UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, ODELL JONES, DOREATHA R. CRENCHAW, EVA RODGERS, JAMES RODGERS, ROBERT M. FAIRFAX, and JIMMIE JONES,

Plaintiffs,

vs.

THE CHICAGO HOUSING AUTHORITY, a corporation, and C. E. HUMPHREY, Executive Director,

Defendants.

Civil Action
No. 66 C 1459

REPLY BRIEF OF DEFENDANTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT IN THEIR FAVOR

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PRELIMINARY STATEMENT

For ready reference by the Court, Defendants have attached as a short Appendix to this Brief copies of the documentary exhibits referred to in the Initial Brief of Defendants in the footnote at pages 20-21a, and of a documentary exhibit referred to hereinafter in this Reply Brief. In addition, there are included copies of the transcript of pages 8-10 of the Deposition of Mr. Rose in which he was being examined by Plaintiffs' counsel about his testimony before the United States Civil Rights Commission in 1959.

THE ISSUE

As stated in Defendants' Initial Brief (p. 5), the determinative issue in this case is whether Defendant CHA - not the Chicago City Council or some Council committee or alderman or anyone else - has since 1950 (Complaint, Count I, par. 16) ". . . deliberately chosen sites for [regular family public housing] projects which would avoid the placement of Negro families in white neighborhoods." Under this Court's earlier ruling this means (265 F. Supp. at 584):

> ". . . plaintiffs must in fact prove, or prove facts from which the inference necessarily follows, that defendants were prompted in their selection of sites at least in part by a desire to maintain concentration of Negroes in particular areas or to prevent them from living in other areas . . . A showing of affirmative discriminatory state action is required. * * * The Constitution . . . commands only that defendants administer the site selection aspect of their housing program untainted by any design to concentrate Negro or white tenants in some areas to the exclusion of other areas."

In short, the Complaint charges Defendant CHA with deliberate discrimination, and the law of the case, consistent with the Complaint and this Court's ruling, is that the issue is one of intention or purpose, that is, as this Court has put it, of "desire," of "affirmative discriminatory state action," of "design." Absent any genuine issue of material fact, and the material facts being favorable to Defendants, summary judgment in their favor should be granted as requested.

THE FACTS

The controlling facts are:

- that CHA is a municipal corporation formed under a special state law to construct and operate decent housing in Chicago for low income families, and to carry out this purpose in such a way as to further slum clearance, the elimination of poor housing and the redevelopment of slum and blighted areas; CHA's purpose is not to integrate the City of Chicago, however laudable a goal that might be.

- that at all times relevant to the Complaint, the approval of the Chicago City Council has been a condition precedent to CHA's acquisition of any public housing site in Chicago.

- that over the years CHA has looked all over Chicago for public housing sites and has considered and recommended for City Council approval numerous sites located in white or substantially white neighborhoods.

- that these sites were recommended by CHA for approval, not because of the racial character of the particular neighborhood, but because the sites met the criteria - e.g., slum clearance, cost limitations, accessibility, surrounding land uses, and zoning and other municipal planning - imposed by law.

- that in respect of site selection, this is all CHA can do - consider and recommend, subject to City and Federal approval.

With most of what has been stated above, Plaintiffs either expressly or impliedly agree without question. For example, Plaintiffs do not challenge the correctness of any of the figures in the Humphrey Affidavit showing the location and other pertinent information regarding the numerous sites in white or substantially white neighborhoods considered and recommended by CHA over the years. Accepting what they accept, however, Plaintiffs nonetheless seek to implicate CHA in what they see as affirmative discriminatory state action, first, by adding as a gloss to what has been stated above a number of bits and pieces culled from a period of history covering twenty years or so, which they then pull together into untruths or half-truths, from which they then draw broad inferences, to which they then attach sinister labels (Pl. Br. 30 - e.g., the "Kean-Murphy deal," the "twice-as-many-as-needed policy on site submissions," etc.), all of which they finally add up as justifying their ultimate conclusion that through these "official actions of CHA and its stated policies," CHA became an "active and willing partner" in the promotion of a "pattern of segregated public housing." (Pl. Br. 30).

Whatever the law may make of this imaginative technique of advocacy and Plaintiffs' ultimate conclusion, the record in respect of what Plaintiffs seek to show is either *contra*, lacking or *de minimus*.

According to Plaintiffs, these "official actions of CHA and its stated policies" implicating CHA with some unnamed "partner" (but presumably the Chicago City Council) in a "pattern of segregated public housing" are as follows (Pl. Br. 30):

"(1) the Kean-Murphy deal for pre-clearance of sites;

(2) the twice-as-many-as-needed policy on site submissions;

(3) the ousting of Elizabeth Wood;

(4) the exclusion of Negroes from the four white-area family projects;

(5) the proximity rule; and

(6) the community-opposition policy."

Considering these in Plaintiffs' order:

(1) *The "Kean-Murphy Deal"*

Putting aside Plaintiffs' rhetoric (Pl. Br. 6-7), the evidence wholly fails to show any "deal." The evidence does show that necessary City Council approval of any public housing site requires a city ordinance, which can be introduced only by an alderman or the City Clerk (Rose Dep. 50, 61; Humphrey Dep. 91-92). It follows that CHA had of course

to conform its site submission procedures from time to time to such procedures as the City Council desired. The evidence shows that one result was the drafting of a procedure for the submission and consideration of sites - nothing more - worked out in 1955 between General Kean (then CHA Executive Director) and City Council delegates. Plaintiffs label this a "deal". The clearance procedure itself is set out in General Kean's three-page Memorandum to the CHA Commissioners date June 13, 1955 (not May 23, 1955). A copy of this Memorandum (Humphrey Dep. Ex. 6) is included in the Appendix to this Brief, and Defendants commend its full reading to the Court to lay at rest any doubt whatever as to the purpose of CHA in working out and agreeing to the procedure - a purpose wholly unrelated to race or racial considerations. As Mr. Humphrey testified (Humphrey Dep. 8 ms):

> "Alderman Murphy requested we do it in the City Council, in effect, requested that the Chicago Housing Authority do it in this method. The Chicago Housing Authority has no alternative but to do it in this method."

(2) The "twice-as-many-as-needed policy" - pp 28-29

CHA readily agrees that its practice has been to submit to the City Council more sites than actually needed to accommodate the units for which Federal funds were immediately available. This has been nothing more than a

reasonable and prudent precaution so as to make certain that in the event of disapprovals for any reason, CHA nonetheless could take full advantage of the allocation of the limited Federal funds available from time to time (Humphrey Dep. 111, 112, 124, and 125). If sites had not been ready when the Federal Government released funds, the funds would have gone to public housing authorities in other communities which had proposals ready (Humphrey Dep. 108, 109). And even if more sites had been approved by the City Council than could have been immediately financed with Federal funds, the City Council approvals would have remained in effect when more Federal funds became available, and the sites could then have been utilized (Humphrey Dep. 110).

It is not true, however, that this procedure had any relationship to any "agreement" between CHA and the City Council aldermen. Plaintiffs' bald assertion (Pl. Br. 8) that CHA had "agreed with the aldermen" to submit twice as many sites as needed or had a "cooperative arrangement" with the City Council (Pl. Br. 10) is a sheer fabrication. In Plaintiffs' attempt to support somehow the unsupportable they quote one source only, Mr. Humphrey - when in fact Mr. Humphrey's testimony establishes only that such a practice existed, not that this practice was pursuant to any agreement with the City Council.

With reference to the practice itself, again there is nothing to suggest any racial animus on the part of CHA or indeed any purpose at all on its part other than to take every reasonable precaution not to deprive the City of Chicago of its full share of sorely needed housing for families of low income.

(3) and (4) The "ousting of Elizabeth Wood" and the "exclusion of Negroes from the four white-area family projects"

Digging back into the departure of Elizabeth Wood from CHA's employ 14 years ago, Plaintiffs quote at length from a public statement she put out at the time (Pl. Br. 20-22). No doubt Miss Wood did put out such a statement, and no doubt in this statement (which says nothing about site selection) she did claim that CHA tenant assignment policies in four white-area family projects were the principal "area of conflict" between her and the then CHA Commissioners (Pl. Br. 20). And admittedly in the early years covered by the Complaint there was a policy against referring Negro applicants for tenancy in those four projects, although this policy has been modified and changed in recent years (Schneider Dep. 58). This history of tenancy policy at Trumbull Park and three other projects - the tension, threats of violence and violence which have attended CHA's efforts to move away from the old

policy and its modest success at racial integration, despite the reluctance of Negroes to live in those projects - has all been well and fairly described by Mr. Rose, Mr. Schneider, and Mrs. Webb (Schneider Dep. 58-85; Rose Dep. 152-168, 174-182; Webb Dep. 59-68, 85-93, 98-102, and 114-120). The over-riding fact remains, however, that there is no evidence to indicate that CHA's early tenant assignment policies at these projects ever had any bearing at all on CHA's site selection policies and recommendations. If there is any probative connection at all, it would seem rather that CHA's more recent efforts to establish and increase racial integration in those projects would weigh against the "factual" argument of Plaintiffs.

