

April 18, 2013

VIA FIRST-CLASS MAIL

Hon. Robert P. Astorino
Westchester County Executive
900 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

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

Dear County Executive Astorino:

Keane & Beane, P.C. serves as Village Attorney for the Village of Rye Brook ("Village") in the County of Westchester, State of New York. We are in receipt of a letter from Federal Monitor James E. Johnson, Esq., dated March 21, 2013, to Mayor Paul Rosenberg regarding the above-referenced matter. The letter encloses "proposed factual findings concerning zoning in the Village of Rye Brook" ("Proposed Findings") and requests that the Village of Rye Brook respond by April 18, 2013. A copy of the Federal Monitor's letter is annexed hereto as Exhibit "A."

As you know, the Village of Rye Brook is not a party to the above-referenced litigation and accordingly, has no standing to directly respond to the letter. However, because the Proposed Findings contain egregious inaccuracies the Village is compelled to address this letter to the County and request that the County respond to the Federal Monitor and challenge these Proposed Findings. The Village is providing this information to the County so that it can use it to correct the gross inaccuracies and misstatements contained in the Proposed Findings concerning the Village. The following letter catalogs the Village's long-standing commitment to the development of affordable housing. We ask that the County, as the defendant in this litigation, ensure that implementation of its Settlement is based on accurate facts and information, not the erroneous statements set forth in the Federal Monitor's Proposed Findings.

The Village has a long history of supporting and encouraging affordable housing, including multifamily housing. The Village's commitment to affordable housing includes but is not limited to:

Hon. Robert P. Astorino

April 18, 2013

Page 2

- (1) adoption of a requirement by the Village twenty (20) years ago for affordable housing units in senior citizen housing developments;
- (2) establishment of an affordable middle-income development program at the BelleFair residential development in 2001;
- (3) commissioning and accepting an “Affordable Housing Discussion Paper” in January 2011 to be used as a resource for property owners, developers and community members in identifying both public and private locations throughout the Village that currently have potential for additional affordable housing development;
- (4) adoption of the Fair and Affordable Housing (“FAH”) District in December 2011, which is a floating zoning district applicable Village-wide to any development project that provides at least 50% of the proposed units as affordable; and
- (5) adoption of an affordability mandate in December 2011 for site plan and subdivision applications proposing a minimum of 11 dwelling units or 11 lots, respectively.

The Village’s commitment to affordable housing is further demonstrated by its 44 units of existing affordable housing and recent approval of two affordable housing projects which will provide a total of 20 additional affordable housing units. On August 22, 2012, the Board of Trustees re-zoned property located at 525 Ellendale Avenue within the FAH District and approved a site plan application to permit four (4) affordable housing units located in a single building. It is expected that the building permit for this for this project will be issued this Spring. Similarly, on November 27, 2012, the Board of Trustees re-zoned property located at 80 Bowman Avenue within the FAH District and approved a site plan and subdivision application to permit 16 affordable housing units located in eight (8) two-family attached dwellings for a project known as Bowridge Commons.

As articulated in this letter, the Village’s commitment to affordable housing is significant and long-standing. To correct misstatements and inaccuracies contained in the Proposed Findings, this letter will set forth the facts regarding the Village’s commitment to affordable housing. We request that the County seek modifications

Hon. Robert P. Astorino

April 18, 2013

Page 3

of the Proposed Findings from the Federal Monitor which related to the Village to more accurately set forth the mechanisms in place within the Village of Rye Brook to encourage the construction of affordable housing.

A. Affordability Mandate for Senior Housing Developments

In 1993, the Village Board of Trustees adopted Section 250-36 of the Village Code which permits multifamily senior citizen housing developments and requires that at least 25% of the dwelling units must be affordable. A copy of Village Code §250-36 is annexed hereto as Exhibit "B."

