

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., :

Plaintiff/Relator, : DECLARATION OF
ANDREW A. BEVERIDGE
-v- :

WESTCHESTER COUNTY, NY, 06-CV-2860 (DLC)

Defendant. :

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**REPORT ON ZONING OF WESTCHESTER MUNICIPALITIES
AND THE PERPETUATION OF SEGREGATION AND
CREATION OF DISPARATE IMPACT**

ANDREW A. BEVERIDGE declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

A. Qualifications and Experience

1. I am Chair of the Department of Sociology at Queens College and a Professor at Queens and at the Graduate Center, City University of New York. My primary responsibilities at the college and Graduate Center are teaching statistics and research methods at the graduate and undergraduate level and conducting quantitative statistically based social research. Trained at Yale University, I have been employed in such a capacity since 1973, first at Columbia University until 1981 and since then at Queens College and the Graduate Center of CUNY.

2. My areas of expertise include demography, the statistical and quantitative analysis of social science data sets, most particularly including Census data, survey data and administrative

records. I am an expert, and have repeatedly been recognized as such, in the application of GIS technology to the analysis of social patterns, including residential segregation.

3. I have previously submitted two expert reports and declarations in this matter.

4. Since it has been some time since I submitted a declaration, I have included a curriculum vitae, which includes virtually all of the matters in which I have testified or rendered expert reports and declarations. *See* Exhibit 1.

5. These include several matters where I was retained by the Department of Justice, including work with the Civil Rights Bureau of the U.S. Attorney for the Southern District of New York in a Westchester-based voting rights matter, *U.S. v. Port Chester*.

B. Introduction

6. The Monitor's Huntington report dramatically understated the extent to which exclusionary zoning in Westchester municipalities contributes to the perpetuation of segregation and creates a disparate impact to the detriment of African-Americans.

7. The Monitor's report, among other things, failed to examine separately segregation, perpetuation, and impact for African-Americans and Latinos; failed to look at Westchester in its regional context; and failed to appreciate that segregation caused by racial separation at the local level.

8. The Monitor's report dramatically overemphasized the concept of perpetuation of "clustering" (of which he found relatively little) to the detriment of other manifestations of perpetuation of segregation and of disparate impact. While "clustering" can reflect phenomena that violate the Fair Housing Act, both perpetuation of segregation and disparate impact can and do occur all the time in the absence of "clustering." The obvious example is a locality that has 10

zoning districts. Each zoning district has zero African-American households. That means that there is no clustering at all. But in the context of a county or a region where there are many African-American households, the zero African-American household jurisdiction contributes powerfully to perpetuation of segregation.

9. Finally, the Monitor's report conflates the concept of "progress" with the concept of "absence of exclusion." A jurisdiction that does something or some things to reduce an extreme level of restrictiveness does not automatically become "not restrictive" or "not exclusionary" by virtue of that action. While there might be a political or tactical decision made to encourage even small steps forward, those steps do not mean that restrictiveness or exclusion has actually come to an end. In other words, despite the desire to give "credit," modest improvement in an extremely restrictive jurisdiction can leave it still highly restrictive.

10. Two notes about nomenclature in my report. First, all references in this Declaration to "African-Americans," "Whites," and "Asians" are meant to mean "non-Hispanic, single-race" members of those groups, unless otherwise noted. All references in this Declaration to "Hispanics" are to Hispanics of any race.

11. Second, I identify Westchester municipalities in four ways. "Cities" are the four political subdivisions that separately seek federal funding, were not part of the Westchester Urban County Consortium while it existed, and are not included in the jurisdictions where any consent decree housing can be built. The four cities are Mount Vernon, New Rochelle, White Plains, and Yonkers.

12. "Excluded jurisdictions" or "excluded municipalities" are those jurisdictions that, as of the time of the entry of the consent decree (using 2000 Census data), had either African-American or Latino population (or both) in excess of the maximums permitted for consent decree

development under Consent Decree ¶¶ 7(a), 7(b), or 7(c). These are Elmsford, Greenburgh, Mamaroneck Village, Mount Kisco, Ossining Village, Peekskill, Port Chester, and Sleepy Hollow.

13. “Included municipalities” or “included jurisdictions” are the balance of Westchester’s municipalities, 31 in all, where some level of consent decree development was permitted.

