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Lots for Sale - Discrimination in Site Selection

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States With Best
and Worst Voting Records
(Voters as percentage of voting age population)

THE BEST

States	*1968*	*1964*	*1960*
Delaware	70.0	70.2	73.6
Idaho	72.6	76.5	80.7
Indiana	71.8	73.9	76.9
Iowa	70.8	72.4	76.5
Minnesota	76.0	76.9	77.0
New Hampshire	70.0	72.4	79.4
South Dakota	72.8	74.4	78.3
Utah	76.1	78.9	80.1
Washington	71.0	71.8	72.3

THE WORST

States	*1968*	*1964*	*1960*
Alabama	50.3	35.9	31.1
District of Columbia	33.5	39.4	—
Georgia	42.9	43.0	30.4
Mississippi	50.6	33.2	25.5
South Carolina	45.9	38.7	30.5
Virginia	50.4	41.1	33.4

Source: Census Bureau.

Lots for Sale—Discrimination in Site Selection

Several cases in the area of low and middle income housing site selection represent the trend of today. They are *Gautraux v. Chicago Housing Authority*,[1] *Hicks v. Weaver*,[2] *El Cortez Heights Residents and Property Owners Association v. Tucson Housing Authority*,[3] and *Shannon v. United States Dept. of Housing and Urban Development*.[4] There exists a significant trend whereby the courts have (1) scrutinized the various methods of site selection utilized by housing authorities, and (2) strongly prohibited racial and economic discrimination in said selection.

[1] 265 F. Supp. 582 (1967), 296 F. Supp. 907 (1969), 304 F. Supp. 736 (1969).
[2] 302 F. Supp. 619 (1969).
[3] 457 P. 294 (1969).
[4] 436 F. 2d 809 (1970).

This trend is reflected by the case law in this area; however, the administrative agencies have significant leeway in determining what standards should be imposed when taking into consideration the racial or economic composition of a community prior to actual site selection.

The *Gautraux* cases[5] may be the most significant of the group of cases because the court has specifically required that affirmative relief be granted.[6] The first case was *Gautraux v. Chicago Housing Authority.*[7] This was an action against the housing authority by black tenants in or applicants for public housing. It challenged the constitutional validity of site selection by the Chicago Housing Authority. In that case the district court held

> . . . that tenants or applicants had right to have site selected for public housing projects without regard to racial composition of either surrounding neighborhoods or of projects themselves and had right to maintain action to determine whether this opinion that such right was being denied them was correct and to secure appropriate remedy, and that issues as to motive or intent of selection of sites for housing and racial composition of neighborhoods involved were presented precluding summary judgment for defendants.[8]

The second *Gautraux* case was *Gautraux v. Chicago Housing Authority.*[9] This case dealt with issues as to motive or intent of selection of sites for housing and racial composition of neighborhoods involved.[10] The second case was an action brought by black tenants in or applicants for public housing on behalf of themselves and all others similarly situated alleging that the city housing authority had violated their rights under the Fourteenth Amendment. After the presentation of evidence it was held that

> . . . evidence established that the housing authority intentionally chose sites for family public housing and adopted tenant assignment procedures for the purpose of maintaining existing patterns of residential separation of the races in the city.[11]

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[5] 265 F. Supp. 582 (1967), 296 F. Supp. 907 (1969).

[6] 304 F. Supp. 737-743. The judgment order definitively enunciates in the *Gautreaux* cases the relief granted. It specificially prescribes what the Chicago Housing Authority can and cannot do.

[7] 265 F. Supp. 582 (1967).

[8] *Ibid.* at 582.

[9] 296 F. Supp. 907 (1969).

[10] 296 F. Supp. 909-915 (1969). Categorically the court elaborated on three broad areas in its opinion: I. Discriminatory Tenant Assignment Practices, II. Discriminatory Site Selection Procedures, III. Relief.

[11] 296 F. Supp. 907 (1969).

The third case was *Gautraux v. Chicago Housing Authority*.[12] This case was an enunciation of the relief granted in the second case.[13] The court held that

> . . . Chicago Housing Authority would not be permitted to cause construction of public housing in part of county, which lay within census tracts having 30% or more nonwhite population, or within distance of one mile from outer perimeter of such tracts, unless within three months following commencement of construction at least 75% of total units caused to be commenced by authority were outside of that part of county.[14]

The true significance of the third case lies in the fact that the opinion of the court clearly and unequivocally ordered specific requirements which must be met by the Chicago Housing Authority.[15] The court defined specifically the areas where public housing could be built,[16] and how many units could be started within certain time limitations.[17]

