Cornell Journal of Law and Public Policy

Volume 9
Issue 3 *Spring 2000*

Article 2

Who Gets the Final No - Tenant Participation in Public Housing Redevelopment

Georgette C. Poindexter

WHO GETS THE FINAL NO? TENANT PARTICIPATION IN PUBLIC HOUSING REDEVELOPMENT

Georgette C. Poindexter†

"We have just as much rights as the rich white man. We can't go back to the old days," proclaims Mrs. Eva Davis, President of the East Lake Residents' Association. Mrs. Davis, a longtime resident of an Atlanta public housing project slated for demolition and redevelopment, led tenant opposition to the redevelopment. That she perceived her tenancy in the housing project as a legal right invites discussion regarding how far community input has come in formulating urban renewal and, perhaps more importantly, how this input should best be channeled in the future.

This article proposes a reconsideration and reconstruction of the role of tenant input in federally funded low income housing initiatives. Through a developing body of case law, legislation and regulations, the community's role in shaping public housing redevelopment projects has evolved from non-existence to a sometime right of unilateral veto. The middle ground between these two extremes bears investigation. Tenant involvement will take on a more meaningful role when assessed within a more clearly defined theoretical framework.

Modern-day public housing development is in critical need of such a framework. High-rise towers fall in cities across the United States, replaced by an array of garden-style, mixed income, mixed use developments.[1] While no one seriously disputes the social ills of high-rise public

---

† Associate Professor of Real Estate and Legal Studies, Wharton School, Associate Professor of Law, University of Pennsylvania Law School. Many thanks to my research assistants Kyla Weisman, Wendy Vargas, and Natalie Bucciarelli; the Zell Lurie Real Estate Center for research funding; and the editors of the Cornell Journal of Law and Public Policy. My thanks also to Wayne Hyatt for his valuable comments. Also thanks go to Ms. Eva Davis, Mr. Greg Giornelli and Carol Naughton, Esq. For taking time out of their busy schedules to provide their insights. Of course, all errors are solely attributable to me.

[1] *See e.g.*, Witold Rybcznski, *Bauhaus Blunders: Architecture and Public Housing*, PUB. INTEREST, Fall 1993, at 82-90; Cory Oldweiler, *Cabrini Changes Come All Too Slowly*, CHIC.REP. (March 1998) <http://www.chicagoreporter.com/1903-98/0398cabr.htm.>; Howard Husock, *Public Housing as a "Poorhouse,"* PUB. INTEREST, Fall 1997, at 73-85; *cf.* Angela Callahan, *Family Reunification: Bringing Fathers Home*, J. HOUS. & COMMUNITY DEV. LAW, November/December 1996, at 25-27; U.S. DEP'T OF HOUS. & URBAN DEV., AN HISTORICAL AND BASELINE ASSESSMENT OF HOPE VI, VOL. II: CASE STUDIES (1996).

housing projects,[2] we cannot ignore that they are the foundation of many communities now being torn apart and dispersed.[3] This wholesale demolition of neighborhoods confronts us with the issue of how to value the voice of the residents—even to the point of questioning whether they should be given a voice at all.

Many of the redevelopment projects currently undertaken by the various housing authorities across the United States are developed under the HOPE VI programs,[4] whose key element "is the use of public housing capital funds to leverage private investment to create mixed income communities on former public housing sites."[5] Current funding guidelines by the United States Department of Housing and Urban Development (HUD) require housing authorities to engage in "meaningful" community participation in the planning of the new HOPE VI communities without clearly defining "meaningful."[6] Furthermore, the demolition of public housing (whether HOPE VI or not) is subject to the requirements of 42 U.S.C. § 1437p which mandates that demolition be undertaken "in consultation with" affected residents.[7] Although some commentators have decried the impotence of present tenants,[8] tenants know their approval of a project is an absolute condition of HUD involvement. Hence, housing authorities are often left beholden to the demands of the tenants.

Part I of this article gives a brief history of resident participation requirements in various federal housing programs. Part II discusses litigation over the meaning of "resident participation." Part III specifically describes the redevelopment of the East Lake Meadows housing project

---

2 Among many problems, high rise housing is generally thought to be inappropriate for poor families with children as it fosters anonymity which leads to lack of security and undermines the quality of life in public housing. *See* Michael Schill and Susan Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PENN. L. REV. 1285, 1293 (1995).

3 *See* JEFFERY HEIGN, NEIGHBORHOOD MOBILIZATION: REDEVELOPMENT AND RESPONSE 25 (1982) ("Slums are not universally the fragmented anomic places they may seem to us driving through them with our car windows rolled up. Kinship ties and friendships can give residents of even deteriorating neighborhoods a sense of belonging.").

4 In 1992, the United States Congress passed the Urban Revitalization Demonstration Program amendments to the Housing Act of 1937, known as the HOPE VI Programs Act of October 6, 1992, Pub. L. No. 102-389, Title II, 106 Stat. 1579, *repealed by* 42 U.S.C. § 1437l (1998).

5 Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON L. REV. 577, 588 (1999). For a description of HOPE VI, *see* Paul K. Casey, *Real HOPE at HUD*, 7 J. AFFORDABLE HOUS. & COMMUNITY DEV. LAW 18, 19 (1997).

6 HOPE VI Revitalization and Demolition, 65 Fed. Reg. 9597, 9604 (2000).

7 42 U.S.C. § 1437p(b)(2) (1994).

8 *See* Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 789 (1998) (tenants' power is reduced to "withhold[ing] their willingness to be displayed as a community partner").

in Atlanta and the role of the tenants in that redevelopment. Part IV introduces the policy considerations of creating such a tenant voice and Part V suggests guidelines to temper, but not disempower, the role of the tenants.

I. HISTORY OF COMMUNITY PARTICIPATION IN URBAN HOUSING REDEVELOPMENT

A wholesale historical recitation of urban redevelopment in the U.S. is outside the scope of this article. However, we cannot accurately assess what the voice of the community should be if we ignore what it has been. Two major federal urban redevelopment initiatives illustrate the changing role of community participation: the Housing Act of 1937[9] and the Housing Act of 1949.[10]

The Housing Act of 1937 (also known as the Wagner Steagall Act) established public housing programs. The goal of this Depression era program was to provide housing to those who could not afford it on their own while subsidizing construction costs of the private rental sector.[11] Under this program, tenants were not given free rent. They received a subsidy to cover the shortfall between what they could pay and the market rent.[12] This housing program was conceived as temporary housing for the working poor.[13] As such, the notion of an entitlement to residency was antithetical to the goals of the program.

Due to World War II, little construction of public housing took place under this program.[14] In 1949, Congress passed another housing act that not only promoted public housing, but also designated urban development as a wider policy initiative.[15] Although in polite circles re-

---

9 Codified as amended at 42 U.S.C. § 1437 (2000).

10 Codified at amended at 42 U.S.C. § 1441 (1994).

11 *See* KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 223-24 (1985). *See also* Shelby Green, *The Public Housing Tenancy: Variations on the Commonlaw that Give Security of Tenure and Control*, 43 CATH. U. L. REV. 681, 690 (1994).

12 *See* Green, *supra* note 11, at 690.

