No. 05-3578

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DOROTHY GAUTREAUX, et al.,	)	Appeal from the United
	)	States District Court for the
Plaintiffs-Appellees,	)	Northern District of Illinois
	)	
vs.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY and TERRY PETERSON,	)	Honorable Marvin E. Aspen
	)	
Defendants-Appellants,	)	
	)	
vs.	)	
	)	
DANIEL E. LEVIN and THE HABITAT COMPANY LLC,	)	
	)	
Receiver	)	

SUPPLEMENTAL APPENDIX OF PLAINTIFFS-APPELLEES

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U.S.C.A. – 7th Circuit
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TABLE OF CONTENTS

Gautreaux v. CHA, 178 F.3d 951 (7th Cir. 1999)..... 1

Transcript (3/8/95)..... 15

Horner Order and Submittal Letter (3/9/95)..... 59

Horner Motion (3/9/95)..... 62

Horner Order (8/14/95)..... 63

Tenant Assignment Motion and Order (8/14/95)..... 76

Horner Order (4/15/96)..... 80

North Kenwood Oakland Order (6/3/96)..... 83

CHA Emergency Motion (9/30/97)..... 88

Sites Near Cabrini Order (11/6/97)..... 98

Transcript (2/10/98)..... 100

Opinion and Order (2/23/98)..... 146

Order on Receiver's Emergency Motion (5/19/98)..... 151

ABLA Order (6/19/98)..... 153

Order on Receiver's Motion (8/12/98)..... 156

Horner Order (10/22/98)..... 158

ABLA Order (11/4/99)..... 161

Moving to Work Demonstration Agreement (2/6/00)..... 163

North Kenwood Oakland Order (4/11/00)..... 182

Sites Near Cabrini Order (9/12/00)..... 183

ABLA Order (9/25/00)..... 185

Motion and North Kenwood Oakland Order (9/10, 9/11/02)..... 187

Horner Order and Motion (12/12/02)..... 224

Rockwell Order (8/5/03)..... 241

Stateway Gardens Order (12/16/03)..... 244

Taylor Order (3/30/04)..... 247

Motion for Instructions (5/25/04)..... 250

Transcript (5/27/04)..... 259

ABLA Opinion and Order (6/22/04)..... 262

ABLA Order (8/16/05)..... 274

Rockwell Order (8/22/05)..... 276

Stateway Order (11/22/05)..... 279

Taylor Order (4/17/06)..... 282

Note:

1. In Defendants-Appellants' Supplemental Appendix ("SA") one page was inadvertently omitted from the Order dated 9/11/02, SA 380-82. This order in its entirety is included in Plaintiffs-Appellees' Supplemental Appendix ("PSA") at pages 221-223.

2. At SA 610-819 the exhibits to Plaintiffs Reply Brief in the District Court are not in order (and in several cases are separated from their cover sheets). The order of the exhibits as filed, with their beginning page numbers in the Supplemental Appendix, is as follows:

Exhibit A, Supplemental Affidavit of Alexander Polikoff, SA 617
Exhibit B, Summary of Plaintiffs' Time Records, SA 622
Exhibit C, Plaintiffs' Annotated Time Records, SA 629
Exhibit D, Two Prior Fee Award Orders and Motions, SA 806
Exhibit E, Affidavit of Adam Gross, SA 611
Exhibit F, CHA Documents Relating to 'Habitability Committee,' SA 614

3. The Table of Contents to the Supplemental Appendix omits mention of plaintiffs' Expense Report (SA 240), plaintiffs initial memorandum to the District Court in support of their motion for fees (SA 244), and the Order dated 12/12/02 relating to the expansion of the Henry Horner Revitalizing Area (SA 257).

In the
United States Court of Appeals
For the Seventh Circuit

Nos. 98-1807, 98-2311 & 98-3145

DOROTHY GAUTREAUX, *et al.*,

Plaintiffs-Appellees,

v.

CHICAGO HOUSING AUTHORITY, a corporation,
and JOSEPH SHULDINER, Executive Director,
in his official capacity,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 66 C 1459—**Marvin E. Aspen**, *Chief Judge.*

ARGUED OCTOBER 30, 1998—DECIDED MAY 28, 1999

Before CUMMINGS,* KANNE, and DIANE P. WOOD, *Circuit Judges.*

DIANE P. WOOD, *Circuit Judge.* When the time comes to write the story of public housing in the United States, the thirty-plus year saga of this litigation and the experience of the City of Chicago will surely feature prominently. The case began in 1966, when Dorothy Gautreaux

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* Judge Cummings participated in the consideration of this case but died before the decision was rendered.

and others filed a class action claiming that the Chicago Housing Authority ("CHA") had intentionally perpetuated racial segregation both in its tenant assignment practices and in its siting policies. In 1969, the district court found for the plaintiff class, *Gautreaux v. Chicago Housing Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969) (*Gautreaux I*), and entered a remedial decree designed to address the constitutional violations, *Gautreaux v. Chicago Housing Auth.*, 304 F. Supp. 736 (N.D. Ill. 1969) (*Gautreaux II*). That decree has continued in force ever since. The CHA has now appealed to this court from three orders the district court entered in 1998 in the course of supervising the decree. We conclude that these orders are essentially interlocutory in nature, that we lack jurisdiction over the appeal, and that it therefore must be dismissed.

I

In order to understand why we lack jurisdiction over this appeal, it is necessary to summarize briefly the history of this litigation. Prior to the entry of the 1969 decree, the Gautreaux class showed that the CHA had effectively designated four housing projects, built in majority-white Chicago neighborhoods, as "white," and that it had reserved the remainder of its facilities for non-whites. Using a discriminatory pre-clearance procedure and quotas, the CHA restricted the number of African-American families it assigned to the four "white" family housing projects. As a result, despite the fact that 90% of the families on the CHA's waiting list were African-American, African-Americans comprised less than 10% of the families in those four projects. The picture was the opposite in the other projects: there, the tenants were (as of 1969) 99% African-American, and 99.5% of the units were located in neighborhoods that were majority African-American.

A. The 1969 Injunction and the 1987 Receivership Order

The *Gautreaux II* injunction divided Cook County into "Limited Areas," in which 30% or more of the population was African-American, and the "General Area," which was the rest of the county. Initially, it required the CHA to build three dwelling units in the General Area for every one unit it constructed in the Limited Areas; later, that ratio was changed to one-to-one. The injunction defined a dwelling unit as a residential unit "which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date [of the injunction], directly or indirectly by or through CHA . . . ." *Gautreaux II*, 304 F. Supp. at 737. More generally, the injunction required that the CHA "affirmatively administer its public housing system in every respect (whether or not covered by specific provision of this judgment order) to the end of disestablishing the segregated public housing system which has resulted from CHA's unconstitutional site selection and tenant assignment procedures." *Id.* at 741. The idea was to bring about a gradual cure of the CHA's constitutional violations over time, as the CHA made new units available to public housing residents. The injunction is still in place, and, of critical importance to our decision, the CHA has requested neither its modification nor its termination.

For the next 18 years, the district court patiently waited in vain for the CHA to develop what has become known as "scattered site housing." In 1987, it finally appointed a receiver (Daniel E. Levin and The Habitat Company), to whom it assigned the responsibility for developing scattered site housing on the CHA's behalf. *Gautreaux v. Pierce*, Order of Aug. 14, 1987. The receivership order applies both to housing projects that were underway at the time and to "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency of [the case against the CHA]." *Id.* at 2. The receiver is authorized to exercise

> all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program, including: (a) Making all determinations governing the scattered site program in compliance with prior and future orders of this Court, including without limitation (1) submission to HUD of applications for funding, development programs and other documents . . . .

Id. at 2-3. The receivership order also directs the CHA to give the receiver its full cooperation. As with the injunction, the CHA has not asked that the receivership order be modified or terminated, and it remains in effect.

B. The Current Controversy

In 1992, Congress passed a new public housing funding program called HOPE VI, an acronym for "Homeownership and Opportunity for People Everywhere." 42 U.S.C. § 1437*l* (note). The program seeks to revitalize severely distressed or obsolete public housing developments by funding a mixture of local public housing authority activities on a competitive grant basis. Local public housing authorities may use HOPE VI grant monies for a variety of purposes, including, among other things, planning revitalization projects, demolition, renovation, providing Section 8 rent vouchers, social services, and (of greatest interest here) building replacement dwellings. To the extent that obsolete public housing is eliminated through HOPE VI, replacement units can be made available through a combination of Section 8 vouchers, new construction, renovation, and other acquisitions. Under HOPE VI, any *demolished* housing units must "be located in up to 3 separately defined areas containing the community's most severely distressed projects." *Id.* It does not similarly restrict the locations in which *replacement* units may be built. *Id.*

In 1993, the CHA prepared the first of several funding proposals it has submitted to HUD under the HOPE VI

program. It took this step unilaterally—that is to say, without any input from the receiver. In the application, however, it represented to HUD that the location of any replacement units would comply with the locational requirements of the *Gautreaux* injunction. The proposal was successful: HUD awarded it $50,000,000 for the Cabrini-Green Redevelopment Project. When the receiver learned of the existence of the application, it approached the CHA and asked to become involved in the HOPE VI projects, insofar as they would implicate the receiver's authority over the construction of replacement housing. The discussions that followed did not resolve this question definitively. Instead, the CHA was inconsistent in later grant applications. In 1996, it received one grant for the rehabilitation of its ABLA and Henry Horner developments on the basis of a proposal prepared in concert with the receiver, but in the same year it received another grant for the Robert Taylor Homes on the basis of a proposal it prepared independently (after erroneously advising the receiver that no replacement units would be involved).

This spotty cooperation between the CHA and the receiver turned to outright hostility sometime in late 1996. In September 1997, the CHA filed an emergency motion with the district court, asking it for an order clarifying that the 1969 injunction did not extend to any aspect of the HOPE VI program. In February 1998 (the "February order"), the district court instead held that the portion of HOPE VI funds dedicated to the construction of dwelling units fell squarely within the plain language of the injunction, and that any replacement units were therefore subject to the injunction's locational requirements.

Despite this order, the CHA continued to refuse to cooperate with the receiver or to release the information necessary to allow the receiver to play a role in the HOPE VI grant application due June 29, 1998. In May 1998, the receiver accordingly asked the court to compel the CHA's cooperation. The court granted this motion (the "May order"), explaining that since "HOPE VI is a 'non-elderly

public housing development program[ ] . . . authorized during the pendency of" the *Gautreaux* litigation, . . . it therefore fits entirely within the Receiver's jurisdiction."

Finally, in August 1998, the receiver filed a second emergency motion to compel the CHA's cooperation with the 1987 receivership order and the district court's February and May orders. It took this action after it learned through a news report that the CHA had unilaterally negotiated a settlement with Cabrini-Green residents who had brought a lawsuit against the CHA, see *Cabrini-Green Local Advisory Council v. Chicago Housing Auth.*, 1997 WL 31002 (N.D. Ill. Jan. 22, 1997), and that this settlement would involve the construction of dwelling units. In its "August order," the district court held that the CHA was "hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation of the Receiver unless, of course, it has already secured a waiver [from the injunction] for the contemplated development." That order also instructed the CHA to "return to the drawing board" and renegotiate with Cabrini-Green LAC and the receiver. It therefore effectively prevents the CHA from presenting the deal it had already sealed without the receiver's participation to the judge presiding in the *Cabrini-Green* case.

The CHA appeals from each of these three 1998 orders. A motions panel of this court denied the CHA's motion to stay the February and May orders on May 29, 1998, and reserved for the consideration of the merits panel the motion of the Gautreaux plaintiffs to dismiss the appeals for lack of appellate jurisdiction.

II

The CHA argues that this court has appellate jurisdiction over the February order both because (1) it sets forth

the steps the CHA must take to comply with the injunction and is, according to the CHA, therefore a final judgment within the meaning of 28 U.S.C. § 1291; and (2) it is a modification of an injunction, making it an appealable interlocutory order under 28 U.S.C. § 1292(a)(1). The May order, it claims, is within our pendent appellate jurisdiction. Finally, it argues that the August order is a new injunction, appealable independently under § 1292(a)(1).

Though they dispute our independent jurisdiction over the February and May orders, the Gautreaux class and the receiver[1] now take the position—agreeing with the CHA—that we have jurisdiction over the August order. As they explained at oral argument, they too regard the August order as a fresh injunction, because it keeps the CHA from presenting the *Cabrini-Green* settlement to another judge of the district court (the Hon. David Coar) for approval. To allow us to reach the merits of this appeal, they next contend that the August order is "inextricably intertwined" with the February and May orders, thereby bringing those two earlier orders within our pendent appellate jurisdiction. The agreement of the parties with respect to our jurisdiction does not, of course, resolve the matter. *E.g., United States v. County of Cook*, 167 F.3d 381, 387 (7th Cir. 1999). We therefore proceed to consider the jurisdictional basis for each of the three orders involved in this appeal.

A. The February Order

1. Section 1291 Jurisdiction

The February order does not dispose of all claims as to all parties. Normally, that fact alone would demonstrate

---

[1] Although the CHA disputes the receiver's right to participate in the appeal, the district court granted the receiver permission to appeal on May 20, 1998. This safeguards the receiver's status before this court. See *Holland v. Sterling Enters., Inc.*, 777 F.2d 1288, 1291 (7th Cir. 1985).

that it does not qualify as a final judgment for purposes of 28 U.S.C. § 1291. *E.g., United States v. Davenport*, 106 F.3d 1333, 1335 (7th Cir. 1997). Recognizing its problem, the CHA seeks to rely on this court's decision in *Association of Community Organizations for Reform Now (ACORN) v. Illinois State Board of Elections*, 75 F.3d 304 (7th Cir. 1996), which discussed the application of § 1291 in post-judgment proceedings.

The issue in *ACORN* was how the State of Illinois would comply with an injunction ordering it to implement the motor-voter law, which it had ignored based on its belief that the law was unconstitutional. The district court held that the state had to comply with the law, and Illinois then proposed some implementing regulations. The district court entered a post-injunction order holding Illinois' proposed regulations invalid and asking the parties to brief some remaining issues. Illinois then appealed this post-injunction order, which raised the question of appellate jurisdiction. In discussing the finality requirement of § 1291, Chief Judge Posner explained:

> [We] treat the postjudgment proceeding as a free-standing litigation, in effect treating the final judgment as the first rather than the last order in the case. Our decision last June [rejecting Illinois' constitutional challenge to the motor-voter law] kicked off a postjudgment proceeding that will end, unless the parties reach an agreement, with a judicial order setting forth the steps that Illinois must take to comply with the injunction that it obey the motor-voter law. That order will be appealable as a final decision under section 1291; interim orders will be appealable only if they meet the criteria for the appealability of interlocutory orders.

Id. at 306.

By analogy to *ACORN*, the CHA claims the February order is final because it sets forth the steps the CHA must

take to comply with the injunction. But as the above passage illustrates, *ACORN* does not stand for the proposition that an order outlining the steps to comply with a prior injunction always qualifies as a new final judgment. Instead, it held only that the post-judgment order there was final because it conclusively resolved the parties' claims in the context of that case. This point was underscored in *Bogard v. Wright*, 159 F.3d 1060 (7th Cir. 1998), which explained that a court facing an appeal from a post-judgment order must try to treat the post-judgment proceeding as a free-standing lawsuit, to identify the final decision in the proceeding, and to confine a § 1291 appeal to that decision. *Id.* at 1062. Especially with injunctions and consent decrees, it is not always possible to pick out a plausible counterpart to the conventional final judgment. *Id.*; see also *United States v. Accra Pac, Inc.*, 1999 WL 222944, at *1 (7th Cir. Apr. 16, 1999) ("One of many orders interpreting or implementing a consent decree cannot readily be called 'final', and we have held accordingly that housekeeping orders in long-running cases are not appealable."). Nor does it help to speak of "pragmatic finality," which is too vague to serve as an analogy to the conventional Rule 58 final judgment. *Bogard,* 159 F.3d at 1063. Instead, *Bogard* holds, parties who need to bring a post-judgment order with irrevocable consequences before the appellate court—at least in cases involving decrees entered by consent or after full litigation—must normally either use mandamus or seek an order granting, modifying, denying, or otherwise affecting the injunction itself, which would be appealable under 28 U.S.C. § 1292(a)(1). *Id.*

Any direction the February order gave the CHA about how to comply with the 1969 injunction did not serve to bring finality to this litigation. Under *ACORN* and *Bogard*, therefore, § 1291 does not confer jurisdiction over this appeal.

2. Section 1292(a)(1) Jurisdiction

The CHA has not requested a writ of mandamus, nor did the district court certify this case for an immediate appeal under 28 U.S.C. § 1292(b). The only possible alternative ground for jurisdiction is thus 28 U.S.C. § 1292(a)(1), which permits appeals from orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions . . . ." The next question is whether the February order does any of those things to an injunction, or if, on the other hand, it is a mere clarification or reiteration of a standing injunction that does not fall within the scope of § 1292(a)(1). See *ACORN*, 75 F.3d at 306. The CHA concedes that the only thing it asked the district court to do was to clarify the injunction, and it acknowledges that this is what the district court said it was doing. It argues, however, that the court's purported clarification resulted in such a blatant misinterpretation of the injunction that it is tantamount to an appealable modification.

This court has repeatedly held that it will look beyond labels such as "clarification" or "modification" to consider the actual effect of the order. *E.g., Motorola, Inc. v. Computer Displays Int'l, Inc.*, 739 F.2d 1149, 1155 (7th Cir. 1984); *Buckhanon v. Percy*, 708 F.2d 1209, 1212 (7th Cir. 1983). This means the court must take at least a glancing look at the merits of the CHA's arguments in order to decide how to characterize the order. Naturally, we need more than the CHA's own assertion that this particular alleged misinterpretation amounts to a modification. See *Motorola*, 739 F.2d at 1155. Otherwise, appellate courts would be deluged with interlocutory appeals from every litigant dissatisfied with a district court's interpretation of its injunctions. As the Supreme Court has noted, § 1292(a)(1) must be approached "somewhat gingerly lest a floodgate be opened . . . ." *Switzerland Cheese Ass'n, Inc. v. E. Horne's Market, Inc.*, 385 U.S. 23, 24 (1966); see also *Carson v. American Brands, Inc.*, 450 U.S. 79, 84 (1981) (holding that the interlocutory jurisdiction provided by

§ 1292(a)(1) is only a narrow exception to the finality rule of § 1291).

Two requirements for appeals under § 1292(a)(1) dealing with post-judgment rulings relating to injunctive decrees emerge from our decisions. First, *Motorola* established that a modification (however labeled) occurs only when a court substantially alters the pre-existing legal relationship of the parties. 739 F.2d at 1155. Second, in *Bogard* we held that it must be apparent or obvious that an order has such an effect before § 1292(a)(1) jurisdiction will be proper. 159 F.3d at 1064. Otherwise, we would have to delve deeply into the merits before we could decide whether we had jurisdiction to reach them. The *Bogard* rule, although it prohibits an all-out inquiry into the merits, does not leave the parties at the mercy of a possible rogue district judge who is wreaking havoc with an injunction or consent decree, because any party who believes that an order has subtly modified an injunction need only move formally for a modification or termination order. See *id.* at 1064-65. Whether the district court grants or denies the requested modification or termination, the resulting order is clearly appealable under § 1292(a)(1). The *Bogard* rule thus redirects litigants to the plain language of the statute. It blocks the statute's "modification" provision from serving as a back door to appellate review of every administrative clarification the district court makes, while it simultaneously retains this court's authority to look behind labels when those labels obviously mischaracterize the order.

Applying these standards to the February order, we conclude that it is not an appealable modification of an injunction. The district court did not, for example, rule that CHA programs other than the administration and construction of dwelling units (like the provision of Section 8 rent vouchers, the management of CHA properties preexisting the injunction, or the conditions under which social services are to be supplied) fell within the sweep of the 1969 injunction. Such extreme actions would be modi-

fications even if the district court labeled them mere clarifications. *Cf. United States v. Board of Sch. Comm'rs*, 128 F.3d 507, 509 (7th Cir. 1997) (finding the addition of a class of students formerly outside scope of the injunction to a mandatory busing order to constitute a clear modification of the underlying order). To the contrary, here there is no such obvious misinterpretation that might trigger appellate jurisdiction under § 1292(a)(1). In fact, there may be no misinterpretation at all. The CHA concedes, as it must, that the 1969 injunction's literal definition of dwelling unit (*i.e.*, a residential unit "which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date [of the injunction], directly or indirectly by or through CHA . . . ." *Gautreaux II*, 304 F. Supp. at 737) encompasses new construction made possible by HOPE VI. Appellants' Br. at 15. The CHA urges the court to consider that the context in which the injunction was drafted somehow belies its wording, but such an analysis would aim to uncover subtle rather than blatant misinterpretations and is therefore too searching for a preliminary jurisdictional inquiry. Under *Motorola* and *Bogard*, we therefore lack appellate jurisdiction under § 1292(a)(1).

B. The August Order

The only theory under which the parties have urged us to recognize appellate jurisdiction over the August order is as a fresh injunction, appealable under 28 U.S.C. § 1292(a)(1). As before, however, this court must look beyond the "injunction" label of the order to see if jurisdiction is proper. See, *e.g.*, *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 279 (1988) ("An order by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under § 1292(a)(1)."); *Carson*, 450 U.S. at 83; *Hetreed v. Allstate Ins. Co.*, 135 F.3d 1155, 1156 (7th Cir. 1998). The combined *Motorola* and *Bogard* tests once again govern our

characterization of the order for jurisdictional purposes: unless it substantially and obviously alters the parties' pre-existing legal relationship, the August order is only an unappealable interpretation or clarification of prior orders, not an appealable new injunction.

The August order does nothing more than reassert the court's prior orders: it tells the CHA that it must continue to comply with the 1969 injunction and February order specifically with respect to the HOPE VI revitalization project at Cabrini-Green, and that it must involve the receiver in any negotiations. Because the proposed settlement with the Cabrini-Green Local Advisory Council addressed, in part, the construction of replacement housing, the receiver was the only party with authority to negotiate the provisions and was therefore indispensable to the negotiations. That the August order also directs the CHA to renegotiate rather than place an illegitimate agreement before another court changes nothing, because that simply ensures that the CHA does not profit from its non-compliance with existing court orders. *Cf. People Who Care v. Rockford Bd. of Educ.*, 171 F.3d 1083, 1086-87 (7th Cir. 1999) (finding a budget order creating new payment obligations appealable as a separate injunction). Thus, the August order is not a fresh injunction. It instead merely reiterates and applies the court's prior orders without creating new obligations for the CHA. As such, this court has no jurisdiction to review it.

C. The May Order

Both parties have argued that the otherwise unappealable May order is so inextricably intertwined with the August order as to trigger our pendent appellate jurisdiction. In addition, the Gautreaux plaintiffs offer pendent appellate jurisdiction as a theory that would support the appeal of the February order. Because we have found no appellate jurisdiction over either the August or the February orders, however, pendent appellate jurisdiction

cannot be marshaled to bring the May order (or the February order on plaintiffs' theory) before the court. See, *e.g., People ex rel. Hartigan v. Peters*, 861 F.2d 164, 166 (7th Cir. 1988).

III

If the CHA is displeased with the 1969 injunction, the receivership order, or the recent district court orders flowing from them, then it should seek to modify or terminate any or all of them. Until it does so—or until the district court obviously departs from the path of its own precedent—this court will not have appellate jurisdiction.

We therefore DISMISS these appeals for lack of jurisdiction.

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

05-3578

DOROTHY GAUTREAUX, et al.,	Docket No. 66 C 1459
	No. 66 C 1460
Plaintiffs,	
vs.	Chicago, Illinois
	March 8, 1995
SAMUEL R. PIERCE, et al.,	3:00 o'clock p.m.
Defendants.	

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APPEARANCES:

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THE CLERK: 66 C 1459, 66 C 1460, Gautreaux versus CHA, et al.

MR. POLIKOFF: Good afternoon, your Honor.

THE COURT: Good afternoon.

MR. POLIKOFF: We very much appreciate your making this time available to us in what I know is a busy schedule.

We are here on Gautreaux, but as you know we are here on a matter that is related to an independent matter in which the Gautreaux plaintiffs are not parties, in a formal sense, the Horner matter.

And here with me in the courtroom today and prepared to answer your questions are personnel, the chairman and lawyers from CHA, personnel from HUD, Mr. Eisendrath, the special representative of the Secretary and members of his staff, and also the Receiver and members of the Receiver's staff, probably other people I should mention -- oh, Mr. Wilen from Legal Assistance Foundation, who represents the plaintiffs in the Horner litigation and members of his staff, and one or more consultants to the Horner plaintiffs. And probably other people are here as well who you may call upon as you see fit.

THE COURT: Okay.

MR. POLIKOFF: What I would like to do this afternoon is to take a very short time, just a very few minutes, less than five, I think, to set the procedural context for you, and then within that context we'll make a factual presentation.

And if you let us get that far, we'll get to the point of asking you to indicate a willingness to sign an order, which has not yet been drafted because we want to hear from you, but which we would then draft if you're favorably inclined and ask you to make the decision on promptly.

As you know, the -- I think you know, the preliminary hearing on the Horner consent decree is scheduled to commence before Judge Zagel on Friday morning.

Well, here's the procedural context, your Honor: CHA proposes to demolish some public housing in what I'm going to call the Horner revitalization area; I will describe that to you geographically in a moment. We have something on the easel here for that purpose.

As you also know, the law presently requires that when public housing is demolished, it be replaced unit for unit. For every physical unit that is taken down, you have to put up another physical unit. That's the way the law stands today.

Now, ordinarily under the existing Gautreaux orders that replacement housing, as I will call it, could go 50 percent in the limited public housing area provided simultaneously 50 percent of it went into the general public housing area. And if that were the proposal, there would be no need to come before you today.

The reason we are here is that we're going to be asking you to decide that some portion beyond 50 percent can go

into the Horner revitalizing area. Some portion of the replacement housing to be built for the units to be demolished above the 50 percent limit in the current Gautreaux orders could go into this Horner revitalizing area.

We are not going to be asking you to tell us today what that number is, only to tell us whether in your view, after you hear today's presentation, some number to be determined beyond the 50 percent could go in this area.

The area I am talking about --

THE COURT: In other words, you want a blank check?

MR. POLIKOFF: No. Quite to the contrary.

The procedure we envision involves coming back to you when certain facts are known that are not known today, and at that point, far from wanting a blank check, you will be filling in the numbers on the check as you then determine. And whatever those numbers are, those are the numbers.

We will be making a presentation to you at that time as to what we think the numbers ought to be, but while you've always listened to us very carefully, you've not been known to slavishly follow my recommendations on every occasion. And I don't expect you'll necessarily do it on this one either.

THE COURT: Most occasions, Mr. Polikoff.

MR. POLIKOFF: The area we're talking about, your Honor -- I have termed it the Horner revitalization area for a reason I'm sure you understand and that I will expand on

briefly in a moment -- runs from Damen Avenue on the east to Western Avenue on the west, from Lake Street on the north -- and the El tracks run right along here -- to Van Buren Street, and immediately south of Van Buren is the Eisenhower Expressway on the south.

I'm terming that the Horner revitalization area. That's not a term of art; that's a rhetorical creation for purposes of having a handy moniker to use in this discussion.

Now, the area encompassing a little more than the southern half of this Horner revitalization area, from Madison Street on the north, the other boundaries being the same, is a so-called SNAP area. SNAP stands for Strategic Neighborhood Action Program. And this is an area, as you will shortly hear, within which the City of Chicago has already commenced physical revitalization activities that will be described to you and that's under the aegis of what the city calls its SNAP program. That's already going on.

In the northern, approximately 40 percent of this area, from Madison up to Lake Street, we have a portion of the Horner public housing complex, this white area, and these long buildings you see here are high-rise buildings. And we have three more Horner buildings here that are mid-rise buildings. Those seven Horner buildings are within this area, and they are the subject matter of the planning that will be described to you shortly. And the rest of this area is privately owned,

some of it city owned; it's in non-public housing today.

The ledgend, which you may not be able to see from the bench, is as follows: The brown lots are vacant land owned by the city. This is true both in the SNAP area and in the area to the north. The blue are vacant lots which are up for sale in the scavenger tax sale contest. The pink are vacant lots that are privately owned. The dark green -- there are a few of them here -- or green with dots, are vacant structures which are either owned or controlled by the city, and the light green without those dots are vacant structures which are privately owned.

And as you can see at a glance, even from the distance where you are, a great deal of this area is either in vacant land already or, to a lesser extent, in structures that are vacant.

Now, I want to tell you briefly why we are here to ask that you consider this area I have just described to be a revitalizing area under the Gautreaux decree and order.

The answer to why I am here as a party to this presentation today is two-fold: First of all, representing the Gautreaux plaintiffs, we believe that you will find the argument in favor of viewing this as a revitalizing area to be persuasive, partly because of the physical activities already commenced in the area, in the SNAP portion of it, partly because of the economic development activities that are, in

effect, a spill-over from the United Center, which isn't shown on this map but which is immediately over here to the east. Indeed, in the upper right-hand corner of the SNAP area, as you see, there is the United Center parking lot. And the economic development activities, although not in that area, precisely located in that area, are clearly, the term that I use for it, spill-over effects of an economic improvement sort that have already begun and can further be anticipated to continue.

And finally, the third factor leading to treating this as a revitalizing area, the proposed activities also to be described to you in a few minutes not only in this Horner area, but also in the immediately adjacent area south of Horner and north of the SNAP area.

Those three factors, the SNAP work, the United Center activities and the proposed Horner activities, we believe justify the Gautreaux plaintiffs arguing to your Honor that, hey, it's okay to treat this as a revitalizing area.

I know that you know that in the history of the Gautreaux case we have used this revitalizing area a number of times. Wherever we have found proposed projects to be located in an area that's really undergoing significant development or -- and/or proposed development, we have come in for orders from you and more often than not you have granted those orders.

This one is a little bit different because ordinarily we have come in historically and said this is already a good

area, Judge. We want to put a little housing in here and we think it's an okay area to put the housing in. This is a little different because the proposed housing activity is one of the reasons why the area can be viewed as a proposed -- as a revitalizing area.

I also have a second reason for being before you today in favor of the revitalizing area concept. I want to make this plain, so to speak, on the record. The Gautreaux case has been going for a long time, and although we have provided a lot of relief, there are an awful lot of plaintiffs who haven't gotten relief yet, and those plaintiffs continue to live not only in segregated but in very, very bad housing. And the prospect of the continued relief, while good in Gautreaux, is still long term. It's not going to go to completion tomorrow.

And meanwhile, we have, for example, Gautreaux families -- even though they are Horner plaintiffs, they are also members of the Gautreaux class -- living in, I will put it charitably, very unhappy circumstances in these high-rise buildings. And if the Gautreaux concepts of a revitalizing area and allowing the Receiver to go beyond the 50/50 that he would otherwise be obligated to adhere to, can stimulate and move along more quickly the demolition of those buildings which currently house Gautreaux plaintiffs and produce some betterment in housing conditions for them, we think that's a factor that the Gautreaux court can legitimately take into

account. And, in any event, as plaintiffs' counsel, we have it in mind that that's an added reason for favoring the proposal that's going to be submitted to you today.

I want to make one aspect of the proposed procedure clear. I have referred already to a sort of two-stage proceeding before your Honor today and at a future date. Today we are only asking you to hear what the Receiver and others have to say about why this is going to be turned into a good area and say, if you agree, yes, I think that some number beyond the allowable 50 percent of public housing units can go into that area.

The reason we are not asking you today to say what number is that there are some facts we're not prepared to present to you today. Example: Tenants who are to be rehoused here have not yet had an opportunity to express their choices as to the kind of housing and the location of housing. When we come back to you for what I will call stage two, we'll have that information.

THE COURT: Let me ask you this: If at stage two there is some dispute as to how much over 50 percent we can go, and if I'm forced to resolve that dispute, would that in any way undermine the revitalization project at that time, if there was some disagreement and perhaps I resolved it not to your agreement?

MR. POLIKOFF: The answer is no.

And I've invited -- you know, this is a complicated matter and I haven't been involved in the Horner negotiations from the beginning, and I've invited CHA attorneys, LAF attorneys, HUD attorneys to interrupt me at any point if I misstate.

And in answering your question, I particularly remind them that if I say anything wrong, to call me on it.

The answer to your question, as I understand it, is no. In two senses it's no. No. 1, the Horner -- whatever number you finally decide to okay, the Horner revitalization program will go forward, assuming Judge Zagel finally approves that decree, that Horner decree. You will not be nixing the proceedings in the other case whatever your answer may be to the number of units permissible.

The second aspect of the answer is that the effect of your determination as to what that number should be, might be, if you don't allow a larger number of units to go in but insist on only a smaller number and the rest in the revitalizing area, a smaller number of units than the parties might otherwise agree upon would go into this area and a larger number would have to go to house those people who need to be housed into the Gautreaux general public housing area; for example, into the scattered site pipeline that the Receiver already has under construction. And that is a possible answer. All the parties understand that.

And all the parties are in agreement that while you will hear them all out as to their recommendations, if they should differ, the ultimate decision as to what the number ought to be is yours and yours alone.

I think that's certainly my understanding and I think that's clear with the parties, hearing no interruption.

Following today's presentation to your Honor, the procedure we contemplate is that if your answer is no, we go hence without day, or whatever that expression used to be, and that would be the end of it. If your answer is yes, you are open to fixing at a future time a number in excess of 50 percent, and subject to that requirement of future fixing the number, you're willing to treat this as a revitalizing area, we would prepare an order for your signature that reflects that determination. And we would all collectively ask you to make that decision today, if possible; if not today, tomorrow, so we could get that order entered and signed before Judge Zagel commences his Horner preliminary hearing on Friday morning.

I think that's all I have to say with respect to introductory remarks.

The planned program before you is to have the Receiver explain the details of what is going on in the area, to have CHA explain its posture, to have HUD explain its views of this, Mr. Wilen will add anything he wants from the point of view of the Horner plaintiffs, and then subject to any question that

you may have, we'll be ready to hear your views.

THE COURT: Okay.

MR. POLIKOFF: So I would like to ask Mr. Levin of the Receiver's staff, to step forward and begin the presentation.

THE COURT: All right.

MR. LEVIN: Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Levin.

MR. LEVIN: As you know, we've had limited time to come to you with a program, and the program that Bill Hickman will explain today is an approach. There's more than one approach. We are satisfied that there are approaches that from a physical point of view will create an exciting and viable physical plan.

And Phil Hickman will present to you various approaches to how a plan might work and also some explanation of the surrounding area and the SNAP area and the kinds of other forces that we believe are active in the overall area that will make a revitalizing program work.

Phil?

MR. HICKMAN: As Mr. Polikoff indicated, the SNAP area is this general area, from Madison to the expressway, from Damen to Western. The SNAP involves the active coordination of four city departments: The Department of Transportation, the Department of Buildings, the Department of Housing and the Department of Planning and Development. And they have been

very active in the past two years in this area.

Just to highlight some of the physical improvements, to date, according to the city numbers, they spent $2.1 million in various public works projects, if you will. This includes the cul-de-sacs built here at Monroe, at Western, and then also here at Monroe and Seeley. This, of course, provides an access off of Damen for the parking lot here that's for United Center.

They've resurfaced seven blocks of residential streets in the SNAP area. To date a 15-unit building is under construction at Adams and Hamilton, which is right in this area -- I'm sorry, here. Currently they've completed about 90 percent of that building.

To date they have demolished 22 buildings in the SNAP; these were abandoned buildings. So they have really an active land clearance program.

THE COURT: You say the city has demolished it, though. I understand that.

You said completing that 15-unit building. Who is doing it actually?

MR. HICKMAN: it's being done by the Near West Community Development Corporation, which is a -- CDC, Community Development Corporation, not-for-profit.

THE COURT: Okay.

MR. HICKMAN: They have been very active and continue to be active in this area and one which Deborah Moore and I

have related to on a regular basis.

In addition, Madison Street running from Halsted to Western, the city has allocated $8 million to upgrade that street. And if you will notice in terms of their planners in the middle of the street, right in here and all along Madison Street, all the way done to Halsted, they have made a number of such improvements. That total package running the hole length of that distance from Halsted to Western is, say, $8 million.

To date they have new construction of $7.8 million, all within the past couple years.

A new branch library, right here, is completed. That was 3.6 million.

The Touhy Herbert Park here at Monroe and Hoyne, they've spent -- now, this is by the park district, I should add -- I will get my bearings. Here you go, this park here. They spent $600,000 upgradingit; it's really quite a handsome improvement.

This area was also selected for the replacement housing when the stadium, which is over here -- the -- when the stadium was built there were 20-some families -- I'm sorry, 16 families displaced. And as a part of this development then they built new two-flats in the SNAP area. And these are all very nice brick buildings that are owned or occupied and all very recent, within the past two years.

Then, in addition -- now, that housing was 3.6

million, I should add, in terms of the two-flats.

On Madison Street now, as you're probably aware, there is a large number of vacant lots because of the fire, after -- going back to the '60s, and the Argo Bank has now opened a temporary facility here on the north side of Madison and they plan to have a signed lease to move across the street in a new building to be constructed. So bringing a bank to the area was a critical element in terms of -- from the city's point of view and they have been very active in recruiting commercial development for the area.

This area that I mentioned, in terms of where the bank is going to be leasing, will be in a $7 million building proposed. And in talking to the city earlier today, they indicated that the owners plan to start this in May but it's not yet finalized. So again, there are a lot of things that are in the process.

The James Jordan Boys and Girls Club at 2100 West Monroe, here, has been funded for $4 million by The CharitaBulls, which is a not-for-profit tied to the Bulls. They expect the groundbreaking in May for that.

Retail development actually is planned in several places along Madison Street. The northeast corner of Madison and Western is one where the city owns the land and it is negotiating now with a retailer for that area.

Likewise, the southeast corner of Western and Madison,

which fits into here, the city owns all this property and they are negotiating now for a grocery to go in there.

The city also owns a number of vacant lots, and in this block, the 2200 block of West Jackson, they currently have an RFP on the street to build ten new -- actually either single family or two-flats. This is across from Crane High School.

I should point out that this is at Jackson, just west of Oakley. We have a new scattered site townhouse -- six townhouse units right here on this corner. We also have -- we have one other building here at 130 South Leavitt which is, if I get my bearings, right in here. It's not shown.

So we have -- this was considered a revitalizing area under the old formula, if you will, before the April of 1991 decision to do away with the so-called designation revitalizing. But we did have two six-unit townhouses in that area.

The city plans what they call a Showcase of Homes. I have talked with one developer who I know is very interested and plans to respond to the RFP. The RFP will be opened April 10th.

In addition, on this large lot, which is approximately three acres, the city has an application now for 60 apartments under the tax credit program; this is at the Department of Housing. And they in the past have given priority to new developments in a SNAP area simply because those are targeted

areas from all of the city departments.

In addition, the Stadium Joint Venture has established a revolving loan fund. In the 2200 block of West Adams, in this area, they will start the six two-flat homes using a $600,000 revolving fund. And what they hope to do then is to have this as seed money; they sell these two-flats, then use that 600,000 to build the next stage. They have 75 lots planned and actually under control by the city for that program.

And lastly, in terms of -- it was just announced within the past couple weeks that the Stadium Joint Venture has established a $1 million economic development fund to fund small businesses, primarily looking at the Madison Street area, to encourage new small business in that area.

So, in summary, in terms of the activity, there's quite a bit. In the last two years the city obviously has put a lot of resources into it and that's why, you know, it seems appropriate to look at it again as a revitalizing area.

As I mentioned, the stadium, of course, is a major impact here. The cost was $175,000,000. The old stadium -- I mean, now it's called United Center. The old stadium is up here, is in the process of being demolished, and that will be a surface parking lot. These will then be surface parking lots all around the stadium.

This is just a point of reference. This is the Horner

annex down here at the southeast corner.

THE COURT: Okay.

MR. HICKMAN: If you have any questions or thoughts, I will go on.

THE COURT: Go ahead.

MR. HICKMAN: In looking at this since last week, we have looked at areas in terms of how this might be redeveloped. Of course, these four across the top are high-rises. These three are mid-rises. There are a total of 745 units in these seven buildings. My understanding is there are currently 234 occupied units, which is 31 percent.

So in looking at the redevelopment of this entire area, we look at it in terms of a three-fold process: A physical plan, a financial plan and then a management tenancy plan. It's like the three legs of a stool; unless they are all three in place, it doesn't stand up.

In terms of the physical plan first, looking to demolish the high-rises -- these two are the ones that are currently vacant -- creating what we'll call a super block in terms of potential redevelopment here, and then later here as the highrises will come down, and then looking at in-fill lots along the two corrider streets, Washington Boulevard is one-way westbound and Warren Boulevard is one-way eastbound.

And these are traditional boulevards in the sense of some very fine old housing stock, however there are a lot of

with the intersperse of small townhouses or two-flats along the way.

THE COURT: How big are the mid-rises?

MR. HICKMAN: These are I believe seven stories each, and these I believe are 16.

THE COURT: Was there ever any plan to get rid of the mid-rises as well as the highrises?

MR. HICKMAN: These two are scheduled for rehab.

When we looked at this, the possibility of this one being demolished came up simply because of the type configuration. I think that's something that down the road will have to be looked at, obviously with all parties involved.

THE COURT: I just wondered whether the problems of the highrises are just unique to the highrises or whether the mid-rises have -- you're not the proper person to answer that question. Maybe Mr. Lane or somebody from his staff is.

