the options:

- (1) up to a 45-minute presentation by two persons from Walsh Construction\VOA, using renderings, plans, elevations, a scale model and, a model apartment, pertaining to how a rehabilitated Annex would look. The Horner Residents Committee (HRC) shall be free to work with Walsh/VOA in connection with the development of this presentation and these plans;
- (2) up to a 45-minute presentation by two persons from CHA/HUD/Habitat, using renderings, plans, elevations, and other information, pertaining to scattered sites, near west side replacement options, and Section 8 housing; CHA/HUD/Habitat may also offer Annex residents one bus tour to one existing scattered site building, as agreed to by the HRC. The HRC shall be free to work with CHA/HUD/Habitat in connection with the development of this presentation and these plans.

Effective on the date this Agreement is signed, CHA shall communicate with the Annex residents only as their landlord, and CHA/HUD/Habitat/Walsh/VOA, their agents, employees and all persons acting in concert with them shall not contact any Horner Annex resident regarding any matter related to the vote. However, the CHA and the HRC will distribute the ballots and count the votes. CHA shall allow a representative of the HRC to have access to the model apartment at all times. CHA shall provide all necessary measures to prevent the vandalism of the model apartment, including use of a steel door and steel mesh screen and other materials similar to that which Construction Management is using to secure

other areas of Horner. In the event of vandalism of the model apartment, no vote shall be taken until the model apartment has been restored to its original condition and all tenants wishing to view the model apartment have done so. Additional ground rules for such presentations shall be agreed upon in advance by all parties, just as they were when the Extension residents voted.

(b) Prior to incorporating this Agreement into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below: (1) CHA shall negotiate a pre-vote budget and sign a contract with Walsh/VOA for the presentation described in Paragraph 3(a)(1) above; and (2) CHA shall negotiate with the HRC and Walsh/VOA a budget for the rehabilitation of the Annex. If the Annex is to be rehabilitated, CHA agrees to reserve sufficient Comprehensive Grant monies to complete such rehabilitation, but the per unit costs of such rehabilitation must be within 110% of TDC limits for rehabilitation. Rehabilitation shall occur with the residents in place at the Annex. If the Annex is rehabilitated, every Annex resident who elects to stay at the facility shall be granted the right to do so, provided there are sufficient units. If there are more Annex residents who wish to stay than there are available units, a lottery shall be utilized to determine which residents shall be permitted to stay. The balance of the units, if any, shall be rented to working families. As current Annex residents vacate the building, they shall be replaced first, by Annex residents who elected to stay but were unable to do so due to lack

of available units, and second, by working families until, over time, a 50-50 split is achieved as between very low-income and working families.

(c) If the Annex is to be demolished, its residents will be afforded the right to occupy the replacement housing they elect, as part of the vote set forth under Paragraph 2(a) hereof. No demolition of the Annex shall occur until 109 units of replacement housing, in addition to the replacement housing provided for in Paragraph 2 (a) above, have been provided to Horner residents. However, CHA will not be required to reserve sufficient funds for this replacement housing in excess of the amount provided for in Paragraph 3(b) above.

4. The residents at 124 N. Hoyne and 2051 W. Lake will be relocated prior to November 1, 1995, provided that plaintiffs may seek an extension of this date from Judge Zagel for good cause shown. Those who have elected scattered-site and Section 8 units (and for whom such units are available) will be afforded the right to obtain those units as soon as possible. The remaining families shall be afforded temporary relocation into repaired vacant units at the Horner Extension or Horner Homes, temporary Section 8 units which may be used in either "general" or "limited" areas, HUD single-family and multifamily homes, hotels/motels leased to the CHA or private apartments leased to the CHA. CHA relocation counsellors, together with HRC representatives, shall meet with each family to discuss and arrange for relocation. The relocation process shall commence after approval of this Agreement by Judge

Zagel on August 7, 1995. All moving expenses, including utility and security deposits, connection fees and reconnection fees, shall be paid by CHA from Comprehensive Grant or other appropriate funds. Additional ground rules for the relocation shall be agreed to by the plaintiffs and CHA prior to the approval of the revised Horner consent decree by Judge Zagel as provided in Paragraph 9.

5. CHA agrees to set aside a minimum of \$5.0 million in Comprehensive Grant funding for interim repairs in the next year to the Homes, Extension and Annex, excluding any repairs necessary to provide temporary relocation housing pursuant to Paragraph 4 above. The use of the \$5.0 million and any amounts in excess thereof shall be negotiated by plaintiffs and CHA pursuant to Paragraphs 6, 9, and 12 of the Horner Consent Decree.

6. CHA agrees to supply the Section 8 certificates utilized in Phase I which may be used in "general" or "limited" areas in the City, subject to agreement by the Horner and Gautreaux plaintiffs, CHA and HUD, provided however that the Horner plaintiffs may petition Judge Aspen if the Horner and Gautreaux plaintiffs are unable to agree.

7. CHA agrees to increase the amount for consultant fees in Paragraph 16 of the Consent Decree to \$150,000 annually, provided reasonable invoices are submitted.

8. Where necessary to accommodate family housing needs, CHA and the Horner plaintiffs may agree to allow household members with children of their own to convert to principal leaseholder status and thereby obtain their own Horner Housing Certificate, provided

that the Horner plaintiffs may petition Judge Zagel to authorize such conversions if CHA and the Horner plaintiffs are unable to agree.

9. The Gautreaux plaintiffs agree to all of the above. The Gautreaux plaintiffs further agree that they shall not raise any Gautreaux issue relating to the Horner Annex, if the Annex residents vote to rehabilitate it, including any issue relating to the resulting tenant income mix. Except where otherwise provided herein this Agreement shall not go into effect until the parties agree on appropriate language incorporating the Agreement into the current Horner Consent Decree, Judge Zagel has approved the revised Horner decree after notice to the class and a fairness hearing in the Horner case, and Judge Aspen has entered an appropriate further order in the Gautreaux case pursuant to his order of March 9, 1995, which order shall make appropriate reference, as agreed to by CHA, HUD, the Horner and Gautreaux plaintiffs, to Paragraphs 2(a) and 2(c) of this Agreement. Notice shall be provided only to current residents of Horner.

10. CHA, HUD and the Horner plaintiffs agree that no further changes to Phase I of the Horner Revitalization Plan or to this Agreement will be made without the consent of the parties.

11. HUD will, subject to acceptable submissions by CHA:

(a) approve allocation of the 1995 HUD development funding and CHA Comprehensive Grant funding as provided in Paragraph 2(b)(1) and (2) above;

(b) approve the allocation of additional HUD development

funding, if any is provided, and any CHA Comprehensive Grant funding, as provided in Paragraph 2(c) above;

(c) approve, if necessary, the Annex pre-vote funding as provided in Paragraph 3(b)(1) above, and approve the Annex rehabilitation funding as provided in Paragraph 3(b)(2) above;

(d) approve all relocation funding as provided in Paragraph 4 above;

(e) approve allocation of CHA Comprehensive Grant funding as provided in Paragraph 5 above;

(f) approve allocation of the Section 8 funding as provided in Paragraph 6 above; and

(g) approve allocation of the consultant fees as provided in Paragraph 7 above.

Dated: August 7, 1995

William P. Wilen
WILLIAM P. WILEN, for the
Horney plaintiffs

Alexander Polikoff
ALEXANDER POLIKOFF, for the
Gautreaux plaintiffs

Thomas E. Johnson

THOMAS E. JOHNSON, for the
Chicago Housing Authority

Linda A. Wawzenski
LINDA A. WAWZENSKI, for HUD

Nelson A. Diaz
NELSON A. DIAZ, for HUD

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

DOROTHY GAUTREAU, et al.	)	
Plaintiffs,	)	
	)	
vs.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
Defendants.	)	

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs, and Defendants Chicago Housing Authority and Department of Housing and Urban Development, for an order designating a North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having heard presentations concerning the proposed order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has

permitted public or assisted housing to be provided in census tracts not within the General Public Housing Area upon a sufficient showing of "revitalizing" circumstances such that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, could be made; and

The Court being of the view that such a forecast can be made with respect to the North Kenwood-Oakland Revitalizing Area if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates as the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies between Oakwood Boulevard on the north, the Illinois Central Railroad right-of-way on the east, 47th Street on the south, and Cottage Grove Avenue on the west;

2. The Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop, through new construction or rehabilitation of existing buildings, up to 241 units of public housing within the Revitalizing Area, subject to the following conditions:

- a) No more than 100 units of public housing shall be developed on CHA-owned land that is the site of CHA's Lakefront high-rise buildings (the area bounded by 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd Place on the south, and Lake Park Avenue on the west).

- b) No more than approximately 50 units of public housing shall be developed on the site of the demolished Washington Park buildings (the CHA-owned property bounded by 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.
- c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.
- d) One-half of the public housing units developed pursuant to subparagraphs (a) and (b) above shall be occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and such units shall be geographically distributed approximately evenly among the units developed pursuant to subparagraphs (a) and (b).

3. The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified to afford eligible displaced Lakefront tenant families, as defined in the "Revised Agreement Regarding Former Residents of the Lakefront Properties and the Future Use of Those Properties," dated September 22, 1995, between CHA and the Lakefront Community Organization, first

priority to all public housing units developed pursuant to subparagraphs 2(a), (b) and (c) of this Order, subject only to the provisions of subparagraph 2(d) of this Order.

ENTER:

Major E. Cooper

Judge

Date: *June 3*
~~May 15~~, 1996

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge	MARVIN E. ASPEN		Sitting Judge if Other Than Assigned Judge	
Case Number	66 C 1459 / 66 C 1460		Date	July 8, 1987
Case Title	Dorothy Gautreaux, et al., v. Samuel R. Pierce, etc., et al.,			

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented.)

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ☐	Judgment is entered as follows:	(2) ☒	[Other docket entry:]
On CHA's proposed scope of discovery, the Court limits the scope of discovery on the receivership issue to facts directly related to CHA's actual compliance with the consent decree and this Court's previous orders. CHA's request for expedited document production is denied. HUD's motion to quash is moot.			
(3) ☐	Filed motion of [use listing in "MOTION" box above].		
(4) ☐	Brief in support of motion due _____		
(5) ☐	Answer brief to motion due _____ Reply to answer brief due _____		
(6) ☐	☐ Hearing on _____ set for _____ at _____		
(7) ☐	☐ Ruling _____		
(8) ☐	Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____		
(9) ☐	Pretrial conference ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____		
(10) ☐	Trial ☐ set for ☐ re-set for _____ at _____		
(11) ☐	☐ Bench trial ☐ Jury trial ☐ Hearing held and continued to _____ at _____		
(12) ☒	This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)		
(12) ☒	[For further detail see ☐ order on the reverse of ☒ order attached to the original minute order form.]		

☐ No notices required. ☒ Notices mailed by judge's staff. ☐ Notified counsel by telephone. ☐ Docketing to mail notices. ☐ Mail AO 450 form.	12 E D 8-75 154 803 - 0371 AA-110 Date/time received in central Clerk's Office	number of notices date docketed docketing dpty. initials date mld. notices mailing dpty. initials	Document #
MVT	courtroom deputy's initials		

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

SAMUEL R. PIERCE, Secretary of the
U. S. Department of Housing and Urban Development,
and CHICAGO HOUSING AUTHORITY, et al.,

Defendants.

NOS. 66 C 1459 and
66 C 1460

MEMORANDUM ORDER

MARVIN E. ASPEN, District Judge:

On May 14, 1987, this Court entered an order granting the plaintiffs' motion to appoint a receiver to administer the scattered site housing program of defendant Chicago Housing Authority ("CHA") pursuant to the consent decree in this case. We delayed implementation of that order for a sixty-day period in order to allow the parties an opportunity to work out an alternative remedy acceptable to the Court. In the interim, CHA has moved that the Court reconsider its order, and, although we find ample documentation in the record as it exists today to fully warrant appointment of a receiver, the Court has granted CHA's request that an evidentiary hearing be held on the motion for reconsideration. Although we have refused to further delay implementation of our order, we have stated that whenever CHA so requests, we will promptly schedule the evidentiary hearing. CHA claims it needs discovery for this hearing. The parties have submitted numerous motions regarding discovery and the scope of evidence

for the hearing. We deal in this opinion with three of these motions: (1) CHA's Proposed Scope of Discovery for the evidentiary hearing which this Court ordered CHA to submit; (2) CHA's Request for Expedited Document Production from its co-defendant, the United States Department of Housing and Urban Development ("HUD"); and (3) the Federal Defendant's motion to quash CHA's Request for Production of Documents.

I.

The threshold issue is CHA's proposed scope of discovery, since the remaining motions really turn on that issue. CHA has requested that the Court open up discovery so that CHA can inquire into: (1) the reasons for the temporary suspension by CHA of the scattered sites program required under previous orders entered by this Court; (2) the extent to which HUD's acts, omissions, policies or rules have impaired or interfered with CHA's compliance with this Court's orders; and (3) whether CHA's proposed remedial plan constitutes a "reasonable alternative" to the appointment of a receiver to conduct the scattered sites program.

As indicated in open court on June 2, 1987, we agree with plaintiffs' counsel that the only issue ripe for litigation respecting the appointment of a receiver is CHA's failure to follow the mandate of this Court as embodied in the consent decree and as reflected by our previous orders regarding the scattered sites program. CHA insists on opening up discovery broadly to encompass disputes between itself and HUD regarding regulations and HUD's application of those regulations which CHA apparently contends are to blame for CHA's failure to adequately pursue the acquisition, construction and rehabilitation of scattered site housing (e.g., the reasonableness of HUD's calculation of prototypical costs for scattered site housing units). The elephantine scope of discovery proposed by

CHA would clearly encumber this Court and the parties with the burden of addressing issues wholly irrelevant to the receivership order. As Judge Crowley wrote in this case nearly seven years ago in denying "[w]ith great reservation" the plaintiffs' motion to appoint a receiver, "compliance will be measured by results not intentions. Bureaucratic inefficiency will no longer be tolerated by this Court." Gautreaux v. Landrieu, 498 F.Supp. 1072, 1075 (N.D. Ill. 1980) (emphasis added). On January 13, 1984, based on promises of compliance which were not kept, we vacated an ~~earlier order~~ to appoint a receiver and afforded CHA still another opportunity to get its own house in order. Enough is enough. It is fundamentally clear that in light of CHA's track record, not only in CHA's present form but also in its multitude of previous incarnations, this case is well beyond the point where bureaucratic squabbles between local and federal agencies will be tolerated as an excuse for noncompliance with the important remedies sought by the plaintiffs, agreed to by the parties and ordered by the Court.

Any complaints CHA had with HUD's cooperation with respect to scattered site housing development during the relevant period could have, and indeed should have, been brought to this Court's attention at the time. Rather than sufficing as an excuse for CHA's inability to comply with the Court's orders, CHA's failure to bring these disputes to the Court's attention at an earlier date may actually be another indication of its lack of competence to administer this program so critical to the needs of the low-income individuals who are the intended beneficiaries of this litigation.

Finally, to the extent that CHA seeks discovery on issues regarding its good faith efforts to comply with the court-ordered scattered site housing program, we deem that information to be irrelevant to the plaintiffs' motion to appoint a receiver as well. To our knowledge, no party has questioned the good

faith of the current administration regarding the construction and rehabilitation of public housing under the Gautreaux decree. However, all the good faith in the world on the part of CHA will not provide a single shelter to a low-income individual or his or her family for a single night where CHA, as it has demonstrated, lacks the ability and competence to comply with the orders of this Court.

In effect, by seeking broad discovery, CHA is asking the plaintiffs and the Court to wait idly while CHA has it out with HUD over broad issues of funding policy. While those issues are of great import, they are not this Court's nor the plaintiffs' primary concern. Plaintiffs have waited for too long for implementation of an agreed order which should have been complied with by CHA years ago.

Accordingly, we limit the scope of discovery on the receivership issue to facts directly related to CHA's actual compliance with the consent decree and this Court's previous orders. Thus, the Court will permit discovery on objective evidence of CHA's compliance such as the number, location and status of ordered units acquired, the number and location of units remaining to be completed and their current status, etc. In other words, the evidentiary hearing will address only "results," not intentions or bureaucratic infighting. Therefore, issues respecting HUD acts, omissions, rules or regulations and their purported impact on CHA's compliance are irrelevant, and the Court will preclude discovery on them. Furthermore, no discovery will be permitted on CHA's proposed remedial plan and its reasonableness as an alternative to our receivership order. We have already allowed the parties, particularly CHA and HUD, an opportunity to arrive at a settlement proposal which would be satisfactory to this Court as an alternative to the appointment of a receiver. Finally, the "reasons" for CHA's suspension of the scattered sites program shall be the subject of discovery only to the extent that they are unrelated to any bureaucratic disputes between CHA and HUD.

II.

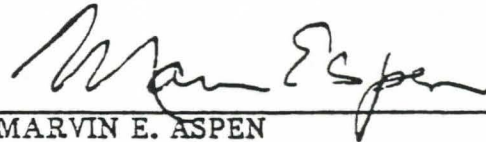
We now turn to the two motions regarding document production. CHA has submitted a request for expedited document production from HUD. It is readily apparent from even a cursory review of the production request that CHA is planning a fishing expedition in which they seek every conceivable document related to issues on which we are not permitting discovery (i.e., HUD's conduct which has purportedly interfered with CHA's ability to comply with this Court's previous orders). Accordingly, we deny CHA's request for expedited document production on the ground that the documents which it seeks are irrelevant to the issues to which we have limited discovery and which will be the subject of any evidentiary hearing.

Finally, HUD has filed a motion to quash CHA's request for production of documents. This motion is clearly moot now that we have denied CHA's request for expedited production and ruled on the scope of discovery. Accordingly, we need not address HUD's motion with respect to the request to quash. HUD also sought further relief in the form of an order prohibiting CHA to file further discovery requests until our ruling on the scope of the evidentiary hearing, granting the Secretary leave to respond to CHA's proposed scope of discovery and granting the Secretary leave to conduct discovery on the issues which we do determine relevant to the motion to appoint a receiver. The first two requests are denied as moot, but the third is granted.

III.

In accordance with this order, the scope of discovery respecting the plaintiffs' motion to appoint a receiver is limited to facts related to demonstration of the extent of CHA's compliance with the consent decree and this Court's

orders. The parties should now proceed expeditiously with discovery on the narrow issues which we have set forth in this opinion. Should CHA, after this discovery, still wish to pursue an evidentiary hearing, we will promptly schedule one. It is so ordered.



MARVIN E. ASPEN
United States District Judge

DATED

7/8/87

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

DOROTHY GAUTREAU, et al.,	)	
	)	No. 66 C 1459
Plaintiffs,	)	No. 66 C 1460
	)	
v.	)	Chicago, Illinois
	)	August 3, 1987
THE CHICAGO HOUSING AUTHORITY,	)	11:00 o'clock
et al.,	)	
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MARVIN E. ASPEN

APPEARANCES:

For the Plaintiffs:

MR. ALEXANDER POLIKOFF
(109 North Dearborn Street
Chicago, Illinois 60602)

For Defendant U.S. Dept.
of Housing and Urban
Development:

MR. LEWIS M. NIXON
(300 South Wacker Drive
Chicago, Illinois 60606)

and -

MR. JOSEPH W. LOBUE
(U.S. Department of Housing
and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410)

For Defendant Chicago
Housing Authority:

SCHIFF, HARDIN & WAITE, BY:
MR. AARON J. KRAMER
MR. JAMES THOMAS
(7200 Sears Tower
Chicago, Illinois 60606)

Court Reporter:

MS. MARY M. GALLAGHER
(219 South Dearborn Street
Chicago, Illinois 60604)
(312) 663-0049

1 reason HUD would like to resolve this through a contract is
2 because our long-range goal here is to avoid splitting CHA
3 in two, if that's possible, to have an integrated agency
4 where the management work together with the development.
5 The management is prepared to take over when the developing
6 is done, to avoid the conflict and the duplication of
7 function that we anticipate could occur between a --
8 whether it's CHA or a private management agent and
9 a receiver.

10 That is not to say that we oppose appointment
11 of a receiver under any circumstances. We just would
12 prefer to try to resolve all the problems at once, make
13 sure that when the receiver gets done, those units are going
14 to be maintained. There is a coordinated effort to make
15 sure that that happens.

16 As I said, if that remedy proves to be
17 elusive or unavailable, then, of course, we would support
18 receivership.

19 Thank you

20 THE COURT: The history of the proceedings on this
21 latest motion I think are a microcosm of the relations
22 between the entities involved in this litigation and the
23 shifting views of the agencies through the years.
24 Obviously much of this has been done -- much of the shift
25 has been because of changes in administrations of the

1 various agencies, but sometimes there has been changes of
2 viewpoint which perhaps have been tactical.

3 It seems to me, though, that we really have
4 for the first time as I see it a consensus among all the
5 interested parties, HUD, CHA, the City, the plaintiffs,
6 that the Scattered Site Program for different reasons as
7 far as the individuals are concerned, but in any event, a
8 consensus that the Scattered Site Program has been a
9 failure, that the Court's orders have not been carried out
10 and that something different has to be done than what has
11 been done in the past.

