

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA *ex rel.* :
ANTI-DISCRIMINATION CENTER OF :
METRO NEW YORK, INC., :

ECF CASE

Plaintiff/Relator, :

06 CV 2860 (DLC)

-v-

WESTCHESTER COUNTY, NEW YORK, :

Defendant. :

-----X

**REPLY DECLARATION OF CRAIG GURIAN
IN SUPPORT OF MOTION TO INTERVENE**

CRAIG GURIAN, an attorney admitted to practice before this Court, pursuant to 28 U.S.C. §1746, declares that the following is true and correct:

1. I am the Executive Director of, and co-counsel for, the Anti-Discrimination Center (“ADC”) and make this declaration in support of ADC’s motion to intervene.

ADC’s AFFH development interests

2. Both the Government and Westchester are well aware of the fact that ADC seeks to vindicate its civil rights interest in a less-segregated Westchester County not only through advocacy but also through direct investment in developing affordable housing in the County with maximum desegregation potential.

3. On January 31, 2011, ADC sent individual letters to Westchester and to each Westchester municipality with a 2000 Census African-American population of less than 2.0 percent. In the letter, we indicated our interest in pursuing *precisely what Westchester is*

supposed to want to have happen under the Consent Decree, and precisely what Westchester and its municipalities are obliged to be striving to have happen pursuant to affirmatively furthering fair housing law and regulation. As we put it in the letter we sent to the County Executive:

As you know, the failure of jurisdictions to confront and overcome zoning barriers to affordable housing development has played and continues to play a significant role in perpetuating residential segregation.

Consistent with and in furtherance of Westchester's obligations under the Consent Decree, ADC is interest[ed] in investing in the development of affordable housing in Westchester — including the acquisition of interests in appropriate parcels — in a manner that both overcomes those barriers and maximizes the desegregation potential of such affordable housing.

Equivalent language was used in the letters to the mayors and supervisors of the ultra-White towns and villages.

4. We sought to be pointed in the direction of parcels that would fulfill the letter and intention of the Consent Decree and the obligation to affirmatively further fair housing: housing that was in municipalities with African-American populations of less than 2.0 percent; on census blocks with African-American populations of under 2.0 and Latino populations of less than 5.0 percent; and on census blocks that were populated, but not with group quarters population. We specified that our interest was in those parcels not currently zoned for the development of as-of-right multiple dwellings that could, consistent with acting in an environmentally responsible fashion, sustain some greater density.

5. In the case of the letter to County Executive Astorino, we also asked that the parcels be located “within one of the four (to date) least-cooperative municipalities from among those described...above, in terms of taking steps to overcome barriers to the development of affordable housing that has maximum desegregation potential.”

6. And, finally, we asked to be pointed to any County housing programs currently open

to participation “that have taken or are taking concrete measures to begin to end residential segregation in Westchester.” [The letters to municipalities asked for the equivalent information on the local level.]

7. Neither the County Executive nor any of his representatives responded to the letter. I therefore sent another letter on March 18th, the full text of which follows:

About six weeks ago, you received my letter regarding ADC’s interest in investing in the development in Westchester of affordable housing with maximum desegregation potential.

Not having had a response, I wanted to write to you to reiterate our interest in directly fostering through investment *precisely* the type of housing that is called for under the Consent Decree and pursuant to Westchester’s affirmatively furthering fair housing obligations.

I think you’ll agree that not every entity interested in development of affordable housing is prepared, as we are, to proceed with a parcel (or parcels) the development of which would require the overcoming of zoning barriers and other forms of municipal resistance.

We hope that you cause our original questions to be answered, and ask as well that Westchester provide to us the advice, guidance, and (noneconomic) assistance that are being made available to others so that we can move forward with investing in the County.

8. ADC presented a strikingly unusual opportunity for Westchester: an investor desiring to cause AFFH housing to be built, and unconcerned about having to deal with an uncooperative municipality. Westchester is supposed to take “all possible actions to meet its obligations” under the Consent Decree (Consent Decree, ¶ 15), and, of course, is under a continuing obligation to AFFH.

9. Nevertheless, when we finally received a response (in a letter dated April 20, 2011, from Westchester’s Deputy County Executive), the County did not respond to any of the questions we had posed, nor offer to meet to discuss the scope of ADC’s proposed investment. (Westchester recites in its Quarterly Reports that it routinely meets with potential developers).

Instead, the sum and substance of the response was to point ADC to westchestergov.com, the County's website.

10. A similar picture exists at the municipal level. Municipalities are all supposed to be acting to promote the development demanded by the Consent Decree (Consent Decree, ¶ 7(j)), and are supposed to be "actively further[ing] implementation" of the Decree through their land use regulations and other affirmative measures to assist development of affordable housing" (Consent Decree, ¶ 25(d)(iii)). As recipients of federal housing funds, they, too, are under a continuing obligation to AFFH.

11. But, 13 municipalities never responded to the letters we sent in January, and none of the eight municipalities that did respond identified any program to end residential segregation.

