HUD has posted a report on its website that identifies public housing units that may be potentially subject to a mandatory conversion.[30] The report identifies public housing developments with at least 250 dwelling units on one site or on contiguous sites. Although it is too early to determine the ultimate effect of conversion, advocates should consider reviewing this report, both for accuracy and as a starting point for evaluating the impact of conversion on local communities. ■

[30]The report is available at http://www.hud.gov/offices/pih/centers/sac/rconv.cfm.

Long Beach Ordered to Designate Additional Projects as Subject to Section 3

Several years ago, the Legal Aid Foundation of Los Angeles (LAFLA) informed the City of Long Beach, California, that it intended to initiate litigation on behalf of several low-income individuals based on the failure of the city and its contractors to comply with Section 3 in the development of the Pike Project located in the Rainbow Harbor area of Long Beach.[1] The Pike Project controversy followed an earlier legal challenge to the city's violation of Section 3 requirements related to other aspects of the harbor development area.[2]

However, LAFLA and Legal Aid Society Employment Law Center agreed not to file litigation after negotiating the Pike Project Agreement with the City of Long Beach on March 13, 2003.[3] The purpose of the Pike Project Agreement was to increase economic opportunities for low-income residents and businesses in the City of Long Beach and in another neighboring community, Signal Hill. The agreement set forth a number of obligations for the city to comply with Section 3. The commitments included obligations relating to construction management, advertising, and outreach and expansion of construction training. The agreement provided for

- Staff support at the job site in a trailer to encourage the hiring of low- and very-low income individuals
- A commitment to use "best efforts" to obtain from the contractors and subcontractors workforce projections in order to determine jobs and other opportunities
- A commitment to enforce existing contract obligations of the contractors to use good faith efforts to hire low-income residents
- A commitment to use "best efforts" to encourage contractors to hire low-income residents of Long Beach and Signal Hill and to contract with Section 3 businesses
- A commitment to the "greatest extent feasible" to obtain information (income status, residence, date of hire, job classification and level) regarding the new hires and the hours worked by new hires
- An agreement to actively conduct outreach to low-income residents of Long Beach and Signal Hill and to take certain specified steps
- An expansion of the construction training and employment program by the Workforce Development Bureau[4]
- A commitment to work with WINTER (Women in Non Traditional Employment Roles)
- Creation of a monitoring committee composed of five members, two designated by the city and three by LAFLA
- Monthly reporting to LAFLA and to the monitoring committee regarding specific topics such as the new hiring reporting and information about the hiring of Section 3 businesses
- A narrative description of the outreach for hiring and contracting.

The agreement designated specific projects (an airport parking garage and two libraries), listing the dollar amounts (approximately $54 million in the aggregate) of the projects, which are subject to Section 3 and the

[1]The Pike Project gets its name from the Pike, which was the name of an amusement park on the ocean in Long Beach. The Pike was closed in 1968. The larger redevelopment area is known as Queensway Bay and it includes an aquarium, convention center, Shoreline Village and the ocean liner the Queen Mary.

[2]Letter from Dennis L. Rockway to Eva Plaza, Assistant Secretary for Fair Housing and Equal Opportunity, HUD, Re: Queensway Bay Project (June 8, 1998).

[3]Pike Project Agreement, No. 28171, at 1, *available at* http://www.nhlp.org/lalshac/hjn2004_conference_materials.htm.

[4]The goal of the Workforce Development Bureau, which is part of the City of Long Beach, is to build quality services that support the workforce needs of the community. The bureau sponsors a wide range of services for businesses and residents at one-stop career center locations throughout Long Beach. For more information, see http://www.longbeach.gov/cd/workforce/default.asp.

agreement.[5] However, the city also insisted upon stating up front that it was voluntarily agreeing to submit the Pike Project to Section 3, as it maintained that Section 3 did not apply to the Pike Project.[6] The agreement also designated a single individual to arbitrate and resolve any disputes. The relief that the arbitrator could provide was limited but included the authority to order the city to designate additional projects for compliance with Section 3.

