

Arroyo Vista Tenants Continue Challenge to Proposed Public Housing Disposition

Tenants of a public housing property in California are pursuing their claims that the PHA has violated public housing, environmental and fair housing laws in seeking to sell their homes under a redevelopment plan that would provide for fewer deeply affordable units serving fewer families. Following an earlier federal court ruling that the tenants could pursue their relocation claims against the housing authority under 42 U.S.C. § 1983,¹ the tenants have continued to press their case, as described below.

Background

The Dublin Housing Authority (DHA) proposes to dispose of its single conventional public housing property, Arroyo Vista, built in the early 1980s and consisting of 150 detached single-family homes. Arroyo Vista is located in Dublin, California, a suburb of San Francisco, with predominately moderate-income households and a relatively low minority population. The Arroyo Vista population is a diverse population of families with children, seniors and persons with disabilities (52% white, 21% Latino, 15% Asian and 28% African American)—many of whom have resided at Arroyo Vista for decades. Without prior approval from HUD to dispose of Arroyo Vista, DHA entered into a development agreement in July 2007 with the Dublin City Council and private developers to sell Arroyo Vista for \$12 million and a proposal to replace all public housing units with a mix of market-rate “for-sale” housing, a low-income housing tax credit project, and a Section 202 senior development. The market-rate and tax credit units will not be affordable to Arroyo Vista tenants, and many of the public housing family-size units will be “replaced” with senior-only units. As a result, the development agreement calls for all 150 Arroyo Vista families to be permanently displaced.

Disposition Application

On August 14, 2007, approximately one month after entering into the development agreement, DHA submitted a Disposition Application to HUD. The tenants responded by submitting a letter to HUD objecting to the application, alleging *inter alia* that DHA’s application violated the public housing disposition statute because the plan is not in the best interest of the tenants and the public housing agency,² the disposition plan is inconsistent with

the DHA’s Annual and Five Year Plan and the applicable Consolidated Plan, DHA had no relocation plan, DHA did not properly consult with tenants, that the application was incomplete because it did not contain any appraisals or an environmental review, DHA’s actions have a discriminatory effect and DHA failed in its action to affirmatively further fair housing.³ HUD responded to that letter addressing in general most of the points raised by the tenants, but stating only that it would investigate and make sure that DHA was complying with the law.⁴

The tenants then sent a follow-up letter, but HUD did not respond.⁵ The follow-up letter noted that DHA without HUD approval of the disposition had relocated at least thirty families, boarded up the vacant units and thereby threatened the continuing residence of the remaining families. Some of the relocated families were provided with vouchers by a neighboring public housing authority with jurisdiction in the area, as DHA did not operate a voucher program.⁶

Complaint Challenging DHA Actions

When DHA began relocating tenants in August 2007, before even submitting an application for disposition to HUD, the Arroyo Vista Tenants’ Association and four individual tenants sued DHA and the city for failure to comply with federal disposition and demolition requirements applicable to public housing⁷ and state relocation assistance laws.⁸ In response to plaintiffs’ motion for preliminary injunction, the Court determined that plaintiffs’ rights to the notice and relocation assistance provisions of 42 U.S.C. § 1437p(a)(4) are enforceable through 42 U.S.C. § 1983, and that those rights include the right to notice that HUD has approved a disposition and/or demolition application before relocation begins.⁹

Rather than restraining DHA from relocating “voluntary” displacees prior to HUD approval, however, the Court subsequently urged the parties to stipulate to a “corrective” notice to all tenants. The corrective notice was issued to all tenants in their primary language in

³Letter from Bay Area Legal Aid, et al to Alphonso Jackson, HUD (Nov. 2, 2007).

⁴Letter from Dominique Blom to Naomi Young, Bay Area Legal Aid (Nov. 20, 2007).

⁵Letter from Bay Area Legal Aid, et al to Dominique Blom (Dec. 19, 2007).

⁶The neighboring PHA’s Administrative Plan allows for a preference for such families only if the PHA receives additional funding for such families. See Housing Authority of the County of Alameda, Section 8 Program Administrative Plan (Dec. 10, 2008), Ch. 11, available at http://www.haca.net/index.php?option=com_content&view=article&id=71&Itemid=100. The residents have raised questions as to how the relocated tenants from Arroyo Vista obtained a preference for vouchers in order to move, because neither DHA nor the neighboring PHA have requested or received vouchers to assist with the relocation.

⁷42 U.S.C. § 1437p (West 2003); 24 C.F.R. Part 970 (2008).