12. Several of the responders were firmly committed to maintaining the status quo. Scarsdale, for example, denied the reality of residential segregation in the village, and failed to identify a single parcel of land that could sustain greater density. Pleasantville professed ignorance of the demographic composition of its Census Blocks, and, like Scarsdale, failed to identify a single parcel of land that could sustain greater density. Irvington took the position that it was not aware of even one parcel in a single-family residential zone in the entire village that would be suitable for sustaining greater density.

13. Through multiple written and oral communications, ADC informed the Government of all of the foregoing.

14. As such, even in the absence of any independent inquiry as to whether *all* municipalities were promoting the goals and objectives of the Consent Decree (not even a check of what exclusionary zoning provisions remained and remain in place), the Government had actual knowledge of lack of cooperation from numerous municipalities through the information

provided by ADC.

15. The type of investment we wish to make — on desirable blocks that have maximum desegregation potential but which do not allow currently multiple dwellings as of right — would obviously be facilitated by County and municipal cooperation of exactly the sort that the Decree contemplates, and is just as obviously inhibited by the lack of such cooperation on either a voluntary basis or as the result of Government and Monitor enforcement of the Decree. The message that we have gotten is that it is futile to expect we will be met by anything other than the most intense resistance. Nevertheless, we continue to be interested in proceeding.

ADC's broader civil rights interests

16. From the beginning of the litigation phase of this case, ADC not only wanted to remedy the fraud that Westchester had committed against the Government, but also wanted to achieve broader AFFH goals, including getting the AFFH requirement to be taken seriously, and achieving concrete change in Westchester via the construction of AFFH development.

17. We recognized that a resolution to a False Claims Act case where injunctive relief was incorporated was not going to be easy; indeed, we were not aware of such a result having been achieved. Moreover, we recognized that a result that involved putting funds towards housing would have a directly limiting impact on the funds that ADC would receive as compared with the usual False Claims Act resolution of all funds recovered being returned to the Treasury. Nevertheless, it was important to us to proceed in that way, and we kept that result in mind throughout the litigation.

18. I was asked at my Jan. 2008 deposition what ADC was hoping to achieve from the litigation. I responded by accurately reporting that we sought, “A change in the conduct of

Westchester County and a change in the conduct of other federal grant recipients who have not taken the obligation to affirmatively further fair housing seriously." I went on to accurately report a more specific Westchester-based result for which we were looking: "[W]e're interested in a resolution where most of the money could go to fund affordable housing in Westchester County in areas that have been traditionally exclusionary with a substantially lower amount of money going to the center as relator."

Implementation Plan status and Cortlandt marketing issues

19. On Sept. 13th, my co-counsel and I spoke by telephone with Eric Gross, one of the Monitor's associates. According to Mr. Gross, the only issues currently before the Monitor for resolution are the adequacy of the AI and the County Executive's veto of the source of income legislation. We knew from papers submitted in opposition to this motion that Westchester (not the Government) had taken the initiative to bring the AI issue before the Monitor. Mr. Gross explained that the Government considered the source of income issue part of the dispute. Mr. Gross also confirmed that the Monitor is dealing with IP issues sequentially, and that his next planned action in connection with the IP deals only with the affirmative marketing plan.

20. On Sept. 7th, the County Legislature's Housing, Planning, and Operations Committee held a meeting to discuss, *inter alia*, the status of the Consent Decree.¹

21. Rose Noonan, the head of the "Housing Action Council" and the Monitor's former assistant in this case, was present at the meeting, at which it was confirmed that the application deadline for units in the Cortlandt development was Sept. 30th. She spoke at the meeting as the "co-developer" of the project, responsible for marketing and outreach.

¹ A videotape of the full Sept. 7th meeting of the Housing, Planning, and Operations Committee is as available at <http://westchestercountyny.iqm2.com/Citizens/VideoMain.aspx?MeetingID=2028>.

22. Noonan said that “we are marketing locally in terms of having several workshops.” After saying that notices (without specification as to scope or frequency) were being sent to the nine-county area around Westchester, she was asked whether workshops were being done throughout that nine-county area. She said only that there had been a workshop done in Westchester and that a second workshop was planned, also for Westchester. No representation was made that any workshops would be done in New York City or elsewhere outside of Westchester in the final weeks of the marketing period, with Noonan instead pointing to a limited number of advertisements that had been placed.

23. Specifically, Noonan said that to that point (only three weeks before the application deadline) an advertisement had thus far been placed only in the Westchester Journal News, the New York Daily News, an Asian newspaper, and, on the Friday of Labor Day weekend, the Amsterdam News.

The myth of progress and the failure of the Government and the Monitor to proceed in accordance with the Decree

24. Westchester asserts that ADC failed to provide a pleading to accompany its motion to intervene.² In fact, of course, the motion to enforce that ADC filed concurrently with the instant motion to intervene constitutes such a pleading. The motion to enforce was filed as ECF Doc. 343. For the purposes of this motion, we are denominating that document as Exhibit A.³

25. That motion to enforce is also important for demonstrating the scope of the issues that the Government and Monitor, contrary to the requirements of the Decree, have chosen to

² Westchester Memorandum in Opposition to ADC Motion to Intervene at 10, n.4.