13 *See* Kenneth T. Rosen and Ted Dienstfrey, *Housing Services in Low Income Neighborhoods*, in URBAN PROBLEMS AND COMMUNITY DEVELOPMENT 437, 440 (Ronald F. Ferguson & William T. Dickens, eds., 1999); *see also* ROBERT HALPERN, REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES 72 (1995) ("Small and spartan apartments were designed to remind any families with tendencies toward dependency that public housing was not intended as a place to settle for a long time.")

14 *See* Michael Schill, *Distressed Public Housing: Where Do We Go From Here?*, 60 CHI. L. REV. 497, 500 (1993).

15 *See id.* at 500. For a detailed history of Title I of the Housing Act of 1949, *see* William Slayton, *The Operation and Achievements of the Urban Renewal Program*, *in* URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 189, 191-192 (James Q. Wilson ed., 1966).

ferred to as a "blight removal" program, the 1949 Act was also referred to as "negro removal."[16]

From the outset, the 1949 Act intended private developers to direct the path of development, not the citizens or even the local government.[17] Under the banner of urban renewal, the federal government (directly and through local housing authorities) splintered and reconfigured low-income neighborhoods across the United States.[18] Charged with eliminating urban blight, the "federal bulldozer"[19] of redevelopment efforts leveled entire neighborhoods in order to replace them with the governmental ideal of neighborhood living. An example of wholesale eradication of a community occurred in Washington, DC in the late 1950s and early 1960s when tens of thousands of residents of Southwest Washington, DC lost their homes, their neighborhood, and their community.[20]

The goals of the strategy to redevelop Southwest DC belied a planning schizophrenia. Was the area to be upgraded to improve housing opportunities for existing low and moderate-income residents? Or should redevelopment be used to attract a higher income level resident who would contribute economically to the community as a consumer and taxpayer? Furthermore, who was to make this decision? Community groups such as the Southwest Civic Association protested the development plans, claiming that the planners failed to consider requests of local residents.[21]

Local officials (and the Federal Housing and Home Finance Agency) ultimately embraced the view that piecemeal redevelopment was of limited value and chose to undertake massive redevelopment to attract outside residents.[22] In the process, low-income housing and the

---

16 Alice O'Connor, *Swimming Against the Tide: A brief History of Federal Policy in Poor Communities, in* URBAN PROBLEMS AND COMMUNITY DEVELOPMENT, *supra* note 13, at 77, 97. The Housing Act of 1949, by design, went well beyond provision of "decent safe and sanitary housing." *Id.* at 96-97. *See also* Cheryl P. Derricotte, *Poverty and Property in the United States: A Primer on the Economic Impact of Housing Discrimination and the Importance of a U.S. Right to Housing,* 40 How. L. J. 689, 694 (1997) (". .the net effect [of the Housing Act of 1949] was the displacement of large numbers of African Americans who were moved to even more inferior, segregated housing.").

17 *See* Henig, *supra* note 3, at 29.

18 *See* GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 146 (1999) (estimating more than 1 million people, more than half of whom were African American, were displaced by "urban renewal").

19 O'Connor, *supra* note 16, at 97.

20 *See* Mary Ann French , *Urban Renewal Reshapes Southwest,* WASH. POST, March 2, 1991, at E1.

21 *See* HOWARD GILLETTE JR., BETWEEN JUSTICE AND BEAUTY: RACE, PLANNING AND THE FAILURE OF URBAN POLICY IN WASHINGTON, D.C. 163 (1995). *See also,* FRUG, *supra* note 18, at 146 (planners' goal was to eliminate housing conditions that prevented the kind of people they wanted to attract from moving into the development).

22 *See* GILLETTE, *supra* note 21, at 162.

homes of current residents fell by the wayside.[23] The United States Supreme Court considered the question of whether the government had the power to engage in redevelopment projects such as this in *Berman v. Parker*.[24] In a now well-known decision, the Court held that the government, not the residents, knew best and upheld the condemnation of land for the purposes of redevelopment.[25]

Federal urban policy attempted to mitigate the disastrous community effects of the 1949 Act in several ways. Most notably, the Community Action Program (CAP), created by the Economic Opportunity Act of 1964,[26] specifically empowered local residents in urban redevelopment decisions.[27] CAP introduced tension between *federal* support of community-based initiatives and opposition to such initiatives from *local* governments who felt cut off from directing the flow of federal money.[28] Other programs, such as Model Cities,[29] focused on city revitalization rather than citizen improvement.[30] This program was less ambitious in including the participation of community residents in urban renewal planning. Backpedaling from CAP, Model Cities imposed no formal community participation requirements.[31]

The law continued to exclude tenants from the public housing decision-making process long after initiatives such as CAP acknowledged the importance of community involvement.[32] Although HUD regulations

---

23 *See id.* at 163.

24 *See* 348 U.S. 26 (1954).

25 The Court held:

> It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Id. at 33.

26 Pub. L. No. 88-452, § 601, 78 Stat. 508, 528 (repealed 1981).

27 *See* O'Connor, *supra* note 16, at 103.

28 *Cf.*, Robert H. Wilson, et al., *The Place of Community in Public Policy*, *in* PUBLIC POLICY AND COMMUNITY: ACTIVISM AND GOVERNANCE IN TEXAS, 14, 16 (Robert H. Wilson, ed., 1997); *see also* Peter B. Edelman, *Toward a Comprehensive Anti-Poverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L. J. 1697, 1714 (1993) ("Mayors were infuriated to find buses, chartered with federal funds, filled with demonstrators coming to City Hall with lists of nonnegotiable demands.").

29 Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. No. 89-754, 80 Stat. 1255, 1467 (repealed 1975).

30 *See* Donald A. Hicks, *Revitalizing Our Cities or Restoring Ties to Them*, 27 U. MICH. J. L. REFORM 813, 823 (1994).

31 *See* Audrey G. McFarlane, *Race, Space and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 319 (1999) (commenting on struggle over community participation and control).

32 Tenants *were* gaining power in the area of due process, securing freedom from arbitrary actions of local housing authorities and an acknowledgment of a constitutional right to tenure security. *See* Holmes v. New York City Hous. Auth., 398 F.2d 262 (2d Cir. 1968); Thorpe v. Hous. Auth. of the City of Durham, 393 U.S. 268 (1969); Escalera v. New York

began to require tenant consultation in 1979, public housing tenants did not acquire a statutory right to participate in the redevelopment of their projects until 1984.[33] That year, Congress amended the Housing Act of 1937 through the Supplemental Appropriations Act of 1984: Domestic Housing and International Recovery and Financial Stability Act.[34] This law prohibits HUD from authorizing demolition or sale of any public housing unless the Housing Authority's application "has been developed in consultation with tenants and tenant councils. . .who will be affected by the demolition or disposition."[35]

II. CONSULTATION DEFINED BY LITIGATION

Although empowered by the consultation requirement, housing authorities and tenants continue to struggle with the appropriate parameters of "consultation." HUD promulgated new tenant consultation regulations in 1985, but they did not clarify the meaning of "appropriate tenant consultation."[36]

Litigation over the role of tenants has achieved little more than judicial acknowledgment that the regulations create a cause of action. No evaluative mechanism has been developed to assess when and whether the tenant consultation requirement of the 1984 Act has been met. *Edwards v. District of Columbia* provided somewhat of a false start to the line of tenant consultation cases.[37] In this case, tenants of a public housing project in the Fort Dupont section of Washington, D.C. sued the Housing Authority for non-compliance with the tenant consultation provision. However, the issue in the case was not whether demolition required tenant consultation but rather whether "de facto demolition" by neglect required tenant consultation.[38] The court answered that the consultation regulations did not apply absent actual demolition and dismissed the tenants' complaint.[39]

Edwards v. District of Columbia did, however, begin the dialogue of whether § 1437p created a right enforceable under 42 U.S.C. § 1983. The court makes a persuasive case that such a right indeed was created in the face of an actual demolition.[40] Congress later amended § 1437p in

---

City Hous. Auth., 425 F.2d 853 (2d Cir. 1970). *See also* Schill, *supra* note 14, at 516 and Green *supra* note 11, at 721.

