

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 98-1807, 98-2311
Appeal No. 98-3145

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
	)	
CHICAGO HOUSING AUTHORITY,	)	Chief Judge Marvin E. Aspen
and Executive Director Joseph	)	
Shuldiner in his official	)	
capacity,	)	
	)	
Defendants-Appellants.	)	

U.S.C.A. - 7th Cir.
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RESPONSE OF PLAINTIFFS-APPELLEES TO
CHA MOTION FOR EXPEDITED ARGUMENT AND DECISION IN
CONSOLIDATED APPEAL NOS. 98-1807 AND 98-2311, AND,
PENDING THE COURT'S DECISION, FOR STAY OF BRIEFING
SCHEDULE IN RELATED APPEAL FILED AUGUST 24, 1998

Plaintiffs-appellees, Dorothy Gautreaux, et al., submit this Response to CHA's "Motion for Expedited Argument, etc.," filed on August 25, 1998:

1. CHA's motion contains many incorrect statements of law, misstatements of fact and statements that, by reason of the omission of material facts, are misleading. Plaintiffs-appellees therefore do not agree with the content of much of the motion, as we explain in paragraph 2 below. However, we do support the motion's request "to stay the briefing of the appeal of the August Order pending resolution of the consolidated appeal . . ."
(CHA Motion, p. 13.) Further, we do not object to CHA's request

that the "argument and decision in the consolidated appeal be expedited." (Id.)

2. The Court should not rely upon the purported factual and legal discussion in CHA's motion for it includes many incorrect statements of law, misstatements of fact and statements that, by reason of the omission of material facts, are misleading. For example:

- (a) Contrary to paragraph 2 of the motion, the Receiver's funding is not limited to funds "available pursuant to HUD's consent decree with plaintiffs [in the companion case (66C1460)]." The order appointing the Receiver transferred to the Receiver all of CHA's development authority respecting new non-elderly public housing, wherever located, to be developed during the pendency of this litigation, without limitation as to source of funding. Order of August 14, 1987, CHA Tab 1. The Receiver has in fact developed such housing with funding from a variety of sources.
- (b) Contrary to paragraph 6 of the motion, federal law does not "require" CHA to provide replacement housing "in the neighborhood" for all residents who choose to remain. HOPE VI contains no requirement respecting the location of replacement housing, the public housing demolition statute provides that displaced persons shall be

"eligible" for replacement housing of their choice only to the "maximum extent practicable" (42 U.S.C. Sec. 1437p(b)(2))¹, and public housing site and neighborhood standards state only that replacement public housing "may" be built on the site of demolished buildings, or in the same neighborhood, if the number of replacement units is the "minimum" number needed to house current residents who want to remain at the site. 24 CFR sec. 941.202(c)(2)(ii). (The actual purpose of the provision is to restrict, not to encourage, building in areas with large minority populations.)

- (c) Although paragraph 12 of the motion states that the Cabrini agreement was "executed" on May 1, 1998, an affidavit filed by CHA states that "[f]rom May 5, 1998, through July 16, 1998 the parties exchanged no fewer than 13 written drafts relating to the agreements reached among the parties." CHA Motion, Exhibit 4, Affidavit of Richard Wheelock, August 6, 1998, ¶22. The affidavit also states that CHA's attorney did not sign off on the agreement until "on or about July 24, 1998," and that the LAC did not approve it until July 28, 1998. Id., ¶¶22, 23.

¹ This provision was held too vague to be enforceable in the Cabrini litigation. CHA Motion, Tab 4, Cabrini-Green LAC v. CHA, No. 96 C 6949 (N.D. Ill. Jan. 21, 1997), *51.