³ To avoid any confusion or duplication, we will not re-file the document itself, but refer the Court and the parties to the original.

ignore in order to accommodate themselves to a recalcitrant and resistant Westchester (both in terms of elements of an Implementation Plan and otherwise). Likewise it is also important for the Court to assess the profound differences between the way that the Government and ADC interpret the binding language of the Consent Decree.

26. The explanation of the relief sought, contained in the declaration I submitted in connection with the motion to enforce, makes clear why permitting ADC intervention would yield a party that, unlike the Government, is prepared to vindicate all provisions of the Decree. The exhibits contained therein also provide vivid evidence, *inter alia*, of across-the-board Westchester non-compliance (not the “mixed” record⁴ that the Government claims to exist). For the purposes of this motion, we are denominating my declaration in support of the motion to enforce, originally filed as ECF Doc. 351 (with associated exhibits filed as ECF Docs. 356-58), as Exhibit B.

27. ADC’s memorandum in support of its motion to intervene incorporated by reference our memorandum in support of our motion to enforce. For the purposes of this motion, we are denominating that latter memorandum, originally filed as ECF Doc. 345, as Exhibit C.⁵

28. Westchester’s County Executive has denied that Westchester is a segregated county “in any way.”⁶ This rejection of a crucial premise of the Decree — that *de facto* residential segregation does in fact exist in the County and must be combated — means that, by definition,

⁴ Government Memorandum in Opposition to ADC’s Motion to Intervene at p. 5.

⁵ ADC recognizes, of course, that the Court will not be *determining* the motion to enforce at this time, having deferred consideration of that matter. That fact does not change the fact that the materials submitted on that brief and incorporated by reference are entirely relevant to this matter, as reflected by the Government’s recognition, both at the scheduling conference and in its papers that the adequacy of the Government’s efforts must be measured in connection with the scope of the non-compliance with which it has been presented.

⁶ See News12, “Astorino fights changes to affordable housing settlement,” Jul. 28, 2011, http://www.news12.com/articleDetail.jsp?regionId=1®ion_name=WC&articleId=288014&position=1&news_type=news at approximately the 55 second mark.

Westchester will continue to fail to meet its Consent Decree, ¶ 31(c) obligation to turn all its housing policies and programs towards the goal of ending such segregation.

29. ADC's demographic expert, Dr. Andrew Beveridge, has found that Westchester County, contrary to the County's position, remains deeply segregated. For purposes of this motion, we are denominating Dr. Beveridge's initial declaration to that effect, originally submitted as ECF Doc. 346 in support of ADC's motion to enforce, as Exhibit D.

Additional exhibits

30. An aerial photo of the City of Rye site, with explanatory annotation, is annexed hereto as Exhibit E.

31. An aerial photo of the Cortlandt site, with explanatory annotation, is annexed hereto as Exhibit F.

32. An aerial photo of the Larchmont site, with explanatory annotation, is annexed hereto as Exhibit G. In connection with the exhibit and the site, it is important to note that the site's location is even worse than we originally imagined. As shown in the photo, ingress to and egress from the property can be had on Palmer Avenue, but the housing itself is being built off of Palmer Avenue, sandwiched between the commercial buildings that abut Palmer Avenue, and the railroad tracks and I-95 just to the North (*i.e.*, the housing is even closer to the railroad tracks and I-95 than the buildings located on Palmer Avenue). Page 2 of Exhibit G is a page from the County Funding Advisory showing the "site view." That Funding Advisory that was included in the Monitor's Apr. 25, 2011 report to the Court. The image is grainy, but the outlines of the site are delineated with white lines that correspond to the approximated site lines that we display in the aerial photo (page 1 of Exhibit G).

33. Page 2 of Westchester's quarterly report for the period ending June 30, 2011 (setting forth the number of units with financing in place) is annexed hereto as Exhibit H.

34. A full copy of the Consent Decree is annexed hereto as Exhibit I.

35. The transcript of the June 7th status conference in this case is annexed hereto as Exhibit J.

36. A copy of the Jan. 20, 2010 statement of John D. Trasviña, HUD's Assistant Secretary for Fair Housing and Equal Opportunity, to the Subcommittee on Housing and Community Opportunity of House Financial Services Committee is annexed hereto as Exhibit K.

37. A copy of *Walker v. U.S. Dept. of Housing and Urban Development*, Civil Action 85-cv-1210-R (N.D. Tex. June 12, 1996) (unpublished order) is annexed hereto as Exhibit L.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Executed on September 16, 2011.



