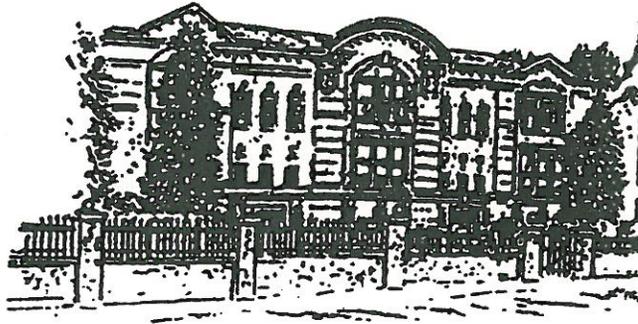


Village of Tuckahoe

Mayor
STEVEN A. ECKLOND

Deputy Mayor
THOMAS GIORDANO

Trustees
STEPHEN QUIGLEY
GREG LUISI
JANETTE HAYES



Treasurer
JOHN PINTOS

**Village Clerk/
Receiver of Taxes**
SUSAN CIAMARRA

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May 16, 2013

By E-Mail Transmission and Overnight Courier

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:

As you are aware, I am the Village Attorney of the Village of Tuckahoe, County of Westchester, State of New York (the "Village"). The Village is in receipt of your letter dated March 21, 2013 to Mayor Steven Ecklund regarding the above-referenced matter, which has been forwarded to my office for response. Your letter also encloses certain proposed factual findings concerning zoning in the Village ("Proposed Findings"). A copy of your March 21, 2013 letter is annexed hereto as Exhibit "A". As further communicated with you, the Village was provided with an extension up to and including May 16, 2013 to provide a response, if any, to your March 21, 2013 letter and Proposed Findings.

As all parties are aware, the Village was not and is not a party to the above-referenced litigation, nor a signatory to the Settlement Stipulation (the "Settlement"). Therefore, it is the Village's position that it has absolutely no

affordable housing obligation under the Settlement. Moreover, the Proposed Findings contain significant inaccuracies and misstatements concerning the Village's commitment to affordable housing within its geographical boundaries. The Village is providing the information contained herein so that you, the Federal Monitor, may use it to correct the inaccuracies contained in the Proposed Findings as it concerns the Village. The Village has a long-standing commitment to affordable housing and has the second highest percentage of subsidized units as a percentage of total housing units of all the municipalities in Westchester County.¹ We ask that you, as the Federal Monitor in this litigation, ensure that implementation of the Settlement is based on accurate facts and information, not the misstatements set forth in the Proposed Findings.

I. The Tuckahoe Housing Authority

Of all the misstatements set forth in the Proposed Findings, it is deeply troubling that your March 21, 2013 letter with Proposed Findings and the report card of the Village makes no mention of the Tuckahoe Housing Authority. Unlike many other communities in the County of Westchester, the Village has a Tuckahoe Housing Authority that provides affordable and public housing to those who qualify for such residences. Indeed, the Village has a long history of providing affordable housing within its geographical boundaries.

The Tuckahoe Housing Authority, which was established in 1938, is a not-for-profit public/governmental agency providing affordable housing for moderate and low-income families within the Village. The Tuckahoe Housing Authority owns and operates a four-building complex, known as Sanford Gardens, that has 99 apartments and a single-building complex, known as Jefferson Gardens, that has 51 housing units. The Tuckahoe Housing Authority also administers 175 Section 8 Housing Choice Vouchers, and it is my understanding that it receives its funding from the federal government.

I recognize that you have engaged a team of experts led by the Chairperson of the Pratt Center for Planning and the Environment who aided in reviewing the County's zoning submissions and in making the Proposed Findings. However, I would submit that it is an oversight to make no mention of the Tuckahoe Housing Authority and the affordable residential units it provides when discussing affordable housing within the Village.

¹ Housing Conditions in the Village of Port Chester, *Urbanomics*, March 2012.

