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.	)	Judge Aspen

AGREED MOTION TO APPROVE MODIFICATION OF CONSENT DECREE IN *CABRINI-GREEN LAC v CHA, et al.*, 96 C 6949

The plaintiffs and the CHA, supported by the Cabrini-Green LAC, jointly move that this Court enter the attached order approving certain changes in the August 30, 2000 consent decree, entered in *Cabrini-Green LAC v CHA, et al.*, 96 C 6949. In support of this motion, the parties state as follows:

1. After considerable effort, the parties have reached agreement on a comprehensive plan to complete redevelopment of the old Cabrini-Green public housing project. The terms of that plan are set forth in three documents. The ***first*** is the Joint Motion of the Plaintiffs and Chicago Housing Authority To: 1) Expand the Near North Revitalizing Area; 2) Authorize, Subject to Stated Conditions, the Development of Additional Public Housing Units In This Area; and 3) Amend the CHA Tenant Selection and Assignment Plan, previously filed with the Court on August 6, 2015. The ***second*** is the Joint Motion of the Cabrini-Green LAC, as Intervenor-Plaintiff, and the CHA for entry of an Agreed Order to resolve the dispute involved in *Cabrini-Green LAC, et al. v CHA, et al.*, 13 C 3642 ("Cabrini III"), now pending in the Court of Appeals. The ***third*** is the Joint and Agreed Motion to Modify the Consent Decree in *Cabrini-Green LAC v CHA, et al.*, 96 C 6949 ("Cabrini I"), which is being presented to both Judge Chang, who

presides over Cabrini I, and this Court, whose approval is required for those provisions of the Cabrini I decree that pertain to CHA development. See, this Court's orders of August 12, 1998 (requiring approval of the proposed Cabrini I decree, to the extent that it relates to CHA development of family public housing), and September 12, 2000 (approving the consent decree in Cabrini I).

2. Attached hereto as Exhibit A is a copy of the Joint and Agreed Motion to Modify the Consent Decree in Cabrini I, supported by the CHA, the City of Chicago, the Cabrini LAC and the Gautreaux plaintiffs. This motion spells out in detail the specific modifications sought and the basis for such modifications. The proposed changes:

> A. Permit CHA to use project-based vouchers (specifically, vouchers from CHA's Project Rental Assistance program with thirty-year subsidies and vouchers from HUD's Rental Assistance Demonstration program with forty-year subsidies) as replacement housing and permanent relocation housing under the Cabrini I decree; and
>
> B. Modify the mix of housing on City- and CHA-owned land subject to the Cabrini I decree so that the floor for public housing is 33%, with incentives for developers to raise the public housing mix to as high as 40% (with the exception of two projects currently in development).

3. The changes in the Cabrini I decree are necessary in order to permit the larger Cabrini redevelopment plan to go forward and they are fully supported by all parties. For convenience, we are tendering the same order for this Court and Judge Chang to sign.

/s/ Thomas E. Johnson
One of the Attorneys for the CHA

THOMAS E. JOHNSON
Johnson, Jones, Snelling, Gilbert & Davis
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
(312) 578-8100

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

CABRINI-GREEN LOCAL ADVISORY COUNCIL,	)	
	)	
Plaintiff,	)	
	)	No. 96 C 6949
v.	)	
	)	Hon. Edmond E. Chang
CHICAGO HOUSING AUTHORITY, et al.	)	
	)	
Defendants.	)	

JOINT AND AGREED MOTION TO MODIFY CONSENT DECREE

The plaintiff Cabrini-Green Local Advisory Council ("LAC") and defendant Chicago Housing Authority ("CHA"), joined and supported by the defendant City of Chicago, move, in accordance with Section XII of the Consent Decree and Fed. Rule of Civ. Proc. 60(b), that the Court enter the attached Order modifying the Consent Decree, originally entered in this case on August 30, 2000 to: 1) permit project-based voucher units provided, developed or acquired by CHA under the CHA's Project Rental Assistance ("PRA") program or HUD's Rental Assistance Demonstration ("RAD") program to be used as public housing replacement housing under Section II(A) and permanent replacement housing under Section V(A) of the decree, and further count toward the completion of the 700 public housing units required by Section II(A) of the decree; 2) to modify the permissible income mix requirements for public housing developed under the decree on CHA and City-owned land, to include between 33% and 40% public housing units (rather than the 30% figure that currently represents the public housing minimum and maximum for such development); and 3) to specifically permit the income mix for the development of the Brinshore Clybourn-Division project within Parcel No. 14 on Appendix C to