14. Of the included municipalities, 25 have, according to 2010 data, African-American population of less than 3.0 percent. These I sometimes refer to as “Under-3” jurisdictions.

15. In this report, I only examine the questions of perpetuation, impact, and exclusionary zoning for the Under-3 jurisdictions. I only looked at the role of the lack of multiple dwelling housing. And I only analyze these factors for African-Americans.

16. I found that 19 of the 25 Under-3 jurisdictions had highly restrictive zoning on the dimension of multi-family as-of-right zoning, that these jurisdictions contribute thereby to perpetuation of segregation of African-Americans, and that the restrictions operate disproportionately to the detriment of African-Americans, (*i.e.*, have a disparate impact).¹

C. Westchester County remains highly segregated and, furthermore, a large part of that segregation is due to the differences in racial composition of the included jurisdictions that have been the subject of this matter.

17. Based on an analysis of 2010 Census data, it is clear that Westchester County

¹ Nothing in the report is intended to suggest that the six “included” municipalities not part of the Under-3 group do *not* have exclusionary zoning or do not either perpetuate or cause disparate impact. In respect to the six in the Under-3 group who did not, unlike their peers, definitively have highly restrictive multi-family as-of-right zoning, I have not examined other elements of exclusionary zoning (minimum lot size, height restrictions, setbacks, lot coverage limitations, density limitations even where multi-family is permitted, etc.). As such, for the few municipalities that the report does not definitively identify as exclusionary, it is not intended that any conclusion be drawn they such municipalities are not exclusionary based on other practices.

continues to be highly segregated.

18. The dissimilarity index is a widely used measure of segregation. Technically, it is the proportion of a minority group that would need to move to make the distribution of that group the same over all units. It thus can vary from 0.0, representing no segregation at all, to 1.0, representing total segregation. I used the dissimilarity index to conduct an analysis as between single-race non-Hispanic African-Americans and single-race non-Hispanic Whites.

19. For 2010, the dissimilarity index based upon Census blocks for African Americans in relation to Whites is .730 (often described as 73.0). This result reflects a very high level of segregation.

20. The isolation index is another widely used measure of segregation. The isolation index gives the proportion of one's own that live in the neighborhood (e.g., Census tract or block) that is inhabited by the average member of the group. Here, too, results can theoretically vary from 0.0 to 1.0. As with dissimilarity, I used the isolation index to conduct an analysis as between single-race non-Hispanic African-Americans and single-race non-Hispanic Whites.

21. With respect to African Americans in relation to Whites, the isolation index based upon Census blocks was .650 (often described as 65.0). This result reflects a very level of segregation.

22. Another way to illuminate segregation is to look at the extent to which individual Census block groups are similar in racial and Hispanic composition to the composition of the County as a whole. For the purposes of this analysis, I allowed substantial leeway in defining that which would be called "similar," by allowing a variation of 20 percent of the group's countywide percentage (either higher or lower).

23. Thus, for example, the White population of Westchester is 57.38 percent (2010

data). Applying the definition from the preceding paragraph, any Census block group that had a non-Hispanic, single-race White population of anywhere from 45.90 percent to 68.86 percent would be considered similar in that population to the County as a whole.

24. I used Census block groups for this analysis, because Census block groups are the smallest areas approximating neighborhoods that are defined by the Census Bureau. Westchester County has 704 Census block groups², of which 700 have population. I only considered those that had population.

25. Only 13.57 percent of Census block groups had Hispanic population similar to Westchester as a whole.

26. Only 9.86 percent of Census blocks groups had African-American population similar to Westchester as a whole.

27. Only 8.14 percent of Census block groups had both Hispanic *and* White population similar to Westchester as a whole.

28. Only 4.71 percent of Census block groups had both African-American *and* White population similar to Westchester as a whole.

29. Only 1.43 percent of Census block groups had African-American, Hispanic, *and* White population similar to Westchester as a whole.

30. Only 0.57 percent of Census block groups had African-American, Hispanic, Asian, *and* White population similar to Westchester as a whole.

31. Almost 40 percent of all populated Census block groups in Westchester (38.55 percent) had African-American population of less than 3.0 percent. 28.59 percent of populated

² In a few cases, populated census block groups spanned two municipalities. In those cases, each municipality's portion of the Census block group was treated as a separate Census block group.