Arbitrator Orders Relief

The agreement was signed March 11, 2003, well after the Pike Project was underway. As a result, the obligations of the city and the monitoring committee "were compressed into a tight timeframe."[7] By December 2003, the monitoring committee issued a report which found that "in all categories reviewed, the city had not complied" with the agreement.[8] The monitoring committee therefore requested the arbitrator to require the city to provide two forms of relief:

- first, to designate additional projects equivalent in scope and dollar size to be subject to Section 3; and
- second, to obtain agreements with project contractors and local building and trade unions prior to construction to commit essential participants and effective targeting of community economic benefits to local low-income residents who are the beneficiaries of the agreement.

After an extensive review of the monitoring committee's findings and applying a standard of review that allowed an "appropriate deference" to the committee's findings and a review to determine if the evidence was sufficient, the arbitrator granted the first form of relief requested and denied the second.[9]

With respect to the first claim for relief, the arbitrator found that the "record shows that the City has gone to great efforts to comply in a very difficult and complex area. However, it appears that the City did not properly prioritize its work"[10] and did not act quickly enough. The examples cited repeatedly show that the city often recognized the problems but did not act to address them or failed to act to get "contractors, especially union contractors, on board early." Ultimately, the arbitrator concluded that the city could learn by its prior mistakes and could achieve the intended results—compliance with Section 3—with newly designated projects. As to the second claim for relief, the arbitrator did not disagree that requested relief would have "resulted in greater success in reaching the goal of the Agreement," but ultimately determined that the requested relief was beyond the scope of the agreement and thus declined to mandate the requested relief.[11]

The Pike Project Agreement and the decision of the arbitrator may be helpful to other advocates because they construe terms that are key to the operation of Section 3.

Implications for Other Section 3 Advocacy

The Pike Project Agreement and the decision of the arbitrator may be helpful to other advocates because they construe two terms that are key to the operation of Section 3: "best efforts" and "to the greatest extent feasible." Section 3 obligates public housing agencies to use "best efforts" to give low- and very-low income persons training and employment opportunities and to award contracts to Section 3 businesses.[12] The agreement uses the term "best efforts" in the context of the city's obligation to obtain workforce projections and to encourage contractors to hire low-income residents and hire Section 3 businesses. The other key Section 3 term is "to the greatest extent feasible." The Section 3 statute requires all recipients of federal financial assistance for housing and community development programs to ensure that employment and other economic opportunities flowing from those funds are "to the greatest extent feasible directed to low and moderate income persons."[13] Again, the agreement incorporates the term "greatest extent feasible" and obligates the city to encourage its contractors to hire low- and very-low income residents of Long Beach and Signal Hill and to contract with Section 3 businesses "to the greatest extent feasible."[14]

These terms are discussed and applied in specific factual contexts which are common to other situations in which Section 3 applies. The arbitrator refers to case law to define "'best efforts' as diligence in the performance of contract terms and more exacting than the usual contractual duty of good faith . . . . 'Best efforts' also requires

---

[5]The parties also agreed that "for purposes of the goals set forth in 24 CFR part 135.20 and for these projects only, the goal shall be for Section 3 residents to comprise at least 30 percent of the new hire hours worked on each project." Pike Project Agreement, *supra* note 3, at 5. In contrast, 24 CFR part 135.20 only requires that Section 3 residents comprise 30% of all new hires. Requiring that Section 3 residents comprise 30% of all the hours worked by new hires is beneficial because it helps to ensure that the work performed by Section 3 residents is for the length of the project, and it is easier to monitor and avoids abuses of hiring all Section 3 residents on the last days of the project.

[6]Pike Project Agreement, *supra* note 3, at 1.

[7]*Id.* at 2.

[8]*Id.* at 1.

[9]*Id.* at 4.

[10]*Id.* at 1.

[11]*Id.* at 3.

[12]12 U.S.C.A § 1701u(c) and (d) (West 2001).

[13]*Id.* at § 1701u(b).

