



Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

VIA EMAIL

April 17, 2017

Jay Golden, Regional Director
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
26 Federal Plaza
New York, N.Y. 10278

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

Dear Mr. Golden:

The County of Westchester received your April 10, 2017 letter, which indicates that the County's tenth zoning analysis was unacceptable to the U.S. Department of Housing and Urban Development ("HUD").

The County's tenth zoning analysis was prepared by an independent consultant, VHB. The previous Monitor approved the selection of VHB for this purpose and HUD raised no objection to that approval.

VHB has reviewed your letter and has responded to your comments in the attached memorandum. In light of VHB's response, the County hereby requests that HUD reconsider its position. Thank you for your consideration.

Very truly yours,

Kevin J. Plunkett
Deputy County Executive

Attachment

Office of the County Executive

Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Telephone: (914)995-2909

E-mail: kplunkett@westchestergov.com

cc: Hon. Robert P. Astorino, County Executive
Hon. Michael Kaplowitz, Chair, Westchester County Board of Legislators
Robert F. Meehan, Esq., County Attorney
Clifford Taffet, HUD General Deputy Assistant Secretary
Gina Martini, VHB, Senior Project Manager



To: Kevin J. Plunkett
Deputy County Executive
Westchester County
148 Martine Avenue, 9th Floor
White Plains, NY 10601

Date: April 12, 2017

Memorandum

Project: 29930.00

From: Valerie Monastra, AICP
Gina Martini, AICP

Re: Response to April 10, 2017 U.S. Department of
Housing and Urban Development letter

VHB has received a copy of the April 10, 2017 letter from the U.S. Department of Housing and Urban development (HUD) which found the Westchester County Analysis of Impediments Supplement to Chapter 12-Zoning Analysis (AI Supplement) to be unacceptable for reasons enumerated in the letter. VHB has reviewed the letter and offers the following comments.

Westchester County's draft submission to HUD was on March 20, 2017. On April 10, 2017, the date by which Westchester County was required to have an accepted AI, HUD notified Westchester that the draft Supplemental Zoning Analysis was unacceptable. No correspondence was received prior to that date on the draft. Westchester County has prepared and submitted to HUD an AI that exceeds HUD requirements and documented guidance provided in HUD's Fair Housing Planning Guide. Objective data and demographics, including but not limited to population, race, ethnicity and low/moderate income, are provided in narrative, tabular, and graphic format as suggested by HUD in technical assistance meetings with HUD in January 2017. The form and format of the data from one "test" community was reviewed and agreed upon by HUD prior to Westchester County undertaking the analysis for the 16 agreed upon communities.

Background

Page 2 of the April 10, 2017 letter states that "HUD advised the County and VHB that the AI Supplement must (1) acknowledge demographic patterns within the county; (2) discuss the role that zoning may play in the creation or perpetuation of the acknowledged demographic patterns; and (3) provide strategies that the County may utilize in addressing the patterns". VHB did analyze and acknowledge demographic patterns throughout Westchester County in Section 2, Overview of Westchester County as suggested in the February 17, 2017 e-mail from Jo-Ann Frey. VHB included three maps visually presenting the demographic patterns for White Non-Hispanic, Black Non-Hispanic, and Hispanic populations. Throughout the document Westchester acknowledges, and illustrates in both tabular and graphic format where concentrations of populations exist, including concentrations of the White population. VHB did analyze if zoning played a role in the creation or perpetuation of the acknowledged demographic patterns in the analysis of the agreed upon 16 communities and in Section 4, Community Comparisons of the AI Supplement. The conclusion of the analysis is that zoning is not creating or perpetuating demographic patterns. Finally, Westchester County did provide strategies that they are using and will continue to use in addressing patterns as suggested in the February 17, 2017 e-mail from Jo-Ann Frey but those patterns are not correlated to zoning. Those strategies are found within Chapter 12 of the 2013 AI and within Section 5 of the AI Supplement. These actions include recent actions undertaken by the individual municipalities and the County as well as those future actions to be taken to advance integration and promote fair and affordable housing in Westchester communities. They include County adopted policies, plans, and regulations and well as education and outreach materials,

50 Main Street
Suite 360
White Plains, NY 10606-1900
P 914.467.6600

information, advocacy, and technical assistance. At the local level, these actions include, but are not limited to, the adoption of a local law based on Westchester County's model affordable housing ordinance, legislating for density bonuses and other affordable housing incentives. The specific actions vary based on the individual community but the actions are clearly articulated within Section 5 of the AI Supplement for each community.

