
In the
United States Court of Appeals
For the Seventh Circuit

No. 81-2308
No. 81-2311
No. 81-2361
(CONSOLIDATED)

No. 81-2308
GAUTREAU, et al.,
Plaintiffs-Appellees,
vs.
SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,
vs.
ROGERS PARK COMMUNITY COUNCIL, ETC. et al.,
Proposed Intervenor-Appellants.
No. 81-2311
GAUTREAU, et al.,
Plaintiffs-Appellees,
vs.
SAMUEL R. PIERCE, ETC., et al.,
Defendants-Appellees,
APPEAL OF: GINGER MACK, Class Member,
Plaintiff-Appellant.
No. 81-2361
GAUTREAU, et al.,
Plaintiffs-Appellees,
vs.
ILLINOIS HOUSING DEVELOPMENT AUTHORITY,
Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois.

Honorable JOHN POWERS CROWLEY, *Judge Presiding*

**BRIEF OF PROPOSED INTERVENORS-APPELLANTS
ROGERS PARK COMMUNITY COUNCIL, ETC., et al.**

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Appellants Rogers Park Community
Council, Etc., et al., in Case No. 81-
2308*

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
NO. 81-2308
NO. 81-2311
NO. 81-2361
(CONSOLIDATED)

GAUTREAUX, <u>et al.</u> ,	)	APPEAL FROM THE UNITED STATES
	)	DISTRICT COURT FOR THE NORTHERN
Plaintiffs-Appellees,	)	DISTRICT OF ILLINOIS
	)	
v.	)	HONORABLE JOHN POWERS CROWLEY,
	)	JUDGE PRESIDING
SAMUEL R. PIERCE, ETC., <u>et al.</u> ,	)	
	)	
Defendants-Appellees,	)	No. 81-2308
	)	
v.	)	
	)	
ROGERS PARK COMMUNITY COUNCIL,	)	
ETC., <u>et al.</u> ,	)	
	)	
Proposed	)	
Intervenors-Appellants.)	)	
-----	)	
GAUTREAUX, <u>et al.</u> ,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	
	)	
SAMUEL R. PIERCE, ETC., <u>et al.</u> ,	)	No. 81-2311
	)	
Defendants-Appellees,	)	
	)	
APPEAL OF: GINGER MACK, Class	)	
Member,	)	
	)	
Plaintiff-Appellant.	)	
-----	)	
GAUTREAUX, <u>et al.</u> ,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	No. 81-2361
	)	
ILLINOIS HOUSING DEVELOPMENT	)	
AUTHORITY,	)	
	)	
Defendant-Appellant.	)	

BRIEF OF PROPOSED INTERVENORS-APPELLANTS
ROGERS PARK COMMUNITY COUNCIL, ETC., ET AL.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, et al.,

Plaintiffs-Appellees,

vs.

SAMUEL R. PIERCE, Secretary of
Department of Housing and Urban
Development, et al.,

Defendant-Appellees,

vs.

ROGERS PARK COMMUNITY COUNCIL,
et al.,

Proposed
Intervenors-Appellants.

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NO. 81-2308

CERTIFICATE OF INTEREST

The undersigned, counsel of record for the ROGERS PARK
COMMUNITY COUNCIL, et al., furnished the following list in
compliance with Circuit Rule 5(b):

1. ROGERS PARK COMMUNITY COUNCIL; an Illinois
not-for-profit corporation, DR. CARL FRIEDENBERG, SANDFORD
GOLDMAN, JAMES LONGWORTHY, WILLIAM BENNETT, LORRAINE WOOS,
CHARLOTTE GOLDBERG, DOLORES COLLINS, PAUL ABRAHAM, ALICE ABRAHAM,
LAURIE PALINSKY, JOSEPH J. PALINSKY, DR. RICHARD DRISCOLL, BONITA
DRISCOLL, VICTOR BERNARDI, JUDY BERNARDI, WILLIAM ROSSBERGER,
BONNIE ROSSBERGER, ANDREW JARDINE, JOAN JARDINE, LEO HART, BEA
HART, MARTIN TOUHY, MARIE TOUHY, ROBERT HOFFMAN, LAIMA HOFFMAN,
MATTHEW DEDDO, SHIRLEY DEDDO, BRUCE MAY, NORA MAY, WILLIAM P.
KENNEDY, VIOLA M. KENNEDY, JOHN KREMBS, MARY KREMBS, STANFORD
JOHNSON, GERTRUDE JOHNSON, JANICE WELSH, THOMAS WELSH, MARY A.
WELSH, WILLIAM COLLERAN, GENEVIEVE COLLERAN, WILLIAM R. MCGOWAN,

WILLIAM SHERIDAN, MRS. JACOB CLAYTON, ROBERT SHAPIRO, WARREN
KEAHEY, JAY SEN, BRUNO KLUES, CRIS FOLGERS, HENRY WILLIAMS,
MILLIE KISSIN, ZEE LOOK, EMMA SWAIN, FLORENCE SHIMENTTO, ANNE
CAPPELLANO, PAY LaPORTA, JOHN ADAMS, and JUDY ADAMS.

