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The Final Frontier of the Privatization of Public Housing: The Rental Assistance Demonstration Program

Ji Hwang

The Chicago Housing Authority (“CHA”) has endeavored to change the nature of public housing in Chicago by moving thousands of public housing families into the private sector rental market through the Rental Assistance Demonstration Program (“RAD”).¹ The CHA submitted an application to Department of Housing and Urban Development (“HUD”) on October 23, 2013 to convert 10,935 of its nearly 21,000 public housing units through RAD.² The largest application for RAD by in the country, CHA received approval to convert 10,880 units to Section 8 on June 2015.³ The CHA board quickly approved the conversion of the Park View Apartments, a senior housing building closed in 2007, within 2 months of HUD approval.⁴ CHA has begun the process of converting more than of half of their public housing stock to Section 8 rental assistance contracts⁵, with no real debate or conversations with the residents of public housing and general public.⁶ This article will examine the origins and goals of the RAD program and the CHA’s implementation efforts.

¹ Rebecca Burns, *Under Rahm Emanuel, Chicago Opens the Door to Privatizing Half its Public Housing*, IN THESE TIMES, Mar. 31, 2015, <http://inthesetimes.com/article/17793/is-rahm-emanuel-planning-to-privatize-chicagos-public-housing>

² *Authorization to Proceed with the Application Process for Eight Additional Properties Under the Rental Assistance Demonstration Program, Item No. 2*, CHICAGO HOUSING AUTHORITY, Feb. 16, 2016, http://www.thecha.org/assets/1/6/Item_28_RAD_Property_Additions_Board_Letter.pdf; Burns, *supra* note 1.

³ Rachel M. Cohen, *The Radical Shift to Public Housing*, THE PROSPECT, Aug. 28, 2014 <http://prospect.org/article/can-private-capital-save-public-housing-tenants-have-their-doubts>; CHICAGO HOUSING AUTHORITY, *supra* note 2.

⁴ *Authorization To: 1) Ratify The Formation Of Fannie Emanuel Housing Development, Llc. . . , Item No. 13*, CHICAGO HOUSING AUTHORITY, Aug. 12, 2015, http://www.thecha.org/assets/1/20/13-_Fannie_Emanuel_Development.pdf

⁵ Christine Serlin, *Chicago Housing Authority Acquires Three Buildings*, AFFORDABLE HOUSING FINANCE, Mar. 8, 2016, http://www.housingfinance.com/developments/chicago-housing-authority-acquires-three-buildings_o

⁶ Telephone interview with Jeremy Bergstrom, Senior Attorney, Shriver Center, Chicago, Ill. (Mar. 17, 2016).

WHAT IS THE RENTAL ASSISTANCE DEMONSTRATION PROGRAM?

Public housing, a program financed through direct government subsidies since its inception in the late 1930s, has been underfunded by Congress for decades, which has led to seriously dilapidated units.⁷ HUD recently found that 1.2 million units nationally need at least \$25.6 billion in capital repairs.⁸ As a result, the public housing inventory has been losing an average of 10,000 units annually through demolition and dispositions.⁹ Moreover, Congress has not appropriated federal funds to build new public housing since the mid-1990's, and the subject of increasing federal funding has become politically toxic in Congress.¹⁰

In 2012, HUD developed the RAD program¹¹ to deal with these dilapidated units. This was quickly authorized by Congress because it was a “budget-neutral demonstration program”¹²—a pilot program¹³ that would not be counted in the federal budget. HUD, with “little promotion. . . or opposition from academics and activists,” launched the program in matter of months.¹⁴ RAD permits public housing agencies and owners of HUD-assisted properties

⁷ Cohen, *supra* note 3.

⁸ Jake Blumgart, *The Obama Administration Is Expanding a Program to Fix Up Public Housing—Too Bad the Program Might Also Privatize It*, THE NATION, June 9, 2015, <http://www.thenation.com/article/obama-administration-expanding-program-fix-public-housing-too-bad-program-might-also>.