The next case *Hicks v. Weaver*[18] was a class action brought by Blacks for declaratory and injunctive relief against location of public housing projects in racially segregated neighborhoods.[19] In this case the sites had been selected, a contractor hired, and one-half of the equipment and supplies purchased.[20] After reviewing the facts that showed diligent effort on the part of the plaintiff in his attempt to object to the site selection the court held that

> . . . Civil Rights Act forbids construction of federally financed public housing in all-Negro neighborhoods in absence of clear showing that no other acceptable sites are available, and that defense of laches was not available to local housing authority.[21]

Here the court ordered that the housing authority and Polk Con-

[12] 304 F. Supp. 736 (1969).
[13] 296 F. Supp. 907 (1969).
[14] 304 F. Supp. 736 (1969).
[15] 304 F. Supp. 737-743 (1969). Defendants were ordered to build a certain percentage of all public housing there after erected in Chicago in the "General Housing" areas of that city. The "General Housing" area was synonymous roughly with the predominantly "white" areas.
[16] 304 F. Supp. 738 (1969).
[17] *Ibid.* at 738.
[18] 302 F. Supp. 619 (1969).
[19] *Ibid.* at 620.
[20] *Ibid.* at 621-627.
[21] *Ibid.* at 622. "Title VI of the Civil Rights Act of 1964 forbids the construction of federally-financed public housing in all-Negro neighborhoods in the absence of a clear showing that no other acceptable sites are available.

struction Company be enjoined from doing any further work pending further orders of the court.[22] The court also issued a supplemental order enjoining George M. Romney, his agents, and employees from making further payment of federal funds to the defendant Housing Authority of the City of Bogalusa.[23]

Another case to be considered in the growing trend toward the elimination of racial and economic discrimination in site selection is *El Cortez Heights Residence and Property Owners Association v. Tucson Housing Authority.*[24] This case can be distinguished from the others in that it seeks to enjoin the housing authority from placing a low income housing project in a black middle income neighborhood. After the petition for a writ of preliminary injunction against construction of a low cost housing project in petitioners' residential area was denied, the petitioners appealed.[25] After reviewing the case the Court of Appeals held that

> . . . where city housing authority, in determining sites for low cost housing project, failed to consider fact that site chosen was surrounded by only middle income Negro community in county, housing authority violated statute prohibiting recipient of federal aid for housing, in determining location or types of housing, from utilizing criteria which has effect of subjecting persons to discrimination because of race or substantially impairing accomplishment of objective of housing program.[26]

Here the court did not hold that the selection per se was illegal, but that the racial character of the neighborhood could not be ignored in choosing a low income housing site.[27] The court did note that there had been no low income housing placed in any white middle income neighborhoods.

The last case to be considered here is *Shannon v. United States Department of Housing and Urban Development.*[29] This is one of the most recent cases dealing with site selection. The suit was brought by residents, businessmen, and representatives of civic organizations in an urban renewal area seeking an injunction against the issuance of a contract of

[22] *Ibid.* at 627, 628.
[23] *Ibid.* at 628.
[24] 457 P. 2d 294 (1969).
[25] *Ibid.* at 294.
[26] *Ibid.*, at 294.
[27] *Ibid.* at 297.
[28] *Ibid.* at 296.
[29] 436 F. 2d 809 (1970).

insurance or guaranty, and against the execution or performance of a contract for rent supplement payments for an apartment project. When the complaint was filed the apartment project was about to be constructed in an urban renewal area. The district court denied plaintiffs' application for a preliminary injunction and finally the complaint was dismissed.[31] Plaintiffs appealed and the primary issue was whether in reviewing and approving this type of project (rent supplement housing under 221(d)(3))[32] for site selection Housing and Urban Development (hereafter referred to as HUD) had any procedures for the consideration of and did in fact consider its effect on racial concentration in the neighborhood where it was to be built.[33] As to this issue the court held that

> . . . the Agency must utilize some institutionalized method whereby, in considering site selection or type selection, it has before it relevant racial and socio-economic information necessary for compliance with its duties under the 1964 and 1968 Civil Rights Acts.[34]

The court further held that

> . . . the agency's judgment must be an informed one; one which weighs the alternatives and finds that the need for physical rehabilitation or additional minority housing at the site in question clearly outweighs the disadvantage of increasing or perpetuating racial concentration.[35]

The *Shannon* case is significant in that it prescribes the same racial discrimination safeguards for 221(d)(3), *supra* rent supplement housing as it does for low income housing. The court, however, leaves the specific formula to the administrative agency and only advises relevant considerations that should be taken into account.[36]