Section 250-36 permits senior citizen housing developments upon the issuance of a special permit by the Board of Trustees in areas immediately adjacent to or south of Westchester Avenue. At least 25% of the dwelling units in senior citizen housing developments must be rented or sold only to seniors that have a "gross household income that is greater than or equal to the very-low-income figure for a one-person household and is less than or equal to the low-income figure for a two-person household as such figures are defined in the Section 8 income limits for Westchester County established by the United States Department of Housing and Urban Development, as amended from time to time." (Village Code §250-36(N)(1)). Section 250-36 also contains provisions similar to those included in the model affordable housing zoning ordinance established as part of the settlement with Westchester County, including rentals, sales and resale limits, deed restrictions, and requirements that the affordable units be built to substantially the same standards as the market rate units.

Senior citizen housing developments providing affordable housing have been constructed in the Village pursuant to this Section 250-36 of the Village Code.

B. BelleFair Affordable Middle Income Development Program

In 1998, the Board of Trustees approved a residential, single-family detached housing development on the west side of King Street, north of the Hutchinson River Parkway, which required as a condition of its approval the development of 12 affordable housing units. In 2001, the Village Board of Trustees adopted Chapter 6 of its Village Code which "...establishes criteria for the 12 affordable middle-income units at BelleFair required under Condition 16 of the High Point Village (now BelleFair) PUD approval resolution adopted by the Board of Trustees of the Village of Rye Brook on January 27, 1998." A copy of Chapter 6 of the Village Code is annexed hereto as Exhibit "C."

Hon. Robert P. Astorino

April 18, 2013

Page 4

Section 6-1 of the Village Code provides that “The purpose of this chapter is to implement Condition 16 and thereby to encourage the development of additional housing options to assist in accommodating a Village and regional demographic need for affordable home ownership opportunities, to establish priorities intended to assist in attracting and retaining qualified Village, school district, town and emergency service organization personnel, and in encouraging residents to remain in the community.”

Chapter 6 established a lottery program through which individuals meeting the income and priority eligibility requirements were selected to purchase one of the 12 affordable middle-income units. Income eligibility requires the purchaser to have a “total household income of not more than 115% of the Westchester County median income for a four-person household, as established by the United States Department of Housing and Urban Development (or successor agency) at the time of contracting for purchase.” (Village Code §6-6).

**C. Affordable Housing
Discussion Paper**

In January 2011, the Village Board of Trustees accepted a report entitled “*Affordable Housing Discussion Paper*” prepared by the Village’s planning consultant, F.P. Clark Associates. A copy of the Affordable Housing Discussion Paper is annexed hereto as Exhibit “D.” The Board of Trustees requested that the report be prepared as a resource to evaluate potential properties that could be considered for affordable housing if such development was supported by the property owner.

The report identified 20 properties throughout the Village (in three different school districts within the Village) that have potential for the development of affordable housing. Some of these properties are already developed but would be possible candidates for redevelopment or adaptive re-use. Two of the properties identified in the report (80 Bowman Avenue and 525 Ellendale Avenue) have recently received site plan approvals for the construction of a total of 20 affordable housing units. Another property located at 259 North Ridge Street has been the subject of a sketch plan conference under the requirements of the Village’s FAH District.

The Village expects that the Affordable Housing Discussion Paper will continue to be a valuable resource for identifying potential locations of affordable housing throughout the Village.

Hon. Robert P. Astorino

April 18, 2013

Page 5

**D. Fair and Affordable Housing
(FAH) Zoning District**

In December 2011, the Board of Trustees created a new zoning district entitled the Fair and Affordable Housing (“FAH”) District which is a floating zoning district available to any property throughout the Village upon submittal of an application proposing the construction of affordable housing, provided at least 50% of the proposed dwelling units are affordable. A copy of Village Code §250-26.1 is annexed hereto as Exhibit “E.” Both projects which have been considered and approved under the new FAH District regulations have committed to providing 100% of the units as affordable, thereby providing a total of 20 additional units of fair and affordable housing in the Village.

