



Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

February 13, 2013

Sent Via Email

James E. Johnson, Esq.
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**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:

We are writing in response to your February 1st letter, requesting that the County respond to HUD's objections to the proposed Ellendale Commons development in the Village of Rye Brook, which was the subject of Funding Advisory 13, dated October 10, 2012.

Specifically, HUD is concerned about proposed affordable AFFH units in eligible municipalities that are districted to schools in ineligible municipalities. By letter dated October 10, 2012, with respect to another Rye Brook development served by the Port Chester –Rye Free Union School District, you had also asked the County to comment. We enclose our response, dated October 22, 2012, since it addresses the issue raised by HUD.

With respect to HUD's concerns on Ellendale Commons, we have additional comments.

Location of the Port Chester-Rye Free Union School District

The Port Chester-Rye Free Union School District serves both the Village of Rye Brook and the Village of Port Chester. (It is one of three school districts that serve the Village of Rye Brook.) Its middle school is located within Rye Brook's borders and its high school and its campus are physically located in both the Villages of Rye Brook and Port Chester. Accordingly, HUD is not correct in stating that the Ellendale units are districted to a school in an ineligible municipality. The Port Chester School District is in both the Village of Rye Brook ("eligible") and the Village of Port Chester ("ineligible").

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Locational Criteria and School Diversity

The locational criteria in the Settlement Agreement is that eligible sites within eligible municipalities be in census tracts that meet demographic criteria relating to race and ethnicity from the 2000 Census. Other factors such as employment and educational opportunities, medical and family services, and transportation are to be given consideration, but these factors do not determine eligibility. It is beyond HUD's authority to change the terms of the Settlement by suggesting that the diversity of school districts carries equivalent weight to a location's racial and ethnic percentages that the Settlement Agreement mandates as criteria for the placement of eligible affordable AFFH units.

As we wrote you previously, Westchester County's school districts are not necessarily co-terminus with single municipalities. One municipality can be divided for multiple school districts, and one school district may serve parts of multiple municipalities.

Families applying for affordable AFFH units have the same opportunity as any family seeking to move to or within Westchester County to choose a community, or a neighborhood within that community, that contains the amenities or opportunities that are important to that family.

With 303 affordable AFFH units with financing in place at the end of 2012, there are a number of choices for which applicants for affordable AFFH units can apply, giving them access to different locations where they may want to live and to the amenities and opportunities they value. Accordingly, where they apply is a choice for them to make based on their particular needs and goals.

In the next four years, development of an additional 447 units in the eligible communities, all with distinct characteristics, will further increase the wide range of opportunities and choices for families applying to affordable AFFH developments.

Site Selection Strategy

With respect to site selection strategy, the County disagrees that it is not following a strategy to meet the goals of the Settlement Agreement in terms of identifying sites for development. The strategy is laid out in significant detail in the August 9, 2010 Implementation Plan, Section E (pages 18-27).

In keeping with its strategy, the County met with the Village of Rye Brook in early 2010 when the Village explained that they had asked their Planning consultant to undertake a review of potential affordable housing sites within the whole Village. The subsequent report is available on the Village's website and identifies potential sites throughout the Village, that might be suitable for development of affordable AFFH units. For the most part, these parcels are in private ownership, so the Village could not control when or if the sites would be developed. The sites identified are within the Port Chester-Rye Union Free School District, the Blind Brook School District and the Harrison School District.

The County's 4Q 2012 pipeline includes three sites within the Village – including two sites that are in the Port Chester-Rye School District and one site that is in the Blind Brook School District. An additional site in the Blind Brook School District had been reviewed, but instead the owners are currently seeking approval for hockey rinks on that site.

Very truly yours,



Kevin J. Plunkett
Deputy Executive Director

Enclosure

Cc: Hon. Robert P. Astorino, County Executive
Hon. Kenneth Jenkins, Chairman, County Board of Legislators
Robert Meehan, Esq., County Attorney
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Benjamin H. Torrance, Esq., Assistant U. S. Attorney (S.D.N.Y.)