(5) The "proximity rule" 29-31

It is undisputed that in its housing for the elderly program, CHA formerly had a rule whereby a priority would be given to elderly applicants living nearest the project. It is also undisputed that a difference of legal opinion arose between CHA and the Public Housing Administration as to the validity of the rule. The PHA was of the opinion that application of the rule in Chicago would promote racial segregation. The opinion of CHA's General Counsel was, on the other hand, that the rule would promote racial integration (Kula Dep. 14).

As a result the rule was abandoned, PHA having the final say and control of the purse-strings. But it is clear also that the reason for this temporary rule had nothing to do with racial integration, or segregation, but rather that "from our experience we knew that elderly people liked to remain in the neighborhood where they had their friends, church, relatives, and so forth. In many cases, they were living with their son-in-law and daughter-in-law. And so the rule was devised to give priority to those people living in the immediate vicinity" (Rose Dep. 196). Again, any evidence having probative value in favor of Plaintiffs' side of the issue in this case and the material facts is lacking.

(6) The "community opposition policy"

Plaintiffs' Brief (pp. 26-27) undertakes also to establish as a material fact a CHA policy of letting "community opposition" determine where in the city CHA would seek out sites from time to time for City Council approval. Apart again from the rhetoric, the Plaintiffs' bits and pieces presented in support of this effort are taken almost entirely from some rough notes (made by a member of the audience) of a speech made by Mr. Rose more than ten years ago. These lead up to an inference by Plaintiffs that entirely misses the point - a point that comes through quite

clearly when the bits and pieces are put back into their context and the context read whole. Not only does Plaintiffs' cut-and-paste technique miss the point; it inexcusably misrepresents. For the most flagrant example of this technique as applied to what Mr. Rose is supposed to have said on another occasion, Defendants suggest that the Court first read the excerpted question and answer quoted in Plaintiffs' Brief (pp. 28-29) implying an admission by Mr. Rose of "guilt" on CHA's part; then read this quotation in context (Rose Dep. 8-10, a copy of which is included in the Appendix). The complete statement clearly refutes any such implication.

Community opposition undoubtedly has been a factor in the location of public housing in Chicago - not, however, because of what Plaintiffs read into the literary product of their elisions, but because such community opposition may effectively and quite naturally express itself through the community's alderman and the City Council with its veto power. As the very Rose speech notes referred to above succinctly quote Mr. Rose as saying (Hirsch Dep. Ex. 3):

> "Elected officials will tell us where public housing is wanted."

It is quite glib for the Plaintiffs to assert, moreover, that "community opposition" is merely a "euphemism for

segregation" (Pl. Br. 27). In the past there has been a lot of such opposition in Chicago and across the country because people are against public housing, period; or they don't want high-rises and overcrowding; or they don't want low-income and broken home families as neighbors, etc., etc.; or they don't want any of these things - matters having nothing whatever necessarily to do with race, creed, or color. Again, the overriding fact is that any evidence of any racial animus or other improper purpose on the part of CHA is so lacking that some rough notes someone took of one speech made more than ten years ago - notes artfully edited in Plaintiffs' Brief - are then treated as a gold mine.

ARGUMENT

There has been a great deal of discovery by Plaintiffs in this case extending over a long period of time. Most of this effort has been spent in an exhaustive search of literally hundreds of bulky CHA files going back in time some 20 years and more. If bulk rather than materiality were the test, it would seem an absurdity - looking at the piles of documents the Plaintiffs have managed to collect - even to suggest that the case is a relatively simple one. But bulk is not the test.

The issue is relatively simple: whether CHA has intentionally discriminated against Negroes by deliberately choosing public housing sites so as to keep Negroes out of white neighborhoods.

The material facts are relatively simple: that CHA's job is to build and operate public housing in a manner consistent with special statutory goals; that these do not include racial integration of Chicago, however laudable; that CHA in doing its job has looked all over the City for sites and has recommended for necessary City Council approval numerous sites in white neighborhoods; that sites have been recommended by CHA because they met the statutory standards, not because the neighborhood was white or black or in between.

There is no genuine issue of any material fact.

Defendants accordingly are entitled to summary judgment as requested.

All of this is surely relatively simple.

All appearance of complication, Defendants submit, arises out of Plaintiffs' effort to advance some very shaky, indeed in all material respects unsupportable, propositions - propositions conceived partly out of their notion as to the law applicable and partly out of their notion as to the facts applicable. These propositions failing, the appearance of complication clearly goes with them, along with any doubt that might otherwise exist as to Defendants' right to summary judgment.

The propositions underlying Plaintiffs' Brief can fairly be stated as follows:

(A) CHA, as a public housing authority, is under some sort of legal duty to carry out its programs so as to further residential racial desegregation if not integration of the City of Chicago;

NO

(B) Since 1949, during which time the Chicago City Council has had (under state law) a veto power over site location, the City Council and

individual aldermen have frustrated CHA's duty, for reasons of racial animus and community opposition;

(C) CHA, even if it had done everything possible to carry out its duty, nonetheless had no right to build on any sites such a City Council would approve; and

(D) CHA in any case was an "active and willing partner" with the City Council, and therefore *a fortiori* had no right to build on such sites.

Considering these propositions in order:

(A) CHA's legal duty regarding residential racial desegregation and integration.

From the very start of this case it has been clear that, insofar as Plaintiffs are concerned, it is a case pretty much like the school cases following the U. S. Supreme Court's 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Much of the language in their Complaint comes almost verbatim from that opinion, and the "*de facto*" Counts III and IV of Plaintiffs' Complaint as originally filed (and subsequently dismissed by this Court upon Defendants' motion) were an obvious attempt to bring this case within what Plaintiffs conceived to be the holdings of recent school desegregation cases. In fact, Plaintiffs' Brief now

before the Court relies largely upon school cases.

Throughout their Brief Plaintiffs use the expression a "pattern of segregated public housing in Chicago" or something similar (Pl. Br. 3, 6, 10, 13, 14, 19, 30, 37, 41). The idea partly seems to be that, if you say it often enough, _de facto_ segregation without more will in and of itself come to sound (and be) unlawful; and that accordingly desegregation, if not indeed integration, is the order of the day as a matter of law. However one characterizes the overall location of public housing in Chicago, this Court has already answered this argument by saying in its earlier ruling (265 F. Supp. at 584):

> "A public housing program, conscientiously administered in accord with the statutory mandates surrounding its inception and free of any intent or purpose, however slight, to segregate the races, cannot be condemned even though it may not affirmatively achieve alterations in existing patterns of racial concentration in housing, however desirable such alterations may be. A showing of affirmative discriminatory state action is required. _Bell_ v. _School City of Gary, Indiana_. 324, F. 2d 209, 213 (7th Cir. 1963), cert. denied 377 U. S. 924, 84 S. Ct. 1223, 12 L. Ed. 2d 216 (1964); _Thompson_ v. _Housing Authority of City of Miami_, 251 F. Supp. 121, 123-124 (S.D. Fla. 1966); _Deal_ v. _Cincinnati Board of Education_, 369 F. 2d 55, 63 (6th Cir. 1966); _United States_ v. _Chemical Foundation_, 272 U. S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926); _Webb_ v. _Board of Education_, 223 F. Supp. 466, 469 (N.D. Ill. 1963)."

Moreover, the school cases themselves are, Defendants submit (and will argue at a later point in this Brief), *sui generis* in any case - having in mind the long history of racial discrimination in the schools in this country leading up to the *Brown* decision and mandate, and that mandate itself. CHA is not a school board. It is a housing authority, a special municipal corporation created under a special Illinois statute with special duties and purposes. Presumably, for example, school buildings should be scattered about the city wherever there are children to attend them, and a concentration in one area might *without more* raise serious questions depending upon the racial residential pattern. That the same thing may therefore be said of public housing is a *non sequitur*. School facilities may be necessary along Lake Shore Drive or in Rogers Park; it does not follow that such locations are necessary or suitable in any way for public housing.

Plaintiffs' refrain - a "pattern of segregated public housing in Chicago" - therefore means nothing by itself, no matter how many times they repeat it. The issue is not segregation or integration but deliberate discrimination.

substitute pattern of public housing located exclusively in negro neighborhoods

We don't say the same thing. People go where the housing is.

(B) The frustration of CHA's legal duty imputed to the Chicago City Council and aldermen

If there is one underlying theme in Plaintiffs' Brief it is surely this: that the Chicago City Council and individual aldermen have since 1949 used the 1949 amendment to the Illinois Housing Authorities Act as a convenient "cover" to kill as inconspicuously as possible the placement of public housing in white areas of the city and therefore the movement of Negroes into such areas. From this, essentially, all evils flow.

