

5/26/05

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
-vs-	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	Hon. Marvin E. Aspen
	)	
Defendants.	)	

**CHA'S RESPONSE TO CAC'S MOTION TO AMEND  
THE JUNE 3, 1996 ORDER ESTABLISHING MINIMUM INCOME LIMITS  
FOR CERTAIN PUBLIC HOUSING- UNITS**

**I. The Problem Presented By the Court's 1996 Order Requiring that One-Half of the Lakefront Public Housing Units Be Reserved for Families With Earnings in Excess of 50% of the Chicago Area Median Income.**

This Court's Lakefront revitalizing order of June 3, 1996 has presented CHA and its private developer/manager, Draper & Kramer ("D&K"), with a significant problem in leasing up those units at D&K's Lake Park Crescent development, dedicated to families who make between 50% and 80% of the median income. The Order and its history are described in the other parties' responses and will not be repeated here. The Order is attached as Exhibit A. Presently, there are thirty 50-80% public housing units at Lake Park Crescent subject to this Order. However, when construction is completed, 75 public housing units in the Lakefront revitalizing area (at Lake Park Crescent and at the companion "Jazz on the Boulevard" development) will be subject to this income restriction. The first 30 units reserved for 50-80% families were completed in November of 2004. Despite diligent efforts by CHA and D&K, only nine of these 30 public housing units have been leased to date.

The problem is that virtually all public housing units in the mixed-income developments, including Lake Park Crescent, are financed, using the Low-Income Housing Tax Credit

Program. This Program limits eligibility to those families earning less than 60% of the median income. As such, the units at issue may be leased only to those families who fall within the very narrow income band between 50% and 60% of median income.<sup>1</sup> The pool of CHA residents who earn more than 50% and less than 60% of the median income is not sufficiently deep to fill these units.<sup>2</sup>

Every displaced resident of CHA's old Lakefront housing development has been contacted, and every CHA resident---living anywhere in the city----- with income above 50% of the median and who has not already been permanently re-housed in new or rehabilitated housing has been contacted to determine if they are interested in leasing these units. In addition, 5900 families on the community area scattered-site waiting lists and the CHA general public housing waiting lists have been contacted to determine if they are interested in the units. Despite this effort, requiring an enormous number of person-hours, only nine leases have been signed. In contrast, of the 30 other public housing units at Lake Park Crescent, available to those making less than 50% of the median income, 28 have been leased. With respect to the remaining two units, one lease is signed and the other is to be signed, with move-in dates scheduled for before June 1, 2005.

## **II. The Site-Based Waiting List Solution**

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1

There are a handful of units not funded with Low Income Housing Tax Credits. Three of these are at Lake Park Crescent, and are for families at 60-80% of median.

2

To give the Court an idea of the income range, for a family of four, 50% of median income is \$37,700 annually, while 60% is \$45,240. For a family of two, 50% of median is \$30,150 annually, while 60% is \$36,180.

CHA began working on solving this leasing problem in December of 2004. Substantial financial sanctions were imposed on D&K and continue to be imposed, to encourage maximum efforts to lease the units. First,- CHA has withheld any operating subsidy for the empty units. Second, D&K's tax-credit investor has required D&K to pay penalties on a monthly basis, because D&K has failed to meet the time line it provided at closing for leasing up the units. When these financial incentives proved insufficient to lease the units, CHA initiated a series of discussions with D&K, aimed at finding a solution to the problem.

Initially, D&K felt a reduction in the ceiling rent charged at Lake Park Crescent might solve the problem. CHA families making more than 50% of the median income generally pay a ceiling rent (rather than 30% of their adjusted gross income). Because the ceiling rents in place at CHA's existing developments were lower than that charged at Lake Park Crescent, D&K felt its units could not compete with the price of existing CHA units. CHA spent weeks organizing and conducting a series of meetings with D&K, HUD and the *Gautreaux* plaintiffs to implement a ceiling rent reduction, while keeping the Receiver abreast of developments. Ultimately, however, D&K determined that such a rent reduction was not necessary, provided they could use a site-based waiting list and lease the public housing units to income-eligible families who applied for the units in response to D&K's direct marketing program, even if they were not current CHA residents or on the CHA waiting lists.