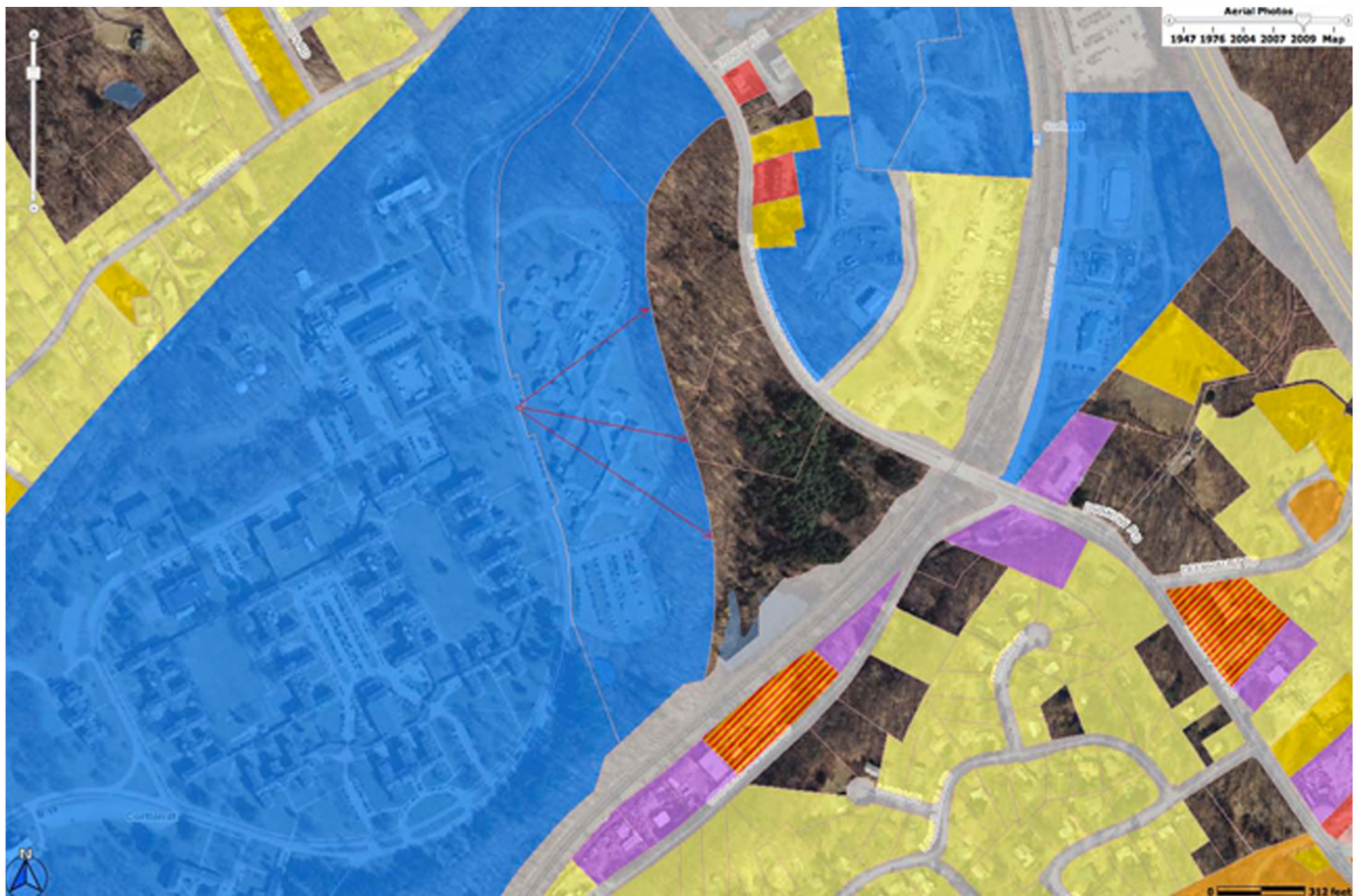
Craig Gurian (CG6405)

EXHIBIT E



The diagonal black line running across the map is Westchester's delineation of the Port Chester line (Port Chester to the north; City of Rye to the south). The annotation added in red represents the outline of the property in question - 15 Edgar Place/42 Cottage Street. The property directly abuts Port Chester, a non-eligible municipality that has a Latino population alone of 59.4 percent. One cannot have egress from the property to the nearest street (Cottage Street) without crossing into Port Chester. Directly below the property are I-95 and I-287. The property is on a census block that is between 50 and 51 percent African-American and Latino. Affirmatively marketing these units to minority groups, therefore, would not be a matter of reducing segregation, but of perpetuating segregation.

