

To: Community Development Block Grant Commission
From: Brenda K. Konkel
Re: Analysis of Impediments to Fair Housing Comments
Date: October 1, 2013

First of all, let me say, that I am thrilled to see this report is finally done and that our community has a proper Impediments to Fair Housing Study. Our community has long been lacking in good housing information and this is a step forward towards gathering this information. This is incredibly important since we have a historically low rental vacancy rate that is far below the national average. Also because we have long had a problem with affordable housing in our community which high percentage of renters.

GENERAL COMMENTS

Failure to refer to the Equal Opportunities Commission and Committee on People with Disabilities for Comment?

I believe that failure to refer this report to the main committee in the city that deals with discrimination (EOC) indicates a real problem within the city structure. Elected officials and staff often fail to look at the bigger picture and this results in not working together on housing issues throughout the city. I believe this is an impediment to fair housing within the city. The lack of any comprehensive housing strategy for over 20 years is a direct result of where we are at with the recommendations of needing more rental and affordable housing. Different departments and committees each have a piece of the puzzle but rarely work together and there is no comprehensive strategy as a result.

I also believe the failure to refer this item to the Committee on People with Disabilities indicates a general failure to acknowledge the needs of this segment of the community.

Recommendation:

- Formally have the council refer this report to the EOC and CPD.

Failure to address concentrations of people of color on the North and South sides of Madison.

While information and maps indicate that there is a concentration of people of color in various areas of the city, this has not been identified as a problem to be addressed and no actions to address this issue have been identified. The recommendation about more loans to minorities is not specific to the area of the city and only addresses issues for homeowners, not for renters. I find this particularly troubling given that there is a lack of people filing complaints and a rather large perception that there is discrimination in the City of Madison. We often fail to talk about race in this city, and I believe this deserves further consideration.

Recommendation:

- This issue should be identified as an impediment and a goal and action should be added to the list of actions and goals

- Add a map that indicates all people of color and where those concentrations are throughout the city, instead of dividing it into African American, Latino and Asian or 2 or more races.

Recommendation to create affordable housing units needs to be more clearly defined.

Often when affordable housing is discussed at city committee levels and for many of our programs, we talk about rental housing that is affordable to people at 60% or 80% of the AMI. Often these are people who don't need rental housing, but could be considering home ownership. I believe we need to more clearly identify the affordable housing needs in our community and specifically create priorities to fit the greatest needs in the community based on data. While I understand that hard data is hard to come by, an analysis of the need, even if flawed, would help guide us in our decision making as a community.

Recommendation:

- Further definition of the need for affordable housing, indicating what income levels have the greatest need for affordable housing.
- Adjust affordable housing programs to meet the greatest needs in our community instead of the ones that the market is more likely to fill.

Recommendation to create more rental housing to reach a 5% vacancy rate needs a more specific goal.

While we know we need to create at least 600 units per year to keep pace with the need in the community, we need a number that will help us catch up to get back to the 5% vacancy rate.

Recommendation:

Do a study to determine how many units we need to build each year to return us to a 5% vacancy rate in this community. Specific attention should be made to make sure that we are creating a range of affordable units so we do not exacerbate the affordable housing problem by creating all high end units.

On-going battle not to tear down affordable housing has been lost repeatedly.

While I appreciate the recommendation to do more rehab of affordable housing, the cold reality is that this issue has been raised on multiple occasions and continues to be ignored.

Recommendation:

More educational materials and education of committee and council members about why this is a good idea.

Failure to address the need for larger units.

When I was on the plan commission nearly 10 year ago I had the staff look into the issue of most rental housing being built was 1 and 2 bedroom apartments. I asked them to recommend strategies for how we could address this issue and the conclusion at the time was that we couldn't address it as a plan commission.

Recommendation:

Have plan commission reconsider this issue and develop strategies to address it.

Homelessness

The impediments to any housing for homeless persons is incredibly difficult at the moment. Waiting lists at most agencies are 4 months - 1 year. And the people who are homeless face not only affordability issues, but are often screened out of the process if they are able to come up with the money. There are no recommendations in this report regarding unhoused persons and I believe that fails to address an emerging issue in this community. There was a 10% increase in homelessness in the past year according to recent reports and we can't continue to fail to address this problem.

Recommendation:

Consider the impacts of fair housing on unhoused persons and create recommendations to address these issues.