the decree ("the Clybourn-Division parcel") to be 38.1% market rate housing, 30.95% affordable housing and 30.95% public housing, and further to exempt the Parkside of Old Town development in its entirety from the 33% floor on public housing units, in favor of the original 30% floor in the Consent Decree. In support of this motion, the plaintiff and CHA state as follows:

I. INTRODUCTION

1. The plaintiff Cabrini LAC and CHA, in conjunction with the City of Chicago, and in consultation with the Near North Working Group (composed of the CHA, the City, counsel for the plaintiffs in *Gautreaux v CHA,* 66 C 1459, counsel for the plaintiffs in this case as well as the Cabrini LAC, and periodically including the alderman for the Cabrini area) have developed a plan to complete the redevelopment of the former Cabrini-Green public housing site, and its environs. This plan was presented to Judge Aspen, who presides over the *Gautreaux* litigation, where all CHA redevelopment in "limited areas", i.e. census tracts with greater than a 30% African-American population, must obtain approval. The plan is described in detail in the Joint Motion of the [*Gautreaux*] Plaintiffs and Chicago Housing Authority to: 1) Expand the Near North Revitalizing Area; 2) Authorize, Subject to Stated Conditions, the Development of Additional Public Housing Units in this Area; and 3) Amend the CHA Tenant Selection and Assignment Plan, filed August 6, 2015 (hereafter "the *Gautreaux* Cabrini Motion"). The *Gautreaux* Cabrini Motion lays out the original conditions at the Cabrini-Green housing development, the history of redevelopment on and around the old Cabrini-Green site, the various lawsuits that have been filed during the process, and the final plan to complete Cabrini redevelopment. A copy of the *Gautreaux* Cabrini Motion is attached hereto as Exhibit A.

2. Additionally, the Cabrini LAC and the CHA have agreed to modify the Consent Decree and seek modification of the Consent Decree pursuant to the terms described herein as part of a resolution of a separate lawsuit, *Cabrini-Green LAC, et al., v CHA, et al.,* No. 13-3642, on appeal (No. 14-3650).

3. Originally composed of 3,020 public housing apartments, the Cabrini-Green development was severely under-occupied and in serious disrepair in 1994, when CHA obtained its first grant to begin redeveloping the area. HUD had found that all of Cabrini's 23 high-rise and mid-rise buildings were no longer "viable" under *42 U.S.C. §1437z-5*, meaning CHA could not invest funds to rehabilitate those buildings. The project was occupied only by very poor families, who were economically and racially isolated from the surrounding community. Crime and gang activity was rampant at Cabrini.

4. To date, all of the Cabrini site has been demolished and cleared, except for the 586 Cabrini Rowhouse units. 2,282 new units of housing have been built and occupied, and additional units are under construction. Approximately one-quarter, 146 units of the Rowhouses have been rehabilitated. Many public improvements have been completed, including the expanded Seward Park, the renovated Jenner School, the expansion of the Walter Payton high school, the construction of the Jesse White Center (for recreation and youth programs) on Chicago Avenue, a new police station and a new public library on Division Street. Substantial commercial development has occurred, including the shopping center at Clybourn and Division, and the large Target store on the north side of Division (which employs many Cabrini residents). Market real estate development (other than that generated by CHA) has also been financed, planned and developed.

