

**Testimony of Amanda Korber
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**Before the Committee on Housing and Neighborhood Revitalization
Council of the District of Columbia**

Performance Oversight Hearing Regarding the District of Columbia Housing Authority

March 4, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the DC Housing Authority (DCHA) over the last year. Specifically, this testimony will address our serious concerns with DCHA’s Transformation Plan, which it released to the public in August 2019. This Transformation Plan purports to lay out DCHA’s roadmap for redeveloping nearly 2,600 units in the District’s public housing stock.

Legal Aid is part of a coalition that submitted extensive comments to DCHA about its Transformation Plan. DCHA met with this coalition multiple times after receiving our comments. However, to date, DCHA is unwilling to correct what is perhaps the biggest problem with its plan: the agency fails to explain how it will rebuild these vitally important, deeply affordable housing units after they are demolished. Additionally, Legal Aid is discouraged by DCHA’s unwillingness to put some of its most important verbal commitments in writing. This includes its promise to replace every single unit of deeply affordable housing that it demolishes, its promise that public housing tenants will not lose their rights post development, and its commitment to ensuring that every public housing tenant will have the right to return to their home and neighborhood. This testimony will address why each of these promises is vital, and why they must be binding and in writing.

This testimony will also address the many problems with DCHA’s recently released plan for developing 1133 North Capitol Street NE, its headquarters site. This woefully inadequate plan, which does not provide for a single new unit of deeply affordable housing, highlights two

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

problems with DCHA's Board of Commissioners: 1) The Board has no rules governing its procedure, making it difficult for Commissioners, let alone the public, to know what they are voting on; and 2) The Board consistently releases substantive resolutions to the public just days before it will vote on them. This Board will be overseeing the redevelopment of DCHA's crumbling public housing stock over the coming years. Therefore, it must be transparent and accountable to the public.

The Public Housing Preservation and Tenant Protection Amendment Act of 2020 (B23-0627) would go a long way in addressing our concerns with DCHA's demolition and redevelopment plans. It would also safeguard against DCHA's Board approving plans that replace the District's public housing units with housing that is out of reach of the District's lowest income residents. We urge the Council to move quickly to consider and pass this legislation.

DCHA Should Put Its Commitments to Its Public Housing Residents into Binding Regulations

Legal Aid was hopeful when we first met with DCHA about our comments on the Transformation Plan because the agency's leadership indicated that it was largely in agreement with our goals. We kept hearing that DCHA intended to rebuild every unit of deeply affordable, site-based housing that the agency demolished, that it wanted to preserve every resident's rights to the extent possible throughout the redevelopment process, and that it was committed to every resident having the right to return home once everything was rebuilt. However, to date, DCHA has been unwilling to put these commitments in writing and ensure that public housing residents can hold the agency to these promises in the future. Perhaps even more concerning, DCHA's leadership has made clear that it will not commit to having redevelopment plans in place before tearing down existing public housing developments.

DCHA Must Start Planning for How It Will Rebuild the Housing It Tears Down and Should Put Its Commitment to Rebuilding Each Unit of Deeply Affordable Public Housing into Regulations

The District has been in the throes of an affordable housing crisis for years. In March 2019, the National Community Reinvestment Coalition concluded that DC has experienced the highest intensity of gentrification in the country, with more than 20,000 Black residents displaced between 2000 and 2013.² Presently, there are nearly 30,000 families sitting on the public housing waitlist, and more than 40,000 languishing on the voucher waitlist.³ These District families have been waiting decades for their chance to live in stable, affordable housing. It is obvious then that DC needs to be adding units of deeply affordable housing (i.e. housing affordable to families at 0 to 30 percent AMI), not demolishing them forever.

² "D.C. has the highest 'intensity' of gentrification of any U.S. city, study says," *available at* <https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/>.

³ See DCHA's FY19 Responses to Pre-Performance Oversight Hearing Questions, at p. 55.

Against this backdrop, Legal Aid’s and the coalition’s ask is common sense. DCHA must commit in writing to replacing every public housing unit it demolishes. This means ensuring that each unit is replaced at the same bedroom size and with a site-based operating subsidy to ensure that it remains deeply affordable far into the future. We also ask that DCHA start planning its redevelopment projects before it starts to tear down what already exists. This means determining what DCHA and residents are going to require developers to rebuild, putting out Requests for Proposals, selecting development partners with meaningful resident input, and beginning the rebuilding process. Even if everything goes perfectly, redeveloping thousands of public housing units is going to take years of planning. If things go wrong, families can be displaced forever. The District must avoid a repeat of what happened at Temple Courts, where huge plots of land sit vacant while former residents who have been displaced for over a decade lose hope that they will ever be able to return home.⁴

Legal Aid understands that public housing families are living in terrible conditions, and appreciates that DCHA wants to move quickly to get these families to safety. We understand that given DCHA’s and the District’s years-long neglect of these properties, some displacement and/or demolition is necessary to achieve this goal. We are not asking that DCHA abandon these plans. Instead, while DCHA is displacing and relocating families, we ask that it commit to rebuilding the housing that the District and its families are losing. At the same time, we ask that DCHA take the first steps to begin rebuilding.

