

15 September 2010

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

To:

Mr. Kevin Hamby

Senior Counsel

Texas Department of Housing and Community Affairs

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Galveston City Counsel

Re: Legality of the Conciliation Agreement

Mr. Hamby:

Prior to Hurricane Ike, there is little doubt that GHA's housing projects were in violation of HUD's March 1996 "Fair Housing Planning Guide", and that the concentration of low-income minorities in them violated Section 3608(e)(5) of the Fair Housing Act. However, it is unclear why HUD, the Texas Department of Rural Affairs (TDRA), and the Texas Department of Housing and Community Affairs (TDHCA) were unaware of this problem, and there was certainly no action on the part of the Galveston Housing Authority (GHA) to rectify it.

When these projects were destroyed by Hurricane Ike, three so-called "fair housing groups" demanded that they be replaced one-for-one in the City of Galveston. You would think that fair housing groups would be aware of the latest requirements (1996

& 2005) to Affirmatively Further Fair Housing (AFFH), and demand that any new units be built to these standards; but this was not the case. With all of the destruction leveled on this state by Hurricane Ike, the highest priority of these three groups was a “one-for-one replacement of the 569 PH units in the City of Galveston”.

The City had lost at least 9,000 residents, many businesses were decimated, and the uninsured losses were in the hundreds of millions of dollars, but all that seemed to matter was rebuilding the 569.

Rebuilding these units in the City of Galveston will not meet the latest requirements to Affirmatively Further Fair Housing which are designed to relocate low-income minorities into areas with higher opportunities than are offered in this city. With the lowest median household income, the highest crime rate, and one of the worst schools systems in the County; Galveston simply is not a city that can offer reasonable opportunities to low-income minorities.

In addition, GHA’s plan will violate HUD’s regulations for “Site and Neighborhood Standards”, federal floodplain regulations, and HUD’s directive to avoid creating or adding to an oversupply or surplus of housing.

Since the two fair housing groups that participated in the Conciliation Agreement ignored all of these violations, it raises the question of why the State was not aware of these violations and did not inform the Complainants that they could not enter into an agreement that would violate federal laws and regulations.

The Galveston Open Government Project brought these problems to the attention of Secretary Donovan in an [08 February 2010 Letter](#) (no reply), and in meetings with representatives from HUD’s Houston and Fort Worth offices, but they ignored our suggestion to adopt a regional approach to PH as required by Thompson v HUD, and stood by as Texas Appleseed (TA) and

Texas Low Income Housing Information Service (TXLIHIS) dictated the terms.

Next, we took our suggestion to Michael Gerber, Executive Director, of the TDHCA in a [12 February Letter](#) (no reply), and Charlie Stone of the TDRA in a [12 February Letter](#) (no reply).

Then, an [18 February letter](#) (no reply) to the GHA Board outlined a way to implement a countywide plan.

Finally, we filed an [Administrative Complaint](#) with HUD on 23 February (no reply).

1. Why did HUD respond to the Complaints filed by TA and TXLIHIS, and ignore the GOGP?
2. Why did the TDRA and the TDHCA negotiate with TA and TXLIHIS and ignore the GOGP?
3. Why did TDRA and TDHCA draft an Agreement with TA and TXLIHIS that will force the City of Galveston, and the GHA, to violate several federal laws and regulations, and ignore a plan suggested by the GOGP that would have avoided all of these problems?

This improper and unlawful “Conciliation Agreement” contains a severability clause on page 22 that states, “If any section of this Agreement is determined by a court to be in violation of the laws of the State, federal law or regulation, or against public policy, the remainder of this Agreement shall continue to operate in full force”. This means that the sections that do violate laws, regulations, or policies, i.e. those regarding the rebuilding of PH in the City of Galveston; are null and void.

In *Thompson v HUD*, Judge Marvin J. Garbis ruled that the PH conditions in Baltimore “violated Section 3608(e)(5) of the Fair Housing Act by failing adequately to consider regional approaches to ameliorate racial segregation in public housing in the Baltimore Region”. Since the facts and circumstances in the

City of Galveston and Galveston County are nearly identical to those in the City of Baltimore and Baltimore County, there is little doubt that the GHA rebuilding plan will violate 3608(e)(5) making the sections of the Conciliation Agreement regarding the City of Galveston illegal, and therefore, null and void.

GHA's plan 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; further violations that will make sections referring to Galveston null and void.

During last week's City Council meeting, you said that the State would probably not allow the City of Galveston, and the GHA, to refuse to rebuild the 569 PH units in question, and this certainly might be true if the rebuilding process did not force the City, and the GHA, to violate several federal rules and regulations to do so! However, now that you are aware of these violations, rebuilding in the City of Galveston certainly cannot be supported by the State.

You also stated that if the City of Galveston, and the GHA, refuse to rebuild the 569 PH units in question, TA and TXLIHIS will probably sue the City, but since they would be trying to enforce an illegal and invalid Agreement by doing so; what would be the point?

Since TA and TXLIHIS have been allowed to dictate the terms of the Texas recovery process, but have ignored the violation of several federal laws and regulations, it is time for the State to regain control and correct this problem by severing all references to and demands on the City of Galveston, and the GHA, in the Conciliation Agreement, and draft a new agreement that spreads out any additional PH into and throughout the other cities in Galveston County. The rebuilding of the 569 PH units on the Mainland can be carried out by the GHA, or some other entity or entities that the State can direct to do so.

Best regards,

David Stanowski
President
Galveston Open Government Project, Inc.