33 *See* Marvin Krislov, *Ensuring Tenant Consultation Before Public Housing is Demolished or Sold*, 97 YALE L. J. 1745, 1749 (1988).

34 Supplemental Appropriations Act of 1984: Domestic Housing and International Recovery and Financial Stability Act, § 214 (a), 42 U.S.C. § 1437 (1984).

35 42 U.S.C. § 1437p(b)(1) (1984).

36 Krislov, *supra* note 33, at 1750.

37 *See* 821 F.2d 651 (D.C. Cir. 1987).

38 *See id.* at 662.

39 *See id.* at 663.

40 *See id* at 654.

response to the *Edwards* case and brought de facto or constructive demolition under the purview of the statute.[41]

The analysis of legal rights attaching to the consultation requirement threads through the subsequent line of cases. In *Concerned Tenants Association of Father Panik Village v. Pierce*,[42] *Velez v. Cisneros*,[43] and *Henry Homer Mothers Guild v. Chicago Housing Authority*,[44] the courts clearly recognized the tenants' right to consultation. However, all of these cases arose out of de facto demolition caused by neglect.

The issue of tenant consultation in conjunction with actual demolition for an urban redevelopment project was not raised squarely until *Cabrini-Green Local Advisory Council v. Chicago Housing Authority*.[45]

The Chicago Housing Authority (CHA) sought to demolish the Cabrini-Green project to make way for a new mixed-income development funded under HOPE VI guidelines. The tenants' association (known as the Local Advisory Council or "LAC") filed suit against the city of Chicago and the CHA in 1996. The LAC sought to halt demolition and resident relocation claiming, inter alia, a right of action to enforce tenant consultation and relocation provisions of the Housing Act of 1937.[46] The defendants claimed that the consultation requirement of § 1437p(b)(2) was incapable of objective measurement and could not be the basis of a federal right.[47]

Although there had been several meetings between the LAC, the city of Chicago and the CHA, the tenants objected to implementation of a development plan they claimed was formulated without their input. The court held that "the creation of a right to consultation under § 1437p is clear."[48] In fact, the court stated:

> It would be inconsistent with the purposes of HOPE VI to allow a Consolidated Plan to be developed (with input from public housing residents), but then to allow a pub-

---

41 H.R. CONF. REP. No. 100-426, at p.3469 (1987), *reprinted in* 1987 U.S.C.C.A.N. 3317, 3458 ("This provision is intended to correct an erroneous interpretation of the existing statute by the United States Court of Appeals for the D.C. Circuit in Edwards v. District of Columbia and shall be fully enforceable by tenants of and applicants for the housing that is threatened.").

42 *See* 685 F. Supp. 316 (D. Conn. 1988).

43 *See* 850 F. Supp. 1257 (E.D. Pa. 1994).

44 *See* 780 F. Supp. 511 (N.D. Ill. 1991).

45 *See* Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., No. 96 C 6949, 1997 WL 31002 (N.D. Ill. Jan. 22, 1997).

46 *Id.* at *3.

47 *See* Defendant's Motion to Dismiss at 32, Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., 1997 WL 31002 (N.D. Ill. Jan. 22, 1997) (No. 96 C 6949).

48 Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., No. 96 C 6949, 1997 WL 31002, at *17 (N.D. Ill. Jan. 22, 1997).

> lic Housing Authority to simply ignore that plan. Giving the residents of public housing projects enforceable rights against CHA to comply with the Consolidated Plan will further the purposes of HOPE VI.[49]

With that victory in hand, the LAC continued to fight the redevelopment plan. After years of bruising litigation, the parties have purportedly come to a settlement agreement that is awaiting approval from the court.[50]

While this string of cases clearly establishes a cause of action for lack of consultation they provide no benchmark upon which to assess the adequacy of consultation. The scope of "meaningful consultation" remains undefined because the courts have stopped short of setting the parameters for consultation. Therefore, a tenants' association unsatisfied with a proposed revitalization plan of the local Housing Authority, can use litigation to halt development. Practically speaking, this bestows great latitude and power upon tenant organizations while holding housing authorities to an undefined and changeable standard. Nowhere was this result more evident than in East Lake Meadows in Atlanta.

III. THE ORIGIN OF EAST LAKE MEADOWS

The Atlanta Housing Authority constructed East Lake Meadows in 1971 as a high-density public housing project in Southeast Atlanta.[51] Construction of East Lake, however, did not require tearing down existing homes. The project site consisted of two contiguous golf courses. One, East Lake Golf Club, was a private course and home to legendary golfer Bobby Jones. The other golf course was public.[52] In the early 1960s, the public course was sold and the buyer literally skimmed off the topsoil and took it to the suburbs.[53] The Atlanta Housing Authority eventually constructed approximately 650 units of housing on this parcel (many containing 5-6 bedrooms) and christened the project East Lake Meadows.[54] It was a massive community of closely packed two-story brick buildings, duplexes and a high-rise for senior citizens.[55] The pro-

---

[49] *Id.* at *16.

[50] *See* National Center on Poverty Law, *Public Housing Residents Close to Agreement with Housing Authority to Ensure Tenant Participation in Redevelopment and Replacement Housing for Lowest-Income Residents*, (visited September 5, 2000) <http://www.vwhl.povertylaw.org/cases/52100/52181.htm>.

[51] *See* Hollis R. Towns, *City Without Limits*, ATLANTA J. & CONST., September 15, 1997, at E7.

[52] *See* Douglas A. Blackmon and Emory Thomas Jr., *One Way to Redevelop a Housing Project: Build a Golf Course*, WALL ST. J., April 24, 1996, at A1.

[53] *See id.*

[54] *Cf.* Jill Lieber, *Atlanta Effort Takes Game to Youngsters*, USA TODAY, May 8, 1997, at C9.

[55] *See* Towns, *supra* note 51.

ject was hailed as a tranquil oasis designed to eliminate some of Atlanta's sprawling urban blight.[56]

In the now familiar refrain of public housing projects in the United States, concentrated poverty, economic isolation, and racial segregation all led East Lake down the road to structural and psychopathic deterioration. By the early 1980s, East Lake had degenerated into the city's most violent public housing project—an impoverished community of graffiti marred buildings, where residents lived in fear and drug dealers controlled the area.[57] When the new interstate highway opened, more affluent white people fled the East Lake area and their handsome homes in the neighborhood of the remaining private golf club. As the levels of drug activity and violence escalated, the project earned the notorious nickname "little Vietnam."[58]

A constant figure at East Lake Meadows was Eva Davis, a tenant who organized and assumed leadership of the East Lake Meadows United Concerned Tenants in 1972.[59] At that time Richard Nixon was President of the United States, and Mark Spitz and Olga Korbut dominated the Summer Olympic Games in Munich, Germany. Since then we have had five more Presidents and countless Olympic stars. But the East Lake Meadows residents' association has had only one leader: Mrs. Davis.