12 Mr. Polikoff made the initial motion for
13 appointment of a receiver. HUD, as I recall, joined in
14 that motion at that time for the appointment of the
15 receiver and asked simply to hold off to see what was
16 going to be happening in terms of HUD's negotiations with
17 the CHA for some broader structural changes in their
18 relationship and then perhaps the appointment of a private
19 entity to run the entire program.

20 The Board meeting of the CHA today I think is
21 a very welcome recognition that obviously not through the
22 fault of the present Board members who are all new
23 appointees, but that the CHA in the past has not met its
24 responsibilities and that again something has to be done.

25 So I think we really are at a point where I

1 sense not only a recognition on the part of all the
2 interested parties that significant changes ought to be
3 made, but also a recognition that the principal
4 beneficiaries of the consent decree, the people who ought
5 to be in scattered site housing, have not -- have been let
6 down and that something ought to be done with due haste by
7 this Court to meet the responsibilities that we owe to the
8 public housing recipients.

9 I have spent a considerable amount of
10 time, not only thinking about who to appoint as
11 receiver, but as to how this ought to be structured in
12 order to accomplish what we all think ought to be done. In
13 my view the scattered site receiver ought to begin work
14 immediately. I appreciate HUD's view of the big picture
15 of the future of the CHA in Chicago and what HUD views as
16 its responsibilities in any takeover that it may decide to
17 undertake.

18 My perspective here is a little bit more
19 limited. My perspective really is what ought to be done
20 with the scattered site housing. And I can not wait for
21 HUD to, number one, decide definitively what it's going to
22 do and, secondly, for what I think would be the inevitable
23 court battle in the District and reviewing courts as to the
24 propriety, legal propriety of what HUD would propose to do.

25 I make no comments at all on the merits of

1 that other than to say that although it may not be a matter
2 of years, it would be a matter of months. And I just don't
3 think we can wait those months which it will take to
4 legitimize any alternative other than a receiver as far as
5 management of the Scattered Site Housing Program is
6 concerned. I am going to name a receiver today and I am
7 going to do it openly and in this courtroom. We have spent
8 -- through Ed Marciniak and the selection committee that I
9 appointed we spent a lot of time and effort interviewing
10 and investigating potential receivers. I asked Mr.
11 Marciniak and this committee to give me three names. They
12 interviewed and investigated many people and found
13 seven that they thought were worthy of consideration,
14 although they had a clear preference for three.
15 I indicated to them before, and I have said
16 on other occasions, that it's my view to get the most
17 efficient receiver named to the position, that I am not
18 interested in making the receiver a "political" -- and I
19 use the word in quotes -- appointee of this Court. That is
20 precisely the reason why I had Professor Marciniak and this
21 committee work on the selection of this person. And I
22 committed myself to make a selection from the three names
23 proposed by the Marciniak committee.
24 I have met personally with the three
25

1 individuals and entities. After that meeting I have asked
2 each to give me a detailed proposal as to how they would
3 operate administratively, fiscally, what the requirements
4 were. I have also impressed I think upon each of them that
5 I expect them to act in an apolitical manner, that as
6 a receiver, unlike another official of government who very
7 properly might get involved in the nitty gritty of
8 politics, local or national -- I expect the receiver not to
9 be involved in that area or to be co-opted by any local
10 political considerations. It seems to me that in the
11 past the CHA has suffered a lifetime with that type of
12 activity.

13 And I received assurances of those people
14 that I talked to. I am satisfied that any of the three
15 individuals that I interviewed and that I received follow-
16 up data from could do the job efficiently. I have decided
17 that for a myriad of reasons one of the three should be
18 selected. I don't consider them choices one, two and
19 three. I would say 1A, 1B and 1C. They were all very
20 good.

21 But I have to select one entity, and I have
22 done that. I don't intend to make it a secret because
23 there are no secrets. You know, I could call the attorneys
24 in my chambers and tell them, "This is the person I want, we
25 will meet in 24 hours and finalize it," and I would probably

1 read it tomorrow morning in Inc. or Sneed. I am not naive
2 enough to think that although the attorneys individually
3 may keep the confidence, but there are too many associates,
4 secretaries, delivery boys and the like involved in this
5 process to realistically think that that is not going to
6 come out and there is really no reason to keep that a
7 secret.

8 I am going to appoint the receiver and I am
9 going to also appoint a transition team which will be
10 composed, if I may impose on Marciniak and his people
11 again to be that transition team to work with the
12 receivers and the lawyers, not only to hammer out the
13 necessary details of the order which I want to have at the
14 latest Wednesday morning at ten o'clock, but also to work
15 with the receiver for an orderly transition of the
16 scattered site responsibilities.

17 As I said before, I expect that cooperation
18 not only because I am going to mandate that it be given,
19 but from what I have heard from all the parties in this
20 courtroom I have every reason to believe that that
21 cooperation will be forthcoming.

22 I have indicated before, and I think Mr.
23 Polikoff is probably tired of hearing it from me, that I
24 have no desires to be the housing czar, public housing
25 czar of the City of Chicago. I appoint a receiver

1 reluctantly. I am a firm believer in local government
2 and I appreciate the overseer role of the Federal
3 Government. I have no desire to have the judiciary
4 infringe on what traditionly is not a judicial function.

5 But because of the history which I have
6 detailed on other occasions of this management, lack of
7 cooperation and other abuses, I have no choice but to name
8 the receiver. Like any order of the Court, that order can
9 be modified. I am not suggesting that I will do so. But
10 certainly as time passes should the CHA ever be able to
11 perform the role that it's supposed to perform, there might
12 be a time when this order could be vacated.

13 On the other hand, if HUD is successful in
14 the hostile takeover -- and I don't use that word in a
15 derogative sense -- I use it in a sense lawyers use it in
16 this courtroom with regard to private matters -- but if HUD
17 is successful in its hostile takeover of the CHA and it
18 looks like HUD is going to be running the program on a
19 long-term basis, and if I am satisfied that HUD is
20 committed to carrying out the mandate of this Court -- and
21 that satisfaction is going to have to be because of
22 concrete actions, not because of words -- then I have
23 no problem with that receiver working on a straight
24 contract basis with the Federal Government.

25 But again I am not committing myself to that

1 at all and I don't see that in the near future. It's not
2 for me to speculate how CHA and HUD are going to either
3 settle or fight the bigger battle that I sense still
4 looms. As I said, my responsibility is a relatively narrow
5 one, that is, to assure that the Scattered Site Program
6 functions in the way that it ought to function.

7 Having said that, I think all that remains
8 really is for me to name the receiver and the transition
9 team. That transition team, by the way, Mr. Lobue,
10 certainly would also work with the HUD development
11 transition team. And if that team also wants to have impact
12 during this transition, certainly they would be welcome.

13 The CHA transition team -- and again I am
14 presuming, I hope not unwarrantedly, that the team would
15 serve would be Professor Marciniak as its chairperson,
16 Reverend Daniel Alvarez, Nancy Jefferson, James Rainer,
17 Professor Leonard Rubinowitz and also representatives
18 from the three entities involved in this lawsuit, Mr.
19 Polikoff, a representative of HUD and a representative of
20 the CHA.

21 The receiver that I have selected will be
22 Mr. Dan Levin and the habitat company jointly as receiver.
23 I have assurances from Mr. Levin that he will personally
24 work to get this program under way and that his company is
25 committed to getting the job done properly.

1 I have a profile of both the company as well
2 as a list of the transition team that will be available to
3 anybody that is interested.

4 I will see you Wednesday at ten o'clock.

5 C E R T I F I C A T E

6 I hereby certify that the foregoing is a correct transcript
7 of the proceedings in this case on August 3, 1987.

8
9 Mary Gallagher
10 Official Court Reporter

August 5, 1987
Date

~~tance by formula under such section 14 [this section].~~

~~"(2) Modifications.—The Secretary shall submit a report to Congress, within 2 years after the date of enactment of this Act [Nov. 28, 1990], recommending any changes to such section 14 that the Secretary determines are appropriate to take into account the relative needs of public housing agencies for assistance to carry out lead-based paint testing and abatement activities. The Secretary shall not adopt any changes to the formula for this purpose except by law."~~

Urban Revitalization Demonstration Program

Pub.L. 103-124, Title II, Oct. 28, 1993, 107 Stat. 1285, provided in part that: "For the urban revitalization demonstration program under the third paragraph under the head 'Homeownership and Opportunity for People Everywhere grants (HOPE grants)' in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993, Public Law 102-389, 106 Stat. 1571, 1579 [set out below in this note], \$778,240,000 [is appropriated], to remain available until expended: *Provided*, That notwithstanding the first proviso in such third paragraph [set out below in this note], the Secretary shall have discretion to approve funding for more than fifteen applicants: *Provided further*, That no part of the foregoing amount that is used for the urban revitalization demonstration program shall be made available for an application that was not submitted to the Secretary by May 26, 1993: *Provided further*, That of the foregoing \$778,240,000, the Secretary may use up to \$2,500,000 for technical assistance under such urban revitalization demonstration, to be made available directly, or indirectly under contracts or grants, as appropriate: *Provided further*, That nothing in this paragraph shall prohibit the Secretary from conforming the program's standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: *Provided further*, That of the \$778,240,000 made available under this heading, \$20,000,000 shall be made to eligible grantees under the urban revitalization demonstration program, to implement programs authorized under subtitle D of title IV [section 12899 et seq. of this title], and of which, \$10,000,000 shall be made

for youth apprenticeship training activities for joint labor-management organizations pursuant to section 3(c)(2)(B) of the Housing and Urban Development Act of 1968, as amended [section 1701u(c)(2)(B) of Title 12, Banks and Banking]."

Pub.L. 102-389, Title II, Oct. 6, 1992, 106 Stat. 1579, provided in part that: "Furthermore, \$300,000,000 shall be for grants to carry out an urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects, to be administered by local public housing agencies: *Provided*, That such funding shall be made available to up to 15 cities selected from either the 40 most populous United States cities or, from any city whose housing authority was considered to have been on the Department's troubled housing authorities list as of March 31, 1992: *Provided further*, That no more than \$50,000,000 shall be provided to each participating municipality: *Provided further*, That no more than 500 units shall be funded for each participating city and such units shall be located in up to 3 separately defined areas containing the community's most severely distressed projects, including family high-rise projects: *Provided further*, That at least 80 per centum of the funding provided to each participating public housing agency shall be used for the capital costs of major reconstruction, rehabilitation and other physical improvements, for the capital costs of replacement units and for certificates under section 8(b) [section 1437f(b) of this title] used for replacement and for management improvements for the reconstructed project and for planning and technical assistance purposes and not more than 20 per centum shall be used for community service programs (as defined by the Commission on National and Community Service) and for supportive services, including, but not limited to, literacy training, job training, day care, youth activities, administrative expenses, and the permissive and mandatory services authorized under the Gateway Program established in the Family Support Centers demonstration program, provided for in 42 U.S.C. 11485e-f [probably means section 11485(e), (f) of this title]: *Provided further*, That each participating city shall make contributions for supportive services in an amount equal to 15 per centum of the funding provided for supportive services pursuant to the

immediately preceding proviso: *Provided further*, That all such contributions from participating jurisdictions for supportive services shall be derived from non-Federal sources: *Provided further*, That each participating community shall submit a plan for program implementation which is consistent with the local comprehensive housing affordability strategy prepared pursuant to section 105 of the Cranston-Gonzalez National Affordable Housing Act [section 12705 of this title] and which has the approval of the local governing body: *Provided further*, That each plan shall include a community services component, but no funds are to be disbursed pursuant to this paragraph until such community services program has been approved by the Commission on National and Community Service: *Provided further*, That funds made available pursuant to this paragraph may be used in conjunction with, but not in lieu of, funding provided under the head 'Modernization of Low-Income Housing Projects' for the modernization of existing public housing projects pursuant to section 14 of the Act (42 U.S.C. 1437f) [this section]; for construction or major reconstruction of obsolete public housing, other than for Indian families; for the replacement of public housing units pursuant to section 18 of the Act [section 1437p of this title]; and for the HOPE for Public and Indian Housing Homeownership program as authorized under title III of the Act [subchapter II-A of this chapter]: *Provided further*, That notwithstanding the provisions of section 18(b)(3) of the Act [section 1437p(b)(3) of this title], units demolished, disposed of or otherwise eliminated under this demonstration may be replaced as follows: one-third by certificates under section 8(b) [section 1437f(b) of this title] and the balance by any combination of conventional public housing and units acquired or otherwise provided for homeownership under section 5(h) of the Act [section 1437c(h) of this title], housing made available through housing opportunity programs of construction or substantial rehabilitation of homes meeting essentially the same eligibility requirements as those established pursuant to sections 603-607 of the Housing and Community Development Act of 1987 (Public Law 100-242) [set out as a note under section 1715f of Title 12, Banks and Banking], or under the HOPE II or III programs, as established under sec-

tions 421 and 441 of the Cranston-Gonzalez National Affordable Housing Act [sections 12871 and 12891 of this title]; persons displaced by the reconstruction activities provided for herein shall be eligible for these replacement units: *Provided further*, That, in order to be eligible for funding under this paragraph, applications for funding must be received within 180 days from the date the Notice of Funds Availability is published in the Federal Register: *Provided further*, That the Secretary of the Department of Housing and Urban Development shall issue a notice of funds availability within 90 days of enactment of this paragraph [probably means date of enactment of this paragraph, Oct. 6, 1992]: *Provided further*, That the Secretary shall determine which cities have been selected to participate in the program within 90 days of the timely receipt of the last eligible application: *Provided further*, That housing authorities, in submitting their application for funds under this paragraph, shall identify all severely distressed public housing developments, using the criteria set forth by the National Commission on Severely Distressed Public Housing: *Provided further*, That nothing in this paragraph shall prohibit the Secretary from conforming the program standards and criteria set forth herein, with subsequent authorization legislation that may be enacted into law: *Provided further*, That the authority in the immediately preceding proviso shall not apply to any legislation that excludes or otherwise limits self-sufficiency or community service activities set forth in this paragraph, or authorize reallocation of amounts available for obligation which are included in this paragraph: *Provided further*, That any troubled housing authority that applies for funds under this paragraph, shall not be eligible if the Secretary certifies to the Congress that they are not making substantial progress to eliminate their troubled status in accordance with section 6(j) of the Housing Act of 1937 [section 1437d(j) of this title], as amended: *Provided further*, That in the event that communities applying for funding under this paragraph also request funding under any other HOPE program authorized under title III or title IV of the Cranston-Gonzalez National Affordable Housing Act [Title III or Title IV of Pub.L. 101-625, Nov. 28, 1990, 104 Stat. 4129, 4148, for classifications of which see Ta-

bles], the Secretary shall process such applications concurrently and in an expeditious manner: *Provided further*, That, in the event that any application received from the cities initially selected to participate in this program is determined to be unacceptable, the Secretary shall select another city from the 40 most populous United States cities to receive funding

under this paragraph: *Provided further*, That, in the event that communities selected to receive funding do not proceed in a manner consistent with the plan approved for that community, the Secretary may withdraw any unobligated balances of funding made available pursuant to this paragraph and distribute such funds to other eligible communities."

CROSS REFERENCES

- Abatement, inspection and reporting requirements for assistance under this section for purposes of elimination of lead paint poisoning, see 42 USCA § 4822.
- Choice in Public Housing Management Act, financial assistance for grants available under this section, see 42 USCA § 1437w.
- Comprehensive improvement assistance under this section for purposes of—
 - Lower income housing projects, see 42 USCA § 1437c.
 - Public housing homeownership, see 42 USCA § 1437s.
 - Public housing resident management, see 42 USCA § 1437r.
- Home Investment Partnerships, funds not available to carry out activities authorized under this section, see 42 USCA § 12742.
- Local housing assistance plan, formula allocation not applicable to assistance approved under this section, see 42 USCA § 1439.
- Mutual Help Homeownership Opportunity Program for Indian families, assistance provided for comprehensive modernization under this section, see 42 USCA § 1437bb.
- Performance indicators for public agencies for purposes of evaluation of management operations, see 42 USCA § 1437d.
- Public and Indian Housing Program, modernization grants available under this section, see 42 USCA § 170u.
- Rehabilitation of vacant public housing units in accordance with this section for purposes of replacement plan under homeownership program, see 42 USCA § 1437aaa-3.
- Severely distressed public housing defined for purposes of revitalization, see 42 USCA § 1437v.

LIBRARY REFERENCES

Administrative Law

Low-income housing programs, requirements, see 24 C.F.R. § 813.101 et seq.

American Digest System

- Building health regulations, slum clearance and public housing, see Health and Environment ¶32.
- Federal benefits for Native Americans, see Indians ¶7.
- Federally controlled housing and home finance organizations, see United States ¶53(9).

Encyclopedias

- Building health regulations, slum clearance and public housing, see C.J.S. Health and Environment § 28 et seq.
- Federal benefits for Native Americans, see C.J.S. Indians § 46 et seq.
- Federally controlled housing and home finance organizations, see C.J.S. United States § 70.

WESTLAW ELECTRONIC RESEARCH

- Health and Environment cases: 199k[add key number].
- Indians cases: 209k[add key number].
- United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

PURPOSE OF THE HOPE VI PROGRAM

HOPE VI was originally conceived as a demonstration program which would promote fundamental changes in the way PHAs developed and administered public housing, and in the way HUD related to those PHAs. Its purpose was and remains to revitalize severely distressed or obsolete public housing developments. HOPE VI is a key ingredient in the Department of Housing and Urban Development's Transformation of Public Housing efforts. The elements of public housing transformation that have proven key to HOPE VI include:

1. Changing the physical shape of public housing. This includes tearing down the eyesores that are often identified with obsolete public housing and replacing them with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, meeting contemporary standards of modest comfort and liveability. HOPE VI funds should be used to create institutional and physical structures that serve the needs of public housing residents over the long term in a cost-effective manner.
2. Establishing positive incentives for resident self-sufficiency and comprehensive services that empower residents. Programs should be outcome-based, directed at residents moving up and out of public housing.
3. Enforcing tough expectations through strict occupancy and eviction rules, such as the "One Strike and You're Out" policy supported by the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120; approved March 28, 1996). The goal of these rules is to improve the quality of life for residents, create safer, family-friendly environments conducive to learning, and make areas around public housing more attractive to businesses that can create well-paying jobs.
4. Lessening concentrations of poverty by placing public housing in nonpoverty neighborhoods, or by promoting mixed-income communities where public housing once stood alone, thereby ending the social and economic isolation of public housing residents, increasing their access to quality municipal services such as schools, and increasing their access to job information and mentoring opportunities.
5. Forging partnerships with other agencies, local governments, nonprofit organizations, and private businesses to leverage support and resources, whether financial or in-kind.

HOPE VI ACTIVITIES AND PROGRAM REQUIREMENTS

In the absence of program Regulations, each HOPE VI grant is governed by the NOFA under which the grant was awarded, and the Grant Agreement executed between the Grantee and HUD.

In addition, the administration of grant and sub-grant funds is subject to all applicable rules, regulations, and policies issued by the Office of Management and Budget (OMB), the General Accounting Office (GAO) and HUD, and to other applicable state and Federal laws and regulations.

The following is a list of eligible HOPE VI activities and the corresponding HUD regulations that apply.

1. Total or partial demolition of buildings or disposition of property (subject to the requirements of section 18 of the 1937 Act (42 U.S.C. 1437p). **Demolition and disposition** activity funded by HOPE VI must be conducted in accordance with 24 CFR part 970.
2. Capital costs of major reconstruction, rehabilitation, and other physical improvements (including energy retrofits) (subject to TDC limitations). **Rehabilitation and physical improvement** activities must be conducted in accordance with 24 CFR 968.112(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d). These provisions were published in the Federal Register on March 5, 1996 (61 FR 8712, 8738), and are included in the May 1, 1996 codification of the Code of Federal Regulations.
3. Capital costs of replacement housing, including homeownership housing (subject to TDC limitations).

Public housing development (including on-site reconstruction as well as construction of off-site housing) funded by HOPE VI must be conducted in accordance with 24 CFR part 941. (Streamlined 941 subparts A-E were published in the Federal Register on July 22, 1996.)

Mixed finance development must be conducted in accordance with 941 subpart F (published in the Federal Register on May 2, 1996 (61 FR 19708, 19714)).

Units acquired or otherwise provided for homeownership under section 5(h) of the 1937 Act must be administered in accordance with 24 CFR part 906; housing opportunity programs of construction or substantial rehabilitation of homes must be administered in accordance with 24 CFR part 280 (the Nehemiah Program);

Housing activities under the HOPE II program must be conducted in accordance with 24 CFR subtitle A, appendix B;

Housing activities under the HOPE III program must be conducted in accordance with 24 CFR subtitle A, appendix C;

4. Section 8 tenant-based assistance to provide replacement housing for residents displaced by demolition. Use of Section 8 rental certificates must be conducted in accordance with 24 CFR part 882.
5. Management improvements for the reconstructed development. The administration and operation of units must be in accordance with all existing public housing rules and regulations.
6. Planning and technical assistance.
7. Programs designed to help residents gain employment and attain self-sufficiency.
8. FY 1993 - 1995 grantees must also implement a community service program.

