

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----	X	
UNITED STATES OF AMERICA ex rel.	:	
ANTI-DISCRIMINATION CENTER OF	:	
METRO NEW YORK, INC.,	:	
	:	
Plaintiff,	:	
	:	No. 06 Civ. 2860 (DLC)
v.	:	
	:	
WESTCHESTER COUNTY, NEW YORK,	:	
	:	
Defendant.	:	
-----	X	

**MONITOR’S REPORT REGARDING IMPLEMENTATION OF THE  
STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL  
FOR THE PERIOD OF OCTOBER 25, 2010 THROUGH APRIL 25, 2011**

## TABLE OF CONTENTS

I.	Executive Summary .....	1
II.	Quarterly Report .....	2
A.	AFFH Units.....	3
B.	Census Analysis.....	3
C.	County’s Efforts to Identify Sites .....	3
D.	Outreach and Advertising .....	4
E.	Local Approval Process .....	5
F.	Financing and Expenditures.....	5
III.	Implementation Plan .....	6
A.	Model Ordinance .....	6
B.	Affirmative Marketing Plan.....	7
IV.	County Inquiries and Responses Thereto .....	9
V.	Update on SRO Issue .....	10
VI.	Site Selection .....	11
VII.	Monitor’s Other Activities.....	12
1.	Launch of Monitor’s Website .....	13
2.	Meetings with Municipal Leaders .....	13
3.	Revolving Loan Fund .....	13
4.	Not-for-Profit Organizations.....	14
VIII.	Analysis of Impediments .....	14

**I. Executive Summary**

As more fully described in previous reports to the Court, the Monitor was appointed by the Court to oversee and facilitate the implementation of the terms of the August 10, 2009 Stipulation and Order of Settlement and Dismissal (“Stipulation”) in this matter. Among other obligations under the Stipulation, the County agreed to spend \$51.6 million over seven years to develop at least 750 “Affordable AFFH Units” (*see* ¶ 7<sup>1</sup>), primarily in municipalities with overwhelmingly white populations, without setting any racial or ethnic quotas for the eventual residents of the units. The County also agreed to affirmatively market these units in Westchester and nearby communities with large non-white populations.

This submission reports on the events since the filing of the Monitor’s third report in October 2010. The County’s activities have continued, primarily, in three separate lanes. First, the County has continued to receive and evaluate proposals for the development of housing units. The County has reported that as of the end of the fourth quarter of 2010, 104 units identified for development had received necessary financing. Second, the County has continued its work to complete the Implementation Plan it is required to develop under the Stipulation. Among other things, the County joined with the Monitor in a collaborative process to develop an affirmative marketing plan. This process, moving forward under the close oversight of the Monitor, has brought together members of the County Executive’s senior staff, the chair and other members of the Board of Legislators, members of the Westchester Municipal Officials Association, and representatives from both the United States Department of Justice and the United States Department of Housing and Urban Development

---

<sup>1</sup> Unless indicated otherwise, all paragraph citations refer to the Stipulation.

("HUD"). In the Monitor's judgment, it is vital to the success of the affirmative marketing effort to have the major stakeholders around the table to contribute to the development of the marketing plan. The group has been meeting over the course of the past five months and has relied on the independent work of New York University's Furman Center for Real Estate and Urban Policy at New York University ("Furman Center"). Among other efforts, the Furman Center convened a roundtable of nongovernmental experts on affordable housing to provide additional inputs about marketing concerns to enhance the basis on which the marketing plan would be refined. Third, working with HUD, the County has submitted a revised Analysis of Impediments.

In evaluating proposals regarding particular developments, the Monitor has noted on several occasions that location within an eligible census tract is only a baseline requirement for determining whether a development should count toward the County's obligation to build at least 750 Affordable AFFH Units. In this report, the Monitor provides greater guidance to the County, municipalities and developers about which attributes should be considered when deciding whether to develop a particular site.

## **II. Quarterly Report**

On February 1, 2011, the County submitted its fourth Quarterly Report ("2010 4Q Report"), attached hereto as Exhibit 1, which covers the County's activities from October 1, 2010 through December 31, 2010. Submission of a quarterly report is required by paragraph 28 of the Stipulation.