2. Yes.

(i) None

(ii) None

3. LAWRENCE JAY WEINER and FREDRIC BRYAN LESSER.


FREDRIC BRYAN LESSER

Date: September 9, 1981

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JURISDICTIONAL SUMMARY

The jurisdiction of the district court was invoked under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. This appeal

is brought pursuant to 28 U.S.C. § 1291 or, alternatively, 28 U.S.C. § 1291(a)(1) and/or (b).

STATEMENT OF THE CASE

The Rogers Park Community Council, Etc., et al., hereby adopts and incorporates the Statement of the Case presented in the Brief of Defendant-Appellant Illinois Housing Development Authority as though fully set forth herein and, additionally, presents the following statement:

The proposed intervenors-appellants are the Rogers Park Community Council, an Illinois not-for-profit corporation incorporated in 1952, and 50 residents of Census Tract 101 (hereinafter collectively referred to as "RPCC"). Prior to the fairness hearing, the RPCC moved the district court for leave to intervene in the instant action for the purpose of objecting to the then-proposed consent decree (R. C 478). The district court denied the motion during the fairness hearing but allowed the RPCC to present evidence against the decree (Transcript of Proceedings on January 19, 1981, at 70-71). The district court entered the consent decree on June 16, 1981 (R. C 525). The RPCC then renewed its motion for leave to intervene and moved the district court to reconsider its order entering the consent decree. The district court denied both of these motions (R. C 534).

STATEMENT OF THE ISSUES

I. Whether the consent decree was adequate, fair and reasonable insofar as it designates Census Tract 101 as a revitalizing area.

II. Whether the district court reversibly erred by denying the motions for leave to intervene of the Rogers Park Community Council, Etc., et al.

PERTINENT FEDERAL RULE OF CIVIL PROCEDURE

Rule 24 of the Federal Rules of Civil Procedure provides:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 23, U.S.C. § 2403.

STATEMENT OF FACTS

The RPCC hereby adopts and incorporates herein the Statement of Facts presented by the Defendant-Appellant Illinois Housing Development Authority as though fully set forth herein, and additionally presents the following uncontroverted facts:

Census Tract 101 ("CT 101") is a "little pocket" of the City of Chicago, bounded by Chicago Transit Authority tracks upon the west, Calvary Cemetary upon the north, Lake Michigan upon the east, and Howard Street upon the south (Tr. III at 718; Tr. II at 381-82¹). The only egress to CT 101 lies to the south, across Howard Street (Tr. II at 381-82).

CT 101 has a substantial minority population. The only public school within CT 101 is the Gale Elementary School. Gale's student population is 94% minority and 6% white (RPCC Ex. No. 2; Tr. I at 166). The school is currently overcrowded (Tr. I at 167; Tr. II at 373). Gale's principal, Mr. Charles Horberg, testified that Gale's students are currently being bused to other schools (Tr. I at 170). Furthermore, he testified that locating new subsidized construction in CT 101 would further segregate and overcrowd Gale (Tr. I at 163; Tr. II at 373).

CT 101 has a higher crime rate than the rest of the Rogers Park neighborhood (Stipulation R. C 510; Tr. II at 371). Recreational and social facilities are currently overcrowded and deteriorated (Tr. II at 371-72). Mrs. Lorraine M. Woos, an expert in urban planning who has closely studied and resides in CT 101, testified that if new subsidized construction is located within CT 101, the crime rate will increase (Tr. II at 371) and recreational facilities will be further strained (Tr. II at 371-72). "[T]he competition for recreational space is very intense, and frequently leads to conflicts between smaller children and older children" (Tr. II at 372).

¹ Citations to the fairness hearing transcript shall be as follows: transcript of January 19, 1981, "Tr. I"; transcript of January 20, 1981, "Tr. II"; transcript of January 21, 1981, "Tr. III"; and transcript of February 27, 1981, "Tr. IV".

The property values in CT 101 are considerably lower than values for comparable property outside CT 101 (Tr. II at 352-54, 361-63). Financing is difficult for prospective buyers to obtain (Tr. II at 354). There are 243 buildings in CT 101 containing approximately 2,797 dwelling units (Tr. II at 338). Nineteen buildings have been demolished, approximately 60 have been involved in building code violations, and no new construction has occurred during the last ten years (Tr. II at 339-41).

