

Final Approved 5/12/15

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Fair Housing and Equal Opportunity



CONCILIATION AGREEMENT

Under

Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

And

Voluntary Compliance Agreement

Under

Section 504 of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990

Between

Supporters of Engine 6 (Complainant)

And

Disability Law Center, Inc. (Complainant)

And

Fair Housing Center of Greater Boston (Complainant)

And

City of Newton, Massachusetts (Respondent)

And

Setti Warren, Mayor (Respondent)

Approved by the FHEO Region I Director on behalf of the United States Department of Housing and Urban Development

Case Numbers: 01-14-0098-8 (Title VIII), 01-14-0098-4 (Section 504), 01-14-0098-D (ADA)

A. PARTIES

Complainants

Supporters of Engine 6
c/o Frank Laski, Attorney
154 Oliver Road
Waban, Massachusetts 02468

Disability Law Center, Inc.
11 Beacon Street
Suite 925
Boston, Massachusetts 02108

Fair Housing Center of Greater Boston
26 Washington Street
Boston, Massachusetts 02108

Respondents

City of Newton, Massachusetts (“the City”)
c/o Donnalyn Kahn, Solicitor
1000 Commonwealth Avenue
Newton Centre, Massachusetts 02459

Setti Warren, Mayor
1000 Commonwealth Avenue
Newton Centre, Massachusetts 02459

B. STATEMENT OF FACTS

On December 17, 2013, Complainants filed a complaint with the United States Department of Housing and Urban Development (“the Department” or “HUD”) alleging that Respondents violated the Fair Housing Act (“the FHA”) as amended, 42 U.S.C. § 3601 et seq., by their treatment of Metro West Collaborative Development’s proposal to develop supportive housing for the chronically homeless (“the subject matter of the complaint”). Complainants also alleged that Respondents’ actions on the subject matter of the complaint violated Section 504 of the Rehabilitation Act of 1973 (“the Rehabilitation Act”) and Title II of the Americans with Disabilities Act (“the ADA”). Respondents deny the allegations in the complaint and deny discriminating on the basis of disability. HUD has made no findings of any violation of any applicable law by the Respondents.

No Admission of Liability

Complainants and Respondents enter into this Conciliation and Voluntary Compliance Agreement (“Agreement”) solely for the purpose of obtaining administrative closure of this

matter. It is understood that the execution of this Agreement does not constitute an admission by Respondents of any violation of any law, statute, or regulation.

C. TERM OF AGREEMENT

This Agreement shall govern the conduct of the Parties to it for a period of five years from the effective date of the Agreement.

D. EFFECTIVE DATE

The Parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the FHA nor a Voluntary Compliance Agreement pursuant to the Rehabilitation Act or the ADA, unless and until such time as it is signed by the Parties and approved by the Department, through the Region I Director, Fair Housing and Equal Opportunity (“FHEO Director”) or her designee.

This Agreement shall become effective and binding on the Parties on the date on which the FHEO Director approves it (“Effective Date”).

E. GENERAL PROVISIONS

1. The Parties acknowledge that this Agreement is entered into voluntarily and is in full settlement of all claims set forth in the complaint. No party admits liability or wrongdoing of any nature as a result of entering into this Agreement and the Parties acknowledge that no findings have been made with respect to Complainants’ allegations. No party has been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement. The Parties affirm that they have read and fully understand the terms set forth in this Agreement.
2. Each person who signs this Agreement in a representative capacity warrants that his or her execution of this Agreement is duly authorized, executed and delivered by and for the entity for which he or she signs.
3. It is understood that Respondents deny that they have violated the FHA, Section 504 of the Rehabilitation Act, Title II of the ADA, or any other law. This Agreement does not constitute an admission by the Respondents or evidence of a determination by HUD of any violation of the FHA, the Rehabilitation Act, the ADA, or any other law.
4. This Agreement, after the FHEO Director has approved it, is binding upon Complainants, Respondents, and their respective employees, heirs, successors and assigns, and all others in active concert with them.
5. It is understood that, pursuant to Section 810(b)(4) of the FHA, upon approval of this Agreement by the FHEO Director, this Agreement is a public document.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless all of the following conditions are met: (a) all signatories or their successors to

the Agreement are notified in advance and agree to the proposed amendment, modification or waiver; (b) the amendment, modification or waiver is in writing; and (c) the amendment, modification or waiver is approved and signed by the Parties and the FHEO Director. Any such amendment, modification, or waiver shall be effective only in the specific instance and for the specific purpose for which given and will have no effect on other provisions of this Agreement.

