

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	COMPLAINT
SUSSEX COUNTY, DELAWARE, and)	Demand for Jury Trial
PLANNING AND ZONING COMMISSION)	
OF SUSSEX COUNTY,)	
)	
Defendants.)	
_____)	

The United States of America alleges:

1. This action is brought by the United States to enforce the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended (“the Fair Housing Act” or “the FHA”), 42 U.S.C. §§ 3601-3631.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 28 U.S.C §§ 1331 and 1345 and 42 U.S.C. §§ 3614(a) and 3614(b)(1).
3. Venue is proper under 28 U.S.C. § 1391(b) because the events giving rise to this action occurred in the District of Delaware, and because all defendants and the real property at issue in this action are located in the District of Delaware.

Parties

4. Defendant Sussex County, Delaware (“the County”), is a local governmental subdivision duly organized and operated as a county under the laws of the State of Delaware. The County is governed by a five-member County Council.

5. Defendant Planning and Zoning Commission of Sussex County (“Planning and Zoning Commission”) has jurisdiction over certain zoning and land use matters in Sussex County, including the review of subdivision plats. The Planning and Zoning Commission is created by the laws of the State of Delaware and duly organized and operated under the laws of the State of Delaware and the Code of Sussex County (“County Code”). The Planning and Zoning Commission consists of five voting members appointed by the County Council and two nonvoting *ex officio* members.
6. Chapter 99 of the County Code governs the subdivision of land. Under that chapter, a developer of a major subdivision must submit a preliminary subdivision plat for review by the Planning and Zoning Commission. After a public hearing, the Planning and Zoning Commission must tentatively approve, disapprove, or conditionally approve the plat subject to specific changes or modifications. Approval of a preliminary plat is required before a developer may submit a final plat for approval, record the approved final plat with the Recorder of Deeds, and ultimately obtain building permits.
7. Decisions of the Planning and Zoning Commission on preliminary plats may be appealed to the County Council. The County Council must review such appeals on the record of the Planning and Zoning Commission hearing to determine whether the Commission's decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of Chapter 99 of the County Code. If the County Council determines that it was not, the County Council may reverse the decision or send the matter back to the Planning and Zoning Commission for further review and

consideration, in which case the County Council may order the Planning and Zoning Commission to hold a new public hearing.

8. Diamond State Community Land Trust, Inc. (“Diamond State CLT”) is a nonprofit corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Dover, Delaware. It was founded in 2006. Diamond State CLT provides affordable housing throughout the State of Delaware to households earning no more than 80 percent of the Area Median Income as calculated by the U.S. Department of Housing and Urban Development (“HUD”). Under Diamond State CLT’s land trust model, the organization sells a home to an income-qualified homebuyer while continuing to own the land under the home, which Diamond State CLT leases to the homeowner on a 99-year lease for a nominal fee. Diamond State CLT and the homebuyer enter into a legal agreement ensuring that, if the homebuyer later decides to sell, the sale price remains at a level working families can afford while still providing the seller with a return on his/her investment.
9. New Horizons Cooperative is a group of families seeking to establish a community where they can live as neighbors in affordable housing. The group was created by the residents of a mobile home park in Sussex County. Although the families who created the cooperative ultimately all moved away from the mobile home park, they remained organized with the goal of reconstituting their community in another location with safe, affordable housing. At all times relevant to this Complaint, the membership of New Horizons Cooperative has been predominantly Hispanic.

Factual Background

10. The population of Sussex County has grown rapidly in recent decades. According to the 2010 Census, the County's population was 197,145 – nearly a 25% increase since 2000 and an increase of approximately 71% since 1990. In 2010, 12.5% of the County's population was non-Hispanic black, and 8.6% of the population was Hispanic. Since 2000, the Hispanic population of the County grew by approximately 145 percent. In 2000, Hispanics made up only 4.4% of the County's population.
11. There is a documented need for, and a short supply of, affordable housing in Sussex County. As of March 20, 2012, the Delaware State Housing Authority reported Census Bureau estimates that 23,737 households (32.5% of all households in Sussex County) are cost-burdened, or paying more than 30% of their gross adjusted income to housing costs. The waiting lists for HUD-subsidized units administered by the Delaware State Housing Authority contain thousands of families. Sussex County planning documents also recognize the need for affordable housing. The County has less than 2,000 housing units that are specifically designated for low-income households.
12. As compared to white households in Sussex County, larger percentages of Black and Hispanic households qualify for and need affordable housing. Black and Hispanic households in the County qualify for affordable housing units for persons making 80% or less of the Area Median Income at percentages greater than those of white households. Black households are also disproportionately represented in subsidized housing when compared to their representation in the overall population in the housing market. For example, approximately 12.5% of the population in Sussex County is black, but 52.5% of

households in HUD-subsidized housing in the County are black, and 64% of households on the combined waiting list for HUD-subsidized housing in Kent and Sussex counties are black. While blacks and Hispanics make up 12.5% and 8.6% of the total County population, respectively, 24% of all Sussex County households under the federally-defined poverty line are black and 18% are Hispanic.