EXHIBIT F



LAND USE KEY

- Agricultural Uses - Farms, Stables, Nurseries
- Single Family Residential
- Two & Three Family and Multi-Structure Proper
- Condominiums, Apartments & Multi-Family Res
- Common Land Homeowners Assoc.
- Vacant Properties
- Commercial and Retail
- Manufacturing, Industrial and Warehousing
- Office and Research (including Campus Office
- Mixed Use
- Institutional and Public Assembly
- Transportation, Communication and Utilities
- Cemeteries
- Public Parks and Parkway Lands
- Private Recreation
- Nature Preserves
- Water Supply Lands
- Interior Water Bodies

The arrows point to the 3 parcels that comprise the “Roundtop at Montrose” property. The area to the left highlighted in blue contains the grounds of the Veterans Administration psychiatric and substance abuse hospital. The railroad tracks abutting the property, and Route 9A, also abutting the property, are shown in grey. Other than the VA facility residents, Census data shows, the census block is unpopulated (that is, there are no White residents not in group quarters to object). The Cortlandt development was already permitted prior to the entry of the Consent Decree, so its development under the Decree represents no zoning barrier being overcome.

EXHIBIT G



The approximate boundaries of the site are indicated in red. It is a former moving company property, and is part of a census block that abuts the railroad tracks (with I-95 just beyond). While ingress is to be had from Palmer Avenue, the housing itself will be behind the buildings that run along Palmer, even closer to the tracks and the highway than those buildings. The site is located in close proximity to New Rochelle (combined African-American and Latino population of 45.9 percent). The Larchmont development was already permitted prior to the entry of the Consent Decree, so its development under the Decree represents no zoning barrier being overcome.

Executive Summary
2101-2105 Palmer Ave
Larchmont, NY 10538



Site View

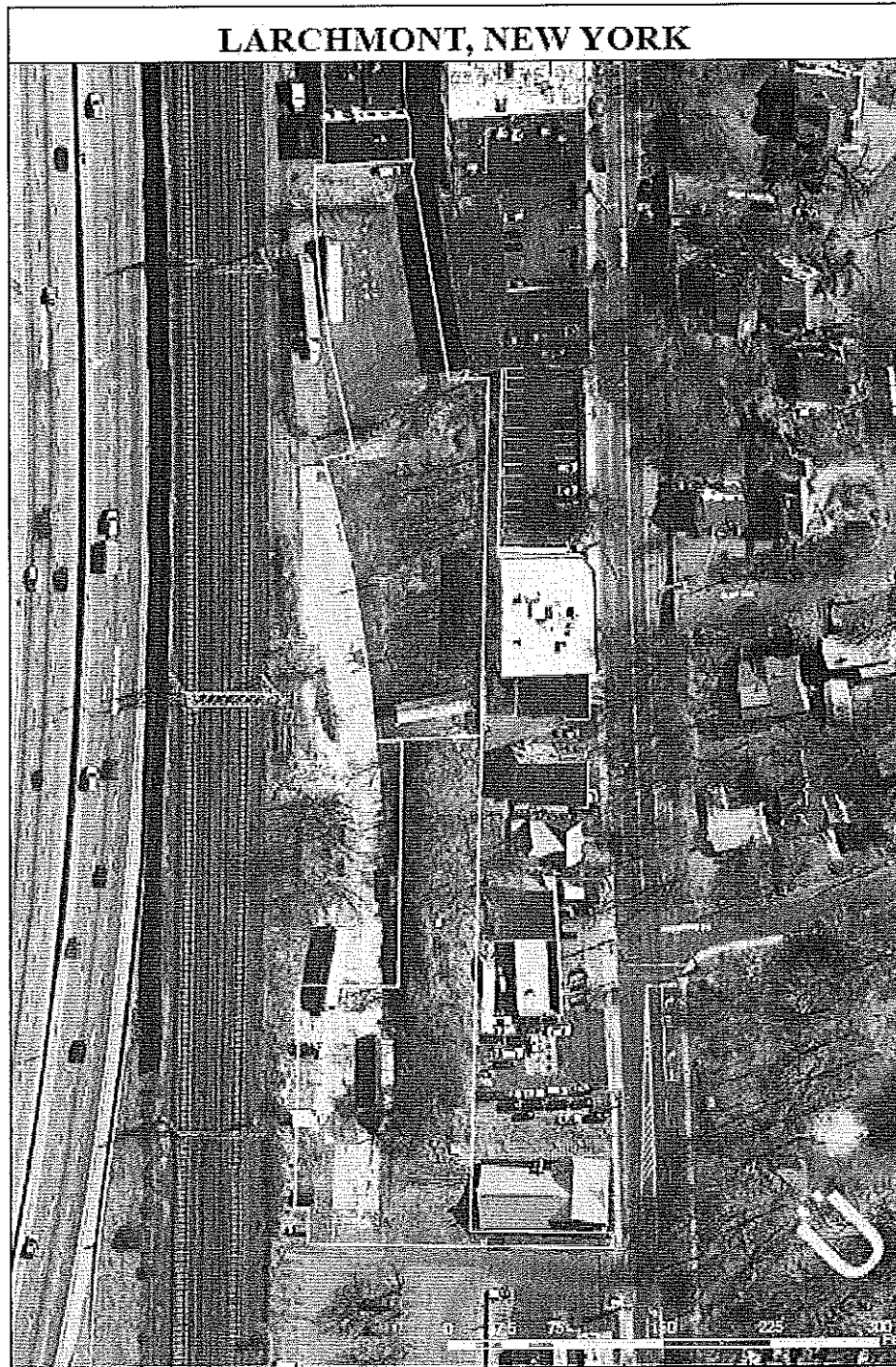


EXHIBIT J

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2 UNITED STATES OF AMERICA ex
3 rel. ANTI-DISCRIMINATION
3 CENTER OF METRO NEW YORK,
4 INC.,

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5 Plaintiff,

5
6 v. 06 CV 2860 (DLC)

6
7 WESTCHESTER COUNTY, NEW YORK,

7
8 Defendant.

