

Robert P. Astorino
County Executive

June 5, 2014

Dear Elected Official:

I am writing to make you aware of a matter that has serious negative consequences for your municipality. Changes are being proposed to Westchester's 2009 affordable housing settlement with the Department of Housing and Urban Development (HUD) that would be extremely unfavorable to the county and your municipality.

Today I notified the federal monitor, James E. Johnson, as did the County Attorney, that we are strongly opposed to the plan before him that would rewrite the original settlement to cede the county's authority for reviewing local zoning to HUD and to give the federal agency authority to "complete an amended Analysis of Impediments" (AI).

The most serious threat to your municipality from these changes to the Settlement, if they are not stopped, would be the loss of Home Rule, your authority to control local land use – as guaranteed by the New York State Constitution. HUD could dictate local zoning changes and open your municipality to never-ending investigations by the federal government.

Specifically, HUD would have the power to classify your municipality as exclusionary, despite evidence to the contrary. The proposed plan would allow HUD to **"replace the zoning analysis"** done by the county, which after eight reviews found no evidence of exclusionary practices based on race or ethnicity, with its own reports and conclusions.

You also need to know the facts behind the methodology (attached) proposed by the Monitor:

- HUD's analysis will be conducted by the Monitor, who was hired by HUD and can only be fired by HUD.
- The actual work on the analysis will be done by the Monitor's team from Pratt Institute. These are the same consultants that produced the error riddled "report cards" on your communities in 2013.
- The Monitor's consultants will prepare a template for a "hypothetical municipality," whatever that means, and apply it to your municipality. The analysis will now extend beyond race and ethnicity to "national origin," a term that is not used by the U.S. Census Bureau. How HUD will apply this to your municipality is anyone's guess.

In addition, the Pratt consultants have already opened up a dialogue with the Anti-Discrimination Center (ADC), the group that brought the original case against the county, withdrew after being paid \$8 million, and has since been turned down twice by the courts from re-entering the Settlement. ADC in its own words has sought the court-ordered dismantling of local zoning.

Fortunately, there is time to stop this plan from going into effect.

Under the terms of the 2009 settlement, the authority for reviewing local zoning rests solely with the county under its responsibility to conduct an AI. That power cannot be taken away on the basis of “letters” between the Monitor and Board of Legislators Chairman Michael Kaplowitz.

No diminishment of the county’s rights under the 2009 Settlement should be allowed as a result of some side deal with HUD. I urge you to contact your legislator and ask that any proposed modifications to the Settlement take place in full view of the public and according to the agreed upon terms of the Settlement and the laws Westchester County and its Charter.

Here’s the impasse between Westchester and HUD in a nutshell. HUD refuses to accept the county’s AI’s. Why? Because the AI’s found no evidence of exclusionary zoning based on race or ethnicity, and without a finding of exclusionary zoning, HUD has no right to come into our towns and villages and tear up local zoning. HUD wants the county to change its conclusions, which are based on volumes of supporting data, and we have refused.

To pressure the county to change its conclusions, HUD is holding hostage money that it had promised our communities through federal Community Development Block Grants. So it is understandable that Chairman Kaplowitz would engage HUD in an effort to get the money released. But trading control of local zoning for CDBG funds is a terrible exchange. Home rule is just too important to turn over to bureaucrats in Washington.

Moreover there is nothing in the letters between HUD and the Board of Legislators that gives any guarantees that current and future CDBG funds will be released, even if the county were to agree to give HUD carte blanche through the monitor to redo the zoning of the 31 Settlement municipalities.

Given HUD’s behavior, I believe the best course is for the county to come to the aid of our communities immediately and directly. In my State of the County Address on May 1, I proposed that the county start its own block grant program. My program would get \$5 million to our local communities; remove HUD’s leverage for dismantling local zoning; and do both at a cost of \$1 a year for each household in Westchester. I would urge you to ask your legislator to bring this important legislation up for a vote.

It is important to note that the county is ahead of schedule in building the 750 units of affordable housing called for in the Settlement. All 31 municipalities have identified potential sites and the progress to date is a testament to the cooperative efforts of the county and our municipalities:

- 406 units with financing in place; (450 is benchmark for this year).
- 401 units with building permits; (surpasses this year's benchmark of 350).
- 173 units occupied; (almost 25% of the total goal).

With respect to zoning, the county has submitted eight separate AI's to HUD. These documents have been comprehensive, covering all 853 zoning districts in Westchester with analyses involving both Berenson and Huntington tests for exclusionary zoning. The most recent was 236 pages and included a 74-page Action Plan, supported by an additional 1,500 pages of documents. HUD has routinely accepted AI's that have been much less detailed with Action Plans of only a couple of pages with little or no discussion of zoning.

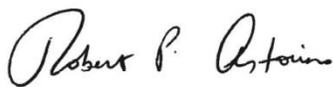
Westchester is a welcoming community. We are proud to be the fourth most diverse county in the state in terms of Hispanics and African Americans. Our diversity continues to expand in every part of the county. That would not be the case if the zoning was exclusionary.

Discrimination has no place in our county and will not be tolerated. But zoning and discrimination are not the same thing. Zoning regulates what can be built, not who lives there. Without evidence of a problem, or even an allegation, academic consultants and Washington bureaucrats have no right to take away land use decisions from our local elected officials.

I am committed to meeting all of the county's obligations under the Settlement. I am also committed to not letting our towns and villages be irrevocably harmed by unwarranted overreaching by HUD. These goals are not at odds. They are both grounded in the rule of law.

I look forward to your support in both these endeavors. If you have any questions, don't hesitate to contact me.

Sincerely yours,



Robert P. Astorino
Westchester County Executive