Law Changes

This report was written during a time of greatly changing policies around tenant and landlord issues. The two laws that have passed and proposed law likely to pass this month have greatly changed the landscape. While there was praise for the educated landlord community, I believe that has changed.

Recommendation:

- There needs to be an investment in or city and community leadership in educating the public about the 75 changes in the law that have occurred or will be occurring in a two year period of time.
- Add an action for EOC to examine other protected classes or ordinances to address issues raised by 2011 Wis Act 108, 2011 Wis Act 143 and SB179.

Is tying the development review fees to the projected unit value or rental cost legal?

I thought I understood the city attorney's office to be very clear that we could not do this. I hope I am wrong or that they have changed their mind about this issue.

Recommendation:

Seek a city attorney opinion on this matter.

Adding "Housing Discrimination" to report a problem.

This is a great idea, however, many people who we talk to at the Tenant Resource Center confuse discrimination issues with regular tenant landlord issues. Staff will need to be prepared to handle these complaints and refer them to the appropriate agency or department.

Recommendation:

Consider hiring a half time person to handle these complaints.

Streamline and combine funding programs.

I am just confused as to where this recommendation comes from as nothing in the report seems to indicate this is an issue or that it is a solution to any of the identified impediments to fair housing. Which programs should be streamlined and combined and why?

Recommendation:

Make it clear why this is necessary and what will be accomplished.

Add recommendation about the lack of people of color and women on key committees

You have a finding no page 53, but there was no corresponding recommendation of action. African Americans, Hispanic persons and women are all underrepresented on several city committees. This issue needs to continue to be monitored.

Recommendation:

- Add an action or goal to address this issue and set specific goals.
- Ongoing monitoring of progress in this area is critical.

Transit deserts?

In addition to considering transit times analysis of how frequently the buses come to certain areas of the city and how well they serve people who work 2nd and 3rd shifts jobs is necessary. Weekend and holiday bus schedules are particularly important to transit-dependent individuals who again, may need to work during non-traditional times.

Recommendation:

Explore transit issues beyond those actions listed in 4.21 and 4.22.

Other recommendations:

- Implementation - A strong interagency team needs to be developed to implement this plan and it will need support from department directors and political support.
- Housing is a complicated issue and the council may need more specific recommendations. There should be a committee appointed to take the actions and goals and create specific actions plans to assist in guiding staff or this should be assigned to the Housing Strategy Committee to implement.

SPECIFIC COMMENTS

Purpose, page 1. I believe the purpose needs to be better explained for those who have never seen this report before in our community and do not understand the role this report plays in the HUD funding process. Many people may not read past the executive summary and I believe it needs more background information as to the purpose of this report that goes beyond City of Madison actions and recommendations. ex. Why do we need to affirmatively further fair housing? Explain HUDs role in requiring this report and how they use it. What are the consequences of what is written in this report?

Goals and Actions Responsible Parties, page 2 The responsible party for each of these actions should include relevant city committees that involve residents of the city, not just staff. See the list below for recommendations for additions

- 1.1 & 1.2 all items - Add the policy makers to the list of responsible parties, including the Plan Commission, Housing Strategy Committee, CDA and Council.
- 2.11 - Since staff are the first step in the development process they should also be included here.
- 2.1 All items - Include the Housing Strategy Committee as a responsible party.
- 4.12 Add the Housing Strategy Committee
- 4.13 Add CDA and Housing Strategy Committee
- 4.2 This item should specifically list the Transit and Parking Commission as they are the ones that have the final authority to make changes to the routes.
- 5.3 The plan commission and council have had long debates on this issue on the past and should be included as a responsible party. The Commission on People with Disabilities should be added as a responsible party.

Editing, page 5

- Paragraph spacing errors between 3rd and 4th paragraphs and in the list of ordinances (between City of Madison and Dane County).
- Consistency of url's, Madison ordinance url is not underlined, the others are.
- In the note it should be "national origin", not "national original".

Eliminated Protected Classes in the City of Madison and Dane County in December 2011, Page 6

2011 Wis. Act 108 eliminated the ability of local municipalities ability to have protected classes of "arrest and conviction record" and "refusal to disclose social security number". These protected classes were eliminated on December 21, 2011.

The City of Madison has not updated their ordinances to reflect the changes by the legislature. While I appreciate the desire to keep these laws on the books in case the state legislation is repealed in the future, I believe this leads to further confusion by landlords about the status of the law.

