

TINSLEY v. KEMP—A CASE HISTORY: HOW THE HOUSING AUTHORITY OF KANSAS CITY, MISSOURI EVOLVED FROM A “TROUBLED” HOUSING AUTHORITY TO A “HIGH PERFORMER”*

Julie E. Levin**

Murray S. Levin***

I. INTRODUCTION

How best to provide housing for low-income persons¹ has been a topic of considerable debate.² Studies indicate a serious shortage

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** Managing Attorney, Kansas City Central Office of Legal Aid of Western Missouri. B.A., University of Wisconsin, 1972; J.D., University of Kansas, 1977. Ms. Levin was and is counsel for the plaintiffs in all cases against the Housing Authority of Kansas City mentioned in this Article.

*** Professor, University of Kansas School of Business, and former president and board member of two not-for-profit corporate owners of low-income housing developments. B.A., University of Wisconsin, 1972; M.B.A., University of Wisconsin, 1974; J.D., University of Kansas, 1977. The Authors thank Professor Florence Wagman Roisman for her helpful comments regarding an earlier draft and the University of Kansas School of Business Charles W. Oswald Research Fund for its financial support.

1. Federal housing law defines low-income families to be those with incomes of less than eighty percent of the area median income, with adjustments for family size. 42 U.S.C. § 1437a(b)(2) (2000). The Secretary of the Department of Housing and Urban Development (HUD) may establish income ceilings higher or lower than eighty percent of the median for an area on the basis of findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes. *Id.*

2. *E.g.* Kristen David Adams, *Can Promise Enforcement Save Affordable Housing in the United States?* 41 San Diego L. Rev. 643 (2004) (emphasizing the need to value individuality and integrate low-income persons into the community on multiple levels, calling for architects to be more socially aware, and suggesting the importance of physical beauty); David Philip Cohen, *Improving the Supply of Affordable Housing: The Role of the Low-Income Housing Tax Credit*, 6 J.L. & Policy 537 (1998) (criticizing the low-income housing tax credit (LIHTC) for unproductive results and for not being cost-effective); Terry A.C. Gray, *De-Concentrating Poverty and Promoting Mixed-Income Communities in Public Housing: The Quality Housing and Work Responsibility Act of 1998*, 11 Stan. L. & Policy Rev. 173 (1999) (exploring the advantages and disadvantages of promoting mixed communities through public housing); Howard Husock, *Broken Ladder: Government Thwarts*

of low-cost housing, which appears to be worsening.³ United States government housing policy has promoted a variety of approaches to providing housing for the low-income population.⁴

Affordable Housing, 82 Policy Rev. 1 (Mar.–Apr. 1997), <http://www.policyreview.org/mar97/husock.html> (criticizing all government involvement and advocating deregulation of the housing market to facilitate restoration of the housing ladder); Sagit Leviner, *Affordable Housing and the Role of the Low Income Housing Tax Credit Program: A Contemporary Assessment*, 57 Tax Law. 869 (2004) (calling the LIHTC an overall success, but suggesting areas of improvement); Paulette J. Williams, *The Continuing Crisis in Affordable Housing: Systemic Issues Requiring Systemic Solutions*, 31 Fordham Urb. L.J. 413 (2004) (advocating a coordinated comprehensive approach that focuses above all else on improving the situation of low-income residents over the long term); Jonathan Douglas Witten, *The Cost of Developing Affordable Housing: At What Price?* 30 B.C. Envtl. Aff. L. Rev. 509 (2003) (advocating a solution centering on the private sector through mandatory inclusion-zoning requirements and imposition of impact fees).

3. See Jt. Ctr. for Hous. Studs. of Harv. U., *The State of the Nation's Housing: 2005*, at 22–23, http://www.jchs.harvard.edu/publications/markets/Son2005/Son2005_bw.pdf (2005) (indicating new construction is not keeping up with the pace of losses of low-cost stock and reporting a shortfall between affordable and available low-cost rental units of 5.2 million).

A recent survey of twenty-seven major U.S. cities shows the average wait for public housing to be twenty months. “The wait for Section 8 certificates is 30 months, and for Section 8 Vouchers it’s 35 months. Fifty-nine percent of the cities have stopped accepting applications for at least one assisted housing program due to the excessive length of the waiting list.” This study also reported that thirty-two percent of eligible low-income households are being served by assisted housing programs and that “[r]equests for assisted housing by low-income families and individuals increased in 68 percent of the cities during the last year.” U.S. Conf. Mayors, *Hunger Homelessness Survey Summary: January 10, 2005*, http://www.usmayors.org/uscm/us_mayor_newspaper/documents/01_10_05/hunger_survey.asp (accessed Dec. 29, 2006). An earlier HUD study showed the average wait for public housing to be almost one year, with waits ranging from three to eight years in larger metropolitan areas. HUD Off. Policy Dev. & Research, *Waiting in Vain: Update on America's Rental Housing Crisis* (HUD Mar. 1999).

4. In addition to funding local agencies to construct public housing, the federal government has provided direct subsidies to low-income renters or to property owners on behalf of eligible tenants, and has provided tax and other incentives, such as low-interest loans, for private builders of low-cost housing. John R. Nolon, *Reexamining Federal Housing Programs in a Time of Fiscal Austerity: The Trend toward Block Grants and Housing Allowances*, 14 Urb. L. 249, 254–256 (1982); Low-income Housing Credit, 26 U.S.C. § 42 (2000).

There are also approaches that are not limited to low-income persons—for example, encouragement of private home ownership facilitated through financing mechanisms, such as government-backed mortgage insurance. *E.g.* Housing for Moderate Income and Displaced Families, 12 U.S.C. § 1715l (2000). There is also the generally available mortgage interest deduction, 26 U.S.C. § 163(h)(3)(A) (2000), and the exclusion from gross income of the gain from the sale of a primary residence (up to \$250,000 for individuals and \$500,000 for married couples), 26 U.S.C. § 121(a) (2000). These tax breaks associated with home ownership, which of course provide enormous benefit for middle- and upper-income persons, cost the Federal Treasury approximately \$60 to \$80 billion a year (more than twice HUD’s entire budget). William E. Nelson & Norman R. Williams, *Suburbanization and Market Failure: An Analysis of Government Policies Promoting Suburban Growth and*

One approach involves housing that is owned and operated by the government—"public housing."⁵ Today there are approximately 1.3 million households living in public housing units, managed by approximately 3,300 Public Housing Agencies (PHA).⁶ This Article recounts the experiences of public housing in Kansas City, Missouri, which in recent years has achieved much recognition for its success. The focal point of this article is the judicial receivership created through the case *Tinsley v. Kemp*.⁷

II. A BRIEF HISTORY OF ENABLING LAW AND PUBLIC HOUSING IN KANSAS CITY, MISSOURI

In the United States, the first major federal public housing endeavors were a product of the dismal life circumstances of the Great Depression.⁸ Early attempts by the federal government to clear slums and directly develop and own public housing were thwarted, however, by a judiciary that embraced the conservative view that federal activities at the state level, including exercise of the eminent domain power, were unconstitutional.⁹ Congress re-

Ethnic Assimilation, 27 Fordham Urb. L.J. 197, 232–233 (1999); San Diego Hous. Commn., *Housing Assistance: History of Public Housing*, <http://www.sdhc.net/hacoabouthousing1.shtml> (accessed Dec. 29, 2006).

5. There is the additional question whether public housing programs should also be available to persons of moderately higher income (e.g. the so-called "working poor"). Congress has moved more in the direction of creating mixed-income projects and lessening the concentration of poor people in public housing. For a discussion of mixed-income projects, see *infra* notes 144–155 and accompanying text.

6. HUD, *HUD's Public Housing Program*, <http://www.hud.gov/renting/phprog.cfm> (accessed Jan. 20, 2006). While HUD's website states this figure of "approximately 1.3 million households," the actual number has declined in recent years to closer to 1.2 million. *Infra* n. 151.

7. 750 F. Supp. 1001 (W.D. Mo. 1990). For a study of the *Tinsley* case focusing on the propriety of the receivership remedy in public reform litigation, see Carolyn Hoecker Luedtke, *Innovation or Illegitimacy: Remedial Receivership in Tinsley v. Kemp Public Housing Litigation*, 65 Mo. L. Rev. 655 (2000).

8. Lawrence M. Friedman, *Government and Slum Housing: A Century of Frustration* 15, 99–101 (Morton Grodzins ed., 1968). During the Great Depression, rates of construction of residential property and expenditures on home repairs fell by more than ninety percent. Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* 187 (Oxford U. Press 1985). By 1933, fifty percent of all home mortgages were in default, and bank foreclosures reached a rate of more than one thousand per day. *Id.* at 188–189.

9. *E.g. U.S. v. Certain Lands in Louisville*, 78 F.2d 684, 688, 690–691(6th Cir. 1935) (holding that condemnation for public housing was not a public use); Jane L. McGrew & Ana Fabregas, *The Housing Act of 1937: Legal Origins*, 44 J. Hous. 156, 156 (1987).

acted by enacting the Housing Act of 1937,¹⁰ by which the federal government would provide funds to local housing agencies¹¹ for slum clearance¹² and for the development and ownership of housing for low-income persons.¹³ The private real estate industry was opposed to such a program that would possibly involve competition from government ownership of housing.¹⁴ Congress tried to assuage this concern by requiring that public housing be of very modest design and construction to ensure that the program would be limited to serving low-income people who could not otherwise afford housing.¹⁵

In 1939, Missouri adopted the Housing Authorities Law,¹⁶ declaring that private enterprise was unable to provide an adequate supply of safe and sanitary housing for persons of low income¹⁷ and providing for the creation of municipal corporations to be known as Housing Authorities to address this problem.¹⁸ The Housing Authority of Kansas City, Missouri (HAKC) was created by city ordinance on July 14, 1941.¹⁹ HAKC immediately initiated plans and financial arrangements with the federal government for development of two low-rent public housing complexes.²⁰ Due to World War II, however, HAKC operations were generally suspended from 1942 until 1946.²¹ Following the war, the Housing

10. Pub. L. No. 75-412, 50 Stat. 888 (1937) (codified at 42 U.S.C. § 1437).

11. State courts had already approved local governments' exercise of the eminent domain power for public housing purposes. *E.g. N.Y.C. Hous. Auth. v. Muller*, 1 N.E.2d 153, 155–156 (N.Y. 1936).

12. 42 U.S.C. § 1441 (2000).

13. *Id.* at §§ 1437, 1439. This law represented not only an effort to provide an improved housing stock for the poor, but also a means to stimulate depressed industry and create jobs. Lawrence M. Friedman, *Public Housing and the Poor: An Overview*, 54 Cal. L. Rev. 642, 646 (1966).

14. Alexander von Hoffman, *A Study in Contradictions: The Origins and Legacy of the Housing Act of 1949*, 11 Hous. Policy Debate 299, 304 (2000), http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1102_hoffman.pdf.

15. *See* Pub. L. No. 75-412, § 15(5), 50 Stat. at 896 (Housing Act of 1937).

16. Mo. Rev. Stat. §§ 99.010–99.230 (2006).

17. *Id.* at § 99.030(2). Many other states have similarly worded statutes proclaiming that the private sector is unable to meet the housing needs of low-income persons. *See e.g.* Fla. Stat. § 421.02 (2005); N.H. Rev. Stat. Ann. § 203:2 (West 2000); Wash. Rev. Code § 35.82.010 (2005).

18. Mo. Rev. Stat. at § 99.040.

19. *In Housing Plea*, Kan. City Times 2 (July 15, 1941).