Failure to Address Segregation of White Residents

On page 2 of the April 10, 2017 letter it states that the "AI Supplement focuses on concentration of minority residents but fails to analyze areas of white segregation." The letter then provides examples from the Larchmont and Pound Ridge analyses. According to Merriam- Webster dictionary the definition of segregation is "the separation or isolation of a race, class, or ethnic group by enforced or voluntary residence in a restricted area, by barriers to social intercourse, by separate educational facilities, or by other discriminatory means". Zoning is not segregating the White population within Westchester County because this population is represented in all varieties of zoning districts where residential uses are permitted within the County.

Westchester does not "fail to analyze whether zoning is a factor in racial segregation" as the April 10th letter asserts. VHB has undertaken a detailed analysis on this issue and determined that zoning is not a factor in racial segregation. The fact that HUD finds and concludes otherwise despite all the objective data and documentation that has been provided, is inconsistent with the facts presented in our analysis. In the AI Supplement, VHB identified patterns of interrelatedness between median housing value or median rent and racial/ethnic concentrations. But VHB found no such interrelatedness between median housing value or median rent and zoning.

The April 10, 2017 letter raises a concern that "nearly half of the acreage in the Village is dedicated to high-density single family, while only 8% is dedicated to multi-family housing" and Larchmont only has "an African American population of less than 1%" (page 3). The letter also finds that the "County fails to analyze whether zoning is a factor" (page 3). Larchmont permits small sized single-family lots within 48.6% of its land area but very few minority residents reside in those small sized single-family lots. Peekskill permits small sized single-family lots in 52.3% of its land area and yet the Black/African American and Hispanic population exceed the County average in those zoning districts. If two communities have very different racial compositions but contain similar small lot single-family zoning districts, then small lot single-family zoning cannot be causing the concentration of Black/African American, Hispanic, or White populations within communities. However, Larchmont has a median income of \$169,038¹ and a median housing value of \$1,044,800², and Peekskill has a median household income of \$57,7841 and a median housing value of \$298,700². As discussed in the AI Supplement, economic difference may be contributing to the distribution of populations.

The April 10, 2017 letter states "the concentration of white residents and the impact of limited multifamily development in Pound Ridge should have been addressed" (page 2-3). VHB acknowledges that there is a concentration of White residents that is partly a result of the predominant land use pattern of single-family

¹ 2010 U.S. Census

² 2015 American Community Survey 2006-2010 5-Year Estimates

homes on large lots. This land use pattern is not the result of current zoning in the Town, which permits multi-family housing in 99% of its land. As demonstrated on pages 3-60 to 3-64 of the AI Supplement, this land use pattern exists in the Town because of market conditions, historical development patterns, severe environmental constraints, strict New York City watershed regulations, and high land costs and housing values. It is acknowledged that development of multi-family housing in most, but not all, zoning districts requires a special permit. The Town could make multi-family housing as-of-right in all districts but it is doubtful that new multi-family would be constructed given the consumer preference in the area for single-family housing, as well as the high land costs, and environmental constraints that affect a significant amount of land in the Town, and the New York City watershed regulations. It is noted that the April 10, 2017 letter does not mention the significant development constraints that affect Pound Ridge and the other communities located in the New York City Croton watershed. Pages 4-6 to 4-7 of the AI Supplement provides detailed explanation of these constraints and how they limit the development of new multi-family housing in this area of Westchester County. Finally, the April 10, 2017 letter (page 2) states "Pound Ridge does not allow any multifamily development as of right", although Page 3-61 of the AI Supplemental states in regards to Pound Ridge that "in the commercial districts (PB-A, PB-B, and PB-C), multi-family use is permitted as-of-right." The April 10, 2017 letter makes the same assertion on page 3.

Failure to Acknowledge Areas of Segregation

The AI Supplement does not fail "to fully acknowledge segregation of African American and Hispanic Residents" (page 3, 4/10/17 HUD letter). VHB has undertaken a detailed zoning analysis on this issue and determined that zoning is not a factor in racial segregation. VHB's focus only concerns the impacts of zoning on racial segregation.

The quote taken from page 3-23 of the AI Supplement referred to in the April 10, 2017 letter states "no concentrations of minority populations are in the Village" referring to the Village of Ossining was a typo. VHB acknowledges this error and has submitted an errata sheet. That sentence should have stated "no concentrations of minority populations are a result of zoning within the Village". The community analysis found on pages 3-21 to 3-24 of the AI Supplement details the reasons why VHB came to that conclusion.

VHB objects to the statement on page 2 of the April 10, 2017 letter which reads that VHB's conclusion for Sleepy Hollow is "highly suspect". The analysis of Sleepy Hollow does correctly conclude that zoning is not a factor in the population distribution of the Hispanic or Black/African American population within the Village and is supported by data. The analysis demonstrates that there is a concentration of Hispanic residents as defined in our analysis, but that population spans multi-family, two-family, and single-family zoning districts. As a result, a conclusion can be drawn that zoning is not correlated with the concentration of the Hispanic population within Sleepy Hollow. The Black/African American population does not meet the concentration definition within our analysis, which is having a population greater than the County average.

