

Exhibit 14



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

December 8, 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:

In response to the questions you raised on November 4, 2020, the County provides the following information:

1) Please provide copies of all quarterly reports for 2016-2019.

Copies of these quarterly reports are being transmitted, contemporaneously herewith, through Sharefile.

2) One area of concern for us is to what extent the use of 2010 Census data rather than 2000 Census data would change the number of units that qualify as AFFH units under Paragraph 7(a), (b), and (c) of the Settlement. Can the County provide us with an updated assessment of the number of units that qualify under Paragraph 7(a), (b), and (c) using 2010 Census data?

Applying the 2010 Census data to municipalities would result in the following communities being eligible under Paragraph 7(a)-(c):

7(a): Ardsley, Briarcliff Manor, Bronxville, Eastchester, Irvington, Larchmont, Lewisboro, Mamaroneck (Town), Mount Pleasant, New Castle, Pound Ridge, Rye (City), Scarsdale, Somers

7(b): Dobbs Ferry, Hastings-on-Hudson,* North Castle,* North Salem,* Pelham Manor,* Yorktown

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7(c): Bedford,* Cortlandt,^ Croton-on-Hudson,^ Harrison,* Ossining (Town),^ Pelham,^ Pleasantville,* Rye Brook,* Tuckahoe

The Villages of Buchannan* and Tarrytown (a Paragraph 7(c) community under the 2000 Census) would become ineligible.

*Denotes a municipality which qualifies under Paragraph 7(a) based on the 2000 Census but not under the 2010 Census.

^Denotes a municipality which qualifies under Paragraph 7(b) based on the 2000 Census but not under the 2010 Census.

Enclosed herewith is a spreadsheet entitled “2020-9-30 AFFFH Units with 2010 ABC Definitions for Monitor,” which applies these locational criteria to the units that (1) have been completed and counted toward the 750; (2) have been completed but are not counted toward the 750, as they are over and above the units allowed under Paragraph 7(b) and (c); and (3) are in progress.

As you can see by line 91 of the spreadsheet, there are 355 units being counted toward the 750 which would fall under Paragraph 7(b) or (c), utilizing 2010 Census data, where only 120 units are allowed. An additional nine (9) units would become completely ineligible. Thus, any utilization of the 2010 Census data would result in significant prejudice to the County’s efforts to AFFH and fulfill the terms of the Settlement.

This is hard-coded into the Settlement itself. The only reference to the possible use of the 2010 Census data is contained in Paragraph 15(a)(iii). That Paragraph provides:

For one hundred eight (180) calendar days following each [biennial] assessment, the Monitor shall have the authority, after having first secured the written consent of the Government and the County, to modify or refine:

...

(iii) the locational criteria set forth in sub-paragraph 7(a), in the event that the Monitor determines that such locational criteria do not serve the purpose of the Stipulation and Order to AFFH, to take into 2010 Census data in the determination of eligible municipalities and census blocks set forth in paragraphs 7(a), 7(b), and 7(c), or to remedy a concentration or other issue related to the geographic distribution of the Affordable AFFH Units that does not serve the purpose of the Stipulation and Order to AFFH, ***except no municipality included under the calculations set forth in paragraphs 7(a), 7(b), or 7(c) shall be excluded after modification or refinement to those subdivisions.***

(emphasis added). Between the time limitation on modification (180 days after each biennial assessment) and the exception providing that municipalities cannot be excluded by the modification, it is clear that Paragraph 15(a)(iii) is meant to apply in a prospective manner, so

as to not place the County in a situation where it has invested time and money into developments which count under the 2000 Census, only to have those units become excluded by a later calculation. Given that the County has all 750 units at or near a state of completion, any modification under Paragraph 15(a)(iii) would now have no impact on the units, as they have all pre-existed the modification.

