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October 8, 2010

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Westchester County
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U.S. Department of Housing and Urban Development
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Washington, D.C. 20410

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

Dear Mr. Plunkett and Ms. Voigt:

Inquiries 5 and 8: In a letter dated September 15, 2010 (attached), the County requested additional guidance regarding the eligibility of units with existing tenants (June 7, 2010 Inquiries 5 and 8). The Monitor previously stated that it appeared that the key obligation to affirmatively market the AFFH units would be met only when new tenants move into the units after affirmative marketing has taken place; accordingly, units with existing tenants appear to fall outside the 750-unit obligation at the outset. In order to assist the Monitor in responding to the County's request for further guidance, I respectfully request the County to submit information regarding:

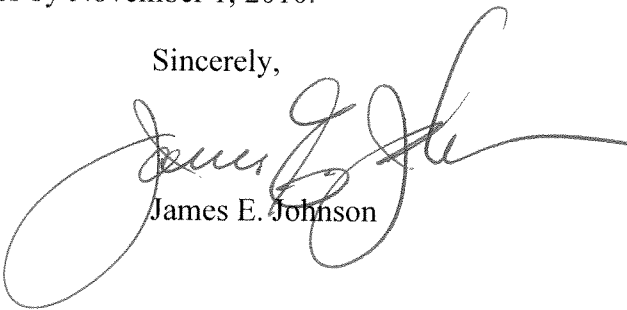
- The rate of turnover of units in each building over the past ten (10) years;
- The expiration of the current affordability restrictions for Inquiry 8; and
- The location of Inquiry 8.

Additionally, I respectfully request that the Department of Housing and Urban Development provide its position as to when the units should be counted toward the County's 750-unit obligation, assuming such units meet the other requirements set forth in the Stipulation.

Revolving Loan Fund: On September 2, 2010, the Monitor provided the County with a memorandum authored by a team of attorneys from Orrick Herrington & Sutcliffe LLP regarding legal issues implicated by the creation of a revolving loan fund. Among other suggestions, the Orrick memorandum raised the possibility of obtaining a court order directing the County to establish an affordable housing revolving loan program. Please state and explain the County's position as to whether such a court order is necessary to make a revolving loan fund viable.

Please submit all responses by November 1, 2010.

Sincerely,



James E. Johnson

Enclosure



Robert P. Astorino
County Executive

September 15, 2010

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**

Dear Mr. Johnson:

We are writing in response to your correspondence of August 13, as well as your more recent letters of September 2 and September 9, 2010.

I. Letter of August 13, 2010 concerning Inquiry 5 and Inquiry 8

Certain aspects of your response in the August 13th letter relating to Inquiry 5 (37 Wildwood in Katonah) and Inquiry 8 (preservation of affordability in a HUD 236 building) raise concerns that your responses may cause unintended consequences that may negatively impact our efforts to meet the obligations set forth in the Stipulation, and we wish to draw them to your attention.

First, with respect to 37 Wildwood in Katonah, your letter states that the “development appears to fall within paragraphs 7 (h) and 13 (h)” if the “County’s claim of non-viability is supported by ample and sufficient evidence.” We direct your attention to Appendices E-4(ii) and E-4(iii) in the Implementation Plan of August 9, 2010, which include New York State’s letter declining funding to the Wildwood application and the Proforma demonstrating viability with FAH funding. Attached please find a copy of those documents. Please advise if additional evidence is needed to satisfy the paragraph 13 (h) criteria.

Second, with respect to the eligibility of the Wildwood housing units pursuant to paragraph 7 (h) of the Stipulation, your letter states that as Monitor you reserve the right to make determinations about whether a particular apartment can be counted as eligible after receipt of information regarding the retenanting process.

With respect to the inquiry relating to the preservation of affordability in a HUD 236 in an eligible community, you refer to the County’s obligation that units developed be affirmatively marketed, and state that, “It would appear that this requirement would only be met once new tenants move into the units in on this property after affirmative marketing has taken place, rather than including existing tenants who meet the threshold of 60% of AMI.”

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Nowhere in paragraph 7 does it state that eligibility of existing housing units, where affordability is being preserved, is based on the units being populated by new residents coming through the affirmative marketing process, with current tenants being evicted. Paragraph 7 (h) (iii) does state that to qualify, the level of affordability must drop from 80% of AMI to 65% of AMI for a period of 50 years.

We need to raise several critical points in response to the re-tenancing approach taken in your letter. First, in the HUD 236 building, the current tenancy resulted from outreach that complied with HUD's 236 regulations. Second, the displacement of existing tenants is a negative public policy, and would contradict HUD's anti-displacement policy along with its support for the preservation of affordable housing, and not just for prospective tenants. Thirdly, if we displace tenants from units that affirmatively further fair housing, we are required under the federal Uniform Relocation Act to pay relocation expenses and their housing expenses for five years thereafter.

