

Exhibit 13



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

August 14, 2020

Hon. Stephen C. Robinson
Skadden, Arps, Slate, Meagher & Flom, LLP
One Manhattan West
New York, New York 10001
stephen.robinson@skadden.com
Via email

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

Dear Judge Robinson:

We thank you for meeting with us on August 11, 2020. In response to some of the questions raised during that meeting, the County provides the following information:

I. AFFH Units:

(a) Did the County complete the 630 units required under Paragraph 7(a)?

Not at this time. The County has completed all allowed units under Paragraphs 7(b) and 7(c). The remaining 41 units to complete the 750 units are all 7(a) units.

(b) Has the County met the 7(d) threshold already for units at 50% of AMI, or is it anticipating that it will meet that threshold once the remaining units are completed?

The County has already met the 7(d) threshold for units at 50% of AMI. As of the date of this letter, the County has completed 530 rental units, and the remaining units to be completed are all rental. As such, the County will reach 571 rental units out of the 750. Paragraph 7(d) requires 20% of rental units to be affordable at 50% of AMI, which would be 114 of the 571 units the County will complete under Paragraph 7. Currently, the County has 138 completed units affordable at 50% of AMI, well exceeding the requirements of Paragraph 7(d). The units the County expects to be completed during the remainder of this year will add another 9 units at 50% of AMI. Attachment A is a spreadsheet showing the units completed to date and the affordability levels. Lines 103 and 104 show the totals and percentages, respectively for the current units; lines 106 and 107 show the details for the remaining units.

Hon. Stephen C. Robinson

August 14, 2020

Page 2

(c) Can the County identify the units it expects to be completed by the end of this year to reach the 750 unit threshold?

The County will exceed the 750 units by the end of this year through two developments. The County expects that the 28 unit development Chappaqua Station (Conifer) development and the 14 unit development at 98 Washington Avenue in the Village of Pleasantville will both be completed by the end of this year in that they should have received their Certificates of Occupancy and their affirmative fair housing marketing. All of these units already have the Declarations of Restrictive Covenants filed upon them. Additionally, the County expects several smaller developments to also be completed including seven units in the development at 485-501 Washington Avenue in the Village of Pleasantville, whose affirmative marketing is already being done; two units at 470 Main Street in the Town of North Castle that already have their Certificates of Occupancy; and some portion of the 21 units at 103-105 Corporate Park Drive in Harrison, for which affirmative marketing will begin by September 1st and where the developer expects Certificates of Occupancy starting in December 2020.

(d) Can the County provide more information regarding AFFH Units being developed outside of the eligible communities?

As was mentioned during our meeting, the County is continuing to approve financing for new affordable developments all over the County and inclusionary units are being constructed as a result of local implementation of the Model Ordinance provisions. Since January 1, 2018, the County has approved subsidy assistance on 1,084 units outside of the eligible municipalities. As examples, the County has approved funding for a total of 85 units in two developments in the City of Peekskill; a total of 185 units in two developments in the City of White Plains, a total of 279 units in three developments in the City of Yonkers; and a total of 520 units in four developments in the City of New Rochelle. The County approved and executed the lease of the former WestHelp Greenburgh homeless shelter to a developer who is now redeveloping the property into 74 affordable senior housing units. An additional 1039 units are under review or in the funding approval process, including a development in the Town of Greenburgh where 70 affordable senior housing units are scheduled to be brought to the County Planning Board for their funding recommendation on September 1st. Attachment B contains a listing of these developments.

Additionally, the Westchester County Industrial Development Agency has provided benefits to 10 developments that will include 207 affordable units when constructed.

II. Model Ordinance:

(a) Can the County explain why its FAQ identifies certain provisions of the Model Ordinance as “not flexible?”

In its June 26, 2013 FAQ, the County identifies the following provisions as not flexible: (1) the definition of an AFFH unit, income requirements, and calculation of housing costs; (2) no preferences for resident selection; (3) setting of rent and sale prices; (4) deed restriction requirements; and (5) marketing requirements. As your team noted, several of these items appear in Paragraph 25(a)(i) of the Settlement.