5. The CHA plan to complete Cabrini redevelopment involves three rounds of RFPs. At the end of the day, the plan calls for the development of a ***minimum*** of 1,627 public housing units, 1,122 affordable housing units and 2,529 market rate units. If this Court increases the 30% cap on public housing development now in place, the number of public housing units will increase. Further, CHA plans to encourage developers to build up to 40% public housing through incentives in the RFPs, also increasing the number of public housing units. Public housing units are available to families making 80% or less of the area median income. Affordable units are generally available to families making 60% or less of the area median income.[1] As such, ***at least*** 2,749 units will be developed and made available to families making 80% or less than the area median income. In addition, CHA has developed or acquired at least 398 scattered-site, housing voucher, and PRA units on the Near North Side (between State and Halsted Streets, and North and Chicago Avenues) separate from the Cabrini redevelopment. So, the 3,020 dilapidated and dangerous Cabrini-Green apartments that once existed are being replaced with ***a minimum of*** 3,147 units of housing available to the same income group in the same neighborhood. CHA fully expects that the final number will be higher than this.

6. To make sure this plan is realized, the existing Consent Decree, crafted in 2000, at a time when redevelopment at Cabrini was far more challenging and unpredictable, and when sources of public housing financing were quite different, needs to be modified.

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[1] The exception is for affordable home ownership units, where the income max can go as high as 120% of the area median income. The large majority of affordable units are, however, rental units.

II. THE FIRST PROPOSED CHANGE: PERMITTING PROJECT-BASED VOUCHERS UNDER THE PRA AND RAD PROGRAMS TO COUNT AS REPLACEMENT HOUSING UNDER THE CONSENT DECREE

7. Section II(A) of the Consent Decree provides that:

> The CHA agrees to provide funding for the development (pursuant to *24 C.F.R. Part 941*) and operation (in the form of HUD operating subsidies or comparable subsidies) of at least 700 public housing units ... with rents set at 30% of the family's adjusted gross income, with no minimum income requirements ... Each unit of public housing developed pursuant to this consent decree shall be maintained and operated in accordance with this consent decree and all applicable public housing requirements for no less than 40 years.

Paragraph V(A) provides that only public housing units constructed under Section II count as permanent relocation housing choices.

8. When the Consent Decree was entered, there was only one way to provide a public housing unit, and that was under *24 C.F.R. Part 941*, where the CHA provided an operating subsidy to private developers. The world of public housing finance and development, however, has changed since the entry of the Consent Decree in 2000. HUD's support for the public housing program has decreased radically in recent years. Traditionally, federal funding for public housing supplied money for: a) the operating fund; and b) the capital fund. Each year, HUD has provided less and less funding for traditional public housing units (both in the operating and capital funds), so that current funding represents only 85% (or less) of the actual public housing operating subsidy funding needs, and there is more than $32 billion in unmet capital needs for public housing authorities across the country. See, "Federal Funding for Public Housing", National Housing Law Project, http://www.nhlp.org/node/853. CHA has worked hard to limit the reductions in its operating subsidy fund through its Moving to Work Agreement ("MTW

Agreement") with HUD, but HUD has informed CHA that it will no longer provide this relief and will return CHA to the same operating subsidy as all other housing authorities by 2019. This would mean an additional 37% reduction in CHA operating funds. The bottom line is that public support and Congressional support for traditional public housing units has been lost.

9. In the wake of these challenges, CHA has developed new programs and accessed alternative sources of funding to keep its redevelopment of public housing, including the redevelopment at Cabrini, moving forward. HUD encourages public housing authorities to utilize such programs to offset dwindling support for traditional public housing operating and capital programs. The two most important programs now in use at CHA are:

A. **The RAD Program.** The Rental Assistance Demonstration ("RAD") program was authorized by Congress in 2012. It is a competitive program in which housing authorities apply to convert traditional public housing units into RAD units. The RAD units are project-based vouchers with a long-term subsidy commitment of 40 years, just like traditional public housing units. Families who live in RAD units pay no more than 30% of their adjusted gross income, i.e. the same rent they would pay in a traditional public housing unit.[2] Further, public housing families will enjoy the same procedural protections as traditional public housing families, as CHA has committed to adopting the RAD Residents Rights, Participation, Waiting List and Grievance Procedures. See, Amended FY 2015 CHA MTW Annual Report, at p. 7, found at http://www.thecha.org/about/plans-reports-and-policies/. The big difference is that the per-unit operating subsidy for a RAD unit is far more than for a traditional public housing unit.