In response to the *Shannon* case, HUD has formulated some proposed

[30] *Ibid.* at 809.
[31] *Ibid.* at 809.
[32] 12 U.S.C. § 1751 (1) (a) and 1715 (1) (d) (3) (iii) 436 F. 2d 812 (1970). This mode of assistance, designed to assist private industry in providing low and moderate income families. 12 U.S.C. § 1715 1 (a), provides that H.U.D. may insure mortgages on housing owned by eligible sponsors for the entire replacement cost of the project. 12 U.S.C. § 1715 1 (d) (3) (iii). Sponsors eligible for such one hundred per cent mortgage insurance include private nonprofit corporations.
[33] *Ibid.* at 812.
[34] *Ibid.* at 821.
[35] *Ibid.* at 822.
[36] *Ibid.* at 821, 822. The court lists eleven considerations as relevant for a proper determination by HUD.

project selection criteria.[37] As was stated earlier the case law in site selection has followed a definite trend toward the elimination of racial discrimination. It is also clear that the leeway given administrative agencies such as HUD to develop the guidelines for site selection could undermine the ultimate purpose of the law.

For example, in developing their rating system three classifications are given to determine the appropriateness of a given site—superior, adequate, and poor.[38] Only those sites defined as "poor" are eliminated as unsuitable.[39] In the area of nondiscriminatory location, a "superior" rating is given

> if the proposed project (1) will be located with respect to which there is no present likelihood, in the judgment of the area or insuring office director, that it will become one of minority group concentration, or (2) will be located in area of minority concentration but is to be located in a major comprehensive development which will include a range of housing at various income levels and where experience and judgment indicate that the area will have a racially inclusive residential pattern.[40]

On one hand a superior rating is given because the site is located in a non-minority site location, but on the other hand, it can be located in a neighborhood of minority concentration if it appears that urban renewal is coming. No real guidelines are set down to indicate what "major comprehensive development" encompasses in terms of improving a site with a present minority concentration. If this is not enough confusion, the proposed regulations go on to define an "adequate" rating to exist

> . . . (1) if the proposed project will be located in an area which is substantially racially mixed and on the basis of existing demographic trends it appears that the project will have no signfiicant effect on the proportion of minority to nonminority families, or (2) if the proposed project will provide housing in or near an area of minority concentration *in response* to an overriding need which cannot otherwise be met. In the case of an "adequate" rating based on (2), the rating shall be accompanied by documented findings based upon relevant racial and socioeconomic information supporting both the overriding need and the availability of alternate housing.[41]

[37] 36 F.R., 12032138 June 24, 1971 also 24 CFR Port 200.
[38] 36 F.R., 12034.
[39] 36 F.R., 12032.
[40] 36 F.R., 12034.
[41] 36 F.R., 12034.

Again the agency provides an escape. In the case of an overriding need which cannot otherwise feasibly be met the plaintiffs granted relief in the above cases will lose their right to relief.

The trend toward strong case law against racial and economic discrimination in site selections for low and moderate income housing is clear. Unfortunately the reality of bureaucratic nonsense leaves doubts about effective implementation of the law.

HENRI NORRIS

Due Process in Juvenile Proceedings

The juvenile court proceeding has all the procedures of a misdemeanor or felony court when the records of juveniles are not impounded. There are many cogent reasons for this position. An "uninformed" juvenile either looks upon the peace officer as a friend or a foe, depending upon the posture the juvenile is in. If he is apprehended in the commission of an offense, he views the police officer as a foe. Instantly there is belief of being deprived of freedom. A juvenile not in trouble or not acquainted with the courts, may believe that the quickest way out is to admit or affirm every inquiry of the officer.

A juvenile summoned to appear in juvenile center to report to a probation officer believes that the probation officer is there to help him, not knowing that the probation officer may bring the complaint against him. The juvenile again will be prone to affirm or agree to almost any statement of the probation officer.

In the application of the due process clause, the law should go further than *Gault* v. *United States*.[1] In this case a fifteen year old boy was the offender. The Supreme Court of Arizona affirmed a dismissal of a petition for a writ of habeas corpus which sought the release of Gerald Francis Gault, who had been committed as a juvenile delinquent to the State Industrial School by the Juvenile Court of Gila County, Arizona. Here it was stated that Gault was denied various procedural due process rights. It was held by the Arizona State Supreme Court that, "the Arizona Juvenile Code impliedly included the requirements of due process in delinquency proceedings, *and that such due process requirements were not offended by the* procedure leading to Gault's commitment."

These five things are essential to the youth in and outside the court: (1) knowledge of pre-waiver statements, (2) full investigations of the

[1] 387 U.S. 1 (1966).