There has been no substantial rehabilitation of buildings (Tr. II at 340; Affidavit of Carol Goldman and Charlotte Goldberg R. C 497). Twenty-eight buildings are currently subject to state housing court actions (Tr. II at 340-41). As counsel for the plaintiff class was willing to stipulate, "some buildings in the area are in poor condition and in need of repair" (Tr. II at 342). Mrs. Charlotte Goldberg, who has lived in the Rogers Park neighborhood for 57 years and has personally visited every building in CT 101, testified:

[I] would describe it as an area where the, especially the residential which I'm deeply concerned with, as deteriorating.

The only type of work that is being done is the court-ordered work under duress. Most of these buildings have been in court several years, and there have been definite orders as to what must be repaired in order to bring it into code--up to code. (Tr. II at 336, 342 and 344).

Thus, the residential housing stock in CT 101 is badly deteriorated.

The commercial enterprises and buildings in CT 101 lie on Howard and Paulina Streets and are similarly deteriorated. Mrs. Woos testified that of the 81 storefront units along Howard Street, 12% are vacant, 25% are involved in marginal retail use (i.e., adult book stores, pinball arcades, and social service agencies), and there is one vacant lot which has been vacant for "a very long time" (Tr. II at 365-66).

Of the commercial buildings along Paulina Street, none is in excellent condition, 6% are good, 24% are fair, 29% are poor, and 41% are "deteriorating and unsuitable for commercial use" (Tr. II at 367). There is one large vacant lot, 29% of the units are vacant, 15% are in institutional use, 18% are in marginal retail use, and 6% may be being used illegally as residences (Tr. II at 367).

In her expert opinion, Mrs. Woos testified that CT 101 was not "undergoing substantial physical development" (Tr. II at 366). "Part of my job as Executive Director for the Neighborhood Development Corporation is to try to retain good merchants, convince good merchants who are thinking of expansion to expand, and to attract new businesses to our vacancies, and none of those things are happening" (Tr. II at 366; emphasis supplied).

Mrs. Woos testified concerning the effect of new subsidized construction in CT 101:

[M]y opinion is that additional new construction of subsidized housing will signal to potential investors and to potential persons who are currently living or have businesses in the neighborhood that the neighborhood is on a downhill slide, that it is going to continue to deteriorate and especially in light of the utter lack of private investment, that the only way an investor or developer or store owner or anyone else can make a reasonable profit and have an incentive for investing in the area is to engage in a heavily subsidized development such as subsidized housing, and I believe that it will lead to additional disinvestment in the community by persons who are there right now. (Tr. II at 368-69; emphasis supplied).

Mrs. Woos also testified that new subsidized construction will depress consumer demand (Tr. II at 370). Currently, CT 101 has "a lot of very small supermarkets that have very poor quality produce and fresh meat products, and that is very largely a function of the fact that there isn't an incentive for those merchants to provide fresh goods . . ." (Tr. II at 370).

Mrs. Woos studied the criteria used by HUD, the plaintiff class, and the district court in classifying CT 101 as a revitalizing area and concluded that under those criteria CT 101 is not a revitalizing area (Tr. II at 374-381; copies of said testimony are attached hereto and incorporated herein by this reference for the convenience of the Court and counsel as "RPCC Appendix"). The effect of classifying CT 101 as a revitalizing area instead of a limited area will be to "create a racial ghetto in the north of Howard neighborhood. And I believe that that's a very serious effect, because Howard Street is a corner of Rogers Park. It's bounded by considerable physical area barriers that really make it a ripe situation for a ghettoizing effect" (Tr. II at 381).

The Northern Illinois Planning Commission ("NIPC") has twice refused applications for new subsidized construction in CT 101, in part because of the high density in CT 101 (Tr. III at 743-44). As Mr. Philip Peters, Assistant Director for NIPC and Director of the Planning Staff, a witness for the plaintiffs, testified:

The Commission, under its Federal project review responsibilities found negatively, or found those projects to be inconsistent with the Commission's housing policies on two grounds; basically, the first being that they would represent an increase in overall density in that area, which is a very high density area, density just in terms of sheer building space; and, secondly, that they both represented a hundred percent project which would be in conflict with the Commission's guidelines for 20 percent or mixed income projects (Tr. III at 744).

The consent decree defines revitalizing areas as "being areas of the City of Chicago having substantial minority occupancy and undergoing substantial physical development, means that part of the City of Chicago which lies within the census tracts listed on Exhibit B . . ." (Appendix: Order of June 16, 1981; Consent Decree, par. 2.9; emphasis supplied). The plaintiff class and HUD listed CT 101 as the first census tract on Exhibit

B. The district court approved and entered the consent decree and denied the RPCC's motion for leave to intervene. The RPCC now appeals from the entry of the decree and the denial of the motion for intervention.