II. The Expansion of Multi-Family Housing Choices

Since the early 1990s, the Village has been working to expand housing choices by rezoning its downtown to allow multi-family development. The Village first rezoned a manufacturing district adjacent to the downtown to the Apartment-3 (“AP-3”) Zoning District, which allows apartment buildings, townhouses and senior housing. As a result of this rezoning, a former Revlon factory on the Village’s border with the City of Yonkers was redeveloped into condominiums and senior housing. The Village then rezoned most of its Main Street corridor from the Business Zoning District to the Business/Residential Zoning District to allow multi-family residential development. There has been significant development activity as a result of these zoning changes and Main Street is now largely built out with a mix of multi-family housing, retail and office uses. Most recently, the Village Planning Board approved the Glenmark Project, a landmark development with 108 residential units, associated retail and substantial improvements to a neighboring park. This project will complete the streetscape, serving as a bookend to the redeveloped Revlon site at the opposite end of Main Street. In addition, the Village’s land use boards also recently approved 47 loft apartment units near and about the Crestwood train station.²

The Proposed Findings, appearing critical of the Village’s Zoning Code, assert that the only permitted form of multi-family housing is contained in the AP-3 Zoning District. This assertion fails to account for the fact that multi-family housing is permitted in the Business/Residential Zoning District. As evidenced by the continuum of development ongoing since the early 1990s, multi-family housing continues to be developed in the Business/Residential Zoning District, which, in many instances, was rezoned from a Business District to provide these multi-family housing choices.

With a population of only 6,486 residents, the aforementioned development projects all showcase this small Village’s strong history of providing diverse housing choices to its citizens. As shown on the attached Zoning Map, annexed as Exhibit “B”, the majority of property within the Village is zoned to allow two-family dwellings and multi-family housing. According to the 2010 Census, ten percent of Tuckahoe’s housing units are subsidized/affordable and Tuckahoe has the second highest percentage of

² Although affordable housing units have not been developed in these projects, the expansion of multi-family housing choices is evident from these developments.

subsidized housing units as a percentage of total housing units of all the municipalities in Westchester County.³

III. Workforce Housing Regulations

In 2005, the Village enacted and adopted within its Zoning Code workforce housing regulations in order to increase the number of housing units available to moderate income families and expand housing choices for people both within and outside of the Village. As recognized in the Proposed Findings, the definition of “workforce housing,” as set forth in the Village’s Zoning Code, is consistent with the definition of “affordable housing” as set forth in the model ordinance. “The workforce housing ordinance provides density bonuses for affordable housing and is consistent with the model ordinance with regard to the physical standards, rent, sale and resale prices of workforce housing units.” Although the Village’s workforce housing regulations do not mandate workforce housing within the Village, they foster and encourage workforce housing units by providing density credit bonuses to developers who create and construct workforce housing units. The workforce housing regulations provide clear and consistent incentives to developers that encourage the construction of moderate income housing within the Village.

According to the 2010 Census, today, approximately thirty-one (31%) percent of the Village’s population is comprised of racial/ethnic minorities. Eleven (11%) percent of the population is African-American, eight (8%) percent of the population is Asian and twelve (12%) percent of the residents identify as Hispanic. The workforce housing regulations provide and encourage clear incentives to developers to create and construct workforce housing units aimed not only at the Village’s population but also for those individuals outside of the Village. Annexed as Exhibit “C” is a copy of the Village’s workforce housing regulations. (*See Village of Tuckahoe Zoning Code, Section 11-1 et seq.*).

³ Housing Conditions in the Village of Port Chester, *Urbanomics*, March 2012.

IV. The Critical Inaccuracies Set Forth in the Federal Monitor's Proposed Findings

A. Westchester County's Unadopted Affordable Housing Allocation Plan

The Federal Monitor's Proposed Findings make several critical inaccurate references to the unadopted Affordable Housing Allocation Plan (the "Referenced Plan") produced in 2005 by Westchester County's Planning Department. Citing as its basis the unadopted and ineffective Referenced Plan, the Proposed Findings allege that only six of 56 required affordable housing units have been built in Tuckahoe. The Proposed Findings go on to indicate that the Village has a benchmark allocation of another 50 affordable housing units that must be built, which would translate into hundreds of units of mixed-income housing (e.g., more than 300 units under an 85 percent market-rate/15 percent affordable format, which represents the upper end of the range of the affordable housing component under the Village's Zoning Ordinance).