When Mrs. Davis formed the residents' association, the tenants sensed that they had no voice in the development and management of the public housing project in which they lived. Emblematic of the absence of tenant involvement was the "red dirt" issue. When the top soil was removed and sold, nothing remained but exposed dirt that turned to red mud with the slightest precipitation. The Housing Authority did not provide landscaping to minimize this dirt.[60] Compounding the problem, the Housing Authority had installed white tile in the apartments. The tenants challenged the Housing Authority for changes to make their community more livable. Through the new residents' association, the tenants demanded landscaping and retaining walls to minimize the dirt problem.[61] They also sought lights and walkways in the streets, a bus stop for public transportation, a daycare center and a community center.[62] It took two

---

56 *See id.*

57 *See id.*

58 *Id.*

59 *See* Blackmon and Thomas, *supra* note 52.

60 *See* Interview with Eva Davis, President of East Lake Meadows United Concerned Tenants, in Atlanta, Ga. (June 2, 1998) [hereinafter Eva Davis interview].

61 *See id.*

62 *See id.*

rent strikes, one in 1972 and another in 1973, but finally the Housing Authority met the tenants' demands.[63]

At the forefront of the fight was Eva Davis, part community activist and part drill sergeant with a liberal dose of grandmother thrown in. She served her constituency with a messianic zeal. As the president of the residents' association, she functioned as the intermediary between the tenants, the Housing Authority, local politicians, and the business community. Mrs. Davis became the "go-to" person at East Lake. If a tenant had a maintenance problem—go to Mrs. Davis to get it fixed. If a tenant needed a bigger apartment—go to Mrs. Davis to increase the chances of getting one. If a local politician wanted delivery of the East Lake votes—go to Mrs. Davis.[64]

Mrs. Davis proved to be an adroit fund-raiser. To outfit their offices, the tenants' association sought and received a $100,000 Tenant Opportunity Grant directly from HUD without the involvement of the Housing Authority.[65] However, this victory was minuscule compared with what the tenants could do in conjunction with the Housing Authority.

In 1993, the residents' association worked with the Housing Authority, the City of Atlanta, and other local leaders to obtain a $33.5 million grant from the Department of Housing and Urban Development for renovation and rehabilitation of East Lake Meadows.[66] Mrs. Davis considered this money "hers" to be spent for the betterment of her community in the way she determined.[67]

A. THE CF FOUNDATION

In 1992, Tom Cousins, an Atlanta real estate developer, purchased the still private East Lake Golf course for $4.5 million.[68] The golf course and the club had also fallen into decline and were in need of intense renovation. Mr. Cousins donated the East Lake Golf course to his family foundation, the CF Foundation, imposing two conditions: (1) the Foundation must restore the golf course to its previous glory as a tribute to Bobby Jones and; (2) the Foundation must use the golf course to help revitalize the surrounding community.[69]

---

63 *See id.*

64 *See* Blackmon and Thomas, *supra* note 52.

65 *See* Eva Davis interview, *supra* note 60.

66 *See* Jill Lieber, *supra* note 54.

67 *See* Eva Davis interview, *supra* note 60.

68 *See* Lieber, *supra* note 54.

69 *See* Lorne Rubenstein, *East Lake Making Golf With a Purpose Work* (visited February 2, 1998) http://www.golfweb.com/library. (cite no longer operational, copy on file with author).

Mr. Cousins, chief executive of Cousins Properties Inc., a real estate investment trust, established the CF Foundation as his family's charitable trust. In the past, the Foundation, a $37 million charity, had scattered grants among groups working in the city of Atlanta. However, frustrated by the "piecemeal" returns to its philanthropy, the Foundation changed its philanthropic focus in 1993.[70] The Foundation's board members decided to become more comprehensive and holistic in solving inner city problems, especially those of public housing, by concentrating investment in a single impoverished area.[71] Since golf is Mr. Cousin's passion, East Lake seemed a perfect place for the CF Foundation to focus its energy and, in 1995, the group established the East Lake Community Foundation.[72]

B. THE ATLANTA HOUSING AUTHORITY

In conjunction with the 1996 Summer Olympics in Atlanta, the Atlanta Housing Authority undertook the Olympic Legacy Program, seeking to serve the city's public housing projects by capitalizing on the positive economic and social feeling prevailing in the city.[73] The Olympic Legacy Program had several goals: to mainstream public housing residents out of concentrated public housing projects; to create resident service programs focused on jobs, job training and education; to leverage federal dollars; and to create a project income stream for the Atlanta Housing Authority that was independent from its federal operating subsidy.[74] The over-arching goal of the Olympic legacy program was that all revitalization must be an asset to the community.

The Olympic Legacy Program called for demolition of almost 2,900 units of dilapidated housing citywide with replacement housing to consist of a combination of new or renovated mixed income housing and section 8 certificates/vouchers.[75] The Housing Authority selected public housing projects in the city to take part in the Olympic Legacy Program. East Lake Meadows was one of the chosen few.[76]

---

70 Blackmon and Thomas, *supra* note 52.

71 *See id.*

72 *See* Fact Sheet from the East Lake Community Foundation, Inc. (on file with the author).

73 *See* Rick White, *Reinventing Public Housing: The Atlanta Experience*, J. HOUS. & COMMUNITY DEV. LAW, July/August 1997, at 18-20.

74 *See* Interview with Carol Naughton, Esq., Chief Counsel, Atlanta Housing Authority, in Atlanta, Ga. (June 2, 1998) [hereinafter Carol Naughton interview].

75 *Cf.* Cynthia Tucker, *The Villages of East Lake: Hope From the Ground Up*, ATLANTA J. & CONST., October 17, 1999.

76 *See* S.A. Reid, *East Lake Impact: 'Great Step Forward'*, ATLANTA J. & CONST., January 26, 1996.

C. THE NEW COMMUNITY AT EAST LAKE-GOLF WITH A PURPOSE

In January 1995, three groups (the tenants association, the East Lake Community Foundation and the Atlanta Housing Authority) came together to determine the fate of East Lake Meadows. Each entity came with its own agenda: the tenants wanted to renovate the existing buildings; the Housing Authority wanted to remove the economic isolation and social stigma of the housing project; and the Foundation wanted a successful concentrated community investment. They decided to demolish all of the existing structures at East Lake Meadows, and rebuild as a mixed income community with a much lower housing density.[77]

As originally anticipated, the development would contain 498 units. One half would be market rent and one half would be subsidized for low-income tenants.[78] The project design envisioned a country club community of townhouses and garden apartments with tennis courts and swimming pools encircling a new public golf course, and also featured a junior golf and tennis academy, learning centers, a YMCA, a preschool, elementary school, parks, and nature trails.[79]

Although not funded with a HUD HOPE VI grant, the redevelopment of East Lake was to be similarly financed. No public money would be used to finance the golf course and the market rate housing was to be funded through a mixture of private and tax-exempt financing.[80] The (still private) East Lake Golf Course would provide a dedicated income stream to fund the project by funneling a significant portion of member dues directly to the East Lake Community Foundation.[81]

The project's goals evoke the metaphorical phoenix rising from the ashes: streets that drug dealers once used as a shooting range transformed into a lush golf course community where the poor and the middle class live side-by-side. However, before the phoenix rises, action must replace thought, and reality must replace dreams. All of the participants shared similar goals but they differed on how best to achieve them.