SUMMARY OF ARGUMENT

During the fairness hearing, the district court stated from the bench: "You know, I mean, let's not play games here. We have got Census Tract 101, and so far all I have heard is evidence about its deteriorated condition. . . .I am going to have to hear some pretty strong evidence from the plaintiffs and HUD that 101 is a revitalizing area" (Tr. II at 346). The plaintiffs and HUD presented no evidence that CT 101 was revitalizing and undergoing substantial physical development.

The RPCC presented five witnesses and six exhibits detailing the deteriorated condition of CT 101. The only evidence presented to show that CT 101 is undergoing substantial physical development was an affidavit, presented by a group of class members, purporting to show that some repairs had occurred. The RPCC then presented a counter-affidavit showing that the majority of the alleged repairs had been minor and made pursuant to court order for building code violations. The record unequivocally establishes that CT 101 is not revitalizing and undergoing substantial physical development and therefore that the consent decree is inadequate, unfair and unreasonable.

Incredibly, and in direct contradiction of its above-quoted statement from the bench and of the evidence, the district court found: "while reasonable persons may differ as to how these criteria should be applied in a specific factual situation, the record supports the finding that the designation of [CT 101, Uptown and Hyde Park] as Revitalizing

Areas is sound." (Appendix: Order of June 16, 1981, at p. 17). This finding is totally unsupported by and directly contrary to the manifest weight of the evidence.

The proposed intervenors-appellants are the Rogers Park Community Council and fifty residents of CT 101. The RPCC is a not-for-profit Illinois corporation, incorporated in 1952 for the purpose of improving the quality of life for the residents of the Rogers Park neighborhood, particularly by opposing racial prejudice, crime and general community deterioration, and by supporting activities to better the neighborhood economically and socially. The record establishes that the district court's denials of the proposed intervenors' motion and renewed motion for leave were in error or, alternatively, an abuse of discretion. The proposed intervenors fully satisfied the requirements of Rule 24 of the Federal Rules of Civil Procedure.

ARGUMENT

I

THE CONSENT DECREE IS INADEQUATE, UNFAIR, AND UNREASONABLE INsofar AS IT DESIGNATES CENSUS TRACT 101 AS A REVITALIZING AREA

The consent decree defines a revitalizing area as an area "having substantial minority occupancy and undergoing substantial physical development" (Appendix: Order of June 16, 1981; Consent Decree, par. 2.9). The plaintiff class and HUD presented a variety of criteria for designating some minority areas as revitalizing areas and others as limited areas. In its order the district court summarized ten criteria for a revitalizing area:

- 1) undergoing visible redevelopment or evidences impending construction;
- 2) located along the lakefront;
- 3) scheduled to

receive Community Development Block Grant Funds; 4) accessible to good transportation; 5) an area with a significant number of buildings already up to code standards; 6) accessible to good shopping; 7) located near attractive features, such as the lake or downtown; 8) free of an excessive concentration of assisted housing; 9) located in an area which is not entirely or predominantly in a minority area and 10) not densely populated (Appendix: Order of June 16, 1981, at 16).

The uncontradicted evidence established that CT 101: (1) is not undergoing any visible redevelopment or impending construction; (2) is located along the lake front (criterion two is identical to criterion seven); (3) received only minimal Community Development Block Grant Funds²; (4) is accessible to transportation; (5) has many buildings not up to code standards and has had 60 buildings demolished for code violations; (6) has a deteriorated commercial area with poor quality products; (7) see criterion two; (8) has assisted housing; (9) is a predominately minority area; and (10) is so densely populated that the Northern Illinois Planning Commission has twice refused to allow further subsidized construction. Yet the district court found that the record supported designation of CT 101 as a revitalizing area.

Even beyond these criteria, the record reveals further indications of a blighted area. The only school in CT 101 is segregated (94% minority) and so overcrowded (by 103 students) that children must be bused to other schools. The parties stipulated that CT 101 has the highest crime rate in Rogers Park. Recreational and social facilities are overcrowded and in disrepair. Property values in CT 101 are substantially

² No evidence was presented concerning the amount of future Community Development Block Grant Funds scheduled for CT 101. All but \$30,000 of the previously scheduled funds have been reallocated for other uses (Tr. III at 718-19). Of the remaining \$30,000, \$10,000 was used to pay Mrs. Woos' salary and \$20,000 pays the salary of a city administrator (Tr. III at 715-16).

lower than property values in surrounding areas. Not one new building has been constructed in CT 101 within the last ten years.

