

**WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING  
IMPLEMENTATION PLAN**

August 9, 2010

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**Appendix A-1(i): A copy of the County's October 8, 2009 extension request letter**



Andrew J. Spano  
County Executive

Susan Tolchin  
Deputy County Executive

October 8, 2009

Mr. James E. Johnson  
Debevoise & Plimpton LLP  
919 Third Avenue  
New York, New York 10022

**RE: Westchester County/Fair & Affordable Housing Program**

Dear Mr. Johnson:

Pursuant to Paragraph (18) of the Stipulation and Order of Settlement and Dismissal entered in *U.S. ex rel. Anti-Discrimination Center v. Westchester* ("Stipulation"), the County of Westchester is hereby requesting an extension of time for the delivery of the County's Implementation Plan, as well as one other preliminary deliverable, as required under the referenced Stipulation. The specific requests for extensions are summarized below, along with the rationale for those extension requests:

**(I) Extension of the deadline specified in Paragraph (31) of the Stipulation which requires the County "to adopt within (90) calendar days after the date of the Court's entry of this Stipulation and Order, a policy statement providing that:**

- (a) the elimination of discrimination, including the present effects of past discrimination, and the elimination of de facto residential segregation are official goals of the County's housing policies and programs;**
- (b) AFFH significantly advances the public interest of the County and the municipalities therein; and**
- (c) the location of affordable housing is central to fulfilling the commitment to AFFH because it determines whether such housing will reduce or perpetuate residential segregation."**

**Extension requested:** The County requests that the deadline for adoption of this policy be extended for an additional (15) days, thereby moving the deadline for adoption from November 8, 2009 to November 23, 2009.

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**Rationale:** In conformance with long-standing legal guidance issued by the NYS Attorney General, the County of Westchester's fair and affordable housing policy was authorized by the Westchester County Board of Legislators ("BOL"), through the adoption of a Statement of Need in 1979, which Statement of Need was amended by the BOL in 1992 and again in 2001. (See attached Schedule "A" for history of legislative enactments.) In order to adopt the requisite policy specified in the Stipulation, as outlined above, the County Board of Legislators must adopt, by local law, an amended Statement of Need.

The process of developing that revised Statement of Need, as well as the legislation necessary for the adoption of same, is underway. However, it is the County's intent to present the draft policy instrument to the U.S. Department of Housing and Urban Development ("HUD") for preliminary review before submission to the BOL.

With or without a formal determination from HUD as to the adequacy of the policy instrument to satisfy the requirements of the Stipulation, the process of BOL consideration of this matter is likely to extend beyond the current November 8, 2009 deadline specified in the Stipulation. This is due, in part, to the fact that the BOL must conduct a formal public hearing process, subject to publication rules, in advance of adoption of the local law as part of its deliberative process.

For your information, there is only one regularly scheduled BOL meeting which will occur before the current deadline. The proposed extension to November 23, 2009 will enable the BOL adequate time to conduct its deliberative processes, and the time frame will encompass the next three regularly scheduled BOL meetings which will occur on October 19<sup>th</sup>, November 9<sup>th</sup>, and November 23<sup>rd</sup>.

**(II) Extension of the Deadline for the Submission of the County's Implementation Plan which, pursuant to Paragraph (18) of the Stipulation, must be delivered to the Monitor and the Government within (120) days of the Court's entry of the Stipulation, or on December 8, 2009.**

**Extension requested:** The County requests that the deadline for delivery of the Implementation Plan be extended for an additional (53) days, thereby moving the deadline for delivery from December 8, 2009 to January 30, 2010.

**Rationale:** As you know, the Implementation Plan requires, in addition to the development of a methodology and process for the actual development of the required 750 units of housing, a wide array of deliverables and extensive community outreach. The County believes that the enormity of the task, as well as the County's interest in applying both a high degree of precision and care to the development of these documents and policies in cooperation with all community stakeholders, warrants an extension of the timeline for production of the Implementation Plan. To illustrate the County's rationale for this request, please consider the following:

