



U. S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT

FHEO Region V  
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77 West Jackson Boulevard – Room 2101  
Chicago, Illinois 60604-3507

Office of Fair Housing and Equal Opportunity

December 9, 2013

Henry Champen, Chairman  
Aurora Housing Authority  
c/o Peter K. Wilson, Attorney  
2111 Plum Street, Suite 201  
Aurora, Illinois 60506

Dear Mr. Champen:

SUBJECT: Letter of Findings of Noncompliance  
Civil Rights Compliance Review of the Aurora Housing Authority  
Title VI Review Numbers: 05-13-0732-6; 05-13-0733-6; 05-13-0809-6  
Section 504 Review Number: 05-13-0732-4

On April 25, 2013, HOPE Fair Housing Center and Tonya Hayes filed housing discrimination complaints with the United States Department of Housing and Urban Development (“HUD”), Office of Fair Housing and Equal Opportunity (“FHEO”), against the Aurora Housing Authority (“AHA”). Then on May 13, 2013, Shirley Fraction filed an additional complaint with HUD against AHA. The complaints alleged that AHA violated Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Fair Housing Act,<sup>1</sup> and that it has failed to affirmatively further fair housing. Specifically, the complaints allege that AHA violated federal civil rights laws when it decided, in the wake of its decision to demolish the Jericho Circle public housing development in 2010, to withdraw its application for Low Income Housing Tax Credit (“LIHTC”) financing in February 2013, which if awarded, would have funded redevelopment of new mixed-income housing, including family public housing at Jericho Circle. The application had been originally submitted in November 2012.

In response to the complaints, investigators from the FHEO Chicago Regional Office reviewed compliance with the applicable federal laws and regulations.

**Applicable Law**

Title VI prohibits discrimination on the ground of race, color, or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI provides that “... No

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<sup>1</sup> Separate letters of determination relating to specific violations of the Fair Housing Act will be issued pursuant to HUD case numbers: 05-13-0732-8; 05-13-0733-8; and 05-13-0809-8.

person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The implementing regulations provide specific prohibitions which include, but are not limited to the following:

A recipient under any program or activity to which this part applies may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity. 24 C.F.R. § 1.4(b)(1)(i) (2013).

A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin. 24 C.F.R. § 1.4(b)(2)(i) (2013).

Under Title VI, a violation occurs if the recipient directly discriminated against an individual or group on the ground of race. It further provides that a violation occurs when a policy or method of administration has the effect of subjecting persons to discrimination. Whether a violation occurs due to the intentional actions of a recipient, or as a result of a method of administration, corrective action must be taken to prevent further discrimination and regain compliance with federal civil rights laws and regulations.

A recipient of federal financial assistance is defined as follows:

[A]ny State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity. 24 C.F.R. § 1.2(f) (2013).

The Civil Rights Restoration Act of 1987 amended Title VI by adding an expansive definition of “program or activity.” It provides that, for purposes of Title VI the following:

[T]he term “program or activity” and the term “program” mean *all of the operations of*—

(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government; *any part of which* is extended Federal financial assistance. 42 U.S.C. § 2000d-4a(1)(A) and (1)(B) (emphasis added).

Generally, the entire operation of a municipal corporation such as a public housing authority is considered to be a program or activity for the purposes of Title VI. In this case, the “program or activity” subject to this Title VI review is the entirety of the operations of the AHA.

Section 504 of the Rehabilitation Act states that:

No otherwise qualified individual with a disability in the United States, as defined in section 705 of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. 29 U.S.C. § 794(a).

The implementing regulations provide specific prohibitions which include, but are not limited to the following:

In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would (i) [s]ubject qualified individuals with handicaps to discrimination solely on the basis of handicap. 24 C.F.R. § 8.4(b)(4)(i) (2013).

In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would: (i) [e]xclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department. 24 C.F.R. § 8.4(b)(5)(i) (2013).

Much like with Title VI, the Section 504 regulations “appl[y] to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance.” 24 C.F.R. § 8.2. As a result, the operations of AHA are considered to be a “program or activity” for the purposes of Section 504.

The federal Fair Housing Act requires that HUD administer its programs and activities relating to housing and urban development in a manner affirmatively to further fair housing purposes. 24

U.S.C. § 3608(d). When a public housing authority submits its annual plan to HUD, it certifies that it will affirmatively further fair housing (“AFFH”). 24 C.F.R. § 903.7(o).

## **Background**

The AHA manages public housing and Section 8 Housing Choice Vouchers (“HCV”) in the Aurora, Illinois area. Jericho Circle was a low-income public housing site that at one time housed families in approximately 145 dwelling units in a cluster of 28 buildings, all located on the same site. Of those 145 units, 26 were two-bedroom, 49 were three-bedroom, and 70 were four-bedroom units. Those 145 units comprised a significant portion of AHA’s public housing inventory; specifically, there were 672 total public housing units in its portfolio. Accordingly, the units at Jericho Circle represented 21.6% of the total public housing units throughout the entirety of AHA.

On or about September 7, 2010, HUD approved AHA’s demolition request for Jericho Circle. The request was made pursuant to 24 C.F.R. Part 970.15, proposing that housing units be demolished due to obsolescence and severe structural deficiencies, and stated that the physical condition of the units had deteriorated to the point that no reasonable program of modifications is cost-effective to return the public housing project to useful life.<sup>2</sup>

At the time of approval, 93 Jericho Circle units were occupied; in its demolition request, AHA proposed that those families be given housing choice vouchers to use for replacement housing.

With regard to the future use of the site, the September 7, 2010 HUD approval noted that “[t]he AHA has indicated that, after demolition, it intends to use the property on which this development was located for the redevelopment of mixed-finance housing at a later date.” At the same time, HUD cautioned that “24 C.F.R. Part 970.31 eliminated the requirement for one-for-one replacement of public housing units. Therefore, the AHA is not required to provide for replacement housing, and the Department is under no obligation to fund replacement housing.”

In part to clarify this apparent confusion, HUD issued a follow up letter dated January 14, 2011, stating that “... [T]he Department would not have approved the demolition if the AHA had indicated that it intended to keep the site vacant after demolition... According to the Department’s demolition approval, the AHA intends to use the land at this site (after demolition) for the development of a mixed-finance housing project.”

Throughout the period of time from late December 2010 through early 2013, AHA made various attempts to proceed with redevelopment at Jericho Circle. As discussed in more detail below, these various attempts were frustrated due to a variety of factors.

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<sup>2</sup> Demolition proposals submitted to HUD subsequent to October 17, 2011 are subject to a civil rights review in accordance with PIH Notice 2012-7. This review process was not implemented at the time that the Jericho Circle demolition application was submitted.

## A History of Conflict Between AHA and the City of Aurora

Beginning in late 2010, AHA attempted to move forward with redevelopment on the Jericho Circle site. The housing authority's 2011 Annual Plan was presented to Aurora city officials in order to obtain the required approvals from the city, specifically that it was consistent with the city's Consolidated Plan.<sup>3</sup> The Annual Plan included a proposal to redevelop low-income public housing on the Jericho Circle site. On or about December 28, 2010, Aurora Mayor Thomas Weisner notified AHA by letter of his refusal to provide the required certification. On or about February 9, 2011, also by letter, AHA threatened litigation against the city for unreasonably withholding approval of the plan. At some time after that, the city conceded that the redevelopment plan was consistent with its Consolidated Plan, and affirmed consistency with the Annual Plan.

On or about March 1, 2011, Mayor Weisner sent an email to various constituents, stating: "at the risk of being accused of supporting the AHA plan, let me simply inform you that the plan calls for about half the current number of apartments and probably would draw only about 40% of the current population. Although I don't support the plan – I support elimination of such complexes and the use of individual housing vouchers instead – the AHA plan was designed to keep HUD satisfied while eliminating the worst features of the current Jericho complex and greatly reducing its impact on public safety or school services."

Also on or about March 1, 2011, HUD Regional Administrator Antonio Riley sent a letter to Mayor Weisner, making the following points that: (1) HUD does not require replacement housing; (2) HUD has approved 93 tenant protection vouchers; (3) the City and AHA both have said in the Consolidated Plan that they want mixed-income development at the site; and (4) the City certified that the AHA Annual Plan was consistent with the Consolidated Plan.

Instead of moving forward with redevelopment, the City, as communicated in a letter from Mayor Weisner to AHA dated March 30, 2011, decided to engage in a community planning process, and then amend its Consolidated Plan based on the planning process.

AHA then retained the services of a consultant, Patrice McGinn, for the purpose of organizing community forums to consider redevelopment at Jericho Circle. However, in a letter dated July 11, 2011, the City refused to participate in this process, stating that "[W]ith all due respect to Ms. McGinn's experience, her previous involvement in the redevelopment plans for Jericho Circle should have excluded her from participating – let alone facilitating the process. How can true progress be made when the progress is tainted from the beginning?"<sup>4</sup> Later in July, the Mayor clarified that the "City will not participate in a planning process until AHA gets a well-qualified permanent Executive Director and assigns a clearly neutral party to facilitate open planning meetings."

At around the same time, on or about July 27, 2011, the AHA Board passed a memorandum to work with CG Partners LLC., to redevelop the Jericho Circle site. The plan was for AHA to finance the redevelopment, of up to 225 total units, by applying for low-income housing tax

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<sup>3</sup> See 24 C.F.R. §91.2(d) (2013).

