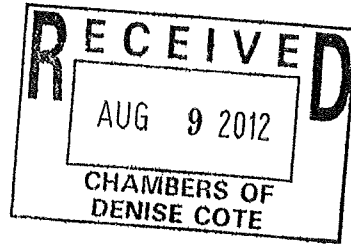


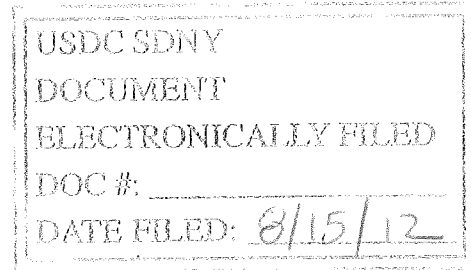
Appendix 26

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August 9, 2012



The Honorable Denise L. Cote
United States District Judge
United States District Court for the
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

**United States ex rel Anti-Discrimination Center of
Metro New York, Inc. v. Westchester County, New York (No. 06 Civ. 2860)**

Dear Judge Cote:

I write to report on Westchester County's efforts to comply with the Court's Order of July 27, 2012, ECF No. 414, in the above captioned matter, and to inform the Court of a second request made concerning the Court's Opinion and Order of May 3, 2012, ECF No. 402.

Pursuant to paragraph 1(b) of the Court's July 27, 2012 order, Westchester County's Commissioner of Planning met with the Monitor, the Monitor's experts, and representatives of the U.S. Department of Housing and Urban Development to discuss a methodology for responding to that portion of the Monitor's May 14, 2012 request for an analysis of municipal zoning ordinances relating to six questioned zoning practices. The parties met on August 1, 2012 and subsequently agreed upon such a methodology, which is enclosed for the Court's reference. The County has also agreed to provide its analysis to the Monitor by September 7, 2012 and to discuss its results at a meeting scheduled for September 10, 2012.

On a separate front, on August 3, 2012 the Monitor sent the County a request for information concerning the County's efforts to comply with the Court's May 3, 2012 Opinion and Order, which concerned the County's obligation to "promote, through the County Executive, legislation currently before the Board of Legislators to ban 'source-of-income' discrimination in housing." Settlement, paragraph 13(c). Specifically, the Court adopted the recommendation of the Monitor directing the County Executive to "[request] that the legislature reintroduce the prior legislation, [provide] information to assist in

The Honorable Denise L. Cote

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analyzing the impact of the legislation, and [sign] the legislation passed.” *See* Opinion and Order of May 3, 2012, at 16-17. On August 3, 2012, the Second Circuit Court of Appeals denied the County’s motion for a stay of the May 3, 2012 order. *See* Denial of Stay, No. 12-2047 (2d Cir. Aug. 3, 2012), ECF No. 70. On August 8, 2012, the Deputy County Executive informed the Monitor that the County intends to proceed with an expedited appeal and requested additional time to set forth its plan to comply with the Court’s order. The Monitor did not agree with the County’s request and informed the County that it should follow the procedures ordered by the Court on July 27, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James E. Johnson" with a stylized flourish at the end.

James E. Johnson

Enclosure

**United States *ex rel* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County,
New York (No. 06 Civ. 2860 (DLC))**

**Methodology for Considering the Cost and Geographic Implications
of the Six Questioned Zoning Practices**

I. Introduction

Provided below is the methodology agreed upon by Westchester County, the U.S. Department of Housing and Urban Development (“HUD”), and the Monitor to characterize and evaluate the geographic and cost implications of the six questioned zoning practices in the 31 municipalities eligible for location of AFFH housing as required under the Settlement Agreement, in accordance with the Court’s July 26, 2012 Order in the above-captioned matter. The six questioned zoning practices are as follows:

1. Restrictions that limit or prohibit multifamily housing development
2. Limitations on the size of a development
3. Limitations directed at Section 8 or other affordable housing, including limitations on such developments in a municipality
4. Restrictions that directly or indirectly limit the number of bedrooms in a unit
5. Restrictions on lot size or other density requirements that encourage single-family housing or restrict multifamily housing
6. Limitations on townhouse development.

II. Geographic Implications

The methodology is to use Geographic Information Science (“GIS”) analysis to characterize the amount of as-of-right multi-family development potential within each eligible individual municipality and in the total eligible municipalities.

In this analysis, “as-of-right” is defined as a zoning district that permits multi-family development without the need to apply for a special use permit. “Multi-family” is defined as a structure with three or more separate dwelling units, and for the purposes of this analysis includes townhouse development.

The analysis does not address situations where design guidelines could impact development density as this would require the creation of numerous development scenarios.

- A. For each eligible municipality, map zoning districts that permit multi-family development as a permitted, as-of-right use. Provide in a table an estimate of the amount of acreage in such districts for each individual municipality and for the total eligible municipalities.

- B. For each eligible municipality, map those areas / sites identified in A above that are: (1) developed; and (2) undeveloped. Provide in a table the acreage in such two categories for each individual municipality and for the total eligible municipalities.

For this analysis, “developed” shall include all Westchester GIS land use categories for residential and commercial uses and the four categories “public parks and parkway lands,” “nature preserves,” “interior water bodies” and “transportation, communication and utilities.” For this analysis, “undeveloped” shall include the two Westchester GIS land use categories “vacant” and “agricultural.”