**A. AFFH Units**

Pursuant to paragraph 23 of the Stipulation, by the end of 2011, the County must have financing in place for 100 units, and building permits for 50 units. In its 2010 4Q Report, the County reports that 104 units have financing in place. At the end of the fourth quarter, no units had received approval for building permits, although applications have been submitted to the relevant municipalities. 2010 4Q Report at 2. The fourth-quarter figures are up from 21 units with partial financing and three units with all necessary financing at the close of the third quarter. *See* 2010 Third Quarter Report (attached as Exhibit 1 to the Monitor's October 25, 2010 Report) at 11.

**B. Census Analysis**

The Monitor has directed the County to, in its quarterly reports, include a census analysis in accordance with paragraph 22(f) of the Stipulation. An updated analysis was not included in the 2010 4Q Report. Rather, the County Planning Department anticipates that it will conduct such an analysis upon the release of additional information from the 2010 Census. 2010 4Q Report at 3.

**C. County's Efforts to Identify Sites**

In the 2010 4Q Report, the County describes the numerous meetings it has held with municipal officials, landowners and developers in order to identify sites, and the County's own efforts in that regard. *See* 2010 4Q Report at 4-6. In a significant improvement from the previous quarterly report, the County also explains the ways in which it evaluates sites, including proximity to schools and other community resources, the developer's qualifications, and an underwriting analysis. *Id.* at 5. The 2010 4Q Report does not state the total number of

lots already under the control of either the County or any of the eligible municipalities, however, which is one of the requirements set forth in the Monitor's February 1, 2010 template for quarterly reporting.

The Monitor has noted that the purposes of the Stipulation require a sensitivity to where within a census tract the units are located. Accordingly, the Monitor asked its team of consultants from the Pratt Institute to develop a set of siting criteria which should inform the judgments of developers, municipalities and the County as they plan additional units. *See infra* section VI.

#### **D. Outreach and Advertising**

The County reports that it conducted a number of meetings with various groups in the fourth quarter of 2010, including municipal officials, developers, property owners, the Board of Legislators, the Westchester Municipal Planning Federation, and non-profit groups. In connection with the upcoming round of CDBG funding, the County conducted technical assistance tours, public information sessions, and sent letters to municipalities that are members of the Urban County Consortium. 2010 4Q Report at 7.

Although no marketing or advertising took place during the fourth quarter, the County noted its participation in meetings with the Monitor and others regarding affirmative marketing. 2010 4Q Report at 8; *see also infra* section III.B.

The County launched its Central Intake System for prospective homebuyers at the end of the third quarter. Of those who registered during the fourth quarter and identified their race, 31% identified as white, 56% as African American, and the remainder represented that they were of mixed race. Of 311 households, 48 indicated that they were Hispanic. Nearly 50% of registrants were from three or four-person households. 2010 4Q Report at 8.

Significantly, the County is developing a second phase of the Central Intake System to include prospective renters, and to provide information about specific properties under development – including information about schools, transportation, and other features of the community. 2010 4Q Report at 8. The Monitor views this website as an important component of the County’s efforts to spread information about new housing opportunities and the benefits of the communities where they are located. The County’s efforts in this regard dovetail with the Monitor’s recent initiative to develop affirmative marketing strategies and practices, as discussed in section III.B below.

**E. Local Approval Process**

Following the Monitor’s approval of the model ordinance, the County Planning Board endorsed its provisions. 2010 4Q Report at 10; *see also infra* Section III.A. Although the County describes its efforts to encourage municipalities to streamline local approval processes, and highlights one municipality’s success in doing so, the 2010 4Q Report does not identify obstacles faced or ways to overcome them. In addition, the report does not state whether any municipalities have yet adopted the model ordinance.

**F. Financing and Expenditures**

The County reports that approximately \$5.5 million of the \$21.6 million in the County’s CDBG line of credit was obligated during the fourth quarter, for a total obligation of approximately \$6.8 million from this funding stream. Just over \$4 million was actually spent using the CDBG line of credit, for the purchase of properties in Cortlandt and the City of Rye. The County has not yet obligated any of the \$30 million it is required to spend under paragraph 5 of the Stipulation. *See* 2010 4Q Report at 12.