---

77 *See* Interview with Carol Naughton, *supra* note 74.

78 *See* Lieber, *supra* note 54.

79 To finance their visions the Housing Authority committed the $33.5 million in the previously obtained HUD grant. *Cf.* S.A. Reid, *supra* note 76. The Foundation, in addition to the purchase of the private golf course that supplied a dedicated income stream to this project, was responsible for funding the public golf course, the YMCA and partial funding of the potential new school. The Foundation also contributed previously acquired adjacent property to the project. The City of Atlanta contributed 15 acres of land.

80 *See* Blackmon and Thomas, *supra* note 52 (no public money to be used for golf course); Rubenstein, *supra* note 69 (mixture of private and tax-exempt financing).

81 *See* Lieber, *supra* note 54.

D. CONSULTATION VERSUS VETO POWER

The development process, like the project itself, was unique. As stated before, no commercial real estate developer participated in the project. When the Foundation and the Housing Authority opened participation to the private real estate industry, no developer came forward.[82] Hence, the Foundation assumed the role of developer, forcing those without a commercial real estate development background to make complicated development decisions.[83] Participants in this process acknowledge that some development issues were left purposely vague in order to achieve compromise between the Housing Authority, the tenants, and the Foundation.[84] Certain critical development and design issues were simply put off until a later time. This proved to be a major mistake: when it came time to make these hard decisions all parties had already committed significant time, money, and effort to the development process.

Every Wednesday night, sometimes more often, Mrs. Davis convened representatives from among the residents, the Foundation, and the Housing Authority.[85] Negotiations were rough and shouting matches were not uncommon. Eventually, exasperated with the residents' rejection of plan after plan, the officials from the Foundation and the Housing Authority asked Mrs. Davis and her neighbors to design the project themselves.[86]

Empowered by the Foundation's surrender of leadership, the residents' association proposed many changes to the project design. For example, instead of the Foundation's original plan to cluster all of the housing in the middle of the complex, the residents moved the buildings to streets on the periphery.[87] They increased the number of duplexes and decreased the number of units in big buildings that reminded them of their present apartment arrangements. They also gained assurances that every tenant would receive replacement housing during and after the

---

82 There were private developers involved in other Olympic Legacy programs of the Atlanta Housing Authority. Notably a joint venture between Egbert Perry (a local developer) and the Integral Group (a national developer) constructed the mixed income project at Centennial Place. However, because the East Lake project was limited to 50% market rate tenants it would only be economically feasible for a not-for-profit developer. For a description of other projects in Atlanta undertaken contemporaneously with East Lake, *see* Jerry J. Salama, *The Redevelopment of Distressed Public Housing: Early Results From Hope VI Projects in Atlanta, Chicago and San Antonio*, 10 HOUSING POL. DEBATE 95 (1999).

83 *See* Interview with Greg Giornelli, Executive Director of the Cousins Foundation, in Atlanta, Ga., June 2, 1998 [hereinafter Greg Giornelli interview].

84 *See id.*

85 *See* Blackmon and Thomas, *supra* note 52.

86 *See id.*

87 *See id.*

demolition of East Lake Meadows.[88] Finally, in November 1995, almost a year after discussions began, residents packed the community center to vote on the plan. The results were 117 for the plan and 51 against.[89]

The tenants memorialized their efforts in a document entitled "Redevelopment Cooperative Agreement" entered into by and between the Housing Authority and East Lake Meadows Residents Association in November 1995.[90] In January 1996, they held a ceremonial signing of the Agreement where the signatures of tenants and Housing Authority officials were joined by those of Jimmy Carter and Tom Cousins.[91] The significance of this document, both legally and psychologically, cannot be overstated. For the tenants, the document represented an ending point. It symbolized closure of a long negotiation and served as an inalterable development blueprint. For the Housing Authority and the Foundation, it functioned as a starting point, an initial outline that would be revisited and modified as the development process unfolded.

This type of agreement between the tenants and the Housing Authority is not uncommon.[92] In order to comply with federal regulations requiring "meaningful consultation" with tenant associations,[93] Housing Authorities utilize these agreements to prove and document tenant input into the development process. However, as previously stated, the federal regulations give no guidance as to what constitutes "meaningful consultation." Further, although agreements such as the Redevelopment Cooperative Agreement might represent the requisite "meaningful consultation" with tenants, there is no mechanism, short of litigation, that dictates what procedures must be followed if and when the Housing Authority deviates from the agreement.

Complicating matters even further in the context of the East Lake redevelopment were two somewhat contradictory provisions in the Agreement. One section indicated that the parties agreed that "precise unit size and bedroom configuration" had not yet been finally established.[94] Later in the document the parties agreed to "use their best efforts" to redevelop the project in accordance with an approved Preliminary Master Plan which specified construction of 115 garden

---

88 *See* Hollis R. Towns, *East Lake Residents Might Sue*, ATLANTA J. & CONST., September 24, 1997, at C3.

89 *See* Brad Andrews, *Metro Voices*, ATLANTA J. & CONST., February 12, 1996, at A9.

90 *See* Redevelopment Cooperative Agreement By and Between the Housing Authority of the City of Atlanta, Georgia and East Lake Meadows Residents Association (November 28, 1995), ceremonial signing copy dated January 25, 1996 (on file with the author) [hereinafter Redevelopment Cooperative Agreement].

91 *See id. See also* S.A. Reid, *supra* note 76.

92 Such an agreement was utilized in Cabrini-Green. Cabrini-Green Local Advisory Council v. Chicago Hous. Auth., No. 96 C 6949, 1997 WL 31002, *1 (N.D. Ill. 1997).

93 42 U.S.C. § 1437p(b)(1) (1984).

94 Redevelopment Cooperative Agreement, *supra* note 90, at §2.5.

apartments, 125 townhouses, 154 duplexes and 104 single-family units.[95] The ambiguity between the language of the Preliminary Master Plan and that of the Redevelopment Cooperative Agreement resulted in a loss of almost a year in development time.

As the first phase of development, garden apartments and townhouses went from paper to bricks, existing structures were demolished, and almost 500 families were displaced.[96] Most of the dispossessed tenants opted to take section 8 vouchers to live elsewhere in the city.[97] The remaining tenants went to other traditional Atlanta Housing Authority public housing projects.[98] When Phase I opened for occupancy less than 100 families returned.[99]

When the Foundation and the Housing Authority turned their attention to the design of Phase II of the construction, they realized that duplexes and single-family houses were not reasonable market strategies for the project. While the single-family units proved to be economically unfeasible, the duplexes were scuttled because of negative social characteristics.[100] Therefore, the Foundation and the Housing Authority attempted to substitute more garden apartments and townhouses for the proposed single-family and duplex units.[101] The residents' association fought this change bitterly, demanding that the duplexes remain part of Phase II.[102] The Foundation took the position that the Redevelopment Cooperation Agreement mandated only a total of 498 units without specifying their configuration.[103]

Locked in battle for most of 1997, the duplex issue drove a final wedge into the already tense and distrustful relationship between the residents' association (still led by Mrs. Davis) and the Foundation (led by its Executive Director, Greg Giornelli). Between the two factions stood

---

95 *See id.* at § 3.1.