Apparently, this proposition of Plaintiffs is something that needs no proof, other than their pointing to the public housing sites that have not received City approval over the years and the sites that have received approval. Defendants put it this way, because one can search Plaintiffs' Brief from front to back and find no names or other specifics anent this alleged aldermanic bigotry. No, it is rather something "everyone just knows," something therefore which need not be proved, etc., etc. Thus, Plaintiffs think it only necessary for example, to quote a former CHA Commissioner as saying that the reasons for the 1949 amendment to the Illinois Housing Authorities Act " . . . are not the ones

being given publicly but are in reality to control the movement of Negroes . . . " (Pl. Br. 3). The Benjamin Affidavit relied upon by Plaintiffs (Pl. Br. 4) is along the same line; no specifics. During all of this lengthy discovery period which Plaintiffs have had and during which they have found ample time to rummage around a vast quantity of old files in CHA's basements and elsewhere, never have they seen fit to take the deposition of a single alderman or city official - preferring apparently to avoid having to back away from "what everybody knows."

Defendants submit that this is a matter of some significance. Plaintiffs nowhere challenge the validity of the 1949 amendment giving sanction to the veto power of the City Council, and they mention no names or specific instances but rely on general hearsay allegations in challenging the purposes and motives of the City Council and its members. In these circumstances surely the City Council and its members are entitled (just as much as Defendant CHA) to the benefit of the presumption of regularity that supports the official acts of public officials, which is a very strong presumption and will prevail in the absence of clear evidence to the contrary (Def. Init. Br. 14-16). And, if this presumption prevails, Defendants respectfully suggest this one question to the Court: What if

anything then remains of the remaining propositions (C) and (D) which are in fact the only legal arguments expressly stated in Plaintiffs' Brief? The answer, Defendants believe, is clear: Nothing.

(C) CHA's right, regardless of fulfillment of its legal duty, to build on the sites selected by the City Council.

Turning to proposition (C), this is a threshold legal argument made by Plaintiffs (the "constitutionally impermissible site" argument - Pl. Br. 29) which may fairly be stated with more specificity as follows:

1. Plaintiffs say that they have the right under the Fourteenth Amendment to have public housing sites selected "without regard to the racial composition of either the surrounding neighborhood or of the projects themselves" (citing Gautreaux v. CHA, 265 F. Supp. 582, 583).

2. Plaintiffs say that "It is clear from the facts . . . that CHA's sites were not so selected" (Pl. Br. 29).

3. Accordingly, Plaintiffs say, the mere development of these sites by CHA, without more, was unlawful and deprived Plaintiffs of their Fourteenth Amendments rights.

Exactly what Plaintiffs mean by this argument is clarified by the Conclusion to their Brief. In this Con-

clusion (Pl. Br. 41) they say that, even assuming CHA over the years had "vigorously pressed upon the City Council balanced and nonsegregated site packages of its own choosing . . .," the mere elimination by the City Council of the white area sites without any CHA participation or acquiescence would result in its having been "constitutionally impermissible for CHA to have constructed and operated a public housing system on the segregated sites which remained available to it."

Something else very important is assumed in this argument but not stated. Plaintiffs' argument starts with the language in this Court's ruling to the effect that the Plaintiffs have a Fourteenth Amendment right to the selection of public housing sites ". . . without regard to the racial composition of either the surrounding neighborhood or of the projects themselves" (265 F. Supp. at 583). Putting aside the fact that the language quoted is directed at the question of Plaintiffs' standing to sue, this first legal argument of Plaintiffs clearly assumes no such racial "regard" in the selection of sites on the part of Defendants; therefore must assume such racial regard on the part of the City Council; otherwise, no affirmative discriminatory state action

anywhere but at most de facto segregation and therefore no constitutional question. But what supports this assumption of racial regard or purpose on the part of the City Council which it is so easy for the Plaintiffs to make? Unless this Court is willing to accept Plaintiffs' pitch as to "what everybody knows" about the City Council and its motives and purposes [see discussion above of Plaintiffs' proposition (B)], Plaintiffs can only have in mind some presumption of law in their favor as to the motives or reasons behind the City Council's actions. Defendants submit, however, that the presumption is the other way, as stated in their Initial Brief and as above in this Reply Brief. Without more, this first argument of Plaintiffs fails.

The second difficulty with this first argument of Plaintiffs - and it too would by itself be decisive - is that the CHA is charged by Plaintiffs' Complaint as having ". . . deliberately chosen" the sites referred to in order to "avoid the placement of Negro families in white neighborhoods." That is, the Complaint is bottomed upon a charge of deliberate and intentional discrimination by CHA. Plaintiffs' argument, however, assumes no such intention on the part of CHA. Accordingly,

it does not square with the Complaint and is fatal to it.*

(D) CHA as an "active and willing partner" with the City Council.

Finally, proposition (D), the second of Plaintiffs' legal arguments (Pl. Br. 30 *et seq*.) may fairly be stated with more specificity as follows:

1. Plaintiffs say there is more shown by the facts than CHA's mere construction of public housing on "constitutionally impermissible sites" (the first of their arguments) - there are certain "official actions of CHA and its stated policies" (*vide* Pl. Br. 30) establishing CHA as an "active and willing partner" in "promoting and perpetuating the pattern of segregated public housing in Chicago."

2. Plaintiffs say that if they have been deprived of their Fourteenth Amendment rights by CHA's mere construction and operation of public housing projects on such sites, then *a fortiori* those rights have been violated by "this panoply of CHA actions and policies" (Pl. Br. 30).

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* Moreover, the argument at best is misdirected. If it is really aldermanic opposition of which Plaintiffs complain in the last analysis, then it would seem more appropriate for Plaintiffs to challenge the 1949 amendment purporting to give sanction to such opposition (presumably as a statute fair on its face but unequal or discriminatory in application).

3. Plaintiffs say that the legal defenses expressed or implied by the CHA Brief (i.e., the "presumption of regularity defense," the "community opposition defense," and the "City Council defense") are insufficient as a matter of law.

The "official actions of CHA and its stated policies" relied upon by Plaintiffs in support of this legal argument, as noted earlier in this Reply Brief, are what Plaintiffs choose to label the "Kean-Murphy deal for pre-clearance of sites; the twice-as-many-as-needed policy on site submissions; the ousting of Elizabeth Wood, the exclusion of Negroes from the four white-area family projects; the proximity rule; and the community-opposition policy" (Pl. Br. 30).

<u>Presumption of regularity</u>

As stated and argued by Defendants in their Initial Brief, a strong presumption of regularity supports the official acts of public officials and, in the absence of clear evidence to the contrary, the courts will presume that they have properly discharged their official duties (Def. Init. Br. 14-18). Plaintiffs in their Brief acknowledge that this presumption of regularity applies "as an abstract proposition in the proper case" (Pl. Br. 33). They argue, however, that in cases of alleged racial discrimination the presumption may

be the other way. Plaintiffs cite two cases in support of their position: United States v. School District 151 of Cook County, Illinois, 286 F. Supp. 786 (N.D. Ill. 1968), and Evans v. Buchanan, 207 F. Supp. 820 (D. Del. 1962).

These are both school desegregation cases. The school cases, Defendants submit and as they have suggested earlier in this Reply Brief, are clearly sui generis - having in mind the long history of racial segregation in the public schools, the U. S. Supreme Court's landmark school desegregation decision of 1954*, and every sort of widespread subterfuge since used by many state and local school authorities to evade the Supreme Court's mandate. Thus, in such a setting the existence within one school district of a number of schools some almost entirely white and some almost entirely Negro, both students and faculty, and along with this a student bussing program helping to bring this situation about (United States v. School District 151, supra); or a clearly gerrymandered small all Negro school attendance area surrounded by large white attendance areas (Evans v. Buchanan, supra) will give rise to a presumption or inference of intentional discrimination that is quite understandable. Given the historical background summarized above, racial segregation of

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* Brown v. Board of Education, supra.

public school faculty and students, although it may not be unlawful per se, is, because of all that has gone before, highly probative of intentional or purposeful segregation. This being so and intentional segregation being unlawful, a justification by the school boards is properly required.

The main point is that the school cases being sui generis, any presumption of "irregularity" or discrimination arising out of them would at most have limited application; certainly, the reasons behind the presumption in the school cases do not apply to the actions of a public housing authority created under a special statute for special purposes. That is why Defendants reiterate that the presumption in the present case is in their favor, Defendants' authorities [e.g., Thompson v. Housing Authority of City of Miami, Fla., 251 F. Supp. 121, 124 (S.D. Fla. 1966)] being in point and not those of Plaintiffs.