### **III. Implementation Plan**

Under the Stipulation, the County has committed itself to develop an Implementation Plan (“IP”) “setting forth with specificity the manner in which the County plans to implement the provisions of” the Stipulation concerning the development of Affordable AFFH Units. ¶ 18; *see also* ¶ 22 (specifying activities the County must undertake in developing the IP); ¶ 24 (requirement that the IP include benchmarks); ¶ 25 (listing other required components of the IP).

As discussed in the Monitor’s October 2010 report, the County submitted a third iteration of its IP on August 9, 2010 (the “August 2010 IP,” attached to the Monitor’s October 2010 Report as Exhibit 2). With the goal of resolving certain aspects of the IP that are particularly crucial to the County’s compliance with its obligations under the Stipulation, the Monitor in October approved the County’s model ordinance, and has spent the past several months working with the County toward an acceptable affirmative marketing plan, as discussed below.

#### **A. Model Ordinance**

Following the Monitor’s approval of the model ordinance required by paragraph 25(a), the County took the following steps to promote it:

- Issued a press release;
- Presented the model ordinance to the Westchester County Planning Board (which endorsed it on November 9, 2010);
- Disseminated copies of the model ordinance at a meeting of the Westchester County Urban Council;
- Scheduled a training session through the Westchester Municipal Planning Federation’s Land Use Training Institute; and



- Sent letters (from the County Planning Board) to municipalities, including in response to referrals from municipalities.

In its January 2010 IP, the County set a January 30, 2011 deadline by which municipalities would have to consider and adopt the provisions of the model ordinance in order to avoid losing funds under the Discretionary Funding Allocation Policy required by paragraph 25(d). Subsequent to the Monitor's approval of the model ordinance, the County notified the Monitor that it intended to extend this deadline to September 30, 2011. As noted above, the County has not indicated whether any municipalities have adopted the model ordinance. The Monitor directs the County to provide updates in its upcoming quarterly reports on whether its efforts to promote the ordinance have yielded concrete results.

**B. Affirmative Marketing Plan**

Another critical component of the County's obligations under the Stipulation is the plan by which the Affordable AFFH Units will be marketed. Over the past several months, the Monitor has engaged in a collaborative process to develop an acceptable affirmative marketing plan, which builds on both the general plan submitted as Appendix G-1 to the August 2010 IP and several project-specific plans the County developed more recently. The working group, which has met four times from December 2010 through April 2011, includes representatives of the following stakeholder groups:

- Westchester County Executive's Office;
- Westchester County Board of Legislators;
- Westchester County Department of Planning;
- United States Department of Housing and Urban Development;

- United States Department of Justice (including both Assistant U.S. Attorneys from the Southern District of New York and trial attorneys from the Civil Rights Division); and
- Municipal leaders (under the auspices of the Westchester Municipal Officials Association).

The working group's initial discussions focused on the challenges to be faced in developing an affirmative marketing plan that would be the most effective in reaching the demographic groups determined to be the least likely to apply for the Affordable AFFH Units. Among other things, the working group discussed comments submitted by several developers with experience in marketing affordable housing in the area.

To support the working group's efforts, the Monitor asked the Furman Center to convene a roundtable of experts with relevant experience. These experts, selected by the Furman Center, included developers (both for-profit and not-for-profit), housing counselors, and representatives of organizations and community development corporations that work in the field of affordable housing. Before the roundtable meeting, members of the Monitor's working group had the opportunity to comment on the proposed agenda and identify key questions to be asked of these experts.

Following the roundtable discussion, the Furman Center prepared a report (the "Furman Report") on affirmative marketing, both generally and with a specific suggestions for Westchester to consider in developing its affirmative marketing plan. The Furman Report, which is attached hereto as Exhibit 2, builds on the roundtable by surveying relevant academic literature, including studies of other communities' efforts to further integration. A representative of the Furman Center made an in-person presentation of the report's findings to the working group and answered participants' questions. The Furman Report's key recommendations include anticipating prospective residents' likely concerns (including access

to transportation, schools, and daily necessities), providing opportunities for prospective residents to become aware of these community resources, and prioritizing outreach to existing residents and local organizations such as faith communities and civic groups. The Furman Report also emphasizes the value of coordinating marketing efforts to most efficiently and effectively reach a broad audience.