The only plaintiff class witness to mention CT 101 was Mr. Kale Williams, who was asked by the district court: "Were you a part of the discussions that led to the designation of Census Tract 101 in Rogers Park as a revitalizing area?" Mr. Williams replied, "[o]nly in the most general sense. I didn't visit that area as I visited a number of the areas, and I don't recall the specific discussions. I think I tended to accept it on HUD's recommendation" (Tr. III at 597).

HUD's only witness to mention CT 101, Mr. Elmer C. Binford, Area Manager of the Chicago HUD office, did not survey CT 101 (Deposition of Elmer C. Binford at 87). Mr. Binford testified: "I have no quarrel with some of the data, for example, that was presented [by the RPCC] about 101 yesterday" (Tr. III at 676). Mr. Binford designated CT 101 a revitalizing area because it had previously been designated as a general area (Tr. III at 678):

We are also saying that this should no longer be a general area project because of the demographic changes there.

Those were the kinds of considerations that went into us offering this as a revitalizing as opposed to a general area neighborhood.

Thus, no one who testified for the plaintiffs or HUD actually examined CT 101 to observe "substantial physical development." The record reveals that HUD and the plaintiff class never considered designating CT 101 as a limited area.

CT 101 was obviously incorrectly designated. Even the counsel for the plaintiff class, in his closing argument, distinguished CT 101 from all other contested areas and admitted that CT 101 "is very small, it has got a badly deteriorated area . . ." (Tr. IV at 46). He was unable to

advance any of the criteria for a revitalizing designation other than, "it has got a very desirable physical location, transportation, near the lake, et cetera, et cetera" (Tr. IV at 47). CT 101 has always been near the lake and has always had transportation. As Mrs. Woos, an expert witness who lives in and has studied CT 101, testified: "We in Rogers Park really appreciate our lake front, but if there was some magic about being a lake front neighborhood, I don't believe that the north of Howard neighborhood would have deteriorated to the degree that it has" (Tr. II at 380). As for transportation, Mrs. Woos testified that the CTA tracks "may in fact have spurred some of the disinvestment in buildings along that western boundary. . . . you can hear the tremendous el screeching and turnaround up there" (Tr. II at 378-79).

Plaintiff's counsel further argued that because of urban renewal and planned subsidized rehabilitation of deteriorated buildings, CT 101 had "bottomed out" (Tr. IV at 46). No one testified that CT 101 had "bottomed out". Mrs. Woos Testified:

Well, the first criteria that was listed was the neighborhood's designation as a neighborhood strategy area, NSA, under the City's Community Development Block Grant Program.

First of all, that designation, being an NSA, is based on the fact that either or both of two conditions exist: One, that the neighborhood is a substantially minority neighborhood. And, secondly, that those persons are low income persons and that the neighborhood had experienced a certain amount of deterioration and is in need of special designation so that CDBG funds can be used to provide needed improvements in that neighborhood.

It's my feeling that, by being designated an NSA, it means that you're a neighborhood in trouble, and in need of help.

And I don't feel that that is predictive of being a revitalizing neighborhood.

And, secondly, it occurred to me that perhaps HUD's rationale was that, because a certain amount of funds and city programs would be targeted toward NSA's, that one would reasonably assume that revitalization would occur because of those services.

And it's been my experience with Rogers Park specifically, because Howard-Paulina has been designated an NSA, and also in conversations with other neighborhood development professionals who belong to CANDO, for example--I'm on the board of CANDO, which is the Chicago Association of Neighborhood Development Organizations--that, unfortunately, frequently those City efforts are very inadequate, and do not lead to revitalization.

The Howard-Paulina commercial strip received pavement treatment. It's called Bomanite. It's a fake brick treatment whereby they pour concrete and mark it off as bricks and put mortar in between the bricks.

There's been a serious problem with Bomanite, and it tends to crack and spall and everything else, and it's doing that on Howard Street. . . .

Also, trees are planted. And, unfortunately, those trees, one of them last week was run over by a car; it doesn't exist anymore. And the other ones have been pretty much denuded of their branches because of a lack of awareness of neighborhood residents and people who use the street that the trees are there for beautification.

And, in effect, they've been vandalized, carved into, and some of them are diseased. And we've been having trouble getting the City to replace those trees.

That has been the extent to date of the benefits of being designated NSA. And it has not, in my opinion, spurred neighborhood revitalization.

The second criteria that I heard discussed out of the HUD testimony was special investment activity.

It's my job to try and stimulate special investment activity in 101, as well as other commercial strip areas in Rogers Park. And unfortunately I haven't been successful.

