

12 September 2010

Sent via email to: khamby@tdhca.state.tx.us

To:

Mr. Kevin Hamby

Senior Counsel

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, Texas 78701-2410

Cc: Galveston City Counsel

Re: Conciliation Agreement

Mr. Hamby:

Allow me to briefly review the state of Galveston public housing before Hurricane Ike:

Approximately, 1,662 people or (1,662/57,000) 2.92 % of the City's population lived in PH, [compared to 0.65% of the U.S. population](#), or 4.49 TIMES the national average! Looking at the number of PH units in relationship to the City's population finds that, [in comparison to nine other nearby cities](#), Galveston had at least twice the density of every other city, and 10 TIMES the density of the City of Houston! Without even considering how this arrangement conformed to any particular housing guidelines or laws, it should be easy to see that PH placed an enormous burden on this city, and the taxpayers of Galveston looked upon the loss of the 569 family housing units, due to Hurricane Ike, as an opportunity to lower Galveston's density of PH to where it would be more in line with national and regional averages. Even

after the loss of the 569 units, the City still has 410 units, or about 0.85% of its population in PH, which is still higher than the national average.

Shortly after the Hurricane, GHA's executive director unveiled plans to replace the 569 PH units, and to build another 1,500 units, which would increase the density of PH in this city far beyond anything seen in this State, and probably would exceed all other U.S. cities, creating a burden the City could not possibly bare. Unfortunately, we have a very powerful Poverty Industry in Galveston that supports the expansion of the GHA, and the number of units that it owns and manages, because it adds to their political power, and is a great financial benefit to them, so they are constantly at odds with the wishes of the rest of the people who live here.

Lone Star Legal Aid stepped into this controversy to demand that GHA replace the 569 destroyed units. GHA was only too happy to sign a NON-BINDING "agreement" with Lone Star to rebuild, because that is what they wanted to do anyway! After that, they could point to this "agreement" and pretend someone else was forcing them to replace the demolished units! Due to the loss in population, rebuilding 569 units, in addition to the existing 410 units, would put the concentration of PH residents in this city at 3.46% of the total population, or 5.33 TIMES the national average!

At about this time, our group, the Galveston Open Government Project, Inc., became involved in researching the issue of PH. One of the first things that we discovered was that the number of low-income minorities forced to live in Galveston's infamous housing projects was in violation of the guidelines in HUD's March 1996 ["Fair Housing Planning Guide"](#), and unlawful based on a series of court rulings against HUD, and local housing authorities, from *Gautreaux v Chicago Housing Authority* to *Thompson v. HUD*!

Since the City of Galveston and the GHA had been conducting Analysis of Impediments studies, for many years, which claimed that they were not limiting the opportunities of low-income

minorities, by building all of their PH in areas that already contained a large number of low-income minorities, these AIs were clearly inaccurate or fraudulent. Our view was that they were contrived, so we began to search for legal counsel to file a false claims lawsuit against the City, and the GHA, that would follow the same arguments as the *Anti-Discrimination Center of Metro New York v Westchester County, NY*. Unfortunately, we have been unable to find appropriate legal counsel and the necessary funding.

The other case that was right on point was *Thompson v HUD* which found that concentrating low-income minorities in limited areas, as was done in Baltimore and Galveston, was unlawful. The court found that HUD's programs *"failed to achieve significant desegregation in Baltimore City."* As Judge Marvin J. Garbis explained, *"Baltimore City should not be viewed as an island reservation for use as a container for all of the poor of a contiguous region."* Since the facts and circumstances in the City of Galveston and Galveston County were nearly identical to those in the City of Baltimore and Baltimore County, we had little doubt that if we were able to obtain legal counsel, and raise the money to pay for it, a Texas court would rule that to properly de-segregate, and offer better opportunities to low-income minorities, PH must be relocated off of Galveston Island, and into and throughout the rest of the County. But, alas, we were unable to bring this action.

In 1995, residents of GHA's family housing developments sued the GHA, the City of Galveston, and HUD alleging that, *"...via various actions and failures to act over the course of more than 50 years, subjected the plaintiff class to racial segregation - or in the case of applicants - the immediate prospect of racial segregation - in public housing and thereafter took insufficient steps to remedy such segregation..."*

The resulting [12 December 1997 Consent Decree](#) offered the remedy of de-concentrating public housing off of existing footprints, to a limited degree, and ordered that some units must be placed in "majority-White areas" as defined by the Census

Block Groups. It is our opinion that the plaintiffs simply failed to argue, and the court failed to see the need to de-concentrate on a much wider basis throughout the County as the HUD "Fair Housing Planning Guide" was already directing local housing authorities to do. This is the reason that we are forced to revisit this same issue again, today; the Consent Decree did not go nearly far enough to actually bring about de-segregation, but, unfortunately, the [2010 Conciliation Agreement](#) makes the same mistake!