Next, the Monitor's team took the lead in building upon the general and project-specific plans already developed by the County so as to incorporate the recommendations and findings of the Furman Report and the working group discussions. Members of the working group have had the opportunity to share concerns, questions, and suggested revisions. At this time, a final draft of the plan is in progress and is nearing completion. The Monitor will include the final plan in a supplemental filing with the Court, and simultaneously will make the plan available via the Monitor's website, <http://www.westchesterhousingmonitor.org>. The Monitor's website is discussed in greater detail in section VII.1 below.

#### **IV. County Inquiries and Responses Thereto**

The County has continued to submit funding advisories and inquiries regarding specific proposed developments, as well as questions that relate to interpretation and application of Stipulation provisions. The inquiries received since the Monitor's October 2010 report are attached as Exhibit 3, and relate to the following developments:

- A 51-unit ownership development in Larchmont, of which the County seeks to have 46 deemed eligible as Affordable AFFH Units;
- A two-bedroom condominium (ownership) unit in the village of Pleasantville;
- A 10-unit development of two-bedroom townhouse ownership units in the hamlet of Armonk (within the Town of New Castle);

- A 22-unit mixed-income ownership development in Ardsley, of which the County seeks to have 17 deemed eligible as Affordable AFFH units; and
- The establishment of a revolving loan fund to acquire and rehabilitate existing foreclosed, vacant, abandoned, or *in rem* 1-4 family homes; the homes would be sold to income-eligible purchasers, and accessory apartments would be rented to income-eligible tenants.

To date, the Monitor has indicated that the Larchmont, Pleasantville, and Armonk developments may count toward the County's 750-unit obligation, contingent upon the completion of an acceptable affirmative marketing plan. The funding advisories relating to the Ardsley development and the revolving loan fund are currently under review.

As noted in the October 2010 report, two previously proposed developments (67 units in total) with existing tenants raise questions regarding turnover, the preservation of existing affordable housing, and the overarching goals of the Stipulation. In response to a request from the developer of one of these projects, the Monitor has continued to consider these questions.

#### **V. Update on SRO Issue**

The Monitor's October 2010 report explained that the Stipulation's lack of a definition of the term "unit" had led to differing interpretations of that term with respect to a proposed development in Briarcliff Manor made up of single room occupancy ("SRO") units. At the time the October 2010 report was filed, the County had recently declined to stipulate to the addition of a numerical cap on the number of SRO units that could count toward the County's 750-unit obligation, citing the Stipulation's limitations on modifying its terms. Instead, the County offered the assurance that it would not develop a significant number of SRO units to meet its obligations, without providing a specific ceiling. The Monitor has cautioned the County that the assessments of the County's compliance, the first of which shall be completed

on December 31, 2011, will closely scrutinize the County's reliance on SRO units. The County has acknowledged this concern and, as of the date of this report, has not submitted for review any other developments involving SRO units.

## **VI. Site Selection**

The Monitor has continued to emphasize to the County the importance of being proactive rather than opportunistic in its approach to identifying and developing sites. In pursuit of this end, the Monitor's team of consultants from the Pratt Institute prepared, at the Monitor's request, a set of best-practices criteria to be used in evaluating potential developments and sites in order to best achieve the Stipulation's integrative goals. The Monitor discussed these criteria with the County and HUD teams at a meeting in April.

As the County, municipalities and developers conceptualize projects, they should focus their attention on the following factors. Sites that lack many of these features will likely be subject to heightened scrutiny from the Monitor.

- Sites should be in or adjacent to a largely or completely non-minority residential neighborhood.<sup>2</sup>
- Sites located in an eligible census block but isolated from non-minority residential neighborhood by visual or other barriers – such as a highway, railroad or commercial strip – or unusual points of entry are undesirable unless significant mitigation measures are taken to provide visual and physical access across these barriers.
- The configuration of the site or the design of the buildings should not inherently stigmatize or isolate residents as low income.