Census block groups had Hispanic population of less than 7.0 percent. And almost a quarter of all populated Census block groups in Westchester (23.76 percent) had both African-American population of less than 3.0 percent and Hispanic population of less than 7.0 percent.

32. When looking at just the populated Census block groups in the included municipalities, the results are even more striking: 75.97 percent had African-American population of less than 3.0 percent. 53.71 percent of populated Census block groups had Hispanic population of less than 7.0 percent. And more than half of all populated Census block groups in included municipalities (51.24 percent) had *both* African-American population of less than 3.0 percent and Hispanic population of less than 7.0 percent.

33. In included municipalities, populated Census blocks with African-American population of less than 3.0 percent and Hispanic population of less than 7.0 percent comprise 115,306 acres and have 190,850 people living in them.

34. There are 25 municipalities in Westchester³ with African-American⁴ population of less than 3.0 percent when excluding estimated population in "group quarters."⁵ See Exhibit 2 for

³ Ardsley, Bedford, Briarcliff Manor, Bronxville, Buchanan, Croton-on-Hudson, Eastchester, Harrison, Hastings-on-Hudson, Irvington, Larchmont, Lewisboro, Mamaroneck Town, Mount Pleasant, New Castle, North Castle, North Salem, Pelham Manor, Pleasantville, Pound Ridge, Rye Brook, Rye City, Scarsdale, Somers, and Yorktown.

⁴ As elsewhere in this Declaration, "African-American" refers to non-Hispanic, single-race African-Americans.

⁵ Though the Census Bureau has released 2010 data on the *number* of people living in group quarters by *type* of group quarters. The Census Bureau chose not to release for every geography in the United States data on the population living in households for non-Hispanic blacks; that is, a complete breakdown that specifies non-Hispanic, single-race African-Americans. However, they did release such data for all blacks, as well as non-Hispanic whites and Hispanics. These data were used to classify municipalities in terms of percent African American under three percent. The municipalities so-classified were the same as those I reported upon in my 2011 declaration, and the percentages were quite close to those reported at that time. (See Exhibit 2 for information on all municipalities.).

details of all municipalities and Exhibit 3 for a map.

35. Since my declaration in 2011, there have been advances in the study of segregation, which can help elucidate the patterns found in Westchester County. Specifically, Dr. Elizabeth Roberto,⁶ a Yale-trained Ph.D. sociologist, who is now the James S. McDonnell Foundation Postdoctoral Fellow at Princeton University has developed a measure entitled the *Divergence Index*, which makes it possible to understand the degree to which segregation is related to the differences in composition between or within municipalities. Furthermore, the divergence index presents a commonsense view of segregation. It makes it possible to measure block by block the difference (in terms of the concentrations of both the minority groups and the majority group) from the average or general composition. This makes it plain that segregation is based upon not the presence or absence of members of a specific group, but rather of the degree of separation of one group from another.

36. Exhibit 3 is a map that depicts the results of the Divergence Index analysis by blocks in Westchester. The darker the color, the larger the divergence in the direction of an overconcentration of whites; the lighter the color, the larger the divergence in the direction of an overconcentration of African-Americans.

37. The Divergence Index is decomposable by various areas. As Exhibit 4 indicates, about three-fifths of the segregation in Westchester County is related to the differences between the included municipalities and the rest of the county. The table shows segregation of blacks from whites

38. Based upon this analysis of segregation, including the newly developed Divergence

⁶ See information about Dr. Roberto's research that is available at elizabethroberto.com. Dr. Roberto assisted me with using the Divergence Index and analyzing the contribution of the municipalities in Westchester.

Index, two things are plain: (a) segregation continues virtually unabated in Westchester County; and (b) over half of the segregation found is related to the differences between the included municipalities and the rest of Westchester, most especially the cities.

39. It becomes clear that the use of “clustering” to the exclusion of other analyses is highly misleading. The lower level of within-area segregation in included jurisdictions versus cities is not a function of included-jurisdiction integration, but rather that included jurisdictions are largely monochromatic (White) throughout, whereas the cities have both areas of high concentrations of Whites and high concentrations of African-Americans. The pattern in the cities is certainly pernicious, but it still turns out that more of the between-area segregation is attributable to the remarkably high level of White residential concentration in the included jurisdictions.