The Complaint filed by the six Plaintiffs in this case makes the very serious charge of deliberate racial discrimination of long duration by Defendant CHA in the carrying out of its public housing program - serious because the charge involves the allegation of intentional wrongdoing by countless CHA Commissioners and staff members over the years; and, of much greater importance, serious because Plaintiffs seek to

enjoin a $54 million public housing program on 21 sites intended to provide desperately needed housing for thousands of families who have long been on CHA's waiting list for such housing. Defendants not only acknowledge but readily agree that such a case is not a case that rests or should rest primarily upon legal presumptions (and, of course, neither presumption advanced, the one by Defendants and the one by Plaintiffs, is a conclusive presumption but rather may be rebutted by the facts). Too much is at stake here, and that is one reason why in this Reply Brief Defendants again address themselves to the material facts and to the gloss upon the material facts sought to be added by Plaintiffs in their Brief. Defendants acknowledge that if, as Plaintiffs argue, CHA has been an "active and willing partner" in promoting the discriminatory placement of public housing in Chicago, Defendant has abridged Fourteenth Amendment rights. This is the basic issue in the case. The record, however, does not support the factual premises on which the argument rests.

Alleged CHA "official actions and policies"

Defendants submit that the so-called "official actions of CHA and its stated policies" relied upon by Plaintiffs in an effort to show a picture of participation by CHA

in an unlawful "pattern of segregated public housing," are founded upon a quicksand of racial motivation and purpose imputed to the City Council but unproved, and on top of that such "actions and policies" are nothing but a mosaic of bits and pieces of untruths or partial truths or fabrications that are immaterial in any event.

Thus, Plaintiffs make reference to what they call "the Kean-Murphy deal for pre-clearance of sites" (Pl. Br. 30). Defendants reiterate that there is no evidence whatever to indicate any so-called "deal." CHA staff may of course draft ordinances for proposed site acquisitions because of the special complexities and technicalities involved, but CHA has no power to lay them directly before the City Council; only the aldermen and the City Clerk can do this. Apart from using their imagination to come up with a sinister-sounding characterization of the clearance procedure worked out in 1955, Plaintiffs in their Brief point to nothing whatever indicating that the arrangement referred to amounted to anything more than CHA's agreeing to go "through channels" in the procedural manner desired by the legislative body - the City Council - having the final say.

Plaintiffs also make use of their imagination in their reference to what they call "the twice-as-many-as-

needed policy on site submissions" (_ibid._). Again there is no evidence whatever to support Plaintiffs' charge that there was any sort of agreement or collusion between CHA and the City Council or individual aldermen, intended to give the aldermen a second crack at white sites reaching the floor of the City Council without at the same time killing the public housing program. As noted already, even Plaintiffs' record references in this respect fail to support their charges. On the contrary, the evidence clearly shows, as already discussed in this Reply Brief, that CHA over the years has rightly been concerned over the possibility of cutbacks in Chicago's public housing program resulting from a shortage of sites; that in submitting the numbers of sites it has submitted to the City Council over the years, CHA's only purpose has been to better assure itself of being able to take full advantage of the allocation of the limited federal funds available from time to time. The gloss of improper or discriminatory motive Plaintiffs seek to add to this is sheer innuendo and no more.

Plaintiffs also attempt to make something out of the "ousting of Elizabeth Wood" (_ibid._); the "exclusion" of Negroes from four white-area projects (_ibid._); the "proximity rule" (_ibid._); and a "community-opposition policy" (_ibid._).

As for Elizabeth Wood and former admission policies at Trumbull Park and three of the other projects, again there is no evidence whatever indicating that these matters ever had any bearing at all on what public housing sites have been selected over the years and why - which is after all the issue raised by Plaintiffs' Complaint. The "proximity rule" - affording a preference in housing for the elderly to persons living nearest the housing site, and no longer in effect - clearly had a reasonable basis because of the needs and desires of most elderly persons to remain in our near their old neighborhoods. Again, there is no evidence that this former rule had anything to do with race or that racial animus was in any way a motivating factor in its origin.

Finally, as to what Plaintiffs characterize as CHA's "community-opposition policy," this is a cut-and-paste argument, as noted already in this Brief, fabricated from bits of statements made or alleged to have been made on several occasions at one time or another by Mr. Rose or Mr. Swibel - statements which suffer somewhat in Plaintiffs' translation. Read in context and in whole, the statements relied on acknowledged only the obvious; that CHA may not go where it cannot go for lack of necessary city and federal

approval as required by law. Moreover, as this Court well knows, public housing in many parts of the country including Chicago has over the years been a matter of great controversy, for many reasons wholly unrelated to race. Accordingly, it does not follow, as Plaintiffs glibly argue, that a respect for community attitudes by any governmental body is nothing but a "euphemism for segregation." (Pl. Br. 27). Again, the important point is that there is no evidence whatever that CHA ever failed to look for sites or refused to propose any sites simply because there was apparent community or neighborhood opposition based upon racial antagonism.

Not true

There is no support, Defendants submit in summary, for Plaintiffs' notion (and that is all it is, a notion, supported largely by imagination mated with inference) that CHA has been involved in "affirmative actions and policies" making it an "active and willing partner" in any deliberate and intentional segregation of public housing in Chicago.

From the above it follows, for reasons already given and having to do primarily with the basic issue of the case being that of deliberate racial discrimination, Defendants need no defense. Believing, however, that a discussion of the legal authorities cited by Plaintiffs may be helpful in dispelling any doubt whatever as to the validity of

Defendants' argument and the disposition to be made of their motion, Defendants will comment on these so-called defenses and Plaintiffs' authorities.

Community opposition

In their Brief Plaintiffs ask (p. 34): "Does 'community opposition' justify CHA's pre-clearance and twice-as-many-as-needed policies?" They then go on to cite and discuss three school cases, Cooper v. Aaron, 358 U. S. 1 (1958), Jackson v. Rawdon, 235 F. 2d 93 (C.A. 5th 1956), and United States v. School District 151 in Cook County, Illinois, 286 F. Supp. 786 (N.D. Ill. 1968). It bears repeating that Defendants do not rely upon any so-called "community opposition defense;" that the simple fact is that under Illinois law public housing sites in Chicago must be approved by the City Council before acquisition; that CHA has acted at all times without racial animus but reasonably and feasibly in seeking such approval; and that to the extent an element of "community opposition" has been a factor in site selection over the years, such factor can have reference only to the obvious fact that any community or neighborhood will ordinarily look to its alderman to represent his constituents. In short, the "community-opposition defense" merges into what Plaintiffs call the "City Council defense." Again, as noted above (and

dealing only with community opposition as a defense at this point), the cases cited by Plaintiffs are school cases. It is not this fact, however, but mainly something else that clearly distinguishes them from the case before this Court.

Cooper v. Aaron, supra, is the notorious Little Rock School case. Clearly, in that case it was no defense for the local school board to say that it could not follow the 1954 school desegregation decision of the Supreme Court because of opposition in the community. The short and simple facts of the matter were that in 1954 the Supreme Court had laid down a mandate to all school boards and districts to comply with the law and desegregate; that the local school board in Little Rock didn't have to go anywhere else for any official "OK," but rather had full authority on its own to carry out that mandate; that it hadn't done so; and that therefore local hostility could not be accepted as an excuse, no more than "good faith" in the face of such hostility. Jackson v. Rawdon, supra, is to like effect, although not so notorious a case and with less extreme facts.

Here, we have a wholly different mandate, a mandate under state law to a public housing authority to build decent, safe and sanitary housing for low-income families, and to build this housing in such places as will facilitate slum clearance

and related statutory purposes. There is the further mandate to obtain City Council approval for the acquisition of sites. So, unlike the school boards in the school cases, CHA is not a body having full power and duty to carry out the mandate laid down; as to site location, it is merely a recommending body.

Plaintiffs see a "compelling parallel" (Pl. Br. 36) between the present case and one of the school cases upon which they rely - the recent decision by Judge Hoffman in <u>United States</u> v. <u>School District 151 of Cook County, Illinois</u>, <u>supra</u>. The "compelling parallel" is visible only to someone who starts out by assuming the ultimate conclusion to be proved - i.e., deliberate racial discrimination by Defendants. In Judge Hoffman's decision he found as a matter of fact that the defendant school district was engaging in <u>purposeful discrimination</u>, viz., that the segregation of teachers in School District 151 was the result of a "<u>deliberate</u> decision by the defendants . . . to assign teachers to schools on the basis of race" (286 F. Supp. at 793); that "the <u>purpose</u> and effect of the program of school bus transportation . . . has been to segregate the students . . . on the basis of race and color" (<u>id.</u> at 794); and that "the <u>purpose</u> and effect of the student assignment and structural reorganization policies and practices . . .

was to segregate the students . . . on the basis of race and color" (id. at 796). Where such findings of affirmative deliberate and purposeful discrimination can be made, it would of course follow that the fact that the local voters showed their approval of all this - their "community opposition" - by their vote on a school construction referendum would be no defense to the actions of the school board.