---

<sup>2</sup> A non-minority residential neighborhood is defined as an eligible census block meeting the criteria set forth in paragraph 7 of the Stipulation.

- Small development sites (i.e., those containing less than 10 units) should be near existing residential uses and should be comparable in scale relative to current and planned adjacent land uses.
- Large development sites should seamlessly integrate with adjoining residential areas and/or be of a size and design that reinforces positive neighborhood qualities (such as social connection, sense of place, pedestrian amenities, and usable open space).
- Multifamily buildings should be located within walking distance (approximately ten minutes) of public transportation, such as a bus stop or train station. One- to four-family homes and accessory units need not have such a level of access to transit.
- Multifamily developments should be in reasonable proximity to and ideally have walkable connections to community resources, such as downtown areas, grocery shopping, pharmacies, banking and other convenience shopping; employment opportunities; schools; religious institutions; medical and social services; and parks and recreational facilities.
- To the extent possible, multifamily buildings should be served by water supply systems and also public sewage or state-of-the-art sustainable means of on-site treatment. One- to four-family homes and accessory units can be served by wells and also individual septic systems or private package plans, rather than municipal infrastructure.
- Sites should exhibit no obvious negative environmental influences that cannot be corrected or acceptably mitigated. Environmental impacts include but are not limited to: deteriorating or blighted residential uses; massive parking lots or storage yards; unsightly loading zones at retail facilities; heavy industrial uses; excessive noise or physical hazard from railroad, vehicular, or air traffic; dumps, sanitary landfills, or salvage yards; sewage treatment plants; stored hazardous materials; buried or spilled hazardous wastes; operating oil wells; mine shafts; and gravel pits.

## **VII. Monitor's Other Activities**

In addition to the efforts discussed above, the Monitor's activities since the filing of the Monitor's third report in October 2010 have included the following:

**1. Launch of Monitor's Website**

In December 2010, the Monitor launched a website, which may be accessed by visiting <http://www.westchesterhousingmonitor.org>. The Monitor's website provides the public with easy access to important settlement-related documents, including the Stipulation, the Monitor's reports to the Court, the County's quarterly reports, the current draft of the IP, and key documents from the underlying litigation. Another key function of the website is to facilitate the submission of comments to the Monitor.

**2. Meetings with Municipal Leaders**

On December 10, 2010, the Monitor spoke at a roundtable of municipal leaders hosted by Pace Law School's Land Use Law Center. Representatives of the County Executive's office also participated in this event, which was focused on the model ordinance and included an extensive question-and-answer period. The Monitor announced the launch of the website at this meeting.

**3. Revolving Loan Fund**

Under paragraph 22(e) of the Stipulation, the County is required to "[e]xplore and implement mechanisms by which the moneys made available pursuant to" the Stipulation, "and proceeds from the expenditure of these funds, can be replaced in a revolving loan fund dedicated to the development of Affordable AFFH units." As discussed in the Monitor's July 2010 and October 2010 reports, the Monitor has engaged a team of attorneys from Orrick Herrington & Sutcliffe LLP to provide legal advice on issues related to the creation of such a revolving fund. The County recently submitted a funding advisory regarding the establishment of a revolving loan fund for a specific purpose. *See* section IV above. In future

submissions to the Court, the Monitor will report on the County's substantive response to Orrick's advice, as well as any other definitive steps taken by the County.

#### **4. Not-for-Profit Organizations**

The Monitor has continued to meet with not-for-profit groups, including developers and others focused on the need for affordable housing in Westchester County. On December 20, 2010, the Monitor and his team met with the Westchester Not-for-Profit Housing Coalition. This group has also commented on the issues raised by developments with occupied units.

### **VIII. Analysis of Impediments**

The County submitted a revised Analysis of Impediments ("AI") to HUD on April 13, 2011. The AI is currently under review by HUD.

Dated: April 25, 2011  
New York, New York

Respectfully submitted,

/s/ James E. Johnson  
James E. Johnson  
(jejohnsn@debevoise.com)  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, NY 10022  
*Monitor*