D. How Under-3 municipalities contribute to perpetuations of segregation and disparate impact.

40. It is uncontroversial to observe that the construction of affordable housing in an expensive housing area like Westchester is not possible within the constraints of low-density zoning. Multi-family housing lowers cost-per-unit so that the subsidies needed (either through government programs and/or the cross-subsidy of market-rate units in a mixed-income development) are far less than if one were subsidizing a typical single-family or two-family home. When multi-family is not permitted as-of-right, on the other hand (permissible, for example, only by special permit), the delays are notorious, developers are deterred from even attempting to build, resistance is often expressed through a process that is determined to deny approval in the end, and very little gets built. (The highly restrictive nature of the multi-family as-of-right housing in many included jurisdictions is detailed in Section E.)

41. Now it is possible, of course, for land to be zoned for multi-family as-of-right and

not achieve the desired result. For example, multi-family units can be built as luxury units. There was – in Westchester as elsewhere – a long and ugly history of not renting apartments or selling cooperative apartments to African-Americans as a matter to straight-out discrimination. This is to say that while multi-family as-of-right zoning may not be a sufficient condition to ensure the development of affordable housing, it is a necessary condition.

42. The lack of affordable housing to which restrictions on multi-family as-of-right housing contribute so strongly generally have fair housing implications for two sets of reasons. Where a place is characterized by racial segregation, the development of affordable housing will often have a universe of eligible households that is more African-American than the existing community. This is what occurs in the normal case where a specific affordable housing development is stymied. Permitting the development would be integrative;⁷ the maintenance of the barrier to the development (multi-family housing not permitted) thus perpetuates segregation.

43. It can also be the case that the percentage of one group's total households eligible for a type of effectively-excluded housing is greater than the percentage of a second group's total households eligible for that type of housing. In other words, the absence of that type of housing (here, affordable housing) bears more heavily on one racial group than another. This is one form of disparate impact.

44. In the included jurisdictions in Westchester, both phenomena – perpetuation of

⁷ In addition to the central issue of reducing cost, new multi-family housing has another practical integrative advantage: it is able to be marketed in an open and inclusive way that can overcome the inhibition of some members of traditionally excluded groups to seek housing where they have previously been barred, and is able to be subject to oversight practices that prevent discrimination in the tenanting process. Whether those advantages are achieved require genuine affirmative marketing and a commitment to non-discriminatory rentals and sales, but the point here is that the multi-family housing context offers the potential of easier development and implementation of appropriate policies than other types of housing, especially one-off units.

segregation and disparate impact – exist.

45. I first looked at the racial composition of two income bands. One represents households that earn between 40 and 60 percent of Westchester Area Median Income (AMI). The second represents households at 60 to 80 percent of AMI. Both capture common levels of affordability in subsidized housing.

46. I did the analysis both for Westchester alone and for the broader real estate market area that consists of Westchester, Rockland, Putnam, New York City, and Fairfield County, Connecticut. I note that the broader region is similar to the requirement in the consent decree that AFFH units be marketed “in geographic areas with large non-white populations outside, but contiguous or within close proximity to, the County.” Consent Decree ¶ 33(e).

47. As shown in Exhibit 6, of the households in Westchester at the 40-60 AMI, 15.8 percent of them are African-Americans; at 60-80 AMI, the percentage is 18.7.

48. In the region, the African-American share of these households is even higher: 24.2 percent at 40-60 AMI, and 23.4 percent at 60-80 AMI.

49. This compares to a current population of African-Americans across the 25 Under-3 jurisdictions averaging just 1.5 percent. The ratio of the African-Americans eligible for each of the two types of affordable housing, in comparison ranges from 10.8 to 16.0 times higher than that depending on AMI level and whether one is considering only Westchester households or households across the region. *See* Exhibit 7.

50. Looking at each of the 25 Under-3 jurisdictions individually, the multiple (extent to which the African-American share of eligible households at 40-60 AMI or 60-80 AMI exceeds the current African-American population of the included municipality) ranges from 6.0 to 36.9, with the overwhelming majority of comparisons representing a difference of at least tenfold. *See*

Exhibit 7.

51. These ratios are all well in excess of what courts have comfortably identified as circumstances under which the stymieing of development perpetuates segregation.