20. *A Low Rent Step*, Kan. City Times 2 (July 30, 1941).

21. Hous. Auth. Kan. City, *HAKC History*, <http://www.hakc.org/history.html> (accessed Dec. 29, 2006) [hereinafter *HAKC History*].

Authority was reactivated, and the need to house returning veterans became its primary focus.²² Through a contract with the federal government to operate the Veterans Temporary Housing Program, HAKC acted as the rental agent for newly constructed emergency housing projects for a period of nine years.²³ During this period of time, the federal government passed the Housing Act of 1949, which established a national policy of “a decent home and a suitable living environment for every American family.”²⁴ The bill authorized \$1 billion in loans and \$500,000 in grants, and authorized the construction of 810,000 new public housing units over the next six years (135,000 per year).²⁵ HAKC focused its attention on housing for the low-income community. During the 1950s, HAKC developed several large apartment complexes—Riverview Gardens (1952, consisting of 232 units), Theron B. Watkins Homes (1954, 462 units), Guinotte Manor (1954, 454 units), and Chouteau Court (1959, 140 units). In the 1960s, HAKC added Pennway Plaza (1960, 250 units), Wayne Miner Court (1962, 738 units), and West Bluff (1964, 139 units).²⁶

Congress passed a series of federal statutes addressing low-income public housing between 1962 and 1976.²⁷ The Senior Citizens Housing Act of 1962 provided, among other things, specifically for the construction of low-income housing for the elderly in

22. *Id.*

23. *Id.*

24. 42 U.S.C. § 1441.

25. *Id.* Later, Congress reduced these authorizations to 50,000 units for 1951, 35,000 units for 1952, and 20,000 units for 1953. Brookings Instn., *Government's 50 Greatest Endeavors*, <http://www.brook.edu/gs/cps/50ge/endeavors/housing.htm> (accessed Feb. 24, 2006) [hereinafter *Greatest Endeavors*]; von Hoffman, *supra* n. 14, at 310–311. In 1954, Congress authorized urban planning grants for development of 35,000 new public housing units. Pub. L. No. 83-560, 68 Stat. 590. In 1959, Congress authorized 37,000 more new public housing units. Pub. L. No. 86-372, 73 Stat. 654.

26. *Low-Rent Public Housing*, Kan. City Star 10B (Oct. 1, 1958); *Kansas City's Battle on Blight Is a Major Feat*, Kan. City Star G1 (Jan. 3, 1960); *New Housing Makes Old Site an Ideal Area*, Kan. City Times 1 (Nov. 21, 1960); *HAKC History*, *supra* n. 21.

27. During the 1960s some low-income housing legislation took a different approach, creating incentives for the private market to develop affordable housing. The 1961 amendment to Section 221(d)(3) of the National Housing Act of 1934 created affordable housing by allowing the FHA to insure below-market-rate mortgages for affordable rental housing. Housing Act of 1961, 12 U.S.C. § 1715l(d)(3). The Housing Act of 1968, through the Section 235 and Section 236 programs, gave payments to private lenders to reduce mortgage rates for low-income homebuyers and subsidized mortgage interest for private developers who agreed to provide low-income rental housing. Von Hoffman, *supra* n. 14, at 319.

urban areas.²⁸ The Housing and Urban Development Act of 1965 authorized \$7.8 billion over four years for new construction and repair and rehabilitation of existing low-income housing.²⁹ Later that year, Congress also approved formation of the federal Department of Housing and Urban Development (HUD).³⁰ The federal Housing Act of 1969, for the first time, established general operating subsidies for public housing programs.³¹ Previously, public housing had been a self-sustaining program. This law also placed a cap of twenty-five percent of income on rents to be charged in public housing.³² Later amendments revised the formula for calculating rent caps, raising the limit to thirty percent of a family's adjusted income.³³

With a federal policy shift to new forms of leasing, acquisition, turnkey development programs, and rental subsidies, HAKC reoriented its activities. In 1967 and 1968, HAKC leased 200 units from private owners for sublease to public housing tenants under a rent-supplement program.³⁴ From 1968 to 1970, HAKC purchased fifty foreclosed single-family homes from the Federal Housing Administration and the Veterans Administration.³⁵ In 1972, HAKC utilized turnkey development to build Brush Creek Towers (135 units), a high-rise for the elderly, and Dunbar Gardens (65 units). In 1973, HAKC converted and rehabilitated the Drake Hotel in downtown Kansas City to develop Heritage House, a seventy-nine unit project for elderly residents.³⁶

In 1973, President Nixon imposed a moratorium on all federal housing programs, which was followed by the Housing and Community Development Act of 1974.³⁷ The centerpiece of this new initiative was a system of housing allowances to reduce rents for low-income tenants in privately owned buildings.³⁸ This Act provided a formula for allocation of funds to eligible communities

28. Pub. L. No. 87-723, 76 Stat. 670 (1962).

29. Pub. L. No. 89-117, 79 Stat. 451 (1965); *Greatest Endeavors*, *supra* n. 25.

30. Pub. L. No. 89-174, 79 Stat. 667 (1965).

31. Pub. L. No. 91-152, 83 Stat. 379 (1969).

32. 83 Stat. at 389.

33. 42 U.S.C. § 1437a(a)(1).

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. Von Hoffman, *supra* n. 14, at 320.

and created a new federally assisted housing program called the “Section 8” program.³⁹ Section 8 provides a rent subsidy to tenants based on their income. Local housing agencies administer the process of qualifying for Section 8 subsidy vouchers. Low-income tenants who receive vouchers rent private market dwellings, and the Section 8 subsidy is paid directly to the owners of the private housing units. In the late 1970s, HAKC became the local administrator for Section 8 subsidy certificates.⁴⁰ In 1978 and 1979, HAKC acquired and rehabilitated another fifty single-family houses for rental to low-income families.⁴¹ These were scattered site units—scattered throughout the city rather than localized at one development. Also, between 1975 and 1980, HAKC obtained nearly \$8 million from HUD for modernization of its housing stock.⁴² In 1981, HAKC developed Pemberton Heights (120 units), a high-rise for elderly residents.⁴³

The period starting in the late 1970s and extending through the 1980s may best be described as a time of turmoil and deterioration for HAKC and its properties. During these years, HAKC demolished hundreds of dwelling units, most notably HAKC’s largest development consisting of five high-rise apartment buildings at Wayne Minor Court.⁴⁴ These buildings were only twenty-seven years old.⁴⁵ During this time period, several class-action lawsuits had been brought against HAKC and HUD by Legal Aid of Western Missouri for various regulatory and statutory violations associated with HAKC housing and activities. In 1979, *Vann v. HAKC*⁴⁶ was filed against HAKC for the racial steering of public housing residents. This case alleged that white public housing residents were deliberately placed in certain developments and African-American public housing residents were placed in other developments.⁴⁷ In response to this litigation, HAKC reformed its admissions procedures to avoid racial steering.⁴⁸ In 1983, the

39. 42 U.S.C. § 1437f.

40. *Id.*

41. *HAKC History*, *supra* n. 21.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. 87 F.R.D. 642 (W.D. Mo. 1980).

47. *Id.* at 645, 652–653.

48. *Id.* at 658.

plaintiffs in *Lee v. HAKC*⁴⁹ alleged that HAKC failed to provide adequate due process procedures including, for example, hearings for Section 8 applicants who were denied assistance.⁵⁰ HAKC subsequently corrected its procedures to provide proper notice with hearings. That same year, another class-action lawsuit was filed against HAKC and HUD for failure to provide the proper utility allowances to public housing residents.⁵¹ Under federal regulations, housing authorities are required to increase the utility allowance that they provide to their public housing residents whenever the utility rates in the community increase by ten percent.⁵² The complaint alleged that for a period of four years, HAKC had not increased its utility allowances despite the fact that utility rates had increased by 200 percent.⁵³ The lawsuit resulted in a payment of over \$1 million to public housing residents in the form of rent rebates. In 1984, *Todd v. HAKC*⁵⁴ was filed alleging that HAKC failed to provide proper due process hearings and notices to public housing applicants who were denied assistance. Following each of these lawsuits, HAKC altered specific practices in remedial ways; however, the organization continued to engage in other questionable practices inconsistent with federal laws. Its housing stock deteriorated badly, resulting, among other things, in high numbers of vacancies.⁵⁵

III. THE TINSLEY CASE AND THE RESULTING RECEIVERSHIP

Despite the legal requirement for habitability of housing, public housing in Kansas City was by the 1980s among the worst housing in the city. In 1988, several public housing residents, who lived at Theron B. Watkins, came to Legal Aid of Western Missouri to determine whether they had any legal recourse against HAKC for maintaining uninhabitable housing. These residents

49. No. 83-0152 CV-W-6 U.S. (W.D. Mo. 1983).

50. *Id.* at 18.

51. Pl. Compl. 1, *Castleman v. HUD*, No. 83-0461-CV-W-8 (W.D. Mo. filed July 18, 1983).

52. 24 C.F.R. § 965.507(b) (2005).

53. Pl. Compl. 3, *Castleman*, No. 83-0461-CV-W-8.

54. Pl. Compl. 1, *Todd v. HAKC*, No. 84-0852-CV-W-1 (W.D. Mo. filed Aug. 16, 1984).

55. Hous. Auth. Kan. City, *HAKC under Receivership*, http://www.hakc.org/under_receivership.html (accessed Mar. 21, 2006) [hereinafter *HAKC Receivership*].

described horrific conditions of rat, mouse, and cockroach infestation, other unsanitary conditions, dangerous deterioration of plumbing and electrical systems, serious physical deterioration of buildings, and a pervasive environment of threatening criminal activity. The complaining residents described how they refused to allow their children to play outside even during the daytime, and how they were fearful when leaving their units at night. They also complained that HAKC ignored their requests for repairs. Over 118 of the 288 units in the development were vacant, yet the vacant units were neither boarded nor locked.⁵⁶ An inspection of these vacant units revealed drug paraphernalia, Sterno cans, old clothes, and mattresses. There was clear evidence that trespassers were living in the vacant units of the development. Many of these units had been stripped of window frames, appliances, cabinets, and countertops.⁵⁷ The common areas of the development were littered with trash, human waste, and broken glass. Obviously, HAKC had failed its contractual duty with HUD to provide safe, decent, and sanitary housing in compliance with housing-quality standards.⁵⁸

This set the stage for the filing of the *Tinsley v. Kemp*⁵⁹ class-action lawsuit in January 1989 in the United States District Court for the Western District of Missouri. *Tinsley* was an action for both declaratory and injunctive relief on behalf of all residents of the Theron B. Watkins housing development and all applicants to public housing operated by HAKC who had been placed on a waiting list.⁶⁰ The *Tinsley* complaint sought an order to require HAKC to immediately repair all the units at Theron B. Watkins and make them suitable for occupation.⁶¹ The lawsuit also sought to enjoin HAKC from allowing the further deterioration and de

56. *Tinsley*, 750 F. Supp. at 1004.

57. *Id.*

58. The requirement to provide safe housing is embodied in Title 42 U.S.C. Section 1437d(l)(3), which requires public housing agencies to use leases that obligate the housing agency “to maintain the project in a decent, safe, and sanitary condition.” In addition, Section 1437d(f)(2) states that housing quality standards to ensure that public housing is safe and habitable shall be established. The policy behind these requirements is to “remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low income families.” 42 U.S.C. § 1437(a)(1)(A).

59. 750 F. Supp. 1001.

60. *Id.* at 1003–1004.