Protected Class Exceptions, or Legal Discrimination, page 7

To avoid confusion and possible violations of fair housing law, it should be noted that when there are exceptions it just exempts the enforcement of that discrimination from the enforcement agency assigned to enforce that particular law. While there may be exemptions at the federal or local level, in some cases you can still be prosecuted at other levels of government and therefore still need to follow the laws. ex. At the federal level "Mrs. Murphy's law" allows for owner-occupied buildings with 4 or less units to be exempt, the Federal courts and HUD may not pursue consequences for violations, but the state (state courts and Equal Rights Division), Dane County (Dane County Corporation Council) and City of Madison (Equal Rights Division) may take a complaint. This is often not clear to landlords, they see the exemption and assume that they are exempt.

Due to the elimination of conviction records as a protected class, the second paragraph about in this section should be eliminated.

What is Required to Affirmatively Further Fair Housing?, page 7

Since this report is essentially new to the City of Madison, perhaps you could add some examples of what other communities do with this report and how they work to address fair housing.

What are Impediments to Fair Housing Choice?, page 7

Again, more explanation needed in these definitions. Perhaps underlining the key words of "because of" and "have this effect" are important. However, I believe further explanation is needed for those who do not deal with fair housing issues on a regular basis. Additionally, the first sentence of the second paragraph is explaining the concept of indirect impediments, but should explicitly say so. Words commonly used to explain these concepts are "direct" and "disparate" impact. This is a good opportunity to educate the broader community on these issues and clarity will be very helpful.

Housing Stock, page 25

I believe an analysis of building inspection records and complaints may show a correlation with areas of the city where there are high concentrations of people of color and poverty. Our housing stock in some areas of the city may in fact be an indirect impediment to fair housing.

Well Educated landlords and "renters have many options", page 26.

Renters simply do not have "many options". The vacancy rates have definitely changed this in Madison, we are at historic lows and renters have very limited options, resulting in higher rents (see page 29), failure of landlords to repair items in a timely manner and other complications in the rental market. The unhealthy vacancy rates make that statement patently untrue. See page 28.

I believe the comments about a well educated landlord population was previously true, however, with the passage of 2011 Wis. Act 108, 2011 Wis. Act 143 and the impending SB179, that will no longer be

true. Widespread confusion and the increasing complications created by these laws, along with the decimation of tenants rights are leading landlords to engage in actions that often run afoul of the laws. Extensive community education about this matters is required, but resources have not been allocated to do so. Additionally, the City of Madison has not changed their laws to reflect that state legislative changes, leading to additional confusion for landlords. While chapter 39 (equal opportunities) was updated, chapter 32 (tenant landlord law) was not.

One of the bigger concerns I continue to have is that tenants still come to the Tenant Resource Center asking for a list of landlords that accept Section 8. Laws are still in place that require landlords to consider all section 8 applicants and that they cannot deny them solely because they receive Section 8. Many landlords have told me that they believe that all local laws have been rescinded by state actions.

Gross Rents, page 29

The Tenant Resource Center produces a list of housing available on a weekly basis. Very rarely are there more than a dozen units under \$600. This is disturbing given that families on W-2 make \$653/month. Given the increase in the W-2 caseload, the 10% increase in homelessness along with the difficulty finding jobs for low skill workers, this key finding may not be adequate.

Also, you need another title in this section for section on owner-occupied housing.

Fair Housing Programs and Activities, page 37

While the powerpoint presentation talks about the "Notable Successes" and lists the following: "Strong network of public and non-profit housing support organizations (City, Tenant Resource Center, Fair Housing Center, etc.)" the Tenant Resource Center and Fair Housing Center are not listed on the list of Fair Housing Programs. Since we are the organizations that directly deal with discrimination issues in the community, I believe we should be added to the list. There are also other notable organizations missing. Please consider adding the following:

- State of Wisconsin Equal Rights Division
- Dane County Equal Opportunities Commission
- Dane County Corporation Council (enforces county fair housing ordinances)
- City of Madison Department of Civil Rights
- City of Madison Equal Opportunities Commission
- Fair Housing Center
- Tenant Resource Center
- Access to Independence

I also believe that you should reconsider the other organizations listed under "local groups" because while they provide affordable housing, they provide more indirect support and have no expertise in the area of fair housing. In fact, as an agency that helps tenants with issues, often some of these organizations are in need of further education in this area.