[2] In addition, a public housing family in a RAD unit can, after a year's occupancy, take their voucher with them and move to a different unit of housing outside Cabrini. There is no such option for traditional public housing families.

Public support for project-based voucher units is stronger than for traditional public housing. See, HUD PIH Notice 2012-32, REV-2; and http://portal.hud.gov/hudportal/documents/huddoc?id=Toolkit1WhyRAD.pdf. The CHA and private developers use RAD as a method to help finance development projects and sustain affordable housing. HUD supports this effort. So, for example, on March 9, 2013, HUD Secretary Julian Castro, addressing the City Club of Chicago, said:

> ...But right now our nation is in the midst of an affordable housing crisis, not just in big urban centers, but in small ones as well. 7.7 million low-income households who aren't receiving any government assistance right now pay more than ½ of their income on rent...
>
> So, we are looking for creative solutions to meet these challenges. One of these solutions is something called a Rental Assistance Demonstration or RAD initiative. It's designed to meet the needs of our nation's crumbling public housing. You see, there's currently a backlog of $26 billion in repair needs. And the nation is losing 10,000 units of public housing to disrepair each and every year. And the cold hard truth is that federal dollars are scarce and won't be able to fully address these issues anytime soon. So, we launched RAD in 2012 to help housing authorities and owners of assisted housing convert to long-term Section 8 contracts. This allows them to better leverage private debt and equity to improve their projects ...

Through RAD, CHA can provide additional dollars per unit of housing development, thus permitting developers to leverage additional private dollars, and making the development of good quality housing for public housing families more attainable.

B. **The PRA Program.** The Project Rental Assistance ("PRA") Program is a component of the CHA's Housing Choice Voucher ("HCV") Program, formerly known as the Section 8 program. It was developed years after the entry of this 2000 Consent Decree. Under the PRA Program, CHA enters into a Housing Assistance Payment ("HAP") contract with a private

property owner or developer. The initial HAP contract, under CHA's MTW Agreement, may be for thirty years. As in a traditional public housing unit, the tenant family pays only 30% of their adjusted gross income as rent, with the CHA paying the balance up to a "fair market rent" for the unit. The CHA regularly inspects the units to ensure that they are decent, safe and sanitary. Tenants enjoy the same procedural rights as traditional public housing families. While some PRA units represent one of the three units in a standard, private three-flat, developers can use PRA units as well as they plan redevelopment at Cabrini. Like RAD units, PRA units enjoy more substantial funding from HUD, so that developers are provided additional financial support for each unit, and can leverage additional private dollars. The initial commitment to a PRA unit is only for 30 years, and not 40 years as the current Consent Decree provides, but the initial 30-year term can be extended for an additional period that would make the subsidy last longer than 40 years. Moreover, PRA units (like RAD units) offer the public housing family the opportunity to convert their voucher into a tenant-based voucher after one year, thus allowing the family to take its subsidy and move to a location anywhere in the country. Currently, CHA maintains a portfolio of 2,282 PRA units, and it is growing. Counsel for the plaintiffs in *Gautreaux* and the Central Advisory Council (composed of the elected tenant leaders at all CHA traditional and senior public housing developments) have agreed that PRA units are comparable to traditional public housing units and therefore may be counted toward CHA's Plan for Transformation goal of establishing 25,000 new or rehabilitated public housing units.[3]

10. CHA will amend its current Tenant Assignment Plan and Admissions and Continued

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[3] Through fiscal 2015, CHA will have developed or rehabilitated 23, 141 of the 25,000 units originally promised under the Plan for Transformation. See, Amended FY 2015 CHA MTW Annual Report, at p. 7, found at http://www.thecha.org/about/plans-reports-and-policies/.

Occupancy Policy, and Administrative Plan, to permit Cabrini Consent Decree families first priority to apply for RAD and PRA units in the Near North Revitalizing Area.