61. Pl. Compl. 21–22, *Tinsley*, No. 89-0023-CV-W-1 (W.D. Mo. filed Jan. 17, 1989).

facto demolition of Theron B. Watkins.⁶² The de facto demolition claim maintained that HAKC violated Title 42 U.S.C. Section 1437p, which provides that housing authorities may not demolish or dispose of a public housing project or unit without prior approval from HUD.⁶³ The *Tinsley* argument was that HAKC was, in effect, demolishing Theron B. Watkins by failing to repair the units and provide a suitably healthy environment.⁶⁴ Thus, HAKC was circumventing statutory requirements for demolition by allowing the development to become obsolete.⁶⁵ The other main claim of the lawsuit was that HAKC was violating Title VIII⁶⁶ of the Civil Rights Act of 1968 by forcing the residents of Theron B. Watkins (who were ninety-nine percent African-American) to live in uninhabitable conditions.⁶⁷ This created a disparate effect on a minority population.⁶⁸ The *Tinsley* lawsuit also raised contract and Administrative Procedure Act claims against HAKC and HUD.⁶⁹ The main claims of the lawsuit, however, were the de facto demolition and the Title VIII claims.

The de facto demolition claim was raised as a Section 1983⁷⁰ action.⁷¹ Both HAKC and HUD filed motions to dismiss the lawsuit.⁷² Despite the fact that the de facto demolition claim was a novel theory, District Court Judge Dean Whipple rejected the mo-

62. *Tinsley*, 750 F. Supp. at 1003.

63. *Id.* at 1007. Section 1437p(a)(1)–(2) restricts HUD approval for demolition to those situations where there is a determination that “the project . . . is obsolete as to physical condition, location, or other factors, making it unsuitable for housing purposes; and . . . no reasonable program of modifications is cost-effective to return the public housing project or portion of the project to useful life”; or, in the case of an application proposing the demolition of only a portion of a project, “that the demolition will help to ensure the viability of the remaining portion of the project.” 42 U.S.C. § 1437p(a)(1)–(2). Additionally, an application for demolition must be developed with consultation of tenants and tenant councils. 42 U.S.C. § 1437p(b)(2)(A)–(B).

64. *Tinsley*, 750 F. Supp. at 1007.

65. *Id.* (stating that Section 1437p should apply to de facto demolition because to “conclude otherwise would allow public housing agencies to evade the law by simply allowing housing projects to fall into decay and disrepair” (quoting *Concerned Tenants Assn. of Father Panik Village v. Pierce*, 685 F. Supp. 316, 321 (D. Conn. 1988))).

66. Fair Housing Act, 42 U.S.C. §§ 3601–3639 (2000).

67. *Tinsley*, 750 F. Supp. at 1004, 1010.

68. *Id.* at 1010–1011.

69. *Id.* at 1003.

70. 42 U.S.C. § 1983 (2000).

71. *Tinsley*, 750 F. Supp. at 1003.

72. *Id.* (describing the arguments in the motions).

tions to dismiss, recognizing an implied private cause of action for de facto demolition under Section 1437p.⁷³

Following this denial of the motions to dismiss, the defendants had more incentive to negotiate a settlement. In 1991, the court approved a Consent Decree, which provided for the complete renovation of the Theron B. Watkins development and the desegregation of public housing in Kansas City.⁷⁴ In the Consent Decree, HUD agreed to provide the estimated \$11 million of funding that would be necessary for the renovation of Theron B. Watkins.⁷⁵ HAKC was to hire an architect to design a plan that would make Theron B. Watkins viable for twenty years, and HAKC was restricted from taking any action to demolish the development until after 2011.⁷⁶ HAKC also agreed to promote the desirability of living at Theron B. Watkins and to publicize the improvements and renovation of the development.⁷⁷ Additionally, HAKC agreed to take steps to improve its image in the community and erase the stigma associated with living in public housing.⁷⁸

In an effort to desegregate Kansas City public housing, the Consent Decree required that HAKC provide all applicants with notice of other affordable housing opportunities in the metropolitan area.⁷⁹ Additionally, applicants for public housing would automatically be placed on the Section 8 and public housing waiting lists.⁸⁰ This would prevent HAKC from steering non-minorities into the Section 8 program and minorities into public housing. HAKC was required to adopt an affirmative marketing plan which included outreach to non-racially and non-economically impacted areas, and to develop and distribute brochures and posters advertising the availability of public housing

73. *Id.* at 1009. *Tinsley* was one of the earliest cases recognizing a private cause of action by tenants to sue to protect rights under Section 1437p. Julia Clayton Powell, *De Facto Demolition: The Hidden Deterioration of Public Housing*, 44 *Cath. U. L. Rev.* 885, 902–903 (1995); see also *Concerned Tenants Assn. of Father Panik Village*, 685 F. Supp. at 319–321; *Gomez v. Hous. Auth. City of El Paso*, 805 F. Supp. 1363, 1367, 1374–1375 (W.D. Tex. 1992), *aff'd*, 20 F.3d 1169 (5th Cir. 1994), *cert. denied*, 513 U.S. 873 (1994).

74. Consent Decree 3, *Tinsley*, No. 89-0023-CV-W-1.

75. *Id.*

76. *Id.* at 2.

77. *Id.* at 7.

78. *Id.* at 8–9, 14.

79. *Id.* at 11.

80. *Id.* at 8–9.

and its advantages.⁸¹ Under the Consent Decree, all Section 8 participants were to be advised of their right to the portability of their certificates and vouchers.⁸² Thus Section 8 participants would be able to use their certificates or vouchers anywhere in the United States.

The Consent Decree imposed extensive reporting requirements on HAKC.⁸³ This would enable the plaintiffs to monitor compliance with the Consent Decree. Plaintiffs' counsel was provided the right to inspect the units and developments upon reasonable notice to HAKC.⁸⁴

Shortly after HAKC and HUD entered into the Consent Decree, violations commenced.⁸⁵ For example, the vacancy rate continued to increase, and no action was taken to begin the renovation of Theron B. Watkins. HUD labeled HAKC a "troubled" agency and refused to provide the \$11 million for renovations as agreed.⁸⁶ HUD then took steps to take over HAKC and in May 1992, the takeover was complete.⁸⁷ HUD then released approximately \$32 million to the HUD-controlled HAKC for improvements including the modernization of Theron B. Watkins.⁸⁸ Despite the HUD takeover, violations of the *Tinsley* Consent Decree continued: vacancies continued to increase, no repairs had been made, and applicants for housing were not provided with opportunities to apply for both public housing and Section 8.

The plaintiffs filed a motion for contempt on May 5, 1992, based on HAKC's and HUD's failure to comply with the *Tinsley* Consent Decree, which the court granted.⁸⁹ The court gave HAKC and HUD six months from the date of the Contempt Order to comply with certain requirements of the Consent Decree.⁹⁰

81. *Id.* at 7, 11–15.

82. *Id.* at 17–18.

83. *Id.* at 18–21.

84. *Id.* at 10–11.

85. April D. McClellan & Diane Stafford, *Resignation of Housing Official Urged*, Kan. City Star C8 (Dec. 5, 1991).

86. *Id.*

87. April D. McClellan, *Public Housing in KC to Get \$32 Million*, Kan. City Star C1 (May 22, 1992).

88. *Id.*

89. Court Docket Sheet ¶ 128, Contempt Order, *Tinsley*, No. 89-0023-CV-W-1.

90. *Id.*

During this time, conditions in another Kansas City public housing development, Riverview Gardens, worsened significantly.⁹¹ Over fifty-five percent of the units were vacant and not boarded properly. The crime rate increased dramatically and the development was deteriorating rapidly. Counsel for the *Tinsley* plaintiffs then filed a class-action lawsuit, *Boles v. Kemp*,⁹² against HAKC and HUD based on the same de facto demolition theory asserted in *Tinsley*. The *Boles* case was settled on February 23, 1993, with HAKC and HUD agreeing to fully modernize Riverview Gardens.⁹³ HUD promised another \$10.5 million to finance the renovation of this property.⁹⁴

Nevertheless, the vacancy rates at all the HAKC properties continued to increase, and conditions continued to deteriorate. In May 1993, HUD turned the Housing Authority back over to Kansas City. The *Tinsley* plaintiffs filed a second contempt motion based on the continued violations of the *Tinsley* Consent Decree.⁹⁵ At that time, the District Court placed HAKC in receivership because it was incapable of complying with the *Tinsley* Consent Decree and of managing its properties.⁹⁶ HAKC has been in receivership since that time.

During the initial stage of the receivership, the court appointed a Special Master and temporary Executive Director.⁹⁷ In 1994, the court launched a national search for a permanent receiver who would bring management and housing expertise to HAKC. The District Court appointed an Advisory Committee, including the Special Master, community leaders, public housing resident leaders, counsel for HUD, and the *Tinsley* plaintiffs' counsel. After evaluating possible appointees, the Advisory Committee recommended TAG Associates, a Massachusetts firm specializing in providing services for public and subsidized housing.

91. *Boles v. Kemp*, No. 92-0526-CV-W-9 (W.D. Mo. filed July 7, 1992).

92. *Id.*

93. Consent Decree, *Boles*, No. 92-0526-CV-W-9.

94. *Id.*

95. Pl. Mot. for Ct. Or. Adjudicating Hous. Auth. Kansas City in Contempt, *Tinsley*, No. 89-0023-CV-W-1 (W.D. Mo. filed May 5, 1992).

96. Contempt Order, *Tinsley*, No. 89-0023-CV-W-1.

97. *HAKC Receivership*, *supra* n. 55.

In September of 1994, the court appointed TAG Associates as the Receiver.⁹⁸

The court gave the Receiver broad powers to manage and operate all aspects of HAKC's properties. The Receiver's powers included performing HAKC's financial, contractual, legal, administrative, and personnel duties.⁹⁹ The Receiver was ordered to preserve, protect, and administer all of HAKC's property and assets.¹⁰⁰ The Receiver was also ordered to fulfill all of the obligations required of HAKC under the District Court Consent Decrees that were in effect at that time.¹⁰¹ The court ordered the Receiver to do all acts necessary to transform HAKC into a functional housing authority—one that provided decent, safe, and sanitary dwellings for families of lower income—and to comply with all applicable laws and regulations.¹⁰² The court ordered the Receiver to submit a twelve-month plan (and budget) detailing the manner in which the Receiver would fulfill its duties.¹⁰³ Thereafter, the Receiver was ordered to submit monthly reports to the parties and the court, listing the significant actions the Receiver took during each month.¹⁰⁴ The Receiver was granted immunity similar to that of officers and agents of the court.¹⁰⁵ HAKC and HUD indemnified the Receiver for all liabilities, damages, and losses incurred in defending any lawsuit or administrative proceeding in which the Receiver and one or more of its employees were named as a party.¹⁰⁶

The *Tinsley* case, which started out as a case limited to the uninhabitable conditions of one HAKC property, became a case in which the court ordered the renovation of all of HAKC's properties and the preservation of its resources. An umbrella tenant organization was formed, the Public Housing Resident Council (PHRC), consisting of all resident leaders of all the HAKC developments.¹⁰⁷ This organization worked with plaintiffs' counsel to

98. Receivership Order, *Tinsley*, No. 89-0023-CV-W-1 (Sept. 6, 1994).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. Ctr. for Community Change, *Comprehensive Services in Public Housing:*

monitor all of HAKC's policies, procedures, and operations.¹⁰⁸ They also monitored all the construction and development of HAKC's properties.¹⁰⁹ At first, the PHRC met with the Receiver or HAKC's Executive Director on a weekly basis. During these meetings, tenant leaders and plaintiffs' counsel reviewed an extensive agenda detailing all operations of each of the eleven public housing developments HAKC operated.¹¹⁰ These weekly meetings were held for several years. As the properties improved and HAKC made progress, the meetings were held every two weeks and, ultimately, once a month.¹¹¹ Under the receivership, HAKC received over \$120 million to create public and affordable housing,¹¹² and each unit of public housing was either fully renovated or newly constructed.¹¹³ Because the court's Receivership Order mandated the preservation of HAKC's assets, whenever a unit was demolished or sold, it was replaced on a one-for-one basis.¹¹⁴ Federal law at the time did not require such replacement. A prior one-for-one replacement requirement was temporarily repealed in 1995¹¹⁵ and permanently repealed in 1998.¹¹⁶ Nationally, approximately 114,000 units of public housing have been lost in recent years because federal law has not required the replacement of demolished units.¹¹⁷ However, public housing in Kansas City was protected under the Receivership Order, and the HAKC Receiver acted

Lessons from the Field 41, <http://communitychange.org/shared/publications/downloads/ServPublicHousing.pdf> (1999).

