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February 10, 2010

Hon. Robert P. Astorino
County Executive
Westchester County
148 Martine Avenue
9th Floor
White Plains, NY 10601

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

Dear Mr. Astorino:

Thank you for the County's submission of its Implementation Plan ("IP") in accordance with the extended January 30, 2010 deadline. I appreciate that developing this plan during the transition into office has been challenging and your efforts to prepare the IP and exhibits thereto have been helpful. That said, there is more work to be done before I can accept the plan, and I am directing the County to take steps to revise it. I will be meeting with members of the County's team on February 16, 2010 to discuss the deficiencies in the current IP and potential cures, and I have invited the Department of Housing and Urban Development ("HUD") to send representatives to this meeting. I anticipate continuing discussions and meetings with the County through March 2, 2010—covering the twenty-day period contemplated by Paragraph 20 of the Stipulation and Order of Settlement and Dismissal ("Stipulation") in this matter. Therefore, the County's revisions will be due ten days later, on March 12, 2010. *Id.*

With this morning's mail, I received comments on the IP from the Anti-Discrimination Center, who was the Relator in the underlying lawsuit. A copy of these comments is attached as Exhibit A. To date, the Monitor has received no other written comments on the IP. As the County continues to work through the IP, I will have an opportunity to review the submission and hereby advise the County that I am likely to request its response to at least some of the issues raised by the Relator, and ask that the County review this submission.

This letter is meant to serve as an overview of the current IP's primary deficiencies. As described in greater detail below, the primary shortcoming of the current IP is a lack of specificity with respect to accountability, timeframes, and processes. The

template for quarterly reporting sent on February 1, 2010, attached as Exhibit B, provides general guidance as to the types of information the County should include in a revised IP.

Strategy and Benchmarks

The current IP lacks any concrete short-, medium- or long-term strategies for how the County plans to develop the 750 Affordable AFFH Units required by the Stipulation. *See* Stipulation ¶ 7. For example, the IP does not include the County's strategy for allocation of the \$51.6 million it must spend under Stipulation ¶¶ 2 and 5. The Stipulation mandates that these resources be expended on "land acquisition, infrastructure improvement, construction, acquisition," and other development costs. *Id.* ¶ 5. In addition to spelling out a strategy for resource allocation, a revised IP should specify the process to be used for making such decisions.

Rather than "specify steps and activities needed to meet" the interim benchmarks required by the Stipulation (¶¶ 23-24), the IP repeats those benchmarks. IP at 19. Additionally, the County has not complied with the Stipulation's requirement that the IP include "proposed timetables and benchmarks for the first six-month and one-year periods and for each year thereafter." Stipulation ¶ 19. Instead, the County states that "[f]irst and foremost, given that the first checkpoint (six months from the entering of the Stipulation) will occur 10 days after the submission of this Implementation Plan, the County is not issuing any proposed 6-month benchmarks as part of this Implementation Plan." IP at 19. It is the Monitor's view that granting the County's request for an extension for submission of the IP did not create an exemption from meeting a key IP requirement. The County's plan for identifying and assessing potential properties for development of the 750 units also lacks any concrete timeframe, and is unnecessarily vague on the whole. *Id.* at 16-17.

In addition, the IP lacks a system for tracking the number of units in progress for each of the locational criteria categories (Stipulation ¶ 7(a)-(c)) or units that count toward the limits on the number of age-restricted units (*Id.* ¶ 7(f)) or existing housing (*Id.* ¶ 7(h)).

Resources and Accountability

The IP is not transparent as to who within County government will be responsible for the various tasks that must be addressed to implement the Stipulation's requirements. For example, it is not clear which person or department is responsible for identifying and assessing sites, meeting and coordinating with developers, or engaging with municipalities regarding local approval processes. For each general Stipulation requirement, the revised IP should state the number of full-time employees assigned and a description of their job responsibilities, with the understanding that personnel may shift over time (as occurred following the November 2009 election).