Non-profit Agencies, page 41 - 43

The agencies listed here seem to be different than the agencies listed on page 37. What is the difference between the two lists?

Additionally, the description of the Tenant Resource Center seems inadequate and fails to mention our primary activity - housing counseling. Please consider using the following description.

The Tenant Resource Center provides information and referral for tenants and landlords, housing counseling about rights and responsibilities, mediations at small claims court for eviction cases, weekly vacancy lists of available housing, lists of affordable housing programs, information about emergency and transitional housing, workshops for community organizations, eviction prevention dollars, third-party mediators for out of court disputes and has provides extensive information about tenant and landlord laws through its website, brochure series and workshops.

Zoning, page 44

Failure to mention neighborhoods that restrict zoning to prevent students from living there while "student status" is a protected class seems to be an oversight. I am particularly concerned about zoning that says that no more than 2 unrelated persons can live in a particular unit. This is a common restriction in areas on the near south and near west areas of the city close to the campus area.

Public Housing Authority Units and Tenant Selection Procedures, page 48

In recent years, there have been several steps backwards when it comes to the tenant selection process for public housing. The rules have been changed to allow more discretion by staff and less clarity for the people applying for housing. Legal Action of Wisconsin has repeatedly made detailed comments about these issues, which have gone largely unchanged as a result of their input. While there may not be direct issues with the policy, the implementation of that policy needs further exploration. Additionally, they have eliminated their preferences for homeless persons, despite HUD's emphasis on helping the chronically homeless get off the streets.

Failure to mention that the waiting lists are closed for the majority of Public Housing units seems to be an oversight.

Section 8 Voucher and Associated Programs, page 50

The City of Madison should consider restoring the preference for homeless person.

Failure to mention that waiting lists for Section 8 are nearly permanently closed and have been closed since 2007 seems to be an oversight.

Informational Programs, page 50

You may want to explain what the EOD is. You may also want to mention how many housing specific presentations are done each year, as I believe their focus is primarily on employment since that is where the majority of their complaints are. Additionally, you may want to include the programs run by the Fair Housing Center in this section, they may do more presentations about fair housing than the EOD>

Sale of Subsidized Housing and Possible Displacement, page 51

When the City of Madison displaces people through the chronic nuisance ordinances, the drug nuisance ordinance and purchase of various rental units for redevelopment of a neighborhood, these tools often have a disparate impact on people of color and people in poverty. My experience has been that they city does not willingly provide relocation assistance and tries to get the tenants out of the units by other means first. I believe this is an area that merits careful review.

The City needs to take responsibility for its actions in regard to displacing tenants in low-income neighborhoods though encouraging evictions by private landlords with the threat of chronic nuisance and the drug nuisance laws. There is a half time city attorney devoted to this activity and police captains

in the various districts frequently send out abatement letters. The tenants in these cases are given little to no assistance in these situations.

Focus Group input, pages 60 - 62

The focus group input seems to have had very little impact on the actions recommended.

On page 61 it says that "51% of statewide complaints to Tenant Resource Center were from accessibility/reasonable accommodation issues". This is not true. I don't know where that number came from or what the misunderstanding there might be.

Recommendations listed on page 62 are largely not in the actions and goals.

Perception of Discrimination, page 63

I am concerned that the perception of discrimination is much more widespread than indicated in this report. Failure to report discrimination doesn't mean that it isn't happening and I believe this deserves further exploration.

Appendix A

I would question this long list of agencies that probably don't even know that they are considered to be furthering fair housing and do not have that as part of their mission or primary activities.

CONCLUSION

Despite my comments, I would like to reiterate what a tremendous step forward for the community this is. Unfortunately, the challenges ahead lie in the implementation and I believe we need a strong implementation plan for this report. My experience with reports of this kind is that if there is not strong direction from the Common Council and the Directors of the various departments, not much will happen. Additionally, when issue cross departments, there is often lack of leadership as each department assumes the other will take the lead.

cc: Housing Strategy Committee
Equal Opportunities Commission
Community Development Authority
Commission on People with Disabilities
Common Council Members
Julie Spears, Grants Administrator, CDBG Office
Lucia Nunez, Director Department of Civil Rights
Jim O'Keefe, Director of Community Development Division
Matt Wachter, Housing Initiatives Specialist
Natalie Erdman, Executive Director Community Development Authority
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Steven Cover, Director of Planning and Community and Economic Development