



**U.S. Department of Housing and Urban Development**  
New York State Office  
Jacob K. Javits Federal Building  
26 Federal Plaza  
New York, New York 10278-0068  
<http://www.hud.gov/local/nyn/nynopen.html>

December 29, 2016

Via email

Valerie Monastra, AICP  
Director of Planning  
VHB  
50 Main Street  
Suite 360  
White Plains, NY 10606  
[ymonastra@vhb.com](mailto:ymonastra@vhb.com)

Re: United States ex rel. Anti-Discrimination Center v. Westchester County  
06 civ. 2860 (DLC)

Dear Ms. Monastra:

On July 18, 2016, the U.S. District Court ordered Westchester County to designate a consultant to complete an Analysis of Impediments to Fair Housing Choice (“AI”) report that would be deemed acceptable to the U.S. Department of Housing and Urban Development (“HUD” or the “Department”) by no later than January 9, 2017. This Order was remedial in nature, to address the County’s failure to fulfill its obligation under ¶ 32 of the Consent Decree to “complete, within [120] calendar days . . . an AI within its jurisdiction that complies with the guidance in HUD’s Fair Housing Planning Guide.’ The Settlement specifically provides that the ‘AI must be deemed acceptable by HUD.’”. See *United States ex rel. ADC v. Westchester County*, 06 Civ. 2860 (DLC), 2016 U.S. Dist. Lexis 93536 at p. 23 (S.D.N.Y. July 18, 2016).

The Court’s July 18, 2016, Order further stated that the Consultant was to “provide the County, the Monitor and the United States with proposed sections of the AI on an ongoing basis, and provide the parties at least five business days for an opportunity for comment upon the Consultant’s proposed sections”.

VHB, the Consultant retained by the County, provided four submissions to HUD, one each on Friday, December 9, 2016; Monday December 12, 2016; Wednesday, December 14, 2016, and Wednesday, December 21, 2016. The first three submissions are entitled, in chronological order, “Draft Chapter 12 Supplement,” “Section 2: Current Status of the 750 AFFH Units,” and “Section 3: Status of Municipal Zoning Analyses.” The fourth submission revised Section 3 to include additional information regarding the Village of Larchmont.

HUD has reviewed these submissions. The submissions purport to build on the County's earlier AI submissions to HUD. As the District Court observed, "the only piece of the County's AI that has not been accepted by HUD is its analysis of local zoning." *Id.*, 2016 U.S. Dist. Lexis 93536 at p. 37-38. Consistent with the Court's finding, VHB's submission focuses on zoning. VHB's Section 3 incorporates and builds upon the Monitor's "Berenson Report" of September 23, 2013, and the "Huntington Analysis" of September 8, 2014, and "subsequent correspondence between the municipalities and the Department of Justice". HUD understands that VHB is proposing to replace Chapter 12 of the County's previous AI submissions with the VHB submissions and, by reference, the Monitor's Berenson Report and Huntington Analysis.

By letter dated October 24, 2014, the Department of Justice advised that "the County's inclusion of the [Monitor's Huntington Analysis] would be deemed acceptable by HUD to satisfy the County's obligation to identify and analyze local zoning impediments' in the County" provided that the concerns set forth in DOJ's letter were accommodated, "the County ... adopt[ed] the Monitor's Berenson analysis, and identif[ied] a strategy to overcome any zoning impediments identified in the Berenson report and [the Monitor's Huntington Analysis], such as the strategy included in HUD's letter to the County dated April 23, 2014". *See* 2016 U.S. Dist. Lexis 93536 at p. 16.

A discussion of VHB's submissions follow.

The first submission, entitled, "Draft Chapter 12 Supplement" represents a summary of County activities since April 2013 with regards to the Consent Decree. The second submission, entitled, "Section 2: Current Status of the 750 AFFH Units," offers an updated status report with respect to the housing units that the County is developing pursuant to the Consent Decree.

The third and fourth submissions, entitled, "Section 3: Status of Municipal Zoning Analyses," essentially summarize the work of the Monitor with regards to exclusionary zoning: his Berenson Report and Huntington Analysis, which identified certain jurisdictions as having exclusionary zoning, and his commendable work with those jurisdictions to ameliorate the impact of the objectionable zoning restrictions.

While the submissions represent progress, in that they incorporate the Monitor's Berenson Report and Huntington Analysis, the submissions do not incorporate the changes that we stated in the letter dated October 24, 2014, needed to be made to the Monitor's Huntington Analysis, in order to make that analysis acceptable. Further, the submissions lack any commitment on the part of the County to develop and implement strategies to overcome the effects of the exclusionary zoning practices identified in the Berenson Report and Huntington Analysis, and that would be further identified when the Huntington Analysis is revised and completed.

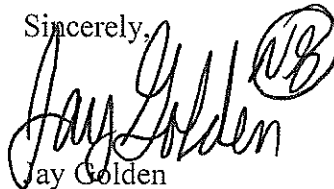
There are many ways that the County can address the issue of exclusionary zoning practices within its jurisdiction to produce an acceptable zoning analysis and AI. One of them would be to adopt the Monitor's work, provided that the changes requested in the October 24, 2014 letter are made, and to identify and include strategies to overcome the effects of the exclusionary zoning practices. One of those strategies could be the one that the Monitor was

employing, which is to work with local jurisdictions to explore making changes to local zoning. HUD is not, and never has been, overly prescriptive about the methodology and strategies to be used by the County. Another option to produce an acceptable zoning analysis and AI would be for the Consultant to summarize the zoning codes currently in effect in each of its municipalities, and then, using census and other data, and the Dissimilarity Index, analyze whether there are areas of segregation and areas that lack diversity. The African American and Hispanic populations should be separately analyzed. The analysis would then show the effect, if any, of that municipality's zoning codes on the observed outcomes. The Consultant would then have to identify and include the strategies to be employed by the County to overcome the effects of the exclusionary zoning.

HUD commends the jurisdictions that, as reflected in the submissions, have made some progress in reducing the extent of exclusionary zoning practices in effect. For example, the Village of Rye Brook modified its zoning code to provide for the development of more affordable housing. As a result, Rye Brook currently has some affordable housing under construction.

While the County is not currently participating in the Community Development Block Grant ("CDBG") program, an understanding of zoning impediments should remain a priority for the County. As a result of revised regulatory requirements, HUD now provides mapping tools to assist program participants in developing robust analyses of fair housing impediments. These tools were not available to the County in 2009, but they are now, and HUD encourages the Consultant to use them as the zoning submission is revised and refined. Should the County decide to return to CDBG program at a later date and meets the program requirements, it would be expected to operate under the revised regulatory requirements. HUD remains committed to assisting the County in this endeavor.

Sincerely,



Jay Golden

Region II Director

Office of Fair Housing and Equal Opportunity

Cc: via email  
 Ed Buroughs ([eeb6@westchestergov.com](mailto:eeb6@westchestergov.com))  
 Norma Drummond ([nvv1@westchestergov.com](mailto:nvv1@westchestergov.com))  
 Gina Martini ([gmartini@vhb.com](mailto:gmartini@vhb.com))