In addition to the civil rights problems created by the concentration and location of PH in Galveston, GHA's expansion plan for this city will also violate [CFR 941.202](#), HUD's regulations for "Site and Neighborhood Standards", [federal floodplain regulations](#) as outlined in [Executive Order 11988](#), and HUD's directive contained in [HUD Handbook 4010.1, Section 3-6 C](#) to use "every means at their disposal" to avoid creating or adding to an oversupply or surplus of housing; an impossible task in Galveston which is currently plagued with over 7,000 vacant housing units. It will not be possible to make GHA's current plans conform to these three requirements. Their choices will be to simply violate the regulations or obtain numerous waivers from HUD.

Into this mix of untold violations of PH regulations and court rulings rode Texas Appleseed. This "public interest" group appeared to have little or no interest in the general welfare of the City of Galveston. Based on their unconditional support for the expansion of PH at any cost, they simply wanted all of the former projects rebuilt with absolutely no concern for the numerous violations listed above. Their [28 October 2009 Complaint](#) cites the shortcomings of the State's AI, and specifically mentions Galveston's AI as being "substantially incomplete" at best.

When they looked at Galveston, TA found the City's AI was so inadequate that it basically consisted of 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.”

We agree that the City’s AI was substantially incomplete, but Appleseed’s solution was to demand that GHA recreate the “Plantation System” that had failed the City so miserably in the past instead of offering the only reasonable solution which is laid out in the Thompson decision, and supported by the GOGP; a regional or countywide approach to PH. In fact, TA conveniently failed to mention Thompson at all in their Complaint!

On [01 December 2009](#), the Texas Low Income Housing Information Service (TXLIHIS) submitted a very similar complaint. They also conveniently failed to mention the Thompson violations in the pre-Ike locations of PH in Galveston, and pushed for a return to the same flawed and unlawful approach for rebuilding.

At some unknown later date, TA and TXLIHIS entered into negotiations with the Texas Department of Rural Affairs, and the Texas Department of Housing and Community Affairs as though they had sued the TDRA and TDHCA, and were beginning settlement talks. The major problem with this so-called “settlement” is there was no lawsuit naming the City of Galveston as a defendant, which would have given it the opportunity to defend itself in court, so the City was not included as a respondent in the settlement. This raises the issue as to whether any part of the Conciliation Agreement is valid and enforceable with respect to the City of Galveston.

Several months ago, the GOGP asked HUD if we could file an Administrative Complaint based on the issues listed above. They said we had no standing to file a Complaint.

On the other hand, the TA and TXLIHIS, were given the green light to file complaints with HUD. Why did they have standing? If these groups did not have clients with standing, it is difficult to imagine how they could properly participate in the Conciliation

Agreement. If either one of them did not have standing; it should invalidate this Agreement.

The GOP is based in Galveston, and was trying to represent the general welfare of the City. These two special-interest groups are based in Austin, and seemed to show little interest in the City of Galveston other than trying to force it to expand its PH against its best interests, and yet the State is allowing them to dictate the terms of our recovery process? What's wrong with this picture?

In conclusion, the 569 family PH units that were standing before Hurricane Ike were an unmitigated disaster and source of blight, crime, and general dysfunction in this city, and were in violation of many regulations and court rulings, so they should not be used as a standard of what to return to. Most plans to replace these units, within this city, will continue to violate the same regulations and court rulings.

Regardless of any impressions on the part of the TDHCA that HUD might force other cities in this County to build PH against their wishes and best interests, at some future date, the City of Galveston should not be singled out and forced to build more PH unless and until such a uniform policy is adopted by HUD.

As far as the Conciliation Agreement is concerned, a basic review of contract law raises three very serious questions as to its validity:

1. Standing

Did TA and TXLIHIS have the standing to participate in this process?

2. Mutual Agreement

For a contract to be valid, all parties must agree on the terms. The City of Galveston was not represented at the settlement discussions, so it could not possibly agree on the terms.

3. Illegal Act

If a contract or agreement requires an illegal act, it invalidates the contract. The Conciliation Agreement requires the City of

Galveston, and the GHA, to break many rules and regulations, and to violate the civil rights of its tenants, as defined by recent court rulings.

It appears as though the State of Texas, in its haste to solve its problems in qualifying for federal recovery funding, has created and entered into an invalid Agreement with TA and TXLIHIS, and is attempting to coerce the City of Galveston to abide by its draconian terms and conditions, against its best interests.

The best course of action for the City of Galveston is for it to refuse to unlawfully act as the dumping ground for PH in this area, in violation of the regulations and court rulings listed above, and decline to build any more PH within its city limits. If TA and TXLIHIS were to sue, as you suggest, it would offer the City the perfect venue to defend itself. By showing the court that this Agreement is invalid, the City could extricate itself from this unlawful Agreement.

It is time for the State to begin negotiating a new agreement with the other cities in Galveston County to host any new PH units that it thinks need to be built or purchased. By locating them in areas with greater opportunities and lesser concentrations of low-income minorities, it will no longer be necessary to violate the numerous regulations and court rulings that building in the City of Galveston entails.

I look forward to your response, and the opportunity to discuss this with you in more detail, when you return to Galveston on 23 September.

Best regards,

David Stanowski
President
Galveston Open Government Project, Inc.