- (d) Contrary to paragraph 18 of the motion, the August Order did not transfer CHA's development authority to the Receiver; that was done by the 1987 Receivership Order. Moreover, nothing in the August Order or in the Receivership Order limits the Receiver's role to those housing activities in which it is named "developer"; rather, the Receivership Order transfers all CHA authority over the development of all new non-elderly public housing to the Receiver.
- (e) Contrary to paragraph 26 of the motion, HUD did not approve the Cabrini-Green plan conditioned upon "clarification that the Injunction did not apply to HOPE VI projects." Rather HUD's letter approving the Cabrini revitalization plan and budget stated:
- "[t]hat within 30 days . . . CHA [should] provide evidence that the Plaintiffs and the Court in the Dorothy Gautreaux, et al., case have approved or have no objection to the development/acquisition of replacement public housing in the quantities and locations proposed in the HOPE VI Revitalization Plan." HUD letter of September 18, 1997, to CHA, p. 4, attached as Exhibit A.

3. Despite these and other incorrect statements of law, misstatements of fact, and misleading statements in CHA's motion, plaintiffs-appellees agree that many issues raised in the appeal of the August Order "have already been briefed by the parties in connection with the consolidated appeal," and that briefing with respect to the appeal of the August Order will to some degree be "duplicative litigation." (CHA Motion, ¶25.) Accordingly,

Accordingly, plaintiffs-appellees support CHA's motion to the extent it requests the Court "to stay the briefing of the appeal of the August Order pending resolution of the consolidated appeal" (CHA Motion, p. 13.) Further, plaintiffs-appellees do not object to CHA's request that the "argument and decision in the consolidated appeal be expedited." (Id.)

Respectfully submitted,



One of the Attorneys for
Plaintiffs-Appellees

Dated: August 31, 1998

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

CERTIFICATE OF SERVICE

I, Julie Elena Brown, an attorney, hereby certify that on August 31, 1998, I caused a copy of the foregoing RESPONSE OF PLAINTIFFS-APPELLEES TO CHA MOTION FOR EXPEDITED ARGUMENT AND DECISION, ETC. to be served by fax and regular mail on counsel listed below:

Susan Getzendanner
Nancy Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 West Wacker Drive - #2100
Chicago, Illinois 60606

Michael L. Shakman
Barry A. Miller
Edward W. Feldman
Miller, Shakman, Hamilton, Kurtzon & Schlifke
208 South LaSalle Street - #1100
Chicago, Illinois 60604



Julie Elena Brown



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AND INDIAN HOUSING

SEP 18 1997

Mr. Joseph Shuldiner
Executive Director
Chicago Housing Authority
626 W. Jackson Boulevard
Chicago, IL 60661-5601

Dear Mr. Shuldiner:

On June 30, 1997, the Chicago Housing Authority (CHA) submitted a revised Revitalization Plan and Budget for the Cabrini-Green HOPE VI/Urban Demonstration Program.

The Revitalization Plan (RP) and HOPE VI Budget for Cabrini-Green, dated June 30, 1997, are hereby approved, with certain conditions and further requirements as set forth herein. The CHA, Cabrini-Green residents and their leaders and advisers, private developers and investors, the Board of Education, and especially the Mayor and the City of Chicago, are all to be commended for the most innovative and extensive urban revitalization proposal that HUD has received to date in the HOPE VI program.

As proposed, a Federal investment of \$69 million (\$50 million of HOPE VI and \$19 million of previously approved Public Housing Development funds) will be the catalyst for \$315 million of new housing, schools, public facilities, and commercial uses on 71 acres (of which 48 percent is vacant land) on the Near North Side of Chicago. The City is calling the overall plan its Near North Redevelopment Initiative (NNRI). The NNRI will take place in three phases and is targeted for completion in the year 2006. The HOPE VI grant will be closed out by year 2004.

The City has taken steps to designate the NNRI as a Tax Increment Financing (TIF) District. Once approved, this will enable the City to issue a bond to finance land acquisition, infrastructure improvements, business relocation, and job training. The tax increments generated by the new development in the area will be used to repay the bondholders. The CHA intends to request that TIF funds also be used to fund modernization work at the remaining Cabrini high rise buildings.