III. THE SECOND PROPOSED CHANGE: INCREASING THE PERCENTAGE OF PUBLIC HOUSING UNITS ON CHA AND CITY-OWNED LAND GOVERNED BY THE CONSENT DECREE FROM 30% TO A MINUMUM OF 33% AND AS HIGH AS 40% PUBLIC HOUSING

11. The Consent Decree in this case covers only a small part of the Cabrini redevelopment area. The area is defined on Appendix C to the decree. A subset of this area is considered CHA and City-owned land. Section II(D) of the decree provides that no more than 30% of the housing developed on this publicly-owned land can be public housing. It fixes figures of 20% for affordable housing units and 50% for market units. At the time the Consent Decree was signed, very little housing had been built at Cabrini (or elsewhere in the City as part of CHA's Plan for Transformation). There was great debate about what percentage of public housing was viable, in terms of marketing, financing and management.

12. We are at a very different point in time now, with thousands of units built and years of experience in developing mixed-income sites at Cabrini. There are currently 11 such sites, with more being developed. CHA is convinced that developers can successfully be challenged to finance and build a higher percentage of public housing units in future developments. CHA plans to issue RFPs as part of its larger Cabrini plan that will fix a new floor of 33% public housing units for CHA and City-owned sites governed by the Consent Decree, and provide incentives (by way of increasing the points for developers) to the extent that they can exceed a mix of 33% public housing, up to a maximum of 40% public housing. This is based not only on CHA's experience to date at Cabrini, but also at sixteen or more other sites throughout the City.

Changing the decree to permit a higher share of public housing units in each development will increase the amount of public housing available at Cabrini, facilitate CHA's effort to provide the 700 public housing units promised, and increase the number of public housing units for the entire Cabrini redevelopment program, set out in paragraph 5 above.

IV. THE THIRD PROPOSED CHANGE: AUTHORIZING A MIX OF 31% PUBLIC HOUSING FOR THE CLYBOURN-DIVISION PARCEL AND EXEMPTING PARKSIDE OF OLD TOWN

13. One of the City-owned sites governed by the Consent Decree is a parcel located at Clybourn and Division Streets. Brinshore Development, LLC and the Michaels Organization ("Brinshore-Michaels") was selected through a City procurement process as the developer for this parcel in 2011. It is Parcel No. 14 on Appendix C to the decree. After overcoming numerous hurdles in financing the project, Brinshore-Michaels now has secured the necessary financing to go forward. They anticipate a closing in late 2015, with construction to commence thereafter.

14. Brinshore-Michaels has proposed a seven-floor, mixed-use structure. The first floor will house 17,200 square feet of retail space, including a proposed day-care center. The second and third floors will contain parking spaces for residents. The four through seventh floors will contain 84 units of housing. The Brinshore-Michaels plan, which has been approved by the Near North Working Group, envisions 26 public housing units (two of which will require income between 50 and 80% of the area median), 16 affordable tax-credit units (for families making 60% of the area median or less), 10 affordable units (for families below 80% of the area median) and 32 market units. This means the income mix will be 30.95% public housing, 30.95% affordable and 38.1% market rate housing.

15. As explained above, Section II(D) currently would prohibit this development by its

30% ceiling on public housing for any development. In order to permit this development to proceed, and increase the number of public housing units built, the CHA seeks a modification of the provisions of Section II(D), as indicated in the proposed Order.

16. Parkside of Old Town is the largest of Cabrini's mixed-income developments. Two of its three phases are complete or under construction. Phase three is in the planning stages. Because the lion's share of Parkside was developed before this proposed change in the decree, the final phase will include more large-size public housing units (which are difficult to finance), and CHA's master development agreement with the Parkside developers treats the project as a single project, it is reasonable to exempt Parkside from the new public housing minimum and permit it to be governed by the original income mix of the Consent Decree (30% public housing, 20% affordable housing, and 50% market housing).