108. *Id.*

109. *Id.*

110. *Id.* at 39, 44, 46.

111. *Id.*

112. Hous. Auth. Kan. City, *The Transformation of the Housing Authority of Kansas City, Missouri: Major Redevelopment Efforts under Receivership 1994–2002*, at 10, <http://www.hakc.org/documents/TransformationBrochure.pdf> (accessed Dec. 30, 2006).

113. Ctr. for Community Change, *A HOPE Unseen: Voices from the Other Side of Hope VI*, app. A at 5, http://www.communitychange.org/shared/publications/downloads/hope_iv/13_appendixa.doc (2003).

114. *Id.* at 6. There was one deviation from this one-for-one formula. At the time of the *Tinsley* lawsuit, Theron B. Watkins had 288 units. After the renovation, because some units were enlarged, it had only 232 units. Twenty-five other replacement units were developed as scattered site units in non-racially impacted areas. Although the total number of replacement units was 257, due to the enlargement of the on-site units, this slightly lower number of units housed the same total number of residents.

115. Pub. L. No. 104-19, § 1002(a), 109 Stat. 194, 235 (1995).

116. 42 U.S.C. § 1437p; Pub. L. No. 105-276, Title V, § 531, 112 Stat. 2461, 2573 (1998).

117. *Infra* nn. 146–151 and accompanying text.

upon the belief that preservation of assets necessitated not diminishing the number of public housing units.¹¹⁸

Kansas City public housing flourished under receivership. The PHRC worked in partnership with HAKC staff to turn HAKC around. Residents were in the best position to identify security, safety, and habitability issues, and HAKC staff were finally responding to residents' concerns. The adversarial and hostile atmosphere that existed between HAKC and its residents dissipated. Under receivership, HAKC negotiated numerous policies and procedures with PHRC. These policies were far more resident-oriented than those of most housing authorities.¹¹⁹ For example, while many housing authorities adopted a \$50 minimum rent for residents whether they had the resources or not, HAKC agreed to have a zero minimum rent for the most needy residents.¹²⁰ While most housing authorities evicted residents for the criminal or drug activity of a household member or a guest, regardless of the resident's knowledge, the PHRC negotiated standard lease terms with HAKC that would allow the eviction of a resident only if the resident knew or should have known of the household member's or guest's drug or criminal activity.¹²¹ In 2002, the United States Supreme Court found that a tenant could be evicted due to the drug or criminal activity of a guest or household member even if the tenant was innocent of any wrongdoing.¹²² However, HAKC has used its discretion to allow innocent tenants to retain their housing. While many housing authorities refused to entertain the recommendations and participations of their residents, HAKC entered into a Resident Participation Plan to ensure resident involvement throughout all HAKC planning, programming, and evaluation.¹²³ The Resident Participation Plan guaranteed resident input into resident screening, relocation, security, youth programming, health programs, economic develop-

118. Ctr. for Community Change, *supra* n. 107, at 39–47.

119. Ctr. for Community Change, *supra* n. 113, app. A at 6.

120. Ctr. for Community Change, *Residents' Guide to the New Public Housing Authority Plans* 37, <http://communitychange.org/shared/publications/downloads/PlanBooklast.pdf> (June 1999); *Annual Plan: Housing Authority of Kansas City, Missouri* 27 (HAKC 2001) (available at <http://www.hud.gov/offices/pih/pha/approved/pdf/01/mo002v01.pdf>).

121. *Id.*

122. *HUD v. Rucker*, 535 U.S. 125, 136 (2002).

123. Hous. Auth. Kan. City, *Resident Participation Plan* (Sept. 9, 1998) (copy on file with *Stetson Law Review*).

ment programs, resident organizational development, contracts between HAKC and private parties, and social services.¹²⁴ It also guaranteed the right of residents to interview prospective HAKC employees who would be working directly with residents.¹²⁵

HAKC has a strong Resident Services Department which has also contributed to the success of the organization. The Resident Services Department coordinates programs for youths and seniors.¹²⁶ Several community centers attached to or next to the family public housing developments provide computer labs, money management classes, family counseling, recreational activities for the youth, and various other programs.¹²⁷

One of HAKC's most successful resident services programs has been its Family Self-Sufficiency Program. The Family Self-Sufficiency Program provides families with methods for obtaining case management, education, employment, child care, transportation, and monetary incentives to achieve self-sufficiency.¹²⁸ Several of the public housing residents who participated in the Family Self-Sufficiency Program have been able to purchase their own homes.¹²⁹ In 2005, there were twenty-one graduates of the Family Self-Sufficiency Program.¹³⁰

HAKC also provides homeownership programs to facilitate the transition from renting in public housing or Section 8 housing to owning a home.¹³¹ Currently, there are 180 families enrolled in these programs.¹³²

HAKC's Resident Services Department established a program to work with domestic violence shelters that provide training for HAKC staff and resident leaders to identify victims of domestic violence and assist them in obtaining help.¹³³ The Department is

124. *Id.*

125. *Id.*

126. See Hous. Auth. Kan. City, *Resident Services Activity Schedule*, <http://www.hakc.org/events.html> (accessed Dec. 26, 2006) [hereinafter *Resident Services Schedule*] (providing the schedule of activities organized by the Resident Services Department).

127. Hous. Auth. Kan. City, *Operations Report 15* (Dec. 31, 2005) (copy on file with *Stetson Law Review*).

128. *Id.* at 14–15.

129. *Id.* at 15.

130. *Id.* at 14.

131. *Id.*

132. *Id.*

133. *Id.*

located in the Family Development and Learning Center, which is a one-stop shop for all types of social services that are provided to HAKC residents and Section 8 voucher holders.¹³⁴ During 2005, 15,602 residents visited the Family Development and Learning Center and received services.¹³⁵ One of the most popular programs has been the Money Management Program that is held four times a week. On average, there are between eight and seventeen participants in each class.¹³⁶ The Center also houses a program called United Services, which provides monetary assistance to residents who cannot pay utility bills. In the winter of 2005, 693 residents applied for and received utility assistance. In a four-month period, United Services paid a total of \$192,270 to the utility companies to prevent the termination of utility services to public housing residents.¹³⁷

HAKC has also been able to achieve positive results through the federal HOPE VI Program, a program with which other housing authorities have struggled. The HOPE VI Program has been, during the last decade, the primary federal initiative for new public housing.¹³⁸ The renewal of HAKC properties was in large part funded through this program.¹³⁹ In 1989, Congress established the National Commission on Severely Distressed Public Housing to analyze the nature and extent of deterioration of public housing and to develop solutions.¹⁴⁰ The Commission estimated that there were approximately 86,000 severely distressed units, comprising roughly six percent of the total public housing units in the country.¹⁴¹ In response to the Commission's report, Congress passed the Urban Revitalization Demonstration Program, known as Hope VI.¹⁴²

134. *Resident Services Schedule*, *supra* n. 126.

135. *Operations Report*, *supra* n. 127, at 14.

136. *Id.*

137. *Id.*

138. See HUD, *Audit Report of Inspector General: Nationwide Audit HOPE VI Urban Revitalization Program* 71, <http://www.hud.gov/oig/ig960001.pdf> (Dec. 17, 1998) [hereinafter *Audit Report*] (stating that the federal HOPE IV program was established to address distressed public housing and that it has done so and continues to do so).

139. *Operations Report*, *supra* n. 127, at 14.

140. Pub. L. No. 101-235 § 127(a)m, 103 Stat. 251, 252 (1984).

141. Natl. Commn. Severely Distressed Pub. Hous., *The Final Report of the National Commission on Severely Distressed Public Housing* 2 (GPO 1992).

142. 42 U.S.C. § 1437v. HOPE is an acronym for "Homeownership and Opportunity for People Everywhere."

Through the Hope VI Program, HUD awards revitalization funds in the form of competitive grants to public housing authorities to renovate or develop public housing sites in their areas.¹⁴³ The Hope VI approach involves the goal of creating developments that will avoid or decrease the concentration of very low-income people, possibly including mixed-income projects, and attract private financing to help fund the developments.¹⁴⁴

The Hope VI Program has generated considerable criticism.¹⁴⁵ While some critical claims are debatable, such as questioning the effectiveness of the mixed-income model,¹⁴⁶ one fact is clear—

The future of Hope VI is uncertain. The fiscal 2007 budget that President Bush sent to Congress has no money for HOPE VI and would rescind \$99 million in unobligated prior-year funds. Natl. Affordable Hous. Mgt. Assn., *2006 Legislative Priorities 2*, <http://www.nahma.org/content/Talking%20Points%20For%20Hill%20Visits%20March%2006.doc> (accessed Dec. 30, 2006).

143. HUD, *HOPE VI Revitalization Grants*, http://www.hud.gov/offices/pih/programs/ph/hope6/grants/revitalization/rev_grants_all.pdf (last updated Mar. 2006).

144. 42 U.S.C. § 1437v; see also 24 C.F.R. § 941.600 (stating that a PHA can use a combination of private financing and public housing development funds to develop public housing).

145. E.g. Michael S. FitzPatrick, Student Author, *A Disaster in Every Generation: An Analysis of HOPE VI: HUD's Newest Big Budget Development Plan*, 7 Geo. J. Pov. L. & Policy 421 (2000); Natl. Hous. L. Project et al., *False HOPE: A Critical Assessment of the HOPE VI Public Housing Redevelopment Program* 7–14, <http://www.nhlp.org/html/pubhsg/FalseHope.pdf> (June 2002) [hereinafter *False Hope*]; *When Hope Falls Short: HOPE VI, Accountability, and the Privatization of Public Housing*, 116 Harv. L. Rev. 1477 (2003); but see Larry Buron, *An Improved Living Environment? Neighborhood Outcomes for HOPE VI Relocates*, http://www.urban.org/UploadedPDF/311059_Roof_3.pdf (Sept. 2004) (finding that HOPE VI relocates generally moved to neighborhoods with lower levels of poverty, slightly more racial diversity, and significantly less criminal activity); Patrick E. Clancy & Leo Quigley, *HOPE VI: A Vital Tool for Comprehensive Neighborhood Revitalization*, 8 Geo. J. Pov. L. & Policy 527 (2001) (describing HOPE VI in more favorable terms and suggesting ideas for improvement). The popular press, which tends to focus on new investment dollars used to replace badly deteriorated properties, has often described HOPE VI projects in favorable terms. E.g. Sherri Day, *Rebuilding to Blend in*, St. Pete. Times 1 (Apr. 15, 2005); *This Program Works*, Hartford Courant A8 (Oct. 17, 2005); Diana Nelson Jones, *Manchester Is Called a Housing Success Story*, Pittsburgh Post-Gazette B1 (Sept. 21, 2005); Ilene Lelchuk, *They Don't Call the Project Outta Control Anymore: Success of Renewal Using HOPE VI Is Evident All Around* A9 (Mar. 28, 2005).

