

09 October 2012

Galveston City Manager
Michael Kovacs
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CC: City Council, City Attorney

Mr. Kovacs:

Unfortunately, since the Galveston City Council passed a Public Housing plan that does NOT Affirmatively Further Fair Housing (AFFH), and it also ceded the sovereignty of the City to Texas Appleseed and TXLIHIS, it is time to review the position of these two groups regarding this city's Analysis of Impediments (AI), contained in their 28 October 2009 Administrative Complaint; the Complaint that lead to the Conciliation Agreement.

The GOPP has made repeated attempts to get the City staff and the City Council to address the City's "insufficient" Analysis of Impediments (see below) BEFORE Texas Appleseed and TXLIHIS remember this short coming and really shut down Round 2 AND annual CDBG funding.

The City simply MUST produce a valid AI as part of the process to lawfully AFFH. This may seem irrelevant at this point, after City Council passed an unlawful plan, but we urge the City not to compound its fair housing violations by continuing to ignore the need to produce a valid AI.

After several failed attempts to get the City **to produce a valid AI before it finds itself in the position justify operating without one,**

consider this our **final notice and a written record of the City's repeated failure to take action to correct this critical deficiency.**

This is what Texas Appleseed and TXLIHIS said about the City's AI in their Administrative Complaint.

2. Subrecipients cannot certify that they are affirmatively furthering fair housing: The City of Galveston

*Nor is the State taking steps to ensure that sub-recipients or other grantees are in compliance with mandatory certifications regarding fair housing. The **City of Galveston**, for example, as an entitlement community under the Annual CDBG program, has its own Consolidated Plan, last updated in 2005. **The City's AI is summarized in one sentence; "The City found that there were no policies that contributed to the concentration of racial/ethnic minorities and that city building codes or ordinances did not impede or limit the development or improvement of affordable housing in Galveston."***

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Galveston's Analysis of Impediments is stunningly inadequate. It simply states that "there were no policies that contributed to the concentration of racial/ethnic minorities and that city building codes or ordinances did not impede or limit the development or improvement of affordable housing in Galveston."

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CDBG grant funds are expressly conditioned on a jurisdiction's certification that it will affirmatively further fair housing. "The AFFH certification [is] not mere boilerplate formality, but rather a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions." United States of America ex rel. Anti-Discrimination Center of Metro

*New York, Inc., v. Westchester County, Case 1:06-CV-02860-DLC, Document 118 at 50-51, (S.D.N.Y, February 24, 2009).*⁷⁶ ***The Secretary cannot obligate funds when a grantee has failed to make a certification that is material to its eligibility to receive CDBG funds.***

Neither Galveston, as an example, or the State, has submitted or can submit a fair housing certification that can be “satisfactory to the Secretary.”

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<http://www.galvestonogp.org/GHA/TexasAppleseedAdministrativeComplaint10-28-09.pdf>

On 26 March 2011, the GOP sent an email to City Attorney Susie Green outlining the necessity of drafting a valid AI.

Top Seven Keys to Affirmatively Further Fair Housing

<http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/Module-5-TopSevenAFFH.pdf>

1. Understand how HUD defines affirmatively furthering fair housing.

HUD defines affirmatively furthering fair housing as:

- Conducting an analysis to identify impediments to fair housing choice within the jurisdiction***
- Taking appropriate actions to overcome the effects of any impediments identified through the analysis***
- Maintaining records reflecting the analysis and actions taken***

The grantee should undertake actions to overcome the effects of the impediments it identifies, whether or not the grantee itself may have contributed to them.

Educating local government elected officials and staff on fair housing requirements, impediments identified and actions being taken

Coordinating metropolitan-wide or regional fair housing activities to ensure that issues are addressed on a regional level

7. Maintain records of analysis and actions taken

The last key step to affirmatively furthering fair housing is to maintain records of the analysis conducted during the Analysis of Impediments as well as the actions taken to address the issues identified. The grantee must retain a copy of the analysis of impediments and the actions taken to overcome the impediments to fair housing choice. All public meetings held to assemble information for the AI should have meeting minutes, including a list of those present. Data collected should note the source and date of the information. Involvement by the chief executive and/or elected officials should be documented in the file.

24 CFR 91.225

Certifications.

(a) General. The following certifications, satisfactory to HUD, must be included in the annual submission to HUD. (See definition of “certification” in § [91.5](#).)

(1) Affirmatively furthering fair housing. Each jurisdiction is required to submit a certification that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard.

<http://www.law.cornell.edu/cfr/text/24/91.225>

15 July 2012 GOGP email to the new City Council.

Councilmembers,

*Please consider putting a discussion of the City's Analysis of Impediments on the next agenda. HUD requires an accurate and factual AI that the City **must certify**. If it is certified and later challenged, an inaccurate AI can leave the City open to a False Claims lawsuit, but more importantly, if either HUD or the State take action against the GHA and/or the City, **an accurate AI can be your best defense; a poor one will be a liability**. The draft that we read several months ago was not an accurate description of the City's impediments to Fair Housing. It wasn't even close. In addition, sooner or later the new GHA Board will be asking you for the AI.*

12 August 2012 GOGP ORR for latest AI.

14 September 2012 email to the City Attorney.

Ms. Palumbo:

*The GOGP recently submitted an ORR for the City's current Analysis of Impediments. **We were given the 2006 AI**. The City paid for a new AI in 2011. We have a draft copy. Was the 2011 AI ever adopted and certified?*

*It is our understanding that **a city cannot accept CDBG funds without a current and valid AI that certifies that it is AFFH**. Doing so improperly was the basis of the successful false claims lawsuit against Westchester County, NY.*

Can you please clarify the status of the City's AI?

25 September 2012 GOGP email to City Council

Councilmembers,

We have been unsuccessful in getting the City's attention on the issue of its Analysis of Impediments (AI).

As we have stated in previous correspondence, HUD can withhold regular annual CDBG funds from any City that has an unacceptable AI. We have been unable to confirm that the City has adopted its 2011 (post-Ike) AI which would leave it operating on its 2006 (pre-Ike) AI which was cited in the Texas Appleseed and TXLIHIS Administrative Complaints (that lead to the Conciliation Agreement) as being insufficient.

We include a short video (link below) of Kevin Hamby, General Counsel for TDHCA, telling the 2010 City Council that 10 cities have lost their "direct funding" (annual CDGB funds) due to AIs that were "not sufficient".

In the second part of this short video, Mr. Hamby confirms the fact that a city must be able to certify that it is Affirmatively Furthering Fair Housing (AFFH) in order to lawfully accept any federal funds! Part of that process of certification is having a current, valid, and sufficient AI.

Michael Allen, attorney for Texas Appleseed and TXLIHIS, has some very interesting presentations (on You Tube) on how a city risks treble damages if it falsely certifies that it is AFFH and then accepts CDBG funds. A False Claims lawsuit can seek to recover three times the CDBG funds falsely accepted by a city.

This also points to the danger of passing Plan 1 which clearly does NOT AFFH. How can the City sign off on documents certifying that it is AFFH if it passes Plan 1?

<http://youtu.be/4lrknCgGE-Q>

In conclusion, it appears that the City contracted for a new AI dated April 2011, but did not hold the required public hearings on it, and the City Council did not accept it, so it is still operating on its pre-Ike AI dated 2006. It is time to complete the process.

Best regards,

David Stanowski
President
Galveston Open Government Project, Inc.