CHA then spent weeks seeking concurrence from the Receiver, HUD and the *Gautreaux* plaintiffs on such a site-based waiting list, and determining how the list would function, and ensuring that D&K could administer such a program successfully. Attached as Exhibit B is a draft of a motion and order to create such a site-based waiting list. This scheme would preserve a priority for families in existing CHA housing, or on one of the CHA waiting lists, but would



not preclude the leasing of these new, finished units to non-CHA families. The Receiver, CHA, and D&K have agreed to this motion and order. The *Gautreaux* plaintiffs originally supported a site-based waiting list, but after the filing of the CAC's motion, now say they cannot yet take a position on the site-based waiting list plan.<sup>3</sup>

### III. The CAC's Solution

As plans for D&K's site-based waiting list reached a final stage, the CAC filed its motion, contending that the Court should modify its requirement that one-half of the Lake Park Crescent units be set aside for those making more than 50% of the median income. Rather, the CAC says that, in light of the Tenant Selection Plans in place both at Lake Park Crescent and Jazz on the Boulevard, which require that all public housing families either work or be engaged in activities leading to work, the 50-80% income requirement on these units should be abolished.<sup>4</sup> The virtue of this plan is to preserve for CHA residents the new housing developed as part of the Plan for Transformation. In other words, the units would not go to income-eligible families who do not presently live in CHA units.

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<sup>3</sup> HUD has participated in the discussions on the site-based waiting list and is well-aware of this proposal. HUD is willing to discuss its views with the Court, and is willing to consider all options to solve this problem.

The CHA joins in the Receiver's procedural objection to the CAC's motion. This Court's June 27, 2000 Order, on which the CAC relies grants the CAC an opportunity to be heard only when the Court contemplates entering a revitalizing order, which is not the case here. Even then, it only applies where the contemplated revitalizing order "in practical effect restricts or limits the opportunity of displaced CHA residents to return to and be rehoused in a redeveloped CHA property." - Prior Orders of this Court ensure that the displaced Lakefront residents have first priority for all Lakefront units, and if they have income in the 50-60% range of the median, first priority for the Lake Park Crescent units at issue here. While the CHA therefore does not believe the CAC is properly a party before this Court, it nonetheless believes its views, as well as the views of the alderman and community group, should be heard.

The Receiver, and the North Kenwood-Oakland CCC (the relevant community group) vigorously oppose the CAC's motion. We understand that the local alderman also opposes the CAC's motion. The *Gautreaux* plaintiffs have not taken a position on the CAC's motion, as yet.

#### **IV. The CHA's Position**

CHA has three components to its position:

*First*, it is imperative to lease these newly-built units as soon as possible. These units at Lake Park Crescent, years in the planning and construction, have now sat empty for more than six months. CHA is working hard on its Plan for Transformation, overcoming obstacles that no other housing authority in the United States has even attempted to address. As of the end of March, CHA has tenanted 95% of the 1057 new mixed-income units built to date.<sup>5</sup> The 21 vacant units at Lake Park Crescent represent 39% of all of our vacancies. Job number one for the CHA, and we believe for the Court, is to quickly adopt a plan that places tenants in these units.

*Second*, CHA supports and will implement either the site-based waiting list that Draper and Kramer suggests, or the plan of the CAC. The key is that one or the other plan should be adopted promptly.

A. The developer and management team selected by the Lakefront Working Group (Draper & Kramer) believes it can tenant these units with 50-60% families, by using a site-based waiting list, while retaining a priority for CHA and CHA waiting list families. This plan would preserve the income mix promised to the surrounding community. The Working

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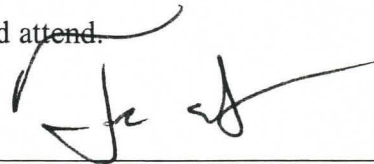
<sup>5</sup>

Of course, in addition to the mixed income units, CHA has rehabilitated almost all of its senior buildings, several of its low-rise developments and hundreds of scattered site units. Moreover, thousands have moved to Section 8 housing of their choice.

Group includes not only CHA, but also the *Gautreaux* plaintiffs, the local alderman and community group, the Receiver, resident representation for the Lakefront CHA residents, and the City. The Working Group selected Draper and Kramer to develop and manage the Lake Park Crescent development, in part, because it is composed of experienced real estate professionals to handle management, and leasing. Where, as here, a major firm has been selected, CHA believes that generally, their view should be respected when it comes to how best to lease units. If, after a defined period, use of a site-based waiting list has not leased the units, then the parties could explore another alternative, first with the developer and then with the Court. A proposed Order, setting forth this approach, is available for the Court's approval.

B. The CAC's plan has the virtue of preserving these units for existing CHA residents, who have the greatest stake in the Plan for Transformation. It also is likely that if Draper and Kramer is permitted to lease to working CHA families or those moving to work, they will be able to lease up the 21 vacant units, as they have filled 28 of the 30 units available to those families making less than 50% of median income.

*Third*, the CHA looks forward to working with the parties in implementing whichever solution the Court adopts. Should the Court deem a conference with the parties to be necessary, CHA would be happy to participate, though CHA believes all interested parties (including Draper and Kramer and HUD) should attend.



