



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

ASSISTANT SECRETARY FOR
FAIR HOUSING AND EQUAL OPPORTUNITY

April 10, 2017

Kevin J. Plunkett
Deputy County Executive
Westchester County
148 Martine Avenue, 9th Floor
White Plains, NY 10601

Re: United States ex rel. Anti-Discrimination Center v. Westchester County
06 civ. 2860 (DLC) – Zoning Analysis

Dear Mr. Plunkett:

The U.S. Department of Housing and Urban Development (“HUD”) has received your March 20, 2017 submission entitled “Westchester County Analysis of Impediments Supplement to Chapter 12 – Zoning Analysis” (“AI Supplement”). HUD has reviewed the AI Supplement and determined that it is unacceptable because it continues to lack appropriate analyses of impediments to fair housing choice and fails to identify forward-looking strategies to overcome those impediments. HUD recognizes that the County no longer participates in its community development programs; however, the County is obligated to provide an acceptable Analysis of Impediments to Fair Housing Choice (“AI”) as a remedial measure under the 2009 Stipulation and Order of Settlement (“Settlement”). Paragraph 32 of the Settlement provides, in pertinent part, “[t]he County shall complete ...[an AI] within its jurisdiction that complies with the guidance in HUD’s Fair Housing Planning Guide... The AI must be deemed acceptable by HUD.”

While HUD and the County have engaged in an interactive process over the past several years that resulted in much of the AI being acceptable to HUD, the County has not yet fulfilled all requirements. The County has received the benefit of the Court’s direction, the guidance of the Monitor, the Fair Housing Planning Guide, HUD technical assistance, and HUD’s prior comments on the AI, but has failed to conduct a complete and adequate analysis as a remedial measure. Because of this failure, the AI continues to be unacceptable.

Background

In December 2016, the County submitted to HUD three similar zoning supplements to the AI, which HUD found unacceptable. On January 9, 2017, the County requested an extension of time to complete the required zoning analysis. The Court granted a final extension until April 10, 2017.

HUD provided technical assistance regarding zoning to representatives from the County and its contractor, VHB Engineering, Surveying, and Landscape Architecture, P.C. (“VHB”), at various meetings and through email correspondence. VHB analyzed demographic patterns

county-wide and in sixteen agreed-upon municipalities: Village of Elmsford; Town of Greenburgh; Village of Mamaroneck; Village/Town of Mount Kisco; Village of Ossining; City of Peekskill; Village of Port Chester; Village of Sleepy Hollow; Village of Bronxville; Town of Eastchester; Village of Larchmont; Town of Lewisboro; Town of New Castle; Town of Pound Ridge; Village/Town of Scarsdale; and Town of Somers. These municipalities represent the eight municipalities with the highest percentage of minority residents and the eight municipalities with the lowest percentage of minority residents. HUD advised the County and VHB that the AI Supplement “must (1) acknowledge demographic patterns within the county; (2) discuss the role that zoning may play in the creation or perpetuation of the acknowledged demographic patterns; and (3) provide strategies that the County may utilize in addressing the patterns.” *See* February 17, 2017, email from Jo-Ann Frey to the County and VHB.

The AI Supplement

Below is a summary of HUD’s review of the County’s most recent AI Supplement. The maps submitted are useful and allow the reader to visualize demographics and patterns of racial segregation. The AI Supplement also discusses zoning in each of the sixteen municipalities. In HUD’s view, however, the AI Supplement is unacceptable for the following reasons. HUD has provided certain examples of each deficiency, which are non-exhaustive, but illustrative of issues that run throughout the analysis. HUD is available to provide additional technical assistance to the County on these deficiencies.

a. Failure to Address Segregation of White Residents

The AI Supplement focuses on “concentration” of minority residents but fails to analyze areas of white segregation. The discussion regarding Larchmont illustrates the problem. Nearly half of the acreage in the Village is dedicated to “high-density single-family” housing, while only 8% is dedicated to multifamily housing. Almost all of Larchmont - 90% of the Village’s acres – is zoned for single family residential use and has an African American population of less than 1%. This indicates that African American residents are barely represented while white residents are overwhelmingly represented. Yet, the County fails to analyze whether zoning is a factor.¹

The analysis of Pound Ridge suffers from the same narrow focus. *See* pages 3-60 – 64. Pound Ridge does not allow any multifamily development as of right and there are only 17 multifamily units in the Town. Pound Ridge is 93.7% white and the housing stock is 99.2% single-family. The AI Supplement concludes that there are no concentrations of African American or Hispanic residents and, therefore, the “zoning provisions are not posing as a barrier to diversification.” Page 3-63. This conclusion is highly suspect. The concentration of white