8 -----x

9 New York, N.Y.
9 June 7, 2011
10 2:30 p.m.

10
11 Before:

11
12 HON. DENISE COTE,
12
13 District Judge

13 APPEARANCES

14
15 CRAIG GURIAN
15 Attorney for Intervenor

16
16 ROBERT H. STROUP
17 Co-counsel for Intervenor

17
18 U.S. ATTORNEY'S OFFICE - CIVIL DIVISION
18 Attorney for Plaintiff

19 BENJAMIN H. TORRANCE

19
20 ROBERT F. MEEHAN
20 JAMES CASTRO-BLANCO
21 Attorneys for Defendant

22 Also Present:
23 James E. Johnson, Monitor

24
25

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1 (Case called)

2 (In open court)

3 THE DEPUTY CLERK: United States of America ex rel.
4 Anti-Discrimination Center of Metro New York, Inc. Counsel for
5 the plaintiff, please state your name?

6 MR. TORRANCE: For plaintiff the government, Benjamin
7 Torrance, United States Attorney. Good afternoon your Honor.

8 THE DEPUTY CLERK: Counsel, please state your names
9 for the record and the parties you represent.

10 MR. GURIAN: Craig Gurian, Antidiscrimination Center.

11 MR. STROUP: Bob Stroup, Antidiscrimination Center.

12 MR. JOHNSON: James Johnson. Good afternoon, your
13 Honor. I'm the federal monitor.

14 THE DEPUTY CLERK: For the defendant, please state
15 your name for the record?

16 MR. MEEHAN: Good afternoon, your Honor. Robert
17 Meehan, County Attorney, attorney for County of Westchester.

18 THE COURT: Mr. Meehan you're accompanied by
19 Mr. Castro-Blanco, is that right?

20 MR. MEEHAN: Yes, your Honor.

21 THE COURT: Mr. Meehan, are you going to be using
22 outside counsel in this matter or not?

23 MR. MEEHAN: No, your Honor.

24 THE COURT: Welcome, Mr. Johnson. Thank you for
25 attending this. I appreciate it. I know you've filed already

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1 a series of reports and have been functioning as a mediator on
2 this case. Good.

3 So I have an application by the County in connection
4 with motions that have been filed by a proposed intervenor, the
5 Antidiscrimination Center, and as I understand it, the County
6 of Westchester wishes me to address the motion to intervene
7 first, before the parties brief or before I reach the motion to
8 enforce the consent decree. Do I understand that correctly,
9 Mr. Meehan?

10 MR. MEEHAN: Yes, your Honor, we'd would like you to
11 address the motion to intervene first.

12 THE COURT: Thank you so much.

13 I'd be interested in hearing from you, Mr. Torrance,
14 what's the position of the United States government with
15 respect to the motion to intervene and the sequencing of the
16 motions?

17 MR. TORRANCE: We will oppose, your Honor, the motion
18 to intervene and we agree with the County that that motion is
19 preliminary to the motion to enforce. We believe that Rule 24
20 and Article III standing protects certain interests that should
21 be addressed first before the enforcement motion is addressed
22 by the Court.

23 THE COURT: Is the government planning to bring its
24 own enforcement motion or not?

25 MR. TORRANCE: We do not plan to do that at the

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1 moment, no, your Honor.

2 THE COURT: Good. So, Mr. Gurian, do you wish to be
3 heard with respect to the sequencing issue?

4 MR. GURIAN: Yes. Thank you, your Honor. I
5 appreciate it. We oppose the application to delay the Court's
6 ability to examine the substance of the matter. We are now two
7 days shy of 22 months after your Honor's entry of the consent
8 decree, and unfortunately we haven't seen any progress. It's
9 as if the litigation, your rulings, the consent decree all
10 never occurred.

11 Westchester has the same policies, the same excuses
12 and continues to be interested in avoiding making change that
13 affirmatively further fair housing, AFFH's. This is really
14 across the board.

15 THE COURT: I appreciate that that that's your
16 position, but in terms of the sequencing issue, why shouldn't I
17 address the motion to intervene first?

