

Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

June 22, 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 re/* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York (No. 06 Civ. 2860 (DLC))**

Dear Ms. Leicht:

Thank you for your response to my letter dated June 17, 2016. Unfortunately, I find that it does nothing more than compound the evidence of HUD's incompetence regarding zoning issues in Westchester.

Six years into Westchester's affordable housing settlement with the federal government, the statements made by you, as regional administrator of HUD, and your colleague, Valerie Daniele, to the Board of Legislators (BOL) on June 6th demonstrate at best a frightening lack of understanding of the watershed issues in Westchester County, which is home to the reservoirs that supply drinking water to eight million New Yorkers.

Rather than a "correction of the record," as you put it, the tape of the BOL meeting shows that Ms. Daniele knows little more than you do about watershed issues:

[MS. DANIELE]: I know that watershed is an issue. How is it an issue? What is it that is the barrier to building fair and affordable housing in the communities? Because if you just say the watershed is an issue and we can't address it, we don't know the assistance to give. If it's a sewer issue, if it's a, a contamination issue, we don't know who to set you up with to address that.

Video of June 6th Meeting, at 55:07-55:41.¹

¹ The video is available at:

<http://westchestercounty.ny.gov/Citizens/SplitView.aspx?Mode=Video&MeetingID=4227&AgendaID=3909&FileFormat=pdf&Format=Agenda>

Office of the County Executive

Your clear lack of knowledge of the watershed issue and Ms. Daniele's admission of not knowing the import of the watershed are not exactly a vote of confidence in HUD's professionalism and expertise at a time when the agency is looking to take away control of local zoning from local communities and their elected officials. In addition, Ms. Daniele's statements did not correct your false narrative that the county somehow failed to notify HUD about watershed issues and their significance. As I discussed in my initial letter to you, the county's multiple AIs have in fact been **connecting the dots** on watershed and other planning issues in Pound Ridge and other communities across Westchester since the earliest days of the Settlement in 2010.

*The Analysis of Impediments to Fair Housing Choice 2011*² is just one example. Pages 126-130 describe the following:

- the 1997 Memorandum of Agreement to protect New York City's drinking water supply and its implications, namely the vulnerabilities to degradation and contamination to the city's water supply from wastewater and land use;
- the 1998 Croton Watershed Wastewater Diversion Study's determination that wastewater diversion in Northern Westchester would cost over \$500 million to implement;
- the East of Hudson Water Quality Investment Program's commitment of \$50 million on five priority wastewater projects;
- the prohibitive cost to the 330-plus households in the Peach Lake Sewer District to implement their wastewater project;
- and the limitations to on-site wells and septic systems required of construction opportunities in the watershed.

Any fair reading of the AIs sent to HUD by the county, if in fact they were ever read, fully contradicts your claim that "others helped connect the dots that the county's AI did not."

In no fewer than eight AI submissions, running to thousands of pages of data and analysis covering 853 zoning districts in Westchester, the county outlined numerous impediments to fair housing in addition to the watershed issues, such as expensive home prices, high taxes, limited transportation in certain areas, a complex regulatory environment and limited subsidized housing opportunities. The AIs also contained extensive recommendations for addressing these impediments.

HUD's dispute with the county is over a single issue – that the county found no evidence in its multiple AIs of exclusionary zoning based on race, a finding backed up by objective data. For example, analysis of two neighboring communities (Bronxville and Mount Vernon) showed that while their zoning codes were effectively identical, the socio-economic and racial makeup of the two communities were starkly different; supporting the county's conclusion that zoning was not the causal reason for these differences. The county's conclusion was supported by a separate analysis by the Pace University Land Use Law Center. It should also be noted that the U.S. Court of Appeals

² The July 2011 AI is available at:
http://homes.westchestergov.com/images/stories/AIreport/AIwestchester_July2011.pdf

for the Second Circuit in its September 2015 decision said, “There has been no finding, at any point, that Westchester actually engaged in housing discrimination.”

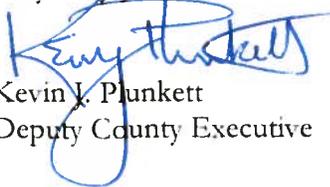
HUD has presented no evidence to the contrary, and the county has refused to change its findings, despite HUD’s punitive action to withhold more than \$25 million from some of Westchester’s neediest residents. Those are the facts behind HUD’s repeated refusal to accept the county’s AIs.

Having set the record straight, it’s important that the parties can move forward to a successful conclusion of the Settlement at the end of the year. One way to build on the “momentum” you mention in your letter would be for HUD to finally accept the county’s AIs. Is there any reasonable justification for continuing to withhold acceptance? HUD has abandoned the use of AIs nationwide as ineffective, and you mentioned in your appearance before the BOL on June 6th that municipalities could “apply to the state and the state does the AI for you.” You also mentioned that the level of rigor HUD has required from New York State is far less than what Westchester has already supplied. As demonstrated by New York State’s most recent AI (attached), which runs only 60 pages, HUD has a common practice of accepting AIs that do not analyze town-by-town zoning ordinances and are far less substantial than any of the county’s submissions. One must conclude Westchester easily met the standard HUD has applied to the state.

The current logjam has us in pages of Franz Kafka’s *The Trial*: a housing settlement that will never be completed because of endless litigation over HUD demanding a conclusion not supported by the facts, based on a tool that is no longer considered productive. Acceptance of the county’s AI would break the logjam.

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.