7. The Parties agree that this Agreement may be executed by the Parties' signatures of consent on separate pages. The separate pages will be attached to the body of the Agreement to constitute one document. The Parties agree that signature pages received via electronic transmission will be considered official, provided that the original copy of the signature page is forwarded to HUD immediately upon signing of the Agreement. Both the original and any electronically transmitted signature pages will be retained in the official case file.

8. Complainants hereby forever waive, release, and covenant not to sue the Department or Respondents or their respective heirs, executors, assigns, agents, employees, insurers, directors, officers, representatives, successors, and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the facts alleged in or the same subject matter as HUD Case Numbers 01-14-0098-8, 01-14-0098-4, and 01-14-0098-D, or which could have been filed in any action or suit arising from such facts or subject matter.

9. Respondents hereby forever waive, release, and covenant not to sue the Department or Complainants or their respective heirs, executors, assigns, agents, employees, insurers, directors, officers, representatives, successors, and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the facts alleged in or the same subject matter as HUD Case Numbers 01-14-0098-8, 01-14-0098-4, and 01-14-0098-D, or which could have been filed in any action or suit arising from such facts or subject matter.

10. HUD hereby forever waives, releases, and covenants not to sue the Respondents or their heirs, executors, assigns, agents, employees, insurers, directors, officers, representatives, successors, and attorneys with regard to any and all claims, damages and injuries of whatever nature, whether presently known or unknown, arising out of the facts alleged in or the same subject matter as HUD Case Numbers 01-14-0098-8, 01-14-0098-4, and 01-14-0098-D, or which could have been filed in any action or suit arising from such facts or subject matter.

11. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving Respondents within the Department's jurisdiction.

12. Respondents acknowledge that they have an affirmative duty not to discriminate under the FHA, the Rehabilitation Act, and the ADA, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the FHA, the Rehabilitation Act, and the ADA. Respondents further acknowledge that any subsequent retaliation or discrimination constitutes both a material breach of this Agreement and a statutory and regulatory violation of the FHA, the Rehabilitation Act, and the ADA.

13. If any provision of this Agreement is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of this Agreement, and shall not affect the validity and enforceability of all other provisions of this Agreement.

F. RELIEF IN THE PUBLIC INTEREST

1. The City shall take the following actions to create nine (9) to twelve (12) units of permanent supportive housing suitable for chronically homeless persons with disabilities in Newton within the next five years:

a. The City shall identify at least five (5) sites which may be suitable for nine (9) to twelve (12) affordable housing units for chronically homeless persons with disabilities. The City shall inform HUD and the Complainants of the locations within 12 months of the Effective Date of this Agreement.

b. By December 31, 2015, the City shall hire an expert to advise the City's Planning Department on the most efficient and expedient manner of constructing permanent affordable housing for individuals, including chronically homeless individuals in the City of Newton in locations that will enhance the ability to access supportive services.

c. The City shall utilize the expertise of an entity to provide supportive services for chronically homeless individuals in Newton.

d. The City shall address its efforts to support housing for the disabled and chronically homeless in its Annual Action Plan and Consolidated Annual Performance Evaluation Report for fiscal year 2015. The City shall make housing for the chronically homeless and disabled a priority in its FY 2016-2020 Consolidated Plan.

e. Within sixty (60) days of the Effective Date of the Agreement, the City shall involve one or more of the member organizations of the Brookline-Newton-Waltham-Watertown Continuum of Care to develop an action plan for the funding and construction of nine (9) to twelve (12) units of permanent supportive housing serving chronically homeless persons (as defined in HUD regulations) to be located within the City of Newton. The organization or organizations to develop the plan may consult with the Complainants. The action plan shall be completed within one (1) year of the Effective Date and shall include the identification of at least five (5) potential sites for such housing; recommendations for partnerships among non-profit developers of affordable housing and organizations providing services to chronically homeless households; recommended amounts to be allocated to the payment of predevelopment costs; real estate and supportive services models for the production of such housing (such as new construction on City-owned land, acquisition of scattered site housing, provision of units on a scattered site basis in other multifamily developments within the City, and/or acquisition of existing multifamily housing); identification of any necessary zoning relief and permitting approvals; prototype development and operating budgets; and such other matters as deemed prudent by the organizations developing the plan. The City shall incorporate the plan into the Analysis of Impediments to Fair Housing (or any successor requirement of HUD) and the Strategy for

Ending Homelessness in the Consolidated Plan and Annual Action Plan and shall implement the plan such that nine (9) to twelve (12) units of permanent supportive housing for chronically homeless households are produced and ready for initial occupancy within the term of this Agreement. The costs of developing the plan will likely constitute a Community Development Block Grant eligible activity.