The model ordinance was part of the implementation plan, and pursuant to Paragraph 25, was “[t]o facilitate the development of the Affordable AFFH Units,” *i.e.*, the Paragraph 7 units. The provisions

Hon. Stephen C. Robinson

August 14, 2020

Page 3

identified as “not flexible” were all provisions of the model ordinance that would need to be complied with in order for units created under that ordinance to count toward the 750 units.¹ Other items in the model ordinance, while certainly preferable, were not required for units to count toward the 750 (for example, an expedited review process [ordinance provision #14] is not required for units to count toward the 750).

(b) Can the County discuss the municipalities who have adopted Model Ordinance provisions but are not listed as “consistent” with respect to residency preferences (item 2(c) on the Model Zoning Ordinance spreadsheet)?

Item 2(c) identifies whether the municipality’s zoning code has a specific provision prohibiting preferences for AFFH units. Where a municipality is listed as “consistent” it has prohibiting language.² Where a municipality is listed as having “no provision,” there is simply no provision in either direction. Each of the municipalities who have adopted the model ordinance provisions are either consistent or have no provision; there are no municipalities listed who are inconsistent. Moreover, each of the municipalities listed have provisions requiring the AFFH units to be marketed in accordance with the County’s Affirmative Marketing Plan. Under the County’s Affirmative Marketing Plan, the marketing for any unit must be done through or in conjunction with the County’s Marketing Consultant (Housing Action Council), who must also conduct the lottery for the units. Thus, there cannot be a residency preference for any unit that is created under zoning regulations consistent with the marketing plan provisions of the Model Ordinance.

(c) How is the Discretionary Funding Policy (“DFP”) used to encourage adoption of the Model Zoning Ordinance?

The County’s DFP requires that, any eligible community that is the recipient of discretionary funds comply with certain terms, including that it “adopt municipal zoning code provisions and/or policies which demonstrate a commitment to AFFH.” These provisions include: (1) inclusionary zoning standards; (2) a ban on preferences for the award of fair and affordable housing units “except to the extent provided in the Westchester County Model Zoning Ordinance Provisions;” and (3) a requirement “that the Westchester County Fair & Affordable Housing Affirmative Marketing Plan be adhered to for any and all fair and affordable housing units developed or offered within” the municipality. *See* WESTCHESTER COUNTY IMPLEMENTATION PLAN APP’X D-2(ii). While this does not require adoption of all of the model ordinance provisions, it does require integration into a municipality’s zoning code of the most important elements, including inclusionary zoning and meeting the marketing standards (which, as discussed *supra*, necessarily remove preferences from the equation). Additionally, as the language requires adoption of provisions that “AFFH, including” the identified provisions, it is clear that there is a requirement to go

¹ Obviously, where a municipality has a residency preference in its zoning code, units that are exempted from the residency requirement (whether as part of a special permit/variance, or being built in a zoning district not subject to the preference), those units can still count toward the 750. However, the point of the model ordinance as part of the implementation plan was to allow for the natural development of units that met the requirements to be counted under Paragraph 7.

² For example, the Town of North Castle has a specific prohibition: <https://ecode360.com/29142389#29142389>.

further than just the identified provisions, while providing flexibility in determining how best to accomplish the AFFH goals.

The County identified several pools of discretionary funds: CDBG funds, East of Hudson grants, the County's Legacy Program, Housing Infrastructure Funds, and County New Homes Land Acquisition Funds. WESTCHESTER COUNTY IMPLEMENTATION PLAN APP'X D-2(i). Since that time, additional discretionary funds have become available (for example, in 2011 the County adopted a Storm Water Management Law and concomitant funding program for flood mitigation). Through these funding sources, the County is able to leverage millions of dollars a year to encourage municipalities to adopt zoning provisions that AFFH. For example, as was discussed during our meeting, the Town of Yorktown is seeking millions of dollars in discretionary funding to expand sewer access—a plan that helps with environmental development constraints in Yorktown and can make parcels in Yorktown more desirable. In order to receive these funds, Yorktown would be required to comply with the DFP; thus, this places pressure on Yorktown to adopt model ordinance provisions so that it can tap the pool of funding. Additionally, once a municipality complies with the DFP for one source of funds, it then opens up access to the other pools of funding. A sample copy of an agreement between the County and the Village of Rye Brook, which includes the DFP, is enclosed as Attachment C.