With respect to financing, the only way to finance the acquisition and rehabilitation of existing affordable housing developments is to leverage such resources as the federal low income tax credit program and tax exempt bonds, along with the County's resources set aside for compliance with the Stipulation. In order to leverage any single source, all sources must be in place at a single closing. Parenthetically, the transaction costs for the financing should only be incurred once. Consequently, acquisition and rehabilitation of existing housing units cannot be financed based on eligibility occurring only as units are turned over. Your approach would require that current tenants be evicted, with the resulting social and financial impacts that are mentioned above. As discussed in our inquiry, we anticipate that a small number of units might not be eligible where the tenants in residency are over-income. Such units would only become eligible when vacated and rented to a tenant who is income eligible, who came through the actions identified in the affirmative marketing plan called for by the Stipulation. However, incremental units coming on line over time through turnover will not support the underwriting necessary to acquire, rehabilitate and preserve existing housing developments. With respect to the preservation of existing housing units, the intent of paragraph 7 (h) (ii) and 7 (h) (iii) is to set the parameters for the eligibility of such units, not to preclude their eligibility, which, as a practical matter, your approach does.

The development of 750 units that affirmatively further fair housing will only occur if the developers who take the financial risk have reasonable certainty that the County's financial contribution will be there as the project proceeds and concludes. The County's financial contribution will only occur if the projects contain units that are eligible. Accordingly, an approach that reserves judgment on the eligibility of proposed units will insure that leveraged financing cannot be attracted, and without financing, the housing units will not be preserved or developed.

We suggest that all factors that should determine eligibility be agreed upon, and that interpretive differences be resolved promptly. The financial risks inherent in real estate development are such that developers and the County need an up or down decision, so

that projects can move forward. Absent the ability to have timely eligibility determinations that can be relied upon by developers, the municipalities, and the County, the ability of developers and municipalities to undertake the development of units that affirmatively further fair housing will be undermined.

Accordingly, we request that these issues be reconsidered, since it will impact the County's ability to meet the benchmarks set forth in the Stipulation and expose the County to financial penalties notwithstanding its good faith efforts to comply.

II. September 2, 2010 transmittal re Orrick Herrington Report on a Revolving Loan Fund Program

We want to acknowledge receipt of the Orrick Herrington Report which was forwarded to us on September 2, 2010. The report is under review, and we will be prepared to discuss their analysis at a future date.

III. Letter of September 9, 2010 concerning Inquiry 6 and the Eligibility of Shared Housing Units ("SRO units")

Finally, we are responding to your letter of September 9, 2010, regarding shared housing which was the subject of Inquiry 6. You asked that the County submit a proposed definition of "unit" that it deems to be the most appropriate for purposes of the Stipulation by today.

First, we wish to state that a number of HUD's programs allow each Single Room Occupancy ("SRO") to count as a housing unit, including the Section 8 Housing Choice Voucher program, 24 CFR 982.4 (b); the Section 8 Moderate Rehabilitation program, 24 CFR 882.102 (b)(1); the Shelter Plus Care program, 42 USC Sec. 11403g; and the HOME Investment Partnership Program, 24 CFR 92.2. We also note that while not expressly identified in the Community Development Block Grant regulations, the rehabilitation of an SRO unit would be allowed under these regulations.

With respect to the Westchester County Sanitary Code cited in your September 9th letter, this regulation relates to Sanitation of Habitable Buildings. There is another definition of "dwelling unit" in a different Article of the Westchester Sanitary Code relating to Housing Hygiene and Occupancy. Significantly, both sections address sanitary conditions and requirements, not the standard concept of dwelling unit in terms of housing policy.

By permitting private sleeping quarters with access to shared kitchens and baths to count as a unit within the meaning of the Stipulation, the County is able to fulfill its obligation to provide fair and affordable housing not only to the traditional family unit, but also to those individuals who may not seek traditional housing. In seeking to provide opportunities to families in need of units that affirmatively further fair housing, the County cannot ignore the fact that a family can consist of a single individual, and such a family should not be limited in his or her housing choice. Specifically, HUD includes single persons in their definition of family in 24 CFR 5.403. Additionally, New York

State, in their administration of the Section 8 Program has also promulgated a definition of family, which applies to the County's administration of Section 8 under an Agreement with New York State. We direct your attention to Appendix E-6(i) in the August 9th Implementation Plan which contains the NYS Definition of "Households" Approved by HUD, which is attached for your convenience.


Indeed, for some single persons, who are of low to moderate income, being able to afford a studio or one bedroom apartment may be beyond their financial means, and shared housing of the sort that we are proposing can provide an opportunity for private bedroom quarters with shared amenities and an opportunity for social interaction in a supportive community.

We anticipate that the 750 units to be built will include a mix of housing unit types, and we do not anticipate SROs to be a predominant type of unit. However, single room occupancy projects will allow the County to maximize the use of available land in Westchester County by permitting several housing units to be located on one housing site, while at the same time, allowing the County to make prudent use of its resources and funds.

The County has historically utilized the CDBG and HOME program regulations as the policies that have governed the use of the County's funds. It is expected that this will continue as the units being developed will need to meet the CDBG and HOME guidelines for funding. As such, we recommend that the "housing" definitions in the HUD regulations be the controlling definition for purposes of the Stipulation.

We appreciate the attention you and your staff are giving to our concerns, and expect that this dialogue will ensure greater opportunities for affirmatively furthering fair housing within Westchester County.

Very truly yours,


Kevin J. Plunkett
Deputy County Executive

Cc: Robert P. Astorino, County Executive
Elisabeth C. Voigt, Esq., U. S. Department of Housing and Urban Development
Mary Mahon, Esq., Senior Assistant to the County Executive

Encl.