

## View: Court ruling a victory for Westchester

Robert P. Astorino 3:35 p.m. EST February 27, 2015

*A federal court ruling that limits HUD's power is a major win for Westchester, which has challenged the federal agency's demand to rezone communities.*



(Photo: Carucha L. Meuse/The Journal New)

### STORY HIGHLIGHTS

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- **This fight is not about money but about the rule of law, says Astorino.**
  - **Westchester's legal challenge means HUD must follow standards across the country, the county executive argues.**
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- **The case now heads back to court.**

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Westchester County has won an important [victory in federal court](#) with regard to the 2009 affordable housing settlement.

In a ruling with critical significance not only for Westchester, but the entire nation, the U.S. Court of Appeals for the Second Circuit held that actions by the Department of Housing and Urban Development are in fact "subject to judicial review."

The ruling is so important because it puts limits on the power of this massive federal bureaucracy. Without it, every community in our state and around the country would have found itself in the same dilemma as Westchester. Change local zoning rules simply because HUD says so, or lose federal funding controlled by the agency, or worse.

Thanks to Westchester's legal challenge, one of the nation's leading appellate panels has now set standards that HUD must follow, not just here, but in every municipality in the country.

Critics will try to downplay the decision, saying all that the county won was the right to go to court to fight HUD for money the agency has unilaterally been withholding and reallocating to other communities since 2011 and that there is no guarantee the county will be successful. These same critics say that I was wrong to challenge HUD's unprecedented actions and that if Westchester had simply caved to HUD's demands to rezone local communities by bureaucratic fiat, then the money would already be in our pockets.

The problem with that logic is that it sells out the legal foundation upon which our communities are built. Under the Home Rule provisions of the New York State Constitution and state law, the responsibility for local land use and zoning decisions belongs with the elected officials of our cities, towns and villages. Unelected bureaucrats at HUD wanted that power for themselves. I said no and went to court to protect our local communities from unwarranted overreach by the federal government.

This fight is not about money. The money HUD has withheld was simply a hammer to get the county to give in. The fight has always been about the rule of law – specifically the constitutionally protected principles of due process and federalism, respect for Home Rule and the limits of federal agencies.

There is nothing in the 2009 affordable housing settlement agreed to by my predecessor Andrew Spano and the federal government that gives HUD the right to dictate local zoning changes. What HUD has done is try to use one line in the settlement – "The AI (Analysis of Impediments) must be deemed acceptable to HUD" – as a catchall to expand the terms of the agreement to give HUD control of your neighborhood. Fortunately, last week the Second Circuit said not so fast.

The court vacated a lower court ruling, with the appeals court finding that HUD did not have "unfettered discretion" and that its actions were reviewable by the courts. The Second Circuit importantly pointed out that there are boundaries to HUD's authority. As long as Westchester's laws are "not in violation of any Federal law," HUD cannot use those laws as a "criteria for allocating or denying funds."

This vindicates what the county has been saying all along: Just because HUD bureaucrats have been critical of the county's AIs and local zoning doesn't mean HUD is right or that HUD's opinions carry the weight of law.

The case now goes back to the lower court where the county will fight to have HUD restore more than \$10 million the agency continues to withhold, so our communities can accept it if they wish.

For its part, Westchester will continue to do what it has done since I took office: Fulfill our obligations under the settlement, stand up for the rule of law and protect our communities from aggressive and unwarranted overreach by HUD.

*The writer, a Mount Pleasant resident, is Westchester County Executive.*