As discussed at the meeting, the County committed \$10 million each in 2020 to the Housing Infrastructure Funds and New Homes Land Acquisition Funds, both of which are subject to the DFP. While not all funds are used for eligible communities (and thus not all funds end up subject to the DFP), the availability of these funds acts as a major incentive for municipalities to adopt zoning provisions which AFFH.

(d) How does the Consortium encourage the adoption of the Model Zoning Ordinance?

Through the Consortium, the County receives, *inter alia*, Community Development Block Grant funding, which is passed on directly to municipalities to assist them in undertaking construction projects and providing public services that benefit low and moderate income households. Every municipality that is a member of the Consortium agrees that if it “accepts any Grants through the County, the Cooperating Municipality agrees to abide by the County’s Discretionary Funding Policy.” *See* Attachment D, ¶ 15. Thus, the Consortium allows the County to leverage additional funds subject to the DFP, and thus encourages adoption of inclusionary zoning as discussed *supra*.

(e) What steps has the County taken to encourage adoption of the Model Zoning Ordinance with: Croton-on-Hudson, Larchmont, Harrison, and Pelham Manor?

During the earlier days of the Housing Settlement implementation, the then County Executive's team and then-Deputy Commissioner Drummond met with each of the 31 eligible municipalities individually to discuss the Housing Settlement, the County's obligations and what was happening in each municipality to assist with the County's effort. These meetings were done with Croton-on-Hudson, Larchmont, Harrison and Pelham Manor. Lists of all the meetings, with their dates, are contained in earlier iterations of the Quarterly Reports. Additionally, the County continued to promote the Model Ordinance Provisions at a number of meetings during each of the past ten years, including meetings of the Urban County Council, the Council of Governments and other public forums and training events hosted by the Westchester Municipal Planning Federation, the Pace Land Use Law Center, Urban Land Institute and

Hon. Stephen C. Robinson

August 14, 2020

Page 5

others, where the four listed municipalities were sometimes in attendance. With some of the training events, members of other board from these municipalities (e.g. Planning and Zoning Board members) were also in attendance.

Additionally, the County Planning Department continues to remind each of these municipalities through planning board referrals undertaken in compliance with General Municipal Law 239, when the municipalities are considering an action that requires County review. Whenever housing is involved, the County reminds the municipalities that have not yet adopted the Model Ordinance Provisions that they should consider their adoption.

The County also discussed model ordinances, including the affordable housing ordinance, in the meetings regarding the Needs Assessment, highlighting how these ordinances could help develop additional affordable housing in municipalities. The other model ordinances discussed focused on accessory dwelling units, senior housing, parking requirements, and office parks. The County explained that it was developing these additional ordinances, which would advance fair and affordable housing, and that it would help municipalities analyze and adopt these ordinances as well. Each of the four municipalities were represented at meetings where this was discussed.

III. Analysis of Impediments

(a) Does HUD's Fair Housing Planning Guide require a Needs Assessment?

HUD's Fair Housing Planning Guide identifies "[a]n assessment of the availability of affordable, accessible housing in a range of unit sizes" as a component of an Analysis of Impediments ("AI"). FAIR HOUSING PLANNING GUIDE, Vol I, § 2.3. This is not an assessment of unmet needs, but rather an assessment of available affordable housing stock. Indeed, as the Fair Housing Planning Guide discusses, the "Affordable housing needs for different categories of residents" is a component of the Consolidated Plan submitted as part of grant funding application, of which the AI is only a component. *See id.* at § 2.7.