96 *See* S.A. Reid, *East Lake Parties Near Agreement on Redevelopment Project,* ATLANTA J. & CONST., August 27, 1995, at G3 (foundation's plan for the housing project would mean relocating two-thirds of the 1,500 current residents); Darryl Fears and Charmagne Helton, *East Lake Redevelopment, 'Where are We Going?',* ATLANTA J. & CONST., June 2, 1995, at C2 (to complete the project, hundreds of families would have to be moved.)

97 *See* Ernst Holsendolph, *Public-Private Partnership Paves Way for Urban Housing,* ATLANTA J. & CONST, June 29, 1997, at R2.

98 *See* Carol Naughton interview, *supra* note 74.

99 Note, however, this was all that applied. This return rate is consistent with the rate at Centennial Place. All former residents who desired to return to the East Lake community were accepted. *See* Carol Naughton interview, *supra* note 74.

100 Atlanta Journal reporter Hollis R. Towns noted that duplexes "often carry a stigma that ranks them just above trailer parks" and the middle class will not rent them. *See* Hollis R. Towns, *A Revival at East Lake,* ATLANTA J. & CONST., September 15, 1997, at E1.

101 *See* Jim Wooten, *Public Housing Politics: The Loud Voices of Incivility Now Reign,* ATLANTA J. & CONST., September 17, 1997, at A16.

102 *See* Towns, *supra* note 100.

103 *See* Greg Giornelli interview, *supra* note 83.

the Housing Authority, now forced to answer the previously unanswered question: how far must the Housing Authority go to assure "meaningful participation?" The Foundation stated that duplexes would not be attractive to market rate renters and thus would result in a prohibited concentration of public housing occupants.[104] On the other hand, the existing tenants sought to keep the plan they had approved. If the Housing Authority sided with the Foundation the tenants threatened litigation for violation of HUD regulations. If they sided with the tenants they risked sacrificing the mixed income component of the development (and the funding that supported it).

E. BRICKS AND STICKS

The ill will created over the duplexes continued as Phase I of the project began. Phase I of the New Community at East Lake was completed in the summer of 1998.[105] Demolition for Phase II also began that summer.[106] In October 1998, East Lake Tenants Residents Association (still comprised solely of the public housing residents) sued the Atlanta Housing Authority to temporarily halt construction on Phase II of the project.[107] The residents claimed that AHA violated their statutory and contractual duty to provide replacement housing for twenty-eight families (including Mrs. Davis) who would be displaced by construction.[108] The families were offered permanent housing in Phase I but they demanded temporary housing until completion of Phase II so they could move back upon completion of construction.[109]

Fulton County Superior Court refused to impose the injunction finding that the Atlanta Housing Authority did not violate the 1996 agreement because it offered permanent housing in Phase I to the residents displaced by Phase II construction.[110] Further, the judge held that the benefits to be gained from proceeding with development outweighed the desires of the few displaced families.[111] Following the decision, Mrs. Davis left East Lake by taking a Section 8 voucher for use in the private

---

104 *See* Towns, *supra* note 100.

105 *Cf.* Ray Glier, *East Lake Changes Course of Its Neighborhood,* WASH. POST, November 1, 1998, at D6.

106 *See id.*

107 *See* Hollis R. Towns, *East Lake Residents Dealt a Setback,* ATLANTA J. & CONST., December 17, 1998, at E2.

108 *Id.*

109 Editorial, *Opinion: Judge Wise to Reject East Lake Lawsuit,* ATLANTA J. & CONST., December 17, 1998, at A26.

110 *See* East Lake Meadows Residents Ass'n v. Hous. Auth. of the City of Atlanta, Georgia, No. CV1998CV-01143 (Sup. Ct., Fulton County Ga., 1998). *See also* Towns, *supra* note 80.

111 *See* East Lake Meadows Residents Ass'n v. Hous. Auth. of the City of Atlanta, Georgia, No. CV1998CV-01143, at 11-12 (Sup. Ct., Fulton County Ga., 1998).

housing market.[112] Although vowing to keep the tenants association alive,[113] Mrs. Davis' involvement in the project is over as she is no longer a resident. The Villages of East Lake function as a successful example of mixed income community living.

In the end, the Phase II plans were revised to eliminate duplexes and single-family housing. However, in a curious compromise, four of the old duplexes were spared from the wrecker's ball. They will sit cheek to jowl with the new townhouses and garden apartments and will serve as community space for meetings and recreation, as well as a sort of historical monument to the old East Lake Meadows.[114] The market rate tenants and public housing tenants will elect equal numbers of individuals to the board of directors of East Lake's new residents' association.[115]

It is a new beginning for East Lake. While no one questions that the new community is an improvement, we *are* left with the query of "why did it have to be so difficult?" The mixture of inexperience, cultural differences, and vague regulations yields a bitter brew. Federal regulations command community participation, but at what cost? Any positive effect of community involvement is offset by lost time, trust, and goodwill. While inexperience and cultural differences can be overcome and understood with time, the scope of community involvement must be set by external regulation rather than being left to resolve itself from within. Development must take place in an arena that allows participants to act without fear of litigation.

IV. WHO, WHAT, AND WHY?

Resolution of tenant participation issues in the housing redevelopment context comes down to a critical examination of *who* is making *what* demand, and *why*. The East Lake development is a case in point. *Who* voiced the issue that held the development process hostage for so long? At first blush, the "who" appears to be the residents' association that fought so tenaciously to retain the duplex units. But *who* constituted the association? Most of the original members had left by the time the Foundation moved to eliminate duplex and single-family units from Phase II.[116] Mrs. Davis is the real answer to the "who" question. She embodied the voice of the residents association. With only one serious

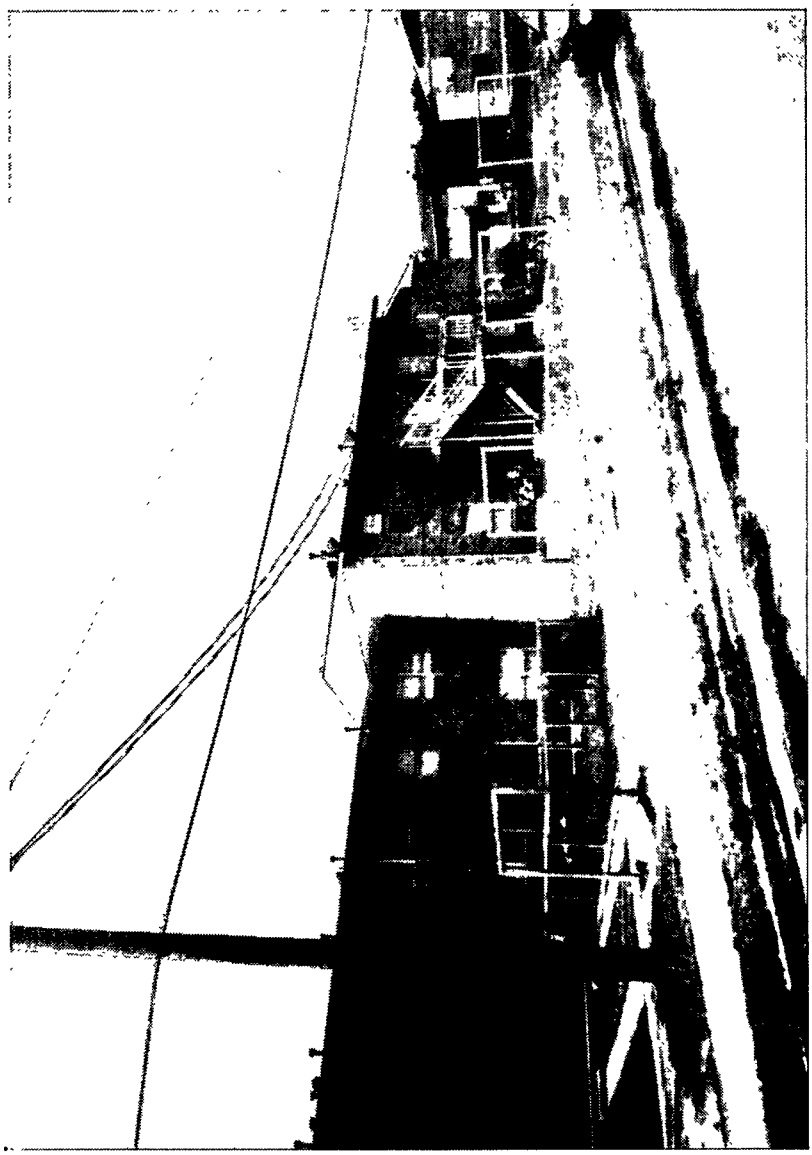
112 *See* Tucker, *supra* note 75.

