

September 27, 2010

Mr. James M. Johnson, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY

Dear Mr. Johnson:

On behalf of the National Fair Housing Alliance, I write you in regards to the “Fair and Affordable Housing Implementation Plan” (“Implementation Plan”) that Westchester County submitted to you on August 9, 2010. The County submitted this third Implementation Plan in an attempt to meet its obligation under the Consent Decree filed in *U.S. ex rel. Anti-Discrimination Center of Metro New York v. Westchester County*. Unfortunately, the submission does not actually offer the good faith plan to reduce racial segregation in the County as required by the Consent Decree. Instead, the County has continued its habit of ignoring the problem of segregation and failing to address municipal resistance to affordable housing. Just as you have rejected two prior implementation plans submitted by the County, I urge you to reject this most recent plan and any subsequent plan that does not comply with both the specific guidelines established in the Consent Decree and the overall goal of the Consent Decree to reduce residential racial segregation.

At a time when the U.S. Department of Housing and Urban Development is revisiting the obligation of federal funding recipients to affirmatively further fair housing, it is imperative that you only accept a plan from Westchester that satisfies both the specific mandates of the Consent Decree and the County’s obligation to affirmatively further fair housing. If Westchester is able to shirk its responsibilities following both decisive litigation and the intervention of the federal government, resistance from municipalities around the country will continue to be emboldened. This could come in two or more possible forms. Municipalities could defy their obligation to affirmatively further fair housing by failing to conduct a reasonable Analysis of Impediments or take steps to overcome those identified impediments. Even more troubling, racially segregated municipalities could also engage in a more sophisticated type of resistance in which they pledge compliance with the AFFH obligation but do so in a nominal way that leaves existing segregation unchallenged.

Based on Westchester’s behavior in the wake of the Consent Decree, it appears that the County is engaging in both types of resistance. The County Executive is on record saying that he will not use some of the most powerful tools at his disposal to ensure municipal compliance with the Consent Decree. To date, the County remains unnecessarily deferential to exclusionary zoning practices that have aided and reinforced racial segregation in Westchester, continues to offer no plans for how it would acquire land for development in predominantly white census blocks, and refuses to use established legal principles to overcome these restrictive zoning principles through litigation. While openly refusing to challenge exclusionary zoning and its accompanying NIMBYism, the County has also suggested siting and counting the affordable housing required by the Consent Decree in a way that substantially reduces the agreement’s overall impact.



If you provide the County with the wide discretion that it seeks to plan for the construction of 750 affordable housing units in white communities, you will minimize the change that the Consent Decree is capable of creating and intended to create. The third Implementation Plan, as drafted, will not further, and is actually defiant of, the goals of the Consent Decree. In it, the County announces that it wishes to, among other plans:


- max out the number of eligible affordable units in non-white areas and senior developments, thereby limiting the number of units that will be truly pro-integrative;
- max out, and even expand upon, the number of affordable units that count toward the 750 required units by converting existing housing into affordable housing;¹ and
- redefine census blocks with the “lowest concentrations” of African Americans and Latinos as census blocks that have zero African Americans and zero Latinos only because the blocks have no population at all when institutionalized persons are excluded from the count.

These intentions illustrate the County’s attempt to follow the path of least municipal resistance. By ignoring census blocks that have populations of up to 3% African-Americans and up to 7% Latinos, the County is artificially limiting the number of available census blocks in which it can build affordable units, while also attempting to maximize the number of units in census blocks with larger populations of people with color. In turn, this substantially reduces the geographic area of land in which the County could build affordable housing and also reduces the likelihood that the County would have to challenge restrictive zoning and NIMBYism. This, of course, would minimize zoning change and preserve the status quo.

These criticisms of Westchester County’s behavior and of the submitted Implementation Plan are in no way comprehensive of the inadequacies that we believe mark the plan. Please do not let the County’s very calculated attempts to evade certain aspects of the Consent Decree go unaddressed. It is important, not just for the future of Westchester, but also the future of our nation, that Westchester be forced to stand up, acknowledge racial discrimination and segregation, and take concrete steps to overcome it.

I appreciate your consideration of the letter. I have also attached for your review the National Fair Housing Alliance’s comments on Westchester County’s previously submitted Analysis of Impediments. If you have any questions, please contact me or Ben Clark in my office. He can be reached by telephone at (202) 898-1661 or email at bclark@nationalfairhousing.org.

Sincerely,



Shanna L. Smith
President & CEO

¹ By counting preexisting buildings, the County is artificially limiting the structural change that the Consent Decree can make. Although acquiring existing buildings and converting them into affordable units is not necessarily bad public policy for the County, relying upon these conversions provides a convenient way for the County to develop affordable units without challenging the exclusionary zoning laws that have made it so segregated.