- C. For each eligible municipality, prepare a map that identifies areas within the undeveloped land defined in II.B above that are: (1) characterized by steep slopes greater than 25 percent; (2) identified as wetlands; and (3) within the 100 year flood plain. Show in a table the amount of undeveloped acreage that is and is not constrained by the above factors for each individual eligible municipality and for the total eligible municipalities.

- D. For each eligible municipality, adopt a build-out factor of 80 percent. Provide a table indicating what the build-out factor is for each municipality.

For each eligible municipality, then apply the adopted build-out factor to the maximum density permitted by the local zoning district (in number of units per acre) to the amount of undeveloped acreage that is not constrained by the factors described in II.C to arrive at a theoretical build-out of multi-family housing. Show in a map for each district and projected yield in units. Provide in a table the number of multi-family units that can be developed for each individual eligible municipality and for the total eligible municipalities.

- E. At the County’s option, repeat the analysis (presented under II.D) utilizing development proposals, environmental impact studies, build-out analyses, etc. Identify in a map for each municipality the instances where revisions to the build-out analysis can be made based on this additional information. Document for each site and municipality (as appropriate) the reasons for the change and the source of the data. Provide in a table the number of multi-family units that can be developed for each individual eligible municipality and for the total eligible municipalities, based on this optional analysis.

- F. At the County’s option, repeat the analysis (starting with II.B through II.D or II.E) inclusive of developed parcels (per the land use classification) or portions of such parcels that appears in the opinion of the County to have reasonable potential to be developed with multi-family units. Identify in a map for each municipality the instances where revisions to the build-out analysis procedure can be made. Document for each site the reasons for the change and the source of the data; or the County’s criteria for the change. Provide in a table the number of multi-family units that can be developed for each individual eligible municipality and for the total eligible municipalities, based on this optional analysis.

[NOTE: TASK I.G WILL BE REVISITED BY THE COUNTY AND MONITOR FOLLOWING COMPLETION OF SECTIONS I.A THROUGH I.F.]

- G. For each municipality, prepare a map and qualitative analysis of the features each of the sites that are identified in step II.D, II.E and II.F above. Consider factors such as: (1) site constraints (e.g., limited access, small size, irregular site configuration, landfill, flooding); (2) convenience (e.g., to transit and services); (3) compliance with the spirit of the stipulation (e.g., location in the same school district as the majority of the municipality, relative isolation of the site); and (4) factors that would effect costs (e.g., limits in size or height that would prove difficult for achieving economies of scale).

III. Cost Implications

Please provided a cost analysis using the following three methodologies. The first would characterize the cost of site assemblage and preparation. The second would characterize the cost of construction. The third would characterize the indirect cost associated with added risk. None of the methodologies address accessory, multiplex or cluster development; they instead focus on “multi-family” defined as a structure with three or more separate dwelling units as well as townhouse development.

A. Cost of land assemblage and preparation

1. Continue where the prior GIS analysis left off, to identify the undeveloped parcels adjoining roads without sewer service, on roads without water lines, on land identified on Westchester GIS land use category as “manufacturing, industrial, and automotive.” Each of these conditions poses extra development costs or potential undisclosed conditions that add to developer risk. Show in a table the number of multi-family sites and units that were found under II.D (and II.E and II-F if the County proceeds with those optional analyses) that could be developed on such parcels for each individual eligible municipality and for the total eligible municipalities.
2. Prepare an estimate of the prevailing market rate for multi-family units in each eligible municipality. This can be based on recent third-party analysis, such as that prepared by Hudson Gateway Association of Realtors. The County should reconvene with the Monitor in the event that no such data is available or thought to have shortcomings.
3. Using the data in the previous section, divide the municipalities into quartiles according to unit value. For the top quartile, assume that 30 percent of unit value would be ascribed to land value, declining 5 percent for each quartile such that for the bottom quartile, assume that 15 percent of unit value would be ascribed to land. Indicate the resultant order-of-magnitude cost of land per unit in each eligible municipality.

Municipality	Unit value	Order of magnitude land value per unit
Top quartile municipalities (where land value represents 30% of unit value)		
Second quartile municipalities (where land value represents 25% of unit value)		
Third quartile municipalities (where land value represents 20% of unit value)		
Bottom quartile municipalities (where land value represents 15% of unit value)		

B. Cost of Construction

1. Provide cost estimates (in present dollars) for construction on a square foot and per unit basis for different prototypes of multi-family units and multi-family developments built in the eligible municipalities with the financial assistance of Westchester County. Prototypes must include buildings consisting of one-, two-, three-, and four-bedroom units; without structured parking and with structured parking; above commercial space and freestanding apartments; and townhouse developments.

C. Risk

1. Show in a table for each individual eligible municipality whether the current zoning ordinance provides density incentives for multi-family development – both independent of or in combination with mandates – for affordable housing.
2. Indicate in each municipality (and in a chart for the county) whether the zoning allows multifamily housing as of right (e.g., is not allowed in connection with a floating zone, does not involve special permits).
3. Show in a table for each individual eligible municipality whether the zoning ordinance provides a streamlined process for approving housing that includes affordable housing.

D. Deadlines

The County shall complete the analysis using the above methodology, with the exception of section II.G, by September 7, 2012. The County, HUD, and the Monitor agree to then meet on September 10, 2012 to discuss the results of the analysis, the feasibility of conducting the analysis in section II.G, and any further qualitative analysis that may be required.