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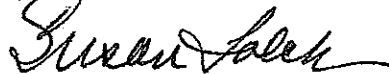
- As part of its Implementation Plan, the County is required to produce and submit a revised Analysis of Impediments (AI) pursuant to Paragraph 32 of the Stipulation. A draft AI has been submitted to HUD for comments, and the County has been informed that those comments will be received on or before October 23, 2009. As you are aware, the AI is an extraordinarily complex document and depending upon the nature and scope of HUD's comments, the County may be required to undertake significant revisions. Such revisions may require the assistance of expert consultants. The County believes that the process of developing revisions, combined with the potential need for professional assistance to prepare those amendments, along with the need to continue the development of all other Implementation Plan deliverables on a parallel track will prove to be an insurmountable task given the time which would remain between October 23<sup>rd</sup> and the current deadline of December 8<sup>th</sup>.
- Both the BOL and the Westchester Municipal Officials' Association have established Implementation Plan Review Committees which will work in cooperation with the County's Administration in the development of the Implementation Plan. The process of developing the deliverables internally, as well as providing regular forums for the review, consideration, comment, and revision of those deliverables, as may be deemed necessary and appropriate, will require considerable time, and in all likelihood several cycles of review which will necessarily occur over a period of months. To add to the complexity of this process, please also note that the BOL will begin reviewing the 2010 budget on November 16<sup>th</sup> and that the BOL will be wholly occupied with finalizing the budget by mid-December, thereby limiting the time and focus the BOL can dedicate to the Implementation Plan process during that period.
- In addition to those cooperative efforts, the development of a model inclusionary zoning ordinance, required pursuant to Paragraph 25(a) of the Stipulation, will be developed in cooperation with a committee of local attorneys who are seasoned municipal zoning experts, which committee has been designated by the Westchester Municipal Officials' Association. It is critical to note that in addition to ensuring set asides for fair and affordable housing, this model ordinance must also include "standards for expedited review of proposals for affordable housing that AFFH including procedures for streamlining the approvals process for the design, permitting and development of these units" pursuant to Paragraph 25(a)(iii) of the Stipulation. Given that local municipalities have exclusive home-rule zoning authority under New York State law, this requirement will likely trigger a complex and time-consuming analytical discussion and drafting process. Nonetheless, the County believes that engaging in these processes will not only be critical to the informed development of the proposed ordinance, but also critical to the credibility of the final product. Notably, the substantive provisions of that model ordinance must then be incorporated into the County's Long Range Land Use Policies, pursuant to Paragraph 27 of the Stipulation, which will be achieved through an amendment to its Westchester 2025 planning document, which amendment must be approved by the Westchester County Planning Board after public notice.
- Likewise, the County believes that the development of the County's CDBG and other financial allocation processes, required pursuant to Paragraphs 25(b) and 25(d) of the Stipulation, must necessarily include the input of both the BOL and municipal officials in order to ensure that the parties to be impacted by these policies are given ample

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- opportunity to understand the rationale for and weigh in on the development of those policies.
- The required standards for the marketing of new housing developments, which are a required component of the model zoning ordinance will also require research and outreach to local housing advocacy organizations to ensure that the most appropriate & effective models are utilized and incorporated. This outreach effort with housing advocacy groups will also be critical to the process of developing: (a) a centralized intake processes for potential owners & tenants for new housing, required pursuant to Paragraph 33(f) of the Stipulation and (b) the enhancement of the County's fair housing advocacy and education programs, which the County intends to undertake pursuant to its obligations under Paragraph 33(b).
- Pursuant to Paragraph 25(c), the County intends to submit legislation to amend the County "First Right of Refusal" law, which requires the BOL to enact a local law. The deliberate process and public hearing requirements outlined in Section (I), above, would also apply to this legislation and will, again, likely overlap with the BOL's budget process, creating an extraordinary strain on its limited resources in this timeframe.
- In addition to all of the activities described above, the County is already actively engaged in the process of meeting with developers, property owners, local housing advocacy groups, planning experts, and others in support of the Implementation Plan, as well as investigating specific sites for the development of housing. Upon the identification of viable siting opportunities, the County will then immediately begin the complex process of due diligence (i.e. conducting appraisals and financing analyses), negotiation, and community outreach for each such project.
- It seems worth noting that the end-of-year holidays will also play a part in complicating the outreach and review processes which are outlined herein.

In support of this extension request, I would like to extend my personal assurance that this Administration will continue to provide you and your staff with a constant flow of information as to our progress, and will provide a series of checkpoint meetings so that you can be assured that the County is proceeding with all due diligence to produce the comprehensive Implementation Plan as required by the Stipulation.

Very truly yours,



Susan Tolchin  
 Deputy County Executive

Cc: Andrew J. Spano, County Executive

Nestor Davidson, General Deputy General Counsel, Office of General Counsel, U.S.  
 Department of Housing and Urban Development (OGC)

SCHEDULE A

CHRONOLOGY

WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING POLICY

September 10, 1979 – Resolution No. 207-1979

Board of Legislators adopts as the official Westchester County Housing Policy the report of the Committee of Community Affairs, Health and Hospitals and “Report Concerning a Housing Policy” dated October 23, 1978.

June 15, 1992 – Resolution No. 107-1992

Board of Legislators adopts the “Westchester County Affordable Housing Plan Statement of Need” dated June 4, 1992 as part of the official Westchester County Housing Policy adopted on September 10, 1979.

August 22, 1994 – Local Law Intro No. 7-1994

Board of Legislators amends the Westchester County Administrative Code to add new Article XII of Chapter 277 “Westchester County Housing Opportunity Commission.” (Original provision set Commission to expire on December 31, 1997. Subsequently amended by L.L. No. 15-1997, L.L. No. 20-2003; L.L. No. 1-2005. Current expiration date is December 31, 2009.)

October 15, 2001 – Resolution No. 156-2001

Board of Legislators amends Section V, Item C of the “Westchester County Affordable Housing Plan Statement of Need” dated June 4, 1992 to reflect the need for affordable assisted/assistive senior housing in Westchester County.