The City Council

Finally, Plaintiffs in their Brief go on to what they call the "City Council defense," arguing that the City Council's final say over sites submitted by CHA is "no . . . excuse for operating a segregated public housing system. . . . " (Pl. Br. 37); that "under long recognized principles, the operating agency of a public institution can be enjoined from acting in an illegal manner even though a higher governmental authority tries to compel it to act in that manner" (Pl. Br. 37-38). It is extremely difficult of course to take issue with the proposition that the courts can afford relief from illegal acts of a local government agency despite the plea that a higher governmental authority has sought to compel such acts. The proposition assumes as indicated, however, that the local agency has in fact engaged in illegal acts - meaning in the present case that the argument assumes

deliberate discriminatory acts on the part of CHA intended to locate public housing so as to keep Negroes out of white neighborhoods. Of course the argument assumes, further, some affirmative acts on the part of the Chicago City Council seeking to compel such deliberate discriminatory acts. Once having been made to rest on these assumptions the argument inevitably leads to the conclusion Plaintiffs desire the Court to reach.

The weakness with the argument - and it is fatal - is that again the argument assumes the conclusion. The argument assumes that the Plaintiffs have proved their Complaint - deliberate discrimination on CHA's part in the location of public housing. If it were proper for this Court to accept that assumption, then Defendants would concede the proposition. That the error lies in the assumption is clearly brought out by looking at what is actually decided by the cases relied upon by Plaintiffs.

In Orleans Parish School Board v. Bush, 268 F. 2d 78 (CA 5th 1959) and Cooper v. Aaron, supra, (again, school cases) there were findings of intentional and affirmative segregation. In the first of the two cases, the school board undertook to defend various actions on the grounds of the requirements of a state statute which purported to prohibit the local school boards from changing the racial

classification of schools (i.e., from desegregating as required by the Brown decision). There being unlawful conduct, the dictates of state law were of course beside the point. In the second of the cases (the Little Rock case) the local school board sought to justify its acts in part by alleging that any other course of action would have been rendered difficult and impossible by actions of the legislature and the Governor. The premise of the decision remains the same; purposeful and therefore unlawful discrimination by the local school board. The premise established, the conclusion followed.

Plaintiffs' remaining cases are Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961), and Ethridge v. Rhodes, 268 F. Supp. 83 (S. D. Ohio 1967). Neither case had to do with a public body supporting its actions on the ground that a higher public body was trying to compel such acts. Neither therefore has much relevance under Plaintiffs' argument. But the cases themselves deserve comment, inasmuch as they further distinguish the present case from Plaintiffs' authorities.

In the Burton case the Wilmington Parking Authority leased out a parking terminal restaurant concession to a private lessee who subsequently refused to serve Negroes. The U. S. Supreme Court found sufficient state action to support

suit against the Authority, but the heart of the Court's rationale for present purposes was that ". . . in its lease with Eagle [the lessee] the Authority could have affirmatively required Eagle to discharge the responsibility under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation" (365 U.S. at 725). That is, the Authority in the lease could easily have prohibited any racial discrimination by the lessee. It did not do so, for whatever motive. How that case is analogous to the present case, except in a way favorable to Defendants rather than Plaintiffs, Defendants fail to see.

CHA could have prevented racial discrimination

Ethridge v. Rhodes, supra, the Ohio labor case, comes down to the same thing, if one substitutes for the lease in Burton the written building trades union assurances of non-discriminatory membership practices customarily required by Ohio state officials from private contractors bidding on state jobs, as a part of their bids. The state officials in Ohio chose to waive such assurances in the instance before the court. This affirmative act on their part was, as recognized by the court (vide quotation, Pl. Br. 40), itself the cause of lack of equal employment opportunity on the public construction involved. The case is one where the defendant state officials were intentionally acquiescing in

discriminatory practices of contractors and craft unions, notwithstanding these very officials clearly had the power to assure qualified workers equal access to employment opportunities on public jobs.

The cases are not relevant.

CONCLUSION

The Complaint in this case charges Defendant CHA with deliberate discrimination in its public housing program in Chicago by the placement of such housing so as to keep Negroes out of white neighborhoods. Plaintiffs seek to enjoin a $54 million public housing program on 21 sites at a time when thousands of families in urgent need of such housing have long been on a waiting list for lack of sufficient existing apartments.

It is in this context that Plaintiffs, after lengthy discovery with which CHA has cooperated in full, now present a Brief to this Court that in large part relies upon inferences stemming from parts of documents and statements which go back years and years - and, however they are read or construed, have little or nothing by any stretch of the imagination to do with the program under attack. This is an equity case. Housing desperately needed by many many low income families should no longer be kept in jeopardy by such burning matters as exactly why Elizabeth Wood left CHA's employment 14 years ago.

There is no genuine issue of material fact. Over the years, CHA has proposed sites for family public housing

without regard to the color of the particular neighborhood. Many of the sites proposed have, in fact, been located in white or substantially white neighborhoods. In all this there has been an intention and design on CHA's part, yes. But that intention and design has clearly been, not to segregate or integrate or discriminate, but rather only to take every proper and reasonable step and to make every proper and reasonable effort to carry forward Chicago's public housing program in the public interest.

Notwithstanding the amendment to their Complaint, Plaintiffs do not seek relief on any separate ground of alleged racial discrimination in the selection and assignment of tenants. Accordingly, summary judgment on the whole case, in favor of Defendants, is now appropriate and requested.

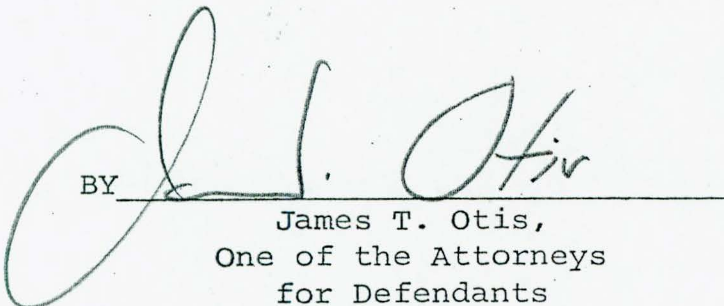
Respectfully submitted,

KATHRYN M. KULA,

JOHN W. HUNT,

JAMES T. OTIS, and

JAMES A. BRODERICK



BY ______________________
James T. Otis,
One of the Attorneys
for Defendants

Dated: November 25, 1968.

Appendix

COPY OF LETTER AS SENT:

The West Side Federation
3411 W. Douglas Blvd.
Chicago, Illinois 60623
August 26, 1965

Mr. Robert Weaver, Administrator
The Federal Housing and Home Finance Agency
Washington, D.C.

Dear Mr. Weaver:

The West Side Federation, an organization representing 53 community and neighborhood organizations on the West Side of Chicago, submits to you the following complaint:

The Chicago Housing Authority, in the act of site selection, and the City Council in the act of approval of the sites for nine Public Housing Units, stand in violation of the 1964 Civil Rights Act, Title VI, Section 601 and 602, and in violation of The Federal Rules and Regulations, Title 24, Housing and Housing Credit, Section 1.4.

On April 7, 1965, the City Council of Chicago approved nine site locations for public housing as chosen by the Chicago Housing Authority. Seven of these sites are located within the boundaries of densely populated areas of Negro residence. Since on March 24th the City Council had approved the location of one other unit, this meant that eight additional units of public housing were being scheduled for location within the confines of the Negro community. There exists no ascertainable reason why the sites were selected in the Negro ghetto.

Four of the eight units are designed as "high-rise structures." Six of the proposed units are scheduled for sites in close proximity to existing public housing. These will be located at Pershing Road and Cottage Grove Avenue, Bowen and Cottage Grove Avenue, 45th Street and Drexel Boulevard, 50th Street and Michigan Avenue, 43rd Street and Princeton Avenue, and Adams and Wood. Two of the proposed sites (Adams and Wood, Washtenaw and 12th Place) are located within the organizational jurisdiction of the West Side Federation and the 53 organizations presenting the complaint. These sites have all been submitted to the Public Housing Administration in Washington for approval. (See Exhibit A for location of proposed units.) *

The West Side Federation is vitally concerned that equal access to good housing be provided all citizens of Chicago. We are expecially concerned, however, about housing opportunity for the low-income Negro population. Because of housing segregation in the private market in Chicago, and level of income, these persons are largely relegated to residence in public housing. Ninety (90) percent of all CHA tenants are non-whites. The housing welfare of citizens and their opportunity for residential selection are thus broadened or limited depending on the practices and the decisions of the Chicago Housing Authority.

As of June 30, 1965,[1] 93 percent of the non-white[2] tenants who live in 28 Federally-assisted CHA Projects lived in Projects that are non-white segregated. These non-white-

---

1/ Chicago Housing Authority Report, Quarter ending June 30, 1965.
2/ Negroes constitute 97 percent of all non-whites in Chicago.
* Map is not included in this copy.

