



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ADAPT OF PHILADELPHIA,  
LIBERTY RESOURCES, INC., MARIE  
WATSON, MARSHALL WATSON, and  
DIANE HUGHES,

Plaintiffs,

v.

PHILADELPHIA HOUSING AUTHORITY and  
CARL GREENE, in his official capacity as the  
Executive Director of the PHILADELPHIA  
HOUSING AUTHORITY,

Defendants.

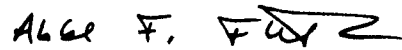
Civil Action

No. 98- CV- 4609

**MOTION OF THE PHILADELPHIA HOUSING AUTHORITY  
TO APPROVE PHASE II UNITS**

Defendant, the Philadelphia Housing Authority ("PHA"), respectfully seeks Court approval to include 11 new units at Tasker Homes among the Phase II units identified in the Settlement Agreement. Defendants sought approval for these new units from plaintiffs nearly seven months ago only to have them unreasonably withhold such consent in violation of Section B of the Settlement Agreement. Pursuant to paragraph G of the Settlement Agreement, PHA now seeks judicial relief to approve these units as part of Phase II of the settlement.

Respectfully submitted,



Alan C. Kessler  
Abbe F. Fletman  
Jodi L. Cagan

Attorneys for Defendants,  
The Philadelphia Housing  
Authority and Carl Greene

Dated: April 23, 2004



## FACTS

As this Court is aware, in January 2002, the parties to this litigation entered into a Settlement Agreement pursuant to which PHA agreed to construct 248 accessible public housing units by December 2005. See Settlement Agreement, Section A page 3, a true and correct copy of which is attached as Exhibit A. The Agreement provides that PHA was to have constructed 124 accessible units by December 31, 2003 ("Phase I"), and the remaining 124 by December 31, 2005 ("Phase II"). By the Phase I deadline, PHA had gone beyond its obligations under the Settlement Agreement and created 149 accessible units. See letter of Abbe F. Fletman to Stephen Gold dated January 29, 2004, a true and correct copy of which is attached as Exhibit B.

In satisfying its obligations under the Settlement Agreement, PHA may offer different units than those specified in the Agreement. Plaintiffs may not unreasonably disapprove newly offered units. The Agreement states:

All 248 of the accessible units . . . created by PHA pursuant to this Settlement Agreement shall comply with Uniform Federal Accessibility Standards ("UFAS"). With Plaintiffs' consent, which shall not unreasonably be withheld, PHA may substitute different units for any of the units identified above, on a one-for-one basis.

Settlement Agreement, Section B, page 7. In the event that PHA offers different units than those identified in the Settlement Agreement, "it shall provide Plaintiffs' counsel . . . written notice . . ." Id. Plaintiffs have 15 days to agree or disagree with PHA's proposed substitution; failure to disagree constitutes agreement. Id.

In a letter dated September 29, 2003, PHA first requested plaintiffs' consent to include 11 units at Tasker Homes as part of Phase II. A true and correct copy of the September 29, 2003, letter of Joel Sweet to Stephen Gold and David Kahne is attached as Exhibit C; see page 2. Tasker Homes is a newly constructed PHA development. Its first phase comprises 245 rental units spread over six blocks in South Philadelphia bounded by Morris Street, New Hope Street,

29th Street, 21st Street and Vare Avenue. Of the 245 units, 173 are townhouses.<sup>2</sup> True and correct pictures of a typical Tasker Homes townhouse is attached as Exhibit D. Tasker Homes also includes a three-story, 72-unit building for the elderly and near-elderly. PHA proposed to make 11 of the Tasker Homes units, seven townhouses and four apartments in the senior building, accessible as part of Phase II of the Settlement Agreement. These 11 units are in addition to any units required to be made accessible pursuant to federal regulations. PHA provided plaintiffs with a rendition of the Tasker Homes townhouses with the September 29, 2003, letter. See Exhibit B to September 29 letter. It also offered to provide further information upon request.

Because plaintiffs' counsel was traveling, PHA agreed to allow plaintiffs to respond to PHA's offer on October 27, instead of by October 13, as required by the Settlement Agreement. Plaintiffs' counsel notified PHA by telephone on October 27 of their clients' rejection of the Tasker Homes units. In a letter dated October 29, 2003, plaintiffs stated, "Plaintiffs reject the Tasker Home Development proposal because this is a conventional project and not scattered site units." A true and correct copy of the letter of Stephen Gold to Joel Sweet dated October 29, 2003, is attached as Exhibit E.

PHA responded on November 4, 2003, that plaintiffs' rejection was unreasonable in light of their failure "to meaningfully inquire[] into the nature of the homes and the community being created at Tasker." A true and correct copy of the letter of Joel Sweet to Stephen Gold dated November 4, 2003, is attached as Exhibit F. PHA asked plaintiffs to reconsider their rejection and offered additional information on the project. Id. Plaintiffs failed to respond.