52. One can imagine someone suggesting that “letting the market takes its course” would work just as well. The first points to make, of course, are (a) that turnover of existing single-family homes is a process that takes decades; and (b) that turnover has nothing to do with increasing supply.

53. But I also decided to test the market thesis empirically, and it is false. I established how much household income would be needed to afford houses becoming available at four illustrative price bands: \$400,000 to \$600,000; \$600,000 to \$800,000; \$800,000 to \$1 million; and more than \$1 million. The price band in which the different Under-3 jurisdictions fit based on median single-family house price in the last year⁸ is shown in Exhibit 5.

54. To estimate housing costs, I used Census data on “selected monthly ownership costs” or “SMOC.” These largest components of SMOC are mortgage payments, taxes, and insurance. I then calculated necessary income as the level at which SMOC would not exceed one-third of gross monthly income. For each bookend to a price band, I computed SMOC plus or minus \$50,000. The exception was the \$1 million price point (since one-million dollars encompasses all house value at or above \$1 million reported by the American Community Survey for New York State, regardless of how high). I used \$999,999 as the upper bound for SMOC calculation of the \$800,000 to \$1 million house band; and I used \$900,000 to \$999,999 for the more than \$1 million price range.

55. I then estimated what percentage of the households able to afford housing at each

⁸ Home sale data obtained from Redfin.

cost level belonged to what demographic group.

56. I acknowledge frankly that this analysis *overstates* the percentage of African-Americans who can afford houses at each of the price bands because the analysis does not take account of wealth. A house purchase requires a down payment (a 20 percent down payment for a \$400,000 house is \$80,000; that same level of down payment for a \$1 million house is \$200,000). It is well-established that African-Americans have, on average, materially less wealth than whites, even with same income. As such, the following comparison of the percentage of African-Americans who can afford a “market-level” home versus the percentage of African-Americans who would be eligible for 40-60 AMI or 60-80 AMI affordable housing *understates* the difference.

57. Even so, the differences are material at each price band. (I again did this both for Westchester households alone and for households in the region.) *See* Exhibit 6.

58. Even at the lowest income band, the data reveal significant difference in the direction of there being a greater percentage of African-Americans eligible for affordable housing than for market-rate housing: about 50 percent relative difference at 40-60 AMI for both Westchester and region; at 60-80 AMI, a relative difference of roughly 80 percent in Westchester and 40 percent in the region. *See* Exhibit 8A.

59. The relative difference is greater at higher price points. For market-rate housing costing between \$800,000 and \$1 million, for example, the comparison with 40-60 AMI in Westchester shows the percentage of African-Americans at the affordable level is approximately 70 percent higher in relative terms than the percentage of African-Americans eligible. For all the other comparisons at that housing cost range, the percentage of African-Americans at the affordable level was *double* the percentage of African-Americans eligible for the market-rate housing.

60. I can therefore conclude definitively that the “let the market operate” theory would not allow for as much integration as the provision of affordable housing at 40-60 AMI or 60-80 AMI, or, to express the mirror image: a hands-off market solution perpetuates segregation more than the introduction of affordable housing.⁹

61. The next part of the analysis was the disparate impact analysis: determining whether the absence of affordable housing bears more heavily on African-Americans than whites. It does, both when looking at 40-60 AMI and 60-80 AMI, and when looking both at households just in Westchester and at households in the region.

62. As shown in Exhibit 8B, when comparing the percentage of all African-American households in Westchester at 40-60 AMI with the percentage of all White households in Westchester at 40-60 AMI, the ratio is 1.5, which is to say a share that is about 50 percent higher in relative terms. At 60-80 AMI, the relative difference is about 60 percent. When making the comparison at the regional level, the relative difference is about percent at 40-60 AMI and about 30 percent at 60-80 AMI.

63. These differences are all material; they reflect that the absence of affordable housing bears more heavily on African-Americans, which is to say that African-Americans suffer a very large disparate impact.

⁹ There was one more variation on perpetuation of segregation that I looked at. What is the difference between the percentage of African-Americans in the context where market-rate housing is only being marketed within Westchester County, on the one hand, and where affordable housing is being marketed fairly and openly throughout the region? The results are also shown in Exhibit 8A. Here, the relative difference is magnified further, with the smallest difference (at the lowest price point) showing that affordable housing marketed throughout the region more than doubles the share of African-Americans compared to market-rate limited to African-Americans in Westchester alone. At the income level needed for houses costing between \$600,000 and \$800,000, for example, affordable housing marketed throughout the region *triples* the percentage of African-Americans households that are eligible.

