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

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

PLAINTIFFS' REPLY MEMORANDUM TO CHA
RESPONSE TO PLAINTIFFS' "LATHROP MOTION"

Pursuant to the Court's minute entry of November 15, 2016, plaintiffs submit this reply memorandum (and do not oppose CHA's motion to submit an oversized brief).

I. The Central Issue – Replacement of General Area Units.

Putting to one side several factual misstatements and logical misconceptions in CHA's brief (some are, however, noted below), we turn first to what we believe to be the central issue before the Court, namely, whether CHA has a legal obligation to replace General Area Dwelling Units that will otherwise be "lost" as a result of Lathrop redevelopment.

CHA advances three arguments to support its no-legal-obligation position (CHA brief, hereinafter "CHA", pp. 14-17, arguments "First, Second, and Third). None of the three is persuasive.

Argument "First" (CHA, p. 15) is that mixed income furthers the purposes of the judgment order. Yes, but provided, as we said in our initial memorandum (hereinafter "Pl.

Memo," p. 5), that "the major issue of the 'lost' public housing units . . . must be satisfactorily addressed . . ." because the lost units in the particular (and unique) Lathrop situation are General Area Dwelling Units. Were these General Area units not to be replaced, CHA's central judgment order obligation to *increase* the supply of Dwelling Units in General Areas would here be eviscerated. While improving conditions for families fortunate enough to be housed at Lathrop, that result would only be achieved at the unacceptable cost of *reducing* the total supply of General Area Dwelling Units and thus *reducing* relief for Gautreaux class families.

Argument "Second" (CHA, pp. 14-15) makes the implication of the first argument explicit, for CHA acknowledges that it proposes "substituting affordable and market units for public housing units, where the goal is to foster integration." (CHA, p. 15.) But to "substitute" units that provide no relief for Gautreaux families while reducing the number that do is plainly incompatible with CHA's central judgment order obligation to provide as many General Area Dwelling Units as possible as rapidly as possible.

Argument "Third"—that plaintiffs' reading of the judgment order "would reinstate [Congress's former] 'one-for-one' rule" (CHA, pp. 16-17)—is simply wrong. The one-for-one rule required a unit-for-unit replacement plan *before* demolition could take place (CHA, p.16). Plaintiffs' proposed order *permits demolition to proceed without such a plan,* and requires only that CHA take all possible steps to replace the lost units and report to plaintiffs and to the Court about its replacement efforts. *No time frame for the replacement is imposed.* (Moreover, even if the proposed order did require a prior plan—which it does not—the Court is here being asked to apply a remedial judgment order in case-specific litigation, not to make national policy.)

In sum, CHA's three arguments are incompatible with the judgment order because they would subvert that order's central thrust. That thrust is to "increase the supply of Dwelling Units

as rapidly as possible," to do so in conformity with judgment order provisions that mandate General Area locations, and to affirmatively administer its public housing system in every respect, "*whether or not covered by specific provisions of the judgment order*," to that end. (304 F.Supp. 736, 741) (emphasis added).)

Far from "expand[ing] the reach" of the judgment order, as CHA asserts (CHA, p. 3), the proposed order is a required application of the judgment order to an unprecedented situation, for no other CHA Plan for Transformation mixed-income development has been located in a General Area (CHA, p. 5) and has therefore entailed a reduction in General Area Dwelling Units. Failing to apply the judgment order in these circumstances, and permitting the "substitution" of market and affordable units which do not afford Gautreaux relief for Dwelling Units that do, would lead to the unacceptable result that Gautreaux families, who have yet to be provided with the opportunity to move into General Area Dwelling Units, would have *reduced* prospects of obtaining the relief to which they have long been entitled under this Court's orders.

II. Phasing.

Both parties have written at length about whether the Court should address the Lathrop redevelopment in its entirety or phase-by-phase. We will not repeat here the reasons set out in our initial memorandum for believing the former to be the correct view. We would emphasize, however, that CHA's public assurances that it will replace the 524 lost units[1] plainly relate to the entire Lathrop Plan, not to a single phase of it, and that — as CHA says at the very outset of its brief — the Plan "all of the stakeholders support" (CHA, p. 1) is likewise the entire Lathrop Plan, not a single phase of it. In a flight of rhetoric CHA says "Lawyers like to plan mixed-

[1] CHA now, for the first time, says it has a "plan" for 525 "housing opportunities" (CHA, p.4). Plaintiffs are aware of no such plan, and CHA has nowhere even defined what it means by "housing opportunities."

income developments on paper, and lay out the entire project from beginning to end." (CHA p. 9) Of course, as CHA knows, the Lathrop plan was designed by the developer in conjunction with the CHA and the City of Chicago, and with input from the Lathrop Working Group, representatives of CHA, City of Chicago, Lathrop and community residents, and the *Gautreaux* plaintiffs.