Selection and Procurement of Development Partners

PHAs must procure development partners in compliance with the requirements of 24 CFR § 85 and 24 CFR § 941 Subpart F. In all instances, selection must be by a publicly advertised and procedurally fair competition. In some circumstances, due to the inapplicability of the type of procurement and/or the proposed relationship, the PHA may need to request a waiver from the requirements stipulated in 24 CFR § 85 and/or 24 CFR § 941 Subpart F. The request and full disclosure of the special conditions must be submitted by the PHA to HUD in order to be granted a waiver. Subsequent procurement of contractors by the owner entity are not subject to Part 85 unless the PHA is substantially involved with such selections. In the evaluation of the procurement responses, PHAs must carefully review and analyze the activities and their related costs, including developer's fees requested, in accordance with the market norms and conduct a cost justification in "fee for service" contracts.

Site and Neighborhood Standards

Replacement plans and revitalization proposals should avoid or lessen concentrations of very low-income families and expand assisted housing opportunities in non-poor and non-minority neighborhoods. However, on-site replacement may occur even in impacted neighborhoods where the overall redevelopment effort successfully addresses neighborhood defects.

Resident Consultation

Residents must be consulted with regard to the plan to revitalize public housing, but they hold no veto power over the PHA's plan. At least one public hearing must be held, and PHAs are encouraged to include residents participation in any funding application preparation. Where demolition is proposed, residents must be given the opportunity to purchase the targeted building, in accordance with Section 412 of NAHA of 1990.

Market Design Requirements

HUD funds should create dwellings which are attractive and marketable, improve or are harmonious with the surrounding neighborhood, meet the long-term needs of the occupants, and are sustainable over the long run. To that end, PHAs are permitted the maximum possible flexibility regarding amenities and design of public housing developments. Consistent with the concept of creating "floating" units that can be rented to public housing or market rate residents, such architectural features such as balconies, counter space, floor area, and carpeting are allowable expenses, as well as amenities such as air conditioning, garbage disposals, dishwashers, washers and dryers, and trash compactors. Utility allowances will not be raised as a result of these amenities.

Total Development Costs

A PHA is permitted, with HUD approval, to use HUD funds in excess of 100 percent of the published total development costs ("TDC Standard") for the development, where justified as necessary to meet the market design requirements articulated above. Other extraordinary and reasonable costs due to demolition, relocation and site remediation may be acceptable for exceeding the TDC Standards.



The Chicago Housing Authority

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Dr. Daniel W. Blue, Jr.
Deputy Chief Operating Officer

F. Willis Caruso
General Counsel

August 11, 1993

Mr. Joseph P. Garaffa
Acting Regional Administrator
United States Department of Housing
and Urban Development
77 West Jackson Blvd-Room 2608
Chicago, Illinois 60604-3507

Re: **APPLICATION FOR DEMOLITION OF PARTIAL
LOW INCOME PUBLIC HOUSING PROJECT IL2-20**

Dear Mr. Garaffa:

This correspondence is written to transmit the Chicago Housing Authority's formal "Application for Demolition of Partial Low Income Public Housing Project - IL2-20", to your office for submission and approval.

The Application requests HUD approval for the demolition of a 262 unit building located at 1117-1119 N. Cleveland in the Frances Cabrini Homes Extension (IL2-20).

This Application has been prepared in compliance with 24 CFR Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook 7486.1, The Public Housing Demolition, Disposition and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to purchase Development proposed for Demolition.

The demolition of this nineteen-story vacant structure is an integral part of the Authority's Urban Revitalization Demonstration (URD) proposal submitted to the HUD Washington D.C. office in May, 1993.

In this proposal, the Authority requested \$50 million dollars in URD funding to aid in its comprehensive plan for the physical, social and economic restructuring and rebirth of the Cabrini-Green communities.

APPLICATION FOR DEMOLITION OF PARTIAL
LOW INCOME PUBLIC HOUSING PROJECT IL2-20

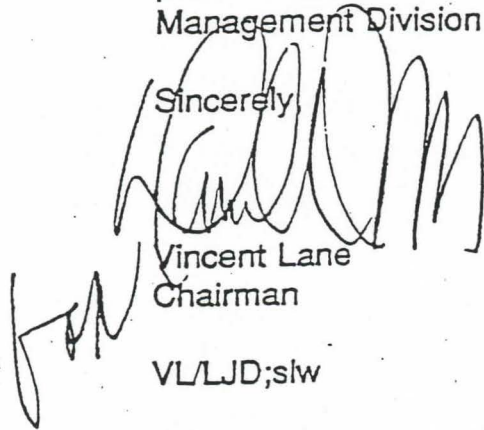
-2-

Therefore, approval of this demolition request is vital to the Authority's efforts to rebuild and extend the life of this public housing development through the reduction of housing density.

The Demolition Plan and the actions proposed therein are in compliance with applicable HUD regulations and: (1) the relocation resources are decent, safe and sanitary and affordable, (2) no demolition or disposition action shall take place until all displaced tenants have been successfully relocated, unless there is to be staged relocation and staged demolition or disposition, and (3) that PHA action is in compliance with applicable civil rights laws and compliance agreements.

Should you have any further questions concerning this Application, please contact Lela J. Davis, Assistant to the Director, Construction Management Division at (312) 567-7861.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Vincent Lane', is written over the typed name and title.

Vincent Lane
Chairman

VL/LJD;slw

3. DEVELOPMENT METHOD

The Authority intends to develop the 190 new development replacement units through new construction utilizing a modified Turnkey Development method, wherein CHA will acquire the sites required for construction.

The additional 72 replacement units are part of the Authority's Urban Revitalization Demonstration program application, which permitted treatment of up to 500 units of distressed housing in one development. The Authority intends to combine its development and rental program in the Cabrini area with a Mixed Income New Communities Strategy (MINCS) Program, as detailed in the URD application submitted to HUD on May 5, 1993.

Replacement of these URD units in the Cabrini Extension will be provided by a variety of means, including the development of new low-income units in multi-family housing complexes on existing large sites in the community surrounding area and in other areas throughout the city and suburbs; rehabilitated apartments in the Cabrini complex; renovated existing housing in the surrounding community; rental or purchase of housing in HUD, Fannie Mae, and Freddie Mac foreclosed or assigned properties through the Chicago metropolitan area.

4. LOCATION OF REPLACEMENT UNITS

The proposed new units will be built on scattered sites in community areas around the Cabrini-Green, and in other sites throughout the Chicago Metropolitan area, in accordance with the Consent Decree (and subsequent orders) of the Gaurteaux litigation. All sites will be selected in accordance with the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

Of the 500 total URD units, the Authority plans to replace 285 by constructing new low-income housing units on vacant land which presently exists in a one mile by three quarter mile area immediately surrounding (and including) the Cabrini-Green complex. The proposed replacement housing will be matched with development or market rate units to promote and economic, racial and cultural mix. The areas bounded by North Avenue on the North; Wells Street on the East; Superior on the South; and Chicago River and Halsted on the West.

The area contains over 40 acres of land, with about 25 acres of 62 percent already in public ownership by CHA, the Board of Education, or the City of Chicago. The remaining 16-plus acres of existing vacant land will be acquired on the open market at the fair market value or through eminent domain with court established compensation.



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Dr. Daniel W. Blue, Jr.
Deputy Chief Operating Officer

F. Willis Caruso
General Counsel

January 18, 1994

Mr. Edwin Eisendrath
Regional Administrator
Regional Housing Commissioner
U.S. Department of Housing and Urban Development
Chicago Regional Office, Region V
77 West Jackson Blvd. 26th Floor
Chicago, Illinois 60604

Dear Mr. Eisendrath:

Subject: Application for Partial Demolition IL2-20
Frances Cabrini Homes Extension

This correspondence is in response to your October 20, 1993 letter concerning the deficiencies in the Application for Partial Demolition of IL2-20, the Frances Cabrini Homes Extension.

The Chicago Housing Authority's responses to said deficiencies are as follows:

1. Resident Comments

Attached please find a certification indicating that no resident comments were received concerning the proposed demolition.

2. Condemnation Correspondence from City of Chicago

The Chicago Housing Authority did not offer the 1117 - 1119 N. Cleveland building for sale to the Cabrini Extension Local Advisory Council pursuant to Section 412 of the National Affordable Housing Act, Public and Indian Housing Notice 93-17 issued April 2, 1993 based on Federal Register 57 FR 46074 Section II (B) (1) which states as follows:

The CHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

As required by the Federal Register Notice, we are enclosing the following documentation demonstrating that the building is a threat to the health and

Mr. Edwin Eisendrath

January 18, 1994

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safety of residents: a complaint filed by the City of Chicago against the Chicago Housing Authority, 90M1403139, praying for relief in the form of either a permanent injunction or demolition of said building.

In addition, please find an Agreed Order of Dismissal in this cause of action granting a mandatory permanent injunction against the Chicago Housing Authority prohibiting it from renting, leasing or occupying 1117 - 1119 N. Cleveland.

Please be aware that we are not invoking the Section II (B)(2) exception of the Section 412 Federal Register Notice involving condemnation of the building and therefore are not enclosing a letter of condemnation from the City of Chicago.

3. Schedule for Requesting Replacement Housing Resources

As indicated in the original application for partial demolition, 72 of the 262 units proposed for demolition will be replaced with funding provided by the Authority's Urban Revitalization Demonstration (URD) for the Cabrini Extension. In a letter dated November 17, 1993, HUD approved the award of \$50 million to the Authority under the URD program. It is expected that development of these units will commence within 24 months of the execution of a grant agreement with HUD for the URD program.

On August 12, 1993, the Authority submitted an application for public housing development funds for replacement of the remaining 190 units. In his letter dated September 30, 1993, the Assistant Secretary for Public and Indian Housing indicated HUD's approval of funding for 107 of the 190 replacement housing units from the fiscal year (FY) 1993 Public Housing Development program. The development of these units has been subcontracted to the Joint Venture comprised of the Chicago Metropolitan Housing Development Corporation (CMHDC) and the Habitat Company. This arrangement has been approved by all parties involved and the Court. Development of the new public housing is expected to commence within 24 months.

With its development application and in subsequent correspondence, the Authority also requested that the

Mr. Edwin Eisendrath
January 18, 1994
Page Three

remaining 83 units be replaced through HUD's funding of 15-year Section 8 Certificates. In his letter dated December 10, 1993, Assistant Secretary Shuldiner indicates that HUD does not have sufficient funds in fiscal year 1993 to provide the Section 8 Certificates. His letter does state, however, "The Department will commit itself to providing the additional development units needed, subject to the availability of such funds."

The Authority (and/or the CMHDC/Habitat Joint Venture, as necessary) intends to apply for funding for the replacement units under Notices of Funding Availability (NOFAs) for the Public Housing Development program and the Section 8 Program in fiscal year 1994, and subsequent years if necessary. It is expected that development would commence within 24 months of funding approval.

4. Replacement Housing Plan - Census Tract Identification

In its October 18, 1993 letter, HUD has indicated that the Replacement Housing Plan (RHP) does not contain the census tract in which the Authority proposes to build replacement units. While this pre-identification may be possible for certain other public housing agencies (PHAs), the Chicago Housing Authority faces unique circumstances due to the constraints for site location imposed by the Gautreaux litigation.

The proposed new units will be built on scattered sites in accordance with the Consent Decree (and subsequent orders) of the Gautreaux v. CHA et. al. litigation. The Authority intends to continue working with the City of Chicago to acquire city-owned vacant lots and other suitable sites. All sites will be selected in accordance with the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

Since the replacement units will be developed by the CMHDC/Habitat Joint Venture, all site selection will be conducted through the regular development program approval process, with any proposed units in Gautreaux "Limited" Areas being presented to the Gautreaux waiver committee for determination. When they are identified, potential sites will be forwarded to HUD through normal review process, and

Mr. Edwin Eisendrath

January 18, 1994

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be subject to HUD site and neighborhood standards, environmental review, and other requirements, unless a waiver is approved by HUD. This process, under which determinations cannot be made until specific sites are proposed, is consistent with that outlined in your letter to the Authority of November 17, 1993 regarding the process for site selection under the Mixed Income New Communities Strategy (MINCS).

In addition, at the time the demolition application was submitted to HUD on August 11, 1993, the Authority had not even been notified by HUD of how many, if any, units would be approved for replacement. HUD did inform the Authority in mid-October of the award of funding for 105 replacement units, and subsequently indicated that sufficient funds were not available in fiscal year 1993 for the award of Section 8 Certificates to serve as replacement units for the remaining unfunded replacement units as requested by the Authority. Without knowing how many and when units will be funded, neither sites nor census tracts could be pre-identified.

Given this site review process, the uncertainty of the type of funding program (Development or Section 8) for all replacement units, and the unique constraints of Gautreaux, the identification of specific census tracts where replacement housing will be built is premature. The Authority therefore requests an exemption of HUD's request for identification of specific census tracts in the demolition application. If such a request requires a waiver of any regulations or HUD requirements, the Authority hereby requests such a waiver of good cause due to the unique constraints in the development process of the Gautreaux litigation and remedy.

City Council Resolution

The Authority has been working in conjunction with the Alderman's Office in the ward in which Cabrini is located, the Mayor's Office, HUD staff and others to obtain Chicago City Council approval of the replacement housing plan. To date, the Alderman has not been willing to introduce such an ordinance into City Council for consideration, due in large part to the relationship of this proposed demolition to the Urban Revitalization Demonstration (URD) Program.

Mr. Edwin Eisendrath
January 18, 1994
Page Five

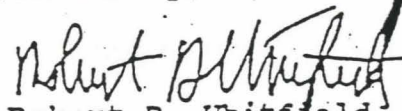
Given the unique circumstances involved with the URD and the ordinance for the replacement housing program for the proposed demolition under this application, the Authority is requesting an extension of 60 days to obtain City Council approval. It is our understanding that this extension request has already been forwarded from the HUD local office to HUD Headquarters for approval.

Board of Commissioners Resolution

The CHA Board of Commissioners approved the submission of the revised application for partial demolition and replacement housing plan of the 262 units in Francis Cabrini Homes Extension, (IL2-20) at its regular meeting on January 18, 1994. A copy of the resolution is attached.

If you have any questions, please do not hesitate to contact Thom Finerty at (312) 791-8612 or Lela Davis at (312) 567-7775.

Sincerely,



Robert D. Whitfield
Chief Operating Officer

Enclosures

RDW/LJD/blb
A:PARTDEMO



The Chicago Housing Authority

February 27, 1995

Board of Commissioners

Vincent Lane
Chairman

Arlene Randolph
Vice-Chairman

Marie E. Billingsley
Arthur M. Brazier
Louis Brown
Milton Davis
Isaac S. Goldman
Handy L. Lindsey, Jr.
Daniel Solis

Graham C. Grady
Chief Operating Officer

Mr. Kevin Emanuel Marchman
Deputy Assistant Secretary
Office of Distressed and Troubled
Housing Recovery
U.S. Department of Housing and
Urban Development
451 Seventh Street, S.W.
Washington, DC 20410

Dear Mr. Marchman:

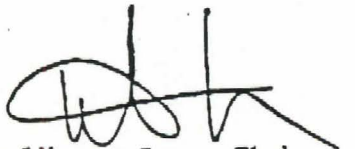
The Chicago Housing Authority is pleased to submit its application for a 1995 HOPE VI Planning Grant in the amount \$400,000. This application is submitted pursuant to your letter of February 3, 1995.

The Authority has selected three developments for the revitalization planning activities under this grant: ABLA Homes, Henry Horner, and Rockwell Gardens. All three meet the description of severely distressed public housing and are located on the west side of the City of Chicago.

The Authority's application proposes planning activities for achieving the goals of reducing the concentration of poverty and public housing, creating mixed-income housing, developing public/private partnerships, promoting community revitalization, and leveraging of public resources. Such goals are embodied in the HOPE VI Program and the Chicago Housing Authority's vision for the redevelopment of its housing stock.

We look forward to your expedited evaluation of this application and the award of funding for the Chicago Housing Authority's 1995 HOPE VI Planning Grant. If you have any questions, please contact me at (312) 791-8401, or Deborah Moore, Executive Director the Chicago Metropolitan Housing Development Corporation (CMHDC), at (312) 441-4480.

Sincerely,



Vincent Lane, Chairman
Board of Commissioners

Section 9. A Plan for Involvement of Local Public and Private Entities During the Planning Period

INTRODUCTION

CHA and its development entity CMHDC have for the past year been working to explore the type of mixed income opportunities for public housing residents that Hope VI puts forth. The concept with which we have been working is that maximum benefit to CHA residents (and to the entire city) could be achieved by using available funds in a manner that allowed CHA residents housing choices throughout the metropolitan area or as equity in the construction or rehabilitation of mixed income housing in the area of existing public housing.

The program as articulated and conceived is that CMHDC* will use CHA/CMHDC federal and tax-exempt financing to acquire an "equity stake" in the mixed-use developments. Non-profit entities, either alone (when the capacity exists) or in partnership with for-profit development managers will be responsible for the development and management of all new or rehabilitated public housing. Depending on the needs and desires of the residents, and in concert with the mandates of the Gautreaux decision, the desires of the City and the community, and an assessment of the viability of the plan, these groups or partnership would develop housing on-site, in the general vicinity of the existing housing, or in neighborhoods throughout the city/metropolitan area that offer substantial mixed income opportunities.

Our vision is an expansive one -- limited only by the tools available to us -- that would allow for the creation of mixed income (PHA, Tax Credit and Market Rate) housing to be built by the partners, the buying/financing of a portion of the units in the contemplated mixed income development already in the planning stages, the buying of units (single family, two-flats condominiums) in existing developments or the rehabilitation of existing CHA buildings into mixed income developments.

PARTNERS FOR CHANGE

To implement this concept, of course, requires the identification or creation of housing opportunities in neighborhoods heretofore unavailable to CHA residents, as well as the identification or creation of entities able to develop mixed income housing in existing CHA dominated neighborhoods, where heretofore few were willing to invest. And to that end, building and improving upon programs developed in the past five years pursuant to the Gautreaux decision and to the rehabilitation of the Lake Front Properties, we have, for the past year, sought to identify and bring together the financial and human resources necessary to provide maximum opportunities for mixed income living. Both contemplated scenarios -- offering "scattered-site" housing opportunities to residents and rehabilitating, creating or buying into mixed-income communities in the vicinity of the present CHA sites -- require complex partnerships for both the planning and implementation of the program.

Thus, we have already begun planning the partnerships with the multiplicity of partners necessary to transform the vision into a reality. These partners include, but are not limited to:

- Public Housing Residents, whose lives will be most affected by the change and whose cooperation is essential in realizing the vision.
- Community Organizations and Community Development Corporations — both in neighborhoods adjacent to CHA developments and in communities throughout the metropolitan area which present opportunities for mixed income living — who must be integrally involved not only in neighborhood planning efforts, but also as developer/owners of the mixed income housing in which public housing residents will live.
- For-Profit Developers, whose expertise may be needed to partner with non-profits and community organizations in the development of housing opportunities
- Community Institutions, including hospitals, universities, and other major stakeholders in the area of CHA developments.
- Philanthropies, whose grant and loan funds are vital to a variety of activities.
- Financial Institutions including banks, equity vehicles, financial planners, secondary mortgage market vehicles.
- Social Service Agencies whose assessment and family service programs are essential for ensuring successful transition and understanding of the challenges and constraints of each individual CHA family.
- The Gautreaux Receiver and attorneys, as the court mandates still have an impact on all new public housing planning in Chicago.
- The City of Chicago, including their departments of planning, economic development and housing whose cooperation is essential in realizing the vision, both as an entity that owns much of the land needed for the endeavor and as a partner in planning for economically viable communities that provide both the resources and employment opportunities that every healthy community needs.
- The Board of Education for what if any impact on over-crowding, facility capacity, program support, etc..
- The Chicago Park District for sports and recreational needs.

CREATING THE NECESSARY PARTNERSHIPS:

Given the complexity of the challenge at hand and the varied entities whose involvement is necessary, CHA and its development affiliate, CMHDC for the past 12 months have begun to

DEVELOPMENT TEAM

An essential component is the Development Team, which is composed of CMHDC and Habitat as the non-profit partnership overseeing all development activity in concert with the mandates of the CHA and the present requirements of the Gautreaux decisions and with LISC as an agreed upon adviser on technical needs, financial planning, and community outreach. This group is responsible for the management of the process, including the quantifying of needs, identification of first-take overall distribution of development (how many units on-site; how many units in the vicinity; how many units to be built in other neighborhoods; how many section 8 certificates, etc.), identification of available land, and oversight of the RFP and land acquisition process, the financing process, and the development process. It is also likely that ultimately this group will be integrally involved in CHA tenant outreach, outreach to the community(ies), interaction with the City, community planning and the issuance and preliminary evaluation of RFPs.

