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C. E. HUMPHREY
EXECUTIVE DIRECTOR

May 12, 1969

The Honorable Richard B. Austin
United States District Judge
United States Court House
219 South Dearborn Street
Chicago, Illinois

Re: Gautreaux v. CHA
Case No. 66 C 1459

Dear Judge Austin:

Chicago Housing Authority staff and Commissioners have carefully reviewed and submit herewith the Authority's written suggestions in response to Plaintiffs' written outline of a proposed final order submitted to you under their letter of April 10, 1969.

These suggestions are tendered in furtherance of your instructions given at the conference in your chambers on April 15, 1969, of course without prejudice to any right of appeal of CHA upon entry of a final order regardless of the form that order may take.

I am taking the liberty of also enclosing a copy of a legal memorandum on the "Constitutionality of Benign Quotas in Public Housing" which was prepared under my supervision by a staff attorney. The research on this subject was undertaken long before the Gautreaux case was filed and, consequently, the memorandum was not prepared in the context of this litigation. However, I believe it is quite pertinent to our recommendation on Tenant Assignment. It should be noted that the author contemplated an approach to the problem in two ways: (1) from the standpoint of judicial precedent and legal reasoning, and (2) from the standpoint of considerations of public policy. The memorandum submitted relates only to the first phase; the second part has not been completed. A copy of this memorandum was previously furnished to Mr. Polikoff.

Very truly yours,

KMK:rmt
Enclosures

Kathryn M. Kula
General Counsel

May 12, 1969

GAUTREAUX et al vs. CHICAGO HOUSING AUTHORITY et al
U.S. DISTRICT COURT N.D. ILL. E.D.
66 C 1459

Suggestions of Chicago
Housing Authority
Regarding Final Order

For convenience, CHA's suggestions follow the written outline furnished by Plaintiff's attorneys to the Court under date of 10 April 1969.

I Definition. CHA agrees that under the Memorandum Opinion some line of demarcation must be drawn between those areas of the City which are substantially white and those which are substantially non-white; and that a demarcation based upon census tracts would be appropriate. However, to characterize as "non-white" any neighborhood having anything less than a 50% non-white population would seem to be both unwarranted and unwise. Such a characterization in any final order could, in and of itself, have the effect of hastening precipitate racial movement rather than fostering efforts at integration and stabilization. Accordingly, CHA suggests a line of demarcation based upon the following definitions: "substantially white neighborhoods" - all census tracts having a population of 50% white or more; "non-white neighborhoods" - all other census tracts; the percentage to be

determined from time to time on the basis of the most recent reliable figures then available.

II Location of Dwelling Units. The Court's Memorandum Opinion and subsequent conferences in chambers make it clear that CHA must use its best efforts to locate as many regular family units as possible in white neighborhoods. The Plaintiffs have gone further and suggested that the final order incorporate a fixed formula - 80% of all future dwelling units to be located in white neighborhoods (with a portion of these at CHA's option to be located outside the city proper). CHA again suggests, as alternative to the fixed formula type of order, a provision that does not attempt a specific ratio at a time when no specific site program has been developed, but rather lays down a general guideline. CHA is aware of what the Court desires and expects to be done, that is, that it is CHA's job to locate as many dwelling units in white neighborhoods as can be done. CHA asks the opportunity, however, to assume maximum responsibility under a final order, and believes that presentation of its programs for Court consideration, with all the facts as to availability of sites then before the Court, affords the adequate and the proper assurance of maximum achievement of the desired results.

CHA has applied to HUD for funds to finance a thorough survey of all sites that may be available for acquisition in white neighborhoods of the city. When and as HUD allocations are made (CHA has applied to HUD for an allocation of 5,000 regular family dwelling units, and has advised HUD it intends to apply for an additional 2,000 such units in 1970), CHA will proceed immediately to put together sites for specific programs on the basis of all information then available (whether or not a complete survey is then at hand). Judgments can be made then which cannot be made now, by fixed formula or otherwise.

CHA submits that the evidence before the Court and summarized in the Court's Memorandum Opinion goes a long way to justify a general guideline rather than the imposition of a fixed formula. The evidence shows that CHA's programs for the years 1955 through 1966 - had CHA been able to carry them out as initially planned - would have resulted in the placement of a substantial number of dwelling units in white neighborhoods. The Memorandum Opinion, moreover, accepts as undoubtedly true that CHA officials never entertained racist attitudes and that the racial character of a neighborhood was never a factor in CHA's selection of suitable sites (page 17). Indeed, the Court characterized CHA's selection of white sites at the initial

stage (before pre-clearance) as "persistent" (page 17). This is not like the typical school desegregation case, therefore, where the evidence does disclose racist attitudes and intentions and no effort at all in the right direction. Whatever may be said in the final order, in the last analysis it is CHA that must go out and look for sites and develop programs for the implementation of the Court's decision. CHA is willing to accept the responsibility for doing the best possible job, and submits that it is both unnecessary and undesirable to attempt to legislate this responsibility precisely in the final order.

III

Density. CHA agrees that one of the aims of public housing in the future should be to avoid large concentration of regular family dwelling units in multi-story projects. It is one of CHA's stated policies that public housing be developed on smaller scattered sites, and not concentrated in large buildings. The only question again is whether and to what extent the Court should attempt to impose a specific limitation or restriction in its final order. CHA submits again that the final order should leave maximum responsibility with CHA, subject always to review by the Court, and that accordingly any fixed limitation such as 100 dwelling units is unnecessary and undesirable. CHA will use its best efforts to scatter sites in such a way as to avoid large concentrations of public housing.