Site Identification and Assessment

The County has explained its reluctance to make public any information about sites that are in the very early stages of assessment for possible development into Affordable AFFH Units, and the Monitor understands that the simple act of publicizing the County's interest could have an impact on the price of a parcel. *See* IP at 18. Nevertheless, a revised IP should include general information about sites under active consideration, including the estimated number of potential units, the locational category into which they fall, and the processes being used for identification and assessment, in a manner that will not jeopardize the development of the units. The County should continue to provide such updates to the Monitor on at least a monthly basis.

Dealings with Municipalities

The IP's discussion of the model inclusionary zoning ordinance emphasizes the County's lack of authority with respect to zoning and land use controls. The Stipulation explicitly states that the County "shall use all available means as appropriate," including "pursuing legal action," to address a municipality's failure to act to promote the objectives of Paragraph 7 of Stipulation (which lays out the general requirements for the 750 units), or actions that hinder those objectives. Stipulation ¶ 7(j). The IP should include a clear strategy for how the County will employ carrots and sticks to encourage compliance by municipal governments. The IP should also include the County's plan for monitoring local approval processes and municipalities' cooperation with the County's efforts to implement the Stipulation.

Additionally, the IP lacks a concrete plan to promote the model ordinance beyond letters from the County Executive and Deputy County Executive to municipal officials that do not contain any real enforcement mechanisms. IP Appendix D-1(ii). The same is true of the "Source of Income" legislation, which has apparently been promoted only by letters from the former County Executive to fair housing advocates. IP Appendix C-3(iii).

Reporting

I thank the County for its willingness to discuss the implementation of the Stipulation's provisions and for its regular contact with the monitoring team. Unfortunately, the IP does not lay out a plan for ongoing reporting to the Monitor about the development of the Affordable AFFH Units outside the quarterly reporting schedule. For example, the IP does not specify the point at which the County will seek approval from the Monitor or HUD during the site identification or assessment process, or when it will provide information about local approvals or the status of funding for individual units. Maintaining transparency will be important to all parties.

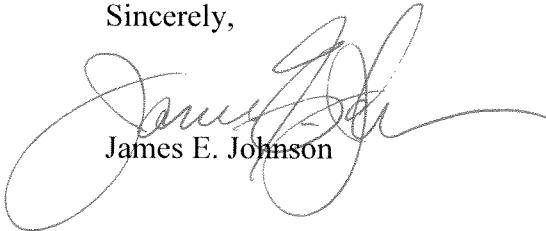
Outreach

The current IP is vague as to how the County will carry out marketing, outreach and education activities. The attached "Fair Housing Outreach & Education Plan" is short, at just over a single page, and largely presented as brief bullet points. In addition, the County states that it will not proceed with its outreach obligations under Paragraph 33(h) of the Stipulation until its centralized intake tool is ready, without a sufficient explanation as to why this is the case. IP at 11. The County's target completion date is not until September 1, 2010. *See* IP Appendix E-2 at 3. A revised IP should include an actual plan for outreach and education.

Conclusion

I look forward to working with the County toward a revised IP that meets the Stipulation's requirements. Please do not hesitate to contact me with any questions or concerns. Thank you for your continued cooperation with this important matter.

Sincerely,



James E. Johnson

cc: Kevin J. Plunkett, Deputy County Executive
Nestor Davidson, U.S. Department of Housing and Urban Development

Exhibit A is omitted from
the electronic filing due to
file size limitations

Exhibit B

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

- I. Affordable AFFH units (as defined in ¶ 7¹):
 - A. Provide total figures for all approved, in progress, or completed units
 - B. For each AFFH unit, also indicate:
 1. Location
 2. Status and source of financing
 3. Status of construction
 4. Completion date or expected completion date; expected availability for occupancy
 5. Size and configuration (number of bedrooms per unit)
 6. Demographic information (including race and ethnicity) for the:
 - a. Municipality
 - b. Census block
 - c. Occupants of the housing units; also include age and whether already residents of the relevant municipality
 7. Number of rental and the number of homeownership units in each development (*see* ¶ 7(d) and (e))
 8. Affordability levels of the units in each development (as defined by ¶ 7(d) and (e))
 9. Number of senior units in each development (as defined by ¶ 7(f))
 10. How the units/location meet the requirements of ¶ 7(a), (b), or (c)

¹ All citations to paragraphs refer to the August 10, 2009 Stipulation and Order of Settlement and Dismissal in this matter (the “Stipulation”).