V. MODIFICATION OF THIS DECREE IS WELL WITHIN THIS COURT'S AUTHORITY

17. Section XII of the Consent Decree provides, in relevant part, that:

> [T]he Court shall retain jurisdiction over this matter for the purpose of enabling any party to the litigation to apply to the Court for such further orders as may be necessary or appropriate for the construction, implementation, or enforcement of this consent decree.

This provision of the decree affords the Court the opportunity to modify the specific provisions of the decree where circumstances require such modification in order to accomplish the purposes of the decree, i.e. the building of new replacement housing for public housing families.

18. Wholly apart from the specific provisions of Section XII of the Consent Decree, the Supreme Court and our Circuit repeatedly have recognized that institutional consent decrees like this one may be modified when unforseen obstacles preclude the defendants' compliance with

the terms of the Decree.

19. The seminal case is Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992), in which the Supreme Court established a "flexible standard" for the modification of a consent decree involving government bodies. Id., at 393. There, the Court dealt with the obligation of a county jail to provide single occupancy cells under the provisions of a consent decree which the county had entered with the plaintiffs. Double-celling of inmates continued to be a problem as the number of detainees increased over the years. The county moved the court for a modification of the consent decree requirements to permit double celling of inmates. The trial and appellate courts refused to allow a modification of this key provision of the consent decree. The Rufo Court vacated these lower court decisions and required that the trial court re-assess the motion.

20. The Rufo Court held that the modification provisions of Rule 60(b) apply to a consent decree. Id., at 378. It emphasized that: "'There is . . . no dispute but that a sound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.'" Id., at 380, quoting Railway Employees v. Wright, 364 U.S. 642, 647 (1961). The Court noted that the upsurge in institutional reform litigation "has made the ability of a district court to modify a decree in response to changed circumstances all the more important." Id. The party seeking a modification of a consent decree bears the burden of establishing a significant change in circumstances warranting revision of the decree. Id., at 383. The significant change can be either in factual conditions or in law. Id., at 384. With respect to factual conditions warranting a modification, the Court stated:

Modification of a consent decree may be warranted when changed factual conditions

> make compliance with the decree substantially more onerous. . . . Modification is also appropriate when a decree proves to be unworkable because of unforeseen obstacles, [citations omitted]; or when enforcement of the decree without modification would be detrimental to the public interest. [citation omitted].

Id., at 384.

21. In Rufo, the Court observed that even if the decree were construed as an undertaking by the plaintiffs to provide single cells for pretrial detainees, "to relieve [defendants] from that promise based on changed conditions does not necessarily violate the basic purpose of the decree." Id., at 387. Unlike Rufo, the modifications sought here do not undermine the heart of the Consent Decree. Rather, they facilitate achieving the goal of transforming the Cabrini development from a dilapidated, very poor area, into a mixed-income community; and CHA and the City will still oversee development of 700 units of new public housing and 270 affordable units at Cabrini.

22. Rufo's elements are plainly satisfied here. The under-funding of public housing operating and capital accounts could not have been anticipated in 2000, when the decree was signed. Nor did the RAD and PRA programs exist then, as effective alternatives for public housing development. Nor could the possibility of increasing the percentage of public housing units in developments have been understood. When the decree was first signed, mixed-income housing in Chicago was just getting underway. We now have developers, like Brinshore-Michaels at Clybourn and Division, willing and able to finance, market and manage developments with greater than a 30% public housing mix.

23. While the parties' agreement does not render a Rufo analysis moot, their "cooperative posture impacts" the Court's analysis. United States v Bd. of Ed. of the City of Chicago, No. 80

C 5124, 2004 U.S. Dist. LEXIS 3067 at *11 (N.D. Ill. March 1, 2004).

WHEREFORE, the CHA, joined by the Cabrini LAC, and supported by the City of Chicago, urge the Court to enter the Order attached hereto.

/s/ Thomas E. Johnson
One of the Attorneys for the CHA

THOMAS E. JOHNSON
Johnson, Jones, Snelling, Gilbert & Davis
36 S. Wabash Ave., Suite 1310
Chicago, IL 60603
(312) 578-8100