<sup>4</sup> McGinn had previously been affiliated with the developer that was working with AHA to rebuild at Jericho Circle.

credit financing (“LIHTC”) with the Illinois Housing Development Authority (“IHDA”).<sup>5</sup> At the time, one of the requirements of a successful LIHTC application was to include a letter of support from the chief executive officer of the local jurisdiction, in this case Mayor Weisner.

Lobbying efforts soon began. For example, on or about August 9, 2011, the Aurora City Council passed a Resolution calling for cooperation between AHA and its stakeholders, but noting that “it is of great concern to the City Council in particular that a Memorandum of Agreement recently executed between the AHA and CG Partners, LLC., the proposed developer for the site, may include as many as 225 residential units, which constitutes a 50% increase in density at a location wherein the existing density levels contributed greatly to the problems which have existed at Jericho Circle over the years.”

On or about September 22, 2011, CG Partners, working with AHA, submitted a preliminary application to IHDA for LIHTC financing.<sup>6</sup> Alongside the proposal, AHA produced an Analysis of Impediments to Fair Housing Choice (“AI”). Published in October 2011, the AI clearly stated AHA’s intention to redevelop mixed-income housing at Jericho Circle, and reiterated that AHA never would have applied for HUD approval to demolish the site absent the intent to rebuild.

In addition, the AI set forth the context within which the AHA and the City were negotiating at the time. It noted that Mayor Weisner sent a memorandum to the AHA board members dated August 1, 2011, objecting to the AHA’s plan to redevelop at Jericho Circle, announcing that he would oppose a special use permit and City funding for necessary infrastructure improvements, and threatening to remove board members who supported redevelopment on-site.

Finally, the AI published earlier communication from the AHA to the City, outlining potential liability that both the AHA and the City may face for failing to replace housing lost through the Jericho Circle demolition. It stated that: “[t]he idea that a public housing complex can be entirely demolished and not replaced with any affordable, low-income or public housing units goes against the mission of AHA, industry standards and fair housing concerns. Both AHA and the City share responsibilities to comply with fair housing obligations and certifications. Demolishing Jericho Circle without creating replacement housing would expose AHA and the City to accusations of housing discrimination and false certifications concerning federal funds.” The AI goes on to quote the following: “[t]he demolition of Jericho Circle without the provision of replacement housing would disproportionately impact lower-income Black female-headed households with children.”

At around the same time, in or around September 2011, the City convened a so-called “Affordable Housing Task Force,” made up of AHA board members, as well as various stakeholders and members of the community. Some of the members of the Task Force included Dr. James Rydland, the Superintendent of the West Aurora school district (the Jericho Circle site was within its boundaries), as well as then current AHA commissioners Scott Voris, Dave Richert, and Bill Powell.

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<sup>5</sup> See 26 U.S.C. §42 *et seq.*

<sup>6</sup> This application was opposed by the City and was denied by IHDA on or about March 19, 2012.

At this time, stakeholders weighed in with letters of support and criticism of AHA's redevelopment plans.

One such letter in support of the redevelopment plan was a December 2, 2011 letter supplied by the Sargent Shriver Center on Poverty Law.<sup>7</sup> The December 2, 2011 letter noted that as of August 2011, there were 1089 households on the AHA waiting list for public housing, and 663 on the waiting list for housing choice vouchers. It also noted that the location of Jericho Circle was close to public transportation options, and in a good public school district. Some letters were less sanguine about redevelopment,<sup>8</sup> while others suggested that redevelopment plans be put on hold pending the completion of the Task Force findings.<sup>9</sup>

On or about June 6, 2012, the Task Force published its findings, which were approved in a vote of 13 to 7. It concluded, in part, that the City should articulate a set of criteria to use to assess support for housing proposals. It went on to state that: "[w]e specifically recommend that Aurora consider adopting the Housing Enforcement Principles and Criteria from the Metropolitan Mayors Caucus as part of their housing policy."<sup>10</sup>

In or around June of 2012, the City of Aurora began the process of amending its Consolidated Plan to include the housing endorsement criteria that resulted from the Task Force findings. In the amendment, the City stated that "as a direct result of the adoption of this 'Housing Endorsement Criteria,' the City of Aurora will not support the AHA's planned redevelopment of the Jericho Circle site since it is evident that rebuilding on this site is not consistent with the recommendations of the Mayor's Task Force on Affordable Housing and specifically is not consistent with the Metropolitan Mayors Caucus Housing Endorsement Principles and Criteria."

With reference to the amended Consolidated Plan, the City refused to provide the required letter of support to IHDA for any proposed redevelopment at Jericho Circle, believing it to be inconsistent with the new criteria.

Shortly thereafter, on or about August 20, 2012, the City of Aurora began the process of appointing new members to the AHA board. Commissioners Avis Miller and Myrna Molina were to be replaced by Bill Powell and Rey Cruz.<sup>11</sup> At around the same time, Mayor Weisner announced his intention to replace Commissioners Burns and Schuler as well.

On or about August 28, 2012, the AHA filed a housing discrimination complaint with HUD against the City of Aurora, alleging that the City had thwarted its ability to redevelop family public housing at the Jericho Circle site. Specifically, AHA alleged that the City's interference

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<sup>7</sup> The Sargent Shriver National Center on Poverty Law is a Chicago-based nonprofit organization that provides national leadership in advancing laws and policies that secure justice to improve the lives and opportunities of people living in poverty.

<sup>8</sup> For example, Ryan Dowd, the Executive Director of the Hesed House Homeless Resource Center recommended against the City supporting the LIHTC application.

<sup>9</sup> Dr. James Rydland, for example, took this position.

<sup>10</sup> The criteria were developed by the Metropolitan Mayors Caucus to be used as regional planning guidance throughout North East Illinois, and independently of any local concerns.

<sup>11</sup> Commissioners Miller and Molina terms had apparently expired in 2011. New appointee Powell had served on the Mayor's Task Force.

would have a disparate impact on the African-American households on its public housing waiting list.<sup>12</sup> In addition, AHA alleged that the Mayor's appointment of new AHA board members in place of current board commissioners was in retaliation for those board members' support of the Jericho Circle redevelopment.

In addition, in or around September 2012, AHA filed a lawsuit with the Kane County Circuit Court to enjoin the City from naming new AHA board appointees.<sup>13</sup> AHA argued that Commissioners Burns and Schuler's terms had not expired, whereas the City argued that its home rule authority preempted Illinois state law controlling public housing authority board member terms. The City ultimately prevailed in the suit, and proceeded with its appointments in late December 2012.

### A New Plan for Redevelopment

Meanwhile, the AHA continued to seek financing for redevelopment at Jericho Circle. To that end AHA reached out to Brinshore Development, LLC. ("Brinshore"), a real estate developer that specializes in affordable housing developments.<sup>14</sup> Brinshore has undertaken dozens of projects, with a current portfolio that includes more than 4,000 residential units. In 2011 Brinshore responded to a request for proposal put forth by the AHA for Jericho Circle redevelopment, and were finalists but were not ultimately selected (the contract had gone to CG Partners, LLC.). In or around June or July of 2012 the AHA contacted Brinshore to work on a redevelopment proposal for Jericho Circle, after the City refused to support the previous plan.

At around the same time, Brinshore was approached by an attorney with whom they work, Nicholas J. Brunick with Applegate & Thorne-Thomsen. Brunick introduced Brinshore to Rick Guzman, Assistant Chief of Staff to Mayor Weisner, who expressed a desire on the part of the city to address its foreclosure problem.

Brinshore began working separately with the City and with AHA, but it became apparent from early on in the process that IHDA would not have approved two proposals from the same jurisdiction for LIHTC during the same funding cycle. As a result, one of the proposals would have to give way to the other. What ended up happening was that the two proposals were married together; as the City's plan to rehabilitate foreclosed properties was expected to "score well" with IHDA, while the AHA's desire to redevelop on-site public housing would not have done so by itself. Keith Gregory, the AHA Executive Director as of October 1, 2012, worked towards this joint application on behalf of AHA, as did Rick Guzman from the City.

According to Richard Sciortino, President of Brinshore, the original plan for on-site redevelopment called for approximately 75 units. Sciortino thought that 75 units might be too many in terms of being able to obtain financing from IHDA, and instead proposed a plan with slightly less density; he explained to HUD that the "sweet spot" was somewhere between 60 and

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<sup>12</sup> HUD Complaint Number: 05-12-1362-8. The complaint brought under the Fair Housing Act was ultimately withdrawn by AHA, however a HUD review of compliance under Title VI remains open as case number: 05-12-1362-6.

<sup>13</sup> Docket Number: 12 CH 3642.

<sup>14</sup> At this time, CG Partners was no longer working with AHA on Jericho Circle redevelopment.



70 units. At various points in time there were discussions prompted by the City about developing fewer units, but this would not have made “real estate sense” according to Brinshore; it was

	Phase 1	Phase 2	Total Units
On-site Units	46	26	72
Scattered-site Units	23	13-24	36-47
Total	69	39-50	108-119

determined that at least 45 units would be required to support a full time property manager, and to operate efficiently.

On or about August 22, 2012, the AHA board unanimously approved a resolution to exercise a Memorandum of Agreement with Brinshore-Michaels<sup>15</sup> for the Jericho Circle Revitalization Project.<sup>16</sup> At this time, it was clear to the developers from Brinshore that the AHA Board was very much in favor of redevelopment at Jericho Circle.