Failure to Appropriately Compare Communities

The April 10, 2017 letter from HUD states on page 3 that "the AI Supplement fails to compare similarly-situated communities" and discusses the comparison of Greenburgh and Pound Ridge that was provided in the AI Supplement (pages 4-4 to 4-5). The AI Supplement, however, does compare the similarly-situated communities of Sleepy Hollow and Bronxville (pages 4-3 to 4-4). The comparison of Sleepy Hollow and Bronxville illustrates that although the communities have very similar zoning ordinances and land use patterns, the racial/ethnic mix of the two communities is very different. The conclusion of this comparison

is that the lack of diversity in Bronxville is not related to zoning and is more likely related to the higher housing values and a higher rate of home ownership in Bronxville. This case study was presented in the AI Supplement to show that inclusion of multi-family housing in a community does not guarantee a racially diverse community and that while a zoning ordinance in one community may result in diversity, a similar zoning ordinance in another community may not result in diversity due to a variety of factors that are clearly not related to zoning. The April 10th letter from HUD does not mention the comparison of Sleepy Hollow and Bronxville or its conclusions.

As for the comparison of Greenburgh and Pound Ridge, the April 10, 2017 letter (page 3) does not accurately restate the conclusions identified in the AI Supplement. The purpose of comparing these two communities is to show that zoning ordinances do not always reflect the actual land uses on the ground. While multi-family use is permitted either as-of-right or with a special permit in approximately 99% of the Town of Pound Ridge, very little multi-family housing has been constructed, while only 8% of Greenburgh is zoned for multi-family even though 36% of its housing stock is multi-family.

Single-family use on large-lots is prevalent in the Town of Pound Ridge due to other factors unrelated to zoning, such as market conditions, high cost of land, and onerous development regulations due to New York City's watershed. The Town of Greenburgh has a diverse population despite having less land zoned for multi-family. Further, as shown on Maps 3 and 4 for Greenburgh, the areas with concentrations of Black/African American and Hispanic populations do not correlate with areas only zoned for multi-family. The areas of minority concentrations contain a variety of residential zones, ranging from large lot single-family districts to high-rise multi-family districts, another demonstration that zoning patterns are not correlated with racial/ethnic patterns.

Finally, on Page 3 of the April 10, 2017 letter it states that "the failure to appropriately compare communities results in the County not accurately identifying impediments to fair housing choice." Yet, page 4-4 of the AI Supplement states, regarding the Sleepy Hollow and Bronxville case study, "in this case, the barriers to affordable housing opportunities may be housing values and tenures, neither of which can be regulated through zoning." In addition, on, page 4-5 it states, regarding the Greenburgh and Pound Ridge comparison, "although Pound Ridge has modified its zoning ordinances over time to encourage a broader array of housing opportunities, other factors not related to zoning, including high land costs, onerous watershed regulations, and environmental constraints, have lessened these opportunities." These impediments are not zoning related and are further discussed in the 2013 AI.

Strategies to Overcome

The April 10, 2017 letter specifically states (page 4) "that HUD questions how fair housing posters, attending award ceremonies, and participating in panel discussions are effective strategies to overcome impediments that should be identified in the AI Supplement". HUD draws a conclusion that the County should have identified impediments absent data to support that conclusion. VHB's analysis of the zoning did not find any impediments and therefore did not identify any impediments related to zoning.

The April 10th letter is correct that the AI Supplement includes education and outreach and web resources. However, the letter fails to acknowledge that the education and outreach includes working and advocating within individual communities for furthering fair and affordable housing, and working with non-profits who specialize in housing. In addition, Section 5 of the AI Supplement contains more than the County's Education

and Outreach efforts since 2010. It contains **all** of the County's policies, plans, and legislation to further fair and affordable housing.

Chapter 12 of the AI does list impediments and actions to overcome them. This AI Supplement only entailed a zoning analysis and those impediments related to zoning, of which none were identified.

Conclusions

Westchester County has been very clear and consistent in stating that there are concentrations of Black/African-American populations as well as concentrations of Hispanic populations, and, in fact, there are concentrations of White populations. Based on VHB's detailed analysis of countywide demographics and zoning, VHB finds and concludes that zoning is not the cause of such demographic concentrations. This very issue seems to be the singular outstanding issue on which HUD and Westchester disagree. It is, however, the preparer of the AI that must make reasonable conclusions based on a hard analysis of all available data. This is exactly what VHB did in its zoning analysis. It is not reasonable for HUD to insist on its own universal conclusions regardless of all the data and analysis conducted by numerous third party zoning and land use consultants and educational institutions.