18 MR. GURIAN: Because the Court has an independent
19 juridical interest in seeing that its orders are enforced, and
20 we really have two possibilities here; simultaneous briefing
21 and sequential briefing. If we were to have simultaneous
22 briefing, which is more efficient in any event, since the
23 substantive issues are intertwined with the question of how
24 well the government and its monitor have or have not
25 represented the public interest here, if we have simultaneous

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1 briefing the government and Westchester have a complete
2 opportunity to be saying, your Honor, defer your consideration
3 for the arguments that have been made. At the same time, when
4 your Honor sees the scope of the violations that Westchester
5 has, and I won't recite them now, when your Honor sees the
6 scope of the violations, we believe your Honor will be inclined
7 to exercise that independent judicial interest and your
8 interest pursuant to paragraph 58 of the consent decree to
9 compel Westchester to comply.

10 If, your Honor, there is sequential briefing, you have
11 a circumstance where we get to the end of the road on
12 intervention briefing, and you will have seen whether it's on
13 unit specific obligations or broader obligations that
14 Westchester hasn't been following what it's supposed to do, and
15 Westchester will then, I'm sure, pop up and say hang on, Judge,
16 we need now first to brief this other issue. It's inefficient,
17 it deprives the Court of the ability to get this process back
18 on track.

19 And if I may add just one thing in about ten or
20 fifteen more seconds. Something that has really marked this
21 process has been treating it as though it were a running
22 negotiation of some dispute in a foreign hot spot trying to get
23 people to cooperate or to talk with one another, perhaps one of
24 the parties might be able to walk away. That's not what we're
25 talking about here. We're talking about a lawful federal court

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1 order where even after the filing of the motions last week,
2 even after the filings of the motion, Westchester has said
3 publicly it will not comply with a core obligation of the
4 decree, and your Honor will recall writing, very famously now,
5 that the obligation to affirmatively further is not mere
6 boilerplate, but is a substantive obligation rooted in the
7 purpose and function of the Fair Housing Act in implementing
8 regulations, and again just this week after the filing of the
9 motions asked about two core requirements, an implementation
10 plan, an analysis of impediments to fair housing choice,
11 Westchester characterized those as, quote, "simply bureaucratic
12 documents."

13 There's really urgency here, because as the process
14 goes on in an unsupervised way, it's not simply a neutral
15 process where perhaps we can fix things later. Time and
16 precious consent decree dollars are being spent in ways that
17 they shouldn't be. So we respectfully submit that simultaneous
18 briefing really serves the Court's interests and the interests
19 of justice.

20 THE COURT: Thank you very much. Before I referred to
21 Mr. Johnson as a mediator and of course he's not. He's a
22 Court-appointed monitor. So I don't think it's fair to say
23 this consent decree is marching forward in a totally
24 unsupervised way. But in any event, I don't want to make
25 judgments about the merits of either motion. I will look with

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1 care at the briefing when it's before me.

2 I think, Mr. Gurian, your eloquent plea to do this in
3 concurrent briefing has some attraction, but I think it would
4 actually be far more efficient for all of us to know whether or
5 not the Antidiscrimination Center is empowered at this point to
6 ask me to take substantive intervention with respect to the
7 County's activities, and if the United States is going to
8 oppose the intervention, of course that is a second voice. I
9 am assuming that Westchester is going to oppose the
10 intervention, so two voices here in opposition. And while I'm
11 not trying to do a head count, it just does say to me again I'm
12 going to really have to take these issues seriously and I think
13 it would be best for us to do the briefing sequentially.

14 Now, let's set a schedule for the opposition and have
15 the government, not that you would be doing a joint opposition,
16 but has the government and has Westchester, have the two of you
17 talked about a briefing schedule so you're able to tell me,
18 give me a joint request?

19 MR. CASTRO-BLANCO: Yes, your Honor. I've spoken with
20 Mr. Torrance and compared notes on our ongoing manpower
21 shortages, vacation schedules and the like, but in order to do
22 this as efficiently as possible we would suggest to the Court
23 that the County's papers and the government's papers be
24 submitted to the Court on July 15, your Honor. That would also
25 for another reason -- I'm sorry, July 29. Because the AI is

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1 due to HUD on the 13th of June, and there is a 30-day window
2 during which HUD will hopefully at this juncture approve the
3 AI.

4 THE COURT: So that would be the middle of July?

5 MR. CASTRO-BLANCO: Yes, your Honor.

6 THE COURT: So you're saying your opposition to the
7 motion to intervene will be principally on the ground that
8 there is no need for intervention?

9 MR. CASTRO-BLANCO: No, your Honor. The grounds are
10 certainly, with all due respect to the ADC, that they are not
11 proper intervenors in this case. This Court has set out
12 through the settlements a mechanism by which any disputes
13 regarding the implementation of the plan, whether from the
14 government or from the County, would in fact go through the
15 monitor and if either the government or the County had any
16 issues with what it is that the monitor would say, that that
17 would then go to the magistrate. There is a mechanism in place
18 for making sure that this plan is implemented correctly, and
19 under the False Claim Act and under Rule 24, the ADC is not a
20 proper intervenor in this case. That's what our motion would
21 be based on.

22 THE COURT: So why does it matter that HUD will be
23 perhaps accepting or rejecting the June 13th AI in the middle
24 of July?