Throughout the negotiation process, Brinshore believed that the City was making a sincere effort to find compromise. While Brinshore was aware of the tension between the City and the AHA, there was a belief that the problem could be bridged.

#### The November 2012 Preliminary Application

The plan, the byproduct of negotiations between Brinshore, the City, and AHA,<sup>17</sup> was to seek financing to develop a total of between 108 and 119 housing units, most of which would be low-income family public housing. The plan was to be completed in two phases; the first phase of the plan called for the construction of 46 new mixed-income units at Jericho Circle, and the acquisition and rehabilitation of 23 bank owned, foreclosed single-family houses throughout Aurora to be converted into “scattered-site” public housing. In addition, a management office would be installed at Jericho Circle as a base of operations for both on and off-site management.

Phase two of the plan called for the construction of an additional 26 units at Jericho Circle, and then the acquisition of at least 13 and up to 24 additional bank owned foreclosed single-family

houses to be converted into scattered-site public housing. Phase one was to commence in November 2012, with the submission of a Preliminary Project Assessment (“PPA”) to IHDA. Originally, the strategy for phase two was to submit a PPA for a subsequent IHDA LIHTC funding round, possibly as soon as March 2013.

On or about November 14, 2012, AHA and Brinshore submitted a PPA to IHDA, proposing the construction of 69 total units, including 46 new units at Jericho Circle along with a scattered-site component to acquire 23 vacant and foreclosed properties. The location of the scattered-site units would depend on the availability of foreclosed homes for purchase at the time that the funding from IHDA would have been secured.

<sup>15</sup> Michaels Development Company is an affordable housing developer that was to partner with Brinshore to be the property manager at the Jericho Circle redevelopment.

<sup>16</sup> Voting in favor were Commissioners Burns, Champen, Coble, Runge and Schuler.

<sup>17</sup> HUD was involved in negotiations as well as part of the process of resolving the housing discrimination complaint filed by AHA against the City, HUD Complaint Number: 05-12-1362-8/6

Specifically, in the first phase, out of the 69 total units, 7 of the units would be rented as “market rate,” 14 to households from the state referral network,<sup>18</sup> and 48 would be rented by families from the local AHA Housing Choice Voucher waiting list. In addition, former Jericho Circle residents who were displaced as a result of the demolition would have a right to return, and priority access to lease the newly developed units.<sup>19</sup>

Out of the 48 units that were to be filled with families from the HCV waiting list or with former Jericho Circle residents, 4 were one-bedroom, 23 were two-bedroom, and 21 were three-bedroom units.<sup>20</sup>

With respect to accessibility for people with disabilities, 10%, or 5 of the on-site units were to be designed for compliance with Section 504,<sup>21</sup> and another 10%, or 5 more units were to be “adaptable.” In addition, all of the ground floor units would comply with the Fair Housing Act’s design and construction requirements.<sup>22</sup>

With respect to local demographics, Jericho Circle is located in what is a relatively affluent part of Aurora. The median household income of the census tract upon which Jericho is situated is \$53,000 - \$70,000 per year. In addition, the median household income for the area directly north of Jericho Circle, in the direction of the Aurora Country Club, is \$70,000 or greater.

On or about January 29, 2013, the phase one PPA was approved by IHDA, with a caution relating to the anticipated demand for units for low-income renters.<sup>23</sup> But this condition did not deter Brinshore from moving forward with a full application.

A successful on-site redevelopment still faced potential obstacles. As Gregory explained to HUD, the City had concerns about lack of proximity to jobs, and that the site was apart from other residential areas. In addition, the City had concerns about the density and layout of the site, as well as access issues for safety vehicles from the police and fire department. Furthermore, Gregory had his own concerns about the site, that the location is difficult because of lack of access to transportation and amenities. However, Gregory explained that he had seen worse deals, but cautioned that a successful development takes a lot of specific expertise, and he wasn’t sure that AHA staff was necessarily able to offer that expertise. Overall, however, Gregory believed that the PPA was a good plan.

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<sup>18</sup> This list is maintained by IHDA and comprised of very low income households with household members who have special disability-related needs.

<sup>19</sup> These assurances were apparently made to Jericho Circle residents. In addition, AHA has identified this right to return in its most recent Annual Plan that was approved by HUD.

<sup>20</sup> It is not apparent that the bedroom mix for phase two was ever firmly established, but it was expected to be similar to the mix in the first phase.

<sup>21</sup> See 24 U.S.C. §701 *et seq.*

<sup>22</sup> See 42 U.S.C. §3604(f)(3)(C).

<sup>23</sup> “Proposed is approved with extreme caution. The Authority [IHDA] is concerned that there is not enough demand for 60% units in the community and believes the project would struggle to achieve 60% rents in this market.” Of course many of the 60% units would have been subsidized by project-based housing choice vouchers.

Information provided by the AHA showed that there is a bus route, the Route 524 West Aurora Circulator, which goes to Jericho Circle, and runs every 40 minutes during business hours. Gregory explained that most of Aurora lacks good bus access unless one lives right downtown.

Throughout the application process, Brinshore also believed that an on-site redevelopment at Jericho Circle could be very successful and bring a lot of pride to the City of Aurora. Peter Levavi, Senior Vice President at Brinshore, explained to HUD that people have cars, and that for the most part the people to be housed at the development would be working families. When asked by HUD, according to Levavi, "this is a good site." Sciortino added that there is "nothing inherently wrong with that site. As long as you deliver a good product at good rents and keep it well maintained it will stay full and operate fine. And I think there's something to be said for having it be in a quiet neighborhood." He went on to say that "we would rather walk away from a transaction than do something that's not going to make good business sense. In fact, I can say that categorically."

According to Brinshore, and supported by the evidence of the unanimous August 2012 vote on the AHA board resolution to move forward with a redevelopment proposal, the AHA board was, for a time, very much in favor of redevelopment at Jericho Circle.

Henry Champen, who had been on the AHA board since June 28, 2011 (and is currently the longest serving board member), stated that the AHA had already spent a lot of time discussing different plans for Jericho Circle, and was supportive of the PPA.

Mattie Coble has been the resident board member since August 2011. She thought that the Brinshore plan was good, in terms of both the structure of the buildings, and the mixed-income model. She acknowledged to HUD that there wasn't much in terms of area amenities, but having lived in Jericho Circle in the past, she explained that while not everyone had cars, "if you needed a ride somewhere you'd get a ride." In addition, Coble has children enrolled in the West Aurora school district, and claims that she is very satisfied with their education, and that it has a reputation as a good school district. Of note is that the West Aurora district provides school bus service from students' residences to schools, something that the East Aurora district, across the river, does not.

Finally, Brinshore, with its many years of experience developing affordable housing, believed that the plan had a good chance of being funded by IHDA. First of all, in January 2013, the PPA was approved, paving the way for the submission of a full application, due in March 2013. Of course, this was no guarantee; Levavi recalled that in the previous funding cycle, IHDA had approved many preliminary applications. Sciortino estimated that there was something in the range of 150 preliminary applications submitted to IHDA in the previous year, that were narrowed down to approximately 75 full applications. From there, IHDA ended up funding 20 proposals. For its part, in the then-most recent cycles, Brinshore had 9 out of 10 preliminary applications make it past the first cut, and then about 4 or 5 out of those 9 proposals ultimately get funded. Sciortino believed that there was a "fair chance" of success that the Aurora plan would be funded. Levavi added that they were "in discussions with the state [IHDA]," and were "fairly certain" that "they'd want to do something like this."

### Withdrawal of the Preliminary Application

After the commissioners unanimously authorized Brinshore to proceed with a redevelopment plan, in August 2012, the City appointed two new commissioners to the AHA board, Bill Powell, and Rey Cruz. In December 2012, and shortly after the PPA was submitted to IHDA in November 2012, the litigation brought by AHA to challenge the City's commissioner appointments was resolved in favor of the City. That resulted in the City appointing two additional commissioners, Scott Voris and Dave Richart,<sup>24</sup> who took the place of Bill Burns and Al Schuler.

With four new board members joining since the August 2012 AHA board resolution to empower Brinshore to submit a redevelopment proposal, there was no longer a consensus about how to proceed. On or about January 18, 2013, Guzman called Sciortino informing him that the City won their state court case to seat two new board members. In an email, Sciortino informed his colleagues that "this changes the dynamics but not sure how nor did Rick [Guzman] elaborate. He intimated however that the City will take a wait and see approach to determine if [the] board is of the same mind on the redevelopment plan."

Shortly thereafter, on or about January 30, 2013, the AHA board voted to table a resolution that would authorize a Voluntary Compliance Agreement ("VCA")<sup>25</sup> with HUD and the City. A summary of the VCA that was circulated amongst the AHA board was provided to HUD in response to a request for production of documents relating to the present set of complaints. The summary outlined an agreement that was essentially identical to the two phase plan that had been developed by AHA and Brinshore. Specifically, the summary stated that an agreement would require AHA to sponsor an application for LIHTC to IHDA during the 2013 round I funding cycle for 69 total units (between Jericho Circle and scattered-sites), and then another LIHTC application for a subsequent funding cycle to fund the development of between 39 and 50 additional units. But the board decided against entering in to such an agreement.

