



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**THE DEPUTY SECRETARY**

WASHINGTON, DC 20410-0050

May 31, 2013

Kenneth W. Jenkins  
Chair, Westchester County  
Board of Legislators  
148 Martine Avenue- 8<sup>th</sup> Floor  
White Plains, NY 10601

Dear Chairman Jenkins:

This responds to your May 21, 2013 letter requesting clarification of the legal terms and requirements associated with the Stipulation and Order of Settlement and Dismissal entered in *United States ex rel. Anti-Discrimination Center of Metro New York v. Westchester County* (No. 06 Civ. 2860) (the “Settlement”). Specifically, this letter provides HUD’s response to the three questions you raised in the May 21 letter. Thank you for the opportunity to respond and clarify the record.

- 1) Is it HUD’s position that the County of Westchester is legally required to fund the construction of 10,768 new affordable housing units, rather than the 750 units referenced in the fair and affordable housing settlement?

The Settlement does not contain such a requirement. Under paragraph 7 of the Settlement, the County is obligated to ensure the development of “at least” 750 new affordable housing units that affirmatively further fair housing. By its terms, this is a floor, not a ceiling.

As made clear in the recitals on page 2 of the Settlement, the County agreed and acknowledged that: “pursuant to New York State law, municipal land use policies and actions *shall take into consideration the housing needs of the surrounding region....*” To date, the best available evidence of such regional housing needs is the County’s own study. The County’s study estimates 10,768 affordable housing units as the regional need. While this study was

issued in 2004 (and no doubt needs updating), it is at least a starting point for considering regional housing needs. In any event, HUD is not requiring the County to build this number of units, but to use this study as a tool to examine how the eligible municipalities are contributing to meet the regional needs. Such an examination does not equate to a new funding mandate.

- 2) Is it HUD's position that the County of Westchester is legally required to facilitate and fund the construction of new affordable housing units in all of Westchester, beyond the 31 communities referenced in the fair and affordable housing settlement?

The Settlement does not contain such a requirement. Paragraph 7 of the Settlement clearly identifies the locational criteria for the municipalities where at least 750 new affordable housing units that affirmatively further fair housing are to be built. Based on the criteria stated in the Settlement, there are 31 eligible municipalities that meet these standards. In selecting sites within these eligible municipalities, paragraph 22 of the Settlement requires the County to identify sites that "provide or have the potential to provide access to services and facilities that will promote sustainable, inclusive communities, such as employment and educational opportunities, medical and other family services, and public transportation[.]" and that the County seek to "maximize the development of units in the eligible municipalities and census blocks with the lowest concentrations of African American and Hispanic residents." The Settlement does not contain a requirement that the County finance new affordable housing construction in every community within the County.

With respect of facilitating new affordable housing in the County, the Settlement also sets forth other actions that the County must take "as part of its additional obligations to [affirmatively further fair housing]." See paragraph 33. For example, in paragraph 33(c), the Settlement states that the County must "create and fund campaigns...to promote the fair and equitable distribution of affordable housing *in all communities*...." As stated in the recitals on the first page of the Settlement, "[t]he development of affordable housing in a way that affirmatively furthers fair housing is a matter of significant public interest....The broad and equitable distribution of affordable housing promotes sustainable and integrated residential patterns."

- 3) Is it HUD's position that the County of Westchester is legally required to eliminate all zoning restrictions – in every neighborhood – on height, size, acreage, density and number of bedrooms, in order to meet its obligations under the fair and affordable housing settlement?

HUD has never suggested that the County must "dismantle" zoning in any neighborhood. HUD has been consistent in its directive that the County must examine the impact of municipal zoning on housing development to determine whether zoning is responsible for creating or perpetuating patterns of segregation, examine whether existing zoning schemes properly take

into account regional housing needs, and develop a clear strategy to overcome exclusionary zoning practices.

Paragraph 32 of the Settlement requires the County to complete an Analysis of Impediments to Fair Housing Choice (AI) within its jurisdiction that complies with HUD's Fair Housing Planning Guide. This paragraph specifically obligates the County in its AI "to identify and analyze, *inter alia*: (i) the impediments to fair housing within its jurisdiction, including impediments based on race or municipal resistance to the development of affordable housing." Under paragraph 15, the Settlement also called for the Monitor to assess whether the County has taken all possible actions to meet its obligations under the Settlement. Under the Settlement, the listed possible actions include, "but not limited to, exploring all opportunities to leverage funds for the development of the Affordable AFFH Units, promoting inclusionary and other appropriate zoning by municipalities by offering incentives, and, if necessary, taking legal action."

Paragraph 25(d) of the Settlement also requires a discretionary funding policy under which eligible municipalities must commit to "actively further implementation of this [Settlement] through their land use regulations and other affirmative measures to assist development of affordable housing."

HUD acknowledges that individual municipalities have a legitimate interest in zoning. However, there is no place for a zoning scheme that, whether by design or effect, violates federal or state law by improperly excluding a protected class of individuals.

Please note the above discussion relates only to your questions concerning the County's obligations under the Settlement. As a recipient of federal funds, the County also has obligations that originate from authorities other than the Settlement. In this regard, in no way is the Settlement intended to replace other fair housing obligations under federal law.

Please let me know if we can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "Maurice A. Jones". The signature is written in a cursive, flowing style with a large initial "M" and a clear "A" and "J".

Maurice A. Jones