DEVELOPMENT TASK FORCE

In addition to the Development Team, and working in conjunction with them, there is a Development Task Force, emanating from the series of meetings held with financiers, non-profits and for-profit entities. This group, convened by CMHDC and LISC, is composed of representatives of CDCs and neighborhood groups, a representative of the Federal Home Loan Bank and technical assistance providers and will be expanded as needed and as it progresses to include government and other enabling representatives.

This group, in touch with the non-profit and for-profit housing and economic development activity throughout the metropolitan area, is charged with crafting creative planning and financing schemes both for the revitalization of existing CHA neighborhoods and for integrating a public housing component into the housing being created (or which we will cause to be created) in existing mixed income neighborhoods throughout the city (and suburbs??)

CITY/DEVELOPMENT TEAM/HUD/GAUTREAUX MEETINGS

No redevelopment plan can work without the full cooperation of the "stakeholders". So we have created and will continue regular meetings with the City and other primary stakeholders. These meetings allow for activity updates and ensure that we are comprehensive in our planning efforts. These meetings also allow for CHA development plans to be integrated with the City's plans and plans of existing for- and not-for-profit developers in the targeted areas. This process enhances our ability to ensure the mixed income nature of every development site, by gaining knowledge of planned market rate or tax credit ventures underway, planned or desired, allows for development of coordinated economic development activity which is essential both for the viability of the neighborhoods we are trying to revitalize and to ensure the availability of consumer services (stores, libraries, schools, etc.). In addition these meetings are essential to make sure all parties are satisfied with the plans and will use their individual assets to facilitate the smooth flow of activity.

COMMUNITY OUTREACH EFFORTS

Chicago is a city of neighborhoods and as such is replete with organizations ranging from Chambers of Commerce to block clubs to aggregations of church groups that are fully involved in

the life and planning of their neighborhoods. Thus, in every case the community must be an essential component of the planning process. Here, too, we have already begun to create models for this process.

In each community there is a community outreach and planning effort, involving CHA residents, neighborhood residents and businesses, significant institutions, and existing community organizations and CDCs. Typically, as in the area of Horner, there is an involved but essential process. It begins with meetings of CHA residents defining their needs and desires. At the same time we meet with key leaders in the community representing neighborhood groups, CDCs, institutions, businesses or particular buildings. At these meetings the CMHDC/Habitat development team and the City discuss redevelopment concepts and general plans and learn what other plans for housing and economic development exist in the community, as well as listen to concerns about the process.

These meetings are followed by joint planning sessions where CHA plans are overlaid with the plans of other institutions to create a comprehensive planning map for the community. Not only will this process determine where CHA builds its mixed income developments, it will also help to identify sites where stores are needed and other potential commercial or industrial sites and will allow for the community, the City, entities like LISC, the banks, major institutions such as universities and hospitals, private developers, non-profit developers and CHA residents to engage in a level of joint democratic planning that may be unprecedented.

Where we have already begun -- at Horner and Cabrini -- the results are encouraging and exciting. We have found an eagerness to create model mixed income communities that are thought of not only in terms of housing, but in terms of economic development and educational, recreational and park resources that can be aggregated to ensure a healthy neighborhood.

COMMUNITY PLANNING GROUP(S)

In each community there is (or will be) a designated community planning group, made up of representatives of CHA residents, neighborhood residents, neighborhood institutions and CDCs, with the elected officials of the area serving in an advisory capacity. This group, with attendance from the Development Team, HUD, the City and local elected officials, will serve as an oversight committee throughout the planning and construction process and as a medium to inform and receive feedback from the community.

DEVELOPMENT FINANCE TEAM

This team, composed of CMHDC, Stein and Company, Federal Home Loan Bank, Goldman Sachs, LISC and the National Equity Fund, and likely to be expanded according to need and expertise, is an essential component of the planning process. Composed of some of the City's most sophisticated and experienced financiers of market rate, Tax Credit and subsidized housing -- both ownership and rental -- this team is charged with identifying all types of housing opportunities we would like to offer tenants which are appropriate for Chicago's varied neighborhoods and with identifying a variety of financial models to meet those needs. These will include the financing of CHA-generated housing that is mixed-income; buy-ins to planned or existing mixed income developments; creation of lease-to-purchase home-ownership

opportunities; as well as traditional, where appropriate, scattered- site models.

LISC, through its affiliates, is the nation's largest syndicator of Low Income Housing Tax Credits and has developed more than 50,000 units of affordable housing with its non-profit community-based partners. Habitat is the city's largest developer/manager of rental housing outside of the CHA, with more than 25 years of experience in the development of mixed income housing. Together their knowledge of available public and private financing sources and their experience in finding financing solutions to a variety of housing challenges makes them stellar components of the financing team. In addition, their relationship to all the major players in the financing world -- from banks and S&Ls to government funding, to the secondary mortgage market to the newly-created financing vehicles such as the CMHDC tax-exempt essential purpose bond program detailed later in this application provide us with an unparalleled network for financing tools for a true mixed-income model the first of which providing long-term lasting housing for public housing residents .

This group is also charged with thinking about the important question of financing needed shopping centers and other economic development ventures that are crucial to the overall success of the program. LISC has already committed both staff and financial aid to the program and has indicated a willingness to consider a special NEF allocation to the process.

THE PLANNING PROCESS -- HOW WILL ALL THIS WORK

The development team will be the center of the process, coordinating with each community in which we are working and with the City, the Task Force and the Financial Task Force. At present the Development Team is conducting community meetings, working on financial pro-forma, assessing land needs in both the target neighborhoods as well as assessing how many units need to be developed off-site and cataloguing available land. At the same time, LISC and the Development Team are working on a variety of financing models to address the full spectrum of need. The Development Task Force is working with the Development Team to create RFPs that are intelligible and user friendly, while also preparing the Resource Directory and continuing the organization/education process of for- and non-profit developers to ensure their participation in the effort through planning mixed income ventures or integrating CHA residents and financing into their existing plans

The Development Team is working both on existing CHA sites and in targeted non-CHA neighborhoods with community groups and institutions to gain their cooperation in welcoming CHA residents and to further the process of community planning.

As the process evolves, the Development Team, having assessed the need and the land available, and having met with and understood the needs and plans of the City and the community for the future (both existing CHA or targeted development communities), will create, with the advice and consent of the City and the community, a comprehensive development map that identifies sites for development and the type of development (including buy-ins to planned and existing developments). This "planning map" will also identify sites for parks, schools, stores, commercial areas, and other job sites.

HOPE VI
REVISED PLAN
TO
REVITALIZE CABRINI-GREEN
CHICAGO METROPOLITAN HOUSING DEVELOPMENT CORPORATION
MARCH 15, 1995


AA-148

REPLACEMENT HOUSING BY BEDROOM SIZE

BUILDING ADDRESS	1-BR	2-BR	3-BR	4-BR	TOTAL
1158 N. Cleveland*	4	13	12	1	30
1150-1160 N. Sedgwick	36	110	112	4	262
1157-1159 N. Cleveland	18	56	58	4	136
1117-1119 N. Cleveland**	36	110	112	4	262
TOTAL	94	289	294	13	690

* These units are replaced due to leasing to families at 50-80% of median income, not demolition. Total building count is 65 units of which 5 units will become non-residential common area, 30 units will be leased to existing public housing residents and 30 units will be leased to public housing eligible tenants with incomes at 50% to 80% of median.

** Of the 262 replacement units for 1117-1119 North Cleveland, 72 will be replaced with Bond proceeds and 190 will be replaced with Public Housing Development Program funds.

E. DEVELOPMENT METHOD

The units will be developed under the modified "Turnkey Method", pursuant to contracts between CMHDC and qualified developers. Properties will be acquired by CMHDC before completion of the necessary construction or rehabilitation and, subject to appropriate assurances of completion by the developer, CMHDC would draw on the Bond proceeds to pay the costs of completing the project. Each project will be undertaken pursuant to a proposal from a qualified developer, such proposal to be approved by CMHDC and by the Program Manager. It is assumed that the Program Manager will be acceptable to HUD as such fiduciary for CMHDC. It is contemplated that to qualify for the Program, a developer would have to be a joint venture between a non-profit sponsor and an experienced financially sound for-profit entity.

F. LOCATION OF REPLACEMENT UNITS

The replacement units will be developed in five separate mixed income Developments, as preliminarily depicted on the Preliminary Phase I Site Plans and filed under separate cover as part of this presentation. All sites will comply with applicable HUD requirements.

the City of Chicago Comprehensive Housing Affordability Strategy (CHAS), and the locational requirements of the *Gautreaux v. Chicago Housing Authority* litigation, or waivers thereof will be sought.

G. DEVELOPMENT SCHEDULE

The units will be developed in accordance with the Plan for Implementation timeframes and schedule incorporated in the Revised Plan. The preliminary schedule, which is subject to change and will be refined in connection with the finalization of the Supplemental Replacement Housing Plan by May 15, 1995, is as follows:

HUD approves Revised Plan and Program	April 1995
Bonds are issued	July 1995
RFPs for housing developers are advertised	July 1995
Developers are selected	August 1995
Construction/rehabilitation begins	September 1995
Occupancy	December 1996 through December 1998

H. RELOCATION PLAN

The Revised Plan will comply with the provision of Article IV, paragraph 3, and Article XVI, paragraph 11 of the Implementation Grant Agreement. Two HOPE VI Buildings, 1150-1160 North Sedgwick and 1158 North Cleveland are currently 75% to 80% occupied.

The occupied buildings will require relocation of all residents. CHA management and CMHDC will work jointly to relocate or transfer residents in accordance with the relocation outline and in compliance with all outstanding laws and regulations including the Uniform Relocation Act.

The relocation process will occur in two phases. 1158 North Cleveland will be the first relocation site, followed by the relocation of the residents of 1150-1160 North Sedgwick. Three primary relocation options will be offered to residents. They include: Section 8 (permanent option), transfer to CHA Scattered Sites (permanent option) and transfer to other suitable CHA units, either in Cabrini-Green or other CHA developments (temporary option).

The relocation process began with a general relocation meeting held on March 8, 1995. During the meeting, residents were presented information concerning the various



The Chicago Housing Authority

Board of Commissioners

Vincent Lane
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Marie E. Billingsly
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Daniel Solis

Graham C. Grady
Chief Operating Officer

May 18, 1995

VIA MESSENGER

Mr. Edwin Eisendrath
Secretary's Representative
United States Department of
Housing and Urban Development
77 West Jackson Boulevard
Room 2608
Chicago, Illinois 60604-3507

Re: Application for Partial Demolition of Low
Income Public Housing (IL2-20)

Dear Mr. Eisendrath:

This correspondence is written to transmit to your office for approval the Chicago Housing Authority's ("Authority") formal "Application for Partial Demolition of Low Income Public Housing - IL2-20".

The Application requests HUD's approval for demolition of 398 units at the Cabrini Green Extension (IL2-20) for the following buildings:

1150-60 N. Sedgwick	262 units
1157-59 N. Cleveland	136 units

The 1157-59 N. Cleveland building is currently vacant and boarded-up and will be part of Phase I demolition. The 1150-60 N. Sedgwick structure presently has an occupancy rate of 67.94 percent and will be included in Phase II demolition.

The Application has been prepared in compliance with 24 C.F.R. Part 970, Public Housing Program-Demolition or Disposition of Public Housing Projects; HUD Handbook and Conversion Handbook; HUD Notice PIH 93-17 and 57 FR 46074, Requirements Relating to the Resident Organizations' Opportunity to Purchase Development proposed for Demolition.

Mr. Edwin Eisendrath, HUD
May 18, 1995
Page 2

These buildings are being proposed for demolition due to their physical conditions as well as de-densification of the development.

Approval of this demolition request is vital to the Authority's efforts to rebuild and extend the life of this public housing development through the reduction of housing density as expressed in the Authority's May, 1993 Urban Revitalization Demonstration Application.

The Demolition Plan and the actions proposed therein are in compliance with applicable HUD regulations and the Authority's action is in compliance with applicable civil rights laws and compliance agreements.

Should you have any questions concerning the Application, please contact Andrew Rodriguez, Director, Construction Management at (312) 567-7775, extension 1004.

Sincerely,



Marilyn F. Johnson
Acting Executive Director/
General Counsel

MFJ:PNB:mr

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4. Location of Replacement Units

The proposed new units will be built on sites in community areas around the Cabrini-Green development, and on other sites throughout the Chicago metropolitan area, in accordance with the *Gautreaux v. Chicago Housing Authority* (Nos. 66 C 1459 *et al.*) modified Consent Decree and subsequent orders or waivers thereto. All sites will be selected in accordance with applicable HUD requirements and the City of Chicago's Comprehensive Housing Affordability Strategy (CHAS).

5. Development Schedule

The replacement housing units will be developed in accordance with time frames and requirements of the HOPE VI Grant Agreement between CHA and HUD. The schedule, which is subject to change with HUD approval is:

ACTION	ESTIMATED TIMEFRAME
HUD approval of HOPE VI Revised Plan to Revitalize Cabrini-Green and bond issue	Expected May 1995
Contract of Sale	November 1996
Construction Start	December 1996
Occupancy (Date of Full Availability) for all replacement units	December 1998

6. Resident Relocation

The building at 1157-1159 North Cleveland was vacated in October 1993 due to dangerous and hazardous conditions. Relocation of the 1150-1160 North Sedgwick building will occur as described in Section E and in accordance with the HUD relocation requirements.

U. S. Department of Housing and Urban Development
Secretary's Representative



November 14, 1995

Distribution: 11/17/95 kac

Executive Office

J. Shaldiner

A. Vargas

J. Nelson

E. Moss

Dr. C. Adams

H. Helton

M. Johnson

R. Monacchio

D. Moore

S. Orloff

P. Pirelli/Owens

B. Prescott

A. Rodriguez

A. Ryan

File

Mr. Daniel Levin
Chairman
The Habitat Company
350 West Hubbard Street
Chicago, IL 60610

RE: Cabrini Green Development Program

Dear Mr. Levin:

This will confirm our understanding and agreement that as Receiver under the court order in the Gautreaux case, you will perform the function of CHA's "development manager" for the Cabrini Green development program, including the Hope VI program, similar to the manner in which you are functioning in the Henry Horner Homes development program.

Sincerely,

Edwin Eisendrath
Secretary's Representative

~~Copy to: Bob Paulsen~~



The Chicago Housing Authority

March 25, 1996

Edwin Eisendrath
Chairman

Joseph Shuldiner
Executive Director

Executive Committee
Rosanna Marquez
Artensa Randolph
Timothy W. Wright III
Dr. Mildred Harris

Ed Moses
*Deputy Executive
Director for Community
Relations & Involvement*

John Nelson
*Deputy Executive
Director for Operations*

L. Vargas
*Deputy Executive
Director for Finance and
Administration*

Hon. Henry G. Cisneros, Secretary
Dept. Of Housing and Urban Development
451 7th Street S.W.
Washington, D.C. 20410

Dear Secretary Cisneros,

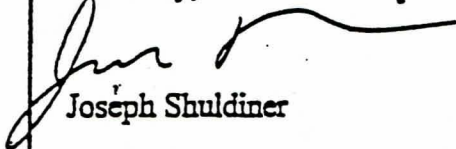
Thank you for your letter to me dated March 15, 1996 in regard to the need to provide viable housing options for low income persons whose mobility impairments or health conditions prevent the use of stairs. Please be assured that we, at the Chicago Housing Authority, are very aware of the need to maximize the availability of such units. Further, because so much of our existing stock is not handicapped accessible, and cannot easily be made so, we, too, look upon the new construction replacement and scattered site units as our best opportunity to increase this stock.

Further be assured that I have mentioned this need to the Habitat Company in the past. As you know, whether as receiver for our scattered site units, or as development manager for the replacement units at Cabrini, Horner, and the Lakefront, the Habitat Company administers our new construction efforts.

I will share with them your letter and your concern, and continue to work with them to maximize the percentage of the units built which can be both lived in and visited by persons with mobility impairments.

Thank you again for your letter and support.

Sincerely,



Joseph Shuldiner

cc: Edwin Eisendrath
Dan Levin
Valerie Jarrett ✓
John Nelson
Andy Rodriguez

AA-155



The Chicago Housing Authority

September 9, 1996

Mr. Christopher Hornig
Deputy Assistant Secretary
Office of Public Housing Investments
U.S. Department of Housing and
Urban Development
451 Seventh Street, SW., Room 4138
Washington, DC 20410

Dear Mr. Hornig:

It is my pleasure to submit this HOPE VI application to continue the revitalization already underway at the Henry Horner Homes and to begin redevelopment at the 3,500 unit complex known as ABLA.

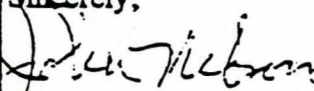
HOPE VI is critical to the continued recovery and long-term sustainability of the CHA. With the most severely distressed public housing developments in the nation, the CHA is wholly dependent on the HOPE VI program to redevelop these communities. To underscore the overwhelming need, the mandatory conversion language in this year's appropriation bill would require the demolition of nearly 19,000 units of public housing. This funding would enable CHA to demolish some of the most run down, crime infested high rises while upgrading and expanding the affordable housing stock in Chicago.

Three high rises have already been torn down at Henry Horner, and two more will be demolished later in the year. Replacement housing is under construction on the existing site and in the surrounding community. This activity has been the catalyst for the redevelopment of the entire Near West side of Chicago, transforming a desolate, poverty stricken inner city area into a vibrant mixed income community. This HOPE VI funding would add 150 units of new low rise housing to the 466 units already under construction or in the planning stages. All of the units built both on and off site will be divided equally between very low income and working families.

ABLA offers revitalization possibilities on a par with Cabrini-Green—prime real estate with high potential for mixed income development. This funding would enable the demolition of three dilapidated high rises and the construction of 200 replacement units on the existing site and on vacant parcels in the vicinity. ABLA is also included in the Authority's vacancy consolidation plan—relocation has begun in two separate sections of the development.

Thank you for your consideration of this funding request.

Sincerely,


John Nelson

Deputy Executive Director, Operations

626 West Jackson Boulevard • Chicago, Illinois 60641-5001 • (312) 781-3000

AA-156

Exhibit C: Physical Description of Revitalization Plan

The overall revitalization plan for the Horner Development (Projects IL 2-19, IL 2-27B, and IL 2-35) is a multi-year, multi-phase program being carried out by a Federal Court Consent Decree.

Phase I began in April of 1995 and will result in demolition of 466 units (2 high rises and 3 mid rises) in the Horner Extension (IL2-35). Funding has already been provided for 466 replacement units which are under construction. Two hundred of the units are being built back on site of the demolished units (lessening the density by about 60%) and 266 units are being provided by new construction on scattered vacant, in-fill sites or acquisition and rehabilitation of vacant and existing properties in the surrounding communities. These sites were the subject of a court approved waiver under the Gautreaux Desegregation case and have been determined to be "Revitalizing Areas" under the provisions of that case. As a condition of the waiver, the replacement housing units are to be for "mixed" income occupancy (50% of the residents must earn 50% or less of median income and 50% of the residents must earn 51% to 80% of the median income). Also included in Phase I is the rehabilitation of IL 2-27B (The Annex Homes). This former 109 unit development is being completely renovated into 90 apartments convertible to 98 units with appropriate community space and outdoor recreation. It is in progress and scheduled for completion in about 16 months. The development is to be re-marketed as a "mixed" income community using 50% of median families and 51 to 80% of median families. Phase I is to be completed in April of 1997 under the Court Order.

Phase III is to consist of the complete rehabilitation of the seven (7) mid-rise buildings in the Horner Homes. The rehabilitation is more incremental than the development in Phase I or II. These mid-rises are presently undergoing a \$5 million dangerous and hazardous repair program, new elevators are to be put in, and extensive exterior repairs to the brick and concrete is about to begin. Significant other investments in pest control, recreation, landscape, and preventive maintenance are being made. Phase III is to be completed on or before April, 2001.

Targeted Development

This Hope VI application, if funded, would provide funding for the beginning of the next phase of revitalization at Horner and would demolish the four remaining high-rise structures and provide land for additional replacement housing units and badly needed open, recreation space.

1. No changes in the size, shape, or use of interior spaces to existing units is contemplated under this application. Only demolition and provision of replacement housing units is proposed.
2. The provision of open, recreation area is proposed as part of this application. Land would be provided within the site to be demolished to facilitate park, sport facilities, and provision of other social and recreation services to the residents who will reside in the 150 replacement housing units to be provided as replacement housing under this application and the 466 replacement housing units previously funded under the Court settlement.
3. The proposed on-site replacement units for the to be demolished public housing units would be provided as follows:

No.	BR Size	Unit Type
10	2BR	Semi-Detached
55	3BR	Semi-Detached
8	4BR	Semi-Detached
2	5BR	Semi-Detached

The units will avoid or lessen concentrations of very low-income families by requesting a Gautreaux Revitalizing Waiver to permit 50% of the units to be provided to very low income families and 50% to families earning 51 to 80% of area median income. Also, the design of the units will be rowhouses and duplex units that will accommodate only two families per building, one of which will be marketed to a very low income family and the other to a 51-80% median income family.

the CHA successfully met the expected goals for the quarter. The Authority received an overall average of "C" for its 1995 modernization score. The Authority is not on the "modernization troubled list."