In light of the board turnover, AHA invited Sciortino and Levavi to a board meeting on February 11, 2013 to discuss the redevelopment proposal. In addition, Gregory invited a HUD Investigator to the same meeting, to discuss potential civil rights implications of the decision to withdraw the proposal and not move forward with redevelopment at Jericho Circle. According to the minutes from the meeting, the HUD Investigator put the AHA board on notice of the following: "It is the responsibility of the AHA to enforce and promote Fair Housing, the Civil Rights requirements under Title VI and protections for the disabled under Section 504. The AHA must also ensure that it is furthering Fair Housing and affordable housing opportunities...At this point, it would be questionable to vary the information already submitted [in the LIHTC application] and [t]he AHA Board must consider if doing so would have an impact on any of the protected groups."

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<sup>24</sup> Mayor Weisner had initially appointed Shauna Wiet, realtor and wife of Bill Wiet, the City's Chief Development Officer, but Wiet resigned shortly after her appointment amidst criticism that a conflict of interest may exist between her membership on the board and her status as a landlord who rents to HCV program participants. Wiet was replaced by Richart.

<sup>25</sup> Proposed settlement of HUD complaint number: 05-12-1362-8/6.

In a subsequent conversation with HUD, Levavi recalled feeling that the meeting went “very well.” He added that there was some concern about a lack of public process and public input. Sciortino too characterized the new board members’ reactions as “what’s the rush?” Levavi added that it seemed as though the new board members were weighing between rushing into a plan that was unfamiliar versus the possibility of missing out and not getting funded altogether. Levavi also recalled telling board members that they (Brinshore) knew of two other proposals that were going under this priority (of foreclosed homes) and the best likelihood of success would be the first one in and to get it in the first round.

On or about February 14, 2013, Sciortino emailed Gregory and Guzman with some concerns, cautioning that: “I know there are still ongoing discussions surrounding our proposal, but we have to get moving on this so we can get our application prepared for IHDA. Please see below the list of deliverables we’ll need from you both.” Gregory replied by informing Sciortino that the AHA board had scheduled a special meeting to formally adopt a plan to move forward. Gregory noted that “in my opinion it rests between either the current proposal or a 1 phase project that is very similar to what we have already proposed but utilizes the entire site. Either way I’ll have something final Tuesday [February 19] night.”

The AHA board did make a final decision on February 19, 2013, and decided to withdraw the PPA that had been originally submitted in November 2012, and that had already been given conditional approval by IHDA. Sciortino later told HUD that he had never before worked with an agency that sponsored a PPA and then requested to withdraw it after it had already been submitted.

The minutes from the February 19, 2013 meeting reflect a divided board. Without attribution, the minutes show that the board members discussed their concerns that the “community at large did not want the redevelopment at the Jericho Circle site,” also that “[t]he School District, teachers, children, stakeholders and the city were opposed.” Guzman suggested that the City and AHA co-sponsor a “Technical Assistance Panel” with the Metropolitan Planning Council, to discuss potential uses of the Jericho Circle site.

On the other hand, according to the February 19 minutes, some board members disagreed, noting that consultants and experts were already hired and money spent to evaluate these concerns, dating back to 2009. Someone asked: “Where is the integrity of the AHA or their ability to make a decision?” In the end, the board voted 5 to 2 to withdraw the PPA and move forward with a scattered-site only plan.<sup>26</sup>

In an email to Sciortino sent the next day, on February 20, 2013, Gregory was candid about the AHA board’s decision to withdraw the PPA. He stated that: “To be honest as a non-local I don’t really understand the opposition to the site. I think at this point it has become more a political concern than a factual concern about the site. The idea that there is something wrong with the Jericho site is far overblown. I’ve been involved in enough developments to know that the site is just fine, and that a completed development is far better than nothing on the site.” Furthermore, Gregory was pessimistic about the chances of anything being done at the Jericho Circle site,

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<sup>26</sup> Champen and Coble were the two “nay” votes; Cruz, Powell, Richart, Runge and Voris voted in favor of withdrawing.

despite the City's idea to involve outside groups and commission a "technical assistance panel." He went on to state that "I think at this point the Board is just asking certain questions to get a sense for your interest and ability to do different kinds of projects. In my opinion I wouldn't spend any significant time on this until the Board commits to a project type. We are mostly concerned about the scattered site proposal at this point."

#### Scattered-Site Supportive Housing Only

During that February 19, 2013 meeting, the AHA board decided to move forward with a scattered-site only plan, which would involve submitting a new PPA to acquire and rehabilitate foreclosed homes to be rented as scattered-site public housing. After briefly considering the proposal, Brinshore agreed to remain partnered with AHA for the limited plan. In an email to Gregory dated February 20, 2013, Sciortino explained that "the management aspect concerns us but we have some ideas on how to handle this."

As for the positions of the new commissioners, Bill Powell was appointed to the AHA board in August 2012. Powell was the former Aurora Chief of Police, and had served on the City's affordable housing task force. Powell explained in an interview with HUD that his vote reflected his belief that there were deeply rooted historical problems with the Jericho Circle site, and felt that it was initially placed in a relatively isolated area to keep its residents, most of whom were poor and African-American, isolated as well. He also had previous experience with Jericho Circle from when he was a police officer, and stated that "speaking personally, no one should have to live in those conditions." With respect to the 2012 PPA, Powell had mixed feelings. He admitted that he was less adamantly opposed to redevelopment after considering the Brinshore model, but still felt that "there's nothing down there to support people who are living there."

In an email sent on February 12, 2013, Powell stated that he was favoring a single phased rebuild with between 50 or 55 units on-site, and then approximately 30 scattered-site units, but ultimately voted to withdraw the plan. Finally, when asked whether the scattered-site proposal addressed the location concerns that Powell raised regarding Jericho Circle, Powell admitted that he hadn't studied specific locations for the scattered-sites.

As for the positions of the new commissioners, Scott Voris was appointed to the AHA board in December 2012. Voris also served on the City's affordable housing task force back in 2011. In an interview with HUD, he explained his vote to withdraw the 2012 PPA as reflecting his belief that the community is better served with scattered-site, due to the location of Jericho Circle, the lack of amenities, education, retail, medical and day care, and that "it's not within a neighborhood." He believed that scattered-site would be closer to schools, retail, grocery, medical, bus lines, jobs, and to other community resources like churches. When asked, Voris then acknowledged that the actual scattered-sites aren't known, and does not remember if the board members considered the possibility that not all of the scattered site units would benefit from close proximity to these resources. Finally, Voris confirmed that the board has not discussed redevelopment at Jericho Circle since the February 2013 meeting where they voted to withdraw the proposal.

Rey Cruz was appointed to the AHA board in August 2012. In an interview with HUD, he admitted to previously having little knowledge about AHA issues. When asked by a HUD Investigator for an explanation of his vote to withdraw the redevelopment plan, he stated that he believes Jericho Circle has poor transportation options, a lack of jobs, no nearby community colleges, and no nearby shopping. While he acknowledged that the Brinshore plan “would have been a nice thing to do,” as the buildings looked great, and because it was mixed-income, Cruz instead felt that they needed to get the community involved. He also cited the burden on the West Aurora school district as a reason to vote against the plan. As for the scattered-sites, he wants them to be placed in neighborhoods with schools, buses, and convenience stores like “7-11 or Buffalo Wild Wings.” He suggested that they be placed in an area with less existing scattered-site housing, like close to Route 88.

Dave Richart was appointed to the AHA board in January 2013. In an interview with HUD, Richart explained that he works as a real estate professional, and previously served on the affordable housing task force. He opposed redevelopment at Jericho Circle because he believed that the site had a stigma, that the model (of having so many low-income people in one place) is outdated, and because it is in a poor location insofar as it’s a bit isolated by the train tracks, and there’s only a liquor store, gas station, and a high end grocery store nearby. Richart asserts that when he was appointed to the AHA board, there was already a redevelopment plan in place, and while he had a lot of questions, there weren’t a lot of answers.

Richart stated that he believed that scattered-site public housing puts people in a better situation. Richart admitted that he hadn’t reviewed the potential locations of the scattered sites, except “that they are scattered.” Also that it’s “less dense,” and “people can have a house with a yard rather than an apartment.” Richart also believed that Jericho Circle created undue pressure on the school system, with larger class sizes, and the scattered-site plan doesn’t put the burden all on one elementary school.

At the time that AHA voted to withdraw the November 2012 PPA, on or about February 19, 2013, Sciortino seemed hopeful that an on-site component would be added to the revised plan. In an email dated February 21, 2013, Sciortino informed his colleagues that they would withdraw the PPA and move ahead with the scattered-site plan. He went on to say that “we will then initiate a planning process for Jericho with an eye toward 2014 IHDA funding.”<sup>27</sup> Finally, Sciortino seemed somewhat skeptical about the decision. He pondered in that same email that “[g]iven that this was originally the reason the City contacted us independently (i.e. to address SF foreclosure problem), we are questioning the arrangement for this transaction.”

Prior to and on the day of the February 19, 2013 vote to withdraw the on-site PPA, Richart exchanged several emails with Gregory. Several of those emails describe Richart attempting to use his real-estate connections to find a buyer for the Jericho Circle site, which would then be used for a non-housing purpose.

Then on February 19, 2013, Richart emailed Gregory the following: “Can u [sic] ask developer if they would be willing to commit all or some of Jericho circle to senior housing, disabled

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<sup>27</sup> At the time of these Findings, no plan has been put forth to redevelop low-income public housing at Jericho Circle.

housing, veteran housing. Anything without kids. Thanks. Reason being to lesson impact on schools.”