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<sup>2</sup> Under the Settlement Agreement, a "townhouse" is "a building consisting of up to three dwelling units that is no more than three stories in height. The building itself may either stand alone or be part of a row or twin grouping, and the units within the building may be stacked or adjacent to each other." Settlement Agreement, Section B, page 4.

On April 13, 2004, before burdening this Court with a motion, PHA again requested plaintiffs' approval of the 11 units at Tasker Homes.<sup>3</sup> A true and correct copy of the letter of Abbe F. Fletman to Stephen Gold dated April 13, 2004, is attached as Exhibit G. In the April 13, 2003, letter, PHA asked plaintiffs to "promptly to reconsider their rejection of the Tasker Homes units" because "the Tasker Homes units are well-designed low-density townhouses." Id.

By letter dated April 20, 2004, plaintiffs did not provide an answer but instead asked: "[W]hat is the bedroom sizes [sic] that are being constructed, where are the 5% units going (with regards to bedroom size and type of unit), and what are the proposed bedroom sizes and types of houses that are proposed for the 11 additional units that you request we accept?" A true and correct copy of the April 20, 2004, letter from Stephen F. Gold to Abbe F. Fletman is attached as Exhibit I. PHA already has informed plaintiffs that it proposes to offer 11 new accessible units at Tasker Homes. Nowhere does the Settlement Agreement contain information regarding the bedroom size or the exact location of accessible units, or provide any right to plaintiffs to obtain this information.<sup>4</sup>

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<sup>3</sup> PHA also offered plaintiffs eight additional accessible units at Schuylkill Falls in a letter dated February 21, 2003. A true and correct copy of the letter of Joel M. Sweet to Stephen Gold dated February 21, 2003, is attached as Exhibit H. PHA reiterated this offer in the September 29, 2003, letter. See Exhibit B. In a letter dated October 29, 2003, plaintiffs' counsel inquired whether the eight units proposed for Schuylkill Falls were in addition to the other 15 provided in the Settlement Agreement. In a letter dated November 4, 2003, PHA responded that the eight additional units were in addition to the 15 provided for in the Settlement Agreement, for a total of 23 accessible units at Schuylkill Falls. See Exhibit F. In the April 20 letter, plaintiffs' counsel stated he "assumed that the prior agreement with regards to the size and type of units in Schuylkill Falls has not changed, and the distribution remains as we had agreed." See Exhibit I. PHA's offer of eight accessible garden-style apartment units has not changed. PHA therefore assumes plaintiffs have accepted these units.

<sup>4</sup> PHA is concerned about plaintiffs' request for such information because, as explained in its response to Plaintiffs' Motion to Compel Disclosure of Accessible Housing Units, plaintiffs seek such information so they can contact PHA residents who live in accessible housing. These residents are not clients of plaintiffs' counsel and may not wish to be

PHA has properly sought plaintiffs' approval of the Tasker Homes units, has been unreasonably denied approval, and therefore seeks relief from this Court.

### ARGUMENT

Under the Settlement Agreement, PHA may offer units different than the ones identified in the Settlement Agreement, and plaintiffs may not unreasonably withhold acceptance. Settlement Agreement, Section B at page 7. PHA has proposed to include 11 new accessible units at Tasker Homes as part of Phase II under the Settlement Agreement. Plaintiffs have failed to articulate any reason to reject these units other than that Tasker Homes is "a conventional project and not scattered site units." See Exhibit E.

PHA disagrees. First, the Settlement Agreement contains no definition of either the term "conventional" or "scattered-site." Tasker Homes is a mixed-income development that, when completed, will include home ownership as well as rental units over a number of city blocks. Such a development is hardly "conventional" and eventually the rental units will be interspersed with home ownership units.

Second, the accessible units being offered are new and well appointed. They are not in towers. Instead, they either comply with the definition of "townhouse" contained in the Settlement Agreement (Section B, at page 4), or are one-bedroom apartments set aside for the elderly and near-elderly. It cannot it really be in the interest of plaintiffs to reject sound new accessible units in a mixed-income development that will include home ownership, rental and

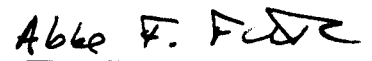
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intruded upon. Moreover, the Settlement Agreement nowhere requires that PHA disclose individual addresses or bedroom configuration to plaintiffs' counsel. Indeed, PHA offered to provide plaintiffs' counsel with a third-party certification that it has created a specific number of accessible public housing rental units that are ready for occupancy. Plaintiffs rejected this offer.

senior housing in favor of old housing stock that was never intended to house the disabled. This is the height of unreasonableness.

**CONCLUSION**

For all of the foregoing reasons, defendant, the Philadelphia Housing Authority, requests that Court approve the inclusion of 11 units at Tasker Homes among the Phase II units under the Settlement Agreement.



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