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County Executive

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June 17, 2016

**Via Email**

Holly M. Leicht, Esq.  
Regional Administrator  
U.S. Dept. of Housing and Urban Development  
Jacob K. Javits Federal Building  
26 Federal Plaza, Room 3541  
New York, NY 10278

**Re: United States *ex rel* Anti-Discrimination Center of Metro New York, Inc. v.  
Westchester County, New York (No. 06 Civ. 2860 (DLC))**

Dear Ms. Leicht:

This letter concerns the admissions you made to the Westchester County Board of Legislators (“BOL”) on June 6, 2016. You stated to the BOL that the U.S. Department of Housing & Urban Development (“HUD”) did not learn about watershed concerns in Westchester County until 2014. You also presented the false narrative that HUD would have known about the watershed issues earlier if the County had merely submitted an Analysis of Impediments (“AI”).

Watershed issues have been a consistent part of the County’s AIs and consolidated plans for decades. For HUD not to know this, one must conclude either the agency never read the County’s AI’s, or worse, ignored critical information presented to it. Your comments are strong evidence that HUD viewed the AIs, not as a planning tool, but as a weapon to seek legal and financial sanctions against the County. The facts speak for themselves. HUD repeatedly rejected the most comprehensive AIs ever submitted to the agency and then used those rejections as the basis to withhold more than \$25 million in funding – money that was slated to help some of Westchester’s neediest residents. Now we learn those AIs were never given a fair or professional review.

The record is clear. The County’s 2010, 2011 and 2013 AIs, submitted in connection with the Settlement, expressly discussed watershed issues in the County. Among other things, the County provided an overview of water and sewer infrastructure; maps that showed the County’s major water suppliers, reservoirs, sewer districts and drainage basins; and a description of the watershed-related issues in the County. The County noted that approximately 40% of Westchester’s land area is part of the New York City Water Supply System Watershed (the

municipalities include the towns of Bedford, Cortlandt, Harrison, Lewisboro, Mount Kisco, Mount Pleasant, New Castle, North Castle, North Salem, Pound Ridge, Somers and Yorktown). The County also noted that all types of development may constitute a source of contamination to or degradation of the water supply, and outlined some of the many difficulties involved in developing in watershed areas.

On June 6<sup>th</sup>, you told the Board of Legislators that HUD was unaware of any watershed issues until 2014 when they were raised in a charrette produced by the monitor involving the Town of Pound Ridge.

So we did not know, honestly didn't know that you all were dealing with these water constraints until the monitor went and worked with Pound Ridge on the charrette and all this came up and then that came back to us and we said, 'Wow, that's good to know!' I mean, even some of the people involved in the litigation never had heard that before. . . . That's one of the reasons an AI actually is important (laughter), . . . then we would have known you had those constraints.

Video of June 6<sup>th</sup> Meeting, at 51:28 – 53:12.<sup>1</sup>

Your narrative strains credulity. The County's Eighth Zoning Analysis, which was submitted on July 23, 2013 as a part of the County's 2013 AI, included a detailed analysis of the zoning in various municipalities, including the Town of Pound Ridge.

A copy of the Pound Ridge analysis is attached. As you can see, this analysis contained numerous references to watershed considerations and, in fact, contained a page and a half section entitled, "WATER SUPPLY/WATERSHED CONSIDERATIONS." This analysis of Pound Ridge's zoning was not the only instance in which watershed considerations were discussed. The main text of the County's 2013 AI contained a discussion of watershed issues as well. *See* Analysis of Impediments to Fair Housing Choice, Chapter 9(C)-(D).

Did no one at HUD read the County's July 2013 Zoning Analysis? Even more striking: How does the agency that wants the power to dismantle local zoning codes across the United States explain its ignorance of watershed issues in Westchester when the County has been sending HUD detailed analysis on the topic for more than two decades?

For example, the County's 1995 Consolidated Plan expressly notified HUD of the County's watershed issues, emphasized that the County led the charge in advocating for a more balanced approach to watershed management, and discussed using funding to prioritize infrastructure improvements to address those watershed issues:

[C]ommunities [that] are located within the Croton Reservoir Watershed, one of the primary sources of drinking water for New York City, . . . will be subject to regulations intended to bring the water body into compliance with the Safe

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<sup>1</sup> The video is available at:  
<http://westchestercountyny.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=4227&Format=Agenda>

Drinking Water Act Amendments of 1986, and the subsequent Surface Water Treatment Rule. Adoption of the watershed regulations proposed by the New York City's Department of Environmental Protection [(“DEP”)] in 1993 would severely limit any future development in the region, and threaten displacement of established institutions, businesses, and residents.

The Westchester Planning Department . . . has taken a lead in responding to the City's onerous subsurface disposal regulations for the affected consortium communities. The County . . . submitted a proposal to the City advancing a more balanced approach to watershed management. The City has disregarded the County's proposal, and will be submitting their substantially unchanged draft regulations to the State Health Department in March 1995. The State is expected to adopt them within the following months.

The County's 2000 Consolidated Plan (which included an AI) also expressly mentioned the watershed constraints in Westchester County. The County pointed out that the above-referenced DEP watershed regulations were enacted in 1996, and pointed out that the watershed regulations (which, by the way, were enacted in order to comply with *federal* law) have “severely limited any future development in the region.” The County stated that it would prioritize its funding to address the impact of the watershed regulations. The County's 2004 Consolidated Plan (which included an AI) again cited the watershed regulations as limiting the “development potential of the municipalities located within the Consortium.”

Even when you were acknowledging that watershed issues are legitimate issues for local zoning restrictions, you continued to inaccurately portray the quality of the County's AI.

[Legislator]: So presumably, an adequate AI would have had that kind of information.

[Ms. Leicht]: Right, we would have known that then.

[Legislator]: Which would have had physical impediments to housing . . . .

[Ms. Leicht]: There can be reasons that have nothing to do with ‘we don't want multifamily zoning’ that are legitimate reasons . . . and [watershed] would be one of those reasons. We just never got to the place where that was explained to us.

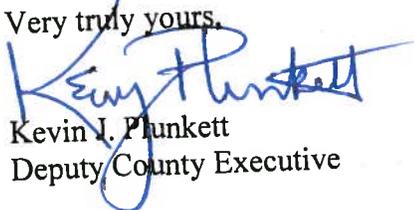
Video of June 6<sup>th</sup> Meeting, at 53:17 – 53:43.

In sum, even though the County repeatedly informed HUD about watershed restrictions in its AIs, and even though HUD takes the position that watershed concerns are legitimate reasons to restrict the development of land in Westchester, HUD nevertheless repeatedly rejected the County's AIs and withheld over \$25 million in funds. In exchange for that \$25 million, HUD demanded that the County change its zoning conclusions and categorize the zoning practices in those municipalities as potentially discriminatory.

The County refused to do so, maintaining that its fact-based analysis, supported by the Pace University Land Use Law Center, found no evidence of exclusionary zoning based on race. Your comments on June 6, which now show that HUD's punitive actions against the County were rooted in bureaucratic incompetence or worse, vindicate the County's position to defend local zoning and resist federal overreach in areas best left to local communities and their elected representatives.

Please accept this letter as the County's correction of the record. As always, the County is happy to discuss its positions with HUD.

Very truly yours,



Kevin J. Plunkett  
Deputy County Executive

Attachment

cc w/attachment (via email): Hon. Robert P. Astorino  
Hon. Michael Kaplowitz  
Westchester County Board of Legislators  
James E. Johnson, Esq.  
David Kennedy, Esq.  
Robert Meehan, Esq.