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**HUFF
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The Battle Over Affordable Housing Heats Up in Westchester

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Concerns about over development in Scarsdale could extend far beyond the shoehorning of oversized houses onto undersized lots or the destruction of heritage trees. If the Federal Department of Housing and Urban Development has its way, villages like Scarsdale and Bronxville could find their local zoning ordinances under attack. These zoning ordinances ensure the unique character of these towns as they define minimum lot sizes, maximum height and bulk, residential vs. commercial zones and the siting of single-family vs. multi-family homes. Without these ordinances, apartment houses and town houses could spring up on 2-acre lots in Murray Hill, clogging residential streets with parked cars and straining the local infrastructure and educational system.

County Executive Rob Astorino paid a visit to the Scarsdale Forum on Thursday night April 25 and presented his side of the county's battle with HUD to meet their obligations as stipulated in the 2009 Affordable Housing Settlement that Astorino inherited when he came into office. Among other remedies, the court mandated Westchester to build 750 units of affordable housing at a total cost of \$51.6 million. Ironically the county is well ahead of schedule on construction of the units and plans to complete 305 by the end of 2013.

Building the required housing has not been the source of the clash between Astorino's office and the HUD Chair. Two additional requirements of the legislation have caused much consternation.

First, the settlement required Astorino to promote sources of income legislation that would bar landlords from discriminating against tenants who use Section 8 vouchers or other government income to pay their rent. Rather than advance this legislation, Astorino vetoed the bill when he came into office. After HUD threatened to penalize Westchester by reallocating \$7.4 in Community Development Block Grants due to Westchester this month, Astorino has re-introduced legislation that bans discrimination against potential homeowners and renters based on their source of income and has vowed to sign it. Astorino has also appealed to Governor Cuomo to lobby for the HUD funds and administer them to Westchester.

However, he still faces another hurdle.

The most vexing portion of the settlement requires Westchester to submit a zoning analysis and a plan to overcome "exclusionary zoning practices." Specifically, the county was ordered to:

- Identify local zoning practices that have exclusionary impact or fail to take into account regional need
- Develop a process to notify municipalities of zoning issues that hinder the county's obligations and changes that must be made as well as consequences for failing to make them.
- Identify types of zoning practices that would, if not remedied by the municipality lead the county to pursue legal action.

In a [letter to the county dated March 13, 2013](#) the Federal Monitor, James Johnson, asks the county to assess the impact of restrictive zoning practices including:

- Restrictions that limit or prohibit multifamily housing development;
- Limitations on the size of a development;
- Restrictions on lot size of density requirements that encourage single-family housing;
- Limitations on townhouse development;

and "the impact such practices have on racial and ethnic composition."

Westchester County has submitted three such zoning analyses and failed to identify exclusionary zoning practices. According to Astorino, "The County has supplied volumes of data as well as a thorough legal analysis showing Westchester's zoning is not exclusionary." In comments at the Scarsdale Forum meeting, Astorino charged HUD with refusing to accept the county's zoning analyses because they did not reach HUD's conclusions -- not because the data was invalid or deficient.

Does HUD have the right to force municipalities to change their zoning codes? [Professor John Nolan](#) of the Pace University Law Land Use Center, who consulted on the case said in June, 2012, "Only towns, villages and cities have zoning power in New York. There is no constitutional or statutory definition of exclusionary zoning in New York to determine the obligations that these communities have to zone for housing that can be made affordable by housing developers." He cited the "Berenson" cases in New York which ruled on issues of affordable housing and said though these cases require the county to consider

"regional needs," they did not define what region needed consideration. Is it Westchester County? New York City? The Tri-State Region? Connecticut? He concluded by saying that though the region's Economic Development Council has been charged by the state with developing plans, none of its current plans establish regional housing needs or a methodology for estimating them.

How to get beyond this impasse?

After HUD turned down all three analyses, James Johnson, who is the Federal Monitor assigned to the case, has now undertaken his own zoning analysis and sent letters to each of the municipalities with a report card for each showing their progress on meeting targets for the number of affordable units. Though Scarsdale has passed a model zoning ordinance that requires developers to build one affordable unit with each group of 10 market-rate units, the report says that the ordinance "provides no zoning incentives for affordable housing." The report notes that "the few areas in which multifamily housing is allowed as-of-right are "fully built out" and recommends that the village "provide density or other incentives for affordable housing, mapping additional areas where multifamily housing is permitted as-of-right, and permitting accessory housing in "faux" garages as well as quadraplexes and cottage-style housing." It shows that as of the 2000 census only .4 percent of total village acreage is zoned for multi-family housing and that 4 percent of the population is Hispanic or Black – the only two minority groups considered in the settlement.

Since Scarsdale is already fully developed, the only way for the village to expand its inventory of affordable housing would be to change the zoning code, an idea that is unpopular with residents who are already up in arms about development and absorbing big annual tax increases to pay for schools and services.

The biggest surprise in the "report card" was the assertion that Scarsdale is targeted to build 160 AFFH units -- a number pulled from "The unadopted Affordable Housing Allocation Plan produced in 2005 by the county's planning department." The letter states that "none of which have been built in the interim."

According to Astorino, this same 2005 report called for the construction of 10,678 units county-wide, far beyond the scope of the 750 units mandated in the 2009 settlement.

In an April 15, 2013 response to the Federal Monitor, the Scarsdale Board of Trustees told Johnson that "the village has fundamental disagreements with the position taken in your letter... Specifically we note that the village is not a party to the litigation and settlement agreement referred to in the "report card." Further, the "unadopted Affordable Housing Allocation Plan does not impose any obligation on the Village."

Astorino says that these new targets "expand the agreement beyond the four quarters of the settlement," and that HUD has taken a very aggressive stance, claiming that any restriction is a restrictive zoning practice that must be abolished. Saying "there is no rhyme or reason" for HUD's demands, he called on residents to contact their congressmen and senators to voice their concerns about HUD's demands.

As it stands today, \$7.4 million in grant money could be lost for Westchester if the county fails to comply. HUD is also calling for Westchester municipalities to make fundamental changes to their zoning codes that would radically alter the character of the 31 municipalities who, according to the outdated 2000 census numbers, do not house adequate numbers of black and Hispanic residents. The zoning code HUD is challenging includes lot size, stipulations for single family housing and structure bulk and density, which is common among suburban communities across the country.

Many in Scarsdale are shocked and offended that HUD is charging the village with exclusionary zoning and racism. The population is a diverse mix of whites, blacks, Hispanics, indians, Asians, and others who live together in harmony. As one 40-year resident said, "anyone who says Scarsdale is racist simply doesn't know the community."

Can a federal agency force a locality to change their zoning code? That's the battle that could be in the offing.

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