The public housing component of the NNRI is based on the removal in two phases of eight mid- and high-rise buildings totalling 1324 dwelling units in Cabrini Extension, and replacing them with 701 new units on- and off-site in the surrounding neighborhood. The 701 new public housing units represent about 30 percent of an expected 2372 new privately developed rental and for-sale units to be built on eight separate land parcels,

EXHIBIT A

including 923 units to be built back on-site at Cabrini Extension.

The first three private developments are already under construction or nearing completion, and will provide the first 57 replacement public housing units. In addition to the 30 percent that will be reserved for CHA acquisition or long-term lease and use as public housing, 20 percent of the new units will be affordable to moderate-income families (earning 80-120 percent of median income), and will be financed through the City's New Homes for Chicago program. The remaining 50 percent of the units will be sold or rented at the market rate. CHA will require that half of the families moving into the 701 public housing units be "working families", which provides about 350 units for very-low-income families and those on fixed incomes.

The CHA, the City, and the Board of Education own most of the land on which the 2372 units of new housing will be built. All three entities will issue Request for Proposals (RFPs) seeking private development proposals that respond to the 30/20/50 income mix and design densities set forth in the RP. The CHA intends to offer about 15 acres of Cabrini Extension land on long-term leases for private development, in two phases.

The 2372 dwelling units (dus) will be developed in three distinct phases spread over 7 to 8 years, as follows:

Phase	I	-	1337	dus	(389	public housing),	in 3-4 years.
Phase	II	-	505	dus	(153	public housing),	in years 5-6.
Phase	III	-	530	dus	(159	public housing),	in years 7-8.

TOTALS ----- 2372 dus (701 public housing), in 7 to 8 years.

The first phase (Phase I) includes the former sites of the high-rise public housing buildings at 1117-19 N. Cleveland and 1157-59 N. Cleveland and the current sites of the high-rise public housing buildings at 1150-60 N. Sedgwick and 1158 N. Cleveland. HUD has previously approved the demolition of the first three buildings, and CHA's demolition application for 1158 N. Cleveland is currently under review. Two of these buildings were demolished in 1995, and the other two are fully vacant. These four buildings contained a total of 725 dwelling units.

CHA intends to submit a disposition application on the 1.82 acre site of the demolished 1117-19 N. Cleveland building so that the land can be used by the Chicago Board of Education to construct a new elementary school. In exchange for this site, the Board of Education has agreed to transfer to the CHA a site of comparable size and value. CHA's Phase I is expected to generate 418 new units, of which 133 (31.8 percent) will be public housing.

CHA's second phase (Phase II) of on-site development would include the sites of the high-rise buildings at 1159-61 N. Larrabee, 1121 N. Larrabee, 1015-17 N. Larrabee, and 500-502 W. Oak. These four buildings contain a total of 599 units, of which 314 (52.4 percent) were occupied as of June 12, 1997. CHA has not requested HUD approval to demolish these four buildings, and has committed to the Cabrini-Green residents to await progress in construction of Phase I replacement housing before seeking HUD approval for the Phase II demolition. Phase II is expected to generate 505 new units, of which 153 (30.3 percent) will be public housing.

The proposed demolition of eight high-rises in Cabrini Extension would remove 1324 public housing units, of which 544 were or are occupied. The RP proposes to replace the eight buildings with 701 public housing units on- and off-site, in addition to the 167 Section 8 certificates that HUD previously funded as part of the HOPE VI replacement housing. The 868 replacement units are more than sufficient to accommodate the 544 affected households, especially since some families have already accepted permanent relocation to scattered site public housing and other CHA developments.

The 493 replacement housing units to be funded with the \$69 million of Public Housing Development and HOPE VI grants are expected to be built and ready for occupancy within five years (by the end of year 2001).