Hall Dep. Ex. 1

segregated projects are located primarily in the most solidly segregated areas of non-white residence in the City. Less than one percent (0.2%) lived in white-segregated projects and 6.8 percent were in integrated projects. The proportion of non-whites in particular integrated projects ranged from 11 to 89 percent. (See Exhibit B for listing of units by proportion of racial occupancy.)

The following table gives the distribution of tenants in the 28 Federally-assisted CHA Projects in Chicago as of June 30, 1965. A Project is designated segregated if the tenant population is 90-100 percent of one race. All other types of Projects are designated integrated.

TABLE I

RACIAL DESIGNATION OF PROJECTS	NUMBER OF PROJECTS	PERCENT OF TOTAL PROJECTS	NUMBER AND RACE OF TENANTS		
			Nonwhite	White	Total
NON-WHITE SEGREGATED	16	57.2	24,213	386	24,599
WHITE SEGREGATED	5	17.8	40	1,378	1,418
INTEGRATED	7	25.0	1,772	1,009	2,781

On the basis of this pervasive pattern, we can expect that if the nine proposed projects are built on the sites selected and approved, they too will become non-white segregated. The existing patterns of residential and public school segregation will be reinforced, and health and welfare problems are likely to be intensified. Moreover, the chances for improved interracial understanding will be minimized.

The Chicago Housing Authority has full responsibility for both site location for public housing and for the funds made available by the Federal Government for such housing. Under Title VI of the 1964 Civil Rights Act, the Chicago Housing Authority is the "recipient," defined in the Rules and Regulations as:

> "...Any State, political subdivision of any state or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or otherwise participates in carrying out such program or activity, (such as a redeveloper in the Urban Renewal Program), including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity."

In selecting sites within the confines of an already segregated area, the Chicago Housing Authority violates the 1964 Civil Rights Act, and specifically Title 24 -- Housing and Housing Credit, Section 1.4, Part 2 -- of the <u>Federal Rules and Regulations</u> which reads as follows:

Hall Dep. Ex. 1.1

"A Recipient, in determining the location or types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situation in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class or persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect persons of particular race, color, or national origin."

Not only does the effect of the decision of the Chicago Housing Authority subject Negroes to further discrimination by occupancy in segregated areas, but the accomplishment of the objectives of your agency are impaired in respect to Negroes who will live in the area.

Additional proof that the sites selected would impair the purpose of your agency's program is provided in Executive Order 11063 and the Public Housing Manual of 1963. Part I of Executive Order 11063, Prevention of Discrimination, reads:

"101 - I hereby direct all departments and agencies in executive branches of the federal government insofar as they function relative to the provision, rehabilitation, or operation of housing and related facilities to take all action necessary and appropriate to prevent discrimination because of race, color, creed or national origin."

Furthermore, under Criteria for Site Selection in the Public Housing Manual, Section 205.1, Site Selection and Tentative Site Approval, September, 1963, it is stated in numbers 1 and 5 that:

"General: The considerations involved in site selection include:
1) The suitability of the site in relation to the surrounding neighborhood and in the city plan, and
2) The suitability of the site from the standpoint of facilitating and furthering full compliance with the applicable provisions of Executive Order 11063 and its goal of equal opportunity in housing."

It should be noted that in relation to number 1), that the Basic Policies for the Comprehensive Plan of Chicago provides guidelines that could be followed by ~~the~~ CHA in site selection. The policy states:

"The growing non-white population in the Chicago area will mean that additional dwellings built in areas which are now predominantly white will be occupied by non-white families in the future. If current trends were to continue, non-white families would be accommodated through massive transition, mainly in areas adjacent to non-white neighborhoods.

Hall Dep Ex. 1.2

The city will seek to change these trends and to achieve harmonious, stabilized neighborhoods attractive to families of all races and creeds. This has been increasingly accomplished in urban renewal areas, through cooperation between the city and citizens."

The CHA did not follow the guidelines developed in the policy statement by the City Planning Department in attempting to develop harmonious, stabilized neighborhoods attractive to families of all races and creeds. Nor did they comply with the Executive Order 11063 by taking action to prevent discrimination, which is stated in number (5), Section 205.1 of the Public Housing Manual, September, 1963.

These charges and the precedent set by your office in the Englewood, New Jersey, complaint filed by the Congress of Racial Equality, provides more than sufficient reason for not approving the sites selected by the Chicago Housing Authority and approved by the City Council of Chicago. The clarity of the injustices performed against low-income persons provide adequate cause for an immediate end to this situation, and a basis for not approving the sites selected and approved by the City Council of Chicago.

Respectfully submitted,

Rev. S. Jerome Hall
Chairman
WEST SIDE FEDERATION

Rev. Daniel J. Mallette
Chairman of the Housing Committee
WEST SIDE FEDERATION

mg

Hall Dep. Ex. 13

THE CHICAGO HOUSING AUTHORITY

June 13, 1955

MEMORANDUM TO THE COMMISSIONERS

SUBJECT: SELECTION OF SITES

I have held discussions with Alderman Murphy, the Chairman of the Housing and Planning Committee of the City Council, concerning a new procedure for the selection of sites for any additional low-income housing that may be required in the future for the City of Chicago.

We have agreed on certain principles from which I have prepared the suggested procedure for selection of sites which is outlined below.

SUGGESTED PROCEDURE FOR SELECTION OF SITES

1. To insure close coordination between the Housing and Planning Committee, and the Chicago Housing Authority, and to provide for the selection of the most satisfactory sites, a procedure for consideration of sites is proposed herein, based on the following assumptions:

   a. That the City Council will in the future determine that there is a need for additional housing for low-income families in Chicago.

   b. There are numerous areas in the City which would be benefited by construction of low-rent housing developments.

   c. That the State Housing Board will approve the use of State funds by CHA to conduct the research and planning required in the site selection process. (Note: Such funds are reimbursable to the State account if and when a contract is entered into with the Public Housing Administration. This has been done in the past.)

   d. The City Council and the Chicago Housing Authority are jointly interested in and have legal responsibilities in connection with the location of projects in areas which will best serve the people of Chicago and assist in the elimination of blighted and slum areas.

   e. The Legislature has vested in the City Council the final power to approve by ordinance the specific sites on which public housing may be constructed. The power to approve includes the power to disapprove.

   f. The Chicago Housing Authority cannot effectively plan a development program nor obtain financial assistance to proceed with a program until exact sites have been approved by formal ordinance of the City Council.

Humphrey Op. Ex. 6

g. Members of the Housing and Planning Committee and the City Council, as a whole, should have as much time as possible to consider, for approval or disapproval, the sites recommended by the Chicago Housing Authority.

2. It is understood that the Chairman of the Housing and Planning Committee will appoint a sub-committee to work with the Authority in making initial selections of sites for consideration by the full Committee. Such sites to be the ones which will best fulfill the requirements of the City and be feasible for use by the Authority.

3. It is further understood that this sub-committee will meet on the call of the Chairman with staff members of the Chicago Housing Authority, to establish a list of recommended sites, from which the Commissioners of the Authority can determine those which can be developed under the dollar limitation placed upon it by PHA.

4. The Chicago Housing Authority staff will continue to investigate possible sites and obtain data for use by the sub-committee in making their determinations.

5. At each meeting of the sub-committee, the Chief of Planning of CHA will present data obtained by the Authority, concerning sites submitted for consideration:

   (1) Maps and boundaries.

   (2) Site characteristics (building conditions, area, density, transportation, employment, schools, shopping, recreation, utilities, land cost, proposed type of construction, etc.

6. The Chairman of the Housing and Planning Committee intends to have his sub-committee study the sites submitted by the Commissioners of CHA, and recommend to the full Committee those sites which should be used for future development.

   a. This will permit Committee members to personally visit such sites as they may desire to examine at first-hand.

   b. The sub-committee would thus have an opportunity to clear with Aldermen of the Wards in which proposed sites are located, to determine community characteristics and attitudes which should be recognized in site selection.

Humphey Dep. Ex. 6.1

c. The sub-committee would also have sufficient time to solicit advice from any Aldermen in the City Council, to determine additional areas which should be considered for redevelopment.

d. The Chief of Planning of CHA will be available to the sub-committee to obtain any additional information they may desire concerning the sites suggested by CHA or by individual Aldermen.

7. When the City Council has certified the need for additional housing under a new program, and the Housing and Planning Committee has completed its determinations after considering the Chicago Housing Authority's preliminary recommendations, the Commissioners of the Chicago Housing Authority will then make final and formal recommendations for the selection of sites for consideration by the City Council.

8. The Executive Director of CHA will obtain informal concurrences from the Housing and Redevelopment Coordinator, the Plan Commission, and the Public Housing Administration, prior to transmitting to the Mayor a proposed ordinance detailing those sites approved by the Commissioners of CHA and the Housing and Planning Committee.

9. Recognizing the especial interest of the Mayor of the City of Chicago in slum clearance, redevelopment, and public housing, it is proposed that the Housing and Planning Committee and the Chicago Housing Authority will fully advise the Housing and Redevelopment Coordinator of their activities pursuant to this procedure and will invite the latter, at appropriate times, to participate in deliberations.