146. See *False Hope*, *supra* n. 145, at 12 (stating that there is no substantial evidence that mixing low-income tenants with higher-income tenants has a positive effect on employment or education); Susan J. Popkin et al., *The Gautreaux Legacy: What Might Mixed Income and Dispersal Strategies Mean for the Poorest Public Housing Tenants?* 11 Hous. Policy Debate 911, 928 (noting the lack of evidence that people of different socio-economic classes will interact even if they live in the same neighborhood); Alex Schwartz & Kian Tajbakhsh, *Mixed-Income Housing: Unanswered Questions*, 3 Cityscape: J. Policy Dev. & Research 71, 81 (1997) (concluding that more research is necessary to determine the effects of mixed-income public housing).

Hope VI has resulted in a diminished number of low-income public housing units.¹⁴⁷ When new units are constructed under the HOPE VI Program through revitalization grants, the number of rental public housing units on the HOPE VI site is reduced on average by fifty-five percent.¹⁴⁸ HUD has also awarded 217 Hope VI grants specifically for the purpose of demolishing more than 57,000 public housing units.¹⁴⁹ In 2005, the National Housing Law Project estimated that between 1996 and 2005 the Hope VI Program had resulted in a net loss of over 109,000 units.¹⁵⁰ By early 2006, that number seemed to have increased further to over 114,000 units.¹⁵¹ Furthermore, when units are revitalized, public housing families are often largely excluded from the new housing constructed on the site of their former homes.¹⁵²

Other major criticisms of Hope VI include that public housing residents have been largely excluded from participation in the Hope VI process,¹⁵³ that HOPE VI development appears to have shifted in focus away from the “most” severely distressed public housing sites towards smaller sites that may be more attractive for private investors,¹⁵⁴ and that HUD’s reporting of Hope VI out-

147. *E.g. False Hope*, *supra* n. 145, at 24 (citing Miami-Dade County Housing, *1999 HOPE VI Grant Application*, Ex. A (May 17, 1999)) (involving demolition of 850 public housing rental units to be replaced with only 80 units of rental public housing and 382 homeownership units of various other kinds).

148. Natl. Hous. L. Project, *Survey of the Proportion of Family Public Housing Rental Units Included in HOPE VI Revitalization Sites: FY 1998, 1999, 2000 Awards*, 31 Hous. L. Bull. 29, 45 (Feb. 2001).

149. HUD, *HOPE VI Demolition Grants: FY 1996–2003*, http://www.hud.gov/offices/pih/programs/ph/hope6/grants/demolition/2003master_dem.pdf (Oct. 2004).

150. Janet Zink, *Can Urban Renewal Magic Be Duplicated in Tampa?* St. Pete. Times 1B (Oct. 2, 2005).

151. This number was calculated by comparing (1) HUD’s 1996 “Picture of Subsidized Households” data from 1995 and 1996, <http://www.huduser.org/datasets/assthsq/statedata96/hud2us3.txt> (accessed Feb. 22, 2006), which lists a total of 1,326,224 public housing units, and (2) HUD’s on-line “Access Resident Characteristics Report” database <http://www.hud.gov/offices/pih/systems/pic/50058/rcr/index.cfm> (accessed Feb. 22, 2006), which lists a total of 1,212,084 public housing units as of January 31, 2006. This is the same method used by the National Housing Law Project. Ltr. from Todd Espinoza, Natl. Hous. L. Project, to Julie E. Levin (Feb. 17, 2006) (copy on file with Authors)).

152. *False Hope*, *supra* n. 145, at 23 (citing KPMG Constructing, LLC, *HOPE VI National Aggregate Summary for 1QFY00* (2000), which indicates that for the period 1993 through 1999 “only 2,568 (11.4 percent) of the total 22,500 displaced public housing residents were slated for ‘re-occupancy’ in HOPE VI sites after development”).

153. *False Hope*, *supra* n. 145, at 17.

154. U.S. Gen. Acctg. Off., *HOPE VI: Progress and Problems in Revitalizing Distressed Public Housing* 25, <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140>

comes is inadequate.¹⁵⁵ Furthermore, HUD has not issued any programmatic regulations for HOPE VI. The HOPE VI projects are controlled by the individual contracts and the Notice of Funding Availability for the respective grant process.

Despite these criticisms, HAKC's Hope VI experience has been a good one.¹⁵⁶ HAKC utilized HOPE VI grants to renovate three of its developments—Guinotte Manor, Theron B. Watkins, and Heritage House. In marked contrast to other cities, HAKC used Kansas City's Hope VI grants to demolish developments without causing a substantial reduction in the number of low-income public housing units.¹⁵⁷ In furtherance of the District Court's Receivership Order requiring the preservation of HAKC's assets, counsel for the *Tinsley* plaintiffs and the Receiver agreed that all demolished units would be replaced. Nor were the residents excluded from participation in the planning and development of the new units. The partnership that the residents and HAKC created under the receivership enabled the residents and plaintiffs' counsel to negotiate relocation plans and rehousing agreements for each development that received Hope VI funding.¹⁵⁸ The rehousing agreements guaranteed the right for residents to return to the newly renovated or constructed public housing units as long as they had remained residents in good standing.¹⁵⁹ Additionally, residents played an active role in every aspect of developing the new units. At each Hope VI development, committees were established comprised of residents and plaintiffs'

.64.88&filename=rc98187.pdf&directory=/diskb/wais/data/gao (July 1998); see also *Audit Report*, *supra* n. 138, at 71 (clarifying that HUD claims that the HOPE VI projects are severely distressed but may not be the most severely distressed).

155. *False Hope*, *supra* n. 145, at 31.

156. For a discussion of various indicators of positive and negative neighborhood changes for one HAKC HOPE VI development and similar developments in other cities, see U.S. Gen. Acctg. Off., *Public Housing: HOPE VI Resident Issues and Changes in Neighborhoods Surrounding Grant Sites*, <http://www.gao.gov/new.items/d04109.pdf> (accessed Nov. 13, 2006).

157. Ctr. for Community Change, *supra* n. 113, app. A at 5; *HOPE VI Moves to the Suburbs*, 46 HOPE VI Dev. (2001) (available at http://www.housingresearch.org/hrf/HRF_News.nsf/982edc9f376438cd852569d0000d00b71/54ce71a879b3d9f685256a6c0072db3e?OpenDocument).

158. See *supra* nn. 107–110 and accompanying text.

159. See Lesley Long, *Transforming Public Housing: Park Avenue Residents Witness Power of Change on KC Tour*, *Missourian News G3* (Oct. 19, 2005) (noting that in Kansas City, after public housing was renovated, the prior residents had first right of refusal on the new homes).

counsel to provide input into relocation, rehousing, neighborhood revitalization, architectural design, interior design, resident and social service programs, capacity building of the tenant association, and Section 3 job opportunities¹⁶⁰ for residents to gain employment in the construction of their housing.¹⁶¹ This extensive resident participation contributed greatly to the success of the Hope VI program in Kansas City.

Under receivership, HAKC also proceeded with other creative property-enhancing endeavors. In one development, HAKC used a design/build contract to complete ninety-two replacement units scattered throughout the city. HAKC entered into a mixed-finance redevelopment venture with a private real estate firm to redevelop HAKC's Pennway site as mixed-income housing, including market-rate, tax-credit, and public housing units.¹⁶² HAKC entered into a mixed-finance partnership with another private developer to build replacement units in another mixed-income development, including fifty-nine units for the elderly and ten family units of public housing.¹⁶³

Moreover, HAKC has prospered under receivership, progressing from a housing authority with a HUD rating¹⁶⁴ of 17.95 (on a 100 point scale) at its low point in 1993,¹⁶⁵ to ratings in the low 90s during the last four years.¹⁶⁶ In 2001, a Post-Receivership Governance Advisory Committee was formed to formulate a plan

160. See 24 C.F.R. § 135 (2005) (regulations implementing Section 3 of the Federal Housing Act of 1968, 42 U.S.C. 3601 (2000)).

161. See text accompanying nn. 107–125 (describing the role the residents played in the redevelopment of public housing).

162. Long, *supra* n. 159 (explaining that Villa Del Sol, formerly Pennway Plaza, was “HUD’s first successful development of mixed-finance, mixed-income public housing”).

163. HUD, *Housing Authority of Kansas City, Missouri PHA Plans* 8, <http://www.hud.gov/offices/pih/pha/approved/pdf/05/mo002v03.pdf> (accessed Mar. 28, 2006).

164. Prior to 2002, HUD rated PHAs using a system known as Public Housing Management Assessment Program (PHMAP). In 2002, this evolved into a new system, the Public Housing Assessment System (PHAS). See *infra* nn. 173–204 and accompanying text (explaining HUD’s system for evaluating public housing agencies).

165. See Special Master’s Report on the Status of the Housing Authority’s Compliance with Consent Decree, *Tinsley*, No. 89-0023-CV-W-1. Magistrate Judge Larsen identified this as the lowest score of any housing authority in the United States. See also Bill Norton, *A Housing Agency in Chaos*, Kan. City Star A1 (Mar. 28, 1994) (describing HAKC as “a leaky boat sinking in a sea of cash”; “[n]ever in its history has the authority had so much to spend: More than \$106 million to manage the agency But because of mismanagement and staff turnover, it’s never been in worse shape”).

166. See *infra* n. 209 (explaining that HUD adjusted HAKC’s original score of 89 to 90).

to transition HAKC out of receivership and back under the oversight of a board of commissioners. This Advisory Committee included representatives from HUD, HAKC, the PHRC, plaintiffs' counsel, and the city. This Committee established qualifications and standards for board members. It also recommended legislation to require the training of board members and to provide board members with a small stipend to defray the cost of active participation on the board.¹⁶⁷ The Advisory Committee interviewed numerous candidates for board membership and recommended certain candidates to the mayor for appointment. In 2002, seven new board members were selected, six of whom were appointed by the mayor, while the residents elected the tenant representative board member.¹⁶⁸ While this Board has acted independently, HAKC is still under receivership, and the Receiver holds the power to overturn certain decisions of the Board.¹⁶⁹ Thus far, this has not happened. The HAKC Board consists of very active members of the community who are dedicated to providing excellent, affordable housing to the poor. This Board is a vast improvement over the pre-receivership boards. Previously, board members were selected by the mayor, and these appointments were typically political favors.¹⁷⁰ HAKC board members of the past were notorious for helping friends get contracts and securing jobs for friends and family.¹⁷¹ The new Board, by statute¹⁷²

167. Mo. Rev. Stat. § 99.134(7) (2002).

168. See *id.* (stating that there shall be a board of seven members, six of which shall be appointed by the mayor and one who shall be elected by the residents).

169. See TAG Assoc. Inc., *Receivership of the Housing Authority of Kansas City, Missouri (September 1994 to Present)*, <http://www.tagassociatesinc.com/HUD.html> (accessed Mar. 26, 2006) (explaining that the role of TAG Associates as a Receiver has changed to that of Special Master under which it retains oversight of the Board on certain matters).

