

Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

August 14, 2014

James E. Johnson, Esq.
Debevoise & Plimpton, LLP
919 Third Avenue
New York, NY 10022

Re: **United States *ex rel* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York (No. 06 Civ. 2860 (DLC))**

Dear Mr. Johnson:

I am writing to bring to your attention the County's principal concerns arising from a review of the "Monitor's Second Biennial Assessment of Westchester County's Compliance" ("Biennial Assessment") and other reports and Court filings.

On June 26th 2014, you filed the Biennial Assessment with the Court. Before filing, you failed to afford the County a pre-filing meeting as required by paragraph 40 of the Settlement Agreement.

Paragraph 40 of the Settlement Agreement states as follows: "Prior to the submission of such reports to the Court (see paragraph 39 on Monitor's reports to the Court, including paragraph 15 assessments), the Monitor shall meet with representatives of the County and the Government to discuss compliance issues, recommendations for corrective action, and other matters included in the Monitor's reports to the Court."

We request that you follow the dictates of paragraph 40 before releasing any further reports to the Court, including any zoning analyses prepared by you or your consultants. A discussion of the issues you identify would, in our view, be mutually productive and, hopefully, limit any areas of potential disagreement. It is for this reason that we further request an opportunity to meet and confer before the release of any report that is likely to be a public document.

Further, since you did not afford County representatives a paragraph 40 meeting before filing the June 26th Biennial Assessment, we would like to discuss a remedy whereby the County's disagreements with certain statements and findings therein can be appropriately addressed and made part of an Amended Biennial Assessment to be filed with the Court.

The Biennial Assessment contains statements by you where the County Executive is disparaged or mischaracterized as undermining the Settlement Agreement. A prior discussion with County

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representatives could have included an exchange of views as to why those assertions are not well founded.

For example, the record also needs to be set straight concerning your allegation in the Biennial Assessment that “the County Executive has asserted in public that HUD, and at times the Monitor, was attempting to impose a new requirement of as many as 10,768 units and allocate sometimes hundreds of units to particular communities.”

As you are well aware the 10,768 figure comes from 2004 Rutgers University study. Any confusion stems from your incorporation of figures based on the Rutgers study and a derivative 2005 advisory plan, which you acknowledge was never adopted by the County, into your March 21, 2013 zoning Report Cards for municipalities. The allocations in the Report Card called for 5,847 units of affordable housing to be built in the 31 communities involved in the Settlement.

The Report Cards were immediately problematic because, based on these unadopted numbers, they imposed “obligations” on the municipalities that were not in the Settlement and those “obligations” called for the individual municipalities to meet specific affordable housing allocations, which went far beyond the Settlement’s benchmark of 750 units and again were never approved or accepted by the County Executive, the Board of Legislators or the municipalities.

The County Executive did nothing more than address the very serious implications raised by your Report Cards. It should also be noted that the first time the County saw the Report Cards was after they were sent to municipalities, who then forwarded them to the County Planning Department. Had the County been given the courtesy to review documents before public release, the confusion, which you created and complain about, may have been avoided. While the issuance of the Report Cards may not fall under a strict interpretation of Paragraph 40, it would be in the interest of all parties and the successful implementation of the Settlement Agreement for the County to have time to review any future documents like the Report Cards before they are made public.

The Biennial Assessment states that the Settlement was not to be only about “bricks and mortar,” i.e., building 750 affordable AFFH housing units, but also to remove impediments to fair housing in Westchester, decrease local opposition to fair housing, and market the housing to those least likely to apply in Westchester and the contiguous counties.

The County is proud of its record on all fronts.

As the numbers in the County’s 2Q 2014 Quarterly Report, sent to you on August 11, 2014, demonstrate, since this Administration took office in January 2010, it has met or exceeded the housing benchmarks in the Settlement Agreement. Eligible units are now underway in approximately two thirds of the municipalities eligible under the Settlement Agreement. The approved affirmative fair housing marketing plan has succeeded in attracting a racially and ethnically diverse pool of applicants for affordable AFFH housing units, and the Central Intake System has attracted interest in 29 states. More than half the eligible municipalities have brought their local zoning codes into compliance with the Model Ordinance.

The Settlement requires the county to develop 750 units of affordable housing in 31 mostly white communities in Westchester by 2017 using \$51.6 million of county tax dollars. Potential sites have been identified in all 31 communities and the progress to date includes:

- 407 units with financing in place; (450 is benchmark for this year)
- 404 units with building permits; (surpasses this year's benchmark of 350)
- 184 units occupied; (almost 25% of the total goal)
- \$33.9 million of county's \$51.6 million budget committed
- \$106 million leveraged from other sources (eg. state, federal and private funds)
- \$2.1 million allocated for outreach, education and housing services
- 350 meetings with community, developers and nonprofits
- 65,000 unique visitors to Housing Website each quarter
- 5,300 households signed up for settlement's 750 units

None of this could have happened without the support of the County Executive, and any statements in the Biennial Assessment that he has "signaled ongoing defiance" of its terms are false.

The Biennial Assessment states that "During the assessment period, the County did not submit an Analysis of Impediments ("AI") satisfactory to HUD in fulfillment of its obligation under paragraph 32 of the Settlement." This is only part of the story.

To date, the county has submitted eight AI's to HUD. These submissions total thousands of pages of data, maps, chart analysis and action steps and are the most comprehensive ever received by the agency. All 853 of the county's zoning districts have been reviewed and no evidence of exclusionary zoning was found. A separate report by the Pace University Land Use Law Center supports this conclusion. Further analysis by the County utilizing the Berenson and Huntington tests also found no evidence of exclusionary zoning.

Although the County worked with HUD, and followed the Monitor's templates for the zoning analyses, HUD has rejected all eight submissions because it doesn't accept the County's conclusions. In Court, the Assistant U.S. Attorney representing HUD acknowledged that the facts and the analysis used by the County were fine—the County simply had to substitute HUD's conclusion for those of the County.

A fair question to ask is at what point do HUD's rejections become unreasonable. HUD's rejections also have to be viewed in the light of the agency's decision to eliminate AI's on a nationwide basis. HUD's new proposed rules for Affirmatively Furthering Fair Housing no longer require AI's, saying the documents have "not been as effective as had been envisioned."

In summary, we request that there will be no further reports filed with the Court without a prior paragraph 40 meeting. The County will respond to the assertions made in the Biennial Assessment, hopefully in the framework of an Amended Biennial Assessment. We further

request that we meet and confer prior to the release of reports that are likely to become public documents.

Finally, as the County works with you to conclude the Settlement Agreement, it will continue to do so in a climate of mutual fairness and civility.

Very truly yours,



Kevin J. Plunkett
Deputy County Executive

cc: Hon. Robert P. Astorino, County Executive
Robert F. Meehan, Esq., County Attorney
Mary J. Mahon, Esq., Senior Advisor Housing & Director of Real Estate
Ed Buroughs, Commissioner, Planning Department