64. It is also useful to look at the same table to see what happens as household income rises to be able to afford houses at more expensive levels. The relative position of African-American and white households reverse. Here there are a greater percentage of all white households in the eligible bands than the percentage of all black households in the eligible bands. The relative difference – in favor of whites -- grows as needed household income rises.

65. It should be emphasized that these analyses are *forward-looking*. This is because zoning decisions get made now, and the question is whether the maintenance of a restrictive practice would perpetuate segregation (or cause a disparate impact) given today's conditions. Where African-Americans have and have not moved in the past – when active discrimination was open and notorious – is not a good measure of what would happen today if there were a genuinely open and welcoming process of marketing.

E. Exclusionary zoning is rampant in among Westchester municipalities

66. I begin with land use data, data found in Exhibit 10. In terms of the percentage of all residential acreage being used for residential multi-family housing, the average percentage for the eight excluded jurisdictions was 10.42 percent. In 21 of the 25 Under-3 jurisdictions, however, the percentage is less than 5.0 percent (11 less than 1.0 percent; 6 less than 2.0 percent; 2 less than 3.0 percent; and 2 less than 5.0 percent).¹⁰ This is highly restrictive. In other words, all 21 had a percentage of residential acreage being used for residential multi-family less than half of the average of the excluded jurisdictions.

67. With all of these 21, there could be very substantial increases of acreage used for

¹⁰ The four Under-3 jurisdictions with somewhat higher percentages were Bronxville, Eastchester, Hastings-on-Hudson, and Eastchester.

multi-family housing without changing the nature of the municipality to one where multi-family consumed anything like the percentage of land zoned for lower-density residential uses, let alone changing the municipality to one where multi-family use predominated.

68. It is important to reflect on this fact. I was asked to err on the side of construing “restrictiveness” narrowly. As such, I made observations about those Under-3 municipalities that were far, far away from any reasonable definition of a border between “restrictive” and “non-restrictive.” This should emphasize that others could interpret the Under-3s that I did not characterized as restrictive on the multi-family as-of-right dimension as being so.

69. One very obvious indicator of a remarkable lack of balance in housing types is the fact that none of the 25 municipalities has met its Housing Opportunity Commission allocation of affordable housing units built. Those were very modest allocations, with only a little more than 10,000 units intended to cover the period from 1990 to 2015, a very small fraction of the more than 340,000 households in Westchester overall. The allocations were self-described by the Housing Opportunity Commission as conservative. Moreover, they were limited to responding to affordable housing need *within* Westchester; they made no account for any Westchester municipality to take on even a single unit of affordable housing need in the broader metropolitan area.

70. To illustrate the scope of that regional problem, New York City’s Planning Commissioner Carl Weisbrod just recently said that, in New York City, “[t]here are 500,000 households that cannot afford the housing that’s available.” Weisbrod also said, “I don’t actually believe that New York City can solve the affordability housing problem...We can address it, we can improve it. But we’re not going to solve it unless there’s a broader regional approach and

there's more affordable housing, not just in the city but in the surrounding region.”¹¹ Only a portion of that need would be addressed as part of Westchester meeting its fair share, but the housing allocation accounted for none of it whatsoever.

71. So the allocation does not come close to accounting for need, and yet none of the 25 Under-3 jurisdictions has met the allocation; most have not come close.¹²

72. Not all zoning districts are created equal. That is, residential population is not randomly spread out among all zoning districts. Instead, there is a “center of residential gravity,” and these are where the zoning is at least principally residential. (Zoning districts were examined to determine whether they were principally residential (“PR”), principally non-residential (“PN”), exclusively non-residential (“NR”), or mixed (M). They were also examined for whether they allowed multi-family housing as-of-right: “MF, Y” or “MF, N.” The analysis included changes to zoning made by municipalities that had not yet been reflected in the Westchester Planning Department’s 2015 zoning map and data. My compilation of each municipality’s zoning types is found at Exhibit 11.)

73. The principally residential zones can permit multi-family housing as-of-right or not. If they do, the people who utilize multi-family housing are integrated into the residential heart of the community. If they don’t, the people who utilize multi-family housing are kept separate.