The local law was adopted in response to Westchester County’s 2009 Stipulation, Settlement and Dismissal of *United States of America, ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York*. Although the Village was not and is not a party to the litigation and did not participate in it, including the Stipulation, Settlement and Dismissal, the Village took seriously the role it could play in encouraging the development of fair and affordable housing in the County through the removal of impediments and adoption of the Model Ordinance created by Westchester County and approved by the Federal Monitor. To encourage the development of fair and affordable housing in the Village, the Village adopted a new zoning district (FAH District), incorporated almost all of the provisions of the Model Ordinance, created by Westchester County and approved by the Federal Monitor, into its Code, and created a set-aside of affordable housing for site plan and subdivision applications involving 11 or more units or lots, respectively.

The adoption of the FAH District was the culmination of considerable review by the Village. In October 2010, the Board of Trustees formed an Affordable Housing Model Ordinance Task Force (“Task Force”) to review and make recommendations to the Village Board of Trustees regarding the review of the Model Ordinance provisions as they relate to the Village’s Zoning Code and as they affect applications for fair and affordable housing. The Task Force met on at least eight (8) separate occasions and presented a proposed local law to the Board of Trustees in July 2011. The Planning Board of the Village of Rye Brook reviewed the proposed local law and provided its recommendations to the Board of Trustees in September 2011. Following a duly noticed public hearing in October, November and December 2011, the Board of Trustees adopted the local law on December 13, 2011.

Properties eligible for FAH District designation may be located anywhere in the Village. The key factor of eligibility is the submission of a site plan and/or subdivision application that proposes to construct at least 50% of the units as

Hon. Robert P. Astorino

April 18, 2013

Page 6

affordable housing. Two important incentives available to FAH District applicants are: (1) the ability to have the application “fast-tracked” by placing it before all other items on any meeting agenda on which the application appears (Village Code §250-26.1(E)(2)(c)), waiving application submission requirements (Village Code §250-26.1(E)(2)(a)), and eliminating the requirement that a subdivision application be reviewed in two-stage process and instead requiring only review of a final subdivision plat (Village Code §250-26.1(E)(2)(b)); and (2) the ability of the Board of Trustees to waive and/or modify the applicable dimensional and bulk requirements “as it deems appropriate upon balancing important concerns of the community’s health, safety and welfare...” (Village Code §250-26.1(F)(3)(b)). By incentivizing the use of the FAH District the Village has encouraged an aggressive set-aside of 50% of the proposed units as affordable.

The ability of the Board of Trustees to waive and/or modify the applicable dimensional and bulk requirements provides the developer with substantial flexibility and a significantly more streamlined review by eliminating the need to seek variances from the Zoning Board of Appeals. It allows the Board of Trustees to provide relief to the developer of affordable housing where it may not otherwise have been permitted by the Zoning Board of Appeals (“ZBA”). For example, the affordable housing project recently approved by the Board of Trustees for property located at 525 Ellendale Avenue included a request for thirteen (13) modifications to the applicable dimensional and bulk requirements, including but not limited to requirements relating to side and rear yard setbacks, height/setback ratio, maximum allowable gross floor area, minimum usable open space, size and number of parking spaces, and total impervious surface coverage. The FAH District provisions also allowed for multifamily dwellings where the existing zoning would have been limited to one- or two-family dwellings. Thus, the developer was relieved of the rigorous standard of a use variance which would have otherwise been required by the ZBA if the application was processed without the flexibility provided by the FAH District.

Indeed, a central purpose of the FAH District is to provide flexibility in the application of the relevant dimensional and bulk requirements. In doing so, the Board of Trustees has provided a set of standards by which requests for waivers and/or modifications of the applicable dimensional and bulk regulations will be reviewed to protect the public health, safety and welfare. Those standards include the following:

- [1] Consistency with the purpose and intent of the Village of Rye Brook Zoning Code and Official Map;
- [2] Furthering fair and affordable housing within the Village;

Hon. Robert P. Astorino

April 18, 2013

Page 7

[3] Harmony with the appropriate and orderly development of the immediate area;

[4] Impacts upon the orderly development and quality of life for neighboring areas;

[5] Advancement of economic development within the Village;

[6] The location, nature and height of buildings, location of parking and the nature and extent of landscaping on the site such that the modified dimensional or bulk requirement will not hinder or discourage the appropriate development and use of adjacent land and buildings or substantially impair the value thereof;

[7] Adverse environmental impacts; and

[8] Whether the requested modification or waiver is the minimum necessary to maintain the economic viability of the development proposal.