MR. LANE: Your Honor, we had planned to rehab the mid-rise but, again, to rehab them in combination with mixing the incomes. And we, of course, use as our basis for making that judgment that it would substantially change the quality of life of people living there from Lake Park Place, where those buildings are 13 stories and they work just fine, I mean, beyond any of our expectations.

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So here we think that we can rehab the seven stories and mix the income and get a great quality of life of the

people living there.

However, the caveat is, there may, as we go through our planning for this area, come a need to look at just physically where they are. It may be, in terms of planning, better to demolish some of the mid-rise just for continuity in the low-rise replacement units.

THE COURT: Okay. Thank you.

MR. HICKMAN: And in terms of looking at the super block, in terms of just possibilities -- recognizing this is just a concept notion and obviously in a limited timeframe -- these could be two-story townhouses in a courtyard effect where you have defensible space and have, say, a fence across here. And this was just as an example of what might work and how many units might fit in various places; likewise, looking at potential future park property across from a private school and across from a public school. Those are just possibilities.

The other thing is that when these highrises were built, Maypole Avenue was vacated to create what we will call a super block.

The other possibility, or one of perhaps many others, would be to restore Maypole and again create more of a Chicago style streetscape with two-flats and with townhouses and that type of thing.

To give you a sense of how this might visualize, on a super block, taking these two-story townhouses where you have

parking in front and then this would be a private courtyard, where then one could see the children out the back door and no one could get into this landscaped space unless they came through their townhouse. Visually, this is another way to look at it, where you can look out your front door, see your car, look out the back door and see the children playing in the back.

So again, this is just a concept notion which obviously needs to be looked at closely, but the sense is that the space we have, the units that we need to replace, is adequate to redo it.

I think that's it. We just have some other photos.

So in terms of the physical planning, I think you get a sense that what we are looking at here, as far as replacement, there's adequate space to do it. As Mr. Lane mentioned, as far as the tenancy goes, looking to the mixed income element of it. The other aspect of the consent decree, as you're aware, relates to having private management involved. And then on the financial side is looking to, obviously, the money coming from the Horner consent decree, and likewise the CHA comp grant money. So that's sort of a quick overview.

Do you have any questions?

THE COURT: No. Why don't you continue.

MR. HICKMAN: Okay. I will turn it back to Dan then.

MR. LEVIN: Well, just a closing comment.

We are excited about this in terms of the potential. The scale of it is big enough so that we believe, and I think the other parties involved believe, that a good job can be done. If the scale was, you know, any small fraction of this, we would not feel the way we do.

At least in my experience, and I think anybody that's been involved in real estate development, scale is terribly important. There are enough resources here, we believe, to make the scale that's needed very feasible.

So we believe that with the cooperation of all the parties that are represented in this room, that we can have a very good planning result, a good architectural result and a very good social result. If that happens, we will be very pleased.

THE COURT: Well, going to the social result for a moment, clearly the initial thrust of Gautreaux was to provide integrated neighborhoods and to break down segregated parts of the City of Chicago. I think the thrust of the relief, and perhaps properly so because times change, has been to provide housing for poor people, sometimes putting aside the considerations of integration that were -- that was the main consideration at the time of Gautreaux.

Do you anticipate that this project will do anything toward an integrated community? Is there any hope that these units will provide integrated housing?

MR. LEVIN: Racially integrated?

THE COURT: Racially integrated, yes.

And again, when we talk about racial integration, we are not talking about racial integration as we talked about it in the '60s, black and white; we are talking about a much more diverse population, Hispanics and --

MR. LANE: Right.

THE COURT: -- Asians.

MR. LANE: Your Honor, I have always had a dream about what could happen with these God awful places and have always felt that if we carry out redevelopment of public housing on the scales we are talking about here -- and remember, the overall plan is to take -- go from 1777 units up to as much as -- over 2,500 units, bringing in some upper-income families.

But the location of Horner and its proximity to the West Loop, the West Loop, I think you will see that if this is executed properly you will see racial integration occur.

And I think -- you know, the examples of why that could happen is Cabrini Green, where, you know, a block, a block and a half from Cabrini Green we have people who -- the lots are now selling at $125,000 each, vacant lots, and homes are going up in excess of a million dollars; and it is white, black, Latino.

So I think that, you know, the proximity to -- and Presidential Towers, I think you'll see people who want to have

-- live in a low-rise environment moving to take advantage of this setting.

In that SNAP area, I think you see that. They've got old manufacturing buildings that are being converted to loft living and it is already integrated. So this is just moving -- and again, we're using the concept. We have to deal with the highrises; that's a little further in, but we are using the concept, build onto your strength. And so, we are just moving forward from the western boundary.

THE COURT: Thank you.

MR. POLIKOFF: I would like Mr. Eisendrath of HUD to address the Court.

MR. EISENDRATH: Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Eisendrath.

MR. EISENDRATH: There are a number of policies of the department that this concept fits with very nicely. Secretary Cisnaros in October of '93 talked about one that has very nearly a Gautreaux policy and now a HUD policy, and I am going to read it to you: Substantially reduce racial barriers to residential mobility and enhance the ability of minorities to choose where they live through a combination of vigorous enforcement of federal fair housing laws and creative metropolitan-wide housing community development strategies. The goal is to reduce the spatial separation of race and income that characterizes America in urban areas. It's finally HUD's

policy, something that you have worked on in this Court for years.

The enforcement strategies vary from what was done in Vidor, Texas, to site neighborhood standards right here, which obviously apply. The creative strategies that we have put in place, things like moving to opportunities, which is just a national attempt to do what you have done in this Court with Gautreaux, but also now, to allow local public housing authorities to set up their own preference rule for who they admit to public housing, to allow them to bring in tenants who are working as opposed to just very low-income families. And that's relevant to making this revitalization process work here.

We believe that real choice means the opportunity to support tenants who want to leave a neighborhood, but also, to make the neighborhood where they are safer and support their choice to stay if that's what they want.

Currently in this neighborhood that's not much of a choice. These are isolated, dangerous places, where the people who live there don't have access to the rest of the city's economy. If we can make this a revitalizing area, then the choice to stay becomes a real one as well as the choice to go, but only if it truly is a revitalizing area.

We think that it can be. In fact, making this Horner development work is a priority of the secretaries, of Joe

Shuldiner, so it's a priority of the assistant secretary for public housing. It's alsom because of litigation, a priority of our litigation division. And we think that there are some unique things that make it possible here to succeed.

They are a confluence that doesn't exist in other places, the possibility of Gautreaux type opportunities to give people chances to move. The existence of those vacant highrises, which will allow -- and, frankly, the possibility of funding replacement units over there, coupled with our new ability to have working families there, means that we can house and give choices to the people who are there, but as well, create units that will allow an income mix in this neighborhood.

We have the track record of the Receiver and the changing nature of the community itself all to recommend this.

So in order to provide residents the choices to really enhance mobility, which doesn't exist over there, to improve safety and security in the neighborhood, to contribute to this vital community in the city, and frankly, to do our best with what are vanishing resources these days, we are very supportive of this concept.

THE COURT: You talked about security, Mr. Eisendrath. I take it the city has a plan as ambitious as its plan to revitalize the streets physically on Madison Street, a plan for law enforcement to make sure that the neighborhood stays

stable, that the potential crime problems are met, that the gang problems are confronted directly and not just reacted to.

MR. EISENDRATH: I can answer that just from my former days as an alderman, although speaking as a former alderman in a federal court is always a --

THE COURT: Well, several alderman have spoken --

MR. EISENDRATH: And I'm glad not to be in their shoes.

THE COURT: -- before they changed their residence to public housing.

(Laughter.)

MR. EISENDRATH: There is the plan for community policing that exists that is to be expanded throughout the city that, frankly, works much better in communities of the design that we're trying to go to here than it works in high-rise communities.

As for specifics of what that district is doing, I can't answer.

THE COURT: Well, it's kind of a rhetorical question because I am sure that the city would have a plan to make sure that the neighborhood doesn't regress crimewise to what it is right now.

MR. LANE: Your Honor, maybe I could just give you -- again, referring back to the experience at Lake Park Place, in three-and-a-half years since we occupied it with the mixed

income, there's literally been zero crime at Lake Park.

So, I mean, just changing the nature of the tenancy, the fact that people start to look out for each other, and raising the standards of, quite frankly, the families who are in their on public assistance, they just take a different view. They know that if -- and Lake Park is sitting a block and a half from Ida B. Wells, you know, 3600 units of some of the toughest housing in the country.

I think that, combined with our own police department and the fact we've just completed about a million-and-a-half dollar study with law enforcement people from all over the country, ex-FBI people, the Secret Service, private security people, we're -- and we are developing plans, community oriented, policing and everything else, and doing it in conjunction with the police and the new 911 station, which is in this area as well. I think we're going to have -- you've got to have a safe environment if we hope to attract one working people, and certainly if we expect to attract people of other racial and ethnic backgrounds.

THE COURT: Thank you.

Thank you, Mr. Eisendrath.

MR. POLIKOFF: Bill, do you want to say anything?

MR. WILEN: If I may just address your Honor for a couple of minutes?

THE COURT: Sure.

MR. WILEN: About five years ago the tenants at Horner came to us and asked if there was anything that we could do legally to solve or help eliminate the serious problems that these tenants were facing. As it turned out, in March of '91 a best-selling book hit the market, "There Are No Children Here", which your Honor may have read, which outlined in poignant terms the daily life of a family that lived at Horner.

Two months later the lawsuit was filed in this case on behalf of the Henry Horner Mother's Guild and tenants at the extension, the homes and the annex. What we were facing was a project, a development that everyone who looked at it felt was the worst at CHA, probably one of the worst in the nation. It had a 50 percent vacancy rate, it had gang infestation, it had serious conditions that threatened the health, lives and safety of the tenants that were living there. And this litigation was a hard-fought litigation because of the various issues and the various things that were at stake with regards to the parties, and that litigation continued for four years.

But there came a time when the parties agreed that it was in the best interest of everyone to settle. And we then embarked on a six-month or eight-month period of negotiations that have been as detailed and as complicated as anything that I have done in my 22 years of practicing law. It included dealing with the Department of Housing and Urban Development, with CHA, with Mr. Polikoff, balancing the needs of the clients

that we represented. Your Honor may have read the decree. I think you can tell the work and effort that went into it and the delicate balance that has been struck in that decree.

Our clients right now today are excited. They are very excited about the prospects that their lives are going to be improved by what the parties have done here today and what is contained in that decree. And I think that they want what we all want, which is descent housing, safe housing. They want a neighborhood they can live in that they don't have to worry about being shot on their way to school. They want good schools, they want to go to their churches, they want a quality family life and they want a neighborhood that fosters that kind of environment.

This consent decree that is before your Honor will make that possible, that it will set in motion a series of events, a series of goals, a series of really of hopeful activity that can realize the dreams that the plaintiffs have in this case.

And, therefore, I would urge you to approve it, to find that this can go forward and to let us proceed with this dream that we have.

Thank you, your Honor.

THE COURT: Thank you.

MR. LANE: Your Honor, I want to just make one last comment.

As ambitious as this seems, we still haven't talked about another element that I think is absolutely essential, and that is, how do we make sure that the people, particularly the low-income people who are in this complex, are able to somehow lift themselves up from the dependency that they are now buried in relative to welfare and other forms of government assistance.

We can no longer in this country have the government and everybody else run in, build the housing and build it at a nice profit and then walk away with the profits and the people in there still on welfare and still no businesses and -- so we're doing -- we're trying something else. But we have a backup. We're trying in the first phase to identify local groups, organizations, Near West, the one that's already working in the area, Hull House, some of the others who are close to the community, to make sure that they are joint developers and they receive some of the development fee, profits that go in here, and then they also will be managing these complexes so there will be ongoing cash flow.

So we will finally get some monies into these communities so there is something to build on that doesn't come from the government and doesn't come from charity and altruism and subsidy, because that's how we have been approaching solving the problems in innercity America, and there's not one healthy neighborhood in this country that operates on the basis

of charity and subsidy.

So we're trying something and HUD has agreed that it's worth the effort, the backup is. If it becomes too complicated, we can't get it done, then it will fall back to the Receiver and joint venture to carry out the development process. But I think we have to try.

The other thing that I want to say is that we have an obligation to raise the standards that we set for poor people in this country. And we have abdicated our responsibility to the people that we claim we want to help by saying for the last 30 years, well, we're going to give you this public housing unit and we're going to give you some food stamps and your green card and just stay out of our way, don't bother us.

Well, now we are confronted with a new congress, a new way of looking at things. And, quite frankly, rather than wringing my hands with the anxiety about what is going to happen within congress, I'm looking forward to what they are going to be able to accomplish because I think it's going to move a lot of people off of dead center. I think what would have taken us ten years to accomplish, we may be able to do now in one-fourth the time. And I think this is an indication of it.

I don't know that we would be standing here today talking about this kind of plan with money coming from HUD and with Legal Assistance Foundation and the tenants reaching

agreement with CHA if the specter of the absence of dollars that are now available were not there.

So I think that this is a -- it is a tremendous opportunity to really upgrade the lives of these tenants.

And one of the other things that we're doing, we have hired Hull House and United Charities to assess every family that goes into this new environment because we know that they are going to bring all kinds of baggage with them. And I'm not saying any more here that I haven't said to the tenants. They do have people in their family that are on drugs and people with mental problems and health problems and all other kind of problems. We've spent the last two-and-a-half years working with the government's office talking about how we target and focus resources to help families, lift them out of that state of dependency. That is, in my opinion, the more critical part of this program.

THE COURT: How about job assistance and vocational training? Is that --

MR. LANE: That's absolutely a part of it, and daycare. You know, when we find them jobs -- and we have been working with Chicago United and they have committed to 300 jobs, and we are working on transportation programs because I also don't believe we are going to reindustrialize innercity Chicago.

The jobs are out in the suburbs and they are in other

places and we have to provide a means of transportation for people to get there. And that's not going to be building a new expressway or a new rapid transit line; they happen to be close enough to the new -- the rehabilitated Lake Street line. But we have to have a way for people to get to those jobs.

And we have a concept, and I am not prepared to talk about it now, but we think that it will work and we think we will identify the jobs, and we will be using City of Chicago job training money after we identify the job and match them up with the families in this new housing and train them to be successful in those jobs.

THE COURT: Is there a way to have a family that's in subsidized housing, that eventually does have wage earners in the home, make that transition to a paying tenant as --

MR. LANE: Absolutely. In fact, your Honor, part of the new CHA is that every unit that is redeveloped in this same kind of scheme, whether it's here or Cabrini or along the lakefront, every unit will be available on a lease purchase arrangement.

I think we have to start looking at providing incentives to people to want to do the right thing, not just sanctions. Sanctions just don't work any more. Any time kids figure they are going to die before they are 20, you know, the threat of eviction means nothing to them; but the incentive of knowing that this help is there, whether it's a drug treatment

slot, or whether it's daycare so a mother can go to job training, or whether it's just health care and mental health care, and that we will be working with them along with the rest of Chicago, because this is not just CHA's problem, to get people into jobs. Work is a critical element of this program.

THE COURT: What about the Chicago Board of Education? Have they been consulted on the project?

What are they doing, if anything, to accommodate some of the changes in the neighborhood?

MR. LANE: What we are -- we haven't talked to them specifically, your Honor, but I am chairman of something called the Cluster Initiative and we are working down by Robert Taylor and DuSable High School and feeder grammar schools on a comprehensive educational model. Argie Johnson (phonetic) and I talk regularly. We think that the changes again -- the changes in Springfield, a lot of people are worried about that, but the legislature recently approved the establishment of charter schools. We think this is the kind of neighborhood where we should be able to utilize the legislation that permits us to establish charter schools.

Public safety, education, affordable housing, quality affordable housing, and services to support that community are what is going to create not only the socioeconomic integration that we all want, but I think that the ultimate goal is to have a racially diverse community as well. I think we have it here

and I think that we're not just concentrating on bricks and mortar. It absolutely is not the answer. We have to deal with the baggage and the problems that the poor have and give them the opportunity to get on their own two feet and to do what the rest of us do in this country.

I urge you, hope you will agree with us. Thank you.

MR. POLIKOFF: Well, your Honor, you've heard the presentation as to prospects. Admittedly they are prospects, but it's a sincere presentation and a lot of parties who aren't often in the same position together believe it's a good bit.

I want to make about a half a minute of comment on a question or two that you asked and then we will wind this up.

You asked about the prospect of racial integration, obviously an appropriate question, perhaps the most appropriate question from the point of view of the Judge who's overseeing the Gautreaux case.

Well, none of the people you heard from have been smoking opium and none of them have promised you that that's going to happen, and I am certainly not. But there are some indicia.

Half a mile from here, at Ashland and Jackson -- you can drive north on Ashland and see a sign on the corner, the Jackson cross street, and that's only half a mile, the other side of United Center, luxury condominiums are for sale on that corner for $329,000.

Up in Uptown, where Phil Hickman has rehabbed a building and it's now scattered site public housing, there is literally right next-door to it, no intervening street or alley, immediately adjacent, another rehabbed building similar to the one Phil has rehabbed for the scattered site tenants, converted to luxury condominiums and the sign is out in front.

And you heard what Vince said about Cabrini Green. I mean, we know that in the right locations racial integration can happen even though we have an awful lot of low income black, including welfare, families living there.

So, I don't think that this is a chimera to tell you that there is a reasonable prospect of it happening, especially when you remind yourself, as I know you will, what Vince has said about Lake Park Place and the significance of working families being included in the mix.

And I want to emphasize to you, finally, the procedural posture that we're in. We are not asking you today to sign off on anything more than your willingness to label this a revitalizing area. We're going to come back to you when we have more information and more specific plans which will be presented to you, and on that basis, only on that basis will you make a decision as to the numbers and tell us how many ought to go in here and how many have to go outside in the general revitalizing area.

The only requirement here is that a total number of

units, public housing units, be provided for the families who have to be housed, and all the parties are of the view that one way or another, inside this area and outside this area, we can accomplish that.

You could go to 51 percent. I mean, we are not asking for a blank check, to use the phrase you referred to at the beginning. You could wind up and give us only a small number of units, and then we would have to figure out ways to put a larger number in the Gautreaux public housing area. But you won't have to decide that until the specifics are presented to you.

So, that's the pitch. If you agree, we hope you'll tell us about it now or soon and we'll draft an appropriate order. And if you don't agree, well, thank you anyway for your time.

THE COURT: Well, let me, first of all, thank you, Mr. Polikoff, and all the other representatives of CHA, HUD, the Receiver -- who's done a yeoman job, not only obviously in this project but in all the Receiver's undertakings since his appointment -- LAF and the other interested agencies.

We have really built, I think, a very historic consensus since the Gautreaux case was first filed in 1966. This case before and after the first consent decree was essentially an adversary proceeding and the adversaries changed. Sometimes the city was on the left, sometimes the

city was on the right, sometimes the federal government was on one side, sometimes on the other side.

I will say this quite frankly: There were transparent political agendas on behalf of principals in this litigation in the past. I think, in my view -- and maybe I'm becoming naive or perhaps wistful in my older years, but I think, in my view, this is a historic occasion because for the first time everybody is on the same wavelength. There is a commitment on all agencies, federal, local, private, to do something about the housing mess that we've inherited and that has festered through the years.

And not only is everybody on the same wavelength, but I think there are no hidden agendas. Or if there are hidden agendas, you've done a masterful job of hiding them from me because I can't ascertain any. And I think that really is as important as anything that has happened in the more than 30 years that Mr. Polikoff has lived with Gautreaux, and I am including the pre-filing stages as well.

Gautreaux has changed through the years, not only in terms of the changes that I've commented on but changes in society and changes in urban life.

There's no question that Gautreaux initially was a lawsuit and the consent decree was a relief in response to a segregated city. And I -- and perhaps I'm being sanguine again -- see the changes in the city. I think that economically

people of all races can live where they want to in the city, and that's an important step.

I think in spite of many problems that we have to deal with, just as we have made progress significantly in terms of urban integration or urban -- or relief from urban segregation, the problems of urban housing, putting aside racial problems, have, if anything, in my view become worse by both neglect and also because of the unfortunate monetary crunch that all federal and local governments are under these days.

To me, your proposal is one that addresses a 21st century view of the City of Chicago and its housing problems as opposed to the 1966 view that was properly the view at the time of the filing of the Gautreaux litigation.

It is important to finally admit, not only in conversation and debate but by action taken, the terrible mistake of public high-rise housing and to be doing something tangible to rectify that mistake.

I think your proposed revitalization project improves the landscape of the City of Chicago, not only physically, which you can see on the plats and plans, but also has a view of improving the quality of life in the City of Chicago. And perhaps this, if successful -- and you can't get excited about anything in Chicago unless you see it come through to fruition. But if this is successful, this could be a model for similar projects all over the city, where they are needed obviously

just as much as they are needed in the Horner area.

Although this project does not directly impact on the goals of racial integration that the Gautreaux consent decree was designed primarily to address, it does have an impact in the broad sense of doing something about the ghettoes of the City of Chicago, which I think are the source of obviously misery for those people who live in them and social excuses for others to live in a community where people of differing backgrounds, economic, social, racial and culturally, can live together. As I said before, I think it's really a 21st century view of what Gautreaux ought to be about.

And at the risk of being characterized as one of those dreaded activist judges, I would certainly consent to this project as a revitalization area and will sign an order to that effect, of course reserving the right to look at the numbers as the project comes to completion.

MR. POLIKOFF: Thank you, your Honor.

Would you be around tomorrow so we can present that order to you?

THE COURT: Yes.

MR. POLIKOFF: Okay. Thank you again for your time.

THE COURT: Thank you all for coming in. I appreciate it.

MR. POLIKOFF: Thank you, your Honor.

MARY M. GALLAGHER, CSR

(Which were all the proceedings had at the hearing of the within cause on the day and date hereof.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and partial transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

7-10-95
Date

MARY M. GALLAGHER, CSR

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
	)	
Defendants.	)	

O R D E R

This matter coming on to be heard on the presentations of the parties, and the Court having heard the same, it is hereby ordered:

1. The Court hereby designates as the Horner Revitalizing Area ("HRA) that portion of the City of Chicago that lies between Damen Avenue on the East, Western Avenue on the West, Lake Street on the North, and the Eisenhower Expressway on the South.

2. Notwithstanding any other order in this cause, the joint venture between the Receiver, previously appointed by the Court to develop scattered site public housing on behalf of the defendant, Chicago Housing Authority ("CHA"), and Chicago Metropolitan Housing Development Authority, CHA's not-for-profit development affiliate, may arrange for the development of such number of public housing units within the HRA, subject to such conditions, as may be approved and specified by further order of

the Court.

3. The Court has examined and now hereby approves Paragraphs 2.C, 8, 14 and 15 of the proposed Consent Decree in Henry Horner Mothers Guild v. CHA, 91 C 3316 (USDC N.D. Ill).

ENTER

March 9, 1995

Alexander Polikoff
Julie Elena Brown
Business and Professional People
For the Public Interest
17 East Monroe Street - #212
Chicago, Illinois 60603
312/641-5570

BPI

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or the Public Interest

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MAR 10 1995
Judge Marvin E. Aspen
U.S. District Court

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Administrative Staff

March 9, 1995

Honorable Marvin E. Aspen
United States District Court
219 South Dearborn Street
Room 1946
Chicago, Illinois 60604

Dear Judge Aspen:

We submit to you herewith a proposed order following yesterday's hearing in Gautreaux. The proposed order has been approved by counsel for all parties in both Gautreaux and Horner.

Sincerely,

Alexander Polikoff

ALP:mm
cc: All Counsel

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
	)	
Defendants.	)	

MOTION OF PLAINTIFFS

By their attorneys, Plaintiffs move the Court for the entry of a "further order," as contemplated by this Court's order of March 9, 1995, authorizing the development by the Receiver of a specific number of public housing units within the Horner Revitalizing Area, and specifying the conditions upon which such development may take place.

Respectfully submitted,

One of the Attorneys for Plaintiffs

Alexander Polikoff
Julie Elena Brown
Business and Professional People
for the Public Interest
17 East Monroe Street - #212
Chicago, Illinois 60603

RECEIVED
AUG 14 1995
Judge Marvin E. Aspen
U.S. District Court

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY and	)	
HENRY CISNEROS, Secretary of	)	(Consolidated)
Department of Housing and Urban	)	
Development,	)	
	)	
Defendants.	)	

O R D E R

This matter came on to be heard on the motion of plaintiffs, pursuant to this Court's order of March 9, 1995, which authorized public housing units to be provided within the Horner Revitalizing Area ("HRA") subject to a further order of Court specifying the number of such units and the conditions relating thereto, and which approved certain paragraphs of a proposed consent decree in Henry Horner Mothers Guild v. CHA and HUD, 91 C 3316 (USDC N.D. Ill.) ("Horner litigation"); and

The Court having heard the presentation of plaintiffs in support of their proposed further order, including advice of a Settlement Agreement in the Horner litigation, signed August 7, 1995; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the HRA respecting the appropriate number of public housing units to be

provided therein and the conditions to be made applicable thereto, and that they join in plaintiffs' motion, believing that the further order proposed by plaintiffs embodies both an appropriate number and appropriate conditions as contemplated by this Court's order of March 9, 1995; and

The Court having heard the presentations of the defendants, U. S. Department of Housing and Urban Development ("HUD") and Chicago Housing Authority ("CHA") with respect to said proposed further order; and

The Court being cognizant that the principle remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than 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 HRA if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED:

(1) In the event the five buildings owned by CHA at 2111, 2145, 2029 and 2051 West Lake Street, and at 124 North Hoyne Street, containing 466 dwelling units in the aggregate, are

demolished, the Receiver shall be free to provide within the HRA, through new construction and/or acquisition with rehabilitation, 466 replacement dwelling units, provided, however, that one-half of such replacement dwelling units are occupied by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and that such units are geographically distributed approximately evenly among replacement dwelling units, and provided further that in accordance with paragraphs 2(a) and 2(c) of a Settlement Agreement in the Horner litigation signed August 7, 1995, and subsequently approved by the Court in that litigation, of which this Court has been advised and a copy of which has been attached hereto and is hereby incorporated by reference, the parties shall be free to seek a modification of such number of replacement dwelling units to be provided within the HRA;

(2) Plaintiffs shall be free to allocate up to $20 million of the fiscal year 1995 "set-aside" available to them under the Consent Decree approved by this Court in 66 C 1460 to aid in implementing paragraph (1) of this Order, and the Receiver may build and CHA may provide on a priority basis to families who reside in the CHA developments known as Henry Horner Extension, Henry Horner Homes and Henry Horner Annex ("Horner residents"), scattered site units pursuant to paragraph (3)(b) of this Order, provided that scattered site units furnished to residents of the Henry Horner Extension shall be made available without reimbursement therefor from funding supplied under the Consent

Decree in the Horner litigation; and

(3) The CHA Tenant Selection and Assignment Plan previously approved by this Court shall be modified (a) to afford Horner residents a priority to be housed in one-half of the replacement dwelling units in the HRA as to which the income requirement specified in paragraph (1) of this Order does not apply, and to provide for occupancy of the other half of such replacement dwelling units by families whose incomes are in the range of 50-80% of the median income in the Chicago Metropolitan Area, and (b) to afford Horner residents who elect scattered site units in Phase I of the Horner Revitalization Program a priority to be housed in one-half of future scattered site units to be provided by the Receiver elsewhere than in the HRA, all upon presentation of appropriate orders therefor.

Enter:

August 14, 1995

Judge

SETTLEMENT AGREEMENT - August 4, 1995

1. The Horner plaintiffs agree to the demolition of 466 units at the two Horner Extension highrises (2111 W. Lake and 2145 W. Lake) and the three Horner Extension midrises (2029 W. Lake, 2051 W. Lake and 124 N. Hoyne). Demolition of the two Extension highrises shall commence upon approval of this Agreement by Judge Zagel on August 7, 1995, provided however that demolition shall not interfere with the heating plant for 124 N. Hoyne and 2051 W. Lake, and shall not be completed until after the tenants currently residing at 124 N. Hoyne and 2051 W. Lake are relocated pursuant to Paragraph 4 below. Demolition of the 124 N. Hoyne property will occur immediately after the current residents of 124 N. Hoyne have been relocated pursuant to Paragraph 4 below. Demolition of the other two Extension midrises shall occur once CHA has clear title to the land, construction contracts have been let, building permits secured and construction has begun on 203 or more units (see Paragraph 2(c) below) to be occupied by very low income Horner residents on the sites of 2111 W. Lake, 2145 W. Lake and 124 N. Hoyne ("Superblock B") and on sites in other areas of the Horner Revitalization Area.

2. (a) CHA agrees to provide 466 units of replacement housing to be occupied by very low-income Horner residents residing at 2051 W. Lake, 124 N. Hoyne, 2245 W. Lake, 2215 W. Lake, the Annex (if they permanently choose to leave), 1847 W. Lake, 141 W. Wolcott, and as many tenants as are feasible residing at 120 N. Hermitage/111 N. Wood. The location of these units, and the type of units (Section 8, scattered-site or near west side) shall be

determined in accordance with the already completed vote of the Extension residents, and in accordance with a vote by 267 additional residents of the Homes and Annex from the previously mentioned buildings, which vote shall occur within one hundred twenty (120) days of the date this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. At least 233 of these very low-income units shall be located in the Horner Revitalization Area. If more than 50% of the Homes/Annex residents elect near west side replacement housing, the parties will negotiate as provided in Paragraph 2 (c) below respecting the accommodation of additional Horner families in the Horner Revitalization Area. The parties understand that 233 or more units for working families (i.e., low income public housing families with incomes between 50% and 80% of area median income) also shall be included in the Horner Revitalization Area, subject to further negotiations by the parties after review of income and other data relating to working families already living in the Horner Revitalization area. The parties further understand that pursuant to an order to be entered in the Gautreaux case on August 14, 1995, 50% of all scattered-site units ready for occupancy will be made available to Horner residents who elect scattered-site units in Phase I of the Horner Revitalization Program.

(b) Funding for the 699 public housing units to be provided, assuming the Homes/Annex residents choose near west side and non-near west side replacement housing choices in the same proportions as the Extension residents, shall be provided as

follows:

(1) 466 units in the Horner Revitalization Area, consisting of 233 very low income units to be paid for by $25 million in HUD development funding, and 233 low income units to be paid for by $20 million in new Gautreaux dollars and $5 million in CHA Comprehensive Grant funding;

(2) 233 units of additional very low-income units, to be paid for with $8.3 million in Gautreaux dollars, $5 million in HUD development funding, and $9.4 million in CHA Comprehensive Grant funding, reduced however by any Section 8 units selected by Horner residents.

(c) If more than 50% of the Homes/Annex residents elect near west side replacement housing, CHA and the Gautreaux plaintiffs shall provide sufficient replacement housing for very low income Horner residents, and the parties shall negotiate the manner of providing such housing, either through additional funding for very low income and working family units, revisions to the one-for-one rule as between very low income Horner residents and low-income working families, expansion of the Horner Revitalization Area or other suitable means, all as agreed to by the Horner plaintiffs. Should additional funds be necessary, HUD will consider any application from CHA for any discretionary HUD funding that could be provided.

3. (a) CHA agrees that the Annex residents shall vote on whether they wish to remain at a rehabilitated Annex, or move to replacement housing (either on the near west side or in Section 8 or scattered-site locations). If 50% or more of the current Annex residents vote to remain at the Annex, the Annex will be rehabilitated. If less than 50% of the current Annex residents

vote to remain at the Annex, the Annex will be demolished. The vote will take place by secret ballot ninety (90) days after this Agreement is incorporated into the Horner Consent Decree and the revised Horner decree is approved by Judge Zagel pursuant to Paragraph 9 below. The vote will follow two presentations on the options:

(1) up to a 45-minute presentation by two persons from Walsh Construction\VOA, using renderings, plans, elevations, a scale model and, a model apartment, pertaining to how a rehabilitated Annex would look. The Horner Residents Committee (HRC) shall be free to work with Walsh/VOA in connection with the development of this presentation and these plans;

(2) up to a 45-minute presentation by two persons from CHA/HUD/Habitat, using renderings, plans, elevations, and other information, pertaining to scattered sites, near west side replacement options, and Section 8 housing; CHA/HUD/Habitat may also offer Annex residents one bus tour to one existing scattered site building, as agreed to by the HRC. The HRC shall be free to work with CHA/HUD/Habitat in connection with the development of this presentation and these plans.

Effective on the date this Agreement is signed, CHA shall communicate with the Annex residents only as their landlord, and CHA/HUD/Habitat/Walsh/VOA, their agents, employees and all persons acting in concert with them shall not contact any Horner Annex resident regarding any matter related to the vote. However, the CHA and the HRC will distribute the ballots and count the votes. CHA shall allow a representative of the HRC to have access to the model apartment at all times. CHA shall provide all necessary measures to prevent the vandalism of the model apartment, including use of a steel door and steel mesh screen and other materials similar to that which Construction Management is using to secure

Zagel on August 7, 1995. All moving expenses, including utility and security deposits, connection fees and reconnection fees, shall be paid by CHA from Comprehensive Grant or other appropriate funds. Additional ground rules for the relocation shall be agreed to by the plaintiffs and CHA prior to the approval of the revised Horner consent decree by Judge Zagel as provided in Paragraph 9.

5. CHA agrees to set aside a minimum of $5.0 million in Comprehensive Grant funding for interim repairs in the next year to the Homes, Extension and Annex, excluding any repairs necessary to provide temporary relocation housing pursuant to Paragraph 4 above. The use of the $5.0 million and any amounts in excess thereof shall be negotiated by plaintiffs and CHA pursuant to Paragraphs 6, 9, and 12 of the Horner Consent Decree.

6. CHA agrees to supply the Section 8 certificates utilized in Phase I which may be used in "general" or "limited" areas in the City, subject to agreement by the Horner and Gautreaux plaintiffs, CHA and HUD, provided however that the Horner plaintiffs may petition Judge Aspen if the Horner and Gautreaux plaintiffs are unable to agree.

7. CHA agrees to increase the amount for consultant fees in Paragraph 16 of the Consent Decree to $150,000 annually, provided reasonable invoices are submitted.

8. Where necessary to accommodate family housing needs, CHA and the Horner plaintiffs may agree to allow household members with children of their own to convert to principal leaseholder status and thereby obtain their own Horner Housing Certificate, provided

that the Horner plaintiffs may petition Judge Zagel to authorize such conversions if CHA and the Horner plaintiffs are unable to agree.

9. The Gautreaux plaintiffs agree to all of the above. The Gautreaux plaintiffs further agree that they shall not raise any Gautreaux issue relating to the Horner Annex, if the Annex residents vote to rehabilitate it, including any issue relating to the resulting tenant income mix. Except where otherwise provided herein this Agreement shall not go into effect until the parties agree on appropriate language incorporating the Agreement into the current Horner Consent Decree, Judge Zagel has approved the revised Horner decree after notice to the class and a fairness hearing in the Horner case, and Judge Aspen has entered an appropriate further order in the Gautreaux case pursuant to his order of March 9, 1995, which order shall make appropriate reference, as agreed to by CHA, HUD, the Horner and Gautreaux plaintiffs, to Paragraphs 2(a) and 2(c) of this Agreement. Notice shall be provided only to current residents of Horner.

10. CHA, HUD and the Horner plaintiffs agree that no further changes to Phase I of the Horner Revitalization Plan or to this Agreement will be made without the consent of the parties.

11. HUD will, subject to acceptable submissions by CHA:

(a) approve allocation of the 1995 HUD development funding and CHA Comprehensive Grant funding as provided in Paragraph 2(b)(1) and (2) above;

(b) approve the allocation of additional HUD development

funding, if any is provided, and any CHA Comprehensive Grant funding, as provided in Paragraph 2(c) above;

(c) approve, if necessary, the Annex pre-vote funding as provided in Paragraph 3(b)(1) above, and approve the Annex rehabilitation funding as provided in Paragraph 3(b)(2) above;

(d) approve all relocation funding as provided in Paragraph 4 above;

(e) approve allocation of CHA Comprehensive Grant funding as provided in Paragraph 5 above;

(f) approve allocation of the Section 8 funding as provided in Paragraph 6 above; and

(g) approve allocation of the consultant fees as provided in Paragraph 7 above.

Dated: August 7, 1995

William P. Wilen

WILLIAM P. WILEN, for the Horner plaintiffs

Thomas E. Johnson

THOMAS E. JOHNSON, for the Chicago Housing Authority

ALEXANDER POLIKOFF, for the Gautreaux plaintiffs

Linda A. Wawzenski

LINDA A. WAWZENSKI, for HUD

John Jensen

NELSON A. DIAZ, for HUD

priority, and depending upon bedroom size, precedence shall be determined, by taking into account any urgent or compelling reasons that make transfer a more immediate need in one case than another (e.g., length of travel time to and from employment, change in family size requiring a different size apartment, and other factors heretofore recognized by CHA as justifying inter-project transfers), and otherwise by date of commencement of occupancy of the apartments from which the tenants would be transferred."

3. The Plan also creates a "neighborhood" priority for 50% of the units. The remaining 25% of units are to be filled in accordance with the Plan's prescriptions for the general public housing waiting list.

4. In order to facilitate the redevelopment of CHA's Henry Horner developments and to provide current Horner residents with the replacement housing of their choice, the parties request an order from this Court granting to Horner families who elect scattered sites as their replacement housing preference in Phase I of the Horner Redevelopment Program a priority to future scattered site units that would otherwise be reserved for transfer families and to the future scattered site units that would otherwise be reserved for families on the CHA public housing waiting list.

WHEREFORE, CHA and the plaintiffs respectfully move the Court to enter the order attached hereto.

Respectfully submitted,

One of the Attorneys for CHA

One of the attorneys for Plaintiffs

Alexander Polikoff
Julie Elena Brown
Business and Professional People
for the Public Interest
17 East Monroe Street
Suite 212
Chicago, Illinois 60603
(312) 641-5570

Thomas Johnson
Chicago Housing Authority
Johnson, Jones & Snelling
36 South Wabash Avenue
Suite 1310
Chicago, Illinois 60603
(312) 578-8100

August 14, 1995

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	66 C 1459
v.	)	66 C 1460
	)	(Consolidated)
CHICAGO HOUSING AUTHORITY and HENRY CISNEROS, Secretary of Department of Housing and Urban Development,	)	
	)	
Defendants.	)	

ORDER

On motion of Plaintiffs and Chicago Housing Authority, the Chicago Housing Authority Tenant Selection and Assignment Plan approved by Order of this Court on November 24, 1969, as amended pursuant to Orders of this Court of September 12, 1983, June 9, 1989, October 1, 1990 and October 6, 1994, is hereby further amended as follows:

Residents of the Henry Horner Extension, Homes and Annex who in Phase I of the redevelopment of CHA Henry Horner developments pursuant to the Consent Decree in Henry Horner Mothers Guild, et al. v. Chicago Housing Authority, et al., No. 91 C 3316, elect scattered sites as their preference for replacement housing shall have first priority to future scattered site units that would otherwise be reserved for transfer families, and first priority to future scattered site units that would otherwise be reserved for waiting list families.

ENTER:

August 14, 1995

Judge

Alexander Polikoff
Julie Elena Brown
Business and Professional
People for the Public Interest
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603
(312) 641-5570

Thomas Johnson
Chicago Housing Authority
Johnson, Jones & Snelling
36 South Wabash Avenue
Suite 1310
Chicago, Illinois 60603
(312) 578-8100

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

DOROTHY GAUTREAUX, et al.	)	
	)	66 C 1459
Plaintiffs,	)	66 C 1460
	)	(Consolidated)
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY and HENRY CISNEROS, Secretary of Department of Housing and Urban Development,	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard on the motion of plaintiffs and defendant Chicago Housing Authority for an Order enlarging the Horner Revitalizing Area ("HRA") to include an area of approximately eight square blocks bounded by Lake Street on the North, Talman Avenue on the East, Madison Street on the South and Kedzie Avenue on the West, and the Court having heard the presentations of the parties in support of the proposed Order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that it would be difficult and undesirable to locate as many as 466 replacement public housing units within the HRA and that the proposed eight block area west of Talman would be an appropriate and desirable location for up to one hundred such replacement housing units; and

The parties having represented that the Defendant United States Department Of Housing And Urban Development, the plaintiffs in the Horner litigation, the Horner Local Advisory Council, the City of Chicago, and the Central West Community Organization, representing residents of the southern portion of the HRA, all support the proposed Order;

Now, therefore, IT IS HEREBY ORDERED:

1. The Receiver shall be free to provide within an area bounded by Lake Street on the North, Talman Avenue on the East, Madison Street on the South, and Kedzie Avenue on the West, up to one hundred units of public housing to replace units demolished in the Henry Horner Extension;

2. All conditions embodied in this Court's order of August 14, 1995, shall apply to units developed in the expanded area, including the requirement that 50% of the replacement housing dwellings are to be occupied by families whose incomes are in the range of 50-80% of the median income; and

3. The modification of the CHA Tenant Assignment Plan embodied in this Court's order of August 23, 1995, shall apply to units developed in the expanded area.