W. B. Kean
Executive Director

Hunphrey Dep. Ex. 6.2

Reverend Theodore M. Haesburgh as one of the members of the Commission. I wish to ask you a few questions about your testimony given on that day. Before I do so, you may, if you wish, examine briefly the copy that I have given Mr. Hunt.

A. Yes, because I don't remember a thing.

MR. HUNT: Off the record.

(Discussion off the record.)

MR. POLIKOFF: Q. Mr. Rose, would you turn to page 725, please?

A. 725?

Q. Yes.

A. Yes.

Q. I am going to ask you a series of questions about whether on this occasion on May 5, 1959, you were asked certain questions and gave these answers. First, Mr. Rose, I will read you the following questions and answers, and then ask you that question. (Reading)

"REVEREND JAMES: I have a question. Mr. Rose, I am interested in this site selection. I am under the impression from what you said that the city council of Chicago gives its approval for the site; is that

Leon M. Golding and Associates, Chicago

true?"

A. Wait, wait, I can't pick it up down here.

Q. Do you see where I am reading?

A. Yes, I have got it.

Q. (Continuing reading)

" MR. ROSE: After we select it.

REVEREND JAMES: After you select it?

MR. ROSE: That is right.

REVEREND JAMES: Because of the present location of the existing sites, then, the Council of Chicago is guilty of practicing to a certain degree segregated housing, is that true?

MR. ROSE: You are only agreeing with me.

REVEREND JAMES: Well, somebody is guilty of contributing to the segregation of housing of people in the city of Chicago, because when you look at the present location of the housing projects, they are predominantly within the Negro area.

MR. ROSE: That is true."

Now, Mr. Rose, I ask you whether on that day in Chicago, were you asked those questions and did you give those answers?

Rose Dep. 9

Leon M. Golding and Associates, Chicago

A. I am looking at the record here. To my own recollection I must say that I don't remember, but because it is the record, I must say that I gave those answers.

Q. You have no reason to doubt that you gave those answers at that time, do you?

A. No. My only regret is I didn't explain a little further, rather than give such brief answers such as the one where I answer Reverend James by saying, "You are only agreeing with me." I should have elaborated on that a little bit more.

Q. But the fact is, that so far as you know now, sitting here today, these questions were asked you and you gave those answers, is that correct?

A. I am accepting this record here.

Q. Does that mean that sitting here today you agree that you gave these answers to those questions?

A. Yes.

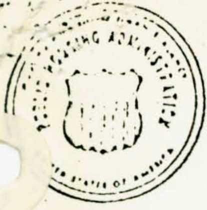
Q. O.K.

MR. HUNT: This is all to the best of your recollection, Mr. Rose?

THE WITNESS: That's right. I take it for granted this is an accurate record of what went on.

MR. HUNT: Sometimes all of the reporters aren't

LEON M. GOLDING AND ASSOCIATES, CHICAGO



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PUBLIC HOUSING ADMINISTRATION

HOUSING AND HOME FINANCE AGENCY — WASHINGTON, D.C. 20413

OFFICE OF THE COMMISSIONER

OCT 14 1965

The Reverend S. Jerome Hall, Chairman
The West Side Federation
3411 West Douglas Boulevard
Chicago, Illinois 60623

Dear Mr. Hall:

As you probably know from my conversation with the Reverend Mallette on September 16, the Public Housing Administration has been looking into the issues raised in your and Reverend Mallette's letter of August 26 to the Administrator, Housing and Home Finance Agency, in opposition to certain sites for low-rent housing in Chicago.

We understand your complaint to relate to four projects for which the Chicago Housing Authority was awaiting approval of annual contributions contracts with the PHA, involving nine sites. The project numbers and related information are as follows:

Project No.	Location	Number and type of units
ILL-2-12	Washtenaw & 12th Pl.	One 10-story building-105 units, and 96 units in three-story walk-ups.
ILL-2-27	Adams & Wood Avenues	One 7-story building-69 units, and 36 units in two- and three-story row houses.
ILL-2-28A	Bowen & Cottage Grove	One 12-story building-141 units, and 36 units in three-story row houses.
B	41st & St. Lawrence	12 units - row houses.
C	Bowen & St. Lawrence	6 units - row houses.
D	Bowen & Langley	6 units - row houses.
E	56th Pl. & Normal	16 units - row houses.
F	47th St. & State	24 units - row houses.
ILL-2-32	W. 43rd & Princeton	Four 7-story buildings-276 units, and 168 units in three-story walk-ups.

Dore Dep. Ex. 1

At the same time the above projects were under consideration for annual contributions contract, we also had under consideration for annual contributions contract two other projects of the Chicago Housing Authority, designed for the elderly and involving utilization of existing structures:

Project No.	Location	Number and type of units
ILL-2-10	Kenmore & Winona	One 7-story building--136 units
ILL-2-39	Hollywood & Kenmore	One 10-story building--120 units

These two, which are on the north side, were included in the Chicago Housing Authority's resolution of March 25, 1965, approving all the sites listed above (except sites for ILL-2-28 B, C, D and F involving 48 units which had previously been approved both by the Housing Authority and by the City Council). Our approval of the projects for annual contributions contract covered the group as a whole, including the projects on the north side as well as the ones to which you object.

The site at Pershing Road and Cottage Grove Avenue, mentioned in your letter, was not included in the group. It is a site for Project No. ILL-2-33 which has been under annual contributions contract for several years. The Chicago Housing Authority has submitted a revised development plan for this project to increase the size of the area in order to provide large size dwelling units in three-story rather than high-rise buildings and decrease density, reducing the total number of dwelling units from 630 to 606, and in order to provide a community building.

You state that the sites referred to by you are in the Negro ghetto, and you allege that the Chicago Housing Authority in selecting the sites and the City Council in approving them stand in violation of Title VI of the Civil Rights Act of 1964 and the regulations of the Housing and Home Finance Agency effectuating Title VI. You also allege that the Housing Authority did not comply with section 101 of Executive Order 11063 and PHA site selection criteria, and did not follow certain guidelines in the Basic Policies for the Comprehensive Plan of Chicago. You set forth data as to the racial composition of the federally aided projects in Chicago (designating as "segregated" any project having a tenancy of 90-100 percent of one race) and state that it can be expected that projects built on the sites to which you refer will become non-white segregated.

In connection with your allegation that the City Council is in violation of Title VI, it should be noted that the City Council is not a recipient of Federal aid in the low-rent housing program within the meaning of Title VI or the regulations and requirements thereunder. This discussion, therefore, will be related to the actions of the Housing Authority.

Pl. Dep. Ex. 11

As you may know, under the procedures of the Chicago Housing Authority, any family who wishes to obtain housing files a registration form, on which it may specify the project or location of its choice in any part of the City, including alternate choices. Each registration is given a number, and all registrations are kept in a permanent alphabetical file in a single Central Rental Office for the City. When a vacancy occurs, no matter in which project, the project office must receive a referral from the Central Rental Office, which draws from those registrations expressing preference for the project in which the vacancy has occurred. Among registrations with the same priority, selection is based on date of registration, the applicant having the lower registration number taking precedence. Of course, the Housing Authority's standards provide that there shall be no discrimination as to race, color, creed or national origin in the selection or placement of tenants in any projects owned or operated by the Authority. Also, we understand that the Chicago Housing Authority intends to amend its registration form to advise applicants that they may indicate a preference for housing without regard to the race, color, or national origin of the existing occupants of any project. These policies and practices are consistent with Federal requirements under Title VI of the Civil Rights Act of 1964. For your information, we are enclosing copies of the Housing Authority's current registration forms.

As the data presented in your letter shows, there is a heavy preponderance of Negro tenancy in federally aided low-rent housing generally in Chicago. This preponderance prevails also among applicants on the waiting list. Information supplied by the Chicago Housing Authority shows that among non-elderly applicants on the waiting list, 93% are Negro, and among elderly 67% are Negro. Among all applicants on the waiting list, non-elderly and elderly combined, 83% are Negro. It may be anticipated from these statistics that new low-rent housing developed in Chicago, no matter where located, is likely to have a large proportion of Negro tenants, and that housing for regular families (that is, non-elderly) is likely to fall within your designation of "segregated." All of the housing proposed for development on the sites to which you object is for regular families.

The provision of the HHFA regulations as to site selection, which you quoted, has been implemented by the PHA in Low-Rent Housing Manual section 205.1, September 1965 (superseding the provision under Executive Order 11063, which you also quoted). The current criteria include the following:

> "(1) The suitability of the site in relation to the surrounding neighborhood and the city plan.

* * *

Pars. Dep. Ex. 1-2

"(5) The suitability of the site from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 and agency regulations and requirements issued pursuant thereto (and of Executive Order 11063, with respect to creed)."

