

**WESTCHESTER COUNTY FAIR AND AFFORDABLE HOUSING
IMPLEMENTATION PLAN**
August 9, 2010

Appendix D-1(ii): Documentation of outreach to local Westchester County municipalities re: Model Ordinance and proposed Discretionary Funding Policy

Robert P. Astorino
County Executive

January 29, 2010

Hon. Jay Leon
Mayor
Village of Ardsley
507 Ashford Avenue
Ardsley, NY 10502


Dear Mayor Leon:

As you know, last year the former County Executive and Board of Legislators approved a Stipulation and Order of Settlement of a lawsuit known as *U.S. ex rel. Anti-Discrimination Center v. Westchester*. Under the terms of that Settlement, the County is obligated to produce a model inclusionary zoning ordinance and promote it to all municipalities by January 30, 2010. The Settlement also requires the County to adopt a discretionary funding policy that would ensure that any municipality which receives discretionary County funding in the future is committed to affirmatively furthering fair housing, as well as an affirmative marketing plan for fair and affordable housing.

Accordingly, each of those documents is enclosed herein.

Since Election Day and during this past month of the new administration, my team has worked closely with representatives of the Westchester Municipal Officials Association to gather input regarding the concerns of you and your colleagues. While many of those issues have been addressed, bear in mind that the County is somewhat constrained by the terms of the Settlement.

Thank you for your input to date, and be assured that my administration will continue to work with you as the Settlement is implemented.

Sincerely,

Robert P. Astorino
County Executive



Robert P. Astorino
County Executive

Kevin J. Plunkett
Deputy County Executive

January 29, 2010

**RE: Westchester County Housing Settlement Obligations
Affecting Local Municipalities**

Dear Westchester County Municipal Officials:

As you know, last year the prior administration and the Board of Legislators agreed to the Stipulation and Order of Settlement and Dismissal entered in *U.S. ex rel. Anti-Discrimination Center v. Westchester* ("Stipulation"), regarding the promotion of fair and affordable housing in Westchester County. This Administration is now responsible for implementing the provisions of the Stipulation. One major component of the County's compliance with the Stipulation is the requirement that the County: (1) produce a model inclusionary zoning ordinance and promote same to the local municipalities; and (2) adopt discretionary funding policies at the County level to ensure that any municipality which receives discretionary County funding in the future is committed to affirmatively further fair housing (AFFH).

At the outset, I would like to thank the Housing Committee of the Westchester Municipal Officials Association for continuously providing invaluable insight and assistance to this Administration as we crafted these instruments. This was a challenging task given the fact that the Stipulation provides largely unequivocal guidelines as to the content of both the model zoning ordinance and the discretionary spending policy, and given the strict and abbreviated deadlines for completion of these instruments. It is my expectation that the results of this process will continue to generate some level of concern among our local municipalities despite the WMOA's input, and despite this Administration's best efforts to balance the home rule rights and interests of the local municipalities with the requirements of the federal government as reflected in the terms of the Stipulation. To that point, please know that I expect that the ongoing process of implementing the Stipulation and its resulting policies will necessarily be an evolving process which recognizes the complexities of local zoning processes, and allows for adjustments to be made to policies in a manner that will satisfy the interests of the local, County, and Federal governments.



To that end, the following instruments are transmitted for your review and reference:

A. Model Inclusionary Zoning Ordinance Provisions

Pursuant to the Stipulation, the County is required to develop and promote a model inclusionary zoning ordinance that would, if adopted by local governments, advance the establishment of fair and affordable housing as part of regular development activity. The Stipulation provides that such model ordinance shall include:

- (i) a model inclusionary housing ordinance that requires new development projects to include a certain percentage of affordable units, including criteria and standards for affordable housing units and definitions of who is eligible for affordable housing;
- (ii) standards for affirmative marketing of new housing developments to ensure outreach to racially and ethnically diverse households;
- (iii) standards for expedited review of proposals for affordable housing that AFFH including procedures for streamlining the approval process for the design, permitting, and development of these units; and
- (iv) standards for legal mechanisms to ensure continued affordability of new affordable units.

