



U.S. Department of Housing and Urban Development
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<http://www.hud.gov/local/nyn/nynopen.html>

January 31, 2013

Via email

James E. Johnson, Esq.
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

Re: United States ex rel. Anti-Discrimination Center v. Westchester County
06 civ. 2860 (DLC) – Funding Advisory 14, Waterwheel, Ardsley

Dear Mr. Johnson:

Thank you for the opportunity to provide our comments on the proposed Waterwheel development in Ardsley, described in the County's November 1, 2012 Funding Advisory No. 14 and Executive Summary, and the County's April 8, 2011 Inquiry No. 10. As explained further below, HUD objects to this development, on the ground that it is in violation of the Settlement's affirmative marketing obligations, found in paragraph 33(e). Additionally, HUD is concerned with the County's use of discretionary funding in a municipality that has yet to adopt the Model Ordinance Provisions. This use of funding runs afoul of the Discretionary Funding Policy adopted by the County under the terms of the Settlement, at paragraph 25(d).

Ardsley's proposed Waterwheel development will consist of 22 homeownership condominium units, 17 of which are proposed to count towards the County's Settlement obligation. The remaining 5 units will be "earmarked" as "workforce housing" consistent with Ardsley's affordable housing ordinance. *See* Funding Advisory, page 1.

Paragraph 33(e) of the Settlement requires that the County undertake additional obligations to affirmatively further fair housing ("AFFH"). One such obligation requires that the County "affirmatively market affordable housing within the County and in geographic areas with large non-white populations outside, but contiguous or in close proximity to, the County, and include in all agreements between the County and a developer requirements that the developer meet these same affirmative marketing requirements[.]" Consistent with other obligations in paragraph 33, this obligation applies to all affordable housing development in the County.¹

¹ The scope of the affirmative marketing obligations found in Paragraph 33(e) differs from the scope of the obligation detailed in Paragraph 25(a)(ii). Paragraph 25 specifically applies to the development of Affordable AFFH Units as defined by the Settlement and requires that the County's implementation plan include "standards for affirmative marketing of new housing developments to ensure outreach to racially and ethnically diverse households." To this end, in December 2011, the Monitor approved the Affirmative Fair Housing Marketing Plan which applies to the marketing of units developed under the Settlement. Conversely, Paragraph 33 applies more

James E. Johnson, Esq.

January 31, 2013

Page 2

The County's most recent Quarterly Report states that Ardsley has not yet incorporated the Model Ordinance into its local regulations. *See* Quarterly Report for the period of July 1, 2012 to September 31, 2012, page 17. Ardsley is joined by twenty other eligible municipalities who, more than two years after its approval, have yet to adopt the Model Ordinance. The importance of the Model Ordinance to the successful implementation of the Settlement cannot be understated. The Model Ordinance furthers the goals of the Settlement by, among other things, precluding preferences which do not affirmatively further fair housing.

As you know, the Discretionary Funding Policy (the "Policy"), approved by you in January 2012, precludes the County from providing discretionary funding to a municipality unless the municipality agrees to affirmatively further fair housing by, among other things, "adopt[ing] municipal zoning code provisions and/or policies which reflect the guidance provided in the Model Ordinance Provisions."

As we reiterated in our December 10, 2012 letter, HUD would like to see the County reevaluate its strategy for promotion of the Model Ordinance in light of apparent municipal resistance to its adoption. Additionally, HUD encourages the County to consider its compliance with the Discretionary Funding Policy which has been in effect for over a year. While HUD is pleased that the revised proposal reserves two of the five proposed three-bedroom units as AFFH units, the development described may violate both the Discretionary Funding Policy and the County's additional Settlement obligations.

Sincerely,



Mirza Orriols
Deputy Regional Administrator

cc: Via email
Kevin J. Plunkett, Deputy County Executive
Robert F. Meehan, Westchester County Attorney
David J. Kennedy, Chief, Civil Rights Unit (S.D.N.Y.)
Lara K. Eshkenazi, Assistant U.S. Attorney (S.D.N.Y.)
Benjamin H. Torrance, Assistant U.S. Attorney (S.D.N.Y.)

broadly, requiring the County to affirmatively market affordable housing and to "include in all agreements between the County and a developer requirements that the developers meet these same affirmative marketing requirements."