As all parties must agree, the Referenced Plan is not an official County plan, never having been adopted by the County of Westchester. As far as the Village can tell, and upon information and belief, the Referenced Plan was an in-house study prepared by the previous County administration that carries no weight and should not be used for providing benchmark allocations to the Village or any other municipality in Westchester County. The Proposed Findings speak to Tuckahoe's "benchmark obligations" under the unadopted Referenced Plan, but fail to take into account that the Referenced Plan is of no force and effect, carrying no weight within Westchester County.

The Proposed Findings conclude that, "to satisfy Tuckahoe's benchmark allocation, another 50 affordable units must be built." The Proposed Findings and report card wholly fail to recognize that there is no benchmark allocation required by Westchester County or any other jurisdiction. It appears as if the Federal Monitor has premised his conclusions on a study that was never effectuated by the County that is without any force of law or authority. In addition, I question whether the Referenced Plan accounted for the 150 residential units of affordable housing provided by the Tuckahoe Housing Authority as described above.

The Proposed Findings conclude that, within districts that allow multi-family housing as-of-right, development sites have been identified that have a cumulative capacity to accommodate 17 new multi-family units. “Theoretically, if all of the units were affordable, the capacity is large enough to satisfy only a third of the Village’s remaining benchmark obligation.” The reference to a benchmark obligation is erroneous in that the County’s Plan was never effectuated and, as such, does not serve to create any type of benchmark allocation. Moreover, the Proposed Findings appear to limit their review to the AP-3 Zoning District. This fails to account for the fact that multi-family housing is permitted within the Business/Residential Zoning District.

B. Restrictive Practices

The Proposed Findings also state that multi-family housing in the Village is only allowed in the AP-3 Zoning District, which requires at least 7 dwelling units on lots of at least 12,000 square feet. Based on this premise, the Proposed Findings conclude that that the Village prevents the development of smaller quadraplexes on smaller lots. The Proposed Findings overlook, however, that in addition to multi-family buildings, the AP-3 Zoning District also allows for a diversity of housing types, including townhouses and senior housing. The Proposed Findings make absolutely no reference to this undisputed fact.

The Proposed Findings also assert that multi-family housing is allowed only in the AP-3 Zoning District. This is not accurate. Multi-family housing is also allowed in the Business/Residential Zoning District. The Proposed Findings again fail to account for this undisputed fact. In practice, the Business/Residential Zoning District has been extremely successful in promoting multi-family housing. In the last decade, approximately 50 multi-family units have been built in the Business/Residential Zoning District and an additional 173 multi-family housing units have been approved, with construction expected to start later this year. It is considered by the Village that multi-family housing in the Business/Residential Zoning District is a success story, revitalizing its Main Street. In fact, the aforementioned Glenmark Project on Main Street has been recognized with a Westchester Municipal Planning Federation achievement award.

C. Incentives and Mandates

The Proposed Findings also indicate that the Village's workforce housing regulations do not mandate workforce housing developments within the Village. As indicated above, the Village's workforce housing regulations and applicable zoning provide incentives to encourage workforce housing developments rather than mandating this type of affordable development. It is worth repeating that, according to the 2010 Census, ten percent of Tuckahoe's housing units are subsidized/affordable and Tuckahoe has the second highest percentage of subsidized units as a percentage of total housing units of all the municipalities in Westchester County.⁴

D. Mapping Additional Areas Where Multi-Family Housing is Permitted As-Of-Right

The Proposed Findings recommend that the Village map additional areas where multi-family housing is permitted as-of-right. Tuckahoe has mapped the AP-3 Zoning District as well as its Business/Residential Zoning District in many areas throughout the Village. Clearly, the Village is built out and there are no other locations to map additional multi-family housing zoning districts.