DCHA Should Ensure Through Regulations That Public Housing Tenants Maintain Their Rights after Redevelopment

Tenants who live in public housing have a host of substantive rights under federal law. These rights include the right to grieve any adverse decision by the housing authority, rights around what those grievance procedures must look like, the right to comment on any changes to their lease, the right to transfer between properties, and even more basic rights, such as the right that tenants’ rents will never be more than 30 percent of their incomes, with an allowance for tenant-paid utilities. Additionally, because traditional public housing is owned and operated by a government actor, there are established legal mechanisms by which tenants in those properties can enforce any violation of their rights against the housing authority. However, many of the legal claims available to public housing residents are not available to tenants in redeveloped properties that are owned and/or operated by private, non-government entities.

DCHA should have regulations in place that maintain public housing tenants’ rights after redevelopment, and ensure that tenants can enforce those rights against any new owner, before allowing DCHA to proceed with demolition. This means rules requiring that tenants’ rights are included in the affordability covenant, the ground lease, the Regulatory and Operating Agreement between DCHA and the developer, and the tenants’ lease agreements. It also means requiring DCHA to name tenants as third-party beneficiaries to the Regulatory and Operating Agreement for purposes of enforcing any violation of their rights.

⁴ “More Than A Decade Later, Some Former D.C. Public Housing Residents Worry If They’ll Ever Return,” available at <https://wamu.org/story/19/04/08/more-than-a-decade-later-some-former-d-c-public-housing-residents-worry-if-theyll-ever-return/>.

Every Public Housing Resident Should Have an Enforceable Right to Return to Redeveloped Properties

Every public housing resident should have the right to return to redeveloped properties. In the past, DCHA has promised that tenants would have this right. However, we and our partner organizations have seen many instances of new owners refusing to rent to returning tenants. This is often because new owners impose stringent screening criteria, such as minimum credit scores and onerous criminal background checks. This is antithetical to public housing's purpose, which is to serve as low-barrier, deeply affordable housing accessible to all low- and no-income residents.

DCHA should have regulations in place to extend the protections of Resolution 16-06 – the Relocation and Re-entry Policies for New Communities Initiative Developments – to all properties that it redevelops. Resolution 16-06 lays out the screening criteria that new owners can consider after redevelopment at New Communities Properties, and clarifies that the criteria can be no more stringent than DCHA's own criteria.⁵ These protections are necessary, and should apply to all properties that DCHA redevelops, whether they are redeveloped through New Communities, demolition/disposition, or the Rental Assistance Demonstration.

In addition to extending 16-06's protections to all public housing residents, DCHA must include the permissible screening criteria in its Regulatory and Operating Agreements with private developers and owners, and make tenants third-party beneficiaries to that Agreement so tenants can protect and enforce their own right to return. These protections will help ensure that DCHA does not make these same mistakes again, especially when it is undertaking such a large scale transformation that will displace thousands of families.

DCHA Should Abandon Its Development Plans for Its Headquarters Site and Ensure that Any Future Plan Includes Deeply Affordable Housing for Families at 0-30 Percent of Area Median Income

On December 11, 2019, DCHA's Board of Commissioner's passed Resolution 19-40. This Resolution authorized the agency to execute a ground lease with a private developer for the land that DCHA's headquarters sits on – 1133 North Capitol Street NE. This is a bad deal for the District's lowest- and no-income residents, and a waste of public land.

1133 North Capitol Street NE is in NOMA, a DC neighborhood that has been completely transformed in the last decade, is close to all the most important amenities, including grocery stores, public transit, and a public university, and is, unsurprisingly, full of luxury housing outside the reach of DCHA's residents and those 30,000 families sitting on the public housing

⁵ The DCHA Board of Commissioners adopted Resolution 16-06 in March 2016. To date, DCHA has not extended its protections to any properties other than those governed by the New Communities Initiative.

waitlist.⁶ DCHA's plans to redevelop this site could have brought deep affordability to hundreds, if not thousands, of units in one of DC's rapidly gentrifying neighborhoods, and increased the supply of desperately needed, deeply affordable housing. Or, DCHA could have used 1133 as a build-first site for one of the many properties it is proposing to demolish, especially since the agency continues to say that locating build-first sites is an ongoing struggle. Instead, DCHA gave the developer a deep discount on the land and will pay the developer millions of dollars to lease the land back while it builds a new headquarters elsewhere. In exchange, DCHA is getting next to nothing. In fact, the developer is not required to build a single unit of deeply affordable housing for families living at 0 to 30 percent of the Area Median Income (AMI), even though DCHA recognizes that 85% of the families it serves earn incomes in that bracket.⁷

Redeveloping 1133 North Capitol Street NE in a way that benefits DCHA's current public housing residents as well as those residents sitting on the years' long waitlist should have been easy. Instead, DCHA is moving forward with a deal that will result in a developer making millions of dollars and not a single deeply affordable housing unit. The Council should look into this deal, perform an independent appraisal of the headquarters' site, and find out exactly how much DCHA is giving up and handing over to its development partners for this project. Then, the Council should urge DCHA to abandon this plan, recommit to its mission of building housing for those lowest-income DC residents, and begin the hard work of rebuilding the public's trust.