The only large scale special investment activity that's occurred to my knowledge is Rescorp's plan to do substantial gut rehab in the north of Howard neighborhood for approximately 350 to 400 units.

However, that's going to be 100 percent subsidized reinvestment, and it is not indicative that a person could go in as a private investor without a heavy federal subsidy and guarantee of profit and make an investment in that neighborhood work, whether it be residential or commercial.

So I don't see where there has been substantial investment activity (Tr. II at 375-78; emphasis supplied).

Even HUD's witness, Mr. Binford, repeatedly disparaged the government spending in CT 101: "we are concerned about the slowness of physical activities in Rogers Park" (Tr. III at 677, 715, and 717).

Finally, plaintiff's counsel argued that CT 101's designation didn't matter because HUD would "be looking very, very carefully" at any proposals for subsidized housing (Tr. III at 47). The RPCC hopes that HUD will examine such proposals more carefully than it did in designating CT 101 a revitalizing area. If the designation does not matter, neither does the consent decree itself. The RPCC, however, respectfully submits that CT 101's designation does matter and that if new subsidized housing is built in CT 101, "it would create a racial ghetto in the north of Howard neighborhood" (Tr. II at 381).

CT 101 is designated as a revitalizing area only because the plaintiff class and HUD call it a revitalizing area. "This cryptic conclusion seems to ignore the ancient wisdom that calling a thing by a name does not make it so." Madison School District v. Wisconsin Employment Relations Commission, 429 U.S. 167, 174 (1976).

As the court stated in reversing the entry of a consent decree in Mandujano v. Basic Vegetable Products, Inc., 541 F. 2d 832, 837 (9th Cir. 1976): "We also are concerned with the effect of the proposed settlement on employees not members of the class." The RPCC and the residents of CT 101 are in a position analogous to the non-class member employees. The consent decree affects their lives, their property and community, and their interests should have been considered by the district court. The consent decree is inadequate, unfair and unreasonable insofar as it incorrectly designates CT 101 as a revitalizing area, and thus the district court reversibly erred by entering the consent decree.

II

THE DISTRICT COURT REVERSIBLY ERRED OR, ALTERNATIVELY, ABUSED ITS DISCRETION BY DENYING THE RPCC'S MOTIONS FOR INTERVENTION

The RPCC moved for leave to intervene prior to the fairness hearing, and the district court denied the motion even though no objection was raised (R. C 478; Tr. II at 701-71). Following the fairness hearing, the RPCC renewed its motion for leave to intervene, and that motion was also denied (R. C 534).

The RPCC includes fifty residents and property owners of CT 101 who were named in the motions for leave to intervene. Testimony during the fairness hearing showed that subsidized new construction would lower property values in CT 101 (Tr. II at 354-55, 357, and 368-69). In Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, 558 F. 2d 861 (8th Cir. 1977), the plaintiff challenged the constitutionality of a municipal ordinance forbidding the construction of an abortion clinic. A community association, similar to the RPCC, and two couples residing near the proposed clinic, similar to the RPCC's named residents of CT 101, moved the district court for leave to intervene. Planned Parenthood, supra, 558 F. 2d at 864. The district court denied the motion and, upon the community association's appeal, the appellate court reversed the denial of intervention. The appellate court found that: (1) the proposed intervenors were timely; (2) the proposed intervenors had a protectable interest in the erosion of their property values; and (3) the proposed intervenors' interests were disparate from those of the defendants. Planned Parenthood, supra, 558 F. 2d at 869-870. Analogously, the RPCC and the residents of CT 101: (1) moved for leave to intervene prior to the fairness hearing and thus were timely; (2) had a protectable interest in

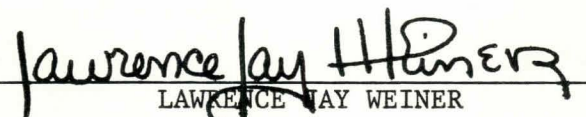
the erosion of their property values and community (see also, National Farmlines v. Interstate Commerce Commission, 564 F. 2d 381, 383 (10th Cir. 1977)); and (3) had interests disparate from those of the defendants. The RPCC was thus entitled to intervene as a matter of right pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure. The district court erred, and its denials of the RPCC's motions for leave to intervene should be reversed.

Alternatively, the RPCC presented sufficient evidence to be entitled to permissive intervention. Rule 24(b)(2) of the Federal Rules of Civil Procedure. The district court abused its discretion by denying the RPCC's motions for intervention.

CONCLUSION

For the reasons hereinbefore stated and the arguments presented by the other appellants, adopted and incorporated herein by this reference, the proposed intervenors-appellants respectfully submit that this Court should reverse the district court's orders denying the proposed intervenors-appellants' motions for intervention and granting the plaintiffs' and HUD's motion for entry of the consent decree with respect to Census Tract 101.