The Proposed Findings also suggest that the Village allow accessory apartments in single-family housing zones. Tuckahoe remains one of the most densely populated and developed villages within Westchester County. As such, a recommendation to allow accessory apartments in single-family housing zoning districts would be inappropriate for a village such as Tuckahoe with such relatively small lot sizes that cannot accommodate the accessory units and associated parking.

E. The Village's Population

The Proposed Findings conclude that only 19 percent of the Village's population is minority (10 percent black and 8.8 percent Hispanic). This conclusion proves to be inaccurate. According to the 2010 Census, approximately thirty-one (31%) percent of the Village's population is comprised of racial/ethnic minorities, with eleven (11%) percent of the population as African-American, eight (8%) percent of the population as Asian and twelve (12%) percent of the residents identifying as Hispanic.

⁴ Housing Conditions in the Village of Port Chester, *Urbanomics*, March 2012.

V. The Tuckahoe Comprehensive Plan

The Proposed Findings conclude that only a draft version of the Tuckahoe Comprehensive Plan has been made available for review and further indicate that the final version is unavailable. Despite prior correspondence with the Federal Monitor, the undersigned is not aware of any requests for the adopted Tuckahoe Comprehensive Plan in connection with the preparation of the Proposed Findings. Nevertheless, annexed hereto as Exhibit "D" is a copy of the Tuckahoe Comprehensive Plan dated May 2008, prepared by BFJ Planning, the Village's planning consultant. As indicated in the Tuckahoe Comprehensive Plan, "there are many different types of housing options within the Village of Tuckahoe. In addition to many single-family homes that span a wide range of price levels, there are also luxury rental housing, affordable housing and senior housing options within the Village." In regard to the affordable housing options, the Tuckahoe Comprehensive Plan makes reference to the fact that there are 15 units of affordable housing individually owned throughout the Village, in addition to another 149 units of affordable housing provided through the Tuckahoe Housing Authority, with 99 units contained at Sanford Gardens and Jefferson Gardens containing 50 units. *See* Tuckahoe Comprehensive Plan at page 28. Indeed, one of the goals of the Tuckahoe Comprehensive Plan is to encourage affordable home ownership. *See* Tuckahoe Comprehensive Plan at page 44.

VI. Conclusion

As mentioned above, the Village was not and is not a party to the above-referenced 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 provided for affordable housing within its geographical boundaries, there is no obligation under the Settlement to provide such affordable housing. The Village remains a diverse community within the County of Westchester and, as explained above, provides a plethora of affordable housing options.

For the reasons set forth above, we strongly urge the Federal Monitor to revise the Proposed Findings, as they are based upon inaccurate information, are replete with misstatements and inaccuracies and evidence a misunderstanding of the applicable regulations of the Village of Tuckahoe Zoning Code pertaining to existing affordable housing and the development of affordable housing. The

Proposed Findings have completely ignored the existence of the Tuckahoe Housing Authority, which provides 150 units of affordable housing within the Village. The Proposed Findings have also failed to account for the expansion of multi-family housing choices and the encouragement of affordable housing under the Village's workforce housing regulations. The Proposed Findings contain several inaccurate statements and are premised on a 2005 Westchester County Affordable Housing Allocation Plan that was never adopted and, therefore, cannot serve to provide a benchmark obligation. The Proposed Findings should be withdrawn and revised to reflect the data and material contained herein.

Thank you for your attention to this matter. It is suggested that the Federal Monitor take action to ensure that the Proposed Findings are withdrawn and revised based on the information provided herein.

Very truly yours,



John D. Cavallaro, Village
Attorney

JDC/pls

cc: Mayor Steven A. Ecklund, Village of Tuckahoe
Village of Tuckahoe Board of Trustees
Susan Ciamarra, Village Clerk
George Oros, Chief of Staff,
Office of the Westchester County Executive
Norma V. Drummond, Deputy Commissioner,
Westchester County Department of Planning