170. See Tom Jackman & Jeffrey Spivak, *Housing Authority Put In Receivership*, Kan. City Star A1 (July 7, 1993) (reporting District Court Judge Whipple's comments of concern about "politics"; upon issuance of the receivership order, Judge Whipple instructed the new Receiver to "put a tape recorder on his phone, 'so you can record conversations by these so-called do-gooding politicians, claiming to help tenants when in fact they're helping themselves."); Rhonda Chriss Lokeman, Editorial, *Public Housing Problems Persist*, Kan. City Star C6 (July 8, 1993) (attributing HAKC problems to "years of politics . . . incompetence, chicanery, and crime which have tainted this authority and hurt tenants").

171. Lokeman, *supra* n. 170. There were also huge issues of incompetence or corruption. See Jackman & Spivak, *supra* n. 170 (reporting that \$1 million of the \$11.5 million dollars released by HUD was gone, and no one at HAKC could account for how it had been spent).

172. See Mo. Rev. Stat. § 99.134(7) (requiring a Nominating Committee to provide names of prospective board members to the mayor).

and through the oversight of the court, is protected from such political interference.

IV. HUD EVALUATION OF PUBLIC HOUSING AGENCIES

With the federal government making a substantial investment in public housing, it is only natural that there should be a process for evaluating the PHAs that are responsible for the management of these resources. Such programs that involve the local administration of federal funds “pose the administrative challenge of ensuring effective management while permitting local discretion.”¹⁷³ HUD performs an oversight function through a combination of regulation and monitoring. HUD specifies in regulations how PHAs must act in administering the programs through which the federal government subsidizes public housing.¹⁷⁴ HUD field staff, located in offices throughout the country, handle monitoring. These field staff reviewers visit the PHAs, inspecting units and reviewing documents.¹⁷⁵ During the 1980s, HUD instituted a “risk assessment” approach to monitoring, designed to focus HUD’s limited staff resources on the PHAs most likely to have problems.¹⁷⁶ Around 1987, HUD extended this approach with a Decontrol Program, which reduced the level and frequency of on-going monitoring of PHAs that were determined to be “well-performing” based on management criteria.¹⁷⁷ The Decontrol Program was successful in focusing resources on the PHAs that were at high risk of mismanagement, but an audit by the Inspector General uncovered fraud in some PHAs that had previously been labeled good performers.¹⁷⁸ This led to suspension of the Decontrol Program and the initiation in 1992 of the Public Housing Management Assessment Program (PHMAP).¹⁷⁹ PHMAP

173. HUD, *Management Case Study: Public Housing Management Assessment Program* 3, <http://govinfo.library.unt.edu/npr/library/studies/casehuda.pdf> (accessed Dec. 27, 2006) [hereinafter *HUD Management Case Study: PHMAP*].

174. *Id.* at 5.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*; see 24 C.F.R. at §§ 901–902 (detailing PHMAP and PHAS). “PHMAP was authorized by Section 502 of the National Affordable Housing Act (NAHA) of 1990.” *HUD Management Case Study: PHMAP*, *supra* n. 173, at 6.

involved an assessment of performance indicators related to several aspects of public housing management:

1. Vacancy rate and unit turnaround time;
2. Modernization;
3. Uncollected rents;
4. Work orders;
5. Inspection of units and systems;
6. Financial management;
7. Resident services and community building; and
8. Security.¹⁸⁰

These indicators and their sub-components were given different weights in compiling an overall PHMAP score.¹⁸¹ The data to support PHMAP came from the PHA management systems, which were certified by the PHAs.¹⁸² The final analysis produced a PHMAP score on a 100-point scale for each PHA. PHAs that scored ninety percent or higher were considered to be high performers. Those that scored between sixty and ninety percent were considered standard, and those that scored below sixty percent were considered to be troubled.¹⁸³ Questions existed about the reliability of data and the validity of PHMAP scores,¹⁸⁴ especially given incentives of PHA management—who were responsible for producing and certifying their own data—and incentives that may have been related to the workload of HUD field staff.¹⁸⁵

In 2000, HUD responded to concerns and criticisms of PMHAP by creating a new evaluation system which was imple-

180. 24 C.F.R. at §§ 901.10-901.45.

181. *HUD Management Case Study: PHMAP*, *supra* n. 173, at 8.

182. *Id.*; 24 C.F.R. § 901.100.

183. *HUD Management Case Study: PHMAP*, *supra* n. 173, at 12; 24 C.F.R. § 901.115. Based on data available in 1996, among the thirty-two largest PHAs (4,000 or more units), forty-one percent were “high performers,” forty-one percent “standard,” and eighteen percent “troubled.” Among the next ninety-six PHAs (1,250 to 3,990 units), forty-two percent were “high performers,” fifty-five percent “standard,” and three percent “troubled.” The smaller categories of PHAs had over fifty percent “high performers” and small percentages in the “troubled” category (two to six percent). *HUD Management Case Study: PHMAP*, *supra* n. 173, at 12–13.

184. *HUD Management Case Study: PHMAP*, *supra* n. 173, at 14.

185. *Id.* at 14–15.

mented in 2002—the Public Housing Assessment System (PHAS).¹⁸⁶ The new system scored PHA performance according to four indicators:

1. Physical Condition¹⁸⁷ (provision of housing that is decent, safe, sanitary, and in good repair; evaluated, for example, by inspecting for compliance with building and sanitation standards);¹⁸⁸
2. Financial Condition¹⁸⁹ (sufficiency of financial resources and the ability to effectively manage them; evaluated by analyzing financial condition components such as the average number of days tenant receivables are outstanding; expenses per unit of utilities, maintenance, and security; and the availability of expendable funds);¹⁹⁰
3. Management Operations¹⁹¹(evaluated by analyzing management sub-indicators such as vacancy rates, unit turnaround time, number and age of outstanding work orders, security/crime problems, and promotion of the economic self-sufficiency of residents);¹⁹² and
4. Resident Service and Satisfaction¹⁹³ (evaluated by a resident survey focusing on issues such as maintenance and repair, safety, perceived effectiveness of management communication, and provision of services, and by the level of implementation and follow-up or corrective actions based on the results of the survey).¹⁹⁴

Though organized differently, the first three indicators address a number of the same matters covered in the predecessor PMHAP assessment. PMHAP, however, was based on self-certified PHA

186. 24 C.F.R. § 902.

187. *Id.* at §§ 902.20–902.27.

188. *Id.* at § 902.25.

189. *Id.* at §§ 902.30–902.37.

190. *Id.* at § 902.35.

191. *Id.* at §§ 902.40–902.47.

192. *Id.* at § 902.45.

193. *Id.* at §§ 902.50–902.55.

194. *Id.* at § 902.53.

information;¹⁹⁵ PHAS requires independent physical inspection of a statistically valid sample of housing units¹⁹⁶ and audited financial statements.¹⁹⁷ The fourth indicator, resident service and satisfaction, is entirely new under PHAS. Under PHAS, each of the many facets of the indicator is measured and then summed and manipulated to produce an overall score on a 100-point scale for each of the four indicators. A final PHAS score on a 100-point scale consists of a weighted average of the four indicator scores.¹⁹⁸

A PHA will be designated as a “high performer” if it receives a score of at least sixty on each of the four indicators and an overall PHAS score of at least ninety.¹⁹⁹ “High performers” are afforded incentives such as bonus points in funding competitions and less monitoring (but not relief from the required independent audits).²⁰⁰ A PHA that does not qualify as a “high performer” will be designated as a “standard performer” if it receives at least a sixty on the overall PHAS score and on each of the physical-condition, finance, and management indicators.²⁰¹ “Standard performers” must take action to correct reported deficiencies, and if their overall score is less than seventy, the PHA is at risk of being identified as troubled and must submit an improvement plan to correct certain identified deficiencies.²⁰² A PHA that receives an overall PHAS score of less than sixty or receives a score of less than sixty on more than one of the physical-condition, finance, or management indicators will be designated as “overall troubled.”²⁰³ A PHA may be just “troubled in one area,” if it achieves a score of less than sixty percent for only one of these same three PHAS indicators.²⁰⁴

195. *Supra* n. 182 and accompanying text.

196. 24 C.F.R. at § 902.20.

197. *Id.* at § 902.33.

198. Thirty points are based on the physical condition indicator score. *Id.* at § 902.27. Thirty points are based on the financial condition indicator score. *Id.* at § 902.37. Thirty points are based on the management operations indicator score. *Id.* at § 902.47. Ten points are based on the resident service and satisfaction indicator score. *Id.* at § 902.55.

199. *Id.* at § 902.67(a)(1).

200. *Id.* at §§ 902.67(a)(3), 902.71.

201. *Id.* at § 902.67(b).

202. *Id.* at § 902.67(b)(3)–(4).

203. *Id.* at § 902.67(c)(1).

204. *Id.* at § 902.67(c)(2).

According to federal regulations, HUD is to “publish every PHA’s score and status in the Federal Register and on HUD’s internet site.”²⁰⁵ An exhaustive search of both of these resources by the Authors yielded no such information. HUD, acknowledging that this information was not published as indicated in the regulations, fulfilled the Authors’ request to furnish the Authors such information for the 100 largest PHAs. This data appears in the appendix to this Article. The 100 largest PHAs range in size (based on number of housing units) from the New York City Housing Authority with 159,677 units to the Youngstown Metropolitan Housing Authority with 1,545 units.²⁰⁶ HAKC ranks seventy-seventh in size.²⁰⁷ The latest available overall PHAS scores for these 100 largest PHAs range from a low of thirty-five to a high of ninety-six.²⁰⁸ Thirty-two of these 100 PHAs have achieved the designation of “high performer,” and HAKC is included in this group.²⁰⁹ Fifty-two achieved the designation “standard performer.”²¹⁰ Five have scores placing them in the “overall troubled” category, and five others are “troubled in one area” (three in the area of physical condition, and two in the area financial condition).²¹¹ HUD did not list current PHAS scores for six of these PHAs. For these six, the list includes a score from an earlier year and displays a designation of “advisory.”²¹² The reason for this is that these PHAs are “Moving to Work” programs, and are permitted to seek exemption from many public housing rules and regulations.²¹³ Among this group of 100 largest PHAs, while one might

205. *Id.* at § 902.63(e).

206. *Infra* app. (listing PHAS scores and total dwelling units for the 100 largest PHAs).

207. *Id.*

208. *Id.*

209. *Id.* Although the HUD list shows a rating of 89 for HAKC, according to HAKC, HUD adjusted this score after HAKC’s audited statements were submitted. The adjusted score was rounded to a 90. E-mail from Edwin Lowndes, Exec. Dir., HAKC, to Julie E. Levin, *HAKC PHAS Scores* (Jan. 26, 2006) (copy on file with *Stetson Law Review*). This seems consistent with the listed designation of “high performer.”

210. *Infra* app.