3. Audit

a. CHA

The FY 94 found the CHA to be lacking in certain major systems critical to support the operations of the Authority. Immediately upon its arrival the new HUD management team developed a comprehensive plan to address the outstanding HUD findings; many of these findings have been successfully addressed as noted in the draft FY 95 audit.

b. Habitat (as receiver)

On June 21, 1996, upon completion of their audit of both the Scattered Site Program and the Chicago Metropolitan Housing Development Corporation (CMHDC)/The Habitat Company Joint Venture, Peat Marwick LLP issued the statement that the Scattered Site Demonstration Program complied, in all material respects, with all HUD and government accounting requirements and standards for the year ended December 31, 1995.

4. Implementation

CHA

The CHA is confident of its capacity to quickly implement the HOPE VI Revitalization Program at Homer Homes. First, as noted above, the CHA has made a strong commitment of time and resources to its redevelopment program and has been moving forward aggressively at four developments. In April 1996, the CHA established a separate Redevelopment Division, charged with oversight of these various redevelopment efforts. This division, having been intimately involved in developing the HOPE VI proposal will be perfectly poised to begin the necessary next steps in the event of an award.

b. Habitat (as receiver)

Implementation of the program can begin quickly under the development management of The Habitat Company since they are fully operational as Receiver for CHA's Scattered Site Program. Staffing (acquisition, planning, construction management, accounting, administration) and processes (RFPs, design, community relations, Section 3, etc.) are currently in operation.

5. Prior experience in financial / leveraging / partnership

As noted above, it is only under the leadership of the new management team that the Authority has made progress in the revitalization of its public housing communities. However, at each of its redevelopment projects described

above, the CHA is pursuing innovative financing models and working to promote public private partnerships. The CHA is committed to using federal dollars to leverage funding and support from the private market as well as other City agencies. The Chicago Metropolitan Housing Development Corporation (CMHDC) a CHA subsidiary may also play a significant role in pursuing innovative financing partnerships to ensure the implementation of the proposed revitalization plan.

6 Receivership

a. CHA

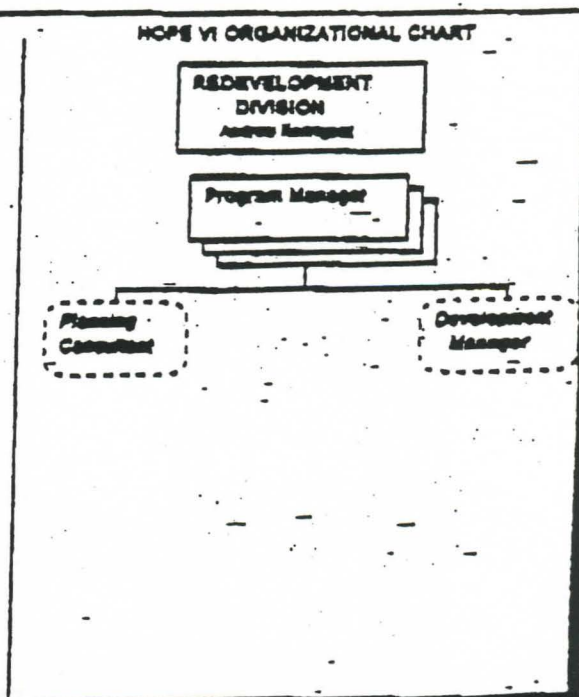
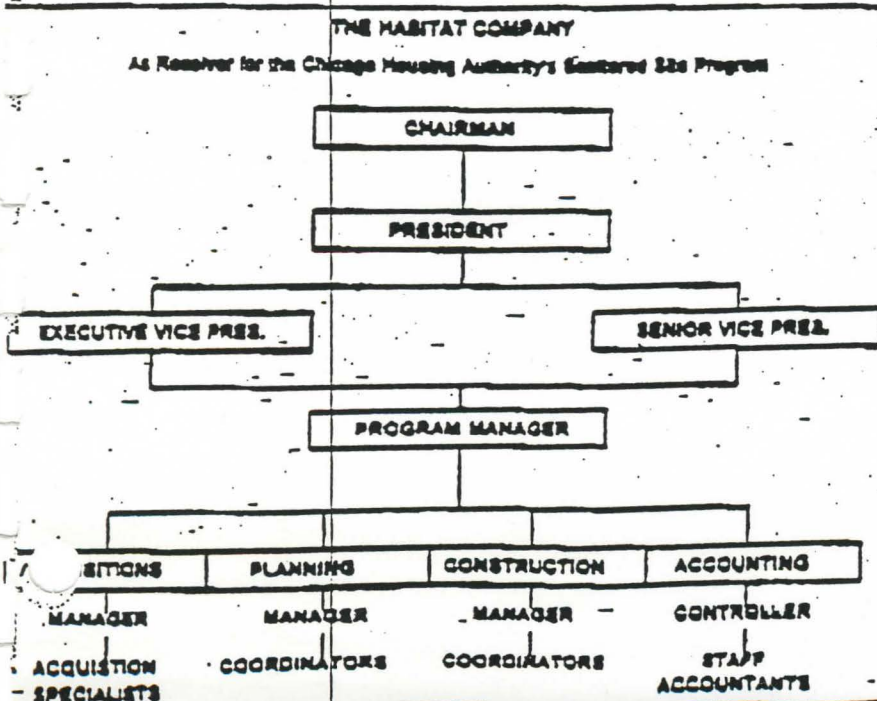
Following the takeover in 1995, HUD is still legally responsible for the operations of the Authority through the person of the Secretary's Representative—who acts as CHA Chairman.

b. Habitat (as receiver)

In 1987, The Habitat Company was appointed by Federal the Court as Receiver for CHA's Scattered Site (non-elderly) Housing Program. The last of the 1,608 units (approximately 250) are currently under construction. Based on Habitat's experience and success in completing these programs in a cost-effective and timely manner, the company is also under contract to CHA in joint venture with CMHDC, an affiliate of CHA, to develop 375 units under "Demonstration Program." Habitat is responsible for the acquisition of land, planning, development, construction management and all related accounting functions.

2 Proposed Staffing

See organization charts from CHA and Habitat below.



Partnerships

a. The CHA will contract with The Habitat Company as development manager for the implementation of the HOPE VI Program (Homer and Brooks Extension). The Habitat Company is a full service real estate brokerage, management and development company. Habitat is the court appointed receiver for the development of The Chicago Housing Authority's Scattered Site (non-elderly) program. Under this program, Habitat has completed over 1,350 units and has additional 330 units under construction. Habitat will be responsible for implementing the plan contained in this application. The financial arrangement will be similar to that approved by HUD for development as the Receiver. The Habitat administrative costs are budgeted at 4.5% of Total Development Cost and the development fee is 3%. Other administrative funds are for CHACMHDC staff and overhead.

The self-sufficiency program is being carried out through a joint partnership of two social service consortiums already serving the area: 1. The West Side Consortium has existed since 1985 and is made up of 18 organizations and 100 service providers who service the needs of the Near West Side generally and which has as its mission the "Raising of funds and other resources for the redevelopment, transformation and economic integration of the Near West Side" (fuller explanation of each member organizations background and service specialty can be found under Exhibit E.) and 2. New Unity West Organization, which is made up of over a dozen social service, health, day care, education, and job training providers who present serve Homer. This newly formed partnership brings hundreds of professionally trained staff and literally hundreds of years of experience in the comprehensive provision of services to Homer residents for self-sufficiency. The group will presently use existing funding to streamline the delivery of services, reduce duplication, and cooperate with government agencies seeking to create a "one stop" comprehensive social service mechanism to Homer residents. The group in conjunction with the HRC, BPI, and Central West Community Organization has pledged to seek additional funding necessary to accomplish a holistic program to bring residents to full self-sufficiency.

The University and the Illinois Medical Center Commission have pledged to assist in job development, job qualification review, training, and job placement within their joint 54,000 job employment base. Both groups will identify new and turnover jobs before they become available and assist the Consortium in training residents for these jobs.

b. The contract with The Habitat Company as development manager will enhance the CHA ability to control costs and expand the supply of housing more quickly. Habitat is currently in the process of developing 455 Replacement Units at Homer and will provide continuity between the existing Replacement Program and the Gautreaux HOPE VI Program.

The West Side Consortium/New Unity West Partnership will guarantee existing providers and their local clients a voice in the type, scope, and delivery methods to be established to bring families to self-sufficiency. Further, these



U.S. Department of Housing & Urban Development
Office of the Assistant General Counsel - Midwest
77 West Jackson Boulevard, Room 2523
Chicago, IL 60604-3807

July 29, 1997

MEMORANDUM FOR: Richard Kruschke, Public Housing Director,
Office of Public Housing, Illinois State
Office, 5APH

ATTENTION: Louis Berra, Director, Distressed and Troubled
Housing Recovery, 5APH

FROM: *Katherine Abraham*
Lewis M. Nixon, Assistant General Counsel for the Midwest,
SAC

SUBJECT: Development Authority Under Gautreaux

At the oral request of Richard Kruschke and Louis Berra on July 28, 1997, we are responding to the question of whether the Chicago Housing Authority or the court appointed Receiver has the general responsibility for development of non-elderly public housing serving as replacement units at Cabrini-Green.

The August 14, 1987 Gautreaux order appointed Daniel E. Levin and the Habitat Company jointly as receiver to develop the scattered site program. The 'scattered site program' was defined to include all CHA non-elderly public housing development programs which might in the future be authorized by HUD. The December 3, 1993 order, the nunc pro tunc order as we typically refer to it, specifically gave development authority for 377 additional scattered site units to serve as replacement housing for Washington Park and Cabrini Green to the Joint Venture comprised of the Receiver and the Chicago Metropolitan Housing Development Corporation ("CMHDC"). In the same order, the Joint Venture was given authority for the eighteen unit Lawndale replacement units, the 350 unit demonstration program and the 25 Family Self Sufficiency Program.

In the August 15, 1993 Joint Venture Agreement, CMHDC is described as an affiliate of the CHA. Provision 5.1 of the Agreement states that overall management and control of the business of the Joint Venture shall be vested in Habitat provided that Habitat would consult with CMHDC on Major Decisions.

Based on the referenced materials, it is the belief of this office that either the Receiver, for general purposes, or the Joint Venture, under the nunc pro tunc order for specific projects, has development authority. In regard to the 377

replacement units for Cabrini and Washington Park approved for funding by HUD in September 1993 and 1994, the Joint Venture has clearly been authorized by Judge Aspen. We also believe that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility. We do not believe the CHA currently has any development authority for non-elderly units.

We have reviewed David Sowell's letter of July 14, 1997 to Rich Monocchio concerning a draft proposal for 44 units of replacement units for Cabrini Green and note that Mr. Sowell says CMHDC would have to separate from CHA and have its own identity. If that is true, then the Joint Venture Agreement and the draft proposal are inconsistent because as stated above, under the Joint Venture Agreement CMHDC is described as an affiliate of CHA. It is our understanding the reason behind the Joint Venture was for CMHDC to develop expertise under the wing of the Receiver, so it could become the development arm of the CHA.

Depending on the nature of Judge Aspen's expected August 15, 1997 ruling it may be time for the parties to consider dissolving the Joint Venture and for filing a motion before Judge Aspen based on such a discussion. It may also be appropriate to ask the court for clarification concerning development authority under HOPE VI.

If you have further questions please send a memorandum to the attention of Jan Elson.

representatives of CHA tenants organizations, elect officials, neighborhood residents and others concerning the housing development activities of the Receiver under the Receivership Order and concerning the activities of the CHA.

3. I am aware from my own personal knowledge of a pattern of activity by the CHA whereby it has failed to cooperate with the Receiver, and has sought to assume and carry out Housing Development Activities that are the responsibility of the Receiver under the Receivership Order. Several examples are described in this affidavit.

4. The CHA has failed to provide approvals to the United States Department of Housing and Urban Development ("HUD") needed to cause HUD to release funds to the Receiver for the construction of housing. As a result, more than \$7.6 million in funds needed by the Receiver for Development Activities have been withheld. On March 13, 1998 I wrote a letter to Deborah Torres of HUD describing the CHA's actions, the funds being held up as a result and requesting that HUD release the funds as required by the Receivership Order. A copy of that letter is attached hereto as Exhibit A.

5. The CHA has initiated and pursued Housing Development Activities that are the responsibility of the Receiver, including initiating development plans for replacement housing for the Cabrini-Green housing development, for the Darrow Homes development, and for the Robert Taylor Homes development. The CHA has

undertaken such activities without prior consultation with and/or approval by the Receiver.

6. In the case of the Cabrini-Green housing development the CHA initially indicated that it would work with the Receiver in the capacity of a development manager. Thereafter, the CHA reversed its position and excluded the Receiver from its planning and development activities, which it has pursued directly with the City of Chicago and the tenants over the past one and one-half years.

7. In the case of the Darrow Homes development, the CHA's independent planning of new housing construction and commitments to tenants are described in a February 11, 1998 Chicago Plan Commission document attached hereto as Exhibit B. That document describes the CHA's proposal to the Chicago Plan Commission, seeking approval of a planned unit development for the construction of 105 units of housing at the Darrow development. That proposal was submitted without prior consultation with or approval by the Receiver.

8. In the case of the Robert Taylor Homes development, my information is based upon Mr. Levin's letter to Judge Aspen of March 13, 1998 and upon a conversation I had with a property owner in the limited area who had been approached by the CHA to provide replacement housing for residents of Robert Taylor homes using HOPE VI development funds. I subsequently confirmed these plans with a representative of the CHA.

9. The CHA has informed us that it has plans to rebuild substantial portions of the ABLA development, and has solicited the City's participation in planning efforts related to such development. In 1997 CHA submitted a HOPE VI application to HUD that HUD did not fund. CHA has not invited the Receiver to participate, or kept the Receiver advised of its plans. Indeed, the CHA specifically advised the Receiver that it did not want the Receiver to work on any portion of ABLA other than the Brooks extension, where the Receiver was already acting as development manager.

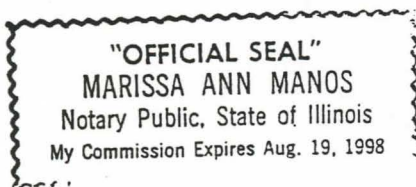
10. As a result of the activities of the CHA as summarized above, the Receiver's ability to carry out the Housing Development Activities assigned to the Receiver has been impaired. When the CHA initiates its own development activities it generates confusion among public agencies, CHA residents, developers, lenders, elected officials, community-based organizations, and neighborhood residents concerning the development of new housing that is the responsibility of the Receiver, and makes the Receivers' work much more difficult.

11. The foregoing matters are based upon my own personal knowledge except where another source is noted above, and in those instances I believe the information to be true and correct. I would so testify if called as a witness.

Philip A. Hickman
Philip A. Hickman

Subscribed and sworn to
before me this 18th day of
March, 1998.

Marissa Ann Manos
Notary Public



66 C 1459

14. Prior to working for Habitat, I was the Executive Director of the Oak Park Housing Authority from 1975 to 1980. From 1980 to 1983 I developed low and moderate-income housing as Vice President and Director of Development for the Burnham Development Co., in Chicago. I later worked for Harris Webber Ltd. as Senior Vice President/Development, developing low, moderate, and market rate housing. I joined The Habitat Company in December 1987 as director of the Scattered Site Program.

15. I have a B.A. in Economics from Denison University, an M.S. from the University of Wisconsin in Curriculum and Instruction, and an M.A. in Urban Economics from Northern Illinois University.

16. I am a Certified Property Manager, a certification by the Institute of Real Estate Management, a national trade group. I am also a Certified Public Housing Manager, a certification by the National Association of Housing and Redevelopment Officials, and a Counselor of Real Estate, a certification from an affiliate of the National Association of Realtors.

* * * * *

17. The Receiver has participated in HOPE VI application and development activity, as follows:

A. Cabrini-Green.

18. In 1993, the CHA applied for a HOPE VI grant for Cabrini-Green. A grant was awarded in November 1993 for \$50 million, approximately \$40 million for replacement housing and \$10 million for "soft services." The Receiver was not invited to participate in the grant, and was unaware of the application at the time it was submitted.

19. Once we learned of the grant, Mr. Levin and I discussed it with Vincent Lane, CHA's then Executive Director. We told Mr. Lane that it was the responsibility of the Receiver to develop any new non-elderly housing that might be funded with the Cabrini HOPE VI funds.

20. During 1993, 1994, and 1995, the CHA wrote to HUD that replacement housing developed with HOPE VI funds at Cabrini would be located in accordance with Gautreaux court orders. Copies of letters that so state are attached as Exhibits to the Plaintiffs' Response to CHA Motion to Stay.

21. After HUD took over the CHA in May, 1995, I raised the HOPE VI question with Robert Prescott, one of the HUD officials who had become involved with oversight responsible for the CHA. HUD reexamined the CHA's obligations to cooperate with the Receiver and I was informed by Mr. Prescott that HUD had determined that it would coordinate housing development with the Receiver.

22. Attached as Exhibit 1 is a copy of a July 3, 1995 memorandum from Robert Prescott of the HUD-CHA management to me, with copies to Mr. Polikoff and other HUD and CHA employees. It confirms a June 29, 1995 meeting at which I had explained to Mr. Prescott that under the Receivership Order the Court had assigned to Habitat responsibility to develop all new non-elderly housing for CHA, including non-elderly housing development for Cabrini under the HOPE VI program.

23. Attached as Exhibit 2 is a copy of a June 30, 1995 letter from Kevin Emanuel Marchman, a HUD official and Interim Executive Director of the CHA, to Deborah Moore, Executive Director of CMHDC (a CHA affiliate). The letter directs CHA to coordinate with the Receiver.^{1/}

24. At about that time, I attended several meetings at which Alexander Polikoff, counsel for the Gautreaux plaintiff class, told the new HUD administrators of the CHA that all HOPE VI new housing development at Cabrini was the responsibility of the Receiver, under this Court's Orders.

25. Attached as Exhibit 3 hereto is a copy of a July 12, 1995 Memorandum from Kevin E. Marchman, then Interim CHA Executive Director, to Joseph Shuldiner, then Assistant Secretary of HUD. Mr. Marchman reported that Mr. Polikoff had

^{1/} After giving up his role as Interim CHA Executive Director, Mr. Marchman became HUD's Assistant Secretary for Public Housing, a position in which he remained through March 13, 1998.

focused on the role of the Receiver in HOPE VI new housing development to HUD/CHA:

8. There have been several meetings with Mr. Alexander Polikoff, Executive Director of Business and Professional People for the Public Interest, concerning placement of HOPE VI replacement housing into so-called "impacted" areas, including the Cabrini Extension site itself, and also about the role of the Court-appointed Receiver, i.e., The Habitat Company, in the planning and development of the replacement housing. It should be noted that 190 units of the total 660 replacement units were funded from non-HOPE VI allocations, and Habitat has the responsibility under their Court Order for planning and providing these dwellings. The questions raised by staff deal with the remaining 303 hard replacement units to be built with HOPE VI funds.

26. The July 12, 1995 memo also lists actions planned before the next CHA Board Meeting, including:

4. Determine the role of the Court-appointed Receiver, if any, in the planning and development of the 303 hard replacement HOPE VI units.
5. Designate or initiate the process for selection of a Development Manager, and reach agreement on the process to be followed in assembling a development team.

27. As set forth in the separate Affidavit of Daniel Levin, Habitat agreed to be called "development manager" to perform its work as Receiver on new family housing developed with HOPE VI funds at Cabrini.

28. Beginning in June 1995, Habitat proceeded to work with the HUD-controlled CHA on the Cabrini-Green development. Habitat's work included land use planning, preparation of and issuance of a Request for Proposals, working with architects and planners, conducting meetings with prospective developers and

consultants, and coordinating meetings with City of Chicago officials and staff, residents, resident consultants, and community groups.

29. In 1995 and 1996, I and other Habitat personnel attended many meetings with CHA and HUD officials concerning the Cabrini-Green redevelopment.

30. During August and September 1995, we exchanged a number of drafts of the initial Request for Proposal ("RFP") with CHA officials, including Mr. Eisendrath and Robert Prescott. A copy of a Qualification Request for the RFP, published in the *Wall Street Journal* on September 8, 1995, is attached as Exhibit 4 hereto. The Qualification Request says that responses will be opened at Habitat's offices by "The Habitat Company, as Development Manager for the Chicago Housing Authority's Cabrini HOPE VI/Urban Revitalization Demonstration Program."

