



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Legal Memorandum

To: Michael Gerber, Executive Director
From: Kevin Hamby, Senior Counsel
cc: Tim Irvine, General Counsel
Date: October 27, 2010
Re: Determination of the One-for One Provision in the Conciliation Agreement

Question Presented:

Does the letter of October 6, 2010 to Mayor Jaworski require Galveston to build all of its public housing units damaged or destroyed by Hurricane Ike within the city limits of Galveston?

Short answer:

Yes, because of language in the Conciliation Agreement.

Facts:

You have been asked if the letter sent to Mayor Jaworski of the City of Galveston requires that all of the units damaged or destroyed by Hurricane Ike must be rebuilt within Galveston or can they be rebuilt in another location? The purpose of this request is to provide how TDHCA would interpret the Conciliation Agreement should less than the 569 units discussed fail to be rebuilt within the city limits of Galveston. Staff has not previously addressed the one-for-one replacement question from this standpoint, and has only previously verbally opined that 569 units must be rebuilt.

Legal Analysis:

Based on information TDHCA received at various meetings and in the press, Judge Charlie Stone, the Executive Director of Texas Department of Rural Affairs and you sent a letter to Galveston's mayor requiring a commitment in the form of a resolution to replacement of public housing units in a timely fashion." There was no direct mention in the letter of where the units were to be built.

However, in the letter, it says:

In an effort to provide Galveston with Round 2 recovery funds more quickly, we believe that a commitment by the Galveston City Council through a resolution directing the Galveston Housing Authority to move forward with a plan to ***address the one-for-one replacement of housing units***—including a deadline for completion of a plan—would provide strong evidence that the overall Galveston plan ***will be consistent with Conciliation Agreement*** and allow the state to recommend applications for other projects identified by Galveston for funding. (*emphasis added*)

The letter also makes reference that the Complainants have said they would block funds under the Round 2 Phase 1 scenario if “Galveston fails to demonstrate a commitment to one-for-one public housing replacement outlined in the Conciliation agreement. The letter also pointed out that HUD would “likely give great credence to any objections lodged by the Complainants.” While it is not part of the Conciliation Agreement and plays no part in this legal memorandum, the Complainants have said publicly that their intent during negotiations was for all of the units to be rebuilt on the Island.

The thrust of the October 6 letter is to require compliance with the Conciliation Agreement in general and specifically with the one-for-one replacement of public housing. Section II. B. 2. b. Captioned “One-For-One Replacement” states that:

From TDHCA’s affordable housing set aside out of the Hurricane Recovery Funds, no less than \$50 million shall be available for use ***in the City of Galveston for the one-for-one replacement of all family and elderly public housing units damaged or destroyed in Hurricane Ike.*** (*emphasis added*)

In Section II, B. 2. e. i. captioned “Rebuilding Subsidized Housing” it requires a plan that includes:

The one-for-one replacement or rehabilitation of all family and elderly public housing units that were damaged or destroyed as a result of the Hurricanes ***within the local jurisdictions*** in a manner that affirmatively furthers fair housing in compliance with phase 1 of the updated AI. Twenty million dollars shall be reserved specifically to support the one-for-one replacement of family and elderly public housing damaged or destroyed by The Hurricanes ***in the City of Galveston.*** (*emphasis added*)

Analysis:

When read together Conciliation Agreement appears to direct that the intent was to require the 569 units to be rebuilt within the city limits of Galveston and within the GHA jurisdiction. After a careful reading of this language, my opinion is that the state would require Galveston to rebuild all elderly and family units within their jurisdiction.

Therefore, due to the requirement in your letter that the City comply with the Conciliation Agreement, your letter does require that a Galveston Plan for rebuilding include a commitment to one-for-one replacement in the City of Galveston and within the GHA jurisdiction.