ENTER:

Judge

April 15, 1996

Minute Order Form (rev. 12/90)

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	Marvin E. Aspen	Sitting Judge if Other Than Assigned Judge	
Case Number	66 C 1459/66C1460	Date	03 Jun. 96
Case Title	Gautreaux v. CHA,etal		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "MOTION" box above]

(2) ☐ Brief in support of motion due _____

(3) ☐ Answer brief to motion due _____ Reply to answer brief due _____

(4) ☐ Ruling / ☐ Hearing on _____ set for _____ at _____

(5) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(6) ☐ Pretrial conf. ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____

(7) ☐ Trial ☐ Set for ☐ re-set for _____ at _____

(8) ☐ Bench Trial ☐ Jury Trial ☐ Hearing held and continued to _____ at _____

(9) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to
☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)

(10) ☒ [Other docket entry] Although we welcomed the presentation of Mr. Benjamin Starks during the hearing on this matter, and have considered the submissions and affidavits of the Residents for the Responsible Redevelopment of North Kenwood-Oakland Community, we decline to grant leave to appear as amicus curiae (59-1) for reasons similar to those articulated in *Gautreaux v. Kemp*, 132 F.R.D. 193 (N.D. Ill. 1990).

MGa

(11) ☐ [For further detail see ☐ order on the reverse of ☐ order attached to the original minute order form.]

☐ No notices required, advised in open court.
☐ No notices required.
☐ Notices mailed by judge's staff.
☐ Notified counsel by telephone.
☑ Docketing to mail notices.
☐ Mail AO 450 form.
☐ Copy to judge/magistrate Judge.

number of notices
date docketed
docketing dpty. initials
date mailed notice

Document #

courtroom deputy's Initials

Date/time received in central Clerk's Office

mailing d

PSA 82

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

DOROTHY GAUTREAUX, et al. Plaintiffs,	)	
vs.	)	66 C 1459 66 C 1460
CHICAGO HOUSING AUTHORITY and HENRY CISNEROS, Secretary of Department of Housing and Urban Development, Defendants.	)	(Consolidated)

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs, and Defendants Chicago Housing Authority and Department of Housing and Urban Development, for an order designating a North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having heard presentations concerning the proposed order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has

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, 47th 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 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd 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 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.

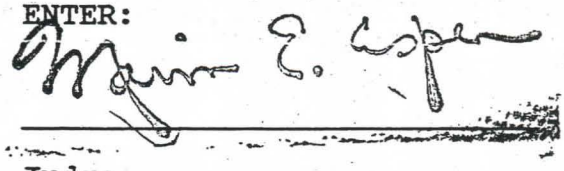
c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.

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:



Judge

Date: June 3, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Stuart Cunningham
CLERK

Office of the Clerk

Alexander L. Polikoff
Business & Professional People for the Public Interest
17 East Monroe
Suite 212
Chicago, IL 60603

Case Number: 1:66-cv-01459

Title: Gautreaux v. Chgo Housing Auth

Assigned Judge: Honorable Marvin E. Aspen

MINUTE ORDER of 6/3/96 by Hon. Marvin E. Aspen: Enter order: Joint motion for an order designating a North Lawndale-Oakland revitalizing area [61-1] and permitting development of family public housing units [61-2] is granted. Mailed notice

This docket entry was made by the Clerk on June 5, 1996

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459, 66 C 1466
	)	(Consolidated)
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
ANDREW CUOMO, Secretary of	)	
Department of Housing and	)	
Urban Development,	)	
	)	
Defendants.	)	

CHICAGO HOUSING AUTHORITY'S
EMERGENCY MOTION TO CLARIFY INJUNCTION

NOW COMES the defendant, the Chicago Housing Authority (the "CHA"), by and through its attorneys, and respectfully moves that the Court clarify that the Injunction entered in this case in 1969 does not govern HOPE VI funding and programs and that such funding and programs are not part of the relief granted to the plaintiffs in this case.

In support of its motion, the CHA states as follows:

1. On August 28, 1997, this Court denied plaintiffs' motion to expand the CHA judgment order, or alternatively to construe the order, to include CHA's Section 8 vouchers and certificates.

2. The Court declined to construe the order to include the Section 8 rent subsidy program. The Court stated that "'[b]cause the Section 8 rent subsidy program was not in existence when the judgment order was entered, CHA's Section 8 program was not part of the relief provided to the plaintiff class.'" Memorandum Opinion and Order, U.S.

Dist. LEXIS 12924 at *5, n.3 (attached to Memorandum in Support of this Motion as Exhibit A).

3. The Court's reasoning applies with equal force to HUD's HOPE VI funding and programs, which are used by the CHA to revitalize existing distressed public housing projects in Limited Areas. The federal law that created HOPE VI was enacted in 1992, long after the judgment order was entered in this case in 1969.

4. The Court's prior opinions in this case decline to extend the Injunction to reach funds spent on revitalizing existing public housing in Limited Areas.

5. The parties have never treated the CHA's applications for HOPE VI funding in 1993, 1996 and 1997, and its use of HOPE VI funds, as governed by the judgment order. It is only recently that the plaintiffs and the Receiver began to assert that this Court has jurisdiction over HOPE VI.

6. The proper interpretation of the judgment order is that it has no application to the revitalization of existing public housing in Limited Areas, the activities funded by the HOPE VI program.

7. On September 18, 1997, HUD approved the CHA's implementation plan submitted with regard to funds the CHA had been awarded as a result of its 1993 HOPE VI application for the Cabrini redevelopment project; however, unlike its approval of the application itself, HUD's approval of the implementation plan is conditioned, *inter alia*, on the plaintiffs and this Court approving the implementation plan by October 18, 1997.

8. Prior to that time, HUD had not taken a similar position and had never insisted that the requirements of the Injunction and the order appointing the Receiver (for

example, the requirement that all applications for Gautreaux funds must be made by the Receiver) applied to HOPE VI funds or applications.

9. The condition now imposed by HUD that requires plaintiffs' and the Court's approval of an implementation plan for funds that have already been awarded (without such approval) is based on HUD's own interpretation of this Court's orders and the Injunction. If this Court determines that HOPE VI is not governed by the Injunction, HUD's interpretation is not correct, and the CHA will ask HUD to remove the condition that requires court approval and plaintiffs' approval.

10. The Cabrini project cannot meet the requirements of the Injunction. There is no possibility of creating an identical number of replacement units in the General Areas of the City, a point with which the plaintiffs do not disagree. Accordingly, in order to fulfill HUD's requirement, the CHA would be forced to negotiate with plaintiffs' counsel a waiver of the proscriptions of the Injunction with respect to the entire Cabrini project.

11. The CHA will be severely prejudiced and irreparably harmed if required to negotiate with the plaintiffs' counsel to obtain their approval, and Court approval, of the Cabrini project. Plaintiffs' counsel's public housing philosophy, that public housing residents should be integrated into the General Areas, is not consistent with the public policy and funding concerns that caused Congress to create HOPE VI. HOPE VI envisions redevelopment of existing distressed public housing high-rises through the creation of replacement units on-site, as well as through other more "unconventional" methods of creating housing.

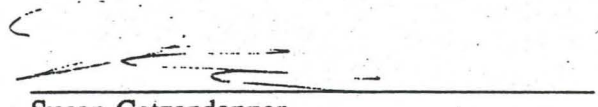
12. In the past the CHA has been forced to negotiate with plaintiffs' counsel for approval of high-rise redevelopments, such as Horner and Lakefront, that were funded in whole or in part with "Gautreaux development money." As a result, the CHA's ends up with an agreed order to present to the Court, but not the program that it would have created without having to negotiate with plaintiff's counsel. While such a situation may be required with regard to "Gautreaux development money," it cannot be required with regard to funds designed to be used for initiatives outside of the scope of the Injunction.

13. The CHA has a substantial probability of success on the merits of its Motion, based on the Court's August opinion on the Section 8 program. In addition, the CHA faces serious and irreparable harm including a sudden loss of control over major pending projects, if this matter is not resolved by October 18, 1997. All of this warrants the Court's treatment of the motion as an emergency.

WHEREFORE, the CHA respectfully asks the Court to clarify that the Injunction does not govern CHA's HOPE VI programs and funding, and that such funding and programs are not part of the relief provided to the class under the Injunction.

Dated: September 30, 1997

Respectfully submitted,



Susan Getzendanner
Nancy S. Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700

Counsel for Defendant
Chicago Housing Authority

Jerome Butler
General Counsel
Chicago Housing Authority

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459, 66 C 1466
	)	(Consolidated)
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
ANDREW CUOMO, Secretary of	)	
Department of Housing and	)	
Urban Development,	)	
	)	
Defendants.	)	

CHICAGO HOUSING AUTHORITY'S
MOTION FOR LEAVE TO FILE INSTANTER
MEMORANDUM IN EXCESS OF FIFTEEN PAGES

Defendant, Chicago Housing Authority (the "CHA"), by and through his attorneys, respectfully moves this Court for leave to file a memorandum in excess of fifteen pages in support of its Emergency Motion To Clarify Injunction ("Motion"). In support of his motion, the CHA states as follows:

1. Local General Rule 9(d) requires leave of court to file a memorandum in excess of 15 pages.

2. Due to the long and complex factual history of this case, and the multiple legal and factual issues raised in the CHA's motion, the CHA requests leave to file a memorandum, not to exceed 20 pages in length, in support of its Motion.

WHEREFORE, the CHA respectfully requests the Court to grant the CHA's Motion for Leave to File Instanter Memorandum in Excess of 15 Pages.

Dated: September 30, 1997

Respectfully submitted,

Jerome Butler
General Counsel
Chicago Housing Authority

Susan Getzendanner
Nancy S. Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700

Counsel for Defendant
Chicago Housing Authority

CERTIFICATE OF SERVICE

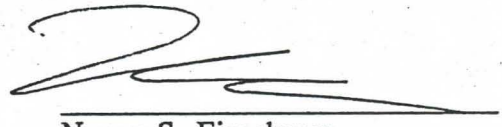
I, Nancy S. Eisenhauer, counsel for the CHICAGO HOUSING AUTHORITY, hereby certify that on Tuesday, September 30, 1997, I caused a copy of CHICAGO HOUSING AUTHORITY'S MOTION FOR LEAVE TO FILE INSTANTER MEMORANDUM IN EXCESS OF 15 PAGES to be served via hand delivery on counsel listed below:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Linda Wawzenski, Esq.
Deputy Chief, Civil Division
OFFICE OF THE U.S. ATTORNEY
219 South Dearborn Street, Suite 500
Chicago, Illinois 60604

Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON, KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604

Lewis M. Nixon, Esq.
John Jensen, Esq.
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
77 West Jackson Boulevard, Suite 2620
Chicago, Illinois 60604



Nancy S. Eisenhauer

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	66 C 1459, 66 C 1460
	)	(Consolidated)
v.	)	
	)	Hon. Marvin E. Aspen
CHICAGO HOUSING AUTHORITY and	)	
ANDREW CUOMO, Secretary of Department	)	
of Housing and Urban Development,	)	
	)	
Defendants.	)	

NOTICE OF MOTION

TO:

Alexander Polikoff, Esq.
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
17 E. Monroe Street, Suite 212
Chicago, Illinois 60603

Linda Wawzenski, Esq.
Deputy Chief, Civil Division
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Michael L. Shakman, Esq.
Barry A. Miller, Esq.
MILLER, SHAKMAN, HAMILTON,
KURTZON & SCHLIFKE
208 South LaSalle Street, Suite 1100
Chicago, Illinois 60604

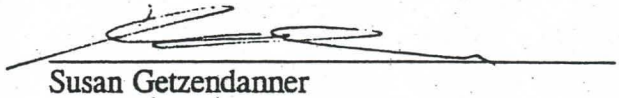
Lewis M. Nixon, Esq.
John Jensen, Esq.
U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
77 West Jackson Boulevard, Suite 2620
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on Friday, October 3, 1997 at 9:30 a.m., or as soon thereafter as this motion may be heard, we shall appear before the Honorable Marvin E. Aspen, or any Judge sitting in his place or stead, in the courtroom usually occupied by him at 219 S. Dearborn, Chicago, Illinois, and present CHICAGO HOUSING AUTHORITY'S MOTION FOR LEAVE TO FILE INSTANTER MEMORANDUM IN

EXCESS OF 15 PAGES, a copy of which is attached hereto and served upon you.

Dated: September 30, 1997

Respectfully submitted,



Jerome Butler
General Counsel
Chicago Housing Authority

Susan Getzendanner
Nancy S. Eisenhauer
Skadden, Arps, Slate, Meagher & Flom (Illinois)
333 W. Wacker Drive, Suite 2100
Chicago, Illinois 60606
(312) 407-0700

Counsel for Defendant
Chicago Housing Authority

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	66 C 1459
	)	66 C 1460
CHICAGO HOUSING AUTHORITY, et al.	)	
	)	
Defendants.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of the Plaintiffs and the Defendant Chicago Housing Authority for an order Designating a Near North Revitalizing Area and Authorizing the Acquisition of Public Housing Units Therein; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court being cognizant that the circumstances described in the Joint Motion and supporting affidavit evidence revitalizing activity in the affected census tracts such that designation as a Revitalizing Area is appropriate; and

The Court being of the view that the aforementioned circumstances evidence a substantial likelihood that plaintiff class families will be provided desegregated housing opportunities if the terms and conditions of this order are met;

Now, therefore, IT IS HEREBY ORDERED :

1. The portion of the City of Chicago described on Exhibit A hereto is designated the Near North Revitalizing Area ("NNRA");

2. CHA shall be authorized to arrange for the acquisition of leasehold interests in, and HUD shall be free to provide funding for, approximately 250 privately developed units on four (4) sites within the NNRA, known as Halsted North, Mohawk North, Larrabee North and Orchard Park (each as located on Exhibit A), for sublease to public housing families, provided that on each of the aforementioned sites, the public housing units shall account for no more than 30% of the total number of units developed on each site; and

3. None of the arguments presented in connection with the granting of this Order, nor the decision to seek or grant this Order, shall be used by the parties in connection with the pending litigation, nor shall any arguments by either party in the pending litigation be waived or estopped by the arguments presented in connection with the granting of this Order or the decision to seek or grant this Order.

ENTER: Marvin E. Aspen

11/6 Date: , 1997

THE CLERK: 66 C 1459, Gautreaux versus CHA.

MS. GETZENDANNER: Good morning, Judge.

MR. POLIKOFF: Good morning, your Honor.

THE COURT: Good morning.

Okay. This is the motion of the CHA, so I guess the CHA will go first, right?

MS. GETZENDANNER: Judge, if you have any questions, I would be happy to answer them, otherwise I am content to rely on the briefs, so long as I can go after these fellows.

THE COURT: Okay.

Anything you wish to say?

MR. POLIKOFF: I will be happy to start, your Honor.

THE COURT: All right.

MR. POLIKOFF: Thank you.

Your Honor, as we see it, CHA advances two basic arguments to support its view that the judgment order does not apply to new HOPE VI funded public housing. One is that the order only covers funding that adds to the aggregate housing stock, not replacement funding; and the other is that the judgment order's locational requirements are incompatible with HOPE VI. And if you were to rule that the order applies to new HOPE VI housing, you would effectively eject CHA from the HOPE VI ballgame.

I will address these two basic arguments momentarily and persuade you, I believe, that the judgment order clearly

does cover replacement housing based on its language, its logic and the conduct of the Court and the parties in carrying it out. And we will also show that there is no incompatibility whatsoever between the judgment order and HOPE VI.

But first I would like, in a few words, to place this HOPE VI dispute within the larger framework of the litigation.

The Fisher and Hickman affidavits attached to our brief demonstrate that a dramatic current racial imbalance still persists in CHA's housing stock. Largely thanks to the receivership and your subsequent orders, the figure has been reduced from 99 percent to the middle 80's, but we've still got a long way to go.

It is, of course, indisputable that sufficient desegregated housing opportunities for plaintiff class families have not been provided to enable anyone to say -- and CHA doesn't even assert -- that this principle remedial purpose of the judgment order has been achieved.

Under these circumstances, the law places the burden on CHA, not the plaintiffs, to show that the current racial imbalance is not traceable in a proximate way to the prior violation. That's a quote, as you may recognize, from Freeman versus Pitts, 503 U.S. at 494.

And subsequent to Freeman the Supreme Court in U.S. v. Fordice reiterated the same point, quote, that the burden of proof falls on the state, not the aggrieved plaintiffs, to

establish that it has dismantled its prior de jure segregated system.

Therefore, your Honor, with a current racial imbalance not shown by CHA to be divorced from its original constitutional wrong and as yet unachieved principle remedial purpose, the law stands flatly opposed to CHA's desire to have the judgment order interpreted in a relief-limiting way.

We've set forth some of the relevant cases at pages 13 to 17 of our written response. CHA's reply brief doesn't address those cases, doesn't even refer to CHA's continuing desegregation obligation. And I suggest, your Honor, that those cases provide the legal framework within which the CHA arguments, to which I now turn on the HOPE VI matter, must be considered.

The first of the two major CHA arguments that the judgment order should be interpreted as not applying to replacement housing, flies in the face of the unambiguous language of the judgment order. Indeed, CHA concedes that HOPE VI funded replacement housing is covered by the dwelling unit definition in the judgment order.

CHA says -- and I quote from page 6 of its reply brief -- quote, the CHA does not disagree that HOPE VI funded units would come within the definition of dwelling unit in the judgment order. It's perfectly understandable that CHA doesn't disagree. That dwelling unit definition was obviously written

by the language of the judgment order, which, as I point out, CHA itself concedes.

THE COURT: As a practical matter, is there really any difference between the two?

Let's assume a hypothetical of 100 units; CHA razes the building, puts up another building of 100 units, or, CHA takes that original building, really guts it, rehabs it and comes up with 100 units. You're saying one would be treated differently than the other?

MR. POLIKOFF: Enormous difference, your Honor. Why?

THE COURT: But as a practical matter, should there be any difference?

MR. POLIKOFF: Yes, there should be, and I will tell you why.

If CHA razes a 100-unit building and is going to build 100 new replacement units, it has the opportunity thereby to provide relief for the plaintiff class, because the 100 new units don't have to be built in the same place that the razed building stands. If you're gutting a building and rehabbing it on site, you don't have that opportunity.

So desegregation opportunities, relief for the plaintiff class, can be provided by the new 100 units. You can put 50 of them out there, 50 of them in here, under your current orders 50/50, so we would get 50 units of desegregated housing.

If, on the other hand, they are simply rehabbing a building, we could have drafted the order differently -- I don't know whether Judge Austin would have gone along -- but we made a distinction right at the outset between -- and he made a judgment order on his own, a judgment decision on his own, I am not going to tell CHA how to run its existing housing stock. They want to rehab it -- and we didn't oppose that. We never argued for that.

The distinction then is the distinction between an opportunity to provide remedial housing opportunities to the plaintiff class through newly constructed housing which has no locational requirements imposed upon it and rehabbing an existing building which obviously isn't being moved.

From the look on your face, I'm not sure you're 100 percent persuaded, but --

THE COURT: Well, following your construction, CHA may have the -- assuming that your construction is the one that will be followed, CHA may have the very difficult task of making a policy decision that would be more costly.

For example, if CHA decides that it wants to keep the 100 units in the hypothetical building that I suggested and the cost to rehab those units is more than the cost to raze the building and put up 100 new units, CHA would be in a position of having to pay that extra cost in order to keep those units at the same site.

MR. POLIKOFF: They may very well, your Honor, if the economics worked out that way; they might work out differently. But --

THE COURT: It's taxpayers' money that we're talking about, though.

MR. POLIKOFF: Yes, but if CHA has an obligation to provide desegregation housing opportunities to the plaintiff class members, which it does, that decision as to which way to go ought to include a consideration of that persisting CHA obligation to provide desegregation.

Indeed, I would argue -- not here arguing this point, but in a hypothetical situation I would argue that that obligation to provide desegregation housing for the plaintiff class should weigh very heavily in CHA's decision-making.

But we have not tried to get into that, your Honor. And if they decide to rehab under the language of the order, they are free to do it without consequences under the Gautreaux orders.

I pointed out that your Honor is being asked to interpret the order in a way that does violence to its language. For the reasons we have just discussed, it also does violence to the logic.

The purpose of the order can be served, i.e., desegregation housing opportunities provided to the plaintiff class through replacement housing just as effectively as

through incremental housing. So the purpose of the order also argues for not imposing the restrictive limitation on it that CHA is proposing. Indeed, I would say that CHA's request to you is at war not only with the language of the order, but also with its logic.

Finally, and perhaps most tellingly, the Court and the parties have already interpreted the judgment order to embrace replacement housing, starting with the Court's order of December 10, 1993. The order is cited and discussed in the briefs, but I've made extra copies for the Court and counsel. This is the order that HUD calls the nunc pro tunc order.

(Document tendered.)

MR. POLIKOFF: Do you need an extra copy?

MS. GETZENDANNER: Sure.

MR. POLIKOFF: On page 2 and 3 of this so-called nunc pro tunc order, you see that paragraph -- it's at the bottom of page 2 -- paragraph number 1 refers to CHA funding applications for the familiar 18 units in Lawndale.

But paragraph 1 over at the top of page 3 now, your Honor, also covers an additional 377 units. And two project numbers are referenced there, which are at Washington Park, which is at North Kenwood/Oakland, for 187 units, and Cabrini Green for 190, making the total of 377.

Paragraph 2 of the order in the middle of page 3 authorizes the joint venture, led by Habitat as Receiver and

previously approved by the Court, to develop those 18 Lawndale units. And then if you drop down to paragraph 4, at the bottom of page 3, you see that that authorizes the same joint venture to develop the 377 Washington Park and Cabrini units.

Now, your Honor, a couple of months before you entered this order the funding for these same 377 units had begun to come from HUD.

On September 10, 1993, HUD notified CHA that its funding application for these Washington Park and Cabrini units had been partially approved, quote -- and I emphasize this -- for replacement housing. That's in one of the letters that was delivered to the Court and counsel early last week, and I emphasize those replacement housing words. In other words, your Honor, these 377 units were being funded with true replacement, not incremental dollars.

Incidentally, the same HUD letter, which is signed by Mr. Shuldiner, who was then in Washington with HUD, also says -- and I am quoting -- these fund reservations are conditioned upon agreement of the parties to the Gautreaux litigation and approval by the Court of the entity that will develop these replacement units, end quote.

So two months later, when the Court signed the nunc pro tunc order you're holding in your lap, it was not only authorizing the joint venture to develop true replacement housing funded with replacement, not incremental dollars; it

was also satisfying the HUD requirement that the Court and the Gautreaux parties agree on the entity to do the developing of those 377 units.

By the way, your Honor, the Gautreaux-funded portion of the 466 units at Horner, those are also true replacement dollars, not incremental dollars.

Now, of course, we pointed out in our brief, referring to this nunc pro tunc order, that true replacement housing funding had already been subjected to the Court's orders.

Now, what does CHA say about that? Well, in its reply brief CHA says correctly that the 18 Lawndale units are being built with incremental funding. But CHA is then thunderously silent about the Washington Park and Cabrini Green units, thereby implying that the nunc pro tunc order relates only to incremental funding and does not embrace true replacement funding as well.

We are not favored with an observation from CHA, therefore, your Honor, on the fact that the Court, with the written approval of all the parties -- you will note that that order was consented to in writing; the signature pages are also in your lap, by all the parties. The Court and all the parties already agreed upon an exercise by the Court of its jurisdiction over true replacement housing.

Parenthetically, I want to note that this nunc pro tunc order covers not only true replacement housing in a

non-HOPE VI context, which is Washington Park in North Kenwood/Oakland, but it also covers replacement housing funding to be used in a HOPE VI project at Cabrini Green, 190 out of those 377 units.

It's true, those aren't HOPE VI dollars, but they are dollars to be used in a HOPE VI project for the same replacement housing purpose as HOPE VI dollars themselves may be used.

In conclusion, your Honor, the replacement housing horse has long since left the barn. The Court, with the written concurrence of CHA and the other parties, has already exercised judgment-ordered jurisdiction over replacement housing, specifically including replacement housing for HOPE VI projects. And you've done this not just in the nunc pro tunc order but in subsequent orders.

As to the location of those replacement units, you will note that paragraph 4 of that order refers to subsequent orders having to do with location.

In the face, your Honor, of these several orders relating to North Kenwood/Oakland, Cabrini, Henry Horner and with the language of the judgment order concededly covering replacement housing, while the rationale of the order supports such coverage, it would be totally inappropriate to now reverse field and act inconsistently with a whole series of the Court's orders as well as extensive conduct of the parties based on

those orders.

I turn to the second major CHA argument, which is the supposed incompatibility between HOPE VI and the judgment order, a point made about a dozen times -- I counted them -- in the CHA's briefs.

HOPE VI and the judgment order are said to be inherently and absolutely inconsistent. We are told that CHA could not hope to be competitive in HOPE VI awards if the judgment order applied, and that denying CHA's motion is the functional equivalent of enjoining CHA from HOPE VI participation.

Simple answer to all this: It ain't true. It is not true if one compares HOPE VI and judgment order language, and it is not true if one looks at the competitive record of CHA in HOPE VI competitions.

Let me turn to the language first. CHA says -- and I'm quoting -- HOPE VI has clear locational requirements for which proposition it cites and quotes the HOPE VI statute which provides funding for addressing, as you know, severely distressed or obsolete public housing projects, for the HOPE VI statute does say the following: No more than 500 units shall be provided to each participating city, and such units shall be located in up to three separately defined areas containing the community's most severely distressed projects, including family high-rise projects, end quote. That's from the HOPE VI

statute, which is Exhibit B to CHA's brief.

And this is the locational requirement, the one I just quoted, to which CHA refers when it says we are, quote, clearly wrong in contending that HOPE VI has no locational requirements for replacement housing.

But, your Honor, this locational requirement I just quoted applies only to the 500 selected distressed or obsolete units, not to their replacement units. That's perfectly clear from the statutory, quote, such units, end quote, language that I just quoted. Just read it; you can see it.

Moreover, the same statute specifically says replacement housing may include tenant-based Section 8, which, of course, can be located anywhere.

Now, if there were any doubt about the statutory language point I am making, which there is not, there is a HUD HOPE VI handbook, as you know, and that would resolve the doubt.

For the guidebook says explicitly -- and the relevant pages are in the exhibits to the briefs -- that replacement housing may include, quote, construction of off-site housing, end quote, and it says not one word about where off site.

And if there were any doubt about that, under the heading Purpose of the HOPE VI Program, the guidebook includes the following quote as a purpose: Lessening concentrations of poverty by placing public housing in non-poverty neighborhoods.

Obviously the neighborhoods that contain the community's most distressed and obsolete public housing units are not likely to be non-poverty neighborhoods.

In short, your Honor, there exists no locational requirement for HOPE VI replacement housing at all, and CHA is simply wrong in implying that the locational requirement applicable to the 500 selected distressed or obsolete units applies to the replacement housing for those units.

Now, CHA then attempts to buttress this mistaken argument with a flat-out misstatement, presumably designed to show that contrary to the statutory and guidebook language, replacement housing is confined to these severely distressed neighborhoods.

Referring to each of CHA's HOPE VI applications, CHA says at page 15 of its reply brief, "All new construction was designated for neighborhoods that were in limited areas." And again, "No application called for the building of any new units in any general area."

From among many statements which demonstrate the contrary, I will refer to but one which has to do with replacement housing for Cabrini.

Here is what CHA said in its August 11, 1993 application to HUD, which is another of the letters that was delivered to Court and counsel early last week. In this letter CHA seeks HUD's approval to demolish the first building it

wanted to tear down at Cabrini. The sentence appears under the heading, quote, Location of Replacement Units, and I now quote the sentence: The proposed new units will be built on scattered sites in community areas around the Cabrini Green and in other sites throughout the Chicago metropolitan area in accordance with the consent decree and subsequent orders of the Gautreaux litigation, end quote. That statement and the others like it cannot be reconciled with CHA's reply brief assertion that all new construction was designated for limited areas.

I turn to the competitiveness issue, the other aspect of this HOPE VI judgment order alleged incompatibility. CHA won its initial HOPE VI award at the end of '93 in a nationwide competition.

Now, look at the dates of the letters I've just referred to. In August '93 CHA says, we're going to develop replacement housing in accordance with Gautreaux. In September CHA receives its first HOPE VI replacement housing funding from HUD.

Moreover, we know what HUD believes from its own lawyer's legal opinion; I'm quoting from Receiver Exhibit B. Quote, in regard to the 377 replacement units for Cabrini and Washington Park approved for funding by HUD in September of '93 and '94, the joint venture has clearly been authorized by Judge Aspen. Still quoting, we also believe that any funds under HOPE VI which go to replacement housing are currently a

Receiver responsibility. We do not believe the CHA currently has any development authority for non-elderly units, end quote.

Now, both the joint venture and the Receiver are, of course, obligated to adhere to the locational requirements of the judgment order, so HUD's understanding that HOPE VI replacement housing would be developed under Gautreaux clearly didn't render CHA uncompetitive.

It didn't render it uncompetitive at first, when it got the Cabrini award in '93, and it hasn't rendered it uncompetitive since, for subsequent to its Cabrini award CHA has received, as you know, two more HOPE VI awards: One for Robert Taylor and one for Henry Horner, ABLA.

Thus, your Honor, a HUD that believes replacement housing, including in HOPE VI projects, must be developed under Gautreaux, has awarded CHA three separate HOPE VI grants.

What is there, then, to support the competitiveness argument? In answer, your Honor, there's nothing but rhetoric.

In sum, there is no incompatibility between HOPE VI and the judgment order. And CHA has not been uncompetitive, even though HUD, not to mention CHA itself, has viewed the judgment order's locational requirements as applicable to HOPE VI public housing.

Now, before I conclude, having thus dealt with CHA's two principle arguments, I would like to address a couple of the CHA's subsidiary arguments very briefly, your Honor.

First, CHA says we haven't objected to its HOPE VI applications and, therefore, we must not ourselves believe that the judgment order covers new HOPE VI housing. And it derides our explanation; namely, that the applications covered non-housing matters as well that aren't covered by the judgment order.

Since this isn't the waiver of rights argument but an argument about what we believe, it's really not worth taking much of your time, for we have told CHA unambiguously what we believe. And I quote from our letter to CHA dated July 15, '97, which is CHA Exhibit F. Quote, it remains the Gautreaux position that court orders require the Receiver to develop all public housing units even though HOPE VI funds are used, end quote.

That is what we believe, that is what we have consistently told CHA we believe, and no tortured analysis is required to determine what we believe.

Second, CHA says in its reply brief that plaintiffs admit that the HOPE VI Cabrini project has gone forward without any involvement of the Receiver. And they add there is, quote, no dispute that the Receiver has had, quote, no role in the Cabrini HOPE VI project.

Your Honor, these assertions are simply not true. For example, among many other things, as a direct recipient from HUD of replacement housing for Cabrini, the Receiver is deeply

engaged in the development of the very first Cabrini replacement units. These are the 44 units in the Mohawk North development adjacent to Cabrini that you yourself drove right by, and they were pointed out to you in the bus tour Mr. Shuldiner took you on last year.

Now, recently Habitat submitted a public housing development proposal to HUD as Receiver for CHA -- it says it right on the cover -- for these very first replacement units in that Mohawk North development. This is the October 24th letter, also delivered to the Court and counsel last week.

These units, by the way, represent not only the first replacement unit at Cabrini, but a potentially important forward step toward mixed income housing for Gautreaux plaintiff class families because they are part of and dispersed throughout a market rate development.

Getting approval for these units from HUD is a big deal, as you can easily see by the thickness of the development proposal, which I'm not going to do anything more than show you. These are two thick volumes. (Indicating.)

The cover page, which you received as part of the letter that was given to you last week, says, CHA development proposal, Cabrini extension, replacement units, 44 units, the Habitat Company as Receiver for the Chicago Housing Authority Scattered Sites Program, two volumes to get HUD approval for those units. And it was Habitat, as Receiver, that submitted

that.

But another letter had to be sent, which was the fourth and final letter delivered to you and counsel last week. Why? Because on receipt of this huge two-volume development proposal for the 44 Mohawk North replacement units, HUD pointed out that a couple of the certifications contained in the proposal, the development proposal, were made by CHA and not by the joint venture.

You see, these first 44 units, replacement at Cabrini, are part of the original 190 units your nunc pro tunc order authorized the joint venture to develop. Under that order the joint venture, not CHA, has development authority for the units, so HUD wanted the certifications to come from the joint venture, not from CHA. And that's what was done in the second letter sent to HUD December 17, 1997. You have that letter and what was delivered last week.

The letter explicitly says, by the way, that the development proposal for these 44 units is submitted pursuant to your order of ten years ago appointing Habitat as Receiver.

So much, your Honor, for the assertions that the Cabrini HOPE VI project is going forward without any involvement of the Receiver.

A final CHA subsidiary argument seeks to draw an analogy between our current dispute here and your 1991 Kenwood/Oakland order as well as a Seventh Circuit decision in

Romney. Suffice it to say that our controversy here is about developing new public housing, something clearly covered by the judgment order, whereas the 1991 Kenwood/Oakland order involved only rehabilitation of existing housing, something not covered by the judgment order, as we discussed a few minutes ago, and the Romney model city's order involved no housing at all.

Your Honor, you will be pleased to know I am ready to conclude.

Even if in the face of the language of the judgment order, the logic of the order and the conduct of the Court and the parties under the order, you were to accept CHA's view that the judgment order doesn't cover new HOPE VI housing, it would be the responsibility of the Court, as we have argued in our briefs, to exercise its, quote, inherent capacity to adjust remedies under Freeman, 503 U.S. at 487, to see to it that the remedial possibilities offered by the new HOPE VI funded public housing aren't lost to the plaintiff class.

But given the language, the logic and the conduct of the Court and the parties that we do have, the right answer is not to reach that issue of inherent capacity to adjust remedies, but simply to deny CHA's motion.

What is really at stake here, your Honor, is neither the figment of a judgment order that fails to embrace replacement housing, nor an imagined incompatibility between the judgment order and HOPE VI.

What is really at stake is whether CHA shall be free to replace its old high-rise ghettoes with new low-rise ones and, thereby, deny Gautreaux families the remedial opportunities HOPE VI replacement housing holds out to them.

The judgment order in this case is all that prevents a CHA, whose briefs don't even mention its desegregation obligations, from once again taking great swaths of Chicago neighborhoods and thousands of families who have not yet received the relief they are entitled to, down the old familiar path of least resistance to hyper-segregation and concentrated poverty.

Happily, your Honor, the judgment order by reason of its language, its logic and your enforcement orders entered with the concurrence of all the parties, does stand in the way.

I thank you.

THE COURT: Thank you, Mr. Polikoff.

Before -- yes, Mr. Shakman, you want to say something on behalf of the Receiver?

MR. SHAKMAN: Yes. On behalf of the Receiver, if you would like to hear a little bit, we had some comments.

THE COURT: Sure.

MR. SHAKMAN: Really three points, your Honor.

First, Mr. Levin, who's present in court today and is available to answer any questions the Court may have, recognizes that he serves as the Court's agent and at the

Court's discretion. He has not sought to be and does not want to be in an adversarial relationship with anybody, but he does think to the extent he has information that bears on the issue before the Court, it's appropriate that he present that to the Court.

It's for that reason that we filed a brief on behalf of the Receiver. And in the brief we pointed out that from the beginning of the appearance on the radar screen of HOPE VI, the Receiver has taken the position that he reads the Court's order appointing the Receiver as requiring that the Receiver construct all new housing that is not elderly housing, and that that includes the HOPE VI program.

At times the CHA has agreed with that, and we have attached a letter from Mr. Eisendrath that reflects that agreement. At other times the CHA has not agreed with that, as they do not agree now.

Throughout that process Mr. Levin has asked me to emphasize his attitude has been to try to avoid unnecessary disputes with the CHA or with anyone else and to find a way of working through these problems. And he's often been able to do that by agreement with the CHA; for example, by operating under the title of development manager pursuant to an agreement with the CHA, which has permitted him to fulfill what he understands to be the obligation that he assumed when he became the Court's Receiver, and to do so in a manner that has been acceptable to

the CHA and has avoided unnecessary disputes. That's point one. I have two more points.

The second point I would like to make relates to correcting some errors that are found in the CHA's last brief that, of course, we didn't have an opportunity to respond to. Part of those issues have been addressed by Mr. Polikoff and I won't repeat what he has said. They relate to the Cabrini Green project.

But one point he didn't focus on that the Receiver has asked me to respond to, to mention, is this: The last brief filed by the CHA states in passing, but it's one of those passing comments that stings and hurts, that the Receiver has sought to extract a three percent fee solely for its work on these 44 townhouses that Mr. Polikoff just referred to.

The Receiver asked me to mention to the Court that its involvement in Cabrini Green went way beyond that. It included at least a thousand hours of effort, over a year-and-a-half in planning the redevelopment project, in hiring architects, in preparing the request for proposal that then generated ten responses.

In reviewing all of those responses and meeting with the city, with the Park District, with the Board of Education, of course with HUD, of course with the CHA, and in formulating plans and responding to a large redevelopment program, the Receiver also developed initially in Kenwood/Oakland the

concept of using rental units on a long-term lease basis for CHA resident housing, and that was then applied and that led to this 44-unit development in Mohawk North that is actually the first housing that -- new housing that Cabrini Green residents have moved into.

When it came time to build the 44 units, the Receiver's fee for that would have been $120,000 computed at the three percent rate. The CHA's brief does not mention that the Receiver offered to accept less than that and, in fact, accepted $35,000. And the brief doesn't mention that this was the first townhouse -- that the townhouse occasion was the first occasion on which the Receiver could seek to be compensated because it was the first project being built.

Perhaps this is more detail than the Court needs in connection with the present motion. I simply wanted to put it before the Court because we did not want to leave you with the impression that those inappropriate comments by the CHA, suggesting a mercenary attitude on the part of the Receiver, were accurate.

Indeed, Mr. Eisendrath and Mr. Shuldiner, both of the CHA, told the Receiver that they recognized that the Receiver was entitled to be compensated for efforts made in connection with Cabrini Green. The question was not whether but how it should be structured, out of what project funds it should come.

So then I would like to come, if I may, to the third

point that the Receiver would like me to make. And he is, as I mentioned, available in court to answer any questions the Court may have.

The third point is this: That from the Receiver's own experience in creating housing pursuant to the court order appointing him as Receiver, he has something to say about whether it is possible, as Mr. Polikoff says, or impossible, as CHA says, to provide housing that meets both the goals of HOPE VI and the goals of the Gautreaux receivership.

And what he has to say is this: If you look at the material that's attached as Exhibit B to the initial motion filed, the brief filed by CHA, it includes the guidebook published by HUD. And the guidebook makes it quite clear that the purposes of HOPE VI housing are, as Mr. Polikoff indicated, quote, tearing down the eyesores that are often identified with obsolete public housing and replacing them with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, end of quote. And that they are, quote, intended to lessen concentrations of poverty by placing public housing in non-poverty neighborhoods or by promoting mixed-income communities where public housing once stood, thereby ending the social and economic isolation of public housing residents, end of quote.

What Mr. Levin would like me to mention to the Court is that that is exactly what he has been doing in implementing

Gautreaux and in using HOPE VI funds, because ABLA and the Horner Phase II are both Receiver projects that use HOPE VI funds. So the notion of incompatibility is inconsistent with what is actually happening in the field.

And in doing that, the objective that is reflected in the HUD guidebook, which is a terribly important piece of national policy as well as Gautreaux objective, of deconcentrating and integrating public housing residents into the community so that they have an opportunity for all of the advantages that flow from that kind of deconcentration and that kind of integration, economic, educational, employment opportunities, many others -- that's precisely what the Receiver has been doing in working with the community, because there is an intensive community component in persuading communities that CHA replacement housing will be an asset to the community, in working with elected officials, in working with HUD, in working with the CHA.

The message that I have been asked to deliver, and I hope I have, is that there appears to be, to the Receiver, no incompatibility whatsoever between those two programs; that is, this Court's Gautreaux objectives and what the Receiver is actually doing in implementing Gautreaux housing, in some cases using HOPE VI funds.

If you have questions for Mr. Levin, he is available.

THE COURT: Thank you, Mr. Shakman.

Is there anybody from HUD here who wishes to address the Court?

MR. JENSEN: Good morning, your Honor. I am Jon Jensen. We did file a brief response.

THE COURT: I know you did.

MR. JENSEN: But we really had not been prepared to address this particular issue, unless you had any questions for us.

THE COURT: Well, by the fact that you have decided not to file a brief and are not prepared to address the issue, I take it that my ruling really is a non-issue as far as HUD is concerned?

MR. JENSEN: I think that is true.

I guess the only point is, we decided -- HUD decided, that is, to defer to the suggestion in CHA's original brief. In a footnote in their brief they claim that the issue was not who had development responsibility for HOPE VI funding but whether HOPE VI funded activity was subject to the basic order of the Court.

We had very definite opinions, very much reflected in Mr. Shakman's brief of the Receiver, that indeed the Receiver has all responsibility connected with the development, whether HOPE VI or otherwise.

But CHA indicated in its footnote that that was not the issue that was being presented to the Court. I think they

said that that would entail an entirely different briefing schedule and -- a motion and entirely different briefing. HUD as a department deferred to CHA's suggestion in that regard.

THE COURT: Thank you.

MR. JENSEN: Thank you.

THE COURT: Ms. Getzendanner?

(Brief pause.)

THE COURT: Let's take about a two-minute break for this case so I can call one other case and let the lawyers go on their way.

(Whereupon, the Court directed its attention to another matter on its call, after which the following proceedings were had herein:)

THE CLERK: Clerk 66 C 1459, Gautreaux versus CHA.