25 MR. MEEHAN: Your Honor, because I think there's an
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1 ongoing stipulation, there is a seven-year stipulation and
2 there is ongoing activity between the County and the United
3 States in an attempt to implement the stipulation. This
4 activity is ongoing, so we believe that first before there's
5 any motions on the substance which are not being initiated by
6 either of the parties to the action, we have to decide whether
7 or not a third party can come in at this point and in effect
8 intervene and will affect the substantive implementation of the
9 settlement agreement.

10 THE COURT: Okay. Thank you. Mr. Torrance, on the
11 timing. I don't understand the reference to the AI and its
12 submission review by HUD on the issue of intervention.

13 MR. TORRANCE: I will state your Honor, the Court is
14 correct that that's not a major piece of it. But I will say
15 that the premise of much of ADC's papers are essentially that
16 the County has failed to meet certain obligations, the
17 government and monitor together has failed to enforce that. I
18 would anticipate by the middle of July, both because of the AI
19 and I believe because of the progress of the implementation
20 plan, that those premises may be undercut. So even though we
21 would oppose the intervention motion regardless of whether
22 those premises have been undercut or not, I do think it's
23 relevant to the Court's consideration, again, not the major
24 piece of it, but relevant to the issue.

25 So I would, we did, I do think that the schedule set

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1 out by the County, we do support that schedule, not only for
2 that reason, but also because of other commitments that we both
3 have outside of this case. I recognize that it is somewhat of
4 a longer time than perhaps the Court would usually give, but
5 there is, there are significant issues to be addressed here and
6 we would ask for that time.

7 THE COURT: Mr. Johnson, did you want to weigh in on
8 this at all?

9 MR. JOHNSON: Your Honor, my major interest is to see
10 that a number of steps be taken, and sooner rather than later.
11 To the extent that it's relevant to the timing issue, I think
12 it would be helpful and perhaps focus attention of the parties
13 if there is before we have to come back to court again there's
14 an opportunity to proceed with and finish both the AI and the
15 implementation plan. Either now or later I can explain to the
16 Court part of the process that has been going on, but it has
17 taken some time, and having a fixed date like this I think will
18 actually accelerate the underlying process which is to get
19 these documents complete.

20 THE COURT: So do you support the opposition date to
21 be July 29?

22 MR. JOHNSON: Yes, your Honor.

23 THE COURT: And how long does the Antidiscrimination
24 Center want for a reply?

25 MR. GURIAN: Your Honor, may we be heard briefly on
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1 the question of the opposition and the statements that have
2 been raised? Because we don't think that that fairly states
3 the posture of the case and I ask the Court's indulgence for
4 just a couple of moments.

5 THE COURT: You know, I think they actually made some
6 strong arguments against sequencing of the motions, so I
7 understood that --

8 MR. GURIAN: I don't mean to reprise anything, your
9 Honor.

10 THE COURT: Okay, but I think we can all move on to
11 briefing. Everyone is busy here. These are important issues.
12 How long do you need for reply? You're going to be in August,
13 so you may have some issues to consider.

14 MR. GURIAN: My co-counsel is describing a problem
15 that he has in being on trial in August, but --

16 THE COURT: Shall we say the end of September?

17 MR. GURIAN: Judge, with respect, we have had a
18 situation where the implementation plan in this case was
19 originally supposed to be due pursuant to the consent decree in
20 2009. There was a mandatory point after the second rejected
21 implementation plan for the monitor to set forth an
22 implementation plan, that was last July. There have now been
23 two analyses of impediments that have been rejected. Neither
24 the defendant nor anyone else has spoken to the broader
25 obligation that Westchester County -- in any report received by

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1 the Court -- the broader responsibility that Westchester County
2 has under paragraph 31(c) of the agreement to use all of its
3 housing programs and residential segregation.

4 Your Honor had correspondence back I think at the end
5 of June of last year when the County Executive vetoed
6 legislation that would have banned discrimination on the basis
7 of sources of income rather than promoting it. Yes, it's true
8 that there is this seven-year period of time, it will
9 constantly be in motion, but so that the arguments here that,
10 say, give us from 22 months to 24, those really don't change
11 the fact that there haven't been any units put on the ground in
12 Westchester County that seek to overcome impediments to fair
13 housing choice. So --

14 THE COURT: So what would you like as your reply date
15 with a July 29 opposition?

16 MR. GURIAN: Then that would be a mid-September date.
17 If it were possible to have an earlier date on the opposition,
18 we would be able to turn around in those circumstances a reply
19 much more quickly, say in the course of ten days.

20 THE COURT: Okay. So do you want September 16 when
21 you say mid-September or do you want later?

22 MR. GURIAN: In those circumstances, that would be the
23 time.

24 THE COURT: Okay. September 16. So I am going to
25 issue a scheduling order with these dates and I know this is in

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1 some ways an inefficient way to set a briefing schedule to
2 bring you all into court, but I thank you for being here and it
3 gives me some comfort level that we're doing what's appropriate
4 in the circumstances. Thank you so much.

5 (Adjourned)

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