31. A copy of the Request for Proposals, issued as Step One and Step Two by Habitat as Development Manager, is attached as Exhibit 5 hereto.

32. Attached as Exhibit 6 is a copy of a September 12, 1995 memo from HUD/CHA. My recollection is that I received a copy from Mr. Prescott, who was the Cabrini project manager, on temporary assignment by HUD Washington to CHA. The memo identifies the following issues concerning the RFP at Cabrini:

Division of Responsibilities:

Currently the formal role of the Habitat Company (THC) has yet to be clearly defined, although on the request of HUD we were informed to include THC as the development manager for the Cabrini HOPE VI Urban Revitalization Demonstration Program.

33. Habitat thereafter requested and received a letter dated November 14, 1995, from Edwin Eisendrath, then HUD's Secretary's Representative in Chicago and Chair of the CHA, confirming the Receiver's authority to proceed to work on the Cabrini-Green HOPE VI development, as Development Manager. A copy of that letter is attached as Exhibit 7 hereto. The Eisendrath letter states:

This will confirm our understanding and agreement that as Receiver under the court order in the Gautreaux case, you will perform the function of CHA's "development manager" for the Cabrini Green development program, including the HOPE VI program, similar to the manner in which you are functioning in the Henry Horner Homes development program.

34. Habitat solicited and evaluated responses to the RFP. An example of Habitat's work on this matter is the attached list of issues for discussion with Mr. Shuldiner for October 18, 1995. A copy is attached as Exhibit 8.

35. Habitat and the new CHA staff worked together throughout late 1995 and the first half of 1996 on Cabrini planning. A November 30, 1995 memo from Eileen Rhodes of CHA to the Receiver, Mr. Eisendrath, Andrew Rodriguez of the CHA, and the lawyer for a Cabrini tenant group is attached as Exhibit 9. It shows the detailed nature of the CHA-Habitat cooperation, and CHA's working recognition of Habitat as development manager/Receiver for Cabrini.

36. Other examples of the CHA's recognition of Habitat's role are from press releases of December 21, 1995 and January 26, 1996, copies of which are attached as Exhibits 10 and 11. The latter discusses a joint press conference of the Receiver

and CHA Executive Director Joseph Shuldiner, concerning the Cabrini redevelopment. Habitat is identified in the press statements as "the development manager for CHA."

37. In a March 25, 1996 letter from Mr. Shuldiner to HUD Secretary Henry G. Cisneros, Mr. Shuldiner, CHA acknowledged Habitat's role for development at Cabrini -- and all new CHA housing development. A copy is attached as Exhibit 12. The letter stated:

[W]e . . . look upon the new construction replacement and scattered site units as our best opportunity to increase this stock [of handicapped accessible housing].

Further be assured that I have mentioned this need to the Habitat Company in the past. As you know, whether as receiver for our scattered site units, or as development manager for the replacement units at Cabrini, Horner, and the Lakefront, the Habitat Company administers our new construction efforts.

I will share with them your letter and your concern, and continue to work with them to maximize the percentage of the units built which can be both lived in and visited by persons with mobility impairments. [Emphasis added.]

38. Other examples of Habitat's work on the Cabrini redevelopment effort are a planning study dated June 7, 1996, and a marketing study by Tracy Cross & Assoc. A copy of the planning study is attached as Exhibit 13. This study was discussed at a June 11, 1996 meeting with the planning group, including HUD, the City, the Park District, the Board of Education, and the CHA, where Habitat acted as "Planning Group Coordinator." Following the meeting, on June 18, 1996, Valerie Jarrett sent a memo to the group enclosing a draft of important issues. A copy is attached as Exhibit 14 hereto. A copy of the marketing study is attached as Exhibit 15.

39. Habitat continued to work actively on the Cabrini redevelopment (including the HOPE VI portion) through the summer of 1996. This work included Matthew Nielson of our staff attending weekly meetings of a working group.

40. While Habitat was working on the HOPE VI Cabrini-Green development, we negotiated a Development Manager agreement with the CHA. A number of drafts of the development management agreement were exchanged. Copies of two of the drafts are attached as Exhibits 16 and 17 hereto.

41. No Development Manager agreement was executed, however. Alexander Polikoff, counsel for the Gautreaux plaintiffs, commented that The Habitat Company ought to expressly retain its authority as Receiver. Habitat agreed with his position, and before and after those comments, Habitat included such language in several drafts of the Development Management Agreement. The CHA's drafts removed the language.

42. A copy of a June 14, 1996 letter from Mr. Polikoff to Mr. Levin, with a copy to Mr. Shuldiner, emphasized the Receiver's authority over new replacement housing development with HOPE VI funds pursuant to the Receivership Order. A copy is attached as Exhibit 18 hereto. The letter commented on a CHA-provided draft Development Manager Agreement. After discussing the background, Mr. Polikoff wrote:

In light of our view that the Court-appointed Receiver is lodged with full and exclusive authority to develop public housing with HUD funds that are allocable to CHA, you can see why we have some trouble

with the draft Development Agreement. The draft proceeds from the assumption that CHA, not the Court, is conferring authority upon Habitat to develop public housing, and many of its provisions derive logically from this starting point. For example, the draft says Habitat shall develop the contemplated housing subject to CHA approval, that Habitat is engaged as an independent contractor, that Habitat may be terminated by CHA, etc. The agreement even suggests that the Receiver subject itself to the jurisdiction of another court. I do not criticize these provisions as inappropriate in a normal contract situation. It is just that they don't fit into this situation at all.

43. On August 30, 1996 I sent a letter to Richard Monocchio, Special Assistant to the Executive Director of the CHA, requesting payment for \$149,881 for our HOPE VI work at Cabrini. Attached to the letter were documents itemizing how the costs were incurred. On December 27, 1996, the CHA issued a check for the full \$149,881 previously requested by Habitat. The check says that it was "FEES FOR WORK ON THE: CABRINI-GREEN REDEVEL." (Copies of the relevant documents are attached as Exhibits 19 and 20 hereto).

44. On September 18, 1996, Mr. Shuldiner wrote Valerie Jarrett and asked Habitat to stop work on Cabrini-Green redevelopment, except for any work specifically agreed upon. A copy is attached as Exhibit 21. It states, in part:

It is becoming more evident that the City has assumed responsibility for coordinating the public and private sector partners and implementing this plan. As a result, the CHA's role at this point is limited. This gives us the opportunity to minimize our administrative expenses and conserve HOPE VI funds for the development of housing units. As of September 20, 1996, the CHA will not pay any outside planning fees unless authorized by the CHA in advance.

45. On October 2, 1996, I wrote back to Richard Monocchio of the CHA, and discussed a meeting we had had on the subject. A copy is attached as Exhibit 22. I wrote Mr. Monocchio that we intended to continue to work on the Cabrini HOPE VI matter, and invoice the CHA for our time, in accord with past practices. I also wrote: "As discussed, we plan to pursue clarification with the City with respect to our role in coordinating all the housing to be developed in the Cabrini revitalization area."

46. On October 24, 1996, Mr. Shuldiner wrote Ms. Jarrett. A copy is attached as Exhibit 23. Mr. Shuldiner wrote that a group (chaired by the City) was conducting a planning process, and that it will complete its process by the end of the year. He concluded:

During this time, it will not be necessary for representatives of the Habitat Company to attend meetings or otherwise represent the CHA in the near North Redevelopment planning process. I think it would be appropriate to revisit this issue once . . . [this process] is completed.

47. On October 23, 1996, the Cabrini-Green Local Advisory Council sued the CHA concerning the Cabrini-Green Redevelopment plan. Cabrini-Green v. CHA, No. 96 C 6949. That lawsuit essentially froze planning work on Cabrini redevelopment. For that reason, immediate resolution of the dispute between the CHA and the Receiver concerning the role of the Receiver for HOPE VI work at Cabrini was not required.^{2/} (The Receiver has followed a policy of attempting to negotiate disputes with the CHA in the first instance, and only applying to the Court where assistance was

^{2/} The CHA's motion to dismiss the lawsuit was denied by Judge Coar on January 21, 1997.

necessary.) Instead, as discussed in the Affidavits of Mr. Levin, Ms. Jarrett, and Barry Miller submitted herewith, the Receiver had a series of discussions on this matter with the CHA through 1997, and raised the matter with the Court in July 1997.

48. In late 1996 or early 1997 I learned from CHA staff that CHA was planning to use HOPE VI replacement housing funds as equity to purchase a 40-year lease on 44 new dwelling units planned for construction at "Mohawk-North" and "Old Town Square," two properties being privately developed in the Cabrini area.

49. I knew from my experience with HUD procedures and my knowledge of the HOPE VI program that before HUD would approve such an expenditure, HUD would require the CHA to have a "Revitalization Plan" for the Cabrini-Green HOPE VI approved by HUD's Washington, D.C. HOPE VI office and that it would be a difficult and time-consuming process for CHA to obtain HUD approval. As of this writing, over one year later, CHA has still not, to my knowledge, obtained the required approval from HUD of a "Revitalization Plan."

50. Richard Monocchio of the CHA approached me in early 1997 about the possibility of Habitat using its Cabrini-Green development funds to lease 44 units at Mohawk-North and Old Town Square for CHA residents. Mr. Monocchio said that he contacted Habitat because of CHA's lack of a HUD-approved "Revitalization Plan" for Cabrini-Green, and because he anticipated that CHA would be unable to obtain approval within the time frame desired by the owner of the property.

51. At that time, the Receiver had funding for 190 units (under Programs 182 and 192) from HUD for use in the Cabrini-Green area. CHA requested that we use funding for 44 of those units for the "equity purchase" of forty-year leases at Mohawk North and Old Town Square. (HUD permits the use of housing development funds for an equity payment under a lease arrangement if certain conditions are met, notably, if (i) the lease is for 40 years, (ii) the property is not subject to real estate taxes, and (iii) the monthly maintenance payment to the private owner is not in excess of the amount permitted to the housing authority under the performance funding system.)

52. On May 13, 1997, Mr. Shuldiner wrote Valerie Jarrett and me, requesting that Habitat use Gautreaux funds to finance the equity purchase of the long-term lease on the 44 units. A copy of that letter is attached as Exhibit 24 hereto.

53. I told the CHA that we were willing to cooperate, and we have engaged in lengthy negotiations with the CHA and with HUD to complete this transaction, which is now close to completed. As Receiver, we submitted a Development Plan to HUD for the 44 units. A copy of the Plan is attached as Exhibit 25 hereto. We have agreed with CHA on a total receiver fee of \$35,000 for this work.

B. Horner II/ABLA.

54. In 1996, the CHA submitted a second HOPE VI application for housing development funding. This application was for a second phase of housing at the Henry Horner Homes and also replacement housing at the ABLA developments.

(ABLA is the amalgamation of 4 large developments with over 3500 apartments in the area near the University of Illinois-Chicago along Taylor St. and Roosevelt Road.) The Receiver's staff assisted with the preparation of this HOPE VI application.

55. In connection with that application, the Receiver executed a formal Development Manager Agreement with CHA. A copy of the Agreement and an April 30, 1997 transmittal letter from Mr. Shuldiner to Mr. Levin, is attached as Exhibit 26 hereto.

56. This Agreement permitted the Receiver, as Receiver, to act as development manager for these projects, and expressly reserved all of the Receiver's authority. In the Receiver's opinion, this permitted the Receiver to discharge satisfactorily its Receivership duties under the Court's Orders with respect to this project.

57. Since that time, the Receiver has continued to perform its duties in connection with replacement housing development at Horner and ABLA pursuant to the Development Manager Agreement.

C. Robert Taylor Homes ("Taylor").

58. We were not included in the CHA's 1996 application for HOPE VI funds at Taylor. We were not involved in the preparation, nor told in advance that the CHA would file an application. Indeed, we were unaware that the CHA had applied, and

I learned from a housing trade publication that the CHA received \$25 million in HOPE VI funds for Taylor.

59. Shortly after I saw the story, I spoke with Richard Monocchio of the CHA. When I asked him about the exclusion of the Receiver from the Taylor HOPE VI application, he told me that it was not necessary for the Receiver to be involved since the CHA was not planning to develop any replacement housing at Taylor. (HOPE VI funds can also be used for housing rehabilitation, social services, and purposes other than new housing development.)

60. Sometime during the fall of 1997, I received a telephone call from a property owner I know in the Washington Park area of Chicago (located not far from the Taylor development). The Washington Park area, like the Taylor area itself, is a limited area under this Court's Gautreaux judgment. My acquaintance told me that the CHA had approached him about "purchasing" a forty-year "equity lease" on twenty apartments in a building he owns. At the time, he did not know the source of the funds. He indicated he learned of the CHA's interest in such a leasing program at a meeting he was invited to by CMHDC with other owners of apartment buildings.

61. After I had spoken with the property owner, I spoke with someone at the CHA, I believe Rafael Leon at CMHDC, who told me the CHA was planning to use HOPE VI money from Taylor to do long-term leases with the owner of the property.

62. After I informed Mr. Polikoff about the above, he told me that he had raised the CHA's unilateral pursuit of HOPE VI new housing development funds for Taylor with the CHA during discussions in 1997. The use of HOPE VI funds for new non-elderly housing development, including the use at Taylor, was one of the items the CHA refused to discuss with us in June and July, 1997.

D. The CHA's Claims of Irreparable Injury.

63. Despite having spent virtually all of my time during the last ten years developing HUD-financed public housing, I know of no specific HUD rules or practices that supports CHA's concerns about injury to it should the Court's February 23 HOPE VI Order not be stayed. Rather, I am aware of facts to the contrary.

64. I deal with HUD virtually on a daily basis. Several HUD employees have repeatedly told me that only the Receiver, and not the CHA, is authorized to spend HOPE VI funds on new housing. For example, Janet Elson, a HUD attorney in Chicago, has told me that HUD would not disburse any funds to the CHA for HOPE VI new housing development, because the August 14, 1987 Order appointing the Receiver required The Habitat Company to develop all non-elderly public housing as Receiver for CHA's development program. That statement is consistent with a July 29, 1997 memo from Lewis Nixon on the subject, attached as Exhibit 27 hereto, in which Mr. Nixon stated "We also believe that any funds under HOPE VI which go to replacement housing are currently a Receiver responsibility."

65. I am aware of no reasons why the CHA could not turn over to the Receiver responsibility for replacement housing development at Cabrini and Taylor, just as had been done at the ABLA/Horner II HOPE VI development. (It would, of course, be possible that CHA's plans might have to be changed if they are not in compliance with this Court's orders, which Habitat, as Receiver, is charged to carry out -- but that would be true no matter who is responsible for developing the housing.)

66. The CHA's Motion at 6 suggests that the Receiver wishes to be "the sole source developer for more than \$300 million worth of construction . . . without giving the CHA the opportunity to obtain competitive proposals." This statement is grossly inaccurate, for several reasons.

67. First, Habitat has no idea where the \$300 million figure comes from. We have requested information from the CHA about its plans, but it has not been provided.

68. Second, Habitat has never developed Gautreaux housing construction as "the sole source developer . . . without . . . competitive proposals." We have employed multiple contractors and used competitive bidding in accordance with HUD regulations. Habitat has managed the development process for the construction of new CHA housing. The actual construction process has been performed by private general contractors and turnkey developers, after a competitive bid and Request for Proposal process. All of the procurement process for this construction work has been reviewed, monitored, and approved by HUD.

69. For example, in Horner replacement housing work, Habitat has retained private contractors and turnkey developers, including MCL Companies, New England Builders, Cyrus Development Co., and Enterprise Development Co., who work under Habitat's supervision, as provided in the contract documents. In each case, the private developers are working in a partnership with a not-for-profit entities, including Near West Development Corp., Horner Association of Men, and Hull House. Those not-for-profit entities were selected by the CHA, without competitive bid, and identified as joint venture builders pursuant to the consent decree Horner entered in the Henry Horner Mothers Guild v. CHA case pending before Judge Zagel, No. 91 C 3316. Again, HUD has approved the process and contracts for all this work.

70. Third, Habitat was selected as Receiver by the Court after a review process conducted by a screening committee appointed by the Court, and following interviews with a number of applicants.

71. During the period from 1987 through the end of 1997, The Habitat Company has completed or has under construction 2205 scattered site and other public housing units (including replacement housing) at a cost through that date of \$205,031,902.

72. The Receiver's work was summarized in the Report we submitted to the Court on January 28, 1998. A copy is attached as Exhibit 28.

E. The CHA's Efforts at Darrow Homes.

73. The CHA's Clarence Darrow Homes project was made up of four high-rise buildings containing approximately 480 units. Darrow is located next to other distressed CHA public housing, including the Ida B. Wells development, which has over 2,000 family public housing units, and Madden Park, which contain 485 family public housing units.

74. I have been informed by the CHA staff that the CHA decided to allocate approximately \$8.5 million of HUD Comprehensive Grant funds to rehabilitate one of the Darrow high-rise buildings.

75. The CHA then changed its plans, and considered building new housing on the site. As set forth in the separate affidavit of Valerie Jarrett, the CHA, the Receiver, and counsel for the plaintiffs entered into negotiations for the CHA to construct 38 townhouse units, on a demonstration basis, at or near Darrow. Those negotiations never reached a final agreement.

F. The CHA's Lack of a Successful Development Record.

76. During the past six to seven years, the CHA has attempted to perform development of new housing. The authorized units have not been built. The details are described below.

77. In 1990, the CHA, under Mr. Lane requested and received court approval to undertake a demonstration program by constructing 350 units of scattered site

housing. The Receiver and the Gautreaux plaintiffs agreed to this proposal, and cooperated with it, to see if the CHA had the capacity to build housing. The Court formally approved the proposal.

78. The demonstration program was originally scheduled to last for two years. After no housing was built, it was voluntarily extended by the parties for an additional two years.

79. As the second two-year period ended, and the CHA had not produced any units, Mr. Lane approached the Receiver and suggested entering into a joint venture with Chicago Metropolitan Housing Development Corp. ("CMHDC"), a development entity created by the CHA, to build these units and to assist the CHA in obtaining development expertise. A court Order was entered on December 3, 1993 approving the joint venture. A copy of the Order is attached as Exhibit 29.

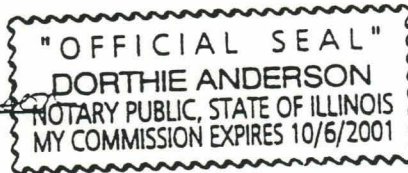
80. Under the joint venture, Habitat is the managing venture partner. During most of the existence of the joint venture, CMHDC has had provided little or no participation in the joint venture, having failed to assign any employees to it for substantial periods of time.

81. The foregoing matters are based upon my own personal knowledge except where another source is noted above or a matter is stated on information and belief, and in those instances I believe the information to be true and correct. I would so testify if called as a witness.

Philip A. Hickman
Philip A. Hickman

Subscribed and sworn to
before me this 30th day of
March, 1998.

Dorthie Anderson
Notary Public





THE HABITAT COMPANY

MEMORANDUM

TO: Chief Judge Marvin E. Aspen

FROM: Daniel Levin and
The Habitat Company *Daniel Levin*

DATE: January 28, 1998

SUBJECT: CHA SCATTERED SITE HOUSING PROGRAM
Quarterly Report: Fourth Quarter 1997

SCATTERED SITE PROGRAM - 1,602 UNITS

Background Original funding for the Gautreaux Scattered Site Program was estimated to produce 1,608 units. Due to the downzoning of property suitable for six (6) units, the total unit count has been reduced to 1,602. The funds for the six units will be transferred to Program 117 where other program savings are currently held by HUD. At the completion of the Scattered Site Program, when all costs are known, HUD has agreed to review cost savings and reformulate Program 117 funds for additional public housing developments. Presently the estimated savings exceeds the amount necessary to complete the six units.

Current Status: Effective December 31, 1997, the development pipeline is summarized below for the Scattered Site Program.

UNITS		STATUS
1,550		Completed and Transferred
52		Under Construction*
1,602	Subtotal	Completed/Under Construction
0		To be Acquired
1,602		TOTAL

*Refer to Scattered Site Program 152 background and current status.

Design and Construction Activity: Construction activity continues on a total of one (1) Turnkey program. Completion status at the end of the quarter is as follows:

<u>Program #</u>	<u>% Completed</u>	<u>Program #</u>	<u>% Completed</u>
152	20%	161	19%

PROGRAM	APPROVED BUDGET	COST (INCOME) TO DATE
149TK	2,709,352	2,641,453
150TK	2,522,813	2,333,425
151TK	2,747,255	2,696,107
152TK	2,410,726	640,766
153	2,549,740	2,546,470
154TK	3,988,830	3,448,068
155TK	2,627,030	2,469,295
156TK	2,679,344	2,611,175
157TK	2,723,598	2,656,660
158TK	3,149,769	2,946,303
159TK	2,634,087	2,590,885
160TK	2,909,461	2,743,993
161TK	4,143,819	647,850
175TK	3,369,490	3,185,847
176TK	3,688,870	3,377,309
TOTAL	\$154,394,663	\$142,903,629

- (a) The purpose of Program 117 is to hold miscellaneous properties until demolished, sold or used for new construction. The \$28,113 represents income to the Program, the proceeds resulting from the sale of buildings and vacant lots. Other surplus development funds of approximately \$16.7 million have been transferred to this Program and HUD has allowed this Program to fund subsequent Programs in their initial stages.