In shaping this instrument, the County was very much aware that all municipalities within the County have comprehensive zoning codes in place that are of varying length, complexity and content, and which cover a wide variety of zoning issues which are unrelated to inclusionary zoning for fair and affordable housing. The County is also aware of the necessity for all projects to undergo SEQRA review. Therefore, the material produced by the County in compliance with the Stipulation is not intended to operate as a fully-integrated zoning code or to otherwise act as a substitute for or blanket addendum to those long-standing codes. Rather, it is a series of zoning provisions which are intended, collectively, to serve as a supplement to existing municipal zoning codes for the purposes of ensuring the provision and promotion of fair and affordable housing development throughout the county. By proceeding in this manner, each municipality can assess the appropriate manner for inclusion of these provisions into their individual codes, while maintaining the underlying integrity of those existing codes.

Please note that the affordability criteria specified in Section (2) of this model, while slightly different from the affordability terms outlined in the Stipulation, reflect the correct Federal income qualification guidelines.

B. Discretionary Funding Policy.

Pursuant to the Stipulation, the County is required to establish a policy which will condition, as appropriate, the use of public funds and resources, including but not limited to: Federal Community Development Block Grant (CDBG) funds and County Open Space/Legacy funds, on commitments from municipalities to: (a) ban certain housing selection preferences that do not affirmatively furthering fair housing, (b) offer the County a right of first refusal to retain and/or

purchase land acquired *in rem* to be used to affirmatively further fair housing and (c) provide active assistance in implementation of Settlement through land use regulations and other affirmative measures.

It is critical to note that the application of this discretionary funding policy will be Countywide, for all County discretionary funding programs, and will not be limited to those communities in which Stipulation-compliant units may be built or to those projects which are undertaken in compliance with the Stipulation. Furthermore, this policy, as written, would apply to all discretionary funding agreements that are entered into by the County and a municipality after January 30, 2011, including CDBG and Open Space/Legacy agreements. This one-year window is intended to allow sufficient time for municipalities to review and to adopt, as may be necessary, relevant code provisions and/or policies to enable compliance with the discretionary funding policy.

C. Fair & Affordable Housing Affirmative Marketing Plan.

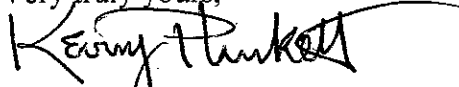
Pursuant to the Stipulation, the County must establish a process for affirmatively marketing housing within the County and in geographic areas with large non-white populations outside, but contiguous or within close proximity to the County, including a requirement that all agreements with developers must include a commitment to conduct such affirmative marketing. The plan outlined in this section shall become a policy of the County of Westchester, and will be implemented continuously for all future fair and affordable housing projects to which the County is a party. In addition, the County's discretionary funding policy will also require that municipalities utilize this plan for fair and affordable housing units developed or offered within municipal boundaries as a means of demonstrating the required commitment to AFFH.

By this communication, I am encouraging the local municipalities in Westchester County to take the necessary steps to adopt the legal and policy recommendations outlined in the attached documents, both to promote the development of fair and affordable housing within your borders, and also to preserve the integrity of the County's discretionary funding programs which are critically important in the realm of shared services and intergovernmental cooperation.

In closing, I welcome continued dialogue on these issues, and hope that the Housing Committee of the WMOA will continue to provide valuable input to this Administration throughout the implementation of the Stipulation.

For further information and background on the Stipulation please visit www.westchestergov.com/pdfs/Housingsettlementtext.pdf. A complete copy of the County's Implementation Plan will be posted to the County's website early next week.

Very truly yours,



Kevin J. Plunkett
Deputy County Executive

KJP/sg

cc: Hon. Robert P. Astorino, County Executive
Hon. George Oros, Chief of Staff
Hon. Ken Jenkins, Chair, Westchester County Board of Legislators