DCHA's Board of Commissioners Should Operate Transparently and In the Interest of the Very Low- and No-Income Residents DCHA is Supposed to Serve

Over the last year, Legal Aid and other advocates have learned more about how DCHA's Board of Commissioners operates thanks to this Committee's oversight and by attending the Board's regular meetings. The Board does not have rules of procedure in place to address common scenarios, such as how amendments to resolutions will be handled. The Board also gives the public next to no notice about the resolutions it votes on, and the Commissioners themselves have, on at least one occasion, appeared to not have enough time to understand the measures they were voting on.

The Board's passing of Resolution 19-40 is a good case study in how these problems can compound, allowing the Board to approve a deal that is bad for the District and, most importantly, bad for public housing residents. First, DCHA did not make Resolution 19-40 available to the public until the afternoon before DCHA's Board was set to vote on it. Therefore, the opportunity for public education and input was nearly nonexistent. This is not uncommon. Over the last year, the Board has routinely failed to release agendas for its meetings, let alone the resolutions that it will be voting on, until the day before. This makes it nearly impossible to do the level of independent research and inquiry necessary to understand a resolution and determine whether it furthers DCHA's mission of housing those families living between 0 and 30 percent of AMI.

⁶ See DCHA's FY19 Responses to Pre-Performance Oversight Hearing Questions, at p. 55.

⁷ DCHA Director Tyrone Garrett stated this statistic at the hearing on Resolution 19-40.

Second, while it is disturbing that the Board gives the public next to no time to consider its proposals, Legal Aid's understanding is that some of the Commissioners had barely any time to become familiar with the details of Resolution 19-40 prior to voting on it. A subsequent Board meeting in January made clear that DCHA had failed to provide sufficient information to answer even the Commissioners' most basic questions about the deal, including questions about the affordability requirements for the site.

Finally, the Board's lack of governing rules was readily apparent during the December Board meeting on Resolution 19-40. Prior to the vote, some Commissioners expressed dissatisfaction that the development deal did not include any site-based housing for families living between 0 and 30 percent of AMI. In response, DCHA's leadership orally agreed that it would amend the Resolution to make clear that DCHA was "targeting" residents in that income bracket. However, DCHA did not amend the resolution in writing prior to the vote. It is Legal Aid's understanding that at least some of the Commissioners thought they were voting on an amended resolution that included site-based, deeply affordable housing. However, when DCHA finally released the amended resolution after the vote, it was clear that the affordable units would only be available to families between 0 and 30 percent AMI if they already had tenant-based housing vouchers.

DCHA's Board is responsible for overseeing the redevelopment of thousands of public housing units. It cannot be trusted with that responsibility in its current state. The Board should adopt rules to ensure that the procedural problems that riddled the Resolution 19-40 vote do not happen again. Specifically, the Board should release every resolution to the public at least two weeks before a vote. The Commissioners themselves ideally should have as much time as they need to understand each resolution, but, at a minimum, they should have at least one month with a resolution before having to vote on it. This is especially true for resolutions that carry particularly high stakes. Every proposed amendment should be in writing and should not be voted on until at least two weeks pass after it is proposed, to give the public and the Board ample time to consider it. Finally, the Board must adopt rules to govern how it debates resolutions, the information Commissioners are entitled to before voting, the process for receiving public input, and the process for incorporating amendments prior to any vote.

Conclusion

Legal Aid hopes that DCHA will voluntarily choose to put its commitments regarding redevelopment into writing. It also hopes that DCHA's Board will voluntarily formalize its operating procedures so that the public can meaningfully engage with the agency's redevelopment plans. However, neither has happened yet. Therefore, the Council should move quickly to consider and pass the Public Housing Preservation and Tenant Protection Amendment Act of 2020. This comprehensive legislation accomplishes much of what Legal Aid is asking for. It would ensure that DCHA has a plan in place to rebuild every unit of affordable housing before it gets authority to demolish any properties. It will require DCHA to put the most important public housing protections into regulations for residents at redeveloped properties and guarantee that tenants can enforce any violation of those rights. Finally, it would ensure that tenants and advocates can have their voices heard throughout the redevelopment process at the DC Council level, even if DCHA's Board is not reformed.