Conclusion: Active construction continues on 31 units in 1 program. It is anticipated that most of the units will be complete by mid-1998. Program 152's remaining 21 units should start construction in March 1998. For the quarter the total funds expended was \$2,047,000. Since the Program's inception, \$142,903,713 has been spent.

DEMONSTRATION PROGRAM - 238 UNITS
FAMILY SELF-SUFFICIENCY PROGRAM - 16 UNITS

CMHDC/Habitat Joint Venture

Background: In 1990, the Chicago Housing Authority (CHA), was granted permission by the Court to begin development of 350 family public housing units known as the "Demonstration Program." In the third quarter of 1993, upon CHA's request and the Court's permission, The Habitat Company (THC) and The Chicago Metropolitan Housing Development Corporation (CMHDC), an instrumentality of CHA, entered into a joint venture agreement to complete the development of these units. THC is the managing partner of the Joint Venture. The Agreement included the 350-unit Demonstration Program plus a 25 unit program called "Family Self-Sufficiency Program" (FSS).

THC and CMHDC analyzed the estimated cost to complete 375 units and found that funds allocated for the units in 1990 were not sufficient to complete the number of planned units and that additional funds were needed. Additional funds were requested of HUD. HUD/Washington indicated that no additional funds were available and authorized the Joint Venture to construct the maximum number of units possible under the original funding. Based on the current acquisition status, the estimate for the total units which can be completed with the available funding is as follows:

<u>Program</u>	<u>Program Approved</u>	<u>Original Unit Count</u>	<u>Original Funding</u>	<u>Revised Unit Count</u>	<u>Revised Funding</u>
Demonstration	03/09/90*	350	\$35,466,000	238	No Change
FSS	09/30/92*	<u>25</u>	<u>\$ 2,223,356</u>	<u>16</u>	<u>No Change</u>
	Totals:	375	\$37,689,356	254	No Change

* A joint venture between the Receiver and CMHDC was executed in the third quarter of 1993. Prior to that time, no progress had been made by CHA to develop any units.

Current Status: Effective December 31, 1997, the development pipeline is summarized below for the Demonstration/Family Self-Sufficiency Program.

<u>NO. of UNITS</u>	<u>STATUS</u>
80	Completed & Transferred to CHA
58	Under Construction
58	Design Phase/Bid Phase
42	Closed (Preconstruction)
238	SUBTOTAL (Closed Properties)
16	In Acquisition Process
254	TOTAL

Identification and acquisition continues of property located on the north and south sides of the City. Newer buildings (post 1978, when the use of lead based paint was banned) remain the primary focus for acquisitions. Since many of these areas have seen little new construction since the 1970s and have little market activity, the acquisition continues at a steady pace, although slower than originally anticipated.

Financial Activity: for each of the funded programs for the period ending December 31, 1997 is below:

<u>PROGRAM</u>	<u>APPROVED BUDGET</u>	<u>COST TO DATE</u>
145	3,457,281	3,357,650
146	2,289,199	2,240,122
162	3,521,980	3,800,716
164	4,320,001	3,371,238
165	3,012,835	2,215,152

REPLACEMENT HOUSING PROGRAM

CMHDC/Habitat Joint Venture

Background: In 1987, the Court assigned the development management of CHA's non-elderly new construction projects to the Receiver. Originally, the Replacement Housing Program consisted of 105 units for Washington Park and 107 units for Cabrini. To date, the Receiver's Replacement Housing Programs have expanded to 1,644 units located in six different geographic areas. Twenty-two (22) programs have been funded totaling \$192,039,685. (See following charts which outline details by Program.) The funds have been awarded through various programs, public housing development funds, and the HOPE VI funds. Due to various Consent Decrees and the dedicated community involvement that exists in each development area, the Receiver has been committed to and is an active participant in informational and planning meetings. These meetings with Receiver's staff include, but are not limited to, various community organizations, public housing resident groups, CHA, HUD, City officials, design professionals, general contractors and the Court appointed special masters.

Current Status: Effective December 31, 1997, the development pipeline is summarized below for the Replacement Housing Programs.

PROGRAM	NAME	# Of Units	STATUS
IL06-P802-178	<u>Lawndale - 18 units</u> 18 Units	2 6 10	Transferred/Completed Under Construction Site Acquisition
IL06-P002-180 IL06-P002-180T IL06-P002-180P	<u>Washington Park - 317 units</u> Woodlawn	38 15 16	Site Acquisition Bid Process Acquisition/Purchase in other developments
IL06-P002-184		16 17	Transferred/Completed Under Construction
IL06-P802-193 IL06-P802-193	Drexel Lakefront	40 90	Pre-Bid Pre-Bid
IL06-P002-194 IL06-P802-194F	34 Units 4 Units	25 9 4	Transferred/Completed Under Construction Transferred/Completed
IL06-P002-205		7	Bid Process
IL06-P002-206		22	Design Phase
IL06-P002-207		18	Pre-Bid
	TOTAL	317	

PROGRAM	NAME	# Of Units	STATUS
	Horner - 466 Units		
IL06P802-188	30 Units	30	Transferred/Completed
IL06-P802-195	45 Units	39	Transferred/Completed
		6	Under Construction
IL06-P802-196	38 Units	38	Permit Review
IL06-P802-197	44 Units	44	Design Phase
IL06-P802-198	56 Units	56	Transferred/Completed
IL06-P802-199	39 Units	39	Under Construction
IL06-P802-200	30 Units	30	Under Construction
IL06-P802-191	51 Units	3	Transferred/Completed
		48	Under Construction
IL06-P802-201	43 Units	43	In Design/Site Acquisition
IL06-P802-202	43 Units	43	Under Construction
IL06-P802-203	32 Units	32	Under Construction
IL06-P802-204	15 Units	5	Transferred/Completed
		10	Funding review pending by HUD-Washington
	TOTAL HORNER UNITS	466	
	<u>Cabrini - 190 Units</u>		
IL06-P002-182	107 Units	63 28 16	Joint planning w/City & CHA Negotiations underway Acquisition pending
IL06-P002-192	83 Units	83	Joint planning with City/CHA
N/A	Cabrini-HOPE VI-303 Units	303	Joint planning with City/CHA
	TOTAL CABRINI UNITS	493	
	GRAND TOTAL REPLACEMENT UNITS	1294	

-17-98 16.07 FROM.

ID.

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

DOROTHY GAUTREAUX, et al.,

Plaintiffs,

v.

CHICAGO HOUSING AUTHORITY,

Defendant.

No. 66 C 1459

Chief Judge Aspen

DECLARATION OF DANIEL E. LEVIN

Daniel E. Levin, being duly sworn upon oath, states.

1. I am the Chairman of The Habitat Company.
2. On August 14, 1987, this Court appointed me and The Habitat Company jointly as Receiver for the Chicago Housing Authority for certain housing development activities.
3. As part of my responsibilities as Receiver, I attended a meeting on March 10, 1998 at the CHA's office with Joseph Shuldiner and Richard Monocchio of the CHA, Janet Elson of HUD, and Valerie Jarrett of Habitat.
4. Based on a series of events culminating in the March 10 meeting, I sent a letter to the Court on March 13, 1998. A copy of the letter is attached as Exhibit A hereto.

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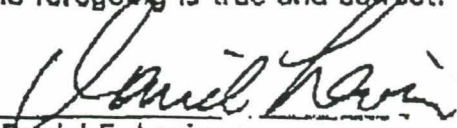
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PAGE 3

5. The statements contained in the March 13, 1998 letter and herein are true of my own personal knowledge, except that some of the statements in the March 13 letter concerning background events preceding the March 10, 1998 meeting were based on information from employees at The Habitat Company who I supervise in my role as Receiver and which I believe to be accurate. I would so testify if called as a witness.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 17, 1998:


Daniel E. Levin



THE HABITAT COMPANY

March 13, 1998

BY MESSENGER

Hon. Marvin Aspen
United States District Court
Room 2548
Dirksen Federal Building
219 South Dearborn Street
Chicago, Illinois 60604

Re: Gautreaux v. CHA No. 66 C 1459

Dear Chief Judge Aspen:

In my role as Receiver, I am writing to request instructions. This request follows a meeting I had with the CHA and HUD on Tuesday, March 10, and the problems that I have encountered and foresee continuing in fulfilling my role as Receiver.

I had requested the meeting with the CHA and HUD to discuss implementation of your Order of February 23, 1998 relating to CHA housing funded under the HOPE VI program. The CHA's positions, as described in that meeting, have led me to conclude that I need direction from the Court.

Your February 23 Order stated that HOPE VI funds are within the Gautreaux case, a matter that had been disputed by the CHA. Therefore, after I received your February 23 Order, I asked Lewis Nixon, the Acting Secretary's Representative in Chicago for HUD, and Joseph Shuldiner, the CHA's Executive Director, to meet with me to discuss what I hoped would be a cooperative approach to new housing to be built with HOPE VI funds. (Your August 14, 1987 Order appointing me and The Habitat Company assigned to the Receiver responsibility for the CHA's non-elderly housing development programs, including all such programs "which may in the future be authorized by HUD" during the pendency of the Gautreaux action, p.2 §(c). Housing to be built with HOPE VI funding clearly appears to be within your Order.)

The meeting was scheduled for March 10, 1998, at Mr. Shuldiner's office. Because Mr. Nixon was unavailable, Janet Elson attended for HUD. Valerie Jarrett accompanied me; Richard Monocchio accompanied Mr. Shuldiner.

At the meeting, Mr. Shuldiner stated that he did not agree with your February 23 Order, that he opposed the Receivership, and that he disagreed with the requirements of various Court Orders mandating housing to be located so as to further desegregation goals. He also stated that the CHA intended to proceed with its own programs for development of new housing without the Receiver, and invited us to "try to stop him." He made it clear that no cooperation would be forthcoming, and that if the Receiver opposed him, he would join tenants in pressing claims against us.

EXHIBIT A
AA-197

Hon. Marvin Aspen

March 13, 1998

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Because of the extraordinary nature of the statements made, and their implications for my ability to carry out my responsibilities as Receiver, I feel it is necessary to set out in some detail what was said.

* * * * *

I began the meeting by expressing my desire to work cooperatively to implement your February 23 Order. Ms. Elson also expressed her desire that we work together.

Mr. Shuldiner said that he reads the February 23 Order as dealing only with the location for HOPE VI housing, and not as a statement that HOPE VI-funded housing is within the Gautreaux judgment for all purposes. He added that he does not agree that the Court-ordered Gautreaux locational requirements (such as one-for-one construction of housing in limited and general areas, the designation of revitalizing areas, etc.) should limit the CHA's ability to place new housing units wherever it chooses.

I pointed out the language of your February 23 Order, which states: "We hold that the judgment order governs the CHA's use of HOPE VI funds." Mr. Shuldiner said he didn't agree with that language. He repeated that your Order dealt only with location and, despite the language, that it had no other effect on HOPE VI housing, and had nothing to do with the Receiver's authority. In addition, Mr. Shuldiner said that he was considering appealing your Order, and that if he did not appeal, he would attempt to get rid of the Receiver, because he couldn't accept the consequences of the Receivership.

I suggested that we ask to discuss this issue with the Court, to determine what your February 23 Order meant, if there were any doubt. Mr. Shuldiner repeated that HOPE VI funding began long after Gautreaux and shouldn't be governed by it. I said that it was the CHA's responsibility under the Order appointing the Receiver to cooperate with us.

Mr. Shuldiner repeatedly expressed at length and in detail his anger at Mr. Polikoff, plaintiff's counsel. He asked if Mr. Polikoff is "going to control our life." He said there are over 3,000 housing units to be constructed at a cost of over \$300 million. He asked if we really expected that the Receiver was going to oversee the development of all this housing. If that is the Receiver's view, he stated, the CHA will ask the Court to eliminate the Receivership or provide that there be more than one party building the new housing.

I told Mr. Shuldiner that we were not seeking to function as a "dictator" of CHA development, wanted to work with him and the CHA, and understood the competing needs and pressures with which the CHA must work, of which desegregation was the paramount priority, but not the only

Hon. Marvin Aspen
March 13, 1998
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concern. If there is \$300 million of new housing to be built, it might make sense to bring in others to help (under the Receiver's supervision), especially if it is to be built in a short period of time. I suggested that we should all work together to resolve problems and make new housing available as quickly as possible.

We also discussed a series of meetings that occurred between the Receiver and the CHA after we met with you last summer. (As you will recall, following the Receiver's filing of an Emergency Motion in late May 1997, you suggested that the parties attempt to resolve their differences, which included the question of whether the Receiver or the CHA had authority over HOPE VI funding when used for new family housing development. During those discussions, the CHA expressed its opposition to the Receiver carrying out HOPE VI housing development, and we discussed the possibility of requesting the Court's agreement to permit the CHA to conduct certain non-elderly housing development on a demonstration basis, in order to see if the CHA had adequate development capability. At that point, there were fundamental differences between the Receiver, the CHA, and the Gautreaux plaintiffs concerning the CHA's desire to end oversight by the Receiver and the Court of new housing development by the CHA. When the CHA filed its motion seeking a determination that HOPE VI funding was not within the Gautreaux decree, the Receiver informed the CHA that the discussions were pointless since the Court would be resolving the dispute over the scope of the authority.)

In our March 10 meeting, Mr. Shuldiner said that if the Receiver did not agree that the CHA would assume future housing development responsibility for projects not already specifically allocated to the Receiver, he would "fight" and would oppose the Receiver in all respects. In particular, he said he would support a potential claim by the plaintiff class in the Horner case for damages against the Receiver if we did not agree to his demand. (As you know, the Receiver is building housing in the Horner case under the supervision of Judge Zagel, because of separate litigation ended by a consent decree. Late in 1996, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He directed that we provide liquidated damage provisions for delay in future contracts with contractors building Horner housing, to serve as a possible source to fund such damages, and we have done so.)

At our March 10 meeting, we also discussed certain issues relating to the cost of housing built by the Receiver. Mr. Shuldiner said that the CHA's signature is required by HUD procedures on certain Annual Contribution Contract ("ACC") forms to provide funding for disbursements to be made to the Receiver. He said that if the CHA's signature is required, the CHA will withhold its approval unless the Receiver satisfies the CHA with extensive backup material and data to the same extent as the CHA is required by HUD to satisfy HUD for its funding. Mr. Shuldiner thought it was unfair that HUD trusted the Receiver, and did not require as much detail as it requires from CHA.

Hon. Marvin Aspen

March 13, 1998

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(This is the first time Mr. Shuldiner has told us of that position, although over \$7.69 million is now held up by his refusal to execute the ACC amendments. The funds being held up are affecting our funding of new developments in several communities, including at Horner and Lawndale.) Mr. Shuldiner expressed resentment that HUD does not treat the CHA on the same basis that it treats the Receiver, because HUD accepts certain requests from the Receiver without elaboration, while requiring additional justification from the CHA. Mr. Shuldiner complained that HUD is a rubber-stamp for the Receiver, but applied a far more rigorous standard to the CHA.

Mr. Shuldiner expressed great hostility and distrust towards HUD's Chicago office. He also stated that he had taken steps to have a HUD employee removed from his responsibilities because that employee had cooperated with the Receiver. (We received copies of e-mails between Mr. Shuldiner and this employee, where Mr. Shuldiner berated the employee for even raising the possibility that the Receiver may have responsibility for HOPE VI funding following your February 23 Order.)

Mr. Shuldiner also said that the CHA intended to proceed to build new family housing at the Darrow Homes (in a limited area surrounded by other public housing), and anywhere else the CHA felt was appropriate. Mr. Shuldiner added that if anyone wants to stop the CHA, they are going to have to sue. He said that Darrow will be the test case and that it was always understood that CHA, and not the Receiver, would build the new housing for Darrow. He said that if the CHA loses on Darrow, it will appeal.

(There had been discussions among Mr. Polikoff, the Receiver, and the CHA about allowing CHA to build 38 units of new housing at Darrow as a demonstration project. As is discussed below, no agreement has been reached for the CHA to build that housing -- or a greatly expanded project it recently submitted to the City's Planning Commission without the Receiver's knowledge. At our March 10 meeting, Ms. Elson noted that Vincent Lane, when he was CHA Chair, had tried to prove the CHA's development capacity by developing 350 units as a demonstration program. When the CHA was unable to develop even one unit after 3½ years, the Receiver assumed responsibility in a joint venture with CMHDC, an arm of the CHA.)

Mr. Shuldiner said that the "whole revitalizing area concept is ridiculous." He said that the CHA should be able to house people wherever it can house them. CHA residents at Robert Taylor Homes, he stated, have to be housed. Mr. Shuldiner asked if we wanted to go deal with the gangs at Taylor, as he has to do.

Mr. Shuldiner said that Mr. Polikoff is "with the unborn residents, and future generations." Mr. Shuldiner said that "we [the CHA] throw in our lot with the current residents." (In context, it was clear that he was saying that he wanted to provide new housing for residents wherever possible,

Hon. Marvin Aspen
March 13, 1998
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regardless of the locational requirements based on the desegregation provisions of the Gautreaux judgments.)

Mr. Shuldiner said that the CHA doesn't need the Receiver to lease housing. He said again that if the CHA goes back to court it will ask the Court to get rid of the Receiver.

Mr. Shuldiner raised the question of how much money Habitat was making from its role as Receiver. Richard Monocchio asked about the pass-through of costs incurred by the Receiver, expressed the view that many developers hide profits in such costs, and implied that we were doing the same thing. I said we didn't make a penny of profit on out-of-pocket costs. (The Receiver is entitled to a fee of 2% on turnkey and 3% on conventional developments, under the August 14, 1987 Order. The fee is not based on all costs, but on certain construction-related costs. My time and other executives' time is not billed. Administrative costs represent an average of 4 to 4½% of project costs, and are approved by HUD. They are a pass-through of our expenses, without mark-up.)

I said that the CHA acts as if it doesn't trust us and doesn't believe I'm telling the truth. I added that if all we wanted was money we would do as little as we could and get out. Mr. Monocchio said he knows we aren't doing that. We also discussed Habitat's fees for leased units.

I repeated that it might be well to ask for a meeting with you. I also said we would talk to HUD about our views, and that the very poor relationship between the Receiver and the CHA wasn't serving the people who need housing. Mr. Shuldiner said he had to consult with his lawyers before agreeing to a meeting with you.

Ms. Jarrett said that it was unfortunate Mr. Shuldiner felt the way he did, since we had a common purpose. She said that Mr. Shuldiner was telling us that the Court's February 23 Order was meaningless, we are dishonest, and that the CHA would like to get rid of us.

I told Mr. Shuldiner that I was proposing to make a cooperative arrangement with the CHA, but the CHA must acknowledge that the Court's February 23 Order has some meaning, and that the CHA must acknowledge its obligation to plan and consult with the Receiver. I said at least five times that I was willing to try to work with him to solve problems. I emphasized that I was not seeking to sit in his chair, and was not trying to make all of the decisions.

Near the end of the meeting, Mr. Shuldiner told me that he had offered to residents at Cabrini-Green a development partnership interest. He will build replacement housing with them, and without the Receiver. He made it clear that he is going to continue to make plans with the residents at Cabrini-Green, and that we could only "try to stop him."

* * * * *

The statements made by Mr. Shuldiner at the March 10 meeting are the latest developments in a difficult relationship between the Receiver and the CHA over at least the past year. I will briefly discuss the relevant background.

Your August 14, 1987, Order appointed me and The Habitat Company as Receiver, with responsibility for new housing development. Your Order gave the Receiver authority to develop "all CHA non-elderly public housing development programs . . . authorized by HUD during the pendency of" this litigation. August 14, 1987 Order at 2, ¶(C).

The HOPE VI program was created by HUD annual appropriation statutes in fiscal year 1993 and each fiscal year since. Substantial funding has already been allocated (and additional sums may be allocated in the future) to the CHA for the purpose of developing new non-elderly public housing. HUD has determined that the Receiver, and not the CHA, is responsible for new non-elderly housing development with HOPE VI funds. (See Lewis Nixon's July 29, 1997 memo attached to the December 19, 1997 Statement we filed with the Court.)

The February 23, 1997 Order (at 5) held that the Gautreaux Judgment Order "governs the CHA's use of HOPE VI funds."

Despite the Court's Orders and the statutory background, prior to our meeting on March 10 the CHA has made intermittent objections to the Receiver exercising authority over non-elderly housing construction funded by HOPE VI, as well as filing the motion that led to your February 23 Order.