13. In or around 2007, Diamond State CLT began working with New Horizons Cooperative on a project to build a subdivision of low-income housing in Sussex County. Diamond State CLT would develop the subdivision, to be called “New Horizons,” for households earning 80% or less of the Area Median Income. Qualified members of the New Horizons Cooperative would have the first opportunity to purchase homes in the subdivision. Throughout the project development, New Horizons Cooperative members consulted with Diamond State CLT on possible locations for the development.
14. By mid-2007, certain employees of the County were aware of Diamond State CLT’s plans for the New Horizons subdivision, including that members of the New Horizons Cooperative would be among the first potential homebuyers. Among these employees was William Lecates, who was then director of Community Development and Housing for the County and was on Diamond State CLT’s board of directors.
15. By early 2008, Diamond State CLT had selected a parcel of land for the development of the New Horizons subdivision in southwestern Sussex County near Laurel, Delaware. The area of the County in which the parcel is located contains disproportionately high numbers of non-Hispanic white persons as compared to the proportions of non-Hispanic

whites, African Americans, and Hispanics in the County as a whole and in most of the census tracts surrounding the tract in which the parcel of land is located.

16. Throughout 2008, Diamond State CLT worked with various members of the County's staff to prepare the New Horizons development proposal for submission to the County for review. Diamond State CLT submitted its first version of the proposal on or about December 23, 2008.
17. On or about March 29, 2010, Diamond State CLT submitted a revised subdivision application for the New Horizons development. The revised application proposed to develop the site as a cluster subdivision of 50 detached single-family homes, a permitted use for the parcel's AR-1 zoning designation under the County Code. On or about May 28, 2010, Diamond State CLT submitted its exhibit book in support of its application for preliminary subdivision plat approval. Certain letters of support contained in this exhibit book stated that the members of the New Horizons Cooperative "form the charter New Horizons residents group."
18. The Planning and Zoning Commission held a public hearing on June 10, 2010, on Diamond State CLT's application for preliminary subdivision plat approval for the New Horizons development. During the hearing, members of the Planning and Zoning Commission and community members made comments indicating a fear that the prospective residents of the New Horizons development would be racial or ethnic minorities, using terms that were impliedly derogatory and based on stereotypes of African-American and Hispanic residents. When the floor was opened to public comment, 17 community members spoke in opposition to the project. Among their

comments, one speaker implied that crime and drug use would become a problem at the New Horizons subdivision, drawing an analogy to the historically African-American community of West Rehoboth.

19. The Planning and Zoning Commission voted on July 14, 2010, to deny Diamond State CLT's application for preliminary subdivision plat approval for the New Horizons project, by a vote of three to one. The six stated reasons for the Commission's decision were either outside those which the Commission could properly consider under the County Code, or were applied in a manner contradictory to provisions of the County Code or to how the Commission had acted with respect to other similarly-situated preliminary subdivision plat applications.
20. Following the Planning and Zoning Commission decision, Diamond State CLT appealed to the County Council. The County Council heard the appeal on September 28, 2010. The County Council voted four to one on October 19, 2010, to affirm the Planning and Zoning Commission decision denying approval for the preliminary subdivision plat for the New Horizons project.
21. On November 29, 2010, Diamond State CLT filed a housing discrimination complaint with HUD, alleging that the actions of the Planning and Zoning Commission and the County Council to deny approval for the New Horizons project constitute discrimination on the basis of race, color, and national origin. Pursuant to 42 U.S.C. § 3610(g)(2)(C), HUD referred the complaint to the Department of Justice on January 24, 2012.
22. The Defendants' actions as described herein were taken because of race, color, or national origin and/or because of community opposition that City officials understood to

be based on the race, color, or national origin of and on racial or ethnic stereotypes of the prospective tenants of affordable housing. The Defendants' application of the County's zoning and land use laws had the intent of discriminating against African-American and Hispanic residents of Sussex County who were prospective residents of the New Horizons development.

Claims

23. By the conduct set forth above in paragraphs 4-21, the Defendants have (1) made dwellings unavailable or denied dwellings to persons because of race, color, or national origin, in violation of 42 U.S.C. § 3604(a); and (2) interfered with persons in the exercise or enjoyment of rights granted by 42 U.S.C. § 3604, in violation of 42 U.S.C. § 3617.
24. Based on the foregoing conduct, the Defendants have engaged in:
 - a. a denial to a group of persons of rights granted by the Fair Housing Act, which denial raises an issue of general public importance, under 42 U.S.C. § 3614(a); and
 - b. a discriminatory housing practice under 42 U.S.C. § 3614(b)(1).
25. The Defendants' discriminatory conduct or actions as set forth above were intentional, willful, and taken in disregard for the rights of others.
26. Diamond State CLT is an aggrieved person within the meaning of 42 U.S.C. §§ 3602(i) and 3614(d)(1)(B). On information and belief, there may be others who are aggrieved persons who have been or will be injured by the Defendants' actions.

Prayer for Relief

WHEREFORE, the United States prays that the court enter an ORDER that:

1. Declares that the Defendants' conduct, as alleged herein, violates the Fair Housing Act;
2. Enjoins the Defendants, their officers, employees, agents, successors and all other persons in active concert or participation with them, from discriminating on the basis of race, color, or national origin in violation of the Fair Housing Act, including further making unavailable or denying a dwelling because of race, color, or national origin;
3. Requires that the Defendants reconsider Diamond State CLT's proposal to build affordable housing in southwestern Sussex County near Laurel, Delaware, using non-discriminatory criteria;
4. Requires that the Defendants take affirmative steps to comply with the Fair Housing Act, including steps necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate the effects of the Defendants' unlawful housing practices as described herein;
5. Awards monetary damages, pursuant to 42 U.S.C. § 3614(d)(1)(B), to all persons harmed by the Defendants' discriminatory practices; and
6. Assesses a civil penalty against the defendant in an amount authorized by 42 U.S.C. § 3614(d)(1)(C) to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

Dated: November 28, 2012

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