Respectfully submitted,


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RPCC APPENDIX

The RPCC hereby adopts and incorporates by this reference the Appendix presented by the Defendant Illinois Housing Development Authority as if fully set forth herein, and additionally presents the attached portions of the Transcript of the Proceedings on January 20, 1981.

1 Q And what organization is that person associated
2 with, to your knowledge?

3 A As she testified yesterday, she's on the board
4 of directors of People's Housing.

5 Q Do they have any interest in terms of any new
6 proposed housing, subsidized housing in Census Tract 101?

7 A Yes. People's Housing is one of the applicants
8 for construction of, I believe, approximately 100 or 110
9 units of new subsidized family housing on the Hermitage-
10 Haskins Triangle.

11 Q Are they, to your knowledge, involved in any part-
12 nership with any entity in that regard?

13 A At the time I saw a copy of the application,
14 they were involved in a partnership with Baird & Warner
15 Real Estate.

16 Q Now, were you here in court yesterday where there
17 was testimony regarding what was then designated as the
18 criteria for revitalizing areas?

19 A Yes. I believe it was a summary from the HUD
20 record that cited approximately ten different categories
21 that were looked at in making that designation.

22 Q And do you feel that Census Tract 101, within those
23 criteria, qualifies as a revitalizing area?

24 A Within those criteria, no, I don't; and also in
25 terms of some of the criteria, I feel that they are mistakenly

1 applied to being able to predict that a neighborhood is
2 a revitalizing neighborhood.

3 Q I want to deal with their criteria.

4 A O.K.

5 Q Would you address yourself to their criteria,
6 and state why, in your professional opinion, you feel that
7 Census Tract 101 is not, even applying their terms and
8 their standards and their criteria, at least the ones we
9 learned of yesterday, why, in your opinion, it is not a
10 revitalizing area.

11 A Well, the first criteria that was listed was the
12 neighborhood's designation as a neighborhood strategy area,
13 NSA, under the City's Community Development Block Grant
14 Program.

15 First of all, that designation, being an
16 NSA, is based on the fact that either or both of two
17 conditions exist: One, that the neighborhood is a substan-
18 tially minority neighborhood. And, secondly, that those
19 persons are low income persons and that the neighborhood
20 had experienced a certain amount of deterioration and is
21 in need of special designation so that CDBG funds can be
22 used to provide needed improvements in that neighborhood.

23 It's my feeling that, by being designated
24 an NSA, it means that you're a neighborhood in trouble,
25 and in need of help.

1 And I don't feel that that is predictive,
2 of being a revitalizing neighborhood.

3 And, secondly, it occurred to me that perhaps
4 HUD's rationale was that, because a certain amount of funds
5 and city programs would be targeted toward NSA's, that
6 one would reasonably assume that revitalization would occur
7 because of those services.

8 And it's been my experience with Rogers Park
9 specifically, because Howard-Paulina has been designated
10 an NSA, and also in conversations with other neighborhood
11 development professionals who belong to CANDO, for example --
12 I'm on the board of CANDO, which is the Chicago Association
13 of Neighborhood Development Organizations -- that, unfor-
14 tunately, frequently those City efforts are very inadequate,
15 and do not lead to revitalization.

16 The Howard-Paulina commercial strip received
17 pavement treatment. It's called Bomanite. It's a fake
18 brick treatment whereby they pour concrete and mark it off
19 as bricks and put mortar in between the bricks.

20 There's been a serious problem with Bomanite,
21 and it tends to crack and spall and everything else, and
22 it's doing that on Howard Street.

23 The other major improvement that was provided
24 was the planning of --

25 Q Is this in Census Tract 101?

1 A Yes.

2 Q These were the improvements --

3 A These were the improvements under the NSA design-
4 nation.

5 Also, trees are planted. And, unfortunately,
6 those trees, one of them last week was run over by a car;
7 it doesn't exist anymore. And the other ones have been
8 pretty much denuded of their branches because of a lack
9 of awareness of neighborhood residents and people who use
10 the street that the trees are there for beautification.

11 And, in effect, they've been vandalized,
12 carved into, and some of them are diseased. And we've
13 been having trouble getting the City to replace those trees.

14 That has been the extent to date of the
15 benefits of being designated NSA. And it has not, in
16 my opinion, spurred neighborhood revitalization.

17 The second criteria that I heard discussed
18 out of the HUD testimony was special investment activity.

19 It's my job to try and stimulate special
20 investment activity in 101, as well as other commercial
21 strip areas in Rogers Park. And unfortunately I haven't
22 been successful.