We also wish to note a surprising misrepresentation of the history of the parties', and the Court's, approach to CHA redevelopment plans (CHA, pp. 10 - 12). As recently as last year this Court approved a three-way settlement among CHA and the Gautreaux and Cabrini plaintiffs to create a revitalizing area covering the entirety of the "Development Zone Plan" for the Cabrini South Extension, Cabrini Row Houses, and William Green Homes. This comprehensive plan embraced the entirety of the remaining (65 acre) Cabrini site, most of which had not been included in the earlier, separate lawsuit governing the Cabrini North site. Among other things, the Court's order set a minimum number of CHA units (930) to replace demolished Cabrini units and set parameters for the income mix. The order addressed the entire "Development Zone Plan", even though the Plan included three phases, even though there were as yet no detailed plans for any of the phases (not even the first), and even though developers had not yet been selected. (Agreed Order of 9/16/15.)

Similarly, this Court's order of September 11, 2002, addressed an entire redevelopment plan for CHA's Oakwood Shores mixed-income redevelopment. The order authorized up to 850 non-elderly public housing units "as part of a mixed income housing development generally consistent with the Master Plan previously approved . . ." (Agreed Order of 9/11/02.) This was not, as CHA seems to argue (CHA, p. 12, n. 7), a phase of the Lakefront redevelopment. While the Oakwood Shores revitalizing area was an expansion of a previous revitalizing area to which

it was adjacent, some five separate Oakwood Shores phases have since been developed in reliance upon the September 2002 "Master Plan" order. No additional orders (other than to authorize Dwelling Units above the third floor) have been entered respecting these individual phases.

Finally, CHA refers (CHA, p. 12) to the parties' actions respecting Taylor Homes and Rockwell Gardens to support its view that orders should proceed phase by phase. As noted in our opening memorandum (Pl. memo at 8), however, each of these sites is in an area the parties do not consider to be revitalizing. The parties therefore agreed to proceed phase by phase because of the uncertainty of future plans in a non-revitalizing area. Here, as at Cabrini and Oakwood Shores, there is no uncertainty; the parties are agreed on the desirability of proceeding with the entire Lathrop Plan. [2]

That entire Plan, as in the cases of Cabrini and Oakwood Shores, is complete in all parameters necessary for this Court's ruling. The overall site is the Lathrop "footprint," as to which CHA has already obtained the necessary zoning.[3] The promised number of CHA units (401) has long been established,[4] as is true of the income mix. Contrary to CHA's argument

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[2] Indeed, as recently as today the CHA Board approved the Lathrop historic preservation agreement with various governmental agencies for "Phase 1 and subsequent phases of redevelopment at Lathrop." The Board's resolution states "The overall revitalization plan for historic Lathrop includes a multi-phased, mixed-income, mixed-use development that will be conducted over three on-site phases and will consist of 1,116 total residential units of which 400 will be [CHA] units.

[3] CHA says that its planned development zoning application does not include the number of units, but this is not the case. Page 17 of the application says, "The Applicant seeks a rezoning of the subject property for the construction and renovation of approximately 1,208 residential dwelling units," which is almost exactly the number of units in the Lathrop Plan (1116) plus the number of units (91) in the existing CHA elderly building. Pages 52 and 61 of the CHA application also refer to 1,208 units.

[4] This number has moved by exactly one, from 400 to 401, in the more than 10 years of planning discussions that have taken place in the Lathrop Working Group.

(CHA, p. 12), details of which units are in which structures on which lots are not necessary for this Court's approval of the Lathrop Plan, just as those details were not necessary at Cabrini or Oakwood Shores—where, we emphasize, this Court approved entire redevelopment plans, not individual phases, even though CHA's board had not yet authorized each of the phases.

In its attempt to escape its clear judgment order obligations at Lathrop, CHA suggests that our motion implicates an Article III "case or controversy" issue because the Lathrop Plan is said to be too "conjectural or hypothetical" to be considered injurious to plaintiffs. (CHA, p. 13.) The suggestion mischaracterizes both the law and the Lathrop facts. The loss of 524 General Area Dwelling Units is an obvious direct injury to plaintiffs' interest (arising from the judgment order) in General Area Dwelling Units, thus satisfying the first element of standing requirements. The second and third elements are likewise clearly satisfied, for the injury is directly traceable to CHA actions and is capable of being redressed by an order of this Court.

The Lathrop facts are obviously totally unlike the speculative intentions to visit endangered species halfway around the world that the Supreme Court held insufficient to show injury in fact in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992), and the Court has long acknowledged that injuries much more distant than the lost Lathrop units are sufficiently "actual" and "imminent" for standing. See, for example, *Massachusetts v. Environmental Protection Agency*, 127 S. Ct. 1438, 1442, 1456 (2007), (holding that risks of harm to the Massachusetts coastline were "actual" and "imminent" despite the fact that they would unfold "over the course of the next century").