Revision Number 1 of the HOPE VI Budget, dated May 12, 1997, is hereby approved, with changes as indicated on the enclosed copy. Capital costs total \$41,645,524 (83.3 percent of grant); Supportive Service costs total \$8,354,476 (16.7 percent of grant). The "Total Development Cost (TDC)" of the 303 units to be funded from the HOPE VI grant will be calculated as individual development/acquisition proposals are submitted for HUD review and approval. The \$34,328,543 budgeted in Account 1440, Site Acquisition, will be held in Account 2000 and only released as individual development/acquisition proposals are reviewed and approved by HUD. We note that the proposed expenditures for the Lower North Community Center have been deleted from the HOPE VI Budget.

Article XXI.17 of the Grant Agreement approved the use of up to \$10 million for the acquisition of parcels of land for housing development by the CHA. In light of the RFP approach that CHA will use to acquire new dwelling units, the approval in Article XXI.17 is hereby rescinded.

Section 7, Management Plan, of the RP proposes to establish a separate waiting list for the HOPE VI replacement housing through the creation of local preferences. The CHA also proposes income disregards for residents who participate in the Resident

Employment Development Initiative (REDI) program, and screening procedures for all eligible families as if they were new potential residents for occupancy of HOPE VI replacement units. These proposed changes to CHA's occupancy standards and practices are hereby approved, subject to applicable statutes.

Section 8, Community Involvement, of the RP discusses the various ways in which resident and community involvement has been achieved in the development of the initial HOPE VI Application in early 1993, the first revised Revitalization Plan submitted to HUD on March 15, 1995, and now the second revised Revitalization Plan submitted on June 30, 1997. Although the CHA has repeatedly tried to obtain resident concurrence and sign-off on the Resident Consultation Plan called for by Article XIX and Article XXI.37 of the Grant Agreement, concurrence has repeatedly been withheld.

Section 9, Self-Sufficiency and Community Building Work Plan, lists a variety of community service, supportive service, and security-related programs that do not all appear to fit the welfare reform work plan that we are now requiring of all HOPE VI grantees (see REQUIREMENT NO. 8). In the summer of 1995, HUD released funds for the first 12 months implementation of community service and supportive services programs. Even though two years have passed, CHA has not fully utilized the funds released for the first year. CHA is hereby informed that no additional funds will be released for BLI 1408 until a comprehensive and cohesive welfare reform work plan has been developed and approved by HUD, pursuant to the instructions that will be provided in the September 28-29 conference.

In October 1996, the Cabrini LAC filed suit against the CHA to halt implementation of the HOPE VI Plan and stop further demolition. Their lawsuit alleges that the residents of Cabrini-Green have not been adequately consulted in the development of the revised HOPE VI plan. On page 8-3 of the Plan it states that the Court has set a trial date for late 1998 on the lawsuit filed by the Cabrini Local Advisory Council (LAC) in October 1996. Will CHA be able to proceed with the demolition of Phase I buildings and the development/acquisition of Phase I units as per the proposed schedule before the trial date, or will the entire schedule need to be pushed back a year or more?

REQUIREMENT NO. 1 - That within 30 days of the date of this letter, CHA provide evidence that the Plaintiffs and the Court in the Dorothy Gautreaux, et al., case have approved or have no objection to the development/acquisition of replacement public housing in the quantities and locations proposed in the HOPE VI Revitalization Plan.

REQUIREMENT NO. 2 - That within 30 days of the date of this letter, CHA submit its plan to secure funding for the approximately 208 units of replacement housing that are not

funded by the \$69 million of HOPE VI and Public Housing Development grants. The RP mentions the possibility of tax credits and land lease proceeds, but does not give any dollar amounts. We have also been informed that Mr. Alexander Polikoff, Attorney for the Plaintiff in the Dorothy Gautreaux, et al., case, has \$20 million of previously approved public housing development funds that have not yet been allocated to a specific project. Is there a possibility that these funds could be obtained to complete the funding for the 701 replacement public housing units?

REQUIREMENT NO. 3 - That CHA submit a disposition application for the parcel to be exchanged with the Board of Education.