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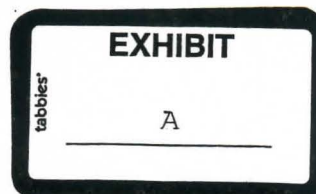
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Dated: May 26, 2005







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

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

Now, therefore, IT IS HEREBY ORDERED:

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

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

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

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

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

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

ENTER:

*Marvin E. Cohen*

Judge

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





Contract CHA negotiated with its Central Advisory Council (representing the residents), CHA is relocating many residents.

3. One of the sites where CHA redevelopment is ongoing is the Lakefront. In its Order of June 3, 1996, as modified by its Order of April 11, 2000, this Court authorized the development of up to 241 new public housing units in the Lakefront Revitalizing Area. 150 of these public housing units were to be developed on the Lakefront and Drexel sites, as identified in the Court's Orders. The Court reserved one-half of these 150 Lakefront and Drexel units for public housing families with incomes between 50% and 80% of the Chicago area median income. Since entry of the Court's Orders, the Receiver and CHA have made substantial progress in the development of public housing units at the Lakefront and Drexel sites. The developments are now known as Lake Park Crescent and Jazz on the Boulevard respectively. At the Lake Park Crescent site, units have been finished and leasing is ongoing.

4. Because virtually all of the public housing units at Lake Park Crescent are financed with Low-Income Housing Tax Credits, they may not be rented to families making more than 60% of area median income. (Three of the units at Lake Park Crescent are financed differently but are limited to families making between 60 and 80% of the median income.) The Court's Orders and the Low-Income Housing Tax Credit program combine then to create public housing units that are, for the most part, available only for families making 50-60% of area median income. The first priority for these units would be households directly displaced by the Lakefront developments, then other CHA relocatees, then other CHA residents, and finally households on the CHA general waiting list.

5. The Lake Park Crescent development is owned by Lake Park Crescent Associates I.L.P. ("LPCAI") LPCAI has hired Draper and Kramer, Incorporated as the Management Agent for these housing units.

6. Draper and Kramer is seeking eligible tenants to lease public housing units at the Lake Park Crescent mixed income development that have been reserved for households earning between 50% and 60% of area median income. ("the 50% units") To date, Draper and Kramer, with the assistance of the CHA, has contacted all of the persons on the Lakefront Properties waiting list and all of the persons currently residing in other CHA public housing across the city, in search of families that satisfy this income requirement, and the other lease requirements for the new units. There are insufficient numbers of families available and interested in the units to fill these units. Therefore, in late January of 2005, the CHA began mailing notice (in the form of a brochure) as to the availability of these units to persons on both the CHA community area scattered-site waiting lists and the CHA general waiting list. To date, 5900 families have been contacted and 119 referrals have been made to Draper and Kramer in an effort to fill these units. This effort to notify families by mail is extraordinarily time-consuming, but is continuing in groups of 1200 families. These efforts, however, have still not yielded sufficient tenants for these 50% units-60% units. Thus, 21 of the 30 completed new public housing units for this group of families have remained vacant.

7. Because these units remain vacant, CHA and the tax-credit lenders for the Lake Park Crescent developer have imposed financial sanctions against the developer. CHA has withheld all operating subsidies for these units and the lenders are drawing down monthly on the developers' tax-credit guarantees. These financial sanctions have not, however, caused any increase in the pace of leasing activity at Lake Park Crescent.



8. In order to more rapidly lease the 50%-60% units, Draper and Kramer seeks to advertise to the general public and operate an on-site waiting list, subdivided by appropriate unit size, to be known as "the Lake Park Crescent 50%-60% waiting list". During such marketing, Draper and Kramer, in conjunction with the CHA, would continue to conduct outreach to the balance of the CHA community area waiting list and the CHA general waiting list. Draper and Kramer would then maintain and lease from the Lake Park Crescent 50%-60% waiting list. This list would be composed of those income-eligible: (A) households responding to the direct marketing campaign by Draper and Kramer soliciting tenants from the general public; (B) households identified through further outreach by CHA and Draper and Kramer to the CHA community area scattered-site waiting list and the CHA general waiting list; and (C) households currently waiting in CHA housing who, at a later date, obtain a job or otherwise move into the 50%-60% income category.

9. Those income-eligible families who are in CHA housing, or were on either the CHA community area scattered-site waiting list or the CHA general waiting list will receive priority over those income-eligible families responding to Draper and Kramer's direct marketing efforts.