Following up on Richart’s email, Gregory then asked Sciortino about the possibility of developing non-family public housing at Jericho, and to develop supportive housing only for veterans, elderly and the disabled. In response, Sciortino considered the possibility of doing such a project, and suggested that “[m]aybe we could find a site closer to center city where we could do a multi-unit elevator building and swap this site or just keep it in your inventory.” Sciortino went on to express some skepticism at the request: “Is the major objection that the Board doesn’t want children on this site? Does this mean they’d object to homeowner occupied SF [single family] homes? What is really going on here? It’s going to be hard to plan this site effectively until we really know the objectives. Maybe we should talk.” The next day, on February 20, 2013, Gregory replied to Richart, informing he that he had spoken to Sciortino “at length,” and that “they were able to find a way to make the property work financially and the developer is interested in putting together a plan that would include only veterans, elderly and supportive housing on the site.”

When asked about the emails, specifically the request that the on-site redevelopment entail “anything without kids,” Richart’s response was something to the effect that HUD was making too big of a deal about it. When asked if Richart had actually studied the effects of housing at Jericho Circle on the local public schools, Richart acknowledged that he hadn’t actually sat down to calculate school class sizes, adding that he “didn’t have time for that.”

Ultimately the AHA and Brinshore decided to go ahead with an all scattered-site proposal and submitted a new PPA to IHDA in or around March of 2013. This second proposal would seek to acquire 40 scattered-site units throughout the City of Aurora from a selection of bank owned vacant and foreclosed homes. While a list of the MLS inventory of foreclosed homes in Aurora was attached to the PPA, Sciortino told HUD that the final locations of the homes to be acquired will not be known until funding is secured. He explained that there is no “site control,” which is usually required by IHDA, but at the time of the proposal there was MLS inventory of about 80 units, and they felt that would be enough units to eventually acquire 40. The PPA was submitted to IHDA in or around March 2013, and was given preliminary approval on or about June 4, 2013. In or around October 2013, IHDA approved AHA’s request for LIHTC financing, and the scattered-site supportive housing project appears to be moving forward.

Of the 40 units, 8 are to be filled from the Illinois state referral network waiting list, and 32 of them locally. While it was initially understood that the 32 units would be filled by the AHA housing choice voucher waiting list, this turned out not to be the case.

Instead, Gregory explained that Commissioner Richart’s email asking that “anything without kids” be placed at the Jericho Circle site led to subsequent discussion, and AHA ultimately chose to make the scattered-site plan submitted to IHDA in March 2013 to be all supportive housing for seniors, the disabled, and veterans. Gregory added that, at the time of the investigation, AHA had yet to assemble a waiting list to provision those units, but AHA keeps a list of qualifications, and eventually will complete a list of local households to be combined with the IHDA state referral network list.



In a conversation with HUD, Gregory defended the decision to change the all scattered-site plan to be all supportive housing by claiming that there is a need for supportive housing. Gregory later admitted that families may have more of a need, however, acknowledging that AHA is 146 units under capacity after the Jericho Circle demolition, but asked: "How could the community possibly say no to that [supportive housing]?"

With regard to the accessibility of the scattered site units, Sciortino explained that most or all of the units will be exempt from the Fair Housing Act's accessibility requirements as they are all single family. However, they plan to make the interior of the units accessible regardless, since they essentially plan to gut and rebuild the interiors. Levavi added that they plan to do 5% of the units as accessible under Section 504, which would be two out of 40 units. In addition, not as many units will be adaptable compared to the on-site plan. In fact, they don't know how many units will be adaptable or compliant with the Act's requirements until the project is funded and are able to determine the actual units that will be acquired.

With regard to the location of the scattered site units, it is clear from interviews with AHA board commissioners that little to no consideration has been given to the siting of the scattered-site units. Levavi explained that Brinshore will be looking to cluster the units in certain neighborhoods to make them easier to manage. In addition, they plan to consult IHDA's criteria, to attempt to develop housing in areas near services, shopping, and mass transit. In part this is to "counterbalance...this perception that Jericho is in a bad location for housing," and also to increase the likelihood of success that IHDA will fund the proposal.

When asked by HUD if they had considered the possibility of locating scattered-site units in areas with already high concentrations of subsidized housing, or in areas of high concentrations of racial or ethnic minorities, Levavi insisted that absolutely no concern had been paid to this by Brinshore, the City, or the AHA.

On or about September 18, 2013, the AHA approved a resolution stating its position in opposition to redevelopment at Jericho Circle. The vote passed 5 to 0, with Commissioner Coble abstaining from the vote.

### Public Planning

Although the City had already commissioned the affordable housing task force in 2011, of which at least 5 of the current board members were a part, there was still the perception from the AHA and some of the board members that additional public input was needed.

In an email to Sciortino dated February 20 2013, Gregory wrote that: "we are undertaking a public process on our Jericho site prior to making a decision on what to do there. That process will be complete by May 15." But according to Sciortino, as of June 2013, no public process had commenced.

Ultimately, in or around April 2013, the City, by way of Guzman, decided to reach out to the Urban Land Institute, a “preeminent multidisciplinary real estate forum,” to convene a “technical assistance panel” for July 2013.

The Urban Land Institute published a presentation based on its findings from the technical assistance panel. The presentation hedged on its findings. It suggested as an alternative use of the Jericho Circle site to sell or lease the land to Aurora University to use for athletic facilities. It went on to consider that (in bullet-point format): “[i]f HUD requires rebuilding: [then] smaller density mixed-income portfolio,”<sup>28</sup> and “substantial public education regarding ‘mixed-income.’”

On or about September 22, 2013, it was reported by local media that Aurora University is not interested in leasing the Jericho Circle land from AHA.

### Housing Need and Demographics

According to the 2012 American Community Survey data, the City of Aurora contains an estimated 203,318 residents, 58.8% of which are white and 10.1% of which are African-American.<sup>29</sup> Within that population, the need for affordable housing in the City of Aurora is significant; the findings made by the City’s Affordable Housing Task Force in 2012 estimated that more than 23,000 people in Aurora are living below the poverty level. In addition, the regional Analysis of Impediments to Fair Housing Choice (“AI”)<sup>30</sup> established that as of 2008, 45% of households in the City of Aurora are cost-burdened, which is defined as when a household spends more than 30% of its income on housing.

In spite of this need, the AHA had previously attempted to convert some of its family public housing to elderly-only housing. On or about December 5, 2011, HUD denied AHA’s Designated Housing Plan (“DHP”), which sought to designate 126 units to be elderly-only from the Centennial House and Centennial Annex developments: The 126 units constituted 19% of the total units of AHA’s total public housing inventory. Combined with the Jericho Circle demolition approval, this meant that 40% of Aurora’s total family low-income public housing would be demolished or re-designated, including 7 out of the 8 total Uniform Federal Accessibility Standards (“UFAS”) compliant units, required by Section 504. Because of this potential impact on Aurora’s public housing inventory, the DHP was denied.

According to information provided by AHA to HUD in or around June 2013, there were approximately 12,873 families on the AHA low-income public housing waiting list. With respect to the various demographics, 54.76% are African-American, 20% are “not assigned,” 24% are white, and 11.22% are Hispanic. Of those households, 11.47% include a person with a

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<sup>28</sup> Although the presentation does not delve into specifics, this suggestion appears similar to the original plan developed by Brinshore that was submitted to IHDA for financing and then later withdrawn.

<sup>29</sup> These percentages include those who identify as one race, as well as those who identify as “in combination with one or more other races.”

<sup>30</sup> The regional AI was published in 2012 and prepared in cooperation with Kane County, the City of Aurora, and the City of Elgin, Illinois.

disability,<sup>31</sup> and only 1.72% of those families on the waiting list seek senior or elderly housing. The average family, most of whom are African-American, has spent 3,998 days on the public housing waiting list.

The waiting list for tenant protection vouchers, given to those families displaced from Jericho Circle, is similar in terms of race and national origin: it is comprised of 75% African-Americans, 20% whites, and 10.59% Hispanics.

The HCV waiting list tells a similar story both in terms of need, and with regard to racial and ethnic composition. Of the 6,475 households on the waiting list at the time of the investigation, 51.8% are African-American, 24% are “not assigned,” 23% are white, and 10.38% are Hispanic. Additionally, 8.67% of the households on the voucher waiting list have one or more disabled family members, while only 1.79% of those families on the list seek senior or elderly housing. The average family has spent 4,445 days on the housing choice voucher waiting list.

In or around September 2013, AHA reported to HUD that it had purged its public housing waiting list and updated its HCV waiting list. The new data shows 253 households on HCV waiting list and 230 households on the public housing waiting list. In addition, the new data shows only 5 households that include a disabled individual on the public housing list. At the time of these Findings, AHA had not made race-based demographic information from the list available to HUD.<sup>32</sup>

Focusing in on the Jericho Circle site, 2010 census data shows that in the ZIP code area around the Jericho Circle, 60506, of the 53,013 total residents, 65% are white, and 13.2% are African-American. Most of the families displaced from Jericho Circle ended up far away from where they had lived. Of the 86 families who were displaced from Jericho Circle and tracked by AHA,<sup>33</sup> only 20, or 23% remained on the west side<sup>34</sup> of Aurora. Another 27 families are currently living east of the Fox River in or around Aurora, Illinois, 30 families have moved out of Aurora altogether, and 9 were terminated from the program.