Based on reality, common sense, and its own precedents, the Court should address the Lathrop Plan in its entirety. [5]

[5] If the Court's lens were to be focused on Phase IA in isolation, the replacement obligation would be 309 units. (CHA, p. 14.) Although plaintiffs do not agree that this would be a correct approach, the Court

III. "Dwelling Units."

Both parties have also written at length about whether public housing units to be provided under the Lathrop Plan are "new," and hence Dwelling Units under the judgment order, or "old" (rehabilitated) units and hence not technically Dwelling Units. We note that should the Court decide to address the entire Lathrop Plan, this issue is mooted and need not be addressed. As CHA's and its developer's documents show, over 200 of Lathrop's planned 401 public housing units are to be newly constructed, far exceeding the judgment order's prohibition against concentrating units for more than 120 people in one public housing project.

We will not repeat here the reasons, set out in our initial memorandum (Pl. Memo, pp. 8 - 10), as to why units in buildings whose facades are to be preserved are nonetheless Dwelling Units because—after more than three-quarters of a century—they are undergoing such extensive reconstruction and reconfiguration (including "combining" some into larger units, CHA, p.8, that obviously had no previous existence) as to constitute new units. [6] We do wish to note, however, that the dispute over new versus old units does not affect the central issue of CHA's replacement obligation. The only issue that is affected by the new versus old unit question is whether a

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could, if it preferred, articulate the replacement obligation with respect to Phase IA alone, making clear its intention, upon appropriate motions, to increase the 309 unit obligation as subsequent Lathrop phases were presented to it.

[6] CHA notes that it has previously undertaken rehabilitation without triggering the Court's supervision (CHA, p. 9, n. 6). But, as we have previously explained, that was because the "stream of rehabilitated units in traditional sites in Limited Areas was roughly 'matched' by the stream of public housing 'remedial units' planned as part of new mixed-income developments . . . . (Plaintiffs' Memorandum filed 6/13/14 in Support of Motion for Enforcement [respecting Altgeld Gardens], p. 3.) CHA's reliance on rehabilitation of the Horner Annex is particularly misplaced, as that rehabilitation was part of a comprehensive redevelopment plan subjected to extensive court supervision in the Horner litigation and approval by this Court.

waiver of the judgment order's concentration provision should be included in plaintiffs' proposed order. [7]

CHA also seems to argue (CHA, pp. 5, 15) that the benefits of redeveloping Lathrop into a mixed-income community somehow obviate the judgment order's concentration limit. As to this, plaintiffs' agreement with CHA that the concentration limit should here be exceeded in order to realize Lathrop's mixed-income benefits does not mean that a waiver is not required. The parties share a long history of proceeding jointly before this Court to ask for such a waiver – because it is legally required – notwithstanding they are agreed that the development in question is desirable.[8]

IV. Twenty Year Voucher Contracts.

CHA mistakenly asserts that plaintiffs' proposed order would require north side landlords "to commit to . . . vouchers for twenty years, as opposed to five-year terms . . ." (CHA, p. 3). Clearly this is not so for the proposed order requires only "contracts aggregating at least 20 years." Thus, five-year contracts *can* be employed. CHA would receive "credit" against its replacement obligation when contracts on any particular replacement unit aggregated twenty years, or when a combination of units have contracts that aggregate twenty years. For example, two units with ten year contracts or four units with five year contracts would be the equivalent of one unit with a twenty year contract.

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[7] CHA claims (p. 6) that "plaintiffs' brief does not deny that Phase 1A is consistent with the...concentration provisions," but of course that is simply not true. See Pl. Memo, p. 7 ("even if the Court were to consider Phase 1A alone, waiver of the concentration provision would still be necessary").

[8] Plaintiffs' proposed "waiver," authorizing the planned on-site 401 Dwelling Units, also provides the approximate income mix for the site and includes the requirement that the units be "built and marketed roughly simultaneously with, and be and remain well dispersed among, the planned affordable and market rate units." These are the key provisions of the agreed-upon Lathrop plan on which plaintiffs' support for the plan is conditioned.