MS. GETZENDANNER: The CHA paid $35,000 for these two volumes. They have paid him nothing more, the Receiver.

The Receiver has no contract with respect to Cabrini Green, he has no role with respect to Cabrini Green. He did ask for a three percent fee based on the building of the townhouses, and knowledge of that was more than the work he had done for which he could be compensated. I believe that's what he said. For the work where he could not be compensated, he wanted that fee to cover that work and the CHA refused. It's that simple.

There is no role for the Receiver at Cabrini Green and

there are geographic requirements in the HOPE VI program. The whole thing talks about neighborhoods where distressed public housing exists.

If CHA were to submit an application that met the terms of the decree, it would provide 50 percent of any funds used for new construction would be used in general areas. And, Judge, it's the CHA's position that that is a non-starter. That will not be approved by HUD.

THE COURT: I think HUD has had the opportunity to speak to that point and apparently has chosen not to.

MS. GETZENDANNER: Pardon?

THE COURT: I say, HUD has had the opportunity to speak to that point and apparently has chosen not to.

MS. GETZENDANNER: There's no question that we have a letter from HUD that says that we cannot draw down the HOPE VI funds unless we get this Court's approval, and that's what drove us to file our motion. And we do not believe that the Court has jurisdiction over the HOPE VI funds.

The HUD lawyer who wrote the letter, I am told, was reprimanded for writing that letter. I don't think there's any basis for HUD's conclusion that the injunction governs HOPE VI.

They looked at the order appointing the Receiver, which is different. The Receiver has no authority if the plaintiffs have no authority. So the fact that the Receiver's order is broadly stated is not terribly relevant to what we are

raising with this Court, which is, what is the scope of this injunction.

Now, I think the best way to talk about why HOPE VI isn't covered by the injunction is to assume that it is. If HOPE VI applies to -- or, I'm sorry, if the injunction applies to HOPE VI, what will happen is that to present a competitive application to HUD we will need a waiver from this Court. We cannot submit a program that calls for 50 percent of new construction in general areas.

It's the waiver process that is the most intrusive, and we've spent a lot of time in our briefs talking about the waiver process. But here's how it goes in reality: CHA needs to get a waiver from the Court to do a HOPE VI program. That means the Court will ask us to negotiate with Mr. Polikoff, as plaintiffs' representative. And that's a perfectly appropriate thing for the Court to do, to ask the parties to sit down --

THE COURT: It's gone on for a couple decades.

MS. GETZENDANNER: Yes, no question about it. So we will sit down and negotiate.

Mr. Polikoff will begin the negotiations by first examining what neighborhood it is we're focusing on; next, what buildings do we want to demolish; next, what buildings do we want to rehabilitate; next, where are we going to build the replacement housing; and then it's going to go all the way down to tenant selection and then to all of the other miscellaneous

things that were brought to the attention of the Court by the Receiver in connection with Horner.

So the negotiation that would be required by the Court, and properly so, would bring the plaintiffs into the whole program. It's very intrusive. I don't think that their statement that all they care about is new construction -- the new construction of new units is just part of the whole. It's part of the whole program designed by CHA.

So they are going to want to negotiate from the beginning, and in order to get an agreed waiver we would have to negotiate.

Now, when CHA negotiates and they agree on a waiver and they bring it to you, they're not happy with that order. That's what they've been able to negotiate. That's not what they wanted, it's not what they hoped for, but it was what they were able to negotiate. So you would be subjecting the entire HOPE VI program to that process because you cannot expect any application to meet the HOPE VI objectives and comply with the injunction. The injunction will have to be waived.

And I think when you look at it that way, how can the injunction cover this, this whole program, which is designed to rehabilitate neighborhoods which are in limited areas? I don't -- all the social services, for example -- 20 percent of the funds have to be used for social services. I don't think you can build the units in general areas and have social services

make any difference.

The whole thing is pointing to neighborhood redevelopment and it's a new program. We cannot agree to waive the HOPE VI requirements. CHA has no power to do that.

I think when HUD was in the case this Court had a lot of authority because the HUD consent decree required them to build so many new units, but that authority is now gone. The Court can't tell HUD what to do, and I don't think the Court would want to. I think that really would interfere with the federalism concerns.

Mr. Polikoff argued in terms of HOPE VI presents an opportunity for desegregation opportunities for his class. HOPE VI does not provide a desegregation opportunity in the general areas; it simply does not. And that's what the whole injunction is tilted toward, building in general areas. It's a way to achieve integration. It's a 30-year-old way; it's not the way Congress is doing it today.

THE COURT: What about the language in the HOPE VI manual? It seems to be consistent with the aims of the plaintiffs.

MS. GETZENDANNER: Judge, think of the general areas in the City of Chicago. How can building in the few remaining general areas in the city help the reconstruction of the Robert Taylor home neighborhood? It can't. It's unconnected. It's not part of the program. It's an integrated program, it

requires demolition, rehabilitation, Section 8 certificates, building of new replacement units and social services, job training, the whole thing, all devoted to that neighborhood. And the goal is to make it an economically diverse neighborhood.

I don't think you can take a line out of a handbook and ignore the legislative history, the language of the statute, the fact that this is a new program that's supposed to reform public housing policy. It's a brand new program. It's never been before this Court before in this context directly: Does HOPE VI apply? Is it governed by the injunction?

The CHA is required under HOPE VI to work with the local government, which is the City of Chicago. There's no requirement to -- there's no opportunity to use HOPE VI funds for any remedial injunctive relief. After the Cisneros set-aside for the 350 units, Congress amended the act and said that's not going to happen again. So there really is no opportunity to use those monies for the Gautreaux remedy.

We did not respond to the cases cited in Mr. Polikoff's brief -- he made that point -- because they are general statements and totally inconsistent with the Seventh Circuit.

So if you look at the Seventh Circuit law, I don't think since alliance to end repression, which was my case -- I don't think there's been a consent decree that the Seventh

Circuit hasn't sent back for re-writing, which I think the Rockford case -- or totally rejected; they set it aside. So no consent decree has survived Seventh Circuit scrutiny.

I think there was a recent case --

THE COURT: CHA has never moved to terminate the consent decree.

MS. GETZENDANNER: Nor do we want to, Judge.

THE COURT: With your track record in the Seventh Circuit, it might be in your interest to do so.

(Laughter.)

MS. GETZENDANNER: We think that the evidentiary battle necessary to establish the grounds for changing the injunction would be very divisive for the community. You know, is there segregation, who's responsible for it, what impact does white flight have on it, what impact does any number of factors have to do with it. We don't want that fight, Judge. We don't want it for the community.

The Gautreaux remedy should stay in place. In the event future funding is made available which would permit the CHA to build housing in general areas, where we have an opportunity to use that funding for that purpose, a Gautreaux remedy will be there. Perhaps at that time we will move to vacate the decree, but there is no need to do that now.

Just as the Court held that the Section 8 certificates are not governed by this decree, there is no distinction

between that analysis and the HOPE VI funds.

We agree that the HOPE VI new construction, forgetting that it is replacement housing, that does fall within the definition of dwelling unit, no question about it. But we are asking the Court to construe the injunction in a way that's consistent with its requirements, and its requirements are geographical.

Judge Austin required the building of housing in general areas. He said, if you're going to build, build one here and three there, and now it's 50/50. And those kinds of requirements only are applicable to new housing, housing that adds to the stock.

THE COURT: How do you square that with the language that Mr. Polikoff read about replacement housing in the decree?

MS. GETZENDANNER: In the what?

THE COURT: How do you square that with the language that Judge Austin used which specifically dealt with replacement housing, the language that Mr. Polikoff read before?

MS. GETZENDANNER: I don't recall him saying that.

THE COURT: Okay.

MS. GETZENDANNER: Surely the rehabilitation process of existing housing was left to the CHA.

Mr. Polikoff, what did you say?

THE COURT: Well, he will have a chance in a minute.

MS. GETZENDANNER: I would like to respond. I just don't recall what he said.

THE COURT: I will let you respond to that later, if need be.

MS. GETZENDANNER: Okay.

I don't think that the Court should interpret the order as applying to HOPE VI because it is, in effect, an injunction against the CHA from applying for the funds. That's exactly the essence of it.

The CHA knows they're not going to get funds if you're going to build in general areas, so we can't apply. And we would suggest to the Court that that's as a result of the court order. And that raises concerns, federalism concerns, separation of power concerns, which we have addressed in our brief.

Judge, the program, the HOPE VI program, cannot be cut into pieces. It's an integrated, complex solution. Congress has said it's new, it's to reform a new way of thinking about public housing. It is clearly designed to repair neighborhoods that have been destroyed by distressed public housing.

There is no possibility that we can apply for funds and expect to use those funds for general areas.

We've gone back and forth in our briefs about who said what to whom. And again, we don't want an evidentiary battle here, but there are some things that are in the record,

including the letters Mr. Polikoff sent to you. But there are also clear indicia that plaintiffs have known for years that HOPE VI funds were not considered to be under the injunction.

On July 11, 1996, Mr. Cisneros wrote to Mr. Polikoff, and that's at Exhibit D attached to our original memorandum, and he says, as a matter of law we cannot use HOPE VI funds as a set-aside for Gautreaux. As a matter of law we can't do that. A set-aside to the Receiver is not appropriate because the statute in the first instance leaves to the public housing authority's discretion whether it wants to apply for a HOPE VI grant at all and how it would want to use the funds for which it applies.

So that's a clear statement by the then secretary of HUD that the HOPE VI money could not be used for the Gautreaux remedy, and this is after the 1993 set-aside, which did get through but which Congress then condemned with an amendment to the law. I withdraw condemned. They made sure it wasn't going to happen again.

So the plaintiffs have known. We think that their application on the Section 8 certificates is pretty positive proof that they didn't think HOPE VI was governed.

There's nothing in the record that should be binding on the CHA that their view is that the injunction covers HOPE VI funds. I don't think there's anything in Edwin Eisendrath's letter from several years ago; I don't think there's anything

in the record that should be binding on the CHA.

The CHA has taken the position since 1993 that HOPE VI funds are outside the scope of the decree.

Thank you.

THE COURT: Thank you, Ms. Getzendanner.

I have a couple of questions of Mr. Polikoff, which I will let you respond to, if you wish.

First of all, as a practical matter, assuming that the social service and job training dollars of HOPE VI are used in the area where the housing is demolished, how will the social service and job training dollars be available in the general areas? Is that a logistical problem?

MR. POLIKOFF: It isn't a problem because the objective is not one that's required or even sought. I have an example of that at Horner, which I will give you in a moment. Even though it's not a HOPE VI project, it presents the identical question you're raising.

I want to make it clear at the outset, in answering your question, that as I think is plain but it keeps getting blurred in CHA's written and oral presentations, we are not talking about all of HOPE VI funding and programs, including specifically the one you used in your question, the social service programs. We have not suggested, are not suggesting, we do not intend to suggest that your orders cover in any way the social service programs --

THE COURT: No, and I understand that completely.

MR. POLIKOFF: Okay.

THE COURT: I am just concerned about whether the persons in the new housing in the general areas will, by necessity, not have the benefit of the HOPE VI dollars for these other ancillary activities.

MR. POLIKOFF: It's up to CHA, your Honor, and I refer to the example of Horner. In Horner a vote was taken -- which is not a HOPE VI project but which CHA acknowledges in its brief in many respects is like a HOPE VI project.

The tenants were given an opportunity to express their choice with respect to the form of replacement housing, on site, in the neighborhood, in other neighborhoods, scattered site or Section 8. Roughly about half chose one, half chose the other. So half of the Horner people have been dispersed to other neighborhoods of the city.

Are the job training dollars, if there were any at Horner, all the social services activities at Horner, to follow those people to West Rogers Park? That's for CHA to decide or not to decide. I think it's pretty clear that they are not.

Indeed, there was supposed to be a family needs assessment taken under the Horner consent decree of all of the people, and my understanding is it's pretty well decided not to take such an assessment of people who have chosen to leave. But even if it is taken, not to follow up the services.

Ms. Getzendanner is right when she says there is a neighborhood focus to HOPE VI activities, and the focus on the neighborhood of the job training dollars would be perfectly appropriate.

If CHA wanted to offer any of those social services to people who moved, it would be up to them. They could do that; nothing to prevent them. We are not asserting, have not asserted, any claim by a Gautreaux on anything but the replacement housing, where it's located.

THE COURT: Okay.

Ms. Getzendanner --

MR. POLIKOFF: By the way, I want to add a footnote to what I just said. That's consistent with the language of HOPE VI. HOPE VI talks, as I quoted to you, about replacement housing going into non-poverty neighborhoods. There is not one indication in the statute or the guidebook that the HOPE VI proponent, in this case CHA, has got to follow those people into non-poverty neighborhoods with job training.

The whole theory of desegregation is that if you enable families to move into non-poverty neighborhoods, they would be forced to get into places where security is better, where access to jobs is better, where schools is better and they have a lesser need by reason of their location for social services.

THE COURT: You quoted some language earlier of Judge

Austin's that applied to replacement housing in particular. Ms. Getzendanner, I think --

MR. POLIKOFF: Yes. I think Ms. Getzendanner is -- it pains me to say this, your Honor -- right and that we were not right in this respect.

THE COURT: All right.

MR. POLIKOFF: I think what she is referring to and what you were asking about was language that I quoted from the judgment order.

THE COURT: Okay.

MR. POLIKOFF: And it referred -- it didn't use the word replacement. It did talk in terms of housing provided directly or indirectly by CHA, whether in a structure owned in whole or in part by CHA, whether or not newly constructed or not, et cetera. It did not use the word replacement.

THE COURT: It did not use the word replacement. Okay. That's fine.

It's your contention that that language embraces replacement housing, is that correct?

MR. POLIKOFF: Well, not only the language embraces it, but as I argued, that's the rational thrust of the order, because through replacement housing you can provide desegregation opportunities. But, also, that your prior orders, the nunc pro tunc and subsequent orders --

THE COURT: I understand my prior orders. I just want

to make sure we all have the same reference to Judge Austin's --

MR. POLIKOFF: When I say embraces -- answer you affirmatively by saying, yes, it's my contention it embraces replacement housing, I mean that not because it says that in so many words, but that it obviously sought to cover all kinds of housing provided by CHA which could be used to provide desegregation opportunities, and replacement housing answers that description.

THE COURT: Okay. Thank you.

MR. POLIKOFF: Thank you, your Honor.

THE COURT: Do you want to reply to either of those points, Ms. Getzendanner?

MS. GETZENDANNER: No. I'm happy to have his concession.

MR. SHAKMAN: Mr. Levin asked me if I would poke my nose in for a moment. May I?

THE COURT: Sure.

MR. SHAKMAN: He asked me to make this point, that Cabrini, Horner II, which is a HOPE VI program, and ABLA, which involves HOPE VI money, none of those required a waiver from Gautreaux to permit a HOPE VI application. He asked me to underscore that point for the Court.

Therefore, the statement that automatically you must have a Gautreaux waiver in order to implement a HOPE VI

activity, for example, in those revitalizing areas, is not correct.

And I am going to resist the urge to further debate the scope of the --

THE COURT: You don't have to debate any ancillary issues. I understand your position.

MR. POLIKOFF: Your Honor, might I make one more observation?

THE COURT: Yes.

MR. POLIKOFF: Ms. Getzendanner has repeatedly said, both today and in the briefs, they couldn't file a HOPE VI application that provided 50/50. The answer is that in your Horner order you have clearly recognized that housing on site, if done under the right conditions imposed by your orders, as at Horner, mixed income and so on, under revitalizing conditions, is an alternative way of providing desegregation opportunities to the plaintiffs. And the Horner precedent stands against the contention that the only way is to do 50/50.

THE COURT: Okay. Thank you.

MS. GETZENDANNER: Your Honor, I just make the observation that there's your orders to which we could agree -- CHA could agree to those orders. The CHA cannot agree to divert money from HOPE VI to general areas.

THE COURT: Okay. Thank you very much.

I will rule in due course and due course will be soon.

Thank you.

MR. POLIKOFF: Thank you, your Honor.

(Which were all the proceedings had at the hearing of the within cause on the day and date hereof.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and complete transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

3/8/97
Date

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 66 C 1459
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, Chief Judge:

Nearly thirty years ago, United States District Judge Richard B. Austin entered a judgment order against the Chicago Housing Authority (the CHA) with the hopes of correcting the effects of that agency's unconstitutional public housing site selection and tenant assignment procedures. *Gautreaux v. CHA*, 304 F. Supp. 736 (N.D. Ill. 1969). Blacks then made up 90% of the CHA's tenant base, but the CHA had deliberately restricted the number of blacks who could live in the four housing projects which were located in predominantly white areas, to the point where 93% to 99% of the tenants in those units were white. *Gautreaux v. CHA*, 296 F. Supp. 907, 909 (N.D. Ill. 1969). The other CHA units -- the 99 1/2 % which were located in predominantly black areas -- housed the rest of the CHA's tenants, 99% of whom were black. *See id.* at 910. This arrangement, ruled Judge Austin, violated the Fourteenth Amendment. *See id.* at 914. And in a comment worth recalling here for its relevance today, he wrote:

> It is . . . undenied that sites for the projects which have been constructed were chosen primarily to further the praiseworthy and urgent goals of low cost housing and *urban renewal*. Nevertheless, a deliberate policy to separate the races cannot be justified by the good intentions with which other laudable goals are pursued.

Id. (citing *Brown v. Board of Educ.*, 347 U.S. 483 (1954)) (emphasis added).

The building block of Judge Austin's remedial judgment order was the Dwelling Unit, "an apartment or single family residence which is to be initially made available to and occupied by a low-income, non-elderly family, subsequent to the date hereof, directly or indirectly by or through CHA." *Gautreaux*, 304 F. Supp. at 737. He barred the CHA from "authoriz[ing], approv[ing], or implement[ing] any plan for Dwelling Units" or from "seek[ing] any approval or request or accept[ing] any assistance from any government agency with respect thereto" unless the plan's Dwelling Units were located in conformity with the order's requirements. *Id.* at 738. The order mandated that the CHA erect three Dwelling Units in a General Area (i.e. areas in Cook County with a white population of 70% or more) for every one Dwelling Unit it erected in a Limited Area (i.e. areas with a minority population of 30% or more), *id.* at 738-39, though it did not *require* any new construction. This ratio was later changed from 3-to-1 to 1-to-1.

In 1993, the CHA applied for and received $50 million from the Department of Housing and Urban Development (HUD) under the auspices of the HOPE VI program (an acronym for Homeownership and Opportunity for People Everywhere). Congress created the HOPE VI program in 1992 with the goal of "empower[ing the] residents of severely distressed and obsolete public housing." S. REP. 102-356, at 70 (1992). It intended to accomplish this via a three-part plan: (1) eliminating and (in some form) replacing dilapidated public housing structures, (2) providing residents of those structures with the skills necessary to achieve self-sufficiency, and (3) instilling a sense of community activism in residents of the blighted areas. *See id.* at 71.

It is the first part which is now at issue, as the CHA believes that it must spend its HOPE VI construction funds exclusively in the "3 separately defined areas containing the community's most severely distressed projects," to which the 1992 HOPE VI appropriation refers. *See* Pub. L. No. 102-389, 106 Stat. 1579 (codified as a Note to 42 U.S.C. § 1473*l*). This would mean, of

course, that any construction of new public housing units[1] would take place in the distressed areas, which, by unfortunate circumstance, are also Limited Areas as defined by the judgment order. Recognizing that the judgment order requires equal construction in the General and Limited Areas, the CHA has asked that we "clarify" the judgment order and read it as not governing any use of HOPE VI funds.

The plaintiffs take issue with this request. They have previously pointed out to this Court that the construction of new public housing units is no longer in vogue, *see Gautreaux v. CHA*, 981 F. Supp. 1091, 1093 (N.D. Ill. 1997), and the HOPE VI money may be one of the few remaining funding sources for the construction of desegregated housing. Of course, if construction funds permanently dry up (and if the plaintiffs do not succeed in convincing us to modify the judgment order, *see, e.g., id.* at 1093-94), then this particular effort to desegregate public housing in Chicago will come to an end. We need not contemplate this possibility today, however, for the dilemma posed by the CHA -- that the HOPE VI program compels spending only in Limited Areas while the judgment order compels equal spending in General Areas -- rests on an illusion.

The 1992 HOPE VI authorization contemplates an "urban revitalization demonstration program involving major reconstruction of severely distressed or obsolete public housing projects," which is to be focused on "up to 3 separately defined areas containing the community's most severely distressed projects." Pub. L. No. 102-389. This does not, however, amount to a

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[1] The CHA attempts to draw a distinction between replacement construction -- construction which does not add to the agency's aggregate housing stock -- and wholly new construction; the CHA argues that the injunction only governs the latter. This distinction may, as the CHA claims, have great significance to other housing decisions, but the judgment order does not differentiate between reconstruction and new construction: it speaks simply of Dwelling Units "initially make available to and occupied by a low-income, non-elderly family, subsequent to the date hereof." *Gautreaux*, 304 F. Supp. at 737. Housing units constructed with HOPE VI funds obviously qualify, and the use of such funds for the ends of desegregation is in keeping with the sweeping nature of the judgment order, the terms of which are as broad as the violation which it was designed to correct.

requirement that all HOPE VI money must be spent physically within those distressed areas. One way to revitalize a distressed public housing neighborhood is to tear down some of the units there and rebuild them elsewhere, thereby lessening the concentration of public housing on the old site. *See* Pub. L. No. 104-134, 110 Stat. 1321 (the 1996 HOPE VI appropriation, providing funds for "replacement housing which will avoid or lessen concentration of very low-income families"); Pub. L. No. 104-204, 110 Stat. 2874 (the 1997 HOPE VI appropriation, providing for the same). HUD's HOPE VI Guidebook contemplates just such an approach, discussing "[p]ublic housing development (including on-site reconstruction *as well as construction of off-site housing*) funded by HOPE VI," Pls.' Br. Ex. D (Guidebook p. 1.D.1) (emphasis added), and the legislative history is in agreement, *see* S. REP. 102-356, at 73 ("The balance of the [demolished] units could be replaced through . . . traditional replacement means, including major reconstruction and *scattered-site development* [emphasis added]. . . ."). In a similar vein, the HOPE VI program also requires that some demolished public housing be replaced by Section 8 housing vouchers, *see* Pub. L. 103-124, which may be used without regard to the boundaries of the General or Limited Areas. *See* 42 U.S.C. § 1473f(r). We see no incompatibility between the HOPE VI program and the judgment order.

It is ironic that the CHA has chosen to argue that it must use the HOPE VI funds for urban renewal and to the exclusion of desegregation, for, as we observed earlier, in 1969 it attempted to characterize desegregation as a byproduct of urban renewal efforts. No matter: Congress and HUD, through HOPE VI, have afforded the CHA an opportunity both to revitalize distressed public housing neighborhoods and to desegregate public housing, and the CHA is duty-bound to vigorously pursue desegregation opportunities. *See Gautreaux*, 304 F. Supp. at 741 (judgment order Article VIII); *see also Gautreaux v. Landrieu*, 498 F. Supp. 1072, 1075 (N.D. Ill. 1980) ("Difficulty in attaining racially integrated public housing shall not be further condoned. . . . The CHA must have only one concern, housing in compliance with the repeated orders of this Court.").

We hold that the judgment order governs the CHA's use of HOPE VI funds. Accordingly, any construction of public housing in Cook County must conform to the judgment order's locational requirements. It is so ordered.

MARVIN E. ASPEN
United States District Judge

Dated 2/23/98

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	5/19/1998
CASE TITLE	Gautreaux, etal vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Receiver's emergency motion for entry of order implementing CHA's duty of cooperation.

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Motion is granted.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		number of notices
	No notices required.		
	Notices mailed by judge's staff.		date docketed
✓	Notified counsel by telephone.		
	Docketing to mail notices.		docketing deputy initials
	Mail AO 450 form.		
	Copy to judge/magistrate judge.		date mailed notice
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

Document Number

(Reserved for use by the Court)

ORDER

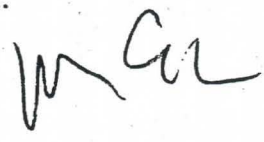
Now before us is the "Receiver's Emergency Motion for Entry of Order Implementing CHA's Duty of Cooperation." In it the Receiver asks that we order the CHA to cooperate with the Receiver and other parties in preparing and filing a 1998 HOPE VI application with HUD and to provide the Receiver with the information it needs to proceed with this project.

This motion is the outgrowth of three of our earlier decisions. In the first, issued August 14, 1987, we appointed the Receiver on the joint motion of the plaintiffs and the CHA. We gave the Receiver "all powers of CHA" with regard to the development and administration of the *Gautreaux* scattered site program, which included "all CHA non-elderly public housing development programs which may in the future be authorized by HUD during the pendency" of the *Gautreaux* litigation. In the second, issued February 23, 1998, we held that the Gautreaux "judgment order governs the CHA's use of HOPE VI funds" distributed by HUD. Our conclusion was compelled by the clear language of the judgment order and our view that there was no conflict between its requirements (as later amended) and those of the HOPE VI program. The CHA appealed this order. In the third, issued May 12, 1998, we denied the CHA's motion to stay our February 23 order pending appeal. The CHA filed today a motion to stay with the Seventh Circuit.

The CHA, in open court this morning, made clear that the basis for its objection to the Receiver's motion is its view that our February 23 order did not directly address the Receiver's status with regard to the HOPE VI program and that the Receiver's status is not obvious from our prior orders in this case. We disagree. HOPE VI is a "non-elderly public housing development program[] . . . authorized during the pendency" of the *Gautreaux* litigation, and it therefore fits entirely within the Receiver's jurisdiction. On February 23 we held that there was no reason to treat HOPE VI funds differently than any other funds for purposes of the *Gautreaux* judgment order, and we similarly see no reason to treat those funds differently for purposes of the order appointing the Receiver. Moreover, the Receiver has indicated its willingness to work with CHA to ensure that the 1998 HOPE VI proposal meets the requirements of both the HOPE VI program and the *Gautreaux* judgment order, as well as to assist in making that proposal as competitive as possible. The Receiver even indicated its interest in the CHA's thoughts on decisions which are ultimately the Receiver's responsibility. We hope that this open-minded and enthusiastic offer of cooperation sets an example for everyone involved in this case.

We denied the CHA's motion for stay pending appeal, and unless and until the Seventh Circuit issues its own stay or reverses our underlying order, the parties must comply with our orders. Our order of August 14, 1987, appointing the Receiver, obligates the CHA to cooperate with the Receiver and to provide the Receiver with the information it needs. It is now clear, if it was not before, that this means that the CHA is to coordinate its 1998 HOPE VI application with the Receiver and to provide the Receiver with the information it has requested.

It is so ordered.



Minute Order Form (06/97)

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	66 C 1459
	)	
CHICAGO HOUSING AUTHORITY, et al.	)	Hon. Marvin Aspen
	)	
Defendant.	)	

O R D E R

This matter coming on to be heard on the joint motion of the parties and the Receiver for an order designating an ABLA Revitalizing Area ("Revitalizing Area") and authorizing the development of non-elderly public housing units therein; and

The Court having heard the presentations of the parties and the Receiver respecting, and being advised that the City of Chicago supports entry of, the proposed order; and

The Court being further advised that the Receiver and the defendant, Chicago Housing Authority, in collaboration with the City of Chicago, are engaged in the preparation of an application for a FY1998 HOPE VI grant of $35 million for the ABLA Revitalizing Area to be submitted by them to the United States Department of Housing and Urban Development (HUD) on or before June 29, 1998; and

The Court also being advised that by arrangement with the plaintiffs and HUD, CHA received a HOPE VI grant of $24,483,250 in FY1996 for a portion of the Revitalizing Area, and that the

current HOPE VI application contemplates and proposes that this prior grant be utilized in conjunction with the grant currently being applied for; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be developed 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, based on the presentations of the parties and the Receiver, that subject to appropriate terms and conditions such a forecast can be made with respect to the Revitalizing Area should the Receiver and the defendant, Chicago Housing Authority (CHA), be awarded a FY1998 HOPE VI grant therefor pursuant to their proposed joint application;

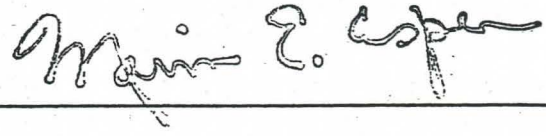
IT IS HEREBY ORDERED:

1. Effective upon advice to the Court from the parties that a FY1998 HOPE VI grant has been made to the Receiver and CHA pursuant to a joint application to be submitted by them to HUD respecting the Revitalizing Area, the Court designates as the ABLA Revitalizing Area that portion of the City of Chicago that lies within the following boundaries: on the west, Ashland Avenue; on the south, the Burlington Northern Railway tracks

immediately south of 15th Street; on the east along Racine Avenue from such Burlington Northern Railway tracks to Blue Island Avenue, northeast along Blue Island Avenue to Roosevelt Road, west along Roosevelt Road to Racine Avenue, and north along Racine Avenue to Cabrini Street; and on the north, along Cabrini Street to Loomis Street, north along Loomis Street to Polk Street, and west along Polk Street to Ashland Avenue; and

2. Subject to such terms and conditions as are specified by further orders of the Court, the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area, which is the approximate number of public housing and total residential units within the Revitalizing Area presently contemplated by such grant application, as part of an overall development including approximately 845 non-public housing units to be occupied by persons with incomes 36-120 percent of area median income, and 966 non-public housing units to be occupied by persons with incomes in excess of 120 percent of area median income.

ENTER:



June 19, 1998

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	8/12/1998
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Receiver's motion for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1988 HOPE VI orders is granted.

(11) ■ [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		number of notices
	No notices required.		
✓	Notices mailed by judge's staff.		date docketed
	Notified counsel by telephone.		
	Docketing to mail notices.		docketing deputy initials
	Mail AO 450 form.		8/12/1998
	Copy to judge/magistrate judge.		date mailed notice
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	GL mailing deputy initials

Document Number

PSA 156

(Reserved for use by the Court)

ORDER

The Receiver has moved for the entry of an order directing the CHA to comply with the 1987 receivership order and our 1998 HOPE VI orders. The plaintiffs and the City of Chicago support this motion. The CHA contests it.

The receivership order in this case gives the Receiver "all powers of CHA respecting the scattered site program necessary and incident to the development and administration of such program." It specifies that these powers include, *inter alia*, "negotiating any contracts or other documents necessary or appropriate to implement the scattered site program." It also provides that the CHA must provide the receiver with "full access to all information, records, documents, [and] files relating to the scattered site program." As we have instructed the CHA previously, compliance with our orders is not optional and we will take every necessary step to ensure the compliance of all parties.

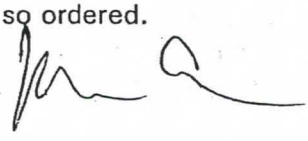
The present dispute arose when the local media reported that the CHA had reached an agreement with representatives of residents of the Cabrini-Green housing development with regard to future development on the Cabrini-Green site. This agreement, if approved, would settle a case brought by the residents against the CHA which is now pending before Judge Coar. The Receiver complains that it was not allowed to participate in the discussions which led to this agreement, and it asks that we enjoin the CHA from further unilateral non-elderly housing development activities and from implementing the Cabrini (and any other similar) deal, and that we compel the CHA to turn over control of such development to the Receiver and to disclose all information about CHA's non-elderly development activities to the Receiver.

The CHA's only meaningful objection to this request is that it has intended all along to seek a waiver of the primary injunction in this case, which, if we consented, would mean that the Receiver would have no role in development at Cabrini-Green. The problem is that *no waiver has been sought*. Without a waiver the CHA lacks the authority to unilaterally negotiate *any* contract or agreement respecting the construction of housing, for the receivership order provides that the scattered site program includes *all* non-elderly housing.

The CHA is hereby enjoined from developing or negotiating or otherwise pursuing any agreement with any person or entity regarding the development of dwelling units (a term defined in the original injunction in this case) without the full participation of the Receiver unless, of course, it has already secured a waiver for the contemplated development. By full participation we mean that the Receiver must have timely and unfettered access to "all information, records, documents, [and] files" relating to the contemplated development and that the Receiver must be given advance notice of all meetings (whether conducted in person or by any other means of communication) related to such development and allowed to attend and give his input. The Receiver, of course, possesses *all* of the CHA's development authority, so the CHA may not come to any agreement regarding development without his written consent.

As for the CHA's agreement with the Cabrini-Green representatives, the parties must now return to the drawing board and renegotiate their agreement with the full participation of the Receiver since the CHA has not yet secured a waiver of the injunction. If the CHA chooses instead to seek a waiver, it should know that we will consult the Receiver on the merits of the proposed waiver (and we will require the CHA to provide "all information, records, documents, [and] files" concerning the Cabrini-Green development and proposed waiver to the Receiver so that he may offer us intelligent and informed comments on the proposed waiver). So, the more prudent, effective, and efficient course will be to negotiate with the Receiver prior to seeking our involvement.

The Receiver's motion is granted. It is so ordered.



Minute Order Form (06/97)

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs-Appellees,	)	
	)	
v.	)	
	)	No. 66 C 1459
CHICAGO HOUSING AUTHORITY, And Executive Director Joseph Shuldiner in his official capacity,	)	Hon. Marvin E. Aspen
	)	
Defendants-Appellants.	)	

ORDER

This matter coming to be heard on the motion of plaintiffs for an order enlarging the Horner Revitalizing Area ("HRA") to include an area of approximately sixteen square blocks bounded by Madison Street on the North, Washtenaw Avenue on the East, Van Buren Street on the South and Kedzie Avenue on the West (the "Enlarged Area"); and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that the Enlarged Area is an appropriate and desirable location for approximately 60 replacement housing units; and

The Court having heard the views of the parties;

Now, therefore, IT IS HEREBY ORDERED:

1. The Receiver shall be free to develop within an area bounded by Madison Street on the North, Washtenaw

Avenue on the East, Van Buren Street on the South, and Kedzie Avenue on the West approximately 60 units of the public housing previously authorized by the Court's Order of April 15, 1996, to be developed within the expanded HRA west of Western and north of Madison;

2. All conditions embodied in this Court's order of August 14, 1995, shall apply to units developed in the Enlarged Area, including the requirement that 50% of the replacement housing dwelling units are to be occupied by families whose incomes are in the range of 50-80% of the metropolitan area median income; and

3. The modification of the CHA Tenant Assignment Plan embodied in this Court's order of August 23, 1995, shall apply to units developed in the Enlarged Area.

4. This order shall be without prejudice to any party's future request to authorize the Receiver to develop approximately 60 previously authorized additional public housing replacement units within the Horner Revitalizing Area, as enlarged, or to authorize the Receiver to develop

replacement units therein in addition to such units previously authorized.

ENTER:

Judge

October 22, 1998

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	11/4/1999
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Before us is a joint motion of the Gautreaux plaintiffs and the Receiver for entry of an order whose effect would be to dismiss a complaint filed in front of Judge Gettleman by the Concerned Residents of ABLA (CRA) and certain individuals, without prejudice to their right to intervene in the Gautreaux case. We grant the motion by reassigning the ABLA case to this Court pursuant to Local Rule 40.4 and then dismissing it without prejudice to the ABLA plaintiffs' right to seek intervention in Gautreaux.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		number of notices
	No notices required.		
✓	Notices mailed by judge's staff.		date docketed
	Notified counsel by telephone.		docketing deputy initials
	Docketing to mail notices.		11/4/1999
	Mail AO 450 form.		date mailed notice
	Copy to judge/magistrate judge.		GL
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

(Reserved for use by the Court)

ORDER

Before us is a joint motion of the *Gautreaux* plaintiffs and the Receiver for entry of an order whose effect would be to dismiss a complaint filed in front of Judge Gettleman by the Concerned Residents of ABLA (CRA) and certain individuals, without prejudice to their right to intervene in the *Gautreaux* case. HUD and the CHA support the motion. For the following reasons, we will grant the motion by reassigning the ABLA case to this Court pursuant to Local Rule 40.4 [formerly Local General Rule 2.31] and then dismissing it without prejudice to the ABLA plaintiffs' right to seek intervention in *Gautreaux*.

In 1998, the CHA and HUD, along with the *Gautreaux* Receiver, the *Gautreaux* plaintiffs, and an ABLA tenants' group called the ABLA LAC developed a plan to build new and replacement housing at the ABLA public housing developments. On June 19, 1998, we entered an order designating an ABLA "revitalizing area" – a necessary step under the *Gautreaux* decree to allow new public housing to be constructed there – and authorized the Receiver to construct new public, low income, and market rate housing in the area. The ABLA plaintiffs want Judge Gettleman to declare that the ABLA plan violates various housing, relocation, and civil rights laws, and requests an injunction requiring, *inter alia*, the development of a modified plan for the area that addresses their concerns.

Because the ABLA complaint directly attacks the relief we ordered for the ABLA area pursuant to the *Gautreaux* decree, it is appropriate to reassign the case to this Court and then dismiss it without prejudice to the ABLA plaintiffs' right to intervene. *See Hines v. Rapides Parish School Board*, 479 F.2d 762 (5th Cir. 1973). This result will allow the ABLA plaintiffs to present their complaints about the revitalization plan without "fostering a multiplicity of new lawsuits over the same complicated and emotional issues which have already once been fought out in an all too lengthy court battle." *Id.* at 765.

The ABLA plaintiffs contend that *Hines* and its progeny are not applicable here because some of them are not members of the *Gautreaux* class and because the ABLA complaint encompasses issues not covered by the *Gautreaux* decree. We do not find these arguments persuasive – *Hines* itself involved a collateral attack on a desegregation consent decree by white parents who were not members of the original plaintiff class. And although the ABLA complaint alleges new statutory violations in addition to those covered by the *Gautreaux* decree, the entirety of the complaint attacks the revitalization plan created pursuant to this Court's June 19, 1998 order. *See Davis v. Board of School Commissioners of Mobile County*, 517 F.2d 1044, 1048 (5th Cir. 1975) (ordering plaintiff to seek intervention even though he added a Title VII claim to his attack on the consent decree).

Pursuant to Local Rule 2.31, we find it appropriate to deem the ABLA case related to the *Gautreaux* action and transfer it to this Court. Reassignment will promote judicial economy by avoiding the possibility that Judge Gettleman will order relief that is inconsistent with or otherwise violative of *Gautreaux*. *See* August 12, 1998 order (enjoining a Cabrini-Green redevelopment plan created without the required input of the Receiver).

Second, there is little chance that reassignment will delay the *Gautreaux* case because the ABLA piece is still in the development phase, unlikely to move forward until the CRA challenge is resolved. And finally, all of the ABLA plaintiffs' challenges to the ABLA revitalizing plan may be addressed in a single proceeding concerning the development of the area. Any plan for the area that involves the construction of public housing must be approved by a host of entities, all of whom are parties to the *Gautreaux* litigation. It would be much more expedient to address all of the challenges to the ABLA plan now, in one forum, instead of pursuing piecemeal litigation in different courts with the intention of later moving for waivers and approval pursuant to the *Gautreaux* decree. We therefore grant the joint motion, reassign the case to this Court, and dismiss it without prejudice to the ABLA plaintiffs' right to intervene in *Gautreaux*. It is so ordered.

MOVING TO WORK DEMONSTRATION AGREEMENT

This Agreement is entered into by and between the United States of America through the Department of Housing and Urban Development ("HUD") and the Chicago Housing Authority (the "Agency"). The term of this Agreement shall begin on the Date of Execution by HUD and continue for ten (10) years unless otherwise specified herein.

WHEREAS, Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) (the "1996 Appropriations Act") establishes the Public Housing/Section 8 Moving to Work Demonstration program ("MTW"); and

WHEREAS, Section 204(a) of the 1996 Appropriations Act provides that public housing agencies ("PHAs") and the Secretary of the Department of Housing and Urban Development (the "Secretary") shall: have the flexibility to design and test various approaches for providing and administering housing assistance that reduce cost and achieve greater cost effectiveness in Federal expenditures; give incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and increase housing choices for low-income families; and

WHEREAS, HUD may permit agencies to combine funds from several HUD programs, and may exempt agencies from existing public and Indian housing and Section 8 certificate and voucher rules under Moving to Work Demonstration authority; and

WHEREAS, the Secretary has the authority to select up to thirty (30) agencies that administer the public housing and Section 8 programs to participate in the Moving to Work demonstration program; and

WHEREAS, on May 29, 1999 the City of Chicago and HUD entered into a Memorandum of Understanding (MOU)that outlined the mutual understanding and expectations regarding the transition of the CHA to local control; and

WHEREAS, as part of the MOU, the CHA agreed to submit to HUD an action plan identifying the regulatory flexibility, legislative flexibility, and resources necessary to accomplish the plan, which if acceptable, HUD would approve under the Moving to Work Demonstration authority provided by Section 204 of the 1996 Appropriations Act ; and

WHEREAS, on January 6, 2000 the CHA submitted its Plan for Transformation, List of Commitments (collectively referred to herein as "The Plan for Transformation"), Waivers and Requests, Annual Public Housing Agency Plan and Five Year Public Housing Agency Plan and accompanying documents, as its application for participation under MTW; and

WHEREAS, the Secretary has determined that the Plan for Transformation constitutes an appropriate application and satisfies and complies with the selection criteria and on that basis, has selected the CHA for participation in the MTW demonstration; and

WHEREAS, it is the aim of this demonstration to design and test innovative methods of providing housing and delivering services to low-income families in an efficient and cost effective manner, HUD and the Agency agree to fully cooperate with each other in order to make the MTW demonstration a success; and

WHEREAS, the parties desire to state the terms and conditions under which HUD will permit the Agency to participate in the Moving to Work Demonstration program as set forth in the Memorandum of Approval and Resident Protection Agreement, attached hereto.. The Memorandum of Approval and Resident Protection Agreement is hereby incorporated by reference into this Agreement.