¹ Additionally, the narrative indicates that Larchmont’s multifamily districts have higher concentrations of African Americans and Hispanics. Townhouse development, widely acknowledged to promote affordable housing, is limited to seven units per development and each unit must be no larger than two-bedrooms. This is likely to have the effect of limiting families with children but is not analyzed. Such a strategy may result in familial status discrimination.

residents and the impact of limited multifamily development in Pound Ridge should have been addressed.

b. Failure to Acknowledge Areas of Segregation

The AI Supplement also fails to fully acknowledge segregation of African American and Hispanic residents. The individual municipal analyses contained within the AI Supplement consistently conclude “[n]o concentrations of minority populations are” present. *See* Village of Ossining, page 3-23. However, the maps accompanying the discussion of the Village of Ossining do not support this conclusion. The maps show areas where African American or Hispanic residents comprise 60% or more of the population. These residential segregation patterns require closer analysis to determine the influence of zoning.

Similarly, the individual analysis of the Village of Sleepy Hollow concludes that there is “no correlation between zoning and the concentration of the Hispanic population,” and notes that “there is no correlation between zoning and the concentration of the Black/African American population.” This conclusion is not supported by the data presented in the analysis, however, where areas zoned as multifamily/two-family have 8.5% African American population and 57% Hispanic population, compared to less than 1% and less than 10% respectively in single family housing residential zoned areas. The analysis avoids whether there is a comparative concentration between single family and other areas. In particular, the AI Supplement erroneously concludes that there is not an impediment to fair housing choice because the “percentage [of Hispanic and African American residents] is higher in other zoning districts than some of the multi-family districts.”

c. Failure to Appropriately Compare Communities

The AI Supplement fails to compare similarly-situated communities. For example, the AI Supplement discusses and compares two communities: Greenburgh and Pound Ridge. *See* pages 4-4 – 5. These two communities are purportedly “similar in size and character but have different zoning codes” as they both have parks, environmental features, and large- to medium-sized residential zoning. The comparison concludes that the municipalities’ zoning codes do not result in segregation because “Pound Ridge permits multifamily in nearly all of its land but is a homogeneous community, while Greenburgh contains little multifamily but is very racially diverse.” This conclusion fails to consider that none of Pound Ridge is zoned for multifamily development as-of-right while all of Greenburgh’s multifamily zoned areas allow multifamily development as-of-right. Pound Ridge is overwhelmingly composed of single-family homes on large lots. Although only 8% of the land in Greenburgh is zoned for multifamily, 36% of its housing units are multifamily, which are concentrated because of the code restrictions. The failure to appropriately compare communities results in the County not accurately identifying impediments to fair housing choice.

d. Strategies to Overcome Impediments

The Settlement dictates that an AI will contain forward-looking actions the County would take to overcome the effects of identified impediments. *See* Paragraph 32(b)(ii). However, it has none.

Instead, the AI Supplement discusses County Actions in Section 5, focusing mainly on the County's education and outreach efforts since 2010. *See* pages 5-4 – 11. These efforts include distributing fair housing posters, attending awards ceremonies, and participating in panel discussions on various topics. HUD questions how fair housing posters, attending award ceremonies, and participating in panel discussions are effective strategies to overcome impediments that should have been identified in the AI Supplement. The County also lists online resources and guides, including the Westchester Government Tenants Resources Page and Accessible Apartment Building Guide and Database. While HUD recognizes this recitation of actions the County has taken since 2010, for any AI Supplement the County submits to be acceptable to HUD, consistent with the Fair Housing Planning Guide, both the identified impediments to fair housing choice and the strategies to overcome them must be appropriate and consistent with data and local context. The AI Supplement does neither.

Beyond this, the AI Supplement speculates as to what action might be taken, and fails to identify forward-looking strategies to be undertaken by the municipalities analyzed, including strategies for the appropriate siting of affordable housing in the County based on the impediments to fair housing choice.

Conclusion

HUD finds that the AI Supplement is unacceptable and that the AI, therefore, does not satisfy the Settlement. HUD recognizes that the County will be unable to correct the above-described deficiencies in time to meet the Court's April 10, 2017 deadline to produce an AI that is acceptable to HUD. As such, notwithstanding the long history related to this litigation, HUD would not oppose a reasonable extension should the County seek one from the Court.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jay Golden".

Jay Golden
Regional Director
Office of Fair Housing and Equal Opportunity

cc: Robert F. Meehan, Westchester County Attorney
Norma Drummond, Acting Director of Planning, Westchester County
David Kennedy, Civil Rights Chief, US Attorney's Office for the Southern District of
New York
John J. Cahill, HUD Regional Counsel
Clifford Taffet, HUD General Deputy Assistant Secretary
Gina Martini, VHB, Senior Project Manager