113 *See* Towns, *supra* note 107.

114 *See* THE VISION OF EAST LAKE: GOLF WITH A PURPOSE (informational pamphlet containing conceptualized rendering of the proposed East Lake Community, on file with the author).

115 *See* MASTER COVENANTS AND EASEMENTS FOR NEW COMMUNITY AT EAST LAKE, Art. VII, § 7.1(on file with the clerk of Sup. Ct., Dekalb County Ga.).

116 *See supra* notes 97-99 and accompanying text.



East Lake Meadows housing units before demolition.

New townhouses at New Community at East Lake.

threat to her incumbency (which she defeated),[117] she was a woman used to getting her own way in any matter affecting East Lake. In fact, in a meeting with the Foundation she told Mr. Giornelli: "We will get what we want. They [the Foundation] might as well sit down and shut the hell

117 *See* Eva Davis interview, *supra* note 60.

up."[118] Her view was held out as representative of the position of the residents' association. Indeed, throughout this period the association did continue to hold meetings. Mrs. Davis is quick to assert they always had the requisite tenant quorum.[119] As the number of public housing tenants dwindled, however, Mrs. Davis spoke for fewer and fewer tenants.

The general public also became part of the "who" in the debate as the citizens of Atlanta began to question what right Mrs. Davis had to dictate the design of the project. Area residents noted that normally tenants have no control over renovations made by the property-owner.[120] In response, Mrs. Davis contended that the HUD regulations gave her the power to question the project design. However, this power is limited in two significant ways. Firstly, HUD regulations do not confer absolute veto power. And, perhaps more important in this situation, the regulations call for input of the *tenants association.* Once the vast majority of tenants left the project, did the tenants association effectively cease to exist for purposes of consultation? In other words, did Mrs. Davis begin as the voice of the association and end simply as the voice of Mrs. Davis?

The "what" question also requires analysis. To the public housing residents at East Lake, duplexes stood for more than just housing. They symbolized prestige and power. They were "a refuge and a bright spot," always the nicest part of the community where tenants maintained gardens and flowerbeds.[121] Cultures clashed when the Foundation portrayed duplex developments as something to be avoided instead of coveted. From the tenants' vantage point, an emblem of pride was cast aside as a mark of shame. From the Foundation's perspective, rejecting duplexes was an essential prerequisite to the integration of market rate tenants into the East Lake community.[122]

Thus, the battle over the duplexes had less to do with real estate development than it had to do with cultural identity and pride. Redevelopment of housing aesthetics necessitates a similar transformation of housing culture. East Lake underwent a metamorphosis from the culture

---

118 Wooten, *supra* note 101.

119 However, during the meeting when the redevelopment plan was approved, Mrs. Davis produced three vans to bring in voters. When asked where the vans came from, she claimed "that's confidential." Blackmon and Thomas, *supra* note 52.

120 Indicative of this sentiment was one letter to the editor which stated: "It used to be that when people were given something, they were grateful. You would think Eva Davis . . .actually owned the property that she and residents accuse 'the white people' of taking from them. . .I suggest that Davis. . .investigate the many programs. . .created that provide avenues to home ownership. Only then will they truly have the right to dictate terms and conditions." Robert H. McEver, *No Ownership*, ATLANTA J. & CONST., Sept. 24, 1997, Letter to the Editor, at A17.

121 *See* Towns, *supra* note 100.

122 *See supra* note 100 and accompanying text.

of public housing to the culture of market rate housing. The construction of duplexes would have fused the old ideal onto the new culture. However, to transform a low income community into a mixed income neighborhood, the culture of the community must also change.

Taken together, the "who" and the "what" do not fit neatly into the "why." The Housing Authority and the Foundation deferred to Mrs. Davis' demands in consideration of the HUD regulations requiring "meaningful participation" for residents.[123] The regulations signify a commitment to community empowerment and involvement in the development process. In fact, Mrs. Davis asserted (and the other parties conceded) that her power to make demands derived directly from these federal requirements. However, no one mapped the reasonable limits of tenant demands. This reluctance to define and set the boundaries of participation concentrated the power of development in the hands of the tenants association. In essence, the "who" and "what" were not addressed because the parties were held captive by the "why."

At some point the question "power to whom, for what" must be addressed without hiding behind the skirt of "why." While the policy of obligating the Housing Authority to meet with the residents for their input remains sound, the limits of such input must be established. Difficult decisions often cannot be reached by consensus. Without federal guidelines designating the party with ultimate decision-making authority—the residents, the Housing Authority, or the developer—the development process freezes and no one gains.

The ambiguity of "resident participation" can backfire when it creates an unrestrained power center in the hands of the tenants' association. Unchecked empowerment produces a strong incentive to resist everything and concede nothing. Further, a resident association officer with undefined authority becomes, in essence, a professional housing project resident. The goal becomes to remain in power and to maintain control—whether it is in the best interest of the community or not.

V. PUTTING PARAMETERS ON PARTICIPATION

Other projects undertaken by the Atlanta Housing Authority contemporaneously with East Lake's renovation followed the same mixed income development process and advocated the same goals. Yet they progressed much more smoothly because, although implemented with significant tenant participation, tenant participation did not amount to tenant veto power. Although tenant demands slowed the process in other developments,[124] once the Housing Authority garnered the trust of the

123 *See supra* notes 33-35 and accompanying text.

124 *See* Salama, *supra* note 82, at 129-131.

tenants, redevelopment proceeded smoothly.[125] However, as in Chicago's Cabrini-Green, the East Lake tenants' association's rigidity delayed the project for months and almost jeopardized its very existence. Therefore, the next step should be devising a framework to ensure tenant voice while stopping short of a tenant veto.

There are several theoretical avenues that can be taken to begin to formulate a normative and practical model for participation. One approach is that the legal right (or entitlement) to participation cannot be viewed as absolute nor as individualistic. Rather, this right is correlative to the rights of other parties in the transaction. Furthermore, it is not an individual right but a group right.