NOW, THEREFORE, in reliance upon and in consideration of the mutual representations and obligations hereunder, the parties do agree as follows:

ARTICLE I. HUD Program Requirements and Other Federal Requirements.

A. This Agreement supersedes the terms and conditions of the ACCs and the provisions of the United States Housing Act of 1937 (the "1937 Act") and HUD requirements to the extent necessary for the Agency to implement its MTW demonstration, as approved by HUD in this Agreement. All authorizations contained in this Agreement are for the length of the demonstration only, unless otherwise specified. Except as necessary to implement the Agency's activities described in the Memorandum of Approval and Resident Protection Agreement , the Agency is

subject to the requirements of the ACCs, the 1937 Act, and other HUD requirements. In the event of a specific conflict between this Agreement and the Memorandum of Approval and Resident Protection Agreement, the Memorandum of Approval and Resident Protection Agreement shall govern. Notwithstanding anything in this Agreement, the following provisions of the 1937 Act , as otherwise applicable, shall continue to apply to the Agency and/or assistance received pursuant to the 1937 Act:

1. The terms "low-income families" and "very low-income families" shall continue to be defined by reference to Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2));

2. Section 18 of the 1937 Act (42 U.S.C. 1437p, as amended by Section 1002(d) of Public Law 104-19, Section 201(b)(1) of Public Law 104-134, and Section 201(b) of Public Law 104-202), governing demolition and disposition, shall continue to apply to public housing notwithstanding any use of the housing under MTW; and

3. Section 12 of the 1937 Act (42 U.S.C. 1437j), governing wage rates, shall apply to housing assisted under MTW unless tenant-based assistance is the only assistance received by participating families and the housing in which they reside receives no other assistance.

B. To the extent described in the Memorandum of Approval and Resident Protection Agreement , as applicable and as approved by HUD, the Agency may combine operating subsidies provided under Section 9(e) of the 1937 Act (42 U.S.C. 1437g), capital funding provided under Section 9(d) of the 1937 Act (42 U.S.C. 1437l) and assistance provided under Section 8 of the 1937 Act for the certificate and voucher programs (42 U.S.C. 1437f) to fund HUD approved MTW activities.

C. Unless otherwise provided herein, this Agreement does not apply to Section 8 assistance that is required: (a) to meet existing contractual obligations of the Agency to a third party (such as Housing Assistance Payment contracts with owners under the Agency's Section 8 certificate and voucher program); (b) for payments to other PHAs under Section 8 portability billing procedures; or (c) to meet particular purposes for which HUD has expressly committed the assistance to the Agency.

D. The Agency agrees to comply with HUD requirements governing the MTW program. Such HUD requirements include, but are not limited to management, financial, accounting, or other requirements designed to adequately track and monitor the

Agency's use of HUD assistance. Notwithstanding other provisions of this Agreement, the Agency will be required to submit reports and financial statements as necessary in forms prescribed by HUD.

E. The Agency agrees to cooperate fully with HUD and its contractors in the monitoring and evaluation of the MTW demonstration, to keep records and to submit reports and information to HUD as required of PHAs participating in the MTW program. Except as otherwise provided in this Agreement, the Agency shall submit an Annual Plan and Report as required by Section 5A of the 1937 Act (as amended), which shall include a separate section fully describing activities and uses of funding the Agency is undertaking through the MTW demonstration.

F. Pursuant to the 1996 Appropriations Act, the amount of assistance that the Agency receives for public housing operating subsidies, public housing capital grants, and Section 8 assistance for certificates and vouchers will not be diminished by the Agency's participation in the MTW program.

G. Any HUD assistance that the Agency is authorized to use in the MTW demonstration must be used in accordance with the Memorandum of Approval and Resident Protection. The Agency hereby certifies that this Agreement is subject to approval by the Agency's governing board, and that a copy of such board approval will be provided to HUD.

H. As required by the 1998 Quality Housing and Work Responsibility Act, the Agency agrees that at least seventy-five percent (75%) of new the families assisted by the Agency's Section 8 program and at least 40% of the new families under the Public Housing Program will be very low-income families. The Agency agrees to comply with the requirements of Section 16(a) (3) of the 1937 Act (as amended). The Agency agrees to continue to assist substantially the same number of eligible low-income families under MTW, and to maintain a comparable mix of families by family size, as would have been served or assisted if HUD funding sources had not been used under the MTW demonstration.

I. The Agency may adopt and implement any reasonable policies for setting rents for public housing, or rents or subsidy levels for tenant-based assistance, notwithstanding the U.S. Housing Act of 1937,subject to the Memorandum of Approval and Resident Protection Agreement.

J. If applicable to activities under the Memorandum of Approval and Resident Protection Agreement, the Agency agrees to provide HUD with any documentation

that HUD needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities and otherwise will assist HUD in complying with 24 CFR Part 50 environmental review procedures. The Agency further agrees (a) to carry out mitigating measures required by HUD or select an alternate eligible property, if permitted by HUD, and (b) not to acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds to program activities involving eligible property without HUD's approval under 24 CFR Part 50.

K. The Agency will comply with all applicable nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a), and will administer its programs and activities in a manner affirmatively to further fair housing. In particular, the Agency must make reasonable modifications and accommodations needed by applicants and residents and must make units accessible in accordance with the Needs Assessment and Transition Plan as required under Section 504 of the Rehabilitation Act of 1973 and its implementing regulations.

L. HUD will review and approve under the statutory timeframe and subject to the Memorandum of Approval and Resident Protection Agreement, the CHA's submission with the Plan for Transformation of the Designated Housing Plan and Amendments, FY 99 and 00 Capital Budgets, FY 00 Operating Budget, Tenant Selection and Assignment Plan of the Admissions and Occupancy Policy, any submissions regarding Demolition/Disposition requests, the Annual Plan template, and any submissions pursuant to Section 202 of the 1996 HUD Appropriations Act.

ARTICLE II. Revision and Termination of Agency MTW Program

A. With written HUD approval, this Agreement and the Memorandum of Approval and Resident Protection Agreement may be revised by the Agency during the course of the demonstration. The Agency shall request approval of a revision by written notification to HUD (delivered to the Office of Policy, Program, and Legislative Initiatives, or its successor, in the Office of Public and Indian Housing), accompanied by an approved board resolution, or equivalent, and certification that the Agency has satisfied all resident participation requirements. HUD will review proposed revisions within a reasonable period of time. When proposing amendments to this Agreement, the Agency will provide notice and a reasonable period within which residents may comment. The Agency will consider these comments prior to amending this Agreement.

B. HUD will cooperate with the Agency to extend successful demonstration activities beyond the term of the MTW demonstration where feasible. To the extent that MTW activities will not continue past the term of the demonstration, the Agency shall fully cooperate with HUD in developing and implementing a transition plan for terminating

the Agency's MTW demonstration program and providing for the continued administration of the public housing and Section 8 programs, as applicable.

ARTICLE III. Default.

A. Definition of Default. Use of funds subject to this Agreement for a purpose other than as authorized by this Agreement and the Statement of Authorizations; noncompliance with legislative, regulatory, or other requirements applicable to this Agreement; other material breach of this Agreement; or a material misrepresentation in the MTW Plan submission by the Agency shall be a default under this Agreement. The Agency's inability to pass PHAS and the consequences that follow shall not constitute a default.

B. HUD's Determination of Default. If HUD determines that the agency is in default, HUD will give the Agency written notice of the default and of the corrective or remedial action required or ordered by HUD.

C. Corrective or remedial actions HUD may require or order under this Agreement for Agency default include, but are not limited to the following:

1. Requiring the Agency to prepare and follow a HUD approved schedule of actions as provided in an amended Plan for Transformation for properly completing the activities approved under this Agreement;

2. Canceling or revising the affected activities, revising the budget for activities as necessary, and substituting other eligible activities;

3. Prohibiting payment or reimbursement for any MTW demonstration activities or for those activities affected by the default;

4. Requiring reimbursement by the Agency to HUD for amounts used improperly.

5. Changing the method of payment to the Agency;

6. Suspending the Agency's authority to make draws or receive or use funds for affected activities;

7. Reducing the Agency's funding in the amount affected by the default;

8. Terminating the Agency's funding as to further activities under the MTW demonstration;

9. Taking any other corrective or remedial action legally available; and

10. Taking action, as applicable, pursuant to the Section 8 and/or public housing Annual Contributions Contract.

Agency Board, except as otherwise provided herein.

CHICAGO HOUSING AUTHORITY

By _____

Its Chief Executive Officer

Date of Execution by Agency 2/6/00

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

By _____

Its Assistant Secretary _____

Date of Execution by HUD 2/6/00

WITNESSED _____
Honorable Richard Daley
City of Chicago

WITNESSED _____
Honorable Andrew Cuomo
U.S. Department of Housing and Urban Development

WITNESSED _____

Feburary 6, 2000

MEMORANDUM OF APPROVAL

RESIDENT PROTECTION AGREEMENT

MOVING TO WORK AGREEMENT

U.S. Department of Housing and Urban Development

Chicago Housing Authority

MEMORANDUM OF APPROVAL AND RESIDENT PROTECTION AGREEMENT

PART I: HUD Responses to CHA List of "Commitments, Waivers, and Requests"

HUD's responses to the requests in CHA's list of "Commitments, Waivers, and Requests", dated January 6, 2000, are as follows:

1. Ten-year program commitment. **Approved** HUD agrees that a multiyear plan is required to address the issues confronting CHA. Therefore, except as otherwise provided below, and subject to HUD's authority to terminate its agreement with CHA and pursue other remedies (as described in item 2), the term of the funding commitments and program changes granted to CHA is ten years.

2. Termination clause. **Approved.** As CHA has requested, HUD will provide CHA with notice and a reasonable opportunity to be heard before terminating its agreement with CHA. Consistent with HUD's agreements with other Moving to Work sites, HUD may terminate its agreement or any or all approvals, or take any other corrective or remedial action, if CHA defaults, or is in substantial non-compliance with the agreement or the terms of an approval or for other good cause as determined by HUD.

3. Prospective Adverse Legislation and/or Regulation. **Approved.** In the event of any regulatory or legislative change significantly affecting the terms, conditions, or funding under this agreement, CHA and HUD will re-negotiate any affected provision.

4. HUD Liaison. **Approved.** As CHA has requested, HUD will appoint a liaison as a single point of contact within a reasonable time, so that issues that arise during implementation of CHA's plan can be addressed expeditiously. CHA likewise agrees to appoint a liaison to HUD. HUD will also appoint a liaison to the CAC to ensure that HUD continues to be aware of residents' concerns.

5. Block Grant Funding. **Approved.** PHAs receive HUD funds from three basic sources: Operating Funds, Capital Funds, and Section 8 voucher funds. By law, the amount that any single PHA receives from each of these sources is determined by three separate national formulas. With certain exceptions, the law prohibits a PHA's funds from these three sources from being commingled. One of Congress's concerns was that Capital Funds not be diverted to short-term operating uses at the expense of prudent longer-term investments, or that capital or section 8 funds be diverted to subsidize inefficient public housing operating practices.

   Nevertheless, to give CHA the flexibility it has requested, HUD will permit the CHA to combine amounts from the Capital Fund and the Operating Fund into a block grant and use them for activities permitted for either the Capital Fund or the Operating Fund under the U.S Housing Act of 1937, as amended (the "1937 Act"). CHA may also

include tenant-based Section 8 assistance (including administrative fees) in the block grant, provided that CHA continues to make available the number of vouchers under contract, subject to a reasonable leasing schedule and temporary conversion for relocation or mobility counseling services as limited herein. In order to ensure adequate funding for the development needs identified in the Plan, no more than 20% of the amount allocated to CHA from the Capital Fund may be used for Operating Fund purposes. This is consistent with CHA's expressed intention of cutting its operating expenses and devoting more resources to addressing its capital improvement needs.

CHA has also requested assurances of a consistent and reliable capital development funding stream. HUD will, as requested by CHA, take several steps to establish a level funding stream for the CHA. First, HUD will issue a capital funding rule that will establish a base allocation of approximately $139 million annually for 10 years, for a total of $1.39 billion, assuming level Congressional appropriations. Second, under the rule, HUD will lock in this funding formula for 10 years irrespective of demolition. Third, to the extent permitted by law and applicable Notices of Funds Availability, HUD will set aside additional national funds in the 2000 and 2001 HOPE VI budget to provide sufficient funds to meet CHA's current projection of its total development and demolition cost for the ten year plan. Fourth, as stated in HUD's letter of November 15, 1999, HUD will make available an additional funding guarantee of at least $350 million through the Community Development Block Grant (CDBG) Section 108 authority. Total projected funds provided to the CHA for development and demolition through these steps equals $1.565 billion (not including CDBG funds). As a result, the CHA will replace or rehabilitate 25,000 public housing units.

HUD notes that the CHA is relying entirely on federal sources to fund CHA redevelopment. HUD encourages the City to bring the many resources at its disposal to the redevelopment process, including the use of low income tax credits for mixed income developments on public housing sites.

Regarding operating funds, CHA will receive level funding according to the formula described in Attachment A to this Memorandum. In addition, CHA will receive a block grant for drug elimination funds, (which is available for certain operating expenses subject to the rules of the drug elimination program) of approximately $8.5 million per year, totaling $85 million during the ten year life of the plan.

6. Relocation and Replacement Vouchers. **Approved.** To ensure that adequate relocation resources are available to CHA residents, HUD will provide a Section 8 voucher, subject to Congressional appropriations, for each public housing unit demolished for which a hard unit replacement is not provided.

7. Demolition Costs. **Approved.** In the FY 2000 budget and the proposed FY 2001 budget for the HOPE VI program, HUD has set aside sufficient funds nationally to accommodate CHA's projected 10 year need for demolition funds. HUD will provide

funding to meet CHA's request over a two-year period, subject to Congressional appropriations and to CHA submitting approvable applications for such funds that comply with the terms of the relevant notices of funding availability.

8. Relocation and Counseling Services. **Approved.** HUD agrees on the importance of relocation issues to the success of CHA's plan. Therefore, HUD will approve CHA's request to temporarily convert a portion of its Section 8 vouchers into a funding source of $12.5 million for relocation costs. At the end of five years, a voucher will revert from temporary relocation services to permanent housing.

9. Forgiveness of Debt for Emergency Repairs. **Approved.** Congress required that emergency capital funds provided by HUD to a PHA should be repaid, since such funds are in excess of the PHA's formula share. However, because of CHA's need for capital improvement resources, HUD will defer repayment of CHA's currently outstanding emergency modernization loan for a period of ten (10) years.

10. Clarification of Development Regulations Regarding Mid-Rise Buildings. **Approved.** The 1937 Act generally prohibits the development of additional public housing for families in mid-rise or high-rise structures, since these are not appropriate environments for children. However, as CHA has requested, HUD will permit CHA to explore a variety of development options, and to develop mid-rise buildings where appropriate, to be determined in consultation with the CHA and residents on a case-by-case basis with HUD approval. Such HUD approval would constitute the necessary waiver.

11. Streamlined Demolition/Disposition Processing. **Approved.** The 1937 Act requires HUD approval of demolition and disposition requests to ensure that the supply of public housing is diminished only with good reason. As CHA has requested, HUD is creating a streamlined review process for demolition and disposition for Chicago's applications and will identify a single point of contact for CHA to facilitate this process

12. Augment Section 202 Viability Test with Market Viability Program. **Approved.** Congress mandated in 1996 that certain distressed public housing developments must be demolished if the cost to rehabilitate the development is greater than a Section 8 voucher ("Section 202 Viability Rule"). At this time, no waiver of those provisions is necessary for CHA to implement its plan. Three of the five mid or low rise developments identified by CHA are not subject to Section 202 (Trumbull, Altgeld-Murray, Ickes). However, CHA notes that these properties may be considered distressed under proposed regulations implementing the 1998 Public Housing Reform Act. If under the proposed rule, these properties are subject to Section 202, HUD will defer taking action under Section 202 for one year to enable the CHA to complete the RFP process for these developments. Likewise, with respect to the other two mid-rise or low-rise developments for which CHA requested authority to undertake its market feasibility process (Cabrini Rowhouses and Dearborn), HUD will defer taking

action under Section 202 for one year to enable the CHA to complete the RFP process for these developments.

13. Use of Capital Funds for Replacement Reserves. **Approved.** Use of replacement reserves generally has been limited in the public housing program because capital needs which require immediate attention far exceed the funding available. Nevertheless, as CHA has requested, HUD will review on a transaction-by-transaction basis CHA's request to use Capital Funds for a replacement reserve in mixed-finance transactions. HUD encourages CHA to pursue a wide variety of development opportunities in seeking to provide adequate replacement housing for CHA residents.

14. Clarification of Authority to Leverage Funds. **Approved.** Subject to Congressional appropriations, CHA may pledge its future funding streams to obtain public and private financing. CHA may also mortgage its assets, subject to prior HUD approval on a case-by-case basis. HUD has an obligation to ensure that the projected benefits of such transactions exceed the risk to public housing assets.

15. Use of MTW/Capital and/or Operating Funds for Annuities. **Approved.** As CHA has requested, HUD will review on a transaction-by-transaction basis CHA's request to use Capital Funds and/or Operating Funds for annuities. Again, HUD is concerned about setting aside scarce resources that could be used for current capital needs.

16. Rent Policies. **Approved.** The 1998 Act gives public housing authorities more latitude in setting rent policy than they have had in the past. However, in recognition that public housing and tenant-based assistance is a vital resource to extremely low-income families whose ability to pay rent is severely limited, the law generally does not permit rents to exceed 30% of a family's adjusted income. HUD will permit CHA to adopt reasonable rent policies that would encourage economic self-sufficiency. Such policies would only be adopted after full public comment, including consultation with the CAC/LAC, and formal amendment to CHA's Admissions and Occupancy policy. Any policy to increase tenant rents above levels permitted by the 1998 Public Housing Reform Act is subject to HUD review and approval, as is the amended Admissions and Occupancy Policy.

17. Bi-annual Recertifications. **Approved.** CHA may implement bi-annual recertifications for seniors as described in the waiver request. This change may increase CHA administrative savings.

18. Local Lease. **Approved.** Current lease regulations are designed to protect public housing tenants against unreasonable housing authority action. CHA, however, may adopt local lease provisions to encourage better community standards. As CHA has proposed, these provisions would be subject to State and local law, would not permit no-cause evictions, and would retain a grievance process. HUD agrees with CHA that any such provisions may be adopted only after full public comment and hearing, including input from CAC/LAC, and formal amendment to CHA's Admission and

Occupancy Policy. Unless HUD subsequently approves a waiver request from CHA, lease provisions must be consistent with the minimum requirements of leases established in 24 CFR 966.

19. Designated Housing. **Approved.** HUD will review and approve CHA's plan to designate any or all senior buildings as "senior only", provided that the plan meets the standards for approval of a designated housing plan and that adequate safeguards are in place for the disabled, including protections for disabled persons who are CHA residents and those seeking housing assistance. As CHA has proposed, any such designations will not affect existing residents and must provide accessible or adaptable units in redeveloped sites in excess of the 5% required by Section 504. CHA must consult with advocates for the disabled such as the Disability Rights Action Coalition for Housing and other disability advocate groups.

20. Obligation and Expenditure Rules and Reporting Requirements. **Approved.** HUD will waive the obligation and expenditure deadlines for the use of Capital Funds and CHA will not be required to report separately on obligation and expenditure rates. In accordance with CHA's proposal, such information would be reflected in CHA's annual consolidated financial report. HUD does question CHA's perceived need for this waiver, which will allow the CHA to carry unexpended balances, given CHA's intent that the Plan will allow CHA to expend Federal funds more efficiently.

21. Allowable costs. **Approved.** In modernization and development projects, CHA will be exempt from the HUD Modernization Handbook regarding allowable costs, provided that block grant funds are used for purposes of public housing and tenant-based assistance. As CHA notes, CHA will remain subject to OMB Circular A-87. This will give CHA greater flexibility in using its block grant funds.

22. HUD Review and Approval of the CHA Procurement Policy and Authority to Use Qualification-Based Procurement for Professional Services other than A&E Services. **Approved.** Housing authority procurements are subject to government-wide Federal rules to ensure integrity in the contracting process. At the same time, HUD supports CHA's efforts to find administrative savings that can be converted into funding for housing and services. Therefore, upon receiving CHA's proposal on procurement, HUD will review and approve a policy that eliminates the need for prior HUD approval of various contracting matters and allows CHA to use qualification-based procurement for certain professional services. HUD will continue to monitor to ensure that CHA's actions remain in compliance with the approved policy. HUD approval may be subject to OMB concurrence, which HUD will assist CHA in securing. The CHA will set goals of 50% for MBE/WBE and Section 3 businesses participating in construction contracts, to the fullest extent permitted by law, and will establish a program to encourage local hiring as required by Section 3 of the Housing Act of 1968.

23. Ability to Establish Local Leased Housing Program. **Approved** Once submitted, HUD will review and approve a request from CHA to establish a local leased housing program, subject to certain minimum standards, which include but are not limited to, compliance of all units with HQS requirements and assurances from CHA that basic tenant protections and fiscal controls are in place concerning the number of families served, subsidy levels, income targeting, lease terms, rent reasonableness, and tenant rents. This waiver gives CHA the flexibility to implement a housing voucher program that meets local needs, while ensuring that the program continues to serve the neediest families in an effective and efficient manner.

24. Project-Based Section 8. **Approved.** The law limits to 15% the portion of a housing authority's Section 8 vouchers that may be used for project based assistance. This limitation is to ensure that most vouchers can be used anywhere in a community, rather than requiring voucher users to locate in specific buildings. However, HUD will allow CHA to exceed the 15% limitation on project-basing of Section 8 vouchers, provided that CHA does not project-base vouchers in CHA-owned properties, and that CHA's program does not contribute to additional concentrations in certain properties or neighborhoods of extremely low-income families. HUD will monitor this policy closely.

25. Section 8 Inspection Protocols. **Approved in Part, Denied in Part.** CHA must continue inspection protocols for buildings over five years old. However, CHA may develop a local inspection protocol for buildings that have been constructed or substantially rehabilitated within the last five years. Inspections go to the heart of protecting the health and safety of tenants in federal subsidized housing.

26. Conversion of Vouchers for Expanded Mobility Counseling. **Approved.** HUD agrees on the importance of mobility counseling to the success of CHA's plan. Therefore, HUD will approve CHA's request to temporarily convert a portion of its Section 8 vouchers into a funding source of $25 million for relocation costs. At the end of five years, a voucher will revert from temporary mobility counseling services to permanent housing.

27. Clarification of Authority under Block Grant to Create Endowment Trust for Supportive Services. **Approved.** CHA may use block grant funds to establish endowment trusts for supportive services. However, HUD again notes its concern that CHA not set aside for other purposes funds which are available to address immediate capital needs, which would counter CHA's extensive goals for redevelopment.

28. Wage Rate Monitoring. **Approved.** In order to reduce administrative costs, CHA may implement a streamlined wage-rate monitoring process, subject to compliance with Davis-Bacon wage rates and other Department of Labor requirements. The Department of HUD will periodically (not less than annually) audit wage rates on all construction jobs of less than $100,000 to ensure Davis-Bacon compliance.

29. Public Housing Assessment System (PHAS). **Denied.** The CHA has requested that CHA be exempt from the assessment system for public housing. This system provides an inspection protocol that monitors the quality and conditions of the public housing stock to ensure that minimum conditions of health and safety are met. Inspections of public housing units are the primary protection to ensure that public housing units are maintained in decent, safe, and sanitary condition as required by federal law. HUD recognizes that CHA has developed an extensive plan for reconstruction of public housing units, but this does not eliminate the obligation to provide decent, safe and sanitary housing units to residents of currently occupied units. HUD will therefore not waive the inspection system.

HUD believes that the CHA's request for a waiver of the inspection system is misplaced. Under the phase in of national, uniform inspection standards, CHA is subject only to advisory scores through March, 2001. After this time, and through March, 2003, assuming that CHA is making reasonable progress, CHA is subject to no penalty for failing to pass physical inspections for its developments, other than to produce a plan for recovery. To allay any concerns CHA may have, HUD will deem the CHA Plan for Transformation sufficient to meet the requirement for a recovery plan. CHA thus has over three years to meet the minimum standards for physical condition of occupied units. To assist CHA in meeting this goal, HUD will exempt vacant units and units scheduled for modernization from physical inspection scoring. If, at the end of that period, CHA is not able to pass PHAS, then CHA may request and HUD will give full consideration to a request for a deferral of any applicable administrative action in order to permit redevelopment and other activities under the Plan for Transformation to proceed.

PART II: CHA/HUD Resident Protection Agreement

The following is a statement of the agreements between CHA and HUD concerning tenant protection issues. Compliance with these agreements is a condition of HUD's continued approval of CHA's waiver requests.

A. Housing security

1. Section 8 Market Study: HUD will review each year the ability of the market to absorb additional voucher holders. This will include a market assessment on a scale HUD deems necessary to determine the market's ability to absorb the Section 8 voucher holders necessary for relocation, as well as an assessment of the success rates and locations of voucher users. No one will be forced to leave the city. CHA will provide any necessary information, will continue to conduct focus groups and otherwise seek to identify issues in voucher usage and will describe any steps taken to overcome barriers to the use of vouchers.

2. Relocation and Demolition Schedules: CHA will adjust its relocation and demolition schedules if the results of HUD's market review or HUD's assessment of success rates of voucher users indicate the need to do so. HUD's approval of demolition or section 202 mandatory conversion plans will contain this condition. If HUD neither has completed a market review nor has required changes based on its assessment of success rates of voucher holders, CHA may continue to proceed according to previously approved relocation and demolition schedules. Schedules for demolition of vacant buildings or for interim relocation to other public housing rather than Section 8 will not be affected by these HUD reviews.

3. Monitoring of Section 8 Contract: At HUD's direction in 1996, a private contractor took over responsibility for administration of the CHA's Section 8 program. This contract is critical to the administration of housing for almost 20,000 families. To promote additional housing opportunities, the new contract with the section 8 contractor shall continue to have both performance incentives for deconcentration and for basic sound program performance, as well as timeliness of administrative procedures including inspection of new units and rent negotiation. HUD will continue its close monitoring with respect to the contract and any amendments.

4. Fair Housing Commitment: The CHA will work with various organizations to expand landlord participation and receptiveness of neighbors, and will take special initiatives to expand choices for lead-safe housing and accessible housing (including CHA's proposed access improvement fund). In addition, CHA will partner with fair housing groups to combat discrimination against voucher holders based on race, familial status, disability or source of income. CHA has agreed to

contract for quarterly testing for fair housing compliance throughout the section 8 and public housing programs.

B. Relocation process and rights of relocatees

1. Legally Enforceable Right to Return and Lease Amendment: CHA has agreed that CHA residents to be displaced from buildings to be demolished or redeveloped will be offered public housing or Section 8 vouchers, and has agreed to various rights of Section 8 relocatees to return to public housing. CHA has indicated its commitment to adopting a legally enforceable lease amendment affirming residents' rights under the relocation process, and containing other protections regarding tenant rights. HUD's continued agreement to the waivers, approvals and other aspects of this agreement is expressly conditioned upon CHA's negotiation with the Central Advisory Council of a lease agreement containing satisfactory protections within a reasonable period..

2. Relocation Counseling: CHA's Plan for Transformation includes various protections for relocatees. As CHA has stated, families who must move from buildings to be demolished or redeveloped under the Plan for Transformation will receive extensive pre-move counseling, assistance in accessing services, Section 8 mobility counseling so that they can make informed choices and secure adequate housing, and post-move counseling. CHA also has committed to arrange for the physical move and make various move-related payments, in compliance with all applicable laws. In addition to meeting its legal obligations regarding offers of housing, final notices and other matters, CHA will provide written information and guidance at least six months prior to the date of such moves, and will begin work with each relocating family at that time. CHA also will provide at least 90days' official notice of such moves. CHA has committed to provide second-move mobility counseling to all existing Section 8 families who indicate an intention to move, or who must move for various reasons.

3. As part of these steps, CHA will conduct an information campaign in a timely fashion to dispel myths about how vouchers work (e.g., misunderstandings regarding restriction of vouchers to certain neighborhoods or automatic termination of vouchers after one year), explain what kind of support will be available to relocatees and explain relocatees' choices.

C. Reuse of sites

1. CHA has agreed that it will convene working groups to determine the future of sites where demolition will occur, which will include representatives of CHA residents and other appropriate parties, in accordance with the redevelopment process described in the Plan for Tranformationas as described in the plan in pp. 17-23. Any proposed reuse of a public housing site will be subject to HUD

approval. CHA has agreed that with the funding identified herein, its plan will result in at least approximately 25,000 public housing units.

D. Income targeting

1. HUD and CHA clarify that the income targeting requirements of the United States Housing Act of 1937 will continue to apply. The targeting requirements are that at least 40% of new admissions to public housing and 75% of new voucher recipients each year have incomes below 30% of median.

E. Applicability of deconcentration requirements

1. Nothing in this agreement shall be construed to exempt or alter applicability to CHA of any statutory or regulatory requirement for deconcentration of poverty and income mixing requirements under the 1998 Public Housing Act.

F. Appropriate Approvals Under the Gautreaux Consent Decree

1. The CHA agrees to seek all appropriate review and approval under the terms of the Consent Decree. The approvals herein are contingent on the redevelopment activities in the Plan meeting the terms of the Consent Decree.

G. Nothing in this document shall constitute a waiver of any federal law or regulation except as stated herein. Nothing in this document shall restrict the rights of the Department of HUD to review, monitor, audit or request any information necessary to ensure CHA's progress in implementing the Plan for Transformation or CHA's compliance with the agreements and approvals herein.

H. Memorialization

1. The Plan for Transformation and list of commitments waivers and constitutes an approved MTW application subject to the approvals, conditions and agreements herein. These agreements are further memorialized in the accompanying Moving to Work Agreement.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

Michael W. Dobbins
CLERK

Office of the Clerk

Alexander L. Polikoff
Business & Professional People for the Public Interest
25 East Washington Street
Suite 1515
Chicago, IL 60602

Case Number: 1:66-cv-01459

Title: Gautreaux v. Chgo Housing Auth

Assigned Judge: Honorable Marvin E. Aspen

MINUTE ORDER of 4/11/00 by Hon. Marvin E. Aspen : Joint motion to modify the North Kenwood-Oakland Revitalizing Area Order is granted. [0-1] (Entered Order). Mailed notice

This docket entry was made by the Clerk on April 12, 2000

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by ICMS, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	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 the plaintiffs, the defendant Chicago Housing Authority and the Receiver for an Order reclassifying census tracts 0806 and 0807 as General Areas, designating an Expanded Near North Revitalizing Area and authorizing development of public housing units therein; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than 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 having determined that the circumstances described in the Joint Motion and attached affidavit justify a reclassification of census tracts 0806 and 0807

from Limited to General and an expansion of the boundaries of the Near North Revitalizing Area as proposed in the Joint Motion; and

The Court being of the view that the aforementioned circumstances evidence a substantial likelihood that plaintiff class families will be provided desegregated housing opportunities if the terms and conditions of this order are met;

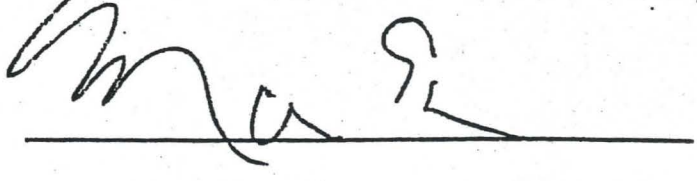
NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Census tracts 0806 and 0807 of the City of Chicago are reclassified as General Area tracts;

2. The Near North Revitalizing Area is expanded to include the portion of the City of Chicago shown on Exhibit C of the Joint Motion;

3. The Receiver shall be authorized to arrange for the development within the existing and expanded Revitalizing Area of 700 public housing units, or such greater number as may be authorized by further order of this Court, by lease, new construction or otherwise. Pursuant to the consent decree entered in *Cabrini-Green LAC v. CHA and City of Chicago*, 96C6949, such public housing units shall account for no more than 30 percent of the total number of housing units in each development, except as otherwise permitted by the revised *Cabrini* consent decree.

ENTER:



Dated: September 12, 2000

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	9/25/2000
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] As stated on the reverse, the CRA's concerns are not yet ripe for review, and thus we currently have nothing to decide. So we dismiss the complaint without prejudice to the CRA's right to bring another motion intervene in this court after the completion of the development plan. Concerned Residents of ABLA's motion to intervene (0-1) is denied without prejudice.

(11) ■ [For further detail see order on the reverse side of the original minute order.]

	No notices required, advised in open court.		number of notices
	No notices required.		
✓	Notices mailed by judge's staff.		date docketed
	Notified counsel by telephone.		docketing deputy initials
	Docketing to mail notices.		9/25/2000
	Mail AO 450 form.		date mailed notice
	Copy to judge/magistrate judge.		GL
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

Document Number

(Reserved for use by the Court)

ORDER

Before us is the motion of the Concerned Residents of ABLA ("CRA"), a tenants' group made up of current, former, and potential residents of the ABLA public housing development, to intervene in the case of *Gautreaux v. Chicago Housing Authority*, 66c1459, for the purpose of challenging plans to redevelop the ABLA site into one of mixed-income housing. Opposing the motion are the Chicago Housing Authority ("CHA"), the *Gautreaux* plaintiff class, the Department of Housing and Urban Development ("HUD"), and the Receiver appointed by this Court. For the reasons stated herein, we deny the motion to intervene without prejudice to the CRA's right to refile the motion in the future, when the controversy is ripe.

The CRA's proposed complaint in this case alleges that there exists a plan to revitalize ABLA by utilizing funds granted from HUD to CHA through a federal program known as HOPE VI, and that this plan discriminates against the CRA individuals in violation of the Fair Housing Act, the Civil Rights Act of 1968, the Civil Rights Act of 1964, § 1983, the Uniform Relocation Act and the United States Housing Act. The CRA presumably bases its allegations on the tentative plan for revitalization that accompanied the CHA's 1998 application for HOPE VI funds. However, as the *Gautreaux* plaintiffs and other objecting parties point out in their briefs, the application explained that "[t]he scenario included in this application is a sample development plan to demonstrate the financial feasibility of CHA's redevelopment strategy, not the final development plan." The process of creating a final development plan includes selecting a development manager, having the manager prepare tentative final plan documents, having a working group which includes the Receiver and the *Gautreaux* plaintiffs consider and approve the plan, and incorporating the plan into a final proposal submitted to HUD for approval.

Because there is still no final development plan, the CRA's complaint, which alleges that the plan is illegal, is not ripe for adjudication. *See Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967). We cannot consider whether the sample plan violates the various laws cited by the CRA because it is not apparent whether any or all of the sample plan will actually be implemented. Further, although the CRA contends that it has been shut out of the planning process, the evidence submitted by the CHA belies this allegation. And with regard to future planning, the Receiver has represented that "[during the process of plan development, the Receiver, CHA, the City and the *Gautreaux* plaintiffs will consult regularly with the representatives of the putative intervenors, informing them of pertinent developments and giving them an opportunity to present their views. . . ." Unless we are confronted with evidence that this is not occurring, we will assume that the CRA will have the opportunity to present its opinions on the progress of the planning and development.

Finally, once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene.

This result comports with our order of November 4, 1999, which dismissed the CRA's complaint filed in front of Judge Gettleman without prejudice to their right to intervene here. As we explained in that order, it would be much more expedient to address the concerns of the CHA in this forum instead of pursuing piecemeal litigation in a variety of courts. As we have explained above, the CRA's concerns are not yet ripe for review, and thus we currently have nothing to decide. So we will dismiss the complaint without prejudice to the CRA's right to bring another motion to intervene in this court after the completion of the development plan. It is so ordered.



RECEIVED
SEP 10 2002
MARVIN E. ASPEN

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

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

JOINT MOTION FOR AN ORDER EXPANDING THE NORTH KENWOOD-OAKLAND REVITALIZING AREA AND AUTHORIZING THE DEVELOPMENT OF PUBLIC HOUSING UNITS THEREIN

Plaintiffs and Defendant Chicago Housing Authority ("CHA"), by their respective attorneys, with the support of Daniel E. Levin and The Habitat Company (the "Receiver"), respectfully move this Court as follows:

A. To expand the North Kenwood-Oakland Revitalizing Area by adding the area of the City of Chicago that lies within the following boundaries:

Beginning at the corner of Oakwood Boulevard and Dr. Martin Luther King, Jr. Drive; north along Dr. Martin Luther King, Jr. Drive to East 37th Street; east along East 37th Street to South Rhodes Avenue; north on South Rhodes Avenue to East 35th Street; east along East 35th Street to the Illinois Central Railroad Right of Way; south along the Illinois Central Right of Way to Oakwood Boulevard; and west along Oakwood Boulevard to Dr. Martin Luther King, Jr. Drive.

B. To authorize the development of 850 units of new non-elderly public housing units within the Revitalizing Area subject to such conditions as are specified below.

In support of this motion, the parties state as follows:

Success of the Original Revitalizing Area

1. On June 3, 1996, this Court entered an order designating a North Kenwood-Oakland Revitalizing Area bounded by Oakwood Boulevard on the north, 47th Street on the south, Cottage Grove Avenue on the west, and the Illinois Central Railroad right-of-way on the east. See Exhibit A.

2. Over the past six years, this area has experienced considerable revitalization activity, as detailed in the attached Affidavit of Daniel E. Levin of the Habitat Company. See Exhibit B. There has been a substantial investment of public and private resources in the Revitalizing Area, including extensive construction and rehabilitation of private homes, the construction of a new shopping center with the area's first full service grocery store in decades, a new health center, the creation of a large new public park (Mandrake Park) along Oakwood Boulevard, and the rehabilitation of Shakespeare School to accommodate two successful charter schools. See Exhibit B, Levin Affidavit at 5 (A - M).

3. The planned new public housing in the Revitalizing Area is also reaching fruition. Sixty-eight new scattered units have been completed and transferred to CHA; a developer has been selected to develop 20 of the

5. The Expansion Area is the last Lakefront area between Hyde Park and the Loop that has not experienced significant private investment and revitalization. Immediately to the north is the successful Lake Meadows development with a modern shopping center on 35th Street and a substantial number of recently constructed luxury townhomes. To the west and northwest is the Gap, where substantial private residential investment has occurred in recent years. To the south is the current North Kenwood-Oakland Revitalizing Area and the Hearts United development, a successful mixed income development immediately west of the Revitalizing Area in which this Court approved construction of non-elderly public housing units. Levin Affidavit at 5D, 8, 12.

6. With the agreement of the Gautreaux parties, the City of Chicago, and community residents, it is now proposed to demolish the entirety of the Ida B. Wells Extension, Ida B. Wells Homes, Clarence Darrow Homes, and Madden Park Homes (hereinafter "Madden/Wells") developments and to replace them with a new mixed-income neighborhood, including a new street grid, new parks, restructured schools and traditional Chicago residential buildings. Levin Affidavit at 9, 10, 11.

7. A Master Plan for the new development was created through a community design charette in which over 500 public housing residents, homeowners and community leaders participated. The planning process was led by McCormack Baron & Associates and Urban Design Associates, two highly respected national firms with considerable experience in mixed income housing development. The Master Plan has been endorsed and accepted as the

blueprint for the Madden/Wells redevelopment by all of the members of the Wells/Madden Working Group. The Working Group, which includes the Receiver, CHA, Plaintiffs, the City of Chicago, the Madden Park Local Advisory Council, the Ida B. Wells Local Advisory Council, the North Kenwood-Oakland Conservation Community Council, the Mid-South Planning & Development Corporation, and the Alderman of the 4th Ward, is the body of stakeholders convened by the Receiver and CHA to guide the redevelopment process. Levin Affidavit at 9.

8. The Master Plan calls for construction of 850 units of family public housing, 150 units of elderly public housing, 680 units of tax credit or other housing affordable to working families earning less than 120% of area median income, and 1,320 units of market rate housing targeted to families earning in excess of 120% of area median income. The development would be constructed in approximately five phases over a period of approximately ten years. Levin Affidavit at 9.

9. In 2001, the Madden/Wells Working Group selected a development team led by Thrush Development, The Community Builders and Granite Development to create a detailed plan and carry out the initial phase of the development, consisting of approximately 452 total units in the southeastern portion of the site. Levin Affidavit at 10.

10. The development team is nearing completion of a Phase I Site Plan. Phase I would include approximately 126 family public housing units, 104 affordable rental units, 95 market rate rental units and 127 for sale units, 10 of

which will be earmarked for Madden/Wells families participating in a Home Ownership program. The City hopes to begin construction on site infrastructure (roads, alleys, sewers, water) in late 2002. Construction of housing units could begin in late 2002 or early 2003. Levin Affidavit at 10.