If in the opinion of the Court some ceiling should be imposed, CHA suggests that a more reasonable ceiling would be to limit any given project to 200 dwelling units; and by "given project" CHA has in mind any project which is not immediately contiguous to any other CHA development.

Tenant Assignment. As indicated in conferences in chambers since the handing down of the Court's Memorandum Opinion, both Plaintiffs and CHA are concerned lest future CHA projects in white neighborhoods be developed as all-black projects. There is at present a long waiting list (13,000 applications) for regular family public housing, and almost all (94%) of the families on the list are Negro families. Plaintiffs have indicated a willingness to depart from the first-come, first-served tenant assignment policy, not only to avoid future projects in white neighborhoods from becoming segregated islands, but also to include within the public housing program the low income white families discouraged from applying for public housing by reason of the location of sites.

An argument can be made that site selection and tenant assignment are not separate and distinct problems, but are part of the same problem, that is, that community acceptance of scattered sites will be better assured if the projects involved are integrated on some basis. Put more broadly, the Court's Memo-

randum Opinion states that "existing patterns of racial separation must be reversed if there is to be a chance of averting the desperately intensifying division of whites and Negroes in Chicago" (page 21).

The goal for CHA, therefore, in placing regular family dwelling units in white neighborhoods, is to do so in such a way as to give the communities affected maximum assurance that the result will be racial integration, supporting stabilization of those neighborhoods.

Much has been written and said about the effect of the entry of non-white families into a theretofore white neighborhood. There is no complete agreement as to what these effects are, and undoubtedly any sweeping, across-the-board statement could be disproved in many particular instances. What may happen in one neighborhood may not happen in another, and in any event whether or not CHA is a landlord in a given neighborhood is but one of a number of factors affecting racial movement into and out of that neighborhood. To the extent CHA's presence is a factor, however, CHA believes it can serve as a positive force for integration in the neighborhood in one way: by the achievement of racial integration within its projects. The question, of course, is how to accomplish this.

CHA's own experience has been that there is a "tipping" effect when a given project reaches 25 to 30% or so non-white occupancy; that around that point it then becomes difficult to place or keep white tenants in the project, with the result that non-white occupancy grows and grows until there are few or no white families left. The same effect has been observed by others. For example, Ferd Kramer, of Draper & Kramer in Chicago, says that residential apartment buildings tend to go all-Negro when Negro occupancy reaches 25%.

Having in mind (a) the desirability of racial integration of future projects if that can be done, (b) the need among white families in Chicago as well as black families for public housing, and (c) the desirability of stabilizing neighborhoods rather than accelerating racial separation, CHA suggests that it be authorized by the Court's final order to establish and maintain tenant occupancy in future regular family projects in such a way that there will be no presumption of racial discrimination if there is an occupancy ratio of not less than one-fourth non-white.

Continued Supply of Dwelling Units. The clear implication of Plaintiffs' suggestion - the suggestion that it be a violation of the final order for CHA to fail to use its best efforts to make available the maximum number of additional dwelling units in the shortest possible time - is, CHA submits, wholly

unwarranted. The implication is that, without some such provision in the final order, CHA will fail to go forward with an adequate program for additional public housing in the Chicago area. All of the evidence is to the contrary. CHA has over the years provided public housing to the limits of the funds available. As of July 1968, CHA had in operation or development 54 regular family projects consisting of almost 31,000 dwelling units (Memorandum Opinion, page 6). CHA intends to add to this number in the future as many dwelling units as it can as additional funds become available and necessary allocations are made. The record indicates that CHA will in fact do so, not the contrary.* It should not be presumed that CHA will not continue to go forward with its public housing program, unless subject to a specific provision of the final order. Such a provision would be tantamount to such a presumption, and accordingly, CHA submits, is uncalled for.

Plaintiffs also suggest that it be a violation of the final order for any other governmental official or agency to interfere with or attempt to frustrate CHA's effort. CHA assumes that the final order will contain a provision enjoining the so-called "pre-clearance" procedure in the future. CHA's main concern is lest any language regarding interference or frustration

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*As already noted, CHA has already asked HUD for an allocation of 5,000 regular family dwelling units, and has advised HUD it intends to apply for an additional 2,000 such units in 1970.

be so broad as to rule out any communications whatsoever between CHA and others which are intended only to keep others informed as to CHA's programs and not intended as a part of a pre-clearance practice.

Reporting. CHA agrees that some sort of reporting provision in the final order would be appropriate.

Facilities in Existing Projects. The assumption of Plaintiffs that there are unsatisfactory conditions in existing projects - is totally unwarranted by anything in the record. This is not to say, however, that there are no problems. There are bound to be problems whenever special housing - public housing - is built for low income families, whether this is housing in Chicago or elsewhere. CHA has always recognized these problems, and in fact has shown more concern and imagination in dealing with them than any other local housing authority in the country (see attached material).

Currently, two studies are under way - one, a study by the Welfare Council of Metropolitan Chicago with CHA contributing $50,000 or most of the cost, and the other a study by Social Planning Associates with CHA paying the entire cost of $30,000 - both intended to analyze and make recommendations regarding the social services and community facilities available to CHA tenants.

Accordingly, CHA submits that there is no basis whatever for any provision in a final order requiring CHA to submit a plan for amelioration of unspecified unsatisfactory conditions in existing projects.

Continuing Jurisdiction. CHA agrees that the Court should retain jurisdiction for the purpose of making sure that the purposes of its Memorandum Opinion are in fact carried out.