10. The on-site waiting list shall be maintained in accordance with federal regulations concerning the maintenance of public housing unit waiting lists, 24 C.F.R. §960.206. Further, to insure that the on-site waiting list is utilized in a proper manner, Draper and Kramer will report quarterly to the CHA Occupancy Department and to plaintiffs' counsel on the utilization of the on-site waiting list, including identification of all information necessary to assess compliance with the federal requirement that selection of households from the on-site waiting list, given appropriate unit size, must be based on date and time of application. See 24 C.F.R. § 960.206(e). Such reports will

be done in a manner agreeable to the CHA and plaintiffs' counsel. This information will be reviewed by the CHA and plaintiffs to determine what, if any, corrective action should be taken.

11. This Order will promote the implementation of this Court's prior orders by speeding up the rental of these new public housing units. This plan for filling the Lake Park Crescent 50%-60% units, as well as this Motion and Order, have been discussed at length with HUD and Draper and Kramer. Draper and Kramer supports entry of this Order.

WHEREFORE, the plaintiffs and CHA respectfully moves the Court to enter the Agreed Order attached hereto.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
-vs-	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.,	)	Hon. Marvin E. Aspen
	)	
Defendants.	)	

**AGREED ORDER**

This matter coming to be heard on the Joint Motion of Plaintiffs and the CHA to enter this Agreed Order modifying the Tenant Assignment Plan, the parties being in agreement hereto, IT IS HEREBY ORDERED THAT:

1. The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended pursuant to Orders of this Court dated September 12, 1983, June 9, 1989, October 1, 1990, October 6, 1994, August 14, 1995, July 20, 2001, August 29, 2002, and March 24, 2003 is hereby further amended to permit the creation of an on-site waiting list at the Lake Park Crescent mixed income development (the Development”) for households earning between 50% and 60% of the area median income to rent the public housing units at the Development which have been reserved for such households . (the “50%-60% Units”).

2. Effective with the date of this Order, CHA shall be authorized to permit the Lake Park Crescent development owner, Lake Park Crescent Associates I L.P., through its Management Agent, Draper and Kramer, Incorporated, to maintain an on-site waiting list of households eligible for the 50%-60% Units located at the Development. This Waiting List (“the Lake Park Crescent 50%-60%



waiting list”) shall be comprised of income-eligible: (A) households responding to a direct marketing campaign by Draper and Kramer soliciting tenants from the general public; (B) households identified through further outreach by CHA and Draper and Kramer to the CHA community area scattered-site and CHA general waiting lists; and (C) households currently in CHA housing. The on-site waiting list shall be maintained in accordance with federal regulations concerning the maintenance of public housing unit waiting lists, 24 C.F.R. §960.206, including the prohibition against discrimination.

3. Effective with the date of this Order, CHA shall be authorized to permit the Lake Park Crescent development owner, Lake Park Crescent Associates, I L.P., through its Management Agent, Draper and Kramer, Incorporated, to begin leasing from the Lake Park Crescent waiting list. Priority shall be accorded to any person on the waiting list, who otherwise meets the leasing requirements of the Development, who previously was listed either on the CHA community area scattered-site waiting list, the CHA general waiting list or is living in CHA housing.

4. While leasing can occur immediately upon entry of this Order, CHA shall be required to continue mailing notice of the availability of 50%-60% units to each member of CHA’s community area scattered site waiting list and CHA’s general waiting list. The Court authorizes CHA to conduct these mailings by sending notice to 1200 families at a time, recognizing that administratively it is not practical to respond to inquiries from more than 1200 families at one time. The content of the notice and timing of the mailings will be left to the discretion of the CHA.

5. Further, to insure that the Lake Park Crescent waiting list is utilized in a proper manner, Draper and Kramer will report quarterly to the CHA Occupancy Department and the plaintiffs on the utilization of the Lake Park Crescent waiting list, including identification of all information necessary to assess compliance with the federal requirement that selection of households from the

Lake Park Crescent waiting list, given appropriate unit size, must be based on date and time of application, 24 C.F.R. §960.206(e). Such reports will be done in a manner agreeable to the CHA and plaintiffs' counsel. This information will be reviewed by the CHA and plaintiffs to determine what, if any, corrective action should be taken.

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Hon. Marvin Aspen, United States District Judge

Dated: \_\_\_\_\_

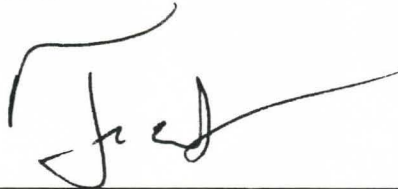
## NOTICE OF FILING AND CERTIFICATE OF SERVICE

Thomas E. Johnson, one of the attorneys for the CHA certifies that he filed the foregoing CHA's Response to the CAC's Motion to Amend the June 3, 1996 Order Establishing Minimum Income Limits for Certain Public Housing Units with the Clerk of the U.S. District Court for the Northern District of Illinois, Eastern Division on May 26, 2005, and served copies on the following counsel by mail, first-class postage prepaid, on the same date:

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