⁹ *Rental Assistance Demonstration Newsletter (Issue 12)*, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, September 2015, <https://canvas.harvard.edu/courses/9013/files/1705343/download?verifier=vcrOk9noc5XXvt9XGuKwNawfxaejGI1B13EXhyv9&wrap=1>

¹⁰ *An Advocate's Guide to Public Housing Conversions Under Component 1 of the Rental Assistance Demonstration*, NATIONAL HOUSING LAW PROJECT, January 2016, <http://nhlp.org/files/RAD%20Advocacy%20Guide%202.0%20FINAL%20with%20Appendix.pdf>; Alexis Stephen, *Risks vs. Rewards: Inside HUD's Favorite New Program*, October 9, 2014, <https://nextcity.org/daily/entry/public-housing-privatized-hud-rad-section-8>

¹¹ For a more comprehensive overview of the RAD program, see *Toolkit #1: Why RAD? A Rental Assistance Demonstration (RAD) Overview*, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, <http://portal.hud.gov/hudportal/documents/huddoc?id=toolkit1WhyRAD.pdf> (last visited May 20, 2016).

¹² Jane Smith, *Between a Rock and a Hard Place: Public Housing Policy*, 37.1 JOURNAL OF URBAN AFFAIRS (Feb. 2015).

¹³ *Single Family Housing Guaranteed Loan Program: Resource Assistance Document*, U.S. DEP'T OF AGRICULTURE, Spring 2015, 3 http://www.safeguardproperties.com/News/Investor_and_Regulatory_Updates/2015/06/~/media/ACA-PDF/2015/June/USDA%20Resource%20Assistance%20Document%20RAD%20PDF.pdf (defining “demonstration program”).

¹⁴ *Id.*

to permanently convert the units to project-based Section 8 programs.¹⁵ Unlike public housing, the Section 8 housing projects allow public housing authorities (“PHAs”) to mortgage the land and buildings to raise public and private capitals to make repairs or to replace the dilapidated units.¹⁶ In short, RAD hopes to attract private investments in lieu of federal reinvestment in public housing.¹⁷

In a perfect iteration of RAD, it would combine the best parts of the public housing program with the best parts of Section 8 program by maintaining the long-term affordability of the units, significant tenant protections, and the public ownership of the property with the financing flexibility to leverage public and private debt and equity to rehab and maintain.¹⁸ The language of the RAD authorization statute states that RAD tenants shall “at a minimum” retain all rights provided in public housing under sections 6 and 9 of the U.S. Housing Act of 1937.¹⁹ Also, because the RAD tenants cannot be re-screened upon conversion, they would have the right to return once construction is complete, establish and operate a resident organization, and access some choice and mobility options.²⁰

WHY IS THE CHICAGO HOUSING AUTHORITY PURSUING RAD?

Increasing federal spending on public housing is currently impossible given the political unwillingness of Congress, leaving RAD as the only viable program to make repairs to the public housing units.²¹ Unlike the primary goal of RAD – renovating dilapidated public housing stocks – more economically viable or otherwise better-off housing projects like senior housing are being targeted by CHA rather than more distressed or poorer projects.²² CHA’s current list of proposed conversions is mostly senior housing located mostly on the North Side of Chicago—units that are well-maintained and have no significant issues with deferred maintenance.²³ One such develop-

¹⁵ NATIONAL PUBLIC HOUSING, *supra* note 10; Blumgart, *supra* note 8.

¹⁶ U.S. DEPT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 9.

¹⁷ Burns, *supra* note 1.

¹⁸ NATIONAL PUBLIC HOUSING, *supra* note 10.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Cohen, *supra* note 3.

²² U.S. DEPT OF HOUSING AND URBAN DEVELOPMENT, *supra* note 9; Bergstrom, *supra* note 6; Cohen, *supra* note 3.

²³ Bergstrom, *supra* note 6.

ment, Palmolive Building, was completely renovated only few years ago, yet is still targeted for conversion by the CHA.²⁴

CHA's primary goal in implementing RAD is to build or redevelop housing units from Section 8 funding rather than public housing funding from Congress.²⁵ CHA believes that federal funding for public housing will only decrease in future years.²⁶ On other hand, Section 8 voucher has a different stream of federal funding, and CHA believes it is more stable and may even increase in the future.²⁷ Therefore, from CHA's vantage point, it is a prudent decision to convert the public housing units to Section 8 units for more reliable funding.²⁸ Through the RAD program, HUD will provide rental subsidies pursuant to a long-term Housing Assistance Payment contract that will ensure that the units remain affordable low income housing during that time for the next forty years.²⁹