[14]Pike Project Agreement, *supra* note 3, at 2.

using all reasonable methods and requires the party owing the duty to take all action and do all things necessary to consummate the transaction contemplated by the agreement."[15] The arbitrator relies upon *Ramirez, Leal & Co. v. City Demonstration Agency, et. al.*[16] to define the phrase "greatest extent feasible" to mean that "a municipality was 'obligated to take every affirmative action they could properly take . . . .'"[17]

Applying these definitions, the arbitrator reviewed the record and determined that there was evidence to support the committee's findings that the city failed to use "best efforts" to obtain workforce projections from the contractors. The committee concluded that, without these projections, the city was hampered in its "ability to plan, accurately advertise and properly tailor its training programs."[18] The city knew that it was not getting the information that it needed and was required to obtain, but waited nine months before it changed its reporting form and before meeting with the contractors for the purpose of obtaining the required information. The failure to follow through with the contractors also violated another provision of the agreement which required the city to encourage contractors to hire low-income residents to the "greatest extent feasible." The arbitrator concluded that the city's lack of follow-through with contractors and failure to take meaningful steps to ensure compliance provided substantial evidence to support the committee's findings that the city violated the agreement.[19] ■

[15]Pike Project Agreement, *supra* note 3, at 5 (citations omitted).
[16]549 F.2d 97, 105 (9th Cir. 1976).
[17]Pike Project Agreement, *supra* note 3, at 7.
[18]*Id.* at 5.
[19]*Id.* at 7. The arbitrator also upheld the committee's findings that the city's efforts to involve local, low-income businesses was insufficient as the city did not comply with the appendix to 24 C.F.R. part 135, which was incorporated by reference into the agreement. The city similarly did not connect these businesses with the Pike Project or use "best efforts" to facilitate their bidding on the project. *Id.* at 10-11.

Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of the opinions can be obtained from a number of sources including the cited reporter, Westlaw,[1] Lexis,[2] or, in some instances, the court's Web site.[3] Copies of the cases are *not* available from NHLP.

Eviction — Late Payment of Rent; Project-Based Section 8

Showe Mgmt. Corp. v. Hazelback, 2006 WL 1976760 (Ohio App. July 17, 2006). The Ohio Court of Appeals affirmed a judgment for possession in favor of a landlord in an action for non-payment of rent. The tenant, apparently assisted under an unspecified Project-Based Section 8 program, tendered her rent plus late fee eight days after the end of the payment grace period—a total of $36.00. The court ruled, *inter alia*, that the landlord's refusal of the late payment was valid under the terms of lease. The court also rejected the tenant's due process and inequitable forfeiture arguments.

Fair Housing — Affirmative Duties; Fair Housing — Exclusionary Zoning

ACORN v. County of Nassau, 2006 WL 2053732 (E.D.N.Y. July 21, 2006). The United States District Court for the Eastern District of New York denied a motion to dismiss for lack of standing and lack of subject matter jurisdiction an action challenging zoning practices alleged to exclude African-American and Latino residents, in particular practices that prevented the development of affordable housing. Plaintiffs asserted claims under the Fair Housing Act, 42 U.S.C. §§ 3601, 3608 *et seq*., the Civil Rights Act of 1866, 42 U.S.C. §§ 1981, 1982, and 1983, the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*., and the Equal Protection Clause of the Fourteenth Amendment.

Fair Housing — Generally; Insurance — Duty to Defend

Washington v. Krahn, 2006 WL 1938077 (E.D. Wis. July 1, 2006). The United States District Court for the Eastern District of Wisconsin found that an insurer had a duty to defend apartment building managers in a housing discrimination suit brought by housing testers and a fair

[1]http://www.westlaw.com.
[2]http://www.lexis.com.
[3]For a list of courts that are accessible through the World Wide Web, see http://www.uscourts.gov/links.html (federal courts) and http://www.ncsc.dni.us/COURT/SITES/courts.htm#state (for state courts). See also http://www.courts.net.