Robert P. Astorino
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Kevin J. Plunkett
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VIA EMAIL

October 22, 2012

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

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

Dear Jim:

On October 10, 2012, you wrote us concerning a proposal for an affordable AFFH development at 80 Bowman Avenue, Rye Brook, New York. Specifically, you made the following two inquiries to which we respond below:

1. Whether the County intends to provide financial support for the proposed development, as it is currently proposed, located at 80 Bowman Avenue, Rye Brook, New York.

Response:

The 80 Bowman Avenue proposed development is eligible under Paragraph 7(a) of the Stipulation and Order of Settlement and Dismissal ("Settlement Agreement") according to the 2000 Census based on its section, block, and lot number. Rye Brook is also identified as a paragraph 7(a) municipality under the Settlement Agreement according to the 2000 Census.

If the development receives all its local municipal approvals and funding approvals, the County anticipates seeking legislative approval to provide the balance of financial support needed for the development to be financially viable.

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2. The County's position on whether the development, as it is currently proposed, is consistent with the specific requirements and broader goals of the Settlement, with an explanation as to why the County has taken that position.

Response:

The locational criteria for affordable AFFH units under the Settlement Agreement are set forth in Paragraph 7 of the Settlement Agreement, and are based on the racial and ethnic demographics of Westchester's municipalities in the 2000 Census. Municipalities are identified under the Settlement Agreement as 7(a), 7(b) or 7(c) municipalities based on the percentage of single race African-American only and Hispanic residents in the municipality at that time. Paragraph 7(a) municipalities had fewer than both three percent Black residents and seven percent Hispanic residents, after removing group quarters. The proposed development at 80 Bowman Avenue is within a municipality and census block that meets 7(a) criteria.

For a proposed affordable AFFH development to be eligible under the Settlement Agreement, it must remain affordable for fifty years, be marketed pursuant to an approved Affirmative Fair Housing Marketing Plan, with units being sold or rented to prospective residents who meet income criteria set forth in the Settlement Agreement. If the 80 Bowman Avenue is approved for funding, it will comply with these requirements.

Accordingly, the proposed development at 80 Bowman Avenue meets the specific requirements of the Settlement Agreement.

We note that a question has been raised whether the fact the property is within the Port Chester-Rye Free Union School District is contrary to the "intent of the Settlement." There is no support in the Settlement Agreement for this view.

Westchester County's school districts are not necessarily co-terminus with single municipalities. One municipality can be divided for multiple school districts, and one school district may serve parts of multiple municipalities.

The Port Chester-Rye Free Union School District is one of two school districts that serve the Village of Rye Brook. Its middle school is located within Rye Brook's borders and its high school and its campus are physically located in both the Villages of Rye Brook and Port Chester. (See attached map.)

The Settlement Agreement does not require that otherwise eligible affordable AFFH developments be excluded based on the school district for which the affordable AFFH development would be served. Eligibility of sites based on school districts is not discussed in the Settlement Agreement. Furthermore, there is no factual support for the view that a school district with an arguably diverse student population is not a desirable one and therefore contrary to the "intent of the Settlement." We believe that such an opinion is counterproductive.

In conclusion, it should be noted that the Village of Rye Brook undertook a review of its entire Village to identify potential affordable housing sites in their Affordable Housing Discussion Paper of January 2011. The review encompassed sites that would feed to both the Port Chester-Rye and Blind Brook school districts. As the Village does not own most of these sites, it cannot control which sites are reviewed and developed first. As follow up to their analysis, the Village has adopted zoning to expedite review of potential sites of affordable units proposed by developers.

Very truly yours,



Kevin J. Plunkett
Deputy County Executive

Cc: Hon. Robert P. Astorino, County Executive
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Hon. Kenneth W. Jenkins, Chairman, Westchester County Board of Legislators
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