VILLAGE OF HASTINGS-ON-HUDSON
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April 23, 2013

James E. Johnson, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

Re: United States *ex rel.* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York

Dear Mr. Johnson:

I am writing in response to your letter, dated March 21, 2013, forwarding a proposed "report card," including "findings" on Hastings-on-Hudson's progress in providing fair and affordable housing in the Village. I concur with the Pratt Center for Planning and the Environment's finding that the Village "has taken a progressive stance with regard to fair and affordable housing." Indeed, Hastings-on-Hudson has been a leader in affordable housing development in the County. In 2003, the Village received an award from the Westchester Interfaith Housing Corporation at its Affordable Housing Awards Luncheon.

The Center's findings, however, as to the Village's zoning provisions relating to the creation of fair and affordable housing are wrong in a number of important respects, which this letter will correct. The corrections are best made in the context of understanding the Village's long history of encouraging affordable housing.

AFFORDABLE HOUSING HISTORY

Almost 20 years ago, the Village began developing zoning changes to provide for boarders and accessory apartments in one-family residential districts throughout the Village. In early 1995, the Board of Trustees adopted an amendment to the Zoning Code to permit as special permit uses boarders and accessory apartments. Among the stated purposes of the amendment was "to provide economic support for resident families, and those of moderate income, and to encourage diversity in the population of the Village of Hastings-on-Hudson." Village Zoning Code § 295-67.D(1)(b). Many residents have taken advantage of this zoning measure.

In 1997, the Village, concerned about rising real estate prices in the Village and the potential for diminished diversity in population, adopted an "Affordable Housing Policy," which set forth various means to achieve affordable housing. At the same time, it created an Affordable Housing Committee, a group of dedicated volunteers who continue to advise the Village on affordable housing matters and advocate for more measures to encourage affordable housing in the Village.

In 1998, the Village formed the Hastings-on-Hudson Affordable Housing Development Fund Company, Inc. ("Affordable Housing Fund") to promote the development of affordable housing. The Affordable Housing Committee and the Fund are all volunteer residents or workers in our Village. They receive assistance from the Housing Action Council and our Village Attorney.

The Affordable Housing Fund has developed two single-family homes, each with three bedrooms plus an accessory rental apartment, on Village-owned land. It is in the process of getting final approvals for another three-bedroom family home with an accessory apartment on a piece of property the Affordable Housing Fund is buying. Under the terms of sale, each of these houses and the accessory apartments must remain affordable for 100 years. Furthermore, all of these houses are located in parts of the Village that do not have high concentrations of people of color.

The Affordable Housing Fund is also beginning the process of redeveloping a derelict, vacant building into three two- and three-bedroom 100-year affordable condominiums, which will be affirmatively marketed.

Beginning in 2004, the Affordable Housing Fund partnered with a private developer to build a multifamily building with 14 one-, two- and three- bedroom units. The Fund was instrumental in securing a Town-owned site on which the building was erected. At present, it is working with a another for-profit developer to construct 12 fair and affordable rental units, as part of a 66-unit development, in the MUPDD District on the largest acreage multifamily site in the Village. All of these multifamily units have a 100-year affordability requirement as well.

The Fund continues to assess the feasibility of developing affordable housing on Village-owned sites and seek out opportunities on privately owned properties. Progress is steady but slow, given the built-out nature of Hastings-on-Hudson, environmental constraints, acquisition and development costs, and limited public funding.

ZONING CODE PROVISIONS

Inclusionary Zoning

The Pratt Center's "report card" is incorrect in saying that "Hastings on Hudson has not adopted the County model zoning ordinance." In 2001, long before the County promulgated a model

ordinance, the Village adopted an affordable housing set-aside law, requiring that 10% of units in any development of more than ten units be affordable. The law required that the units be distributed evenly throughout the development, that the exterior appearance of the units not differentiate them from market rate units, that size-wise they be in the same proportion as the market rate units, and that they be affordable for 100 years.

In 2011, the affordable housing set-aside law was amended to require that 15% of the units be set aside for affordable and workforce housing. (A minimum of 10% has to be affordable, *i.e.*, for households whose incomes are at or less than 80% of the Westchester County median income for ownership housing and 60% for rental housing.)

In 2012 and 2013, the Affordable Housing Committee worked long and hard to incorporate the provisions of the County's model inclusionary principles into the Village's own law without relaxing any of the requirements of the stricter Hastings-on-Hudson affordable housing set-aside law. The set-aside law was amended at the beginning of 2013. The Hastings-on-Hudson amended affordable housing set-aside law was evaluated – and accepted – by the County. (The "report card" is in error on this issue as well.) A copy of the amended law is included with this letter.

The "report card" is also in error in stating that the new 2013 law gives preference to firefirghters and other municipal employees. It specifically provides: "No preferences shall be utilized to prioritize the selection of income-eligible tenants or purchasers for affordable or workforce housing units." § 295-112.1.B(3).

Accessory Apartments

The "report card" also misunderstands the Zoning Code provisions on accessory apartments. First of all, they are permitted in all single-family residential districts, not only the CO and LO Districts. Accessory apartments were identified in the Village's Affordable Housing Policy in 1997 as a method of achieving affordable housing.

Second, there are no "restrictive practices" with respect to accessory apartments. Indeed, the accessory apartment law was modified to accommodate additional affordable units. When the accessory apartment law was passed in 1995, one of the requirements for an accessory apartment permit was (and continues to be) that the portion of the house where the accessory apartment is located must have been in existence at the time the law was enacted. (One of the purposes of the law was to make it possible for residents to stay in houses that had become too large for them. The Village did not want to allow people to put accessory apartments in new construction.) Roughly ten years later, however, when the affordable housing set-aside law was enacted, the Village carved out an exception to that "pre-existence" requirement for affordable houses, so that newly constructed affordable houses could also have accessory apartments. Thus, all of the ownership houses built by the Affordable Housing Fund have accessory apartments in them. These accessory apartments must also meet affordability requirements.

Incentives

The "report card" fails to recognize a number of incentives to encourage the creation of affordable housing that are included in the Hastings-on-Hudson Zoning Code. Some of these have been part of the Code for years; others were enacted in the 2013 amendments. First, a density bonus is included in the affordable housing set aside law:

> Density bonus. The Planning Board may permit the number of dwelling units and bedrooms to exceed the maximum number of dwelling units and bedrooms otherwise permitted by the Zoning Code, but in no event by more than 10%, if for every market-rate dwelling unit in excess of the maximum, one affordable unit is also provided. § 295-112.1.A(9).

In addition, the law permits single-family affordable houses to built on smaller lots:

> Reduced lot size. Notwithstanding Article IX of this chapter, a single-family affordable or workforce housing unit may be located on a lot meeting 75% of the minimum lot area for the single-family homes in the development. § 295-112.1.A(8).

In addition, the Village's requirement of a fee in lieu of parkland (ranging from $7,500 to $10,000 per dwelling unit), which is required for all residential units, is waived for all affordable and workforce housing units. § 295-112.D. Furthermore, the Village waives its building permit fee for affordable housing units.

Finally, the affordable housing set-aside law has an entire section on "Expedited project review process." § 295-112.1.C.

Hastings-on-Hudson has very little undeveloped land, so it is limited in how much new housing it can create. It has, however, taken every step it can to insure that any new housing development will include more than the 10% required elsewhere throughout the county. Moreover, its Affordable Housing Committee and Affordable Housing Fund have been aggressive in seeking out infill lots and other opportunities for development of affordable units.

If you have any questions or wish any further information, feel free to call or email me.

Sincerely,

Peter Swiderski, Mayor
Village of Hastings-on-Hudson