2. The City shall post its fair housing ordinance, Section 12-50, on its website and on its second floor bulletin board in City Hall within sixty (60) days of the Effective Date of this Agreement. During the City's activities for National Community Development Week in 2015, Mayor Warren shall amplify and speak about the importance of fair housing.

3. Within sixty (60) days of the Effective Date of this Agreement, the City shall post on its Planning and Development Department website page information to guide the public and developers on the process for developing affordable housing projects in Newton. The posting must include information on fair housing and the City's obligation to affirmatively further fair housing. For the duration of this Agreement, the City shall have its Planning Department review all applicable projects for their inclusion of fair housing goals and note in writing in all applicable project reviews a statement that "the objectives of the City's Consolidated Plan, including fair housing, have been considered in this review."

4. Within sixty (60) days of the Effective Date of this Agreement, the City's Director of Planning shall provide to the Complainants and HUD a list of City employees who will receive training on fair housing requirements. Complainants may propose that additional City employees receive fair housing training within thirty (30) days of Complainants' receipt of the Director of Planning's list. Such training shall be provided by December 31, 2015.

5. The City shall include in its FY 2016-FY2020 Consolidated Plan its commitment to create nine (9) to twelve (12) units of permanent supportive housing suitable for chronically homeless persons with disabilities in Newton within the next five years, its commitment to hire an expert to advise on supportive housing for the chronically homeless, a copy of the written statement to be included in all applicable Planning Department project reviews, its commitment to the posting of its policy on fair housing on its bulletin board and website, and its commitment to undergo fair housing training. The Parties understand that the Consolidated Plan is created through a transparent public process where the Planning Department creates a plan for the allocation of Community Development Block Grants and related funds based, in part, on needs identified and prioritized by the community. The City agrees to conduct the citizen participation process in accordance with 24 C.F.R. § 91 Subpart B and welcomes the participation of the Complainants in this process.

G. MONITORING

The Department shall determine compliance with the terms of this Agreement. For the duration of this Agreement, Respondents shall retain all records evidencing their compliance with this Agreement. During the term of this Agreement, HUD may review compliance with this Agreement. As part of such review, HUD may conduct inspections, examine witnesses, and copy

pertinent records of Respondents. Respondents agree to provide full cooperation in any monitoring review undertaken by HUD to ensure compliance with this Agreement.

H. REPORTING AND RECORDKEEPING

In addition to any submissions required under 24 C.F.R. Part 91, the City shall provide reports to the Department every ninety (90) days, until the Department provides the City with notice that it has substantially complied with the requirements of this Agreement. The first report shall be due ninety (90) days after the Effective Date of this Agreement. Reports shall provide status updates on each provision in Section F of this Agreement and contain documentation to substantiate the progress reported. Reports shall be submitted to:

Susan M. Forward, Region I Director
United States Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
Thomas P. O'Neil Jr. Federal Building
10 Causeway Street, Room 321
Boston, MA 02222-1092

Or electronically Daniel Weaver, Region I Enforcement Branch Chief at Daniel.J.Weaver@hud.gov.

With a copy to:

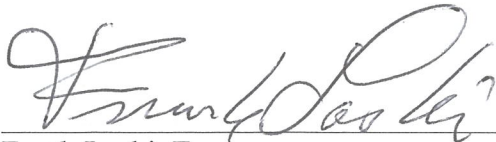
Frank Laski, Attorney
154 Oliver Road
Waban, Massachusetts 02468

I. CONSEQUENCES OF BREACH

Whenever the Department has reasonable cause to believe that either or both Respondents have materially breached this Agreement, the matter may be referred to the Attorney General of the United States to commence a civil action in the appropriate U.S. District Court pursuant to §§ 810(c) and 814(b)(2) of the FHA.

J. SIGNATURES

WHEREFORE, the Parties hereto have duly executed this Agreement:



Frank Laski, Esq.
Supporters of Engine 6


May 11, 2015
Date


Christine M. Griffin, Esq.
Disability Law Center, Inc.

4/23/15
Date



Robert Terrell
Fair Housing Center of Greater Boston

4/23/15
Date


Setti Warren
Mayor

4/23/15
Date

K. APPROVAL


Susan M. Forward
Region I Director
Office of Fair Housing and Equal Opportunity

5/12/15
Date