REQUIREMENT NO. 4 - That CHA submit a disposition application for the balance of the land in Phase I, including a draft of the RFP to be used to solicit developer proposals for replacement housing.

REQUIREMENT NO. 5 - Pursuant to Article IV.12 of the HOPE VI Implementation Grant Agreement, CHA must submit for HUD approval a list of proposed subgrantees, and must also submit for HUD approval each subgrantee agreement prior to execution with the subgrantee.

REQUIREMENT NO. 6 - Any subgrantee agreements already executed must be submitted for HUD approval within 15 days of the date of this letter. We note that as of August 30, 1997, about \$3,150,000 had been drawn down through the LOCCS system for resident services (account BLI 1408) without any contract or subgrant agreement having been submitted to HUD for approval. If CHA fails to respond to this requirement by the date indicated, HUD will move all remaining funds in BLI 1408 to BLI 2000.

REQUIREMENT NO. 7 - Article XXI.11 of the Grant Agreement required that CHA provide a full description of the process it intends to utilize to subgrant funds to providers of community service activities or supportive services, i.e., CHA's "regranting program". This information was not provided in the RP, and must be submitted to HUD within 30 days of the date of this letter. The HOPE VI Budget shows \$612,985 for this purpose, and page 9-3 of the RP states that funds have already been awarded to seven community organizations. The CHA is hereby instructed not to make any additional re-grant awards until the requested information has been submitted to HUD.

REQUIREMENT NO. 8 - On or about September 2, 1997, CHA received a letter from this Office requesting that you send appropriate representatives to a conference in Kansas City,

Missouri, on September 29-30. All HOPE VI grantees have been asked to attend one of four regional conferences at which the requirements of responding to recent welfare reform legislation will be discussed, and grantees will be asked to prepare a formatted work plan showing how the HOPE VI-funded community service and supportive services will accomplish the economic development and upward mobility envisioned by welfare reform legislation. All grantees will have a similar workplan so that statistics can be compiled for the entire HOPE VI program. We appreciate and thank you for the presentations that Ron Carter has made in prior workshops, and look forward to his participation in the three remaining welfare reform conferences.

REQUIREMENT NO. 9 - That CHA submit a copy of all RFPs for development proposals concurrently to the HUD Illinois State Office and to the Office of Public Housing Investments (OPHI), and submit each development/acquisition proposal to OPHI for prior review and approval.

REQUIREMENT NO. 10 - The Milestone Schedule under Tab 10 of the RP indicates that the 493 replacement housing units to be acquired with Public Housing Development and HOPE VI funds will be ready for occupancy by late 2001, and that HOPE VI grant closeout will begin in 2002. Please provide an explanation of why grant closeout is expected to take two years and not to be finished until 2004. The HOPE VI grant for Cabrini-Green was awarded in the fall of 1993, and the Grant Agreement was executed in November 1994. The proposed schedule needs to be accelerated as much as possible.

REQUIREMENT NO. 11 - Article XXI.12 of the Grant Agreement requires that CHA provide a Staffing and Time Allocation Plan with its RP. Page 5-1 of the RP provides the names of three persons, and the explanation for BLI 1410, Administration, in the Budget states that staff costs consist of three full-time positions. Please provide a listing of all persons, with name, title and HOPE VI function, that are being charged full or part time to the HOPE VI budget, including any persons outside the immediate redevelopment office, together with the total of their annual salary and benefits and the percentage that is being charged to HOPE VI.

REQUIREMENT NO. 12 - The RP states that the Tax Increment Financing (TIF) will pay for infrastructure improvements. However, the revised HOPE VI Budget in Section 6 of the RP proposes to spend \$1 million for "the costs of infrastructure, interior sidewalks and landscaping associated with the new development". Why can't these costs be paid from the TIF? We will withhold the \$1 million for BLI 1450 until a satisfactory explanation is received.