11. Substantial funding has already been committed to this project. In 2000, HUD approved a $35 million HOPE VI grant for the development of a mixed income community within the Expansion Area. The City of Chicago has committed to fund infrastructure improvements and to provide major subsidies for housing construction through low income housing tax credits, second mortgage financing through the HOME and CDBG programs, and funding through the New Homes for Chicago program. The City is also working to establish a Tax Increment Financing (TIF) district for the Expansion Area. Finally, the City plans to acquire and/or assemble up to 45 acres of land adjacent to the current CHA property. Levin Affidavit at 11.

Support For Expansion of the Revitalizing Area

12. The Receiver and the parties believe that the redevelopment plan for the Madden/Wells Area is sufficiently visionary and comprehensive to promise genuine revitalization. Moreover, eliminating the last enclave of concentrated public housing along the south Lakefront would reinforce the vitality of the existing North Kenwood-Oakland Revitalizing Area and the nearby Hearts United development. Levin Affidavit at 13.

13. Based on the foregoing, and on the attached Affidavit of Daniel E. Levin, the parties believe that a responsible forecast of economic integration, with a longer term possibility of racial desegregation, can be made for the Expansion Area. This motion and the redevelopment plan have the full support of the public agencies, community residents, community organizations and public housing tenants represented on the Madden/Wells Working Group.

14. Site-specific tenant eligibility criteria and other specific conditions relating to the proposed development designed to maximize assurance of a successful mixed-income development may be fashioned at a later date. If so, the parties may seek to amend any revitalizing order to include such criteria or conditions.

WHEREFORE, Plaintiffs, CHA, and the Receiver respectfully request entry of an Order in the form attached hereto expanding the North Kenwood-Oakland Revitalizing Area and authorizing the development of public housing units in the Expansion Area.

Respectfully submitted,

One of the Attorneys for the Plaintiffs

August 1, 2002

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

DOROTHY GAUTREAUX, et al. Plaintiffs, vs. CHICAGO HOUSING AUTHORITY and HENRY CISNEROS, Secretary of Department of Housing and Urban Development, Defendants.	)	66 C 1459 66 C 1460 (Consolidated)

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs, and Defendants Chicago Housing Authority and Department of Housing and Urban Development, for an order designating a North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having heard presentations concerning the proposed order; and

The Receiver, Daniel Levin and The Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein and the conditions to be made applicable thereto, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has

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, 47th 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 40th Street on the north, the Illinois Central Railroad right-of-way on the east, 42nd 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 41st Street on the north, Drexel Avenue on the east, Cottage Grove Avenue on the west, and Bowen Avenue on the south) and adjacent property.

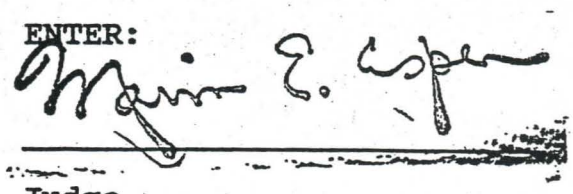
c) The balance of such units of public housing within the Revitalizing Area, in addition to those referred to in subparagraphs (a) and (b) above, shall be developed on other sites distributed throughout the Revitalizing Area.

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:



Judge

Date: June 3, 1996

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

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

AFFIDAVIT OF DANIEL E. LEVIN

Daniel E. Levin, being first duly sworn on oath, deposes and states as follows:

1. Pursuant to a 1987 order of the Court of the Northern District of Illinois in Dorothy Gautreaux v. CHA et. al., I, Daniel E. Levin, and The Habitat Company, jointly, as Receivers have and exercise all power of CHA respecting the development of CHA non-elderly public housing.

2. On June 3, 1996, this Court ordered that 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, 47th Street on the south, and Cottage Grove on the west be designated the North Kenwood-Oakland Revitalizing Area ("Revitalizing Area")

3. As a result of such order, the Receiver has developed, caused to be developed, or is causing to be developed up to 241 units of public housing units within the Revitalizing Area.

4. In 1994, the North Kenwood-Oakland area was chosen as the host site for the City of Chicago's second Parade of Homes project. The neighborhood, at that

time, had seen very little investment in new housing. However, the neighborhood seemed ripe for reinvestment due to its prime lakefront location, its proximity to downtown, its designation as a conservation district and its abundance of vacant, inexpensive land. As the 36 new homes for the Parade of Homes project were being constructed, a modest but steady stream of middle class homebuyers began moving into the neighborhood. The homes were selling at prices ranging from $165,000 to a little more than $200,000.

5. **Existing Conditions.** The North Kenwood-Oakland Revitalizing Area has shown remarkable revitalization since the entry of this Court's 1996 order. It is attracting considerable public and private investment and its population has an increasing mix of incomes. Outlined below are highlights of revitalizing activity in the North Kenwood-Oakland Area that continues to strengthen the community and attract middle and upper class homebuyers from the entire Chicago Metropolitan area.

Residential

A. In 1996, the Chicago Homebuilders sponsored a second Parade of Homes in North Kenwood–Oakland at 39th Street and Ellis Avenue. The project included 14 new homes, with selling prices ranging from $180,000 to $250,000.

B. In 2001, Thrush Development Company completed construction of Shakespeare Townhomes, a 106-unit mixed income development at 46th Street and Woodlawn Avenue. Prices for the townhomes and condominiums ranged from $180,000 at the beginning of construction to

more than $300,000 in late 2001. The project also includes 12 units reserved for public housing families. Thrush has begun pre-sales on Phase II of the project. Sales prices at Shakespeare Court continue to exceed those in Phase I.

C. New Kenwood, LLC has begun construction on 38 new homes adjoining the Shakespeare School site in North Kenwood. Prospero Homes will consist mainly of single-family attached units with prices ranging from $159,900 to $479,000.

D. Bonheur Development Company, LLC has completed the first two phases of its Hearts United mixed income rental project just west of the Revitalizing Area. Phase I consists of 116 units, 25% of which are reserved for public housing families, and Phase II consists of an additional 107 units, of which 25% are reserved for public housing families. Phase III of the development is underway and the developer is also working to complete a for-sale component of the project.

E. Rehabilitation projects have contributed to considerable construction activity in the area. In 1996, 150 rehab permits were issued in the 4th Ward (of which North Kenwood-Oakland is a part) and in 1997, 234 such permits were issued.

F. Pursuant to the order of the Court designating the Revitalizing Area, The Habitat Company, as Receiver, has completed 68 of 91 scattered site public housing units in the area. A developer has been selected by the

Receiver to construct 20 of the remaining 23 units, pending HUD's approval of such developer. We expect the developer to begin construction on these units in the summer of 2002. Finally, plans are in place to purchase the remaining 3 units in a private, market-rate development located on Woodlawn Avenue between 46th and 47th Streets.

Commercial

G. In 1998, Lake Park Pointe, a 78,000 square foot shopping center, was completed at 47th Street and Lake Park Avenue. Hyde Park Cooperative, a full service grocery store, and Walgreens drug store anchor the shopping center. Other tenants include a sporting goods store, a real estate brokerage office and private practice medical practitioners.

H. Komed Health Center, located at 4320 S. Greenwood, was opened in 1999 to make regular healthcare more accessible to residents of the North Kenwood-Oakland and surrounding area. It is a general health clinic that offers pediatric, internal medicine, obstetrics and gynecological services as well as dental services to community residents. The Komed Center has provided primary care services to more than 7,000 persons for an average of 2.5 visits per year.

Educational

I. The newly rehabbed Shakespeare school at 46th Street and Greenwood Avenue houses two new charter schools - Ariel Academy, sponsored by the Chicago financial management firm Ariel Capital Management, and

the North Kenwood Charter School sponsored by a partnership of the University of Chicago and St. James United Methodist Church.

J. Martin Luther King, Jr. High School at 41st Street and Drexel Boulevard, long known for under-performance on state and national standardized tests, has recently been the recipient of more than $2 million in investment from the Chicago Board of Education. The school has been converted to a college preparatory curriculum by the Chicago Public Schools. It is now one of eight public schools in the city with a college preparatory program and a competitive admissions policy.

Recreational

K. Little Black Pearl Workshop and Art Gallery located at 4200 S. Drexel is a well- known and respected asset to the North Kenwood Community. Its mission is to create avenues for exposure to art and culture while teaching the profitable connection between art, education and business. In addition to its Drexel location, workshops are also held at King High School and several area grammar schools.

L. The Chicago Park District has been an integral part of the revitalization of the North Kenwood-Oakland community. Most notable is the expansive redevelopment of Mandrake Park located at Oakwood Boulevard and Lake Park Avenue. The new park allows for much desired green space where children and adults alike can congregate for outdoor fun. The 2+-acre park includes new tennis courts, a baseball field and a running track.

M. In addition to the redevelopment of park space, the Chicago Park District community centers are also expanding their offerings. Area residents most often use Kennicott, Kenwood, Madden and Washington Parks. Offerings for children and adults have included sporting activities, fitness classes, photo classes and stained glass making.

6. **Further Planned Improvements.** The City of Chicago's Department of Transportation is currently undertaking an extensive upgrading of area infrastructure in anticipation of major redevelopment activities at Lake Park Crescent and Jazz on the Boulevard housing developments.

A. **Lake Park Crescent** is a 480-unit mixed income development located between 40th and 42nd streets along Lake Park Avenue on the site of the now demolished CHA Lakefront high-rises. The project, being developed by Draper and Kramer, Inc., promises to be one of Chicago's finest mixed income communities, with a mix of rental and for-sale housing, including 120 units reserved for public housing families. The project is a high priority for the City of Chicago. City infrastructure crews have already begun installing new sewer and water lines on the site, as well as preparing for new streets and alleys. Housing construction on the project is scheduled to begin in the fall of 2002.

B. Like Lake Park Crescent, **Jazz on the Boulevard** promises to be a very attractive mixed income development. With 137 units along approximately 4.3 acres of land on historic Drexel Boulevard, the development features all-masonry streetscapes along the Boulevard in the style of nearby mansions and homes, along with generous green

space. The development will include 98 for-sale homes and 39 rental units, of which 30 are reserved for public housing families. Jazz on the Boulevard is also a high-priority project for the City of Chicago. City infrastructure crews have begun installing new sewer and water lines on the site. Housing construction on this project is scheduled to begin in fall 2002.

C. These redevelopment activities in North Kenwood-Oakland, while extensive, are only a sample of the many projects being developed in the area. A more extensive list of development activities in the North Kenwood-Oakland and surrounding areas, along with representative photographs, are attached as Exhibit 1 to this affidavit.

The Proposed Expansion of the Revitalizing Area to Include the Madden/Wells Site.

7. Ida B. Wells, Wells Extension, Clarence Darrow Homes, and Madden Park Homes (hereinafter "Madden/Wells") are contiguous public housing projects on 72 acres located in the historic Mid South-Bronzeville neighborhood. The developments are severely distressed. When originally built, the developments totaled more than 3,200 units of concentrated public housing in 17 high-rise buildings, mid-rise buildings, and numerous walk-ups. Soon the developments represented one of the largest concentrations of segregated public housing in Chicago. Current occupancy is less than 1,300.

8. North of the Madden/Wells site is Prairie Shores and Lake Meadows, a major 1960s urban renewal area rebuilt as economically and racially integrated market rate rental and for-sale housing. These neighborhoods consist of high-rise

apartment towers set amongst grassy lawns. Some of the open space between the towers has recently been filled with new townhomes selling at prices between $250,000 and $400,000. Just west of Lake Meadows, between 31st and 35th Streets, is an enclave of largely single-family homes that have experienced extensive renovation and new construction over the past few years. New homes in this area, referred to as "The Gap", have generally been priced between $200,000 and $375,000. In addition, Lake Meadows Shopping Center at 35th Street and Martin Luther King Drive is anchored by a Jewel food store, a Walgreens drug store and Goldblatts discount department store. Shops with an orientation to the area's more affluent residents are beginning to develop in the storefronts along 35th street.

9. It is important to support the momentum of development taking place to the north and south of the current public housing developments. The Madden/Wells development has consistently set the stage for the fates of its surrounding neighborhoods. One way we believe that growth can continue is to support an expansion of the North Kenwood Revitalizing Area to include the Madden/Wells site. The success of the current Revitalizing Area stands as a testament to what we believe can take place at Madden/Wells. A Master Plan for the area has been created through a community design charette in which more than 500 area residents, including public housing residents, supplied input. This planning process was led by McCormack Baron & Associates and Urban Design Associates, two highly respected national firms with considerable experience in mixed-income housing development. The Plan currently calls for the construction of 850 units of family public housing, 150 units of elderly housing, 680 units of affordable housing and 1,320 units of market-rate housing. With the

demolition of all existing public housing and the construction of more than 3,000 units of housing planned for the site, a redevelopment of the site would essentially create an entirely new Chicago neighborhood with a new street grid, new parks and restructured schools. The Plan calls for the development to be constructed in approximately five phases over a period of approximately ten years. The Plan has been endorsed and accepted as a blueprint for Madden/Wells by various stakeholders including the Receiver, the CHA, the Gautreaux Plaintiffs, the Chicago Department of Planning, the Chicago Department of Housing, the Chicago Park District, the Madden Park Local Advisory Council, the Ida B. Wells Local Advisory Council, the North Kenwood-Oakland Conservation Community Council, the Mid-South Planning and Development Commission and the Alderman of the 4th Ward (collectively referred to as "the Working Group").

10. In 2001, the Working Group selected a development team led by Thrush Development, The Community Builders, and Granite Development, to begin planning for Phase I of the development based on the concepts outlined in the Master Plan. The current Phase I plan consists of approximately 126 family public housing units, 104 affordable rental units, 95 market rate rental units and 127 for-sale units, of which 10 units will be reserved for public housing families, all to be constructed in the southeastern portion of the site. We continue to refine Phase I to reach the best possible housing mix under a financially feasible development scenario. The City hopes to begin infrastructure improvements in late 2002. Construction of housing units could begin in early 2003.

11. Considerable financial support has already been committed to the project. In 2000, HUD awarded a $35 million HOPE VI grant to the project, which was ranked the number one proposal in the nation by HUD. The City of Chicago has committed to fund the extensive infrastructure improvements and provide significant housing subsidies in the form of housing tax credits, tax-exempt bond financing, HOME funds, New Homes for Chicago, and CDBG funds. The City is in the process of establishing a Tax Increment Financing district in an effort to spur continued investment in the area. Finally, the City plans to assemble and donate up to 45 acres of land adjacent to the current CHA property.

12. The combined Madden/Wells site and its immediate environs are the only area along the lakefront between downtown and Hyde Park showing no new investment. Of the land in this area, 65% of the parcels are vacant. The redevelopment of this site will not only provide a stage for quality mixed-income community, but it will allow the surrounding communities to continue to flourish. It will create a seamless flow of economically diverse, stable neighborhoods along an 8-mile stretch of the lakefront from downtown to South Shore.

13. We support the expansion of the Revitalizing area to include the over 100 acres bound by Dr. Martin Luther King, Jr. Drive, East 37th Street, the Illinois Central Railroad Right of Way, and Oakwood Boulevard. We are confident that, with an expansion of the Revitalizing area, the Madden/Wells community can experience the kind of resurgence and investment that North Kenwood-Oakland has experienced. With the support of HUD, the City of Chicago and the many community stakeholders, we are confident that Madden/Wells will become a viable economically integrated community, with a longer-term possibility of

becoming a racially integrated community as well. The proposed expansion of the North Kenwood-Oakland Revitalizing Area has the Receiver's full support.

FURTHER AFFIANT SAYETH NOT

Daniel E. Levin

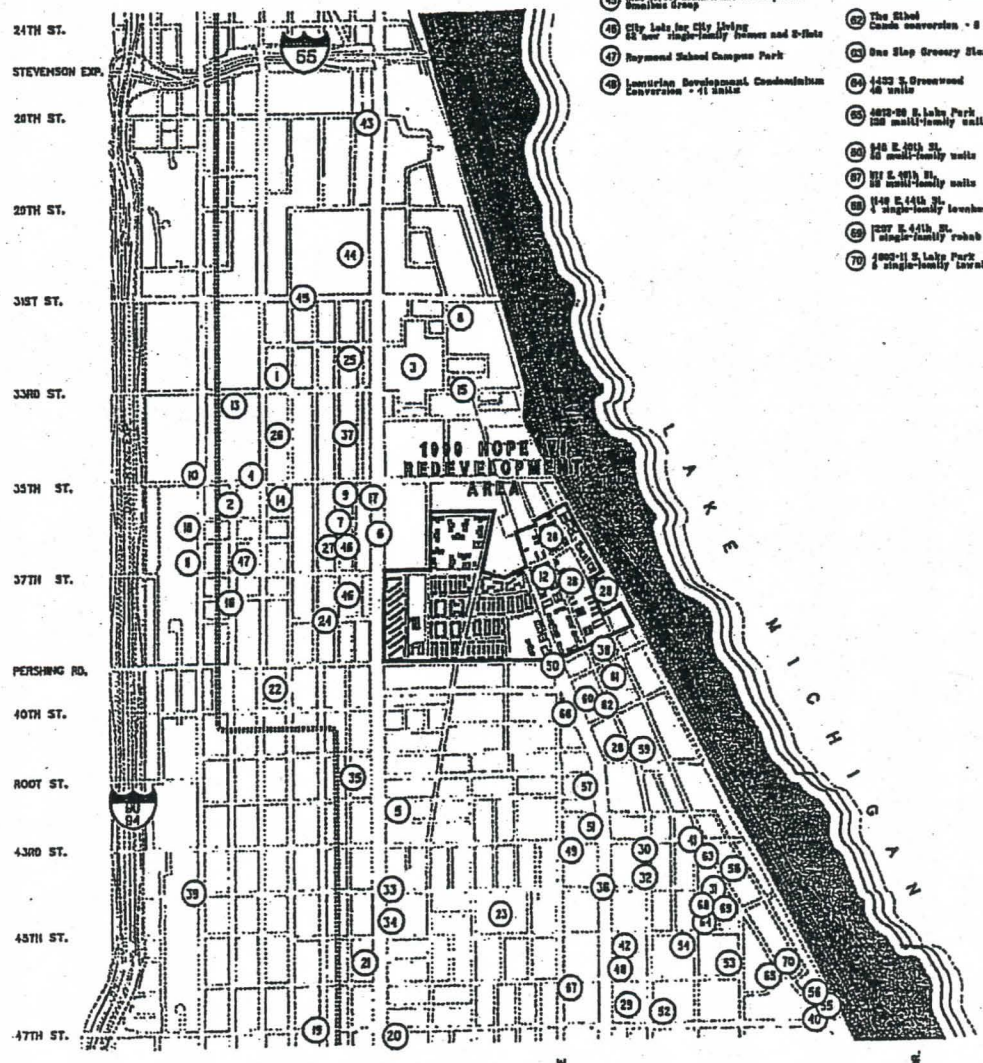
SUBSCRIBED and SWORN to
Before me this 18th day of
July, 2002

NOTARY PUBLIC

"OFFICIAL SEAL"
ROWENA BIERMANN
Notary Public, State of Illinois
My Commission Expires 09/14/05

DEVELOPMENT ACTIVITIES

1. Illinois College of Optometry Campus Expansion • $8 million (1994)
2. Police Headquarters at 35th and State Streets • $65 million (2000)
3. 200 townhomes and condominiums at Lake Meadows • market rate
4. Dr LaSalle High School Expansion • $35 million (1992)
5. 60 units of new family housing at the Paul Stewart Development • $11.5 million
6. Martin Luther King Drive Gateway Project • $10 million
7. 132 new and rehabilitated housing in the South Gap • $12 million
8. Lake Meadows Townhomes • $257-360 thousand
9. Brownsville Armory rehabilitation to a new school • $10.5 million (1996)
10. CTA rehabilitation of the 35th Street Station • $4 million
11. Chicago Bee Public Library • $4 million
12. Douglass Elementary School renovation • $1.2 million
13. IIT Campus expansion • $220 million
14. Commercial redevelopment and street improvements at 35th Street • $4.6 million
15. Lake Meadows 200 Condominium conversion
16. Wabash YMCA • $8 million
17. SAPPHIE Shopping Center • $1.7 million
18. Overton Building renos • $4 million
19. 47th Street CTA Green Line Transit-Oriented Development Plan
20. Lou Rawls cultural/ entertainment complex • $60 million
21. 22 unit • multi-family residential development
22. New motel • $5 million
23. Meadows Campus Park • $525,000
24. Phillips High School / Hope Elementary School Campus Park • $4 million (1998)
25. Douglas Community Academy Park Improvements • $450,000 School Improvements • $700,000
26. McKinley Center • $600,000
27. Homes of Brownsville
28. 28 New Homes for Chicago
29. North Kenwood Charter School
30. Parade of Homes
31. Infill single family homes at Kenwood Harbor
32. Tower Condominiums 12 condos (1997)
33. Townhouses and stacked condominiums at Bronzeville Pointe
34. Infill housing
35. Condominiums
36. Single family homes at Pope's Place on the Boulevard
37. Landmark Row on Giles • single family homes
38. Condos on the Boulevard
39. United House for Prayer for All People
40. Lake Pointe Shopping Center • $11 million
41. HOMES Health Center
42. Centers for New Horizons new daycare center • $5.7 million
43. South Park Plaza (Prairie Courts) CHA Development Project
44. Dunbar High School • 1998 Infrastructure improvements completed
45. 51st Street Commercial Development Dunbar Group
46. City Lots for City Living 62 new single-family homes and 2-flats
47. Raymond School Campus Park
48. Lenurian Development Condominium Conversion • 41 units
49. Ellis Elite Community Center
50. Pershing-Oakwood Connector and Park
51. King-Price Schools Campus Park
52. Bulhuetand Arts Center Empowerment Zone funds
53. North Kenwood Townhomes 105 units
54. Hyacinth Park Expansion
55. Kensington Court Apts. 68 multi-family units
56. Lake Park Court Apts. 28 multi-family units
57. Little Black Pearl Art Gallery Empowerment Zone funds
58. Kennicott Park Feasibility Analysis Chicago Park District
59. 1020 E. 41ST Pl. 52 multi-family units
60. 4851 S. Drexel 48 multi-family units
61. 4001 S. Ellis 44 multi-family units
62. The Ethel Condo conversion • 8 units
63. One Stop Grocery Store Expansion
64. 4452 S. Greenwood 48 units
65. 4852-58 S. Lake Park 108 multi-family units
66. 140 E. 40th St. 24 multi-family units
67. 317 E. 44th St. 28 multi-family units
68. 340 E. 44th St. 7 single-family townhomes
69. 4237 S. 44th St. 1 single-family rehab
70. 4903-11 S. Lake Park 4 single-family townhomes



Interstate Highway

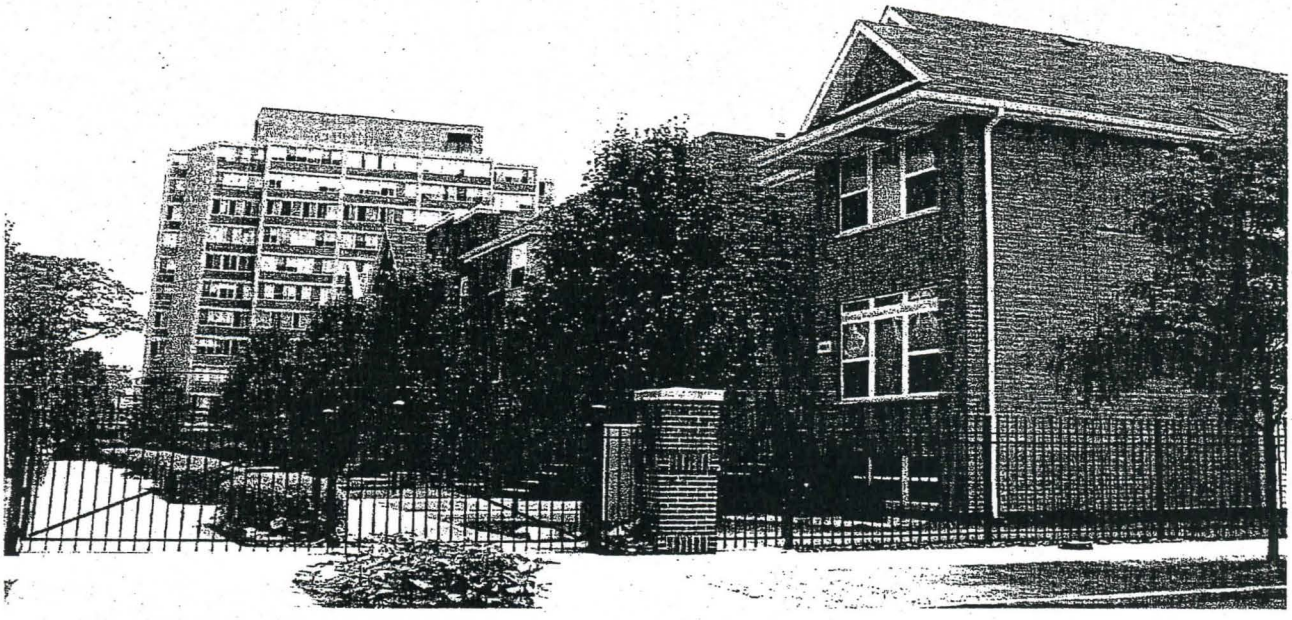
CTA/METRA Rail Lines

Campbell Tiu Campbell, Inc.
Architects • Planners • Construction Managers

North Kenwood-Oakland Revitalizing Area Expansion

AREA PHOTOS

Residential



Chicago Homebuilders Parade of Homes – 39th Street and Ellis Avenue



Shakespeare Townhomes – Thrush Development Company

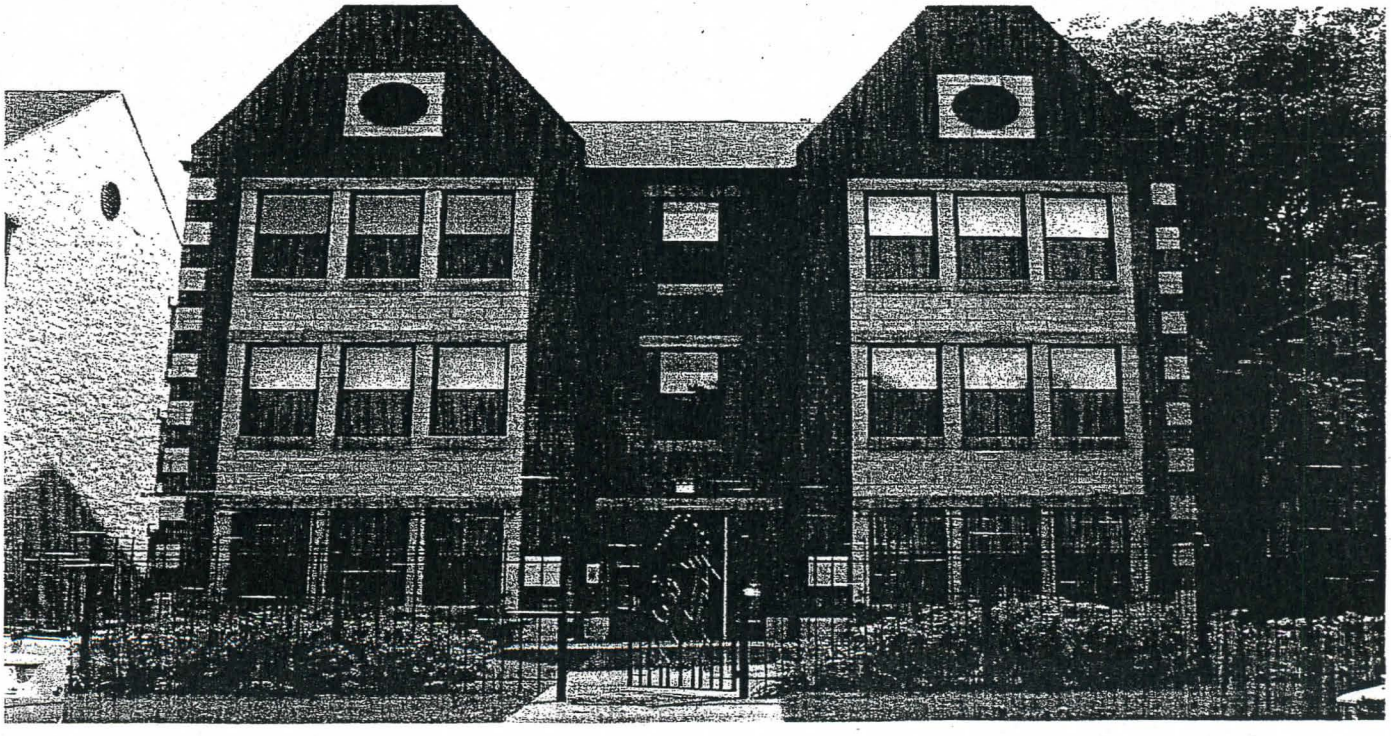
North Kenwood-Oakland Revitalizing Area Expansion

AREA PHOTOS

Residential



Prospero Homes (Model) – New Kenwood , LLC



Hearts United – Bonheur Development Company, LLC

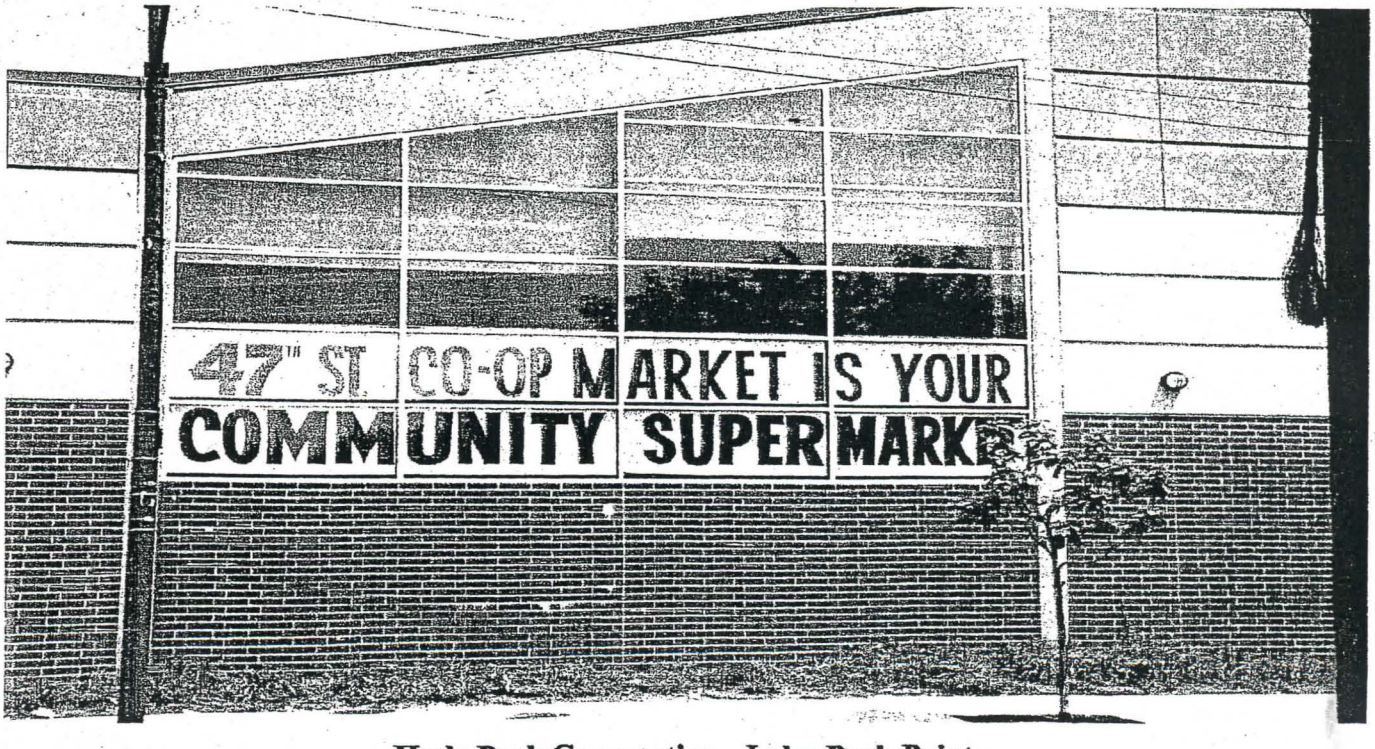
North Kenwood-Oakland Revitalizing Area Expansion

AREA PHOTOS

Commercial



Lake Park Point Shopping Center – 47th Street and Lake Park Avenue

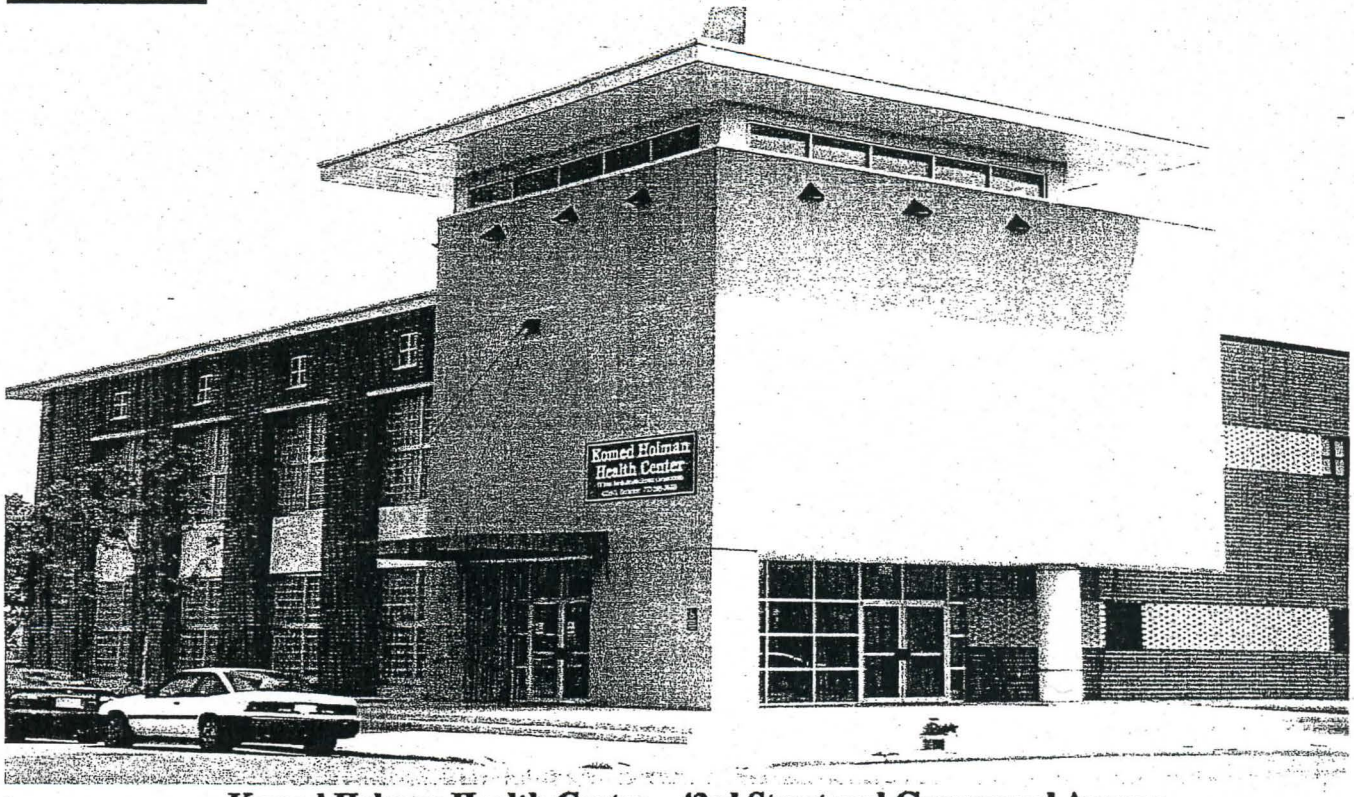


Hyde Park Cooperative – Lake Park Pointe

North Kenwood-Oakland Revitalizing Area Expansion

AREA PHOTOS

Commercial



Komed Holman Health Center – 43rd Street and Greenwood Avenue

Educational



Ariel Community Academy – 46th Street and Greenwood Avenue

North Kenwood-Oakland Revitalizing Area Expansion

AREA PHOTOS

Recreational



Mandrake Park Play Lot – Oakwood Boulevard and Cottage Grove Avenue



Mandrake Park

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

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

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority for an order expanding the North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having reviewed the parties' submissions; and

The Receiver, Daniel Levin and the Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the Orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracks 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 proposed expansion of the North Kenwood-Oakland Revitalizing Area if the redevelopment plan described in the Motion is carried out;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates the following portion of the City of Chicago as an expansion of the previously-designated North Kenwood-Oakland Revitalizing Area: ("Expansion Area"):

> Beginning at the corner of Oakwood Boulevard and Dr. Martin Luther King, Jr. Drive; north along Dr. Martin Luther King, Jr. Drive to East 37th Street; east on East 37th Street to South Rhodes Avenue; north on South Rhodes Avenue to East 35th Street; east along East 35th Street to the Illinois Central Railroad Right of Way; south along the Illinois Central Railroad Right of Way to Oakwood Boulevard; and west along Oakwood Boulevard to Dr. Martin Luther King, Jr. Drive.

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 up to 850 new units of non-elderly public housing within the

Expansion Area as part of a mixed income housing development generally consistent with the Master Plan previously approved by the Madden/Wells Working Group.

3. The parties may propose amendments to this order in the future to include site-specific eligibility criteria or other conditions respecting the development of public housing units in the expanded Expansion Area.

ENTER:

_____
United State District Judge

Date: _____, 2002

RECEIVED

SEP 10 2002

MARVIN E. ASPEN

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

DOROTHY GAUTREAUX, et al., Plaintiffs,	)	
v.	)	66 C 1459
CHICAGO HOUSING AUTHORITY, Defendant.	)	Hon. Marvin E. Aspen

NOTICE OF MOTION AND CERTIFICATE OF SERVICE

To: Gail Niemann, General Counsel
Courtney Minor
Chicago Housing Authority
200 West Adams Street
Suite 2100
Chicago, IL 60606
(Hand Delivery)

Michael L. Shakman
Edward W. Feldman
Miller, Shakman, and Hamilton
208 South LaSalle Street - #1100
Chicago, IL 60604
(Hand Delivery)

PLEASE TAKE NOTICE that on September 12, 2002, at 10:30 a.m., the attorneys for the Plaintiffs will present a **Joint Motion for an Order Expanding the North Kenwood-Oakland Revitalizing Area and Authorizing the Development of Public Housing Units Therein** in the courtroom of the Honorable Marvin E. Aspen, Room 2568 of the U. S. District Court, 219 South Dearborn Street, Chicago, Illinois. A copy of this motion is attached hereto and hereby served upon you.

Respectfully submitted,

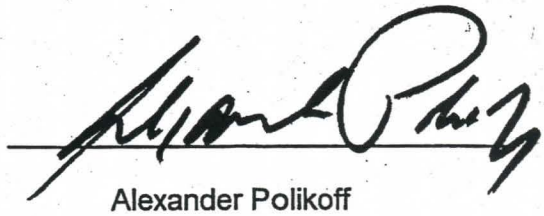
One of the Attorneys for the Plaintiffs

September 10, 2002

Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
25 East Washington Street, Suite #1515
Chicago, Illinois 60602
312/641-5570; fax: 312/641-5454

CERTIFICATE OF SERVICE

Alexander Polikoff, an attorney, hereby certifies that on Tuesday, September 10, 2002, I caused copies of the foregoing Notice of **Joint Motion for an Order Expanding the North Kenwood-Oakland Revitalizing Area and Authorizing the Development of Public Housing Units Therein** to be served on the persons shown on such Notice in the manner indicated.



Alexander Polikoff

FOR: → Julie Brown — 641-5454

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	9/11/2002
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Joint motion for an order expending the North Kenwood-Oakland Revitalizing Area and authorizing the development of public housing units therein is granted. Enter order.

(11) ■ [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		number of notices	Document Number
	No notices required.			
	Notices mailed by judge's staff.		SEP 12 2002	
	Notified counsel by telephone.		date docketed	
✓	Docketing to mail notices.		AR	0
	Mail AO 450 form.		docketing deputy initials	
	Copy to judge/magistrate judge.		date mailed notice	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

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

DOCKETED
SEP 12 2002

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

ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority for an order expanding the North Kenwood-Oakland Revitalizing Area and permitting development of family public housing units therein, and the Court having reviewed the parties' submissions; and

The Receiver, Daniel Levin and the Habitat Company, having represented to the Court that they have examined the proposal respecting the appropriate number of public housing units to be provided therein, and that they support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the Orders previously entered in these consolidated cases has been and is to provide plaintiff class families with desegregated housing opportunities; and

D

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracks 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 proposed expansion of the North Kenwood-Oakland Revitalizing Area if the redevelopment plan described in the Motion is carried out;

Now, therefore, IT IS HEREBY ORDERED:

1. The Court designates the following portion of the City of Chicago as an expansion of the previously-designated North Kenwood-Oakland Revitalizing Area: ("Expansion Area"):

> Beginning at the corner of Oakwood Boulevard and Dr. Martin Luther King, Jr. Drive; north along Dr. Martin Luther King, Jr. Drive to East 37th Street; east on East 37th Street to South Rhodes Avenue; north on South Rhodes Avenue to East 35th Street; east along East 35th Street to the Illinois Central Railroad Right of Way; south along the Illinois Central Railroad Right of Way to Oakwood Boulevard; and west along Oakwood Boulevard to Dr. Martin Luther King, Jr. Drive.