74. I examined these principally residential zones and found that the percentage of

¹¹ Capital New York, “Weisbrod: NYC can’t solve housing affordability crisis on its own,” May 6, 2016, available at <http://www.capitalnewyork.com/article/cityhall/2016/05/8598608/weisbrod-nyc-cant-solve-housing-affordability-crisis-its-own/>

¹² See the figures shown in Exhibit 10. They show the percentage of allocation where units have been built or approved, and reflect the data in the Monitor’s 2013 *Berenson* report, supplemented with such additional units as have been approved or built as shown in the County’s 2015 4th Quarter report.

households who lived in those kind of zones where multi-family housing was *not* allowed as-of-right far exceeded the percentage of households who lived in principally residential zones where multi-family housing was not allowed as-of-right. This was true in all of the 25 Under-3 jurisdictions.

75. I then took a closer look at the percentage of households living in principally residential zones where multi-family as of right was a permitted as-of-right use.

76. It is not as though all of these households *lived* in multi-family housing, it is a matter of the households who live in *zones* that permit such housing as of right.

77. The question was how much of the residential center of gravity incorporated multi-family as-of-right housing. The answer is very little. As a point of comparison, the average percentage of households living in principally residential zones with multi-family allowed as-of-right in the excluded jurisdictions is 23.75 percent. *Half* of that percentage is 11.88 percent. 19 of the Under-3 municipalities had the percentage of households in such zones at less than half of the average of excluded jurisdictions, ranging from Pound Ridge at 0.0 percent to Mamaroneck Town at 11.7 percent. Except for Mamaroneck Town, all were less than 7.0 percent (less than a third of the excluded jurisdiction average), and 14 were than 6.0 percent (less than a fourth of the excluded jurisdiction average).

78. These data characterize isolation and stark limitation, not inclusion. Exhibit 9 presents a map that demonstrates this restriction in residential zones. Looking at the 25-under-3 included municipalities, it is plain that precious little land is allocated to multi-family as of right districts (the very small area depicted in red).

79. Here again, one is able to infer the depth of restriction by the fact that there could be so much growth in the principally residential zones where multi-family is allowed as-of-right

without even beginning to dent the overwhelming predominance of households living in principally residential zones where multi-family is not allowed as-of-right (in connection with the 19 jurisdictions below 50 percent of excluded-jurisdiction average, all had more than two-thirds of households living in principally residential zones with multi-family not allowed as-of-right; in most, the percentage of households was in excess of 85 percent). And, it should be noted, that the up-zoning of a principally residential zone to allow multi-family as-of-right¹³ will not transform a neighborhood overnight. Redevelopment of parcels currently in use as low-density residential will occur only on a portion of parcels, and will occur over time.

80. There is an important implication regarding the Monitor's concern about "clustering" in these data. If one only looks to zones that are not principally residential in which to permit multi-family housing as-of-right, you will: (a) not have an impact on the segregation of the residential heart of the municipality; and (b) the zones that are not principally residential are likely to become "clustered" areas of minority residence.

81. Indeed, I looked at each of the Under-3 jurisdictions to see what type of zone had the highest percentage of African-American households. In none – zero of 25 – was the highest percentage in principally residential zones that do not allow multi-family as of right.

82. In 23, the highest percentage of African-American households were found in zones that were either exclusively or principally non-residential zones, or, in several cases, in mixed-use zones.¹⁴

83. The ratio of the percentages between the highest percentage of African-Americans

¹³ Presumably hinged to a meaningful inclusionary unit requirement of 20 or 30 percent.

¹⁴ The exceptions were Croton and Irvington. In those cases, the highest percentage was in principally residential zones where multi-family housing was allowed as-of-right.

in a type of zone and the percentage of African-Americans in the municipality's principally residential, no multi-family as-of-right zones ranged from 21 percent higher in one case to 13 times higher in Larchmont. Most of the differentials were in the range of the highest African-American percentage being two to four times the percentage of African-Americans in the principally residential, no multi-family as of right zones.