Further, following the third biennial report, the Monitor specifically requested that the County, as part of the AI, be required to include "(i) a determination of affordable housing need in Westchester County as of August 10, 2009, the date of the Settlement; [and] (ii) an analysis of whether zoning regulations in each eligible municipality act as impediments to fair and affordable housing under the state-law *Berenson* and federal-law *Huntington* standards." MONITOR'S SPECIFIC REQUESTS FOR RELIEF ARISING FROM THE THIRD BIENNIAL ASSESSMENT OF WESTCHESTER COUNTY'S COMPLIANCE, Doc. 609 at 2-3. The Court denied this request, stating that "the Court declines to order that the AI contain any specific analysis. The adequacy of its contents is for HUD to decide." July 18, 2016 Order, Doc. 659 at 37 n. 14. HUD did not require the County to conduct or include a needs assessment as part of the AI process,³ and thus no needs assessment was required under the Settlement.

³ This is true during both federal administrations overseeing the Settlement. *See generally, Cnty. of Westchester v. U.S. Dep't of Housing & Urban Dev.*, 802 F.3d 413 (2d Cir. 2015) (discussing the bases for HUD rejecting the County's AI submissions).

(b) What prompted HUD's final acceptance of the County's AI?

In April 2017, HUD rejected an AI submitted by the County's Consultant. A copy of that letter is Attachment E. The County provided a response by the Consultant, and asked HUD to reconsider the rejection. A copy of that response is Attachment F. Following that letter, HUD, the County, and the Consultant conferred, and some changes were made, resulting in the County's June 16, 2017 submission. HUD reviewed that submission and provided a redline, indicating that if the County accepted the redline, HUD would accept the AI. A copy of the email from John Cahill, Regional Counsel for HUD, and the redline, is Attachment G. On July 13, 2017, the County accepted all the redline changes and submitted the AI to HUD. A copy of that letter is Attachment H. HUD then accepted the AI. Ultimately, the acceptance of the June 2017 AI was an iterative process, where the limited issues remaining from the April rejection were discussed, worked on, and ultimately resolved to the satisfaction of both parties.

IV. What actions has the County taken under the Needs Assessment?

Westchester County released its Housing Needs Assessment on November 19, 2019. Before, during and after the release of this report, the County took several steps to inform various stakeholders of this important document and support several recommendations listed.

Meetings:

In the weeks leading to the public release of this report, Westchester County presented an overview of the report's data and findings to the following stakeholders:

- Housing Action Council
- Affordable Housing Settlement Monitor
- Westchester County Association
- NYS Homes and Community Renewal
- Board of Legislators Caucuses
- Business Council of Westchester

On the day of the press announcement, the County briefed additional organizations and boards:

- Nonprofit Housing Organizations
 - Allied Community Enterprises
 - Community Capital New York
 - Community Housing Initiatives
 - CLUSTER
 - Croton Housing Network
 - CVR - County Section 8 Program
 - Housing Action Council
 - Human Development Services of Westchester
 - IFCA Housing Network
 - League of Women Voters Housing Co.
 - Mount Vernon United Tenants
 - Westchester Disabled on the Move
 - Westhab
 - Westchester Residential Services

- Legal Services of the Hudson Valley
- Hudson Valley Justice Center
- Community Voices Heard
- Non Profit Westchester
- Westchester Community Foundation
- Westchester County's Housing Opportunities Commission
- Westchester County's African American Advisory Board

Post announcement, Westchester County briefed the following:

- Westchester County's Hispanic Advisory Board
- Westchester County Planning Board
- Regional meetings with Municipalities
- Westchester County Family Task Force Committee
- Building and Realty Institute
- Westchester County Real Estate Task Force

Action Steps:

Following the release of this report, the County put in place a series of action steps to support several recommendations listed.