211. *Id.*

212. *Id.*

213. 42 U.S.C. § 1437f. A “Moving to Work” designation allows a PHA considerable flexibility in using its federal funds. For example, Moving to Work PHAs are permitted to combine their operating subsidies and modernization funds for development uses. The program also enables PHAs to create incentives for families to become economically self-sufficient, to reduce the cost of housing assistance, and to increase housing choices for low-income households. *Id.*

anticipate that the larger PHAs would be the most troubled and difficult to manage, that does not seem to be the case. For example, the New York City Housing Authority is by far the largest, and it has a PHAS score of ninety, and there are other very large PHAs that are “high performers” (e.g. Atlanta, Los Angeles).²¹⁴ While there may be, among this group of 100 largest PHAs, a slight proclivity for the PHAS scores to be inversely related to the size of the PHA, it is not a statistically significant relationship.²¹⁵

A question of interest is the relative performance of PHAs, such as HAKC, that have been managed by receivership. Without considerably more data than is now readily available, including, for example, the amount of money devoted to maintaining and improving the various PHAs, one cannot attempt to assess the efficacy of use of resources and receivership management. Nevertheless, by comparison to the other severely distressed large urban PHAs that have been placed in receivership—Boston, Chicago, District of Columbia, and New Orleans²¹⁶—HAKC seems to have fared well; indeed, it has the highest current PHAS scores from this group—a score of eighty-nine and a fraction, ultimately revised and rounded to ninety.²¹⁷ Both the District of Columbia and Boston PHAs are close to HAKC in performance, with PHAS scores of eighty-eight and eighty-five respectively.²¹⁸ These three were all involved in judicial receiverships.²¹⁹ The Chicago Housing Authority has no new score since 2001. At that time its PHAS score was sixty-five, and the New Orleans 2005 PHAS score (which predates the devastation of Hurricane Katrina) was fifty-

214. *Infra* app.

215. The correlation is -0.0125.

216. *Infra* app.

217. *Supra* n. 209.

218. *Infra* app. The District of Columbia PHA has improved since the termination of its receivership in 2000 when its PHAS score was seventy-two. Similar comparative data is not available for the Boston PHA since there was no comparable rating system when its receivership terminated in 1990. See U.S. Gen. Acctg. Off., *Public Housing: Information on Receiverships at Public Housing Authorities* 15 (U.S. Gen. Acctg. Off. 2003) (available at <http://www.gao.gov/cgi-bin/getrpt?GAO-03-363>) [hereinafter *GAO PHA Receivership Report*].

219. *GAO PHA Receivership Report*, *supra* n. 218, at 7. The fourth, smaller PHA that is under a judicial receivership—Chester, Pennsylvania—also seems to be very successful. Its PHAS scores have risen from thirty-five (when the receivership began) to a recent high of ninety-six. See Chester Hous. Auth., *A Message from the Receiver* ¶ 6, <http://www.chesterhousingauthority.org/current/index.html> (accessed Feb. 8, 2006).

eight. Both of these PHAs were under administrative receiverships.²²⁰

*V. HUD INTERVENTION REGARDING "TROUBLED" PUBLIC
HOUSING AGENCIES AND THE SIMILAR
JUDICIAL RECEIVERSHIPS*

A "troubled" status subjects a PHA to intensive monitoring and requires the PHA to enter into a Memorandum of Agreement with HUD specifying strategies that must be followed and achievements that must be met.²²¹ Failure to fulfill the responsibilities of the Memorandum of Agreement (including, for example, failure to show a substantial improvement) will result in HUD initiating an intervention necessary to maintain decent, safe, and sanitary dwellings, possibly including the extreme measures of placing the PHA under an administrative receivership or pursuing the judicial appointment of a receiver.²²² This would typically entail replacing top management of the PHA and dissolving its board.²²³

The United States General Accounting Office (GAO) reported on the experience of PHA receiverships through the end of 2002.²²⁴ At that time, HUD had placed eleven PHAs in administrative receivership.²²⁵ Most of these predated the statutory mandate that required "troubled" PHAs be placed in receivership.²²⁶ Eight of these administrative receiverships involved PHAs with problems in the physical condition of dwelling units; three involved racial segregation.²²⁷ The physical problems were more

220. *GAO PHA Receivership Report*, *supra* n. 218, at 6. For additional evaluative discussion of these judicial and administrative receiverships, see *infra* notes 224–246 and accompanying text.

221. 24 C.F.R. § 902.75; *HUD Management Case Study: PHMAP*, *supra* n. 173, at 16.

222. 42 U.S.C. § 1437d(j); 24 C.F.R. §§ 902.75(g), 902.77(a)(2), 902.83. For a PHA with at least 1,250 units, HUD must seek a court-appointed receiver. 42 U.S.C. § 1437d(j)(3)(B)(III)(aa). Through an administrative receivership, HUD has the authority to take possession of all or part of the PHA's operations. *Id.* at § 1437d(j)(3)(A)(iv).

223. *GAO PHA Receivership Rpt.*, *supra* n. 218, at 5.

224. *Id.* at 6–7.

225. *Id.*

226. See Pub. L. No. 105-276, 112 Stat. 2461 (1998) (codified and amended as 42 U.S.C. § 1437d).

227. *GAO PHA Receivership Report*, *supra* n. 218, at 8. An example was the Lafayette (La.) PHA whose management maintained waiting lists based on race, ensuring that its developments were segregated. *Id.*

severe in the large and very large PHAs.²²⁸ The GAO Report also addressed the four court-appointed receiverships that HUD had not initiated, including *Tinsley/HAKC*. The histories and problems of these PHAs were all very similar to HAKC. All had properties in very poor physical condition, high vacancy rates, long waiting lists, deteriorated surrounding neighborhoods, and elevated crime rates.²²⁹ In all of the judicial receiverships and some of the administrative receiverships, the receiver took action to redevelop or rebuild a substantial portion of the housing inventory of the PHA.²³⁰ Notably, the HAKC Receiver took the extraordinary action of either rebuilding or rehabilitating every unit.²³¹

The GAO concluded that whether under administrative or judicial receivership, nearly all of the fifteen PHAs showed improvement during their time under receivership.²³² While PHAs performance scores for the four PHAs under judicial receivership had all reached and remained at high levels, some PHAs under administrative receiverships continued to experience problems such as poor physical condition of units and high turnover among managers.²³³ The eight PHAs for which a sufficient number of performance scores were available showed a median increase in the overall performance score of about twenty-seven percent after two years under receivership and approximately forty-one percent after three years.²³⁴ HAKC's scores increased from approximately eighteen to sixty-one (a 339% increase) after two years under receivership and had reached seventy-five (a 417% increase) by the third year.²³⁵ Of course, starting with the extremely low PHMAP

228. *Id.* at 16. HUD classifies PHAs based on size as follows: very large, more than 6,599 units; large, 1,250 to 6,599 units; medium, 500 to 1,249 units; small, 100 to 499 units; very small, less than 100 units. *Id.* at 22.

229. *Id.* at 9.

230. *Id.* at 11.

231. *Id.*

232. *Id.* at 12.

233. *Id.*

234. *Id.* at 13.

235. E-mail, *supra* n. 209. The GAO report indicates a beginning score for HAKC of 51.46. *GAO PHA Receivership Report*, *supra* n. 218, at 15. This does not square with HAKC's own records, which show a score (rounded to the nearest whole number) of thirty-five in 1992, eighteen in 1993, and forty-four in 1994. E-mail, *supra* n. 209. HAKC was placed in judicial receivership in 1993. *GAO PHA Receivership Report*, *supra* n. 218, at 7. The GAO reported scores for 1995 and 1996 (upon which the GAO reported second- and third-year improvements were based) are the same as those in HAKC records. *Id.* at 15; e-mail, *supra* n. 209. Using the GAO beginning score of 51.46 yields a calculated improve-

performance score of eighteen allowed a great deal of room for improvement. Nevertheless, attaining a score of seventy-five after three years (by 1996) is a considerable accomplishment. In subsequent years, HAKC performance scores continued to rise to a high of ninety-three for 2001 through 2003 and a 2004 score of ninety.²³⁶

HUD and PHA officials identified poor management, corruption, and local political influence as the underlying causes of the problems of the PHAs that have been placed in receivership.²³⁷ The GAO reported that housing experts and officials of housing authorities indicated that, although the legal authority of administrative and judicial receiverships are the same, the court-appointed receivers may be more effective because they are more insulated from local politics.²³⁸ HUD, in a follow-up comment to the GAO report, expressed a belief that judicial receiverships are more costly than administrative receiverships and stated a desire for further analysis of the differences in the two types of receiverships.²³⁹

A receivership can be terminated when the defaults have been cured and the PHA's management can sustain the improvements.²⁴⁰ Judicial receivership terms are, of course, determined on a case-by-case basis, and the decision when to terminate is ultimately made by the judge.²⁴¹ As of the GAO report in 2003, four administrative and two judicial receiverships had been terminated.²⁴² Since then, two additional administrative receiverships have been terminated.²⁴³ The duration of the terminated administrative receiverships has ranged from one and one-half years to

ment of eighteen percent after two years under receivership and forty-five percent after three years. *GAO PHA Receivership Report*, *supra* n. 218, at 7; e-mail, *supra* n. 209.

236. *See supra* n. 209 (discussing HAKC's 2004 PHAS score).

237. *GAO PHA Receivership Report*, *supra* n. 218, at 9.

238. *Id.* at 10.

239. *Id.* at 20.

240. 24 C.F.R. § 902.83(d).

241. *Id.*

242. *GAO PHA Receivership Report*, *supra* n. 218, at 6–7.

243. Hous. Auth. City of Beaumont, Tex., *U.S. Department of Housing & Urban Development Returns Beaumont Housing Authority to Local Control*, <http://www.bmtha.org/news06.04.04.htm> (accessed May 9, 2006). The Orange County Housing Authority (Tex.) in October 2004 was dissolved and merged with the Housing Authority of the City of Beaumont (Tex.) and the Housing Authority of Orange City (Tex.). Telephone interview with Hous. Auth. City of Beaumont, Tex. (Feb. 27, 2006.)

over seven years.²⁴⁴ Also, since the 2003 GAO report, a small number of other PHAs have been placed in administrative receivership.²⁴⁵ The two terminated judicial receiverships—Boston and District of Columbia—lasted eleven and five years, respectively.²⁴⁶ HAKC is now operating in its thirteenth year of receivership, and there is no anticipated date for its termination.²⁴⁷

VI. CONCLUSION

Many criteria may be considered in evaluating the strength and success of a PHA. HUD's PHAS evaluation system represents a recognized and convenient benchmark. By this measure, HAKC has made enormous progress under receivership and now ranks among the top-performing large housing authorities in the country. The HAKC PHMAP/PHAS scores improved from a low of 17.95 out of 100 in 1993 to consistent scores in the low 90s for the last few years.²⁴⁸ Other measurements further confirm HAKC's success. For example, in 1994,²⁴⁹ the Agency had an inventory of 1,836 dwelling units, of which approximately fifty percent were uninhabitable and vacant.²⁵⁰ During that period of time, HAKC's

244. *GAO PHA Receivership Report*, *supra* n. 218, at 6–7.

245. The Virgin Islands Housing Authority was placed in an administrative receivership in August 2003, and the City of Sarasota Housing Authority (Fla.) was placed in an administrative receivership in April 2005. Three other small PHAs, Shelby County Housing Authority (Tenn.), Riviera Beach Housing Authority (Fla.), and Sanford Housing Authority (Fla.), are also now under administrative receivership. Donna White, *HUD Takes Over Sarasota Housing Authority, Appoints Receiver*, HUD News Release No. 05-046 (Apr. 12, 2005) (available at <http://www.hud.gov/news/release.cfm?content=pr05-046.cfm>).

246. *GAO PHA Receivership Report*, *supra* n. 218, at 7.

247. The fourth judicial receivership—Chester (Pa.) Housing Authority—appears to be nearing completion after twelve years. According to Robert Rosenberg, the Chester receiver, the Chester Housing Authority “is ready to take the next critical steps toward again being an independent local agency with a permanent Executive Director and Board of Commissioners.” Robert Rosenberg, *Chester Housing Authority: A Message from the Receiver*, <http://www.chesterhousingauthority.org/current/message.html> (accessed May 9, 2006).

