

Westchester County, NY Affirmatively Furthering Fair Housing Plan Rejected by Court Monitor

A court-appointed monitor has rejected a plan to overcome the “utter failure” of Westchester County, NY to affirmatively further fair housing choice. In a February 11 report to the United States District Court, Southern District of New York, the monitor appointed to oversee implementation of a court Stipulation and Order of August 10, 2009 directed the county to make significant revisions to its Implementation Plan (IP) in order to comply the Stipulation’s requirements. A revised IP is due on March 12.

The monitor found that the county's IP lacked "any concrete short- medium- or long-term strategies for how the county plans to develop the 750 affordable housing units that affirmatively further fair housing as required by the Stipulation.” For example, the monitor notes that the IP does not include the county’s strategy for allocating the \$51.6 million it must spend on land acquisition, infrastructure improvement, construction, acquisition, and other development costs. Nor does the IP specify the process for making allocation decisions.

HUD announced on August 10 a historic fair housing settlement with Westchester County, requiring it to use its own funds to develop affordable housing in parts of the county that are currently home to very few people of color. According to the Stipulation, the county must spend \$51.6 million of non-federal, non-state funds to “ensure the development of” at least 750 new units of affordable housing over the next seven years. At least 630 of these homes must be in municipalities with an African-American population of less than 3% and a Latino population of less than 7%. Within such municipalities, the homes cannot be developed in census blocks that have more than 10% African-American or Latino populations (See *Memo* 8/21).

The monitor states that the county has not complied with the Stipulation’s requirement that the IP include proposed timetables and benchmarks for the first six-month and subsequent one-year periods. In addition, the county’s plan for identifying and assessing potential properties for development of the required 750 units lacks any concrete timeframe and is unnecessarily vague. Plus, the IP lacks a system for tracking the number of units in progress for each of the locational criteria categories.

The Stipulation obligates the county to promote to its municipalities a model inclusionary zoning ordinance and standards for affirmative marketing. Noting the Stipulation’s requirement that the county use all means, including legal action, to overcome municipal resistance to the goals of the Stipulation, the monitor specified that a revised plan "should include a clear strategy for how the county will employ carrots and sticks to encourage compliance by municipal governments." The IP also lacks a plan for the county to monitor local approval processes and municipalities’ cooperation with the county’s efforts to implement the Stipulation.

The August 10 settlement was a major step in a legal process that began in April 2006 when the Anti-Discrimination Center (ADC) sued the county, alleging that it violated the

False Claims Act each time it certified as part of its Consolidated Planning process since 2000 that it was “affirmatively furthering fair housing” (AFFH). The U.S. District Court for the Southern District of New York found on February 24, 2009, that the county had “utterly failed” to meet its annual AFFH certification. Then, on April 28, HUD rejected the accuracy of the county’s AFFH certification, leading to the rare disapproval of the county’s 2009 ConPlan and reflecting Secretary Shaun Donovan’s stated commitment to AFFH (See Memo, 6/5).

Jurisdictions that receive CDBG, HOME, ESG, and HOPWA block grants are required to have a HUD-approved Consolidated Plan (ConPlan). In its ConPlan, a jurisdiction must certify that it is affirmatively furthering the jurisdiction’s commitment to fair housing choice.

The monitor’s report to the court and the Anti-Discrimination Center’s preliminary analysis of the county’s IP is available at www.antibiaslaw.com/westchester-false-claims-case.