23 The only large scale special investment
24 activity that's occurred to my knowledge is Rescorp's
25 plan to do substantial gut rehab in the north of Howard

1 neighborhood for approximately 350 to 400 units.

2 However, that's going to be 100 percent sub-
3 sidized reinvestment, and it is not indicative that a
4 person could go in as a private investor without a heavy
5 federal subsidy and guarantee of profit and make an invest-
6 ment in that neighborhood work, whether it be residential
7 or commercial.

8 So I don't see where there has been substantial
9 investment activity.

10 In terms of good transportation, the Howard-
11 Paulina commercial strip was formed because it is at the
12 Howard el stop, and that is the most northern el stop along
13 the Howard-Jackson-Englewood line.

14 And, while transportation there is very good,
15 a study that was in one of our newspapers showed that it's
16 also the most crowded el line in the city, and that substan-
17 tial improvements are going to be needed to keep that el
18 line properly functioning.

19 Also, the train yards, the train turnaround
20 yards and some of the repair facilities are located north
21 of Howard and form the western border of the residential
22 area to the north of Howard Street.

23 And there is a lot of noise pollution,
24 screeching; it's visually, aesthetically, unattractive,
25 and may in fact have spurred some of the disinvestment in

1 buildings along that western boundary that led to them
2 being torn down from the Hermitage-Haskins site.

3 It isn't regarded as being good to be in
4 an apartment where you can hear the tremendous el screeching
5 and turnarounds up there.

6 In terms of good shopping, we have various
7 serious problems of deterioration on the retail strip there
8 as I've talked about already, so I won't keep talking about
9 that.

10 Another criteria was, there was not a sub-
11 stantial concentration of subsidized housing.

12 That may be true, based on the current
13 count of persons who are basically on the certificate
14 program in north of Howard.

15 But based on the plans of Rescorp and other
16 developers, and that data I believe has been read into the
17 record under previous testimony, there will be a very large
18 amount of subsidized housing in that one census tract.

19 And so I feel that additional new construction
20 would provide a higher concentration of subsidized housing
21 than is desirable.

22 In terms of good housing, there is some
23 good housing, but as has been testified, there are many,
24 many deteriorating buildings. A lot of the buildings north
25 of Howard are very large courtyard buildings. It's not a

1 single-family home neighborhood or a three-flat neighbor-
2 hood.

3 And a lot of the owners of those large
4 courtyard buildings are absentee landlords. A lot of them
5 don't even live in the city.

6 And the housing stock is deteriorating
7 quite considerably. So I don't see where good housing
8 applies.

9 Low density: The north of Howard neighbor-
10 hood is an incredibly dense neighborhood. Trying to find
11 a parking spot is one really good example of that.

12 The crowded condition of the schools, the
13 parks, just the number of, the sheer number of units in
14 that census tract, I think, makes it obvious that it's a
15 very dense neighborhood.

16 Another criteria was, I believe was called
17 the striking attribute of location, and one example given
18 was the lake front.

19 We in Rogers Park really appreciate our
20 lake front, but if there was some magic about being a
21 lake front neighborhood, I don't believe that the north of
22 Howard neighborhood would have deteriorated to the degree
23 that it has.

24 And so I think that should be a consideration
25 in terms of just making a blanket statement that being near

1 the lake means that you're in a very revitalizing or well-
2 maintained neighborhood.

3 The other criteria was not entirely minority,
4 but predominantly minority.

5 It is predominantly minority, and I would
6 agree with that criteria.

7 And those were the criteria that I heard
8 testified to yesterday.

9 Q Talking about that last criteria, what is your
10 opinion as to the composition in terms of minority that
11 would be affected if new subsidized construction was
12 authorized by this court pursuant to the consent decree in
13 Census Tract 101?

14 A I feel very strongly that it would create a
15 racial ghetto in the north of Howard neighborhood. And I
16 believe that that's a very serious effect, because Howard
17 Street is a corner of Rogers Park. It's bounded by consid-
18 erable physical areas that really make it a ripe situation
19 for a ghettoizing effect.

20 There's Calvary Cemetery on the north;
21 there's the lake on the east; and there's a very large
22 CTA facility and train yards on the west.

23 The only border of that whole neighborhood
24 that isn't bounded by a strong physical barrier is Howard
25 Street, and I feel that it's in very great danger of

CERTIFICATE OF SERVICE

I, MARK FRANCIS VIZZA, certify that I served the foregoing Brief of Proposed Intervenors-Appellants Rogers Park Community Council, Etc., et al., upon the following named attorneys at the addresses indicated by depositing in the U.S. Mail located at One North La Salle Street, Chicago, Illinois 60602 postage prepaid, 5:00 p.m. this 14th day of January, 1982.

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