248. See e-mail, *supra* n. 209 (listing HAKC's PHMAP/PHAS scores for 1992–2004).

249. The nadir for HAKC was actually 1992–1993, before the receivership commenced. At that time, however, the organization was in such disarray that there are no reliable records. Consequently, many of the figures reported here are for 1994.

250. E-mail from Edwin Lowndes, Exec. Dir., HAKC, to Julie E. Levin, *HAKC Statistics* (Feb. 27, 2006). Previously, HAKC had as many as 2,058 units of low-income housing. *Id.* During 1993, 222 units of Pennway Plaza were demolished, as the property was uninhabitable. *Id.*

vacancy rate was the second worst in the nation.²⁵¹ Today, HAKC has 1,899 units, with an average of only two percent vacant.²⁵² During a period of time when the number of low-income housing units has been in steady decline nationally,²⁵³ HAKC has achieved a net increase of sixty-three public housing units.²⁵⁴ In addition, HAKC has increased its inventory of scattered site units located in non-racially and non-economically impacted areas by over 350.²⁵⁵ HAKC has also developed an additional 460 low-income housing tax-credit units with private owners.²⁵⁶ An additional twenty-one public housing units will be put into service within the next eighteen months for a total inventory of 1,920 public housing units.²⁵⁷

The length of the waiting list for HAKC's public housing may also serve as an indicator of the strength of the housing stock and the reputation of its management. In 1994, fewer than 700 families were on the HAKC public housing waiting list;²⁵⁸ today there are 3,700.²⁵⁹ In 1994, there were fewer than 1,200 families on the HAKC Section 8 waiting list;²⁶⁰ today there are over 9,100.²⁶¹ The number of reported crimes at HAKC public housing developments declined forty-two percent between 1994 and 2005.²⁶² There were over 4,637 open work orders at the end of 1994, with an average of twenty days to complete a work order.²⁶³ At the end of 2005, there were 2,000 open work orders, and the completion time averaged 2.27 days.²⁶⁴ In 1994, HAKC charged approximately \$725,000 in rent and collected eighty-five percent of the rent charged.²⁶⁵ In 2005, HAKC charged over \$3,159,000 in rent and

251. Jeffrey Spivak, *Public Housing's Rise and Fall*, Kan. City Star B1 (July 11, 1993).

252. E-mail, *supra* n. 250.

253. *Id.*

254. *Id.* HAKC had actually increased the number of habitable units by a net amount of 981, which constitutes a fifty-three percent increase in habitable units. *Id.*

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.*

collected over ninety-three percent of the rent charged.²⁶⁶ In 1994, the average time to turn a unit from vacant to occupied was 263 days; in 2005, the average was 30 days.²⁶⁷

There is value in attempting to understand the combination of factors and ingredients that led to this record of achievement in order to sustain it and possibly to replicate the experience in other communities. This task, however, is not an easy one. There are innumerable variables at play, and important comparative data, such as the amount of money available to different PHAs to develop new properties and to support operations, is not readily available. HUD is in control of this complex financial data, and it is best positioned to engage in such an economic evaluative endeavor. The best we can do in this Article is to provide an account of the history of public housing in Kansas City and share potentially relevant observations and thoughts.

The private market—without subsidy, support, or incentive—has not met the need of supplying a sufficient volume of decent, safe, and sanitary housing by our nation's standards for persons of low income. This is substantiated by all of the housing studies, and it is reflected in the long waiting lists for the million plus units of basic, no-frills dwelling units in public housing. Simply put, there is a mismatch between the cost of providing minimally suitable housing and the incomes of the poor citizens of our nation. This shortage of decent, safe, and sanitary housing exists even with present levels of subsidy, support, and incentive for private-market development. This is exemplified by the shortage of landlords who are willing to participate in the Section 8 program, by the long Section 8 waiting lists, and again by the insufficient number of dwelling units available at rental rates that low-income families can afford to pay. Thus, without dramatically different social and economic circumstances or some very different subsidy formulas, the need for public housing will continue.

The favored public housing paradigm of recent years has been the mixed-income and scattered-site approach to development. This often involves replacing high-density, high-rise structures with low-density “new urbanist” townhouse developments. This integrative approach seems sociologically attractive, and in a low-

266. *Id.*

267. *Id.*

density city such as Kansas City, it does bring public housing developments more into character with surrounding neighborhoods. Also, it provides socioeconomic integration, and to the extent that disproportionate members of racial minorities make up the low-income community, dispersing the low-income community can promote racial integration. This is illustrated in the distribution of public housing residents in the various Kansas City school districts. In 1994, ninety-six percent of the children of HAKC's leaseholders were educated in the racially and economically impacted Kansas City School District, which serves Kansas City's urban core.²⁶⁸ In 2005, only seventy-eight percent of the children of HAKC's leaseholders were educated in this district.²⁶⁹ Due to the location of newly constructed scattered site units, the remaining twenty-two percent received their education in non-racially and non-economically impacted areas.²⁷⁰ In other respects, however, scattered site development can be less than ideal. For example, many members of the low-income community need and want social service support; given their limited financial resources, it can be advantageous to provide this conveniently within a housing development. Thus, low-income residents often desire concentrated public housing that includes community facilities serving their unique needs. Similarly, locations that are convenient to public transportation and employment opportunities are highly desirable. In a sprawling, low-density city such as Kansas City, where there is also a weak public transportation system, scattering low-income residents throughout the community in both public and private housing can be an impediment to access to ancillary support services and employment opportunities. While HAKC has added scattered site properties and has reduced density in some developments, most of HAKC's housing development includes or is conveniently close to community facilities.

The model, or some might say "ideal," of housing mobility for low-income residents of public housing does not square with the reality of people living in public housing for long periods of time. The notion that special housing for low-income persons, such as

268. E-mail from John Monroe, Dir. Planning & Dev., HAKC, to Julie E. Levin, *HAKC Units by School District* (Feb. 24, 2006) (copy on file with *Stetson Law Review*).

269. *Id.*

270. *Id.*

public housing, is a short-term stopgap is a fallacy. While many residents of public housing improve their personal financial conditions and choose to move to other housing, large numbers of public housing residents are long-term residents.²⁷¹ Many members of the stable resident community are disabled and elderly, and there are able-bodied residents who simply do not achieve significantly improved personal finances. This is not a transient population; these residents are stakeholders with an interest in their homes and neighborhoods, and they should be afforded the opportunity for meaningful involvement in local public housing policy decision making and oversight. The residents and immediate neighbors are, for example, the first line of defense in identifying deteriorating housing conditions and security problems. One of the hallmarks of the HAKC receivership has been its working partnership with the residents of HAKC properties and surrounding neighborhoods.

The success of HAKC may, in large part, be a product of the individuals involved in its transformation. Jeff Lines, the president of TAG Associates (the longstanding HAKC court-appointed Receiver) has been tremendously influential. His substantial knowledge and expertise in public housing management and his resident-centered focus enabled the significant productive shift in culture at HAKC. The succession of prior HAKC board members and executive directors often lacked experience with public housing administration and policy.²⁷² Under the initial receivership, prior to the appointment of TAG Associates as Receiver, HAKC was in a state of chaos. A Kansas City Star editorial published six months after the imposition of the receivership described the Housing Authority as “still an absolute mess.”²⁷³ In the decade preceding the appointment of TAG Associates as Receiver, HAKC had twenty-one executive directors,²⁷⁴ nine of whom served subsequent to the time of the initial *Tinsley* consent decree.²⁷⁵ Court-

271. E-mail, *supra* n. 250. The average time a family stays in public housing in Kansas City is approximately 6.5 years. *Id.*

272. Lokeman, *supra* n. 170.

273. Rhonda Chriss Lokeman, Editorial, *Care for the Tenants*, Kan. City Star B4 (Dec. 20, 1993) (lamenting that judicial intervention is “straying” and that “despite the court’s expression of good intentions, not much has been done”).

274. Ruth E. Igoe, *The Case for Change*, Kan. City Star Mag. 12 (May 21, 2000).

275. *Around Kansas City*, Kan. City Star C2 (June 30, 1994).

appointed Special Master, Magistrate Judge Robert Larsen, in his annual report to the court at the end of 1993, emphasized that “the crucial need for a sophisticated executive director in a contemporary housing authority cannot be overstated.”²⁷⁶ Magistrate Larsen concluded his report by urging the court to appoint a permanent receiver.²⁷⁷ In 1994, the court launched its national search for a permanent receiver who would bring management and housing expertise to HAKC. An Advisory Committee screened seventeen bids for the receivership position.²⁷⁸ This process resulted in the appointment of TAG Associates as Receiver.²⁷⁹ TAG, under the leadership of its principal Jeff Lines, was able to turn chaos into productive order—a task at which a succession of many others had failed.

Judge Dean Whipple also displayed much compassion and concern for the low-income resident community. He was determined to reform HAKC and put an end to political influence on the agency. He has maintained his compassion and interest in HAKC’s progress throughout the years. He is often in attendance at HAKC functions, such as open houses, dedications, and annual resident/staff picnics. He facilitated the close involvement of the *Tinsley* plaintiffs’ counsel in monitoring HAKC. Plaintiffs’ counsel still devotes much time to negotiating policies and procedures and participating in frequent meetings with the Public Housing Resident Council, HAKC, and community leaders. Eugene Jones, Dallas Parks, and Edwin Lowndes, the three HAKC Executive Directors under the era of the TAG Receivership, shared Jeff Lines’ respect for resident participation and involvement. They have required their staff to partner with the residents in making decisions that affect them. Finally, resident leaders rose to the challenge to work closely with all of these individuals to transform their housing.

A lawsuit seeking to place a housing authority in a judicial receivership is normally viewed as an act of last resort. Yet a suit and judicial receivership may offer some advantages that are not

276. Special Master’s Report on the Status of the Housing Authority’s Compliance with Consent Decree at 15, *Tinsley*, No. 89-0023-CV-W-1.

277. *Id.* at 48.

278. Tom Jackman, *K.C. Housing Receiver Is Named*, Kan. City Star C1 (Aug. 26, 1994).

279. *Id.*

otherwise achievable. This may suggest the lawsuit and judicial receivership as a preferred approach for improving a weak PHA. The turnaround success of HAKC was unquestionably aided by the addition of unprecedented financial resources. One must wonder whether HUD would have made this substantial new money available to HAKC had it not been for the *Tinsley* lawsuit, which named HUD as a co-defendant. Although some of this new money was the product of competitive proposals by HAKC, a substantial portion of this money was the direct product of negotiations that would likely not have occurred without the lawsuit. When judicial intervention was necessary, HUD was subject to the judicial orders. Of course, this is also why HUD seems less enthralled with judicial receiverships than administrative receiverships.²⁸⁰

Moreover, HAKC's success may be attributable to many factors. Through its regard for resident rights and participation, HAKC has gained the trust and respect of the residents. Its unique partnership with the residents has enabled HAKC to learn about habitability and security problems as they occur and to obtain resident collaboration in efficiently resolving these and other problems. The social support services ancillary to the housing is enabling residents to make advancements in meeting personal life goals. The substantial funds from HUD, through the court's Consent Decree and through grants, enabled the complete reformation of the housing stock. The renovated or newly constructed units remain in good condition with the vigilant efforts of the residents and competent professional management. HAKC is providing a valued contribution to housing low-income people in Kansas City. Yet, as is reflected in the numbers of people on its waiting lists for both public housing and Section 8 housing, there remains a shortage in the supply of low-cost housing.

280. *Supra* n. 239 and accompanying text.