- \$20 million appropriated in affordable housing development funds
- \$500,000 appropriated in a pre-development and feasibility fund administered through a local nonprofit to assist nonprofit affordable housing developers
- \$85,000 in education and training opportunities to increase capacity of housing nonprofits and provide homeownership and financial literacy services to households looking to purchase a home for the first time
- \$300,000 for eviction prevention and foreclosure prevention services to county residents
- \$500,000 to fund an Employer Assisted Housing Program in partnership with the Westchester County Association, Pace University, Housing Action Council and employers and financial institutions
- Meetings with each municipality to discuss their housing opportunities and challenges based on the data from the Housing Needs Assessment. While COVID did interrupt these meetings, the County intends to continue the meetings through the rest of the year

V. The Consortium

(a) How is the Consortium organized and ran?

HUD Regulations state that municipalities with a population of at least 50,000 may qualify to receive grants directly from HUD as an entitlement. Smaller municipalities only have the option of applying to the Small Cities programs run by each state, which are very competitive in New York State, or agreeing to cooperate together and form an Urban County Consortium ("Consortium") if they can establish a population of at least 200,000. The four largest cities in Westchester qualify as their own entitlements, leaving the remaining 41 municipalities to either apply to New York State or form their own Consortium. The County first established its Consortium in 1976 and continued this administration through Fiscal Year 2011, when HUD began to deny releasing the funding. Under the leadership of

Hon. Stephen C. Robinson

August 14, 2020

Page 8

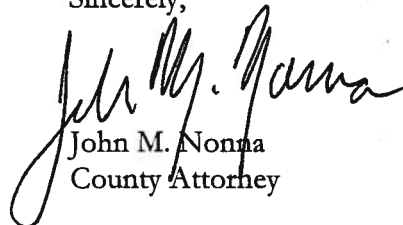
County Executive Latimer, the Consortium was re-established in 2018 with 25 municipalities and was expanded in 2019 with two additional municipalities. Documentation was submitted to HUD this July to add three additional municipalities for Fiscal Year 2021—New Castle, Tuckahoe and Peekskill—for a total of 30 municipalities. The 30 municipalities have a total population of approximately 420,000. The Consortium municipalities each send a representative to approximately 3-4 meetings annually of the Urban County Council which sets the policies for the local administration of the grants by the County Department of Planning. These govern limits on how many grants a municipality can apply for or the amount of funding requested. They do not impede the County's ability to comply with the grant regulations. By participating in the Urban County Council, the municipalities have much greater access to grant funding, and benefit from all the services the County provides in administering the program, including environmental reviews, design services, Davis Bacon wage compliance, training opportunities, and Consortium-wide programs offered such as Fair Housing outreach and education, rehabilitation services and eviction prevention services.

(b) What grants does the Consortium administer?

The County administers three HUD grant programs on behalf of the Consortium: the Community Development Block Grant ("CDBG"), the HOME Investment Partnership Program ("HOME") and the Emergency Solutions Grant ("ESG"). The County receives approximately \$5 Million annually for these programs (\$3.7m for CDBG, \$1m for HOME, and \$311,000 for ESG). CDBG funds are passed through to local municipalities. Consortium members submit applications for eligible projects to the County, which are then reviewed and evaluated before funds are awarded. The HOME program goes directly to developers of affordable housing in Consortium municipalities and the ESG program is provided to nonprofit agencies that provide homeless and eviction prevention services to residents of the Consortium municipalities. Additional funding of \$2,180,194 in CDBG and \$5,242,813 in ESG has been awarded to the Consortium this year through the CARES Act to provide programs that benefit those impacted by COVID-19.

We hope you find these responses informative. We look forward to further dialogue with you and your team.

Sincerely,



John M. Nonna
County Attorney

Attachments

Cc: George Latimer, County Executive
Ken Jenkins, Deputy County Executive
Joan McDonald, Director of Operations
Andrew Ferris, Chief of Staff
Norma V. Drummond, Commissioner of Planning
Justin Adin, Deputy County Attorney