The question of whether or not to consider the 2010 Census data has also been previously presented and addressed. In response to a letter from the former relator, the Anti-Discrimination Center of Metro New York, Inc., James Johnson informed the Court that “[t]he Monitor elected not to take into account the 2010 data because he determined that there was no evidence of significant demographic shifts among the 31 municipalities that would materially affect the ‘purpose of the Stipulation and Order to AFFH.’” MONITOR’S SUBMISSION RELATING TO THE MONITOR’S REQUESTS FOR RELIEF AND RELIEF PROPOSED BY THE ANTI-DISCRIMINATION CENTER OF METRO NEW YORK, INC., Doc. 630, p. 22 (quoting Paragraph 15(a)(iii) of the Settlement); *see also*, RESPONSE OF THE UNITED STATES TO THE COURT’S ORDER OF MAY 13, 2016 AND THE RECOMMENDATIONS IN THE MONITOR’S THIRD BIENNIAL ASSESSMENT, Doc. 628, p. 25 (ADC’s request to use the 2010 Census “does not analyze what practical impact the proposed change would have, particularly where many of the units are already in development, or have already been built.”).

Mr. Johnson, in his final biennial report, filed April 28, 2016, also discussed the County’s equitable distribution of the AFFH Units throughout the County, noting that: (1) as of the end of 2015, 27 of the 31 eligible communities had units; and (2) 86.1% of developments contained no more than 25 units, and approximately 75% of those contained between one and five units. MONITOR’S THIRD BIENNIAL ASSESSMENT OF WESTCHESTER COUNTY’S COMPLIANCE, Doc. 576, pp. 8-9. This comports with his position that there was no need to consider the 2010 Census data, as this continued to demonstrate that the development of the 750 units across the municipalities was furthering the purpose of the Settlement to AFFH.

- 3) Please provide Certificates of Occupancy for the 14 units that cannot be counted toward the 750 requirement because they are above the 60 units allowed by Paragraph 7(b) and 7(c) of the Settlement.**

Copies of these Certificates of Occupancy for these units (now 16 units) are being transmitted, contemporaneously herewith, through Sharefile.

- 4) The County stated in its September 30th letter in response to Question III(b) that there are “14 units (now modified to 12) where the units have COs, filed deed restrictions, and marketing is done” that are also complete for purposes of the 750 units. Can the County clarify which developments contain these 12 units, and provide the Certificates of Occupancy and deed restrictions for those developments if it has not done so already?**

The units that are complete , but unoccupied are:

41 Church St., Bedford – 1 unit

194 Ketchum Ave, Buchanan – 1 unit

208 Centre St., Buchanan – 1 unit
 280 Bleakley Ave, Buchanan – 1 unit
 104 Pine St., Cortlandt – 1 unit
 240 Halstead Ave, Unit 2B, Harrison – 1 unit
 5 Stanley Ave, Ossining (Town) – 1 unit
 39 Washington Ave, Pleasantville – 2 units
 1100 King St., Rye Brook – 8 units (2 more under construction)
 55 Leroy Ave, Tarrytown – 1 unit
 112 Village Rd., Unit #F, Yorktown – 1 unit
 3271 Lincoln Dr., Yorktown – 1 unit

The 8 units at 1100 Kings St. have recently completed marketing, so there are now 20 total units which are complete, but unoccupied. The Certificates of Occupancy and deed restrictions for these properties are being transmitted herewith through Sharefile.

- 5) Can the County provide the deed restrictions for the following developments?
- a. 75 Main St
 - b. 3 Maryland Ave
 - c. 20 Tighe Rd
 - d. 3841 Valleyview St
 - e. 3408 Deerhaunt St

Copies of these deed restrictions are being transmitted, contemporaneously herewith, through Sharefile.

- 6) The County has stated that 138 of the completed rental units, plus an additional 9 rental units still under construction for a total of 147 units, are affordable at 50% of AMI. However, the deed restrictions the County has provided (see the chart below) indicate that only 95 rental units are affordable at 50% of AMI. Can the County provide additional deed restrictions to show that it is in compliance with Paragraph 7(d)? [Note that the deed restrictions the County provided for 54 Hunts Place and 17 Kaldenberg Place do not provide a breakdown of the affordability of units.]