⁸Cal. Govt. Code § 7260 *et seq.* (2009 Thomson Reuters/West); 25 Cal. Code of Regs § 6000 *et seq.* (2008 Thomson Reuters/West).

⁹See note 1, *supra*.

¹See *Arroyo Vista Tenants Ass’n v. City of Dublin*, 2008 WL 2338231 (N.D. Cal. May 12, 2008); see also NHLP, *Tenants Can Sue for Violation of Public Housing Demolition Law*, 38 HOUS. LAW. BULL. (June 2008).

²42 U.S.C. § 1437p(2)(B) (West 2003)

July 2008.¹⁰ It informs tenants that they have no obligation to move unless HUD approves the disposition and they have received all notices required by state and federal law, including a notice that HUD has approved the disposition. It also extends the date by which any displacement could occur (to not less than five months beyond HUD approval) and informs tenants of their rights to receive relocation benefits pursuant to state and federal law. Relocation benefits include actual and reasonable relocation expenses, including moving expenses, security deposits, and credit check fees; comparable housing, including a Section 8 voucher and/or rental assistance payments; and advisory services and necessary counseling.

Finding of No Significant Impact

In an effort to complete DHA's application for disposition of Arroyo Vista, the city completed an environmental assessment of the Arroyo Vista project pursuant to the National Environmental Policy Act and certified a "Finding of No Significant Impact" (FONSI) to HUD on July 24, 2008, nearly a year after DHA submitted its application for disposition. Under federal law, the local public entity must analyze the environmental consequences of the disposition or demolition project including such factors as water availability, air quality, endangered species, and effects on building environment (such as traffic, noise pollution and land use conflicts). It also must analyze the effects on the *nonphysical* environment, including economic and social factors, to determine whether there is a likelihood of significant negative socioeconomic impacts, and, if so, complete a full environmental impact statement.¹¹

Tenants objected to Dublin's FONSI on the grounds that the city had failed to analyze the negative socioeconomic effects of the project, including the demographic character of the existing location, the displacement of existing tenants, and significant changes in employment and income patterns in the affected area.¹² They also objected that the city had undertaken displacement and relocation activities without prior HUD approval of a disposition application.

HUD determined in October 2008 that these are permissible objections and requested a response from the city to the allegations that the proposed disposition will result in a net loss of affordable units available to families with children, a loss of two- and four-bedroom units, the loss of units available for extremely low-income tenants, and that DHA's premature displacement and relocation activities limit the choice of reasonable alternatives to

disposition.¹³ HUD rejected several other objections raised by tenants (*e.g.*, the city's failure to make a finding of significant socioeconomic effects, deficiencies in the relocation plan, inadequacy of relocation expenses, and insufficient facts or evidence to support the FONSI), finding that these are substantive matters for the city to consider. By letter dated December 29, 2008, HUD's San Francisco Regional Office determined that the city has adequately addressed the socioeconomic effects of the disposition proposal and that the relocation of residents and entering into a "conditional" disposition and development agreement without prior environmental review or HUD approval does not violate disposition and development or environmental regulations.¹⁴ Accordingly, the Regional Office determined that the city's request for release of funds and certification responsibilities pursuant to 24 C.F.R. Part 58 have been met. DHA's application for disposition remains pending before HUD's Special Applications Center.

Plaintiffs also have amended their complaint to include, among other claims, state and federal fair housing claims, and are commencing discovery. If the application is approved, the tenants also anticipate amending the complaint to add claims against HUD.¹⁵ ■

¹⁰See Important Notices to Arroyo Vista Tenants in English, Spanish, Tagalog, and Farsi issued July 21 and July 22, 2008.

¹¹See 28 C.F.R. §§ 58.40(c) and 58.75 (2008).

¹²Letter from Public Interest Law Project, et al. to Stephen Schneller, Director of Public Housing, San Francisco Regional Office (July 31, 2008).

¹³Letter from Stephen Schneller, Director of Public Housing, San Francisco Regional Office to Richard Ambrose, Dublin City Manager (Oct. 15, 2008).

¹⁴Letter from Stephen Schneller, Director of Public Housing, San Francisco Regional Office to Joni Pattillo, Dublin City Manager (Dec. 29, 2008).

¹⁵Counsel for Tenants include Lisa Greif and Naomi Young, Bay Area Legal Aid, Oakland, CA; Deborah Collins, Michael Rawson, Craig Castellonet, California Affordable Housing Law Project of the Public Interest Law Project, Oakland, California. For more information, contact Deborah Collins at dcollins@pilpca.org, or Lisa Greif at Lgreif@baylegal.org.