84. A check of density, measured as the number of occupied housing units per acre, confirmed that all of the 19 jurisdictions that met the test for low-percentage-of-households in principally residential, multi-family as-of-right also had low density.¹⁵

85. Thus, I found that 19 of the Under-3 jurisdictions: (a) featured residential multi-family acreage as a low percentage of all residential acreage, all lower than 50 percent of the average of this characteristic for the excluded jurisdictions; *and* (b) failed to meet the Housing Opportunity Commission's allocation over a period of more than 20 years; *and* (c) were characterized by a low percentage of households residing in principally residential zones that allowed multi-family housing as-of-right, all lower than 50 percent of the average of this characteristic for the excluded jurisdictions; *and* (d) had the highest percentage of African-American households in a zoning district type other than principally residential, multi-family not allowed as-of-right, with most instances occurring in a district type other than principally residential altogether; *and* (e) were low density.

86. These 19 jurisdictions – Ardsley, Bedford, Briarcliff Manor, Buchanan, Croton, Harrison, Larchmont, Lewisboro, Mamaroneck Town, Mount Pleasant, New Castle, North Castle, North Salem, Pleasantville, Pound Ridge, Rye Brook, Scarsdale, Somers, and Yorktown – unquestionably having zoning that is properly characterized as highly restrictive, and, because of

¹⁵ Larchmont was more dense than the others, but still not dense.

the disparate impact and perpetuation of segregation that results from the relative absence of affordable housing, for which multi-family is a necessary condition, the highly restrictive zoning operates in a racially exclusionary manner to the detriment of African-Americans.

87. Of the six remaining Under-3 jurisdictions, the Monitor has already designated Pelham Manor exclusionary for other reasons.

88. Of the remaining five,¹⁶ it is quite possible that other zoning factors could result in one or more of them being properly characterized as exclusionary, but that determination was beyond the scope of this report.

89. The Court will notice that I have not discussed the “Model Ordinance” which has figured so prominently in the Monitor’s reports. It is true that *not* having any inclusionary zoning provision, even a weak one like the Model Ordinance,¹⁷ represents another indicia of zoning restrictiveness (and consequently race-linked exclusion). But having this ordinance does very little to reduce restrictiveness. Indeed, the signature feature of the Model Ordinance is that it does nothing to require more multi-family housing as-of-right. If a jurisdiction does not have any multi-family housing as-of-right and passes the Model Ordinance, the jurisdiction will still have no multi-family housing as-of-right.

90. Relying on the market to do the work of desegregation not only allows more perpetuation than creating the possibility of affordable units through more multi-family as-of-right zoning (because of lower percentages of African-Americans able to afford market prices than can

¹⁶ Bronxville, Eastchester, Hastings-on-Hudson, Irvington, and Rye.

¹⁷ The Model Ordinance calls for only 10 percent of units subject to the ordinance to be affordable. New York City, by contrast, long had an “80/20” program, where 20 percent of units were required to be affordable, and the City’s new program requires up to 30 percent of units to be affordable.

afford units at 40-60 AMI or 60-80 AMI), it also operates much more slowly. The market for existing homes depends on a small percentage of resales occurring over time; upzoning, by contrast, is designed to increase supply. Note in this connection that the County's "cooperative" approach (*i.e.*, don't change existing zoning) has barely yielded an average of 100 units a year across the included jurisdictions.

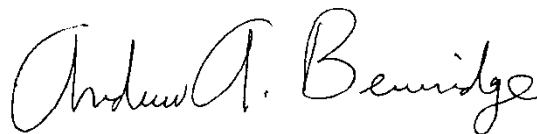
91. As I did in the perpetuation and impact section, I point out that the question of what happens with the loosening of restrictions on multi-family housing is a forward-looking one. What happened in a period where multi-family housing was rented on a discriminatory basis or where no provision was made for units to be affordable is very different from the reality that a necessary condition to create the affordable housing that, in turn, is integrative, is more multi-family as-of-right zoning.

Conclusion

92. Almost eight years since I did my first analysis for this case (and almost seven years after the entry of the consent decree), very little, if anything has changed with respect to the degree of segregation (that is separation and divergence) of the included communities with under 3 percent non-Hispanic black population in households.

93. The overwhelming majority of Under-3 jurisdictions remain characterized by exclusionary zoning that perpetuates the segregation of African-American households and causes a disparate impact to be suffered by them.

Executed on May 11, 2016 at Yonkers, New York.



Andrew A. Beveridge, Ph.D.