Much of the factual history is described in the Statement we filed on December 19, 1997, commenting on the CHA's Motion. Following the 1995 takeover of HUD by the CHA, the Receiver worked hard to cooperate with the new CHA management led by Mr. Shuldiner, and tried to avoid bringing a dispute to Court concerning the Receiver's authority. The "development manager" concept was created so that the Receiver could administer HOPE VI funds in cooperation with the CHA, without a dispute over the Receiver's role.

The CHA, however, revoked the earlier written confirmation from its then Chairman, Edwin Eisendrath, that the Receiver would function as development manager at Cabrini-Green, and did not include the Receiver in the HOPE VI applications for Taylor and ABLA II.

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Disputes between the CHA and the Receiver escalated during 1997. Many of the disputes concerned the Horner development. As you will recall, the Receiver filed an Emergency Motion seeking instructions, describing our view, among other things, that the CHA was failing promptly to fill completed units at Horner. The CHA objected, and made charges against the Receiver. Judge Zagel resolved certain matters relating to Horner.

You scheduled a conference in chambers in July 1997, and observed that the Emergency Motion seemed to betray greater difficulties in the relations among the parties. You urged the parties to negotiate their differences.

The Receiver scheduled a series of meetings with Mr. Shuldiner, his counsel, and other CHA representatives. Among the issues discussed were the Receiver's desire to assume its responsibilities for HOPE VI funded non-elderly housing development, and the CHA's opposition to any role for the Receiver.

The parties discussed the possibility of entering into an agreement as discussed above. Before a final agreement was reached, the CHA decided to file the motion that led to the February 23 Order, seeking a determination that HOPE VI housing was outside the scope of the Gautreaux judgments.

* * * * *

The CHA's position has complicated and will, if adhered to, further complicate and impede the Receiver's actions — and in many cases the desegregation goals of the Gautreaux Orders — in a number of ways.

(a) Robert Taylor Homes. The Receiver understands that the CHA applied in 1996 for HOPE VI funds for Taylor. Press reports indicate \$25 million was awarded.

The Receiver was not aware of the application at the time it was made. The Receiver does not know what portion of the funding is for new non-elderly housing construction development, but we are aware of the CHA's attempt to enter into long-term leases in the limited area without approval of a revitalizing designation. (The use of long-term leases for public housing was considered by the Receiver before it was mentioned by the CHA. The leasing concept is based on a HUD memo that HUD development funds could be used for long-term leases as a form of expanding the supply of new public housing.)

Mr. Shuldiner indicated that the CHA intends to demolish all of Taylor. Mr. Shuldiner's comments reflect that he (and/or his staff) had extended discussions with tenants, and possibly with others, in the area relating to replacement housing.

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We do not know if those discussions have ripened to commitments, since the CHA has not shared any of this information with us or involved us in any way in its planning. If replacement housing units are developed, it appears likely that they would fall within the language of the August 14, 1987 Order. If the Receiver is to take any action to construct new housing for residents of Robert Taylor, it is important that we immediately be made aware of the status of HOPE VI (and other) funding, and all prior communications with the City, tenants, and others. It is also important that we discuss how such housing will be built consistent with the desegregation obligations of the CHA under the 1969 Judgment Order in this case.

(b) Darrow. Mr. Polikoff, the Receiver, and the CHA had a series of discussions concerning the possibility of the CHA creating a housing demonstration project at Darrow. Several years ago, the CHA received \$8.5 million from HUD under either the modernization or Comprehensive Grant program to rehabilitate a building at Darrow. The CHA spent about \$500,000 on architectural plans. It then learned that the cost of rehab exceeded the funds available, and demolished the building, after agreeing (without court permission or consultation with us) with the tenants that it would build replacement housing on site.

The funds available allow for approximately 80 replacement units. Mr. Polikoff and the Receiver discussed with the CHA that if the Receiver did not need to use 38 units built in Rogers Park to offset units the Receiver was building in Woodlawn (on the 1-for-1 formula provided by the Judgment Order, as amended), then the CHA could use the 38 units on a one-for-one basis to build 38 units at Darrow without a court waiver of the Gautreaux locational requirements. The CHA also considered seeking permission to build an additional 40 units (approximately) on site. No agreement was reached.

We next heard about the CHA's plans for this development by chance, when Valerie Jarrett of Habitat attended a Chicago Plan Commission Meeting in February 1998, where a formal proposal was scheduled to be presented by Andrew Rodriguez for the CHA for a 105-unit project at Darrow that we (and plaintiffs' counsel) knew nothing about. After the Receiver objected, the matter was deferred.

As noted above, Mr. Shuldiner said in our March 10, 1998 meeting that he intends to proceed with the Darrow project, and that the Receiver (or anyone else) would have to take legal action to stop him. Mr. Shuldiner's plans appear to conflict with the Court's August 14, 1987 Order.

(c) Cabrini-Green. A November 14, 1995 letter from Edwin Eisendrath confirms that Habitat would act as development manager for the Cabrini project, including HOPE VI, in its role as Receiver. But as discussed in our December 19, 1997 Statement filed with the Court, the CHA subsequently vacillated among involving the Receiver in the redevelopment of this project,

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abandoning the Receiver, and pursuing the project on its own, and reinvolving the Receiver in the leasing of 44 units at Mohawk North and Old Town Square.

Since 1993, no units have been produced by the CHA. In addition, the Receiver has 190 units of Gautreaux funding authorized for use in this area. It has been blocked from using any of these units because of lack of a comprehensive plan, from which the CHA has largely excluded us. There has also been a separate lawsuit brought by Cabrini tenants against the CHA.

Until the March 10 meeting, we had understood that nothing had been resolved at Cabrini. At the March 10 meeting, we learned for the first time that Mr. Shuldiner has made some kind of promise to residents that they would be partners with development entities to be created by them and the CHA. It was clear from Mr. Shuldiner's comments that his arrangement with the tenants does not include a role for the Receiver. Any promises made by Mr. Shuldiner could jeopardize our ability to comply with the Gautreaux Orders, and would be contrary to our responsibilities under the August 14, 1987 Order appointing us.

(d) Horner. Judge Zagel is supervising the construction of replacement housing at Horner, which is occurring under a consent decree in separate litigation. You have received copies of reports on the status of construction there. (We are proud to say our construction recently won a national award.)

As discussed above, an issue arose in that case as to whether the Receiver was falling behind schedule, and whether residents should receive damages if we were. Judge Zagel ruled that the issue was premature, and that he would address it when and if he had to. He provided that we should require contractors to provide liquidated damages for delay in future contracts with contractors building Horner housing.

At the March 10 meeting, Mr. Shuldiner stated that if we oppose him on the HOPE VI issue, he will encourage Horner residents to seek damages from the Receiver. We are concerned that this threat reflects an attitude of hostility under which it will be more difficult to work.

(e) ABLA and Horner II. These development efforts are complicated by the existence of the Horner lawsuit, and the need to coordinate plans with tenants, neighbors, local elected officials, and the court supervising the Horner reconstruction process. Developing procedures to implement the desegregation objectives of Gautreaux, while building replacement housing, presents difficult issues. In view of Mr. Shuldiner's statements we are concerned that necessary cooperation will not be provided by CHA.

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(f) Scattered site housing. We continue to build scattered-site housing in the General Area and, as recently as this week, closed on two additional buildings. In a letter of March 6, sent by Mr. Shuldiner to me shortly before our March 10 meeting, he made a number of complaints about our work as Receiver. We do not see the need to respond in detail at this time to Mr. Shuldiner's views, although we are prepared to do so. We do want to note our concern that Mr. Shuldiner apparently doesn't agree with the Court's determination that revitalizing areas are a step towards desegregation, even though CHA has repeatedly agreed to court orders to that effect.

(g) Funding. At the March 10 Meeting, Mr. Shuldiner said he would withhold approval for \$7.69 million in funding for the Receiver. We believe we have met all of the requirements for the funding. HUD has approved it, and sent it to CHA for final signature. No CHA signature is required under the August 14, 1987 Order. Therefore, those funds should be transferred. Without the transfer, the progress of our program will be severely impeded. We are already overdue on bills awaiting the funding.

(h) Information. CHA has not provided us with information concerning its HOPE VI and other new non-elderly housing development plans. We do not know the scope of other planned non-elderly housing development that CHA has considered, or may even have authorized. We do not know to what Mr. Shuldiner was referring when he discussed 3,000 units of housing costing \$300 million.

In addition, after the filing of our Emergency Motion in May 1997, the CHA directed the managers of its scattered site housing not to provide information directly to us, and that prohibition remains in effect. That is contrary to the cooperation requirement in the August 14, 1987 Order. Information concerning the occupancy of the scattered site units is necessary, among other reasons, to trigger the cutoff of certain payments from the development budget we administer.

We were told that the reason for the prohibition was our filing of the Emergency Motion against the CHA. Since we were a litigant, the CHA would not allow us access to their agents without going through counsel. We were advised that all requests for information must proceed through counsel.

* * * * *

We recognize that it is not our role to determine the scope or duration of our responsibility as Receiver. It is our responsibility, however, to advise you that our ability to act effectively is being impaired.

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We accepted the position of Receiver to be a developer of housing, not to be a policeman over the CHA, and certainly not to be a litigant with the CHA over all housing-related decisions. Unfortunately, the CHA's conduct has frequently forced us to involve our counsel in litigation-type activity, at the expense of focusing on housing development.

The CHA's frequent adversarial attitude to the relationship with the Receiver clearly impedes the development of new housing urgently needed by CHA residents.

The Receiver would like to develop new housing in a cooperative manner with the CHA. We would like to respond to CHA needs, while also meeting the desegregation objectives of Gautreaux. A working relationship has to develop between the CHA and the Receiver. The CHA should share its needs and ideas with the Receiver in advance of making commitments. It should meet on an ongoing basis to try to develop solutions for the benefit of residents. That has not been happening.

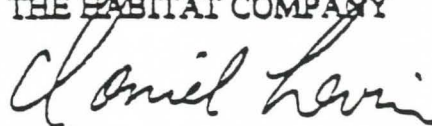
I had held off asking for the Court's directions, in the hope that we could work through the process with the CHA and reach pragmatic solutions that respected our responsibilities as Receiver while not offending the CHA. Based on the most recent meeting with Mr. Shuldiner, I believe that there is no prospect of a solution being developed without Court intervention. Our effectiveness as Receiver is clearly impaired by the problems posed by the CHA's actions and attitudes.

We appreciate the responsibility you have given us as your Receiver. We also appreciate and support the important goals to be accomplished by implementation of the Court's Orders in this litigation. It is a privilege to perform this public service.

We reiterate our willingness to operate in a cooperative fashion with the CHA.

We need your assistance and directions in carrying out the tasks you have entrusted to us.

Respectfully,
THE HABITAT COMPANY



Daniel E. Levin

Hon. Marvin Aspen

March 13, 1998

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cc: Jerome Butler/Susan Getzendanner
Valerie Jarrett
John Jensen/Linda Wawzewski
Lewis Nixon/Janet Elson
Alexander Polikoff/Julie Brown
Michael L. Shakman
Joseph Shuldiner/Karen Newton

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	Chief Judge Aspen
	)	
Defendant.	)	

AFFIDAVIT OF DANIEL E. LEVIN

Daniel E. Levin, being duly sworn upon oath, states:

6. On March 17, 1998, I executed a Declaration in connection with the Gautreaux plaintiffs' motion for further relief. To avoid confusion, the paragraphs contained herein are numbered consecutively to that declaration.

7. I am the Chairman of The Habitat Company. On August 14, 1987, this Court appointed me and The Habitat Company jointly as Receiver for the Chicago Housing Authority for certain housing development activities.

8. I am a graduate of the University of Chicago. I also graduated from the University of Chicago law school.

9. After graduation from law school, I practiced law for about three years.

10. I moved to Chicago in 1957, and began working in the real estate development business. I founded The Habitat Company in 1971.

11. During the past 26 years, The Habitat Company has developed over 12,000 units of housing in Chicago.

12. The Habitat Company currently manages over 15,000 units of housing at every income level. Over 4,000 of those units are low income housing.

13. As Receiver, through the end of 1997, we had built and delivered to the CHA 1,630 units of housing and had under construction over 100 additional units of scattered site housing. This housing cost \$169,323,765 through that date.

14. As Receiver, we have built and delivered 133 units of replacement housing in connection with the demolition of housing that is part of the Henry Horner Homes development. This Horner replacement housing is provided under a consent decree entered in a case pending before Judge Zagel. An additional 198 units of Horner replacement housing are under construction.

15. We have also been involved as Receiver in developing 317 units in the North Kenwood-Oakland neighborhood. As of year end 1997, 45 units were completed and transferred and 26 units were under construction.

16. In developing our scattered site and replacement housing, The Habitat Company functions as the developer, not as the builder of the housing. Contrary to

the suggestion in the CHA's Motion for a Stay at 6, Habitat seeks out parties to bid either on a turnkey or competitive basis. Habitat does not act as a contractor.

17. The history of our dealings with the CHA concerning housing to be funded under the HOPE VI program is discussed in my letter to the Court of March 13, 1998, and in the accompanying affidavits of Philip Hickman, Valerie Jarrett, and Barry A. Miller.

18. During discussions with the CHA in 1995 and 1996 about the HOPE VI work, Mr. Shuldiner had difficulty in accepting the word "Receiver" in describing Habitat's duties. Therefore, in an effort to compromise and move forward, I concluded that it did not matter to the Receiver if we were called "Receiver" or some other title with respect to the development of replacement housing using HOPE VI funds, as long as the Receiver was able to discharge the duties the Court had given us, and provided any such arrangement was acceptable to the Court. Accordingly, I told Mr. Shuldiner and others at the CHA that we were willing to be called "development manager" with respect to HOPE VI housing work at Cabrini-Green.

19. As set forth in the Affidavit of Mr. Hickman, Edwin Eisendrath, then Chair of the CHA and the HUD Secretary's Representative (its highest ranking local official) in Chicago, wrote Habitat in November 1995, in response to our request, to confirm that the CHA wanted Habitat to proceed as development manager for Cabrini.

20. Based on our role as Receiver, and the written assurances of Mr. Eisendrath, we conducted the replacement housing development work for Cabrini in 1995 and 1996, as discussed in detail in the affidavit of Mr. Hickman.

21. In late 1996, as discussed in the Hickman affidavit, the CHA attempted to prevent us from performing further work on the HOPE VI application at Cabrini. Since little or no work was being performed at Cabrini because of a lawsuit filed by Cabrini tenants, I did not think it necessary to bring this matter immediately to the Court's attention, but instead we discussed it from time to time with the CHA.

22. In addition, other disputes with the CHA concerning new housing development arose. Although I always tried to negotiate matters directly with the CHA and avoid going to Court for the Court's assistance, if possible, I found it increasingly difficult to work these disputes out with the CHA because Mr. Shuldiner and his staff were unwilling to accept that the Receiver had been granted exclusive responsibility for the development of all non-elderly public housing.

23. In May 1997, I determined that problems with the CHA concerning the Horner replacement housing were sufficiently severe that I needed to apply to this Court and Judge Zagel for instructions, which the Receiver did by motion.

24. After Chief Judge Aspen and Judge Zagel scheduled and conducted an in-chambers conference on the Receiver's May 1997 motion, Chief Judge Aspen

entered an Order referring the Horner issues for dispute to Judge Zagel, recommending mediation if appropriate.

25. Chief Judge Aspen also scheduled a conference in chambers at which all Gautreaux parties were invited to discuss the relationship between the Receiver, counsel for the plaintiffs, and the CHA.

26. At that status conference, held on July 2, 1997, all parties stated their positions. I informed the Court of a number of problems between the Receiver and the CHA, including the dispute over whether the Receiver or the CHA had authority to conduct the development of new non-elderly housing units with HOPE VI funds.

27. The CHA's statement in its Motion to Stay ¶10 that this point was not raised with the Court before entry of this Court's Order of February 23, 1997, is therefore not correct. I raised the point on many occasions with the CHA, and specifically raised the point with the Court seven months earlier -- before the CHA filed its HOPE VI motion.

28. At the July 2 status, the Court (a) directed the parties to negotiate the issues over which they differed, (b) offered to appoint a special master to assist in the negotiation, and (c) stated that the Court would rule if disagreements remained. Accordingly, we scheduled discussions with the CHA concerning several outstanding issues, including the dispute over authority to develop new non-elderly public housing with HOPE VI funds.

29. At a meeting held on July 10, the CHA refused even to discuss the HOPE VI issue. Most of the discussions held in June and July are described in more detail in the accompanying Affidavit of Barry A. Miller.

30. On July 11, 1997, Edwin Eisendrath, then chair of the CHA, sent a letter to Mr. Polikoff stating that the CHA would not discuss non-Horner issues unless the Receiver withdrew its Emergency Motion and took those issues "off the table." A copy of that letter is attached as Exhibit 1 hereto.

31. On July 17, 1997, I wrote Mr. Eisendrath and told him I disagreed with his letter. I told him I believed that the CHA's approach was inconsistent with the directions the Court had given the parties in chambers on July 2. A copy of my letter is attached as Exhibit 2.

32. On July 17, 1997, I attended a meeting at the CHA offices with Michael Shakman, Derek Cottier, Valerie Jarrett, and Philip Hickman representing the Receiver. Edwin Eisendrath, Joseph Shuldiner, Jerome Butler, Mia Barricini, Richard Monocchio, Thomas Johnson, Susan Getzendanner, and Nancy Eisenhower attended for the CHA. Derek Cottier, one of the counsel for the Receiver, wrote a letter on July 24, 1997 confirming the substance of the meeting. A copy is attached as Exhibit 3. At the meeting, the CHA again persisted in its refusal to discuss the HOPE VI issue.

33. Mr. Butler responded to Mr. Cottier's letter on August 6, 1997. A copy of his letter is attached as Exhibit 4 hereto.

34. In discussions with the CHA beginning at the end of July 1997, we considered a proposal to resolve the HOPE VI dispute by allowing the Receiver to complete housing it had begun, and allowing the CHA to pursue agreed housing development on a demonstration basis, subject to the approval of the Gautreaux plaintiffs' counsel and the Court.

35. Drafts of an agreement were exchanged. The Receiver included language making it clear that any CHA development work was for a limited time on a demonstration basis. The CHA would not accept that language, and asked the Receiver to agree to recommend to the Court that the CHA receive the authority to conduct all new non-elderly public housing development not already assigned to the Receiver.

36. Based on my experience in real estate development and as Receiver, I was aware that substantial development experience is required successfully to develop any housing, and particularly racially and/or economically integrated housing in the Chicago market. Building housing, without paying attention to a myriad of issues concerning location, appearance, marketing, government regulations, provision of services, and other factors will not generate good housing on a racially and/or economically integrated basis.

37. Because of my belief that the CHA did not and does not have the necessary development capabilities, I declined to agree with the CHA to recommend to the Court that the Court give the CHA full authority to conduct new public housing development.

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37. Because of my belief that the CHA did not and does not have the necessary development capabilities, I declined to agree with the CHA to recommend to the Court that the Court give the CHA full authority to conduct new public housing development.

38. During our discussions, we proposed that we jointly ask to meet with the Court to resolve our differences if we could not reach agreement. Negotiations ended following the CHA's unilateral decision instead to file its HOPE VI motion with the Court on September 30, 1997.

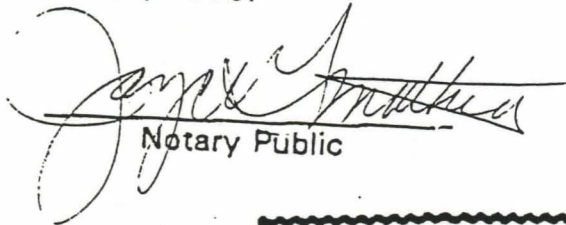
39. Following the Court's denial of the CHA's motion on February 23, 1998, I asked Joseph Shuldiner and Lewis Nixon, HUD's Acting Secretary's Representative, to meet with me to discuss implementing the Court's decision.

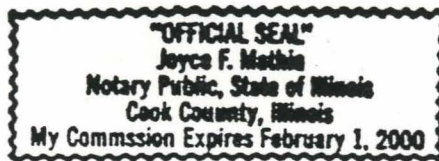
40. The meeting with Mr. Shuldiner and Janet Elson, a representative of HUD (attending because Mr. Nixon was not available), occurred on March 10, 1998. I sent a letter to the Court on March 13, 1998 reporting the statements made by Mr. Shuldiner at the March 10 meeting.

41. The foregoing matters are based upon my own personal knowledge except where another source is noted above and in such cases is on information and belief; in those instances I believe the information to be true and correct. I would so testify if called as a witness.


Daniel E. Levin

Subscribed and sworn to
before me this 30th day of
March, 1998.


Notary Public



42 U.S.C. Sec. 1437p(b)(2):

The Secretary may not approve an application [for demolition or disposition of public housing] or furnish assistance under this section or under this chapter unless -

* * *

(2) all tenants to be displaced as a result of the demolition or disposition will be given assistance by the public housing agency and are relocated to other decent, safe, sanitary, and affordable housing, which is, to the maximum extent practicable, housing of their choice, including housing assisted under section 1437f of this title;

* * *