Finally, 2005 American Community Survey data shows that most households in the City of Aurora have a car; approximately 94.5% of white households and 82.7% of African-American households own at least one vehicle.

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<sup>31</sup> Amongst families on its waiting lists, AHA does not apparently distinguish between particular types of disabilities, i.e. families containing persons with physical disabilities who may need an accessible unit.

<sup>32</sup> For the purposes of the analysis contained in these findings, the demographics from the original waiting lists will be used, since AHA has neither provided complete updated waiting list information to HUD, nor has it suggested that the demographic makeup of the updated lists will be materially different.

<sup>33</sup> As there were 93 families at Jericho Circle at the time of the demolition, it is unclear what happened to the other 7 families not apparently tracked by AHA.

<sup>34</sup> The 60506 ZIP code.

## Analysis

Title VI of the Civil Rights Act of 1964<sup>35</sup> and its implementing regulations at 24 C.F.R. Part 1 prohibit discrimination in federally funded programs on the basis of race, color or national origin. The implementing regulations, specifically 24 C.F.R. §1.4(b)(2)(i), state that a recipient of federal financial assistance, in determining the types of housing which will be provided under a program or activity, may not utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race. In addition, 24 C.F.R. §1.4(b)(1)(i) makes it illegal for a recipient to deny a person any housing or other benefits provided under the a program or activity on the grounds of race.

Section 504 of the Rehabilitation Act<sup>36</sup> and its implementing regulations at 24 C.F.R. Part 8 prohibit discrimination in federally funded programs on the basis of disability. The implementing regulations, specifically 24 C.F.R. §8.4(b)(4)(i), state that a recipient of federal financial assistance may not utilize criteria or methods of administration the effect of which would subject qualified individuals with handicaps to discrimination solely on the basis of handicap. The Title VI manual published by the Department of Justice explains that a Section 504 claim shall be analyzed in the same manner as a claim under Title VI.<sup>37</sup> Accordingly here, the same analytical framework that applies to the claims under Title VI will apply to the claims under Section 504.

### Title VI and its Implementing Regulations

The AHA, as a public housing authority, is a recipient of federal financial assistance.<sup>38</sup> Beginning in 2010 through October 2013, AHA's actions and policies have adversely and disproportionately impacted African-American families. In 2010, AHA began the process of demolishing Jericho Circle, removing 145 units and displacing 93 families from their homes. Rather than developing family public housing at Jericho Circle and scattered-site homes for families as was contemplated in 2012, in March 2013, AHA directed Brinshore to only submit a scattered-site supportive housing plan for funding by IHDA. Further, on September 18, 2013, AHA passed a resolution denying redevelopment of housing at Jericho Circle. In October 2013, IHDA decided to provide LIHTC funding to the scattered-site supportive housing plan. The scattered-site supportive housing plan only provides 40 units for seniors, disabled people, and veterans. There is extensive evidence that AHA does not want any children in these units.

The vast majority of families displaced from Jericho Circle who have tenant protection vouchers would not qualify to live in the scattered-site supportive housing. Of those families, AHA has recorded only one household qualified as "disabled," and none as seniors or veterans. This indicates that as few as one family displaced from Jericho Circle, and with a right to return to public housing, would qualify for the scattered-site supportive housing developed under the AHA plan.

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<sup>35</sup> 42 U.S.C. §2000(d) *et seq.*

<sup>36</sup> 29 U.S.C. §701 *et seq.*

<sup>37</sup> Retrieved at <http://www.justice.gov/crt/about/cor/coord/vimanual.pdf>

<sup>38</sup> See 24 C.F.R. §1.2(f).

Moreover, the evidence indicates that AHA's actions and policies cause an adverse and disproportionate impact on African-American families, as compared to white families. For example, 75% of the families displaced from Jericho Circle who are on the waiting list for tenant protection vouchers are African-American, as compared to 20% who are white. Likewise, African-Americans constitute the majority of families on AHA's public housing and HCV waiting lists.

The evidence also indicates that AHA's policies and actions discriminate because they perpetuate segregation. The City of Aurora and the area around the demolished Jericho Circle is predominately white, while residents in Jericho Circle and the majority of families on the various AHA waiting lists are predominantly African-American. In the City of Aurora, the 2012 American Community Survey data shows that out of an estimated 203,318 residents, 58.8% are white, and 10.1% are African-American. Furthermore, 2010 census data shows that in the ZIP code area around the Jericho Circle site, 60506, of the 53,013 total residents, 65% are white, and 13.2% are African-American. Redevelopment at Jericho Circle presented a unique opportunity for AHA to place families that need subsidized housing, a majority of whom are members of a racial minority, in an area with a low concentration of minority residents.

Specifically with respect to the families tracked by AHA who had originally lived at Jericho Circle and were displaced due to its demolition, only 20 out of 86, or 23% of the families stayed in the 60506 ZIP code area. On the other hand, 31% of the families ended up on the east side of Aurora. Many of those families are currently living in the 60505 ZIP code; according to 2010 census data only 16.9% of the population in that ZIP code is "white alone," while 8% is "African-American alone" and 73.6% is Hispanic.

Therefore, the demolition of Jericho Circle, displacement of its residents, and refusal to rebuild on the Jericho Circle land has the effect of perpetuating racial segregation. It is clear that families on the local waiting lists who would have been qualified for housing developed under the 2012 AHA plan were more likely to be African-American and less likely to be white compared to families in the surrounding area. It's also true that families displaced from Jericho Circle after the demolition were more likely to have ended up in non-white, majority-minority areas than to have remained in the 60506 ZIP code on the west side of Aurora.

The AHA decision in February 2013 to withdraw the initial plan and substitute a scattered-site supportive housing only plan means that it is unlikely that any of the 40 units currently slated to be purchased and redeveloped will be filled with families from the various local waiting lists. In particular, it appears that few if any former Jericho Circle families with a right of return will be qualified to move into any of these units. As a result, the evidence supports a finding that the AHA's decision to withdraw the 2012 PPA and instead submit a scattered-site supportive housing plan has a disparate impact on African-American families and perpetuates segregation in Aurora. This is in violation of 24 C.F.R. §1.4(b)(2)(i), which prohibits a recipient of federal funding from utilizing criteria or methods of administration in the operation of its programs that have the effect of subjecting persons to discrimination because of their race.

## Section 504 and its Implementing Regulations

With regard to disability discrimination and Section 504, 10% of the on-site units to be developed under the initial plan submitted to IHDA in November 2012 would have been fully UFAS compliant, which would have included 5 units from the first phase, and then an additional 3 units from the second stage, or 8 total accessible units. In addition, another 10% of the on-site units, five from the first phase and 8 total, would have been adaptable. Furthermore, all of the ground floor units would have been compliant with the Fair Housing Act's accessibility requirements. Based on planning documents provided by Brinshore, 42 out of the 46 units that were planned for Phase 1 would have been ground floor units and covered under the Act.

On the other hand, only 5%, or 2 out the 40 scattered-site units will be compliant with Section 504, and none of them will need to be compliant with the Act's accessibility requirements, since they are single family homes. As a result, the decision to withdraw the November 2012 PPA and substitute a scattered-site supportive housing only plan will result in the development of fewer units accessible to families and people with physical disabilities. Specifically, the difference is between, under the Jericho Circle redevelopment plan, 8 accessible units, 8 adaptable units, and all ground floor units (at least 42 from Phase 1 of the on-site redevelopment) in compliance with the Fair Housing Act, versus only two accessible units under the scattered-site supportive housing only plan. This is in violation of 24 C.F.R. §8.4(b)(4)(i), which prohibits a recipient of federal financial assistance from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with handicaps to discrimination solely on the basis of handicap.

## Defenses

It is next necessary to consider whether AHA's actions regarding Jericho Circle, when viewed in its entirety, serve a legitimate public purpose sufficient to justify the resulting disparate impact on the African-American and disabled households on the AHA's waiting lists. The question in this context is whether the AHA's decision to withdraw the PPA and instead submit the PPA for the scattered-site supportive housing only plan was necessary to achieve a legitimate and important interest that was integral to AHA's mission.

The most common justifications for its actions offered by AHA and its board members is that (1) the Jericho Circle site is unsuitable for redevelopment, due to its relative isolation and lack of nearby amenities. Another frequently cited justification is that (2) the AHA board needed more time to study the issue before committing to a decision, since four board members were appointed subsequent to the AHA board's decision in August 2012 to empower Brinshore to pursue a redevelopment plan. A final justification suggested by at least two AHA board members is that (3) many low-income families would create an undue burden on the local elementary school and the West Aurora school district.

With respect to (1), the Jericho Circle site is located in a relatively isolated part of town. While the bus service only runs every 40 minutes, Gregory acknowledged that much of the City of Aurora suffers from less than frequent public transportation services. In addition, in deference to

their professional expertise, both Executive Director Gregory, who has previous development experience, and Sciortino and Levavi with Brinshore, thought the site was perfectly fine.

In addition, Prisco's Fine Foods, a full-service grocery store, is located less than one mile away and within walking distance from the site. Lincoln Elementary School is only about one mile away, and regardless of its location the West Aurora district provides school bus service. Considering that the surrounding census tract is relatively affluent, in that the median household income is between \$53,000 and \$70,000, the area is clearly desirable enough for people who have the means to choose where they live.