REQUIREMENT NO. 13 - Article XXI.12.(a) of the Grant Agreement calls for the establishment of a position of HOPE VI Program Manager. Ms. Eileen Rhodes has held this position since the fall of 1995, but we understand she resigned effective September 5, 1997. Article XXI.12.(b) of the Grant Agreement requires that the HOPE VI Program Manager coordinate and oversee the activities of all parties involved in the implementation of the RP, but this has not been the case. CHA must inform us within 15 days of the date of this letter how it proposes to administer the Cabrini HOPE VI program so that there is effective internal coordination. We also request a more detailed statement than the third paragraph on page 5-1 of the RP on how the CMHDC and the three panels of consultants which CMHDC has retained will be involved in structuring and negotiating replacement housing deals.

REQUIREMENT NO. 14 - The Cabrini-Green housing complex actually consists of three separate public housing developments constructed at three different times. The HOPE VI program was approved specifically for Cabrini Extension, which consists of 15 high-rise buildings, and not for the original low-rise Cabrini Homes, or for the separate Green Homes. To date, it appears that CHA has not limited the expenditure of HOPE VI funds to Cabrini Extension, but has instead extended the community and supportive services to all three developments. Within 30 days of the date of this letter, CHA must submit for HUD review and approval an explanation and justification for any expenditure of HOPE VI funds outside of Cabrini Extension. Otherwise, expenditures must be restricted to the present and relocated residents of Cabrini Extension, and to the buildings of Cabrini Extension.

REQUIREMENT NO. 15 - That within 60 days of the date of this letter CHA submit its proposed Plan for Resident Consultation for HUD review and approval, unless advised by CHA's General Counsel that such action should await the resolution of the lawsuit that the Cabrini LAC has filed against the CHA and the City. In that case, please submit CHA General Counsel's opinion.

REQUIREMENT NO. 16 - In addition to the quarterly and semi-annual reports called for by the Implementation Grant Agreement, we will soon be asking all HOPE VI grantees for a monthly report on budget expenditures, program schedule, and relocation, demolition, development, construction, occupancy, welfare reform and other essential program statistics. You will receive an initial database that we have created from information received to date, and will ask that CHA review, correct and complete the database before certifying to its accuracy. We will then be asking for

monthly updates to all information in the database, and intend to use the internet for rapid transmission of data. KPMG Peat Marwick is under contract to our office to design and manage this HOPE VI program database and report generation. CHA should plan now for qualified staff that can collect and transmit the required information.

This letter does not approve any disposition of CHA land although HUD recognizes that disposition is a necessary part of the proposed method of development/acquisition of replacement housing. The CHA will need to submit separate Disposition Applications pursuant to 24 CFR 970.7 at the appropriate time.

This letter recognizes the conceptual use of long-term leases to acquire replacement public housing, but does not approve the contractual and funding methods that have been proposed by CHA in separate correspondence. The Department cannot give a formal approval until one or more development proposals are submitted in accordance with 24 CFR Part 941, and specifically Subpart F thereof. We are working closely with CHA, the HUD Illinois State Office, and the developer/managers of the initial Phase I properties to work out an approach that meets all statutory and program requirements.

This approval incorporates all the provisions of applicable laws, the original Notice of Funding Availability (FY 1993) under which CHA applied for HOPE VI funding, the Implementation Grant Agreement executed on November 14, 1994, and other HOPE VI program guidance, except as specifically stated herein or in subsequent approvals.

The Chicago Housing Authority has submitted a very exciting and far-reaching plan for community revitalization that will have beneficial effects well beyond the boundaries of Cabrini-Green. We encourage the CHA to continue working closely with the Mayor and other City Offices, with the Board of Education, with community leaders and business interests, and with the residents and neighbors of Cabrini-Green so that the full potential of the proposed HOPE VI revitalization program can be achieved.

Please do not hesitate to call whenever our Office can be of assistance. We look forward to your response to the "Requirements" set forth herein.

Sincerely,



Elinor R. Bacon
Deputy Assistant Secretary
Office of Public Housing Investments

Enclosure (Budget)