Development	Total # of AFFH Units	# of Rental Units Affordable at or below 50% AMI	# of Rental Units Affordable at or below 60% AMI	# of Rental Units Affordable at or below 65% AMI	# of Ownership Units Affordable at or below 80% AMI
100 Danforth Ave	10	-	10	-	-
147-175 Railroad Ave	12	6	6	-	-
250 Theodore Fremd	41	8	32	-	-
1680 Strawberry Rd,	1	-	1	-	-

Development	Total # of AFFH Units	# of Rental Units Affordable at or below 50% AMI	# of Rental Units Affordable at or below 60% AMI	# of Rental Units Affordable at or below 65% AMI	# of Ownership Units Affordable at or below 80% AMI
Unit #5					
1680 Strawberry Rd, Units #11-13	3	3	-	-	-
17 Kaldenberg Pl	2	Deed restriction does not say	Deed restriction does not say	Deed restriction does not say	Deed restriction does not say
190 Farragut Ave (aka 184 Farragut Ave)	2	1	-	-	1
19 Park Ave	2	1	-	-	1
214 Hillside Pl	4	-	4	-	-
240 Underhill Ave	39	-	39	-	-
256 June Rd	65	13	52	-	-
322 Kear St	12	3	9	-	-
37 Wildwood Rd	7	1	4	2	-
421 Saw Mill River Rd	12	3	9	-	-
491 Franklin St	2	-	1	-	1
54 Hunts Pl	28	Deed restriction does not say	Deed restriction does not say	Deed restriction does not say	Deed restriction does not say
57 Route 6	58	12	46	-	-
72 Croton Ave	2	-	1	-	1
98 Washington Ave	14	3	11	-	-
200 Readers Digest Rd	28	6	22	-	-
Clayton Blvd	75	15	60	-	-
Rt 9A Roundtop	83	19	64	-	-
Somers Avalon	10	1	9	-	-
10 West Main St	4	-	4	-	-
117 Washington Ave	1	-	1	-	-
15-25 Mt Airy	1	-	1	-	-
16 Route 6	16	-	8	-	8
2 Spruce Rd	2	-	1	-	1
21 Cooley St	3	-	2	-	1
9 Saxon Woods Rd	4	-	4	-	-
37 Stewart Pl	2	-	1	-	1
42 First Ave	3	-	2	-	1
5 Liberty Way	3	-	-	-	3
55 Pleasant Ave	2	-	1	-	1
MTA Station at	7	-	7	-	-

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Development	Total # of AFFH Units	# of Rental Units Affordable at or below 50% AMI	# of Rental Units Affordable at or below 60% AMI	# of Rental Units Affordable at or below 65% AMI	# of Ownership Units Affordable at or below 80% AMI
Halstead Ave					
Total	560	95	412	2	20

The development at 240 Underhill Avenue is the subject of a regulatory agreement issued by the State of New York, as part of the Low Income Housing Tax Credits. This regulatory agreement, which is filed with the County Clerk's office, sets the affordability levels for units; in the case of Underhill, it requires 36 of the 39 units to be affordable at 50%. A copy of the regulatory agreement is being transmitted herewith through Sharefile. 54 Hunts Place, which is currently under construction, will also be subject to a regulatory agreement that will require 7 units to be affordable at 50%. Both the State and the developer have confirmed that this agreement will be executed and filed prior to occupancy of the development.

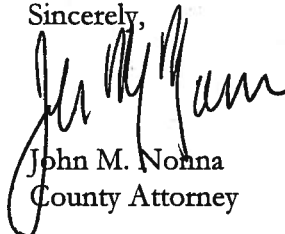
In reviewing the deed restriction for 17 Kaldenberg Place, we recognize that the affordability level for the rental unit could be clearer. While there are multiple mentions of 60%, there is a requirement of 50% affordability on page 14 of the deed restriction; Housing Action Council has confirmed that it is rented at 50%. The County is working with the owner to amend the deed restriction to make it clearer that it is a 50% unit. A copy of the current deed restriction, with the 50% language highlighted, is being transmitted herewith through Sharefile.

The County is also working with the developer of 37 Wildwood to amend the deed restriction to include two units at 50% and to reduce two 65% units to 60%. Housing Action Council has confirmed that two units at 37 Wildwood are currently rented and occupied at the 50% level.

The County further notes that there is financing in place for another 9 units at 50%, in the Route 22 development in the Town of Lewisboro.

We hope this correspondence resolves your additional questions. Please advise if you would like to discuss any of the items addressed in this letter.

Sincerely,



John M. Nonna
County Attorney

Attachments

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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