The same Manual section also provides:

> "The aim of a Local Authority in carrying out its responsibility for site selection should be to select from among otherwise available and suitable sites those which will afford the greatest acceptability to eligible applicants regardless of race, color, creed, or national origin (see paragraph 3, Commissioner's Circular of 8-27-65, Title VI of Civil Rights Act of 1964)."

(The reference to "paragraph 3, Commissioner's Circular of 8-27-65" is to a requirement that local authorities furnish the PHA with such supporting data or information as may be required to enable the PHA to determine that the site selection is in accordance with the policy established by the PHA under Title VI of the Civil Rights Act.)

As the above indicates, the aim is to select "from among otherwise available and suitable sites those which will afford the greatest acceptability to eligible applicants." The acceptability of the general locations to eligible applicants is clearly demonstrated by the applicants' own designations of locations in which they prefer to live. Data supplied by the Chicago Housing Authority from its waiting list of eligible families indicates the following:

Among non-elderly applicants, of a total of 10,072 Negro families, 6569 (65%) stated a preference for the south side, 2898 (29%) for the west side, and 605 (6%) for the north side; and of a total of 642 white families, 121 (19%) stated a preference for the south side, 152 (24%) for the west side, and 369 (57%) for the north side. Among the entire group of non-elderly applicants, Negro and white families combined, 62.5% stated a preference for the south side, 28% for the west side, and 9% for the north side.

Among the elderly, of 1494 Negro applicants, 79% stated a preference for the south side, 14.5% for the west side, and 6.5% for the north side. Of 3823 elderly white applicants, 5% stated a preference for the south side, 4% for the west side, and 91% for the north side. Of the 5317 elderly applicants, Negro and white combined, 26% stated a preference for the south side, 7% for the west side, and 67% for the north side. (2673 other elderly applicants--1099 Negro and 1574 white--are not included in the above figures because their applications were coded as to location on the basis of the Chicago Housing Authority's so-called "proximity rule," which has since been revoked.)

Rose Dep. Ex. 13

As we understand the designations of areas in Chicago, all of the sites to which you object are in the south side except for Projects ILL-2-12 and ILL-2-27 which we believe could be designated as west side. All of the housing proposed for the south and west side sites is for regular families, while the two other sites, which are in the north side, are for the elderly. It is apparent, then, that the group of sites submitted by the Chicago Housing Authority corresponds to the demand for locations expressed by eligible applicants. It is also apparent that the locations to which you object have wide acceptance among eligible applicants, and that these locations are preferred by some white families as well as by the majority of all families and an even greater majority of Negro families. It would appear, therefore, that all the proposed locations satisfy the objective of the PHA requirement.

Moreover, we are informed that there could be no alternative sites for regular families having greater acceptability because alternatives in other general areas are not available to the Chicago Housing Authority.

As you know, City Council approval of sites is required as a matter of State law, and the sites here in question were so approved. On March 24, an ordinance was introduced in the City Council to approve low-rent housing sites, including the entire group which we have approved for annual contributions contract (except the four locations mentioned above, involving 48 units, which had previously been approved by the City Council). The Housing Authority's request to the City Council was well publicized by an item in the Chicago American on March 24, which gave detailed information including the precise location of each site and the number of dwelling units proposed for each. A similarly detailed account, including a map indicating the location of the sites, was published in the Chicago Tribune of March 26, 1965.

On April 1, 1965, the City Plan Commission held a public meeting on the sites, which meeting had been publicized by official notices published in the Chicago American on March 17 and March 24 and posted on public notice boards in the County Building and the City Hall. At this meeting which was attended by approximately 350 persons, the sites were approved by the City Plan Commission. The resolution of approval recited the fact that the Department of City Planning had recommended approval after finding that the sites "are in conformity with current city plans for the areas and with city planning requirements and criteria for this type of use."

On April 6, 1965, the City Council Committee on Planning and Housing held a public hearing on the sites. The written report of the Department of City Planning was submitted to the Committee, recommending approval of the sites on the basis indicated above, and stating that their development

Rose Dep. Ex. 1-4

"will help to alleviate the city's need for such low-rent housing, and will be a forward step in the city's continuing program of improving its housing supply." The City Council Committee recommended to the Council that it adopt the ordinance approving the sites, and such action was taken by the Council on April 7, 1965.

Newspaper accounts of the Council Committee hearing of April 6, which appeared in the Sun Times and the Tribune of April 7 indicate that representatives of the Urban League and the Metropolitan Housing and Planning Council were present and presented their viewpoints. Apparently these organizations expressed objections essentially similar to yours, i.e., that the sites would perpetuate patterns of segregation. They also urged that the Authority not build high-rise apartments. So far as we know, your organization did not appear at either this hearing or at the earlier public meeting of the Plan Commission to make known its views to the local bodies which were officially concerned with the problem of selecting and approving suitable sites for low-rent public housing in Chicago.

We are not called upon here to decide whether the sites to which you object are the best or the worst of all possible sites for public housing in the City of Chicago. So far as we know neither the City Plan Commission nor any of the other persons or groups who participated suggested any other specific sites during the extensive proceedings which took place at the local level. We understand from the Chicago Housing Authority that several alternative sites may have been available, but that these other sites would be open to the same kind of objections as you have presented against the ones that have been chosen and approved. We are also advised that sites other than in the south or west side, if proposed for regular family housing, invariably encounter sufficient objection in the Council to preclude Council approval. Under all the circumstances, we cannot say that the Chicago Housing Authority has not done its best to find sites that would most nearly meet the criteria for site selection related to Title VI of the Civil Rights Act, or that the sites which have in fact been selected and approved by the City Plan Commission and the City Council are not in fact the best available sites in relation to those criteria.

Relative to your allegation that the Housing Authority did not follow guidelines in the policy statement of the City Planning Department, it is clear from the above proceedings that the sites were found by the local planning officials to be in conformity with city plans. Although these proceedings did not cover the four sites included in Project ILL-2-28 involving 48 dwelling units, these four sites, as mentioned above, had received previous City Council approval and presumably, therefore, were also found to be consistent with city plans. The matter of consistency with city plans is one for local determination. The responsible local officials having made these determinations, we have no basis for finding that the Housing Authority has failed to meet the prescribed criterion of suitability of site in relation to city plan.

Rose Dep. Ex. 15

You have stated: "The existing patterns of residential and public school segregation will be reinforced, and health and welfare problems are likely to be intensified. Moreover, the chances for improved interracial understanding will be minimized." This prediction ignores the very substantial benefits that the new housing will bring to the neighborhoods. Substituting decent, safe and sanitary housing for the slums now on the sites will undoubtedly reduce, rather than intensify, the health and welfare problems in the area and make for a happier living environment. To the extent that the neighborhoods are improved and enhanced by new decent housing they will tend to attract families regardless of race, and regardless of income level.

The sites at 45th Street and Drexel Boulevard and at 50th Street and Michigan Avenue, approved by the City Council for low-rent housing on April 7, 1965, to which you referred, were withdrawn from consideration by the Chicago Housing Authority because the private owners are proceeding with plans to develop them. These owners are proposing to construct high-rise apartment buildings, whereas the Chicago Housing Authority had intended to construct three-story buildings involving much lower density. In this connection it should be noted that the proposed plans for the four projects consisting of new construction include a substantial number of two-and three-story buildings. Of the 991 units to be constructed, 400 would be in two- and three-story buildings.

You will appreciate that the Federal agency, in performing its function of approval or disapproval of a site, must do so within the framework of the United States Housing Act of 1937, pursuant to which the Federal financial assistance is made available. This Act vests in local authorities the maximum amount of responsibility in the administration of the program, including responsibility for selecting sites. The PHA has the right to approve or disapprove the local selection, but not the right to direct the choice of other specific sites. Where, as in this case, the evidence indicates that the local housing authority has made a sincere effort to conform to the site selection policies designed to carry out the objectives of the Civil Rights Act within the realm of possibility of providing a significant amount of desperately needed housing for low-income families, and the other local city officials have arrived at a resolution of differences in agreeing upon the use of such proposed sites for this purpose, disapproval of the sites by the PHA would be tantamount to an arbitrary denial of such housing to the thousands of low-income families waiting for it in Chicago.

We hope that the foregoing adequately explains the position of the Federal Government with respect to the projects in question. We also hope that your organization and other citizens and groups interested in the low-rent program in Chicago will continue your efforts to obtain the best possible sites for the program by working with your local officials responsible for choosing and approving sites.

We sincerely appreciate your interest and your carefully prepared documentation.

Sincerely yours,

Marie C. McGuire

Commissioner

Enclosures

Rose Dep. Ex. 1:6

Certificate of Service

I certify that I caused a copy of the foregoing Brief to be served by hand delivery to the office of Alexander Polikoff, Esq., Suite 1705, 231 South LaSalle Street, Chicago, Illinois 60604, on November 25, 1968.

James T. Otis

One of the Attorneys
for Defendants