CHA also suggests (CHA, p. 19) that its project based voucher program should fall outside the reach of the Court, ignoring the fact that the Court has already entered orders respecting that program. See, for example, Agreed Order of 11/6/14, providing that 102 Horner replacement units "may be project-based voucher units with at least 20-year contracts," and Amended Agreed Order of 9/24/15, providing that any of 930 Cabrini replacement units "may include project based voucher units under CHA's PRA program (with at least a twenty-year subsidy commitment) . . ."[9] Indeed, plaintiffs' proposed order gives CHA *more* flexibility with regard to contract duration than do the cited Horner and Cabrini orders, but of course CHA is not required to use project based voucher units for Lathrop replacement units at all; it can choose instead to satisfy its replacement obligation exclusively with public housing.[10]

V. Elderly Units.

CHA asserts that a "significant portion" (CHA, p.18) of its Lathrop replacement obligation could be satisfied with elderly units. The judgment order plainly defines Dwelling Units as "non-elderly." (304 F.Supp. 736, 737.) On rare occasions this Court has authorized development of elderly units in conjunction with the development of new scattered site units (see e.g., Order of 5/24/90), but otherwise the Court has addressed elderly units chiefly to preclude CHA from diverting resources to elderly units to the prejudice of its obligation to provide

[9] This Court also addressed an earlier, similar program, the Leased Housing Program, which is specifically mentioned in the Judgment Order.

[10] CHA also says it would like the Court to consider some new "opportunity areas." (CHA, p. 20) After initial discussions on this topic some months ago, CHA asked plaintiffs to delay further discussion of new areas until January, pending the availability of new income data. We anticipate continuing the initiated discussion at that time, and are surprised that CHA seeks to involve the Court prematurely in this matter. Should an updated map be agreed to by the parties, a motion to substitute such map for the current map can be submitted by the parties at that time.

Dwelling Units for families. (Order of 10/29/82.) Since elderly units do not constitute relief for Gautreaux families, CHA's notion that a portion of its Lathrop replacement obligation could be satisfied with elderly units defies understanding.[11]

[11] The fact that some current Lathrop families include elderly persons is utterly irrelevant to CHA's replacement obligation. Lathrop units (apart from the Lathrop elderly building, not at issue here) have no age restriction attached to them; both elderly and non-elderly residents may live in them. Moreover, Phase IA of the Lathrop plan contains enough public housing units (151) to house all current Lathrop families (144) and includes more accessible units and an elevator building that may be attractive to seniors. The obligation to replace the "lost" Dwelling Units has nothing to do with relocating present Lathrop residents.

Conclusion.

In an unprecedented context (Lathrop being CHA's only Plan for Transformation mixed-income development situated in a General Area), CHA disappointingly wishes to evade its judgment order responsibility to provide—in this case merely to replace—General Area Dwelling Units. Indeed, it asserts that it may "substitute" units that provide *no relief* to Gautreaux families—market, affordable, and elderly units—for General Area Dwelling Units that do, thus moving Gautreaux families even further away from the goal of the full relief to which they have long been entitled.

We urge the Court not to permit this backward step. Plaintiffs respectfully request the Court to enter their proposed Lathrop order, which will permit this desirable, long-awaited redevelopment to move forward under the proper conditions.

Respectfully submitted,

/s/ Julie Elena Brown
One of the Attorneys for the Plaintiffs

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

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CHICAGO HOUSING AUTHORITY,	)	Hon. Marvin E. Aspen
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Defendant.	)	

NOTICE OF FILING
and
CERTIFICATE OF SERVICE

To: Attached Service List

PLEASE TAKE NOTICE that we have today filed with the Honorable Marvin E. Aspen, in Room 2568 of the U. S. District Court, 219 South Dearborn Street, Chicago, Illinois, the attached **Plaintiffs' Reply Memorandum to CHA Brief in Response to Plaintiffs' "Lathrop Motion,"** a copy of which is hereby served upon you.

Respectfully submitted,

/s/ Julie Elena Brown
One of the Attorneys for the Plaintiffs

December 6, 2016

Alexander Polikoff
Julie Elena Brown
BUSINESS AND PROFESSIONAL PEOPLE
FOR THE PUBLIC INTEREST
25 East Washington Street - #1515
Chicago, Illinois 60602
312/641-5570; fax: 312/641-5454

CERTIFICATE OF SERVICE

JULIE ELENA BROWN, an attorney, hereby certifies that on December 6, 2016, she caused a copy of the foregoing Notice, together with the **Plaintiffs' Reply Memorandum to CHA Brief in Response to Plaintiffs' "Lathrop Motion,"** to be served upon the parties on the attached Service List by the electronic filing system on December 6, 2016.

/s/ Julie Elena Brown

Service List

Gautreaux, et al. v. CHA, et al.
Case No. 66 C 1459

James L. Bebley, General Counsel
Cheryl J. Colston, Deputy General Counsel
Chicago Housing Authority
60 East Van Buren Street – 12th Floor
Chicago, IL 60606

Thomas E. Johnson
Johnson, Jones, Snelling, Gilbert & Davis
36 South Wabash Avenue – Suite 1310
Chicago, IL 60603