(Village Code §250-26.1(F)(3)(b)).

Application of these standards in the Board of Trustees' review of requests for waivers and/or modifications of the applicable dimensional and bulk requirements protects the public health, safety and welfare, while allowing the Board of Trustees, as the legislative and policy-making body, to consider benefits of the project such as providing a minimum of 50% of the proposed units as affordable housing.

The FAH District also incorporates almost all of the provisions of the Model Ordinance including but not limited to the minimum floor area requirement for each dwelling unit, occupancy standards, unit appearance and integration requirements, maximum rent and sales price, 50 year requirement for the duration of affordability, declaration of restrictive covenant requirement, affirmative marketing requirements, and resale and lease renewal requirements. These provisions are also made applicable to projects which do not chose to utilize the benefits of the FAH District but must provide a certain number of units of affordable housing where construction of 11 or more units/lots are proposed in a site plan/subdivision application.

Thus, the provisions of the FAH District provide the flexibility necessary for the development of affordable housing in a community which is already substantially developed, while also providing mechanisms for streamlining the review of applications proposing affordable housing. The combination of a streamlined review

Hon. Robert P. Astorino

April 18, 2013

Page 8

and the opportunity for substantial flexibility encourage and incentivize the construction of affordable housing throughout the Village.

E. Affordability Mandate

In addition to adopting the FAH Zoning District to encourage and incentivize the construction of affordable housing throughout the Village, the Board of Trustees also established an affordability mandate for site plan and subdivision applications which do not propose to utilize the incentives of the FAH Zoning District.

In that regard, site plan applications which propose a minimum of 11 dwelling units and do not fall within limited exceptions, must provide affordable housing. A copy of Village Code §209-3(F) is annexed hereto as Exhibit "F." Specifically, one (1) unit of affordable housing must be provided if 11-20 dwelling units are proposed, two (2) units of affordable housing for 21-30 proposed dwelling units, three (3) units of affordable housing for 31-40 proposed dwelling units, four (4) units of affordable housing for 41-50 proposed dwelling units, and so forth. *Id.* The provisions derived from the Model Ordinance, such as minimum floor area requirement for each dwelling unit, occupancy standards, unit appearance and integration requirements, maximum rent and sales price, 50 year requirement for the duration of affordability, declaration of restrictive covenant requirement, affirmative marketing requirements, and resale and lease renewal requirements, set forth at Village Code §250-26.1(F)(3)(d) through and including Village Code §250-26.1(M) apply to these mandatory affordable housing units.

A similar mandate for subdivision applications was also adopted by the Board of Trustees. A copy of Village Code §219-27.1 is annexed hereto as Exhibit "G."

**F. Misstatements and Inaccuracies
Set Forth in Proposed Findings
of the Federal Monitor**

The Proposed Findings for the Village of Rye Brook contain several egregious misstatements and inaccuracies and evidences a complete misunderstanding of the Village Code. Moreover, the Proposed Findings misstate the Village's role in the Settlement. The Village was not and is not a party to the litigation, nor a signatory to the Settlement Stipulation and therefore, the Village has absolutely no "affordable housing obligation under the Settlement." While the Village has proactively been working with Westchester County to aid the County in meeting its obligation in providing at least 750 units of affordable housing in eligible municipalities (the Village being one of the them) and will continue to do so, the Village absolutely has no obligation under the Settlement to provide such affordable housing.