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 up to 850 new units of non-elderly public housing within the

Expansion Area as part of a mixed income housing development generally consistent with the Master Plan previously approved by the Madden/Wells Working Group.

3. The parties may propose amendments to this order in the future to include site-specific eligibility criteria or other conditions respecting the development of public housing units in the expanded Expansion Area.

ENTER:

United State District Judge

Date: 9/4/, 2002

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	66 C 1459
	)	Hon. Marvin E. Aspen
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendants.	)	

AGREED ORDER

This matter coming to be heard on the joint motion of the Plaintiffs and the Defendant Chicago Housing Authority for an order to expand the Horner Revitalizing Area ("HRA") by adding the area of the City of Chicago bounded by Lake Street on the North, Washington Boulevard on the South, Hermitage Avenue on the East and Damen Avenue on the West, to permit development of family public housing units within the expanded HRA, to authorize adoption of certain measures that may be taken to further promote economic integration, to permit families with children to be housed in certain public housing units above the third story within the HRA, subject to the plaintiff's written approval and to authorize allocation of Gautreaux funding to aid such development; and

The Receiver, Daniel Levin and the Habitat Company, having represented to the Court that the Expansion Area is an appropriate and desirable location for approximately 271 public housing units; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court also being cognizant that on occasion it has permitted public or assisted housing to be provided in census tracts other than 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 based on the circumstances described in the joint motion and supporting affidavit, such a forecast can be made with respect to the expanded HRA if the terms and conditions of this order are met; and

The Court being of the view that additional economic integration within the originally designated HRA is desirable; and

The Court being of the view that permitting families with children to be housed in certain public housing units above the third story within the HRA, subject to the plaintiff's written approval of the initial location and configuration of such units, will be an

appropriate and desirable way to create viable mixed-income and desegregated housing opportunities for members of the plaintiff class;

Now, therefore, IT IS HEREBY ORDERED:

1. The previously designated HRA shall be expanded to include the area of the City of Chicago bounded by Lake Street on the North, Washington Boulevard on the South, Hermitage Avenue on the East and Damen Avenue on the West;

2. The Receiver, previously appointed by the Court to develop family public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop within the expanded HRA 271 units of public housing, provided, however, that additional non-public housing units are constructed within the expanded HRA such that public housing units constitute no more than 35.5% of the total number of units to be constructed, that in each phase of construction this ratio of public to non-public housing units is maintained, that the public housing units are and remain well distributed throughout the expanded HRA and within buildings, and that at plaintiffs' request, the defendant shall provide or cause to be provided to plaintiffs annual written reports on the location of public housing units, including sufficient information to assess whether such units continue to be broadly dispersed throughout the expanded HRA and within buildings;

3. Notwithstanding any previous order in this cause and Paragraph 2 of this Order, the number of public housing units within the previously designated HRA may be reduced so long as an equal number of public housing units in addition to the 271 public housing units described above is provided within the expanded HRA, very low income public housing units are replaced with very low income public housing units, low income public housing units are replaced with low income public housing units, and public housing residents are not involuntarily relocated as part of this effort;

4. Within the HRA the Receiver shall be free to provide public housing units above the third floor for families with children as it deems consistent with achieving the purposes of the Gautreaux order, except that no such units shall be provided until plaintiffs approve in writing the initial location and configuration of such units, and except that in elevator buildings with family public housing units above the third floor such units shall comprise no more than 35.5% of the total number of residential units; and

5. Plaintiffs shall be free to allocate up to $12 million of the "set-aside" available to them under the Consent Decree approved by this Court in 66 C 1460 to aid in implementing paragraph (2) of this Order.

ENTER:

Judge

December 12, 2002

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	66 C 1459
	)	Hon. Marvin E. Aspen
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendant.	)	

RECEIVED
DEC 10 2002
MARVIN E. ASPEN

JOINT MOTION OF PLAINTIFFS
AND DEFENDANT CHICAGO HOUSING AUTHORITY
FOR AN ORDER EXPANDING THE HORNER REVITALIZING AREA,
AUTHORIZING DEVELOPMENT OF PUBLIC HOUSING UNITS THEREIN,
AUTHORIZING ADOPTION OF ADDITIONAL MEASURES THAT MAY BE TAKEN TO
FURTHER PROMOTE ECONOMIC INTEGRATION,
PERMITTING FAMILIES WITH CHILDREN TO BE HOUSED
IN CERTAIN PUBLIC HOUSING UNITS ABOVE THE THIRD FLOOR, AND
AUTHORIZING ALLOCATION OF GAUTREAUX FUNDING
TO AID IN SUCH DEVELOPMENT

Plaintiffs and Defendant Chicago Housing Authority ("CHA"), by their respective attorneys, with the support of Daniel E. Levin and the Habitat Company (the "Receiver"), move this Court as follows:

A. To expand the Horner Revitalizing Area ("HRA") by including the area of the City of Chicago bounded by Lake Street on the North, Washington Boulevard on the South, Hermitage Avenue on the East and Damen Avenue on the West ("the Expansion Area");

B. To authorize the development of approximately 271 new non-elderly public housing units within both the existing HRA and the Expansion Area, subject to such conditions as are specified below (and subject to the Horner Consent Decree and the Order entered by the Horner Court on February 1, 2000, both of which continue to be applicable to Horner redevelopment);

C. To permit public housing units already constructed within the previously designated HRA to be converted to affordable or market units, subject to such conditions as are specified below;

D. To permit families with children to be housed in certain public housing units above the third floor, subject to the plaintiff's written approval of the initial location and configuration of all such units; and

E. To authorize the Plaintiffs to allocate up to $12 million of Gautreaux "set-aside" funding to aid in implementing the public housing development described above.

In support of this motion, the parties state as follows:

1. The Court has previously entered orders respecting the HRA as follows:

A. On March 9, 1995, the Court entered an order designating as the HRA "that portion of the City of Chicago that lies between Damen Avenue on the East, Western Avenue on the West, Lake Street on the North, and the Eisenhower Expressway on the South." The Court also authorized the development of public housing units in the HRA, subject to further order of the Court.

B. On August 14, 1995, the Court entered a further order authorizing the development of 466 replacement public housing units in the previously designated HRA through acquisition and rehabilitation or new construction, provided certain conditions were met.

C. On April 15, 1996, the Court entered a further order expanding the HRA to include an area bounded by Lake Street on the North, Madison Street on the South, Talman Avenue on the East and Kedzie Avenue on the West. Among other things, the order also authorized the Receiver to locate up to 100 of the previously authorized 466 replacement housing units within the expanded HRA.

D. On October 22, 1998, the Court entered an order further enlarging the HRA to include an area bounded by Madison Street on the North, Van Buren Street on the south, Washtenaw Avenue on the East, and Kedzie Avenue on the West, and authorizing development of approximately 60 of the previously authorized 466 replacement units of public housing therein.

2. For the reasons set forth below and in the attached affidavit from Daniel Levin and the Habitat Company, the parties have determined that the Expansion Area satisfies the Gautreaux "revitalizing" criteria and that the expanded HRA would be an appropriate location for the approximately 271 replacement housing units proposed to be located there:

A. Henry Horner redevelopment has proceeded in two phases. "Phase I," previously authorized by the Court, is complete and the replacement housing units authorized by said orders of August 14, 1995, April 15, 1996 and October 22, 1998 have been built and occupied. Phase I produced units for an equal mix of low and very low income public housing families. The success of Phase I made possible a more ambitious "Phase II" income mix, including a substantial market rate component. When Phase II – the redevelopment that is the subject of this motion – is complete, the housing within the expanded HRA will have been entirely transformed – 1,730 dilapidated public housing units will have been replaced with 732 new and 90 rehabilitated public housing units, 132 affordable units and 361 market rate units (a total of 1315 residential units). Where Horner's residents were once almost exclusively very low income, the new

development will be mixed-income. When Horner redevelopment is complete, approximately 40 percent of all Phase I and II units will be designated for very low income public housing families and 27 percent will be sold or rented at market rates. Where public housing was once isolated and concentrated in an area roughly three-quarters of a mile long and one block wide, the new public housing units will be integrated among non-public housing units and broadly dispersed throughout the expanded HRA and within buildings.

B. In Phase I, completed in October 2000, five high- and mid-rise public housing buildings at the center of the site were demolished and the Receiver constructed 461 mixed-income public housing townhomes throughout the HRA. (Though the Court authorized development of 466 public housing units, only 461 were built because of environmental problems on one site where five units were to have been built.) In addition, just outside the HRA, at the Henry Horner Annex, three buildings with a total of 90 units were either completely rehabilitated or demolished and replaced.

C. In February of 2001, a Working Group, consisting of the Receiver, the Gautreaux plaintiffs, CHA, the City of Chicago, the Horner Residents Committee and the Horner plaintiffs, selected an experienced development team, Brinshore-Michaels, to carry out Phase II of Horner redevelopment. The team received formal approval from the CHA Board of Commissioners in May 2001. Since then, the Working Group and Brinshore-Michaels have made plans to transform the remaining portions of the Horner site, consisting of the Expansion Area and a heretofore undeveloped portion of the previously designated HRA.

D. In Phase II, five high-and mid-rise public housing buildings have been demolished; the remaining six buildings will be torn down as development proceeds. Phase II will produce 764 rental and homeownership units. Of the total, 271 (35.5 percent) will be reserved for public housing residents, 132 (17.3 percent) will be designated "affordable," and 361 (47.3 percent) will be designated "market rate." Nearly 40 percent of the new units will be for sale. Public housing and market rate units will be broadly dispersed throughout the expanded HRA and within buildings.

E. Substantial funding has already been committed to this project. HUD has awarded a HOPE VI grant of $18,435,300. In addition, the Receiver and the Gautreaux plaintiffs are prepared to allocate up to $12 million in Gautreaux set-aside funding. The Chicago Housing Authority has agreed to provide additional funding in an amount that is at minimum equal to the Gautreaux allocation. Further, CHA will make available another $7.8 million as a result of a settlement in the Horner lawsuit. The City of Chicago will fund infrastructure improvements and provide major subsidies for housing construction which may include tax-exempt bonds, provision of low income housing tax credits, and mortgage financing through the HOME and CDBG programs. The City has also designated

an area, which includes the Expansion Area, as a Tax Increment Financing district, eligible to receive funds for business and housing development.

F. Since the Horner redevelopment began, there has been a large investment of public and private resources in the HRA and the surrounding community, including a substantial increase in private housing rehabilitation and construction. Within the HRA, several condominium projects have been completed in recent years, with some two bedroom units selling for more than $250,000 and three-bedroom units being offered for more than $300,000. Plans are underway for another condominium development, with 34 market rate units. Housing prices have skyrocketed in the neighborhoods adjacent to the HRA; condominiums have sold for more than $400,000 just blocks from the proposed Expansion Area.

G. Residential revitalization has encouraged commercial development within the HRA. This year, a new, 15,000 square foot Walgreens opened at the north-east corner of Madison Street and Western Avenue. Across the street, the City of Chicago has selected a developer to construct a 66,000 square foot shopping center that will be anchored by a new full-service grocery store.

H. The proposed Expansion Area is located in an area with strong prospects for mixed-income success. The Expansion Area is just over a mile west of the heart of downtown Chicago. It is well-served by prominent city streets and expressways. Just south of the Expansion Area is the Illinois Medical District, with two major teaching hospitals and Cook County Hospital. In the near future, these institutions expect to invest more than a billion dollars in neighborhood improvements. Moreover, the institutions represent one of the state's largest employment centers outside of downtown Chicago.

3. For these reasons, the parties believe that the enlarged HRA is an appropriate location for the development of 271 public housing units. Based on the foregoing, the parties believe that a responsible forecast of economic integration, with a longer-term possibility of racial desegregation, can be made for the Expansion Area. Development of hundreds of new, high quality residential properties within the Expansion Area, together with demolition of the older, dilapidated public housing units within it, will decrease concentrations of poverty within the HRA and the adjacent community. In addition, eliminating the last enclave of very low income public housing at Horner will encourage further private redevelopment activity in the surrounding neighborhood.

4. The "Request for Qualifications for a Developer of Henry Horner Homes" (RFQ), which resulted in creation of the redevelopment plan that is the subject of this Motion and Order, invites the selected developer to propose ways to further promote economic integration within the Phase I development. The developer may propose to convert Phase I public housing units to affordable and/or market rate units, so long as

such public housing units are replaced one for one within Phase II, very low income public housing units are replaced with very low income public housing units, low income public housing units are replaced with low income public housing units, and public housing residents are not involuntarily relocated as part of this effort. The parties believe that additional economic integration within Phase I is desirable and that, notwithstanding any previous order in this cause or the modifications to the numbers and ratios set out in paragraph 2.D. of this Motion that would result, the Court should authorize such conversion, subject to the terms and conditions described above.

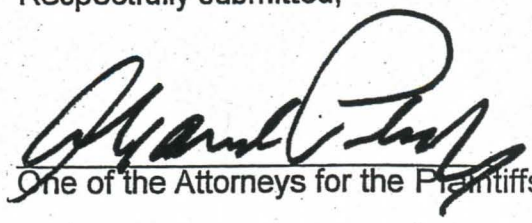
5. The Phase II plan, which includes several four-story walk-up buildings and two seven-story mid-rise buildings, proposes to house some public housing families with children above the third floor. On July 1, 1969, this Court entered an order which provided that, "No (CHA) Dwelling Units shall be provided above the third story in any structure except for families without children." The order also provided that the Court, "by order," could permit developments that were "specifically designed to assist in achieving the purposes" of the Gautreaux order. The parties and the Receiver believe that, so long as these public housing units are broadly dispersed throughout the expanded HRA and within buildings, housing CHA families in these buildings meets the goal of creating mixed-income, desegregated housing opportunities for the plaintiff class. Given scarce land, development at the densities made possible by four-story and mid-rise buildings will make it feasible to produce more public housing units while still ensuring an income mix. In buildings with family units above the third floor, public housing will comprise no more than 35.5% of the total number of residential units, reflecting the economic diversity of the overall Phase II plan. Units housing public housing families will be dispersed throughout walk-up and mid-rise buildings. The Plaintiffs and the Receiver therefore believe that a limited waiver of this provision of the July 1, 1969 order is desirable and that the Court should authorize development of family public housing above the third floor at Horner, subject to the plaintiff's written approval of the initial location and configuration of all such units.

6. Because the location of public housing units may shift over time, at plaintiffs' request, CHA will provide or cause to be provided to the plaintiffs annual written reports on the location of public housing units, including sufficient information to assess whether such units are broadly dispersed throughout the expanded HRA and within buildings.

7. Movants are authorized to represent to the Court that this motion and order are supported by the Receiver, HUD, the City of Chicago, and the Central West Community Organization. The plaintiffs in the Horner litigation and the Horner Local Advisory Council have what we consider to be a non-substantive objection to the order, which they wish to present to the Court.

WHEREFORE, plaintiffs and the defendant Chicago Housing Authority request the Court to enter an order in the form attached hereto.

Respectfully submitted,



One of the Attorneys for the Plaintiffs

December 10, 2002

Alexander Polikoff
Adam Gross
Business and Professional People for the Public Interest
25 E. Washington Street, #1515
Chicago, Illinois 60602
phone: (312) 641-5570
fax: (312) 641-5454

Gail Niemann
Chicago Housing Authority
200 W. Adams Street, # 2100
Chicago, Illinois 60606
phone: (312) 744-0250
fax: (312) 726-6418

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

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MARVIN E. ASPEN
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MARVIN E. ASPEN

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

AFFIDAVIT OF DANIEL E. LEVIN

Daniel E. Levin, being first duly sworn on oath, deposes and states as follows:

1) Pursuant to a 1987 order of the Court of the Northern District of Illinois in Dorothy Gautreaux, et al v. Chicago Housing Authority, et al, I, Daniel E. Levin, and The Habitat Company, jointly, as Receiver have and exercise all power of the Chicago Housing Authority ("CHA") respecting the development of CHA non-elderly public housing.

2) The CHA's Henry Horner development is in the process of re-development and, as a non-elderly public housing development, is subject to the 1987 order.

3) On March 9, 1995, this Court designated that portion of the City of Chicago that lies between Lake Street on the north, the Eisenhower Expressway on the south, Damen Avenue on the east, and Western Avenue on the west, a revitalizing area ("Horner Revitalizing Area" or "HRA").

4) On August 14, 1995, this Court entered a further order authorizing the development of 466 replacement public housing units in the previously designated HRA. In an Order entered on April 15, 1996, this Court expanded the HRA to include an area bounded by Lake Street on the north, Madison Street on the south, Talman Avenue on the east and Kedzie Avenue on the west. The order also authorized the Receiver to locate up to 100 of the previously authorized 466 replacement housing units within the expanded HRA.

5) On October 22, 1998, this Court entered an order further enlarging the HRA to include an area bounded by Madison Street on the north, Van Buren Street on the south, Washtenaw Avenue on the east, and Kedzie Avenue on the west. The Order also authorized development of approximately 60 of the previously authorized 466 replacement units of public housing in this area.

6) Pursuant to these orders, the Receiver has developed 461 units (the "Phase I" development). Although 466 units were authorized, five units could not be developed because of environmental limitations on available land within the HRA.

7) Phase I redevelopment included 200 units built between Lake Street on the north, Maypole Avenue on the south, Damen Avenue on the east, and Leavitt Street on the west, completed in 1999 and 261 units of off-site replacement housing in the HRA completed in 2000.

8) Additional Horner redevelopment is now proposed within the HRA and in the area bounded by Lake Street on the north, Washington Boulevard on the south, Hermitage Avenue on the east and Damen Avenue on the west (the "Proposed Expansion to the HRA"). Such redevelopment would require this Court to expand the Horner Revitalizing Area and authorize development of new non-elderly public housing units within the Proposed Expansion to the HRA.

9) **Revitalization Factors**. The area in and around the Horner Revitalizing Area has shown remarkable revitalization activity since the entry of this Court's 1995 Orders. Outlined below are highlights of revitalizing activity and other factors that will attract higher income renters and owners and strengthen the prospects for mixed-income success.

   a) **Census Data.** The Horner Revitalizing Area is located in the western portion of the Near West Side community area. Census data show increasing racial integration in the Near West Side over the last ten years. Between 1990 and 2000, census tract 2802 (two census tracts east of the Proposed Expansion to the HRA) changed from a limited area to a general area. Of the 1,347 residents in this tract, 28% are identified as African American. Census tract 2803, due east of the Proposed Expansion to the HRA, is less than 50% African American.

   b) **New Housing Construction and Sales.** Residential development has been booming in the Near West Side of Chicago since the mid-1990's. The most substantial real estate development on the Near West Side has taken place east of Ashland Avenue. However, recent sales of residential property show that the revitalization has touched the western borders of the Near West Side and is moving further west into East Garfield Park. In addition, the area south of the Eisenhower Expressway has seen significant development. Ashland Avenue and the expressway are no longer the borders to new development. According to the Realtor's Multi-Listing Service there were 22 condominium sales between November 2001 and July 2002 in the area bounded by Ashland Avenue on the east, Kedzie Avenue on the west, Lake Street on the north and Van Buren Street on the south. Sales prices have varied from a low of $150,000 (for a two-bedroom, one-bath unit at 18 South Leavitt Street) to a high of $255,000 (for a three-bedroom, two-bathroom unit at 2140 W. Jackson Boulevard). A third floor two-bedroom/two-bathroom condominium at 121 South Bell Street sold for $234,000. (Photos of representative developments follow in Exhibit A.) In addition, several new developments are now being planned in or near the HRA:
      i) Near West Development Corporation is in the process of pre-selling 22 units of housing: six two-flats and 10 single family homes, some of which will be subsidized through the City of Chicago's New Homes for Chicago Program.
      ii) East Garfield Place Condominiums at 3305-15 W. Warren Boulevard, a six building condominium development just west of the HRA, includes three-bedroom/two-bathroom units that are being marketed starting at $179,000.
      iii) Adam's Place at 2301 W. Adams is planned to be a 41 unit townhouse development at the western edge of the Near West Side which the developers are calling "the

West United Center neighborhood." Foundation work has begun on this ambitious development.

c) **New Commercial Development**. Around the HRA, new commercial development has been completed and additional commercial development is planned. In 2001, a new Walgreens was completed at the northeast corner of Western Avenue and Madison Street. (A photo of the new store is included in Exhibit A.) The City of Chicago has named a developer to develop a grocery store and small retail stores along the southeast corner of Western Avenue and Madison Street. This area has been identified as a commercial "node" by the City's Department of Planning and Development.

d) **Location**. The HRA is located just two miles west of downtown Chicago. Major east/west thoroughfares provide easy access to and from downtown. In addition, the HRA is located close to several major expressways and is served by the Chicago Transit Authority's elevated train and bus lines.

e) **Proximity to Employment Centers**. To the north of the HRA, the Kinzie Industrial Corridor is a significant job center. To the south is the Illinois Medical District, comprised of two major teaching hospitals. Area employees are a pool of potential renters and homeowners who will find the development's location convenient to work.

f) **Schools**. Three public schools within the Horner Revitalizing Area have received significant capital improvements in the last six years. Suder Elementary School has received a number of capital improvements in the past few years. In 1998, the school's windows were replaced and masonry was repaired. Suder also received a new play lot, which is used by families in the community. A campus park was installed around Brown Elementary School in 1996. Brown was also extensively rehabilitated with a new roof, windows and masonry repairs. Dett Elementary School received a campus park and major repairs in the late 1990s. In addition, nearby Malcolm X College provides opportunities for further education for those who may need a graduate equivalency degree or career-oriented training in areas varying from nursing to telecommunications. Malcolm X has a 430-seat performing arts center, a library, dance studios, a gymnasium and a swimming pool.

g) **Parks**. Just east of the Proposed Expansion to the HRA, Union Park offers a variety of recreational opportunities. The park has a swimming pool, tennis courts, ball fields and a field house with various activities including after school and summer programs for children. A two-acre park planned for the site will complement this 13-acre facility. The western portion of the HRA includes Touhy-Herbert Park, an eight-acre facility jointly operated by the Park District and the Board of Education, which has received significant investment recently.

h) **Other Facilities**. The James Jordan Boys and Girls Club—opened in 1996—is within the HRA. This facility contains a gymnasium, games rooms and ample classroom space and offers youth programs and service to the entire community. Mabel Manning Library—built in 1993 and named for a local community leader—is also in close walking distance. This attractive, neighborhood library is a freestanding building with

community space for meetings and other functions. (Photos of the James Jordan Boys and Girls Club and Manning Library are included in Exhibit A.)

10) **Further Planned Development**. Rockwell Gardens, a CHA owned development west of Western Avenue and south of Madison Street, is the subject of a 2001 $35,000,000 HOPE VI grant from the United States Department of Housing and Urban Development ("HUD"). A developer has been selected and plans have been developed to demolish the existing family public housing high-rises and replace them with 780 units of new, mixed-income housing, roughly one-third of which will be reserved for public housing residents. A significant number of the new mixed-income units will be constructed off-site, to the west of the current Rockwell development, further revitalizing the community.

The Proposed Expansion to the Revitalizing Area to Include the Horner Phase II Site.

11) In order to complete the redevelopment of Henry Horner, all 11 remaining high- and mid-rise buildings will be demolished. Five of the buildings have already been demolished; the remaining six will be demolished as development proceeds. The area to be redeveloped covers approximately 26 acres.

12) The momentum of development in the broader community should be continued within the Proposed Expansion to the HRA. In February 2001, the Horner Working Group, consisting of the Receiver, the CHA, the Gautreaux Plaintiffs, the City of Chicago, the Horner Plaintiffs, and the Horner Residents Committee, selected a lead developer, BMH-I, LLC, to carry out Phase II of the Horner redevelopment. BMH-I, LLC consists of the The Michaels Development Company, Inc. and Brinshore Development, LLC. Michaels is a national firm that has extensive experience with HOPE VI developments across the nation. Brinshore is a local firm focused on developing affordable and mixed-income housing in Chicago and across the State of Illinois.

13) The Horner Working Group, in collaboration with BMH-I, LLC, developed a Phase II redevelopment plan. In December 2001, the CHA and The Habitat Company, as Receiver, submitted the plan to HUD. In April 2002, HUD approved the plan. The plan includes construction of 764 new units of housing with 271 units (35.5%) reserved for public housing residents, 361 of the units (47.3%) designated "market rate," and 132 (17.3%) designated "affordable" for households earning no more than 60% of area median income. The plan will return the historic street grid to the area and increase the amount of park space thus creating a neighborhood better connected to the surrounding community. The plan for redevelopment has been endorsed by various stakeholders including all members of the Horner Working Group.

14) The redevelopment has received considerable financial support, including a HUD HOPE VI grant. The City of Chicago has committed funds for extensive infrastructure improvements, including new or repaired sewers, water lines, streets, alleys, street lighting and access for utilities. These infrastructure improvements are already underway. The City Council has passed an ordinance approving up to $8.5 Million in HOME funds. Tax Increment Financing ("TIF") funds may be available for some of the redevelopment. BMH-I, LLC will soon apply to be designated as eligible to use TIF funding to subsidize the affordable for-sale component of the transaction.

15) Horner redevelopment has further encouraged private development to the east and west. Additional redevelopment within the Proposed Expansion to the HRA will allow public housing residents to benefit further from the surrounding redevelopment, and it will likely catalyze additional mixed-income development in the surrounding community.

16) The Receiver supports expanding the Horner Revitalizing Area to include the area bounded by Lake Street on the north, Washington Boulevard on the south, Hermitage Avenue on the east and Damen Avenue on the west. The Receiver also supports authorizing the development of approximately 271 new, non-elderly public housing units within the Proposed Expansion to the HRA. With the support of HUD, the City of Chicago and the many community stakeholders, the Receiver is confident that the Horner Revitalizing Area will become a viable, economically integrated part of the West Haven neighborhood and the Near West Side of Chicago. The completion of the redevelopment of Henry Horner will complement the development already in process all around the HRA. Therefore, the proposed expansion to the Horner Revitalizing Area and construction of new non-elderly public housing units therein has the Receiver's full support.

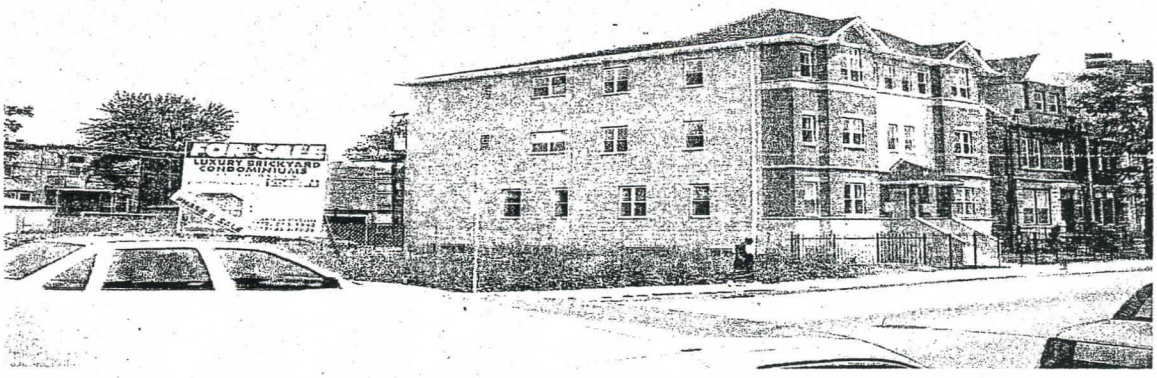
Further affiant sayeth not.

Daniel E. Levin

SUBSCRIBED and SWORN to
before me this 3 day of December, 2002
Victoria M. Simpson
NOTARY PUBLIC

OFFICIAL SEAL
VICTORIA M SIMPSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:09/05/05

Exhibit A



2665 West Warren



2724 West Warren

Exhibit A

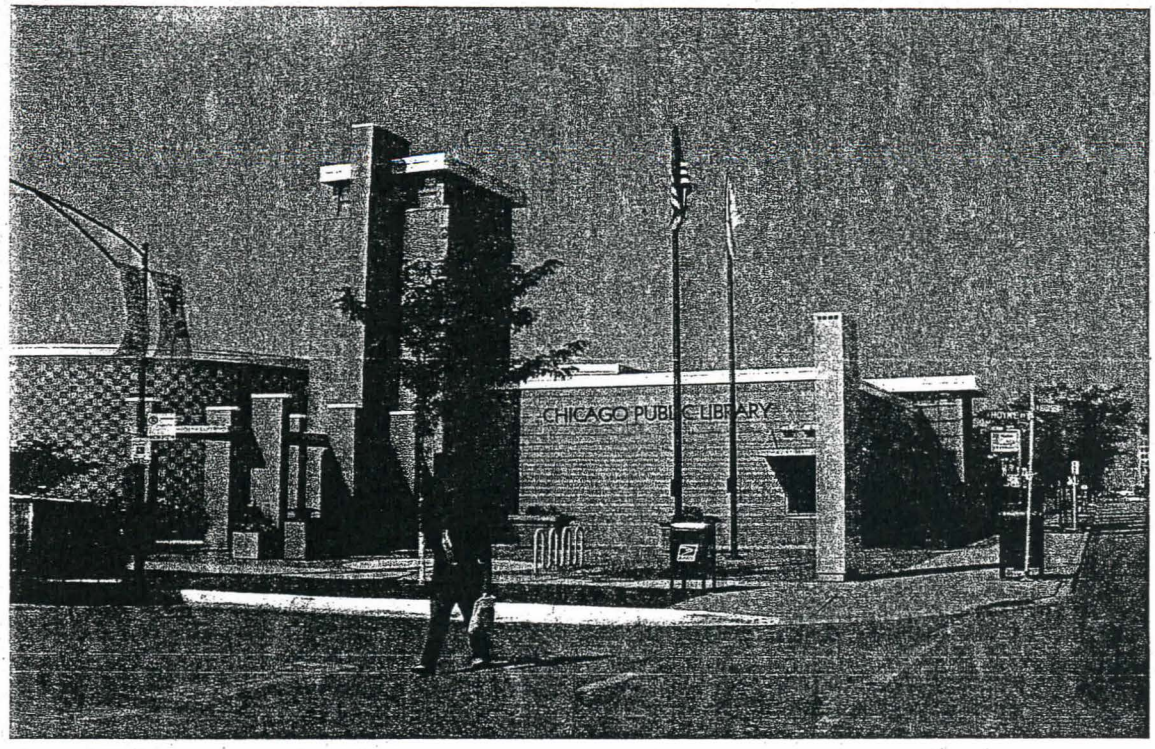


3305 West Warren

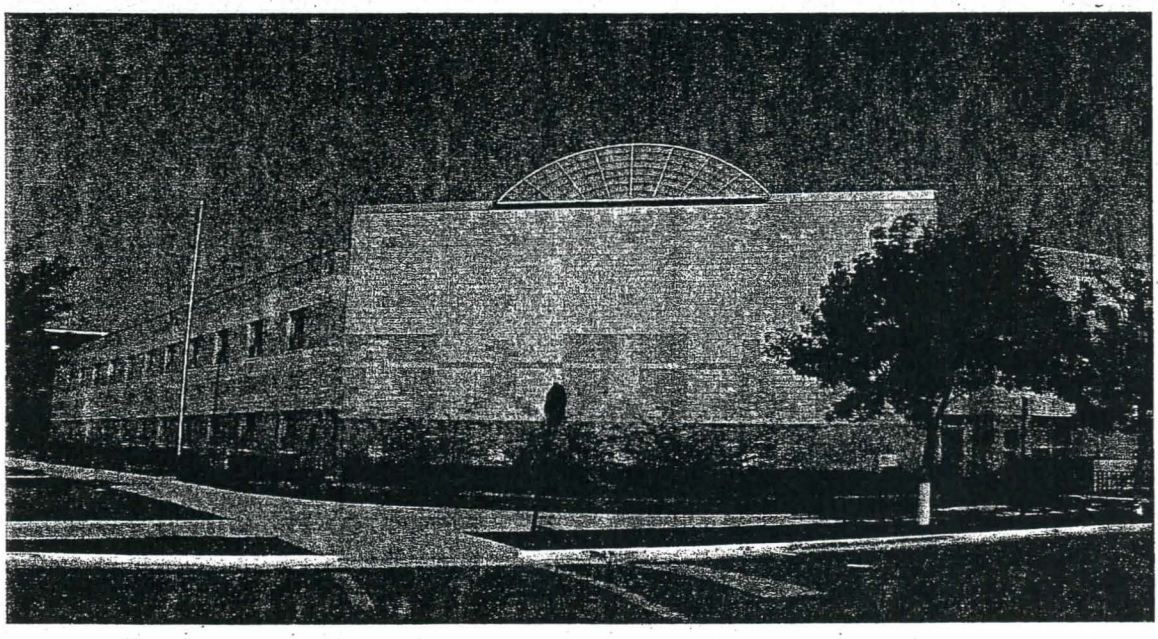


2136 West Monroe

Exhibit A

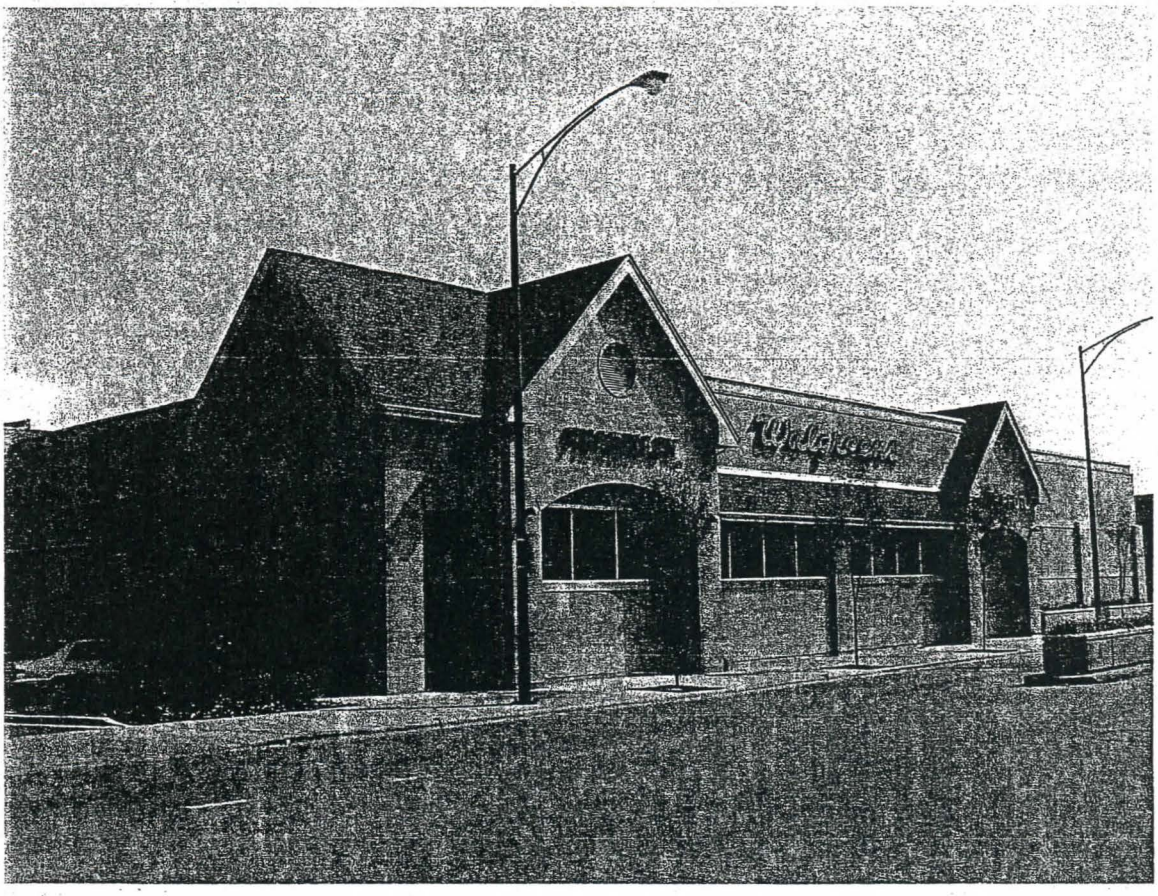


Mabel Manning Library



James Jordan Center

Exhibit A



Walgreens Pharmacy (Madison and Western)

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	Case No. 66 C 1459
	)	Judge Marvin E. Aspen
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendant.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority, for an order to waive Gautreaux locational restrictions and authorize development of 14 new non-elderly public housing units on a block bounded by Madison Street on the north, Monroe Street on the south, Rockwell Street on the east and Washtenaw Avenue on the west, and to amend the Tenant Assignment Plan with respect thereto, and the Court having heard from the parties concerning the proposed order, including that the Receiver, Daniel Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court being authorized to issue orders in this case "designed . . .to achieve results consistent with [the Judgment Order]" (304 F. Supp. 736, 741); and

The Court being of the view that based on the circumstances described in the Joint Motion, the proposed 14 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this cause;

Now, therefore, IT IS HEREBY ORDERED:

The Receiver, previously appointed by the Court to develop non-elderly public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 14 units of non-elderly public housing on a block bounded by Madison Street on the north, Monroe Street on the south, Rockwell Street on the east and Washtenaw Avenue on the west, provided, however, that (1) an additional 18 affordable rental units and 10 market rate rental units are built and marketed roughly simultaneously so that public housing units constitute no more than 33% of the total number of residential units to be constructed pursuant to this Order, and (2) the public housing units are and remain well distributed among the new units to be constructed on the block. The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended by further orders 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 amended to require that the 14 pubic housing units in the Phase I-A Rockwell Gardens redevelopment be made available to eligible families living in CHA units or with temporary Section 8 vouchers If there are no such families available to occupy the units, then they shall be made available to families on the CHA waiting list.

ENTER

Judge

Dated 8/5/03

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	66 C 1459
	)	Hon. Marvin E. Aspen
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendant.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority, for an order (A) to waive Gautreaux locational restrictions and authorize development of 27 new non-elderly public housing units in a mixed-income building ("Pershing Courts") to be constructed at the northeast corner of 39th Street and State Street on a site adjacent to CHA's Stateway Gardens public housing development; (B) to waive within the building the *Gautreaux* restriction on housing families with children in public housing units above the third floor; and (C) to amend the Tenant Assignment Plan to require that the 27 public housing units that are the subject of this motion be made available to relocating public housing families; and

The Court having heard from the parties concerning the proposed order, including that the Receiver, Daniel Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court being authorized to issue orders in this case "designed . . .to achieve results consistent with [the Judgment Order]" (304 F. Supp. 736, 741); and

The Court being of the view that based on the representations of the Parties and the Receiver, the proposed 27 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this cause;

Now, therefore, IT IS HEREBY ORDERED:

(A) The Receiver, previously appointed by the Court to develop non-elderly public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 27 units of non-elderly public housing in a mixed-income building at the northeast corner of 39th Street and State Street, provided, however, that (1) an additional 53 affordable rental units are built and marketed simultaneously within the building so that public housing units constitute no more than 34% of the total number of residential units to be constructed pursuant to this Order, and (2) the public housing units are and remain well distributed among the new units to be constructed in the building.

(B) Within the building, the Chicago Housing Authority and its designees shall be free to provide public housing units above the third floor to families with children.

(C) The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended by further orders dated September 12, 1983, June 9, 1989, October 1, 1990, October 6,

1994, August 14, 1995, July 20, 2001, August 29, 2002, March 24, 2003 and August 5, 2003, is hereby amended to require that the 27 pubic housing units that are the subject of this order be made available to eligible families living in CHA units or with temporary Section 8 vouchers. If there are no such families available to occupy the units, then such units shall be made available to families on the CHA public housing waiting list.

ENTER:

Marvin E. Aspen
Judge

Dated: 12/16/03

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	Judge Marvin E. Aspen
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority, for 1) an order to waive Gautreaux locational restrictions and authorize the development of 54 new non-elderly public housing units in several mixed-income developments to be located in an area bounded by 41st Street to the north, 43rd Street to the south, State Street to the west, and Calumet Avenue to the east, in an area adjacent to CHA's Robert Taylor public housing development, and 2) to amend the Tenant Assignment Plan to require that the 54 public housing units that are the subject of this motion be made available to eligible families relocating under CHA's Plan for Transformation and if there are no such families available to occupy the units, that such units be made available to families on the CHA public housing waiting list; and

The Court having heard from the Parties concerning the proposed order, including that the Receiver, Daniel Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide Plaintiff class families with desegregated housing opportunities; and

The Court having retained jurisdiction to issue orders in this case "designed . . . to achieve results consistent with [the Judgment Order]," 304 F. Supp. 736, 741 (N.D.Ill. 1969); and

The Court being of the view that based on the representations of the Parties and the Receiver, the proposed 54 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this case;

Now, therefore, IT IS HEREBY ORDERED:

(A) The Receiver, previously appointed by the Court to develop new non-elderly public housing on behalf of the Defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 54 units of public housing in mixed-income buildings at the following sites:

4233 S. State Street;
4239 S. State Street;
4243 S. State Street;
4247 S. State Street;
4231 S. Wabash Avenue;
4235 S. Wabash Avenue;
4245 S. Michigan Avenue;
4255 S. Michigan Avenue;
4157 S. Indiana Avenue;
4227 S. Indiana Avenue;
4233 S. Indiana Avenue;
4246 S. Indiana Avenue;
4254 S. Indiana Avenue;
4156 S. Prairie Avenue;
4200-4210 S. Prairie Avenue;
4117 S. Prairie Avenue;
4125 S. Prairie Avenue;
4129 S. Prairie Avenue;
4133 S. Prairie Avenue;
106 East 43rd Street;
116 East 43rd Street; and
126 East 43rd Street,

provided, however, that (1) the planned 44 affordable and 12 market-rate rental units in the buildings that are the subject of this motion are built and marketed roughly simultaneously with the development of the 54 public housing units to be authorized pursuant to this motion, and the 40 for-sale units planned for the immediate area are marketed roughly simultaneously with such development and (2) the public housing units are and remain well-distributed among the non-public housing units across the developments that are the subject of this motion.