CHA identified properties that would be able benefit the most from the stable funding structure available under RAD based on factors that included "existing property conditions, recent construction activity, overall financial health and eligibility for the RAD Program."³⁰ However, it is more prudent to address the most dilapidated units in the CHA inventory with the RAD allocation instead of dealing with the well maintained senior housing units.³¹

THE FEARS OF RESIDENTS AND ACTIVISTS OF PUBLIC HOUSING

The RAD program gives local housing authorities wide discretion in framing the RAD contract with developers with little input from residents and advocates.³² However, CHA has lost all credibility with the residents of public housing and local activists: "it is a corrupt system that fosters homelessness rather than provide housing."³³ The promises and guarantees made by the CHA such as not re-screening tenants, the right to return once construction is

²⁴ Bergstrom, *supra* note 6.

²⁵ *Id.*

²⁶ CHICAGO HOUSING AUTHORITY, *supra* note 4.

²⁷ Bergstrom, *supra* note 6.

²⁸ *Id.*

²⁹ CHICAGO HOUSING AUTHORITY, *supra* note 4.

³⁰ Burns, *supra* note 1; Bergstrom, *supra* note 6.

³¹ Bergstrom, *supra* note 6.

³² Burns, *supra* note 1.

³³ In-Person interview with Michael Donley, Founder, Peoples' Institute for Housing Justice, Chicago, Ill. (Apr. 4, 2016).

complete, the right to establish and operate a resident organization, and having some choice mobility options cannot be believed, and it is widely believed that all the units will become private housing by forcing out the low-income residents.³⁴

The distrust in CHA to work for the residents of public housing is embodied by CHA's failure to spend millions of dollars earmarked for affordable housing for over a decade while amassing at least \$440 million, even as more than 280,000 people sit on its housing waitlist.³⁵ These financial mismanagement were enabled in large part by the CHA's deregulation in 2000 under now-Mayor Rahm Emanuel, who pushed to remove federal oversight of the housing authority's budget as vice chairman of its board.³⁶ Recent, a joint Chicago Sun-Times and Better Government Association investigation found that since 2000, there has been a forty percent drop in the number of people living in CHA owned buildings and a forty percent rise in the number of people living in privately housing units with Section 8 vouchers.³⁷ However, four of every 10 voucher tenants live in buildings that have had at least one code violation in the past five years.³⁸ Also, despite the CHA's "Plan for Transformation" of public housing, most of the more than 44,000 voucher tenants continue to live in high-crime, poverty-riddled neighborhoods on the South Side and the West Side.³⁹

At the same time, local activism is crucial to realize the goal of the RAD program envisioned, according to a report by the Office of Inspector General of HUD, given that HUD provided no administrative funding to implement the Demonstration and the existing organizational structure and management does not have the resource to properly oversee the program.⁴⁰ The Inspector General has an identified a risk that housing authority with ineffective man-

³⁴ In-Person interview with Michael Donley, Founder, Peoples' Institute for Housing Justice, Chicago, Ill. (Apr. 4, 2016).

³⁵ Burns, *supra* note 1.

³⁶ *Id.*

³⁷ Chris Fusco, et. al, *Cashing in on the CHA – a Sun-Times/BGA Special Watchdogs Report*, CHICAGO SUN-TIMES, Apr. 23, 2016, <http://chicago.suntimes.com/news/cashing-in-on-cha-chicago-housing-authority-section8-vouchers>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Rental Assistance Demonstration, Public Housing Component*, Office of Inspector General, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, Sept. 2, 2015, <https://www.hudoig.gov/sites/default/files/documents/2015-AT-0003.pdf>.

agement may have difficulty in properly managing the conversion process, negatively affecting the chances for a successful conversion.⁴¹

Chicagoans have responded to this call to action. On March 20, 2016, church leaders and housing advocates from the Chicago Housing Initiative and Logan Square Neighborhood Association staged a sit-in at Julia Lathrop Homes.⁴² Activists protested CHA's proposed mixed-income redevelopment for its failure, under the plan, to replace 525 low-income housing units.⁴³ Michael Donley, an activist and former Lathrop resident, said that advocates like himself were concerned with CHA's overreliance on the private market "as the future model [for] affordable housing."⁴⁴ Donley and other activists have declared that the CHA reneged on its Plan for Transformation "while thousands of former residents remain homeless or living elsewhere awaiting the opportunity to return."⁴⁵