Furthermore, according to Levavi and based on previous experience, most of the families to be placed at Jericho Circle in the proposed redevelopment in 2012 were working families. As a result, many families would likely own a vehicle. Additionally, the 2005 American Community Survey data shows that most households in the City of Aurora own a car; approximately 94.5% of white households and 82.7% of African-American households were shown to own at least one vehicle.

Perhaps the most compelling argument against (1) is that the AHA and its commissioners did not provide any evidence of actually having studied the issue, or of having discussed the possibility that some or all of the 40 scattered-site units to be developed would be any less isolated than Jericho Circle. To the extent that isolation from amenities is a reasonable argument to make against redevelopment at Jericho Circle, it fails when the people making the argument proceed with an alternative plan that could easily be subjected to the same criticisms. If the AHA was concerned about the location of its developments, it would have applied the same rigor to considering potential locations for the scattered-site units as it did for Jericho Circle, but it did not.

With respect to (2), there are several flaws to the argument that the new board members lacked sufficient time to study the issue before allowing a full application to be submitted. One flaw in this argument is that 3 out of the 4 new board members -- Voris, Richart and Powell -- had previously served on the 2011 affordable housing task force, which carefully considered the issue of whether or not to redevelop public housing at Jericho Circle. It is unclear how much more thought and analysis could be necessary to make a decision.

In addition, the AHA missed its May 15, 2013 deadline for soliciting feedback from the community, making no apparent effort to further study the viability of on-site redevelopment. It was not until July 2013 that the Urban Land Institute Chicago convened a technical assistance panel to inform the fate of Jericho Circle. And while the technical assistance panel considered the "location" issue, it made recommendations that included both a redevelopment plan at Jericho Circle, as well as alternatives.

Finally, with respect to (3), Commissioners Richart and Cruz stated that they did not want to burden the local West Aurora School district by concentrating low-income families with children at the Jericho Circle site.<sup>39</sup> The AHA board provided no evidence that the 93 families living at

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<sup>39</sup> This argument, and any decision made as a result of it, may violate the Fair Housing Act's provision against making housing unavailable to families with children, 42 U.S.C. §3604(a).

Jericho Circle in 2010 had actually affected the school; specifically, Commissioner Richart admitted that he “didn’t have time” to calculate the actual burden that families with children who may one day live in a redeveloped Jericho Circle might have on the West Aurora district.

A review of enrollment data shows that in 2009, when families still lived at Jericho Circle, 3414 students attended the West Aurora High School. On the other hand, the 2011 data (after families were removed from Jericho Circle) shows an enrollment of 3393 students, illustrating that the demolition of Jericho Circle had a minimal effect on the local high school’s enrollment.<sup>40</sup> The effect on the local elementary school attended by students living at Jericho Circle was similar. The enrollment at Nicholson Elementary School in 2009 was 378 students, whereas in 2011 it was 371 students.<sup>41</sup> The same trend was also apparent district-wide; according to data provided by the district, the 2009-2010 enrollment was 12,063, while the 2012-13 enrollment was 12,185. Therefore, despite families relocating from Jericho Circle and the West Aurora district, school enrollment has actually increased, which shows that the families at Jericho Circle had a minimal impact, if any, on the size of the district’s student population.

Children will of course attend school somewhere, whether they are living at Jericho Circle, a scattered-site unit, or in a market-rate unit; the AHA’s mission is to provide affordable housing, and not to enforce the parochial concerns of the local school district.

There was and remains a clear need for affordable housing in Aurora. Information provided to HUD by AHA in or around July 2013 showed that there were 12,873 families on the AHA public housing waiting list, and 6,745 families on the AHA housing choice voucher waiting list. The Affordable Housing Task Force convened by the City of Aurora, in its findings published in 2012, described 23,000 people in the City living below the poverty level. Furthermore, the regional AI that the City helped prepare illustrates a large need for affordable housing, noting that 45% of households in the City of Aurora are cost-burdened. In addition, back in 2011, HUD disapproved a previous attempt on the part of AHA to re-designate family public housing as supportive housing (in that case senior-only housing) due to a severe need for both family public housing, and housing for people with physical disabilities, in its jurisdiction.

As a result, AHA is unable to establish any persuasive justification for its decision to withdraw its application to redevelop public housing at Jericho Circle.

What remains is a clear alternative plan that AHA could have used to achieve its mission and policy goals, and that would have had a less discriminatory effect on protected class members. AHA, in November 2012, and with the assistance of Brinshore, submitted a funding proposal in the form of a PPA to IHDA, in an attempt to receive LIHTC financing that would be used for stage one of a two stage redevelopment plan. This first stage sought to redevelop family public housing at Jericho Circle, and to develop a number of scattered-site public housing units, most of which would also be reserved for families. The PPA was approved by IHDA in late January 2013, paving the way for AHA and Brinshore to submit a full application. Brinshore estimated that there was a “fair chance” that the full plan would be approved for financing by IHDA. This plan previously had the support of a unanimous AHA board, and ostensibly, that of the City

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<sup>40</sup> Data retrieved from: <http://www.schooldigger.com/go/IL/schools/0471000174/school.aspx>

<sup>41</sup> Data retrieved from: <http://www.schooldigger.com/go/IL/schools/0471000157/school.aspx>



Forty-eight out of the 69 total units that were to be developed under phase one of the plan were to be occupied by low-income families;<sup>42</sup> phase two, as it was conceived at the time, would have added an additional 39 to 50 units, 24 of which would have been on-site, and most if not all of which would have been occupied by families. In sum, there was the potential to redevelop and add anywhere from 108 to 119 units of new mixed-income housing, including family public housing, in the City of Aurora. Despite AHA's claims that Jericho Circle is unsuitable for redevelopment, it has failed to provide HUD with an alternative plan to develop mixed-income family housing comparable to the plan developed with Brinshore.

Based on the foregoing analysis, AHA's decision to withdraw the November 2012 PPA and its subsequent failure to submit a full application for phase one of its two phase Jericho Circle redevelopment plan discriminated by significantly limiting opportunities for a population that was predominantly African-American, and perpetuated segregation, in violation of 24 C.F.R. § 1.4(b)(2)(i). Additionally, the decision resulted in the potential development of fewer accessible units for persons with physical disabilities, in violation of 24 C.F.R. §8.4(b)(4)(i).

### Intentional Discrimination

The Title VI implementing regulation found at 24 C.F.R. §1.4(b)(1)(i) prohibits a recipient of federal financial assistance from directly, or through contractual or other arrangements, denying a person any housing on the grounds of race. The Title VI Legal Manual<sup>43</sup> recognizes that federal agencies may enforce regulations promulgated under Title VI and Section 504 using a theory of intentional discrimination.<sup>44</sup> Here, the agency must show that "a challenged action was motivated by an intent to discriminate." This requires a showing that the decisionmaker was not only aware of the complainant's race... but that the recipient acted, at least in part, because of the complainant's race...<sup>45</sup> A successful intentional discrimination claim does not require "evidence of 'bad faith, ill will or any evil motive on the part of the recipient.'"<sup>46</sup> Furthermore, "[e]vidence of discriminatory intent may be direct or circumstantial and may be found in various sources, including statements by decisionmakers, the historical background of the events in issue, the sequence of events leading to the decision in issue, a departure from standard procedure (e.g. failure to consider factors normally considered), legislative or administrative history (e.g. minutes of meetings)...and evidence of a substantial disparate impact on a protected group."<sup>47</sup> In addition, evidence that a decisionmaker is aware that a discriminatory effect is likely to result from a practice or decision may also support a claim of intentional discrimination.<sup>48</sup>

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<sup>42</sup> The others were to be rented at market-rate.

<sup>43</sup> Retrieved at <http://www.justice.gov/crt/about/cor/coord/vimannual.pdf>.

<sup>44</sup> *Id* at 43.

<sup>45</sup> *Id* at 43, citing Elston v. Talladega County Bd. Of Educ., 997 F.2d 1394, 1406 (11th Cir. 1993).

<sup>46</sup> *Id* at 43, citing Elston at 1406.

<sup>47</sup> *Id* at 44, citing Elston at 1406.

<sup>48</sup> See Personnel Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 279 n.25 (1979) ("When the adverse consequences of a law upon an identifiable group are as inevitable as the gender-based consequences of [the statute], a strong inference that the adverse effects were desired can reasonably be drawn").

In this case, there is evidence that AHA engaged in intentional discrimination on the basis of race, in violation of Title VI and HUD's regulations promulgated under Title VI, when it made the decision to withdraw the PPA that had been submitted to and approved by IHDA in February 2013.

Originally, AHA made its intent to redevelop at Jericho Circle clear, going all the way back to its 2010 request to HUD for demolition approval. After that, in or around October 2011, the AHA published an AI and in that cited previous correspondence to the City of Aurora, noting the potential for liability under civil rights laws, and arguing that failing to redevelop units lost after the Jericho Circle demolition would have a disproportionate impact against certain protected classes, in this case "[b]lack female-headed households with children."

Further historical evidence exists that AHA was aware of potential liability that it would face for failing to redevelop housing lost after the Jericho Circle demolition. AHA filed a housing discrimination complaint against the City of Aurora on August 28, 2012, alleging that the City had engaged in discrimination on the basis of race when it thwarted AHA's attempt to redevelop on the Jericho Circle site. As a result, AHA was aware that not redeveloping family public housing at Jericho Circle might adversely impact its program participants with tenant protection vouchers and those families on the HCV waiting list. Also, throughout this time, AHA was aware that a majority of its program participants were (and remain) members of a protected class, specifically that a majority are African-American.