(B) The Chicago Housing Authority Tenant Assignment Plan, originally approved by the Order of this Court on November 24, 1969, and amended by further orders dated September 12, 1983, June 9, 1989, October 1, 1990, October 6, 1994, August 14, 1995, July 20, 2001, August 29, 2002, March 24, 2003, August 5, 2003, and December 16, 2003 is hereby amended to require that the 54 public housing units that are the subject of this Order be made available to eligible families relocating under CHA's Plan for Transformation and if there are no such families available to occupy the units, that such units be made available to families on the CHA public housing waiting list.

ENTER:

Judge

Dated: 3/30/04

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

RECEIVED
MAY 25 2004
MARVIN E. ASPEN

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

MOTION FOR INSTRUCTIONS
PURSUANT TO LOCAL RULE 54.3(g)

I. Background

In compliance with Local Rule 54, requiring parties to share information and attempt to resolve fee issues before filing a fee motion with the Court, on December 30, 2003, plaintiffs delivered to the defendant Chicago Housing Authority ("CHA") a draft motion, with supporting affidavits and explanatory materials, for an award of attorneys fees and costs. The draft motion and accompanying materials covered the period August 1, 2001 through July 31, 2003, the two years since the last award of fees approved by the Court.

On February 9, 2004, before any substantive discussion between the parties on the fee matter, CHA's General Counsel wrote counsel for plaintiffs to say that the draft fee motion raised concerns regarding the fee amount requested, hourly rates proposed, and activities for which fees would be sought,

i.e., the normal matters to be jointly negotiated by the parties under Rule 54. The letter then went on:

> However, the overriding matter that must be initially addressed before any consideration of these concerns is the Seventh Circuit's recent decision in *Alliance to End Repression v. City of Chicago* [356 F.3d 767 (7th Cir. 2004)], which would seem to under cut the recovery of any further fees in the *Gautreaux* case.

A copy of the letter of February 9, 2004, is attached.

Subsequently, counsel for the parties met to attempt to resolve their differences as to the applicability of the *Alliance* decision, but they were unsuccessful. CHA continues to hold the view that *Alliance* precludes further fees in *Gautreaux*. For the reasons discussed below, plaintiffs believe that *Alliance* does not preclude recovery of further fees. Given this threshold disagreement, the parties are unable to conduct normal Rule 54 negotiations. Obviously, should CHA's views respecting the applicability of *Alliance* prevail, plaintiffs would be entitled to no further fees, eliminating the need to negotiate or, indeed, to file a fee motion.

Plaintiffs therefore believe it appropriate, and in the interest of judicial economy, to ask the Court for "instructions" under Local Rule 54.3(g)(3) – "disputes between the parties that cannot be resolved after good faith attempts." Specifically, plaintiffs request the Court to instruct the parties that *Alliance* does not, as a matter of law, preclude further fees to the *Gautreaux* plaintiffs and to proceed with prescribed Rule 54 negotiations.

II. Analysis

In *Buckhannon Board and Care Home v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598 (2001), the Supreme Court held that a party seeking fees must have secured either a judgment on the merits or a consent decree or other settlement order before it could qualify as a "prevailing party" under relevant fee-shifting statutes. *Id.*, at 610. *Buckhannon* rejected the "catalyst theory" under which a plaintiff might be deemed a "prevailing party" if a lawsuit brought about a voluntary change in the defendant's conduct without any enforceable judgment, consent decree or other settlement order ever having been entered in the case. *Id.*, at 605-606.

Alliance involved a fee award for post-judgment work in a case in which a 1981 consent decree prohibited the Chicago police department from engaging in certain investigative activities. The *Alliance* fee opinion extended the Supreme Court's ruling in *Buckhannon* to a post-judgment context in which plaintiffs had been entirely unsuccessful in post-judgment litigation that was viewed as clearly separable from the proceedings leading to the consent decree.

The *Alliance* opinion held that because after *Buckhannon* plaintiffs could no longer rely on the "catalyst theory," and because the *Alliance* plaintiffs experienced "nothing but loss" (*Alliance*, 356 F.3d at 770) in litigated post-judgment matters that were viewed as "clearly separable from the proceedings that led up to the entry of the decree" (*Id.* at 771), they were not "prevailing parties" as to those matters and could not recover fees. As now to be discussed,

in every relevant respect (except that both involve fees for post-judgment work) *Alliance* is plainly distinguishable from and does not preclude the recovery of further fees in *Gautreaux*.

First, the *Alliance* decision is premised on the fact that no relief was obtained in the proceedings for which fees were sought. It described the fee petition as follows:

> The $1 million award is for . . . two proceedings for contempt of the decree, which failed; the opposition . . . which also failed, to the modification of the decree; and efforts, which also bore no fruit so far as anyone can say, to monitor the City's compliance with the decree . . . . *Alliance,* 356 F.3d at 769.

The entire legal analysis is in the factual context of utter failure. Several statements by the court emphasize this point. For example, "in the present case there has for a decade now been nothing but loss – a million dollars' worth of legal services poured down the drain." *Id.* at 770. By contrast, plaintiffs in *Gautreaux* have a history of success in post-judgment matters, both in contested litigation and in negotiated relief.

Second, unlike the view of the *Alliance* panel respecting the post-judgment proceedings there, the work for which plaintiffs here seek fees is not "clearly separable" from the underlying Judgment Order. *Alliance*, 356 F.3d at 771. In *Alliance*, the remedy prescribed by the consent decree had long been fully secured – the City of Chicago "had complied with the decree throughout the period of almost two decades in which it had been in force." *Alliance*, 356 F.3d at 768. Here, by contrast, the remedy has not yet been fully secured. Rather, post-

judgment work has been and continues to be in pursuit of integrated housing opportunities for members of the plaintiff class, which is precisely the relief the Judgment Order entitled them -- over time -- to receive. *Gautreaux v. Chicago Housing Authority*, 304 F.Supp. 736 (N.D. Ill. 1969).

During the period of the proposed fee petition alone (now, by reason of the time entailed by the *Alliance* discussion, extended to 12/31/03), this Court has entered orders that include expansion of the North-Kenwood Oakland Revitalizing Area, allowing 850 new public housing units to be developed, expansion of the Horner Revitalizing Area, allowing 271 new public housing units, a waiver for the development of 14 public housing units as part of the Rockwell Gardens redevelopment project, and a waiver for the development of the 27 public housing units as a part of the Stateway redevelopment project. *See* Orders of 9/11/02 (North Kenwood Oakland), 12/12/02 (Horner), 8/5/03 (Rockwell), and 12/16/03 (Stateway). In each instance, the orders are designed to provide further relief to plaintiff class families. *See, e.g.,* Order of 8/5/03 (Rockwell) ("designed to achieve results consistent with [the Judgment Order].")

These four orders alone will give 1,162 plaintiff families new housing in mixed-income communities "consistent with [the Judgment Order]." *Id.* Further, these orders also modify the tenant assignment plan approved by this Court to provide that all public housing units produced under the orders be made available to the plaintiffs, rather than only half, as would be the case without the modification. The results thus obtained represent important successes for

plaintiff class families, many of whom have been waiting some thirty-five years for the relief promised by the Judgment Order.

Other examples of post-judgment work in the proposed fee petition period include monitoring the requirement of the Court's Horner Revitalizing Order that "one-half of...replacement dwelling units are occupied by families whose incomes are in the range of 50-80% of ...median income" (Order of 8/14/95); activities pursuant to the Court's Order denying intervention to Concerned Residents of ABLA, but without prejudice and contemplating further discussion among the parties (Order of 9/25/00); and monitoring the provision of the Court's Order requiring CHA to fill scattered site vacancies in a timely fashion (Order of 8/29/02). [1]

Indeed, the Seventh Circuit has expressly rejected the view that post-judgment proceedings in *Gautreaux* are to be viewed as separate from the Judgment Order. In *Gautreaux v. Chicago Housing Authority*, 690 F.2d 601 (7th Cir. 1982), CHA had contended that the basic *Gautreaux* case ended with the 1969 Judgment Order, and that the post-judgment proceedings for which fees were being sought should be viewed as a series of separate matters. *Id.* at 610. Rejecting this "mischaracteriz[ation]," the Seventh Circuit embraced Judge Crowley's view that the *Gautreaux* circumstances required the case to be treated "as a continuous litigation." *Id.* The Court added that the reality in a case such as *Gautreaux* is that --

[1] Still another difference between *Alliance* and *Gautreaux* is that under the consent decree in *Alliance* "someone else [the Chicago Police Board] -- not the plaintiff -- is the appointed monitor," 356 F.3d at 771, whereas the Judgment Order here appointed no separate monitor and required CHA to submit various reports to the plaintiffs' counsel. *Gautreaux*, 304 F. Supp. at 739, 740-41.

> the finding of a constitutional violation is in a practical sense only the preliminary hurdle. The heart of the lawsuit is the remedial stage, where the parties struggle, often for years, over the scope and details of injunctive relief. *Id.*

The Seventh Circuit recently reconfirmed this view when it ruled that three *Gautreaux* orders issued by this Court in 1998 were "interlocutory in nature," "flow[ed] from [the 1969 injunction]," and therefore could not be appealed. *Gautreaux v. Chicago Housing Authority*, 178 F.3d 951, 952, 958 (7th Cir. 1999). *See also*, *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air et al.*, 478 U.S. 546, 559 (1986)("measures necessary to enforce the remedy [monitoring consent decree and participating in related administrative hearings]...cannot be divorced from the matters upon which [plaintiffs] prevailed in securing the consent decree.").

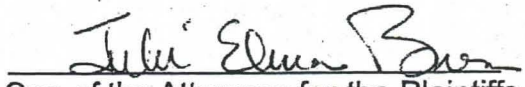
Third, even were the post-judgment proceedings to be viewed for fee purposes as separate matters (erroneously in our view, and contrary to the twice-stated view of the Seventh Circuit), *Alliance* would still not preclude a further award of *Gautreaux* fees. As the Court knows, since the entry of the Judgment Order plaintiffs have achieved victories in contested legal matters, and have also obtained significant relief for class members in negotiated, agreed orders. These orders satisfy many times over the Supreme Court's *Buckhannon* requirement that there be some "judicial imprimatur" before fees are awarded. *Buckhannon,* 532 U.S. at 605. (This Court has already found plaintiffs entitled to an award of fees post-*Buckhannon*. *See* Order of 4/2/02.)

III. Conclusion

The post-judgment proceedings here are part and parcel of the *Gautreaux* remedial process – "the heart of the lawsuit," as the Seventh Circuit has said, the ongoing "struggle, often for years, over the scope and details of injunctive relief." *Gautreaux*, 690 F.2d at 610. Plaintiffs' work during the proposed fee petition period relates not only to implementation of the Judgment Order and the multitude of post-judgment orders entered between July 1, 1969 and the proposed fee period, but also to over 25 additional orders entered during the proposed fee petition period. Collectively, these orders have provided plaintiffs with significant relief in furtherance of the basic remedy prescribed by the Judgment Order.

Because the *Alliance* situation is totally different in all relevant respects from the situation here, plaintiffs respectfully request the Court to instruct the parties that *Alliance* does not as a matter of law preclude an award of fees to the plaintiffs, and direct them to negotiate the particulars of plaintiffs' fee request under Local Rule 54.

Respectfully submitted,



One of the Attorneys for the Plaintiffs

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A. Niemann
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February 9, 2004

Julie Brown
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Suite 1515
Chicago, Illinois 60602

Re: Gautreaux v. CHA No. 66 C 1459

Dear Julie:

Our review of the BPI fee request which you transmitted to me at the end of the year raises many concerns regarding the amount requested, the hourly rates, and the activities for which fees are sought. However, the overriding matter that must be initially addressed before any consideration of these concerns is the Seventh Circuit's recent decision in Alliance to End Repression v. City of Chicago, which would seem to under cut the recovery of any further fees in the Gautreaux case. For your convenience, I have enclosed a copy of the Seventh Circuit's decision.

I would like to ask that BPI review this decision and advise us of your position as to its impact and whether BPI intends to still pursue the fee request.

I look forward to your consideration of this matter and shall await your response.

Sincerely,

Gail A. Niemann
General Counsel

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

DOROTHY GAUTREAUX, et al.,	)	No. 66 C 1459
	)	66 C 1460
Plaintiffs,	)	
	)	
vs.	)	May 27, 2004
	)	10:30 o'clock a.m.
CHICAGO HOUSING AUTHORITY, et al.,	)	Chicago, Illinois
	)	
Defendants.	)	

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HON. MARVIN E. ASPEN

APPEARANCES:

For certain plaintiffs:	MR. ALEXANDER POLIKOFF MS. JULIE ELENA BROWN Business and Professional People for the Public Interest 25 East Washington Street Suite 1515 Chicago, Illinois 60602
For Defendant Chicago Housing Authority:	JOHNSON JONES SNELLING GILBERT & DAVIS BY: MR. THOMAS E. JOHNSON 36 South Wabash Avenue Suite 1310 Chicago, Illinois 60603
Court Reporter:	MS. MARY M. HACKER 219 South Dearborn Street Room 1426 Chicago, Illinois 60604 (312) 663-0049

THE CLERK: 66 C 1459, Gautreaux v. CHA.

MR. POLIKOFF: Good morning, your Honor. Alex Polikoff for the plaintiffs.

MR. JOHNSON: Good morning, your Honor. Tom Johnson on behalf of the CHA.

MS. BROWN: Good morning. Julie Brown for the plaintiffs.

THE COURT: Nice to see you.

MR. JOHNSON: I think, as with most things, we've worked out what to do with this motion.

Do you want to recite in the record --

MR. POLIKOFF: What we think we can do, without the necessity of a ruling or briefing schedule, your Honor, is to conduct negotiations in good faith under Rule 54, with the mutual understanding in two respects as follows: No. 1, so far as the negotiation is concerned, the understanding would be that the Alliance case does not apply to produce a zero result. But secondly, without prejudice to CHA's right, when the matter comes back before you, to argue whatever they want to argue about an Alliance. And if that is, as I have just stated, agreeable, that satisfies us.

MR. JOHNSON: Right, Judge. That's absolutely fine. And the idea is that --

THE COURT: Do you want to withdraw your motion or continue it?

MR. POLIKOFF: Why don't just continue it -- either way, your Honor, which ever you prefer.

THE COURT: It makes no difference to me.

MR. JOHNSON: It's their motion so it's up to them, but it seems like it would be appropriate only to withdraw it only because the motion asks you to decide this Alliance question --

THE COURT: I will withdraw it.

MR. JOHNSON: Okay, great, Judge. And we'll work hard on trying to come up with something and limit what you have to do.

THE COURT: Nice to see you all.

(Which were all the proceedings had at the hearing of the within cause on the day and date hereof.)

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and complete transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

Marilyn M. Wacker
Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

1/6/05
Date

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Marvin Aspen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	66 C 1459	DATE	6/22/2004
CASE TITLE	Gautreaux vs. CHA		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Enter Memorandum Opinion and Order: CRA's motion to intervene (0-1) is denied.

(11) ■ [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		number of notices	Document Number
	No notices required.			
✓	Notices mailed by judge's staff.		date docketed	
	Notified counsel by telephone.			
	Docketing to mail notices.		docketing deputy initials	
	Mail AO 450 form.		6/22/2004	
	Copy to judge/magistrate judge.		date mailed notice	
GL	courtroom deputy's initials	Date/time received in central Clerk's Office	GL	
			mailing deputy initials	

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

DOROTHY GAUTREAUX, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE CHICAGO HOUSING AUTHORITY, et al.,	)	
	)	
Defendants.	)	
	)	No. 66 C 1459
	)	
CONCERNED RESIDENTS OF ALBA ("CRA"), et al.,	)	
	)	
Intervenor-Plaintiffs,	)	
	)	
v.	)	
	)	
THE CHICAGO HOUSING AUTHORITY, et al.,	)	
	)	
Intervenor-Defendants.	)	

MEMORANDUM OPINION AND ORDER

MARVIN E. ASPEN, District Judge:

Over thirty years ago, a group of Chicago Housing Authority ("CHA") residents filed a federal class action suit in which they alleged that the CHA had unconstitutionally discriminated against them by selecting sites for public housing based on the racial makeup of the surrounding communities. In 1969, United States District Court Judge Austin entered a judgment on the pleadings in favor of the CHA residents, finding that the CHA had engaged in a pattern of racial discrimination in selecting public housing sites. *Gautreaux v. Chicago Hous. Auth.*, 296 F. Supp. 907 (N.D. Ill. 1969). He ordered the parties to "formulate a comprehensive plan to prohibit the future use and to remedy the past effects of CHA's unconstitutional site selection and tenant

assignment procedures." *Id.* at 914. Pursuant to that mandate, as well as this Court's subsequent orders, the class-action plaintiffs (the "*Gautreaux* plaintiffs"), the CHA, the United States Department of Housing and Urban Development ("HUD"), and a court-appointed receiver have worked together to develop a plan for the revitalization of one of the Chicago's major public housing developments, the ALBA Homes. (We will refer collectively to this group of parties as the "*Gautreaux* parties" or the "original parties" to this litigation). The Concerned Residents of ALBA ("CRA") object to the proposed joint plan on the grounds that it does not do enough to remedy the past effects of CHA's discriminatory practices. CRA has therefore filed a motion to intervene in the *Gautreaux* litigation so that it may have a forum in which to voice its objections. For the reasons set forth below, we deny its motion to intervene as untimely.

BACKGROUND

On June 19, 1998, we approved a joint motion of the *Gautreaux* parties, entering an order designating an ALBA Revitalization Area and authorizing the development of non-elderly public housing units. Pursuant to our order, CHA submitted an application for funding under the federal government's HOPE VI program, along with a tentative plan for development of the ALBA Revitalization Area. Not long thereafter, on July 29, 1999, the CRA, a group comprised of current, former, and potential ALBA residents, filed suit against the CHA and HUD, challenging the proposed ALBA redevelopment plan, which we dismissed without prejudice as to CRA's right to intervene in the *Gautreaux* action. *Gautreaux v. Chicago Hous. Auth.*, No. 66 C 1459 (N.D. Ill. Nov. 4, 1999). The ALBA plaintiffs then filed a motion to intervene, which we denied without prejudice. *Gautreaux v. Chicago Hous. Auth.*, No. 66 C 1459 (N.D. Ill. Sept. 25, 2000). At that time, we found that the CHA had only developed a *tentative* plan for the ALBA Revitalization Area. Because the parties had not yet come up with a final redevelopment plan, we held, the CRA's complaint, which

alleged that the plan was illegal, was not ripe for adjudication. *Id.* We explained that "once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene." *Id.* CRA appealed this order to the Seventh Circuit, but voluntarily dismissed its appeal on May 31, 2002 because "the parties reached agreement that the ALBA redevelopment plan had become ripe, meeting the requirements set forth in this Court's Order of September 25, 2000." (CRA's Mem. In Support of Mtn. to Intervene at 3.) CRA did not renew its motion to intervene in the case until two years later, when it filed the present Amended Motion to Intervene on May 14, 2004.

ANALYSIS

In its motion, CRA argues first that, pursuant to Federal Rule of Civil Procedure 24(a)(2), it has a right to intervene in the *Gautreaux* action. CRA's second argument is that, even if this Court finds that CRA is not entitled to intervene as a matter of right, this Court should allow permissive intervention pursuant to Federal Rule of Civil Procedure 24(b). We discuss each argument in turn.

I. Intervention as of Right

A party may intervene in an action as of right when, *inter alia*, "the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." Fed. R. Civ. Pro. 24(a)(2). Mirroring the language of the Rule, the Seventh Circuit has set forth a four-part test for determining whether a party may intervene as of right: 1) the application must be timely; 2) the applicant must claim an interest relating to the property or transaction which is the subject of the action; 3) the applicant must be so situated that the disposition

of the action may impair or impede the applicant's ability to protect that interest; and 4) existing parties must not adequately represent the applicant's interests. *Heartwood, Inc. v. United States Forest Serv., Inc.*, 316 F.3d 694, 700 (7th Cir. 2003) (citing *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941, 945-46 (7th Cir. 2000)). The failure of any one of these factors requires denial of the petition to intervene. *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995) (citations omitted).

Turning to the first requirement, timeliness, the Seventh Circuit has held that courts should evaluate whether an application to intervene is timely according to a reasonableness standard. *People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 175 (7th Cir. 1995) ("[R]equiring potential intervenors to be reasonably diligent in learning of a suit that might affect their rights, and upon learning of such a suit, to act to intervene reasonably promptly."). A party may not intervene if it "dragged its heels" after learning of its interest in a lawsuit. *Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 438 (7th Cir. 1994). There are four factors that a court must consider in assessing timeliness: 1) when the intervenor knew or should have known of his interest in the case; 2) whether the delay caused any prejudice to the original parties; 3) whether the intervenor would suffer any prejudice if his motion is denied; and 4) any unusual circumstances. *Id.* (citations omitted). Taking each of these factors in turn, we conclude that the CRA's application is not timely.

We first consider when CRA knew or should have known of its interest in the case. There is little question that CRA knew it had an interest in the case from the early stages of the ALBA redevelopment process since it filed its first suit against the CHA and HUD in 1999, shortly after this Court entered the order designating the ALBA Revitalization Area. Once we ordered that intervention was the appropriate vehicle for addressing its concerns (rather than the filing of a separate suit), CRA was also diligent about filing its first motion to intervene. As discussed above,

however, we denied that motion on the grounds that CRA's interest in the case was not yet ripe. *Gautreaux v. Chicago Hous. Auth.*, No. 66 C 1459 (N.D. Ill. Sept. 25, 2000). At that time, we indicated that CRA could renew its motion to intervene once its claim did become ripe. Thus, the pertinent issue for purposes of the present motion to intervene is not when CRA knew of its overall interest in the case, but when CRA knew or should have known that its claim became ripe for adjudication.

CRA concedes in its brief that, as soon as May 2002, "the parties reached agreement that the ALBA redevelopment plan had become ripe, meeting the requirements set forth in this Court's Order of September 25, 2000." (CRA's Mem. In Support of Mtn. to Intervene at 3.) There is therefore little question that CRA knew that the time was ripe for intervention as early as May of 2002. Yet it waited a full two years before renewing its motion to intervene. Although there is no set time limit by which a party must file a motion to intervene once it is aware of its interests, courts have held that much shorter time periods were insufficient. *See, e.g., City of Bloomington, Indiana v. Westinghouse Elec. Corp.*, 824 F.2d 531, 535 (7th Cir. 1987) (finding that an eleven-month delay before seeking intervention was too long). CRA retorts that it had a good reason for holding off on renewing its motion since the parties were engaged in settlement negotiations and intervention might not be necessary. This argument is unpersuasive. CRA knew the case was ripe, and yet it waited two full years to intervene.

CRA maintains that it also waited two years to renew its motion because it relied on a supposed promise (contained in our Order of September 25, 2000) that we would hold a hearing on the merits of the ALBA redevelopment plan and that the hearing would act as a signal to CRA that its claim had become ripe. However, most significantly, CRA admits that it knew the case became ripe in May of 2002. In light of this admission, CRA's allegation that it has been biding its time,

waiting for us to hold a hearing, appears disingenuous. Moreover, CRA has misread our Order of September 25, 2000. In that Order, we said that "once a development plan is finalized, we expect to hold a hearing on the merits of the plan, which would involve receiving either oral or written submissions from all interested parties. At that time, if the CRA believes the final plan is in violation of the law, it may renew its motion to intervene."[1] *Gautreaux v. Chicago Hous. Auth.*, No. 66 C 1459 (N.D. Ill. Sept. 25, 2000). In any case, the unmistakable message of the Order was that CRA could renew its motion to intervene once a plan had been finalized, not once a hearing had been held.[2] For example, in the concluding sentence of the Order, we explicitly told CRA when a renewed motion would be considered appropriate. We stated that we would "dismiss the complaint without prejudice to the CRA's right to bring another motion to intervene in this court *after the completion of the development plan.*" *Id.* In short, we spelled out for CRA when the proper time for filing suit would be: once a plan was finalized. CRA acknowledged that the controversy was ripe more than two years ago, but waited until one month ago to renew its motion to intervene. We thus find that CRA has failed to satisfy the first prong of the timeliness analysis.

Next, we consider whether the *Gautreaux* parties were prejudiced by CRA's delay. *See People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 176 (7th Cir. 1995) (noting that "the ultimate test in considering timeliness is the prejudice suffered by the parties because of [the intervenor's] delay in petitioning to intervene."). The CHA contends that the CRA's delay is "catastrophic." (CHA's Mem. in Opp. to Mtn. to Intervene at 17.) Although this may be an

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[1]CRA argues that our Order *required* the *Gautreaux* parties to request a hearing before final implementation of the plan. We find nothing in the language of our Order that would countenance such a conclusion.

[2]It is true that the hearing to which we alluded did not take place (indeed, one was not necessary given the fact that all of the parties, including the *Gautreaux* plaintiffs, were in complete agreement regarding the proposed ALBA development plan).

overstatement, CHA does point out that, after a several-year long process of developing plans, meeting with concerned neighborhood groups, obtaining building permits, and securing funding, construction is finally set to begin on the ALBA development project on July 1, 2004. *See City of Bloomington, Indiana v. Westinghouse Elec. Corp.*, 824 F.2d 531, 535 (7th Cir. 1987) (finding that intervention after the original parties had come to a settlement agreement was prejudicial because it would "render worthless all of the parties' painstaking negotiations" and impede the cleanup of environmental waste). CHA also alleges that the deadline for completion of the project is in late 2005, that they are dealing with an already ambitious construction schedule, and that failure to meet their deadline could cause the CHA to forfeit eligibility for certain tax credits that are essential to the project's funding.

HUD also describes significant problems that the parties could face if the ALBA plan is delayed. According to HUD, it is required to recapture any funding that it provides to local housing authorities that are not used in a timely fashion. Thus, HUD argues that if CRA's intervention causes substantial delays in the ALBA project, it might have no choice but to withdraw its funding. HUD also points out that funding for the HOPE VI program (under which the parties obtained funding for the ALBA project) has been "dramatically cut" in recent years and worries that the program "may not have a long future." (HUD's Mem. in Support of Opp. to Mtn. to Intervene at 2-3.) It explains that a substantial delay in the ALBA project could therefore render future HOPE VI funding unavailable.

CRA responds that many of the arguments put forth by the CHA and by HUD are speculative at best. This is true. None of the potential problems to which the *Gautreaux* parties cite are necessarily destructive to the entire ALBA project. However, the parties' briefs do highlight some of the very concrete difficulties that the parties will have to face if the project is delayed. There is little

question that CRA's intervention will act as a *de facto* injunction, requiring the parties to rethink the timing and funding of the entire construction process. Although the consequences of allowing CRA to intervene may not be quite as disastrous as the parties make them out to be, we find that the existing parties will suffer some prejudice if CRA is allowed to intervene at this stage.[3]

We next consider whether denial of the motion to intervene will cause undue prejudice to CRA. CRA argues that, because "this Court already dismissed both their independent lawsuit and their first attempt to intervene on procedural grounds, denying intervention would effectively leave the ALBA Plaintiffs with no forum in which to raise their substantial and well-supported concerns." (Mem. In Support of Mtn. to Intervene, at 6.) It may be true that denial of their motion will leave CRA without the opportunity to litigate its claims on its own. However, CRA is not entirely without representation in this matter. Almost all of the members of CRA are also plaintiffs in the *Gautreaux* class-action. Thus, at least some of their interests are represented by the *Gautreaux* plaintiffs. Although CRA and the *Gautreaux* plaintiffs obviously differ as to the best method for curing past grievances at ALBA, CRA and the *Gautreaux* plaintiffs do share the same ultimate goal of remedying past grievances and ensuring that ALBA residents obtain the maximum amount of low-income housing in the new development. Furthermore, this Court has appointed a Receiver in the action who also has interests in common with CRA. We appreciate that CRA wishes to intervene because its members disagree with the approach taken by those very parties who are supposed to be

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[3]CRA also argues that the *Gautreaux* parties are estopped from claiming that they would be prejudiced by intervention given the fact that the *Gautreaux* parties argued *in favor* of intervention in 1999 when CRA first attempted to raise its concerns in a separate action. This argument misinterprets the Seventh Circuit's rulings regarding prejudice to existing parties. The relevant test is not whether existing parties would be prejudiced by another party's *intervention*; it is whether the existing parties will be prejudiced by a would-be party's *delay* in moving to intervene. *People Who Care v. Rockford Bd. of Educ.*, 68 F.3d 172, 176 (7th Cir. 1995). Thus, the fact that the *Gautreaux* parties argued in favor of intervention in 1999 is irrelevant to the issue of whether they will be prejudiced by CRA's attempt to intervene now, two years after the controversy became ripe.

representing their interests in the *Gautreaux* action. However, the fact that most of them are also members of the *Gautreaux* class means that they are not left entirely without a voice.[4] We therefore find that CRA will not suffer undue prejudice by being denied the right to intervene at this late stage in the development process.

Finally, we address the "unusual circumstances" prong of the Seventh Circuit's timeliness test. CRA argues that the unusual procedural posture of this case requires intervention as of right. CRA's argument is somewhat puzzling. CRA claims that, based on similar cases proceeding outside of the *Gautreaux* litigation (regarding CHA developments at the Henry Horner Homes and at Cabrini-Green), it originally believed that it was appropriate to bring a separate action rather than intervening in the *Gautreaux* litigation. It concludes that, "[w]hen this Court made clear by its November 4, 1999, decision that intervention in *Gautreaux* was the ALBA Plaintiffs' only remedy, they promptly filed a motion to intervene. Given the unusual facts of this case, the motion to intervene should be considered timely and intervention should be granted." (CRA's Mem. in Support of Mtn. to Intervene at 7.) CRA's argument appears to be that we should take into account the fact that it was reasonable for it to originally file its case as a separate action, rather than intervening in the *Gautreaux* litigation. Although the procedural posture of this case is unusual,

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[4]Because we find that the motion to intervene is not timely, we do not reach the three remaining requirements for intervention, including the inquiry into whether or not CRA is adequately represented by the existing parties. We note, however, that the Seventh Circuit presumes adequacy of representation in cases where the proposed intervenor and an existing party share the same ultimate objective. *Wade v. Goldschmidt*, 673 F.2d 182, 186 n. 7 (7th Cir. 1982). Although CRA and the *Gautreaux* plaintiffs disagree as to the best way to remedy past segregation in the ALBA development, they do share the same ultimate goal of ensuring that CHA residents will be given the opportunity to live in racially and economically integrated communities. This shared goal invokes the presumption that CRA is adequately represented by the *Gautreaux* plaintiffs and suggests that CRA would also fail to demonstrate this element of the Seventh Circuit's intervention test.

CRA's belief, held in 1999, that it should file a separate action has no bearing on our consideration of whether the present motion to intervene is timely.

Superficially, it may appear that this Court has erected unfair procedural borders for CRA. First, we told CRA that it filed suit in the wrong place. Next, we told CRA that it filed its motion to intervene too early. Now we tell CRA that it has renewed its motion too late. But an examination of the procedural history shows that in reality, CRA was treated fairly. After acknowledging that the time was ripe for intervention in the case, CRA stalled in filing a motion to intervene for two years. There is nothing in this Court's earlier opinions which would suggest that CRA would have been turned away had it renewed its motion to intervene at a much earlier date. We thus find that CRA's two-year delay in filing its renewed motion to intervene is improper and conclude that they may not intervene as of right in this matter.

II. Permissive Intervention

CRA's next argument is that, even if it has no right to intervene, permissive intervention is appropriate in this case. The doctrine of permissive intervention is set forth in Federal Rule of Civil Procedure 24(b), which provides that, "[u]pon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common . . . 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." District courts have broad discretion as to whether to grant permissive intervention. *Sokaogon Chippewa Community v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000) ("Permissive intervention under Rule 24(b) is wholly discretionary and will be reversed only for abuse of discretion.").

As a rule, permissive intervention is only allowed in cases where an application to intervene is timely. *Heartwood, Inc. v. United States Forest Serv.*, 316 F.3d 694, 701 (7th Cir. 2003). The

timeliness analysis applied to permissive intervention cases is the same as that employed where a party seeks to intervene as of right. *Id.* Therefore, our conclusion that CRA failed to renew its application for intervention in a timely manner dictates the denial of their request for permissive intervention.

CONCLUSION

For the foregoing reasons, CRA's motion to intervene is denied. It is so ordered.

MARVIN E. ASPEN
United States District Judge

Dated: 6/22/04

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	**66 C 1459**
	)	**Hon. Marvin E. Aspen**
v.	)	
	)	
CHICAGO HOUSING AUTHORITY	)	
	)	
Defendant.	)	

ORDER

This matter coming to be heard on the joint motion of the parties for an order amending the June 19, 1998 ABLA Revitalizing Order to permit the leasing of 126 units in the Loomis Courts development to families with incomes ranging from 0 to 60 percent of area median income, and the Court having heard the presentations of the parties regarding the proposed order;

IT IS HEREBY ORDERED: Paragraph 2 of the June 19, 1998 order designating an "ABLA Revitalizing Area" is stricken in its entirety and amended to read as follows:

"2. Subject to such terms and conditions as are specified by further orders of the Court, the Receiver is authorized to develop such number of new public housing units within the Revitalizing Area as will result in public housing units comprising approximately 1,084 of a total of approximately 2,895 residential units within the Revitalizing Area, which is the approximate number of public housing and total residential units within the Revitalization Area presently contemplated by such grant application, as part of an overall development including approximately 719 non-public housing units to be occupied by persons

with incomes of 36 to 120 percent of area median income, 126 non-public housing units at Loomis Courts to be occupied by persons with incomes from 0 to 60 percent of area median income, and 966 non-public housing units to be occupied by persons with incomes in excess of 120 percent of area median income."

ENTER:

U.S. District Judge

August 16, 2005

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

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

AGREED ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority, for an order to waive Gautreaux locational restrictions and authorize development of 57 new non-elderly public housing units in a mixed-income development within the following boundaries: (a) an area bounded by Adams Street on the north, Van Buren Street on the south, Western Avenue on the east and Campbell Street on the west and (b) a block bounded by Madison Street on the north, Monroe Street on the south, Rockwell Street on the east and Washtenaw Avenue on the West, and to amend the Tenant Assignment Plan with respect thereto, and the Court having heard from the parties concerning the proposed order, including that the Receiver, Daniel Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court being authorized to issue orders in this case "designed ... to achieve results consistent with [the Judgment Order]" (304 F. Supp. 736, 741); and

The Court being of the view that based on the circumstances described in the Joint Motion and the presentations made in open court, the proposed 57 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this cause; and

The Court notes that the parties have reached an understanding as to plaintiffs' concerns regarding their mutual goal to realize the mixed-income objective at Rockwell;

Now, therefore, IT IS HEREBY ORDERED:

The Receiver, previously appointed by the Court to develop non-elderly public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 57 new non-elderly public housing units in a mixed-income development within the following boundaries: (a) an area bounded by Adams Street on the north, Van Buren Street on the south, Western Avenue on the east and Campbell Street on the west and (b) a block bounded by Madison Street on the north, Monroe Street on the south, Rockwell Street on the east and Washtenaw Avenue on the West, provided, however, that (1) an additional 53 affordable units and 98 market rate units (including 116 affordable or market rate homeownership units) are built and marketed roughly simultaneously so that public housing units constitute no more than 28% of the total number of residential units to be constructed pursuant to this Order, and (2) the public housing units are and remain well distributed among the new units to be constructed on the block. The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended by further orders 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 amended to require that the 57 pubic housing units in the Phase I-B Rockwell Gardens redevelopment be made available to eligible families living in CHA units or with temporary Section 8 vouchers. If there are no such families available to occupy the units, then they shall be made available to families on the CHA waiting list.

ENTER:



Judge

Dated: 8/22/05

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	66 C 1459
	)	Hon. Marvin E. Aspen
vs.	)	
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of plaintiffs and defendant Chicago Housing Authority, for an order (A) To designate as the Stateway Revitalizing Area ("Revitalizing Area") that portion of the City of Chicago that lies within the following boundaries: 35th Street to the north, 39th Street to the south, State Street to the east, and Federal Street to the west; (B) to authorize development of 439 new non-elderly public housing units in mixed income buildings within the Revitalizing Area on the site previously occupied by CHA's Stateway Gardens public housing development; and (C) to amend the Tenant Assignment Plan to require that the 439 public housing units that are the subject of this motion be made available to relocating public housing families; and

The Court having heard from the parties concerning the proposed order, including that the Receiver, Daniel E. Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide plaintiff class families with desegregated housing opportunities; and

The Court being authorized to issue orders in this case "designed... to achieve results consistent with [the Judgment Order]" (304 F. Supp. 736, 741); and

The Court being of the view that based on the representations of the Parties and the Receiver, the proposed 439 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this case;

Now, therefore, IT IS HEREBY ORDERED:

(A) The Court hereby designates as the Stateway Revitalizing Area that portion of the City of Chicago that lies between 35th Street on the north, 39th Street on the south, State Street on the east, and Federal Street on the west.

(B) The Receiver, previously appointed by the Court to develop non-elderly public housing on behalf of the defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 439 units of non-elderly public housing in a mixed income development within the Revitalizing Area, provided, however, that (1) an additional 877 affordable and market-rate units are built and marketed roughly simultaneously within the development so that public housing units constitute no more than 33% of the total number of residential units to be constructed pursuant to this Order, and (2) the public housing units are and

remain well distributed among the new units to be constructed in the development.

(C) The Chicago Housing Authority Tenant Selection and Assignment Plan, originally approved by Order of this Court on November 24, 1969, and amended by further orders dated September 12, 1983, June 9, 1989, October 1, 1990, October 6, 1994, August 14, 1995, July 20, 2001, August 29, 2002, March 24, 2003 and August 5, 2003, is hereby amended to require that the 439 public housing units that are the subject of this Order be made available to eligible families relocating under the CHA's Plan for Transformation, and that if there are no such families available to occupy any such units, that such remaining units be made available to families on the CHA public housing waiting list.

ENTER:

JUDGE

Dated: 11/22/05

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

DOROTHY GAUTREAUX, et al.	)	
	)	
Plaintiffs,	)	
	)	No. 66 C 1459
v.	)	Judge Marvin E. Aspen
	)	
CHICAGO HOUSING AUTHORITY,	)	
	)	
Defendant.	)	

AGREED ORDER

This matter coming to be heard on the Joint Motion of Plaintiffs and Defendant Chicago Housing Authority, for 1) an order to waive Gautreaux locational restrictions and authorize the development of 83 new non-elderly public housing units in several mixed-income developments to be located in an area bounded by 40th Street to the north, Root Street to the south, State Street to the east, and the railroad embankment west of Federal Street to the west, on a site previously occupied by CHA's Robert Taylor public housing development, and 2) to amend the Tenant Assignment Plan to require that the 83 public housing units that are the subject of this motion be made available to eligible families relocating under CHA's Plan for Transformation; and

The Court having heard from the Parties concerning the proposed order, including that the Receiver, Daniel Levin and The Habitat Company LLC support the Joint Motion; and

The Court being cognizant that the principal remedial purpose of the orders previously entered in this case has been to provide Plaintiff class families with desegregated housing opportunities; and

The Court having retained jurisdiction to issue orders in this case "designed . . . to achieve results consistent with [the Judgment Order]," 304 F. Supp. 736, 741 (N.D.Ill. 1969); and

The Court being of the view that based on the representations of the Parties and the Receiver, the proposed 83 public housing units are designed to achieve results consistent with the Judgment Order previously entered in this case;

Now, therefore, IT IS HEREBY ORDERED:

(A) The Receiver, previously appointed by the Court to develop new non-elderly public housing on behalf of the Defendant, Chicago Housing Authority, shall be free to develop or cause to be developed 83 units of public housing in mixed-income buildings on the site previously occupied by CHA's Robert Taylor public housing development provided, however, that (1) the planned 68 affordable and 30 market-rate rental units in the buildings that are the subject of this motion are built and marketed roughly simultaneously with the development of the 83 public housing units to be authorized pursuant to this motion, and the 57 for-sale units (not including the 16 homeownership units to be built once the city relocates the Fire Station currently located within the development area), planned for the immediate area are marketed roughly simultaneously with such development and (2) the public housing units are and remain well-distributed among the non-public housing units across the developments that are the subject of this motion.

(B) The Chicago Housing Authority Tenant Assignment Plan, originally approved by the Order of this Court on November 24, 1969, and amended by further orders dated September 12, 1983, June 9, 1989, October 1, 1990, October 6, 1994, August 14, 1995,

July 20, 2001, August 29, 2002, March 24, 2003, August 5, 2003, December 16, 2003, March 30, 2004, and November 22, 2005 is hereby amended to require that the 83 public housing units that are the subject of this Order be made available to eligible families relocating under CHA's Plan for Transformation.

ENTER:

Judge

Dated: 4/17/06