Westchester County: Template for Quarterly Reporting

11. Opportunity indicators for each of: (a) census block(s) where approved/completed units located; (b) the municipality in which such census blocks are found, and (c) the County. Such indicators include:
 - i. Public school standardized test scores
 - ii. Access to transportation, including the following indicators: share of residents who use a method of transportation other than a car; population density; vehicle miles traveled to reach job; average commuting times
 - iii. Number of jobs that require an associate's degree or less within a five mile radius divided by number of people under 80% of Area Median Income ("AMI") for the reporting period and the same period in each of the two prior years
 - iv. Poverty rate as defined by the most current Poverty Threshold, as determined by the U.S. Census Bureau
 - v. Crime rates

II. Census Analysis

Identify municipalities and census blocks with the lowest concentrations of African American and Hispanic residents and describe Affordable AFFH units under development or being built in those municipalities and census blocks; assessment of means to maximize the development of Affordable AFFH Units in these municipalities and census blocks pursuant to ¶ 22(f)

III. Land

- A. How sites being investigated
- B. Provide the total number of lots already under the control of the County or municipalities
- C. For each site, indicate whether the units in each development were acquired by the County pursuant to ¶ 7(h)
- D. Median price of residential lots in the communities where approved, in progress, or completed AFFH units located
- E. Whether the units in each development were resuscitated by the County pursuant to ¶ 13(h); efforts to acquire foreclosed properties, projects with

Westchester County: Template for Quarterly Reporting

stalled financing, and completed but overleveraged or partially vacant developments

IV. Outreach and Advertising

- A. Describe meetings with community groups, local and state officials, developers, and property owners (§ 22(b)-(d))
- B. Describe steps taken to advertise housing units presently and soon to be available, including fair housing outreach campaigns, affirmative marketing, and promotion of the proposed ban on source of income discrimination; location and format of advertising (*see* § 33)

V. Local approval processes

- A. County's efforts to promote municipal policy changes, including the creation and promotion of a model ordinance required pursuant to § 25(a)
- B. Period of time between proposal of affordable AFFH units and approval for construction
- C. Steps taken to streamline local approval processes; description of obstacles faced, if any

VI. Financing and expenditures

- A. Funds expended by county to develop affordable AFFH units and sources of those funds within the reporting period; total spending to date
- B. County's efforts to leverage funds
- C. County's efforts to explore and implement mechanisms to create a revolving fund pursuant to § 22(e)
- D. Status of applications or rationale for not applying for financial support from:
 - i. State agencies: New York State Housing Finance Agency, New York State Division of Housing and Community Renewal
 - ii. The U.S. Department of Housing and Urban Development ("HUD")
 - iii. Private foundations

Westchester County: Template for Quarterly Reporting

- E. CDGB allocation process/plan designed to promote activities that affirmatively further fair housing (“AFFH”) required pursuant to ¶ 25(b) and a policy to condition the use of public funds and resources on certain commitments intended to AFFH required pursuant to ¶ 25(d); impact of those expenditures on development of AFFH
 - F. Status of revisions to Analysis of Impediments to Fair Housing Choice (“AI”) required by ¶ 32
- VII. Overall progress
- A. The County’s progress toward the interim mandatory goals set forth in ¶ 23, the benchmarks and timetables in the implementation plan, and its obligations under the Stipulation
 - B. A description of any specific obstacles the County has faced in its efforts to comply with its obligations under the Stipulation and the County’s efforts to overcome those obstacles, specifying whether the County believes any obstacles outside of its influence or control will prevent the County from meeting its obligations as required pursuant to ¶ 29
 - C. The County’s need for additional expert support, if any