Hon. Robert P. Astorino

April 18, 2013

Page 9

Inexplicably, the Proposed Findings state that “under the existing zoning regime, the only affordability mandate is for senior housing units in one district, and there are no incentives for affordable housing.” This statement is untrue. As set forth above, several affordability mandates are provided by the Village Code, besides that provided for senior housing units, including: (1) the Bellefair development on the west side of King Street, north of the Hutchinson River Parkway; (2) site plan applications proposing a minimum of eleven dwelling units; and (3) subdivision applications proposing a minimum of eleven lots. Furthermore, the FAH District incentivizes and encourages the development of affordable housing in several ways, including an opportunity for a streamlined review and more importantly, the opportunity for considerable relaxation of the applicable dimensional and bulk standards provided such relaxation is in the interests of the public health, safety and welfare.

Furthermore, the statement that “...there are no incentives for affordable housing” also is untrue. It completely ignores the Village’s adoption of the FAH District which provides substantial incentives to applicants proposing to construct at least 50% of their proposed residential housing as affordable units. The incentives, as described above, include the ability of the Board of Trustees to grant considerable waivers and/or modifications to the applicable dimensional and bulk requirements, along with provisions allowing a streamlined review of the application. It is inconceivable how such incentives could be characterized as “minimal” where the two approved affordable housing projects may not have been feasible had they been subject to the more traditional review process requiring the applicant to obtain a significant number of variances (including a use variance). The incentives provided by the FAH District aided the review and approval of these projects and resulted in the mapping of the FAH District in two locations in the Village (80 Bowman Avenue and 525 Ellendale Avenue). Thus, the statement in the Proposed Findings that the FAH District has not been mapped in the Village also is inaccurate.

One fact the Proposed Findings aptly recognizes is the Village is almost entirely built-out, including areas that permit multifamily housing as-of-right, subject to site plan review. In fact, even the two lots on Bowman Avenue across from the Port Chester Middle School, identified in the Proposed Findings as a site available for the construction of 38 affordable housing units, are not available as the two lots have had site plan approval in place since 2007. While the developed nature of the Village will make it difficult to find opportunities for affordable housing, the creation of the FAH District has made it easier for developers to explore the possibility of multifamily housing in areas traditionally reserved for one- and two-family housing. For example, there was recently an interest expressed in the development of property located at 259 North Ridge Street, a larger parcel of land in the northern half of the Village, for multifamily affordable housing. Although the property is currently zoned for one-family use, seeking designation under the FAH District would permit the property to

Hon. Robert P. Astorino

April 18, 2013

Page 10

be developed for multifamily housing provided at least 50% of the units proposed were affordable. Thus, the FAH District provides opportunities for affordable housing where they may otherwise not be economically feasible for the developer.

G. Conclusion

The Village requests that Westchester County, as the defendant in the litigation, request that the Federal Monitor revise the Proposed Findings that reference the Village of Rye Brook as they currently contain several misstatements and inaccuracies and evidence a misunderstanding of the applicable provisions in the Village of Rye Brook Code pertaining to the development of affordable housing. These deficiencies should be eliminated. In addition, the Proposed Findings ignore the fact that two affordable housing projects have been approved by the Board of Trustees since the adoption of its FAH District. In each of these projects, 100% of the residential units are proposed to be affordable. In total, they will provide 20 additional units of affordable housing in the Village of Rye Brook. These omitted facts should be included in the Proposed Findings.

Thank you for your consideration and we request that Westchester County take action to ensure the Proposed Findings are substantially revised based on the information provided herein.

Please respond to this request at your earliest convenience.

Very truly yours,


Edward F. Beane
Senior Counsel

EFB/

Encls.

cc: Kevin Plunkett, Esq., Deputy County Executive
George Oros, Chief of Staff, Office of the County Executive
Norma V. Drummond, Deputy Commissioner, Westchester County
Department of Planning
James E. Johnson, Esq., Federal Monitor
Mayor Paul Rosenberg, Village of Rye Brook
Village of Rye Brook Board of Trustees
Christopher J. Bradbury, Village Administrator