Because the issue underlying this discussion flows from public housing residency, a natural reaction would be to build the examination on the individual liberties analysis underpinning such decisions as *Goldberg v. Kelly*.[126] But such reliance would be misplaced. The HUD regulations under discussion do not entitle tenants to an apartment.[127] Rather, they attempt to give tenants the opportunity to speak about the direction of their community. Therefore, emphasis should be placed on community, rather than individual goals.

Individual (versus community) goals of tenant participation in public housing redevelopment projects can be analyzed by using a public versus private dichotomy. Although the concepts of public regarding and private regarding are more generally recognized as part of the literature on interest group theory, they play a valuable role in this discussion.[128] Those parties with a private regarding perspective look to their individual gain. In other words, private regarding activity is rent-seek-

---

125 *See* Carol Naughton interview, *supra* note 74.

126 *See* 397 U.S. 254, 262 (1970) (holding that welfare benefits were a matter of statutory entitlement and placing due process requirements on the termination of welfare payments). The move to recognize the entitlement to government benefits began before Goldberg was decided. *See* Charles A. Reich, *The New Property*, 73 YALE L. J. 733 (1964). Some commentators have dubbed the era of Goldberg as the "due process revolution." *See* Robyn Minter Smyers, *High Noon in Public Housing: The Showdown Between Due Process Rights and Good Management Practices in the War on Drugs and Crime*, 30 URB. LAW. 573, 587 (1998).

127 Note however that the right to residency in public housing has been construed as a "property right or entitlement to continue occupancy until there exists a cause to evict. . ." Joy v. Daniels, 479 F.2d 1236, 1241 (4th Cir. 1973). Therefore, without "good cause," a tenant cannot be evicted, obliterating the concept of annual or monthly leasing in public housing. McQueen v. Druker, 317 F. Supp. 1122, 1130 (D. Mass. 1970). For a discussion of the changes in tenant rights and management responsibilities in public housing, *see* Smyers, *supra* note 126. However, demolition of public housing and the eviction of tenants is specifically addressed in the HOPE VI guidelines and hence would fall under the "good cause" rubric.

128 *See, e.g.*, Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 233, 240 (1986) (judges should read rent-seeking or private regarding statutes from a public regarding perspective).

ing.[129] Public regarding activity is that which benefits the community and maximizes social wealth.[130] Low-income neighborhoods are more likely to have a private regarding (rather than public regarding) political ethos, and they see urban renewal in terms of specific threats and short-term costs.[131] The creation of a right in participation feeds the private regarding inclination.

Similarly, the right to consultation can be viewed as awakening what Sidney Plotkin labels the "enclave consciousness"[132] of public housing tenants who view redevelopment as a threat. This awakening exacerbates an already distrustful relationship between the Housing Authority, the tenants, and local real estate developers.[133] In this hostile environment tenant groups will likely serve only their own narrow self-interest. Therefore, a limitation on tenant participation should be drawn to force all development decisions to further the social wealth of the entire community and not solely the individual public housing tenants.

Another method of readjusting participation rights is to explicitly empower the Housing Authority and developer, as well as the tenants. As all are members of the community, their voices should be statutorily recognized. In this manner, the strength of the whole community will be enlisted for protection of the person and property of each member. The tenants (a self-interested group), the Housing Authority (representing the interests of the city at large), and the real estate developer (representing the interests of the business community) will engage in negotiation where no one party dictates the terms and where no party loses its free will. Affording one party (the tenants) unilateral veto power clearly

---

129 Rent seeking occurs when a group lobbies for legislation or regulation that concentrates benefit to group members. *See* Mark Seidenfeld, *Bending the Rules: Flexible Regulation and Constraints on Agency Discretion*, 51 ADMIN. L. REV. 429, 472 (1999).

130 *See* Daniel Shaviro, *Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980's*, 139 U. PA. L. REV. 1, 45 (1990) (defining public interest as "maximizing social wealth and distributing it equitably").

131 *See* James Q. Wilson, *Planning and Politics: Citizen Participation in Urban Renewal in* URBAN RENEWAL: THE RECORD AND THE CONTROVERSY 407, 414 (James Q. Wilson, ed., 1966) ("Whereas it is relatively easy to obtain consent to renewal plans when people are thinking in terms of general goals and community wide benefits, it is much harder when people see the same set of facts in terms of possible threats and costs.") However, I would caution against taking this analysis as far as to state that "[t]he higher the level of indigenous organization in a lower class neighborhood, the poorer the prospects for renewal in that area." *Id.* at 417.

132 *See* Sidney Plotkin, *Community and Alienation: Enclave Consciousness and Urban Movements, in* BREAKING CHAINS: SOCIAL MOVEMENTS AND COLLECTIVE ACTION, 5-25 (Michael Smith, ed. 1991). "The feelings and relationships of community can thus give rise to a solidarity that is militantly partisan." *Id.* at 8.

133 *See* O'Connor *supra* note 16, at 127 (discussing how "the main interests involved in low-income housing are almost diametrically opposed to each other. For example, community advocates of the poor that have often mobilized to fight practices of the private real estate owners are supposed to ally with them in support of HUD programs and budgets.").

makes such negotiation impossible. A statutorily imposed social contract functions to induce social cooperation, allowing each member to make considered sacrifices in a more equal environment.[134]

To achieve this equilibrium and overcome the tenants' inward looking bias, I offer several suggestions. First, I propose that consultation requirements weigh tenant input more heavily in the goal phase of development and less heavily in the implementation phase. During the development phase of the project, overarching goals are discussed and should be determined. This is where tenant input is most valuable. Secondly, there should be a prescribed form of satisfaction of participation that would provide prima facie evidence of tenant input. For example, HUD could develop a standard form that must be signed by tenants, the Housing Authority, and the developer.[135] Once signed, the tenants must agree that the participation requirement has been met. Another requirement would be that once a plan has been agreed upon, the Housing Authority and the developer should be free to alter the plan subject to a pre-determined limitation. For example, the number of units to be built could be changed without tenant input up to, say, twenty percent.

While other proposals have addressed how to quantify tenant participation,[136] the time is ripe for discussing not just *how* consultation should take place (notice requirements, written agenda, etc.) but also *why* consultation is crucial. Three goals of consultation should be kept in mind. Firstly, consultation builds a sense of community. Secondly, it serves to educate tenants about possible changes to their community. And lastly, consultation can empower tenants by giving them a voice in how they want their community to develop.[137]

The objective here is not to present a laundry list of regulatory requirements. Rather, the goal is to make the case for explicit regulatory definition of what constitutes "meaningful participation." Within that framework, regulations should include not only the participation of the tenants but also of the developer and Housing Authority. This would eradicate the veto power of tenant organizations while still providing them with crucial input into the development of their neighborhood. Mrs. Davis is correct: we can't go back to the old days. Instead, we must ensure the awakening of a new day that balances the real and just need

---

134 *See* Georgette C. Poindexter, *Collective Individualism: Deconstructing the Legal City*, 145 U. PA. L. REV. 607, 659 (1997).

135 Although Housing Authorities must hold a minimum number of meetings, etc. under current HOPE VI guidelines, a more formal document evidencing tenant input would strengthen the argument that tenants participated in the redevelopment.

136 *See* Krislov, *supra* note 33, at 1759-63.

137 For a discussion of these factors in the context of community based planning, *see* Randy Stoecker, *The CDC Model of Urban Redevelopment: A Critique and an Alternative*, 19 J. URB. AFFAIRS 1, 14 (1997).

for tenant consultation with the need for progressive redevelopment of urban public housing.