In attempting to resolve its complaint, AHA then worked towards negotiating a VCA with the City and with HUD; a summary of the proposed agreement that was circulated amongst the AHA board was made available to HUD, and is identical to the two phase plan developed in conjunction with Brinshore. To summarize: AHA was at one time aware of the potential discriminatory effect of not rebuilding on-site, negotiated a VCA that would have resolved the complaint and redeveloped public housing at Jericho Circle, then walked away from the both the proposed VCA and the redevelopment plan. AHA chose this course of action, despite its previous position that failing to redevelop at Jericho Circle had a "substantial disparate impact on a protected group."

Additionally, after AHA voted against signing a VCA with HUD and the City, it invited a HUD Investigator to present FHEO's position in a board meeting on February 11, 2013. Minutes from the meeting show that the investigator put AHA on notice that it "must consider if [withdrawing the PPA] would have an impact on any of the protected groups." The minutes also reflect that AHA was reminded of its obligation to affirmatively further fair housing, and of its requirements under Title VI and Section 504. In spite of these warnings, AHA voted to withdraw the PPA and ultimately seek funding for a scattered-site supportive housing only plan. Therefore, AHA engaged in intentional discrimination insofar as it was aware at the time that its decision would have a discriminatory effect on a protected class.

Finally, AHA, along with the City of Aurora, convened two different focus groups for the express purpose of determining the future of the Jericho Circle site. There was the Affordable Housing Task Force that published its findings in 2012, and then the 2013 Technical Assistance Panel. While the task force was convened by the City, nearly all of the current AHA board

members participated in it. Then more recently the panel was brought together by both the City and the AHA. There is no evidence that the AHA convened a similar panel or solicited feedback from the community to determine where to locate the supportive housing scattered-site units that it intends to develop. On the other hand, AHA made redevelopment at Jericho Circle contingent on the outcome of the various task forces and panels. This is evidence that AHA departed from its standard practice, and assisted in creating obstacles to a successful redevelopment at Jericho Circle.

In summary, there is evidence that AHA engaged in intentional discrimination in violation of Title VI and its implementing regulation in found at 24 C.F.R. §1.4(b)(1)(i).

### **Duty to Affirmatively Further Fair Housing**

AHA, as a public housing authority (“PHA”), is required to conform to various regulatory civil rights requirements enforced by HUD; specifically, AHA is required to affirmatively further fair housing. Based on the foregoing evidence, it appears that AHA has failed to affirmatively further fair housing by reducing housing opportunities for African-American program participants in more affluent and non-racially concentrated areas, and by reducing housing opportunities for families with children.

The authority to enforce civil rights related program requirements of HUD programs has been delegated to FHEO,<sup>49</sup> and is therefore within the scope of these findings.

First, in the submission of its annual plan, AHA has certified that it will affirmatively further fair housing. The regulations state that HUD will take action to challenge a PHA’s certification under 24 C.F.R. § 903.7(o) where it appears that a PHA plan or its implementation: “(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing; or (B) Is creating new segregation in housing.”<sup>50</sup> Moreover, if “HUD challenges the validity of a PHA’s certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in (d)(2)(ii) of this section.”<sup>51</sup>

Second, the specific regulations that control public housing and HCV programs impose further AFFH requirements. Specifically, the regulations state that AHA “must affirmatively further fair housing in the administration of its public housing program.”<sup>52</sup> With respect to its HCV operations, the regulations state that AHA “will affirmatively further fair housing in the administration of the program.”<sup>53</sup>

AHA reduced the number of units in its public housing portfolio by demolishing Jericho Circle. It then had the opportunity to expand its public housing portfolio by building a mixed-income

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<sup>49</sup> “Redelegation of Authority for the Civil Rights Related Program Requirements of HUD Programs,” 76 Federal Register 229 (29 November 2011), p. 73987.

<sup>50</sup> 24 C.F.R. § 903.2(d)(3)(i).

<sup>51</sup> 24 C.F.R. § 903.2(d)(3)(ii).

<sup>52</sup> 24 C.F.R. § 960.103(b).

<sup>53</sup> 24 C.F.R. § 982.53(b)(2).

development at Jericho Circle and providing other housing opportunities for families on its waiting lists, a majority of whom are African-American. Of note is that the Jericho Circle site is in an area that is racially integrated. Additionally, the census tract within which the Jericho Circle site is located is one of the most affluent in the area. At the same time, AHA has not proposed any significant alternative development of family public housing.

Instead, AHA chose to move forward with a plan to purchase foreclosed homes and develop scattered-site supportive housing. In doing so, it failed to consider the location of the acquisitions with respect to concentration of minority populations or with income levels. Furthermore, it failed to consider whether those families displaced from Jericho Circle would even be qualified for the units. As it stands, only 23% of the families displaced from Jericho Circle that are tracked by AHA still reside on the west side of Aurora, near Jericho Circle. Instead, many of those families ended up in poorer neighborhoods with larger concentrations of ethnic and racial minority populations. As a result, AHA failed to affirmatively further fair housing, as its decision to back out of the mixed-income Jericho Circle redevelopment thwarted an opportunity for families on its waiting lists to live in a more affluent, racially integrated neighborhood. In addition, the evidence makes it clear that AHA's recent decisions were made in light of Commissioner Richart's email plea for "[a]nything without kids," and therefore reduced housing opportunities for families with children. While the initial email was focused on redevelopment at the Jericho Circle site, the investigation revealed that this email led to further discussions resulting in the supportive housing scattered-site plan, where few if any families displaced from the Jericho Circle demolition will be eligible to be housed.

While there may be some families with children who qualify to live in the senior, disabled, and veteran-only housing being developed, the evidence of Richart's email, inquiring about "senior housing, disabled housing, veteran housing. Anything without kids" expresses a belief that housing for those groups effectively eliminates families with children from consideration, and that the AHA acted with that intent. As a result, AHA failed to affirmatively further fair housing by reducing, if not eliminating, housing opportunities for families with children when it decided to develop scattered-site housing for seniors, veterans, and the disabled, and failed to develop any additional housing for families with children.

In light of all of the forgoing information obtained during the compliance review and the Title VI findings outlined above, there is sufficient evidence to question whether the AHA's decision to withdraw its application to fund redevelopment at Jericho Circle is consistent with its AFFH certifications submitted pursuant to 24 C.F.R. § 903.7(o). Furthermore, there is sufficient evidence to question whether AHA's public housing and HCV program operations are in compliance with the requirements to AFFH.

## **Conclusion**

The Department finds the Recipient in violation of Title VI, Section 504, and its duties to affirmatively further fair housing, pursuant to the Fair Housing Act. This letter addresses only the issues discussed herein and should not be interpreted as a determination of the Aurora

Housing Authority's compliance or noncompliance with Title VI, Section 504, or AFFH certifications in any other respect.

HUD's regulations discuss the issuance of a letter of finding ("LOF") under Title VI at 24 C.F.R. § 1.7, and under Section 504 at 24 C.F.R. § 8.56.

Under Title VI it is HUD's policy to resolve all matters by informal means whenever possible. Informal resolution is usually achieved through the execution of a Voluntary Compliance Agreement ("VCA") between HUD and the recipient. We invite the Aurora Housing Authority to enter into an informal resolution.

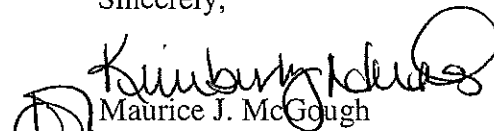
HUD prefers to achieve an informal voluntary resolution to this matter through a written VCA. See 24 C.F.R. § 1.7(d). If the noncompliance cannot be corrected by informal means, compliance may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by law. See 24 C.F.R. §1.8(a).

Under Section 504 the recipient may request a review of this preliminary Letter of Findings by the reviewing civil rights official. A request must be made within 30 days of receipt of this letter by submitting a written statement of the reasons the letter of findings should be modified in light of supplementary information. For the purposes of a request for review, supplementary information means new and material information not previously available to the party requesting the review during the course of the investigation. If the request does not include such information, it will be denied without further review and a formal written determination of non-compliance will be made.

If one party requests review, the reviewing civil rights official shall send a copy of the request to the other party, who shall have twenty days to respond. The response may include material supplementary factual information. See, 24 C.F.R. Sec. 8.56(h). If neither party requests that the letter of findings be reviewed, a formal finding of compliance will be issued within fourteen (14) calendar days after the thirty-day period for the request for review has expired.

Within the next 30 days, I encourage you to contact me or my staff to discuss negotiating the terms of a VCA to resolve the noncompliance issues. You may also contact me directly at (312) 913-8400.

Sincerely,

  
Maurice J. McGough  
FHEO Region V Director  
Office of Fair Housing and  
Equal Opportunity

cc: Keith Gregory  
Executive Director, Aurora Housing Authority

Anne Houghtaling  
Executive Director, HOPE Fair Housing Center

Steven E. Meiss  
Director, Chicago Office of Public Housing

Kate Walz  
Director, Housing Justice, Sargent Shriver National Center on Poverty Law

The Honorable Mayor Tom Weisner  
City of Aurora, Illinois