While activists will continue to agitate for Lathrop Homes, residents' fight for housing equity at the more renowned Cabrini-Green recently ended after 19 years of litigation.⁴⁶ Rather than reversing decades of discrimination,⁴⁷ the settlement favored the will of private developers over residents.⁴⁸ This has paved the way for the "notorious" housing project to become the "art project" of white newcomers, who have displaced and excluded longtime black residents.⁴⁹

⁴¹ *Rental Assistance Demonstration, Public Housing Component*, Office of Inspector General, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, Sept. 2, 2015, <https://www.hudoint.gov/sites/default/files/documents/2015-AT-0003.pdf>.

⁴² Dawn Rhodes, *Group protests number of low-income units in planned Lathrop redevelopment*, CHICAGO TRIBUNE, Mar. 21, 2016, <http://www.chicagotribune.com/news/local/breaking/ct-lathrop-homes-palm-sunday-met-20160320-story.html>.

⁴³ Mitch Dudek, *Crowd protests Lathrop Homes redevelopment plan*, CHICAGO SUN-TIMES, Mar. 20, 2016, <http://chicago.suntimes.com/politics/lathrop-homes-development-protest>

⁴⁴ Donley, *supra* note 34.

⁴⁵ *Id.*

⁴⁶ Dawn Rhodes, *Cabrini-Green residents, CHA settle lawsuit — adding public housing in area*, CHICAGO TRIBUNE, Sept. 13, 2015, <http://www.chicagotribune.com/news/local/breaking/ct-cabrini-green-settlement-met-20150913-story.html>.

⁴⁷ Lawrence Vale, *Housing Chicago: Cabrini-Green to Parkside of Old Town*, PLACES JOURNAL, Feb. 2012, <https://placesjournal.org/article/housing-chicago-cabrini-green-to-parkside-of-old-town>.

⁴⁸ Alby Gallun, *City courting developers for Cabrini-Green land*, CHICAGO REAL ESTATE DAILY, Jan. 6, 2016, <http://www.chicagobusiness.com/realestate/20160106/CRED03/160109912/city-courting-developers-for-cabrini-green-land>.

⁴⁹ Maya Dukmasova, *Documenting the Rise and Fall of Chicago's Cabrini-Green Public Housing Projects*, IN THESE TIMES, Nov. 16, 2015, <http://inthesetimes.com/article/18606/70-acres-cabrini-green-documentary-chicago-housing-authority>.

Conclusion

To assure the public housing residents and activists that the CHA will provide safe, clean, affordable housing to low-income families, the City of Chicago needs to take steps to guarantee the rights of low-income residents and keep CHA accountable to the public.⁵⁰ The City Council needs to pass the “Keeping the Promise Ordinance”⁵¹, which codifies basic guidelines that RAD conversion will guarantee: perverse public interest by maintaining public control or ownership of the units, one for one replacement of all public housing units, must allow public participation and oversight, all current residents right to return after conversion, rescreening of residents prohibited, the right to establish and operate tenant council, and must establish and maintain an administrative grievance procedures.⁵²

The RAD program may be the best one can hope for in the current political climate to address the issue of dilapidated public housing units.⁵³ If implemented carefully with robust federal and local oversight, RAD could advance the goal of more affordable housing.⁵⁴ It is crucial for the Chicago City Council to pass the “Keep the Promise” ordinance to restore the public’s faith in CHA’s goal and to keep CHA accountable to the public and the residents of public housing.

⁵⁰ Bergstrom, *supra* note 6.

⁵¹ *What is the Keeping the Promise Campaign?*, CHICAGO HOUSING INITIATIVE, <http://www.chicagohousinginitiative.org/keeping-the-promise/> (last visited May 20, 2016)

⁵² City of Chicago, *Keeping the Promise Ordinance*, Amendment of Municipal Code, July 29, 2015.

⁵³ Burns, *supra* note 1.

⁵⁴ Cohen, *supra* note 3.